

**Submission of the
NZ Audiological Society (NZAS)
on
Regulations for Noise Induced Hearing loss
under the
Accident Compensation Act 2001
pursuant to sections 323 and 324.**

1. The New Zealand Audiological Society (NZAS)

1.1 This submission is presented by the New Zealand Audiological Society (NZAS), the professional organisation for Audiologists in New Zealand. The NZAS is a self regulated professional body with approximately 290 Members working in all sectors of hearing care in New Zealand including, public hospitals, education, private practice and academia. We advocate for safe, high-quality hearing services for all New Zealanders and participate in the training of graduate audiologists through our supervision and clinical certification process. Our members are subject to a strict code of ethics and adhere to clinical standards following best practice guidelines informed by international research.

1.2 In order to become an audiologist who is a member of the New Zealand Audiological Society an audiologist undertakes at least 5 years of university study and has to have a postgraduate qualification, usually a Master's or Doctorate Degree in Audiology. They then have to complete an additional year of supervised practice and then following that year, complete an exam with a practical component in order to receive a Certificate of Clinical Competence in Audiology (CCC) from the New Zealand Audiological Society. In addition, New Zealand Audiologists have to undertake continual education to maintain their Practicing Certificates. Valid, current Practicing certificates are required in order to retain Full Member status of the New Zealand Audiological Society.

2. Context for the regulations

2.1 The NZAS, HIMADA and ACC signed an ACCORD in 2007. The ACCORD has resulted in around \$15.3m worth of savings to NZ employers over the last two years

out of a total annual \$60m spend. This was achieved by the voluntary participation of the industry in bringing the price of hearing aids down to an agreed target. The target was achieved. Audiologists have not had a fee increase since 2001, save for a one off movement in 2004 for the fitting fee.

- 2.2 In March 2010 the NZAS and vendors committed to undertake a survey of fees being charged by audiologists in order to provide a bench mark for discussions around fees. The NZAS and vendors participated in the survey in good faith. When the draft report of the survey results was provided to the parties, agreement could not be reached on what were the true costs.
- 2.3 The table that is attached on page 17 of this submission shows that fees being paid by ACC are below the rate required to cover costs and provide a sustainable margin. The regulations propose to further reduce fees.
- 2.4 ACC ceased negotiations with NZAS on 21st May 2010. The NZAS was advised as follows by Phil Wysocki, Manager Treatment and Rehabilitation Services, Health Purchasing and Provider Relationships: *"Given that consultation will only canvas regulatory options, ACC has decided it is appropriate at this point to cease negotiations relating to the current audiology services contract review. This is because under either of the two proposed options, costs payable for audiology services will be prescribed in regulations, and ACC will not hold a contract for these services"*.
- 2.5 On 24 May 2010, the hearing care industry was presented with a regulatory framework, in place of a contractually based framework. The objective of the Government intervention by regulations is to bring down costs abruptly. The regulations will potentially strip \$500 million out of the hearing care sector over the next few years. The regulations propose shifting costs from levy payers to claimants and reducing the fees paid to audiologists to such an extent that the future of the industry is at risk. On pages 18 & 19 of the submission, the current and proposed fees for audiological services are compared.
- 2.6 People with work related hearing loss will not receive the rehabilitation that they would expect from a scheme based on a principle of community responsibility and founded on a social contract which took away the injured persons right to sue. A principled approach has been usurped by prescriptive technical rules.
- 2.7 The Regulations that are proposed are not consistent with the espoused Government approach of less regulation; and less Government intervention, nor are they consistent with the regulatory powers contained within the governing statute. The statute does not envisage controlling the market (by prescribing total amounts

payable). The regulations are an unusual use of a power, not seen anywhere else within the ACC scheme.

3. Request for extension of time

3.1 The Department of Labour and ACC released a Consultation document on regulations for noise induced hearing loss to the NZAS on 24th May 2010. It advised the NZAS that submissions were due by 18 June 2010.

3.2 The NZAS has requested an extension of time to provide submissions on the proposed regulations:

- To enable it to consult with its members, then analyse the results in order to formulate an effective and meaningful response.
- It is vital that any consultation is fair and real
- The Regulations are important and far reaching
- They will have a significant economic and social impact not only on its members but on those suffering hearing loss and their families.
- The regulations will have an indirect effect on safety in workplaces as some people suffering hearing loss will not be able to access hearing aids
- Communication difficulties impact on safety and well being
- We wish to obtain advice on the apparent discriminatory aspect of these regulations
- We are investigating whether the regulations breach ILO Conventions that NZ has ratified.
- We are seeking legal advice on whether the regulations are made in accordance with the general objects and intentions of the statute under which they are made and contains matters more appropriate for Parliamentary enactment.

3.3 This extension was refused on the basis that it would be unfair on those who have already put in submissions and to those who would do so by the 18th June.

3.4 On 11th June 2010 the NZAS was advised it would not receive a copy of an exposure draft of the regulations as the policy contained in the consultation document was comprehensive and that there would be no other matters contained in the regulations that were not in the consultation document. On 15th June 2010, submitters were advised that the standards referred to in regulations were not available for viewing.

3.5 The NZAS contends that 20 days is insufficient time to provide a comprehensive response to the regulations for the reasons set out above.

3.6 The NZAS further contends that the consultation document is misleading and inadequate. In particular the document incorrectly alleges that the ACC pays for age related rehabilitation which it does not.

3.7 The consultation document fails to provide any information concerning the impact on Maori, Peoples of the Pacific Islands or people currently disadvantaged.

4. The Woodhouse Principles and the Act: the regulations are not consistent and are unsupported by the scheme as a whole

4.1 The five guiding principles proposed by Hon Justice Woodhouse and his fellow Commissioners are:

- Community responsibility
- Comprehensive entitlement
- Complete rehabilitation
- Real compensation, and
- Administrative efficiency.

4.2 The Accident Compensation Act 2001 is the relevant legislation.

Section 3 - the purpose of the Act is to enhance public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has as its overriding goals minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social and personal costs), through-

S3(a) establishing as a primary function of the Corporation the promotion of measures to reduce the incidence and severity of personal injury.

S3 (c) ensuring where injuries occur, the Corporation's primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to a maximum practicable extent a claimant's health, independence and participation¹.

4.3 The regulations are inconsistent with the Woodhouse principles and the purpose of the Act. Fairness and sustainability must be in balance. The consultation document elevates "financial sustainability" above all else. This balance is further distorted by the arbitrary manner in which financial sustainability is considered by the ACC. The willingness (or even the ability) of Employers to pay levies that would, by 2019, fund any and all existing and potential claims where a component of the injury may have

¹ The purpose of the Act did not change with the recent amendment: the Accident Compensation Amendment Act 2010.

occurred prior to 1999 is not a measure of sustainability. Sustainability must be considered in the standard accounting and insurance contexts which time-match expenditure to revenue.

5. Sustainability

- 5.1 The reason for the regulations is to cut employer levies. The employer concerns regarding the levy are centred on the increase in levies required to fund the actuarial estimates of liability for residual claims for hearing services. Residual claims relate to potential and actual claims for all persons who had pre 1999 exposure to noise in the workplace. The levy pool must be fully funded by 2019, yet the funds will be used to fund claims that may not be lodged until 2046. The key drivers of this component of the levy are the outstanding liability and the time period to achieve full funding.
- 5.2 The largest contributor to that liability is hearing loss. This liability arises solely from the unique treatment of future claims for hearing loss ie claims not already lodged.
- 5.3 Employer concerns over this levy could be met by extending the time period for full funding, going back to a Pay As You Go model, or funding hearing loss claims as they are lodged.
- 5.4 We understand that funding future claims, not yet lodged, is inconsistent with normal insurance practices. The NZAS has serious concerns about the accuracy of estimates of liability which appear to increase over time. The basis for the actuarial estimates are projections of current claims history to the future using linear modelling. The NZAS believes that this will overestimate the risk to levy payers. The ACC has commissioned work that will provide more accurate estimates of future claims,

6. The Consultation document

- 6.1 This question in the consultation document **is it fair that ACC and employers continue to pay for the non- injury-related component of hearing loss claims?** is misleading and loaded as it implies that employers are paying for non injury related hearing loss. This is not true. Currently employers only pay for the work related noise induced hearing loss.
- 6.2 The NZAS directs the DOL and ACC to the ENT and audiologist assessment of claimants and notes.² ACC relies on an ENT opinion as to whether to grant entitlement to a hearing aid. The ENT is directed to only consider work related noise

² See pages 30-41 of this submission for the Audiologists Hearing Needs Assessment report ACC 4122 and the ENT Report ACC 22b. See Q 20.

induced hearing loss when considering whether or not to prescribe a hearing aid. This point is further elaborated on later in this submission. Significant numbers of claims that have been accepted as covered injuries do not result in the claimant receiving entitlements because the covered injury does not justify the provision of entitlement. The NZAS has been advised that a significant number of claims are declined. Historically 42% of covered claims resulted in no entitlement to hearing aids as they were not needed for the rehabilitation of the work related hearing loss³. The overall tightening of ACC's approach to hearing loss claims indicates there is little need to regulate to control costs. More recent data is set out below.

Year of lodgement year ending 30 June	Total lodged	ONIHL claims accepted for cover	
		<i>accepted with hearing aid</i>	<i>accepted without hearing aid^{[1][1]}</i>
2008	9,457	4,251	2,633
2009		n/a	n/a
<i>Total</i>			19,582

Year of lodgement year ending 31 Mar	Total lodged	ONIHL claims accepted for cover	
		<i>accepted with hearing aid</i>	<i>accepted without hearing aid^{[2][1][1]}</i>
2009	11,509	4,844	3,415
2010	11,040	not yet available	not yet available

Source: Phil Wysocki ACC 16.6.10

6.3 As from 1st July 2010 only those with 6% or more noise induced hearing loss will be covered. This effectively rules out many people of older age with noise induced hearing loss.

6.4 Currently, claims for replacement aids and appliances are rejected by the ACC when those claims arise solely or substantively from changes in the Claimants hearing due to factors other than the covered NIHL

³ Source: DOL document "Summary of information for policy on hearing loss thresholds for eligibility for entitlements" 2009

7. Do you prefer option 1 or option 2?

7.1 The NZAS rejects both options proposed for the regulations. The reasons for this are:

- The Accident Compensation Corporation has a role to administer a fair and sustainable scheme.
- The importance of access to entitlement for a covered injury is made clear by the statutory bar that prevents an injured person from suing for personal injury.
- It is well established that the provision of social rehabilitation (which includes hearing aids) involves the exercise of a statutory discretion on the part of ACC.
- ACC is liable to provide rehabilitation after it has had an opportunity to consider all the relevant matters reported to it by the assessor, and has exercised its discretion that in this circumstance this individual is entitled to rehabilitation.
- The statute requires that the qualified assessor must describe the limitations caused by the covered hearing loss and the rehabilitation outcome that would be achieved (in relation to the covered hearing loss) by the provision of rehabilitation (e.g. of providing and fitting hearing aids).
- A regulation must implement policy stated in the empowering Act. The regulations conflate a simple percentage hearing loss with the extent of rehabilitation that ACC is liable to contribute towards rehabilitation. Under the current framework sections 81, 84 and clause 13 all must be considered in their entirety before an entitlement to a hearing aid is granted. The proposed regulations eliminate the need to consider the matters contained in these sections⁴.
- The regulations cannot fetter the Corporation's discretion which it must apply when deciding to provide or contribute to the cost of an aid or appliance.
- Audiometric thresholds and resulting levels of hearing loss are not directly related to need for rehabilitation.
- Percentage hearing losses are not linear measures that can meaningfully be added and divided in the manner proposed by the regulations.

⁴ Attached to this submission are the relevant sections of the Act that ACC must have regard to. See pages 22-29 of this submission.

- Due to the prescriptive nature of the regulations the Corporation will ultimately be unable to take into account all relevant matters, in deciding how to exercise its discretion to provide hearing aids to a claimant with a covered hearing loss.
- The statute envisages the ACC providing rehabilitation to assist in restoring a claimant's independence to the maximum extent practicable. Whilst the ACC can regulate to prescribe the costs that the Corporation is liable to pay for the entitlement to rehabilitation. The statute does not envisage that a person cannot access rehabilitation because cost is an insurmountable barrier. For example:
 - Annual checks and trouble shooting will be paid for by the claimant, not ACC; reprogramming and adjustment will be fully funded by the claimant; hearing reviews (which need to take place within 6 years of a fitting) will be fully funded by the claimant.

7.2 The statute foresees a balance being struck between what is fair to the claimant and which allows the ACC to fulfil its statutory goals, and overall scheme sustainability.

7.3 The regulations are not consistent with the statute as a whole.

8. Rehabilitation to the maximum extent practicable

8.1 The reasoning inherent in the regulations is that a simple % apportionment is sufficient to explain the type of limitation that would likely result from a % of ONIHL (as is required to be done by section 84(4)(c))

8.2 It is well established law the provision of social rehabilitation requires the ACC to exercise a discretion. The regulations are more than a technical breach of the Act, they represent a failure to comply with sections 84(4)(c), (d) and (e).

8.3 The regulations preclude any enquiry being applied to a specific claimant into whether the ONIHL would justify the provision of hearing aids, in and of itself. The practical significance of this failure is that, the Corporation is unable to exercise its discretion in a fully informed way, as envisaged by the statute.

8.4 Under the regulations the Corporation will not be able to have regard to any rehabilitation outcome that would be achieved by providing aids. For example, a farmer who has an untreated hearing loss will be exposed to greater safety risks compared to an office worker or a retiree.

- 8.5 Section 81 allows social rehabilitation to be subject to any regulations, but it does not envisage that the regulations would usurp the intention of the statute.

9. No scientific basis underpinning regulatory tests

- 9.1 The regulations imply that there is a scientifically robust methodology available to specialists to apportion exact percentages to noise and age related hearing loss in any individual case. This is not the case.
- 9.2 As a leading international expert in hearing loss, Mr Dobie MD FACS, explains in his text *Medical-Legal Evaluation of hearing loss*, "In many cases the issue is not to choose one diagnosis and exclude the other but to determine the relative contributions each has made to that individual's hearing loss: this process is called allocation . . . Like the clinical process of diagnosis, allocation is probabilistic and judgmental, requiring knowledge and experience as well as the integration of different types of data of varying quality and consistency."
- 9.3 Under the ACC legislation, ENTs are required to assess what portion of hearing loss is injury-related and what portion is due to other, non-injury related (including, but not limited to age-related) causes. These other causes are referred to as idiopathic factors or causes. By their very nature they cannot be identified and attributed precisely and scientifically, but are identified and attributed based in large part on a claimant's recollection of previous noise exposure. Those with work-related gradual hearing loss who have worked in a number of jobs (eg, seasonal and casual workers) may be particularly disadvantaged, depending on their memory of past employment environments, as there will be little recorded documentation (eg, baseline hearing tests) available.
- 9.4 This level of subjectivity in assessments will result in many claimants seeking second opinions, reviews and appeals, resulting in increased administration and litigation costs for ACC.
- 9.5 Courts in NZ would support the approach outlined by Mr Dobie. Courts are reluctant to undertake accurate probabilistic calculations when evaluating whether causation has been proved. The legal approach to causation is different from the medical or scientific approach. The regulations go too far. They impute that there is a scientific basis for the apportionment, when there is not; and they attempt to force the Courts to rely on expert evidence of an apportionment when there is no scientific basis for it. This approach is bound to fail.
- 9.6 The regulations require a Court to accept that the amount of rehabilitation being offered by ACC can be equated to the % ascribed to the work related hearing loss. This approach is flawed as audiometric thresholds are not a measure of need.

9.7 Rehabilitation of the work related injury is required irrespective of the ageing factors, and the presence of the ageing factors does not typically increase the cost of rehabilitation. The regulations abandon a needs based approach to rehabilitation and substitute for this a population based formula which conflates a % hearing loss with actual limitations. There is no basis for this approach in the scientific literature.

10. The application of the Regulations leads to reduced entitlement as the person ages

10.1 Where two people with 26% work related hearing loss present to the ACC, at aged 55 and 65, the regulations will force ACC to pay differing amounts to rehabilitate the same injury. If the hearing loss is 26% the 55 year old will receive \$800 ACC contribution per ear and \$550 in fitting fees. Whilst the 65 year old will receive \$444 ACC contribution per ear and \$275 in fitting fees. The injury is the same, but the age correction of 2.9% in the current table (or 2.4% in the proposed table) reduces the ACC contribution by \$1438. This difference in payment is the direct result of the application of the proposed regulations.

10.2 Hearing loss is a permanent injury. As the person ages even where there is clear evidence that the injury remains stable there will be a regulatory driven age correction. Thus a person who has had regular hearing tests every two years which show no change to the level of hearing loss as they age will be required to pay increasing proportions of the costs of rehabilitation themselves. This is ageist.

10.3 The NZAS submits that once a person has had a determination of cover for the work related hearing loss, the percentage loss should remain the same because hearing loss is permanent. The age correction should not be applied for the purposes of seeking rehabilitation; this should be based on the limitations caused by the work related hearing loss, as assessed by a competent and appropriately qualified assessor. The legislation requires ACC and the assessor to take into account all relevant factors when considering rehabilitation. The regulations will inhibit ACC and assessors from taking into account all relevant factors when considering rehabilitation, which must be provided to the maximum extent practicable.

10.4 The regulations use a proxy to determine ACC's level of contribution towards treating hearing loss, in place of a needs based assessment process.

10.5 New Zealand Positive Ageing Strategy

The New Zealand Positive Ageing Strategy promotes the value and participation of older people in communities. The strategy and goals are set out in the appendix to this submission at page 20.

- 10.6 The regulations proposed by ACC and DOL undermine the positive ageing goals.
- Those with hearing loss will not have access in a timely and affordable to treatment for their hearing loss, this will worsen as the person gets older because of the application of the regulations;
 - Older persons with untreated hearing loss will find it challenging to stay at home which may result in early admission to residential facilities.
 - Access to rural services will decrease as audiologists will not be able to afford to provide services in rural areas because the regulations cap their fees
 - Employment opportunities will be restricted as workers may not be able to afford to pay for hearing aids and fees for fitting hearing aids
 - Opportunities for personal growth and participation will be compromised as people with untreated hearing loss will face social isolation and difficulties in learning situations.

11. Breach of ILO Convention

- 11.1 The NZAS supports the NZCTU submissions concerning the ILO Conventions. In its submissions it says:

International minimum standards for injured workers are laid down in ILO Conventions. New Zealand will be in further breach of its obligations under ILO Conventions 17 and 42 if entitlements are reduced. New Zealand has ratified ILO Convention 17 to provide all necessary treatment for people injured in accidents at no cost to the injured person, and ILO Convention 42 to provide the same compensation to workers incapacitated by occupational disease as is provided to workers incapacitated by industrial accidents. The CTU has repeatedly raised concerns about the existence of co-payments, which place the New Zealand Government in breach of its international law obligations under ILO Convention 17. Whilst it is acknowledged that NZ is already in breach of ILO Convention 17, these regulations worsen the breach.

12. Social and personal cost to claimants

- 12.1 Workers in the 1960s, 1970s and 1980s are now paying the price of poor noise management practices in the workplace. Through no fault of their own, these New Zealanders were subject to noisy and unsafe workplaces. The ACC no fault comprehensive cover recognised that. Today's hearing loss claimants are yesterday's farmers and workers who built our office buildings, houses and infrastructure. Society continues to benefit from their labours – and yet the government seeks to shift the cost of those labours away from society and onto the (now retired) individual.

12.2 The NZAS acknowledges that there are major challenges facing ACC as a result of compounding factors: the financial crisis, increasing medical costs, and higher expectations about health care treatment. But the effect of the proposals will be to shift health care costs disproportionately on to workers who are least able to shoulder this burden. These manual and industrial workers who have paid levies for years (along with their employers) now retiring or about to retire are hit hard by these proposals.

12.3 The regulations will result in cost shifting to the claimant and their family, and to the tax payer. The Australian Senate Report issued in May 2010 entitled "Hear Us: Inquiry into hearing health in Australia" says at page 35:

The impact of hearing loss can lead people to isolate themselves and deny the rest of society their talents and creative ideas. The lost productivity and revenue caused by early retirement or under employment is a tangible loss to all Australians.

12.4 In NZ, the application of the regulations will result in untreated hearing loss with all its attendant problems of increased levels of depression and social isolation.

12.5 The tax payer will pick up the costs of the ACC funding decision in greater Health expenditure, WINZ benefits, Corrections, and early admission to residential facilities, to name but a few of the social impacts.

12.6 These social consequences are likely to impact Maori and People of the Pacific Islands to a disproportionate extent since these groups are over represented in noisy industries. The proposed Regulations do not adequately consider the impact on these groups.

12.7 The Ministry of Health budget for hearing loss is already stretched, and if the current policy changes whereby ACC claimants can access MOH subsidy, the budget will be hopelessly inadequate.

13. The regulations can lead to waste of the initial capital investment

13.1 The regulations propose extending the time for repairs from 5 to 6 years. They also propose contributing a grossly inadequate amount towards the cost of repairs. The risk is that claimants will not replace or repair hearing aids because they cannot afford to do so. This wastes the initial capital investment in the aid. Further the proposed restrictions on how often the ACC will contribute to the cost of repairs and ongoing rehabilitation services will unnecessarily limit the extent of rehabilitation in all cases.

- 13.2 Hearing aids will be left in the bedside table unused because claimants will not be funded to have their adjustments or their hearing re-checked.

14. Regulations are ultra vires

- 14.1 The Accident Compensation Act 2001 does not allow regulation of what providers are able to charge in the open market for their services.
- 14.2 The Minister is seeking to use section 323 for something that he cannot. The regulations purport to regulate the price of audiology services by setting a cap above which audiologists may not charge the claimant. Regulations must be made in accordance with the general objects and intentions of the statute.
- 14.3 The lowering of fees to a level that renders businesses unsustainable is not supported by Government procurement guidelines. The Chart on page 17 of this submission shows that the fees being proposed by the regulations are well below the sustainable market rate.

15. Is there an alternative approach?

- 15.1 The NZAS preferred approach is based on a robust, scientifically based assessment of work related hearing loss. Base line tests should be performed so that the employer knows the level of loss of a new employee. Hearing tests should be regularly performed in the work place, and noise levels monitored. In this way, the true level of work related hearing loss can be ascertained.
- 15.2 The NZAS supports the introduction of the UK Control of Noise at work Regulations which are enforced by an inspectorate.
- 15.3 Fees for Hearing Services should be negotiated by contract, not regulation⁵. The contract allows ACC to ensure appropriate standards, and to clearly define services. Such definitions are essential to ensure that the ACC receives best value for money, and that claimants receive appropriate care. Contracts are a better mechanism to ensure appropriate standards and to clearly define services.
- 15.4 The fees proposed in the regulations would restrict the ability of the claimant to receive effective ongoing rehabilitation. The regulations contain no requirements that services conform to any standards whatsoever. Restricting the fees paid to those contained in the regulations will deny access to some services that they currently

⁵ See Government Statement on better regulation, less regulation and the preference for contracts over regulations.

require. This will restrict rehabilitation to the maximum extent practicable. Capping the price of the hearing aid will limit the rehabilitation available to a person irrespective of their needs, and irrespective of their financial contribution. The requirement in the regulations that the trial should be three weeks is inconsistent with current best practice guidelines and could not be adhered to by an NZAS audiologist.

- 15.5 The Regulations provide a financial incentive for claimants to inflate the degree of their hearing loss. The fees proposed in the Regulation will prevent Qualified Assessors thoroughly investigating this psuedo hyperacusis and will ultimately lead to increases in the proportion of payment made by the ACC. This is a false saving on fees.
- 15.6 The NZAS along with other industry representatives should be given the opportunity to continue working with ACC to find solutions. Efforts to date have produced significant and enduring savings. There are process failures and issues that can be addressed that will result in cost savings and lower levies to employers. Recent closer scrutiny of entitlements has led to a considerable reduction in the rate of growth of hearing loss services costs. Although the consultation document states the growth in claim costs as being 57% between the years 2005 and 2009.. This ignores the positive impact of recent changes. The annual rate of growth between 2005/06 and 2008/09 has been only 3.64%.

16. Baseline testing

The NZAS supports the retention of base line testing. See paragraph 14.1.

17. Update schedule 2 – adjustment of percentage loss of hearing loss caused by presbycusis

- 17.1 The proposed regulations intend to update the standard to allegedly the most recent version of the NAL table which is apparently in the 1988 Report 118 entitled “Improved procedure for determining percentage Loss of Hearing”. Whilst the table to reproduced in the consultation document, the text associated with the table is not.
- 17.2 The DOL and ACC have not provided any other alternatives (other than the 1988 standard) for the assessment of claimants. It is submitted that the DOL and ACC have unreasonably limited the consultation on this matter. The purported objective of the standard is to improve the quality of the information in the regulations and increase clarity and consistency in the assessment of claimants. The NZAS is aware that there are ISO standards from 1999 *Acoustics: Determination of Occupational Noise Exposure and Estimation of Noise Induced Hearing Impairment*. and ANSI

standards S3.44. (American National Standards Institute 1996 *Determination of Occupational Noise Exposure and Estimation of Noise Induced hearing Impairment*. The NZAS believes that the consultation is not transparent and falls below the standard required of consultation.

18. Update the acoustical standard used for testing

18.1 The proposed regulations intend to update the acoustical standard for testing. The consultation document cites the existing standard: ISO 6189 and proposes to substitute it with AS ISO 8253.1-2009. However these standards have not been supplied to the submitters prior to the close of submissions. The close of submissions is June 18, 2010.

18.2 On 15 June 2010 May Guise policy analyst for ACC advised a submitter as follows:

“ We have a copy of the standard on order and it should be available by the end of the week. I'll let you know as soon as it comes in and arrange for a time for you to view it. Unfortunately we can't forward it on to you electronically due to copyright”.

18.3 The Legislation Advisory Committee Guidelines 2001 with amendments⁶ says that the agency responsible for an Act of Parliament or delegated legislation that incorporates a document by reference should ensure that the submitters have access to the standard available to them at the time of consultation and prior to enactment. The ACC and DOL have refused the submitters the opportunity to see the exposure draft of the regulations. No opportunity has been offered to submitters to inspect the document prior to the close of submissions.

18.4 The NZAS submits that it must be given an opportunity to view the standard as it may have a material impact on the delivery of services. In the same correspondence referred to above it was said: *“The ISO 6189 standard is appropriate for workplace screening or monitoring audiology. However, for the purpose of cover and entitlement assessments, ACC requires audiometric information that conforms to standards for diagnostic audiology, such as the AS ISO 8253. This standard will enable ACC to have better confidence in the accuracy of audiometric thresholds”.* Therefore it can be assumed that the standard imposes additional responsibilities on the audiologist. The regulations should not include a standard that is unilaterally imposed on the industry when it has not had an opportunity to be consulted with.

⁶ www.justice.govt.nz/lac/index.html.

19. Summary

- 19.1 The regulations are fundamentally flawed as is the process of consultation.
- 19.2 The regulations will have an adverse impact on the rehabilitation of injured people suffering hearing loss.
- 19.3 The regulations will have an adverse impact on the sector resulting in closure of clinics and reducing access to services for those in rural districts.
- 19.4 The regulations are ageist and conflict with the NZ Strategy for positive ageing.
- 19.5 The sector wishes to engage positively with the ACC and DOL to explore alternative approaches in order to ensure that the scheme is sustainable.

Yours sincerely
For the New Zealand Audiological Society

A handwritten signature in black ink, reading "Lesley Hindmarsh". The signature is written in a cursive, flowing style.

Lesley Hindmarsh
2009/2010 President

Reference paragraph 2.3 page 2 of the submissions

The table below shows the results of a survey of audiologists fees. It is a draft MEMO

To: ACC Audiology Working Party
 From: Kim von Lanthen and Associates Ltd
 Date: 29 March 2010
 Re: FURTHUR SCENARIOS

Following today's working party meeting the following requests have been made:

- *Rerun based on the following assumptions:*
 - *42 weeks in a year (as opposed to 47)*
 - *Using Graeme's A / B x C formula - please make A= total salary bill, B = NZAS Audiologists and non-NZAS audiologists/audiometrists, C= 100% utilisation*
 - *Please expand Table 5 into three separate tables*
 - *Table 5 i : 20% margin against 90%/80%/70% utilisation*
 - *Table 5ii : 30% margin against 90%/80%/70% utilisation*
 - *Table 5iii : 40% margin against 90%/80%/70% utilisation*
- *Management fee - what information has been captured for this?*

The following calculations have been made for your review:

	Table 5i			Table 5ii			Table 5iii		
Weeks	42	42	42	42	42	42	42	42	42
Amort.	5yrs	5yrs	5yrs	5yrs	5yrs	5yrs	5yrs	5yrs	5yrs
Margin	20%	20%	20%	30%	30%	30%	40%	40%	40%
Utilis.	90%	80%	70%	90%	80%	70%	90%	80%	70%
AUD12	397	447	511	430	484	553	463	521	596
AUD14	538	605	692	583	656	749	628	706	807
AUD21A	1,367	1,537	1,757	1,481	1,666	1,904	1,594	1,794	2,050
AUD21B	1,574	1,771	2,024	1,705	1,918	2,192	1,836	2,066	2,361
AUD22	276	311	355	300	337	385	323	363	415
AUD23	381	429	490	413	464	531	444	500	571
AUD24	242	272	311	262	295	337	282	317	363

Please note that there hasn't been time to fully check these numbers. Checking would be completed as part of the final report.

In terms of the management fee the data does not appear to be sufficiently strong for analysis.

Type of Service	Present ACC Contract	New ACC Proposals
Hearing Needs Assessment Aud 12	\$135	\$150.00
Hearing Needs Reassessment (Includes new hearing assessment) Aud 14	\$135 + \$107	\$180
Hearing Review Aud23	As required (Normally Yearly) Amount Not Specified	6 Yearly
Hearing Aid Fitting Monaural and Binaural Aud 28a/21B	As approved \$940/\$1585	6 Yearly \$900/\$1100
Management fee for large amount of outstanding credit Aud 26	\$200	None
Insurance excess HDXINZ	As required	none
Yearly Check including clean & check of aids and troubleshooting, audiogram and insertion gain testing Aud 23	\$107	None allowed

Onsite Repairs as required Aud 24	up to \$71	up to \$50.00 only 2 per year
Off Site repairs when required Aud 25	as invoiced	only \$200.00 per 2 yearly
Delivery aid back to patient after repair HDXFRT	as invoiced	none
Appointment to check aids after repair AUD22	\$ up to \$71	none
Accessories/ Consumables e.g. domes, tubing Aud 24	as required	limited to \$50.00 service included service
Reprogram/ Adjustment Aud 22	as required	none
Batteries	Distributed and managed by ACC (not audiologists)	Unknown
Failed Hearing Aid Fitting Monoaural Aud 21a	\$600	\$250
Failed Hearing Aid Fitting Binaural Aud 21b	\$1,100	\$250

The New Zealand Positive Ageing Strategy

The Strategy:

- aims to improve opportunities for older people to participate in the community in the ways they choose
- provides a framework within which policy with implications for older people can be understood and developed
- identifies ten positive ageing goals.

Positive Ageing Goals

"To achieve the vision of a society where people can age positively means directing our collective efforts towards achieving identified positive ageing goals."

The New Zealand Positive Ageing Strategy identifies ten goals:

Income - secure and adequate income for older people

Health - equitable, timely, affordable and accessible health services for older people

Housing - affordable and appropriate housing options for older people

Transport - affordable and accessible transport options for older people

Ageing in the Community - older people feel safe and secure and can age in the community

Cultural Diversity - a range of culturally appropriate services allows choices for older people

Rural Services - older people living in rural communities are not disadvantaged when accessing services

Positive Attitudes - people of all ages have positive attitudes to ageing and older people

Employment Opportunities - elimination of ageism and the promotion of flexible work options

Opportunities for Personal Growth and Participation - increasing opportunities for personal growth and community participation

The Legislative Advisory Committee Guidelines 2001

The Legislative Advisory Committee Guidelines 2001 states that the agency responsible for an regulations that incorporates a document by reference should:

- in the case of delegated legislation, before the delegated legislation is finalised consult the persons likely to be affected by the document to the same extent as if the content of the document had been set out in the delegated legislation;

and ensure that-

- a reasonable number of hard copies of the document are readily available in New Zealand for a reasonable period before the Act or delegated legislation is enacted or made, for inspection free of charge by persons likely to be affected by or interested in the document; and
- if the document is not in a New Zealand official language, a high quality translation is similarly available; and
- copies of the document are readily available free, or for purchase at a reasonable cost, for a reasonable period before the Act or delegated legislation is enacted or made; and
- the address/es of the place/s in New Zealand where copies of the document can be inspected, and of the place/s (whether in New Zealand or elsewhere) where copies of the document can be obtained, are publicly notified in New Zealand in an appropriate manner.
- endeavour to make the document available free of charge on the Internet before the Act or delegated legislation is enacted or made.

The Legislation

1. The Accident Compensation Act 2001 is the relevant legislation.
2. Section 3 - the purpose of the Act is to enhance public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has as its overriding goals minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social and personal costs), through-
 - S3(a) establishing as a primary function of the Corporation the promotion of measures to reduce the incidence and severity of personal injury.
 - S3 (c) ensuring where injuries occur, the Corporation's primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to a maximum practicable extent a claimant's health, independence and participation⁷.
3. No person may bring proceedings independently of this Act for damages arising directly or indirectly out of a personal injury covered by this Act.
4. Under section 165 the duty of the Corporation is to determine cover for persons for whom claims for cover are lodged, and provide entitlements in accordance with provisions of this Act in respect of persons who have cover under the Act.
5. The functions of the Corporation are spelt out in section 262 which is to carry out the duties referred to in section 165, and carry out such other functions as are conferred on it by this Act.
6. A person has cover for a personal injury, if under the scope of the Act a personal injury has been suffered. A personal injury can be caused by a work related gradual process, disease or infection suffered by that person (section 20(e)).
7. Under the Accident Compensation Amendment Act 2010, which comes into force on 1st July 2010, the definition of personal injury in section 26 has been amended.
8. From 1 July 2010, section 26(1) has been amended to read:
 - (1A) Personal Injury includes any degree of hearing loss that is 6% or more of binaural hearing loss caused by a personal injury described in section 20(2).
 - (1B) Personal injury does not include any degree of hearing loss caused by:
 - (a) a personal injury other than a personal injury described in section 20(2); or
 - (b) the ageing process; or
 - (c) any other factors.

⁷ The purpose of the Act did not change with the recent amendment: the Accident Compensation Amendment Act 2010.

9. Section 26(2) says that a personal injury does not include personal injury caused wholly or substantially by a gradual process, disease, or infection unless it is personal injury of a kind described in section 20(2)(e) to (h).⁸
10. A person can suffer a personal injury caused by a gradual process which is caused in circumstances described in section 30(2).
11. Section 30(2) requires that the person must have performed an employment task or worked in an environment that has a particular property or characteristic which causes or contributes to the personal injury. Those properties, characteristics or environment must not be found to any material extent in the non-employment activities or environment of that person. The risk of suffering personal injury must be significantly greater for persons who perform the employment task than for persons who do not perform it, and is significantly greater for persons who are employed in that type of environment than for persons who do not.⁹
12. Section 61 Decision on claim for noise induced hearing loss caused by work related gradual process. This section states that when the Corporation (ACC) determines there is cover for ONIHL, it must assess the percentage of binaural hearing loss caused “in these circumstances” (i.e. in the work place). It does so by applying a pure tone audiometry test (audiometry test) “and any other test that the Corporation considers appropriate for this purpose”
13. Section 61(2) All tests must be performed :
 - a. “by a treatment provider who holds qualifications satisfactory to the Corporation; and
 - b. in accordance with any regulations made under this Act for this purpose.”
14. This provision is reinforced by s 323(1) which provides for the making of regulations prescribing conditions under which ACC is to “apply the pure tone audiometry test **or** any other appropriate test under s 61”. The regulations may also prescribe any other matters relating to the tests.
15. The Minister must not make recommendation under subsection (1) without first consulting the persons or organisations the Minister considers appropriate.

Regulations

16. Section 324 allows the regulations to:
 - Prescribe the costs that the Corporation is liable to pay for the entitlement of rehabilitation
 - Prescribe the circumstances in which, and the method by which, the Corporation must make any payment for rehabilitation
 - Prescribing the circumstances in which and the method by which, the Corporation may make arrangements and make contributions for rehabilitation

⁸ Section 26(2) was not amended by the 2010 amendment.
⁹ As amended by the 2010 amendment.

- Prescribing the persons to whom those payments may be made, set out costs ACC will pay for entitlement for rehabilitation and the circumstances in which it will pay for rehabilitation, including the percentage of costs it will pay.

Entitlement

Section 67 states that a claimant who has suffered a person injury if he or she has cover for the personal injury and is eligible under the Act for the entitlement in respect of the personal injury.

Assessment of need for hearing aids

15. Section 79 Purpose of social rehabilitation

The purpose of social rehabilitation is to assist in restoring a claimant's independence to the maximum extent practicable.

16. Section 81 Corporation's liability to provide key aspects of social rehabilitation

(1) In this section, *key aspect of social rehabilitation* means any of the following:

- (a) aids and appliances:
- (b) attendant care:
- (c) child care:
- (d) education support:
- (e) home help:
- (f) modifications to the home:
- (g) training for independence:
- (h) transport for independence.

(2) Terms in subsection (1)(a), (b), and (d) to (h) have the same meaning as in [clause 12](#) of Schedule 1.

(3) The Corporation is liable to provide a key aspect of social rehabilitation to a claimant—

- (a) if the conditions in subsection (4) are met; but
- (b) not earlier than a date determined in accordance with [section 83](#).

(4) The conditions are—

- (a) a claimant is assessed or reassessed under [section 84](#) as needing the key aspect; and
- (b) the provision of the key aspect is in accordance with the Corporation's assessment of it under whichever of [clauses 13 to 22](#) of Schedule 1 are relevant; and

- (c) the Corporation considers that the key aspect—
 - (i) is required as a direct consequence of the personal injury for which the claimant has cover; and
 - (ii) is for the purpose set out in [section 79](#); and
 - (iii) is necessary and appropriate, and of the quality required, for that purpose; and
 - (iv) is of a type normally provided by a rehabilitation provider; and
- (d) the provision of the key aspect has been agreed in the claimant's individual rehabilitation plan, if a plan has been agreed.

(5) This clause is subject to any regulations made under [section 324](#).

84 Assessment and reassessment of need for social rehabilitation

(1) An assessment under this section assesses a claimant's need for social rehabilitation and identifies the specific social rehabilitation that the claimant needs.

(2) The Corporation may—

- (a) do assessments and reassessments, itself, by using appropriately qualified assessors employed by the Corporation; or
- (b) appoint and pay as many appropriately qualified assessors as it considers necessary to do assessments and reassessments; or
- (c) both.

(3) A claimant's need for social rehabilitation—

- (a) may be reassessed from time to time; and
- (b) must be reassessed if the Corporation considers that the claimant's condition or circumstances have changed.

(4) The matters to be taken into account in an assessment or reassessment include—

- (a) the level of independence a claimant had before suffering the personal injury:
- (b) the level of independence a claimant has after suffering the personal injury:
- (c) the limitations suffered by a claimant as a result of the personal injury:
- (d) the kinds of social rehabilitation that are appropriate for a claimant to minimise those limitations:
- (e) the rehabilitation outcome that would be achieved by providing particular social rehabilitation:

- (f) the alternatives and options available for providing particular social rehabilitation so as to achieve the relevant rehabilitation outcome in the most cost effective way:
- (g) any social rehabilitation (not provided as vocational rehabilitation) that may reasonably be provided to enable a claimant who is entitled to vocational rehabilitation to participate in employment:
- (h) the geographical location in which a claimant lives:
- (i) in the case of a reassessment,—
 - (i) whether any item that the Corporation provided for the purposes of social rehabilitation is in such a condition as to need replacing:
 - (ii) changes in the claimant's condition or circumstances since the last assessment was undertaken.

(5) The Corporation must provide to an assessor (whether employed or appointed by the Corporation) all information the Corporation has that is relevant to the assessment.

Schedule 1 clause 13

13 Aids and appliances

- (1) In deciding whether to provide or contribute to the cost of an aid or appliance, the Corporation must have regard to—
 - (a) any rehabilitation outcome that would be achieved by providing it; and
 - (b) whether a claimant has a prescription for the aid or appliance from a medical practitioner who holds appropriate qualifications to the satisfaction of the Corporation.

(2) The Corporation is not required to provide an artificial aid in the nature of an implant, unless the implant is implanted in the course of a surgical procedure approved by the Corporation.

(3) The Corporation is not required to provide any aid or appliance, if a claimant already—

- (a) owns an aid or appliance that has, at the time at which the Corporation is making its decision, a similar function to the aid or appliance for which the claimant has lodged a claim; or
- (b) possesses such an aid or appliance on permanent loan from any person or organisation, including a hospital and health service,—

unless, in either case, the aid or appliance, because of its age or condition, is unsuitable to assist in restoring the claimant to independence.

(4) The Corporation is not required to provide any aid or appliance, if the claimant has, after suffering the personal injury, disposed of an aid or appliance that, at the time of disposal,—

- (a) had a similar function to the aid or appliance for which the claimant has lodged a claim; and
- (b) was still suitable for that function.

(5) The Corporation is not required to meet any costs of—

- (a) maintaining, repairing, or replacing any aid or appliance; or
- (b) replacing any consumable items used in association with any aid or appliance,—

if the costs have been incurred because the claimant has neglected, abused, or misused the aid or appliance.

(6) The Corporation may provide an aid or appliance by way of approving its hire by the claimant for a term it approves, if that hire is a cost effective alternative to the purchase of the aid or appliance.

(7) If the claimant pays for any aid or appliance approved by the Corporation, the Corporation is liable to reimburse the claimant at the same rate that the Corporation normally purchases the aid or appliance, but may deduct any subsidy payable by a funder under the Health and Disability Services Act 1993 for that aid or appliance.

FACTORS TO BE TAKEN INTO ACCOUNT

The factors which ACC must take into account when exercising this discretion are contained in the statutory sections set out above.

As hearing aids come within the definition of 'aids and appliances', their provision falls under the umbrella of 'social rehabilitation', the starting point must be section 79. This section sets out the purpose of social rehabilitation, i.e. to assist in restoring a claimant's independence to the maximum extent practicable.

Section 81 then sets out the circumstances where the appellant will be liable to provide key aspects of social rehabilitation (including aids and appliances), in order to achieve the purpose stated in section 79. Under section 81(4), factors which establish the appellant's liability to provide aids and appliances are:

- Whether the claimant has been assessed as requiring the aid or appliance, by a qualified assessor, under section 84. Section 84(4) states that the assessor must take into account the following:
 - the level of independence a claimant had before suffering the personal injury:
 - the level of independence a claimant has after suffering the personal injury:
 - the limitations suffered by a claimant as a result of the personal injury:
 - the kinds of social rehabilitation that are appropriate for a claimant to minimise those limitations:
 - the rehabilitation outcome that would be achieved by providing particular social rehabilitation:
 - the alternatives and options available for providing particular social rehabilitation so as to achieve the relevant rehabilitation outcome in the most cost effective way:
 - any social rehabilitation (not provided as vocational rehabilitation) that may reasonably be provided to enable a claimant who is entitled to vocational rehabilitation to participate in employment:
 - the geographical location in which a claimant lives.
- Whether the relevant factors in clause 13 are taken into account:
 - any rehabilitation outcome that would be achieved by providing the aid or appliance; and
 - whether a claimant has a prescription for the aid or appliance from a medical practitioner who holds appropriate qualifications to the satisfaction of the appellant.
- Whether, the aid or appliance:

- is required as a direct consequence of the covered personal injury;
and
- is for the purpose set out in [section 79](#); and
- is necessary and appropriate, and of the quality required, for that purpose; and
- is of a type normally provided by a rehabilitation provider.

It is evident that, in enacting this statutory framework, the legislature envisaged that a comprehensive, robust and transparent process would be undertaken, prior to decision being made regarding the provision of aids and appliances.

It is also evident that the basis of this process is the assessment carried out by the qualified assessor, under section 84. Given the pivotal role of this assessment, it stands to reason that the assessment must also be carried out in a comprehensive, robust and transparent manner.

Hearing Needs Assessment Report

Please complete this form to detail a client's hearing goals and rehabilitation plan.

Once you have completed the form, please ask the client to sign the client declaration (section 1.7).
 Keep this form for your records, and email an electronic copy to the appropriate ACC Service Centre:
Hamilton.HearingLoss@acc.co.nz or Dunedin.HearingLoss@acc.co.nz

PART ONE: BACKGROUND INFORMATION

1.1 ASSESSMENT DETAILS

Vendor name:	Vendor number:
Provider name:	Provider number:
Date of assessment:	Purchase order number:

1.2 CLAIM DETAILS

Client's name:	
Address:	
Phone:	Date of birth:
Claim number:	Date of injury:
Name of support person (if applicable):	ACC Client Services staff member:
Total hearing loss: %	Covered hearing loss: %
Nature of injury: <input type="checkbox"/> ONIHL <input type="checkbox"/> Trauma <input type="checkbox"/> Treatment Injury	

1.3 PREVIOUS TREATMENT AND REHABILITATION

Details of previous treatment and rehabilitation:

1.4 HEALTH FACTORS

Please tick the relevant box(es) to indicate which factors below could impact on the client's rehabilitation, and comment what the impact is.			
<input type="checkbox"/> General health	<input type="checkbox"/> Ear condition(s)	<input type="checkbox"/> Vision	<input type="checkbox"/> Dexterity
<input type="checkbox"/> Cognitive status	<input type="checkbox"/> Motivation	<input type="checkbox"/> Perceived disability	
Comments:			

1.5 EFFECTS OF INJURY ON CLIENT

Please answer the following questions, which focus on any difficulties the client is having in the various life environments as a result of the injury.	
Employment	
Employment status:	<input type="checkbox"/> Full-time employee <input type="checkbox"/> Part-time employee <input type="checkbox"/> Self-employed

<input type="checkbox"/> Semi-retired <input type="checkbox"/> Retired <input type="checkbox"/> Other (please state):
Occupation (if applicable):
Difficulties in employment as a result of the injury-related hearing loss (eg listening to speakers in large or small meetings, hearing equipment signals, operating machinery, driving):
Details of any safety issues in employment environment:
Home / Social Life
Living situation: <input type="checkbox"/> Lives with partner only <input type="checkbox"/> Lives with partner & children <input type="checkbox"/> Lives with children only <input type="checkbox"/> Lives with extended family <input type="checkbox"/> Lives in supported accommodation <input type="checkbox"/> Lives alone <input type="checkbox"/> Other (please state):
Difficulties in home/social life as a result of the injury-related hearing loss (eg conversations with partner, family and friends; caring for children; listening to TV or music; attending shows, movies etc):
Details of any safety issues in home/social life environment:
Education / study
Current situation: <input type="checkbox"/> Full-time study <input type="checkbox"/> Part-time study <input type="checkbox"/> Occasional courses <input type="checkbox"/> Not studying <input type="checkbox"/> Other (please state):
Difficulties with education/study as a result of the injury-related hearing loss (eg listening in lecture theatres or classrooms):
Details of any safety issues in education/study environment:
Community
Difficulties in community as a result of the injury-related hearing loss (eg participating as a committee member, sporting/recreational involvement, driving, pedalling, dealing with shop assistants):
Details of any safety issues in community environment:
General environment
Comment on any other difficulties the client is experiencing as a result of the injury-related hearing loss:

1.6 CLIENT'S GOALS

Outline the client's specific rehabilitative goals in order of priority from the COSI.

NUMBER	COSI GOAL			CATEGORY (state relevant number from legend below)
1				
2				
3				
4				
5				
Legend	1 Conversation with 1 or 2 in quiet	5 TV/radio at normal volume	9 Hear from door bell or knock	13 Stop feeling left out
	2 Conversation with 1 or 2 in noise	6 Familiar speaker on phone	10 Hear traffic	14 Stop feeling angry or upset
	3 Conversation with group in quiet	7 Unfamiliar speaker on phone	11 Increased social contact	15 Church or meeting
	4 Conversation with group in noise	8 Hear phone ring from another room	12 Stop feeling embarrassed or stupid	16 Other

HHI score:

1.7 CLIENT DECLARATION AND CONSENT TO THE RELEASE OF INFORMATION

I confirm that I participated in the hearing needs assessment referred to in this report, and the information above, is a fair summary of my hearing needs. I authorise the collection and release of any information about me which is necessary to assess my entitlement to compensation, rehabilitation, and medical treatment.

Signed by client:

Date:

PART TWO: REHABILITATION**2.1 REHABILITATION PLAN**

Please provide details below of the options you have recommended to address the client's goals.

☐ **TRIAL OF HEARING AIDS**
A. Requirements

Tick the relevant number(s) below to show which of the goals shown in Part 1.6 above are addressed by this rehabilitation option.

COSI goal(s) addressed: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

Specific features required: ☐ Directional (fixed) ☐ Directional (adaptive) ☐ Noise reduction ☐ Feedback control

☐ Other special features especially required for this client (please specify):

If other special feature(s) especially required, how will they assist in meeting the client's goals and/or key aspects of their injury-related hearing loss?

Client's preferred style:

Note any conflict between the client's wishes and your recommendation, if applicable:

Details of any other requirements:

B. Details of aids selected

Need: ☐ Unilateral ☐ Bilateral

Brand and model (please be specific):

Code: **HD**

Style: ☐ RITC ☐ BTE ☐ ITE ☐ ITC ☐ CIC ☐ CROS ☐ BiC

Accessories:

If applicable, why are accessories required for this client?

☐ **ASSISTIVE DEVICE(S) / SERVICES**

Tick the relevant number(s) below to show which of the goals shown in Part 1.6 above are addressed by this rehabilitation option.

COSI goal(s) addressed: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

Recommended device(s)/services and how these will assist with the injury-related hearing loss:

Review date:

☐ **NO ACTION REQUIRED AT THIS POINT**

Please comment why no action is required at this point for the injury-related hearing loss:

2.2 OTHER COMMENTS

Please provide any other comments that you would like to make about the client's rehabilitation plan and/or product choice:

2.3 ASSESSOR DECLARATION

I have considered all options objectively, including product choice and have recommended the most cost-effective option to meet the client's needs. I certify that when sending the form electronically to ACC, the client has signed the form.

Signed by Audiologist:

Date:

The information collected on this form will only be used to fulfil the requirements of the Injury Prevention, Rehabilitation, and Compensation Act 2001. In the collection, use and storage of information, ACC will at all times comply with the obligations of the Privacy Act 1993 and the Health Information Privacy Code 1994.

Keep this form for your records, and email an electronic copy to the appropriate ACC Service Centre: Hamilton.HearingLoss@acc.co.nz or Dunedin.HearingLoss@acc.co.nz

ACC22(b)

Loss of Hearing



*Specialist - Otolaryngologist Report

*To be completed by an Otolaryngologist with reference to an accompanying completed ACC22a and ACC 23c

(Other than the claimant's name and claim number - Claimant Demographic and Occupational data on page 1 of this report does not have to be duplicated - If it is supplied to ACC in other documentation accompanying this completed form)

CLAIMANT DETAILS

Claimant Name [REDACTED]

Claim Number [REDACTED]

Previous Claim(s) for Hearing Loss (Specify nature of claim & claim number)

Date of Birth (& Age)

Place of Birth (If not New Zealand, when did the claimant legally become a New Zealand resident?)

Home (or contact) Phone number

Home Address

Current Occupation (Specify)



1. ACC22c – Hearing Loss – Claimant Questionnaire & Claimant Assessment

(This is based upon the Claimant's documentation as well as the clinical history and additional findings you obtain at the time of clinical assessment).

Is the Claimant Questionnaire fully completed? _____ yes _____

Have you reviewed all of the information? _____ yes _____

2. Your Clinical History of the Hearing Loss directly obtained from the Claimant

_____ His family have commented on his poor hearing over the last 10 years. He has problems re there is background noise which includes talking to clients at work, and any social situations.

3. Occupational Noise Exposure

Based upon the Claimant Questionnaire, and any information from current and former employers and personal clinical history and assessment - is there a history consistent with occupational exposure to noise? Was the claimant a NZ resident at the time?, as ACC does not cover noise exposure outside New Zealand.

Please specify the period when, and the location where the exposure occurred, and whether or not there is likely to have been adequate hearing protection and how much exposure is likely to have occurred.

~~His only significant work noise exposure was at Mitsubishi Motors 1998 to 1999, where he was exposed to 2 to 3 "bangs" per day when heavy metal jigs were dropped off car chassis where he worked. The background noise levels were mild. Ear protection was not worn.~~

4. Military Noise Exposure

Based upon the questionnaire and personal assessment - is there a history consistent with likely military exposure to noise? Was the claimant a member of the N.Z. Defence Forces?

Please specify the period when, and the location where, the exposure occurred, and whether or not there is likely to have been adequate hearing protection and how much exposure is likely to have occurred.

nil

5. Non-work Noise Exposure

Based upon the questionnaire and personal clinical history and assessment - is there a history consistent with non-work exposure involving significant noise exposure?

Please specify the type of activity, the period when the exposure occurred, how much exposure is likely to have occurred, whether or not there is likely to have been adequate hearing protection and whether the or not the claimant was a N.Z. Resident at the time.

(a) Domestic Activities

of 7

Activity	Period	Hours/ week	Hearing protection used?	N.Z. Resident?
nil				

(b) Hobbies, Sporting Activities or other Non-work Exposure

Activity	Period	Hours/ week	Hearing protection used?	N.Z. Resident?
nil				

6. History of Head Injury or Traumatic Ear Injury

Please provide details of any previous significant head or ear injury (including the approx date when the injury occurred, whether medical treatment was sought [and if so, when and where], whether an ACC claim was lodged, and indicate sources where corroborative medical details are likely to be found.)

nil

7. Medication

Based upon the Claimant Questionnaire and your personal clinical assessment with clinical history - is there a past medical history consistent with likely exposure to drugs which might have caused or contributed to hearing loss?

(Please specify the drug(s) when, approx when it/they was/were given and the purpose of the drug(s))

nil

8. Family History of Hearing Loss

Please detail any family history of hearing loss - including - if known: relationship, age of onset/diagnosis and cause (if known).

nil known

9. Previous Audiogram(s) or ENT Examination(s)

(Specify date(s) & Location(s) & provide copies of results if available)

_____ as copied to me by ACC _____

10. Clinical Examination

Nose, R Ear, L Ear, Tuning Forks & Hearing, Vestibular Labyrinths, Other

Please specify clinical findings on ENT examination which might cause or contribute to hearing loss of any type. (Specify the findings, the differential diagnosis of the possible causes and the most likely cause).

~~No clinical abnormality of ears that would indicate alternative cause for hearing loss.~~
Remainder of ORL exam non contributory

11. ACC22a – Hearing Loss – Audiogram Report

(Refer to the accompanying Audiogram ACC22a report)

Did you do the ACC22a – Hearing Loss – Audiogram Report on which this ACC22b – Specialist Otolaryngologist's Report is based? _____ yes _____

Are you satisfied that the ACC22a Audiogram Report met the 1999 regulatory requirements of the AI Act 1998 and the Audiogram Report is complete and sufficient for your diagnostic purposes? If not, please specify.

yes _____

Do you feel that other tests are required to determine the cause of the hearing loss? _____ no _____

If so, please specify the test(s) required and the diagnosis(es) it may reveal.

12. On the basis of the Audiogram findings, what is the nature of the Hearing Loss?

Bilateral Symmetrical Sensorineural X

Bilateral Asymmetrical Sensorineural

Bilateral Symmetrical Conductive ☐

Bilateral Asymmetrical Conductive ☐

Bilateral Symmetrical Mixed ☐

Bilateral Asymmetrical Mixed ☐

Unilateral Sensorineural ☐

Unilateral Conductive ☐

Unilateral Mixed ☐

No significant functional hearing loss ☐

Other (please specify) _____

13. Please confirm the percentage of Hearing Loss from the Audiogram

Percentage Binaural Loss (Calculated using Schedule 1 of the Accident Insurance [Occupational Hearing Assessment Procedures] Regulations 1999) 15.2%

Percentage of Binaural Loss after age-correction for presbycusis (Calculated using Schedule 2 of the Accident Insurance [Occupational Hearing Assessment Procedures] Regulations 1999) 16%

OPINION

14. Pattern of Hearing Loss

In your opinion is the pattern of hearing loss shown on the Audiogram typical for NIHL? Not for his level of exposure

15. If you believe this is work-related noise induced hearing loss – but the pattern is not consistent with the *“Distinguishing features of occupational noise induced hearing loss” published by the American College of Occupational and Environmental Medicine’s Noise and Hearing Conservation Committee* -please explain your reasons

He has noise induced hearing is worse than expected

16. What in your opinion is the amount of hearing loss that could be due to occupational noise exposure within New Zealand? 5%

17. Other contributing cause(s) of the Hearing Loss

What in your opinion would be the attribution of the possible contributing cause(s) of the hearing loss, e.g. military noise exposure, occupational noise exposure overseas, non-work related noise exposure, age, conductive loss, idiopathic cochlea degeneration etc

Cause:	Amount of hearing loss attributable to cause
Other cochlear degeneration (early onset aging of hearing)	10%

18. Contributing tasks or employer(s)

Specify the employer(s) and job task(s) likely to have caused or contributed to hearing loss since this person entered the workplace after school (whether they were a NZ resident or not at the time of exposure):

Mitsubishi Motors

19. Hearing Conservation

In your opinion, what is the best advice for this claimant to prevent further work-related (or non-work related) hearing loss. Please Specify.

He takes appropriate care now but has minimal exposure.

20. Hearing Aids

Do you recommend a trial of hearing aids as a result of hearing loss due to occupational noise exposure? no

"If Yes" what type of trial fitting is appropriate:

Binaural

Left only

Right only

Does the claimant wish to pursue the matter of hearing aids at this time?

21. Additional Comments

Predominant cause of hearing loss is not work noise exposure.

Name of Otolaryngologist G R Webster

ACC Reg Number H90121

Date of Examination; 15.12.08