

Submission to

The Transport and Industrial Relations Committee

On

The Injury Prevention, Rehabilitation and Compensation Amendment Bill.

From

The National Foundation for the Deaf
Chris Peters, Advocacy Project Manager

This Submission

Noise-damaged hearing is an injury and people with such injuries have the right to cover and support from the Accident Compensation Corporation. ACC's proposal to deny them cover via an artificial 6% threshold shows a lack of understanding of the effects of hearing damage that borders on the callous. It also targets older people who have worked for decades under an ACC scheme they believed would support them, and shovels hundreds of people a year on to an overloaded health system. We ask that the threshold be removed and ACC's assessments of cover and support remain based on the injured person's needs. A 6% hearing loss does NOT mean a 94% ability to hear.

Oral presentation

We seek the opportunity to appear before the committee to speak to this submission, in conjunction with other groups and organisations making submissions on behalf various areas of the hearing disability sector.

About the National Foundation for the Deaf

The NFD is a hearing sector organisation that works for the interests of the 400,000 New Zealanders with hearing disabilities. It is a non-profit, non-government organisation that works with its six member groups to support New Zealanders with hearing loss and deafness, encourages hearing preservation, and promotes good sound. It was established in 1978 and its member groups comprise consumer, academic and professional organisations.

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1. Introduction

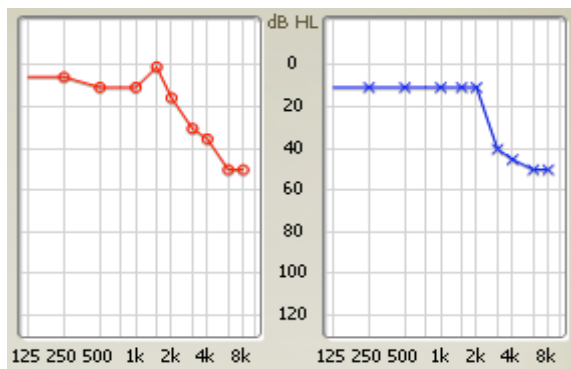
- 1.1 Noise damaged hearing is a human issue with human outcomes. It affects the ability to work, relationships, and independence. It is not a mathematical exercise.
- 1.2 Yet, in the proposed legislation, ACC says that if the noise-damage results in a hearing loss that is less than 6%, it is not an injury.
- 1.3 Noise damage attacks the high-frequency part of our hearing that is critical for speech discrimination, especially where there is background noise, and has an impact far more profound than an apparently small total loss of 6% might suggest.
- 1.4 Case studies provided to this committee by the NZ Audiological Society show damage in this zone can be severe with the loss of hearing in high frequencies up to 50dB or more. The commentaries with these case studies show professional impact and social dislocation, and in many of these cases the injured person is below the age of 65. This is not just an “old person’s problem”.
- 1.5 The key for people with noise injuries is the ability to get treatment – hearing aids and support – that will allow them to continue their careers, maintain their business and personal relationships, or to keep their independence.
- 1.6 **We submit that**
 - 1.6.1 A 6% hearing loss does not mean a person has 94% hearing.
 - 1.6.2 The threshold is a breach of faith with older, often retired, people.
 - 1.6.3 ACC is penalising people today for past events they had nothing to do with.
 - 1.6.4 The threshold is inflexible and removes from professionals any discretion based on need.
 - 1.6.5 The people culled from the ACC lists and millions of dollars of costs will be dumped on to a Ministry of Health system where the waiting lists are already up to 12 months.
 - 1.6.6 ACC is not waiting for the results of its own research that suggests industrial noise damage is dropping.
 - 1.6.7 The per-case cost to ACC for noise damage has seen a major drop in the past two years.
 - 1.6.8 The 6% threshold does not bring New Zealand into line with Australian schemes as reported by ACC.
 - 1.6.9 ACC is loosening noise damage standards.
 - 1.6.10 Removing this area of noise damage from cover automatically restores to victims the right to sue, and is an attack on the whole basis of the ACC scheme.

2. Hearing Disabilities in New Zealand

- 2.1 Research published in 2001 by Anne Greville, currently employed by ACC as Audiology Adviser, shows 10.3% of New Zealanders – now nearly 447,000 – have a hearing loss, with the loss in more than 286,000 of us amounting to a disability. That figure includes the 10,000 or so Deaf New Zealanders, although the culturally Deaf would argue their deafness is an identity rather than a disability.
- 2.2 ACC's figures show that in the 2008-09 year, noise damage cost ACC \$58.4 million. Research by Professor Peter Thorne, head of the Auckland University School of Population Health, estimates 25% of the New Zealand work force is affected by some degree of harmful noise and that 16% of all hearing loss is caused by noise damage.
- 2.3 Australian research published by Access Economics in 2006 showed the cost of hearing disabilities to the Australian economy in 2005 was AUD\$11.75 billion, or 1.4% of GDP, which included AUD\$6.7 billion in lost productivity. See Appendix-2 for New Zealand cost-equivalents.

3. Noise damage is an injury

- 3.1 Noise damage usually attacks the high frequency part of our hearing (see graph below) that is critical to decipher speech, especially where there's background noise – typical of almost any work or social environment or even in the street. It affects our ability to hear softer voices such as children, and hearing softer sounds like the ticking of a clock, car indicators, etc, and distinguishing between letters like s, t, p, b, or sounds like th, sh, ch.
- 3.2 The impact can be profound, with substantial loss of hearing in the damaged zones resulting in what becomes a significant disability. Data from ACC needs assessment trials presented at the NZ Audiological Society's 2008 national conference, showed 83% of claimants with a 0-10% hearing loss had a Hearing Handicap score of 50% or greater, while 41% had a score of 75% or more. That means 83% of claimants with less than 10% hearing loss had significant hearing problems in more than half of their usual listening situations, while nearly half of them have significant hearing problems in most of their activities.
- 3.3 A 6% hearing loss does not mean a person has 94% hearing.
- 3.4 The example below is from a 45-year-old male with 4.7% "hearing loss" but with hearing damage that sees him having difficulty hearing in background noise, in an open-plan office or group meetings. The red line shows the right ear and the blue line the left. The graph demonstrates typical noise damage with a sharp drop in hearing in the higher tones – the right side of the graph.



- 3.5 Other case studies provided with the submission from the NZ Audiological Society detail people also having problems hearing at home, with impacts on family relationships. In many cases, the effects of this damage can be, and has been, corrected by hearing aids, counselling and support.
- 3.6 To say people with a total hearing loss of 6% do not need ACC cover and support is wrong. The issue is where the hearing damage is occurring. An analogy is that if a 100kg person lost 6kg overall weight, there would be little impact, but if that person lost 6kg from one leg or an arm, the result could be crippling.
- 3.7 ACC is already supporting people with a total hearing loss of less than 6% who have been through its existing rigorous assessment protocols and still accepted for treatment. ACC's figures show that in the year to June 2008 it provided hearing aids and support to 290 people with less than 6% total hearing loss– an average of five and a half claims a week.

- 3.8 If ACC, with its rigorous assessments, accepts injuries resulting in less than 6% total hearing loss exist and require support, ACC can't claim in 2010 that such injuries don't exist.
- 3.9 **Footnote:** When asked where the figure of 6% came from for the threshold, ACC told the ACC Hearing Loss Reference Group meeting in Auckland on October 30 the figure was arrived at by a mathematical calculation that showed if the threshold was set lower, claims would cost ACC money. Client need was not the issue.

4. The threshold is a breach of faith with older people

- 4.1 One of the key reasons ACC gives for instituting a 6% threshold is that the number of people claiming for noise-damaged hearing is growing and will continue to grow. It notes these claims are coming from older people, typically in retirement, who are suffering the effects of noise damage in past occupations. It advises the average age of claimants is 70.
- 4.2 Further, it is understood that for older people ACC will add noise damage to a scale of natural hearing loss it claims every male aged 57+ and female aged 65+ has. This will then deny those people upgrades to hearing aids when they come back for further support such as repairs or upgrades to old aids. The current scales are attached as Appendix-1.
- 4.3 Noise damage is permanent. It does not heal over time, and 5% damage at age 30 is still 5% damage at 70. For that 70-year-old, if ACC adds the 5.5% presumed age-related loss to the original 5% damage, that person must now have at least a 10.5% hearing loss before he can get hearing aids or have his aids upgraded, despite the fact the original injury still exists.
- 4.4 These people, now aged in their 60s, 70s, 80s were working when ACC was first introduced, and gave up their right to sue for damages if they were injured in return for the promise they would get cover and support if they needed it.
- 4.5 They worked in an age when little thought was given to noise protection and often in noisy environments that damaged their hearing. They are claiming now because they are struggling and they are aware that technology can help improve their lives.
- 4.6 To change the rules after 35 years of ACC operation and deny them cover and support just when they need it, is a breach of faith.

5. ACC is penalising people for past events

- 5.1 If this threshold is introduced, people whose hearing is injured "today" will face a barrier for support born out of past issues they have nothing to do with.
- 5.2 What's driving ACC to introduce a threshold are the claims for hearing damage coming from older people who are typically retired and who generally had their hearing damaged in decades past.

- 5.3 Research being done for ACC into noise damage and ACC's own claim figures suggest the increase in claim numbers may be levelling off. University research being done for ACC (see below) shows the participation rates in noisy industries is declining, which backs Greville's research as far back as 2001, which noted a fall in the number of people working in noisy industry and "...there is some hope that in the future not as many men will develop hearing loss."
- 5.4 We are living in an age where people are more aware of the threat of noise damage to hearing - we're seeing more stringent noise controls or protocols in industry, in agriculture, for example, farm tractors now usually have insulated cabs, and people are more-frequently observed wearing hearing protectors in activities such as mowing lawns.
- 5.5 Noise is still a danger and much work needs to be done on prevention, but ACC's projections of a continuing rise in claims could therefore be wrong, and future claims will be penalised because of past events.

6. The 6% threshold removes professional discretion

- 6.1 One of the strengths of the current system administered by ACC is that it allows professionals the flexibility to cater for special cases. The Bill, in setting the 6% threshold baldly states a loss under 6% is not an injury, thereby unilaterally removing that discretion.
- 6.2 As the case studies presented to this committee show, there is a range of individual need among people with noise-damaged hearing. Flexibility to apply discretion is a core feature for any health professional.
- 6.3 To remove that discretion is a major step backwards for people with noise-injury, the medical professionals who work with them, and ultimately the quality of the ACC scheme itself. It is seeing bureaucrats set the limits on the client's need, not the professional who actually deals with the client.

7. People must rely on an overloaded Ministry of Health service

- 7.1 The 6% threshold will cost the Ministry of Health up to \$5 million a year. ACC is playing "pass the parcel" despite government fears of cost transfer.
- 7.2 The explanatory note accompanying the draft IPRC Bill states a major concern of the government ahead of this Bill is the transfer of costs from ACC to other government departments. The note states the cost to the Ministry of Health in taking up hearing damage claims will be about \$500,000 a year.
- 7.3 At the ACC Hearing Loss Reference Group meeting in Auckland on October 30, the Ministry of Health representative disputed this figure and said ACC had been told the cost would in fact be several million dollars a year.
- 7.4 The ministry has now told the NZ Audiological Society it anticipates additional costs of \$3 million in the first year, growing to \$5 million a year if the 6% threshold is introduced and changes in cover related to the percentage of age related hearing loss are introduced.

- 7.5 ACC's projected savings are put at just \$3 million to \$4 million.
- 7.6 However, the cost will be greater in human terms. The people culled from the ACC scheme will have to rely on a Ministry of Health scheme where people living south of the Bombay Hills (greater Auckland's southern boundary) already face a wait of 12 months for the standard Priority-2 hearing aid funding, while those in the north face delays only slightly shorter than this.
- 7.7 The ministry's adult hearing aid scheme is under stress with capped funds, forcing the ministry to "rearrange the deckchairs" by introducing a new "Urgent" category to its three-category waiting list. This will give quicker service to a claimant, but only if their safety is at stake.
- 7.8 On top of this, people with noise-damaged hearing seeking support from the MoH system will get much less support than they would from ACC. Under ACC, these people get the full cost of their hearing aids and all audiologist fees paid, plus any counselling they require and hearing aid batteries. Under the MoH scheme, they get the cost-price of hearing aids (plus some audiologist fees if they live in the north) if they qualify, otherwise just the basic subsidy of \$198 per aid or \$500 per aid if they have a SuperGold Card.
- 7.9 This is not a case of "so what?" Every person paying PAYE tax is paying an ACC levy, and that levy means they are entitled to services from ACC for work-related injuries, not be dumped on to an overloaded scheme that is not designed to provide rehabilitation.

8. ACC is not waiting for the results of its own research

- 8.1 ACC has commissioned research from Auckland and Massey Universities into noise damage and the issues surrounding it.
- 8.2 The results of that research is due in less than 12 months, yet rather than wait for those results, ACC is acting now to introduce a threshold that research may show is not needed.
- 8.3 Professor Peter Thorne, head of the Auckland University School of Population Health, who is leading that university's research, told the ACC Hearing Loss Reference Group on October 30 that the research models suggest noise damage in general may be in decline, especially where proper controls and practices are in place.
- 8.4 He cited a study at the Kawerau paper mills where workers who joined the company in 1997 had no noise damage to their hearing a decade later.
- 8.5 Given ACC's concerns about the growth in claims for noise-damaged hearing, it is incomprehensible that it is not waiting for the results of its own research, especially when those results are due only months after the Bill comes into effect.

9. The per-case cost to ACC has dropped sharply

- 9.1 The cost of noise-damage claims to ACC has dropped substantially on a per-case basis over the past two years.
- 9.2 In November 2007, ACC entered an accord with the audiologists (NZAS) and the hearing aid manufacturers (HIMADA) to reduce costs that has seen a 22% drop in the average cost of hearing aids. Also, in the past eight years, ACC's fees to audiologists have remained unchanged. ACC has now flagged to audiologists it wants a 20% reduction in those fees. HIMADA and the NZAS estimate the accord has saved ACC \$10 million since November 2007, with \$7 million in the past year, and the savings will continue.
- 9.3 As a result of the savings, the cost of noise-damage claims to ACC has increased only 3.6% a year over the past two years, despite a 12%-15% increase in claims, and the accord partners believe further savings can be achieved.

10. The threshold does not bring ACC into line with Australia

- 10.1 ACC claims that introducing a 6% threshold brings it into line with Australian compensation schemes, but it is our understanding this is not the case.
- 10.2 The Australian legislation varies state by state, and generally thresholds are lump sum compensation, not rehabilitation.
- 10.3 An ACC document provided to the NZ Audiological Society states:
- Victoria: "WorkSafe Victoria has not set a 'threshold' or percentage of loss that is required before consideration will be given to providing hearing aids."
 - South Australia: "Therapeutic devices (including hearing aids) - no limits in place & entitlement is based on just having a hearing loss, there is no percentage threshold. The test for entitlement is; is it reasonable, appropriate & necessary".
 - New South Wales: "...legislation required a minimum of 6% hearing loss due to boilermakers deafness (or similar) for **compensation** as a result of permanent impairment" (emphasis is mine)
 - Australia in general: "All jurisdictions ... have an impairment threshold in place for industrial deafness, which means an injured worker is not entitled to **lump sum compensation** until they reach the threshold level." (emphasis is mine)
- 10.4 It should also be noted the Australian schemes are insurance schemes that focus on compensation, not a rehabilitation scheme like ACC, which is charged with restoring as much functionality to a person as possible.
- 10.5 We are not talking about lump sum compensation, we are talking about support - the provision of hearing aids to allow people with noise-damaged hearing to function to the best of their hearing ability, something the Australian schemes do.

11. ACC is loosening noise damage standards

- 11.1 Since its inception ACC has had no threshold for noise damage, and the result is the current environment, the current number of claims, and the current level of cost.

- 11.2 By saying people must have noise damage above a certain level before it officially becomes an “injury”, ACC is saying a certain amount of noise injury is acceptable.
- 11.3 Further, it is signalling to industry that the existing standards can be loosened because staff can have their hearing damaged up to 6% of hearing loss before those industries will incur rating penalties on their levies.
- 11.4 ACC is loosening the standards just when the current environment (including the existing standards) has finally seen noise prevention efforts starting to bear fruit – at least in major industry – and while initiatives by organisations such as the National Foundation for the Deaf, which is preparing a major national noise prevention campaign, are set to raise public awareness of noise damage.
- 11.5 ACC is undermining the work that has gone in at several levels of society.

12. The threshold will reintroduce the right to sue

- 12.1 By declaring “personal injury does not include any degree of hearing loss that is less than 6%...” ACC is removing hearing damage below 6% from the scheme’s coverage.
- 12.2 Our advice is that if an injury is not covered by the ACC scheme, the injured party has the right to sue the person or organisation that caused the damage.
- 12.3 ACC is potentially starting to unravel its own scheme. While the 6% threshold has been described by some as the “thin end of the wedge” in a move by ACC to cut “minor” injury from the scheme, it could also be the thin end of the wedge for reintroducing injury litigation to our industrial relations

13. Conclusion

- 13.1 Our contention is that noise injury is real, that its effects reach far beyond an artificial threshold of 6%, and that in introducing a threshold ACC has no regard for its impact on the individual.
- 13.2 This is not needs-based, but a mathematical exercise.
- 13.3 ACC is ignoring the fact it has its own research underway, it is breaking faith with people who have worked for decades in the belief ACC would support them if they were injured, and it will force hundreds of people to rely on a Ministry of Health scheme that is overloaded and provides only a shadow of their entitlements under ACC.
- 13.4 The case studies provided to this committee demonstrate these are real people with real injuries that have real impacts. What has to be understood is that for every person with a hearing loss, perhaps 10 more are affected – family, friends, and workmates.
- 13.5 By denying cover and support to someone with a legitimate noise injury, ACC is affecting a far wider spread of people than just the victim.
- 13.6 Noise damage is an injury and that injury will not go away just because ACC declares some sort of threshold means the injury does not exist. Further, ACC is saying it is OK for someone to be injured.
- 13.7 The National Foundation for the Deaf asks that the proposed threshold be abandoned, and the system, as it relates to noise damage, continues to provide cover and support on the basis of need, with professionals making the decisions, not bureaucrats working to a formula.

Chris Peters
Advocacy Project Manager
National Foundation for the Deaf
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14. Appendix-1 – ACC’s age-related scale of hearing loss

14.1 ACC’s scale of presumed age-related hearing loss is set out below. Under the Injury Prevention, Rehabilitation and Compensation Amendment Bill, hearing loss must be at least 6% greater as a result of noise damage before the claimant will get support.

Age Corrections		
AGE	Male	Female
<57	0.0	
57	0.2	
58	0.5	
59	0.7	
60	1.0	
61	1.4	
62	1.7	
63	2.1	
64	2.5	
65	2.9	0.1
66	3.4	0.2
67	3.9	0.3
68	4.4	0.4
69	5.0	0.5
70	5.5	0.7
71	6.1	1.0
72	6.8	1.3
73	7.4	1.6
74	8.1	1.9
75	8.8	2.3
76	9.6	2.7
77	10.3	3.2
78	11.1	3.7
79	12.0	4.3
80	12.8	4.8

15. Appendix-2 – Hearing loss cost in New Zealand terms

- 15.1 Hearing loss has a range of social and financial costs to New Zealand, and while it may be difficult to “connect the dots” in terms of social costs, the economic cost is significant.
- 15.2 Physical hearing problems such as glue ear are a significant problem in schooling, particularly in lower socio-economic areas, while research has shown 30%-40% of prisoners have hearing loss
- 15.3 The Access Economics review of the cost of hearing loss to Australia, published in 2006, showed it costs the Australian economy a total AUD\$11.75 billion – 1.4% of GDP – including AUD\$6.7 billion in lost productivity.
- 15.4 In NZ terms, 1.4% of Real GDP equates to NZD\$1.87 billion. (Source: Investment NZ)
- 15.5 To put that into perspective, that is
 - More than our total exports to the UK (\$1.73b)
 - More than our fourth-biggest export category – mechanical equipment (\$1.79b)
 - Almost the same as the combined value of our wine and our iron and steel exports (\$1.93b)
 - More than our 6th largest import category – plastics (\$1.62b)
 - Almost as much as the combined imports of pharmaceuticals and fertilizers (\$1.95b)
 - About the same as our total imports from Germany – our 5th largest source of imports (\$1.89b)
 - More than our imports from Singapore (\$1.83b)
 - More than our imports from the UK and Italy combined (\$1.83b)