

**The New Zealand Hearing Sector**

**SUBMISSION TO THE TRANSPORT AND INDUSTRIAL RELATIONS SELECT  
COMMITTEE ON THE INJURY PREVENTION, REHABILITATION AND  
COMPENSATION AMENDMENT BILL**

**to be presented by and on behalf of**

**The Hearing Sector**

**Graeme Dodd**

**Email: [graemedodd@xtra.co.nz](mailto:graemedodd@xtra.co.nz)**

**General Manager**

**Triton Hearing Clinics Ltd**

**Level 1, 226 Antigua Street**

**CHRISTCHURCH**

**Ph: 03 363 3120**

**The Hearing Sector seeks to present an oral submission to the Select Committee.**

# **SUBMISSION TO THE TRANSPORT AND INDUSTRIAL RELATIONS SELECT COMMITTEE ON THE INJURY PREVENTION, REHABILITATION AND COMPENSATION AMENDMENT BILL**

**November 23, 2009**

This submission is presented on behalf of the hearing sector which comprises audiologists who are members of the New Zealand Audiological Society (NZAS), hearing instrument manufacturers and distributors (HIMADA) and owners/operators of hearing clinics in New Zealand.

## **INTRODUCTION**

- 1.0 The hearing sector is responsible for the diagnostic testing for hearing loss, tinnitus, and balance disorders, and rehabilitation services for ACC claimants with noise damaged hearing and other injury related hearing loss, including planning, directing and participating in counselling, speech reading and other rehabilitation programmes; prescribes appropriate hearing aids and instructing patients in use..
- 2.0 When a patient presents with hearing loss, audiologists assess the patient's hearing using a wide range of audiometric tests to determine hearing efficiency and locate sites of hearing problems; and if noise damage or injury related hearing loss is suspected refers them to a general practitioner (GP) who refers the case to the Accident Compensation Corporation (ACC) for assessment.
- 3.0 ACC-registered Ear, Nose and Throat Specialists undertake this assessment and verify whether the hearing loss is noise induced and determine the percentage to which the patient's hearing loss is injury or accident related. The diagnostic analysis of *actual* hearing loss determined through the audiogram is subjectively determined, and there is a high degree of clinical subjectivity brought to bear by the ENT Specialist in determining the degree to which that loss is attributed to injury or accident.
- 4.0 Cl. 6 amends the current definition of 'personal injury' by stating that, "...*personal injury does not include any degree of hearing loss that is less than 6 percent of binaural (both ears) hearing loss*". The effect of the amendment is to introduce a threshold of attributed loss that must be demonstrated before cover is provided.
- 5.0 It is unclear whether the proposed amendment applies only to *new* claims or whether it will also applies to those claimants seeking re-aiding, which typically occurs approximately every six years, depending on rehabilitation needs. ACC have indicated that the expectation is that the threshold does not apply to re-aiding.<sup>1</sup>

## **BASIS FOR ACC PROJECTIONS**

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<sup>1</sup> Email from Phil Wysocki, Manager Treatment and Rehabilitation Services, Health Purchasing and Provider Relationships, ACC, October 29, 2009.

- 6.0 The fundamental drivers of the expected future liability are the number of claims and the cost of each claim.<sup>2</sup>
- 7.0 By setting a threshold of ‘6 percent’ injury-related hearing loss before treatment and rehabilitation is available; ACC estimates that the number of claims would be reduced by up to 6.5 percent with a cost saving to the Scheme of \$3 to \$4 million per annum.<sup>3</sup>
- 8.0 This saving is relative to total ACC annual hearing costs of circa \$60 million in FY 09.<sup>4</sup>
- 9.0 ACC has stated they set the 6 percent threshold only after calculating what annual savings they wanted to achieve<sup>5</sup> and thus there was no consideration made based on clinical input and patient need.
- 10.0 ACC’s current projection of future demand for hearing coverage is based on ACC analysis, which assumes that about 6.25 percent of the population aged 64-66 will be experiencing work-related gradual process hearing loss. This projection is determined by ACC by assessing *historical* claims patterns for hearing loss and attributing a similar likelihood to projections of population trends into the future.<sup>6</sup>
- 11.0 At present 77 percent of injury-related hearing loss claims are compensated out of the Residual Claims Account under the Scheme, ie pre-1999. These proportions will decrease with time, as more and more of the exposure relating to these cases will be post – 1999. ACC project the Residual Claims Account will be funding 9-10 percent of hearing claims by 2042.<sup>7</sup>

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<sup>2</sup> “Basis for modeling hearing loss claims for settling 2007/2008 Residual Claims Account levy rate”, Sept. 2006, ACC.

<sup>3</sup> Background Paper for Levy Consultation (ACC) <http://www.acc.co.nz/for-business/levy-consultation/consultation-process/levy-consultation-2010-2011/BUS00202>.

<sup>4</sup> It appears difficult to determine the exact costs for hearing for the July 1, 2008 to June 30, 2009 financial year; ACC have provided various figures ranging from \$55 million (OIA response to Mike Williams, NZAS member, dated 16 November, 2009 from Nancy Robbie, Senior Advisor Government Services) to \$65,024,121 as provided for in the ‘Hearing loss data for reference group meeting’ issued 13 November, 2009 from Michael Playle, Verna Smith and Anne Greville from ACC. Various other figures in between have also been provided to the industry.

<sup>5</sup> ‘Injury Prevention, Rehabilitation, and Compensation Amendment Bill — First Reading’ (ACC – Hon Dr Nick Smith).

<sup>6</sup> <http://wdmzpub01.stats.govt.nz/wds/TableViewer/tableView.aspx>; Email from Mike Playle, ACC Policy, November 11, 2009.

<sup>7</sup> S. Chang, ACC Actuary, November 16, 2009. Note: The NZAS was advised in July 2009 that 51% of claims are classified in the Residual Claims Account, 43% from the work account.<sup>7</sup> The Accredited Employer Reference Group and the Hearing Loss Reference Group were told in October 2009 that the liability of \$1B was mostly in the Residual Claims Account. Exact apportionment has not been provided to the NZAS.

## HEARING SECTOR CONTRIBUTION TO REDUCING COST OF INJURY-RELATED HEARING LOSS

- 12.0 In October 2007 the hearing sector, comprising the New Zealand Audiology Society (NZAS) and Hearing Manufacturers and Distributors (HIMADA) entered into a voluntary Accord with ACC to reduce the cost of injury-related hearing loss to the Scheme as a result of the recently increased number of elderly patients suffering from pre – 1999 workplace-related hearing loss.
- 13.0 The Accord delivered cost savings to the Scheme of \$10 million in just 18 months to June 2009 by audiologists prescribing a broader range of devices, and HIMADA offering ACC discounts, effectively reducing the average cost of hearing aids some 22%.
- 14.0 Audiologists have not had an increase in their ACC fees for eight years which means, relative to inflation, their fees have effectively dropped by 19.4<sup>8</sup> percent, equating to another sector cost saving contribution to ACC.
- 15.0 The hearing industry submits that it has already achieved savings from the Accord alone, well in excess of the \$3-\$4m pa savings targeted by ACC. These savings, extrapolate to Scheme savings of between \$150-160 million in today's dollars.<sup>9</sup>
- 16.0 Growth in costs has already declined markedly from the level of expenditure originally forecast by ACC as recently as 2006. This forecast included an "...expectation that ACC will establish policies and procedures to control the spending in this area."<sup>10</sup> FY09 costs were therefore projected by ACC in December 2006 to be circa \$78 million.<sup>11</sup>
- 17.0 Due to the Accord being entered into between the Hearing Industry and ACC, and underlying slowing of growth, actual ACC payments for hearing for FY09 are estimated to be \$55 - \$65 million.<sup>12</sup>
- 18.0 Growth in hearing costs over the last three years has been 3.6 percent pa, compared to 19 percent in for the time period 2004-2006.<sup>13</sup>

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<sup>8</sup> Derived from the Reserve Bank Inflation Calculator from Qtr 1 2001 until Qtr 1 2009  
<http://www.rbnz.govt.nz/statistics/0135595.html>

<sup>9</sup> Industry model; same discount rate applied (5.83 percent) as ACC actuarial model.

<sup>10</sup> "Basis for modeling hearing loss claims for settling 2007/2008 Residual Claims Account levy rate", Sept. 2006, ACC, Paragraph 4.6.

<sup>11</sup> "Basis for modeling hearing loss claims for settling 2007/2008 Residual Claims Account levy rate", Sept. 2006, ACC.

<sup>12</sup> See footnote 4.

<sup>13</sup> Hearing loss data for reference group meeting 13 November 2009 by Michael Playle et al

- 19.0 In the main, workplaces are safer now and the number of claimants with work-related hearing loss should significantly decline in the future. This is indicated by ACC's funded research conducted by Prof Peter Thorne, Auckland University.<sup>14</sup>
- 20.0 In addition, there is a well understood movement of workers from traditionally high risk industries (e.g. manufacturing) to more service based industries, i.e. the use of historical demand to set future projections overstates the likely demand on the hearing program.
- 21.0 The hearing industry submits that ACC's view on long term liability (and hence requirement for further cost reductions through imposition of a 'threshold') is predicated on now stale growth assumptions which do not reflect the change in per claim costs as a result of the Accord and longer term trends in work related hearing loss.
- 22.0 ACC acknowledges in September 2006 how critical the growth assumptions are in projecting long term Scheme liability:
- *“The aggregate valuation model used to derive the projected costs ... ..uses historic payment patterns to predict future payments. There is scope for subjective interpretation of how to best to reflect past patterns in future payments so there is no definitive “right” answer.”*<sup>15</sup>
  - *“Again, the most subjective assumption and the one with the greatest influence on the results (of projecting scheme liability) is the assumption about the number of future claims. Until more data is collected it is very difficult to establish the validity of this assumption. However the cash flows in the next three or four years should not be too dissimilar to those presented above (in the report).”*<sup>16</sup>  
(Underlining added)
  - Cash flows over the ensuing three to four years are markedly dissimilar than projected. For example, FY09 costs were projected by ACC in December 2006 to be circa \$78 million.<sup>17</sup> Actual ACC payments for hearing for FY09 are estimated to be \$55 - \$65 million.<sup>18</sup>

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<sup>14</sup> ‘Epidemiology of noise-induced hearing loss in New Zealand’ <http://www.nzma.org.nz/journal/121-1280/3211/> (Peter R Thorne, Shanthi N Ameratunga, Joanna Stewart, Nicolas Reid, Warwick Williams, Suzanne C Purdy, George Dodd, John Wallaart)

<sup>15</sup> “Basis for modeling hearing loss claims for settling 2007/2008 Residual Claims Account levy rate”, Sept. 2006, ACC., Paragraph 6.1

<sup>16</sup> Ibid., Paragraph 6.8

<sup>17</sup> “Basis for modeling hearing loss claims for settling 2007/2008 Residual Claims Account levy rate”, Sept. 2006, ACC.

<sup>18</sup> See footnote 4.

- 23.0 Furthermore, in proposing the ‘6 percent threshold’, ACC stated that hearing loss thresholds are, “...in many of the Australian State Schemes and in the UK.”<sup>19</sup>
- 24.0 What was not made clear is that Australia has a compensation (i.e. lump sum) threshold not a rehabilitation threshold. Entitlement to rehabilitation (hearing aids) is not determined by reference to the threshold but rather by determination of *clinical need*.<sup>20</sup> The adoption of the 6 percent threshold in, say NSW, *only* determines whether the claimant is eligible to receive financial compensation for his/her injury. It does not determine eligibility for hearing aids which is determined, based on need and clinical evaluation, on a case by case basis.
- 25.0 The Hearing Industry strongly opposes the introduction of this ‘threshold’; their views were not considered in drafting the proposed threshold.
- 26.0 Had ACC consulted the sector, experts in the testing and assessment of hearing loss, the sector would have cautioned ACC as to the clinical difficulties in objectively measuring work place injury as a percentage of total hearing loss. Furthermore, the sector would have submitted that noise-induced hearing loss is permanent and such an approach would invite a degree of clinical subjectivity that could prove unfair to the patient.
- 27.0 As a result, the sector submits that by setting an arbitrary threshold the Scheme will be subject to greatly increased costs of assessment, review, dispute and legal challenge.
- 28.0 It was the intention of the hearing sector to continue to work with ACC to address ways of reducing the cost impact on the Scheme into the future.

## **WHO IS IMPACTED BY THE PROPOSED THRESHOLD?**

- 29.0 For those patients who suffered noise-related hearing loss and who are now presenting for treatment of their injury, approximately 58<sup>21</sup> percent are 60 years and over.
- 30.0 Approximately 94 percent of claimants are male.
- 31.0 To suggest that the law will state that hearing loss, through no fault of the worker, is to be tolerated, and enshrined in law, is discriminating against New Zealand’s senior citizens and a signal to industry that some degree of hearing loss through injury will be tolerated.

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<sup>19</sup> Injury Prevention, Rehabilitation, and Compensation Amendment Bill — First Reading’ (ACC - Nick Smith)

<sup>20</sup> Hearing Loss Assessment and Associated clinical issues for Worksafe Victoria, 2/10/08 by Dr Brian J Williams, Pages 30-32.

<sup>21</sup> Derived from Figure 3 of ‘**Epidemiology of noise-induced hearing loss in New Zealand**’ <http://www.nzma.org.nz/journal/121-1280/3211/> (Peter R Thorne, Shanthi N Ameratunga, Joanna Stewart, Nicolas Reid, Warwick Williams, Suzanne C Purdy, George Dodd, John Wallaart)

- 32.0 Furthermore, for those currently working in noisy work places, (approximately 42 percent per year of claimants under the age of 60 have injury-related hearing loss<sup>22</sup>), Clause 6 in effect says you may not be treated and rehabilitated by ACC.
- 33.0 Injury-related hearing loss is associated, in the main, with low income levels and low employment rates.
- 34.0 Put simply, it is those New Zealanders who worked on our farms, in our forests, in our manufacturing and meat processing plants and in construction that are most afflicted today.
- 35.0 A disproportionate number of Maori fall into this category.
- 36.0 The fact that 42 percent<sup>23</sup> of those seeking ACC cover and entitlement for injury-related hearing loss are under the age of 60; with approximately 17 percent between the ages of 20 and 49<sup>24</sup> would suggest that ACC should be making a greater investment in hearing loss prevention; a more responsible and cost effective solution to address cost.
- 37.0 By not providing cover, ACC opens employers up to being sued by employees.

## HEARING SECTOR SUBMITS

- 38.0 It is strongly submitted that this arbitrary figure will be impossible to clinically test accurately and that assessment will therefore be subjective, potentially discriminatory and damaging for the patient and his/her family. Objective testing requires use of expensive evoked potential equipment (as used for assessing babies hearing), typically only found in public health clinics.
- 39.0 Noise-induced hearing loss is permanent. The damage and injury to the hearing system is permanent. Applying a threshold implies that as a person gets older their injury reduces. (*This is like suggesting the shoulder injury sustained after rolling down a hill when they were 40 is actually attributable to age after they reach 57. Each year over 57 means a greater percentage is attributable to age until eventually the whole injury is due to the fact that the person is elderly*).
- 40.0 It is a retrospective move to deny cover to people who have already suffered an injury.
- 41.0 By not providing injury-related cover ACC is setting a precedent which hasn't been set in the history of the Scheme.

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<sup>22</sup> Ibid.

<sup>23</sup> Derived from Figure 3 of '**Epidemiology of noise-induced hearing loss in New Zealand**' <http://www.nzma.org.nz/journal/121-1280/3211/> (Peter R Thorne, Shanthi N Ameratunga, Joanna Stewart, Nicolas Reid, Warwick Williams, Suzanne C Purdy, George Dodd, John Wallaart).

<sup>24</sup> Ibid.

42.0 The prime focus for ACC and the Department of Labour, working in conjunction with the hearing industry, should be on the promotion and auditing of safe working environments.

## **THE PUBLIC HEALTH SYSTEM AND BROADER ECONOMY WILL BE BURDENED WITH THE COST**

43.0 For those New Zealanders denied cover and entitlement to the Scheme for personal injury in Clause 6, they will have no option but to join the public waiting list, (currently approximately 12 months), to access hearing aids through the public health system.

44.0 This consequence of the setting of the 6 percent threshold, and changes in cover related to the percentage of age-related hearing loss as proposed by ACC, will simply shift the cost burden from one government agency to another. The Ministry of Health has estimated it will face increased costs of \$3m in the first year to \$5m- per annum in later years.<sup>25</sup>

45.0 As the public system only covers a portion of the costs of noise induced hearing loss claims, the individual will be forced to absorb the rest.

46.0 These costs do *not* include well understood additional healthcare costs (e.g. treatment of depression) and economic costs (e.g. lost productivity) relating to untreated hearing loss.<sup>26</sup>

## **WHAT DOES “6” PERCENT HEARING LOSS MEAN?**

47.0 It does not mean that a person has 94 percent hearing.

48.0 The 6 percent threshold is arrived at by calculating total hearing loss (*actual* hearing loss as determined objectively through use of an audiogram), then subtracting age-related hearing loss, and then subtracting ‘other’ factors. Therefore, the older you are, the lower your percentage hearing loss attributable to noise or injury. Essentially the older you are the less likely you are to get cover. Yet injury or damage through noise is permanent and doesn’t diminish or reduce over time.

49.0 This is not a minor level of loss; a 6 percent noise-induced hearing loss is significant. It means a person is unable to clearly hear consonants like “s”, “t”, “f”, “th” which are critical for speech discrimination, especially in noisy environments.

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<sup>25</sup> “The Ministry of Health email dated November 17, 2009.

<sup>26</sup> See for example: “Listen Hear!; The Economic Impact and Cost of Hearing Loss in Australia, Access Economics, February 2006.

- 50.0 Noise damage can destroy up to 50 percent of that part of your sense of hearing, specifically required to understand speech.
- 51.0 *The sector has ear plugs available for Select Committee Members which equate to 6-10 percent hearing loss and invites Committee Members to wear them for a day to assess the effect on their ability to hear and communicate effectively.*

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## SUMMARY

- 52.0 ACC proposes that the threshold is beneficial as it will save ACC \$3 - \$4 million pa. The figure ignores the cost shifting to the Ministry of Health in the order of \$3.0 m per annum progressing to \$5.0 million pa (from introduction of the threshold and changes in cover related to the percentage of age-related hearing loss) as well as the well-documented costs on the rest of the economy. There is no cost saving to Government.
- 53.0 The cost saving rationale is based on a now stale assessment of long term growth in claims and liability which is not borne out by trends evident in the last three years.
- 54.0 The “6” percent hearing loss threshold:
- undermines the integrity of the no fault principles enshrined in the ACC scheme;
  - will deny thousands of New Zealanders rightful cover for injury-related hearing loss they have suffered in the past,
  - by redefining ‘personal injury’, exposes employers to potential litigation, and
  - will increase the cost of hearing assessment significantly.
- 55.0 The hearing industry is committed to continuing to work with ACC to address current cost pressures on the Scheme, and support significantly more emphasis on hearing loss prevention while ensuring that current and future generations are not disadvantaged by an arbitrary hearing threshold regime.
- 56.0 The hearing sector submits that if this clause is passed the assessment of hearing loss will become subject to inequity and dispute. The elderly will be most discriminated against and that, if the previous negotiations under the Accord with ACC had continued, further reductions in the cost to the Scheme could have been achieved.
- 57.0 The sector submits that Clause 6 be removed from the Bill and that the hearing sector, through its voluntary Accord, continues to work with ACC to achieve additional cost savings to the Scheme. This will ensure equitable access and assessment for those suffering from this personal injury.**

