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NFD Submission

ACC Regulations – Regulations relating to hearing loss

Requested by:
The Department of Labour Workplace Regulations Group

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NFD Submission Executive Summary

In this Submission we contend there has been a failure to apply consumer rights as enshrined in public law as follows:

1. Though extra time was sought, on two occasions, verbally and in writing, these requests were denied.
2. If extra time had been available, proper consultation with our member organisations would have been possible.
3. If a proper consultation process had been possible, we believe it is **very likely** that other options for ACC to provide an appropriate service would have emerged and now be recommended.

Substantively, we further contend that:

4. Currently, ACC pays to rehabilitate hearing injury.
5. ACC does not and, never has, paid to rehabilitate for non-injury hearing loss.
6. Part-charges will limit rehabilitation for hearing injuries to the claimant's ability to pay. It will potentially deny claimants the rehabilitation they are entitled to under law.
7. Hearing impairment impacts on the whole person and hearing rehabilitation improves the quality of life of the whole person.

8. Collateral benefit to concurrent health conditions, including hearing impairment of non-accidental aetiology, that may arise when treating the hearing injury, is a beneficial co-incident. There is no extra cost to ACC.
9. The proposed regulations ignore university research funded by ACC suggesting its projected claim numbers are wrong.
10. The proposed regulations endorse the application of a diagnostic process that is not accurate or evidence based.
11. The application of these regulations will be discriminatory against one class of injured ACC claimants.
12. The application of these regulations will have a significant impact on those with limited discretionary incomes.
13. The application of these regulations will have a significant impact on one specific population sector - the elderly.
14. The introduction of these regulations contravenes the intention of the Act which was developed with the requirement of identifying needs, which then became the driver for the provision of rehabilitation.
15. NFD believes these proposed regulations as they stand are fundamentally wrong and we oppose them.

1. ACC is not paying non-injury costs

- 1.1 ACC does not accept claims for hearing damage that is not caused by conditions set out in the Act
- 1.2 ACC has strict guidelines for ENT specialists who assess a claimant's injury and Department of Labour statistics show 42 percent of claimants are refused hearing aids and audiology services (rehabilitation) as a result
- 1.3 ACC's core function is to provide rehabilitation. If in the course of that rehabilitation there is a benefit to other hearing loss conditions the claimant has, that is a by-product of the process and does not warrant co-payments
- 1.4 There is no additional cost to ACC for the collateral benefit to the non-injury conditions.

2. Rehabilitation will depend on the ability to pay

- 2.1 The co-payments regulations will reduce injury rehabilitation to a claimant's ability to pay their share of the charges
- 2.2 These charges can run to several thousand dollars
- 2.3 Claimants, especially those on limited discretionary incomes – and especially the elderly – will not necessarily have the means to produce several thousand dollars as their share of the cost of rehabilitation
- 2.4 As a result, they will be forced to go without hearing aids and suffer the consequences of ongoing hearing loss such as social isolation and depression.
- 2.5 It is not possible to provide half a hearing aid
- 2.6 As stated, the average age of noise-injury claimants is in their 70s, putting them squarely in the group of people with limited discretionary income
- 2.7 The Office for Senior Citizens notes that one of the first expenditures retirees dispense with is medical insurance, which is an indication of their spending priorities. Hearing aids will fall into the same category.

3. The regulations are not needs-based and ignore personal impact

- 3.1 The inability to hear well enough could cost the claimant his/her job
- 3.2 If this occurs and they cannot purchase hearing aids as recommended by their health care specialist, they may become dependent on the state of welfare
- 3.3 They could otherwise be contributing to the tax base, to their families, and to society
- 3.4 It is estimated that for every person with hearing loss, eight other people – family, work colleagues, and friends – are affected
- 3.5 Where a person cannot fund the part-charges ACC asks them to make, all of those people pay the price too
- 3.6 The proposed regulations are an accounting exercise that takes no account of the personal impact on the individual with noise-damaged hearing.

4. ACC's projections on liability are flawed

- 4.1 ACC is basing its projections on its current history of claims. It is looking at previous claim figures and making projections on the basis of those figures
- 4.2 ACC has commissioned Auckland and Massey University scientists to examine the whole noise damage situation in New Zealand, and the report from those universities is due late this year
- 4.3 ACC is aware the early indications from the university research are that the noise-injury situation in New Zealand is improving, suggesting the current claim numbers are a “bubble”
- 4.4 This is borne out by the fact the average age of first-time noise-injury claimants is 69 – a group who will move out of the system in coming years
- 4.5 University researchers say historical claims are not a good indication of the actual situation
- 4.6 ACC is acting prematurely – these are cost-driven regulations, being forced through without due reference to a sound evidence base.

5. ACC applying science incorrectly - there is no accurate diagnostic test

- 5.1 The co-payments regulations are based on the premise that it is possible to accurately apply percentages to noise injury, age-related hearing loss, and other hearing conditions
- 5.2 Scientists say this position is flawed
- 5.3 Scientists state there is no accurate diagnostic test to differentiate the effect of noise and age retrospectively on hearing
- 5.4 This position is tacitly endorsed by ENT specialists who, in their assessments of claimants, routinely ascribe an often-large percentage of hearing loss to “idiopathic causes”. This term essentially means the ENT does not know the cause of the hearing loss
- 5.5 The ACC-contracted ENT specialist cannot say for certain that this portion of hearing loss was caused by noise injury, but equally, the specialist cannot say it was NOT
- 5.6 The same claimant, assessed by another ENT, could have a different percentage applied to “idiopathic causes” because there is no accurate scientific measure
- 5.7 In part, the situation arises from the fact that in most cases, noise-damage to hearing is gradual and can happen over many years or even decades
- 5.8 Claimants, when being assessed by audiologists and ENT specialists are being asked to provide information and background based on recollections that may be decades old
- 5.9 At best, the assigned percentages, particularly “idiopathic causes” are an opinion, and at worst, a guess
- 5.10 Claimants will be required to pay potentially significant sums of money, based on the application of research findings that have never been proven as applicable on an individual case-by-case basis.
- 5.11 Speculative judgements are unfair and unacceptable.

6. Co-payments for hearing conditions are discriminatory

- 6.1 The co-payments process forced by these regulations discriminates against hearing injuries as a class
- 6.2 While ACC does require people with some injuries to pay part charges based on other conditions, in this case it is taking a whole class of injury and arbitrarily applying part-charges.

7. The regulations will see service reduction

- 7.1 The regulations reduce the frequency of audiology visits and the frequency of repairs
- 7.2 Adjustments are moved from annually to once every six years
- 7.3 Scientists contend that noise-damaged hearing also impacts on other parts of our hearing and can accelerate age-related loss, so regular review and adjustment of the hearing aids as required is essential
- 7.4 The regulations also reduce the frequency of significant repairs – those that require the hearing aid to be sent off site – to once every two years
- 7.5 Even if a claimant damages their hearing aid/s in the course of their work, they will have to wait for up to two years for an ACC-funded repair
- 7.6 Because of the restrictions on what ACC will pay for under the proposed regulations, people with noise injury face becoming B-grade clients where audiologists can provide only a limited range of services based on what ACC will fund
- 7.7 This is an unwarranted penalty on those who are struggling with the impact of their noise injury, and shows no understanding of the impact of hearing loss or its dynamics.

8. The regulations are a cost-shifting exercise

- 8.1 The proposed regulations shift a large part of the cost-burden for rehabilitation to the claimant, which puts the ACC scheme out of balance and is unfair

- 8.2 The discussion document accompanying the proposed regulations also acknowledges the impact will cause costing shifts to the Ministry of Health, the Ministry of Social Development, and Veterans Affairs, among others
- 8.3 The Ministry of Health, which is likely to pick up most of the resulting cost-shift, is already struggling with capped budgets and long waiting lists for hearing aids
- 8.4 The public hospital audiology system is patchy at best because district health boards have no prescription for providing a universal standard of audiology services
- 8.5 ACC plans to shift at least part of its burden to other entities that are not prepared to cope.

9. The regulations are a betrayal of trust

- 9.1 The bulk of the people claiming for noise-damaged hearing are those who worked during the 1970s and 1980s when there was little attention paid to noise damage and noisy working environments
- 9.2 Since 1974, their employers have been paying levies to ACC to cover the cost of worker injury
- 9.3 Now ACC is telling individuals they have to pay even more money, often at a time in their lives when they can least afford it, in the midst of emission charges, GST increases and other imposts.

10. The regulations are in breach of ILO conventions

- 10.1 International Labour Organisation Convention 17 provides that people injured in accidents get all necessary treatment at no cost to themselves
- 10.2 ILO Convention 42 provides for compensation for those injured in such accidents
- 10.3 ACC will argue they are meeting their obligations because they are funding the full cost of the portion of injury – it is just not paying for other hearing loss the claimant may have

10.4 However, the NFD has shown that collateral benefit from rehabilitation is not a just cause for ACC introducing part-charges.

11. The regulations penalise workers for past system failures

- 11.1 ACC's figures show the bulk of current claimants were working during the 1970s and 1980s when noise protection was seldom practised
- 11.2 ACC's policies are being driven by the residual costs of those past failures
- 11.3 It is the NFD's position that the current claim numbers are a "bubble" and that claim figures will decline
- 11.4 As a result, the policies will see people in today's workforce unfairly paying the price for past failures of the noise protection system.

12. Choice of options

- 12.1 ACC asks respondents to give their preference of two options for part-charges
- 12.2 The NFD rejects both on the basis that:
 - 12.2.1 - they are unfair, unnecessary, and deny injured claimants their rights
 - 12.2.2 - if the NFD had sufficient time to consult on this proposal, we would have had the chance to formulate possible alternatives to these ill-conceived regulations
 - 12.2.3 However, restricted response time has given the NFD insufficient time to consult effectively with the hearing disability sector for their views.

13. Conclusion

- 13.1 The proposal to introduce ACC regulations which will lead to part-charges and reduce services to victims of noise-damaged hearing are unjust, illegal, and unfair
- 13.2 They will see people denied their right to injury rehabilitation simply on the basis of their ability to pay
- 13.3 They are a short-sighted approach to what is perceived to be a problem, with no regard to the consequences for the individual, or the knock-on impact on other government departments.

14. Footnote

- 14.1 It is a fact that people with hearing disabilities often benefit from being given more time to communicate
- 14.2 The National Foundation for the Deaf believes the restricted time to respond to the Department of Labour discussion document was insufficient to allow effective consultation with the wider hearing disability sector
- 14.3 The NFD sought, both verbally and in writing, more time to respond, and its requests were denied
- 14.4 This failure to recognise such an essential communication requirement is indicative of governmental bullying of vulnerable citizens, yet the strength of a community is measured by the way it upholds their vulnerable members
- 14.5 We contend that the Department of Labour's refusal to give the NFD and other groups in the hearing disability sector sufficient time to consult adequately on such fundamental proposals is also a form of bullying at an institutional level.