

**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE
WORKCOVER AUTHORITY**

Organisation: Hearing Care Industry Association

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The Chairman and Director
NSW Legislative Council
Standing Committee on Law and Justice
Parliament House
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**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY (INQUIRY):
HCIA SUBMISSION**

Dear Chairman and Director

Please find attached the submission from the Hearing Care Industry Association (HCIA) for the inquiry into the Review of the Exercise of the Functions of the Workcover Authority.

HCIA would be pleased for the opportunity to provide testimony in person to the Inquiry should hearings be held.

Please do not hesitate to contact me should you have any queries in relation to our submission.

Yours sincerely

John Pappalardo
Chairman

Hearing Care Industry Association
17 January 2014

Submission by HCIA to the Standing Committee on Law and Justice concerning the Review of the Exercise of the Functions of the WorkCover Authority

Background to HCIA and work-related hearing impairment

The Hearing Care Industry Association (**HCIA**) represents more than 60% of the private providers of hearing devices used in Australia. HCIA members care for many hundreds of thousands of hearing-impaired Australians in more than 440 locations around the country. HCIA members employ more than 500 professionals in teams of clinicians and client service officers to provide excellence in hearing care. The clinicians are industry-trained and government-accredited specialists and work with the latest technology.

Hearing is a critical sense for effective participation and communication in the workplace. Most employment situations require verbal communication in order to effectively engage with co-workers or the public and effective hearing is also critical to assure safety on the job. Without aided hearing, the hearing impaired person can be expected to suffer losses in remuneration due to underemployment; may make mistakes on the job; experience higher rates of unemployment and in general, experience an overall reduction in quality of life (anxiety, depression, social isolation) which may negatively impact on job performance.

Evidence provided by Access Economics is that people with a hearing impairment leave the workforce earlier, earn less money, and are more likely to be unemployed than people without a hearing loss. The largest economic cost of hearing impairment is due to lost productivity. (*The Economic Impact and Cost of Hearing Loss in Australia – A report by Access Economics February 2006*)

Submission

Executive Summary

HCIA welcomes the opportunity to submit its views on the functions and role of the WorkCover Authority (**WorkCover**), and on how WorkCover is assisting those who rely on its services. The purpose of HCIA's submission is to address unintended consequences and false economies relating to the 2012 reforms to the NSW Workers Compensation Scheme (**the Scheme**) for those with work-induced hearing loss.

HCIA contends that is essential that injured workers' rights to payment of medical and related expenses are fair and equitable – the Scheme as it now stands may have *intended* to improve the situation of hearing-loss workers, but in fact does the opposite. This needs to be urgently redressed.

Previously, the Scheme had acknowledged that permanent hearing loss can occur due to exposure to noise in the workplace, and it had subsequently covered the lifetime cost of hearing aids and rehabilitation.

However, HCIA submits that the 2012 reforms significantly curtail workers' rights to payment of medical and related expenses associated with work-induced hearing loss. In particular, as at 1 January 2014, Workcover will no longer cover the cost of a replacement hearing aid or the cost of batteries for workers suffering noise induced hearing loss in the workplace in NSW.

This means that workers who have suffered hearing loss as a result of exposure to noise in the workplace, and who have been prescribed a hearing aid by a qualified practitioner, will no longer have replacements supplied or re-fitted under the Scheme when the aids wear out or are damaged. If those workers cannot afford to buy the aids themselves, they will be doomed to a life of hearing loss. This will impact on their ability to fully participate in the workforce and in normal social and family activities.

As far as HCIA is aware, this restriction does not exist in any similar scheme, in any other part of Australia.

CASE STUDY #1

Adrian was 37 when an explosion at work caused him to lose his hearing. Now retired, he is set to lose the medical payments he relies on to pay for his hearing aids. "It was an accident that was no fault of his, he's lost his hearing and now this is going to be taken away from him," his daughter Diana Siddall said. "It is just so unfair. He's now under major stress and anxiety."

On January 1, 2014, Adrian, who asked for his surname to be withheld, and thousands of injured workers across NSW had their entitlement to medical expenses payments cut under changes to the state's workers compensation laws. Retired workers and those returning to work alike will be affected.

Mrs Siddall said her father, a former service technician at a gas and chemicals company, had just 10 per cent hearing in one ear without his hearing aids.

It cost at least \$900 a year to maintain his cochlear implant in one ear, and at least \$400 a year to maintain his hearing aid in the other. A looming \$3,500 bill to pay for his five-year-old hearing aid to be replaced, a process required every three to five years, was another cause of stress.

“He’s been retired now for six or seven years,” Mrs Siddall said. “He can’t afford to maintain that.”

The new laws, which were passed last year, exclude most workers from claiming medical expenses for more than a year after they stop receiving weekly compensation payments. Those payments cover part of a worker’s pre-injury average earnings and stop when an injured worker retires or returns to work.

Source: *Injured workers face big bills in compo changes* The Sydney Morning Herald Digital Edition, 29 December 2013.

Hearing-impaired Australians who are unable to afford hearing health services suffer severely disadvantaged lives. Their ability to participate in training or employment can be limited and their family and social life can be severely disrupted. Reforms, which potentially limit workplace participation, are a false economy.

People with hearing loss aged between 25 and 65 who are not eligible for the Australian Government Hearing Services Program and who do not have private health insurance have to pay for their hearing aids themselves and they can cost between \$3,000 and \$12,000 a pair. They have the option of taking out private health insurance to help meet the cost of purchasing and maintaining hearing devices, if they can afford it, but private health insurance only provides limited cover for hearing and the level of cover varies greatly between the insurers, and is frankly very low.

HCIA believes that the 2012 reforms have the potential to financially and emotionally devastate injured workers – particularly anyone who is currently receiving workers compensation benefits – and these inequities must be addressed.

In particular, HCIA submits that for work-related hearing loss, WorkCover should cover the ongoing costs associated with replacing and re-fitting hearing aids, as well as the cost of batteries for the aids. Hearing aids are not the same as prosthetic devices, which can last a lifetime. Hearing aids have a limited life and once they become obsolete, they are unusable.

HCIA considers that new reforms such as restoring lifetime cover, hearing aid replacement using a monetary cap, and/or reducing the threshold for exemption from the cap to a more realistic figure

of 10% whole person impairment (**WPI**) (as opposed to the current 30% WPI figure) are measures, which may effectively address the inequities outlined above. These suggested measures are discussed in more detail below.

This submission provides:

- a brief summary of the relevant 2012 amendments to the *Workers Compensation Act 1987* (NSW) (**the Act**) that impact on coverage of medical expenses;
- HCIA's views on the consequences of the amendments; and
- suggestions for reform.

Amendments to the Act

The 2012 reforms were commenced with the release of an Issues paper in April 2012. An inquiry was conducted by the Joint Select Committee on the Workers Compensation Scheme chaired by the Hon. Robert Borsak MLC. The Committee conducted oral hearings and considered written submissions on a wide range of suggested reforms to the Scheme. The Committee published its report on 13 June 2012.

In its report, the Committee noted what it considered to be the poor state of the financial health of the Scheme and recommended that coverage of medical expenses be capped at one year after the cessation of weekly benefits.

The Committee did not consider that injured workers would be put on the "scrap heap" because they would have access to medical and hospital benefits under Medicare. That is not the case in relation hearing impairment and the need for a hearing device.

The amendments inserted into the Act at section 59A provide:

"(1) Compensation is not payable to an injured worker under this Division in respect of any Treatment, service or assistance given or provided more than 12 months after a claim for compensation in respect of the injury was first made, unless weekly payments of compensation are or have been paid or payable to the worker."

(2) If weekly payments of compensation are or have been paid or payable to the worker, compensation is not payable under this division in respect of any treatment, service or

assistance given or provided more than 12 months after the worker ceased to be entitled to weekly payments of compensation.

(3) If a worker becomes entitled to weekly payments of compensation after ceasing to be entitled to compensation under this Division, the worker is once again entitled to compensation under this Division but only in respect of any treatment, service or assistance given or provided during a period in respect of weekly payments are payable to the worker.

(4) This section does not apply to a seriously injured worker (as defined in Division 2)."

A seriously injured worker is a worker whose injury has resulted in an impairment of greater than 30%. Only extreme cases of catastrophic injury qualify as serious injury. For example, some leg amputations below the knee do not qualify and it is not possible for a neck or back injury to qualify unless it is associated with paraplegia or quadriplegia. Leg and arm injuries only qualify where there has been a substantial amputation.

Other amendments to the Act effectively cap weekly payments of compensation to a period of 130 weeks unless the worker continues to be totally incapacitated for work (now referred to as having no work capacity).¹

The effect of the reforms is that where there was previously life time coverage for the cost of treatment made reasonably necessary by a work injury - there is now only very limited coverage. The changes are especially harsh in cases where people have returned to work and are receiving continuing treatment.

Consequences of the Reforms

Prior to the reforms, a worker who suffered industrial deafness was compensated with the provision of hearing aids. The worker was also provided with the cost of batteries for the aids and was entitled to replacement when the aids wore out or were damaged.

¹ See sections 32A and 38 of the Act

As a result of then 2012 amendments to the Act, workers' rights to payment of medical and related expenses have been significantly reduced: as at 1 January 2014, WorkCover no longer covers the cost of a replacement hearing aid or the cost of batteries i.e. the injured worker will be compensated by the provision of a single set of hearing aids and batteries. *As industrial deafness does not usually give rise to an entitlement to weekly payments of compensation, there will be no coverage for replacement, batteries or servicing occurring more than 12 months after the hearing aids were first provided.* It should be noted that hearing aids usually only operate effectively for about 5 years, they may need servicing from time to time and the batteries will need to be replaced on a relatively regular basis.

CASE STUDY #2

Peter (aged 51) is a boilermaker by trade and he has worked in the boiler making industry for around 36 years. He has been exposed to significant noise for many years due to the nature of his work and currently still works as a boilermaker. Peter didn't use any ear protection device during the early years as there were none available but his employer has made it compulsory to use earplugs for the last 15 years and uses them regularly whenever he is in noisy surroundings.

Peter's hearing levels started to deteriorate a number of years ago (in mid to late 90's). Initially, hearing loss didn't bother him much but he decided to do something about that in early 2000 because of family pressure. His employer organised for a hearing test and he was fitted with his first set of WC hearing aids in 2001. They were in the ear type small aids but he didn't use them much as they were noisy, uncomfortable to wear and made his ears sweaty.

Peter later got his second set of WC hearing aids in 2010. He noticed a huge difference with these aids as they were comfortable to wear, didn't block his ears and improved his hearing significantly. Hearing aids have helped in improving his quality of life significantly and he is dependent on them for his day-to-day conversation. Peter attends number of meetings, briefings at work and also works at office regularly. Hearing aids have been helping to manage these situations at work very well and he wouldn't be able to work effectively without them. Due to wear and tear on his hearing aids, Peter got his 3rd set of WC hearing aids in December 2013 and he is very happy with them.

Peter feels that he is being greatly benefitted by his current hearing aids and they have transformed his life. He is aware that his hearing loss is permanent and he would need hearing aids to hear better for the rest of his life. He says that he is only 51 years old and has a long way to go and the current set of hearing aids will not assist him forever. He depends on his hearing aids for his day-to-day communication and work and can't afford to buy them for the rest of his life.

He feels that not having a lifetime support for his hearing needs will have a significant impact on his ability to do day-to-day work and will erode the quality of life for him. Peter wants the government to reconsider its decision.

There are other injuries that require the provision of long-term aid and assistance but do not qualify as a serious injury. An example recently seen in the media is a below knee amputation. This results in less than 31% WPI. Most such amputees return to work and cease to be entitled to weekly compensation. They have a lifetime need for prostheses, servicing of prostheses and other treatment associated with the amputation. Those costs are no longer covered. These workers, like those who suffer from industrial deafness and other hearing related work injuries, are left without any recourse.

A worker may suffer a long-term injury – such as hearing loss. Despite the injury, the worker returns to work but needs ongoing treatment to allow him or her to remain at work. Under the amendments the cost of treatment ceases 12 months after a return to work. Because the treatment is no longer provided, the worker is unable to continue at work. *This result of inability to continue to work would appear contrary to the stated intention of having a compensation system that encourages a timely return to work.* If the worker has not received 130 weeks of weekly compensation he or she may be entitled to some weekly compensation. Treatment expenses will again be payable while the worker is away from work but coverage will stop as soon as there is a return to work. This will prevent the provision of services such as ongoing rehabilitation, which would allow and assist a long-term return to work.

HCIA submits that a further problem became apparent late in 2013. Many injured people ceased being entitled to the payment of treatment expenses on 1 January 2014. In the lead up to that time, a number of cases arose where the insurer denied liability for some medical treatments.

Subsequently, the injured worker made an application to the Workers Compensation Commission for orders that the treatment be paid. This process can take some months. So, although the Commission ultimately determined the treatment was reasonably necessary and therefore should be paid, there was insufficient time for the treatment to be carried out before the end of the year. This is because liability is only for treatment received within the 12-month period. It also meant that while the treatment might be paid for, the following rehabilitation and other necessary follow up treatment incurred after 31 December 2013 was not payable. This is clearly inequitable.

The amending legislation also inserted section 60 (2A) into the Act, which provides that treatment is not payable if the treatment or service is given or provided without the prior approval of the insurer

(not including treatment provided within 48 hours of the injury happening and not including treatment or service that is exempt under the WorkCover Guidelines from the requirement for prior insurer approval). The WorkCover Guidelines provide for a small number of exemptions largely relating to routine services by or at the direct of the nominated treating doctor but limiting the number of the services. There is no exemption in respect of emergency treatment. There is an exemption if the service is the subject of an order by the Workers Compensation Commission.

It is this section that caused the problem outlined above. In some instances an insurer avoided liability by delaying decisions about treatment so that the worker could not get a determination from the Workers Compensation Commission in sufficient time to receive the treatment before the expiry of the period.

Suggestions to redress unintended consequences from the Reform

HCIA strongly encourages reform to the Scheme with respect to treatment expenses. HCIA submits that lifetime cover for hearing impaired injured workers should be restored. This will provide care for the injured individual for their lifetime, and may include:

- hearing devices (aids, implantables, and/or whatever new developments may arise over the lifetime of the individual);
- surgery;
- prostheses;
- rehabilitation; and
- maintenance of any such intervention.

HCIA also suggests that injured workers should be eligible for hearing aids beyond the first pair. It is proposed that ongoing eligibility should be based on a more realistic 10% WPI (as opposed to the current 30% WPI). It is essential that the costs associated with replacing and re-fitting hearing aids for workers suffering noise induced hearing loss in the workplace in NSW are covered.

As another recommended reform, HCIA submits that there should be ongoing cover for batteries and maintenance for an existing pair of aids after the first 12 months that the device is provided. Cover should be extended for a period of 5 years.

Conclusion

HCIA hopes that this submission:

- highlights the important issues of concern relating to the 2012 reforms to the Scheme with respect to treatment expenses – from both a hearing care perspective and a broader “device” perspective; and
- will assist the Standing Committee on Law and Justice to develop recommendations that will result in significant improvements to the current Scheme, which will benefit NSW workers.

Thank you for the opportunity to share HCIA’s views with the Committee.

John Pappalardo
Chairman
Hearing Care Industry Association

17 January 2014