



Work-related hearing loss in the NSW Workers Compensation System

icare submission to SIRA



Executive Summary

icare strongly supports a systematic review of the work-related hearing loss claims process and agrees that a simplification of the claims experience will deliver best outcomes for injured workers and other stakeholders in the system.

icare recommends that the State Insurance Regulatory Authority's (SIRA) give consideration to the following matters in its review:

- **Simplifying the process for lodging a hearing loss claim, including requiring a Hearing Service Provider report only (with additional supporting information and evidence) to enable an injured worker to lodge a claim. This allows an insurer to assess the claim in a timely fashion and minimises delays, ensuring the worker has access to hearing aids as needed.**
- **Simplifying the process for seeking replacement hearing aids or servicing existing hearing aids, requiring general practitioner sign-off only. In addition, or in the alternative, consideration may be given to amending the workers compensation legislation to permit commutation of a worker's lifelong entitlement to this type of compensation.**
- **Reviewing the availability of remote and regional IMEs to enable fair, consistent and equitable assessments to be carried out.**
- **Focusing on education initiatives for workers, employers and service providers, to help each party manage the claims process and their expectations from the system.**

icare would be pleased to meet with SIRA to discuss the more particular aspects of its submission and, together, build a worker's compensation system that is efficient, fair and sustainable.

Introduction

Hearing impairment claims differ from standard workers compensation claims in several ways. First and foremost, hearing impairment is an injury of gradual process, and the majority of hearing loss claims are latent. They may only manifest several months or years after a worker has left a particular noisy employer or has retired from work. The workers compensation legislation recognises this latency and provides for it specifically in the *Workers Compensation Act 1987*.

Managing work-related hearing loss in the workers compensation system is therefore relatively specific and requires focused processes to enable the effective and efficient operation of such claims. icare agrees with and supports the SIRA proposition that uptake and compliance with hearing aids improves when the hearing aid is delivered to the worker together with support, training, counselling and auditory rehabilitation. This results in better communication outcomes and improved participation in social activities for injured workers and improves aural results and quality of life for people with work-related hearing loss.

icare agrees that there are some areas in relation to claiming for work-related hearing loss that may require attention, but submits that, overall, the process for such claims is progressing well.

Approaching a review of the claims process via a systematic approach is welcome and icare supports a simplification of the claims experience while delivering best outcomes for injured workers and other stakeholders in the system.

Claimant experience: accessing benefits for work-related hearing loss

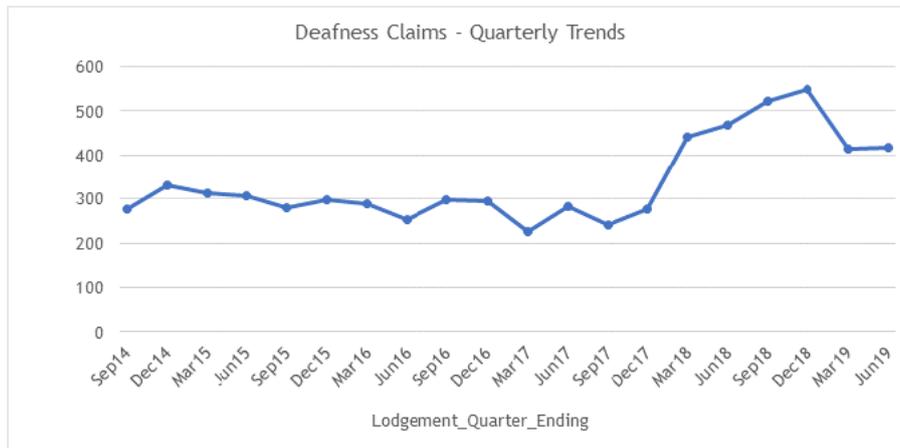
1. Are there barriers to workers with work-related hearing loss accessing their entitlements?

icare does not consider there to be significant barriers to workers with work-related hearing loss accessing their entitlements.

In fact, current data suggests that, over the last 12 to 18 months, there has been an increase in workers accessing entitlements relating to work-related hearing loss.

Actuarial data from September 2014 to June 2019 suggests there has been a significant increase in the number of active hearing loss claims. While the average payment per active claim decreased over 2016 to 2018 () and has now stabilised, the total cost to the workers compensation system of hearing loss claims has increased due to the increased volume of claims made.

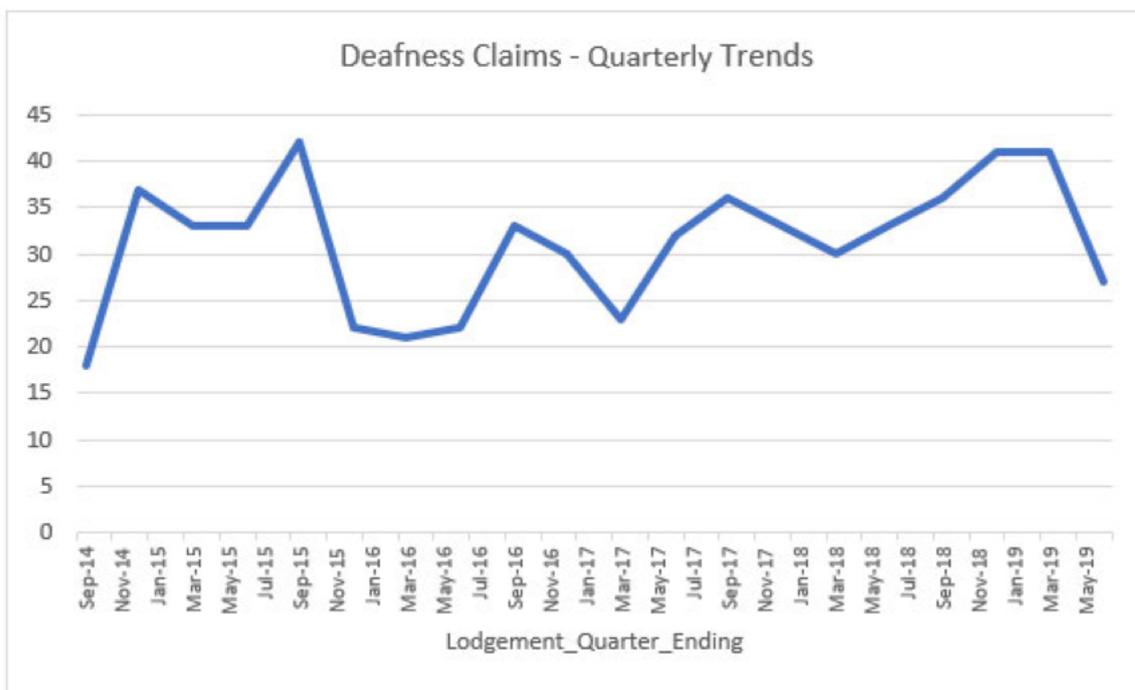
Nominal Insurer¹



- Since 1 December 2017, Nominal Insurer hearing loss claim lodgements have increased at a rate of 5% per quarter, which compares with 1% per quarter for the scheme.
- In the year to 30 June 2019, Nominal Insurer hearing loss claims accounted for 3% (1,904) of all claims lodged for the year (67,173). Historically, hearing loss claims have accounted for about 2% of Nominal Insurer claim lodgements.

Lodgement year ending	All claims	Claims for deafness	Deafness as % of all claims
30 June 2015	61214	1230	2
30 June 2016	60439	1122	2
30 June 2017	61065	1102	2
30 June 2018	63215	1427	2
30 June 2019	67163	1904	3

¹ Data sourced from 30 June 2019 CDR SAS.



- In the year to 30 June 2019, hearing loss claims accounted for 0.9% (145) of all claims lodged for the year (15,907). Historically, hearing loss claims have accounted for about 0.8% of claim lodgements.

Lodgement year ending	All claims	Claims for deafness	Deafness as % of all claims
30 June 2015	14,223	121	0.85%
30 June 2016	15,022	107	0.71%
30 June 2017	15,007	118	0.79%
30 June 2018	15,024	132	0.88%
30 June 2019	15,907	145	0.91%

Submission – icare submits there are no significant barriers to workers with work-related hearing loss accessing their entitlements. However, there are dangers in assuming that barriers to workers accessing their entitlements do not exist simply because there has been an increase in claims lodged. The correlated data does not necessarily suggest causality. There may be other reasons that claims lodgement figures have increased, including better access to information (online and via the Workers Compensation Independent Review Officer), simple to use lodgement portals, an ageing workforce, and the increased public availability of free-of-charge hearing tests by independent hearing providers.

There are also historic barriers, such as a lack of workplace awareness/education as well as difficulties in determine employer/insurer on risk given delayed onset, to workers with work-related hearing loss accessing their entitlements that may benefit from being addressed as part of SIRA’s review.

2. Can improvements be made in the following areas?

a) Access to Benefits

Hearing Aid Replacements

Pursuant to section 59A(6)(a) of the *Workers Compensation Act 1987*, there are no limits on compensation with respect to an injured worker's entitlement to replacement of hearing aids, hearing aid batteries, and other artificial aids.

As outlined in SIRA's '*Request for replacement hearing aid*' form, a worker is eligible to request a hearing aid replacement if:

1. The hearing aid has been lost or damaged and is not covered by warranty or other insurance; or,
2. The worker can no longer communicate effectively using the current hearing aid.

SIRA requires the worker to complete a '*Request a replacement hearing aid*' form when requesting a replacement. This form is completed by the worker and signed by the worker's regular general practitioner. The worker's general practitioner, on examining the worker, is able to determine that the worker requires replacement hearing aid(s). Alternatively, the general practitioner may opine that the worker requires a referral to a SIRA approved Hearing Service Provider (HSP) for a review of the worker's hearing needs. It is icare's experience that most forms completed by the worker's general practitioner recommend a referral to an HSP for review.

When the worker consults with an HSP, the worker's treatment needs are assessed. The HSP is then required to submit to the insurer a Hearing Needs Assessment, which includes a hearing assessment as per the Australian/New Zealand Standard 1269.4:2014, as well as the HSP's recommendations and clinical rationale for the provision of the hearing aid device. A valid quote or invoice in line with relevant gazetted fees is also required.

The majority of claims for hearing loss are submitted by a worker's legal representative. The worker is referred by their legal representative to an audiologist to undergo an audiogram (and obtain an assessment of degree of hearing loss) and thereafter for assessment by an ENT, who subsequently provides a written report.

Submission – icare is of the view that requiring the worker's general practitioner to complete a form, and then requiring a Hearing Needs Assessment by an HSP, essentially doubles up on functions and uses up valuable resources. Additionally, by requiring a repeat of this function, claims costs are added to the system.

icare submits that either:

- i) The general practitioner and the HSP complete the same '*Request a replacement hearing aid*' form; or,
- ii) the '*Request a replacement hearing aid*' form is completed by the HSP only.

It is unclear why, when the worker has consulted with a SIRA-approved HSP or a SIRA-trained Ear, Nose and Throat (ENT) specialist, a worker's general practitioner is then required to sign-off on the worker's request for a replacement hearing aid. This is particularly so given the rationale and recommendations come from the HSP or ENT themselves.

Removing the requirement for the worker's general practitioner to sign avoids the added inconvenience to the worker needing to consult with their general practitioner as well as other health service providers.

b) Worker Outcomes and Experience

Please see submissions above and below.

c) Service Provision

Regional Access to Independent Medical Examiners

icare is concerned that workers in regional and remote areas of New South Wales do not have sufficient access to Independent Medical Examiners (IMEs). This presents problems for many injured workers needing access to hearing aids and other hearing loss related services.

Some examples of this include:

- ████████ – in August 2019, Dr ████████ ENT, SIRA Permanent Impairment Accredited assessor) retired. With his retirement, the availability of qualified IMEs in the ████████ area has been rendered non-existent. As a result, insurers are having to fly each injured worker from the area to a metropolitan location, normally Sydney, to attend a medico-legal consultation. In some instances, where a return flight cannot be arranged on the same day, insurers are required to arrange for overnight accommodation. This increases the claims cost of travel and overall claims costs to the system.
- ████████ region – there is limited availability of IMEs in the ████████ area. Dr ████████ (ENT, SIRA Permanent Impairment Accredited assessor) is reportedly the only available IME. When the injured worker is referred to this ENT by their solicitor, it becomes difficult for the insurer to locate another nearby IME. The only alternative is to arrange transportation for the injured worker to the closest metropolitan location, normally Sydney.
- ████████ region – similar to the above examples, Dr ████████ (ENT, SIRA Permanent Impairment Accredited assessor) is the only available IME in the ████████ region. When the injured worker is referred to this ENT by their solicitor, it becomes difficult for the insurer to locate another nearby IME. The only alternative is to arrange transportation for the injured worker to the closest metropolitan location, normally Sydney.

Submission – icare recommends that SIRA review its accreditation process for permanent impairment assessors, perhaps seeking input from the relevant medical association, and take measures to promote the number of assessors available in regional and remote areas of New South Wales.

Quality of IME Reports

Insurance claims staff have reported inconsistencies in reports obtained from IMEs, particularly those in regional areas. These concerns have previously been raised by icare as part of icare's submissions to SIRA in its Consultation on Independent Medical Examiners.

icare repeats its previous submission here:

IMEs who report on questions of treatment and causation do not have to go through a SIRA accreditation process in order to work in the Scheme – they are required only to meet the eligibility

requirements gazetted in the WorkCover Guidelines on Independent Medical Examinations and Reports²:

“The independent medical examiner is to be a medical specialist with qualifications relevant to the treatment of the injured worker’s injury. If the referral includes a question of causation or treatment, the independent medical examiner is to be in current clinical practice.”

There are additional requirements for IMEs who are able to assess WPI: these IMEs must complete a short training course and be accredited by SIRA before they are able to assess WPI.

...

The legislation and guidelines underpinning the Scheme are complex and specific. However, only those IMEs accredited to perform WPI assessments are required to undertake Scheme-specific training and SIRA accreditation. ...

icare believes that all IMEs working in the NSW Scheme should be required to undertake a minimum level of training and be accredited by SIRA. This would achieve the following outcomes:

- All IMEs would have a clear understanding of their role and responsibilities, and an increased awareness of the rights of injured workers under the Scheme.
- Training would provide an opportunity to connect all IMEs to important information on trends in workplace injury and best practice treatment options.

Submission – icare again encourages SIRA to consider extending its accreditation process so that all IMEs complete the same initial training and are accredited by SIRA before they are able to work in the workers compensation system.

Further, icare encourages SIRA to consider a requirement for IMEs to refresh their initial training after a certain period of time – say, three to five years – to gain continued accreditation by SIRA. The rationale for this is the same as for the initial training requirements – the regulatory, technological and medical changes that can occur over such a period of time are complex enough to require continued professional development and training, both generally and specifically to the workers compensation system.

The benefit of such a requirement would mean greater consistency across all IME knowledge, understanding and reporting.

It may also be beneficial to injured workers in the scheme to operationalise guidelines around writing IME reports, including the type of information to be recorded and the detail that needs to be given in order to comply with reporting standards.

d) Insurer Claims Management

Application for workers compensation insurance claims, policy and settlement records

In 2019, SIRA introduced a new requirement for insurers to complete an “Application for workers compensation insurance claims, policy and settlement records” in order to request SIRA undertake a search for relevant records held by SIRA. The form requires that the insurer obtain the worker’s authority to release the information requested.

As previously submitted to SIRA, icare has concerns that this policy change is having a significant impact, both in the time for approvals of claims for the injured worker and from an operational perspective. This

² *WorkCover Guidelines on Independent Medical Examinations and Reports from Government Gazette, Number 30, 23 March 2012*

additional requirement has presented an administrative burden on insurers that is impacting timely and informed decision making.

Submission – it is icare’s view that, in the absence of a signed application, there is no legal impediment to SIRA releasing prior claims and settlement information to an insurer in respect of a current claim made by the worker.

e) Employer Support and Information

icare is of the view that there are some gaps in employer education in relation to hearing loss claims. In particular, there is a lack of awareness within the small to medium employer group (and large employer group to some extent) about the nature of hearing loss injuries, the specific legalities that apply to hearing loss claims, and claim mitigation or prevention strategies (including pre-employment audiograms and identification of hearing loss risks through noise conduction studies).

The most common concerns raised from employers in managing hearing loss claims is identifying whether employment is, in fact, ‘noisy’. Conversely, employers have difficulties in proving the workplace is not ‘noisy’. Employers also have questions and concerns with respect to who bears the burden of responsibility for claims liability (including issues of establishing the ‘last noisy insured’ employer).

Submission – icare submits that targeted education should be rolled out to employers – initially employers in the small to medium employer group, but eventually extended to all employers – to assist with their understanding of the particularities of hearing loss claims, including managing risk, mitigating injuries and supporting injured workers.

Because hearing loss is latent and hearing loss claims can be made at any time, and sometimes decades after employment has ceased, many employers do not have the information or evidence to contest the injured worker’s employment or refute claims of being ‘noisy’. Educating employers on record-keeping and mitigating risks will assist employers, particularly with respect to future claims. Legislative change may also assist (see submission under “Dispute Pathway”).

Education around pre-screening prospective employees prior to them commencing work may also assist the employer in limiting liability for hearing loss claims (or claims for deterioration of hearing loss).

f) Dispute Pathway

Delays in Notification of Claims

icare is aware that there can sometimes be significant delays in notification of hearing loss claims (measured from the time the worker consults with an HSP to when a claim for hearing aids is made on the insured). This delay is observed to be particularly protracted if the worker has legal representation.

Workers are normally referred to an HSP by their general practitioner. The HSP collects information that identifies possible association between hearing loss and employment. After identification of ‘noisy employment’ and completion of a Hearing Needs Assessment, the HSP then refers or recommends that the worker consult with a legal provider to assist in lodging a hearing loss claim. The legal provider then applies for and obtains an Independent Legal Assistance and Review Service grant from the Workers Compensation Independent Review Officer to act on behalf of the worker, and to seek an assessment by a SIRA accredited ENT specialist who is able to complete an assessment of whole person impairment. There are often months, and in some instances years, between a worker consulting an HSP to being assessed by a SIRA accredited ENT specialist before the claim is notified to the insured.

icare has also observed that litigation costs associated with hearing loss claims are often higher, and claims are more protracted, in disputes lodged in the Workers Compensation Commission related to

hearing loss. This has also been supported by anecdotal feedback from insurer legal representatives who advise of regular delays and matters being lodged and discontinued multiple times on the one claim.

Examples of such delays with respect to worker claims for hearing aids and whole person impairment under section 66 of the *Workers Compensation Act 1987* (noting details of IME assessments are not available) are:

Example 1: Notification of claim made via the worker's legal representative on 25 June 2019. The date of assessment with the HSP was 12 June 2018 (claim notified 378 days after worker first consulted an HSP).

Example 2: Notification of claim made via the worker's legal representative on 25 June 2019. The date of assessment with the HSP was 18 May 2017 (claim notified 768 days after worker first consulted an HSP).

Example 3: Notification of claim made via the worker's legal representative on 12 June 2019. The date of assessment with the HSP was 13 November 2018 (claim notified 211 days after worker first consulted an HSP).

Submission – icare submits that, given the specific nature of hearing loss claims, a separate and distinct dispute pathway is established to improve efficiencies and reduce claims costs.

In addition to the above, or in the alternative, icare recommends that SIRA establish a pathway for a worker or a worker's legal representative to notify the insurer at an early stage of the worker's hearing loss, to enable the insurer on risk to commence investigations into liability for the hearing loss injury. In such a case, the worker or the worker's legal representative should be able to provide a nominal notification, perhaps simply with a form completed by a HSP or by providing a copy of the HSP report. A formal claim can follow at will, or, can be prescribed to be followed within a certain time period following initial notification (say, three to six months later) if a dispute remains on foot.

This ensures that workers are able to access timely and efficient resolution to their claims and can address their hearing loss injury earlier, leading to better health and injury outcomes.

Latency of Hearing Loss

As noted above, employers regularly raise concerns with icare around the passage of time since the injured worker's employment with the employer and find it difficult to manage these claims due to a lack of accurate records, particularly records that can help refute a claim for hearing loss and being a 'noisy' employer.

Conversely, workers themselves can find it difficult to establish 'noisy' employment when claims are made years after the employment has ceased, and this can unfairly prejudice the worker in succeeding in a claim for hearing loss.

Submission – icare submits that SIRA limit the timeframes for workers to make hearing loss claims. Further or in the alternative, SIRA may wish to impose minimum record-keeping requirements on employers, particularly those that are known 'noisy' employers, to keep accurate records of workplace noise levels and details of workers in such employment, perhaps for a period of twenty to thirty years.

Treatment and support for workers

3. What would help to improve workers' use and benefit of hearing aids?

Remove or limit delays between assessment and approval/provision of aids

As submitted above, there can be significant time delays between a worker consulting with an HSP to when a claim for hearing aids is made on the insured. This is particularly so when the worker's claim for hearing aid(s) is accompanied by a claim for whole person impairment under section 66 of the *Workers Compensation Act 1987*, as a separate assessment is required by a SIRA-trained ENT.

A review of the process for claiming hearing aids is recommended.

A standardised approach for requesting hearing aids may be beneficial. This could include initial notification of the alleged injury via a standardised form, which the HSP completes, providing all necessary documentation (including confirmation and proof of employment), audiogram, quote for hearing aids, and rationale behind the request for hearing aid(s).

It is then the responsibility of either the worker or the HSP to submit the request to the relevant insured. Where a dispute remains on foot, or where the worker also seeks to pursue a claim for whole person impairment, the worker can be referred to a legal representative for assistance. This 'dispute' pathway can be made clear by the worker's general practitioner, the HSP, or by the insured. Some education of these parties may also be necessary to enable them to assist workers in the process.

Further details on a proposed process for replacement hearing aids is outlined below.

Worker Education

icare suggests that a focus on worker education around hearing loss claims would be beneficial to workers. Such education could be in the form of a 'Frequently Asked Questions' booklet (in multiple languages), specific to work-related hearing loss. This booklet could detail the process for referral and assessment, the steps in making a claim, and the required documentation to make a claim. This resource would be particularly beneficial for claimants who are self-represented.

HSPs could also be trained to give workers information on the hearing loss claim process, and hard copies of the booklet could be made available free of charge to workers at general practitioner or HSP consultation rooms.

4. How can the use of hearing aids for work-related hearing loss be evaluated?

Questionnaire or NSP survey

icare suggests the use of a questionnaire, distributed to workers, employers, and allied health providers, to help assess and evaluate satisfaction with and outcomes from the use of hearing aids for work-related hearing loss.

This questionnaire could be sent, for example, three to six months following the supply and fitting of hearing aids. The questionnaire could also assess satisfaction with providers and insurers. Feedback will assist icare, and other providers and insurers, in delivering to workers an experience that is fair, efficient and beneficial.

Alternatively, or in addition, SIRA could implement NPS targets for HSPs and insurers. NPS targets could be used to main a HSP's SIRA accreditation.

The practical, administrative and privacy implications of the above suggestion would need to be carefully considered prior to any action being undertaken.

Efficiency and effectiveness

5. How can the process for servicing devices and the provision of batteries and replacement aids be improved?

icare has the following suggestions to help improve the process for follow-up care required for hearing loss claims:

- icare suggests that the requirement for the worker to consult with their general practitioner be restricted to cases where replacement hearing aids, or servicing for hearing aids, are required. This will streamline the replacement and servicing timeframes for workers with accepted hearing loss claims.
- Where a worker makes a new claim for work-related hearing loss, icare suggests that the worker's general practitioner need not be required to complete paperwork. This function can be included in the work of the HSP at the initial Hearing Needs Assessment consultation.
- Enabling workers to commute their lifetime entitlement to replacement hearing aids and the servicing of their devices. This ensures a lump sum payout is made to the worker which can cover all future expenses. This will allow the worker increased autonomy over their care, will make the process of servicing and replacing hearing aids more efficient due to reduced red tape, and will crystallise and/or reduce liabilities on the workers compensation system. Commutations would be based on age, levels of auditory impairment, expected deterioration, and hearing aid servicing and replacement expectations.
- Educating workers on the claims process, including replacing or servicing hearing aids.
- Educating providers, particularly HSPs, about the claims process and the requirements for follow-up care.

6. Hearing aids are constantly evolving with new technology and improvement. How can hearing aid quality and function best be balanced with overall device cost?

icare agrees that there needs to be a critical balancing act between the quality of a device and the cost of a device.

To manage this balance, icare currently [REDACTED].

Device Schedule

icare produces and publishes [REDACTED] which is distributed to Hearing Device Suppliers, Hearing Services Providers and scheme agents twice annually in May and November. This [REDACTED] in line with Schedule B of the *Workers Compensation (Hearing Aid Fees) Order 2019*. HSPs are [REDACTED] on their device charges and are permitted [REDACTED], including for hearing aids, assistive listening devices and accessories. [REDACTED].

Any new devices proposed to be included (or removed) in the schedule can be submitted for consideration by recipients [REDACTED]. The inclusion of hearing aid devices [REDACTED] [REDACTED]).

Price Alignment

The maximum wholesale price for a hearing aid under the *Workers Compensation (Hearing Aid Fees) Order 2019* is currently \$2,500. icare recommends that this be reduced to \$1,750 – or lower – in the *Workers Compensation (Hearing Aid Fees) Order 2020*.

Since May 2016, icare has [REDACTED] [REDACTED] a maximum of \$1,750. icare's transaction data since that time indicates that the average maximum price per hearing aid has remained below \$1,750. Importantly, icare are not seeing any out-of-pocket expenses for the injured worker at this price point.

icare suggests that SIRA consider matching icare's maximum of \$1,750 (or lower) in its *Workers Compensation (Hearing Aid Fees) Order 2020*. This will enable and promote a sustainable and cost-effective arrangement with suppliers in the industry.

It is noted that ongoing market analysis from time to time will be necessary to assess that the maximum fees in the *Workers Compensation (Hearing Aid Fees) Order* are reasonable, appropriate and in line with rest of the healthcare industry.

General comments

icare recommends consideration be given to the following key matters:

- A review of the claims process for hearing aids, particularly for follow-up care (where liability has already been accepted);
- Allowing workers with accepted work-related hearing loss claims – where the worker is entitled to hearing aid devices, replacements and servicing for life – to commute their claims, negating the need for a worker to obtain ongoing approval for hearing aid replacement or servicing. This amendment will require legislative change and may require an exception to the requirement to have a whole person impairment of 15% prior to commutation.
- Reviewing IME accreditation and compliance, including regular training for practitioners for consistency in the interpretation and application of the workers compensation legislation.
- Reviewing the coding and costs in the *Workers Compensation (Hearing Aid Fees) Order* to consider adding item codes for assistive listening devices, for example, vibrating alarm clocks and other accessories (or otherwise clarifying whether these items fall under an existing Payment Classification Number). A review of an HSP's scope and responsibilities under the Order (and whether this includes servicing and 'hearing rehabilitation' in the first 12 months post-service) would be helpful. icare proposes a meeting with SIRA be arranged to further explore this issue.

Conclusion

icare would be pleased to meet with SIRA to discuss the submission and, together, build a worker's compensation system that is efficient, fair and sustainable.

Should SIRA wish to discuss icare's submission further or require further information, please contact [REDACTED]

icare thanks SIRA for the opportunity to make this submission.
