












Submission to the State Insurance Regulatory Authority (SIRA)

Work-related hearing loss in the NSW Workers Compensation System

Coal Services

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Coal Services

1. Introduction

This paper is provided to the State Insurance Regulatory Authority (SIRA) in response to the 2019 Consultation Paper titled:

'Work-related hearing loss in the NSW Workers Compensation System'.

The submission is intended to provide relevant feedback from Coal Mines Insurance Pty Limited (CMI/CMI Scheme) a wholly-owned subsidiary of Coal Services Pty Limited, which administers a Specialised Health and Safety Scheme (including the provision of workers compensation insurance services) for the NSW coal industry.

2. Background

2.1 Coal Services

On 1 January 2002 the *Coal Industry Act 2001* was enacted, creating Coal Services Pty Limited and its subsidiary entities (Coal Services) to undertake the functions formerly performed by the Joint Coal Board (JCB) and the NSW Mines Rescue Board.

The new organisational arrangements were necessary following a decision of the Commonwealth Government to repeal the Commonwealth's *Coal Industry Act 1946* and withdraw from its involvement with the JCB. In recognition of the importance of the functions that had been carried out by the JCB and the significant improvements to health and safety that it had helped deliver to the NSW coal industry, the NSW Government decided to create an independent, industry owned organisation that provided essential health, safety and other services specific to that industry.

Coal Services is owned jointly by two shareholders – the NSW Minerals Council and the CFMMEU. Shareholders do not receive any dividends.

Coal Services has statutory functions, as directed by the NSW *Coal Industry Act 2001*. These functions include, but are not limited to, the provision of workers compensation, occupational health and rehabilitation services, the collection of statistics and the provision of mines rescue emergency services and training to the NSW coal industry.

2.2 Coal Mines Insurance

CMI has been a specialised workers compensation insurer for the NSW coal industry since 1922, delivering best in class service and outcomes to its workers and employers.

Coal Mines Insurance (then known as Mine Owners Insurance Ltd) was established in December 1921 to provide specialist workers compensation insurance to the NSW coal industry. In 1946 the then Government and Board made two improvements; one, to create a specialised insurer that was the sole insurer to the NSW coal industry for workers compensation, so that the industry risk could be fairly shared across the industry, and two, to create Health Bureaus and implement dust monitoring through the establishment of the JCB.

More recently (1 July 2018), the *Coal Industry Act 2001* was amended to include a definition of employer in the coal industry to take into account changing employment relationships, especially labour hire and contractors in the industry, and to return to the original intent of the CMI Scheme, which was to look after all coal industry workers.

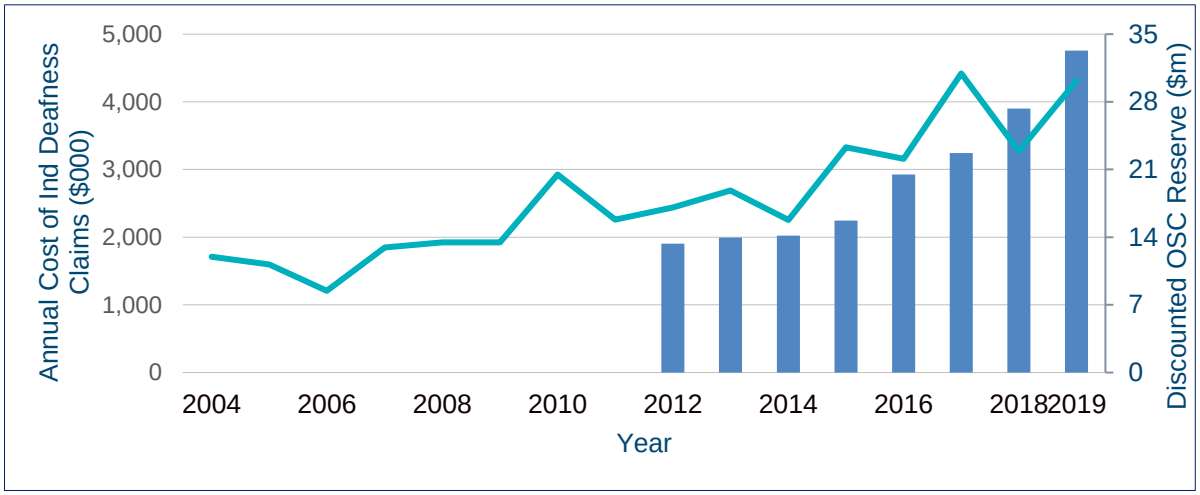
As the sole provider of workers compensation insurance to the NSW coal industry, the CMI Scheme receives all workers compensation claims resulting from an injury or illness to any worker in the industry and holds the records for a comprehensive data set of injuries and illnesses experienced by workers in the industry, including work-related hearing loss.

3. Industrial deafness in the NSW coal mining industry

3.1 Summary

As a noisy industry, industrial deafness claims have always been a part of the landscape for the coal mining industry, despite being a 100% preventable disease and the provision of extensive industry education on appropriate hearing protection and ear-fit testing. However, even with increased education, general awareness and use of hearing protection, the CMI Scheme has experienced a significant increase in the claims costs and liability in relation to industrial deafness over recent years.

The graph below shows these increases, especially since 2012.



To try and understand the drivers of these increases we have performed considerable analysis in an attempt to arrest these increasing costs whilst still providing workers with necessary care and support.

As a result of this analysis, we have concluded that these increased costs have largely resulted from legal and hearing aid provider behaviours consequent to the legislative reforms regarding industrial deafness effected in 2012 and 2015.

To address the issue of industrial deafness in the NSW coal industry and the NSW workers compensation system more broadly, CMI's submission is in two parts:

- The first part of the submission deals with what CMI sees as the key issues affecting industrial deafness in the NSW workers compensation system, in particular, those relating to provider behaviour consequent to the 2012 and 2015 legislative reforms, and
- The second part of the submission addresses the six consultation questions posed in the Consultation Paper titled 'Work-related hearing loss in the NSW Workers Compensation System' released August 2019.

4. Key Issues

4.1 Introduction

In addition to the consultation questions, CMI has identified a number of other issues that we note have been previously raised with SIRA.

The balance of our submission goes to issues that affect the NSW workers compensation system more broadly, which can summarised as:

- Removal of anti-touting provisions for legal providers with regard to personal injury services
- Changes to permanent impairment thresholds for work-related hearing loss and provision of hearing aids
- Changes to legal and hearing assessment/aid provider behaviours.

4.2 Removal of anti-touting provisions

In early 2017, Coal Services raised an issue with SIRA regarding the removal in 2015 of the anti-touting provisions for legal providers from the Workers Compensation Regulation. This matter was raised as the CMI Scheme had been experiencing a substantial increase in legal provider involvement in industrial deafness claims, including more aggressive tactics and direct campaigns to workers, both injured and uninjured. When investigated CMI found that these provisions had been removed.

At a SIRA Stakeholder meeting later in 2017, it was further noted that it appeared no consultation had been undertaken with insurers or other workers compensation system stakeholders nor had the potential implications of this change been modelled. There also appeared to have been no communication to insurers that this change had been made after the fact. An email advice was received in June 2017 from SIRA providing further information as to why the prohibition on lawyers advertising was removed from the *Workers Compensation Regulation 2010* prior to it being remade. This email advice is provided below:

From [redacted]

Sent: 9/06/2017 12:46 PM

To: Lucy Flemming

Cc: [redacted]

Subject: FW: [redacted] and other legal matters

Security Classification:UNCLASSIFIED

Dear Lucy,

Please see below some context of why the prohibition on lawyers advertising was removed from the Workers Compensation Regulation 2010. In brief it was because of the implementation of the Legal Profession Uniform Law, Regulation and Rules. All lawyers and law practices conduct and discipline is now managed through that package of legislation. The removal of the prohibition was not a policy decision of (the then) WorkCover or our Minister but arose because of legislation introduced by the Attorney General. In summary:

- Workers Compensation Regulation 2010 was amended by the Legal Profession Uniform Law Application Legislation Act 2015 No 7 (NSW), Schedule 2, Clause 2.45
- Workplace Injury Management and Workers Compensation Act 1998 was amended by the Legal Profession Uniform Law Application Legislation Act 2015 No 7 (NSW), Schedule 2, Clause 2.45
- The date of commencement for the amendments was the date of assent 9 June 2015.
- The Legal Profession Uniform Law Application Legislation Act 2015 No 7 (NSW) was "An Act to amend the Legal Profession Uniform Law Application Act 2014 and other legislation relating to the legal profession; to provide further for the application and supplementation of the Legal Profession Uniform Law in New South Wales; and for other purposes."
- The Legal Profession Uniform Law (the Uniform Law) established a scheme to regulate the legal profession in New South Wales and Victoria. The Legal Profession Uniform Law Application Act 2014 (the application Act) applied the text of the Uniform Law as a law of NSW, enacted complementary provisions for NSW and repealed the Legal Profession Act 2004 (the repealed Act). The formal and ancillary provisions of the application Act and the Uniform Law commenced on 1 July 2014. The remaining provisions of the application Act and the Uniform Law commenced from 9 June 2015.
- The object of Legal Profession Uniform Law Application Legislation Act 2015 No 7 (NSW) was to amend the application Act to enable the commencement of the Uniform Law scheme.
- The Legal Profession Uniform Law Application Legislation Act 2015 No 7 (NSW) also made amendments to other legislation consequent on the commencement of the Uniform Law scheme and the repeal of the repealed Act.
- Complaints, conduct and discipline of lawyers and law practices are legislated through the Legal Profession Uniform Law (NSW) No 16a, Legal Profession Uniform Regulations 2015 or one of the (numerous) Legal Profession Uniform Rules, as applicable.

Hope this is of assistance.

Kind regards

[redacted]

[redacted]

Workers & Home Building Compensation Regulation

State Insurance Regulatory Authority

p 02 4321 [redacted] | **m** [redacted]

e [redacted]@sira.nsw.gov.au | www.sira.nsw.gov.au

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NSW GOVERNMENT State Insurance Regulatory Authority

Due to the removal of these provisions, CMI has continued to see increased legal provider activity, targeted touting campaigns and associated increases in legal, specialist, investigation and other claims costs. Further detail around some of the targeted campaigns and legal provider activities is included in the section below.

4.3 Industrial Deafness Workshop

These industrial deafness matters have been formally raised with SIRA since 2017, and, as a result of our concerns, together with those of other insurers, SIRA formed an Industrial Deafness Workshop, with its inaugural meeting on 8 February 2019. This workshop was attended by CMI, SIRA, SafeWork NSW, iCare, WIRO and a selection of other specialised and self-insurers and the following matters were discussed:

- Overview of industrial deafness claim data
- Impact of legislative changes, challenges for insurers and opportunities for improved outcomes
- Effect of changes to anti-touting provisions.

The findings/outcomes of this workshop are summarised below:

4.3.1 Industrial Deafness Dataset

It was identified that the dataset provided by iCare was incomplete in so much as it did not include any worker legal or provider data that had been funded and paid through WIRO. Mr Kim Garling, the Independent Review Officer from WIRO was present on the day and confirmed that this was the case and that this data, although previously offered to iCare, was currently not shared with iCare and was also not available at claimant level.

The *State Insurance Regulatory Authority Annual Report 2017-18* provides further information regarding the funding of the Workers Compensation Independent Review Office (WIRO) and the Independent Legal Assistance and Review Service (ILARS) and their purpose. An extract from this report (page 70) is provided below for reference:

Workers Compensation Independent Review Officer

The Workers Compensation Independent Review Officer (WIRO) was established on 1 September 2012 pursuant to the *Workplace Injury Management and Workers Compensation Act 1998* and commenced operations on 1 October 2012. The functions of WIRO are:

- To deal with complaints made to the Independent Review Officer under Division 2 of the *Workplace Injury Management and Workers Compensation Act 1998*.
- To review work capacity decisions of insurers under Division 2 (Weekly compensation by way of income support) of Part 3 of the 1987 Act
- To inquire into and report to the Minister on such matters arising in connection with the operation of the Workers Compensation Acts as the Independent Review Officer considers appropriate or as may be referred to the Independent Review Officer for inquiry and report by the Minister.
- To encourage the establishment by insurers and employers of complaint resolution processes for complaints arising under the Workers Compensation Acts.
- Such other functions as may be conferred on the Independent Review Officer by or under the Workers Compensation Acts or any other Act.

The Authority is responsible for funding the remuneration of the Independent Review Officer and staff of the Independent Review Officer and costs incurred in connection with the exercise of the functions of the Independent Review Officer.

Independent Legal Assistance and Review Service (ILARS)

The Minister established the Independent Legal Assistance and Review Service (ILARS) to facilitate the provision of legal services at no cost to injured workers, in respect to their claims for compensation.

ILARS considers the merits of any application for legal assistance in deciding to provide funding. If legal assistance is approved, ILARS will make a determination as to an appropriate level of funding that will be provided for the legal assistance.

The legal service providers submit invoices for their costs and expenses at certain times during the course of a claim. The costs incurred by ILARS are recognised on an accrual basis.

The Authority has delegated this function to WIRO to administer.

The financials contained in that same report (page 76) advise the funding costs for the 2018 and 2017 financial year:

Details of expenses incurred by the **Workers Compensation Independent Review Officer** are:

	2018	2017
	$'000	$'000
Personnel services		
Salaries and allowances (including annual leave)	3,733	4,011
Other	2,470	1,505
Total personnel service costs	6,203	5,516
Other operating expenses		
Operating lease and rental expenses	313	296
Consultants	4	-
Contractors	147	-
ILARS	50,465	49,864
Other miscellaneous expenses	676	770
Total other operating expenses	51,605	50,930
Total Workers Compensation Independent Review Officer	57,808	56,446

A review of the WIRO Annual Report 2017-18 (page 38) provides the following information in relation to how ILARS works and how this process "…will cover the cost of obtaining evidence such as medical reports and clinical notes, as well as providing funding, in appropriate cases, for the lawyer to obtain further material or reports…".

When an injured worker seeks assistance with the conduct of a claim the lawyer will take basic instructions from the worker and complete a WIRO application for a grant of funding which sets out essential facts and indicates what funding is sought.

That application, which is lodged by email, is then considered by one of the 19 ILARS Principal Lawyers, who are all highly experienced in workers compensation practice and procedure. The ILARS Principal Lawyer then considers whether, based on the information provided, funding is approved to conduct preliminary enquiries and evidence gathering to support the claim or the giving of advice.

ILARS undertakes to assess applications and advise lawyers of the outcome within five working days. Often the response time is much quicker. Urgent applications for funding are determined within 24 hours. Applications for funding of a specific type will be prescribed a specific timeframe for response.

The grant of ILARS assistance will cover the cost of obtaining evidence such as medical reports and clinical notes, as well as providing funding, in appropriate cases, for the lawyer to obtain further material or reports consistent with the proper conduct and preparation of the claim.

The report further identifies on page 39 that ILARS "...paid out over $34.1m in professional fees and approximately $20.5m in disbursements in the year ended 30 June 2018". A full breakdown of these costs is found on page 54 of the WIRO Annual Report 2017-18 and is included below for reference:

Payment Type	Total amount	Number of payments	% of disbursements	Average amount
Professional fees	$34,144,425	10,452		$3,267
Medico-legal	$14,321,234	10,985	70%	$1,304
Barrister Fees	$2,500,349	1,612	12%	$1,551
Clinical Notes	$1,522,242	11,471	7%	$133
Travel	$331,163	1,457	2%	$227
Barrister Country Loading	$174,784	262	1%	$667
NTD Report	$397,083	984	2%	$404
Treating Specialist Report	$550,447	982	3%	$561
Interpreter	$109,922	558	1%	$197
Other	$46,250	211	0%	$219
Meal Allowance	$5,919	103	0%	$57
Solicitor Loading	$60,712	98	0%	$620
Non-attendance fee	$63,350	193	0%	$328
Grand Total	**$54,503,544**	**43,534**		
Total Disbursements	**$20,471,999**		**38%**	
Total Professional Fees	**$34,144,425**		**62%**	

At the Workshop, Mr Garling also advised that WIRO was using artificial intelligence to analyse ILARS data to aid in the identification of sub-optimal behaviours from an applicant law firm, respondent law firm and insurer perspective. *CMI considers it may be useful to obtain the outcomes of that analysis to add further evidence to the industrial deafness issues noted in this paper as well as potentially other issues.*

Note: We have been advised that currently this data is <u>not</u> included in the iCare data set and as such is also not directly included in the claims costs as reported by iCare nor the actuarial Outstanding Claim Liability (OCL) valuations, and therefore the OCL valuation may not provide an accurate view of industrial deafness and other claims costs, together with the normal actuarial assumptions including risk margins or loading for claims handling expenses (CHE). The status of this is difficult to assess from publicly available information as iCare does not currently publish details of its OCL valuation.

The Action Item in relation to this agenda item from the Workshop was for "WIRO to share data on industrial deafness claims with SIRA", so that a more complete and accurate data set on industrial deafness could be reviewed and understood. This action may have occurred subsequent to that Workshop.

4.3.2 Potential Duplication of Claims with the National Hearing Scheme

Participants in the Workshop identified issues relating to potential duplication of claims and the provision of hearing aids through the National Hearing Scheme.

Mr Garling of WIRO advised at that time that they had just ceased providing funding for industrial deafness matters where the worker is eligible for subsidised hearing services under the Australian Government of Health Hearing Services Program and that the worker must provide evidence that they are ineligible under that scheme before any funding will be provided.

It was also further noted that there is no current cross-checking in place to prevent a "double-dipping" of the National Scheme and the State workers compensation schemes.

4.3.3 Prevention and Research

The issue of what constitutes industrial deafness vs age onset or other lifestyle factors was also discussed. Many insurers around the table were concerned that all hearing loss was being treated as employment-related when so many other factors could be at play in the current environment that could cause deafness, such as, mobile phones, ear buds, load music delivered via headphones etc.

It was agreed that SafeWork NSW would look into what research had already been carried out on this emerging issue and report back to the group. SafeWork NSW did note that there was an exemption from audiometric testing for workers in NSW until 31 December 2020.

Dependent on the outcome of the research being carried out by SafeWork NSW, the way industrial deafness is currently treated in terms of workers compensation may require further review.

4.3.4 Hearing Service Providers and Worker Legal Firms

All insurers at the Workshop noted instances of hearing aid providers and law firms actively canvassing workers to lodge industrial deafness claims as well as other workers compensation claims. It is believed that the removal of the anti-touting provisions has had a clear and significant impact in this regard.

The Group remained concerned that legal providers played too big a part in the industrial deafness claim process and were obtaining too great a benefit, sometimes to the detriment of the injured worker, and we needed to minimise legal provider involvement in the process.

The Group also noted specific questionable behaviours by a handful of legal firms that provided approximately 70-80% of the industrial deafness matters in NSW. It was further noted that these firms are included on the list of firms recommended by WIRO to use for claims. This list is available on the WIRO website.

The Group further questioned how SIRA regulated these providers and what actions they have or were taking.

Further detailed evidence, particular to Coal Mines Insurance, on provider behaviours will be covered later in this paper.

A further Workshop was scheduled for 3 May 2019; however, this was postponed to a date yet to be set. The agenda was to discuss all action items from the inaugural Industrial Deafness Workshop.

4.4 Effect of 2012 and 2015 legislative reforms

The CMI Scheme has experienced substantial increases in claim costs and liabilities with respect to Industrial deafness following reforms to workers compensation legislation in 2012 and 2015.

Whilst coal miners were exempt from both reforms, amendments enacted for Section 66 and 67 entitlements, including the introduction of a whole person impairment assessment (WPI), revision of entitlement thresholds, combined with legal cost capping within the General Scheme, have collectively translated into unintended consequences for the CMI Scheme by way of increased claim activity by both legal and hearing providers.

The following outlines the financial impact and increased activity experienced by the CMI Scheme within the industrial deafness claim cohort.

4.4.1 Workers Compensation Amendment Act 2012 (2012 Amendments)

Specific to industrial deafness, Section 69A of the 1987 Act which previously set the threshold for lump sum compensation entitlements at 6% binaural loss of hearing was repealed. A new section 66 lump sum compensation entitlement threshold of 11% Whole Person Impairment (WPI) was introduced with no lump sum compensation payable if the assessed loss was less than 11% WPI.

In terms of industrial deafness, a worker would need to be assessed with a **20.5% binaural loss of hearing** to meet the 11% WPI threshold. In contrast the previous 6% binaural loss threshold equated to **3% WPI**.

Section 67 representing pain and suffering lump sum entitlement was also repealed.

In terms of medical expenses including hearing aids, the proposed introduction of Section 59A limited the payment of medical expenses to not more than 12 months after a claim was made in respect of an injury unless weekly payments are or have been paid.

A worker would not be entitled to the cost of hearing aids, replacement hearing aids and replacement batteries 12 months after a claim for compensation relating to hearing loss unless the claim resulted in weekly payments.

Amendments to Section 66 and the repealed Section 67 applied to claims made on or after 19 June 2012. None of these revised provisions applied to Coal Miners.

4.4.2 Workers Compensation Amendment Act 2015 (2015 Amendments)

Arising from stakeholder feedback, amendments were made in 2015 that included a relaxation of the above set time restrictions and the removal of certain limits imposed with respect to ***reasonably necessary*** medical expenses claimable under Section 60.

Regardless of the assessed WPI (%), the 2015 Amendments allowed for workers to claim artificial aids (which includes hearing aids and hearing aid batteries) until retirement age

where the assessed hearing loss and recommended treatment such as the provision of aids was considered reasonably necessary.

In terms of whether medical expenses are considered reasonably necessary, each treatment must be considered to:

- alleviate the consequences of injury, or
- maintain a worker's state of health, or
- slow or prevent its deterioration given the injury.

The 2015 Amendments also amended the timeframe to claim replacement hearing aids.

4.4.3 Legal and Hearing Provider Behaviour Post Amendments

For legal providers specialising in industrial deafness, the introduction to the General Scheme of a 11% WPI threshold to claim lump sum entitlements combined with established legal cost capping had a profound impact on their revenue. As a result, we believe that several legal providers searched for an alternative source for clientele and revenue and identified the CMI Scheme as an attractive proposition.

A select number of legal providers appear to work directly with/are associated with hearing providers and use these relationships for client referrals and ultimately revenue streams.

From behaviours and actions observed by CMI, in addition to individual worker and policyholder feedback and evidence received, specific hearing providers actively seek out workers on behalf of associated legal providers offering free hearing tests whilst collecting employment information and encouraging the lodgement of a hearing loss claim amongst other workers compensation claims.

CMI has investigated the cost increases in industrial deafness legal matters and is continuing to liaise with SIRA as to how some of these issues might be mitigated including the behaviours of certain providers. These will be discussed in detail later in this paper.

4.4.4 Summary – Practical Effects of the Amendments on Behaviour

In the General Scheme, prior to the 2012 Amendments, to make a claim for ***hearing aids and hearing loss,*** a worker needed to meet a threshold of 6% binaural hearing loss. Under the 2012 Amendments, this provision was repealed and a new limit of 11% WPI was introduced.

Under the 2015 Amendments, the timeframe to claim replacement hearing aids was removed.

Because Coal Miners are exempt from the 2012 and 2015 Amendments, this means that among other things, the threshold for claiming ***hearing loss*** remains at 6% binaural hearing loss. . This sits alongside the change to the Fee Order which removed the threshold for hearing aids.

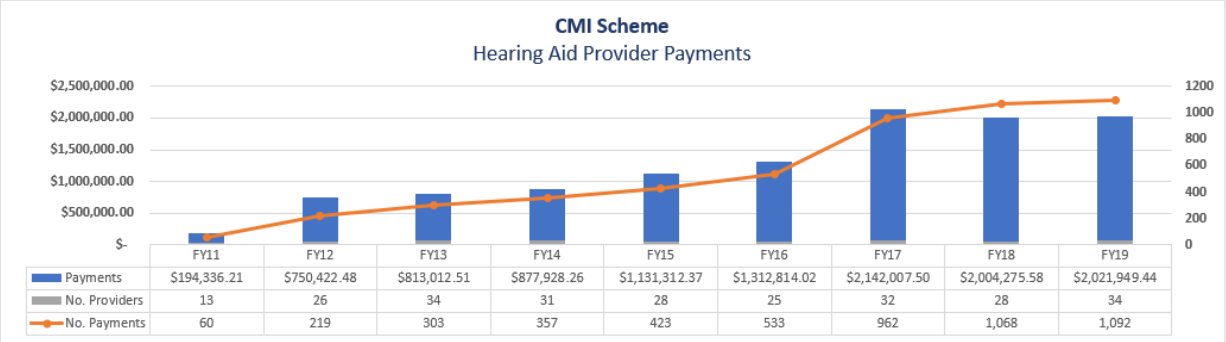
CMI believes that these amendments, together with the removal of anti-touting provisions are driving an increase in claims frequency and cost in the CMI Scheme for two reasons:

- Hearing aids and replacements are available without a threshold and a replacement timeframe, which may encourage workers to lodge a claim for both ***hearing loss and hearing aids***, noting that there is now no time limit on when a hearing aid can be replaced.
- The lower thresholds in the CMI Scheme are a more attractive option for legal providers to pursue because the thresholds are easier to meet than in the General Scheme.

4.4.5 Overview of Industrial Deafness Claim Payments in the CMI Scheme

To provide weight to this argument, the following graph provides an overview of hearing aid provider payments incurred by the CMI Scheme since 1 July 2011 to 30 June 2019), noting the significant increase in the number and quantum of payments and providers since the 2012 Reforms.

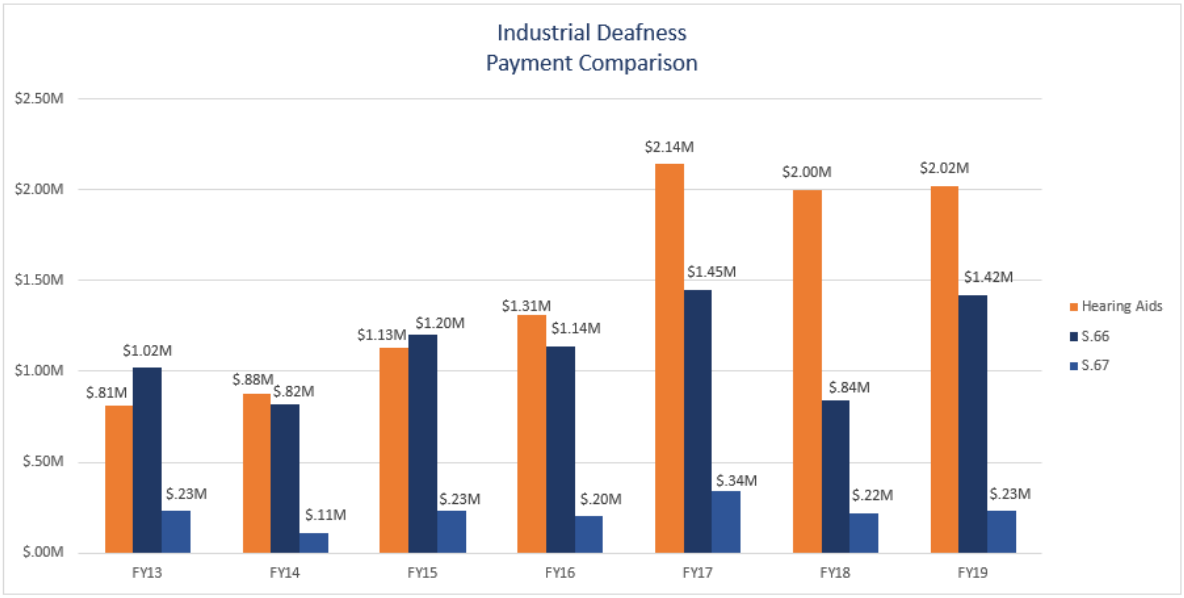
During FY12 total payments of $750,422 were incurred across 26 hearing providers contrasted against FY11 where payments totalled $194,336 across 13 providers. This trend remains current to date.



	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Payments	$194,336.21	$750,422.48	$813,012.51	$877,928.26	$1,131,312.37	$1,312,814.02	$2,142,007.50	$2,004,275.58	$2,021,949.44
No. Providers	13	26	34	31	28	25	32	28	34
No. Payments	60	219	303	357	423	533	962	1,068	1,092

To add context to the increase in hearing provider payments incurred by the CMI Scheme, the following graph provides a comparison of lump sum compensation entitlements paid under S.66 (% loss of hearing) and S.67 (pain and suffering) in contrast to total hearing provider payments incurred since FY13.

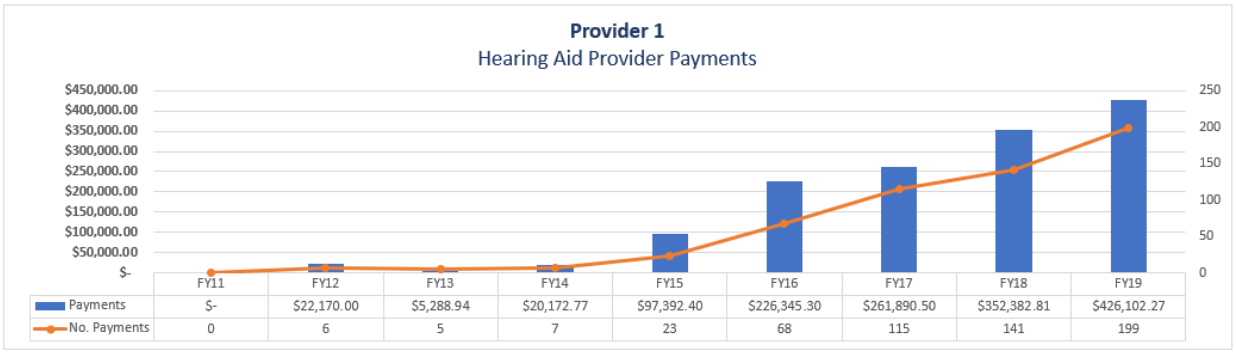
For the first time experienced by the CMI Scheme, total hearing provider payments incurred in FY17 were greater than the combined total of S.66 and S.67 lump sum compensation entitlements. This trend has continued into the current FY19 year (@ 30 June).



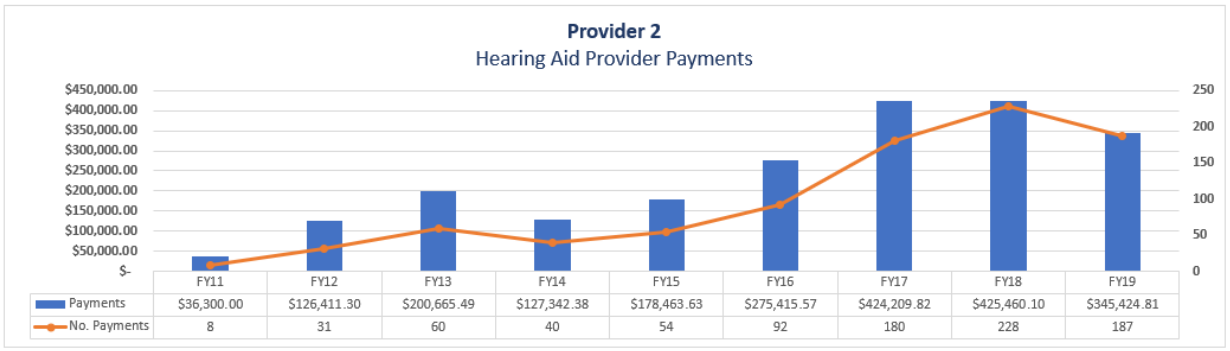
4.5 Specific Industrial Deafness Provider Behaviours

4.5.1 Hearing Aid Provider Payments

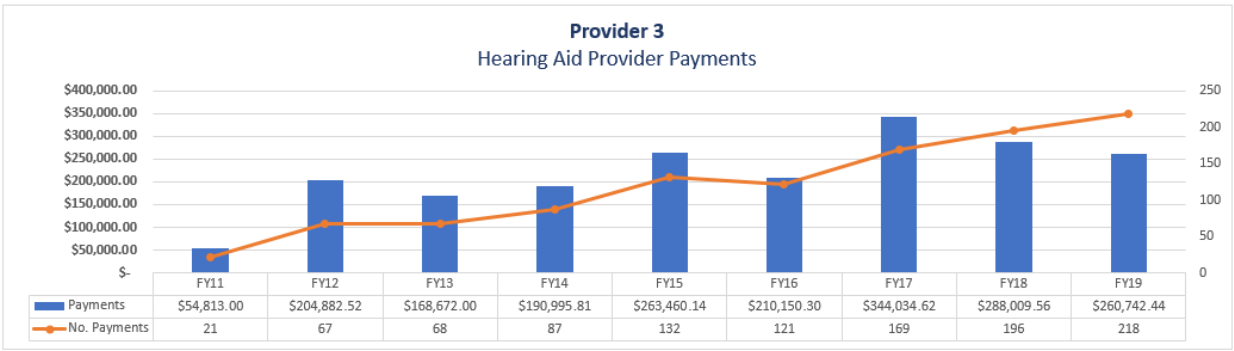
The graphs below show the data from FY2011 to current (as at 30 June 19) for the top five hearing aid providers. This analysis demonstrates an increase in coal miner worker claims over that period. These graphs have been de-identified for the purpose of this submission however details can be provided to SIRA as part of any investigations.



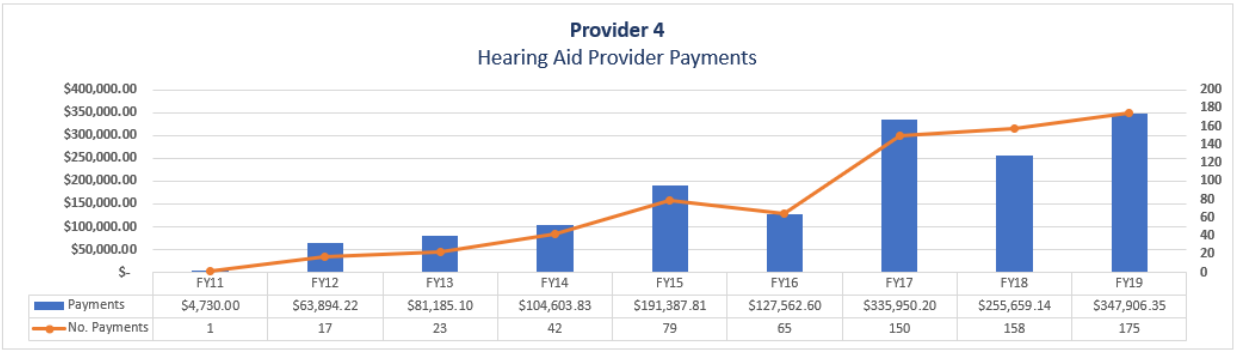
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Payments	$-	$22,170.00	$5,288.94	$20,172.77	$97,392.40	$226,345.30	$261,890.50	$352,382.81	$426,102.27
No. Payments	0	6	5	7	23	68	115	141	199



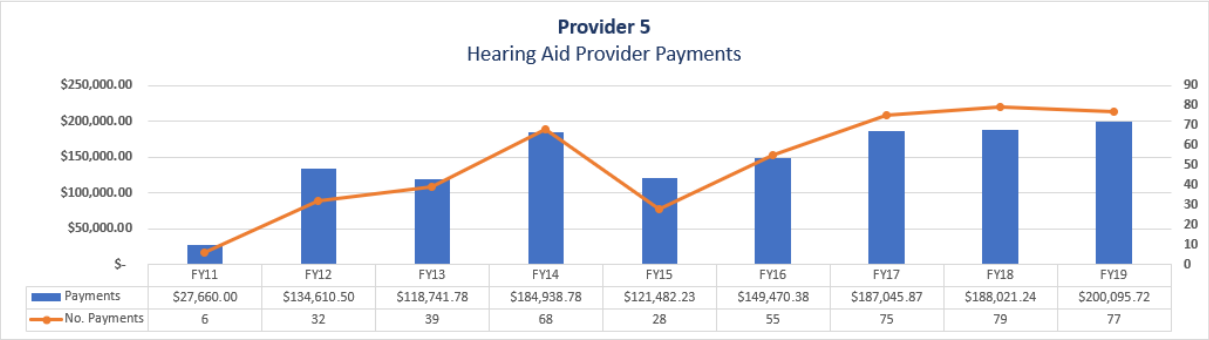
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Payments	$36,300.00	$126,411.30	$200,665.49	$127,342.38	$178,463.63	$275,415.57	$424,209.82	$425,460.10	$345,424.81
No. Payments	8	31	60	40	54	92	180	228	187



	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Payments	$54,813.00	$204,882.52	$168,672.00	$190,995.81	$263,460.14	$210,150.30	$344,034.62	$288,009.56	$260,742.44
No. Payments	21	67	68	87	132	121	169	196	218



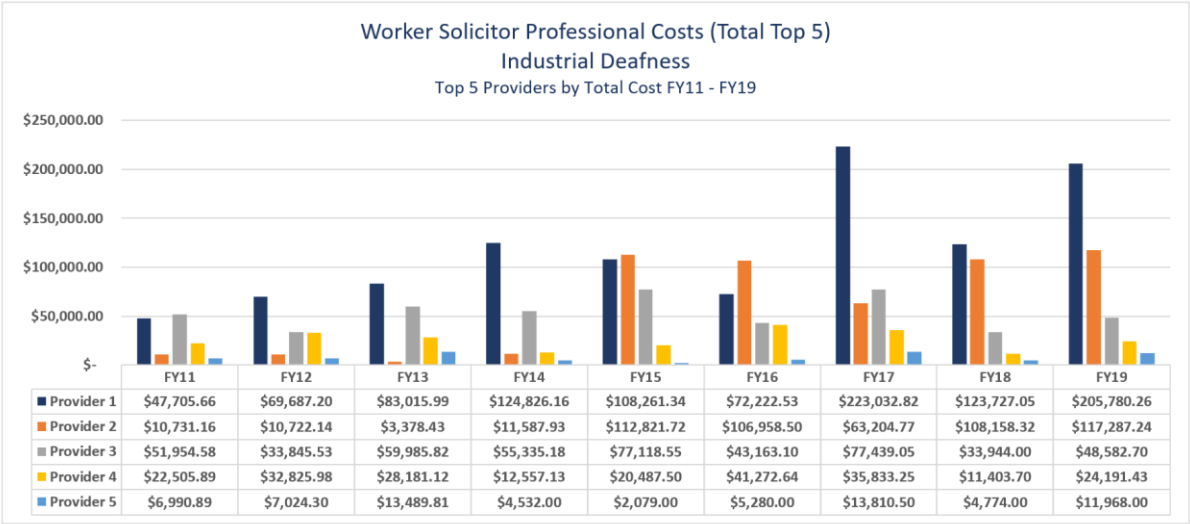
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Payments	$4,730.00	$63,894.22	$81,185.10	$104,603.83	$191,387.81	$127,562.60	$335,950.20	$255,659.14	$347,906.35
No. Payments	1	17	23	42	79	65	150	158	175



	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Payments	$27,660.00	$134,610.50	$118,741.78	$184,938.78	$121,482.23	$149,470.38	$187,045.87	$188,021.24	$200,095.72
No. Payments	6	32	39	68	28	55	75	79	77

4.5.2 Worker Legal Provider Payments

Alongside the increased payments for hearing aids and other associated industrial deafness costs are the increased worker legal costs. The data below is as at 30 June 2019. Several legal providers have been identified that appear to have direct associations with hearing aid providers. One is currently the subject of a referral to SIRA on a potential fraud-related matter. Analysis of worker legal provider costs again shows an increase after the 2012 reforms. Specifically, two providers (Provider 1 and 2 below) have increased activity substantially in the industrial deafness space in recent years.



	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Provider 1	$47,705.66	$69,687.20	$83,015.99	$124,826.16	$108,261.34	$72,222.53	$223,032.82	$123,727.05	$205,780.26
Provider 2	$10,731.16	$10,722.14	$3,378.43	$11,587.93	$112,821.72	$106,958.50	$63,204.77	$108,158.32	$117,287.24
Provider 3	$51,954.58	$33,845.53	$59,985.82	$55,335.18	$77,118.55	$43,163.10	$77,439.05	$33,944.00	$48,582.70
Provider 4	$22,505.89	$32,825.98	$28,181.12	$12,557.13	$20,487.50	$41,272.64	$35,833.25	$11,403.70	$24,191.43
Provider 5	$6,990.89	$7,024.30	$13,489.81	$4,532.00	$2,079.00	$5,280.00	$13,810.50	$4,774.00	$11,968.00

4.5.3 Worker Legal Provider Behaviours

In 2016 CMI started to see legal providers commence targeted campaigns to workers in relation to industrial deafness claims. CMI has various forms of evidence supporting direct marketing campaigns by several providers and other methods employed by other legal providers to solicit injured workers for a hearing test and then further solicit them for potential other workers compensation claims that they may have at the same time.

CMI has provided a few examples of this below. These examples have been de-identified for this submission, however, detail can be provided on request.

Example 1

Extract from a letter from a Worker Legal Provider directly mailed to a worker who had a previous industrial deafness claim.

20 September 2016

Re: Industrial Deafness – Hearing Aid Claims

As you might recall this firm has previously conducted a claim on your behalf in respect of hearing loss suffered by you as a consequence of your previous employment, which claim was resolved some years ago.

There have been recent legislative changes made by the State Government including the *Workers Compensation Amendment Act 2015*, *the State Insurance and Care Governance Act 2015* and the *Workers Compensation Amendment (Lump Sum Compensation Claims) Regulation 2015*.

The consequence of those amendments has been that enhanced benefits have been reintroduced, particularly the opportunity to claim for vastly improved hearing aids (sometimes up to a value of $10,000.00), including for people who have had previous claims. There may also be the opportunity for a claim for monetary compensation in addition to hearing aids, if the hearing loss is substantial and the coal miner has not previously been compensated by a Medical Panel for hearing loss.

Our firm is now working with a company which provides specialised services in preparing and presenting claims for clients who are suffering from all levels of industrial deafness. **Such claims can be brought at no cost whatsoever to you** and might mean that you can claim for some of the most advanced hearing aids which are now available.

The specialist assistant working with us to prepare these claims is *name removed* and if you wish us to assist you in this regard please call *name removed* on *number removed* to make arrangements to meet. Please note that *name removed* of this office is the partner overseeing the preparation of such hearing aid claims.

Yours faithfully

Example 2

An email account from a CMI Case Manager regarding a conversation with an injured worker.

From: [redacted]

Sent: Tuesday, 7 May 2019 12:18 PM

To [redacted] <[redacted]@coalservices.com.au>

Cc: [redacted] <[redacted]@coalservices.com.au>

Subject: Industrial Deafness - Quick Summary – Worker X - Hearing Aids

Hi [redacted]

Please find below a quick summary of my phone conversation with Mr X regarding his experience in claiming initial hearing aids:

- Mr X visited a hearing aid provider recently with his wife (wouldn't disclose who, my guess is [redacted]). His wife was obtaining aids and while he was there he asked to be reviewed for hearing aids for himself.
- During the conversation with the provider, he was asked where he had worked, Mr X advised that he had worked in the mining industry for 30 plus years, the hearing aid provider advised that CMI would be liable to pay for his hearing aids.
- He was provided an authority to sign, which he was told would allow CMI to be billed for hearing aids. Mr X was fitted with hearing aids (with no approval sought from CMI to date) and continues to benefit from them but has not been billed as yet.
- Mr X has now received correspondence from Legal Provider Y which included 2 x further authorities to release for him to sign and return, one being for his superannuation fund and I'm unsure of the other. He was wondering why we need this.
- I explained our process and advised that we didn't need the information that Legal Provider Y was seeking to approve his hearing aids, we simply review the file and if he was over the threshold we could approve immediately.
- We discussed this process further and Mr X advised that he was happy to proceed with the supply of hearing aids through the provider only and it was not his intention to submit a claim through Legal Provider Y. He advised that he would pass this on to the provider as he has had no contact with Legal provider Y to date.

Hope this helps

Thanks

Kind Regards

[redacted]

Industrial Deafness Specialist

Coal Mines Insurance

1 Civic Avenue, Singleton NSW 2330

T: +61 (2) [redacted] F: +61 (2) [redacted]

E: [redacted]@coalservices.com.au www.coalservices.com.au

Example 3

An email from the CMI Head of Operations Management regarding a conversation with an injured worker about an unsolicited approach by a legal provider in relation to industrial deafness. The attachment from the legal provider has been removed but is available if further investigation is required. Alternatively, all documentation has previously been provided to the SIRA, Compliance, Investigations and Prosecutions Unit.

From [redacted]
Sent: Thursday, 20 June 2019 10:22 AM
To: Lucy Flemming <lucy.flemming@coalservices.com.au>
Subject: [redacted]

Good Morning Lucy,

As discussed, please see attached the letter sent to one of our workers, Mr Y.

Mr Y attended our office recently to provide a copy of the letter to our [redacted], Industrial Deafness Specialist, and to express his concerns over the letter.

He was not happy about receiving this and was happy for us to have a copy of the letter he was sent from Hearing Aid Provider Y and Legal Provider X. Mr Y expressed that he did not feel it was appropriate to be sending out this type of correspondence and was perplexed and didn't even know how they got his contact details. [redacted] indicated that she would pass this on internally to the appropriate people and subsequently raised it with me when I was down there on Tuesday.

Thanks

Regards
[redacted]
Head of Operations Management

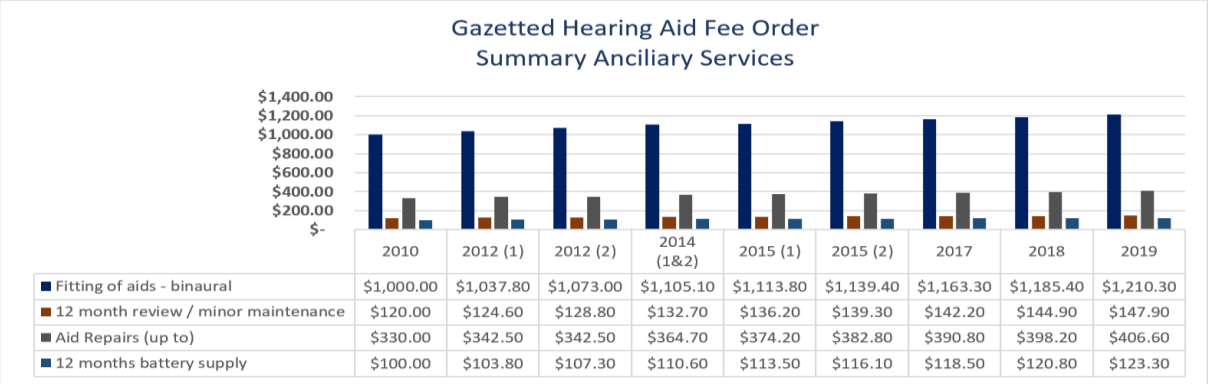
Coal Services
Level 21, 44 Market Street, Sydney NSW 2000
T: +61 (2[redacted]
M: [redacted]
E: [redacted]**@coalservices.com.au**

4.6 Other Contributing Factors to Increased Industrial Deafness Claim Costs

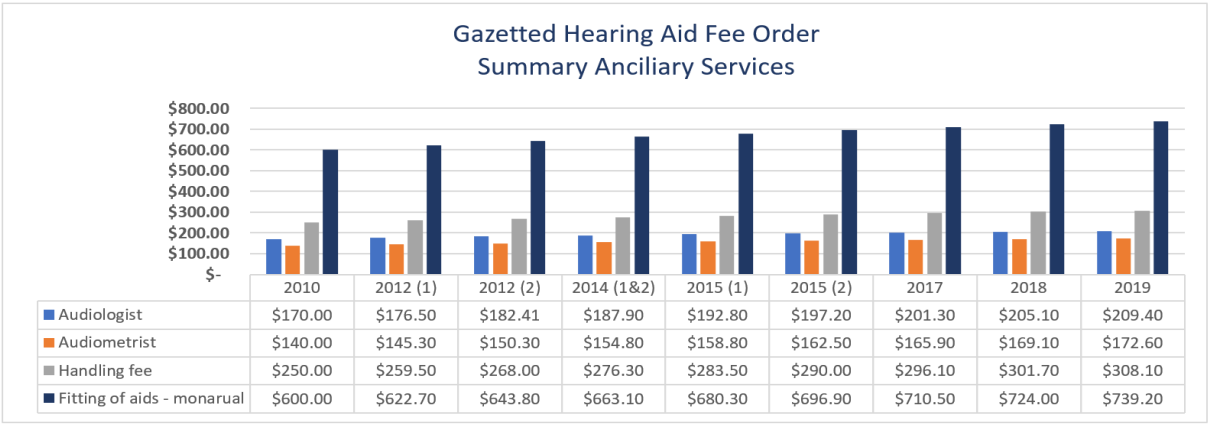
4.6.1 Gazetted Hearing Aid Fees Order(s)

Combined with the increased activity experienced by the CMI Scheme in both the legal and hearing aid provider space, the increase in gazetted fees for ancillary services associated with the provision of hearing aids has contributed to the overall increased cost position.

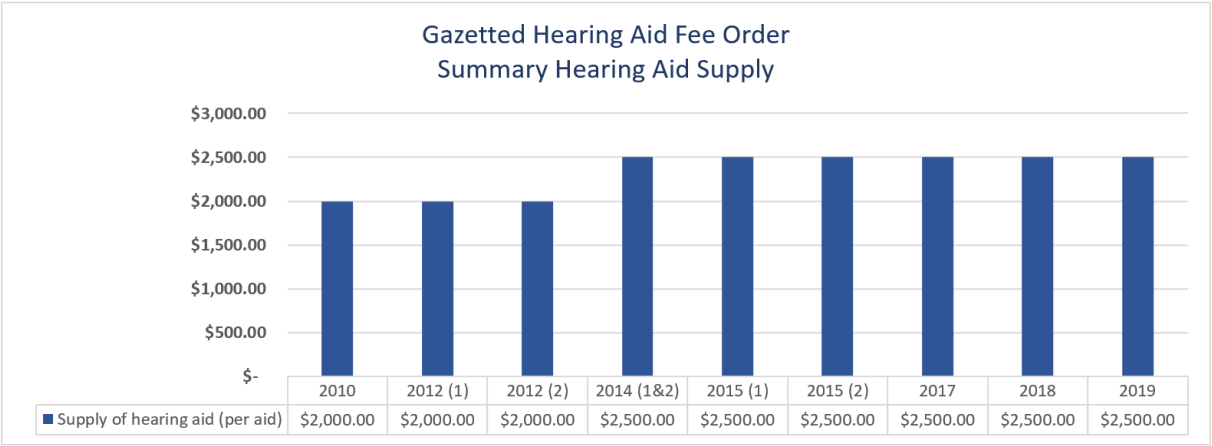
The graphs below show movement in gazetted fees with specific reference to ancillary fees (over two graphs) which have continued to increase in contrast to the static position of gazetted fees for the supply of hearing aids which has remained constant since 2014.



	2010	2012 (1)	2012 (2)	2014 (1&2)	2015 (1)	2015 (2)	2017	2018	2019
Fitting of aids - binaural	$1,000.00	$1,037.80	$1,073.00	$1,105.10	$1,113.80	$1,139.40	$1,163.30	$1,185.40	$1,210.30
12 month review / minor maintenance	$120.00	$124.60	$128.80	$132.70	$136.20	$139.30	$142.20	$144.90	$147.90
Aid Repairs (up to)	$330.00	$342.50	$342.50	$364.70	$374.20	$382.80	$390.80	$398.20	$406.60
12 months battery supply	$100.00	$103.80	$107.30	$110.60	$113.50	$116.10	$118.50	$120.80	$123.30



	2010	2012 (1)	2012 (2)	2014 (1&2)	2015 (1)	2015 (2)	2017	2018	2019
Audiologist	$170.00	$176.50	$182.41	$187.90	$192.80	$197.20	$201.30	$205.10	$209.40
Audiometrist	$140.00	$145.30	$150.30	$154.80	$158.80	$162.50	$165.90	$169.10	$172.60
Handling fee	$250.00	$259.50	$268.00	$276.30	$283.50	$290.00	$296.10	$301.70	$308.10
Fitting of aids - monarual	$600.00	$622.70	$643.80	$663.10	$680.30	$696.90	$710.50	$724.00	$739.20



	2010	2012 (1)	2012 (2)	2014 (1&2)	2015 (1)	2015 (2)	2017	2018	2019
Supply of hearing aid (per aid)	$2,000.00	$2,000.00	$2,000.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00

5. Answers to Consultation Questions

5.1 Claimant Experience: accessing benefits for work-related hearing loss

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

CMI do not believe there are any systemic barriers to workers accessing their benefits for work related hearing loss but that, in the case of the assessment of work-related hearing loss for coal miners, there are some issues with time delays in procedural areas (such as assessment of permanent impairment) that could be improved.

On balance, CMI considers coal miners may possibly be better informed of their work-related hearing loss entitlements and how to access them than workers in other noisy industries may be. This is due both to the nature of the industry and that there is a high level of trade union representation, which helps ensure that workers are well educated on industrial and other work-related entitlements. However, CMI does consider there may be a lack of education regarding potential entitlements for workers in other noisy industries, particularly around the process to lodge a claim for workers compensation.

Notwithstanding the above, CMI is currently developing an information package for workers covered by the CMI Scheme that will explain their potential entitlements for work-related hearing loss and the process for making a claim. CMI is also developing a specialised Claim Form for work-related hearing loss that will enable CMI to assess entitlements, based on the information provided by workers, in one point of contact. This is being done to:

- continue improving how we communicate with and service workers in the NSW coal industry, and
- because, as for other insurers in the NSW workers compensation system, CMI is seeing increasing (and unnecessary) involvement by legal providers in this field.

Based on CMI's observations, workers covered elsewhere under the NSW workers compensation system could also possibly benefit from SIRA publishing information regarding their potential entitlements for work-related hearing loss and information regarding the process for making a claim.

A lack of understanding of the process by workers can lead to over-servicing by legal providers, as observed above. Notably, the engagement of legal providers at the beginning of a claim for work-related hearing loss does not change how the CMI Scheme assesses a worker's entitlement but can dramatically increase the costs of the claim. For example, the degree of permanent impairment resulting from work-related hearing loss in the CMI Scheme is assessed by a Medical Panel appointed by the District Court and is not subject to appeal. However, the engagement of legal providers at the beginning of a claim for permanent impairment can increase legal costs from approximately $750 (for the legislated provision of legal advice to a worker when considering a financial settlement) to above $2,750 for services that can be managed directly by worker, employer and insurer.

Where there is a lack of worker knowledge, it appears to flow, in part, from their employers not providing that information. Notably, there is no system or processes in place to address work-related hearing loss when a worker ceases employment in a noisy industry. This may affect a worker's entitlements to compensation as they could be prevented from making a claim due to legislative timeframes.[1]

[1] Section 65 of the *Workplace Injury Management and Workers Compensation Act 1998*

5.1.2 Can improvements be made into the following areas:

5.1.2.1 Access to benefits

As noted above, CMI considers the process could be simplified and access to benefits made easier through increased education of workers and employers – both about entitlement and how they are accessed. CMI is currently streamlining this process through the development of an information package and Claim Form for work-related hearing loss, which sets out relevant entitlements and information required to assess the claim.

Another initiative that may address this issue more broadly is a dedicated help-line for work-related hearing loss, whereby information and claim-related material (such as claim forms) could be provided upon request or made available online.

CMI has a helpline (1800 WORKER /1800 967 537) that provides information and support to workers making or enquiring about making a claim for workers compensation under the CMI Scheme. CMI also has two dedicated Industrial Deafness Specialists who are available to provide information and guidance to workers when making a claim for work-related hearing loss and throughout the claim process.

5.1.2.2 Worker outcomes and experience

Hearing loss for coal miners is assessed by a Medical Panel appointed by the District Court, rather than an Approved Medical Specialist appointed by the Workers Compensation Commission.

In the CMI Scheme, workers may experience extensive delays caused by:

a) Their solicitors, if acting, not providing all required information to substantiate the claim
b) Slow turn-around and responses from the District Court Registry, leading to delayed filing and receipt of sealed documents
c) Limited availability of Medical Panel.

On average, there is a five month wait between filing an Application for Assessment by the Medical Panel and attending the assessment.[2]

Furthermore, workers are required to travel significant distances to attend the Medical Panel Assessments in Sydney and Newcastle. Appointments were previously scheduled in Wollongong, which is no longer an option.

5.1.2.3 Service provision

The provision of hearing aids may be improved through more thorough assessments by service providers, which should be detailed in their reports. The assessment and report should explore the different hearing aids on the market and specific requirements of the individual worker.

Notably, when workers receive replacement batteries after 12 months, CMI receives an invoice for the batteries and usually a fee for ‘review/minor maintenance’ ($147.90). Anecdotally, CMI has seen an increase in fees for ‘review/minor maintenance’. These invoices are rarely supported by a report from the provider or statement from the worker regarding whether the hearing aids in question are still the most appropriate and efficient device for the

[2] Over the last month, CMI has tracked when an Application for Medical Panel Assessment has been filed with the District Court and the date of the Medical Panel Assessment (40 matters)

worker's individual needs. In most instances, it is unclear whether there has been a face-to-face review with the worker, a phone call, or if this fee is simply included on all invoices for replacement batteries, even in the absence of a review. It is recommended that SIRA include more specific guidelines around what constitutes a 'review/minor maintenance' in the Fee Order and mandate reporting requirements to substantiate this fee.

CMI also believe there is a lack of education regarding the different types of products available to treat work-related hearing loss. This may be addressed through information packages on the CMI and/or SIRA website, which may also direct workers to independent websites with further detailed information.

There is a lack of education for providers regarding the SIRA Fee Orders and workers compensation entitlements. For example, some providers are limiting the devices offered to workers depending on their entitlement, rather than offering the worker the best available hearing aids and noting the worker would only be liable to pay the amount above their entitlement. This may mean that workers are not receiving the most suitable devices to address their particular work-related hearing loss.

5.1.2.4 Insurer claims management

CMI is in the process of updating, simplifying and improving accessibility to our forms and procedures regarding work-related hearing loss. CMI is also developing an information package for workers covered under the CMI scheme that will explain their potential entitlement for work-related hearing loss and the process for making a claim. CMI is also developing a specialised Claim Form for work-related hearing loss that will enable CMI to assess entitlements, based on the information provided by workers, from one point of contact.

This is being done to continue improving how we communicate with and service workers in the NSW coal industry, and because, as for other NSW workers compensation insurers, CMI is seeing increasing (and unnecessary) involvement by legal providers in this field.

CMI also considers that NSW workers compensation system insurers would benefit from closer collaboration with superannuation funds to confirm employment histories. This could expediate the investigation process (e.g. of employment history) and reduce delays. CMI also considers that delays may be reduced through greater collaboration with SIRA to obtain records of previous industrial deafness claims and perhaps the ability to also check against data held by the National Hearing Scheme regarding the provision of hearing aids. Without compromising a worker's privacy, the request from an insurer would be that SIRA provide a yes/no response to enquiries regarding previous industrial deafness claims before a signed authority is obtained from the worker to access further information.

5.1.2.5 Employer support and information

As the sole workers compensation insurer for the NSW coal industry, CMI has regularly experienced difficulty obtaining historical employment records due to the turnover of mine owner/operators and destruction of paper files. Anecdotally, most claims for industrial deafness are made by retired workers, 10 to 30 years after ceasing employment. If it were standard practice for employers to educate workers about their entitlements upon retirement, this would decrease the delay in lodging a claim for compensation and avoid the difficulties associated with confirming employment several years later.

5.1.2.6 Dispute pathway

The dispute pathway for coal miners is through the Residual Jurisdiction of the District Court. This dispute pathway has remained largely unchanged for coal miners since 2001. As noted above, coal miners are regularly subjected to delays associated with court proceedings. Furthermore, the professional costs of the worker's solicitors (where engaged) are not currently regulated, which appears to incentivise drawn-out litigation rather than early resolution of the claim.

5.2 Treatment and support for workers

5.2.1 What would help improve workers' use and benefit of hearing aids?

CMI considers that a more thorough review by providers with greater detail included in supporting reports explaining the advantages of a particular device based on the worker's personal preference and symptoms would be beneficial to all parties.

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

Prior to the 2012 Amendments, the Fee Order contained a 6% binaural hearing loss threshold for hearing aids, which was aligned to the threshold for permanent impairment compensation under the *Workers Compensation Act 1987*.[3] When the 2012 Amendments increased the threshold for lump sum compensation to 11% whole person impairment (20.5% binaural hearing loss) the threshold for hearing aids was removed from the Fee Order. CMI notes that the coal miners were exempted from the change to the threshold for permanent impairment but are subject to the relevant Fee Order.

CMI considers that the removal of the 6% threshold for hearing aids has had unintended consequences and has resulted in claims for hearing aids where binaural hearing loss could be well below 6%. For example, the case of *Bluescope Steel (AIS) Pty Ltd v Sekulovski* [2019] NSWCA 136 involved a worker with 1.9% binaural hearing loss, who was awarded medical expenses for hearing aids ($5,657.80) despite the relatively low level of binaural hearing loss. Similar claims have proceeded to determination in the CMI Scheme. These matters are now relied on by workers' solicitors to pursue almost any claims for hearing aids where there is less than 6% binaural hearing loss.

The legal fees incurred to pursue and/or dispute these claims in the CMI Scheme will always outweigh the costs of the hearing aids themselves. In the CMI Scheme, legal fees are not regulated by a schedule, therefore incentivising the pursuit of claims for hearing aids without regard to the limited benefit they will provide the worker or other benefit schemes available to the worker. CMI has received an increasing number of calls from workers who are unaware that they have solicitors pursuing the claim on their behalf or to the length that they may be required to give evidence in Court. The reason for solicitors being involved in this manner was explored further earlier in this submission.

CMI recommends that SIRA amend the Fee Order to reintroduce a threshold for claiming compensation for hearing aids.

Another avenue to address this issue for coal miner matters is that the scope of the Medical Panel could be expanded to address whether hearing aids are reasonably necessary for industrial deafness at the time of assessment.

[3] Section 69A of the *Workers Compensation Act 1987* (prior to 2012 amendments)

5.3 Efficiency and effectiveness

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

CMI recommends that SIRA amend the Fee Order to include mandatory reporting requirements for service providers to address the efficiency of hearing aids at the 12-month review. This review coincides with the replacement of batteries. Anecdotally, CMI only receives an invoice without a supporting report at the 12-month review. Further, in practice, if the hearing aids are reported as lost, there is no minimum waiting period. Often, the claim for replacement hearing aids due to loss is only substantiated by a Statutory Declaration.

Anecdotally, it also appears that workers are receiving multiple sets of hearing aids through multiple benefit schemes. To avoid this, SIRA may want to consider introducing regulations that require workers to complete a disclosure form to ensure they are not in receipt of hearing aids through any other assistance program, such as the Australian Government Hearing Service Program.

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

CMI recommends that SIRA amend the Fee Order to include a minimum time before hearing aids may be replaced. Notably, the Fee Order previously stated that hearing aids may be replaced every 4-5 years. This was an effective way to balance overall device costs and CMI strongly supports the re-implementation of this timeframe.

6. Conclusion

The evidence and anecdotal information provided in this submission highlights several areas of concern for the CMI Scheme.

The implementation of various legislative reforms in 2012 and 2015, removal of anti-touting provisions for legal providers in 2015, and resultant changes in provider behaviour, together with increasing medical costs and hearing aid and ancillary costs above inflation levels, have contributed to significant financial impacts to the CMI Scheme as well as impacts to workers.

It is important that the review of Work-related hearing loss in the NSW Workers Compensation System **appropriately investigates these matters together with those raised through the public comment process and makes suitable recommendations to adequately address relevant findings in a timely manner.**

As an organisation that has been trusted with the health and safety and support of workers in the NSW coal mining industry for almost 100 years, it is important that CMI is able to continue to look after the industry into the future and ensure that the NSW workers compensation scheme, including CMI, remains just that, a scheme that looks after workers.

We welcome further discussion with SIRA as part of this process and confirm that we are able to provide identified evidence on request.

Lucy Flemming
Managing Director/CEO