

How to submit this form

Submission form: Proposed amendments to the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999

The Ministry of Business, Innovation and Employment (MBIE) would like your feedback on proposals on updating the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999. Please provide your feedback by **5pm, on 14 September 2022**.

When completing this submission form, please provide comments, evidence, and any data that may aid your submission. Your feedback provides valuable information and informs decisions about the proposals.

We appreciate your time and effort taken to respond to this consultation.

Instructions

To make a submission you will need to:

1. Fill out your name, email address, phone number and organisation.
2. Fill out your responses to the discussion document questions. You can answer any or all of these questions in the [discussion document](#). Where possible, please provide us with evidence to support your views. Examples can include references to independent research or facts and figures.
3. If your submission has any confidential information:
 - i. Please state this in the email accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 (Official Information Act) that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - iii. Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

How to submit this form

4. Submit your feedback:

i. As a Microsoft Word document by email to ACregs@mbie.govt.nz with subject line:
Consultation: Hearing Assessment Regulations

ii. By mailing your submission to:

The Manager, Accident Compensation Policy
Ministry of Business, Innovation and Employment
PO Box 1473

Wellington 6140
New Zealand

Submitter information

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MBIE would appreciate if you would provide some information about yourself. If you choose to provide information in the section below it will be used to help MBIE understand the impact of our proposals on different occupational groups. Any information you provide will be stored securely.

Your name, email address, phone number and organisation

Name: Dr. Lisa Seerup

Email address: Privacy of natural persons

Phone number: Privacy of natural persons

Organisation: Hearing NZ

- The Privacy Act 2020 applies to submissions. Please tick the box if you do **not** wish your name or other personal information to be included in any information about submissions that MBIE may publish.
- MBIE may upload submissions or a summary of submissions received to MBIE's website at www.mbie.govt.nz. If you do **not** want your submission or a summary of your submission to be placed on our website, please tick the box and type an explanation below:

I do not want my submission placed on MBIE's website because... [insert reasoning here]

Please check if your submission contains confidential information

- I would like my submission (or identifiable parts of my submission) to be kept confidential, and **have stated** my reasons and ground under section 9 of the Official Information Act that I believe apply, for consideration by MBIE.

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Questions on the proposed objectives

1. Do you agree with the objectives?

If you disagree, which of the objectives listed do you disagree with and why?

Neither provision ensure that there are consistent outcomes with ACC. Percentage hearing loss is an artificially derived assessment for the sole purpose of establishing a medico-legal percentage of disability for compensatory reasons. It does not relate to the function of a person, nor does it predict how well or poorly an individual will do with rehabilitation.

ACC document 7917 Assessment of occupational Noise-induced hearing loss Page 79 section 3 General remarks 3.2 States it is not possible from case law or from scientific research to specify the minimum degree of NIHL that maybe considered significant in terms of compensability. Changing the age requirements will not address the inconsistencies within the ACC system This is in direct odds with objectives, paragraph 14, paragraph C.

It also must be noted that the background information is incorrect and should not be used as a basis for any change.

Paragraph 6, both references are problematic.

The Macrae 1998 is incorrectly quoted.

“These findings do not mean that hearing disability begins to occur at a PLH of 5%. Hearing disability exists if the PLH is 0.1% or greater. The requirement to use a hearing aid does not begin at the point at which hearing disability begins. Hearing disability must reach a certain degree (for some people, a PLH of 5%) before the advantages of hearing aid use outweigh the associated disadvantages.” It must be noted that hearing instruments in 1998 were not as sophisticated as modern hearing aids and certainly had more disadvantages the modern hearing aids have overcome.

The other reference cited incorrectly spells the author’s name and provides the wrong journal and is not an epidemiological study. It has a cohort of 52 elderly that do not have noise exposure. Hearing aids recommendation

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was on pure tone average and the Hearing handicap inventory for the elderly. Percentage hearing loss was not calculated or evaluated. Therefore, cannot be used to support the assertion that 5% has any validity. Support for any changes validates a faulty system.

2. Are there other/alternative objectives that should be considered to help shape the discussion?

The proposed amendment to the accident insurance (Occupational Hearing Assessment Procedures Regulation 1999 show a complete lack of understanding of the unscientific nature of the entire process.

Firstly thresholds are based on a scale using audiometric Zero. ¹

To understand “normal” hearing, one must first understand “audiometric zero.” Audiometric zero refers to the level of a pure tone of a given frequency that is minimally detectable (known as thresholds) by a person with normal hearing.

To establish audiometric zero, researchers tested thousands of people at the 1933 World’s Fair. They then took an average of the lowest level that participants could hear at particular frequencies. The result became a standard for what determined “normal hearing” and what determined hearing loss. They then created a standardized formula to determine whether a person has hearing loss.

Jerger J. The quest for audiometric zero. Hearing Review. 2019;26(7):22-24.

It also bears repeating” ACC document 7917 Assessment of occupational Noise-induced hearing loss Page 79 section 3 General remarks 3.2 States it is not possible from case law or from scientific research to specify the minimum degree of NIHL that maybe considered significant in terms of compensability.

Questions on the proposed options

3. Do you think the use of ISO standards as the base for the age scale is appropriate?

Yes No Not Sure

Why/ why not?

Apportionment of percentage hearing loss often includes and apportionment for idiopathic sensory neural hearing loss. The direct translation of this term is of unknown cause. The case history eliminates most common medical conditions that cause hearing loss, such as Tuberculosis, Meningitis, Ear surgery, injury or infection, Serious head injury, Stroke, Diabetes, Chemotherapy/radiation treatment and Kidney failure. Family history and most risk factors for hearing loss are also

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explored in the ACC 742 hearing loss questionnaire form. See attached from Client A. Once all risk factors are accounted for, than apportionment of percentage hearing loss to unknown causes is an additional age reduction by stealth. Until this practice is not allowed, changing the age standard will have no material effect on any outcome and is a waste of resources. Instead of changing the age standard, a more uniform approach to apportionment would better serve ACC.

4. Do you have any evidence to support an alternative method for calculating the age scale?
Please provide specific evidence and data

These two ACC claims have come across my desk this month. They are the norm rather than the exception. All identifying information has been redacted but the claimants are willing to speak to mbie if they would like first hand verification of the process. Claimants can be contacted through Hearing NZ.

5. What is your preferred option?

Option 1 (Status Quo) Option 2 (proposed update) Neither No preference

Please provide the reasons for your view

As stated previously, a standardized apportionment system would serve the needs of a fair and impartial entitlement system. The change to age requirement will have no material effect on ensuring that assessments are consistent across.

Questions on the overall proposal

6. Are there any other impacts that may come about from updating the age scale that should be considered?

Please provide evidence where possible

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Reducing the threshold for hearing loss cover from six percent hearing loss to five percent This does not address ACC's overriding goals of reducing injury in the community. The purpose of that Act, which is "to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has, as its overriding goals, minimising both the overall incidence of injury in the community, and the impact of injury on the community (including economic, social, and personal costs)". It proposed to do that through a number of different measures. Number one of those was "establishing as a primary function of the Corporation", the Accident Compensation Corporation, "the promotion of measures to reduce the incidence and severity of personal injury

Questions on additional amendments

7. Do you think the reference, within the Regulations, to tests conducted by otolaryngologists should be removed from the regulations?

Yes No Not sure

Why/ why not? (Please provide specific evidence where possible)

It allows an Otolaryngologist to perform a hearing test or not. It gives an additional option if necessary and there is no negative impact. The exercise has no meaning.

8. Do you think the reference, within the Regulations, to AS ISO 8253.1-2009 should be updated to ISO 8253.1-2010?

Yes No Not sure

Why/ why not? (Please provide specific evidence where possible)

The changes do not address the inequities within the ACC system. Māori and women have always been underrepresented in industrial deafness claims. In the last 10 years there has been an average 3,110 claims for industrial deafness. Last year was no exception and ACC data showed 2690 men and 262 women received hearing support last year. There has been a slight decrease in the last 10 years over the number of claims approved but the percentage of claims filed by women verses men remains about the same. These same numbers also apply for pakaha and Māori.

If we decrease the percentage hearing loss from 6% to 5% there is no guarantee it could increase the number of accepted claims.

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