



COVERSHEET

Minister	Hon Carmel Sepuloni	Portfolio	ACC
Title of Cabinet paper	Updating the Hearing Assessment Regulations – Approval to undertake consultation	Date to be published	12 September 2022

List of documents that have been proactively released		
Date	Title	Author
July 2022	Updating the Hearing Assessment Regulations – Approval to undertake consultation	Office of the Minister for ACC
27 July 2022	Updating the Hearing Assessment Regulations: Approval to Consult SWC-22-MIN-0130 Minute	Cabinet Office

Information redacted:

NO

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In Confidence

Office of the Minister for ACC

Chair, Cabinet Social Wellbeing Committee

Updating the Hearing Assessment Regulations – Approval to undertake consultation

Proposal

- 1 I am seeking Cabinet agreement to release the attached consultation document on the *Proposed amendments to the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999*.

Relation to government priorities

- 2 This is a routine request to release a consultation document that requires Cabinet approval.

Executive Summary

- 3 The Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999 (the Regulations) outline the procedures that audiologists must undertake when conducting an assessment of hearing loss caused by gradual process for ACC claimants. Schedule 2 of the Regulations contains an age scale which provides consistent guidance on the proportion of hearing loss attributed to age as opposed to workplace injury.
- 4 The age scale is based on an international standard (ISO 7029:1984). A new international standard has since been developed (ISO 7029:2017). I recommend consulting on updating the age scale to:

Option 1: Maintain the current age scale based off of ISO 7029:1984.

Option 2: Update the age scale based off of ISO 7029:2017.
- 5 Consultation is scheduled to be undertaken between July and August 2022, with a final proposal brought back to Cabinet in mid-to-late 2022.

Background

- 6 For those affected by hearing loss, ACC provides cover and entitlements where there is a certain proportion caused by injury. The current legislative settings contain two features to ensure that claimants with Noise Induced Hearing Loss (NIHL) receive consistent outcomes and that ACC only funds hearing aids where they are needed due to injury:
 - 6.1 A minimum six per cent hearing loss injury-related cover threshold, based on clinical evidence that hearing aids provide benefit beginning at five-six per cent hearing loss (In August 2021, Cabinet agreed to

change this to a five per cent threshold CAB-21-MIN-0314.01 refers. The change is currently before the House in the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill 2022).

- 6.2 An age scale (based on clinical evidence that a certain amount of hearing loss will be caused by age (presbycusis), not injury).
- 7 The purpose of the age scale is to provide consistent guidance on the proportion of hearing loss attributed to age as opposed to workplace injury or other factors.

The international standard that forms the basis of the age scale has been updated

- 8 The percentage of hearing loss caused by age is contained in Schedule 2 of the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999 and is based on Appendix 5 of the 1988 National Acoustic Laboratories of Australia (NAL) report 'Improved Procedure for Determining Percentage Loss of Hearing'. The NAL scale is based on an earlier international standard (ISO 7029:1984). A new international standard has since been developed (ISO 7029:2017).

I recommend consulting on updating the age scale in the Regulations

- 9 I recommend consulting on updating the age scale contained within the Regulations. The new age scale starts at age 66 (down from 69) for women and age 61 (up from 56) for men. The new ISO standards would benefit most claimants, as over 90 per cent are men. Appendix one contains the current (1988 NAL report table) and new (ISO 7029:2017) age corrections expressed as percentage loss of hearing for males and females (data derived from ISO 7029 (Acoustics Statistical distribution of hearing thresholds related to age and gender), mean values).

Comparison of proposal to status quo and analysis of risk

- 10 The outcomes sought through updating the Regulations are:
 - 10.1 **Entitlements are targeted at work-related hearing loss:** employers should not be responsible for hearing loss costs that are caused by factors that are not related to work. Equally, claims for justified work-related injury should receive entitlements.
 - 10.2 **Based on up to date scientific research:** the Regulations reflect current research to keep in line with international studies and support evidence-based scheme settings.
 - 10.3 **Consistent outcomes:** claimants receive consistent outcomes no matter which specialist they visit for an assessment.
 - 10.4 **Ease of implementation:** the hearing assessment settings are easy to implement for providers and ACC.

10.5 **Financial impact:** the impact of updates to levy payers and the sustainability of the Work account.

- 11 I consider that ensuring entitlements are targeted at work-related hearing loss to be the primary objective of updating the Regulations, in order to ensure that current and past levy payers are only paying for work-related injury. These objectives are included in the consultation document in order to provide a framework for the review and help evaluate the proposed updates.
- 12 Although the new age scale would benefit most claimants, it will mean that women aged 66 and over and men aged 78¹ and over are disadvantaged relative to the current scale. However, there is evidence that the current age scale does not properly account for hearing loss in women. The new scale based on the 2017 update to the ISO standards describes the hearing profile of people in recent years, more accurately reflecting the population today.
- 13 For those who already have cover under the current provisions, but would otherwise not receive cover under the proposed update to the Regulations, their existing cover decision would stand. Once a claimant has had a certain amount attributed to a covered cause, this would usually not change².

Financial Implications

- 14 ACC has estimated the outstanding claims liability (OCL)³ impact (including a risk margin) and levy impact of updating the age scale, in addition to the shift to a five per cent threshold (refer paragraph 6.1). Table 1 provides the cost estimates.
- 15 These estimates can be seen in the context of existing costs for hearing loss claims. At June 2020, the OCL for work-related hearing loss claims was \$550 million (with a risk margin) and the June 2020 levy rate for the Work Account was 67 cents.

Table 1: Estimated financial impact of updating the age scale and lowering the cover threshold to five per cent

Financial	Work OCL Impact	Cash Cost	Work Account Levy Impact
2022/23	\$5 million	\$0.5 million	\$0.01 dollars
2023/24	\$7 million	\$1.5 million	\$0.01 dollars
2024/25	\$8 million	\$1.5 million	\$0.01 dollars

- 16 The two proposed policy changes, individually, are not estimated to result in a significant change in expected costs. However, the two changes together

¹ For males aged 61 to 77 the proposed update to the age scale would be seen as beneficial, while ages 78 and up it would be seen as disadvantageous in comparison to the current scale. Refer to page 7 for a detailed table.

² The only exception is if the claimant has been exposed to further noise, and there is concern the amount of covered loss would have increased.

³ ACC's liabilities are defined as the balance sheet Outstanding Claims Liability (OCL), this includes the projected long-term cost of current active claims.

could shift some clients to a higher level of ACC-funded hearing loss entitlement, thereby increasing ACC's hearing loss costs.

- 17 The Ministry of Health (MoH) also provides some funding for hearing aids through Vote: Health, ACC works alongside MoH to apportion funding where a claimant has some injury related hearing loss alongside other factors. CAB Min (10) 35/13 sets out that the additional cost to Vote: Health of \$5 million per annum to meet the costs of ACC hearing loss claimants who also qualify for an apportionment of funding for their health-related hearing loss be met from the between budget contingency.
- 18 As at 31 May 2021 the health contribution to jointly fund hearing aid services under the current policy settings is \$5,824,171.43 which exceeds the \$5 million appropriated. The proposed changes (inclusive of the five per cent threshold change and updated age scale) will have little to no impact on Vote: Health. It is estimated that over the last ten years the proposed changes would have resulted in health funding requirements decreasing by just over \$440,000.

Impact Analysis

Regulatory Impact Statement

- 19 The Treasury's Regulatory Impact Analysis team has determined that the release of the discussion document is exempt from the requirement to provide a Regulatory Impact Statement (RIS). The exemption is based on advice that the discussion document includes the key features of an interim RIS.
- 20 The Regulatory Impact Analysis panel at the Ministry of Business, Innovation and Employment has reviewed and confirms that it substitutes as an interim Regulatory Impact Statement. The Discussion Document is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions.

Climate Implications of Policy Assessment

- 21 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 22 Based on the previous 10 years^{4,5} of accept/decline decisions by ACC, 1,321 more claims will be accepted under the proposed settings than were accepted under the current settings. However, although most claimants will benefit from the proposed changes, the proposals presented for consultation (inclusive of

⁴ Note that when the data was extracted, the inclusive dates were January 2011 – 28 May 2021, so is slightly longer than 10 years, however I have rounded this for simplicity.

⁵ Changes in the future demography of New Zealand (more people in the 75+ age bracket relative to the 60 – 75 bracket) could skew these numbers meaning the portion of people disadvantaged might be different than expected.

the five per cent threshold change and updated age scale) will result in women aged 66 and over and men aged 78 and over being disadvantaged relative to the status quo.

- 23 **Table 3** below contains an estimate of the likely scale of change, noting that the proposed changes would not be retrospectively applied.

Table 3: Impacts on claim numbers (based on the previous 10 years of accept/decline decisions by ACC)

	New accepted ('Decline changed to Accept' minus 'Accept changed to Decline')		
	M	F	Total
Decline changed to Accept	2729	151	2880
Accept changed to Decline	386	1173	1559
Decline changed to Accept minus Accept changed to Decline	2343	-1022	1321

- 24 Differences in New Zealand’s demography and labour force participation may place limitations on the accuracy of ISO 7029 as a presentative of the New Zealand population. However, I consider it remains the best possible option as it encompasses a wide range of research, some of which has not been undertaken to date in New Zealand.

Human Rights

- 25 The proposals contained in this paper are unlikely to raise issues of consistency under the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

Public consultation

- 26 Section 323 of the AC Act requires that I consult the persons or organisations considered appropriate before making recommendations to amend the Hearing Assessment Regulations. In this instance I see public consultation as appropriate due to the population who will, over time, be impacted by the recommended options.
- 27 If Cabinet agrees I will release the “*Proposed amendments to the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999*” consultation document. Public consultation will be held for a period of four

weeks and my officials will focus on consulting with providers, organisations and representatives of older persons, and clinical experts.

- 28 After the consultation period, submissions will be summarised, and I will present final recommendations to Cabinet in mid to late-2022, taking into account public submissions.

Government consultation

- 29 ACC and the Ministry of Health were consulted during the development of the potential approaches.
- 30 ACC, the Ministry of Health, WorkSafe, the Office for Seniors, the Office for Disability Issues, the Ministry of Social Development, and the Ministry for Pacific Peoples have been consulted on the proposals in this paper. Their comments have been considered. The Treasury, Veterans' Affairs, the Ministry for Women, Te Puni Kōkiri, and the Department of the Prime Minister and Cabinet were informed or offered the opportunity to comment.

Communications

- 31 The consultation document will be published on MBIE's website.
- 32 ACC will also publicise the consultation document on their website and will notify relevant stakeholders of its release.

Proactive Release

- 33 I intend to proactively release this Cabinet paper on MBIE's website within 30 business days of the final decision being made by Cabinet. Any redactions will be made in accordance with the Official Information Act 1982.

Recommendations

The Minister for ACC recommends that the Committee:

- 1 **agree** to release the attached public consultation document providing proposals to update the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999;
- 2 **note** that consultation is scheduled to be undertaken in July and August 2022;
- 3 **note** that consultation requirements under section 323 of the Accident Compensation Act 2001 are required to be met before recommending any changes to the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999;
- 4 **note** that after consultation I will report back to the Social Wellbeing Committee with final recommendations. This will include final costings and any impact on levy rates and Budget appropriation;

- 5 **note** that there may be other technical amendments to the Regulations which will be included in the final recommendations.

Authorised for lodgement

Hon Carmel Sepuloni

Minister for ACC

Appendix one: Current (1988) and new (2017) age corrections

Current (1988) and new (2017) age corrections – percentage to be taken from the overall test results to determine the injury-related portion of a claimant’s hearing loss.

Age	Male 1988 (%)	Male 2017 (%)	Female 1988 (%)	Female 2017 (%)
55	0.0			
56	0.1			
57	0.2			
58	0.4			
59	0.6			
60	0.8			
61	1.0	0.1		
62	1.3	0.4		
63	1.7	0.6		
64	2.0	1.1		
65	2.4	1.2		0.0
66	2.9	1.5		0.1
67	3.3	1.8		0.7
68	3.8	2.6	0.0	0.9
69	4.4	3.1	0.2	1.1
70	4.9	3.6	0.4	1.7
71	5.5	4.3	0.6	2.2
72	6.2	5.3	0.8	3.2
73	6.8	6.0	1.1	3.9
74	7.5	7.0	1.4	4.5
75	8.3	7.7	1.7	6.1
76	9.0	8.6	2.1	7.2
77	9.8	9.6	2.5	8.1
78	10.7	11.1	2.9	9.7
79	11.5	12.8	3.4	11.1
80	12.5	14.0	3.9	13.4

IN CONFIDENCE

Appendix two: consultation document on the *proposed amendments to the Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999*

IN CONFIDENCE