

SAPS Injury Management Practice Note

Noise Induced Hearing Loss Claims

Objectives, Targets & Performance Indicators

Objective	Target	Performance Indicator
South Australian Public Sector (SAPS) agencies have a procedure regarding claims for noise induced hearing loss	All SAPS Agencies	SAPS agency has a procedure for the investigation and management of noise induced hearing loss claims

Purpose

To ensure consistent application of the provisions of the Return to Work Act 2014 (RTW Act), with regard to the investigation and management of noise induced hearing loss claims managed by South Australian Public Sector (SAPS) agencies.

Context

Noise induced hearing loss (NIHL) is an injury listed in the Second Schedule of the RTW Act and is afforded the evidentiary presumption of Section 9(2) of the RTW Act, namely that if the worker suffers NIHL and was exposed to noise capable of causing hearing loss in their employment under this Act, it is presumed, in the absence of proof to the contrary, that the NIHL arose from the employment.

The purpose of this procedure is to outline the investigation, assessment and determination process to be followed in managing NIHL claims.

Definitions

'ENT' means Ear Nose and Throat Specialist or Otorhinolaryngologist ;

'NIHL' means noise induced hearing loss;

'RTW Act' means the Return to Work Act 2014;

'SAET' means South Australian Employment Tribunal;

'Second Schedule' means the list of injuries to which the evidentiary assumption applies as detailed within the Second Schedule of the RTW Act;

'SIMS' means the Self Insurance Management System;

'WPI' means Whole Person Impairment.

SAPS Practice

Whilst requiring slightly different considerations from physical or psychiatric injuries, claims for NIHL are nevertheless claims for compensation as contemplated by Section 31 of the RTW Act and should be investigated, assessed and determined in line with relevant legislative parameters.

On the initial receipt of most NIHL claims, further investigations will be required to make a well-informed, evidence-based determination of the claim. Therefore in those cases, it will not be possible to determine the claim within 10 business days in accordance with Section 31(4) and the claim will need to be deferred to gather the required evidence.

In the vast majority of cases, the NIHL claim will be a claim for medical expenses and/or lump sum compensation, not for income support. Therefore, Interim Benefits will generally not be offered.

Initial Assessment

Assuming the claim cannot be determined within 10 business days and must be deferred to gather the required evidence, the Agency should send a deferral letter to the worker advising of the delay and detailing any anticipated investigations, such as the seeking of factual and medical evidence. The Agency's letter should also advise that if the worker believes there has been undue delay in determining a claim, an Application for Expedited Decision may be lodged with the SAET.

If the claim is mistakenly lodged with the wrong SAPS Agency, but the worker's relevant noise related employment was with another Agency, the claim should not be rejected as not arising from employment but rather the claim should be transferred to the appropriate Agency for determination as it is the view of the Crown Solicitor that SAPS is one indivisible employer.

N.B. Clauses 29(1) and (2) of the Transitional Provisions of the RTW Act state that if an injury is wholly attributable to a trauma that happened after 1 July 2015 or partially attributable to a trauma that happened before 1 July 2015 and partially attributable to a trauma that happened after 1 July 2015, the claim must be determined under the jurisdiction of the RWT Act. However if an injury is wholly attributable to a trauma that happened before 1 July 2015 the claim must be determined with reference to the Workers Rehabilitation and Compensation Act 1986 and the Transitional Provisions of the RTW Act (see clause 30 of the Transitional Provisions of the RTW Act).

Investigation

The Agency should take steps to obtain factual information from the worker including but not limited to the following:

- Their entire employment history including occupations and places of employment;
- Any alleged exposure to noise in any work with any employer
- Details of any previous NIHL claims
- Details of any childhood illnesses or adult medical conditions that can impact on hearing such as otitis media or diabetes
- Exposure to noise in any other activities outside of employment i.e. shooting, army reserves or car racing etc;

The Agency should also take steps to obtain the following factual information from the relevant source(s) within the Agency:

- Agency employment history including commencement and termination dates;
- Occupation and work location(s) during Agency employment;
- Any previous hearing tests or audiograms undertaken by the Agency;
- Details of any known noise level testings relevant to the Agency employment;
- Noise level testing from the relevant Agency location(s) regarding noise levels to which the worker would have been exposed during their employment. If no noise level evidence is available, the Agency may consider arranging noise level testing to be undertaken at the worker's work location(s), testing to the extent and duration of noise exposure (leq) to ascertain whether the worker was exposed to noise capable of causing NIHL. Such noise level testing should be obtained by a person with relevant expertise such as Occupational Therapist, Sound Engineer or the relevant WHS Officer from the Agency.

The Agency should also undertake a Lump Sum Check from SIMS:Helpdesk to obtain details of any prior NIHL settlement.

It should be noted that pursuant to Section 188(2) and (3) of the RTW Act, the date of injury for a worker who HAS NOT retired from employment due to age or ill-health is the date of the claim form, whereas the date of injury for a worker who HAS retired from employment due to age or ill-health is their date of retirement.

Furthermore, it should be noted that pursuant to Section 9(3) of the Act, where a NIHL claim is lodged more than two years after the worker has retired, the evidentiary presumption of Section 9(2) of the Act, namely that if the worker was exposed to noise capable of hearing loss in that employment it is presumed that the employment caused the NIHL, ceases to apply in the worker's favour.

The Agency may choose to obtain a medical report from the worker's treating medical provider(s) seeking a history and details of any hearing related conditions or any conditions or medications that may impact on hearing, such as diabetes or otitis media.

The procedures set out in Regulation 67 of the Return to Work Regulations 2015 should be noted. In accordance with Regulation 67(1)(b), in addition to an audiometric test, a legally qualified medical practitioner registered in the specialty of otorhinolaryngology, or approved by the Corporation, must carry out a physical examination of the worker.

Accordingly, the Agency should arrange for the worker to attend an appointment with a (WPI accredited) ENT Specialist and will request two medical reports, the first seeking opinion regarding history, investigation, causation, treatment, any tinnitus component and whether any NIHL is consistent with exposure to noise, and the second seeking a Section 58 WPI assessment.

All relevant medical and factual evidence gathered to date should be provided to the ENT prior to the appointment.

Assessment

When the Agency is in possession of all the requested evidence, an assessment should be made as to:

- Whether the worker has sustained NIHL and if so, quantum of same;
- Whether any such NIHL is consistent with exposure to noise;
- Whether there are competing causes for any NIHL;
- Whether the worker was exposed to noise capable of causing hearing loss;
- Whether the evidentiary assumption of Section 9(2) of the Act applies;
- Whether there has been any progression of NIHL from previous hearing tests/audiograms;
- Whether the Agency's employment is the last employment in which the worker was exposed to noise capable of causing hearing loss;
- Whether the worker has received any previous NIHL claim payments.

If the worker has been exposed to noise capable of causing hearing loss, has sustained NIHL loss which is consistent with exposure to noise and there is no proof to the contrary, the claim for NIHL will be compensable and should be accepted.

Additionally, if the worker has sustained a WPI of greater than 5%, the worker is entitled to lump sum compensation pursuant to Section 58 of the Act.

Depending upon the facts of the claim and the available medical evidence, the “best test result principle” may be applicable (See Scutella vs LGA SAWCT 41 and SAWCT 118/2002).

If the worker has not been exposed to noise capable of causing hearing loss, has not sustained hearing loss which is consistent with exposure to noise, or there is proof to the contrary, the claim for NIHL is not compensable and should be rejected.

Where the worker has been retired for greater than two years, there is unsatisfactory evidence of noise (for instance, due to the passage of time) or it is not possible to undertake noise level testing, and/or there is proof to the contrary, the claim should be rejected.

Accepted Claims

If the determination is to accept the claim, the Agency should undertake the following:-

- Prepare and forward the acceptance determination letter to the worker (or legal representative) and where a Section 58 entitlement is applicable, prepare a separate Section 58 determination advising the worker of their lump sum entitlement, rights of review and Medicare advance payment including Notice of Judgment or Settlement Form.

The Determination letter must contain:

1. Reference to the particular claim for compensation;
2. The circumstances alleged by the worker and the date of occurrence;
3. The worker’s right to lodge an Application for Review with the SAET;
4. The name and telephone number of the contact person;

The determination status on SIMS is to be altered to accepted on the same day as the determination letter is issued.

If no dispute is lodged by the worker within 1 month of the determination date or their representative has advised the determination is accepted, the Agency should complete a Centrelink Compensation Advice of Lump Sum Payments form and send this via fax to Centrelink along with a copy of the determination letter.

Rejected claims

If the determination is to reject the claim, the Agency should undertake the following:-

- Prepare and forward the determination letter to the worker (or their legal representative).

The Determination letter must contain:-

1. Reference to the particular claim for compensation;
2. The circumstances alleged by the worker and the date of occurrence;
3. The worker’s right to lodge an Application for Review with the SAET;
4. The name and telephone number of the contact person.

The determination status on SIMS is to be altered to rejected on the same day as the determination letter is issued.