



HIA Submission

Noise Induced Hearing Loss

Strategic Review Consultation Brief

ReturntoWorkSA

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Introduction

Housing Industry Association (HIA) takes this opportunity to provide feedback on the Return to WorkSA Noise Induced Hearing Loss – Strategic Review Consultation Brief, dated February 2025 (Consultation Brief).

HIA supports injured workers returning to work in a timely, safe, and efficient manner.

Any moves to reduce delays and disputation within the current Return to Work framework are positive, noting the current Return to Work process in South Australia is complex.

The effective management of noise induced hearing loss (NIHL) claims, and minimisation of frustration and confusion in the process allows workers experiencing NIHL to optimise their capacity to work and enjoy life, despite their injury.

It is essential that the Return to Work scheme supports businesses in their day-to-day operations. The laws and the systems established must operate effectively and fairly, and not introduce unnecessary red tape, administrative burdens or implementation costs when weighed up against the outcomes they seek to achieve.

By contrast, if the laws do not operate in the way they are intended, they add to the cost of premiums and the compliance load with minimal impact in improving outcomes. This has a direct adverse impact on housing affordability and is at odds with the Government's agenda to deliver more housing for South Australians. It is critical that housing affordability remains a central consideration when contemplating any changes that may increase costs to industry.

With the number of NIHL claims almost doubling since 2017, HIA is supportive in principle of moves that would see a reduction in the exposure of the Return to Work scheme to misappropriation and misuse, while improving the process for both employees and employers. Similarly, removal of unnecessary duplication between the requirements of the scheme and other regulatory frameworks is also positive and is supported in principle, however further investigation into the potential for improved efficiency is encouraged.

The Residential Building Industry

The residential building industry is one of the most heavily regulated industries in South Australia.

Those in the industry must manage a complex web of national, state, and local laws, regulations and codes, including but not limited to requirements from a planning, design, environment, health and safety, inspection and certification perspective. Industry participants must also comply with a legislative framework that spans a multitude of issues including licensing, owner-builders, dispute resolution, builders warranty obligations and contractual requirements.

The industry is further complicated by a spectrum of business sizes and structures, from large project home builders to small family run operations, from companies to partnerships and sole traders. In addition, the industry is supported by a multitude of trade contractors who provide the 'hands on the ground' support to the industry, as well as manufacturers, suppliers, consultants, and other professionals operating at all scales.

The variety of work undertaken on a residential building project and the range of businesses involved in undertaking that work creates a complex arrangement in relation to workplace health and safety and workers compensation. It is important to recognise the unique nature of residential building work, particularly

low rise domestic construction. Given the complex nature of the workforce involved in residential building work, the responsibility to effectively and practically control activity on a building site is a shared one.

The prevalence of small businesses and independent contractors within the residential building industry represents the greatest challenge to compliance. While critical, communication with these stakeholders is exceptionally difficult. Principal contractors and industry organisations play a part, but reach is limited to those parties they have direct contact with, such as contracting relationships, membership, and subscriptions.

HIA seeks to ensure the unique characteristics of the residential building industry are taken into consideration in any proposed changes to the Return to Work framework and that these specialised businesses receive the appropriate level of support for their operations. Businesses in the industry already bear significant costs, and any further cost increases, administrative burden and red tape will only have undesirable consequences for industry.

Premiums

Workers compensation insurance premiums are usually the largest single government on-cost for employers. Based on the data provided in the Consultation Paper HIA holds concerns regarding significant unfunded liabilities and increases to insurance premiums.

With the extent to which scheme liability for NIHL injuries has increased beyond the forecasted amounts, HIA urges government to take decisive action to address any loopholes and known shortcomings in the current system to ensure premium increases are not required.

The current system for the calculation of premiums is not directly linked to typical payments for NIHL. HIA would oppose any changes to the system of calculation unless they can be justified by a regulatory impact statement, including a comprehensive cost-benefit analysis.

Further, the South Australian Government should also consider the compounding impacts of any other related legislative reforms or amendments, such as any recent or proposed changes to the Work Health and Safety (WHS) laws that may also affect premiums or have consequences for businesses more broadly.

Conversely, any measures that will ease the cost and administrative burden of the Return to Work scheme for South Australian businesses will provide welcome relief for an industry that is experiencing regulatory overwhelm and fatigue.

Housing affordability

It is essential Government takes into consideration the potential impact of any changes on housing affordability, weighed up against the benefit to stakeholders. The introduction of any amendments to current systems or frameworks at this stage has the potential to further impact the industry's ability to respond to the current critical shortfall in housing and to push up the cost of delivering a home, as detailed in the Centre for International Economics Report on [Taxation of the housing sector](#), dated 3 March 2025.

The initial impact of an increase in premiums will be felt by the employer, however in the residential building industry these costs are inevitably passed up the contractual chain. In a residential context, subcontractors pass costs on to builders, who then pass costs on to homeowners.

Prevention and Work Health and Safety

Effective management of workplace noise exposure is a requirement under the *Work Health and Safety Act 2012* (SA) (WHS Act) and its associated regulations. Audiometric testing is required for workers who

frequently use hearing protection as a control measure for noise that exceeds the exposure standard and must be conducted within three months of employment, then at intervals of not more than two years thereafter.

However, safety is everyone's responsibility. While the Consultation Brief focuses on improvements that can be made by employers (or PCBUs) to improving safety and the experience for workers with NIHL, it is imperative to recognise that workers themselves have a role to play in ensuring they also minimise the risk of NIHL. Furthermore, it is well-recognised that a worker's active participation in Return to Work processes is necessary to facilitate an appropriate outcome for all parties.

A broader view must be taken on the cause of NIHL beyond employer non-compliance in order to develop effective strategies to better tackle and minimise NIHL in future.

Dual requirements

The purpose of audiometric testing under the WHS Act is to ensure the measures in place are adequate to protect workers from hearing loss. This differs from the purpose of testing for NIHL under the Return to Work scheme, which is intended to identify the occurrence and extent of hearing loss. Accordingly, the triggers, testing requirements and the intervals at which testing is required are different.

Although this issue is not raised in the Consultation Brief, the dual requirements for hearing testing under the WHS and Return to Work schemes results in two concurrent testing regimes that are similar, but not the same. The potentially unnecessary duplication in this arrangement has adverse impacts for all scheme stakeholders, including businesses, workers, practitioners and ReturnToWorkSA.

Alignment with work health and safety requirements

An opportunity exists to consider where efficiencies can be achieved between the WHS and Return to Work testing frameworks. HIA is supportive of simplification and streamlining of the NIHL and audiometric testing regime where it maintains an effective system for assessing and measuring the impacts of NIHL on workers and results in improvements for all scheme users.

While the purposes of the WHS and Return to Work laws are different, they intersect in many ways in relation to workplace injuries, including for the detection and monitoring of NIHL. There appears to be merit in investigating the potential alignment of parallel processes to minimise impact for workers and businesses by reducing costs, removing unnecessary duplication, and improving clarity. For government, it may result in aligned or streamlined reporting and potential for future refinement.

Industry structure and testing requirements

To ensure an optimal outcome is achieved industry-specific requirements must be considered. For the residential building industry, this includes the strong reliance on independent contracting arrangements and the project-based nature of the work.

Any investigation into opportunities to remove duplication between the schemes may also include clarification in the WHS framework around the responsibility for carrying out audiometric testing. As with many WHS duties in the building and construction industry, the PCBU's responsibility to carry out audiometric testing is complicated by the high instance of independent contracting and the cascading duties throughout the contracting chain. This ambiguity only fuels unintentional non-compliance.

Rather than having cascading and overlapping PCBU duties that result in a number of employers responsible for audiometric testing for the same workplace and workers, the duty to carry out testing and retain records should sit with the employer, or individual sole traders. Not only would this improve clarity but would better align with the Return to Work requirements.

1. Are the results from the SafeWork SA campaign consistent with your experience of the level of NIHL awareness and management in the workplace?

The Consultation Brief identifies a range of findings from the proactive project on NIHL by SafeWork SA. The campaign focused on PCBU compliance; however, it appears to have overlooked the critical role of workers in achieving a safe workplace.

HIA receives feedback from its members through our dedicated member support services, in addition to our range of Committees. A consistent point of frustration across industry is worker complacency. Reports have been received where despite the best efforts by the PCBU, implemented processes and measures are not being used.

An example of this relates to the use of personal protective equipment, such as respiratory and audiological protection. When a supervisor is present on site, workers adhere to the requirements, but when the supervisor leaves site, personal protective equipment is removed. While the PCBU has a duty to address known non-compliance, worker's personal disregard for their own safety is not easily identified or addressed and cannot always be overcome.

Furthermore, it is not clear from the Consultation Brief what steps have been taken by SafeWork SA to address a perceived shortcoming in awareness, aside from the proactive project. To drive genuine improvement, a range of measures can be utilised including:

- review of information available on the website and its accessibility;
- seminars and training;
- industry working groups and forums;
- communications across a variety of channels; and
- targeted advertising.

The impact of the above could be amplified if carried out in partnership with industry organisations and other key stakeholders.

It is well understood that the strategy for communication is also complicated by independent contracting arrangements. This reiterates the need for a multifaceted approach to bolstering industry awareness, to reach as much of industry as possible.

2. What initiatives, if any, should ReturnToWorkSA consider to further support employers to improve the prevention and management of NIHL?

HIA supports ongoing measures to educate and inform WHS duty holders and Return to Work scheme users of their rights and obligations under the respective laws. For example, it is the responsibility of a PCBU to ensure they are providing a workplace in which the risk of NIHL is minimised, but it is also the responsibility of the worker to ensure they comply with the PCBU's reasonable instructions to safeguard themselves and others against the risks.

If data from SafeWork SA and ReturnToWorkSA has identified a need for additional information and potentially training in relation to factors contributing to NIHL, Government should consider an audit of available resources and potentially targeted funding for a multi-faceted campaign to improve education and awareness. Similar methods to those identified in response to Question 1 can be utilised by ReturnToWorkSA to bolster its current efforts.

Hearing loss as a health and work injury concern

3. Please provide any insights or feedback about what you believe is causing the changes relating to NIHL claims?

(Note: this section covers worker experiences, claim number increases, increased marketing activity, locking-in service providers, increased disputation, interstate employment, audiological services, anecdotal information, etc.)

Further data is necessary to provide a comprehensive response to this question.

Initially, a review should be carried out to establish particular industries or worker groups that are experiencing a higher frequency of NIHL claims, as well as to identify any other commonalities in the areas of concern. This information can be used to inform the appropriate next steps for further investigation and stakeholder engagement.

4. Please provide any insights or feedback about what is causing the increased frequency of repairs and replacement of hearing devices being experienced?

For service providers a worker with NIHL provides a revenue stream for life. Unlike medical costs claims for services such as a rehabilitation and physiotherapy that typically step down or reduce over time as the worker returns to work, costs associated with NIHL are ongoing and do not typically decrease over time. This situation also presents an opportunity for businesses.

Beyond this observation, HIA does not have insight into factors driving the increase in frequency of repairs and replacement of hearing devices. However, issues with the quality of goods are not specific to the manufacture of this type of equipment and are common across many industries.

Again, detailed data is necessary to determine the cause of these issues, such as a brand, country of origin, and year of manufacture. HIA suggests Consumer and Business Services (CBS) in its consumer protection capacity would be well-placed to investigate any suspected issues with these products where a pattern of failure can be established.

5. What insights do you have about the increase in the number of workers with NIHL claims being legally represented?

HIA suggests there may be two driving factors related to an increase in legal representation.

Firstly, the surge in social media use has had a range of impacts on the residential building industry. Users can easily disseminate information, including personal experiences and opinions, to a broad audience at the click of a button. This can be done “privately” through the use of groups, forums and review sites with little regard for the accuracy of the information, and limited avenues for correction or recourse. There is every possibility this approach is being utilised by claimants and third parties to assist others in navigating the NIHL claim process.

Secondly, the business environment is becoming increasingly competitive and opportunistic, with businesses seeking leads and generating income in a range of different and emerging ways. Where an opportunity exists to support an NIHL claimant with their claim or dispute, there are limited barriers for a law firm, as with any other business, in securing that opportunity.

Within every sector the vast majority of businesses aim to do the right thing. Unfortunately, it is also possible that a small proportion of operators may have ulterior motives and seek to subvert the system for their own

benefit. Whether this is occurring with regard to NIHL claims is a matter for further consideration. However, notably, the Consultation Brief identifies:

- NIHL injuries are progressive and maybe be slow to develop.
By the time a worker realises they have hearing loss, it may be well progressed, and they may seek to minimise the additional time associated with a claim by obtaining legal representation.
- Employees have a low awareness of the scheme and the NIHL claims process.
By extension, this is potentially also true of employers and may be the cause of unintentional non-compliance and is likely to be creating space for intervention by third parties. Supporting employers to understand and educate employees will go some way to demystifying the process and empowering them to act on their own behalf. One example would be a NIHL information pack to support employers and employees to navigate a claim without the use of legal representation.
- Similarly, issues with consistency, duration and lack of communication can be improved in the first instance with further support, education and information for employers and employees.

6. What insights do you have regarding disputation in NIHL claims?

Also identified in the Consultation Brief is a level of worker dissatisfaction and misalignment in expectations resulting from incorrect third-party information. Improved information and its proactive dissemination to third parties, as well as employers and workers, will go some way to ensuring both are informed of the level of coverage provided by the scheme.

However, if the cause is a result of deliberate misinformation on behalf of third parties, this is a consumer protection issue. ReturntoWorkSA can support injured workers by providing information and establishing pathways for impacted workers to resolve these types of complaints with CBS.

HIA would not oppose the introduction of further regulation to prevent misuse of the scheme by such operators. This type of behaviour has a variety of negative impacts, including reduced availability of resources for to assist injured workers with their genuine needs and increased in premiums for employers.

Latency period and the responsible employer

Insofar as the matter in dispute relates to the allocation of responsibility for a claim to an employer, consideration should be given to modernisation of the system, rather than starting with the most recent employer, or the employer considered most likely to be responsible at face value.

NIHL injuries and related claims have unique attributes when compared to other Return to Work claims, such as the considerable latency period, range of potentially contributory employment and lifestyle factors. With higher staff turnover rates and the prevalence of independent contracting in particular industries further complicating the determination process, updates to the determination and disputation system to suit the claim type and current employment environment is likely necessary.

Similar to other occupational diseases or injuries, NIHL can occur and progress gradually as a result of sporadic or extended periods of exposure and may occur during an employee's tenure with various different employers. The transient nature of work in the building industry creates an additional layer of complexity in identifying and determining liability for a progressive injury such as NIHL.

NIHL may also be caused or exacerbated by factors unrelated to work, such as a person's lifestyle choices. When there is a lack of familiarity between an employer and employee, personal factors that contribute to the condition will be less apparent and again, this will be more problematic within a transient workforce.

This leaves businesses with greater exposure to fraudulent claims and a potentially higher appetite and instance of disputation.

Current ReturnToWorkSA initiatives

7. What other operational initiatives, if any, should ReturnToWorkSA consider to improve the management of NIHL claims?

It is important proactive action is taken by SafeWork SA to assist all duty holders to understand and avoid NIHL occurring in the first instance. This goes beyond a compliance blitz. HIA refers to the range of options to progress SafeWork's initiatives as set out in response to Question 1.

HIA is also supportive of steps by ReturnToWorkSA to promote better understanding and management of NIHL processes and claims as set out in the Consultation Brief and suggests further:

- engagement and educational materials for workers could be extended to employers;
- further potential options to streamline and simplify claim pathways for NIHL which would negate the need for legal representation and reduce disputation;
- improvements to claims management processes, including supporting instructions and tools, should be reviewed on a periodic basis and feedback sought from scheme participants;
- ongoing monitoring must be undertaken in relation to suspected misuse and misappropriation of the scheme to identify problematic providers or suppliers;
- if necessary, strategic limitations pertaining specifically to NIHL may be necessary to prevent over-servicing, such as minimum warranty or guaranteed life expectancy requirements for equipment; and
- setting caps for deemed claim amounts or specified equipment.

While there are a range of options provided above, and likely many more, HIA encourages a robust and holistic review of the impacts of any of the above prior to implementation to ensure the ongoing integrity of the scheme. There must be a level of rigour maintained around the approved providers, not to create barriers to supporting injured workers, but to ensure the scheme is and funds are not unreasonably eroded.

It will also be necessary for Government to review and regularly consider whether funding for ReturnToWorkSA is adequate to ensure optimal processing timeframes and support is provided to navigate NIHL claims.

Scheme design

In addition to the measures above, the Consultation Brief proposes the establishment of a new hearing services entity, independent of ReturnToWorkSA, as a single point of contact for information and services associated with NIHL claims.

8. Please provide your feedback regarding the hearing service proposal currently being considered.

HIA would not oppose the establishment of a new independent hearing services entity provided that it is appropriately funded and resourced in order to achieve the objectives of consistent assessments, reduction in delays and fewer disputes. The establishment of a new, separate entity must also not come at the expense of other ReturnToWorkSA functionality.

In addition, the two entities must be able to work together and maintain strong lines of communication to ensure independence does not create further barriers to service.



Again, ongoing monitoring of the success of this initiative will be necessary to ensure it is meeting stakeholder expectations and the cost to the scheme is also being managed.

9. What other changes to the Scheme, if any, should ReturnToWorkSA consider to improve the claim service and experience for injured workers with NIHL claims?

10. Do you have any other comments or suggestions?

HIA has no further feedback in relation to Questions 9 and 10 at this time.