Form Submission

Question	Answer
Agreement	Yes, with these details:
Can we publish your submission?	Yes, with these details:
Name of organisation or individual making this submission	Richard Villari, Solicitor
Authorised delegate/contact person	Richard Villari
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In what capacity are you making your submission?	a legal representative
If other, please specify	
Is this a personal submission or on behalf of a	personal submission

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professional body or organisation (please specify)?	
If a professional body or organisation, please specify the organisation	
Do you currently have, or have you previously had, a work-related hearing loss claim?	No, I've never had a work-related hearing loss claim
What would you rate the current system for workers with work-related hearing loss?	4
Are there barriers to workers accessing their work-related hearing loss entitlements?	Yes
Can improvements be made in the following areas?	access to benefits, worker outcomes and experience, service provision, insurer claims management, employer support and information
For any options you selected above, what changes can be made?	Barriers to workers with work-related hearing loss accessing their entitlements (i) The most significant barrier for accessing lump sum compensation is the high threshold for claims with dates of injury after 1/1/2002 The current threshold for lump sum benefits is 20.4% binaural hearing loss (â€œBHLâ€□). In comparison, the state with the second highest

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	threshold is Victoria where their threshold for lump sum benefits is only 10% BHL. The threshold in South Australia is 8.8% BHL (or 5% WPI). If equity and fairness is a goal of our scheme, the threshold for lump sum benefits should either be reduced to 10% BHL in accordance with Victoria or reduced to 5% WPI as per the South Australia Scheme. To adopt to the Victorian standard would only require an amendment to the Table 9 of the WorkCover Guides for the Evaluation of Permanent Impairment (â€œthe Guidelinesâ€) by simply equating a loss of 10% BHL to being equal to 11% WPI. Alternatively, if the South Australian model was considered, the 1987 Act would need to be amended to reduce the threshold for hearing loss claims to 5% WPI. (ii) The second barrier for accessing lump sum compensation is the prohibition of aggregating multiple section 66 assessments to achieve the current threshold for lump sum claims. This has been the situation since the decision in Sukkar v Adonis Electris Pty Ltd (2014) NSWCA 459 (â€œSukkarâ€). For example, a worker who was paid compensation for 5% BHL in 1985 and continued to work until 2015 and now has 25% BHL is precluded from receiving further lump sum compensation because his additional loss of 20% BHL does not meet the 20.4% threshold. It is submitted the decision in Sukkar causes inequity and unfairness and should be reviewed by legislative amendment. The above inequity existed in Victoria until legislative amendment was made permitting aggregation of multiple 66 amendments to reach their own modest threshold. The South Australian Scheme similarly allows aggregation of 2 or more lump sum assessments to reach their lump sum threshold.

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	(iii) A third barrier is the fact that lump sum claims for hearing loss are now premium bearing. We understand this change only occurred this year. It is the writerâ€™s experience that many workers, especially those still employed or who reside in small regional communities, are disinclined from pursuing any claims, including claims for hearing aids, in circumstances where the claim could potentially affect their employerâ€™s workcover premiums. Although only based on the writerâ€™s own experience, up to 10% of potential claimants do not access their benefits because of this problem. (iv) The fourth barrier to workers accessing their entitlements is WIROâ€™s current practice of not funding claims solely for hearing aids where a claimant is in receipt of the Age/DSP/DVA pension. (v) The fifth barrier to accessing a workerâ€™s entitlements is the lack of information provided on the SIRA website relating to the availability of WIRO approved solicitors who are prepared to assist workers in hearing loss claims at no cost to them. 1. Can improvements be made in the following areas? Access to benefits (i) Reducing threshold for lump sum claims to 10% BHL (as per Victoria) or 5% WPI (as per South Australia). To adopt to the Victorian standard would only require an amendment to the Table 9 of the WorkCover Guides for the Evaluation of Permanent Impairment (â€œthe Guidelinesâ€□) by simply equating a loss of 10% BHL to being equal to 11% WPI. Alternatively, if the South Australian model was considered, the 1987 Act would need to be amended to reduce the threshold for hearing loss claims to 5% WPI.

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	(ii) Permitting aggregation of 2 or more section 66 assessments to reach the lump sum threshold. Legislative change or amendment to the Guidelines would be required to permit aggregation of section 66 claims and reverse the effects of the decision in Sukkar. (iii) SIRA to reverse affectation of premiums due to lump sum claims for hearing loss SIRA should reverse the 2019 changes to premium calculations for employers whose workers make a lump sum claim for hearing loss (iv) Request WIRO reconsider their policy of not funding claims for hearing aids where claimant is in receipt of AGE/DSP/DVA pension. (v) Amend SIRA website to promote availability of lawyers through WIRO Scheme Amend SIRA website to make it clear that WIRO provides a service whereby an experienced solicitor will be funded who can represent a claimant in any workers compensation claim, including claims for hearing loss, at no cost to them. Worker outcomes and experience The timely and efficient delivery of benefits to claimants could be significantly improved by the following changes: (a) Remove the need for insurers to seek their own Independent Medical Examination (IME) in Lump Sum claims. Workers obtain their own assessments from qualified, SIRA approved ENT surgeons. Insurers should be required to quality assess the reports and if they determine the report is in accordance with the Guidelines, accept the claim as made.

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	Such a change would shorten the time to resolve lump sum claims by 3 to 6 months, and even more in regional areas. It would also alleviate the need to attend 2 ENT surgeons which is particularly burdensome for regional claimants. Such a change could be effected by minor amendments to the Guidelines. (b) If SIRA is of the view that insurer IMEâ€™s should continue, they should require insurers to determine the hearing aid claim component of the claim based on the workerâ€™s medical evidence within 21 days of Notice of Claim as stipulated under the section 279 of the Workplace Injury Management Act 1998 (â€œWIM ACT 1998â€□), for hearing aids. In the writerâ€™s experience, very few claims (less than 5%) are disputed after insurer IME and it is submitted it is inequitable and inefficient to require workers with lump sum claims to wait until their lump sum claims have been determined before providing them with access to hearing aids. Such a change could be effected by minor amendment to the Guidelines or by Direction to insurers. Service Provision Remove the need to receive pre-approval for hearing aids The process of obtaining pre-approval to fit hearing aids can take 4 to 6 months to complete. As the quality and cost of aids is fully regulated by SIRA, the impetus for requiring pre-approval has diminished. Workers should be permitted to incur the costs of regulated hearing aids if they wish and if they are unwilling to do so, wait for approval from the insurer. This is the system which operates effectively in South Australia to great benefit to claimants. Having a dual system for receiving hearing aids would potentially save claimants with stronger,

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	undeniable cases, numerous months to receive their hearing aids. Insurer Claims Management There are several areas of insurer claims management which could be greatly improved which would result in claims being determined more quickly. (i) Insurers are unlawfully requiring workers to substantiate their claims by requiring evidence, ignoring sections 279 â€" 282 of WIM Act 1998 and decisions of W.C.C. Claims for Hearing Aids A worker in a claim for medical expenses is not required to provide â€œparticularsâ€ about a claimâ€ under section 279 of WIM Act 1998 or the Guidelines. However, it has become standard procedure for insurers to put every claimant to proof (which even goes beyond what is required to provide â€œparticulars about a claimâ€). Accordingly, insurers should be directed to adhere to section 279 WIM Act 1998 and determine all hearing aids claims within 21 days and desist from seeking evidence or proof from claimants. Lump Sum Claims Section 281 (2) (b) WIM 1998 requires insurers to determine lump sum claims within 2 months after the claimant has provided the insurer with all â€˜relevant particulars about the claim.â€™ â€œRelevant particulars about a claimâ€ is defined under section 282 (1) WIM Act as full â€œdetailsâ€ of the following, sufficient to enable the insurer, as far as practicable, to make a proper assessment of the claimantsâ€™ full entitlement on the claim: (a) the injury received by the claimant, (b) all impairments arising from the injury, (c) any previous injury or pre-existing conditionâ€¦ (d) in the case of a claim for work injury damages, details of the economic losses that are being claimed as damages and details of the alleged negligence or other tort of the employer, (e) information relevant to a determination as to whether or not the degree of permanent impairment resulting from the injury will change,

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	(f) in addition, in the case of a claim for lump sum compensation, details of all previous employment to the nature of which the injury is or may be due, (g) such other matters as the Workers Compensation Guidelines may require. â€œDetailsâ€□ of a claim is a much lower standard than â€œproof or evidenceâ€□ In Bond Industries Ltd V Bord (2007) NSW WCC PD 80, DP Roche indicated that the purpose of sections 281 and 282 was â€œto enable claims for lump sum compensation to be resolved expeditiously, fairly and without unnecessary expense.â€□ To that end, workers need only provide â€˜relevant particularsâ€™ about the claim. Those particulars must identify the injury/s and the impairments alleged to have resulted from the injury. In this case, DP Roche found the provision of â€œparticularsâ€□ provided by the worker and the contents of his supporting medical evidence satisfied sections 281 and 282. The decision in Willoughby City Council vs Kevric (2009) NSW WCC PD 140, the insurer refused to determine a lump sum claim unless the worker â€˜substantiatedâ€™ the claim by way of evidence of injury and other relevant particulars. DP Roche noted that a worker is only required to provide â€œrelevant particularsâ€□ not â€œperfect particulars.â€□ The worker provided particulars of the claim through his accompanying medical report. The particulars provided to the employer were sufficient to comply with section 282 if the WIM Act 1998 and the relevant WorkCover Guidelines. DP Roche specifically noted that claims do not need to be â€œsubstantiatedâ€□ as the insurer submitted. As a final note, the interpretation of â€œrelevant particularsâ€□ is echoed in the WorkCover Operational Instruction 1.13 titled â€œManagement of Hearing Loss Claims.â€□ Under sub-heading â€œAdequate evidenceâ€□ it noted that â€œa worker or scheme agent need only provide to the employer a comprehensive medical report and hearing loss assessment from a relevantly qualified ENT specialist together with a detailed work history

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	showing all periods of exposure to industrial noise.â€ Insurers, contrary to sections 281 and 282 and the Guidelines are requiring every claimant to substantiate every aspect of their claim. They generally require tax returns from 1990 to present, proof of â€˜non-employmentâ€™ after deemed dates of injury and evidence of no previous claims for hearing loss before determining a claim. Providing such evidence is time consuming and often adds up to 12 months to the determination of a lump sum claim. This is particularly abhorrent when the Act only requires the worker to provide â€œdetailsâ€ of their claim, which are often provided with the Notice of Claim or are ascertainable through the report of the consulting E.N.T. specialist submitted with the claim. Employer Support and Information Many large employers, notably BHP/One Steel, State Rail and those in the Coal industry routinely refuse to provide employment or previous claim details (despite being self-insurers). WIRO, as a matter of practice, will not provide legal funding in the absence of proof of employment for pre 2002 claims or without evidence of previous claims. The result of employerâ€™s refusal to provide employment and claim details is claims are delayed by up to 6 months as tax returns are required or searches with District Court for previous claim details are necessary. Minor amendment to section 126 WIM ACT 1998 should be made to remove the need for a claim to be in dispute before an employer has a duty to assist. As for greater support from SIRA and for the District Court in providing previous claim details, please see our comments under â€œEfficiency and Effectiveness.â€ Dispute Pathway We submit the current dispute pathway works effectively, which is reflected in the low rates of disputation for hearing loss claims.

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What would help to improve workers' use and benefit of hearing aids?	Treatment and Support for Workers 3. What would help to improve workers use and benefit of hearing aids? It is the writerâ€™s experience that it takes the majority of claimants many years to seek assistance for hearing loss, possibly due to concerns of â€œlooking old,â€ general apathy or waiting for retirement in order to avoid threatening their employment. Accordingly, it is often a significant decision to seek assistance. Currently however, a worker who has made the difficult decision to seek assistance is then confronted with a system which will unfortunately take 6 to 12 months to receive approval for hearing aids. We submit it will lead to better outcomes if workers were able, where reasonably possible, to be fitted with hearing aids as near to the time they decide to do something about their hearing loss as possible, rather than having to wait 6 to 12 months. Early provision of hearing aids can be achieved through a combination of removing the requirement for pre-approval, improve insurer claims management by effective training on the requirements of claimants under sections 279 â€“ 282 of WIM Act 1998 and employer support by way of provision of employment and previous claim details.
How can the use of hearing aids for work-related hearing loss be evaluated?	
How can the process for servicing devices and the provision of batteries and replacement aids be improved?	

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Hearing aids are constantly evolving with new technology and improvement. How can hearing aid quality and function be balanced with overall device cost?	We submit the current system whereby manufactures nominate newer models to be added to the hearing aids device list every 2 years works well. The cost of hearing aids has effectively reduced or maintained through SIRA third party contracts with manufacturers which has resulted in provision good quality hearing aids for lower costs than even permitted under the relevant Hearing aid Orders.
Please include any other general comments not addressed above.	