

**DEAFNESS
FORUM**
AUSTRALIA



Discussion Paper

Work Health and Safety Regulation 2017

Clause 58 – AUDIOMETRIC TESTING

Submission by:

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Introduction

Unions NSW welcomes the opportunity to make a submission to the Discussion paper: Work Health and Safety Regulation 2017 Clause 58 – Audiometric testing.

Unions NSW is the peak body for NSW Unions. Unions NSW represents approximately 60 affiliated unions comprising over 60 0000 members. These unions represent a diverse range of workers from both blue and white-collar industries.

Unions NSW supports the submissions of our affiliate unions.

Unions NSW has collaborated with Deafness Forum Australia and the Australian Workers Unions NSW Branch (**AWU**) to ensure Unions NSW is able to do justice to the lived experiences of those who have suffered occupational hearing loss. These organisations deal directly with those who have experienced industrial deafness and hearing loss and their lived experiences are vital to understanding the importance of preventing hearing loss and deafness.

The Australian Workers Union is one of Australia's oldest and largest trade unions, representing the interests of workers across a diverse range of industries, including mining, construction, manufacturing and more.

Deafness Forum Australia is the national consumer peak for Hearing Health & Wellbeing, representing the views and interests of the 4 million Australians who live with hearing loss.

Occupational Hearing Loss

Occupational hearing loss and deafness is a completely preventable injury. It is a serious injury that has a profound impact on an individual's quality of life. It causes a social disability resulting from loss of communication leading to various adverse outcomes such as depression, fear, embarrassment, loss of self-esteem and confidence, tension in relationships and stigma. It is capable of producing both physiologic and psychologic stress responses stimulating the neuro-endocrine system. This stimulation results in increases in blood pressure and heart rate.

It restricts an individual's ability to actively participate in social interactions, often resulting in the isolation and exclusion of an individual in social and family events. It causes sleep disturbance, fatigue, hypertension and may limit an individual's employment options. _____

The inability to hear can be a significant threat to a worker's health and safety. The worker's safety can be compromised. Employers may successfully argue their inability to provide

such a worker with the necessary duty of care required, thus leading to difficulties for hearing impaired workers to gain employment and result in loss of a worker's career.

Other problems may range from tinnitus to difficulty in detecting and recognising distinct sounds from background noise. This can impair a person's ability to detect warning signals in everyday life, to discriminate between different frequencies, to comprehend speech, and to localise sound sources so as to gauge the direction or the distance of the sound. Many occupations such as firefighters require these skills. The occupational risk of hearing loss from continued exposure to noise is well established. Further, most people rely on these skills to drive, navigate footpaths, crowds, traffic etc.

Two characteristics of noise-induced hearing loss (**NIHL**) have been thoroughly established. The amount of hearing loss increases with noise intensity, duration and exposure, such that the more intense and longer-duration noise exposures cause more severe hearing loss. Not all individuals exposed to a given noise develop the same degree of hearing loss, though the reason for this is not well understood. The effects of sudden, explosive peaks of impulse noise (drop forge, jackhammer, explosives, etc) may promote damage in excess of that predicted by the use of standard measuring devices. Inaudible, low frequency noise can have a detrimental effect

on people's health, causing headaches, fatigue and irritability.

Sensorineural hearing loss affects the inner ear (sensory) or the auditory nerve (neural) that connects the inner ear to the origin of the nerve in the brain. Sensorineural hearing loss due to noise exposure is an irreversible condition with no effective treatment currently possible. This is because hair cells, once damaged, do not regenerate.

Noise-induced hearing loss (**NIHL**) is largely preventable. Early detection of noise induced hearing loss through audiometric testing can assist in the prevention of further hearing loss. Not only does this assist in preventing further hearing loss, it also assists in the medical and scientific study of hearing loss. The Occupational and Health Administration (**OSHA**) recognises that an annual audiometric test is essential for an effective hearing conservation program.¹

The OSHA occupational hearing conservation program must incorporate five factors: (1) periodic noise exposure monitoring, (2) engineering and administrative controls, (3) personal hearing protection, (4) audiometric evaluations and follow-up activities, and (5) employee/management education and training. The most effective control

¹ Understanding & preventing noise- induced hearing loss, OiSaeng Hong, PhD, FAAN, Madeleine J. Kerr, PhD, Sumitrajit Dhar, PhD, p115

measurement is through engineering controls but where engineering controls have not occurred, under the occupational noise standard of the OSHA (29 CFR 1910.95), every worker in the workplace must consistently use hearing protection devices but as individuals cannot detect their own hearing loss employers should encourage hearing tests on a regular basis.²

The Australian Work Health and Safety Setting

Australia has adopted the Roben's Model of health and safety which is a model based on the prevention of harm, injury and disease. It is generally more cost effective and better for any society to prevent injuries and diseases. It is unconscionable not to prevent diseases that are preventable. Where there is no cure, prevention is a must.

Requirements for audiometric testing are currently in place in the Australian Capital Territory, Victoria, Western Australia and South Australia. Queensland is currently reviewing its laws.³

The requirement for businesses to regularly test the hearing of workers exposed to high levels of noise has been in the Work Health and Safety (**WHS**) Model Legislation since 2011. The importance of preventing industrial deafness and

² *ibid*

³ 2014 SA, 2017 Victoria, 2022 Western Australia, Australian Capital Territory 2012.

hearing loss is considered important enough to warrant a Model Code of Practice.⁴

NSW signed up to the Model Work Health and Safety legislation on January 1 2012.ⁱ The requirement for businesses to regularly test workers in **Clause 58** of the *NSW Work Health and Safety Regulation 2017*.

NSW initially gave businesses a two year transitional period from 2011 to 2013 to prepare for audiometric testing to be put into place.⁵ Since this transitional period NSW has continuously placed an exemption on Clause 58, not requiring Person's Conducting a Business or Undertaking (**PCBU**) to provide audiometric testing for workers exposed to high levels of noise. There was no consultation at the time. The Government continued to state businesses needed time to transition to these regulations.

Unions NSW, Deafness forum of Australia, The Australian Workers Union (**NSW Branch**) and affiliate unions believe ten years is an adequate 'transition' period. Businesses have not had this time to transition to most of the harmonised legislation.

⁴ Code of Practice Managing Noise and Preventing Hearing Loss At Work, August 2020.
<https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-noise-and-preventing-hearing-loss-work>

⁵ <https://www.safework.nsw.gov.au/legal-obligations/legislation/exemptions-accordion/audiometric-testing-requirements#:~:text=The%20Exemption%20is%20made%20by,exceeds%20exposure%20standard%20for>

Statistics released by SafeWork NSW in 2016 showed that 10352 workers suffered noise related injuries between 2012-2015 in NSW, with 90% of these workers permanently disabled.

Noise-induced hearing loss (**NIHL**) is the most common cause of permanent hearing in Australia. Although preventable, hazardous noise at the workplace continues to be a major cause of hearing loss.⁶

Industries most at risk of excessive occupational noise include mining, manufacturing, transport, construction and logistics as well as some areas of hospitality such as nightclubs, bars and casinos. A worker required to raise their voice regularly above their normal range is at risk of damage to their hearing. Educational settings can also be hazardous.

It is important to test a worker's hearing at the commencement of their career (within three months of the worker commencing work where hearing protection is required), to provide a baseline measurement as a reference for future audiometric test results. Once this is done, early identification of changes to hearing due to noise is the most effective way of assessing the effectiveness of any control measure in place and in turn preventing hearing loss, which can take place over a long period of time or can in some

⁶ <https://www.kinnect.com.au/learnfromus/audiometry-health-monitoring-nsw-employer-edition/>

cases be instant. Follow up testing should occur every two years. Testing should occur well into the work shift so that any temporary hearing loss can be picked up. More frequent audiometric testing may be needed if exposures are equal to or greater than 100dB(A).

Unaddressed hearing loss poses an annual cost of \$30 billion to the Australian economy and noise induced hearing loss is a priority disorder for national action under the Australian Work Health and Safety Strategy 2012-2022 due to the severity of consequences and the estimated number of workers affected. Despite this, control measures to successfully reduce noise levels in many industries are failing, insufficient or non-existent.

Case Studies

Worker 1

Worker was working in a noisy environment where his employer did provide audiometric testing every two years for workers. Control measures were in place to minimise the noise, however annual audiometric testing detected member had some measurable hearing loss. Control measures were revealed to be inadequate, and the member now uses a hearing aid.

Worker 2

Worker has worked in the manufacturing of aluminium for over 26 years. When he was working 8 hour shifts personal protective equipment (PPE) was not provided. It was only provided to those working 12-hour shifts. These workers were provided with neoprene plugs and earmuffs.

As an operator the worker was required to have an annual medical health check-up which included hearing and lung function. Despite this, the worker had concerns that the hearing tests his company provided were not adequate and workers were not fully informed of the severity of their hearing loss.

Around 15 years ago the tests began to pick up noticeable degradation of hearing. The worker approached the AWU, and the union assisted the worker with further hearing tests and eventually assisted him in lodging a workers compensation claim which was accepted.

He also noted concern about a workplace policy the company issued that stated the cost of any hearing aids needed due to noise induced hearing loss would be the responsibility of the worker.

Worker 3

Worker has undergone many hearing tests after a 42-year career working in a consistently noisy workplace. The worker has lodged a workers compensation claim however the claim has been consistently disputed and was ultimately not successful.

The worker has sustained more hearing loss in his right ear. His work involved working on the shopfloor which was consistently loud. He also worked in the testing house conducting mechanical tests. Workers were provided with earplugs. Workers found communicating with other workers extremely difficult due to the noise. The floor often vibrated because of the machines running. At times the administrative staff on the floor above would hear the noise and feel the vibrating floor. The worker described the noise of the machines when a wire was broken as like a gun going off.

The company provided hearing tests, but the worker described these as 'rough as guts'. The hearing tests were often conducted in rooms that were not soundproofed and were not consistent and did not occur every two years.

Discussion paper Questions

1. Do you think SafeWork NSW should continue issuing an exemption for all businesses in NSW, on an annual basis, to prevent clause 58 from coming into effect?

No. The exemption must end. Clause 58 must be reactivated and enforced. Workers exposed to continual noise, vibration and some chemicals should be tested regularly to prevent occupational hearing loss and deafness. This is a preventative measure that is in line with the preventative legislation we have in Australia. Industrial deafness and hearing loss is preventable, and PCBU's must accept that they have a duty to eliminate and or minimise the risks as far as is reasonably practicable that they place upon their workers for the profit and productivity their workers provide in return. The effectiveness of control measures can only be assessed through regular audiometric testing.

Audiometric testing is happening in other jurisdictions and is reasonably practicable.

Prevention is a primary focus of our health system. Preventative medicine is crucial in ensuring people live productive, fulfilling, and happy lives for as long as possible.

2. Do you think clause 58 (audiometric testing) of the WHS Regulation should come into effect in NSW?

Yes. We strongly recommend the clause come into effect in NSW. Workers need the strongest protections as per the intention of the Objects of the *Work Health and Safety Act 2011 (The Act)*:

- (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant,

3. What do you think the benefits would be if clause 58 of the WHS Regulation came into effect in NSW?

A reduction of preventable noise induced hearing loss and occupational deafness. This would lead to an immediate decrease in the cost on the workers compensation system as well as the cost on Medicare.

We would also encourage audiometric testing to occur independently of the workplace and not within the workplace by company employed doctors. Our experience of doctors employed directly by companies has not generally been a positive one.

Avoiding noise induced hearing loss and deafness would be cost saving, and more importantly it would avoid the great loss of quality of life that those with noise induced hearing loss and deafness suffer. These people would remain

productive members of society able to live satisfying and fulfilling lives.

4. Do you think there would be any regulatory difficulties for business or industry if clause 58 came into effect in NSW?

There will be costs involved. Particularly when testing is done by independent doctors under proper testing conditions regularly. There may be difficulties in enforcing proper testing in appropriate testing conditions. Enforcing effective audiometric testing regularly would most likely need the support of the Regulator, SafeWork NSW. But currently these costs are shifted. They are transferred to the worker, to the workers compensation system, to Medicare and onto families and society.

5. If clause 58 came into effect, do you think it would result in increased compliance costs for businesses?

When hearing loss is prevented, businesses will benefit, and there will be a reduction in workers compensation costs. Productivity would remain consistent, workers would remain in their employment and business would be encouraged to undertake effective safety control measures which in the first instance should eliminate the hazard. This is currently required by the law so allowing businesses to avoid this is allowing them to avoid their duty of care under section 19 of the Act.

6. Do you think that requiring mandatory audiometric testing will reduce the likelihood of workers developing noise-induced hearing loss from exposure to hazardous noise?

Absolutely it will. Provided it is done independently and regularly and appropriate control measures are applied where control measures are proving to be inadequate.

7. Do you support the repeal of clause 58 even if it may affect the operation of the model WHS laws?

We absolutely do not support the repeal of clause 58. Repealing this would not be within the spirit of the legislation and would not assist in preventing this very common form of worker harm and injury, as is the purpose of the legislation.

8. Do you think that the Work Health and Safety Regulation 2017 already contains provisions that adequately protect workers from hazardous noise, without clause 58 (audiometric testing) having effect in NSW?

No. From our combined experiences we see the effects daily of the current exemption of clause 58. We also see workplaces with very poor control measures despite the duties imposed by the legislation on the PCBU.

9. Do you have any other feedback on the Discussion Paper?

Unions NSW would be happy to provide further information to support our submission if required.

Conclusion

Unions NSW, Deafness Forum Australia, The Australian Workers Union (NSW Branch) and affiliated unions assert the continued exemption of clause 58 undermines the purpose of the legislation which is to protect workers from harm, injury and disease and prevent harm, injury and disease.

Given that national data from SafeWork Australia indicates that noise-induced hearing loss in Australia is the single greatest cause of permanent hearing loss in Australia, every step should be taken to protect workers from this hazard, as is required by the Act.

ⁱ The Model Work Health and Safety laws aim to provide for a harmonised approach to Work Health and Safety Regulation across Australia. Harmonised legislation was developed following the establishment of Safe Work Australia, the body tasked with undertaking a National Review of Work Health and Safety laws in 2018.