

CHAPTER 1

SCOPE OF VOLUME II OF THIS *MANUAL*

#1.00 INTRODUCTION

In 2002, the *Workers Compensation Act* underwent significant legislative amendment. This resulted in the restructuring of the *Rehabilitation Services & Claims Manual* into two volumes - Volume I and Volume II. This policy sets out an overview of the legislative changes and explains how readers of this *Manual* can determine which volume is applicable to their particular circumstances.

#1.01 *Legislative Amendments*

- (a) *Workers Compensation Amendment Act, 2002*
("Amendment Act, 2002")

The *Amendment Act, 2002* is also referred to as "Bill 49". It primarily amended the *Workers Compensation Act*:

- effective June 30, 2002 in relation to benefits for injured workers (including the calculation of average net earnings, duration of temporary benefits, integration of CPP disability benefits, indexing of compensation benefits, worker obligations to provide information, mental stress and permanent disability awards); and
- effective January 2, 2003 in relation to the establishment of a new Board of Directors as the governing body of the Workers' Compensation Board.

- (b) *Workers Compensation Amendment Act (No. 2), 2002*
("Amendment Act (No. 2), 2002")

The *Amendment Act (No. 2), 2002* is also referred to as "Bill 63". It primarily amended the *Workers Compensation Act* effective March 3, 2003 in relation to a new review/appeal structure and to the Board's authority to reopen matters previously decided or to reconsider previous decisions.

(c) *Skills Development and Labour Statutes Amendments Act, 2003*
(“*Amendment Act, 2003*”)

The *Amendment Act, 2003* is also referred to as “Bill 37”. It primarily amended the *Workers Compensation Act*:

- effective June 30, 2002 in relation to benefits payable as the result of the death of a worker (including the age of dependent children, the definition and integration of federal benefits and the calculation of benefits for childless spouses, for separated spouses and for dependants following the death of more than one worker); and
- effective December 31, 2003 in relation to the indexing of benefits payable as the result of the death of a worker, a psychologist’s diagnosis of a worker’s mental stress condition and lay advocates who provide assistance in workers’ compensation matters.

#1.02 Scope of Volume I and Volume II of this Manual

The *Rehabilitation Services & Claims Manual* was restructured into two volumes to facilitate the implementation of the new benefits policies resulting from the *Amendment Act, 2002*. The new policies were incorporated into Volume II, and the policies in place immediately prior to June 30, 2002 became Volume I. (For policies in effect prior to the Volume I policies, readers are referred to the Board’s archives.)

Volume I and Volume II apply to different categories of injured workers and surviving dependants. Whether the benefits for an injured worker are to be determined under Volume I or Volume II depends upon the transitional rules set out in policy item #1.03 below. It is the responsibility of decision-makers to determine whether Volume I or Volume II applies to each case before them. In terms of benefits for the surviving dependants of a deceased worker, the policies in Volume II apply where the worker’s death occurred on or after June 30, 2002.

Due to the fact that Volume I covers a finite group of injured workers and surviving dependants, its relevance to the workers’ compensation system will gradually decrease over time. It is anticipated that there will be very few future amendments to the policies in Volume I. Any major amendments will be listed, for convenience, in the Addendum to Chapter 1 in Volume I.

Volume II includes injuries and deaths occurring on or after June 30, 2002. Its relevance to the workers’ compensation system will therefore continue over time. Volume II policies will be subject to amendment from time to time, in the same manner as policies in other policy manuals. Amendments to policies in Volume II will be archived in the Board’s records and documented publicly.

#1.03 *Scope of Volumes I and II in Relation to Benefits for Injured Workers*

(a) **General**

Subject to subsequent amendments, Volume I sets out the law and policies that were in effect immediately prior to June 30, 2002 in relation to compensation for injured workers. For convenience, the law and policies in effect immediately prior to that date, as amended, will be called the “former provisions”.

Volume II sets out the law and policies in effect on or after June 30, 2002, as they may be amended from time to time, in relation to worker benefits. For convenience, the law and policy on or after that date, including any subsequent amendments, will be called the “current provisions”.

Unless otherwise stated, in Volume II of this *Manual* the “*Act*” refers to the *Workers Compensation Act*, as amended on or after June 30, 2002. The *Interpretation Act*, RSBC 1996, Chapter 238, applies to the *Act*, unless a contrary intention appears in either the *Interpretation Act* or the *Act*.

(b) **Amendment Act, 2002 (Bill 49) Transitional Provisions**

The following rules apply to determining whether the former provisions (Volume I) or the current provisions (Volume II) apply in a particular case. These rules are based upon the transitional rules in section 35.1 of the *Workers Compensation Act*, as amended by the *Amendment Act, 2002*.

1. The current provisions apply to an injury that occurs on or after June 30, 2002.
2. Except as noted in rules 3, 4, and 5, the former provisions apply to an injury that occurred before June 30, 2002.
3. Subject to rule 4 respecting recurrences, if an injury occurred before June 30, 2002, but the first indication that it is permanently disabling occurs on or after June 30, 2002, the current provisions apply to the permanent disability award with two modifications:
 - (i) 75% of average earnings (former provisions) is used for calculating the award rather than 90% of average net earnings (current provisions); and
 - (ii) no deduction is made for disability benefits under the Canada Pension Plan (former provisions).

Under this rule, for an injury that occurred before June 30, 2002, where the first indication of permanent disability also occurs before June 30, 2002, the permanent disability award will be adjudicated under the former provisions. Where the first indication of permanent disability is on or after June 30, 2002, the award will be adjudicated under the current provisions, using the modified formula described in (i) and (ii) above. The determination of when permanent disability first occurs will be based on available medical evidence.

An example of when this rule applies is where a worker, injured before June 30, 2002, shows no signs of permanent disability before that date. However, on or after June 30, 2002, the worker has surgery, which first causes permanent disability. The permanent disability award will be adjudicated under the current provisions, using the modified formula.

4. If an injury occurred before June 30, 2002, and the disability recurs on or after June 30, 2002, the current provisions apply to the recurrence.

This transitional rule applies only to a recurrence of a disability on or after June 30, 2002. It does not apply to permanent changes in the nature and degree of a worker's permanent disability. Where a worker was entitled to a permanent disability award before June 30, 2002 in respect of a compensable injury or disease, the former provisions apply to any changes in the nature and degree of the worker's permanent disability after that date.

For the purposes of this policy, a recurrence includes any claim that is re-opened for an additional period of temporary disability, regardless of whether the worker had been entitled to a permanent disability award before June 30, 2002. However, where the worker was entitled to a permanent disability award before June 30, 2002, the former provisions apply to any changes in the nature and degree of the worker's permanent disability following an additional period of temporary disability.

The following are examples of a recurrence:

- A worker totally recovers from a temporary disability resulting in the termination of wage-loss payments. Subsequently, there is a recurrence of the disability and the claim is re-opened for compensation.
- A worker is in receipt of a permanent partial disability award and the disability subsequently worsens so that the worker is

temporarily totally disabled. The claim is re-opened to provide compensation for a new period of temporary disability. The additional period of temporary disability is a recurrence to which the current provisions apply. However, a subsequent change in the nature and degree of the worker's permanent disability is adjudicated under the former provisions.

5. Regardless of the date of injury, the current provisions on indexing apply to compensation paid for an injured worker on or after June 30, 2002. Indexing of retroactive awards payable before June 30, 2002 will be based on the former provisions.

EFFECTIVE DATE: August 1, 2006

APPLICATION: Amendments to policy item #1.03(b)(4) that took effect on August 1, 2006 apply to all decisions, including appellate decisions, made on or after October 16, 2002.

HISTORY: December 31, 2003 – Amendments to reflect consequential changes to the *Act* resulting from the *Amendment Act, 2003*.

June 17, 2003 – Reorganization of format and addition of content to address the scope of Volumes I and II of the Manual.

October, 16, 2002 – Amendments to clarify meaning of "recurrence" for the purposes of section 35.1(8) of the *Act*.

#1.10 The Persons Covered by the Act

Not everyone is entitled to compensation under the *Act*, even if injured at work. To qualify for compensation, a person must be a "worker" employed by an employer covered by the *Act*. (1) Where a compensable injury or disease results in the worker's death, certain of the worker's relatives are entitled, but they must usually have been "dependants" during the worker's lifetime. (2)

#1.20 The Conditions under which Compensation is Payable

Not all injuries or diseases are compensable. The *Act* prescribes the type of injuries (3) and diseases (4) and the circumstances in which they are compensable. (5) Thus, for example, in the case of injuries, compensation is limited to personal injuries arising out of and in the course of employment. (6)

#1.30 The Type and Amount of Compensation

There are a variety of types of compensation provided under the *Act*:

1. payments to compensate the injured worker for loss of earnings caused by a temporary disability; (7)
2. permanent disability awards for actual or estimated loss of earnings; (8)
3. pensions to dependants for loss of support by a deceased worker; (9)
4. health care benefits; (10)
5. rehabilitation assistance. (11)

#1.40 Charging of Claims Costs

The cost of compensation is normally charged to the employer rate group to which the worker's employer belongs. The cost may also affect the employer's experience rating. There are special provisions which relieve the rate group and/or the employer in certain situations. (12)

#2.00 WORKERS' COMPENSATION BOARD

The Workers' Compensation Board is a corporation set up under the *Act* to administer the provisions of the *Act*. (13) The *Act* defines the word "Board" as the Workers' Compensation Board. (14) The use of the word "Board" throughout this *Manual* means the Workers' Compensation Board.

The Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety. The Board of Directors must set and supervise the direction of the Board.

EFFECTIVE DATE: February 11, 2003 (as to deletion of references to the Appeal Division and the former Governors)

APPLICATION: Not applicable.

#2.10 Jurisdiction over Claims Adjudication

The Board has exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law arising under the *Act*, and the action or

decision of the Board thereon is final and conclusive and is not open to review in any Court. (17) Thus, the Board has sole jurisdiction over the adjudication of claims for compensation under the *Act*.

EFFECTIVE DATE: February 11, 2003 (as to deletion of references to the Appeal Division and the former Governors)

APPLICATION: Not applicable.

#2.20 Application Of The *Act* And Policies

In making decisions, the Board must take into consideration:

1. the relevant provision or provisions of the *Act*,
2. the relevant policy or policies in this *Manual*; and
3. all facts and circumstances relevant to the case.

By applying the relevant provisions of the *Act* and the relevant policies, the Board ensures that:

1. similar cases are adjudicated in a similar manner;
2. each participant in the system is treated fairly; and
3. the decision-making process is consistent and reliable.

Section 99(2) of the *Act* provides that:

The Board must make a decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in the case.

In making decisions, the Board must take into account all relevant facts and circumstances relating to the case before them. This is required, among other reasons, in order to comply with section 99(2) of the *Act*. In doing so, the Board must consider the relevant provisions of the *Act*. If there are specific directions in the *Act* that are relevant to those facts and circumstances, the Board is legally bound to follow them.

The Board also must apply a policy of the Board of Directors that is applicable to the case before them. Each policy creates a framework that assists and directs the Board in its decision-making role when certain facts and circumstances come before them. If such facts and circumstances arise and there is an applicable policy, the policy must be followed.

All substantive and associated practice components in the policies in this Manual are applicable under section 99(2) of the *Act* and must be followed in decision-making. The term “associated practice components” for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 99(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term “business processes” for this purpose refers to the manner in which the Board conducts its operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. “If practicable” for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This policy item is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/CEO to address.

EFFECTIVE DATE: June 1, 2009 – Delete references to Board officers.
HISTORY: March 3, 2003 – Amendments to reflect the obligation of the Board in decision-making to apply a policy of the Board of Directors that is applicable to the case before it.
APPLICATION: Applies on or after June 1, 2009

NOTES

- (1) Chapter 2
- (2) Chapter 8
- (3) Chapter 3
- (4) Chapter 4
- (5) Chapters 3 and 4
- (6) Chapter 3
- (7) Chapter 5
- (8) Chapter 6
- (9) Chapter 8
- (10) Chapter 10
- (11) Chapter 11
- (12) Chapter 17
- (13) S.1 S.80
- (14) S.1
- ~~(15)~~ ~~S.81~~ **DELETED**
- ~~(16)~~ ~~S.82~~ **DELETED**
- (17) S.96(1)
- ~~(18)~~ ~~Chapter 12~~ **DELETED**
- ~~(19)~~ ~~Chapter 13~~ **DELETED**

