

DISCUSSION PAPER

1. TITLE

Draft 2009 – 2011 Compensation, Occupational Disease and Assessment Policy
Priorities Workplan

2. ISSUE

At issue is the draft 2009 – 2011 compensation, occupational disease and assessment policy priorities workplan for stakeholder review and comment.

3. OVERVIEW

3.1 2008 Workplan Overview

As of November 2008, the Compensation and Assessment Policy Department of the Policy and Research Division (“PRD”) completed the following projects related to compensation, occupational disease and assessments:

- Section 251 Review – Loss of Earnings Assessments – Policy Item #40.00
- Average Earnings and Exceptional Circumstances – Policy Item #67.60
- Disfigurement Awards – Policy Item #43.20
- Excess Cost Surcharge – Item AP1-42-1
- Coverage for Apprentices Attending Technical Training at Private Training Institutions
- Multiple Classification: Special Hazards and Classification of Unassigned Payroll – Item AP1-37-2

It is anticipated that the policy project on setting short term average earnings for workers who are injured while participating in non-WorkSafeBC (“WCB”) return to work programs will be referred to the Board of Directors (“BOD”) for decision in the last quarter of 2008.

Considerable work has also been undertaken during 2008 on the following projects which are scheduled for referral to the BOD for decision in 2009:

- Notification of Decisions – Policy Item #99.20
- Variable Shift Workers – Policy Item #65.01
- Reopenings Over Three Years – Policy Item #70.20

3.2 2009 – 2011 Workplan Priorities

Appendix A of this paper contains the draft 2009 – 2011 compensation and occupational disease workplan. Appendix B contains the draft assessments workplan.

The items outlined in the draft workplans were identified from a number of sources, including:

- Board of Directors;
- Senior Executive Committee of WCB;
- Stakeholders;
- WCB Operating Divisions;
- Review Division and Workers' Compensation Appeal Tribunal Decisions;
- Other jurisdictions; and
- Others.

The 2009 key priorities for the Compensation and Assessment Policy Department of the PRD include the following:

- Policies to support the Claims Management Solutions Project;
- Completion of the Chapter 10, Medical Assistance re-write;
- Chronic Pain – Review of Policy Items #22.35 and #39.02;
- Review of the Classification policies;
- Bronchogenic Cancer in Asbestos Exposed Workers; and
- Review of the Permanent Disability Evaluation Schedule.

It is anticipated that, as in prior years, issues will arise during the year that will require immediate attention and will result in a shifting of work priorities.

4. CONSULTATION

Stakeholders are invited to provide feedback on the draft workplans, and any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until **January 7, 2009**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Susan Hynes
Director, Compensation & Assessment Policy Department
Policy and Research Division
WorkSafeBC
PO Box 5350, Stn. Terminal

Vancouver, BC V6B 5L5
By fax: (604) 279-7599
By e-mail: policy@worksafebc.com

WorkSafeBC's governing body, the Board of Directors, will consider the opinions expressed by stakeholders before it adopts the proposed workplan.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX A

Policy and Research Division

2009 – 2011 Policy Priorities

Compensation and Occupational Disease Policy Workplan

1. Claims Management Solutions (“CMS”) Project – 2008/2009

Aligned with WorkSafeBC’s strategic plan, the CMS project is designed to refocus core claims-related business to increase the efficiency of adjudication, improve delivery of claims services, and enhance systems and financial control. The aim of CMS is to facilitate improved timeliness of claims-handling and payments, and earlier identification of workers requiring return-to-work assistance.

It is anticipated that policy issues will be identified during the development of the CMS project which will require policy guidance and policy development in order to ensure the effective implementation of the project. Currently two issues have been identified:

a) Forms Redesign

A Claims Front End project was undertaken to redesign claims-related forms in preparation for CMS implementation. Further to this review, various policy items in the *Rehabilitation Services & Claims Manual* (“RS&CM”) reference specific forms and require updating. This project involves updating the RS&CM so that the correct claims-related forms are referenced.

b) “Board Officer” and Other Similar Titles

The RS&CM currently references claims-related actions being carried out by board officers, case managers, claims adjudicators and other officers of the Board. In addition, the RS&CM contains many other outdated references to departments, government agencies and other titles which require updating. Work has already begun on this project, which involves a line by line revision of the RS&CM, including replacement of the various job titles with “the Board” to reflect the legislation and wording in other policy manuals.

2. Medical Assistance, Re-write of Chapter 10 of the RS&CM – 2008/2009

This project involves a review of the 87 policies contained in Chapter 10. The re-write of the Chapter 10 policies consists of putting the policies into the new format and addressing various issues that have been raised, such as:

- Other Health Care Providers – re-writing policy to reflect changes to health care services provided to workers, such as physiotherapy, acupuncture and massage therapy.
- The Prescription of Narcotics and Other Drugs of Addiction – review of the current policy to ensure that it reflects the latest medical and scientific information.
- Respite Care – guidance on the provision of respite care is required.
- Review of discretionary allowances and benefits provided to injured workers, such as:
 - (i) those provided to seriously injured workers;

- (ii) those regarding travel expenses and subsistence, related to workers' receipt of health care; and
- (iii) those related to childcare and homemaker services.

Considerable work has been undertaken on this project and it is anticipated that draft proposed policies will be released for stakeholder consultation in the summer of 2009.

3. Variable Shift Workers – Policy Item #65.01 of the *RS&CM* – 2008/2009

Current policy does not specifically set out how to establish short-term average earnings for workers who are regularly employed on an on-call basis for more than one employer at differing wage rates, such as film workers. In these situations, an issue has arisen regarding whether it is more appropriate to establish average earnings with reference to earnings on the date of injury or whether earnings based on the three month period immediately preceding the worker's date of injury is more reflective of a worker's average earnings.

Consultation on this issue occurred during the summer of 2008. Based on stakeholder feedback, further work is being undertaken and a revised discussion paper with draft policy will be released for consultation in the fourth quarter of 2008.

4. Reopenings Over Three Years – Policy Item #70.20 of the *RS&CM* – 2008/2009

Section 32(1) of the *Workers Compensation Act* ("Act") provides that, where there is a recurrence of a temporary disability after a lapse of three years following the occurrence of the injury, WorkSafeBC may calculate the compensation as if the recurrence was the happening of the injury.

This project involves a review of policy item #70.20 to ensure it is consistent with the wording of section 32(1) of the *Act* along with a review of the appropriate date to use to determine the application of the policy. This project will also include a review of the application of the policy to persons with personal optional protection.

Work has begun on this project and it is scheduled to be referred to the Board of Directors for approval to consult in 2009.

5. Enhancement/Devaluation – 2008/2009

This policy project will involve a review of policy items #39.12 and #39.13 of the *RS&CM* to determine whether policy amendments are advisable to ensure consistency of application. In particular, consideration will be given to clarifying the approaches/methods to calculate devaluation and enhancement.

6. Aggravation of a Disease – Policy Item #26.55 of the *RS&CM* – 2008/2009

Policy item #26.55 provides guidance with respect to compensability for a disability resulting from an aggravation of a pre-existing disease by a work activity. A concern has been raised that the policy is unclear as to whether certain diseases should be excluded, such that any worsening of the condition would not be considered compensable or whether there is a requirement for the pre-existing disease to be recognized as an "occupational disease" by WorkSafeBC. If it need not be recognized, additional guidance may be required as to when the aggravation is compensable.

7. Notification of Decisions – 2008/2009

Policy item #99.20 of the *RS&CM* sets out when WorkSafeBC is required to provide written notification of a decision. Written notification is currently provided where a decision is adverse to the worker or an employer has protested a decision to allow a claim. Where a claim is allowed and there is no protest from the employer, the policy provides that no written decision is required.

At issue is whether a decision has to be documented and/or communicated to the affected parties in some form before it can be considered to have been “made” for the purposes of the reconsideration and appeal provisions of the *Act*. A secondary issue is the distinction between the terms “reject” and “disallow”, which has created some confusion among officers and has led to incorrect coding of claims.

Consultation on this issue occurred during the summer of 2008. Based on stakeholder feedback, further work is being undertaken.

8. Chronic Pain – Policy Items #22.35 and #39.02 of the *RS&CM* – 2009

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is proposed in order to evaluate their effectiveness and to improve consistency in the adjudication and management of chronic pain.

9. Compensation for Bronchogenic Carcinoma (Lung Cancer) in Asbestos Exposed Workers – 2009

Schedule B item #4(a) provides a presumption of work causation in favour of a worker who has developed a primary site lung cancer which is associated with either asbestosis or bilateral diffuse pleural thickening, or fibrosis measuring a specified size.

At issue is whether these descriptions are current and supportable based on the most current medical science. Another issue is whether WorkSafeBC should consider the recognition of primary site lung cancers in workers who have had significant exposures to asbestos in British Columbia, but who do not display radiographic evidence of benign asbestos-related pleural or lung disease. This second issue has arisen out of recent studies and reports including the “Report by the Industrial Injuries Advisory Council” (United Kingdom) dated July 2005.

In October 2006, the Research Secretariat released a request for proposals for a systematic review of available literature on Bronchogenic Carcinoma (Lung Cancer) in Asbestos Exposed Workers. The results of this review will form the basis for a comprehensive analysis and development of WorkSafeBC policy options that could be applied in the adjudication of lung cancer claims.

The peer reviewed report was received in October 2008 and work has commenced to analyze the report and identify the issues that require policy development.

10. Carpal Tunnel/Cubital Tunnel Review – 2009

The Research Secretariat is funding a systematic review on the causal relationship between work-related activities and the development of upper limb nerve entrapment disorders such as carpal tunnel and/or cubital tunnel syndrome. It is anticipated that the systematic review will be completed in 2009. Following receipt of the review, policy review will be undertaken to determine what, if any, changes are required to policy items #27.32, *Carpal Tunnel Syndrome* and #27.33, *Other Peripheral Nerve Entrapments and Stenosing Tenosynovitis* of the *RS&CM*.

11. Experience Rating Exclusions for Subsequent Non-Compensable Incidents – 2009

Policy item #34.55, *Subsequent Non-Compensable Incidents*, was created as part of the policy project to review Chapter 3 in the *RS&CM*, Volume II, to replace policy item #22.14, *Treatment Unrelated to Injury*. It comes into effect on January 1, 2010. The new policy defines “subsequent non-compensable incident” and directs WorkSafeBC to estimate when a worker’s disability resulting from a compensable injury (and therefore the worker’s wage-loss benefits) would end, if he or she is disabled when a subsequent non-compensable incident occurs.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, WorkSafeBC makes a new decision as to whether the disability, or increased disability, is due to the compensable injury or the subsequent non-compensable incident. If the disability is due to the compensable injury, WorkSafeBC may continue to pay wage-loss benefits, even if the reason for the continued disability from the compensable injury is that the subsequent non-compensable incident has delayed the worker’s recovery.

At issue is whether an experience rating adjustment under section 42 of the *Act* should be given to employers whose workers’ disability from a compensable injury is aggravated, or recovery is delayed, by a subsequent non-compensable incident.

12. Room & Board – Policy Item #68.22 of the *RS&CM* – 2009

At issue is a review of policy item #68.22 to ensure that it is consistent with section 96(5) of the *Act* which provides that the Board may not reconsider a decision or order if more than 75 days have elapsed since the decision or order was made.

This policy provides guidance on when to include the dollar value of room and board in average earnings. Situations have arisen where the provision of room and board changes during the claim and after 75 days has elapsed from the date of the original wage loss decision. This is creating adjudicative problems as workers seek a reconsideration of the original wage loss decision.

13. Tinnitus – 2009

Policy item #31.00, *Hearing Loss*, of the *RS&CM* provides that tinnitus alone is not considered a condition for which a permanent disability award can be granted. However, tinnitus in combination with a permanent degree of hearing loss may have an impact on a worker’s employability and affect the amount of the resulting award.

At issue is a review of the current medical and scientific literature related to this condition to determine whether the current policy is appropriate. The PRD has commissioned a review of the medical and scientific literature on this issue. The final report is expected to be received at the end of 2008.

14. Permanent Disability Evaluation Schedule (“PDES”) – 2009/2010

At issue is the ongoing review of the percentages listed on the PDES to ensure that the PDES remains current with emerging medical and scientific knowledge. This issue is complex and will require additional research and analysis including significant cross-jurisdictional analysis of schedules, methods of application and scientific bases. Included in this project will be a review of the Additional Factors Guidelines to ensure it is also medically current and clear enough to ensure consistency in application.

15. Average Earnings, Chapter 9 of the *RS&CM* – 2009/2010

This project is part of the overall plan to redevelop the *RS&CM*, Volume II on a chapter by chapter basis. This project will involve putting the policies into the new format, conducting a review of the Chapter 9 policies on average earnings as a whole and addressing various issues that have been raised, such as:

- Review of policy item #65.02, *Workers with Two Jobs*, to determine if clarification is required with respect to calculation of wage rates for persons with two jobs. In addition, a review of policy item #35.22, *Calculation of Earnings for Workers with Two Jobs*, is required to ensure that the two policies are consistent.
- Consideration of whether additional policy guidance is required with respect to calculation of long-term average earnings for workers with multiple employment where more than one of the average earnings exceptions appears to be applicable.

Work is scheduled to commence on this project in 2009.

16. Skin Cancer – 2009/2010

Skin cancer is the most commonly diagnosed form of cancer. Schedule B item #4(g) provides a presumption of work causation in favour of a worker who has developed a primary site skin cancer where there is prolonged contact with coal tar products, arsenic or cutting oils or prolonged exposure to solar ultraviolet light.

At issue is whether this description is current and supportable based on the most current medical science. Another issue is whether the specific types of skin cancer should be set out in the Schedule. A review of the science will be undertaken as part of this project.

17. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the *RS&CM* – 2009

Policy item #26.02 addresses the recognition of an occupational disease under section 6(4.2) of the *Act* as a “disease that is peculiar to or characteristic of a particular process, trade or occupation”. To date, only one disease has been recognized in this manner – osteoarthritis of the first carpo-metacarpal joint in physiotherapists who perform deep friction massage.

Policy item #26.02 states that this recognition is limited to factual situations substantially the same as those applied to the worker in *Workers’ Compensation Reporter* (“*WCR*”) Decision No. 231, dated February 9, 1977. *WCR* Decision No. 231 is one of two remaining *WCR* Decisions that have yet to be retired from official policy status. The general reference in policy item #26.02 to *WCR* Decision No. 231 is problematic, as accessibility to old *WCR* Decisions is limited. The old *WCR* has not been published in over ten years, nor is it available electronically.

At issue is a review of the scientific and medical literature related to this condition to determine whether the current recognition is current and supportable. This project will also facilitate the retirement of *WCR* Decisions. A medical and scientific literature review was completed in mid-2007 and is currently out for peer review. Any policy development that flows from the report will be done in 2009.

18. Suspension of Benefits – 2009/2010

Sections 57(2) and 57.1(2) of the *Act* give WorkSafeBC the authority to reduce or suspend compensation to a worker in certain situations of worker noncompliance. Current policy does not provide sufficient guidance to determine whether the resumption of full benefits (after a suspension is lifted) includes retroactive entitlement to the benefits that were reduced or suspended. Policy is also silent with respect to the type or extent to which compensation is to be reduced or suspended.

19. Tendinosis – 2009/2010

Schedule B lists “Hand-wrist tendinitis, tenosynovitis (including deQuevain’s tenosynovitis)” and “Shoulder tendinitis” as occupational diseases. Policy item #27.12 of the *RS&CM* confirms that a claim made by a worker diagnosed with hand-wrist tendinitis/tenosynovitis or with shoulder tendinitis where no specific event or trauma, or series of events or traumas, has occurred, will be treated as a disease and will be adjudicated in accordance with the policies set out in Chapter 4 of the *RS&CM*. The policy item provides the guiding principles when interpreting Schedule B. As well, the policy details risk factors typically associated with these conditions to assist in determining whether it is biologically plausible that the hand-wrist tendinitis/tenosynovitis has resulted from the work activities.

It appears that there is a growing acceptance of the condition “tendinosis” in the medical community. As a result, WorkSafeBC is receiving an increasing number of medical reports where the diagnosis is tendinosis. An ‘itis’ condition is characterized by inflammation and typically will heal within 6 weeks. However, tendinosis is considered a chronic deterioration of the tendon and does not necessarily have the same risk factors or treatment protocols as tendinitis.

At issue is whether WorkSafeBC should recognize tendinosis as an occupational disease and whether policy should be developed to provide guidance on the risk factors and treatment protocols for tendinosis.

20. Multiple Sclerosis as a Compensable Consequence – 2009/2010

Policy item #22.31, *Multiple Sclerosis*, of the *RS&CM* includes the following statements, “While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is traumatic injury.”

This policy project will involve a review of the current medical and scientific literature with respect to whether multiple sclerosis may be precipitated by a traumatic injury.

21. Whole Body Vibration – Policy Item #26.50 of the *RS&CM* – 2010

Worker and Employer Services Division has requested policy direction regarding the possible relationship between occupational exposure to Whole Body Vibration (“WBV”) and back injuries/disorders. There are conflicting views in the medical literature as to whether there is a causal link between WBV and certain back disorders.

Policy item #26.50 provides that disability can occur due to the natural aging process. Where degeneration is a kind that affects the population at large due to multi-factoral causes, it is difficult for WorkSafeBC to measure or determine whether the occupation had any significant effect in advancing the pace of the degeneration compared with other occupations.

For a disability to be compensable, evidence must establish that the work activity brought about a disability that would probably not otherwise have occurred, or that the work activity significantly advanced the development of a disability that probably would not otherwise have occurred until later.

This project will involve a review of the scientific and medical literature on back disorders in workers exposed to whole body vibration. The results of this review will form the basis for a comprehensive analysis and development of policy options for stakeholder consultation.

22. Compensation on the Death of a Worker, Survivor Benefits – 2010

A series of policies in Chapter 8 of the *RS&CM*, Volume II pertain to calculation and apportionment of compensation payable on the death of a worker. Concerns have been raised that the existing policies have resulted in unclear interpretation and/or application of sections 10 and 17 of the *Act*, including provisions pertaining to payment and apportionment of benefits to children. This policy project will involve a review of the current policies and consideration of options for revisions to the applicable policies to provide additional or clearer guidance.

APPENDIX B

Policy and Research Division

2009 – 2011 Policy Priorities

Assessments Workplan

1. Inclusion of Shareholder Dividends in Assessable Payroll – 2008/2009

Item AP1-38-2 of the *Assessment Manual* (“AM”) provides that dividends are not considered part of payroll unless paid for services rendered to the company. Current practice of the Assessment Department, however, is to include dividend payments in assessable payroll where they exceed T4 amounts, without regard to the value of the shareholders’ activities. A review of the policy is required to address this inconsistency.

2. Combining Experience Rating of Affiliated Firms – 2009

The Assessment Department has raised concerns that there is no specific policy to address affiliated firms acting in concert in business. The proposed project would determine whether affiliated firms should share a common experience rating.

3. Procedure for Applying Sections 47(2) and (3) of the Act – 2009

Policy relating to sections 47(2) and (3) of the *Workers Compensation Act* (“Act”) are contained in policy item #115.11 of the *Rehabilitation and Services Manual* (“RS&CM”). For reasons of consistency and transparency, the Assessment Department has requested that the policy be updated to remove outdated practice information and moved to the *AM*.

4. Classification Policy Review – 2009

The Assessment Department has requested a review of the classification policies to address the following two issues:

a) Adoption of an Annual Decision Cycle for Firm Classifications

The classification of a firm within the Classification System is a key component in the determination of a firm’s annual assessment. The other two components of a firm’s annual assessment, the base rate and experience rating adjustment, are annual processes, which allow WorkSafeBC to make necessary adjustments to the assessment system to maintain an adequate accident fund.

Decisions regarding the classification of a firm within the Classification System are not currently made annually. Once a classification decision is made, the Assessment Department has 75 days in which to reconsider the decision under section 96(4) of the *Act*. After 75 days, a change in the classification decision can only be made where there is a change in the firm’s business operations, firm non-compliance or a change in classification policy.

As a result, even when the Assessment Department recognizes that a firm is misclassified, there is time-limited ability to correct. The impact of this is cumulative. Over time, more classification errors will likely enter the system, and the data generated from the system used to set base rates will become progressively less reliable.

A possible approach to deal with this challenge is for the Assessment Department to make decisions concerning each firm's classification on an annual basis when each firm's experience rating adjustment and the base rates for all classifications are set. This could allow the correction of misclassified firms on an annual basis. The Assessment Department seeks a review of the proposal to adopt an annual classification decision cycle and of the corresponding classification policies.

b) Consistent Language in Classification Policies

The *AM* came into effect in 2003. Since then, WorkSafeBC has done several reviews of specific classification policies. A review of all five classification policies is required in order to determine whether to consolidate some or all of the policies, to ensure consistency between policies and to ensure consistency in the description and usage of terms in the policies.

The aim of this project is to improve the consistency in interpretation and application of the policies, by ensuring that the language used in the classification policies is consistent.

5. Clarifying the Obligation of Firms to Maintain and Furnish Records – 2009

An issue that has arisen on review and appeal is the failure of some firms to keep complete and accurate payroll information and to supply such information to WorkSafeBC. This includes financial data and information regarding the workplace status of subcontractors, all of which is required to determine assessable payroll figures. The *Act* provides, under section 38(1), that maintaining and furnishing this information is the responsibility of all employers. However, on review and appeal, some firms have argued that WorkSafeBC has power of inquiry under the *Act* and therefore is responsible for performing its own investigation to obtain the required information.

A review of the *AM* policies concerning payroll reporting and audits is required to clarify WorkSafeBC's power of inquiry and a firm's responsibility to keep and supply payroll records as required by the *Act*. At issue is whether there is adequate guidance in policy with respect to the following:

- an employer's duty to compute and furnish an estimate of the probable amount of its assessable payroll;
- an employer's duty to maintain necessary records;
- WorkSafeBC's authority with respect to audit and inquiry; and
- the nature and scope of WorkSafeBC's audit function.

6. Contractor Liability – Item AP1-51-1 – 2009

At issue is a review of the minimums in effect for the exemptions provided by Item AP1-51-1 - *Contractor Liability* for prime contractors and homeowners. Currently the thresholds, which have been in place since 1985, are set at \$200 and \$500 respectively in Appendix A of the *AM*. These minimum amounts require review to determine whether adjustments are necessary.

7. Section 4 of the Act and the Fishing Industry Regulations – 2010

The Assessment Department is undertaking a review of the fishing industry both in terms of status determination and assessments obligations. It is anticipated that following this review, a review of the *Fishing Industry Regulations* may be required in order to clarify assessment obligations.