

DISCUSSION PAPER

1. TITLE

Draft 2006 – 2008 Compensation, Occupational Disease and Assessments Policy Priorities Workplan

2. ISSUE

At issue is the draft 2006 – 2008 policy priorities workplan for stakeholder review and comment.

3. OVERVIEW

3.1 2005 Workplan Overview

As of the end of October 2005, the Worker and Employer Policy Department of the Policy and Research Division (“PRD”) completed the following projects related to compensation, occupational disease and assessments:

- Section 251 Decision – Recurrence of Disability
- Average Earnings and Equipment Expenses
- Transfer of Experience Between Firms
- Changes to the Payroll and Audits Assessment policies
- Section 39(1)(e) – Relief of Costs for a Pre-Existing Disease, Condition or Disability
- Casual workers
- Assessment Operating Strategy – Penalties on Non-reporting and Non-remitting of payroll

The following projects are scheduled for referral to the Board of Directors in the last quarter of 2005:

- Fishing Industry Policy and Regulation Changes
- Section 251 – Calculation of Benefits for Dependent Children

Considerable work has also been undertaken on the following key projects which are scheduled for approval in 2006:

- Re-write of Chapter 3, Compensation for Personal Injury
- Asthma and Dermatitis
- Determining Workplace Status – Independent Operators
- Employer Registration Effective Date Limit

3.2 2006 – 2008 Workplan Priorities

TAB A of this paper contains the draft 2006 – 2008 compensation and occupational disease workplan. TAB B contains the draft assessments workplan.

The 2006 key priorities for the Worker and Employer Policy Department of the PRD include the following:

- completion of the Chapter 3 re-write;
- policy changes that are anticipated as a result of the Claims Management Solutions (“CMS”) project;
- the status determination/independent operators project;
- asthma and dermatitis; and
- the re-write of Chapter 10, Medical Assistance.

To date, there is still a great deal of uncertainty regarding the nature and extent of the policy changes stemming from the CMS project, which is a key priority for WorkSafeBC. The potential workload will become clearer during the remainder of 2005 and may require adjustments to the 2006 workplan as a consequence.

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. In addition, it is anticipated that additional section 251 issues will be received from the Workers' Compensation Appeal Tribunal Chair that will result in a shifting of priorities in order to meet the legislated 90-day timeframe for response.

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 November 20, 2005. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Susan Furlong
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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*.

TAB A

2006 – 2008 Policy Priorities

Compensation and Occupational Disease Workplan

1. Compensation for Personal Injury, Re-write of Chapter 3 of the Rehabilitation Services & Claims Manual (“RS&CM”) – 2006

This project involves a review of the 90 policies contained in Chapter 3. The basic provision governing a worker's right to compensation for personal injury is section 5(1) of the *Act*. This section provides that where, in an industry within the scope of the *Act*, personal injury or death arising out of and in the course of employment is caused to a worker, compensation as provided by the *Act* shall be paid by WorkSafeBC. Chapter 3 of the *RS&CM* sets out the policies which assist decision makers in determining whether an injury arose out of and in the course of employment.

Chapter 3 policies have developed over time, many from the old *Workers' Compensation Reporter* (“*WCR*”) decisions and as a result contain a significant amount of outdated references and examples. Section 5 and the Chapter 3 policies are also the most commonly appealed issues.

The re-write of the Chapter 3 policies consists of clarifying the policies, removing outdated examples and references and placing the policies into the new policy document format. This project also includes a review of policy item #7.10 on Volunteer Firefighters.

Work on this project commenced in 2005. Consultation on the proposed policy changes is scheduled to commence mid-2006.

2. Claims Management Solutions (“CMS”) Project – 2006/2007

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.

3. Asthma – Policy Item #29.20 – 2006

This project is primarily focused on the underlying nature of occupational asthma. At issue is whether a worker who is asymptomatic when removed from the aggravating workplace substance has a permanent impairment.

Considerable work was undertaken on this project during 2005 including the commissioning of an expert scientific review of the issue and a peer review of that report. Consultation is scheduled to commence on this project in early 2006.

4. Contact Dermatitis – Policy Item #30.50 – 2006

This project is primarily focused on the underlying nature of occupational contact dermatitis. At issue is whether a worker who is asymptomatic when removed from the aggravating workplace substance has a permanent impairment.

Considerable work was undertaken on this project during 2005 including the commissioning of an expert scientific review of the issue and a peer review of that report. Consultation is scheduled to commence on this project in early 2006.

5. Medical Assistance, Re-write of Chapter 10 of the RS&CM – 2006

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 Provision of Hearing Aids – Reviewing current policy that provides that "the Board will provide such hearing aids as is reasonable and necessary to achieve optimum satisfaction for the worker."
- Reviewing of discretionary allowances and benefits provided to injured workers, such as:
 - (i) Those provided to seriously injured workers; and
 - (ii) Those regarding travel expenses and subsistence, related to workers' receipt of health care.

6. Return to Work Strategy – 2006

As part of the Board of Directors ("BOD") Health and Safety Initiative in 2005, a number of questions were posed to worker and employer stakeholders regarding return to work and duty to accommodate. This project will examine the findings of the BOD Health and Safety Initiative with respect to return to work and duty to accommodate. In addition, the BOD has asked for work to be undertaken on whether financial/rate reduction incentives could be incorporated into any future return to work or duty to accommodate strategy.

7. Average Earnings for Self-employed Workers – 2006

The issue is what components of a self-employed person's business income should be included in the calculation of average earnings. Decisions on this issue are commonly disputed and appealed.

Work on this project commenced in late 2005 with consultation scheduled to commence in early 2006.

8. Chronic Pain – Review of Policy Items #22.35 and #39.02 – 2006

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 the effectiveness of these policies and to improve consistency in the adjudication and management of chronic pain.

9. Preventative Measures and Exposures – Review of Policy Item #32.60 – 2006

A review of this policy is required to clarify WorkSafeBC's responsibility for preventative or curative measures in the event of an exposure to a disease or contaminant such as HIV/AIDS and Hepatitis C.

10. Sexual Assault and Sexual Harassment – 2006

Current policy is silent on the issue of sexual assault and harassment. A definition of these terms and guidance in policy on the adjudication of these types of claims is sought.

11. Tendinitis, Tenosynovitis and Bursitis – Policy Item #26.03 – 2006

When Schedule B was amended in March 2000 with respect to the descriptions of tendinitis and bursitis, it had the unintended consequence of reducing the types of claims that could be adjudicated with the benefit of the section 6(3) Schedule B presumption. Issues have been raised on appeal that conditions such as Achilles tendinitis or elbow bursitis have "not been recognized by the WCB as an occupational disease because they are not listed in Schedule B or in policy item #26.03 which sets out those diseases recognized by regulation of general application". It is proposed that the list of diseases in policy item #26.03 be expanded to include "tendonitis or tenosynovitis" and "bursitis".

12. Deduction of Probable Income Taxes, Policy Item #71.10 – 2006

At issue is a review of policy item #71.10, *Short-term Average Net Earnings* to ensure consistency with the legislation in cases where probable income taxes are deducted where the worker is not actually paying taxes.

13. Effective Date/Policy Application Terminology – 2006

At issue is the development of a general policy to clarify for readers of the *RS&CM* the intent of the effective date and application statements of policies.

14. Compensation for Bronchogenic Carcinoma (lung cancer) in Asbestos Exposed Workers – 2006-2007

Schedule B item #4(a) provides a presumption to a worker who has developed a primary site lung cancer which is associated with either asbestosis or bilateral diffuse pleural thickening. 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 including the "Report by the Industrial Injuries Advisory Council" (United Kingdom) dated July 2005.

15. Whole Body Vibration – Policy Item #26.50 of the *RS&CM* – 2006/2007

Occupational Disease Services requires 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 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-factorial 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 the 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.

A comprehensive review of the medical/scientific literature conducted by an acknowledged expert in epidemiology is required. The results of this review will form the basis for a comprehensive analysis and to develop WorkSafeBC policy to be applied in the adjudication of WBV claims.

16. Reopenings Over Three Years – Policy Item #70.20 – 2007

Section 32(1) of the *Act* provides that where there is a recurrence of a temporary disability after a lapse of 3 years following the occurrence of the injury, WorkSafeBC may calculate the compensation as if the recurrence was the happening of the injury. A review of policy item #70.20, is required to ensure it is consistent with the wording of section 32(1) of the *Act*.

17. Wage-Loss Benefits, Re-write of Chapter 5 of the *RS&CM* – 2007

This project will involve review of the Chapter 5 policies and the associated practices and procedures. It will include a review of the policies related to the termination of benefits. Section 31.1 of the *Act* directs the termination of periodic payments where a worker ceases to have the disability for which the periodic payment is to be made. Policy item #35.30, *Duration of Temporary Disability Benefits*, of the *RS&CM*, Volume II, references section 31.1 and provides that in all cases, benefits will be terminated under sections 29(1) and 30(1) where, notwithstanding the existence of a temporary total or temporary partial impairment, the worker is suffering no loss of earnings as a result of the work injury. Specific policy reviews to ensure consistency with section 31.1 of the *Act* will include:

- Policy item #34.32 – *Strikes and Other Lay-Off on Day Following Injury.*
- Policy item #34.51 – *Other Factors Prevent Return to Employment.*
- Policy item #34.52 – *Workers Undergoing Educational or Training Program.*

18. Osteoarthritis of the First Meta-Carpal Joint in Physiotherapists – Policy Item #26.02 – 2006/2007

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 Decision No. 231. No further guidance is provided by the policy item.

Decision No. 231 is one of the remaining policy Decisions in the old *WCR* that has yet to be retired. The general reference in policy item #26.02 to 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 medical science related to this condition to determine whether the current recognition is appropriate. A review of the medical literature on this subject is required.

19. Average Earnings, Chapter 9 of the *RS&CM* – 2007

This project is part of the overall plan to redevelop the *RS&CM*, Volume II on a chapter by chapter basis. A review of the average earnings policies and the associated practices and procedures is proposed.

20. Permanent Disability Awards, Chapter 6, *RS&CM* – 2008

This project is part of the overall plan to redevelop the *RS&CM*, Volume II on a chapter by chapter basis. A review of permanent disability awards and the associated practices and procedures is proposed.

21. Permanent Disability Evaluation Schedule (“PDES”) – 2008

At issue is the development of a process for ongoing review of the PDES.

The Core Reviewer recommended that WorkSafeBC develop an appropriate process by which it can conduct an 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.

22. Claims Procedures, Chapter 12 of the *RS&CM* – 2008

This project is part of the overall plan to redevelop the *RS&CM*, Volume II on a chapter by chapter basis. Project includes the following:

- Rewrite Chapter 12 into new policy format;
- Remove all procedural requirements;
- Update Freedom of Information and Protection of Privacy policies; and
- Develop general assignment of authority policy.

23. Non-Reporting/Mis-Reporting of Claims – Ongoing Project

The project will consider possible policy approaches to addressing non-reporting and mis-reporting of claims by employers and workers.

TAB B

2006 – 2008 Policy Priorities

Assessments Workplan

1. Independent Operator — AP1-1-1 through AP1-1-7 – 2006

The determination of the status of a person by the Assessment Department is complex and subjective. This decision has impacts on both Compensation and Prevention decision-making.

Policy currently does not contain a comprehensive test to determine whether the person is a worker, employer or independent operator. This project involves the following issues:

- a) clarification of the criteria to distinguish between workers and independent operators (i.e., self-employed individuals); and
- b) a review of the status of "labour contractor", a term found in WorkSafeBC policy, but not contained in the *Act*.

Work was begun on this project in 2005.

2. Retroactivity Limits on Employer Registration Effective Dates — AP1-38-1 – 2006

This project considers whether the current limits on how far back the effective date of an employer registration may go (policy now provides up to January 1 of the prior year) are adequate in terms of equitable collection of assessments.

Work was begun on this project in 2005. Consultation on this item is expected to conclude in early 2006.

3. Pre-Clearance to Qualified Employers — AP1-51-1 – 2006

Currently, clearance letters are provided by the Assessment Department to advise firms and individuals of possible section 51 liabilities if another registered individual or firm is hired for subcontracted work. For the most part, these letters are retroactive in application, as most registered firms make payments in respect of past periods of time. This project is associated with the "customer service" improvements of the Assessment Operating Strategy project, and will consider whether to adopt a pre-clearance program for existing registered employers and independent operators (prime contractors and subcontractors) with a history of good standing in reporting payroll and remitting premiums. Any policy changes would require system changes to be developed by the Assessment Department.

4. Experience Rating and Fatal Claims — AP1-42-1 – 2006

This project will consider the current way in which fatal claims' costs are treated within the experience rating system, and whether there are better ways to provide incentives for employers to prevent such claims either within the experience rating system or outside of it.

5. Reconsideration of Decisions — AP1-96-1 – 2006

This project will involve a review of *Assessment Manual* policy on reconsideration of prior decisions to ensure consistency with Policy item C14-103.01, *Reconsiderations*, in the *Rehabilitation Services and Claims Manual*, Volume II.

6. Fishing Industry Regulations — 2006/2007

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 assessments obligations.

7. Employer Compliance with Reporting & Remitting Requirements — Ongoing

A number of concerns have been raised regarding employer non-compliance with the reporting and remittance requirements of the *Act*. The Priorities and Governance Committee of the Board of Directors has directed the PRD and the Finance Division to evaluate the existing law and policy and determine whether there are items that are not being applied, or policies that can be developed, to assist in addressing this issue.