

DISCUSSION PAPER

1. TITLE

Draft 2018 – 2020 Policy Workplans

2. ISSUE

The draft 2018 – 2020 compensation, occupational disease, assessment, and occupational health and safety (“OHS”) policy priorities workplans (“Policy Workplans”) are presented for stakeholder review and comment.

3. BACKGROUND

The Policy, Regulation and Research Division (“PRRD”) conducts consultation to establish workplans setting out policy priorities for compensation, occupational disease, assessments, and OHS. The feedback received as part of the consultation is presented to WorkSafeBC’s Board of Directors (“BOD”) to determine the PRRD’s policy priorities for the year.

The items outlined in the draft Policy Workplans are identified from a number of sources, including:

- the BOD
- the Senior Executive Committee of WorkSafeBC
- stakeholders
- WorkSafeBC operating divisions
- Review Division and Workers’ Compensation Appeal Tribunal decisions
- other jurisdictions

What follows are the proposed Policy Workplans, setting out the PRRD’s priorities for 2018 – 2020.

4. COMPENSATION AND OCCUPATIONAL DISEASE POLICY

4.1 2017 Workplan Overview

As of November 2017, the PRRD has completed the following projects related to compensation and occupational disease:

- Clothing Allowances
- The Permanent Disability Evaluation Schedule (“PDES”) Annual Review (2016)
- Updating Statutory Presumptions in the *Rehabilitation Services & Claims Manual*, Volume II (“RS&CM”)

The following project is currently out for public consultation:

- Prior Shoulder Dislocations – Item C3-16.10, *Pre-Existing Conditions – Specific Injuries*, Section C, of the *RS&CM*

Considerable work has also been undertaken in 2017 on the following projects. It is anticipated they will be referred to the BOD later in 2017 or early in 2018:

- Measurement of Earnings Loss – Policy Item #40.13 of the *RS&CM* (referred for decision)
- Schedule B of the *Workers Compensation Act* (“*Act*”) – Typographical Error (referred for decision)
- PDES Annual Review (2017) (referred for approval to consult)
- Average Earnings, Chapter 9 of the *RS&CM* (referred for approval to pre-consult)

4.2 2018 – 2020 Workplan Priorities

Appendix A contains the draft 2018 – 2020 compensation and occupational disease policies workplan. The 2018 key compensation and occupational disease policy priorities for the PRRD include the following:

- Chronic Pain
- Mental Disorder Policies, section 5.1 of the *Act*
- Psychological Disability Awards
- Average Earnings, Chapter 9 of the *RS&CM*

The following projects are proposed for addition to the 2018 workplan:

- Schedule D of the *Act*, Non-traumatic Hearing Loss
- Newly Recognized Occupational Diseases – Section 55 of the *Act* & Policy Item #32.58 of the *RS&CM*
- Chapter 10, *Rehabilitation Services & Claims Manual*, Volume I

As in prior years, issues may arise during the year resulting in a shifting of work priorities.

5. ASSESSMENT POLICY

5.1 2017 Workplan Overview

As of November 2017, the PRRD has completed the following project related to assessments:

- Assessable Payroll – Items AP1-38-2 and AP1-38-3 of the *Assessment Manual*

Considerable work has also been undertaken in 2017 on the following projects. It is anticipated they will be referred to the BOD for decision later in 2017 or early 2018:

- The Partners in Injury and Disability Prevention Program (“Partners Program”, also known as the COR program) (referred for decision)
- Removing Capitalized Values of Permanent Disability Awards from Experience Rating Calculations (referred for decision)

5.2 2018 – 2020 Workplan Priorities

Appendix B contains the draft 2018 – 2020 assessment policies workplan.

The 2018 key assessment policy priorities for the PRRD include the following:

- Workplace Status
- The Partners Program

Again, issues may arise during the year resulting in shifting of work priorities.

6. OHS POLICY

6.1 2017 Workplan Overview

As of November 2017, the PRRD has completed the following OHS policy project:

- OHS Penalty Amounts Policy (D12-196-6)

6.2 2018 – 2020 Workplan Priorities

Appendix C contains the draft 2018 – 2020 OHS policies workplan. The 2017 – 2019 OHS regulatory amendment workplan was consulted on earlier this year. The next regulatory amendment workplan consultation will take place in 2018.

The 2018 key priorities for the PRRD regarding OHS policy include the following:

- The Partners Program
- Discriminatory Action Policy Review
- Bullying and Harassment

Again, issues may arise during the year resulting in shifting of work priorities.

7. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper and draft Policy Workplans, or provide any additional comments relevant to the issue.

Stakeholder comments will be accepted until **December 14, 2017**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By e-mail: policy@worksafebc.com

By mail: Lesley Conway
Policy Analyst
Policy, Regulation and Research Division
WorkSafeBC
P.O. Box 5350, Stn. Terminal
Vancouver, B.C. V6B 5L5

By fax: (604) 279-7599

WorkSafeBC's governing body, the Board of Directors, will consider stakeholder feedback before it adopts any amendments to the Policy Workplans.

Please note all comments become part of the Policy, Regulation 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, Regulation and Research Division (“PRRD”)

2018 – 2020 Policy Priorities

Compensation and Occupational Disease Policy Workplan

1. *Chronic Pain – Item C3-22.20 and #39.02 of the Rehabilitation Services & Claims Manual, Volume II (“RS&CM”)*

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is required to address a number of issues in order to improve consistency in the adjudication and management of chronic pain. To date, the following issues have been identified for clarification:

- whether the current fixed 2.5% loss of function award for chronic pain is appropriate,
- whether chronic pain should be adjudicated under the Permanent Disability Evaluation Schedule (“PDES”), and
- whether the terminology used in the current policies is appropriate.

The PRRD held pre-consultation meetings with stakeholders in 2017. Work on this project is expected to continue into 2018.

2. *Psychological Disability Awards*

The current table of permanent psychological disabilities has been in place in the PDES since December 31, 2001.

At issue is a review of the adjudication guidelines in the assessment of permanent psychological disabilities and the role of the Psychology Disability Awards Committee in the decision-making process.

Policy review is currently underway and will continue into 2018.

3. *Measurement of Earnings Loss – Policy Item #40.13 of the RS&CM*

At issue is a review of policy on two aspects of the measurement of earnings loss: the factor used to adjust earnings for inflation, and the process set out in policy.

This review is to consider whether WorkSafeBC should continue to use the cost of living adjustment (“COLA”) factor to adjust earnings for inflation in calculating loss of earnings awards. Also at issue is whether process information in policy should be updated to clarify when historical earnings are used to determine a worker’s loss of earnings.

Consultation on this policy review has concluded. The PRRD intends to bring this item for decision in the last quarter of 2017.

4. Schedule D, Non-traumatic Hearing Loss

At issue is a review of Schedule D of the *Workers Compensation Act* (“Act”) to consider whether the schedule reflects current medical and scientific understanding on the impact of noise-induced (non-traumatic) hearing loss. This review will focus on:

- the ranges of hearing loss,
- the percentages of disability, and
- the methods or frequencies to be used to measure hearing loss.

This review will also include non-traumatic hearing loss policies found in Chapter 4 of the *RS&CM*.

5. Relief of Costs under section 39(1)(e) of the Act

This item concerns current policy item #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, of the *RS&CM*, which sets out that for an employer to be eligible for cost relief under section 39(1)(e) of the *Act*, there has to be 10 or more weeks of temporary total or partial disability benefits paid. This review will address whether an accident employer should be eligible for cost relief at a different point in time and will also consider approaches to cost relief in other jurisdictions.

6. PDES – Annual Review

The PDES Working Committee was established following the 2014 policy review of the PDES found in Appendix 4 of the *RS&CM*. As part of the 2014 policy review, stakeholders identified the need for an ongoing formal review process for the PDES. This formal review will allow for the evaluation of the effectiveness of legislation, regulation, policy, practice and training relating to the PDES and review associated disability award policies.

The PRRD anticipates consulting on the 2017 review of the PDES in the first quarter of 2018.

7. Newly Recognized Occupational Diseases – Section 55 of the Act & Policy Item #32.58 of the RS&CM

Policy item #32.58, *Newly Recognized Occupational Diseases*, of the *RS&CM* sets out WorkSafeBC’s authority under subsection 55(3.2) of the *Act* to pay benefits retroactively for a disablement due to an occupational disease where the application is filed more than three years from the date of disablement. A review of the policy is required to ensure consistency with the *Act*. The following issues have been identified:

- whether recognition of an occupational disease by order dealing with a specific case is one type of recognition contemplated by subsection 55(3.2) of the *Act*, and
- whether the terminology used in the current policy is appropriate.

8. Mental Disorder Policies and sections 5.1 and 55 of the Act

The mental disorder policy has not been reviewed since July 2012 when the *Workers Compensation Amendment Act, 2011* (“Bill 14”) revised section 5.1 of the *Act*. Bill 14 broadened entitlement for mental disorders that are:

- a reaction to one or more traumatic events arising out of and in the course of the worker’s employment, or
- predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors.

Policy review will continue into 2018.

9. Typographical Error in Schedule B

A typographical error has been recently identified in item 6 of Schedule B of the *Act*. WorkSafeBC can amend Schedule B by regulation. The PRRD plans to take this item to the Board of Directors (“BOD”) for decision in 2017 to correct this typographical error.

10. Average Earnings, Chapter 9 of the RS&CM

This is a review of Chapter 9 – Average Earnings of the *RS&CM*. The purpose of this review is to update the policies into the new format and address issues identified with policy requiring change, updating or clarification.

The PRRD anticipates requesting approval to pre-consult with external stakeholders in the first quarter of 2018.

11. Overpayments – Policy Item #48.41 of the RS&CM

Policy item #48.41, *When Does an Overpayment of Compensation Occur?* of the *RS&CM*, distinguishes between recoverable overpayments and excess payments that are not recoverable. It distinguishes among erroneous payments made on the basis of administrative error, fraud or misrepresentation, decisions not within the statutory authority of WorkSafeBC, and decisions made as a result of decisional errors.

The PRRD is conducting a review of the policy, including:

- whether the current distinctions between recoverable and non-recoverable errors are appropriate, and how to classify an error when it appears to contain elements of more than one type,

- how time limits should be applied to WorkSafeBC's policy on recovering overpayments, and
- when claims costs related to overpayments will and will not be charged to an employer for experience rating purposes.

Work on this project has commenced and will continue into 2018.

12. Chapter 10, *Rehabilitation Services & Claims Manual*, Volume I

WorkSafeBC's compensation policy manual, the *Rehabilitation Services & Claims Manual*, is structured in two volumes. Volume I generally applies where the date of injury is prior to June 30, 2002 and Volume II generally applies where the date of injury occurs on or after June 30, 2002. The policies in Chapter 10, Health Care, of the *Rehabilitation Services & Claims Manual*, Volume II were substantially amended effective January 1, 2015.

At issue is whether to replace Chapter 10 of the *Rehabilitation Services & Claims Manual*, Volume I with current Chapter 10 (*Rehabilitation Services & Claims Manual*, Volume II). This would ensure workers with a date of injury prior to June 30, 2002 are entitled to the same health care benefits as workers injured on or after that date.

13. Prior Shoulder Dislocations – Item C3-16.10, *Pre-Existing Conditions – Specific Injuries*, Section C, of the *RS&CM*

Policy on prior shoulder dislocations is longstanding. The scientific basis of the policy had been identified as requiring scientific review. The PRRD therefore commissioned a scientific review to determine:

- the duration of recurrence-free status likely to signify clinical stability in a previously traumatically dislocated shoulder,
- whether evidence supports the assumption prompt reduction of a shoulder dislocation is associated with less (or minimal) disablement from work, and
- if evidence suggests disability after a recurrent shoulder dislocation is generally limited to two weeks.

At issue is whether current policy on prior shoulder dislocations is supported by scientific evidence.

At their meeting on September 19, 2017, the BOD approved the release of a discussion paper with options, a narrative review of the scientific literature, and proposed policy amendments to stakeholders for comment.

14. Treatment of Dividends Paid to Principals

At issue is a review of policy item #68.90 of the *RS&CM* on the composition of average earnings of principals for compensation benefits, which currently provides dividends are included in calculating a principal's average earnings.

This issue has previously been the subject of review. However, the current project will include a review of the Treatment of Dividends Paid to Principals for assessment purposes (as outlined in Appendix B), to ensure the consistent treatment of shareholder dividends in assessment and compensation policy.

Work on this project has commenced and will continue into 2018.

15. Diverting Pension Benefits to Pay for Worker's Maintenance (Section 35(5) of the *Workers Compensation Act*) – 2016

At issue is when pension funds should be diverted to pay for a worker's maintenance, a clarification of what qualifies as custodial care, and an examination of how a worker's comfort allowance should be calculated.

16. Vocational Rehabilitation ("VR") Policy Review

This policy review is being conducted in two phases. The first phase was completed and approved by the BOD in 2015. The second phase will consider the scope of income continuity payments, address non-compensable impediments to return to work, promote the active participation of workers in the VR process and examine other issues that may be identified in the future.

Work on the second phase of this policy review is underway and will continue into 2018.

17. PDES – Range of Motion ("ROM") Method and Disabilities of the Spine

Stakeholders have questioned the reliability and validity of the ROM method for measuring permanent disabilities involving the spine provided in the PDES. At issue is a review of the appropriateness of the ROM method in assessing disabilities of the spine in comparison to other diagnostic approaches such as the diagnosis-based impairment method or the diagnosis-related estimate method. This policy review will involve a systematic review of the medical/scientific literature.

Work on this project has commenced and will continue into 2018.

APPENDIX B

Policy, Regulation and Research Division (“PRRD”)

2018 – 2020 Policy Priorities

Assessment Policy Workplan

1. Workplace Status

In 2007, the Board of Directors (“BOD”) approved changes to the workplace status policies in the *Assessment Manual* (“AM”) guiding the determination of whether an individual is a worker, employer or independent operator. These policy changes were scheduled to come into effect on January 1, 2010.

Employer stakeholders continued to express concerns regarding the impact of the policy changes on business relationships and activities. The Assessment Department also highlighted the challenges in implementing these policy changes.

Given these potential issues, as well as concerns assessment policy is not well positioned to address workplace health and safety issues, the BOD decided at their September 15, 2009 meeting to rescind the policy changes. The PRRD was directed to undertake additional analysis on the issues and develop a discussion paper and draft policy to address the assessment issues. Specifically, challenges relating to the labour contractor policy are to be addressed as part of this project, as well as an extensive review of other jurisdictions’ approaches to this issue.

Stakeholders have requested a full review of the treatment of volunteers which will also be incorporated into this policy review.

The PRRD has commenced pre-consultation to identify issues, and will continue with pre-consultation into the first quarter of 2018.

2. The Partners in Injury and Disability Prevention Program (“Partners Program”)

The Partners Program is a voluntary certification program intended to motivate employers to take a proactive role in occupational health and safety. In September 2015, the BOD approved the release of draft policies for stakeholder consultation. During stakeholder consultation, both workers and employers identified a need for a full review of the Partners Program beyond the scope of the draft policies. Based on this feedback, the BOD approved the policies, Items AP1-42-4 in the *AM* and D2-111-4 in the *Prevention Manual*, on an interim basis pending a full review of the program.

The program review will cover all aspects of the Partners Program including the interim policies which expire on December 31, 2017. The PRRD is developing and consulting on draft policies at the same time as practice materials are being developed.

3. Removing Capitalized Values of Permanent Disability Awards from Experience Rating (“ER”) Calculations

At issue is whether to stop using “capitalized pension costs” – the estimated total compensation to be paid to workers with a permanent disability – when calculating an employer’s ER. This has become an issue because WorkSafeBC is now calculating capitalized pension costs faster than when the ER system was designed, and this has dramatically impacted employers’ ER adjustments. The issue will be presented to the BOD for decision in November 2017.

4. Section 4 of the *Workers Compensation Act* (“Act”) and the Fishing Industry Regulations and associated policy

Following the review of the Workplace Status policies, a review of the Fishing Industry Regulations and associated policy may be required in order to clarify fishing industry workplace roles and responsibilities, and assessment obligations. Work on this project is ongoing into 2018.

5. Allocation of Claim Costs

At issue is a review of policy to clarify WorkSafeBC’s jurisdiction to withdraw claim costs from a firm and transfer the costs to the firm of the injured worker’s employer, or to transfer costs between classifications on an employer’s account where appropriate. The issue is of significance, as the correct allocation of claim costs affects employers’ assessment rates and experience rating calculations.

6. Treatment of Dividends Paid to Principals

At issue is a review of Item AP1-38-2, *Payroll Categories* of the *AM* in relation to whether dividends paid to principals should continue to be included in determining an employer’s assessable payroll. Currently dividends are included when they are paid as remuneration for activity in a company.

This issue has previously been the subject of review. At its October 2014 meeting, the BOD rescinded the December 2013 changes to assessment policy excluding dividends paid to principals from assessable payroll effective January 1, 2015. As a result, dividends paid to principals will continue to be included for assessment purposes.

The BOD directed this issue be retained on the workplan and the current project include a review of the Treatment of Dividends Paid to Principals for compensation purposes (as outlined in Appendix A), to ensure the consistent treatment of shareholder dividends in assessment and compensation policy.

7. *Transfer of Experience Between Firms – Item AP1-42-3 of the AM*

The Assessment Department has raised concerns there is no specific policy to address the combining of experience rating for affiliated firms acting in concert in business. At issue is a review of Item AP1-42-3, *Transfer of Experience Between Firms* of the *AM*, to address this issue.

8. *Experience Rating – Item AP1-42-1 of the AM*

The Assessment Department is undertaking a review of the ER formula and the application of ER to employers which may require policy work in the future.

This project includes a review of the ER policy with respect to the formula used, the wording of the section involving the five year transition mechanism, as well as the wording of the section concerning average variance.

9. *Minimum Annual Assessment*

The Assessment Department has proposed WorkSafeBC establish a minimum annual assessment requirement for all accounts for both employers and independent operators with Personal Optional Protection coverage with WorkSafeBC.

APPENDIX C

Policy, Regulation and Research Division (“PRRD”)

2018 – 2020 Policy Priorities

Occupational Health and Safety Policy Workplan

1. The Partners in Injury and Disability Prevention Program (“Partners Program”)

The Partners Program is a voluntary certification program intended to motivate employers to take a proactive role in occupational health and safety. In September 2015, the Board of Directors (“BOD”) approved the release of draft policies for stakeholder consultation. During stakeholder consultation, both workers and employers identified a need for a full review of the Partners Program beyond the scope of the draft policies. Based on this feedback, the BOD approved the policies, Items AP1-42-4 in the *Assessment Manual* and D2-111-4 in the *Prevention Manual*, on an interim basis pending a full review of the program.

The program review will cover all aspects of the Partners Program including the interim policies which expire on December 31, 2017. The PRRD is developing and consulting on draft policies at the same time as practice materials are being developed.

2. Discriminatory Action Policy Review

The aim of this project is to clarify policy and review the legal principles surrounding discriminatory action complaints. Developing more comprehensive policy will increase the transparency of the process and make it more accessible to parties. Greater awareness of the legal principles will also assist parties both in the mediation and decision-making process.

3. Item D6-153-1, *Discriminatory Actions of the Prevention Manual*

There has been some confusion as to what amounts to an “election” under Item D6-153-1, *Discriminatory Actions* in the *Prevention Manual*. The purpose of this project is to amend policy to clarify the rules for proceeding with a complaint to WorkSafeBC after the union has declined to pursue a grievance.

Work on this project is underway and will continue into 2018.

4. Residential Demolition and Asbestos Industry

WorkSafeBC's recent experience with non-compliant employers in the asbestos abatement business highlights challenges in this industry during the residential demolition and renovation process. Prevention Officers are encountering problems with the quality of asbestos surveys and abatement work, as well as issues with compliance leading to workers being exposed to asbestos.

At issue is a review of the residential demolition and the asbestos abatement industries, including the potential for introducing a certification program for the asbestos industry. WorkSafeBC is engaging with stakeholders on preventing asbestos exposures and continuing to develop short-term and long-term initiatives to address this issue.

5. Occupational Exposure Limits ("OELs")

The PRRD is currently reviewing the new or revised Threshold Limit Values ("TLVs") adopted by the American Conference of Governmental Industrial Hygienists ("ACGIH") from the years 2013 – 2015. It is anticipated the proposed changes to the BC OELs will be presented to the BOD in the first quarter of 2018.

6. Biennial Review of Formaldehyde

To ensure due diligence, the BOD directed the PRRD to report back to them every two years with the following information regarding formaldehyde:

- (a) results of any new scientific research – especially at the lower levels where the current OELs are
- (b) WorkSafeBC claims
- (c) claims in other Canadian jurisdictions that are significant users of formaldehyde
- (d) results of inspections by Prevention Officers

Prior to 2013, the report was done on an annual basis.

The next review will commence in 2018.

7. Biennial Review of Styrene

To ensure due diligence, the BOD directed the PRRD to report back to them every two years with the following information regarding styrene:

- (a) results of any new scientific research at levels between the BC OEL and the ACGIH TLVs
- (b) WorkSafeBC claims
- (c) claims in other Canadian jurisdictions that are significant users of styrene
- (d) results of inspections by Prevention Officers

Prior to 2013, the report was done on an annual basis.

The next review will commence in 2018.

8. Policies for Part 24 of the *Occupational Health and Safety Regulation* (“*OHSR*”) – Diving, Fishing and Other Marine Operations

The PRRD is currently reviewing the remaining policies related to Part 24 of the *OHSR*. Work on this project will continue into 2018.

9. Bullying & Harassment – Section 173 of the *Workers Compensation Act* (“*Act*”)

Investigations of bullying and harassment are in some cases subject to other requirements from the *Act* or *OHSR*.

The PRRD anticipates scheduling consultation sessions in 2018 to review the bullying and harassment policies.