

DISCUSSION PAPER

1. TITLE

Proposed 2019 – 2021 Policy Workplans

2. ISSUE

The proposed 2019 – 2021 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 proposed 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

Additionally, the BOD retained an external consultant, Mr. Paul Petrie, to conduct a review of compensation policy to determine if any policies could be amended to ensure a worker-centred approach. Mr. Petrie published a report entitled *Restoring the Balance: A Worker-Centred Approach to Workers’ Compensation Policy* (“CPR”), which the BOD received at their April 2018 meeting. The CPR contains a number of recommendations, some of which have been either added or rolled into existing projects on the PRRD’s compensation and occupational disease workplan.

What follows are the proposed Policy Workplans, setting out the PRRD’s priorities for 2019 – 2021.

4. COMPENSATION, OCCUPATIONAL DISEASE, AND ASSESSMENT POLICY

4.1 2018 Workplan Overview

As of November 2018, the PRRD has completed the following projects related to compensation, occupational disease, and assessment:

- Prior Shoulder Dislocations
- Chapter 10, *Rehabilitation Services & Claims Manual* (“RS&CM”), Volume I
- Mental Disorders Presumption, Bill 9
- Permanent Disability Evaluation Schedule (“PDES”) Annual Review (2017)
- Proposed Policy Amendments Regarding the Certificate of Recognition Program

The following project is currently out for public consultation:

- Instalment Model for Quarterly Reporting

Considerable work has also been undertaken in 2018 on the following projects. It is anticipated they will be referred to the BOD in 2019:

- PDES Annual Review (2018)
- Psychological Disability Awards
- Statutory Revision of the *Workers Compensation Act – Assessment Manual, Prevention Manual, and RS&CM, Volume II*
- Surveillance – CPR Recommendation #41

4.2 2019 – 2021 Workplan Priorities

The 2019 compensation, occupational disease, and assessment policy key priorities for the PRRD include the following:

- Chronic Pain
- Psychological Disability Awards
- Mental Disorder Policies
- Vocational Rehabilitation – CPR Recommendations #5 – 15
- Merits and Justice – CPR Recommendation #1
- Activity-Related Soft Tissue Disorders (“ASTDs”) – CPR Recommendations #34 – 37
- Workplace Status
- Mental Disorders – Section 55
- Schedule D

The following projects are proposed for addition to the Policy Workplans:

- Additional Benefits for Severely Disabled Workers
- Personal Optional Protection Acceptance and Billing
- Evidence and Adjudicative Framework (*Assessment Manual*)

Stakeholders have requested the following projects be added to the Policy Workplans:

- Professional Sports Competitors – subject to BOD approval

Professional sports competitors are currently exempt from coverage, pursuant to a 1994 *Workers' Compensation Reporter* Decision. This project involves a policy review of this exemption to consider whether the exclusion of professional sports competitors from coverage should continue to apply.

- Overexertion and Back Strains (BCNU) – subject to BOD approval

The BCNU has identified an adjudicative issue for workers with back strain injuries resulting from overexertion during accustomed work. At issue is whether policy amendments are required to clarify guidance for strain injuries where the worker is accustomed to the work but yet required to perform a series of strenuous tasks.

- Out-of-province Injury Claims – subject to BOD approval

Chapter 16 in the *RS&CM* provides policy direction on the adjudication of claims arising from out-of-province injuries. A series of appellate decisions, culminating in *Air Canada v Workers' Compensation Appeal Tribunal*,¹ indicates a need to clarify policy direction pertaining to out-of-province injuries.

- Acupuncture – subject to BOD approval

This project involves policy review regarding acupuncture treatment for injured workers.

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

Appendix A contains the draft 2019 – 2021 compensation and occupational disease policies workplan. Appendix B contains the draft 2019 – 2021 assessment policies workplan.

¹ *Air Canada v Workers' Compensation Appeal Tribunal*, 2017 BCSC 1609.

5. OHS POLICY

5.1 2018 Workplan Overview

As of November 2018, the PRRD has completed the following OHS policy projects:

- Occupational Exposure Limits 2013 – 2015 (R5.48-1)
- Proposed Amendments Regarding the Certificate of Recognition Program

Considerable work has also been undertaken in 2018 on the following projects. It is anticipated they will be referred to the BOD later in 2018 or early in 2019.

- Biennial Review of Formaldehyde
- Biennial Review of Styrene
- Amendments to *Prevention Manual* policies regarding Part 24 of the Occupational Health & Safety Regulation (“OHSR”)

5.2 2019 – 2021 Workplan Priorities

The 2017 – 2019 OHS regulatory amendment workplan was consulted on in 2017. The next regulatory amendment workplan consultation is underway and will continue into 2019.

The 2019 key priorities for the PRRD regarding OHS policy include the following:

- Discriminatory Action Policy Review
- Bullying and Harassment

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

Appendix C contains the draft 2019 – 2021 OHS policies workplan.

6. 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 **February 4, 2019**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

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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”)

2019 – 2021 Policy Priorities

Compensation and Occupational Disease Workplan

1. Chronic Pain – Item C3-22.20 and #39.02 of the *Rehabilitation Services & Claims Manual* (“RS&CM”), Volume II – 2019

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.

Work on this project, including a review of recommendations resulting from Mr. Paul Petrie’s compensation policy review (“CPR”), is expected to continue into 2019.

2. Psychological Disability Awards – 2019

The current table of permanent psychological disabilities has been in place in the Permanent Disability Evaluation Schedule (“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.

Work on this policy review will continue into 2019.

3. Mental Disorder Policies – 2019

On May 17, 2018, the *Workers Compensation Amendment Act, 2018* (“Bill 9”) came into force by Royal Assent and added a mental disorder presumption for eligible occupations to the *Act*. As a result, policy was developed to reflect the new presumptive legislation. Additionally, changes were made to Item C3-13.00.

At issue is whether further revisions to Item C3-13.00 are required to address concerns raised by stakeholders and to assist decision-makers in determining entitlement to compensation under section 5.1 of the *Act*. As part of this review, the PRRD is reviewing:

- the definition of significant work-related stressor;
- the definition of bullying and harassment; and
- the application of section 5.1(1)(c) of the *Act*.

The CPR includes recommendations relating to these issues. Work on this project is expected to continue into 2019.

4. Vocational Rehabilitation – CPR Recommendations #5 – 15 – 2019

The CPR includes a number of recommendations related to Vocational Rehabilitation and Return to Work. These recommendations include emphasizing safe, productive and durable return to work, and focusing on restoring injured workers to pre-injury earnings capacity.

The recommendations from the CPR has been rolled into the existing VR policy review that was underway.

Work on this policy review will continue into 2019.

5. Merits and Justice – CPR Recommendation #1 – 2019

The CPR recommends changes to policy item #2.20, *Application of the Act and Policies*, of the *RS&CM* to re-state the requirement in section 99(2) of the *Act* that Board decision-making must be based on the “merits and justice of the case”.

In making decisions, WorkSafeBC must take into account all relevant facts and circumstances relating to the case before them.

Work on this policy review will continue into 2019.

6. Activity-Related Soft Tissue Disorders (“ASTDs”) – CPR Recommendations #34 – 37 – 2019

The CPR includes a number of recommendations related to ASTDs. At issue is a review of policy item #27.00, *Activity-Related Soft Tissue Disorders*, of the *RS&CM* to:

- Add guidance for when it is appropriate to adjudicate ASTDs under both section 5 (personal injury) and 6 (occupational disease) of the *Act*; and
- A review of the relevant risk factors and how they are evaluated.

Work on this policy review will continue into 2019.

7. Mental Disorders – Section 55 – 2019

Section 55 of the *Act* sets out the limitation period for filing an application for compensation for mental disorders. At issue is when the one-year limitation period should commence for mental disorder claims.

Work on this policy review will continue into 2019.

8. Schedule D, Non-traumatic Hearing Loss – 2019

At issue is a review of Schedule D of the *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*.

Work on this policy review will continue into 2019.

9. Statutory Revision of the *Workers Compensation Act* – *Assessment Manual*, *Prevention Manual*, and *RS&CM Volume II* – 2019

As part of the statute revision process, Legislative Counsel has reviewed the *Act*. A draft of the proposed revisions has been submitted to the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills. The Standing Committee is expected to meet in 2019 to review the proposed revisions, and it is anticipated that the changes will come into effect later in 2019.

Revising the *Act* will have broad implications for WorkSafeBC and stakeholders. In anticipation of the Standing Committee approving the proposed changes, the PRRD is in the process of revising the *Assessment Manual*, *Prevention Manual*, and both volumes of the *RS&CM*, along with all compensation and OHS-related regulations under the *Act* that are impacted by the changes.

10. Evidence and Decision-Making – CPR Recommendation #32 – 2019

The CPR recommends the Board of Directors consider incorporating principles from recent jurisprudence regarding onus of proof and medical evidence into policy item #26.23, *Non-Scheduled Recognition and Onus of Proof* of the *RS&CM*. This recommendation requires a review of the *RS&CM* and amendments to policy items #26.23, #97.00 and others, focusing on how policy describes the standard of proof under the *Act* and establishes causation.

Work on this policy review will continue into 2019.

11. Cost Relief – CPR Recommendations #16 & 19 – 2019

The CPR includes two recommendations from the CPR which proposes considering relieving employers' costs for:

- accommodation of injured workers, if successful after 12 months; and
- wage loss and rehabilitation costs paid during an investigation of a reasonable dispute over an offer of selective employment.

This item also 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 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.

Work on this policy review will continue into 2019.

12. PDES – Annual Review (2018, 2019, 2020) – 2019, 2020, 2021

As part of the 2014 policy review of the PDES, stakeholders identified the need for an annual review of the PDES. The annual review allows for the evaluation of the effectiveness of policy, practice and training relating to the PDES and a review of associated disability award policies.

13. Newly Recognized Occupational Diseases – Section 55 of the Act & Policy Item #32.58 of the RS&CM – 2020

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.

Work on this policy review will continue into 2019.

14. PDES – Range of Motion (“ROM”) Method and Disabilities of the Spine – 2020

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 with 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 policy review will continue into 2019.

15. Surveillance – CPR Recommendation #41 – 2019

The CPR recommends WorkSafeBC consider implementing a policy for the appropriate use of video surveillance to meet WorkSafeBC responsibilities without causing unintended harm to workers. WorkSafeBC does not currently have policy regarding the use of surveillance to gather evidence for adjudicating claims.

At issue is whether WorkSafeBC should establish policy to guide the use of surveillance, including video, audio and photographic recordings, for claims adjudication.

Work on this policy review will continue into 2019.

16. Additional Benefits for Severely Disabled Workers – 2019

Item C10-84.00, *Additional Benefits for Severely Disabled Workers*, in the *RS&CM*, sets out additional benefits and services that may be available to severely disabled workers.

The policies in Item C10-84.00 are designed to alleviate the effects of the compensable personal injury, mental disorder or occupational disease to assist in achieving physical, psychological, economic, social, and vocational rehabilitation.

At issue is whether amendments to policy are required to ensure benefits for severely disabled workers are appropriate. For example, do Personal Care Allowances and Independence and Home Maintenance Allowances provide appropriate compensation to severely disabled workers regarding home cleaning services and child care expenses for their dependants?

Monitoring

Policy projects for which the PRRD does not anticipate consultation to commence within the next two years will be removed from the workplan, but will continue to be monitored. The Compensation and Occupational Disease policy projects which will continue to be monitored are listed below.

1. Average Earnings, Chapter 9 of the *RS&CM* – Monitoring

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.

2. Overpayments – Policy Item #48.41 of the *RS&CM* – Monitoring

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.

3. Diverting Pension Benefits to Pay for Worker's Maintenance – [Monitoring](#)

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.

APPENDIX B

Policy, Regulation and Research Division (“PRRD”)

2019 – 2021 Policy Priorities

Assessment Policy Workplan

1. Workplace Status – 2019

In 2007, the Board of Directors (“BOD”) approved changes to the workplace status policies in the *Assessment Manual* 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.

Work on this policy review will continue into 2019.

2. Instalment Model for Quarterly Reporting – 2019

WorkSafeBC calculates assessments based on payroll. Firms with an annual assessment of \$1,500 or more are generally required to report payroll and remit assessment premiums on a quarterly basis. At issue are changes to policy to introduce an instalment model for quarterly reporting employers, which would reduce reporting requirements for these employers. The PRRD has commenced work on this policy review in 2018 and will release a review of potential policy changes for stakeholder consultation.

Work on this policy review will continue into 2019.

3. Section 4 of the *Workers Compensation Act* (“Act”) and Fishing Industry – 2020

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 policy review will continue into 2019.

4. Personal Optional Protection (“POP”) Acceptance and Billing – 2021

This item concerns *Assessment Manual* Item AP1-2-3(d)’s POP acceptance and billing dates. The review will address whether an amendment to this policy’s language would better align the 20-day cancellation period with the billing date, rather than the acceptance date.

5. Evidence and Adjudicative Framework (*Assessment Manual*) – 2021

The *Assessment Manual* currently does not include policy similar to policy item #97.00, *Evidence*, of the *RS&CM*. At issue is whether WorkSafeBC should include an adjudicative framework and other “evidence policy” in the *Assessment Manual*. This would involve an amendment to Item AP1-1-0 of the *Assessment Manual*.

6. Treatment of Dividends Paid to Principals – 2021

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.

Monitoring

Policy projects for which the PRRD does not anticipate consultation to commence within the next two years will be removed from the workplan, but will continue to be monitored. The Assessment policy projects which will continue to be monitored are listed below.

1. Allocation of Claim Costs – Monitoring

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.

2. Transfer of ER Between Firms – Item AP1-42-3 – Monitoring

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 *Assessment Manual*, to address this issue.

3. Experience Rating – Item AP1-42-1 – Monitoring

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.

4. Minimum Annual Assessment – Monitoring

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”)

2019 – 2021 Policy Priorities

Occupational Health and Safety Policy Workplan

1. Discriminatory Action Policy Review – 2019

The aim of this project is to clarify policy and review the legal principles surrounding discriminatory action complaints. For example, 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 address such concerns and to clarify, in this case, the rules for proceeding with a complaint to WorkSafeBC after the union has declined to pursue a grievance. Developing more comprehensive policy will increase the transparency of the complaint 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.

Work on this project is underway and will continue into 2019.

2. Bullying & Harassment Policy Review – 2019

The purpose of this project is to conduct a review of the bullying and harassment policies to determine the comprehensiveness and efficacy of these policies and whether they should be elevated to regulations. It is anticipated this review will be conducted jointly with a review of Part 4 of the *Occupational Health and Safety Regulation (“OHSR”)* provisions dealing with workplace conduct and violence to determine if these regulations are sufficiently comprehensive and whether bullying and harassment should be added to this part of the *OHSR*.

3. Occupational Exposure Limits (“OELs”) – 2019 / 2020 / 2021

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 2016–2018. It is anticipated the proposed changes to the BC OELs will be referred to the BOD in multiple phases, with the first phase occurring in 2019.

4. Biennial Review of Formaldehyde – 2018

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.

Work on this project for the 2018 report is underway. It is anticipated the 2018 decision paper will be referred to the BOD in December 2018.

5. Biennial Review of Styrene – 2018

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.

It is anticipated the 2018 decision paper will be referred to the BOD in December 2018.

6. Policies for Part 24 of the OHSR – Diving, Fishing and Other Marine Operations – 2018

The PRRD conducted a general review of Part 24 policies on diving, fishing, and other marine operations in the *Prevention Manual*.

The PRRD published the consultation paper and draft policies on WorkSafeBC's website from July 26, 2018 to October 12, 2018. It is anticipated a decision paper will be referred to the BOD in December 2018.

Monitoring

Policy projects for which the PRRD does not anticipate consultation to commence within the next two years will be removed from the workplan, but will continue to be monitored. The Occupational Health and Safety policy projects which will continue to be monitored are listed below.

1. Residential Demolition and Asbestos Industry – Monitoring

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.