

**2009 Program Policy Agenda:
Consultation Follow-Up and Supporting Rationale**

October 24, 2008

I) 2009 Program Policy Agenda: Foundation and Follow-up Year:

Throughout late April - early July 2008, the WCB began to put together a list of policy topics for the Board of Directors to consider for the 2009 Program Policy Agenda. To do this, the WCB asked stakeholders (by mail and website), our partners in the *Workplace Safety and Insurance System* (WSIS) and WCB staff to identify policy topics that support the WCB's vision and strategic focus. Overall, 16 separate (some topics were identified more than once) policy topics were identified through the consultation process and 3 additional policies issues were added after reviewing stakeholders topics for a total of 19 policy topics.

Recognizing that the term "policy" is broad, in the WCB context the term refers to program policies approved by the Board of Directors pursuant to section 183 of the *Workers' Compensation Act* (the Act) and included in the Workers' Compensation Board's Policy Manual. Program policies include topics such as entitlement, short and long term benefits, prevention, and assessments.

After careful review and analysis of stakeholder input, the Board of Directors has initially decided that the 2009 will be a "foundation and follow-up" year for policy review. By focusing on foundational issues, the WCB can begin to address what are believed to be the root causes of some stakeholder concerns. In particular, this approach will allow for the development of clear adjudicative principles at key points in the WCB decision-making process. The WCB believes clarification of the principles used to make key claim decisions will begin to resolve some of the issues raised by stakeholders during the program policy agenda setting process.

As a result, the 2009 Program Policy Agenda will include the following three foundational, principle based, policy topics:

- I) General Entitlement – Arising out of and in the Course of Employment
- II) General Entitlement – Occupational Disease
- III) General Principles – Medical Aid

The development of key principles will help create a common understanding among workers, employers and the Workplace Safety and Insurance System (WSIS) of how entitlement decisions are made. The development of principles in these areas will: improve the transparency and accountability of WCB decision making processes; support the WSIS in getting to the right decision the first time; and simplify future policy development by reducing the need, in some cases, for situation specific policies and/or establish the basis on which more complex entitlement policies can be built.

Based on the draft 2009 Program Policy Agenda the WCB has prepared issue papers for the 3 topics included on the agenda. These papers will form the basis of the discussion with stakeholders at the "policy summit" to be held on the afternoon of November 26, 2008. The "policy summit" will provide stakeholders with an opportunity to identify and clarify issues related to the topics included on the program policy agenda. To ensure stakeholders are able to fully participate in the discussion, the papers are being shared well in advance of the "policy summit".

In addition to the three policy topics identified above, the WCB will continue to review and/or develop any outstanding policy items from the 2007/2008 program policy agenda including employer access to claim file information, 36-Month Review of Extended Earnings Replacement Benefit – Timing and Scope, and opioids (see Appendix A – 2007/08 Program Policy Agenda status update).

The remainder of this document will outline how stakeholder input was used by the Board of Directors during its decision making process and discuss actions outside the 2009 Program Policy Agenda that will be carried out by the WCB in response to some stakeholder concerns shared as part of the information gathering for the 2009 Program Policy Agenda.

II) Stakeholder Input & Emerging Themes:

During the process of reviewing the 16 stakeholder policy topics as a group, several themes emerged. Specifically, 5 general themes were identified (for details of the policy topics within each theme, please see Appendix B):

1. Conditions of Entitlement
2. Considering Evidence
3. Vocational Rehabilitation & Return to Work
4. Accountability
5. Provision of Medical Aid

In looking at the themes, the Board considered the change that was needed to resolve the issues identified by stakeholders. The root cause of stakeholders' concerns in the areas of entitlement, medical aid and accountability can be, at least in part, traced back to a lack of a common understanding and agreement on how the WCB makes general entitlement decisions, as well as the need to improve the openness of WCB decision making. It is believed this gap in understanding/agreement may be due to a lack of clear adjudicative principles at key points in the WCB decision making process.

As a result, three policy topics that emerged from stakeholder concerns were added to the list to be considered by the Board of Directors. The additional policy topics are "foundational" in that they will address the root causes of some of stakeholder issues and will establish a common basis on which more specific entitlement/medical aid issues can be built at a later time.

These policy topics are:

1. General Entitlement – Arising out of and in the Course of Employment
2. General Entitlement – Occupational Disease
3. General Principles – Medical Aid

III) Policy Topics

To help the Board of Directors decide what to include on the 2009 Program Policy Agenda, all 19 policy topics were considered based on the information gained through analysis and by applying the Board of Directors' prioritization criteria (see Appendix C). The Board uses objective criteria to prioritize policy topics to ensure that all proposals are given equal consideration, as they recognize that each of the topics is of great concern to the group that proposed it.

This process resulted in 6 out of the 19 policy topics meeting the high priority criteria. The high priority topics are (not in order of rank):

- 1) General Entitlement – Arising Out of and in the Course of Employment;
- 2) General Entitlement – Occupational Disease;
- 3) Medical Aid – General Principles;
- 4) Occupational Hearing Loss – Policy 1.2.5R1 and 1.2.5AR;

5) Recurrences (clarify and articulate, in writing, the definition of a recurrence, and the extent of an employers' obligation to re-employ where a recurrence of an injury has occurred) - Policy 5.2.2; and

6) Estimating Potential Earnings Ability (EPEA) – Policy 3.5.2 (factors that determine whether employment is “suitable“ and “reasonably available”, and the System impact of a 100km “job search area” in Policy, considering some of the regional challenges associated with employment opportunities).

Generally, these policy topics were ranked as high priority because they support the achievement of WSIS and WCB goals/priorities including:

- Provide excellent and efficient service that is open and accountable;
- Improve public confidence and risk mitigation;
- Support Return-to-Work and the Health Care Strategy; and
- Improve service delivery.

These topics were considered significant because clarity in these areas would have far reaching benefits for the system. Although a number of issues have not been included on the high priority list, this does not mean that the issues are not valid or important. In fact, the identification of the issues provided great insight into some of the ongoing challenges that the WSIS is facing.

In relation to some of the issues not captured on the high priority policy list, in some instances, the WCB already has activities underway to address similar or related issues and will incorporate stakeholder issues into those initiatives where appropriate (for example: weighing of evidence is being incorporated into staff training). The WCB also plans to use other tools, including research, to clarify the scope of some of the policy topics identified before determining the best approach to address these issues (for example: the human, operational and financial impact of urbanization and demographic shifts on vocational rehabilitation).

IV) Action Items and Outstanding High Priority Topics

The 3 high priority policy issues that were not included on the 2009 Program Policy Agenda (occupational hearing loss, recurrences and EPEA) will be reviewed following research, policy analysis and recommendations concerning 2009 policy topics. If this review shows that policy may be the right tool to address these issues, and the topics continue to raise concerns with stakeholders, they will be included in the consultation materials as part of the 2010 program policy agenda setting process.

At that time, stakeholders will be asked if these topics are still high priority, and will continue to have the opportunity to identify other policy topics as well. If the review shows that any of these high priority topics are resolved, or may be resolved using other tools (for example procedures, Fact Sheets, training), the WCB would advise stakeholders of this finding and provide an explanation as part of the 2010 program policy agenda setting process.

The WCB will begin to address some of the remaining 2009 program policy topics through research, program, and process changes. (See Table A below).

Theme	Tool	Action Item(s)	Supporting Rationale
		outlooks for rural/urban communities in NS; <ul style="list-style-type: none"> • urbanization and impact if any on travel; and • shifts in availability of employment and impact if any on rural communities. 	

Appendix A - Status of 2007/2008 Program Policy Agenda Topics

Policy Topic	Status
<i>Under Review & Development</i>	
Employer Access to Claim File Information	<ul style="list-style-type: none"> • Stage 2 Consultation Completed • In March 2008, the Board of Directors agreed to proactively use the appeal system to resolve the question of the WCB's legal authority to release claim file documents or records to an employer in the absence of an appeal. • The proactive resolution of this issue is in progress.
36 Month Review of EERBs – Timing & Scope of Review	<ul style="list-style-type: none"> • Stage 1 consultation completed (Jan. 2008) • Policy review is underway.
Opioids	<ul style="list-style-type: none"> • At the March Board meeting, the Board of Directors agreed that the electronic formulary project should be implemented before determining whether policy development is appropriate. • A letter was sent to all stakeholders on the key stakeholder list outlining the Board of Directors' decision and the supporting rationale. • The electronic formulary will provide the WCB with quantitative data that will be helpful in confirming the scope of opioid prescribing issues and can be used to inform our Policy development process. • Following the implementation of electronic formulary this topic will be reevaluated.
<i>Policy Process Completed</i>	
Supplementary Benefits (Eligibility Criteria)	<ul style="list-style-type: none"> • Initial analysis indicated revision of eligibility criteria may result in a change to benefit structure. As a change to the benefit structure is not consistent with the WCB's funding strategy the Board of Directors decided that no additional policy work will be done on this issue at this time.
Medical Aid for Long Term Claims	<ul style="list-style-type: none"> • Analytical and policy advice/support provided to project team throughout 2007. No specific policy items are included on the 07-08 program policy agenda.
Annuities	<ul style="list-style-type: none"> • At the March 2008 Board meeting, it was agreed that the annuities issue cannot be addressed by a policy change alone and requires legislative/regulatory change. Therefore, the issue was added to a list of legislative or regulatory changes the WCB would like to see made if the opportunity arises.
Apportionment of Benefits	<ul style="list-style-type: none"> • Final policy revisions approved by the Board of Directors in April 2008.
Chronic Pain – causal connection	<ul style="list-style-type: none"> • In April 2008, the Board of Directors decided that policy is not the appropriate tool to address how medical evidence is used by the WCB to determine whether a causal connection exists between chronic pain and the original compensable injury. • A fact sheet has been developed and posted to the WCB website. Further, a copy of the fact sheet was sent to all stakeholders on the key stakeholder list.
Chronic Pain Eligibility Criteria	<ul style="list-style-type: none"> • Stage 2 Consultation Completed • September - Board of Directors approved minor changes to <i>Policy 3.3.5 – Eligibility Criteria and Compensation Related to Chronic Pain</i> to ensure ongoing consistency between language of policy and <i>Chronic Pain Regulations</i>.
Surcharge (minor policy revision)	<ul style="list-style-type: none"> • Stage 2 consultation completed • January – Board of Directors approved a revision to Board Policy 9.4.2R2 – <i>Experience Rating – Maximum Merit or Demerit and Surcharge</i> to clarify that two successive warning notices must be issued to an employer by the WCB prior to a surcharge being applied to the

	employer's assessment rate.
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Appendix B – Proposed Program Policy Topics (organized by themes)

1. Conditions of Entitlement

- Occupational Hearing Loss: time lines for entitlement. (Employer Advisor & WCB staff)
- Recurrences: entitlement to re-employment where a recurrence of an injury has occurred and assignment of costs for injuries/aggravations during rehabilitation. (Worker Counsellor & WCB staff)
- Supplementary Benefits: eligibility of those workers who have had benefits commuted, and consistency of policy eligibility requirements for CPP benefits compared with the Regulations. (Worker Counsellor)
- Pandemic readiness (WCB staff)

2. Considering Evidence

- New evidence and reconsiderations: consistency of policy with the *Act*, civil procedure standard for new evidence, and the policy's impact on the appeal system. (Worker Counsellor, Injured Worker Associations, Workers' Advisers Program)
- The weighing of medical evidence: inappropriate weight given to the opinion of the WCB Medical Advisor/the role of the Medical Advisor: putting role of medical advisor in policy. (Worker Counsellor & Injured Workers Associations)

3. Vocational Rehabilitation/Return to Work

- Estimated Potential Earnings Ability (EPEA): definition and determination of "reasonably available" including appropriateness of 100 km job search area. (Injured Workers Associations, WCB staff)
- Non-participation in VR due to circumstances beyond worker's control: appropriateness/fairness of terminating benefits. (Workers' Advisers Program)
- General concerns about VR & RTW: consistency of VR goals with the *Act*, payment for on-the-job-training and employment incentives placements, and payment for VR travel. (Injured Workers Associations)

4. Accountability

- Accountability: WCB compliance with policy and decisions made in bad faith. (Injured Workers Associations)
- Requirement for independent review of WCB performance, legislation, and policy. (Labour)

5. Provision of Medical Aid

- Use of private health care: to reduce wait times. (Employer Advisor)
- Treatment using opioids: appropriateness for soft tissue injuries. (Employer Advisor)
- Injury during rehabilitation: WCB and service providers should be held to same standards as employers with respect to injury prevention. The suggestion is that far too many workers are suffering new injuries/aggravations during RTW & treatment programs. (Injured Workers Associations)

A sixth group, "other," was created to capture two topics that did not fit in one of the other themes. These topics are:

- Post accident earnings: appropriateness of excluding pensions. (Employer Advisor)
- Prevention of repeat injuries in the same workplace: follow-up by WCB staff and the impact of repeat injuries on experience rating. (Labour)

Appendix C: Prioritization Framework

<p style="text-align: center;">High</p> <ul style="list-style-type: none"> • Policy requires development and/or review due to a ruling of the Courts. • Policy requires development and/or review due to a legislative or regulatory change. • Policy is a component of a project/initiative included in the plan and requires completion to achieve the project outcomes. • Policy supports achievement of a corporate or System goal/priority. • Policy is causing a major service delivery issue. 		<p style="text-align: center;">Medium</p> <ul style="list-style-type: none"> • Importance to and impact on external stakeholders. • Impact of policy on daily operations. • Recurring appeals or decisions frequently overturned on appeal due to policy interpretation.
		<p style="text-align: center;">Low</p> <ul style="list-style-type: none"> • Emerging trend in social environment (i.e. changing demographics). • Elapsed time since last revision. • Policy needs housekeeping changes
<p>WCB Goals:</p> <ul style="list-style-type: none"> • Building workplace safety culture • Safe and timely return to work • Skilled and committed team of employees • Excellent and efficient service • Financially stable/sustainable <p>WCB Strategy:</p> <ul style="list-style-type: none"> • Injury Prevention • Safe and timely RTW • Health Care • Public Confidence 	<p>WSIS Goals</p> <ul style="list-style-type: none"> • Improve outcomes for workers/employers • Improve service delivery • Effective governance • Financially sustainable <p>WSIS Strategy</p> <ul style="list-style-type: none"> • Reduce workplace injury • Return to Work • Accessibility of Information/sharing • Issue resolution • Stakeholder consultation 	

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