RATE FRAMEWORK POLICY CONSULTATION

STAKEHOLDER SUBMISSIONS

August 14, 2017 to January 15, 2018

Association of Canadian Search, Employment and Staffing Services | Association Nationale des Entreprises en Recrutement et Placement de Personnel

VIA E-MAIL

October 12, 2017

Consultation Secretariat
Workplace Safety and Insurance Board
200 Front Street West
Toronto, Ontario
M5V 3J1

To Whom it May Concern

RE: Submissions of the Association of Canadian Search, Employment & Staffing Services on the Draft Temporary Employment Agencies Policy

Introduction

The Association of Canadian Search, Employment & Staffing Services (ACSESS) is the only association representing the staffing industry in Canada. ACSESS represents over 1000 staffing service offices across Canada. ACSESS members provide placement and executive search services, and temporary and contract staffing to the public sector and virtually every type of business.

The mission of ACSESS is to promote the advancement and growth of the employment, recruitment and staffing services industry in Canada. It also serves as Canada's only national advocate for ensuring professional ethics and standards in this industry. All member companies pledge annually to uphold the Association's Code of Ethics and Standards which promotes ethical treatment of employees and clients, and adherence to all applicable laws including human rights and occupational health and safety legislation.

As indicated in our earlier submissions, ACSESS supported the WSIB proposal to assign staffing agencies the classification of their client employers for any workers that are supplied. ACSESS believes that this measure fully addresses any potential concern that staffing agencies are being retained by client employers to reduce workers' compensation costs.

ACSESS wishes to comment on two specific aspects of the Draft Temporary Employment Agencies Policy.

Obligation to Provide WSIB Classification Information About Client Employers

The Draft Policy states that staffing agencies are responsible for obtaining the information from client employers that is necessary for the WSIB to classify them based on the methods set out in the Policy. It is the respectful view of ACSESS that this approach places imposes an obligation on the wrong party. It should be the responsibility of the client employer to provide the WSIB with enough information to properly classify it under WSIB policies. A staffing agency does not have the same powers as the WSIB to gather information to properly classify an employer.

ASCESS suggests that the policy be rewritten to include the following language:

"*TEAs are responsible for obtaining a clearance certificate from every client employer they assign workers and to provide a copy of the clearance certificate to the WSIB upon request*".

This approach will provide the WSIB with the information that it needs to ensure that the staffing agency is paying the correct rate for the client employer. It is the opinion of ACSESS that the WSIB does not require any further information to accomplish the relatively straight forward task of assigning the correct premium rate for the workers in question.

Staffing Agency Liable for Retroactive Classification Changes

The Draft Policy states that "…*WSIB will change a client employer's classification based on relevant classification and premium adjustment rules. If the classification change is applied to any period (including past periods) in which the client employer used workers supplied from a TEA, the TEA's classification during that period, with respect to those supplied workers, is changed to align with the client employer*."

In other words, if the premium rate of a client employer is changed by the WSIB for any reason (i.e. often as the result of an audit or other enforcement activity) the staffing agency could be burdened with a surprise assessment for additional premiums that it did not anticipate and did nothing to cause.

Obviously, a staffing agency cannot communicate on behalf of a client with the WSIB and has no legal right to be involved in the classification process of a client. Further, a staffing agency has no standing to initiate or to participate in any appeals arising out of classification decisions by the WSIB. Staff agencies should not be punished with additional assessments simply because

a client did not provide adequate information to be classified properly or the WSIB made a mistake in the initial classification process.

The liability for staffing agencies in this context could be very extensive if a significant retroactive adjustment is made. As a matter of fundamental fairness, staffing agencies should not be held accountable for the mistakes of others.

ACSESS recognizes that there will be some circumstances where there is a retroactive assessment or appeal decision which retroactively reduces the premiums of a client. ACSESS concedes that the staffing agency should not benefit from any reduction in premiums resulting from a classification change if the staffing agency is not charged for any premium increases.

ACSESS agrees with the submission of the Office of the Employer Advisor that the introduction of a complex new revenue system will result in considerable confusion and classification problems at the start of the new system. ACSESS proposes the WSIB should only adjust premiums for the year of audit and should not retroactively adjust premiums any further back in time.

We thank you for the opportunity to make these submissions and look forward to the opportunity to continue to participate in the process.

Yours Very Truly,

Mary McIninch, B.A, LL.B (Membre du Barreau du Québec)

Director of Government Relations/Directrice des Affaires Publiques
Association of Canadian Search, Employment and Staffing Services
Association Nationale des Entreprises en Recrutement et Placement de Personnel

CANADIAN FOUNDRY ASSOCIATION
ASSOCIATION DES FONDERIES CANADIENNES

COMMENTS ON SEVEN DRAFT POLICIES

WSIB RATE FRAMEWORK POLICY CONSULTATION

JANUARY 15, 2018

Introductory Comments

The Canadian Foundry Association (CFA) appreciates the opportunity to provide comments on the draft policies that support the implementation of the approved Rate Framework and amended Regulation (O.Reg. 175/98) under the *Workplace Safety and Insurance Act, 1997.*

By way of background, the CFA is the national voice for the foundry industry in Canada. Incorporated in 1975, it is a proactive, issues driven association that draws on the industry's collective resources to solve common problems.

The metal casting industry is the original recycling industry and an environmentally responsible industry. Raw material is typically recycled metal which conserves natural resources and energy.

Foundries are vital to Ontario's economy since metal castings are a strategic component of the manufacturing base. They are the first step in the value-added manufacturing chain and are utilized in the manufacture of most durable goods.

Casting markets are extremely competitive on a global basis and, as a result, the cost structure and competitive position of Ontario foundries are significantly affected by legislation and regulation and the related cost.

The industry in Ontario is comprised of all sizes of foundries and includes operations located in approximately 75 foundry facilities and 80 supplier facilities throughout the province. Markets and industries that have a critical reliance on the foundry industry include: automotive; construction; agricultural; forestry; mining; pulp and paper and other heavy industrial machinery and equipment; aircraft and aerospace; plumbing; soil and pipe and municipal road castings; defence; railway; petroleum and petrochemical; electrical distribution; and a variety of specialty markets.

The Ontario foundry industry directly employs approximately 7,800 people and indirectly 11,200 people represented by suppliers, machine shops, assembly plants, scrap dealers and services including trucking, maintenance, engineering, environmental services, and others.

With more than 60% of our membership in Ontario, the CFA is interested and pleased to offer input into the seven (7) draft policies that will support the implementation of the Rate Framework.

The policies and amended Regulation will have a direct impact on the foundry industry in Ontario and will also have an effect on business plans and forecasting expenditures. With this in mind, the CFA is pleased to offer a summary of members' comments to the following draft policies:

Consultation Response

1. ***Coverage Status***

CFA Response: Not Applicable.

2. ***Classification Structure***

CFA Response: The Canadian Foundry Association supports the new classification structure, but would also support a process for reviewing the classification when business activities change or when classification does not represent the employers' business activities.

3. Eligibility for Single or Multiple Premium Rates

CFA Response: The Canadian Foundry Association supports the proposed draft policy.

4. Associated Employers

CFA Response: The Canadian Foundry Association has a number of questions and concerns with this draft policy. The policy as proposed will cause issues and concerns with some organizations operating under a corporate umbrella structure. Often, theses corporate structures will ensure that 'best practices' are implemented across the entire corporate structure to minimize and reduce risk with the goal to ensure worker safety. The criteria proposed to *"Associated Employers Policy"* leaves many questions:

1) **Use of common health and safety policies / practices:** multiple employers may share common policies and practices yet continue to operate as independent employers. The simple use of standardized best practices should never be used against employers to penalize or force a policy of association.

2) **Sharing of employees:** must be phrased as continual sharing of employees across physical location and outline time requirements or be linked to other criteria. The simple sharing of employees is too broad.

3) **Sharing of revenues and profits:** no comments

4) **Sharing of technology:** multiple employers may share a common enterprise software system and technology and also operate as independent employers. Sharing common technology is a normal practice as groups of employers can negotiate better annual rates through the bulk buying power they possess. Normal industry practice to manage and control costs are implemented to make Ontario workplaces more globally competitive. This practice should not be used against good employers by attempting to link 'poor performers' to others.

5) **Joint bidding or tendering for contracts:** no comments

6) **Common collective bargaining process:** no comments

7) **Common labour policies:** multiple employers may share common policies and practices yet continue to operate as independent employers. The simple use of standardized best practices should never be used against employers to penalize or force a policy of association.

The policy for 'Associated Employers' outlines the criteria for determining whether a cooperative relationship exists between two employers, however the policy fails to clearly outline any criteria that would delineate such a relationship. Employers must clearly

understand the intention of this policy and the rules associated with a “non- cooperative relationship”. WSIB should consider current employers “approval” of such “association”.

5. Temporary Employment Agencies

CFA Response: The Canadian Foundry Association supports the proposed draft policy.

6. Employer Level Premium Rate Setting

CFA Response: The Canadian Foundry Association would suggest additional clarification and detail on the implementation of this policy. Employers forecast business expenditures up to five (5) years into the future. This policy provides insufficient detail for employers to assist or understand the impact of potential rate increases. The Canadian Foundry Association would suggest the development of a ‘simplified calculator’ to assist employers with predicting the impact of rate adjustments based on current and predicted performance.

7. *Employer Premium Adjustments*

CFA Response: The Canadian Foundry Association continues to support ‘experience rating programs’. The proposed draft policy, and in particular, the “Seven-Year Rule” is too broad. The CFA would support a more narrow approach, such as “Five-Year Rule”.

Also, the CFA continues to support the *“Second Injury and Enhancement Fund”* and would like to ensure that this policy is maintained.

The Canadian Foundry Association respectfully submits these comments to the WSIB and the association will look forward to the WSIB’s response.

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Canadian Manufacturers & Exporters

January 15, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Sent via E-mail: consultation_secretariat@wsib.on.ca

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions
Canadian Manufacturers & Exporters (CME) appreciates the opportunity to provide input to the Workplace Safety & Insurance Board's (WSIB) Rate Framework Draft Policies Consultation.

By way of background information regarding CME, it is Canada's leading trade and industry association and the voice of manufacturing and global business in Canada. The
Association directly represents more than 10,000 leading companies nationwide. More than 85% of CME's members are small and medium-sized enterprises. As Canada's leading business network, CME touches more than 100,000 companies from coast to coast, engaged in manufacturing, global business and service-related industries. CME's membership network accounts for an estimated 82% of Canada's total manufacturing output and 90% of our manufacturing exports. It is also important to note that for every dollar invested in manufacturing, it generates $3.25 in total economic activity.

About CME:

- 10,000+ members (approximately half are in Ontario)
- Businesses in all sectors of manufacturing and exporting across Canada as well as
- supporting services
- 75% of Canada's industrial output 90% of exports
- 92% of members are small/mid-sized companies
- Chair of the Canadian Manufacturing Coalition
- 47 industry associations across Canada/US manufacturing
- National office in Ottawa and divisions in every province

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About the importance of manufacturing:

- Direct economic impact
- A $270 billion business
- 21 industry sectors (processing, fabrication, assembly, high tech)
- 13% of GDP
- Directly employs approximately 800,000 Ontarians (1.5 million indirect)
- A critical anchor for real wealth creation and innovation
- Every $1 in manufacturing output generates an average $3.25 in total economic activity
- 65% of merchandise exports

BACKGROUND TO CONSULTATION

In August of 2017 the WSIB released 7 Rate Framework Draft Policies for consultation and stakeholder input. The draft policies cover the following issues: Coverage; The Classification Structure; Eligibility for Single or Multiple Premium Rates; Associated Employers; Temporary Employment Agencies; Employer Level Premium Rate Setting; and Employer Premium Adjustments (collectively, the "draft policies").

The draft policies are key to the implementation of the WSIB's new Rate Framework which was approved in November 2016 by the WSIB Board of Directors, following a multi-year stakeholder engagement and consultation process.

The draft policies were developed to support the implementation of the rate framework and include features of the rate framework that have been shared with stakeholders already, such as the rate framework's classification structure and premium rate setting methods.

CME RESPONSE

CME appreciates the WSIB's commitment to the development of the policies necessary to help employer stakeholders in understanding the new Rate Framework. CME agrees that it is critical that the draft policies be approved in sufficient time to allow as much education on the new policies as possible. It is as equally important that the policies clearly articulate the issues and provide employers with the necessary tools to understand the principles guiding the WSIB in its implementation of the new framework.

CME also acknowledges the WSIB's response to the initial negative feedback on the draft polices following its release of the documents in August of 2017. Following the many concerns raised by the employer community on the original draft polices, the WSIB responded by creating a working group with employers to obtain direct feedback on how the policies could be improved to better address the employer needs. CME appreciates the WSIB's efforts to revisit the process and revise the draft policies in an effort to move forward with policies which are more reflective of the realities facing employers on the new topics identified in the draft policies.

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Canadian Manufacturers & Exporters

Regarding the draft policies, CME supports the position submitted by the Ontario Business Coalition, which is supportive of the two very thorough responses to the draft policies submitted by the Office of the Employer Adviser.

CME looks forward to participating in the next phase of this consultation and the next iterations of the draft policies.

Regards,

Maria Marchese
Director
Workplace Safety and Compensation Policy
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ONTARIO BUSINESS COALITION (OBC)

January 15, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Sent via E-mail: consultation_secretariat@wsib.on.ca

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions

The Ontario Business Coalition thanks the Workplace Safety & Insurance Board for the opportunity to provide feedback to its Rate Framework Draft Policies Consultation.

By way of background information, the Ontario Business Coalition (OBC) is the Ontario's largest and most diverse employer organization focused exclusively on workers' compensation issues. Our members represent employers in the manufacturing, auto assembly, construction, retail, hospital, long term care, fuels and temporary staffing services industries in the Workplace Safety & Insurance Board's (WSIB) Schedule 1 class of employers, as well as school boards and other Schedule 2 Employers. We are mandated to work with our members, senior officials at the WSIB and in government to make sure Ontario's workers' compensation system meets the needs of the province's employers and compensates injured workers in a fair and efficient manner.

OBC also appreciates the WSIB's recognition of the serious concerns expressed by employer stakeholders with the initial draft policies which were released in August 2017, and the WSIB's subsequent creation of a working group to obtain more specific input on the drafts.

Attached please find the Officer of the Employer Adviser's (OEA) two submission on the draft policies. OBC supports the concerns expressed by the OEA and will not be providing any additional submission at this time.

OBC looks forward to the next step in this consultation, and the further opportunity to provide input on the next version of the draft policies.

Yours truly,

Ian Cunningham
Chair

Office of the Employer Adviser

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Ontario

Michael Zacks
Director (A) and
General Counsel

October 6, 2017

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions

The Office of the Employer Adviser has a statutory mandate under the Workplace Safety and Insurance Act to advise represent and educate primarily employers with fewer than 100 workers. This submission will accordingly be focused on the interests of smaller employers in the workplace safety and insurance system.

General Comments:

We find these policies in the main to be complex and highly integrated. Most small employers will not have read them, and those that have will be hard pressed to understand them. If the goal is to make these policies easily understood by small employers, then policies need to be simplified where possible, or be accompanied by extensive explanatory documents. These accompanying documents must contain clear examples, explanations and definitions of various undefined terms and expanded terms that are sprinkled throughout the policies. This can be done through administrative guidelines which should quickly be available once the policies come into force. This is especially necessary as there are penal consequences buried in some of the policies involving the material change in circumstances rule for associated companies that change status.

Our submissions will address the policies that give us concern.

Coverage Status Policy 12-01-04

We have two comments on this Policy. The first pertains to the statement at the start of the Policy that provides:

> *The business activity of an employer who operates in Ontario, or of a non-resident employer who is determined by the WSIB to have a substantial connection to Ontario, falls under either mandatory coverage or non-mandatory coverage.*

There is no explanation on what is meant by a substantial connection to Ontario. This term must be defined with clarity. Employers have a right to know whether they have a substantial connection, and thus obliged to consider registration with the WSIB.

The second concern is found on page 2 of the Policy:

> ***Transfer to Schedule 1***
>
> *Any Schedule 2 employer may request a transfer to Schedule 1 and receive the protection of collective liability. Schedule 2 employers transferring to Schedule 1 will be classified in one or more 6-digit NAICS codes based on their Schedule 1 business activity. Guidelines for Schedule 2 employers requesting transfers to Schedule 1 can be found in 12-01-02, Employer by Application*

Currently, transfers can go either way. A Sch. 2 employer can transfer to Sch. 1 and then back again on payment of a transfer fee. The absence of a reference to the move from Sch. 1 to 2 for Sch. 2 employers raises the concern that this type of transfer may not be permitted. This needs to be clarified that such bilateral transfers are permitted

The Classification Structure Policy 14-01-01

This is an explanatory Policy. It describes how the WSIB will determine a business' classification in the new system. Generally, it reflects what the WSIB has described to employers. However, to fully appreciate the process one needs to be familiar with the new regulation that was passed last year, O. Reg. 470/16 and the chart of the Classification Structure in the Appendix to the this Policy. There needs to be clearer explanations in the policy.

The Classification Structure Policy is confusing. Although it states that employers are classified in one or more of the 2, 3, 4 and 6 digit NAICS codes the Board only shows 2 – 4 digit codes in its chart. There are no 5 or 6 digit codes shown. Examples of how 5 and 6 digit codes work need to be included.

Ancillary Activities

The Rate Framework Document provides that ancillary operations will remain part of the new funding framework:

> *The concept of business activity remains central to the classification of employers in the new rate framework. To determine what is (and is not) considered a business activity for classification purposes, the WSIB would continue to consider operations that are "ancillary" to the business activity (i.e. in support of the business activity) as part of, and therefore not separately classified from, the employer's business activity.*[1]

The Classification Structure Policy establishes a policy foundation for ancillary activities. Although the regulatory provisions pertaining to ancillary activities will be deleted from the general WSIB regulation when the new system comes into effect the policy has re-introduced ancillary activities in a significantly broadened and open ended way.

As a general observation we question the need for including ancillary activities at all given that an employer's classification will be based on the class with the predominant insurable earnings. The section describing them, unlike the repealed provisions in Ontario Regulation 175/98, s. 6(3) are complex, confusing, and subjective. As an example, the policy provides that,

> *The WSIB will not separately classify the employer's operations that are ancillary, i.e, incidental to the employer's business activity.*

However, towards the end of the policy it states,

> ***Ancillary operation that is a business activity in its own right***
>
> *An employer's ancillary operation may be incidental to the employer's business activity and at the same time carry on a business in its own right. When part of the ancillary operation is carrying on as a business in its own right, it may be eligible for classification in one or more 6-digit NAICS codes, and may be assessed separately, see policy XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

These two provisions are contradictory on their face. We encourage the WSIB to reword this aspect of the policy and give several examples of how this would work in practice.

The OEA has serious concerns about the extremely expanded and open-ended nature of the how the WSIB is re-interpreting ancillary activities. Under the current general regulation ancillary activities are clearly and specifically defined.

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[1] Rate Framework Modernization - The New Rate Framework, March 2017, page 12.

They are not open-ended. This policy leaves too much discretion to WSIB auditors to define in an ad hoc manner whatever any business activity as ancillary. This will result in inconsistent decisions among auditors, and the possibility of significant retroactive premiums if the employer gets it wrong. Currently, employers know with certainty if an activity is ancillary or not. This is not the case with the Classification Structure policy. It is open ended in the extreme. The description of ancillary activities starts with the following statement:

> *Activities that are incidental to an employer's business activity include, but are not limited to:*

It then continues to describe specific ancillary activities that are in their own right open ended using the phrase *including but not limited to* such as in the provision on administration activities:

> *administration related to an employer's operations including but not limited to management, payroll, human resources, information technology, training and clerical services*

In our submission this wording is grossly unfair to employers. An employer will never know if their organizational structure offends the ancillary activities rule. There can be no certainty. This wording essentially proposes that ancillary means whatever the WSIB says it means.

Further unfairness occurs through the inclusion of activities that have to date not been considered ancillary with no explanation as to why this is being done. The following is a comparison of the current ancillary activity and its policy counterpart:

Regulation 175/98	Draft Policy	Comment
Design, including drafting and engineering, research and development related to goods produced or services provided, or intended to be produced or provided, by the employer.	design, including but not limited to drafting and engineering, research, development and software development related to goods produced or services provided, or intended to be produced or provided, by the employer	In addition to being open ended, the policy expands design by including software development

Marketing, promotion or communication related to goods sold or produced or services provided, or intended to be sold, produced or provided, by the employer.	marketing, promotion, fundraising or communication related to goods sold or produced or services provided, or intended to be sold, produced, or provided by the employer	The policy inserts fundraising. A previously independent and by application activity as an ancillary activity.
The manufacture of packaging or packing materials to be used in the packaging of goods produced by the employer.	packaging an employer's own goods, including but not limited to the manufacturing of packaging material used	This is an example of an open ended activity that leaves employers unclear on what is meant
	the sale of goods produced, or services provided, by the employer (Exception: If the employer operates at least one retail operation located elsewhere than on the production site of the goods the employer produces, the retail activity is considered a separate business activity.)	This is a new ancillary activity. It is in our submission nonsensical. An employer can simply avoid the ancillary application by setting up a stand-alone kiosk anywhere in the province off his production site.

The significant risk to employers with this very broad open-ended version of ancillary activity is found in the following part of the policy:

> ***Changes to classification***
>
> *When registered employers change, add, or discontinue a business activity, they must immediately report this to the WSIB to ensure that they are correctly classified. The WSIB determines how an addition or deletion of activities affects an employer's classification.*
>
> *A classification change may impact an employer's predominant class or subclass or the employer's eligibility for multiple premium rates, see XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

How is an employer to know whether their classification has changed because of adding an activity which is subsequently determined to be ancillary? This change would be considered a material change in circumstances, and not reporting would be an offence. We strongly recommend that the WSIB

reconsider the need for ancillary activities and if it is to be included then make it a clearly defined as a closed list.

Eligibility for Single or Multiple Premium Rates Policy

The Eligibility for Single or Multiple Premium Rates Policy provides the criteria for obtaining granting multiple classes to an employer in the new system. This is an exception to the rule that an employer is placed in a single class based on the predominant business activity determined by the class that reflects the employer's largest share of insurable earnings. In our view, the criteria are unfair to both small and larger employers.

The criteria require an employer seeking a second (or more) premium rate(s) to meet a business significance test and a non-integration test. The significance test has two parts both of which must be met:

a) generate an annual insurable earnings of at least five times the maximum insurable earnings ceiling for the premium year, and

b) generate at least 25% of the employer's total annual insurable earnings.

In order to have a separate rate the non-predominant activity must be significant in the sense that it generates at least $442,500 in insurable earnings using the 2017 maximum insurable earnings ceiling, which must be at least 25% of the employer's total annual insurable earnings. That means an employer must have at least $1,770,000 in total insurable earnings to be eligible for multiple rate groups. On average this is an employer with 20 workers all paid at least the maximum insurable level for 2017 - $88,500. This would likely exclude many small employers, and larger employers that pay lower based wages.

As the maximum insurable ceiling amount increases annually, it becomes more difficult for a small employer with an independent secondary business activity to qualify for a second rate. A small employer that actually meets the significance test in a particular year, may lose it in a succeeding year if the increase in the insurable ceiling puts the employer under the 25% requirement. In our view this is unfair as being outside the employer's control, and may result in penalties unless the employer closely monitors its insurable payroll – a requirement it has not needed to do outside of the small employer rule.

Larger employers are also prejudiced by this test in another way. As the test requires an employer's secondary activity to generate at least 25 % of total annual insurable earnings, the more insurable earnings a larger employer generates in the primary business the less likely it will be for the employer to maintain the 25% level of earnings for the secondary industry assuming its share of the insurable earnings remains constant, hereby disqualifying the employer from the second rate. Being successful in growing the primary business punishes the employer with the secondary business which does not grow as fast.

This approach puts an employer who qualifies for a second rate in jeopardy should an increase in the insurable ceiling disqualify the employer in a subsequent year. There is an obligation on the employer to notify the WSIB of this material change in circumstances. Failure to do so is a significant risk to employers that place some of them in financial jeopardy because of their inability to stay on top of these complex changes. In our view these policies need to be reviewed from this perspective and assurance given that employers will not be penalized in this way.

If an employer passes the significance test, it must then meet the non-integration test. To meet this test an employer must be able to show that the product or service of the stand-alone activity is not integrated into the development of other products or services of the employer, or used in the joint development of other products or services. The claimed non-integrated service or business activity must not be offered primarily to external, unaffiliated clients together with the product or service of the employer's other operations.

As a general observation we believe most employers will find these criteria difficult to understand as they are vague, unclear and open to subjective interpretation in nature. We recommend that the non-integration criteria must be clarified and clear examples given of how they are to be applied.

The WSIB's decision to allow multiple rate groups was in response to employers' pleas for fairness. Some employers were complaining that if some of their business activities were lumped in with the predominant class, then they could not remain competitive in Ontario, and their only option was to incorporate another company to get a lower rate. The WSIB's draft policy on associated companies has removed this option. Associated companies will be treated as one entity, and the multiple rate rules would be applied to the two or more companies as one if there were affiliation and cooperation. These policies do nothing to foster competitiveness of such companies either in Ontario or globally. We submit that it would be preferable and fairer for employers to have the rules broadened to allow more employers to take advantage of multiple rates, if doing so did no damage to the overall integrity of the new rate setting process.

We recommend that the significance test be removed, and that the WSIB simply applying a non-integration test to determine if an employer is eligible for multiple rates. If an employer believes that it is good business to operate a non-integrated activity, then that is enough to entitle the employer to a secondary rate assuming it meets the other criteria such as a segregated payroll.

Associated Employers Policy 14-01-06

The Associated Employers Policy creates the concept of affiliated employers and co-operative business relationships. It replaces the narrower associated employer rule found in O. Reg. 475/98. The Policy provides that if two or more

employers are affiliated and are engaged in a co-operative business relationship, they are considered associated. The WSIB treats the employers as one employer for the purposes of classification and premium rate setting.

The tests of affiliation and cooperation must both be met for two or more employers to be considered associated. Affiliation is essentially the same under the Policy as associated is under the current regulation.

We have a concern with the affiliation test applicable to where one employer is a corporation and the other employer is a member of a related group that controls the corporation. A related group is described as a group of individuals each of whom is related to all the other members of the group. The actual term *related* is not defined as it is in the current regulation. It seems to be broader than family members but it is not clear. We would recommend that the Policy define related in the same way it defines *family member*.

Employers should not be guessing and not need to call the OEA to find out what the Policy means. There must be clarity so employers will know if they are in compliance with premium remittance rules, especially since the Policy makes it clear the affiliated employers must declare the affiliation as a material circumstance:

> ***Disclosure of association***
>
> *Employers must declare associations with other employers at the time of registration or, if not associated at the time of registration, within 10 days of becoming associated with another employer. The WSIB may determine whether an employer is associated with another employer at the time of registration or any time afterwards; see 22-01-01, Material Change in Circumstances - Employer.*

There is also a reference to associated construction employers, and the impact that will have on executive officers in associated companies:

> ***Associated employers in construction***
>
> *If two or more employers are associated, and one carries on business in construction, and the other(s) does not engage in construction activities, the entirety of both employers' operations are subject to compulsory coverage in construction industry rules (see 12-01-06, Expanded Compulsory Coverage in Construction), even if the entire operations of one or more of the associated employers are not predominantly classified in any of the subclasses of Class G.*

Here is what the WSIB's stated purpose for this rule is in the accompanying consultation document:

The coverage rules for those associated employers engaged in construction activities are also being clarified. To make these rules explicit, the policy states that any employer who is associated with an employer who engages in construction work is subject to compulsory coverage in construction, i.e., requires coverage for all executive officers and partners.

This policy on its face runs counter to the stated purposes of the Funding Framework classification model which is based on what class has the predominant percentage of insurable earnings. If the non-construction company of two associated companies has the predominant amount of earnings in a non-construction class, then company earnings should be rated in the non-construction class. Alternatively, the WSIB could allow the construction company a separate construction rate as an exception to the general rule for multiple rates.

This would be fairer to the employer instead of assessing all non-construction employees in a manufacturing company for example at a construction rate. It would also ensure that directors who are involved in a non-construction company do not have to start paying premiums because of an artificial construct created by this clause in the policy. Employers impacted by this part of the policy would surely see this provision as a pure money-grab by the WSIB.

The OEA has concerns with the supportive component of the affiliation test. The test provides that two or more affiliated employers are engaging in a cooperative business relationship if the businesses are supportive of each other.
The term *supportive* is not defined. It is an extremely broad word. It generally means giving encouragement or approval or actively giving help to someone who needs it.[2] The consultation questions accompanying this policy provide some indication of what the WSIB will consider to be establishing a state of cooperation between two companies:

- *Use of common health and safety policies/practices*
- *Sharing of employees*
- *Sharing of revenues and profits*
- *Sharing of technology*
- *Joint bidding or tendering for contracts*
- *Common collective bargaining process*
- *Common labour policies*

The state of being supportive is vague and open ended. In our submission it requires clear guidance in the Policy. Usually, ancillary activities were considered as supportive of the primary business activities, so we would like to see the Policy explain what the distinction is between ancillary and supportive. Clarity takes on a particular urgency as an employer must declare association with another employer at the time of registration or, if not associated at the time

[2] http://dictionary.cambridge.org/us/dictionary/english/supportive

of registration, within 10 days of becoming associated with another employer, as it is considered a material change in circumstance and thus attracts criminal sanction in the breach. This means potentially any employer who currently has an affiliated company that did not meet the associated company rule in the current regulation would have to declare an associated relationship when the new rate framework comes into effect within 10 days or be at risk of being prosecuted if they do not declare a material change in circumstances.

We assume that the WSIB will likely have a grace period of say a year so employers could bring themselves into compliance like they did under Bill 119 changes. This will still leave I suspect hundreds if not thousands of employers with affiliated companies at risk of significant retroactive premium increases and penalties because they weren't paying premiums at the correct rate as they thought they were in a manufacturing class, but as a result of this new Policy are deemed to be in construction.

The OEA is also concerned with the new common employer rule that provides:

> *When an employer restructures a business, either establishing or consolidating separate legal entities to carry on an existing business, or if an existing employer registers a new legal entity for similar business purposes, these employers will be considered <u>associated for the purposes of classification and premium rate setting.</u>*

This provision causes us concern as it treats a new legal entity as associated with another entity for both classification and premium rate setting. We assume that by using the phrase *rate setting* the WSIB will also apply the accident costs of the prior entity to all associated companies. This will be a trap for many employers, who legitimately restructure a business. Aside from an apparent lack of legal authority to create such a policy, it will result in many employers being retroactively assessed, and potentially run afoul of the material change in circumstance rule. We submit this policy is unjust to employers and should be abandoned.

Similarly we have concerns with the successor employer provision in the policy:

> *The WSIB may also find that an active employer is associated with another employer that is no longer active if the WSIB determines that the person(s) who control the active employer's operations are affiliated with the person(s) who controlled the inactive employer's operations, and the active employer retains the same employees, clients, or similar equipment and business processes as the inactive employer*

We again question the WSIB's statutory authority to make such a policy rule. It will create significant penalties for employers who legitimately close down a corporation particularly in the construction sector when the construction project is over. We submit this provision should also be reconsidered.

Employer Premium Adjustments Policy 14-02-06

This Policy sets out the rules for retroactive adjustments to premium rates. The policy takes the current premium adjustment policy and updates it for the new funding framework. Our comments on this policy reflect a concern that the introduction of such a complex and comprehensive restructuring of the revenue model will result in significant problems for employers for years to come.

Given the complexity of myriad rules that could affect class change, ancillary activities, associated companies and the other rules, the WSIB should only adjust for the year of audit. This one year limit can be reviewed in five years by which time employers will be more comfortable and familiar with the new rules.
We have no comments with respect to the other policies.

I trust the above will be helpful. Please contact me if you have any questions.

Sincerely,

Michael Zacks

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Office of the Employer Adviser

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Ontario

Michael Zacks
Director (A) and
General Counsel

January 9, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1
Dear Consultation Secretariat:
Re: Funding Framework Policy Submissions

Dear Consultation Secretariat:

Re: RATE FRAMEWORK POLICY CONSULTATION – INTERIM UPDATE.

The following are the OEA's submission on the interim update to the Rate Framework Policy Consultation.

A. Eligibility for Single and Multiple Premium Rates Policy: Test of Significance

The WSIB has proposed three options in response to stakeholders' concerns about the proposed two stage test:

WSIB Action: The WSIB is exploring the following options for adjusting the test of significance:

1. Modifying the percentage of Insurable Earnings (IE) threshold - Currently the draft policy has a threshold of 25%.

2. Creating an exception for the percentage of IE threshold for large employers – This could allow large employers to have multiple rates regardless of percentage of insurable earnings in each business activity.

3. Removing the requirement to meet both criteria – Instead of requiring employers to meet both a 25% threshold for each business activity AND meeting the 5 times maximum IE ceiling threshold, employers would only be required to meet one condition to be eligible for multiple premium rates.

The OEA has concerns with all three options. In our submission the percentage of insurable earnings threshold should be based on rational objective criteria. Why was the 25% amount picked instead of 20% for example.

The OEA agrees with the concern expressed by the WSIB on the second option. Of the three options the third is a reasonable compromise, subject to a discussion about the appropriateness of the 25% threshold.

B. Associated Employers Policy: Test of Affiliation and Test of Cooperation

The OEA supports the WSIB's proposal to review the Associated Employers policy, and especially the tests of affiliation and of cooperation to ensure that the purpose of the policy and the criteria for the tests are clearly explained.

C. Associated Employers Policy: Compulsory Coverage in Construction

The OEA supports the WSIB's proposal to removal of this section of the policy.

D. Classification Structure Policy: Ancillary Operations - Scope and Definition

In response to employer concerns to the ancillary operations policy, the WSIB is proposing three options:

1. Reverting to an inclusive list of ancillary operations, as currently exists in policy.

2. Revising the definition of ancillary operations to a more general definition.

3. Revising or deleting the description of "retail operations" as ancillary.

The OEA supports the first option and the third option. The second option will remove clarity and certainty for employers. An inclusive list will allow certainty which is necessary in this area, and deleting the description of retail operations will remove what is in our submission an illogical ancillary activity.

E. Health and Safety

The OEA supports the WSIB's commitment to review the policies with health and safety in mind.

Thank you for this further opportunity to provide submissions.

Sincerely,

Michael Zacks

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Canadian Vehicle
Manufacturers' Association
Association canadienne
des constructeurs de véhicules

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January 15, 2018

Ms. Kate Lamb
Chief Corporate Services Officer
Workplace Safety and Insurance Board
200 Front Street West
Toronto, ON M5V 3J1

Re: Draft WSIB Rate Framework Policies

Dear Ms. Lamb:

The Canadian Vehicle Manufacturers' Association (CVMA) representing FCA Canada Inc., Ford Motor Company of Canada, Limited, and General Motors of Canada Company appreciates the opportunity to review and comment on the Draft WSIB Rate Framework Policies which were developed to support the implementation of the Rate Framework.

We appreciate that the WSIB has engaged in a consultation on the draft policies and has heard the concerns expressed regarding these policies. We are encouraged that the WSIB has signalled that it will be making adjustments to the policies as outlined in the Interim Update published in December 2017. With regard to our specific input, CVMA supports the Ontario Business Coalition submission on the draft policies (copy attached).

In closing, CVMA looks forward to hearing about the next steps on the Rate Framework policies. CVMA encourages the WSIB to finalize the policies and move forward with the implementation of the Rate Framework.

Yours sincerely,

Yasmin Tarmohamed

Yasmin Tarmohamed
Vice-President, Environment, Health and Safety

Attachment

cc: D. Weber, WSIB
WSIB Consultation Secretariat

File: 53210YTAF_18

55 Standish Court, Suite. 620
Mississauga, ON L5R 4B2
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ONTARIO BUSINESS COALITION (OBC)

January 15, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Sent via E-mail: consultation_secretariat@wsib.on.ca

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions

The Ontario Business Coalition thanks the Workplace Safety & Insurance Board for the opportunity to provide feedback to its Rate Framework Draft Policies Consultation.

By way of background information, the Ontario Business Coalition (OBC) is the Ontario's largest and most diverse employer organization focused exclusively on workers' compensation issues. Our members represent employers in the manufacturing, auto assembly, construction, retail, hospital, long term care, fuels and temporary staffing services industries in the Workplace Safety & Insurance Board's (WSIB) Schedule 1 class of employers, as well as school boards and other Schedule 2 Employers. We are mandated to work with our members, senior officials at the WSIB and in government to make sure Ontario's workers' compensation system meets the needs of the province's employers and compensates injured workers in a fair and efficient manner.

OBC also appreciates the WSIB's recognition of the serious concerns expressed by employer stakeholders with the initial draft policies which were released in August 2017, and the WSIB's subsequent creation of a working group to obtain more specific input on the drafts.

Attached please find the Officer of the Employer Adviser's (OEA) two submission on the draft policies. OBC supports the concerns expressed by the OEA and will not be providing any additional submission at this time.

OBC looks forward to the next step in this consultation, and the further opportunity to provide input on the next version of the draft policies.

Yours truly,

Ian Cunningham
Chair

Office of the Employer Adviser

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Ontario

Michael Zacks
Director (A) and
General Counsel

October 6, 2017

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions

The Office of the Employer Adviser has a statutory mandate under the Workplace Safety and Insurance Act to advise represent and educate primarily employers with fewer than 100 workers. This submission will accordingly be focused on the interests of smaller employers in the workplace safety and insurance system.

General Comments:

We find these policies in the main to be complex and highly integrated. Most small employers will not have read them, and those that have will be hard pressed to understand them. If the goal is to make these policies easily understood by small employers, then policies need to be simplified where possible, or be accompanied by extensive explanatory documents. These accompanying documents must contain clear examples, explanations and definitions of various undefined terms and expanded terms that are sprinkled throughout the policies. This can be done through administrative guidelines which should quickly be available once the policies come into force. This is especially necessary as there are penal consequences buried in some of the policies involving the material change in circumstances rule for associated companies that change status.

Our submissions will address the policies that give us concern.

Coverage Status Policy 12-01-04

We have two comments on this Policy. The first pertains to the statement at the start of the Policy that provides:

> *The business activity of an employer who operates in Ontario, or of a non-resident employer who is determined by the WSIB to have a substantial connection to Ontario, falls under either mandatory coverage or non-mandatory coverage.*

There is no explanation on what is meant by a substantial connection to Ontario. This term must be defined with clarity. Employers have a right to know whether they have a substantial connection, and thus obliged to consider registration with the WSIB.

The second concern is found on page 2 of the Policy:

> ***Transfer to Schedule 1***
>
> *Any Schedule 2 employer may request a transfer to Schedule 1 and receive the protection of collective liability. Schedule 2 employers transferring to Schedule 1 will be classified in one or more 6-digit NAICS codes based on their Schedule 1 business activity. Guidelines for Schedule 2 employers requesting transfers to Schedule 1 can be found in 12-01-02, Employer by Application*

Currently, transfers can go either way. A Sch. 2 employer can transfer to Sch. 1 and then back again on payment of a transfer fee. The absence of a reference to the move from Sch. 1 to 2 for Sch. 2 employers raises the concern that this type of transfer may not be permitted. This needs to be clarified that such bilateral transfers are permitted

The Classification Structure Policy 14-01-01

This is an explanatory Policy. It describes how the WSIB will determine a business' classification in the new system. Generally, it reflects what the WSIB has described to employers. However, to fully appreciate the process one needs to be familiar with the new regulation that was passed last year, O. Reg. 470/16 and the chart of the Classification Structure in the Appendix to the this Policy. There needs to be clearer explanations in the policy.

The Classification Structure Policy is confusing. Although it states that employers are classified in one or more of the 2, 3, 4 and 6 digit NAICS codes the Board only shows 2 – 4 digit codes in its chart. There are no 5 or 6 digit codes shown. Examples of how 5 and 6 digit codes work need to be included.

Ancillary Activities

The Rate Framework Document provides that ancillary operations will remain part of the new funding framework:

> *The concept of business activity remains central to the classification of employers in the new rate framework. To determine what is (and is not) considered a business activity for classification purposes, the WSIB would continue to consider operations that are "ancillary" to the business activity (i.e. in support of the business activity) as part of, and therefore not separately classified from, the employer's business activity.*[1]

The Classification Structure Policy establishes a policy foundation for ancillary activities. Although the regulatory provisions pertaining to ancillary activities will be deleted from the general WSIB regulation when the new system comes into effect the policy has re-introduced ancillary activities in a significantly broadened and open ended way.

As a general observation we question the need for including ancillary activities at all given that an employer's classification will be based on the class with the predominant insurable earnings. The section describing them, unlike the repealed provisions in Ontario Regulation 175/98, s. 6(3) are complex, confusing, and subjective. As an example, the policy provides that,

> *The WSIB will not separately classify the employer's operations that are ancillary, i.e, incidental to the employer's business activity.*

However, towards the end of the policy it states,

> ***Ancillary operation that is a business activity in its own right***
>
> *An employer's ancillary operation may be incidental to the employer's business activity and at the same time carry on a business in its own right. When part of the ancillary operation is carrying on as a business in its own right, it may be eligible for classification in one or more 6-digit NAICS codes, and may be assessed separately, see policy XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

These two provisions are contradictory on their face. We encourage the WSIB to reword this aspect of the policy and give several examples of how this would work in practice.

The OEA has serious concerns about the extremely expanded and open-ended nature of the how the WSIB is re-interpreting ancillary activities. Under the current general regulation ancillary activities are clearly and specifically defined.

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[1] Rate Framework Modernization - The New Rate Framework, March 2017, page 12.

They are not open-ended. This policy leaves too much discretion to WSIB auditors to define in an ad hoc manner whatever any business activity as ancillary. This will result in inconsistent decisions among auditors, and the possibility of significant retroactive premiums if the employer gets it wrong. Currently, employers know with certainty if an activity is ancillary or not. This is not the case with the Classification Structure policy. It is open ended in the extreme. The description of ancillary activities starts with the following statement:

> *Activities that are incidental to an employer's business activity include, but are not limited to:*

It then continues to describe specific ancillary activities that are in their own right open ended using the phrase *including but not limited to* such as in the provision on administration activities:

> *administration related to an employer's operations including but not limited to management, payroll, human resources, information technology, training and clerical services*

In our submission this wording is grossly unfair to employers. An employer will never know if their organizational structure offends the ancillary activities rule. There can be no certainty. This wording essentially proposes that ancillary means whatever the WSIB says it means.

Further unfairness occurs through the inclusion of activities that have to date not been considered ancillary with no explanation as to why this is being done. The following is a comparison of the current ancillary activity and its policy counterpart:

Regulation 175/98	Draft Policy	Comment
Design, including drafting and engineering, research and development related to goods produced or services provided, or intended to be produced or provided, by the employer.	design, including but not limited to drafting and engineering, research, development and software development related to goods produced or services provided, or intended to be produced or provided, by the employer	In addition to being open ended, the policy expands design by including software development

Marketing, promotion or communication related to goods sold or produced or services provided, or intended to be sold, produced or provided, by the employer.	marketing, promotion, fundraising or communication related to goods sold or produced or services provided, or intended to be sold, produced, or provided by the employer	The policy inserts fundraising. A previously independent and by application activity as an ancillary activity.
The manufacture of packaging or packing materials to be used in the packaging of goods produced by the employer.	packaging an employer's own goods, including but not limited to the manufacturing of packaging material used	This is an example of an open ended activity that leaves employers unclear on what is meant
	the sale of goods produced, or services provided, by the employer (Exception: If the employer operates at least one retail operation located elsewhere than on the production site of the goods the employer produces, the retail activity is considered a separate business activity.)	This is a new ancillary activity. It is in our submission nonsensical. An employer can simply avoid the ancillary application by setting up a stand-alone kiosk anywhere in the province off his production site.

The significant risk to employers with this very broad open-ended version of ancillary activity is found in the following part of the policy:

> ***Changes to classification***
>
> *When registered employers change, add, or discontinue a business activity, they must immediately report this to the WSIB to ensure that they are correctly classified. The WSIB determines how an addition or deletion of activities affects an employer's classification.*
>
> *A classification change may impact an employer's predominant class or subclass or the employer's eligibility for multiple premium rates, see XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

How is an employer to know whether their classification has changed because of adding an activity which is subsequently determined to be ancillary? This change would be considered a material change in circumstances, and not reporting would be an offence. We strongly recommend that the WSIB

reconsider the need for ancillary activities and if it is to be included then make it a clearly defined as a closed list.

Eligibility for Single or Multiple Premium Rates Policy

The Eligibility for Single or Multiple Premium Rates Policy provides the criteria for obtaining granting multiple classes to an employer in the new system. This is an exception to the rule that an employer is placed in a single class based on the predominant business activity determined by the class that reflects the employer's largest share of insurable earnings. In our view, the criteria are unfair to both small and larger employers.

The criteria require an employer seeking a second (or more) premium rate(s) to meet a business significance test and a non-integration test. The significance test has two parts both of which must be met:

a) generate an annual insurable earnings of at least five times the maximum insurable earnings ceiling for the premium year, and

b) generate at least 25% of the employer's total annual insurable earnings.

In order to have a separate rate the non-predominant activity must be significant in the sense that it generates at least $442,500 in insurable earnings using the 2017 maximum insurable earnings ceiling, which must be at least 25% of the employer's total annual insurable earnings. That means an employer must have at least $1,770,000 in total insurable earnings to be eligible for multiple rate groups. On average this is an employer with 20 workers all paid at least the maximum insurable level for 2017 - $88,500. This would likely exclude many small employers, and larger employers that pay lower based wages.

As the maximum insurable ceiling amount increases annually, it becomes more difficult for a small employer with an independent secondary business activity to qualify for a second rate. A small employer that actually meets the significance test in a particular year, may lose it in a succeeding year if the increase in the insurable ceiling puts the employer under the 25% requirement. In our view this is unfair as being outside the employer's control, and may result in penalties unless the employer closely monitors its insurable payroll – a requirement it has not needed to do outside of the small employer rule.

Larger employers are also prejudiced by this test in another way. As the test requires an employer's secondary activity to generate at least 25 % of total annual insurable earnings, the more insurable earnings a larger employer generates in the primary business the less likely it will be for the employer to maintain the 25% level of earnings for the secondary industry assuming its share of the insurable earnings remains constant, hereby disqualifying the employer from the second rate. Being successful in growing the primary business punishes the employer with the secondary business which does not grow as fast.

This approach puts an employer who qualifies for a second rate in jeopardy should an increase in the insurable ceiling disqualify the employer in a subsequent year. There is an obligation on the employer to notify the WSIB of this material change in circumstances. Failure to do so is a significant risk to employers that place some of them in financial jeopardy because of their inability to stay on top of these complex changes. In our view these policies need to be reviewed from this perspective and assurance given that employers will not be penalized in this way.

If an employer passes the significance test, it must then meet the non-integration test. To meet this test an employer must be able to show that the product or service of the stand-alone activity is not integrated into the development of other products or services of the employer, or used in the joint development of other products or services. The claimed non-integrated service or business activity must not be offered primarily to external, unaffiliated clients together with the product or service of the employer's other operations.

As a general observation we believe most employers will find these criteria difficult to understand as they are vague, unclear and open to subjective interpretation in nature. We recommend that the non-integration criteria must be clarified and clear examples given of how they are to be applied.

The WSIB's decision to allow multiple rate groups was in response to employers' pleas for fairness. Some employers were complaining that if some of their business activities were lumped in with the predominant class, then they could not remain competitive in Ontario, and their only option was to incorporate another company to get a lower rate. The WSIB's draft policy on associated companies has removed this option. Associated companies will be treated as one entity, and the multiple rate rules would be applied to the two or more companies as one if there were affiliation and cooperation. These policies do nothing to foster competitiveness of such companies either in Ontario or globally. We submit that it would be preferable and fairer for employers to have the rules broadened to allow more employers to take advantage of multiple rates, if doing so did no damage to the overall integrity of the new rate setting process.

We recommend that the significance test be removed, and that the WSIB simply applying a non-integration test to determine if an employer is eligible for multiple rates. If an employer believes that it is good business to operate a non-integrated activity, then that is enough to entitle the employer to a secondary rate assuming it meets the other criteria such as a segregated payroll.

Associated Employers Policy 14-01-06

The Associated Employers Policy creates the concept of affiliated employers and co-operative business relationships. It replaces the narrower associated employer rule found in O. Reg. 475/98. The Policy provides that if two or more

employers are affiliated and are engaged in a co-operative business relationship, they are considered associated. The WSIB treats the employers as one employer for the purposes of classification and premium rate setting.

The tests of affiliation and cooperation must both be met for two or more employers to be considered associated. Affiliation is essentially the same under the Policy as associated is under the current regulation.

We have a concern with the affiliation test applicable to where one employer is a corporation and the other employer is a member of a related group that controls the corporation. A related group is described as a group of individuals each of whom is related to all the other members of the group. The actual term *related* is not defined as it is in the current regulation. It seems to be broader than family members but it is not clear. We would recommend that the Policy define related in the same way it defines *family member*.

Employers should not be guessing and not need to call the OEA to find out what the Policy means. There must be clarity so employers will know if they are in compliance with premium remittance rules, especially since the Policy makes it clear the affiliated employers must declare the affiliation as a material circumstance:

> ***Disclosure of association***
>
> *Employers must declare associations with other employers at the time of registration or, if not associated at the time of registration, within 10 days of becoming associated with another employer. The WSIB may determine whether an employer is associated with another employer at the time of registration or any time afterwards; see 22-01-01, Material Change in Circumstances - Employer.*

There is also a reference to associated construction employers, and the impact that will have on executive officers in associated companies:

> ***Associated employers in construction***
>
> *If two or more employers are associated, and one carries on business in construction, and the other(s) does not engage in construction activities, the entirety of both employers' operations are subject to compulsory coverage in construction industry rules (see 12-01-06, Expanded Compulsory Coverage in Construction), even if the entire operations of one or more of the associated employers are not predominantly classified in any of the subclasses of Class G.*

Here is what the WSIB's stated purpose for this rule is in the accompanying consultation document:

The coverage rules for those associated employers engaged in construction activities are also being clarified. To make these rules explicit, the policy states that any employer who is associated with an employer who engages in construction work is subject to compulsory coverage in construction, i.e., requires coverage for all executive officers and partners.

This policy on its face runs counter to the stated purposes of the Funding Framework classification model which is based on what class has the predominant percentage of insurable earnings. If the non-construction company of two associated companies has the predominant amount of earnings in a non-construction class, then company earnings should be rated in the non-construction class. Alternatively, the WSIB could allow the construction company a separate construction rate as an exception to the general rule for multiple rates.

This would be fairer to the employer instead of assessing all non-construction employees in a manufacturing company for example at a construction rate. It would also ensure that directors who are involved in a non-construction company do not have to start paying premiums because of an artificial construct created by this clause in the policy. Employers impacted by this part of the policy would surely see this provision as a pure money-grab by the WSIB.

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- *Use of common health and safety policies/practices*
- *Sharing of employees*
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The state of being supportive is vague and open ended. In our submission it requires clear guidance in the Policy. Usually, ancillary activities were considered as supportive of the primary business activities, so we would like to see the Policy explain what the distinction is between ancillary and supportive. Clarity takes on a particular urgency as an employer must declare association with another employer at the time of registration or, if not associated at the time

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of registration, within 10 days of becoming associated with another employer, as it is considered a material change in circumstance and thus attracts criminal sanction in the breach. This means potentially any employer who currently has an affiliated company that did not meet the associated company rule in the current regulation would have to declare an associated relationship when the new rate framework comes into effect within 10 days or be at risk of being prosecuted if they do not declare a material change in circumstances.

We assume that the WSIB will likely have a grace period of say a year so employers could bring themselves into compliance like they did under Bill 119 changes. This will still leave I suspect hundreds if not thousands of employers with affiliated companies at risk of significant retroactive premium increases and penalties because they weren't paying premiums at the correct rate as they thought they were in a manufacturing class, but as a result of this new Policy are deemed to be in construction.

The OEA is also concerned with the new common employer rule that provides:

> *When an employer restructures a business, either establishing or consolidating separate legal entities to carry on an existing business, or if an existing employer registers a new legal entity for similar business purposes, these employers will be considered <u>associated for the purposes of classification and premium rate setting.</u>*

This provision causes us concern as it treats a new legal entity as associated with another entity for both classification and premium rate setting. We assume that by using the phrase *rate setting* the WSIB will also apply the accident costs of the prior entity to all associated companies. This will be a trap for many employers, who legitimately restructure a business. Aside from an apparent lack of legal authority to create such a policy, it will result in many employers being retroactively assessed, and potentially run afoul of the material change in circumstance rule. We submit this policy is unjust to employers and should be abandoned.

Similarly we have concerns with the successor employer provision in the policy:

> *The WSIB may also find that an active employer is associated with another employer that is no longer active if the WSIB determines that the person(s) who control the active employer's operations are affiliated with the person(s) who controlled the inactive employer's operations, and the active employer retains the same employees, clients, or similar equipment and business processes as the inactive employer*

We again question the WSIB's statutory authority to make such a policy rule. It will create significant penalties for employers who legitimately close down a corporation particularly in the construction sector when the construction project is over. We submit this provision should also be reconsidered.

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Given the complexity of myriad rules that could affect class change, ancillary activities, associated companies and the other rules, the WSIB should only adjust for the year of audit. This one year limit can be reviewed in five years by which time employers will be more comfortable and familiar with the new rules.
We have no comments with respect to the other policies.

I trust the above will be helpful. Please contact me if you have any questions.

Sincerely,

Michael Zacks

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Office of the Employer Adviser

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20th Floor
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M5G 2P1
Toll Free: 1-800-387-0774
Tel: 416-327-0020
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Ontario

Michael Zacks
Director (A) and
General Counsel

January 9, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1
Dear Consultation Secretariat:
Re: Funding Framework Policy Submissions

Dear Consultation Secretariat:

Re: RATE FRAMEWORK POLICY CONSULTATION – INTERIM UPDATE.

The following are the OEA's submission on the interim update to the Rate Framework Policy Consultation.

A. Eligibility for Single and Multiple Premium Rates Policy: Test of Significance

The WSIB has proposed three options in response to stakeholders' concerns about the proposed two stage test:

WSIB Action: The WSIB is exploring the following options for adjusting the test of significance:

1. Modifying the percentage of Insurable Earnings (IE) threshold - Currently the draft policy has a threshold of 25%.

2. Creating an exception for the percentage of IE threshold for large employers – This could allow large employers to have multiple rates regardless of percentage of insurable earnings in each business activity.

3. Removing the requirement to meet both criteria – Instead of requiring employers to meet both a 25% threshold for each business activity AND meeting the 5 times maximum IE ceiling threshold, employers would only be required to meet one condition to be eligible for multiple premium rates.

The OEA has concerns with all three options. In our submission the percentage of insurable earnings threshold should be based on rational objective criteria. Why was the 25% amount picked instead of 20% for example.

The OEA agrees with the concern expressed by the WSIB on the second option. Of the three options the third is a reasonable compromise, subject to a discussion about the appropriateness of the 25% threshold.

B. Associated Employers Policy: Test of Affiliation and Test of Cooperation

The OEA supports the WSIB's proposal to review the Associated Employers policy, and especially the tests of affiliation and of cooperation to ensure that the purpose of the policy and the criteria for the tests are clearly explained.

C. Associated Employers Policy: Compulsory Coverage in Construction

The OEA supports the WSIB's proposal to removal of this section of the policy.

D. Classification Structure Policy: Ancillary Operations - Scope and Definition

In response to employer concerns to the ancillary operations policy, the WSIB is proposing three options:

1. Reverting to an inclusive list of ancillary operations, as currently exists in policy.

2. Revising the definition of ancillary operations to a more general definition.

3. Revising or deleting the description of "retail operations" as ancillary.

The OEA supports the first option and the third option. The second option will remove clarity and certainty for employers. An inclusive list will allow certainty which is necessary in this area, and deleting the description of retail operations will remove what is in our submission an illogical ancillary activity.

E. Health and Safety

The OEA supports the WSIB's commitment to review the policies with health and safety in mind.

Thank you for this further opportunity to provide submissions.

Sincerely,

Michael Zacks

.

Construction Employers Coalition
(for WSIB and Health & Safety and Prevention)

January 15, 2018
Via email to: Consultation_Secretariat@wsib.on.ca

Workplace Safety and Insurance Board
Consultation Secretariat – Rate Framework Review Policy Consultation
200 Front Street West, 17th Floor,
Toronto, Ont. M5V 3J1

Reference: Rate Framework Consultation

As outlined in previous consultations related to Rate Framework, the Construction Employers Coalition (CEC) on WSIB Health and Safety and Prevention, represents more than 2,000 firms employing approximately 80,000 workers.

As always, we appreciate the opportunity to provide submissions on an issue that will impact all employers, their employees, and the WSIB for decades to come.

The scale of Rate Framework cannot be overstated. Its complexities as outlined in the Ontario Sewer and Watermain Construction Association submission are unparalleled and this creates tremendous risks for all employers, the WSIB, and all workers on a going forward basis. Reaching out to CEC members and their individual association members, general confusion is wide spread. For construction employers, the shift from thirteen to five rate groups has raised numerous questions including issues related to predictability and attempts by the WSIB to identify single vs. multi-rated employers through a letter writing campaign.

While there is no doubt that extensive work has gone into Rate Framework, each policy regardless of scale, requires constant evaluation. In the case of Rate Framework, the massive impact and scope requires additional consideration. Any and all changes that can be classified as periphery should be delayed. In other words, Rate Framework should focus solely on changes that are absolutely necessary. All non-core changes should be delayed. This will simplify implementation for the WSIB and employers reducing unintended consequences associated with change and implementation.

As a result, the CEC has two additional recommendations:

1. The CEC lends support to the positions as outlined by L.A. Liversidge to Kate Lamb on October 6th, 2017.
2. The CEC requests that the WSIB release and discuss the revised Rate Framework policies with the CAGs before they are publicly released. This will allow for a final discussion and forum to further review any changes before implementation.

As always, CEC appreciates having the opportunity to provide input into this consultation process.

If you have any questions or require information regarding CEC and its membership, please contact David Frame david@ogca.ca

Sincerely,
Construction Employers Coalition

David Frame, Chair

COCA
COUNCIL OF ONTARIO
CONSTRUCTION ASSOCIATIONS

180 Dundas Street W., Suite 2001 | Toronto, Ontario | M5G 1Z8 Phone: (416) 968-7200 | Fax: (416) 968-0362

Workplace Safety and Insurance Board
Consultation Secretariat
200 Front Street
Toronto, Ontario M5G 3J1

Sent via email: consultation_secretariat@wsib.on.ca

Dear Consultation Secretariat:

Rate Framework Modernization – Draft Policies Consultation

The Council of Ontario Construction Associations (COCA) is a federation of 29 construction associations representing more than 10,000 general and trade contractors. These contractors operate in the industrial, commercial, institutional and heavy civil segments of the construction industry. They work in all regions of the province, employing approximately 400,000 workers. COCA is the largest and most representative voice for the non-residential construction industry in Ontario.

COCA is committed to working with the senior management of the WSIB and with officials in the Ministry of Labour and the provincial legislature to ensure that Ontario's workers' compensation system is sustainable, addresses the needs of both employers and workers effectively and efficiently and serves as a competitive advantage for attracting new business investment and jobs to the province.

Our reason for writing today is to support the two submissions made by the Office of the Employer Advisor (dated October 6, 2017 and January 9, 2018 which are attached) in response to the WSIB's draft rate framework policies consultation. The Office of the Employer Advisor is an important partner of COCA and in particular that organization's Director and General Counsel, Michael Zacks, is a trusted member of our WSIB Committee and advisor to our board of directors. We believe his comprehensive and very thoughtful review of the draft policies reflects the views of our membership.

We look forward to meeting with you in the near future to learn about the full range of stakeholder input received through this consultation and how it has been used to steer the development of the finalized policies.

Sincerely

Ian Cunningham
President

Office of the Employer Adviser

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Ontario

Michael Zacks
Director (A) and
General Counsel

January 9, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1
Dear Consultation Secretariat:
Re: Funding Framework Policy Submissions

Dear Consultation Secretariat:

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The OEA supports the WSIB's proposal to review the Associated Employers policy, and especially the tests of affiliation and of cooperation to ensure that the purpose of the policy and the criteria for the tests are clearly explained.

C. Associated Employers Policy: Compulsory Coverage in Construction

The OEA supports the WSIB's proposal to removal of this section of the policy.

D. Classification Structure Policy: Ancillary Operations - Scope and Definition

In response to employer concerns to the ancillary operations policy, the WSIB is proposing three options:

1. Reverting to an inclusive list of ancillary operations, as currently exists in policy.

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The OEA supports the first option and the third option. The second option will remove clarity and certainty for employers. An inclusive list will allow certainty which is necessary in this area, and deleting the description of retail operations will remove what is in our submission an illogical ancillary activity.

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The OEA supports the WSIB's commitment to review the policies with health and safety in mind.

Thank you for this further opportunity to provide submissions.

Sincerely,

Michael Zacks

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Michael Zacks
Director (A) and
General Counsel

October 6, 2017

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions

The Office of the Employer Adviser has a statutory mandate under the Workplace Safety and Insurance Act to advise represent and educate primarily employers with fewer than 100 workers. This submission will accordingly be focused on the interests of smaller employers in the workplace safety and insurance system.

General Comments:

We find these policies in the main to be complex and highly integrated. Most small employers will not have read them, and those that have will be hard pressed to understand them. If the goal is to make these policies easily understood by small employers, then policies need to be simplified where possible, or be accompanied by extensive explanatory documents. These accompanying documents must contain clear examples, explanations and definitions of various undefined terms and expanded terms that are sprinkled throughout the policies. This can be done through administrative guidelines which should quickly be available once the policies come into force. This is especially necessary as there are penal consequences buried in some of the policies involving the material change in circumstances rule for associated companies that change status.

Our submissions will address the policies that give us concern.

Coverage Status Policy 12-01-04

We have two comments on this Policy. The first pertains to the statement at the start of the Policy that provides:

> *The business activity of an employer who operates in Ontario, or of a non-resident employer who is determined by the WSIB to have a substantial connection to Ontario, falls under either mandatory coverage or non-mandatory coverage.*

There is no explanation on what is meant by a substantial connection to Ontario. This term must be defined with clarity. Employers have a right to know whether they have a substantial connection, and thus obliged to consider registration with the WSIB.

The second concern is found on page 2 of the Policy:

> ***Transfer to Schedule 1***
>
> *Any Schedule 2 employer may request a transfer to Schedule 1 and receive the protection of collective liability. Schedule 2 employers transferring to Schedule 1 will be classified in one or more 6-digit NAICS codes based on their Schedule 1 business activity. Guidelines for Schedule 2 employers requesting transfers to Schedule 1 can be found in 12-01-02, Employer by Application*

Currently, transfers can go either way. A Sch. 2 employer can transfer to Sch. 1 and then back again on payment of a transfer fee. The absence of a reference to the move from Sch. 1 to 2 for Sch. 2 employers raises the concern that this type of transfer may not be permitted. This needs to be clarified that such bilateral transfers are permitted

The Classification Structure Policy 14-01-01

This is an explanatory Policy. It describes how the WSIB will determine a business' classification in the new system. Generally, it reflects what the WSIB has described to employers. However, to fully appreciate the process one needs to be familiar with the new regulation that was passed last year, O. Reg. 470/16 and the chart of the Classification Structure in the Appendix to the this Policy. There needs to be clearer explanations in the policy.

The Classification Structure Policy is confusing. Although it states that employers are classified in one or more of the 2, 3, 4 and 6 digit NAICS codes the Board only shows 2 – 4 digit codes in its chart. There are no 5 or 6 digit codes shown. Examples of how 5 and 6 digit codes work need to be included.

Ancillary Activities

The Rate Framework Document provides that ancillary operations will remain part of the new funding framework:

> *The concept of business activity remains central to the classification of employers in the new rate framework. To determine what is (and is not) considered a business activity for classification purposes, the WSIB would continue to consider operations that are "ancillary" to the business activity (i.e. in support of the business activity) as part of, and therefore not separately classified from, the employer's business activity.*[1]

The Classification Structure Policy establishes a policy foundation for ancillary activities. Although the regulatory provisions pertaining to ancillary activities will be deleted from the general WSIB regulation when the new system comes into effect the policy has re-introduced ancillary activities in a significantly broadened and open ended way.

As a general observation we question the need for including ancillary activities at all given that an employer's classification will be based on the class with the predominant insurable earnings. The section describing them, unlike the repealed provisions in Ontario Regulation 175/98, s. 6(3) are complex, confusing, and subjective. As an example, the policy provides that,

> *The WSIB will not separately classify the employer's operations that are ancillary, i.e, incidental to the employer's business activity.*

However, towards the end of the policy it states,

> ***Ancillary operation that is a business activity in its own right***
>
> *An employer's ancillary operation may be incidental to the employer's business activity and at the same time carry on a business in its own right. When part of the ancillary operation is carrying on as a business in its own right, it may be eligible for classification in one or more 6-digit NAICS codes, and may be assessed separately, see policy XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

These two provisions are contradictory on their face. We encourage the WSIB to reword this aspect of the policy and give several examples of how this would work in practice.

The OEA has serious concerns about the extremely expanded and open-ended nature of the how the WSIB is re-interpreting ancillary activities. Under the current general regulation ancillary activities are clearly and specifically defined.

[1] Rate Framework Modernization - The New Rate Framework, March 2017, page 12.

They are not open-ended. This policy leaves too much discretion to WSIB auditors to define in an ad hoc manner whatever any business activity as ancillary. This will result in inconsistent decisions among auditors, and the possibility of significant retroactive premiums if the employer gets it wrong. Currently, employers know with certainty if an activity is ancillary or not. This is not the case with the Classification Structure policy. It is open ended in the extreme. The description of ancillary activities starts with the following statement:

> *Activities that are incidental to an employer's business activity include, but are not limited to:*

It then continues to describe specific ancillary activities that are in their own right open ended using the phrase *including but not limited to* such as in the provision on administration activities:

> *administration related to an employer's operations including but not limited to management, payroll, human resources, information technology, training and clerical services*

In our submission this wording is grossly unfair to employers. An employer will never know if their organizational structure offends the ancillary activities rule. There can be no certainty. This wording essentially proposes that ancillary means whatever the WSIB says it means.

Further unfairness occurs through the inclusion of activities that have to date not been considered ancillary with no explanation as to why this is being done. The following is a comparison of the current ancillary activity and its policy counterpart:

Regulation 175/98	Draft Policy	Comment
Design, including drafting and engineering, research and development related to goods produced or services provided, or intended to be produced or provided, by the employer.	design, including but not limited to drafting and engineering, research, development and software development related to goods produced or services provided, or intended to be produced or provided, by the employer	In addition to being open ended, the policy expands design by including software development

Marketing, promotion or communication related to goods sold or produced or services provided, or intended to be sold, produced or provided, by the employer.	marketing, promotion, fundraising or communication related to goods sold or produced or services provided, or intended to be sold, produced, or provided by the employer	The policy inserts fundraising. A previously independent and by application activity as an ancillary activity.
The manufacture of packaging or packing materials to be used in the packaging of goods produced by the employer.	packaging an employer's own goods, including but not limited to the manufacturing of packaging material used	This is an example of an open ended activity that leaves employers unclear on what is meant
	the sale of goods produced, or services provided, by the employer (Exception: If the employer operates at least one retail operation located elsewhere than on the production site of the goods the employer produces, the retail activity is considered a separate business activity.)	This is a new ancillary activity. It is in our submission nonsensical. An employer can simply avoid the ancillary application by setting up a stand-alone kiosk anywhere in the province off his production site.

The significant risk to employers with this very broad open-ended version of ancillary activity is found in the following part of the policy:

> ***Changes to classification***
>
> *When registered employers change, add, or discontinue a business activity, they must immediately report this to the WSIB to ensure that they are correctly classified. The WSIB determines how an addition or deletion of activities affects an employer's classification.*
>
> *A classification change may impact an employer's predominant class or subclass or the employer's eligibility for multiple premium rates, see XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

How is an employer to know whether their classification has changed because of adding an activity which is subsequently determined to be ancillary? This change would be considered a material change in circumstances, and not reporting would be an offence. We strongly recommend that the WSIB

reconsider the need for ancillary activities and if it is to be included then make it a clearly defined as a closed list.

Eligibility for Single or Multiple Premium Rates Policy

The Eligibility for Single or Multiple Premium Rates Policy provides the criteria for obtaining granting multiple classes to an employer in the new system. This is an exception to the rule that an employer is placed in a single class based on the predominant business activity determined by the class that reflects the employer's largest share of insurable earnings. In our view, the criteria are unfair to both small and larger employers.

The criteria require an employer seeking a second (or more) premium rate(s) to meet a business significance test and a non-integration test. The significance test has two parts both of which must be met:

a) generate an annual insurable earnings of at least five times the maximum insurable earnings ceiling for the premium year, and

b) generate at least 25% of the employer's total annual insurable earnings.

In order to have a separate rate the non-predominant activity must be significant in the sense that it generates at least $442,500 in insurable earnings using the 2017 maximum insurable earnings ceiling, which must be at least 25% of the employer's total annual insurable earnings. That means an employer must have at least $1,770,000 in total insurable earnings to be eligible for multiple rate groups. On average this is an employer with 20 workers all paid at least the maximum insurable level for 2017 - $88,500. This would likely exclude many small employers, and larger employers that pay lower based wages.

As the maximum insurable ceiling amount increases annually, it becomes more difficult for a small employer with an independent secondary business activity to qualify for a second rate. A small employer that actually meets the significance test in a particular year, may lose it in a succeeding year if the increase in the insurable ceiling puts the employer under the 25% requirement. In our view this is unfair as being outside the employer's control, and may result in penalties unless the employer closely monitors its insurable payroll – a requirement it has not needed to do outside of the small employer rule.

Larger employers are also prejudiced by this test in another way. As the test requires an employer's secondary activity to generate at least 25 % of total annual insurable earnings, the more insurable earnings a larger employer generates in the primary business the less likely it will be for the employer to maintain the 25% level of earnings for the secondary industry assuming its share of the insurable earnings remains constant, hereby disqualifying the employer from the second rate. Being successful in growing the primary business punishes the employer with the secondary business which does not grow as fast.

This approach puts an employer who qualifies for a second rate in jeopardy should an increase in the insurable ceiling disqualify the employer in a subsequent year. There is an obligation on the employer to notify the WSIB of this material change in circumstances. Failure to do so is a significant risk to employers that place some of them in financial jeopardy because of their inability to stay on top of these complex changes. In our view these policies need to be reviewed from this perspective and assurance given that employers will not be penalized in this way.

If an employer passes the significance test, it must then meet the non-integration test. To meet this test an employer must be able to show that the product or service of the stand-alone activity is not integrated into the development of other products or services of the employer, or used in the joint development of other products or services. The claimed non-integrated service or business activity must not be offered primarily to external, unaffiliated clients together with the product or service of the employer's other operations.

As a general observation we believe most employers will find these criteria difficult to understand as they are vague, unclear and open to subjective interpretation in nature. We recommend that the non-integration criteria must be clarified and clear examples given of how they are to be applied.

The WSIB's decision to allow multiple rate groups was in response to employers' pleas for fairness. Some employers were complaining that if some of their business activities were lumped in with the predominant class, then they could not remain competitive in Ontario, and their only option was to incorporate another company to get a lower rate. The WSIB's draft policy on associated companies has removed this option. Associated companies will be treated as one entity, and the multiple rate rules would be applied to the two or more companies as one if there were affiliation and cooperation. These policies do nothing to foster competitiveness of such companies either in Ontario or globally. We submit that it would be preferable and fairer for employers to have the rules broadened to allow more employers to take advantage of multiple rates, if doing so did no damage to the overall integrity of the new rate setting process.

We recommend that the significance test be removed, and that the WSIB simply applying a non-integration test to determine if an employer is eligible for multiple rates. If an employer believes that it is good business to operate a non-integrated activity, then that is enough to entitle the employer to a secondary rate assuming it meets the other criteria such as a segregated payroll.

Associated Employers Policy 14-01-06

The Associated Employers Policy creates the concept of affiliated employers and co-operative business relationships. It replaces the narrower associated employer rule found in O. Reg. 475/98. The Policy provides that if two or more

employers are affiliated and are engaged in a co-operative business relationship, they are considered associated. The WSIB treats the employers as one employer for the purposes of classification and premium rate setting.

The tests of affiliation and cooperation must both be met for two or more employers to be considered associated. Affiliation is essentially the same under the Policy as associated is under the current regulation.

We have a concern with the affiliation test applicable to where one employer is a corporation and the other employer is a member of a related group that controls the corporation. A related group is described as a group of individuals each of whom is related to all the other members of the group. The actual term *related* is not defined as it is in the current regulation. It seems to be broader than family members but it is not clear. We would recommend that the Policy define related in the same way it defines *family member*.

Employers should not be guessing and not need to call the OEA to find out what the Policy means. There must be clarity so employers will know if they are in compliance with premium remittance rules, especially since the Policy makes it clear the affiliated employers must declare the affiliation as a material circumstance:

> ***Disclosure of association***
>
> *Employers must declare associations with other employers at the time of registration or, if not associated at the time of registration, within 10 days of becoming associated with another employer. The WSIB may determine whether an employer is associated with another employer at the time of registration or any time afterwards; see 22-01-01, Material Change in Circumstances - Employer.*

There is also a reference to associated construction employers, and the impact that will have on executive officers in associated companies:

> ***Associated employers in construction***
>
> *If two or more employers are associated, and one carries on business in construction, and the other(s) does not engage in construction activities, the entirety of both employers' operations are subject to compulsory coverage in construction industry rules (see 12-01-06, Expanded Compulsory Coverage in Construction), even if the entire operations of one or more of the associated employers are not predominantly classified in any of the subclasses of Class G.*

Here is what the WSIB's stated purpose for this rule is in the accompanying consultation document:

The coverage rules for those associated employers engaged in construction activities are also being clarified. To make these rules explicit, the policy states that any employer who is associated with an employer who engages in construction work is subject to compulsory coverage in construction, i.e., requires coverage for all executive officers and partners.

This policy on its face runs counter to the stated purposes of the Funding Framework classification model which is based on what class has the predominant percentage of insurable earnings. If the non-construction company of two associated companies has the predominant amount of earnings in a non-construction class, then company earnings should be rated in the non-construction class. Alternatively, the WSIB could allow the construction company a separate construction rate as an exception to the general rule for multiple rates.

This would be fairer to the employer instead of assessing all non-construction employees in a manufacturing company for example at a construction rate. It would also ensure that directors who are involved in a non-construction company do not have to start paying premiums because of an artificial construct created by this clause in the policy. Employers impacted by this part of the policy would surely see this provision as a pure money-grab by the WSIB.

The OEA has concerns with the supportive component of the affiliation test. The test provides that two or more affiliated employers are engaging in a cooperative business relationship if the businesses are supportive of each other.
The term *supportive* is not defined. It is an extremely broad word. It generally means giving encouragement or approval or actively giving help to someone who needs it.[2] The consultation questions accompanying this policy provide some indication of what the WSIB will consider to be establishing a state of cooperation between two companies:

- *Use of common health and safety policies/practices*
- *Sharing of employees*
- *Sharing of revenues and profits*
- *Sharing of technology*
- *Joint bidding or tendering for contracts*
- *Common collective bargaining process*
- *Common labour policies*

The state of being supportive is vague and open ended. In our submission it requires clear guidance in the Policy. Usually, ancillary activities were considered as supportive of the primary business activities, so we would like to see the Policy explain what the distinction is between ancillary and supportive. Clarity takes on a particular urgency as an employer must declare association with another employer at the time of registration or, if not associated at the time

[2] http://dictionary.cambridge.org/us/dictionary/english/supportive

of registration, within 10 days of becoming associated with another employer, as it is considered a material change in circumstance and thus attracts criminal sanction in the breach. This means potentially any employer who currently has an affiliated company that did not meet the associated company rule in the current regulation would have to declare an associated relationship when the new rate framework comes into effect within 10 days or be at risk of being prosecuted if they do not declare a material change in circumstances.

We assume that the WSIB will likely have a grace period of say a year so employers could bring themselves into compliance like they did under Bill 119 changes. This will still leave I suspect hundreds if not thousands of employers with affiliated companies at risk of significant retroactive premium increases and penalties because they weren't paying premiums at the correct rate as they thought they were in a manufacturing class, but as a result of this new Policy are deemed to be in construction.

The OEA is also concerned with the new common employer rule that provides:

> *When an employer restructures a business, either establishing or consolidating separate legal entities to carry on an existing business, or if an existing employer registers a new legal entity for similar business purposes, these employers will be considered <u>associated for the purposes of classification and premium rate setting.</u>*

This provision causes us concern as it treats a new legal entity as associated with another entity for both classification and premium rate setting. We assume that by using the phrase *rate setting* the WSIB will also apply the accident costs of the prior entity to all associated companies. This will be a trap for many employers, who legitimately restructure a business. Aside from an apparent lack of legal authority to create such a policy, it will result in many employers being retroactively assessed, and potentially run afoul of the material change in circumstance rule. We submit this policy is unjust to employers and should be abandoned.

Similarly we have concerns with the successor employer provision in the policy:

> *The WSIB may also find that an active employer is associated with another employer that is no longer active if the WSIB determines that the person(s) who control the active employer's operations are affiliated with the person(s) who controlled the inactive employer's operations, and the active employer retains the same employees, clients, or similar equipment and business processes as the inactive employer*

We again question the WSIB's statutory authority to make such a policy rule. It will create significant penalties for employers who legitimately close down a corporation particularly in the construction sector when the construction project is over. We submit this provision should also be reconsidered.

Employer Premium Adjustments Policy 14-02-06

This Policy sets out the rules for retroactive adjustments to premium rates. The policy takes the current premium adjustment policy and updates it for the new funding framework. Our comments on this policy reflect a concern that the introduction of such a complex and comprehensive restructuring of the revenue model will result in significant problems for employers for years to come.

Given the complexity of myriad rules that could affect class change, ancillary activities, associated companies and the other rules, the WSIB should only adjust for the year of audit. This one year limit can be reviewed in five years by which time employers will be more comfortable and familiar with the new rules.
We have no comments with respect to the other policies.

I trust the above will be helpful. Please contact me if you have any questions.

Sincerely,

Michael Zacks

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ECAO
ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO

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January 15, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat:

Re: RATE FRAMEWORK POLICY CONSULTATION- INTERIM UPDATE

The Electrical Contractors Association of Ontario (ECAO) has actively participated in the WSIB's Rate Framework Consultations over the past few years, and fully supports WSIB's efforts in updating the existing rate framework to reflect current realities in the construction sector.

ECAO has also worked closely with the Office of the Employer Advisor (OEA) during the stakeholder consultations, and we endorse their recent submission to you dated January 9, 2018 regarding the Interim Update on the Policy Consultation.

As a summary we are in support of the OEA's submission as follows:

A. Eligibility for Single and Multiple Premium Rates Policy: Test of Significance

The WSIB has proposed three options about the proposed two stage test, and we support OEA's proposal to recommend option 3, with further discussion on the criteria being used to support the appropriateness of the 25% threshold as suggested by WSIB.

B. Associated Employers Policy: Test of Affiliation and Test of Cooperation

ECAO supports WSIB's proposal to review the Associated Employers policy to ensure the criteria for tests are clearly explained.

C. Associated Employers Policy: Compulsory Coverage in Construction

ECAO supports WSIB's proposal to remove this section of the policy.

ECAO
ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO

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D. Classification Structure Policy: Ancillary Operations-Scope and Definition

ECAO recommends both options 1 and 3, proposed by the WSIB in addressing employer concerns regarding "ancillary operations". These options will enable WSIB to revert back to using an inclusive list of ancillary operations and removing the description of "retail operations" as an ancillary activity on that inclusive list.

Thank you for the opportunity for ECAO to provide our comments and support of OEA's recent submission.

We look forward to future stakeholder consultations as WSIB continues to update its policies on the rate framework, and we would like to continue to be involved in the process.

Yours truly,

R. Graeme Aitken
Executive Director
ECAO

Experience Rating Working Group
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January 15, 2018

Consultation Secretariat
Workplace Safety & Insurance Board
200 Front St. W.
Toronto, ON
M5V 3J1

Dear Consultation Secretariat:

Re: Rate Framework Policy Consultation

We are writing to provide our submissions to the Rate Framework Policy Consultation. We have participated in every phase of the rate framework consultation, and although the concerns of the worker community with the rate framework continue to be ignored, we feel we must continue to assert our strong, evidence based opposition to the use of claims experience as a proxy for health and safety and the mechanism for rate setting. Our position was most recently outlined in our submissions of October 2015, which we have appended, since they bear repeating.

Our submissions at this juncture will focus on the Temporary Employment Agencies draft policy, with a few comments on the Employer Premium Adjustments and Employer Level Premium Rate Setting Draft Policies.

While we have no comments to make on the Coverage Status draft policy, we do note our disappointment that the WSIB proposed changes to the General Regulation and had them approved by its Board of Directors and the government in December of 2016 in silence and with no opportunity to provide input. In our view, this was a missed opportunity to expand coverage for Ontario workers, and area in which Ontario lags. As you know, Ontario has one of the smallest covered workforces in the country.

Temporary Employment Agencies

The key problem with the Temporary Employment Agencies policy is that it does nothing to further health and safety for temporary workers. It is commonly known that temporary workers are at greater risk of injury, in part because of their unfamiliarity with the workplace and lack of safety training, and in part because they are more likely to be assigned dangerous work as employers seek to protect themselves from the cost consequences of injuries. Because the accident costs of temporary workers are attributed to the claims record of the agency, rather than the client employer, there remains an incentive to use temporary workers to do dangerous work.

The WSIB has been clear throughout the rate framework consultation that in its view, it has the authority to set rates using risk bands under section 83, which reads as follows:

> 83 (1) The Board may establish experience and merit rating programs to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work.

The WSIB therefore can use experience rating programs, such as risk banding, only for the purposes of improved health and safety and return to work. While we believe that claims costs are a far better indicator of claims management practices than a reflection of health and safety practices, it is clear that in the case of temporary agencies, there is absolutely no link at all. Since the costs of the injury are attributed to the agency rather than the client employer, there is absolutely no nexus to either legislative objective. The temporary agency has no control over the conditions of work or the worksite, nor does it have any ability to return an injured worker to work at a client employer.

Any number of temporary workers could be injured while working for a client employer, and that employer can retain a clean accident record, and falsely appear to have stellar health and safety practices.

To actually remove the incentive to use temporary workers for more dangerous work, the claims costs must be attributed to the client employer – the employer that actually has control over health and safety practices. The proposed measure of having the temporary agency pay the same base rate as the client employers may increase the cost of using temporary workers, but the fact remains that the use of temporary workers will continue to be a viable way to avoid premium increases, and therefore the incentive to use temporary workers for more dangerous tasks will remain, to the peril of those workers.

It is also notable that temporary agencies generally have small operations and highly portable assets – it is easy to wind them up and reopen under a new business name if their premiums get too high.

The submissions of the Worker's Heath and Safety Legal Clinic to this consultation contain a fulsome accounting of the government's attempt to fix this issue with Bill 18 and its subsequent retraction in the final version of that Bill. It is clear, though, from the Minister's statements that it was his intention to fix this issue with the new rate framework. The policy should be revised to fall in line with the legislative intent expressed in Bill 18.

<u>Employer Premium Adjustments</u>

Our concern with the Employer Premium Adjustment policy center on what it excludes: claims suppression and health and safety.

Claims suppression

The policy does contain a sentence on claims suppression, but it appears to only contemplate instances of claims suppression where a claim was not reported at all. As we have indicated in our previous submissions, we are gravely concerned that the new rate framework, with its sole emphasis on claims costs as the driver for premium rates, will further encourage claims suppression and claims management, which are already commonplace. The Board has indicated that it will be relying on its new claims suppression offences to combat this issue. In our experience, one problem is that case managers do not appear to have the ability to recognize when claims suppression may be occurring, even in cases where a worker tells them about it directly. Furthermore, there do not appear to be any policies that address claims suppression aside from the brief reference in the policy at issue.

Our second concern is that there appears to be no contemplation of the vast forms that claims suppression can take, beyond a failure to report. For instance, a worker may be fired ostensibly for unrelated reasons such as absenteeism, when the worker is off due to the injury. This often leads to a stoppage of loss of earnings (if there is any indication modified work may have been provided, but for the termination).

Claims suppression also includes inducing workers back to work too soon (for instance, telling a worker to come in and lie down in the break room), or offering to pay a worker full salary even though they are only working partial hours. These forms of claims suppression can lead to negative consequences for injured workers. The worker who appears to have no wage loss, even though he was only working partial hours, will have a harder time re-establishing loss of earnings benefits if his condition worsens or if the position ends, for instance. Cost suppression is a form of claims suppression, and it needs to be recognized and addressed in the policy.

We sincerely hope that the Board is able to develop an effective and comprehensive strategy to address claims suppression, but it bears repeating that a simpler solution would be to remove the incentive to suppress claims in the first place. That is, set premium rates based on classification and actual health and safety practices rather than claims costs, so that employers are rewarded for promoting safety rather than managing accident costs.

Health and Safety

We understood that the WSIB had undertaken to put some actual health and safety measures into the rate framework, as expressed in Mr. Chris Buckely's letter to Mr. Tom Teahen of August 30, 2017. We are dismayed to see in your interim update of December 21st that the WSIB has no intention of doing this. Instead, the update indicates that

> The WSIB is considering revisions to the section of the draft premium rate setting policy that describes the mechanism for greater employer accountability, in order to better articulate the link to health and safety and return to work efforts, while also simplifying the wording of the policy.

This seems to suggest that rather than integrating actual health and safety incentives into the rate framework, the policies will instead be revised to better explain how they are already doing so. As you know, we fundamentally disagree that claims costs are a valid proxy for health and safety, given that they are complicated by claims suppression and claims management practices. The Board's attempt to "better articulate the link" is, frankly, insulting to the worker community and, if this is truly the only action the Board intends to take with respect to adding health and safety, it represents a broken promise.

Employer Level Premium Rate Setting

The section on Traumatic fatalities demonstrates that the true intention of the rate framework is not to improve health and safety but to promote premium rate equity. As you know, premium rate equity is not a permitted purpose under the legislation. If the Board was truly concerned with using the rate framework to promote health and safety, it would attribute a cost equal to the average serious injury claim, which may appear fair from an equity perspective, since the fatality costs significantly less than the serious injury, but it is not fair from a justice perspective, or if the true intention is to promote health and safety. In effect, this policy rewards employers for killing (rather than seriously injuring) workers.

Thank you for staging this consultation and providing this opportunity to reiterate our concerns. We hope you will actually take them into account in revising the rate framework.

Sincerely,
Experience Rating Working Group
per

Laura Lunansky

Submissions to the WSIB Rate Framework Reform Consultation

October 2, 2015

Submitted by the Experience Rating Working Group
c/o 815 Danforth Avenue, Suite 411
Toronto, ON M4J 1L2

The Experience Rating Working Group was formed in the 1990's and is composed of members of injured workers' groups, labour organizations, legal clinics, and interested individuals. The group's main objective is to expose the adverse affects of the incentive systems used by the Ontario workers' compensation system and to advocate for the discontinuance of experience rating. At the same time, the group has worked on ideas for alternative schemes which would more likely achieve the intended results of the incentive systems – improved health and safety and return to work.

To be blunt, we cannot support any rate scheme that adjusts premium rates for individual employers based on claims costs. This is a further expansion and entrenchment of experience rating and so it will carry with it all of the negative aspects of experience rating. It is bad for workers, and contrary to the fundamental principles of workers' compensation.

No link between claims costs and health and safety

Like any other experience rating initiative, the proposed framework will likely result in lower claims costs. Lower claims costs translate into lower costs to the system, and it is obvious to all concerned that this is the primary focus of WSIB management at present. The question, though, is *how* will the framework result in lower claims costs? The assumption is that experience rated premium rates (risk bands, in this case) will incent employers to improve workplace health and safety. This assumption is unproven.

There is no evidence that the threat of increased premiums incents employers to improve health and safety. In his systemic review of research on prevention incentives, Tompa noted that "with so little evidence, and such imprecise measures, it is difficult to draw robust conclusions about the effectiveness of experience rating".[1] Alan Clayton put it succinctly:

> What is contested is the facile assumption that experience-rated premiums result in action to achieve safer workplaces, that is, a reduction in accidents, injuries and illnesses rather than simply a reduction in claims. Starkly stated, the issue is that if the goal of accident prevention is to be a serious objective of workers' compensation schemes, then experience rated premiums are a very blunt and problematic instrument to achieving this end and may result in other, undesirable effects.[2]

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[1] Emile Tompa, Scott Trevithick, and Chris McLeod (2007). "Systematic review of the prevention incentives of insurance and regulatory mechanisms for occupational health and safety" *Scandinavian Journal of Work and Environmental Health*, 33(2), p.7.

[2] A. Clayton (2012). "Economic incentives in the prevention and compensation of work injury and illness" in *Policy and practice in health and safety*, 10.1, p.p.40-41.

An earlier study from British Columbia drew similar conclusions. Hyatt and Thompson found that "[n]one of the studies are able to determine whether experience rating results in actual reductions in the frequency and costs of injuries, or whether some claims are either not reported or shifted to other forms of disability insurance."[3]

Like the current experience rating programs, the proposed rate framework has no direct link to health and safety. This disconnect between health and safety and experience rating in Ontario has been well documented. The value for money audit of experience rating programs in 2008 noted that employers could receive premium adjustments (rebates) for periods in which they were found to be in violation of the *Occupational Health and Safety Act (OHSA).*[4] We note that there is no provision to remedy this inconsistency in the new framework. It will still be possible for employers to receive rewards in the form of lower premium rates (moving to a lower risk band) while violating the OHSA, as long as they can keep claims costs low. The auditors made several recommendations to address the issue, all of which have been ignored to date.

The Framework ignores the Expert Panel and Arthurs recommendations

The Expert Panel on Occupational Health and Safety also recommended taking a step back from the use of claims experience in incenting health and safety.

> The panel strongly believes that health and safety incentives should not simply be tied to claims experience. An ideal incentive program should reduce emphasis on measures such as LTI by taking into account OHS practice improvements in the workplace, and reward employers for those improvements.[5]

The Panel recommended that the WSIB "review and revise existing financial incentive programs, with a particular focus on reducing their emphasis on claims costs and frequency".[6] The new framework stands in opposition to this recommendation. Although the framework does away with the distinction between lost time and no lost time, it continues and in fact expands the use of claims experience-based incentives. Under the proposed framework, claims experience becomes the main driver of

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[3] Douglas Hyatt and Terry Thompson (May 1998). *Evidence on the Efficacy of Experience Rating in British Columbia: A report to the Royal Commission on Workers' Compensation in BC,* p.51.
[4] Morneau Sobeco, *Recommendations for Experience Rating*, October 28, 2008.
[5] *Expert Advisory Panel on Occupational Health and Safety Report and Recommendations to the Minister of Labour*, December 2010, p.40 http://www.labour.gov.on.ca/english/hs/pdf/eap_report.pdf
[6] *Ibid.*, at p.41

premium rates for all Schedule I employers. The framework contains no provision to recognize or reward health and safety improvements.

The Ontario government has indicated its intention to implement the Expert Panel recommendations without delay. The proposed rate framework stands in direct opposition to this intention.

Professor Harry Arthurs also urged the WSIB to address the disconnect between occupational health and safety and its experience rating programs. One of his recommendations was that employers found to be in violation of the WSIA or the OHSA should be ineligible for favourable premium adjustments for up to five years.[7] As noted, the new framework contains no provision that accounts for this recommendation.

The proposed framework expands experience rating and will exacerbate its negative effects

There is no dispute that the proposed framework is likely to result in lower claims costs. As we indicated at the outset of this submission, the important question is how this will be accomplished. There is substantial evidence that claims costs can and will be reduced through claims management and claims suppression. In fact, the rate framework, with its experience rated premium rates (risk bands) will continue to carry the many detrimental unintended consequences of the experience rating programs we have now. The late esteemed Professor Terence Ison identified the following practices that have been used to reduce claims costs: failing to report injuries; discouraging workers from reporting claims (including threats of dismissal); creating peer group pressure on workers not to make claims through worker safety programs; delaying completing paperwork and omitting relevant information to delay claims processing; and having as many claims as possible classified as medical care only (that is, as no lost time claims).[8]

In our practices, we have observed these tactics time and time again. We have also seen many cases where workers have been terminated, allegedly for non-compensable reasons, or induced to quit through harassment and other tactics. We have also seen instances where workers are given degrading make-work tasks such as sorting different sized ball bearings or different colours of paper with the apparent goal of encouraging the worker to quit in frustration.

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[7] Harry Arthurs (2012) *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System* (Toronto: Queen's Printer for Ontario).

[8] Terence G. Ison (1994). *Compensation Systems for Injury and Disease: The Policy Choices*, Butterworths, Toronto, p. 202

Another unintended consequence is the effect of experience rated premiums on hiring practices. A study from New Zealand found a direct relationship between experience rating and discriminatory hiring practices. It concluded that employers proactively manage compensation claims by discriminating against employees with disabilities in the hiring process to try to prevent future claims.[9] More specifically, they note that

> as the premium rate increases, experience-rating provides strong incentives to limit the level of employees' claims by discriminating on the basis of disability.[10]

The study shows that employers avoid hiring not just injured workers, but persons with disabilities in general, who are seen as a risk.

In his comprehensive report on funding, Professor Arthurs recognized that claims suppression was almost certainly occurring under the current experience rating system. He called the situation "a moral crisis" and made strong recommendations that the WSIB consider discontinuing the programs:

> Unless the WSIB is prepared to aggressively use its existing powers – and hopefully new ones as well – to prevent and punish claims suppression, and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them.[11]

The moral crisis is on course to continue under the risk-adjusted premium bands of the proposed rate framework. As long as premium rates remain tied to claims costs, there will be a strong incentive for employers to reduce costs. The new framework makes this link readily apparent and clear: lower claims costs will equate to lower premium rates. Even well meaning employers are faced with the pressure to keep costs down and remain competitive. We have no doubt that all of the claims management and claims suppression behaviours that currently go on will continue, or even expand under the new framework. The drive to reduce costs will result in discouraging claims reporting, challenging entitlements, and managing workers out of employment through dubious return to work programs.

The WSIB rate framework materials suggest that claims suppression will be abated under the new framework because there will be less volatility in premium rate changes. The thought is that graduated per claim limits and controlled movements between bands from year to year will make rates more predictable. Predictability is good for

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[9] Mark Harcourt, Helen Lam, and Sondra Harcourt (September 2007). "Impact of workers' compensation experience-rating on discriminatory hiring practices" *Journal of Economic Issues*, Vol. XLI no. 3, p. 681 – 699, at p.695

[10] *Ibid.*, at p. 694

[11] *Supra* Note 7, p.81.

employers and indeed one of the purposes of the compensation system, but we strongly disagree that this version of predictability will impact claims suppression and claims management practices. What is predicable is that if you report a claim, your rates will increase. As long as claims costs are used to set premium rates, there will be an incentive to reduce claims costs and for many employers, claims costs will be reduced by whatever means necessary.

The automobile insurance rate framework is a clear example of the future of workers' compensation under the proposed rate framework. Everyone knows their insurance rate will increase if they report an accident. Every driver in Ontario has, or knows someone who has, settled an accident by an exchange of money between drivers in return for a promise not to report the accident. This is more problematic in a worker's compensation context because of the power imbalance between the employer, who pays the premium and stands to lose by reporting, and the worker, who stands to suffer a loss if the claim goes unreported.

It is not lost on us that the proposed window for claims costs to be included in the calculation of risk is 6 years, which coincides exactly with the 72 month window in which benefits can be reviewed. This means that employers will have an incentive to contest claims and provide return to work only for so long as the worker's benefits can be reviewed and reduced. An employer could provide highly accommodated work for 72 months at which time, the worker can be terminated with no claim cost repercussions for the employer and no benefit costs to the WSIB. The worker, though, having lost his highly accommodated job will have no benefits and no prospects for finding new employment.

We note that Manitoba has a premium assessment rate framework that is very similar to the one proposed for Ontario, and that claims suppression is regarded to be a widespread concern.[12] A recent review in Manitoba found no connection between the rate framework and the implementation of health and safety programs, and that instead, costs were controlled by measures taken after an accident has occurred, including claims suppression in some cases:

> Experience rating systems are more effective in controlling the cost of claims after the injury has occurred through effective disability management programs, and in some cases rewards illegal suppression of claims. [13]

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[12] Prism Economics and Analysis (November 2013) *Claims Suppression in the Manitoba Workers Compensation System: Research Report*, Prepared for Manitoba Workers Compensation Board.
[13] Paul Petrie *Fair Compensation Review* A Report to The Minister of Family Services and Labour, January 30, 2013, p.16.

The Manitoba review also noted that experience rating can contribute to "unsafe workplaces because employers focus limited resources on managing reported claims rather than on prevention".[14]

A recent report on claims suppression prepared for the Manitoba Workers Compensation Board suggests that suppression is fairly commonplace. The report notes that claim suppression largely remains hidden because employers try to hide claims from the start. The report found that six per cent of workplace injuries, about 1,000 workers annually, go unreported due to overt claim suppression tactics by employers. This includes threatening or bullying workers to deter them from filing claims as well as intimidating workers into withdrawing claims after they have been filed.[15]

We note that the Ontario Provincial Legislature is also worried about ongoing intimidation and has recently introduced amendments to the WSIA in Bill 109. The proposed amendments will impose and increase fines for some aspects of claims suppression. Unfortunately, as in Manitoba, there is no reason to have confidence that such measures will deter claims suppression—scared workers do not report.

The proposed Rate Framework is inconsistent with the WSIA

Professor Arthurs wrote in his report that "no public agency should act in violation of its own statute and any well-run agency should confirm that its programs are achieving the goals laid out in the statute".[16] Professor Arthurs was prompted to make this seemingly "obvious" comment by the WSIB's disregard for the statutory purposes of its experience rating programs – health and safety and return to work. Professor Arthurs recommended that the WSIB discontinue its experience rating programs "forthwith" if it could not confirm that the programs were fulfilling their mandated purposes. He recommended that the WSIB only continue to operate its experience rating programs if

(a) It declared that the purpose of those programs is solely to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work and
(b) it establishes a credible monitoring process to ensure that it was achieving those purposes.[17]

The new rate framework does nothing to further these recommendations or respect the statutory mandate. The current experience rating programs will cease under the framework, since experience rating will be incorporated directly into the rate setting process. The WSIB has been clear that the risk band system is experience rating and

[14] *Ibid.*
[15] *Supra* Note 12.
[16] *Supra* Note 7, P.82.
[17] *Supra* Note 7, p. 81.

falls under the authority of s.83, experience rating, and yet, there is no mention of return to work and only a vague reference to the framework acting as an "early warning system" for employers to address health and safety issues. The materials claim the framework can include health and safety initiatives but there is no description of what these might be or how they would be incorporated. It is obvious that health and safety is nothing more than an afterthought in the proposed framework.

Although the rate framework papers do not speak of insurance equity, this is clearly the main consideration of the proposed scheme. The rate framework papers focus on "risk" as measured by claims costs; there is no provision to measure health and safety risk. However, as Professor Arthurs has stated, "the "risk" metric is not the same as the "claims costs" metric usually associated with insurance equity."[18] Risk must encompass more than just the risk of financial consequences under the WSIA.

The WSIB has been advised by one of Canada's preeminent legal scholars, Professor Harry Arthurs that it does not have a statutory mandate to use experience rating for insurance equity purposes. And yet, this is exactly what the new framework proposes to do.

Injured workers are more than a financial risk

As noted, the proposed framework is based on a conception of risk that has been narrowly defined as the risk of costing money to the system. This is inconsistent with the broader purposes of the legislation, which are to promote health and safety, to facilitate return to work, and to provide compensation and other benefits to workers. What about the risk to health and safety? The risk of job loss due to illegal claims management practices?

The framework in fact contains no provisions to protect workers against the broader risks that are inherent in any system that relies on a claims cost metric: "if motivation for behavioural change is heightened, so too is the risk of abuse; and if the risk of abuse is heightened, so too must be the effectiveness of regulation to deter it, to punish it and to repair its negative consequences."[19] As noted, the framework contains no such provisions to deter, punish or repair abuses, and even if it did, the efficacy would be questionable.

The mental health risk

It is important to note, too, that many of the behaviours that are incented by experience rating have significant negative consequences for workers. Research shows that routine claims management practices such as questioning work relatedness or the level of

[18] *Supra* Note 7, p.61-62.
[19] *Supra* Note 7, p.63.

disability adversely affect the mental health of injured workers in the Ontario workers compensation system. A recent cross-sectional telephone survey of Ontario injured workers examined mental health status. The data suggest that becoming a WSIB claimant leads to mental health problems and/or significantly exacerbates existing mental health problems.[20] Another study showed that questioning the legitimacy of the injured worker can lead to mental health consequences such as stress, anxiety, and anger in the injured worker.[21] Instead of providing a nurturing and supportive environment where recovery occurs, claims management interactions may create ill health and exacerbate emotional stressors, in many cases promoting the development of psychological disease secondary to physical injury. These mental health consequences will continue to occur if the proposed rate framework is implemented.

The 'exceptions that prove the rule': long latency occupational diseases, fatalities, and temporary agency workers

Fatalities

Long latency diseases, fatal claims, and temporary agency workers –all three of these special circumstances exemplify the disconnect between the claims costs metric and actual health and safety. The most flagrant example is that of fatal injuries. As is well known, it is far cheaper to kill than to maim; that is, the claims costs associated with a workplace fatality can be extremely small. Fatalities represent a very small risk to the compensation system, although they can and usually do reveal a very high risk to health and safety. If risk is defined as purely a financial risk, as the framework proposes to do, then it would make sense to adopt the Ontario Chamber of Commerce's recommendation to just 'roll' the cost of fatalities into the plan as is. Of course, this has highly unpalatable consequences: it seems obscene that an employer who kills a worker should pay a lower premium than other employers in its group.

One alternative is to attribute a cost to fatalities, as is done in Manitoba, and as is done with the current fatal claims premium adjustment policy. Under that policy, the WSIB increases the cost of an employer's premium to an amount equal to any rebate they would have been eligible to receive in the year of a fatality. The limits of this are obvious – firstly, it applies only to the year of the fatality, whereas the costs of other accidents can span many years. Second, there is evidence to suggest that the fatal claim policy has been applied on a discretionary basis.[22] The Workplace Safety and Insurance

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[20] F. O'Hagan, P. Ballantyne, and P. Vienneau (2012) "Mental Health Status of Ontario Injured Workers With Permanent Impairments," 2 *Canadian Journal of Public Health* 103(4), pp.303-8.
[21] Kilgour, Kosny, McKenzie, Collie (March 2015) "Interactions Between Injured Workers and Insurers in Workers'Compensation Systems: A Systematic Review of Qualitative Research Literature" *Journal of Occupational Rehabilitation*, 25(1), pp 160-181.
[22] Joel Schwartz (2014) "Rewarding Offenders: Report on how Ontario's workplace safety system rewards employers despite workplace deaths and injuries." Ontario Federation of Labour.

Appeals Tribunal (WSIAT) has recently held that the policy does not permit such discretion in the application of the premium adjustment. [23] The use of this discretion, illegal as it may be, means that there have been no cost consequences to employers for at least some worker fatalities.

The recent WSIAT decision noted above illustrates the moral bankruptcy of claims cost-based premiums. In that case, the employer was convicted under the OHSA for failing to ensure overhead guarding was in place. The OHSA fines totaled $375,000. The employer appealed the WSIB's application of the fatal claim policy which had the effect of rescinding its experience rating rebate of about $1 million. The WSIAT has not yet issued a final decision on the matter and it is possible that the decision will stand, but in any case, something is fundamentally wrong with a system that would provide a $1million refund to an employer who fails to take the minimal safety precaution of guarding its machinery. Yet this exact situation could occur under the proposed framework, which has no direct incentive to improve health and safety. An employer who chooses to pay a claims management firm to address claims that have already happened could very well pay less than an employer who invests that money in machine guarding and other safety initiatives instead.

Long latency occupational diseases

Long latency occupational disease cases also illustrate the deficiency of using claims cost-based premium adjustments. The WSIB has proposed to exclude long latency diseases from the cost record of individual employers because it is often impossible to know which employer is responsible. This is not always the case - where a worker has worked for one employer with known exposures over his entire work-life, the responsible employer is fairly clear. In any case, the exclusion of these disease cases makes possible a situation where a handful of employers with inferior safety practices are responsible for the majority of the claims, and the cost of those claims, but all employers in the group would pay equally.

If premium adjustments were made based on health and safety practices, though, the result could be different. Employers who invested in better health and safety equipment, those who adopted higher safety standards, or similar initiatives, would pay less, irrespective of actual claims costs. Safer employers would be compensated directly for their efforts.

Temporary Agencies

The final exception is perhaps the starkest example of the limits of claims cost-based premium adjustments: temporary agencies. When a temporary agency employee is injured while working at a client employer, under the proposed framework, the costs of

[23] *Decision No. 2346/12 I2*

that claim affect the temporary agency's premium rate. The temporary agency has no control over the conditions of work at the client employer. There is no way for any shift in risk bands to "act as an early warning sign" for the temporary agency to remediate health and safety conditions because it has no control over the conditions that require remediation. It is unlikely that the temporary agency will "pass on its costs" to the client employer. Under the current system, and with s.84 of the WSIA, temp agencies could pass on costs but they don't because it is bad for business. What they do, and what they would continue to do under the proposed framework is manage claims. Temporary agencies can and will aggressively object to entitlement decisions, and they can and likely will find a way to terminate the worker, or give him make-work projects.

The proposed claims premium structure actually makes work more dangerous for many temporary workers. This type of cost structure creates an incentive for employers to contract their more dangerous jobs out to temporary workers since there will be no effect on their premium rates if the temp worker is injured. Research has found that temporary workers have a high risk of injury.[24]

In 2008, the Toronto Star reported on a "loophole" that allowed companies with histories of serious work accidents to maintain good experience rating records by employing temporary workers.[25] The employers used poorly trained temp workers to do dangerous jobs, or took inadequate safety precautions, but because the temp workers were not their employees, the accidents did not show up on their claims records and the employers continued to receive rebates. If we substitute "lower risk band" or "lower premium" for "rebate", the same scenarios recounted in the Toronto Star article could, and likely will, continue under the proposed framework.

All of these cases – temporary agencies, long latency diseases, and fatalities – show the perils of claims cost-adjusted premiums and the fundamental disconnect between claims costs and health and safety. These perils cannot be repaired by creating exceptions for temp agencies, or fatal claims, or long latency diseases; instead, the solution is to abandon the use of claims costs as the metric for rate setting.

An alternative approach

We agree with the Board's proposal to use NAICS categories for classification, and we agree that the system would benefit from fewer groups or classes of employers, which is in accordance with the collective liability principle. As we have made clear, what we disagree with is the use of claims costs as the metric for risk-adjusted premium rates.

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[24] See for instance, E. MacEachen et al. (2012) "Workers' compensation experience-rating rules and the danger to workers' safety in the temporary work agency sector" *Policy and Practice in Health and Safety* 10.1, p.77.

[25] David Bruser "Hiding injuries rewards companies" The Toronto Star, May 29, 2008.

Measure genuine indicators of health and safety

We suggest instead that "risk" be measured by actual health and safety leading indicators rather than claims costs. Leading indicators shift the focus to prevention rather than dealing with the costs of a claim after the accident has happened. The recently developed Institute for Work and Health leading indicator tool, for example, could be used to determine risk.[26]

Proactive inspections with penalties have also been found to reduce the frequency and severity of work injuries, and could also be used as a risk indicator.[27] Workwell used to be a strong and genuine health and safety tool, and we strongly support the reinstatement of penalties in Workwell to restore its effectiveness. Consider the auto insurance example. Your rates will stay the same if you drive over the speed limit, but they will go up if you are caught speeding by the police and found guilty of an offence. This is the inspection with a penalty.

To best facilitate return to work, we have long suggested that the WSIB support accommodations and tools tailored to the worker, what we have termed the "backpack". With this approach, the worker would carry with him/her tools or funds to support his/her integration to work. For instance, the WSIB could fund a sit-stand desk that the worker could take with him or her if s/he changed jobs. We have also attached our vision for an "excellence fund" as an appendix to this document.

We don't pretend to have all of the answers on what an alternative scheme should look like. Instead, we suggest investing some of the cost savings from the dismantling of the current experience rating programs in a research study aimed at finding a solid health and safety based alternative. Part of these savings could also be used to fund a cost analysis of the administrative cost savings of using a collective liability system rather than a risk banded system. It is possible that the savings would be significant enough to warrant abandoning the risk band approach.

Classification changes can lead to full coverage

Finally, we must comment on the potential that the rate framework has for expanding coverage in Ontario. The proposed use of the NAICS system and the necessary regulatory amendments that this shift will entail open the door to making coverage universal for all workers in Ontario. As we know, the Ontario workforce has one of the lowest rates of coverage in all of Canada, and expanding coverage could have a positive affect on premium rates.[28]

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[26] Institute for Work and Health (2015) "IWH leading indicator tool wins over advocates across Canada"
[27] Institute for Work and Health (2015) "Inspections with penalties linked to lower injuries: IWH review"
[28] *Supra* Note 7.

Full coverage would also increase fairness and equity for employers, in line with current WSIB values. It would be fairer to have all employers pay into the WSIB system which in part funds prevention for all Ontario workplaces.

The NAICS system contains the necessary structure to easily extend coverage to all employers and warrants further consideration.

Recommendations and Conclusions

Our recommendations are:

1. Dismantle the current experience rating programs without delay.
2. Abandon the "risk adjusted premium rate" aspect of the rate framework, or use actual health and safety indicators, rather than claims costs as the metric of risk.
3. Further study into alternative approaches, including health and safety indicators.
4. Reinstate penalties in Workwell audits.

Ontario's workers' compensation system was intended to be a no-fault system where the total cost of the system was shared by all employers. Adjusting premium rates based on claims experience re-introduces fault into the system, and fosters an adversarial process that the no-fault system was designed to eliminate. It also undermines the collective liability of employers by tying individual employer costs with individual employer claims records.

The proposed rate framework conceptualizes the injured worker as a "risk to the system". Implementing such a framework will result in the absurdity of making the WSIB an institution which instead of protecting the worker, as intended, turns that worker into a risk from which the institution now seeks protection.

As stated at the outset, we will not support any rate setting model that uses claims costs as the metric for establishing premium rates.

Appendix A: **EXCELLENCE FUND KEY PRINCIPLES**

We propose the Excellence Fund to allow the Board and employers to go forward with prevention and accommodation promoting timely and safe return to work (RTW). Funding for the Excellence Program would be transferred from all annual expenditures from the current experience rating program.

The Excellence Fund is set up as a merit system or incentive program which would:

1. Offer grants/loans to employers who want to make real health and safety improvements beyond their obligation under the *Occupational Health and Safety Act.* For example, the addition of patient lifts in health care facilities or the replacement of toxins with safe substances in the workplace. In order to qualify for a grant the employer must undergo an extensive audit by the Board through an accreditation process. The Joint Health and Safety Committee would be involved in the accreditation process. For purposes of the audit employers would be required to record all lost time injuries and no lost time injuries and incident reports. Employers passing accreditation will be publicly recognized. ie. ISO Banner. If an employer fails audit the Board and the Ontario government would not purchase any goods or services from them. Grants would be amortized over a reasonable period.

2. Give grants to employers to modify the workplace to accommodate an injured worker. This could be the accident employer or a new employer willing to hire an injured worker.

3. An employer may be given a prospective rate discount if accreditation is passed and no grant had been awarded during the deemed amortization period of the grant. Rate discounts will be adjusted through regular or spot audits. Audits could be triggered through a Ministry of Labour (MOL) enforcement action and would allow the Board to apply an administrative penalty which would go to the Excellence Fund.

4. Entitlement to grants for employers who modify the workplace to accommodate an injured worker move with the injured worker on RTW i.e. with the accident employer and/or a subsequent employer. Compensation for loss of earnings should resume in the event of job loss by the accommodated injured worker, which could be adjusted on the merits of the individual case.

cope343
LH:ph

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Workplace Safety & Insurance Board
Attn: Consultation Secretariat
200 Front Street West, 17th floor
Toronto, Ontario M5V 3J1
consultation_secretariat@wsib.on.ca

January 12, 2018

Draft Rate Framework Policies Consultation

Please receive Hydro One's submission regarding the WSIB's proposed Rate Framework Draft Policies. We appreciate the continued opportunity to participate in the development of the framework and the associated Operational Policies. As the WSIB proceeds towards revisions, completion and finalizing of the policies, we look forward to continued collaboration and information sessions with other stakeholders.

Hydro One has thoroughly reviewed all seven of the proposed policies associated with this consultation, and participated in multiple sessions with the WSIB as part of the Industrial & Manufacturing Advisory Committee (IMAC). Herein, Hydro One has addressed applicable policies where we believe further revision or clarification may be appropriate. Policies not included below were reviewed but Hydro One determined we had no additional input requiring inclusion in this submission.

Policy: 14-01-01 - The Classification Structure

The Classification Structure policy provides a clear outline of how the majority of employers will be classified within the new NAICS-based classification structure. The primary intention of the Policy is in keeping with the proposals set out throughout the Framework Consultation process.

Ancillary Operations

Hydro One recognizes the WSIBs need to address the issue of ancillary operations. However, this section of "The Classification Structure" policy is a departure from the Key Goal of the Rate Framework. In its attempt to provide clear direction on how Ancillary Operations will be addressed with respect to classification, the policy actually becomes more complex and unclear.

Hydro One and other stakeholders recognize that employers should not be classified by their ancillary operations. However, the extensive focus and detail outlined in the policy in regards to ancillary operations takes away from the basic principles of classification. This issue is further complicated by the other policies addressing "*Associated Employers*" and "*Single vs. Multiple Premium Rates*", and how all three policies will work together.

The WSIB would be better served to keep "The Classification Structure" policy simple and clear as it relates to predominant business activity, and applicable NAICS classification. The WSIB's new policy on "Eligibility for Single or Multiple Premium Rates" would seem to be better suited to include clarity and details about scenarios where "ancillary operations" could be considered for separate classifications and how they would be rated.

Hydro One recognizes that the WSIB has already confirmed in ongoing stakeholder sessions the intention to simplify and clarify this policy, and specifically the treatment of ancillary operations.

Monitoring & Maintenance

The key item that raises concern is the issue of a reviewing the Classification Structure itself, and ensuring alignment with industry changes in Ontario. The policy does outlines that the policy itself will be reviewed within five years of implementation (Policy Review Schedule), but this is fairly standard policy language, and not specific to the Classification System itself.

The issue of review, monitoring, and maintenance of the classification system was raised initially in Douglas Stanley's Pricing Fairness report of February 2014, and Hydro One supported his comments in our joint submission with other utilities on October 1, 2015. Douglas Stanley identified that the use of Standard Industry Classification (SIC) system itself was not the issue. The issue was the absence of a clear and systematic monitoring and maintenance program, and the application of that program.

Hydro One continues to support that an appropriate policy should be developed which clearly outlines the WSIB's accountability to review, monitor, and maintain the NAICS-based classification system itself. In the absence of a policy and program to review the system itself, there is a strong likelihood the same pitfalls that burdened the SIC-based system will arise again in the future. The SIC-based system failed to adapt over time to changes in industry, technology, etc. It is well documented that part of the reason the SIC-based system was no longer relevant, is because the SIC code is no longer used in North America. However, because a regular monitoring and maintenance program was not adhered to, the prior classification system became outdated, and was later burdened by rate-shopping employers attempting to seek more accurate-classification.

Hydro One continues to support the notion that the WSIB needs to establish a clearly documented and systematic approach to monitoring and maintaining the classification system itself.

Hydro One continues to suggest that the WSIB do one of the following:

1. Include a section in ***14-01-01 – The Classification Structure*** detailing how the WSIB intends to review, monitoring, and maintain the NAICS-based classification system;

Or

2. Develop a new stand-alone policy to address the process by which the WSIB will review, monitor and maintain the NAICS-based classification system.

In either circumstance, we propose that the WSIB clearly document the review schedule, and align the schedule with the NAICS five-year cycle. In the event of significant changes to classes/subclasses as part of NAICS reviews, a WSIB review program that aligns with the NAICS process will assist in addressing changes that may have affect WSIB Employer Classification(s) and Rate setting.

Policy: XX-XX-XX - Employer Level Premium Rate Setting

Overall, the Policy is consistent with the Rate Framework principles and key goals. Hydro One has identified some areas of the policy that require further clarification and/or revision that may improve the policy.

Step 2: Employer risk adjusted premium rates:

Clarification should be made within the policy on how and why an employer will/may have two premium rates. It has been made clear in the Consultation processes to-date, that in the initial stages of the implementation, Employer's will likely have the two rates (Projected and Actual) as they progress from their current experience rating program into the new Rate Framework.

It is our position that the proposed policy is somewhat lacking in clarifying the circumstances where an employer would have the two rates. Additionally, it does not clarify the broader objective that employers will initially be on a path where their "projected premium rate" and "actual premium rate" are the same. The formulated approach of the Framework is intended to ensure employers are paying fair rates based on the individual experience and costs that they bring to the system.

Therefore, in theory, once the new framework is implemented, and employers approach their projected premium rate, the need for two rates should become rare. Hydro One recognizes there may be some instances where exceptions may occur. Particularly where an employer's actual rate is limited/capped by rate band movement, and their actual rate may differ from the projected rate. However, once the

program is established, most employers will eventually gravitate towards simply having only an "Actual Premium Rate".

Claims excluded from the risk adjusted premium rate calculation

As part of Hydro One's previous consultation submissions, we were in agreement with the intention that LLOD claims should continue to be excluded from claims experience of individual employers under the "Risk Adjusted Premium Rate Setting" process. We maintain that position. However, during discussions, and in our prior submissions, we had suggested the following:

1. The WSIB should make clear where the costs of those claims do fall (at the Class Level); and
2. Employers should be informed of their "contribution" to those Class costs related to the LLOD claims that are assigned to them as the "injury employer."

Hydro One recommends that a statement should be included in this section of the policy, outlining how LLOD claim will be accounted for with respect to their contribution to the class level premium rate, and how the WSIB will communicate an employer's contribution to the LLOD claims (frequency and costs). Although it is recognized this information will not impact employer-level experience and rate setting, transparency of the burden on the overall system would be beneficial to employers.

Traumatic fatalities

Hydro One proposes confirming that the average cost of traumatic fatalities will be based on the "six-year rolling average" during the same rolling six-year review period used to establish premium rates. The policy currently only states "based on a rolling average". The March 2017 "WSIB Rate Framework Modernization" manual/update references the six-year rolling average (Page 24 – Fatal Claims), so it would be appropriate that the Operational Policy references this specifically in order to ensure transparency and clarity.

Provisional Assessment

This section is unclear. In reviewing all prior Rate Framework consultation, documents, presentations, and resources, Hydro One has been unable to identify previous use of the term "Provisional Assessment". Additionally, the term is not used in any of the other draft policies.

Based on the limited information available, it would appear the assessment is in relation to one of the following:

1. Noting the reference to limiting "downward risk band movement" and "compliance" it appears to be in reference to employers whose "experience is out of step with their class"; Or
2. Noting the term "provisional", it could be related to a new employer entering the system who has not yet established enough experience or predictability to appropriately establish an accurate employer-level premium rate, and is therefore assigned a provisional premium rate in a risk band closer to a "class average"; Or
3. Some other assessment, unclear to the reader.

Given the fact that this section provides limited context with respect to what employer would undergo a "Provisional Assessment", when it would occur, and why it would occur; Hydro One proposes a revision of this portion of the policy to include greater detail for all stakeholders.

Policy: XX-XX-XX – Temporary Employment Agencies

Hydro One does not have extensive comments with regard to this draft policy, but offers the following suggestion in regards to the Classification section of the policy.

Classification

The policy clearly states that, with respect to the workers the TEA supplies to client employers, TEAs will be classified in "*the 6-digit NAICS code(s) of the client employer to which they supply workers…*" This is appropriate and in-keeping with the original intentions of the proposed framework.

Hydro One suggests that it may strengthen the language of the policy to add notations, or examples, confirming that the TEA will be classified by the client employer's NAICS code(s) regardless of the nature of the occupation the supplied workers are performing. For example; if a TEA is providing temporary clerical workers to a Hospital, the TEA will be assigned an appropriate rate under Class D, Subclass 3.

By ensuring clarity is built into the policy, it would save the board and employers unnecessary administration associated with requests or appeals at future dates.

Policy: 14-01-06 – Associated Employers Policy

Clarity should be provided on who would initiate re-classification and/or how 'associated employers' will be determined.

- Are employers assumed to be associated until proven otherwise; or are employers considered separate until proven to be associated?
- How does the WSIB intend to identify, monitor and/or investigate employers, in instances where an employer (or employers) may be in an "associated" position?

Hydro One understands the principles of Affiliation and Cooperation. However, it appears there remain gaps in the application of how and when these tests will be applied. Ongoing review and clarification of the terms to ensure appropriateness continues to be necessary.

General Comments

Multiple Premium Rates

As noted above under "Classification Structure", "Ancillary Operations", and "Single/Multiple Premium Rates", clarity should be offered on how the WSIB intends to determine when Employers require multiple premium rates. It is unclear if the WSIB will initiate reviews, or whether it will be up to the individual employers to apply for multiple rates. The WSIB appears to address the requirements necessary to demonstrate eligibility for multiple classifications and/or rates, but the process for identifying and reviewing/auditing, remains unclear.

Additionally, while there may be a small minority of employers who do truly require multiple rates due to clear and distinct business that may be classified/rated differently, the majority of businesses should be classified, as intended, based on their predominant business activity and in keeping with their NAICS code. This principle should be made abundantly clear, in an effort to eliminate potential for businesses attempting to rate shop via the various policies expected to be available.

This issue is related to the broader point mentioned above with respect to a clear policy/direction on how the WSIB intends to monitor and maintain the classification system.

Employer Accountability/Surcharge Mechanism

The WSIB Rate Framework Manual/Guide (March 2017) confirms the WSIB's intent to address employer accountability for employers who find themselves above the Premium Rate Thresholds on a sustained basis (pages 36 – 38). This practice is consistent with the WSIB's December 2015 Framework Update, which was in response to stakeholders feedback supporting mechanisms to address employers whose burden to the system is disproportionate to the class/subclass.

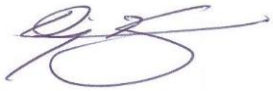
In Hydro One's March 2016 submission, we suggested that the WSIB develop applicable policy in regards to the surcharge mechanism, and involve stakeholders in the development of the policy. The seven draft policies in this particular policy consultation do not address this matter. Hydro One continues to encourage the development of a specific policy (or set of policies) which will provide more transparency with the regard to the identification of employers, the stages/processes to follow, and more detail of the proposed approach.

As suggested previously, undertaking a consultation on this matter will assist in avoiding concerns and pushback from stakeholders at a later date. The implementation of the *Fatal Claims Premium Adjustment* (14-02-17) policy in 2008, and the reaction from Ontario employers, is an example of what could potentially occur if the WSIB forgoes an opportunity to obtain further feedback and discussion with stakeholders on this matter.

Conclusion

Hydro One appreciates the opportunity to continue our participation in the Rate Framework consultation process. We look forward to receiving further information on the seven proposed draft policies, and reviewing the final policies prior to final implementation.

Yours Sincerely,



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International Union Of Operating Engineers Local 793
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Mike Gallagher
BUSINESS MANAGER
Joe Redshaw
PRESIDENT

January 15, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
200 Front Street West, 17th Floor
Toronto ON M5V 3J1

Dear Consultation Secretariat:

Re: Rate Framework Policy Consultation

The International Union of Operating Engineers (IUOE), Local 793 was founded in 1919 as a trade union representing construction workers working as crane operators, heavy equipment operators, mechanics, and surveyors. The IUOE Local 793 currently represents more than 14,500 highly skilled crane and heavy equipment operators across Ontario.

IUOE Local 793's Social Services Department provides guidance, advice and support to our eligible members with matters related to compensation and have represented our members before the WSIB and WSIAT.

As a result of the approved new Rate Framework in November 2016, the WSIB developed the following seven draft policies to support the implementation of the new Rate Framework:

- **Coverage Status Policy**
- **The Classification Structure Policy**
- **Eligibility for Single and Multiple Premium Rates Policy**
- **Associated Employers Policy**
- **Temporary Employment Agencies Policy**
- **Employer Level Premium Rate Setting Policy**
- **Employer Premium Adjustments Policy**

The WSIB has indicated the new rate framework is adopting a prospective risk-adjusted premium setting process that better reflects individual employer's claims experience and replaces existing experience rating programs.

The Ontario Building Trades March 2016 Submission to the WSIB Rate Framework Consultation concluded:

> Despite our acceptance that there needs to be change in the classification system and rate group framework we have real concerns that the proposed new model will be relying on claims experience to calculate individual employers' premium rates. Essentially, the Board will be embedding the experience rating into the new rate setting process.
>
> Experience rating has done little to improve workplace safety in the last 25 years. The Board's proposed approach will continue to reward bad practices and to move employers to manage claims rather than prevent injuries and deaths in the workplace.

The Rate Framework Policy Consultation – December 2017 Interim Update posted on the website states the "WSIB is considering revisions to the section of the draft premium rate setting policy that describes the mechanism for greater employer accountability, in order to better articulate the link to health and safety and return to work efforts, while also simplifying the wording of the policy."

According to the WSIB's 2017 Corporate Business Plan the measurement to gage health and safety is by the lost time injury rate. The WSIB's measurement of a successful return to work (RTW) hinges on whether or not the injured worker returned to work at 100% of pre-injury earnings within 12 months of the injury.

Local 793 undertook a study of our members RTW experiences with the injury employer for a workplace injury occurring on or after January 1, 2011. Our results are in line with the WSIB's, in that 81% of our members returned to work with the injury employer within 12 months following their workplace injury versus the WSIB's 92%, as reported in their 2016 annual report. We continued to follow-up with our members at 12, 24 and 36-month intervals. Our results of workers injured post 2010, show 59% and 84% of our members are not employed with the injury employer 12 and 24 months from the date of accident, respectively.

Local 793 have participated in many return to work interventions with the WSIB since the introduction of the Work Reintegration (WR) Program in December 2010 and support the WSIB's early return to work intervention and agree it is a step in the right direction. This program could be improved if the WSIB follows up with the workplace parties at different intervals to ensure the worker is provided with safe, suitable, and dignified work on an ongoing basis.

In our experience it's the nature of the construction industry, combined with the severity of the injury and/or the worker's personal characteristics, which often make it difficult for employers, even with outstanding health and safety initiatives, to provide safe, suitable, dignified and sustainable work offers for injured workers.

The Construction Health and Safety Action Plan released in May 2017 noted the construction sector made up only 6.7% of Ontario's employment in 2015, and accounted for about 30% of all work-related traumatic fatalities and occupational disease fatality claims in the province. The construction industry is considered a high-hazard sector and is one of the key priorities in the Ontario Ministry of Labour (MOL)'s occupational health and safety strategy.

We are recommending the WSIB collaborate with the MOL and utilize the inspection and/or investigation reports. The WSIB should also review the recommendation(s) generated from the mandatory Coroner's Inquests. We also support the Workwell Audit program or a version of same to review an employer's health and safety program.

In addition to being a high-hazard sector, the construction industry was the top industry sector for small employers at 36% and represented 12% of medium employers and 7% of large sized employers, according to the WSIB 2016 Statistical Report, By the Numbers. Sustainable RTW for injured workers with a permanent impairment requiring accommodation is often a barrier for a small employer and ultimately will have an impact on their premium rates.

Local 793 cannot support the Rate Framework or the draft polices as proposed and it is our position the new model will NOT have any impact on health and safety in the construction industry. The system relies on lost time claims and RTW records which may reward employers with aggressive claims management and penalize employers who promote the importance of health and safety. This model may not give an accurate reflection of an employer's health and safety culture and in our opinion, will increase pressure on employers to manage claims in an effort to minimize premium increases.

Yours truly,

Debbie Coulson

Debbie Coulson
Manager, Member and Social Services
IUOE Local 793

Leon DeGagne Ltd
RR#2 Site 204-25
Fort Frances, ON P9A 3M3

January 12, 2018

Workplace Safety & Insurance Board
200 Front Street West
Toronto, ON M5V 3J1

Attn: RATE FRAMEWORK CONSULTATION

Dear Rate Framework Committee:

I am a second-generation business owner. For more than 40 years my family has been working hard, building our business and contributing to our community, our employees and our local economy. My father started in the trucking business and over the course of the next two decades expanded into logging and road construction. We have seen the best of times, through the vibrant 1980s, and the worst of times, in 2012 with the closure of our local pulp and paper mill. Because of the volatility in the forest industry, my father knew the importance of diversification. My brother and I joined the company almost two decades ago with the hopes and desires of becoming a third-generation family operation. We have continued to expand our company to include culvert and geotextile sales, warehousing, commercial rentals and road maintenance services; including gravel sales, sanding, grading and dust suppression. Because of this diversification we have been able to survive the economic downturn in our region. We continue to employ 16 full time staff. I tell you our 'story' because I feel the WSIB often forgets who we, the companies, are. We are regular people working extremely long hours to keep food on the tables of our employees, suppliers and ourselves. As you read my letter please remember that you're not just 'doing your job' when you make decisions at work. Your decisions greatly effect families and companies just like mine.

Also, please note that you may not hear very much of a response from small business. Do not construe the lack of communication as agreement with the framework. Most business owners will not reply, even when they completely disagree, because many of them, myself included, do not have the time or resources to navigate the hundreds of pages of complex and convoluted information. The sheer volume and complexity of the framework is overwhelming. The constant updates and deadline extensions make it nearly impossible to stay current on the information. Couldn't there have been a simpler way to address the issues faced by WSIB? Why does the entire process have to take years and years of planning and millions of dollars spent? In my opinion the entire system has become more complicated, left more unanswered questions, and caused more inequity than ever before.

Also, the majority of business owners I have spoken to say "What's the point in responding? They (the WSIB) never listen to us anyways?" On past occasions when I have voiced my concerns to the WSIB, I too have felt unheard. Many small business owners also don't want to 'rock the boat' and are terrified because of stories of "I voiced my opinion and then got an audit." I am now afraid of the same. The last auditor who came to our company had me in tears. She was aggressive, difficult and threatening. Who wants to invite that back in to your office?

Despite my fears of not being heard, or of potential retribution, I believe the WSIB needs to address the following issues more completely.

1. **Lower the Test of Significance**: I highly urge the WSIB to lower the test. Just because the rate group doesn't meet the 25% threshold doesn't mean that it isn't a big part of the company's success. How can we compete with competitors paying just a fraction of the WSIB I would be forced to pay under the higher rate group. It is discriminatory to smaller businesses.
2. **Construction Coverage for Non-Exempt Partners:** This issue has not been addressed.
3. **Forestry Rate Inequity**: There is a serious need to re-evaluate the rates you charge to Forestry. Forestry rates need to be adjusted to reflect the Mechanized Harvesting Equipment Operators of today. We no longer cut with chain saws. Feller bunchers, used to cut the trees, are the same equipment bodies as excavators. So why do we pay 13.35% in the same machine as a construction excavator that pays only 4.5%? The forest industry across Canada has similar working environments and conditions. Yet Alberta, BC and Manitoba pay only a fraction of the compensation (1.71%-2.96%) that we pay in Ontario (13.35%). Is the WSIB that poor at managing their premiums that they need to gouge us in Ontario?
4. **Private Coverage**: I feel that we as business owners' should have the option to leave WSIB and provide private insurance coverage to our employees. My brother and I have policies that far exceed any WSIB coverage and we pay only a fraction of the cost of WSIB.
5. **Actual Rates**: Despite the thousands of pages available online not ONCE are any potential premium rates mentioned.

Maybe instead of spending millions of dollars and thousands of man hours on a terrifyingly complex framework, WSIB should spend it on SIMPLIFYING THE PROCESS. Create a system that is fair. My secretary in the office pays the same rate as my skidder operator, yet their exposures to workplace incidents are entirely different. Also, if you're going to start changing the system maybe you should spend more time discussing the ACTUAL RATES so that business owners know where they stand.

Thank you for the opportunity to share my side of the Rate Framework equation. I apologize if you find my letter too emotional but this affects MY bottom line, MY employees, MY business and MY life. Please consider that when making decisions with my hard earned WSIB premiums that are paying your wages.

Sincerely,

Shanda DeGagne-Begin

CC: Canadian Federation of Independent Business

Office of the Employer Adviser

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Ontario

Michael Zacks
Director (A) and
General Counsel

January 9, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1
Dear Consultation Secretariat:
Re: Funding Framework Policy Submissions

Dear Consultation Secretariat:

Re: RATE FRAMEWORK POLICY CONSULTATION – INTERIM UPDATE.

The following are the OEA's submission on the interim update to the Rate Framework Policy Consultation.

A. Eligibility for Single and Multiple Premium Rates Policy: Test of Significance

The WSIB has proposed three options in response to stakeholders' concerns about the proposed two stage test:

WSIB Action: The WSIB is exploring the following options for adjusting the test of significance:

1. Modifying the percentage of Insurable Earnings (IE) threshold - Currently the draft policy has a threshold of 25%.

2. Creating an exception for the percentage of IE threshold for large employers – This could allow large employers to have multiple rates regardless of percentage of insurable earnings in each business activity.

3. Removing the requirement to meet both criteria – Instead of requiring employers to meet both a 25% threshold for each business activity AND meeting the 5 times maximum IE ceiling threshold, employers would only be required to meet one condition to be eligible for multiple premium rates.

The OEA has concerns with all three options. In our submission the percentage of insurable earnings threshold should be based on rational objective criteria. Why was the 25% amount picked instead of 20% for example.

The OEA agrees with the concern expressed by the WSIB on the second option. Of the three options the third is a reasonable compromise, subject to a discussion about the appropriateness of the 25% threshold.

B. Associated Employers Policy: Test of Affiliation and Test of Cooperation

The OEA supports the WSIB's proposal to review the Associated Employers policy, and especially the tests of affiliation and of cooperation to ensure that the purpose of the policy and the criteria for the tests are clearly explained.

C. Associated Employers Policy: Compulsory Coverage in Construction

The OEA supports the WSIB's proposal to removal of this section of the policy.

D. Classification Structure Policy: Ancillary Operations - Scope and Definition

In response to employer concerns to the ancillary operations policy, the WSIB is proposing three options:

1. Reverting to an inclusive list of ancillary operations, as currently exists in policy.

2. Revising the definition of ancillary operations to a more general definition.

3. Revising or deleting the description of "retail operations" as ancillary.

The OEA supports the first option and the third option. The second option will remove clarity and certainty for employers. An inclusive list will allow certainty which is necessary in this area, and deleting the description of retail operations will remove what is in our submission an illogical ancillary activity.

E. Health and Safety

The OEA supports the WSIB's commitment to review the policies with health and safety in mind.

Thank you for this further opportunity to provide submissions.

Sincerely,

Michael Zacks

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Michael Zacks
Director (A) and
General Counsel

October 6, 2017

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions

The Office of the Employer Adviser has a statutory mandate under the Workplace Safety and Insurance Act to advise represent and educate primarily employers with fewer than 100 workers. This submission will accordingly be focused on the interests of smaller employers in the workplace safety and insurance system.

General Comments:

We find these policies in the main to be complex and highly integrated. Most small employers will not have read them, and those that have will be hard pressed to understand them. If the goal is to make these policies easily understood by small employers, then policies need to be simplified where possible, or be accompanied by extensive explanatory documents. These accompanying documents must contain clear examples, explanations and definitions of various undefined terms and expanded terms that are sprinkled throughout the policies. This can be done through administrative guidelines which should quickly be available once the policies come into force. This is especially necessary as there are penal consequences buried in some of the policies involving the material change in circumstances rule for associated companies that change status.

Our submissions will address the policies that give us concern.

Coverage Status Policy 12-01-04

We have two comments on this Policy. The first pertains to the statement at the start of the Policy that provides:

> *The business activity of an employer who operates in Ontario, or of a non-resident employer who is determined by the WSIB to have a substantial connection to Ontario, falls under either mandatory coverage or non-mandatory coverage.*

There is no explanation on what is meant by a substantial connection to Ontario. This term must be defined with clarity. Employers have a right to know whether they have a substantial connection, and thus obliged to consider registration with the WSIB.

The second concern is found on page 2 of the Policy:

> ***Transfer to Schedule 1***
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> *Any Schedule 2 employer may request a transfer to Schedule 1 and receive the protection of collective liability. Schedule 2 employers transferring to Schedule 1 will be classified in one or more 6-digit NAICS codes based on their Schedule 1 business activity. Guidelines for Schedule 2 employers requesting transfers to Schedule 1 can be found in 12-01-02, Employer by Application*

Currently, transfers can go either way. A Sch. 2 employer can transfer to Sch. 1 and then back again on payment of a transfer fee. The absence of a reference to the move from Sch. 1 to 2 for Sch. 2 employers raises the concern that this type of transfer may not be permitted. This needs to be clarified that such bilateral transfers are permitted

The Classification Structure Policy 14-01-01

This is an explanatory Policy. It describes how the WSIB will determine a business' classification in the new system. Generally, it reflects what the WSIB has described to employers. However, to fully appreciate the process one needs to be familiar with the new regulation that was passed last year, O. Reg. 470/16 and the chart of the Classification Structure in the Appendix to the this Policy. There needs to be clearer explanations in the policy.

The Classification Structure Policy is confusing. Although it states that employers are classified in one or more of the 2, 3, 4 and 6 digit NAICS codes the Board only shows 2 – 4 digit codes in its chart. There are no 5 or 6 digit codes shown. Examples of how 5 and 6 digit codes work need to be included.

Ancillary Activities

The Rate Framework Document provides that ancillary operations will remain part of the new funding framework:

> *The concept of business activity remains central to the classification of employers in the new rate framework. To determine what is (and is not) considered a business activity for classification purposes, the WSIB would continue to consider operations that are "ancillary" to the business activity (i.e. in support of the business activity) as part of, and therefore not separately classified from, the employer's business activity.*[1]

The Classification Structure Policy establishes a policy foundation for ancillary activities. Although the regulatory provisions pertaining to ancillary activities will be deleted from the general WSIB regulation when the new system comes into effect the policy has re-introduced ancillary activities in a significantly broadened and open ended way.

As a general observation we question the need for including ancillary activities at all given that an employer's classification will be based on the class with the predominant insurable earnings. The section describing them, unlike the repealed provisions in Ontario Regulation 175/98, s. 6(3) are complex, confusing, and subjective. As an example, the policy provides that,

> *The WSIB will not separately classify the employer's operations that are ancillary, i.e, incidental to the employer's business activity.*

However, towards the end of the policy it states,

> ***Ancillary operation that is a business activity in its own right***
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> *An employer's ancillary operation may be incidental to the employer's business activity and at the same time carry on a business in its own right. When part of the ancillary operation is carrying on as a business in its own right, it may be eligible for classification in one or more 6-digit NAICS codes, and may be assessed separately, see policy XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

These two provisions are contradictory on their face. We encourage the WSIB to reword this aspect of the policy and give several examples of how this would work in practice.

The OEA has serious concerns about the extremely expanded and open-ended nature of the how the WSIB is re-interpreting ancillary activities. Under the current general regulation ancillary activities are clearly and specifically defined.

[1] Rate Framework Modernization - The New Rate Framework, March 2017, page 12.

They are not open-ended. This policy leaves too much discretion to WSIB auditors to define in an ad hoc manner whatever any business activity as ancillary. This will result in inconsistent decisions among auditors, and the possibility of significant retroactive premiums if the employer gets it wrong. Currently, employers know with certainty if an activity is ancillary or not. This is not the case with the Classification Structure policy. It is open ended in the extreme. The description of ancillary activities starts with the following statement:

> *Activities that are incidental to an employer's business activity include, but are not limited to:*

It then continues to describe specific ancillary activities that are in their own right open ended using the phrase *including but not limited to* such as in the provision on administration activities:

> *administration related to an employer's operations including but not limited to management, payroll, human resources, information technology, training and clerical services*

In our submission this wording is grossly unfair to employers. An employer will never know if their organizational structure offends the ancillary activities rule. There can be no certainty. This wording essentially proposes that ancillary means whatever the WSIB says it means.

Further unfairness occurs through the inclusion of activities that have to date not been considered ancillary with no explanation as to why this is being done. The following is a comparison of the current ancillary activity and its policy counterpart:

Regulation 175/98	Draft Policy	Comment
Design, including drafting and engineering, research and development related to goods produced or services provided, or intended to be produced or provided, by the employer.	design, including but not limited to drafting and engineering, research, development and software development related to goods produced or services provided, or intended to be produced or provided, by the employer	In addition to being open ended, the policy expands design by including software development

Marketing, promotion or communication related to goods sold or produced or services provided, or intended to be sold, produced or provided, by the employer.	marketing, promotion, fundraising or communication related to goods sold or produced or services provided, or intended to be sold, produced, or provided by the employer	The policy inserts fundraising. A previously independent and by application activity as an ancillary activity.
The manufacture of packaging or packing materials to be used in the packaging of goods produced by the employer.	packaging an employer's own goods, including but not limited to the manufacturing of packaging material used	This is an example of an open ended activity that leaves employers unclear on what is meant
	the sale of goods produced, or services provided, by the employer (Exception: If the employer operates at least one retail operation located elsewhere than on the production site of the goods the employer produces, the retail activity is considered a separate business activity.)	This is a new ancillary activity. It is in our submission nonsensical. An employer can simply avoid the ancillary application by setting up a stand-alone kiosk anywhere in the province off his production site.

The significant risk to employers with this very broad open-ended version of ancillary activity is found in the following part of the policy:

> ***Changes to classification***
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> *A classification change may impact an employer's predominant class or subclass or the employer's eligibility for multiple premium rates, see XX-XX-XX, Eligibility for Single or Multiple Premium Rates.*

How is an employer to know whether their classification has changed because of adding an activity which is subsequently determined to be ancillary? This change would be considered a material change in circumstances, and not reporting would be an offence. We strongly recommend that the WSIB

reconsider the need for ancillary activities and if it is to be included then make it a clearly defined as a closed list.

Eligibility for Single or Multiple Premium Rates Policy

The Eligibility for Single or Multiple Premium Rates Policy provides the criteria for obtaining granting multiple classes to an employer in the new system. This is an exception to the rule that an employer is placed in a single class based on the predominant business activity determined by the class that reflects the employer's largest share of insurable earnings. In our view, the criteria are unfair to both small and larger employers.

The criteria require an employer seeking a second (or more) premium rate(s) to meet a business significance test and a non-integration test. The significance test has two parts both of which must be met:

a) generate an annual insurable earnings of at least five times the maximum insurable earnings ceiling for the premium year, and

b) generate at least 25% of the employer's total annual insurable earnings.

In order to have a separate rate the non-predominant activity must be significant in the sense that it generates at least $442,500 in insurable earnings using the 2017 maximum insurable earnings ceiling, which must be at least 25% of the employer's total annual insurable earnings. That means an employer must have at least $1,770,000 in total insurable earnings to be eligible for multiple rate groups. On average this is an employer with 20 workers all paid at least the maximum insurable level for 2017 - $88,500. This would likely exclude many small employers, and larger employers that pay lower based wages.

As the maximum insurable ceiling amount increases annually, it becomes more difficult for a small employer with an independent secondary business activity to qualify for a second rate. A small employer that actually meets the significance test in a particular year, may lose it in a succeeding year if the increase in the insurable ceiling puts the employer under the 25% requirement. In our view this is unfair as being outside the employer's control, and may result in penalties unless the employer closely monitors its insurable payroll – a requirement it has not needed to do outside of the small employer rule.

Larger employers are also prejudiced by this test in another way. As the test requires an employer's secondary activity to generate at least 25 % of total annual insurable earnings, the more insurable earnings a larger employer generates in the primary business the less likely it will be for the employer to maintain the 25% level of earnings for the secondary industry assuming its share of the insurable earnings remains constant, hereby disqualifying the employer from the second rate. Being successful in growing the primary business punishes the employer with the secondary business which does not grow as fast.

This approach puts an employer who qualifies for a second rate in jeopardy should an increase in the insurable ceiling disqualify the employer in a subsequent year. There is an obligation on the employer to notify the WSIB of this material change in circumstances. Failure to do so is a significant risk to employers that place some of them in financial jeopardy because of their inability to stay on top of these complex changes. In our view these policies need to be reviewed from this perspective and assurance given that employers will not be penalized in this way.

If an employer passes the significance test, it must then meet the non-integration test. To meet this test an employer must be able to show that the product or service of the stand-alone activity is not integrated into the development of other products or services of the employer, or used in the joint development of other products or services. The claimed non-integrated service or business activity must not be offered primarily to external, unaffiliated clients together with the product or service of the employer's other operations.

As a general observation we believe most employers will find these criteria difficult to understand as they are vague, unclear and open to subjective interpretation in nature. We recommend that the non-integration criteria must be clarified and clear examples given of how they are to be applied.

The WSIB's decision to allow multiple rate groups was in response to employers' pleas for fairness. Some employers were complaining that if some of their business activities were lumped in with the predominant class, then they could not remain competitive in Ontario, and their only option was to incorporate another company to get a lower rate. The WSIB's draft policy on associated companies has removed this option. Associated companies will be treated as one entity, and the multiple rate rules would be applied to the two or more companies as one if there were affiliation and cooperation. These policies do nothing to foster competitiveness of such companies either in Ontario or globally. We submit that it would be preferable and fairer for employers to have the rules broadened to allow more employers to take advantage of multiple rates, if doing so did no damage to the overall integrity of the new rate setting process.

We recommend that the significance test be removed, and that the WSIB simply applying a non-integration test to determine if an employer is eligible for multiple rates. If an employer believes that it is good business to operate a non-integrated activity, then that is enough to entitle the employer to a secondary rate assuming it meets the other criteria such as a segregated payroll.

Associated Employers Policy 14-01-06

The Associated Employers Policy creates the concept of affiliated employers and co-operative business relationships. It replaces the narrower associated employer rule found in O. Reg. 475/98. The Policy provides that if two or more

employers are affiliated and are engaged in a co-operative business relationship, they are considered associated. The WSIB treats the employers as one employer for the purposes of classification and premium rate setting.

The tests of affiliation and cooperation must both be met for two or more employers to be considered associated. Affiliation is essentially the same under the Policy as associated is under the current regulation.

We have a concern with the affiliation test applicable to where one employer is a corporation and the other employer is a member of a related group that controls the corporation. A related group is described as a group of individuals each of whom is related to all the other members of the group. The actual term *related* is not defined as it is in the current regulation. It seems to be broader than family members but it is not clear. We would recommend that the Policy define related in the same way it defines *family member*.

Employers should not be guessing and not need to call the OEA to find out what the Policy means. There must be clarity so employers will know if they are in compliance with premium remittance rules, especially since the Policy makes it clear the affiliated employers must declare the affiliation as a material circumstance:

> ***Disclosure of association***
>
> *Employers must declare associations with other employers at the time of registration or, if not associated at the time of registration, within 10 days of becoming associated with another employer. The WSIB may determine whether an employer is associated with another employer at the time of registration or any time afterwards; see 22-01-01, Material Change in Circumstances - Employer.*

There is also a reference to associated construction employers, and the impact that will have on executive officers in associated companies:

> ***Associated employers in construction***
>
> *If two or more employers are associated, and one carries on business in construction, and the other(s) does not engage in construction activities, the entirety of both employers' operations are subject to compulsory coverage in construction industry rules (see 12-01-06, Expanded Compulsory Coverage in Construction), even if the entire operations of one or more of the associated employers are not predominantly classified in any of the subclasses of Class G.*

Here is what the WSIB's stated purpose for this rule is in the accompanying consultation document:

The coverage rules for those associated employers engaged in construction activities are also being clarified. To make these rules explicit, the policy states that any employer who is associated with an employer who engages in construction work is subject to compulsory coverage in construction, i.e., requires coverage for all executive officers and partners.

This policy on its face runs counter to the stated purposes of the Funding Framework classification model which is based on what class has the predominant percentage of insurable earnings. If the non-construction company of two associated companies has the predominant amount of earnings in a non-construction class, then company earnings should be rated in the non-construction class. Alternatively, the WSIB could allow the construction company a separate construction rate as an exception to the general rule for multiple rates.

This would be fairer to the employer instead of assessing all non-construction employees in a manufacturing company for example at a construction rate. It would also ensure that directors who are involved in a non-construction company do not have to start paying premiums because of an artificial construct created by this clause in the policy. Employers impacted by this part of the policy would surely see this provision as a pure money-grab by the WSIB.

The OEA has concerns with the supportive component of the affiliation test. The test provides that two or more affiliated employers are engaging in a cooperative business relationship if the businesses are supportive of each other.
The term *supportive* is not defined. It is an extremely broad word. It generally means giving encouragement or approval or actively giving help to someone who needs it.[2] The consultation questions accompanying this policy provide some indication of what the WSIB will consider to be establishing a state of cooperation between two companies:

- *Use of common health and safety policies/practices*
- *Sharing of employees*
- *Sharing of revenues and profits*
- *Sharing of technology*
- *Joint bidding or tendering for contracts*
- *Common collective bargaining process*
- *Common labour policies*

The state of being supportive is vague and open ended. In our submission it requires clear guidance in the Policy. Usually, ancillary activities were considered as supportive of the primary business activities, so we would like to see the Policy explain what the distinction is between ancillary and supportive. Clarity takes on a particular urgency as an employer must declare association with another employer at the time of registration or, if not associated at the time

[2] http://dictionary.cambridge.org/us/dictionary/english/supportive

of registration, within 10 days of becoming associated with another employer, as it is considered a material change in circumstance and thus attracts criminal sanction in the breach. This means potentially any employer who currently has an affiliated company that did not meet the associated company rule in the current regulation would have to declare an associated relationship when the new rate framework comes into effect within 10 days or be at risk of being prosecuted if they do not declare a material change in circumstances.

We assume that the WSIB will likely have a grace period of say a year so employers could bring themselves into compliance like they did under Bill 119 changes. This will still leave I suspect hundreds if not thousands of employers with affiliated companies at risk of significant retroactive premium increases and penalties because they weren't paying premiums at the correct rate as they thought they were in a manufacturing class, but as a result of this new Policy are deemed to be in construction.

The OEA is also concerned with the new common employer rule that provides:

> *When an employer restructures a business, either establishing or consolidating separate legal entities to carry on an existing business, or if an existing employer registers a new legal entity for similar business purposes, these employers will be considered <u>associated for the purposes of classification and premium rate setting.</u>*

This provision causes us concern as it treats a new legal entity as associated with another entity for both classification and premium rate setting. We assume that by using the phrase *rate setting* the WSIB will also apply the accident costs of the prior entity to all associated companies. This will be a trap for many employers, who legitimately restructure a business. Aside from an apparent lack of legal authority to create such a policy, it will result in many employers being retroactively assessed, and potentially run afoul of the material change in circumstance rule. We submit this policy is unjust to employers and should be abandoned.

Similarly we have concerns with the successor employer provision in the policy:

> *The WSIB may also find that an active employer is associated with another employer that is no longer active if the WSIB determines that the person(s) who control the active employer's operations are affiliated with the person(s) who controlled the inactive employer's operations, and the active employer retains the same employees, clients, or similar equipment and business processes as the inactive employer*

We again question the WSIB's statutory authority to make such a policy rule. It will create significant penalties for employers who legitimately close down a corporation particularly in the construction sector when the construction project is over. We submit this provision should also be reconsidered.

Employer Premium Adjustments Policy 14-02-06

This Policy sets out the rules for retroactive adjustments to premium rates. The policy takes the current premium adjustment policy and updates it for the new funding framework. Our comments on this policy reflect a concern that the introduction of such a complex and comprehensive restructuring of the revenue model will result in significant problems for employers for years to come.

Given the complexity of myriad rules that could affect class change, ancillary activities, associated companies and the other rules, the WSIB should only adjust for the year of audit. This one year limit can be reviewed in five years by which time employers will be more comfortable and familiar with the new rules.
We have no comments with respect to the other policies.

I trust the above will be helpful. Please contact me if you have any questions.

Sincerely,

Michael Zacks

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ONTARIO BUSINESS COALITION (OBC)

January 15, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1

Sent via E-mail: consultation_secretariat@wsib.on.ca

Dear Consultation Secretariat:

Re: Funding Framework Policy Submissions

The Ontario Business Coalition thanks the Workplace Safety & Insurance Board for the opportunity to provide feedback to its Rate Framework Draft Policies Consultation.

By way of background information, the Ontario Business Coalition (OBC) is the Ontario's largest and most diverse employer organization focused exclusively on workers' compensation issues. Our members represent employers in the manufacturing, auto assembly, construction, retail, hospital, long term care, fuels and temporary staffing services industries in the Workplace Safety & Insurance Board's (WSIB) Schedule 1 class of employers, as well as school boards and other Schedule 2 Employers. We are mandated to work with our members, senior officials at the WSIB and in government to make sure Ontario's workers' compensation system meets the needs of the province's employers and compensates injured workers in a fair and efficient manner.

OBC also appreciates the WSIB's recognition of the serious concerns expressed by employer stakeholders with the initial draft policies which were released in August 2017, and the WSIB's subsequent creation of a working group to obtain more specific input on the drafts.

Attached please find the Officer of the Employer Adviser's (OEA) two submission on the draft policies. OBC supports the concerns expressed by the OEA and will not be providing any additional submission at this time.

OBC looks forward to the next step in this consultation, and the further opportunity to provide input on the next version of the draft policies.

Yours truly,

Ian Cunningham
Chair

Office of the Employer Adviser

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Ontario

Michael Zacks
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b) generate at least 25% of the employer's total annual insurable earnings.

In order to have a separate rate the non-predominant activity must be significant in the sense that it generates at least $442,500 in insurable earnings using the 2017 maximum insurable earnings ceiling, which must be at least 25% of the employer's total annual insurable earnings. That means an employer must have at least $1,770,000 in total insurable earnings to be eligible for multiple rate groups. On average this is an employer with 20 workers all paid at least the maximum insurable level for 2017 - $88,500. This would likely exclude many small employers, and larger employers that pay lower based wages.

As the maximum insurable ceiling amount increases annually, it becomes more difficult for a small employer with an independent secondary business activity to qualify for a second rate. A small employer that actually meets the significance test in a particular year, may lose it in a succeeding year if the increase in the insurable ceiling puts the employer under the 25% requirement. In our view this is unfair as being outside the employer's control, and may result in penalties unless the employer closely monitors its insurable payroll – a requirement it has not needed to do outside of the small employer rule.

Larger employers are also prejudiced by this test in another way. As the test requires an employer's secondary activity to generate at least 25 % of total annual insurable earnings, the more insurable earnings a larger employer generates in the primary business the less likely it will be for the employer to maintain the 25% level of earnings for the secondary industry assuming its share of the insurable earnings remains constant, hereby disqualifying the employer from the second rate. Being successful in growing the primary business punishes the employer with the secondary business which does not grow as fast.

This approach puts an employer who qualifies for a second rate in jeopardy should an increase in the insurable ceiling disqualify the employer in a subsequent year. There is an obligation on the employer to notify the WSIB of this material change in circumstances. Failure to do so is a significant risk to employers that place some of them in financial jeopardy because of their inability to stay on top of these complex changes. In our view these policies need to be reviewed from this perspective and assurance given that employers will not be penalized in this way.

If an employer passes the significance test, it must then meet the non-integration test. To meet this test an employer must be able to show that the product or service of the stand-alone activity is not integrated into the development of other products or services of the employer, or used in the joint development of other products or services. The claimed non-integrated service or business activity must not be offered primarily to external, unaffiliated clients together with the product or service of the employer's other operations.

As a general observation we believe most employers will find these criteria difficult to understand as they are vague, unclear and open to subjective interpretation in nature. We recommend that the non-integration criteria must be clarified and clear examples given of how they are to be applied.

The WSIB's decision to allow multiple rate groups was in response to employers' pleas for fairness. Some employers were complaining that if some of their business activities were lumped in with the predominant class, then they could not remain competitive in Ontario, and their only option was to incorporate another company to get a lower rate. The WSIB's draft policy on associated companies has removed this option. Associated companies will be treated as one entity, and the multiple rate rules would be applied to the two or more companies as one if there were affiliation and cooperation. These policies do nothing to foster competitiveness of such companies either in Ontario or globally. We submit that it would be preferable and fairer for employers to have the rules broadened to allow more employers to take advantage of multiple rates, if doing so did no damage to the overall integrity of the new rate setting process.

We recommend that the significance test be removed, and that the WSIB simply applying a non-integration test to determine if an employer is eligible for multiple rates. If an employer believes that it is good business to operate a non-integrated activity, then that is enough to entitle the employer to a secondary rate assuming it meets the other criteria such as a segregated payroll.

Associated Employers Policy 14-01-06

The Associated Employers Policy creates the concept of affiliated employers and co-operative business relationships. It replaces the narrower associated employer rule found in O. Reg. 475/98. The Policy provides that if two or more

employers are affiliated and are engaged in a co-operative business relationship, they are considered associated. The WSIB treats the employers as one employer for the purposes of classification and premium rate setting.

The tests of affiliation and cooperation must both be met for two or more employers to be considered associated. Affiliation is essentially the same under the Policy as associated is under the current regulation.

We have a concern with the affiliation test applicable to where one employer is a corporation and the other employer is a member of a related group that controls the corporation. A related group is described as a group of individuals each of whom is related to all the other members of the group. The actual term *related* is not defined as it is in the current regulation. It seems to be broader than family members but it is not clear. We would recommend that the Policy define related in the same way it defines *family member*.

Employers should not be guessing and not need to call the OEA to find out what the Policy means. There must be clarity so employers will know if they are in compliance with premium remittance rules, especially since the Policy makes it clear the affiliated employers must declare the affiliation as a material circumstance:

> ***Disclosure of association***
>
> *Employers must declare associations with other employers at the time of registration or, if not associated at the time of registration, within 10 days of becoming associated with another employer. The WSIB may determine whether an employer is associated with another employer at the time of registration or any time afterwards; see 22-01-01, Material Change in Circumstances - Employer.*

There is also a reference to associated construction employers, and the impact that will have on executive officers in associated companies:

> ***Associated employers in construction***
>
> *If two or more employers are associated, and one carries on business in construction, and the other(s) does not engage in construction activities, the entirety of both employers' operations are subject to compulsory coverage in construction industry rules (see 12-01-06, Expanded Compulsory Coverage in Construction), even if the entire operations of one or more of the associated employers are not predominantly classified in any of the subclasses of Class G.*

Here is what the WSIB's stated purpose for this rule is in the accompanying consultation document:

The coverage rules for those associated employers engaged in construction activities are also being clarified. To make these rules explicit, the policy states that any employer who is associated with an employer who engages in construction work is subject to compulsory coverage in construction, i.e., requires coverage for all executive officers and partners.

This policy on its face runs counter to the stated purposes of the Funding Framework classification model which is based on what class has the predominant percentage of insurable earnings. If the non-construction company of two associated companies has the predominant amount of earnings in a non-construction class, then company earnings should be rated in the non-construction class. Alternatively, the WSIB could allow the construction company a separate construction rate as an exception to the general rule for multiple rates.

This would be fairer to the employer instead of assessing all non-construction employees in a manufacturing company for example at a construction rate. It would also ensure that directors who are involved in a non-construction company do not have to start paying premiums because of an artificial construct created by this clause in the policy. Employers impacted by this part of the policy would surely see this provision as a pure money-grab by the WSIB.

The OEA has concerns with the supportive component of the affiliation test. The test provides that two or more affiliated employers are engaging in a cooperative business relationship if the businesses are supportive of each other.
The term *supportive* is not defined. It is an extremely broad word. It generally means giving encouragement or approval or actively giving help to someone who needs it.[2] The consultation questions accompanying this policy provide some indication of what the WSIB will consider to be establishing a state of cooperation between two companies:

- *Use of common health and safety policies/practices*
- *Sharing of employees*
- *Sharing of revenues and profits*
- *Sharing of technology*
- *Joint bidding or tendering for contracts*
- *Common collective bargaining process*
- *Common labour policies*

The state of being supportive is vague and open ended. In our submission it requires clear guidance in the Policy. Usually, ancillary activities were considered as supportive of the primary business activities, so we would like to see the Policy explain what the distinction is between ancillary and supportive. Clarity takes on a particular urgency as an employer must declare association with another employer at the time of registration or, if not associated at the time

[2] http://dictionary.cambridge.org/us/dictionary/english/supportive

of registration, within 10 days of becoming associated with another employer, as it is considered a material change in circumstance and thus attracts criminal sanction in the breach. This means potentially any employer who currently has an affiliated company that did not meet the associated company rule in the current regulation would have to declare an associated relationship when the new rate framework comes into effect within 10 days or be at risk of being prosecuted if they do not declare a material change in circumstances.

We assume that the WSIB will likely have a grace period of say a year so employers could bring themselves into compliance like they did under Bill 119 changes. This will still leave I suspect hundreds if not thousands of employers with affiliated companies at risk of significant retroactive premium increases and penalties because they weren't paying premiums at the correct rate as they thought they were in a manufacturing class, but as a result of this new Policy are deemed to be in construction.

The OEA is also concerned with the new common employer rule that provides:

> *When an employer restructures a business, either establishing or consolidating separate legal entities to carry on an existing business, or if an existing employer registers a new legal entity for similar business purposes, these employers will be considered <u>associated for the purposes of classification and premium rate setting.</u>*

This provision causes us concern as it treats a new legal entity as associated with another entity for both classification and premium rate setting. We assume that by using the phrase *rate setting* the WSIB will also apply the accident costs of the prior entity to all associated companies. This will be a trap for many employers, who legitimately restructure a business. Aside from an apparent lack of legal authority to create such a policy, it will result in many employers being retroactively assessed, and potentially run afoul of the material change in circumstance rule. We submit this policy is unjust to employers and should be abandoned.

Similarly we have concerns with the successor employer provision in the policy:

> *The WSIB may also find that an active employer is associated with another employer that is no longer active if the WSIB determines that the person(s) who control the active employer's operations are affiliated with the person(s) who controlled the inactive employer's operations, and the active employer retains the same employees, clients, or similar equipment and business processes as the inactive employer*

We again question the WSIB's statutory authority to make such a policy rule. It will create significant penalties for employers who legitimately close down a corporation particularly in the construction sector when the construction project is over. We submit this provision should also be reconsidered.

Employer Premium Adjustments Policy 14-02-06

This Policy sets out the rules for retroactive adjustments to premium rates. The policy takes the current premium adjustment policy and updates it for the new funding framework. Our comments on this policy reflect a concern that the introduction of such a complex and comprehensive restructuring of the revenue model will result in significant problems for employers for years to come.

Given the complexity of myriad rules that could affect class change, ancillary activities, associated companies and the other rules, the WSIB should only adjust for the year of audit. This one year limit can be reviewed in five years by which time employers will be more comfortable and familiar with the new rules.
We have no comments with respect to the other policies.

I trust the above will be helpful. Please contact me if you have any questions.

Sincerely,

Michael Zacks

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Toronto, Ontario
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Ontario

Michael Zacks
Director (A) and
General Counsel

January 9, 2018

Workplace Safety and Insurance Board
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1
Dear Consultation Secretariat:
Re: Funding Framework Policy Submissions

Dear Consultation Secretariat:

Re: RATE FRAMEWORK POLICY CONSULTATION – INTERIM UPDATE.

The following are the OEA's submission on the interim update to the Rate Framework Policy Consultation.

A. Eligibility for Single and Multiple Premium Rates Policy: Test of Significance

The WSIB has proposed three options in response to stakeholders' concerns about the proposed two stage test:

WSIB Action: The WSIB is exploring the following options for adjusting the test of significance:

1. Modifying the percentage of Insurable Earnings (IE) threshold - Currently the draft policy has a threshold of 25%.

2. Creating an exception for the percentage of IE threshold for large employers – This could allow large employers to have multiple rates regardless of percentage of insurable earnings in each business activity.

3. Removing the requirement to meet both criteria – Instead of requiring employers to meet both a 25% threshold for each business activity AND meeting the 5 times maximum IE ceiling threshold, employers would only be required to meet one condition to be eligible for multiple premium rates.

The OEA has concerns with all three options. In our submission the percentage of insurable earnings threshold should be based on rational objective criteria. Why was the 25% amount picked instead of 20% for example.

The OEA agrees with the concern expressed by the WSIB on the second option. Of the three options the third is a reasonable compromise, subject to a discussion about the appropriateness of the 25% threshold.

B. Associated Employers Policy: Test of Affiliation and Test of Cooperation

The OEA supports the WSIB's proposal to review the Associated Employers policy, and especially the tests of affiliation and of cooperation to ensure that the purpose of the policy and the criteria for the tests are clearly explained.

C. Associated Employers Policy: Compulsory Coverage in Construction

The OEA supports the WSIB's proposal to removal of this section of the policy.

D. Classification Structure Policy: Ancillary Operations - Scope and Definition

In response to employer concerns to the ancillary operations policy, the WSIB is proposing three options:

1. Reverting to an inclusive list of ancillary operations, as currently exists in policy.

2. Revising the definition of ancillary operations to a more general definition.

3. Revising or deleting the description of "retail operations" as ancillary.

The OEA supports the first option and the third option. The second option will remove clarity and certainty for employers. An inclusive list will allow certainty which is necessary in this area, and deleting the description of retail operations will remove what is in our submission an illogical ancillary activity.

E. Health and Safety

The OEA supports the WSIB's commitment to review the policies with health and safety in mind.

Thank you for this further opportunity to provide submissions.

Sincerely,

Michael Zacks

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October 23, 2017

Ms. Elizabeth Witmer
Chair, Workplace Safety & Insurance Board of Ontario
200 Front Street West
Toronto, ON M5V 3J1

Re: Rate Framework Policy Consultation

Dear Ms. Witmer,

The Workplace Safety and Insurance Board (WSIB) has solicited oral and written submissions on the rate framework modernization of its classification structure by adopting the North American Industry Classification Structure System (NAICS). The new rate framework will change the way Schedule 1 employers are classified, and the way their premium rates are set and adjusted. As the voluntary professional organization which represents the dentists of Ontario, promotes the highest standards of dental care and advocates for sustainable and accessible care for all Ontarians, the Ontario Dental Association (ODA) appreciates this opportunity to provide feedback.

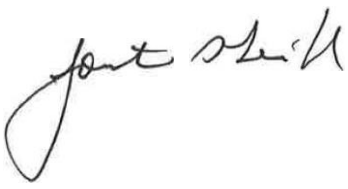
It is our understanding that under the new rate framework dental offices' premium rate would be set by going through the three steps of classification; class, subclass level premium rate setting, and employer level premium rate adjustments. Thus, the rate they pay would be influenced both by their individual experience and by the experience of their subclass. While the cited changes are laudable, the ODA is concerned that the premium rate for dental offices – many of whom chose to voluntarily register for coverage under WSIB – may see a significant increase post-implementation.

Bearing this in mind, the ODA respectfully recommends the WSIB consider and pursue the following:

- Ensure appropriate relief measures are provided to address costs resulting from injuries with pre-existing conditions.
- Ensure appropriate criteria are used under the new rate framework when determining affiliation as appropriate to premium rate setting.

On behalf of the ODA, we thank you for the opportunity to provide feedback. The WSIB has arrived at an innovative rate setting structure and committed itself to extensive stakeholder consultations throughout this process. Should you have any questions, please contact, David Gentili, Director of Professional and Government Affairs, at 416-355-2277 or dgentili@oda.ca.

Sincerely,



Dr. Janet Leith, Chair
ODA Health Policy and Government Relations Advisory Committee

Ontario Legal Clinics'
WORKERS' COMPENSATION NETWORK
Réseau d'échange des cliniques juridiques
de l'Ontario sur la loi des accidentés du travail

Reply c/o: Injured Workers' Consultants, 815 Danforth Avenue, Suite 411, Toronto, Ontario M4J 1L2
Tel: 416 461-2411 Fax: 416 461-7138

15 January 2018

WSIB Consultation Secretariat
Workplace Safety & Insurance Board
200 Front St. West,
Toronto, Ontario
M5V 3J1

Sent by email to: consultation_secretariat@wsib.on.ca

Dear Consultation Secretariat:

Re: Rate Framework Policy Consultation

The Ontario Legal Clinics' Workers' Compensation Network is comprised of legal workers who handle workers' compensation cases from Ontario's 76 community legal clinics. Our members are involved in individual representation, continuing public legal education, and consideration of law and policy reforms. Many of our members have practiced workers' compensation law for several decades and the Network is a group of the most highly experienced workers' compensation advocates in the Ontario Legal Clinics.

We share the concern expressed by the worker and injured worker communities that the rate framework ignores the problems created by experience rating systems. The WSIB continues to treat claims cost experience as if it was a proxy for measuring health and safety in the workplace and to use it for rate setting. Research shows that claims cost does not reflect health and safety practices in the workplace. As well, the WSIB continues to use a very narrow interpretation of claims suppression that does not address the full range of improper claims management activities that result from experience rating.

We adopt and endorse the submissions of the Experience Rating Work Group and the Workers Health and Safety Legal Clinic on these matters.

Yours truly,
Ontario Legal Clinics Workers Compensation Network
Per:

John McKinnon
Co-chair

January 15, 2018

Workplace Safety and Insurance Board (WSIB)
Consultation Secretariat
Rate Framework Policy Consultation
200 Front Street West
Toronto, Ontario M5V 3J1
consultation_secretariat@wsib.on.ca

OMA submission to Rate Framework Policy Consultation

References:
A. Rate Framework Policy Consultation (OEA submission to WSIB, October 6, 2017)
B. Rate Framework Policy Consultation – WSIB Interim update, December 21, 2017
C. Rate Framework Policy Consultation – Interim update (OEA submission, January 9, 2018)

Dear Consultation Secretariat:

We are pleased to present the following submission on behalf of our members in response to the Workplace Safety and Insurance Board's consultation document and proposed changes and additions regarding the Funding Framework policies.

The Ontario Mining Association has developed submissions to the WSIB on several subjects in recent years. We have found the policy consultation process of the WSIB to be effective, well managed and transparent. Materials are posted publicly well in advance, presentations are offered and WSIB representatives make themselves available to answer the questions of our members who have the experience of working with the policies each day. The OMA appreciates the extension of the deadline for the Funding Framework policy review allowing additional time to review and provide comment on the proposed changes.

Through the efforts of the members of the OMA's Workers' Compensation & Occupational Health Committee (WCOH) representing our member companies, we are able to state that we have reviewed the WSIB's draft policies and Interim update and we wish to offer the following comments and recommendations.

WCOH members find these draft policies to be complicated and difficult to understand; there must be improved clarity so that employers are aware of the impact to their organization and can ensure compliance. For those who are familiar with WSIB policies, these policies are not

straight-forward, raising more concerns regarding how they will be interpreted and implemented without sufficient clarity.

In addition to our members' comments, the Ontario Mining Association fully supports the submissions of Mr. Michael Zacks, Office of the Employer Adviser (References A and C). The analysis and recommendations the OEA has submitted to the WSIB greatly assisted our own efforts to assess a complex topic that can have significant implications for workers, employers and the WSIB.

In conclusion, the OMA wishes to thank the WSIB for this opportunity to provide comments on behalf of our members in response to the WSIB's consultation document and proposed policy changes and additions. We would be interested in discussing this further and are available to answer any questions regarding this submission.

Sincerely,

Philip Bousquet
Manager, Industrial and Government Relations
Ontario Mining Association

Copy:

Kate Lamb, Chief Corporate Services Officer, Kate_Lamb@wsib.on.ca
Diane Weber, Corporate Secretary, Diane_Weber@wsib.on.ca

ONTARIO NURSES' ASSOCIATION

Submission on Workplace Safety and Insurance Board

Rate Framework Consultations

January 15, 2018

ONTARIO NURSES' ASSOCIATON
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Introduction

The Ontario Nurses' Association (ONA), the union representing 65,000 registered nurses (RNs) and health professionals, as well as more than 16,000 nursing student affiliates, across the province, is the voice of Ontario's knowledgeable and experienced nurses.

We welcome a review and modernization of the Workplace Safety and Insurance Board (WSIB) funding system and are of the view that policy must reflect the intent and purpose of the *Workplace Safety and Insurance Act, 1997 (WSIA)*. Further, we agree with a fair and equitable implementation of a "collective liability" funding system that is managed in a financially responsible and accountable manner.

It is our view that the implementation of the proposed policy, following this consultation, must be consistent with the *WSIA* and compatible with Sir William Meredith's principles, first elucidated in his report to parliament. Specifically, he advocated "collective liability" to fund the system and a "security of payment" to injured workers. It is also our view that modernization of WSIB's funding system should ensure that the first goal of WSIB's mandate is achieved, namely to promote healthy and safe workplaces.

For brevity, we are limiting our input to the following proposed policies, **Employer Level Premium Rate Setting** and **Employer Premium Adjustments** (OPM 14-02-06).

Employer Level Premium Rate Setting

The use of experience rating systems produces both positive and negative results. The positive intended results include appropriate funds to administer the plan or reserve capital to fund research in workplace injury prevention. However, the unintended negative results, such as claim suppression or under reporting, are far more corrosive to workplaces and worker compensation systems, generally.

Moreover, history has proven that "efficient" premium rates are unable to fund the system and do not incentivize accident prevention to a degree that would reduce the costs of WSIB administration. A White paper[1] that set out the government's changes to the compensation system (in response to Paul Weiler's review of the *Worker's Compensation Act*) in the early 1980s restructured available entitlement to workplace injuries with the intent to reduce the unfunded liability and to incentivize accident prevention.

The results of the 1980s compensation reforms did not alleviate the unfunded liability issues, despite significant benefit reduction of injured workers' entitlements, nor did it promote accident prevention. Unfortunately, WSIB administrative and total claims cost continued to escalate; likely contributing to the escalation was an absence of evaluating employer accident prevention, an assessment that could provide variable funding to meet fluctuating compensation costs.

Another effort in the mid-1990s[2], driven by the unfunded liability, was undertaken to "balance the books." The restructuring, which significantly reduced accident benefits, did not reduce the

[1] White Paper on the *Worker's Compensation Act* - 1981

[2] New Directions for Worker's Compensation Reform, 1996 Honorable Cam Jackson.

unfunded liability despite a purported focus on accident prevention[3] – which was not a consideration in the new calculation of premium rates.

However, a recovery of the unfunded liability ought to be a separate rate paid by employers or stakeholders because it is a result of chronic underfunding and discounted premium rates, and is arguably a "loan" to employers. The "loan" has funded or maintained employers' respective business enterprises at the expense of workers' compensation. As such, WSIB ought to implement a funding policy that apportions premiums to those industries that have benefited or profited from the delay in funding their own workplace accident compensation costs.

The efforts of the 1990s also included considerable changes to compensation legislation, notably the *Workers' Compensation Act*[4] received a new name and a purpose clause:

> "The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:
> 1. To promote health and safety in workplaces.
> 2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
> 3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
> 4. To provide compensation and other benefits to workers and to the survivors of deceased workers.[5]"

While this clause directs WSIB to promote health and safety, the adopted approach, emphasizing economic pressures that reflected claims cost, did not create the necessary conditions for employers to implement preventative health and safety measures.

The WSIB created Safety Groups as a means to incent employers to improve their health and safety programs. Yet despite this involvement and supposed action Violence, MSDs, slips, trips and falls and infectious disease injuries and illnesses continue to plague our members. In fact health care sector has the highest rates of these injuries and illnesses when compared to the mines, construction and manufacturing. (see included infographic). In our experience, incentive programs that reward employers are ineffective while, WSIB programs that include audits and penalties are more effective in creating healthy and safe workplaces.

For example, the Niagara Health System is one employer who was enjoying rebates for years as a result of inaccurate reporting that WSIB allowed. After ONA filed a grievance and made a call to WSIB to investigate (which they did) this employer took steps to improve its health and safety program and return to work (RTW) program. In response, their new RTW was publicly supported by the WSIB when it was launched.

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[3] New Directions for Worker's Compensation Reform: A Discussion Paper, Goals of Reform. "A system based on: Prevention first, return if possible, rehabilitation when needed and compensation as required…"

[4] Bill 99 (January 1, 1998), Hansard, October 9, 1997:
"**Hon Elizabeth Witmer (Minister of Labour)**: The legislation which we are passing today is going to achieve a very significant objective, that is, it's going to shift the focus from compensation to the prevention of injury and illness. Bill 99 is, for the first time, going to deal with health and safety."

[5] *Workplace Safety and Insurance Act, 1997* – Section 1

The Workwell audit was one program we found held employers accountable. In this program, auditors visited workplaces to review the Employers' their health and safety programs. If Employers who "failed" the audit risked getting penalty assessments that were sometimes very large – hundreds of thousands of dollars. This penalty is what incented employers to prevent injuries and illnesses. Employers lobbied to take the teeth out of Workwell and in 2011, the compulsory component was removed as well as the penalties. These changes reduced the effectiveness of the Workwell program.

Our experience tells us that any incentive and penalty system and a new Rate framework system must also include in it an audit system to be effective and meet WSIB's number one mandate.

We propose the following:

- Employers be required to do an annual self-audit, in collaboration with their Joint Health and Safety Committees, and provide their report to WSIB, MOL, and their Joint Health and Safety Committee
- Where there is a union, the union will participate in the audit, which could be supervised by the JHSC – sign off by both the Union and the JHSC must be a requirement
- The audit would be carried out to a standard established by MOL
- MOL would carry out random audits of its own
- An external audit would be mandatory following a critical injury, fatality, and/or act of violence
- Incentive payments made in the year prior and year of a critical injury or fatality would be reviewed based on the results of the audit and recovered if the audit demonstrates deficiencies
- Apply penalties based on the audit findings

Therefore, a policy to determine an employer's premium rate ought to include and declare that rate settings will evaluate measurable efforts by employers to reduce injuries, to reduce occupational diseases and to encourage workers' safe return to work.

In our view, the consultation policy lacks sufficient detail to indicate, in any way, that a determination of an employer's premium rate includes demonstrating or implementing measurable efforts to reduce workplace accidents. Moreover, the policy references a two-step process that ignores health and safety awareness and does not motivate the employer to adopt robust health and safety programs from the initial stages of business development or afterwards.

In addition, without explicit and measurable benefit for the implementation of health and safety improvement in the workplace, employers are unlikely to value or appreciate the incentive. There is also the risk that employers will resort to reactive management approaches to claims mitigation, which increases the administrative burden on WSIB administrative resources and puts workers at risk.

OPM 14-02-06 – **Employer Premium Adjustments**

The policy should include an employer accountability measure to implement or maintain health and safety objectives and disability prevention in the Return to Work (RTW) process. These measures should underpin the calculation of adjustments to an employer's premium rate.

The inclusion of such a measure is consistent with the stated purpose of the *WSIA*, namely Sec. 1(1), “To promote health and safety in workplaces.” Further, the accountability measure would accumulate actuarial data to evaluate if employer programs are accomplishing their stated purpose and create a feedback loop to reinforce successful health and safety prevention initiatives for similar employers to adopt.

In the Experience Rating System, ONA has always made a point of obtaining from WSIB data requests a yearly report of all employer rebates and surcharges. This report has assisted us greatly and our JHSC members in making health and safety improvements in the workplace. We are asking that in this new rate framework the WSIB develop a similar system that would allow for transparency so unions and JHSC members can obtain a report that indicates total premiums paid yearly and shows increases and decreases from the prior year.

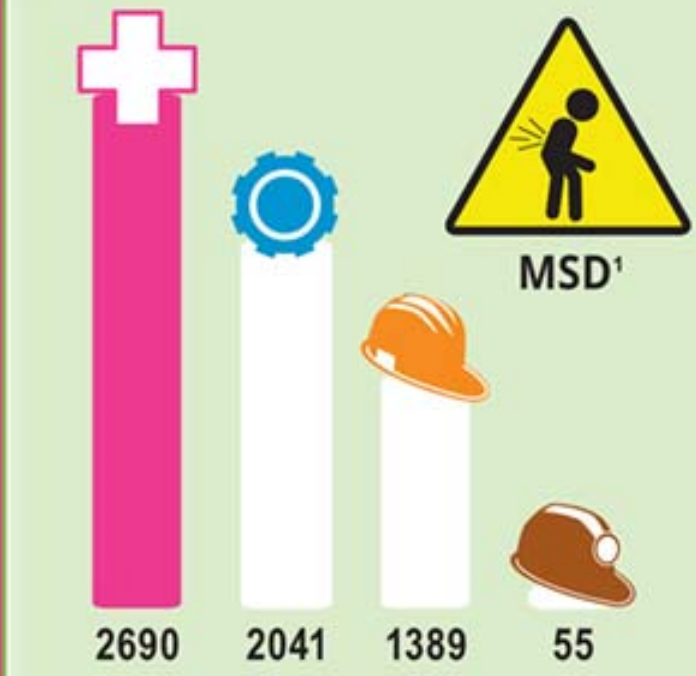
Conclusion

The final adopted policy to guide employer premium adjustments ought to include criteria that measures and audits an employer’s promotion and action of safe workplaces and prevention of workplace injuries and illnesses. The WSIB would use the criteria to adjust and reward successful objectives with a lower premium rate (within their class) or increase premium rates, in a progressive manner for employers who disregard or fail to take similar meaningful steps and/or who fail the audit. WSIB must ensure as noted above that the yearly premiums and any increases or decreases are made available to Unions and JHSC on request and/or are publicly reportable.

Working in Health Care IS Dangerous

Comparison of Lost-time Injuries in Ontario, 2016, by Sector

Health Care | Manufacturing | Construction | Mining



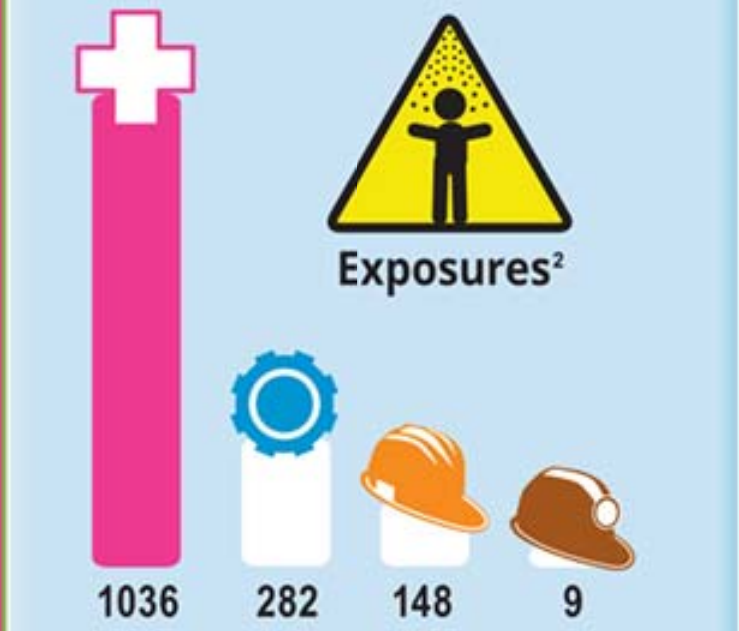


ILLUSTRATION NOT TO SCALE

[1] **Musculoskeletal Disorders** (soft-tissue injuries to the low-back, shoulder, arm, etc.)
[2] **Exposures** may include infectious disease, medical waste, mould, radiation, etc.

Data Source: *Workplace Safety and Insurance Board EIW Claim Cost Analysis Schema*, June 2017 data snapshot.

ONA
Ontario Nurses' Association
www.ona.org

Ontario Sewer and Watermain Construction Association

OSWCA Response to WSIB Rate Framework Policies

January 12, 1018

January 15, 2018

Submitted via email to: Consultation_Secretariat@wsib.on.ca

Workplace Safety and Insurance Board
Consultation Secretariat – Rate Framework Policy Consultation
200 Front Street
Toronto, Ontario M5V 3J1

Re: Rate Framework Policy Consultation

On behalf of our members, the Ontario Sewer and Watermain Construction Association (OSWCA) would like to provide the following comments to the Workplace Safety and Insurance Board (WSIB) consultations around its proposed suite of policies for the new Rate Framework.

General Comment on the Rate Framework Policy Suite

In feedback received from OSWCA members, we heard (almost universally) that the WSIB's policy proposals were complex, difficult to understand, and lacking specific examples for how existing rules would change. A reader-friendly, plain-language policy document should be developed to help companies understand what their new operating environment is going to look like. We recommend including numerous detailed examples and scenarios with flow charts to help explain how these policies would be applied against the existing operating environment. We believe that this is particularly necessary for the Classification Structure, Associated Employers, and Eligibility for Single or Multiple Premium Rates policies.

The reform of the WSIB Rate Framework is a *very* significant change for employers and must continue to be treated as such. We are concerned that, despite our efforts to report-out and educate members about the coming changes, there continues to be a lack of awareness and understanding amongst employers about how this new Rate Framework will modify the existing operating environment for individual companies, especially those who are multi-rated or associated. Providing as much information as possible upfront, in an easily consumable format, is critical to help limit any confusion that may arise around how the rate setting process works and how a vertically-integrated company's competitiveness may change as a result.

Eligibility for Single or Multiple Premium Rates Policy

In consideration of the December policy consultation update, we will refrain from commenting in detail on the initially proposed "test of significance" that an employer would be required to meet for each of its business activities. We strongly believe that the proposed 25% application rule threshold does not accurately reflect whether a

company's operations in an individual sector are significant, especially if a company is operating in three or more sectors.

We believe that the rules for multi-rating must be broadened. At present, the construction industry is filled with vertically-integrated companies who operate in multiple industry sectors. These companies are often competing for major construction projects based solely on which company can provide the lowest possible price. So, if two companies are competing for a demolition project, but one company's predominant business activity is in the excavation sector, while the other's is in the demolition sector, the excavation contractor will have a major competitive advantage. To keep companies competitive in the different sectors that they are operating in, every effort must be made to charge them the appropriate rate based on the risk they are bringing to *each sector*, rather than to the system more broadly.

While some companies will benefit from the proposed approach of basing rates on predominant business activity, it will negatively impact an equal number of companies. Some sectors in construction are inherently riskier than others given the nature of the work. Competitive fairness between the different sectors therefore, needs to be a consideration in this decision-making process as much as possible.

Classification Structure Policy – 14-01-01

The WSIB has noted in its December policy consultation update that it is considering revising the "ancillary activities" section to clarify how these provisions will be interpreted and applied. This is an important revision to make. Given that a company's "predominant business activity" is what sets its classification, it is unclear why so much focus has been placed on determining the scale and scope of a company's ancillary activities. More clarity is needed for companies to be able to understand the intent of this language and how to properly account for it.

The language around "ancillary activities" in the initial policy proposal is too vague and open to interpretation. As it is presently constituted, too much is being left open for WSIB auditors to define "ancillary activities" in an *ad hoc* manner. We strongly recommend that a comprehensive and closed list of "ancillary activities" be defined in the policy to ensure that employers can understand and adequately meet these new expectations. At present, given the uncertainty and open-endedness of what these activities may entail based on the language in the policy, an employer may violate their reporting requirements by mistake and be completely unaware.

Coverage Status Policy – 12-01-04

While generally straightforward, the "Coverage Status Policy" needs to provide a clear definition and explanation for what it is means for an employer to have "…a substantial connection to Ontario…" There are numerous construction companies in the province

that could potentially be viewed as “non-resident employers,” who need this clarification to help them comply with these new policies. To help explain how this policy will be applied, the WSIB should include language in the policy about how it will test this definition in practice. By clearly identifying how they will be applying this policy, the WSIB will help to build greater employer trust in the new system model.

Associated Employers – 14-01-06

In its December policy consultation update, the WSIB has proposed to remove the “Associated Employers Policy: Compulsory Coverage in Construction.” We strongly support the removal of this section of the policy. This section seemed to run counter to the “predominant business activity” rule, as it states that “…any employer who is associated with an employer who engages in construction work is subject to compulsory coverage in construction, i.e. requires coverage for all executive officers and partners.” The removal of this section will resolve our primary concern with this policy.

Additionally, a clear definition is needed for what is meant by “the businesses are supportive of each other” (page 2 – Test of Cooperation). The construction industry is filled with companies that would likely meet the test of affiliation, but are clearly separate companies. Until a very clear definition is included in the policy, it will be very difficult for companies to self-declare their associations with another employer. This definition must be comprehensive and easy to understand to allow for proper compliance. Including a clear definition will also remove subjectivity from the policy, which will help to ensure that companies are not back-charged significant sums of money for mistakenly misinterpreting the policy language.

Concluding Notes

OSWCA appreciates having the opportunity to provide input into this consultation process. The proposed suite of policies are an important step towards finalizing the Rate Framework Modernization exercise. With further revision, we believe that several the issues raised above can be resolved.

Please do not hesitate to contact Patrick McManus in our office (905-629-7766 ext. 222 or patrick.mcmanus@oswca.org) if you have any questions or need information regarding OSWCA and its membership.

Sincerely,

Giovanni Cautillo
Executive Director

January 15, 2018

Submitted via email to Consultation_Secretariat@wsib.on.ca

Workplace Safety and Insurance Board
Consultation Secretariat – Rate Framework Review Policy Consultation
200 Front Street
Toronto, Ontario, M5V 3J1

RE: Rate Framework Consultation

RESCON is an association which represents the construction interests of high-rise and low-rise residential builders in Ontario, with more than 200 union and non-union member companies. As a founding member of the Construction Employers Coalition (CEC), RESCON reconfirms its support for the CEC position and would liketo provide further comments.

1. **The elimination of the Unfunded Liability (UFL) should occur before the implementation of the Rate Framework.** This point is reinforced extensively in our March 31st, 2016 submission.

2. **Maintain Rate Group 755 and address issues of predictability.** The Rate Framework process allows for huge increases to executive officers if the rate group is collapsed and moved to G1, G2, and G3 expanded. This is complicated by the fact that subcontracting in residential construction limits the size of residential construction employers. This creates a double hit, as a majority of employers are faced with potentially losing Rate Group 755 and will be less than 10 % predictable. This means an above average safety record will have, at best, an extremely limited impact on their overall premium rate.

3. **Revisit and lower the threshold for multi-rating in construction.** As outlined in several submissions, the construction sector is unique and operates with a governance model which has been adopted for efficiency. The current policy related to multi-rating does not reflect on-the-ground practicalities and will potentially create incentives for business to change their business models on a going forward basis. The threshold should be two-part, incorporating a dollar amount threshold, as well as a percentage of business threshold. This would provide the flexibility of both large and small employers and allow for a consistent business structure on a going forward basis.

4. **Shadow Rates should be released as soon as possible and well in advance of any 'go-live' date.** Shadow rates will be key to implementation. When published, understanding of the new system will increase exponentially. This will expose unintended consequences that need to be

addressed before full implementation in 2020. Any delay prevents a full understanding of rate framework and therefore prevents practical solutions to problems as they are identified.

5. **RESCON requests that the WSIB release and discuss the revised rate framework policies with the CAG's before they are publicly released**. This will allow for a final discussion and forum to further review any changes before implementation.

As always, RESCON appreciates having the opportunity to provide input into this consultation process. Please do not hesitate to contact Andrew Pariser at pariser@rescon.com for questions or require information regarding RESCON and its membership.

Sincerely,

Andrew Pariser
Vice President
RESCON

Submission
To
WSIB Rate Framework Consultation

January 9, 2018

Presented by the
Thunder Bay & District
Injured Workers' Support Group

Eugene Lefrancois
President

Executive Summary

We are writing to express our dismay at the direction of the WSIB Rate Framework Modernization process. There has been little or no attention paid to the implications for workers hurt or made sick on the job; and limited attention paid to protecting workers health and safety on the job.

We believe that must be the primary goal of the WSIB and how assessments are collected from employers must not ignore this goal, which we submit is missing from this process. The development of the draft policies to implement this new assessment process has ignored our previous concerns seemingly with no consideration for the negative potential impact on injured and disabled workers

We hear more and more often from our members that they are being discouraged from reporting unsafe work and injuries on the job. They tell us that they fear losing their job if they "rock the boat".

We believe this misbehaviour on the part of some employers is due to the revenue programs at the WSIB and the encouragement given to employers to "save $s" and get rebates from the WSIB.

Professor Arthurs made many recommendations for both the Government and the WSIB to take to ensure that that workers are protected and the experience rating programs are consistent with the requirements of the WSIA. Professor Arthurs wrote on page 81 of his report *Funding Fairness*:

In my view, the WSIB is confronting something of a moral crisis. It maintains an experience rating system under which some employers have almost certainly been suppressing claims; it has been warned – not only by workers but by consultants and researchers – that abuses are likely occurring. But, despite these warnings, the WSIB has failed to take adequate action to forestall or punish illegal claims suppression practices. …. Unless the WSIB … is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them.

We firmly oppose the move to this new system that will entrench this behaviour more fully in the workplaces that causes further risks to workers health and safety and the successful rehabilitation of workers injured or made sick at work.

We recommend a funding mechanism following the example of OHIP, which is a flat rate system that has no experience-rating component in its calculations. History has shown that such a system has experienced wide spread support from all sectors of society, which the WSIB can not claim.

Attached is our Platform for Change that gives a more comprehensive approach to our recommendations for reform at the WSIB.

About our Organization

Our group, The Thunder Bay & District Injured Workers Support Group, was founded in 1984 in response to the then pending legislation, Bill 101. The geographic area that the Thunder Bay & District Injured Workers' Support Group membership resides in is approximately one-quarter of a million square miles.

We are a group of workers (and family members) who have been injured or made sick on the job. We have first hand experience of the WCB/WSIB system and know it needs improvement

The Thunder Bay & District Injured Workers' Support Group's (TB&DIWSG) mission is to help create Dignity, Respect and Justice for Injured and Disabled Workers in the Workers' Compensation System by assisting and educating workers, injured workers, the general public, our elected representatives and WSIB staff.

The organization has four main goals:

1. Provide information and support to injured workers;
2. Provide analysis of legislation and make recommendations for improvements and reform;
3. Educate each other and the general public; and
4. Lobby government and the WCB/WSIB to establish Justice for Injured and Disabled Workers.

The TB&DIWSG is a democratically governed, not for profit organization with a Board of Directors elected at the annual general meeting (AGM). We receive no government funding and all our staff are volunteers. Our members are injured workers, family members and other individuals who support injured workers and their issues.

Thunder Bay & District Injured Workers' Support Group
Room 17 - 929 Fort William Road
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PLATFORM FOR CHANGE (2004)

As amended by the Thunder Bay & District
Injured Workers' Support Group

February 19, 2015

JUSTICE FOR INJURED WORKERS

Injured workers need a rehabilitation system that recognizes the special difficulties they face as persons with disabilities in obtaining and maintaining employment. In Ontario this rehabilitation system will seek to assist injured workers with both social integration and the attaining of suitable employment. It will be a system that fully compensates and supports those workers who have suffered a workplace injury or illness; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work. To that end the following document outlines how this result can be achieved.

JUSTICE FOR INJURED WORKERS

In Ontario, we need a workers' compensations system that fully compensates and supports those who have suffered a workplace injury or illness; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work.

Justice for Injured Workers Means:

1. A Public, Responsive System Based on Collective Liability and Comprehensive Coverage

- Our compensation system will be publicly administered and delivered. Studies show that the privatised insurance company model is much more costly and much less effective than a public system.

- Collective liability is an important founding principle of the system, which will be protected. Schedule II will be eliminated and all employers will come under the collective liability system. Experience Rating will be eliminated as it undermines the principle of collective liability and produces incentives for employers to hide claims and to harass injured workers.

- Our compensation system will be administered with the understanding that its primary purpose is to compensate and support injured workers. It will seek to do this. Perhaps under the old motto: *Justice, Humanely and Speedily Rendered.* In this context the name will revert to *The Workers' Compensation Board.* Furthermore WCB policy will function as a guideline for interpretation and implementation of legislation (not as rules). Entitlement outside of policy will be granted on the merits and justice of the case.

- The Board of Directors will have strong representation from Labour and the Ontario Network of Injured Workers' Groups (ONIWG)

- The public will be provided with regular opportunity to have input on the legislation, the policy, and the practice of the Board. This will happen in various ways including an annual review by a legislative committee; a special review of the Act every four years (as exists in other provinces); and an open door policy to encourage those who develop and approve policy to have regular interaction with Labour and injured worker groups to ensure that the decision makers have a clear understanding of their needs and the impacts of policy.

- The Board will conduct and support regular and thorough research on the impacts of short and long term injuries and diseases including tracking long term outcomes for workers with a permanent disability and the WSIB/WCB's sufficiency in addressing them.

- All workers in Ontario will be covered by workers' compensation legislation.

- All work-related disabilities will be covered, including occupational disease, repetitive strain injuries, workplace stress, and pain conditions resulting from workplace injury. The Board will be pro-active in identifying compensable conditions, especially in newly emerging industries and conditions of work.

- Survivors of workers who are killed by occupational injury or illness will be provided with support and benefits, which ensure that they are financially secure.

- Non-dependent immediate family members of workers who have died from occupational injury or disease will be compensated.

- There will be coverage for secondary victims of occupational exposures – including people who are harmed by substances inadvertently brought home from the workplace by a worker.

- Workers who must be re-assigned or quarantined or temporarily removed from work due to exposure to an occupational hazard (e.g., SARS exposure, hazards to expectant or nursing women) will be financially protected. *(Will have their wages protected with re-assignment. Will receive full workers compensation benefits if they need to be quarantined or there is no alternate suitable work.)*

2. Quality Adjudication

- The WCB/WSIB administration and the WIA Tribunal will operate in an enquiry system.

- Adjudicators will proactively seek and request the medical information necessary to adjudicate a claim. Adjudicators will automatically consider psychological or chronic pain entitlement where there is insufficient evidence to allow a claim on an organic basis.

- Ontario Human Rights Codes will apply in all cases.

- Adjudicators will not request continuous medical reports in established claims.

- Workers should be able to navigate the system on their own; legal representation should not be needed. At the beginning of all claims, the Board will provide the injured worker with a simple but comprehensive written explanation of the system and how to navigate it. The material will emphasize that the Board is there to help and to provide information on how to get assistance both inside and outside of the system. The material will be available in multiple languages.

- Board decisions will be speedily rendered, with no undue delays.

- High quality initial adjudication will be provided and adjudicators will be well paid in recognition of the importance of their work. The Board will endeavour to employ adjudicators who can directly communicate with member of newer immigrant communities, in their language and with an understanding of their culture.

- High quality adjudication will be achieved through (1) quality training of adjudicators and (2) more attentive service:

    - Adjudicators will receive training in legal and medical matters, including mental health issues. As half of permanently injured workers experience mental health effects of injury and disease, the Board will train adjudicators to recognize and respond appropriately to any signs of psychological problems.

    - Adjudicators will be taught empathy and respect. This may be achieved by including sessions with injured workers and their family members on a regular basis and having an advisory body permanently in place.

    - Training will provide adjudicators with the understanding that the purpose of the system is to provide compensation and support to workers in lieu of their right to sue employers as stated in its founding principles put forward by Sir William Meredith. Adjudicators will understand that their role is to seek to compensate and provide full benefits based on the merits and justice of the case.

    - Adjudicators must ultimately follow the Act.

    - More attentive service will be achieved by reducing caseloads for claims adjudicators, maintaining the same adjudicator throughout a claim (to the extent possible), and improved communications between injured workers and adjudicators. Communication will be improved in part by increasing opportunities for face to face meetings.

- Higher quality adjudication will reduce the number of appeals.

- The Act will provide that workers are covered financially during the period that the WCB is rendering a decision up to the final level of appeal.

- Adjudicators will respect the opinion of the treating physician/health care provider. If it conflicts with the WSIB, the treating health care provider will refer the injured workers to another health care provider.

- The Board will include, with all its decisions, a full, multi-lingual description of the appeal system and resources for assistance.

3. Full Compensation and Dignity

- The compensation system will fully compensate a worker for the impact of the injury or illness on his or her life within a system, which seeks to be simple, straightforward, and accessible, and which seeks to provide security and dignity to the person as long as the disability lasts.

- Wage-loss benefits will replace the full income lost due to the worker's injury and disease until it is determined if the injury or disease is permanent.

- A permanent pension based on level of physical and/or psychological impairment will be paid for life. If the wage loss is greater than the pension, a supplement will be paid.

- If there is a benefit plan with the pre-injury employer, the employer will continue coverage for the two years of the re-employment obligation. In any case, the WCB will provide such a plan to a worker and his or her family, where there is a permanent disability except where they have employment, which provides better coverage.

- Compensation benefits will include payments, by the WCB, to CPP to maintain the retirement entitlement.

- The Act will establish a minimum wage-loss benefit payable regardless of the pre-injury earnings.

- The current practice of *deeming/determining* a worker to have phantom wages will end and wage loss benefits will be based on the injured workers' actual wage loss.

- Severely disabled workers will receive additional benefits and support allowances that allow them to live in dignity.

- CPP disability benefits will not be deducted from workers compensation benefits.

- Benefits will be fully indexed to the cost-of-living.

4. Medicine that Heals

- Our compensation system will restore injured workers into the hands of their treating healthcare practitioners. It will allow them the choice of their practitioners and be open to alternative treatments.

- Injured workers will have the right to the same relationship to the healthcare system as all Canadians. Specifically they will be treated within the public, one-tiered,

system under the direction of their main treating doctor. The Canada Health Act needs to remove the exclusion for injured workers.

- The Board will work with Ontario health care providers and their organisations to improve education and awareness of workplace based injuries and illnesses.

- The Act will confirm that the worker has the right to choose his/her initial and subsequent health care providers. The guiding principle of the system will be to accept the opinion of the worker's doctors and/or other health care providers, including the medical diagnosis, all aspects of the treatment plan and work capacity.

- During the period of recovery, the WCB will recognise and accommodate the special needs of an injured worker in their home environment.

- Principles of *Managed Care* have no place in our public, no fault system. The compensation system and its medical professional staff and advisors, including Nurse Case Managers, will take care to avoid claims control and benefit control activities. They will not function as behind-the-scenes adjudicators.

- Workers will have the right to heal after injury without pressure from the Board or employer to return to work prematurely.

- The employer will not have the right to require the injured worker to undergo a medical examination.

- Maintenance physiotherapy and other long-term treatments including medications will be recognised and allowed as necessary ongoing components in many cases of permanent disability even where the worker has reached "maximum medical recovery". Such ongoing treatment can both help to prevent a worsening of the condition and can help an injured worker cope with their disability.

5. Comprehensive Vocational and Social Rehabilitation

- Injured workers need a rehabilitation system that recognises the special difficulties they face as persons with disabilities in obtaining and maintaining employment. The system will seek to assist injured workers with both social integration and obtaining suitable employment.

- The 1982 WCB Vocational Rehabilitation Division Manual describes the process as follows: The Workmen's Compensation Board rehabilitation philosophy will be predicated on the concept that we see the injured worker settled in the community and employed at a job that is entirely suitable. Our goal is the job for the person. It is basic that we consider the whole person that we examine what the disabled person can do rather than what he/she cannot do. This type of evaluation enables the disabled person to ascend the social scale and prevent automatic assignment to

a lower status and economic plane. Our belief is that rehabilitation is not complete without employment in a useful job for which the person is suited.

- Rehabilitation will not be considered complete without a viable job. The WCB itself will set an example by hiring injured workers. The Board will recognize, though, that some workers are competitively unemployable. Competitively unemployable workers will receive full benefits and social rehabilitation services.

- The Board will take an active and in-depth role in facilitating return to work in co-operation with the treating physician. This means actively working with an injured worker to ensure that their employer takes all reasonable steps to accommodate the job and workplace environment to the worker's disability. The Human Rights Code will apply.

- Where work with the accident employer is not available or is not suitable, then the WCB/WSIB, in conjunction with the treating physician, will actively assist the injured worker in locating and settling in to work with a different employer, usually after an individually designed training program.

- In facilitating return to work, the Board will recognize the power imbalance underlying worker and employer negotiations and provide extra support to workers accordingly.

- The Board will employ a holistic approach in facilitating return to work. This means going beyond the narrow approach of looking at whether the essential elements of a job are suitable. A holistic approach to suitable work looks at whether the work environment is safe, including whether it is free from co-worker or manager harassment or hostility. A holistic approach to suitable work also looks at whether the work is sustainable (i.e., that the worker will be able to continue in that position on a longer term basis) and meaningful (i.e., that the work makes a substantive contribution to the employer's business)

- A holistic approach also looks at the worker as a whole person in developing a sustainable and suitable plan for return to work. This includes consideration of the workers personal characteristics. This includes considering mental health issues, and recognizing that pain may be a real barrier to return to work.

- Plans for accommodated work must be developed in close consultation with the worker. Any ergonomic assessment will be done with the worker present and involved.

- When it is in the worker's best interests, the Board will provide the worker with retraining to return to a new job with the accident employer.

- The Board will recognize that some workers will only be capable of returning to work on a part time basis due to the nature of their disabilities. Workers who return to part time work will receive benefits to compensate them for their wage loss.

- When it is in the worker's best interests, the Board will assist either the worker or employer in providing accommodations that lead to a sustainable and meaningful job. For example, the Board might provide a worker with a specialized computer that would enable him to return to his pre-injury job. The computer would move with the worker, should he change jobs.

- Special care will be taken not to have the worker placed in a job, which could cause a worsening of the condition or re-injury.

- Experience rating will not be used as an incentive tool for return to work compliance for employers since it produces reverse effects. Any incentive tool will be carefully developed to ensure that its' result is to achieve truly suitable work which is in a physically and socially acceptable environment and which is clearly long-term. The best incentive tool will be one controlled by the injured worker.

- Where there is a union, the employer and Board will work with the union, including Joint Return to Work Committees. These Joint Committees will be properly resourced, trained and supported by active enforcement and involvement by the Board. The Joint Committee will have the authority to recommend modifications to the workplace as required to accommodate the injured worker.

- There will be progressive discipline process and strong penalties for larger employers who refuse to re-employ injured workers and for those who withdraw employment offers; provide unsafe, unhealthy, or phoney return-to-work arrangements; harass injured workers; or terminate their employment later. There will be no time limit on these obligations.

- The Act will include provisions to recognize that injured workers, as persons with disabilities, face lifelong disadvantage in obtaining and sustaining employment. All injured workers with a permanent disability will have a lifelong entitlement to return to work and rehabilitation services, including restoration of benefits in situations where finding work is not realistically possible, or for periods in which they are having difficulty finding new work and require support.

- Workers in accommodated jobs or with a permanent impairment rating of 10% or more will automatically be restored to full compensation and entitled to further rehabilitation services if they lose their employment for any reason except criminal offenses. This will recognize the fact that injured workers often face barriers to finding employment, even if they were able to return to regular work after their injury.

- Quality public rehabilitation services will be provided. Rehabilitation and employment will be suitable for the worker, vocationally, socially, financially, physically, and

psychologically. Workers will have the right to design and approve their rehabilitation plan. The Board will not impose the plan. The plan will be flexible to take into account the worker's circumstances and changes in those circumstances. A new plan can be developed if necessary.

- A rehabilitation plan when required will include support for new special circumstances.

- English as a Second Language programs will be made available to injured workers whose first language is not English. These programs will be high quality and of sufficient length to allow these workers to become proficient in English.

- Where rehabilitation includes attending school, injured workers will be part of the process to choose the appropriate school and except in special circumstances, the schools will be public institutions.

- The Board will recognize volunteer work as a valid form of vocational or social rehabilitation for those who remain unemployed or as part of a vocational rehabilitation plan and will not be penalized by volunteering. For vocational rehabilitation, volunteer work can make a valuable contribution to training and allow a worker to gain job experience. Volunteer work can also have a social rehabilitation function for workers who are competitively unemployable or otherwise unable to return to paid employment.

- Many workers would have been able to return to school or otherwise improve their circumstances had it not been for the compensable injury or illness. The system will recognise that injured workers face special hurdles in advancing through their careers and therefore the Board will support retraining to the worker's full potential.

6. Access to Justice

- At all levels of decision-making the Board and the appeal systems will operate on an enquiry basis. This is in contrast to an adversarial basis. Decision makers will be trained to seek and obtain relevant information to help the workers establish their claim recognising that it is often difficult for workers to overcome numerous barriers in obtaining it themselves.

- Time limits for workers in filing a claim and in appeals will be eliminated.

- Employers will have the right to appeal only on issues where they have direct involvement: initial entitlement and return to work with the accident employer.

- There will be full disclosure to the injured worker of all documents and information relating to their claim; including general correspondence between the employer and the Board.

- Employers will have restricted access to information about a worker. Information on a workers claim will be provided only in active appeals on initial entitlement or return

to work with that employer. Medical information will not be disclosed to the employer except that which is specific to a contested issue on which the employer has appeal rights.

- There will be full recognition and communication by the Board of the worker's right to free advice and representation, from their union if they have one, legal clinics, the OWA and from Legal Aid Ontario certificates.

- Injured workers or their survivors, who have scarce resources, will not need to use the services of fee-for-service consultants. There will be sufficient funding for all of the representation programmes from appropriate funding sources such as the Ministry of Labour and Legal Aid Ontario.

- Injured workers will have the right to an independent appeal of Board decisions. The Workers' Compensation Appeals Tribunal will not be bound by WCB/WSIB policy.

- A tripartite appeal panel will be available as a matter of course.

- Appointments to the Tribunal will be competent and qualified in WC law and policy.

- Members of the Provincial Legislature, including their trained staff**,** will be among those who provide assistance, including representation at appeals.

7. Funded Arms Length Programmes

The legislation will ensure that sufficient funding will be provided to such arms length organisations as:

- The Office of the Worker Advisor (sufficient means the OWA has the ability to handle all injured workers' claims regardless of union affiliation.)
- The Ontario Network of Injured Workers Groups
- Support systems such as the Occupational Health Clinics of Ontario, the Workers Health and Safety Centre, and the Occupational Disability Response Team.
- Community Legal Clinics and Legal Aid Certificates.
- An Occupational Disease Standards Panel
- The Institute for Work and Health and other research initiatives.
- A Database agency which would, for example, maintain a disease/cancer database (including parental and occupational information for childhood cancers and birth defects) along with a tracking system for workers with hazardous exposures (along the lines of the mining master file.)

8. Proclamation of Special Days

- There will be official recognition of June 1st as "Injured Workers Day."

- There will be official recognition of April 28th as the "International Day of Mourning for Persons Killed or Injured in the Workplace." (under Bill C-223). There will be an official two minutes of silence and stop work in the workplace and provision will be made for workers' representatives to attend ceremonies.

- There will be official recognition of February 28/29 as Repetitive Strain Injury Awareness Day.

9. Improving Workplace Health and Safety

(Since this document is attempting to focus on compensation, we have not attempted to be comprehensive in this section. For the purposes of this document we want to focus on H&S points which overlap with the compensation system)

- The workers' compensation system will find an effective way of working with the Ministry of Labour, organized labour and injured workers' groups to aid in producing safer workplaces.

- Experience Rating will not be used as a tool for Health and Safety due to its serious, negative impact on injured workers. As long as experience rating exists, accident numbers and claims duration statistics will not be used as evidence of safe and healthy workplaces.

- Incentive programs such as merit rating, if used, will be based safety audit inspections.

- Employer-based behavioural safety incentive programmes will be prohibited.

- The Ministry of Labour will impose and collect heavy fines and penalties on employers who violate health and safety laws, including criminal prosecutions for reckless disregard for human life. The 25% surcharge on fines will be made available to victims of workplace injury or disease.

- The Board and Ministry of Labour will ensure prompt investigation of the cause of all injuries and illnesses and then verify that the employer has fixed the hazard that caused them. The Form 7 will include a required section to ensure employer compliance by removing the hazard. A copy of the form 7 will go automatically to the worker, the joint health & safety committee and where there is one, to the union.

- The Ministry of Labour will significantly increase the number of inspectors available to enforce health and safety rules and to identify safe and unsafe workplaces.

- Ministry of Labour will enforce mandatory entry-level and on-going workplace specific safety training.

WORKERS' HEALTH AND SAFETY LEGAL CLINIC

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www.workers-safety.ca

WHSLC

09 January 2018

Via Electronic Mail

Consultation Secretariat
Workplace Safety and Insurance Board
200 Front Street West
Toronto, Ontario
M5V 3J1

RE: Rate Framework Policy Consultation

To Whom It May Concern:

I am writing to provide submissions with respect to the Rate Framework Policy Consultation on behalf of the Workers' Health and Safety Legal Clinic. The submissions focus on two policies: the Temporary Employment Agencies Policy and the Employer Premium Adjustment Policy.

The Workers' Health and Safety Legal Clinic ("the Clinic") is a community legal clinic funded by Legal Aid Ontario. Our mandate is to provide legal advice and representation to non-unionized low wage workers in Ontario who face health and safety problems at work. We have appeared before the Ontario Labour Relations Board on behalf of workers who were fired for raising occupational health and safety concerns. We have also assisted federally regulated workers with unlawful reprisal complaints before the Canada Industrial Relations Board. The Clinic also represents workers who are injured on the job with respect to their workers compensation claims before the Ontario Workplace Safety and Insurance Board and the Ontario Workplace Safety and Insurance Appeals Tribunal, and workers who have reprisal claims under the Ontario *Employment Standards Act*.

Temporary Employment Agencies Policy

The Temporary Employment Agencies policy is inadequate for the purposes of protecting workers. The weaknesses of the policy are found by examining who the policy benefits and whether the policy has any positive effect on worker health and safety.

The WSIB is the Financial Beneficiary of the New Policy
The introduction of the rate framework policies has changed the premium structure for temporary employment agencies. Agencies are now required to separate payroll so that their workers can easily be identified in the same rate group as the client employer. The policy does

not require a reporting of the different third party employers. This change is solely for the benefit of the Workplace Safety and Insurance Board ("the Board").

In the previous classification scheme, temporary employment agency ("TEA") had a decidedly lower premium rate to their client employers. The creation of separate payrolls allows the Board to bill TEAs at the same rates as their clients. While the policy increases the Board's revenues, it fails to take any steps recognising occupational health & safety, accident prevention, and return to work goals with client employers. The policy also does not require identification of client employers. If particular client employers were the source of higher than expected claims, the Board would not have that data on hand for investigation. It is therefore suggested that in addition to separate payroll organisation, every TEA must also report their clients to the Board.

The Board's Focus on Monetary Benefits Fails to Support Worker Health and Safety

A study by the Institute for Work and Health ("the Institute") found that temporary workers are at a higher risk of workplace accidents.[1] The reason was unsurprising: experience rating was the cause of the higher accident rate. The Institute found that TEAs served a specific purpose; risk avoidance for client employers.[2]

Claim costs under the new system will remain a motivator for client employers. TEAs will still divert dangerous or more onerous work on temporary employees. Given that employers naturally want to reduce their claim costs, TEAs will continue to serve their function as a claims costs suppressor for client employers. The policy takes no action to support accident prevention for workers. There is no incentive for client employers to address health and safety issues because the TEAs are the employers for the purposes of the Board.[3] The decision to increase premium rates for TEAs based on their clients does not equate to increased support for prevention.

One example, cited in the aforementioned study, came from a TEA employer, "We were providing industrial labour... to a client. The client was receiving an award [workers' compensation] for best health and safety practices. That day I had two people... rolled out the back door in the ambulance. The client kept his health and safety record up high because he outsourced to staffing companies all the risky jobs, all the heaviest lifting, all the jobs that required any type of dangerous work went to a staffing agency. So, his record looked... perfect... The WSIB thought he was great."[4] The new TEA policy would do nothing to prevent the same scenario from repeating itself. The Board will continue to think employers are "great" while remaining oblivious to the hazardous conditions in the workplace for TEA employees.

Although there is the option of "transfer of costs" between employers, it is unlikely to be done. As the Institute's study found, TEAs would not opt to transfer costs because of the negative effect on their business.[5]

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[1] E. MacEachen et al, "Workers' compensation experience rating rules and the danger to workers' safety in the temporary work agency sector" (2012) 10:1*Policy and Practice in Health and Safety*, 79.
[2] *Ibid*, 82.
[3] *Ibid*, 82.
[4] *Ibid*, 83.
[5] *Ibid*, 84.

It is the Clinic's position that the rate framework fails to address the problems of experience rating. When introduced as Bill 18, *Stronger Workplaces for a Stronger Economy Act, 2014*, the Bill envisioned claim costs for accidents involving TEA employees moving from the TEA to the client employer.

Section 2 of Bill 18 originally read:

2. Section 83 of the Act is amended by adding the following subsections:

Temporary help agency worker

(4) For the purposes of this section and despite section 72, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1), and the worker sustains an injury while performing work for the other employer, the Board shall,

(a) deem the total wages that are paid in the current year to the worker by the temporary help agency for work performed for the other employer to be paid by the other employer;

(b) attribute the injury and the accident costs arising from the injury to the other employer; and

(c) increase or decrease the amount of the other employer's premiums based upon the frequency of work injuries or the accident costs or both.

Same, access to records

(5) If there is an issue in dispute in respect of a determination made by the Board under subsection (4), the other employer described in that subsection shall be deemed to be an employer for the purposes of sections 58 and 59.

Notice by other employer of injury

(6) The other employer described in subsection (4) shall notify the Board within three days after learning of an injury to a worker that necessitates health care or results in the worker not being able to earn full wages.

Same

(7) The notice must be on a form approved by the Board and the other employer shall give the Board such other information as the Board may require from time to time in connection with the injury.

Failure to comply

(8) An employer who fails to comply with subsection (6), (7) or (9) shall pay the prescribed amount to the Board.

Copy to worker

(9) The other employer shall give a copy of the notice to the worker at the time the notice is given to the Board.

The Clinic and other worker-side stakeholders endorsed the proposed changes.

Unfortunately, during the Committee review the amendments were removed from Bill 18. Instead it was possible to make the changes via regulation. According to the debate during Third Reading, the government anticipated the rate framework changes would address this issue. The Minister of Labour explained during third reading[6]:

> Additionally, we originally proposed changes to the Workplace Safety and Insurance Act experience rating system. However, Speaker, a lot of time has passed since this bill was first introduced; it was almost a year ago. It didn't pass in the last Parliament due to delays. The situation has changed since then. The WSIB is currently itself now undertaking a rate framework review, which also includes a review of the same experience rating system. We expect the WSIB will make decisions regarding these changes just around the same time next year.
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> As a result, it did not make sense to legislate, and then implement, changes to a system that may or may not exist in its current form in the very near future. Therefore, I'm glad the Standing Committee on General Government changed schedule 5 of this bill to a regulatory authority, so when the time comes to act in the future, we can indeed act.

The Minister's anticipation that the old system would not exist was not borne out by the facts. Experience rating has not been eliminated; risk banding is not the end of negative practices

[6] Ontario, Legislative Assembly, *Hansard*, 41st Leg, 1st Sess, 05 November 2014.

encouraged by experience rating. TEAs continue to operate to buffer claims that should be the responsibility of client employers.

Workers will sign up with a temporary agency for payroll purposes but in all other respects are employees of the client employer. The client employer has care and control of the workplace not the TEA. The client employer has no responsibility for return to work. There was an opportunity with the new policy to fulfill the intentions of the Minister. This policy misses the opportunity to address and rectify the very real dangers that TEAs pose to workers.

It is therefore necessary to amend the proposed policy to better reflect the Board's commitment to prevention and better outcomes for workers. A workplace littered with accidents only to have the problems covered by the TEA remains the likely outcome as a result of the lack of substantive measures in the proposed policy.

The policy should be amended so that all claim costs in the event of an accident are the responsibility of the client employer, as was originally envisioned by the Minister of Labour. This can be achieved by requiring the TEA to provide placement information with the Board. An alternative approach is to have the automatic transfer of costs to the client employer when a TEA worker is injured at a client employer's workplace.

The Failure to Encourage Suitable Return to Work

Whereas the Board takes the view that return to work is essential, no nuance or consideration is referenced in the policy to return to work with the client employer. The use of a TEA for payroll purposes means that the employee has no workplace connection to the TEA. Whether or not they are a TEA employee, an injured worker was reporting to work at the client employer.

If the Board believes that return to work is essential in the process, it should be guided by returning the TEA to their actual workplace and not an office they have unlikely visited since their initial hiring.

Employers benefit from the return to work obligations for TEAs. Given the lack of responsibility to return the injured worker to the client employer, return to work normally involves a placement at the TEA office. With a segregated payroll, the returning injured worker would be covered at the reduced TEA office rate and not the higher rate of the client employer. This is a win-win situation for both employers: the client employer can have a fresh worker to injure and not bear any costs while the TEA pays a lower rate for the returned injured worker. The policy is silent on the consequences for the worker. The likelihood of permanent employment is lost.

Return to work responsibilities must also be transferred to the client employer. That relationship should be, and can be, fostered by holding the client employer responsible. Breaking that relationship has the added danger of the worker losing out on a possible opportunity for permanent employment.

There must be an end to the disconnect between prevention and responsibility. It is the client employer's workplace where the accident occurred. It is the investigation by the client employer that will address the health and safety issues. It will be the responsibility of the client employer to eliminate hazards. Our position is that client employer should bear all responsibilities and that

includes ones imposed by the Board. This will hopefully end the use of TEA to avoid compensation claims and encourage return to work with a viable employer. This would particularly help vulnerable workers maintain steady employment where return to work is a realistic option.

Employer Premium Adjustment Policy

The difficulty with the Employer Premium Adjustment Policy in some way reflects the frustration of worker-side stakeholders following the 01 December 2015 Stakeholder session. Notwithstanding the many organisations and individuals who made submissions, presentations and/or met with Board staff, the worker-side position was lumped into 1 slide out of approximately 36. The one slide referred to "additional stakeholder feedback" as if the views of the worker side are not considered on equal footing with employers. The policy is drafted with a focus on employers without any substantive contemplation of matters that would concern the various worker-side stakeholders.

The policy requires more clarity in recognition of other claim issues that are not addressed in the policy. For example, in making reference to situations where premium adjustments will be made, the policy directly references the Second Injury Enhancement Fund ("SIEF") policy. Even though the Board has not produced an SIEF policy in the new framework, it was deemed necessary to mention. At the same time, there is no mention of the adjustments that potentially can happen as a result of the Fatal Claims Premium Adjustment Policy ("FCPAP"). If the Employer Premium Adjustment Policy is meant to spell out when adjustments are to be made and in what circumstances, all circumstances should be identified. This would include those circumstances that are of interest to workers like the FCPAP.

In summary, the expression of a commitment to worker health and safety must be demonstrated. Reviewing the proposed policies where the Board can demonstrate a desire towards improving prevention, more must be done.

Thank you for your attention to this matter.

Yours truly,

John Bartolomeo
Lawyer/Assistant Director