

WORKING



TOGETHER

EXECUTIVE SUMMARY

REPORT AND RECOMMENDATIONS

OF THE ALBERTA WORKERS' COMPENSATION BOARD (WCB) REVIEW PANEL



JUNE 2017

EXECUTIVE SUMMARY

In March 2016, the Government of Alberta established our Panel to review Alberta's workers' compensation system including the Workers' Compensation Board - Alberta (the "WCB"); the Appeals Commission for Alberta Workers' Compensation (the "Appeals Commission"); and the Medical Panel Office.

In accordance with the Terms of Reference we were given (see Appendix A), the purpose of our Panel's review was "to strike the right balance between workers and employers to ensure fair compensation, meaningful rehabilitation for an injured worker, and a sustainable and affordable workers' compensation system."



WHAT WE DID

Our review process was thorough. We commenced with a broad data gathering exercise, in which we marshalled as much information as we could about the current policies and processes of the system. This included detailed technical briefings to ensure that our Panel had a comprehensive foundation. In addition, we asked Albertans to provide their perspectives about the current system through written submissions and online questionnaires. We also held in-person meetings with groups of injured workers to hear about their experiences and to see firsthand how the system can directly impact the lives of Albertans and their families.

Based on what we learned and heard, we identified areas of the system that were especially complex, controversial or confusing and which required additional analysis. To help us with that analysis, we undertook a number of face-to-face engagement activities with individuals representing workers, employers, unions, industry associations, the health community, safety associations, and many others. Our engagement activities with these stakeholders included facilitated working sessions, an expert panel session on major trends in workers' compensation systems, and a symposium on issues related to data around workplace injuries and illnesses.

All of these efforts gave us rich input about the strengths of Alberta's current system and opportunities to improve the system for the future. Along with information from our own research efforts, which included an examination of other workers' compensation systems across Canada, our Panel used this input to inform our deliberations and recommendations.

WHAT WE FOUND

Our full report provides greater details on specific aspects of Alberta's workers' compensation system, but overall, here is what we found.

First, it must be emphasized that Albertans place value on the workers' compensation system. The system covers nearly 1.9 million Albertans working at over 160,000 employers throughout the province. Its reach is vast, touching the lives of workers and business owners in the public, private and non-profit sectors. We heard loud and clear that Albertans want the system to be there for people when needed. Workers and employers continue to see the system as a preferable alternative to litigation, consistent with the historic compromise on which the system is premised.

It is also important to emphasize that the vast majority of claims are handled by the system well and are usually resolved within two weeks. Workers and employers alike express high satisfaction with these smoothly-handled claims.

However, not every claim is straightforward. Some present with significant complexities. For example, an injured worker's condition may be multifactorial in nature; they may have a pre-existing condition; or they may have worked for several different employers during their career. In cases where the nature or cause of a worker's condition is hard to discern, the system does not perform smoothly. Instead, injured workers, employers and health professionals can find themselves caught in a mix of disagreements, reviews and appeals. When this happens, the WCB can be overly efficient, and tends to manage the claim in aggressive accordance with strict rules, even when the resulting decisions fly in the face of common sense. This raises frustration among workers and employers alike and it contributes to a perception that the WCB has a "culture of denial".

Indeed, the biggest failing of the system right now is not the level of benefits it provides, but how its overall decision-making impacts the lives and livelihoods of workers and employers. Rather than decision-making that focuses on assisting people with their injuries, illnesses or concerns, the system's decision-making currently focuses on efficient management of claims. Too often, it seems, the latter is given attention at the expense of the former.

Workers and employers both gave up significant rights in the historic compromise that led to the creation of the workers' compensation system, and they want to be sure that they are getting what was promised in return. Many are not certain they are, and this has eroded trust amongst those with interests in the system: workers, employers, health professionals, and even staff working in the system. Interestingly, there is a sense among many workers that the system is 'in the pocket' of employers and, at the same time, a sense among many employers that the system is 'always on the side' of workers. The fact that everyone is equally unhappy does not mean that the system is doing a good job of serving everyone equally and impartially.

For the workers' compensation system to be effective in fulfilling its mandate over the long-term, trust in the system must be re-established. Those with interests in the system must be able to regard the entities in the system – especially the WCB – as impartial decision-makers. For that to be possible, the system needs to exhibit the fundamentals that are essential for trust in any relationship: transparency, honesty, openness, good communication, and fairness.

The majority of our Panel's recommendations focus on changes that will establish and strengthen those fundamentals in the system. With those in place, stakeholders will be able to have greater trust and confidence in the system, and will have a greater degree of dialogue, engagement and collaboration with decision-makers in the system. This will drive a much-needed culture change throughout the system and ensure that decisions made in the system – whether about benefits, claims eligibility, employer assessments or other matters – will be grounded in evidence, stakeholder input and adherence to the Meredith Principles.

WHAT WE RECOMMEND

Stakeholders consistently told our Panel that Alberta's workers' compensation system needs to be aligned with its core purpose: providing compensation to workers who suffer workplace injuries or illnesses, and helping them recover and return to work.

We agree. While there will always be an administrative need for claims to be managed, the system does not exist to manage claims. It exists to provide assistance to injured workers.

The better approach going forward is to put the health and well-being of injured workers at the centre of the workers' compensation system. This should be the focus around which the system's policies, processes and decisions are made. And it should be the shared goal that all partners have in mind when they approach the system and towards which all the partners should work.

For the sake of brevity, we refer to this new focus in our report as a "worker-centered" system. However, this term is not intended to leave the impression that the shift in focus is only about workers. It is also about employers.

Employers are essential partners in the historic compromise that is the workers' compensation system. They value the importance of providing assistance to injured workers and ideally want to see those workers recover, return to the workplace, and

continue contributing their skills and ingenuity to help the organization pursue opportunities. Employers have a genuine and direct interest in benefitting from a cost-effective workers' compensation system that is open, transparent and provides fair and just coverage, just as workers do.

Our Panel's recommendations include several legislative, policy and structural changes that are designed to bring about a worker-centered system that features greater independence, transparency, stakeholder engagement and accountability. (A summary of our recommendations is provided in Appendix B.)

Among other changes, these include:

- **The establishment of a new Fair Practices Office**, independent of the WCB and accountable to the Minister of Labour, that serves an ombudsman-type function for Alberta's workers' compensation system. In addition to fielding, investigating and addressing concerns about administrative fairness in the system, the Fair Practices Office would conduct regular quality assurance audits of the system and issue public reports of its findings.
- **Increased assistance for workers and employers with reviews and appeals**, through an Office of the Appeals Advisor (OAA) that is relocated from the WCB to the Fair Practices Office. Under this arrangement, workers and employers will have access to the same suite of assistance services, and they will have greater confidence in the advice they are receiving is delivered impartially.
- **The use of a new roster system for independent medical examinations (IMEs)**, with responsibility for the roster residing with the Medical Panel Office, which is independent from the WCB. This will help parties have greater confidence in the impartiality and integrity of IMEs. It will also help reduce conflict and cost in the system by removing incentives to "doctor shop" for multiple IMEs.
- **Greater choice for injured workers in selecting health professionals**, in addition to the choice they already have in selecting their treating physicians. Rather than selecting from an established list of WCB-retained professionals, injured workers will have greater choice in physiotherapists, chiropractors and other types of professionals they engage for treatment.
- **The establishment of an obligation to return workers to work**, and a corollary obligation to cooperate on the part of workers. Through new policy, the WCB establishes protocols to ensure these obligations are observed as appropriate. The WCB will commit to assisting employers and workers in meeting these obligations. The result is a return-to-work approach that respects pre-existing relationships between workers and employers and the realistic re-engagement of workers with the labour force.
- **The use of case conference models throughout the system**, along with a system-wide commitment to seek early and collaborative resolution of any disputes that arise. Formal processes such as internal reviews, appeals, and medical panels are regarded as tools of last resort. Instead, decision-makers in the system engage in meaningful dialogue with employers, workers and appropriate parties to discuss challenges and come up with solutions.
- **The adjustments of certain benefits provided by the system**, with the specific aim of addressing areas where there is hardship, fatalities, permanent injuries of young workers, retirement benefits or people who are affected in dramatic ways by the current application of WCB policies. These adjustments are not expected to result in significant cost increases. To the extent these adjustments might influence a nominal increase to employer assessments, our Panel expects those affects to be balanced by cost reductions in other parts of the workers' compensation system as a result of our other recommendations.

- **Further study or review of particularly complex aspects of the system.** There are some areas of the system, such as the model for calculating employer assessments, which are complex in nature and have significant impacts for many stakeholders. Though our Panel had neither the time nor the expertise to provide specific recommendations in these areas, there is a compelling case for them to be studied further in consultation with stakeholders and appropriate experts.

Our recommendations do these things, and more, with a keen eye to maintaining the sustainability of the system – an imperative that was consistently emphasized by stakeholders. On this front, Alberta’s workers’ compensation system is doing well compared to many of its counterparts across the country. It is financially solvent, its Accident Fund (which pays the costs of claims) is fully funded, and financial decisions are informed by actuarial data and analysis rather than politics or conjecture.

Credit for this is due to the WCB Board of Directors, and the Board has demonstrated prowess when it comes to financial management. The Board’s prowess now needs to extend to encompass all of its other duties, including setting the overall tone of the WCB and bringing about the culture shift needed to achieve a worker-centered system.

Part of this will require a change in the WCB’s policy approach. Staff of the WCB expressed frustration to our Panel that the WCB’s current policy approach often ‘ties their hands’, forces them to make ‘all or nothing’ choices and discourages them from fashioning creative solutions that may better address the needs of all parties. To bring a worker-centered system to life, WCB policies will need to allow staff to use discretion, compromise and creative options, while recognizing that workers’ claims must still fit within the existing statutory framework.

Bringing about the necessary culture shift will also require a change in the WCB’s governance approach. To this end, our Panel recommends a number of governance changes including:

- The development of a comprehensive and robust Mandate and Roles document for the WCB Board of Directors, to ensure accountability of the Board to Albertans, through their elected government;
- The use of the Mandate and Roles document by government to articulate broad public policy guidance and performance measures for the Board;
- The reorganization of committees of the WCB Board of Directors, and the establishment of a duty on the part of each committee to undertake stakeholder engagement in the course of its work;
- The removal of the Chief Executive Officer as a member of the WCB Board of Directors;
- The establishment by the WCB Board of Directors of a Code of Rights and Conduct for the WCB organization that articulates the rights of workers and employers in their interaction with the WCB; and
- The creation of a new Policy and Practice Consultative Committee, with stakeholder representation, to provide input into the WCB Board of Directors’ policy development process.

The workers’ compensation system is the product of a special compromise between workers and employers – one that is nearly a century old in Alberta. It is not a system designed around an “us versus them” approach, but rather an approach of “we’re all in this together”. Workers, employers and the government continue to be partners in this historic compromise, and they remain essential partners for making the system work over the long-term.

APPENDICES

APPENDIX A – TERMS OF REFERENCE

TERMS OF REFERENCE WORKERS' COMPENSATION BOARD REVIEW

As a part of the review of Alberta's agencies, boards and commissions, the Alberta government is conducting a review of the Alberta Workers' Compensation Board. The purpose of the review is to strike the right balance between workers and employers to ensure fair compensation, meaningful rehabilitation for an injured worker, and a sustainable and affordable workers' compensation system.

The terms of reference for the review are outlined below. This approach to the review has been discussed with the major organizations and individuals with an interest in this process and its outcomes.

Terms of Reference for a Review of the Workers' Compensation Board

1. Governance: Are the structures and processes used to direct or govern the affairs of the WCB effective for setting the organization's direction and overseeing the organization's management so that the organization effectively fulfills its mandate?

The scope of the review will include:

- Board size, composition, appointments, executive compensation and legislative compliance;
- Transparency, accessibility and communications;
- The Board's relationships with the Appeals Tribunal and the organizations charged with the prevention of workplace injuries and fatalities;
- The design, collection and dissemination of harmonized data on prevention measures, injuries and fatalities, return to work programs, and claims/compensation outcomes; and
- Jurisdictional review comparison that examines entitlement rates, comparability rates, and the correlation between rates of fatality in a jurisdiction compared to the number of claims in a jurisdiction.

2. Appellate Structure and Effectiveness: The entire appellate structure and mechanisms will be reviewed to include the internal WCB appeals system prior to cases being referred to the Appeals Commission itself. Moreover, the governance and structure of the Office of the Appeals Advisor will be reviewed and recommendations will be provided to ensure this office is appropriately situated.

3. Principles of Compensation: Recommendations will be made as to whether the current principles of compensation address all longstanding, current and emerging workplace injuries such as mental health and repetitive strain injuries in an effective and comprehensive manner. Do the principles of compensation result in fair compensation and meaningful rehabilitation? Does the current funding model (including employer premiums, rebates, Certificates of Recognition refunds and incentives) promote fair compensation and meaningful rehabilitation for injured workers?

4. Policies, including implementation: Recommendations are to be made with respect to WCB policies and the way those policies are developed and implemented. Recommendations should reflect a balanced and effective workers' compensation system that ensures fairness, confidentiality and privacy, objectivity, transparency, ease of access, sensitivity and timeliness. A clear recommendation should also be made on adequacy of the policies and the way they are developed.

Some additional considerations should be included as follows:

- Privacy and confidentiality for claimants.
- Reduction in the complexity and invasiveness of WCB processes.
- Claimants access to representation, including legal representation (legal aid).
- Transparency of processes and decision making at the WCB and Appeals levels.
- Workers' human rights, including the duty to accommodate and the protection of workers with mental health or cognitive or emotional illnesses.
- Reasonableness of timelines at the appeals level.
- Timeliness of services.
- Performance Measures for WCB and the Appeals Commission.
- Recommendation on any alleged allegations such as "claims suppression".

APPENDIX B – SUMMARY OF RECOMMENDATIONS

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
SHIFTING THE SERVICE CULTURE			
<p>Recommendation 1: Amend the <i>Workers' Compensation Act</i> to include a preamble which states the objects of the Act and, in so doing, articulates the purpose of the workers' compensation system.</p>	✓		
<p>Recommendation 2: Establish a Code of Rights and Conduct for the WCB organization that articulates the rights of workers and employers in their interaction with the organization and articulates in detail how the WCB commits to operate in recognition of these rights.</p>		✓	
<p>Recommendation 3: The Government of Alberta, through the Minister of Labour, should establish expectations for the WCB Board of Directors through a robust Mandate and Roles document.</p>		✓	
<p>Recommendation 4: In the WCB Mandate and Roles document, provide for a structure of three standing committees of the WCB Board of Directors. In the Terms of Reference for each committee, specify that the committee is to undertake consultation with stakeholders in its work.</p>		✓	
<p>Recommendation 5: Amend the <i>Workers' Compensation Act</i> to remove the CEO from membership on the WCB Board of Directors.</p>	✓		
<p>Recommendation 6: Establish a Secretariat within the WCB organization that is dedicated to supporting the WCB Board of Directors and can provide the Board with access to independent resources.</p>			✓
<p>Recommendation 7: The WCB Board of Directors, in consultation with the Minister of Labour and stakeholders, review the competency matrix that is applied when recruiting Board members.</p>		✓	
<p>Recommendation 8: WCB Board establish a Policy and Practice Consultative Committee, comprised of representatives from the WCB and stakeholders, to provide input into the policy development process.</p>		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
Recommendation 9: WCB Board establish a calendar for regular policy reviews and policy evaluations of all pertinent WCB policies and practices.		✓	
Recommendation 10: Prohibit the use of performance pay, pay-at-risk, bonuses or other programs that tie the compensation of WCB employees to performance measures.		✓	
Recommendation 11: Engage stakeholders to gather their input into the development of new performance measures for the WCB.		✓	
Recommendation 12: Establish a Fair Practices Office for Alberta's workers' compensation system which plays roles similar to fair practices offices in other provinces.	✓		
Recommendation 13: Establish formal, scheduled meetings between the WCB, the Appeals Commission, the Fair Practices Office, the Medical Panel Office and the Department of Labour that feature published agendas and detailed meeting minutes.			✓
Recommendation 14: Amend the <i>Workers' Compensation Act</i> to provide for a statutory review three years from now, and every five years thereafter.	✓		
TAKING A BETTER APPROACH TO HEALTH			
Recommendation 15: Enable workers to choose their own health professionals, including their treating physicians, so long as those professionals meet a set of criteria established by the WCB.		✓	
Recommendation 16: Refocus the role of the medical consultant to better support a case conferencing approach. The Medical Panel Office should design and implement a quality assurance program to ensure the new case conferencing approach is achieving its desired outcomes.			✓
Recommendation 17: Use a roster approach, administered by the Medical Panel Office, to obtain independent medical examinations.		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
<p>Recommendation 18: Amend applicable legislation and policies to enable injured workers to initiate the MPO’s medical panel process when there is disagreement in medical opinion about their claim.</p>	✓		
<p>Recommendation 19: Establish an informal medical dispute resolution process within the MPO as a mandatory step before a full medical panel is convened.</p>	✓		
<p>Recommendation 20: WCB undertake initiatives to raise levels of knowledge and awareness in Alberta’s medical community about the workers’ compensation system, its purpose, its major components and its processes.</p>			✓
<p>Recommendation 21: WCB adjust the approach to treatment coverage so that it reflects and responds to the unique and individualized needs of each worker.</p>		✓	
SUPPORTING RETURN TO WORK REALISTICALLY			
<p>Recommendation 22: Amend the <i>Workers’ Compensation Act</i> to provide that employers have an “obligation to return to work” those workers who suffer injuries and illnesses in their workplaces.</p>	✓		
<p>Recommendation 23: WCB implement a new policy that establishes a more collaborative approach which also enforces the obligation to return an injured worker to work.</p>		✓	
<p>Recommendation 24: Government amend the <i>Workers’ Compensation Act</i> and the WCB amend its policies to clarify that WCB will review a worker’s level of continued benefits in situations where an employer terminates a returning employee for egregious acts.</p>	✓		
<p>Recommendation 25: WCB amend the deeming process so that it reflects the realities of Alberta’s labour market and makes a worker’s re-employment prospects the central focus.</p>		✓	
<p>Recommendation 26: WCB revamp vocational rehabilitation services so that it helps workers re-engage with the workforce with a realistic consideration of Alberta’s labour market.</p>		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
PROVIDING BENEFITS WITH A SUPPORTIVE FOCUS			
Recommendation 27: WCB examine the use of predominant cause and its impact to ensure it does not create an unreasonable threshold for eligibility.		✓	
Recommendation 28: Government amend the <i>Workers' Compensation Act</i> to provide that where the disputed possibilities are evenly balanced on an issue, the injured worker receives the benefit of the doubt.	✓		
Recommendation 29: Amend the <i>Workers' Compensation Act</i> to require WCB to establish an Occupational Disease and Injury Advisory Committee to advise on potential changes to Schedule B of the <i>Workers' Compensation Regulation</i> .	✓		
Recommendation 30: Government amend the <i>Workers' Compensation Act</i> to enable the Appeals Commission to take note of commonly-seen linkages between certain injuries or illnesses and certain types of employment.	✓		
Recommendation 31: Amend the definition of "first responder" in the <i>Workers' Compensation Act</i> for the purposes of presumptive coverage for PTSD to include additional occupations.	✓		
Recommendation 32: Incorporate the dual wage loss system in legislation, including the definition of impairment.	✓		
Recommendation 33: Maintain the maximum insurable earnings level as it is prescribed annually by the WCB Board of Directors.			✓
Recommendation 34: Establish a special graduated benefit for workers whose wages place them in excess of the maximum insurable earnings range.	✓		
Recommendation 35: Introduce a lump sum payment specifically in recognition of an injured worker's death in the amount of \$40,000.	✓		
Recommendation 36: Treat a surviving spouse more consistently under the fatality benefit regime, regardless of the spouse's circumstances.	✓		

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
Recommendation 37: Provide cost-of-living adjustments based on the actual Alberta's Consumer Price Index, without any reduction.	✓		
Recommendation 38: Provide the ability to adjust the benefits of young workers to mitigate the hardship they might otherwise experience.	✓		
Recommendation 39: Update the retirement provisions to better recognize the impact that a workplace injury has on an injured worker's retirement savings.	✓		
Recommendation 40: Amend the <i>Workers' Compensation Act</i> to establish a requirement that an injured worker continues to be covered under their existing health benefits programs.	✓		
KEEPING THE SYSTEM SUSTAINABLE			
Recommendation 41: WCB Board commission an independent study on the process that should be used by the WCB to establish employer rates fairly.			✓
Recommendation 42: WCB maintain the current target range of the Accident Fund.			✓
Recommendation 43: WCB undertake a review using an independent resource on how the investment of the Accident Fund can best be managed in accordance with the Funding Policy that is established by the WCB.			✓
Recommendation 44: Amend the <i>Workers' Compensation Act</i> to make clear that money in the Accident Fund is in trust for the benefit of workers and employers to support a sustainable workers' compensation system.	✓		
Recommendation 45: End the current practice of distributing "surplus" money from the Accident Fund to employers. Establish a new policy for the use of excess Accident Fund monies (i.e., when the Accident Fund exceeds its target range) which respects the unique purpose of these monies.		✓	

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
STRENGTHENING REVIEWS AND APPEALS			
<p>Recommendation 46: Shift the internal review process to a model based on case conferencing rather than a model based on claims management.</p>			✓
<p>Recommendation 47: WCB provide interim relief to workers and employers while their matters are under appeal.</p>	✓		
<p>Recommendation 48: Appeals Commission establish a process whereby the WCB must submit a notice of intention to attend a hearing of the Appeals Commission, which includes a description of its reasons for attending.</p>			✓
<p>Recommendation 49: The Appeals Commission encourage the use of an alternative dispute resolution mechanism as an option in the appeals process, making use of case conferencing and other approaches that help achieve early and effective resolution of matters under appeal.</p>			✓
<p>Recommendation 50: The Appeals Commission should consider its decision-making process on a regular basis and reflect as appropriate in their reports.</p>			✓
<p>Recommendation 51: The Appeals Commission take a two-stage approach to reconsideration applications that features an appropriate documentary review and a tribunal.</p>	✓		
<p>Recommendation 52: Amend the <i>Workers' Compensation Act</i> to allow the Chief Appeals Commissioner to authorize a panel of one appeal commissioner to act on behalf of the Appeals Commission for certain types of hearings.</p>	✓		
<p>Recommendation 53: Leading decisions of the Appeals Commission should be published on the Appeals Commission website, organized by topic.</p>			✓

Recommendation	Highest Level Where Change Required		
	Legislation and Regulation	Policy	Operations
Recommendation 54: Consider exempting the Chair and Vice-Chairs of the Appeals Commission from the term limit provisions of the <i>Alberta Public Agencies Governance Act</i> .		✓	
Recommendation 55: Have the Office of the Appeals Advisor report to the new Fair Practices Office.	✓		
Recommendation 56: Provide for representation at judicial review supported by the OAA.	✓		
Recommendation 57: Expand the scope of the OAA to include the provision of the same suite of advisory services to employers.		✓	
SUPPORTING PREVENTION OF INJURIES AND ILLNESSES			
Recommendation 58: Safety associations funded through WCB-collected levies should receive their grant installments from WCB only after satisfying oversight requirements established and delivered by OHS.		✓	
Recommendation 59: OHS and WCB jointly establish a working group featuring representation from employers, workers, the WCB and OHS, to examine issues and make improvements to the collection and use of data related to workplace injuries and illnesses.			✓
Recommendation 60: Amend the <i>Workers' Compensation Act</i> as required to give the WCB authority to collect information relevant to the prevention of workplace injuries and illnesses and to disclose such information to OHS.	✓		
Total	27	19	14



Alberta 