

115/2016



2016 WCB Review Workbook Response



Question 1	Please provide your insights below on how eligibility for workers' compensation in complex claims should be determined.
ACA	<p>The WCB needs to be able to clearly define the incident time, date of occurrence and employee reporting of the occurrence before randomly accepting a claim as a workplace incident. As with all other claims, there has to be a clearly defined incident. Determining a causal link to work duties, evidence based that it occurred because and in the term of employment.</p> <p>The "Benefit of Doubt" policy is fair and reasonable when read within the interpretation provided and when properly applied. It is imperative this not be used as a substitute for lack of evidence, or in purely speculative sense, or when the issue can be decided on the balance of probabilities.</p>
Question 2	Please provide your insights below on expanding the scope of presumptive diseases. Please elaborate on occupations and injuries/illnesses where you think presumptions should be expanded (or reduced).
	<p>We do not support any expansion of presumptive diseases. Implementation of presumptive diseases coverage contradicts the fundamental tenets and responsibilities of the WCB to make decisions based on evidence, policy, and a fair, impartial and transparent process.</p>
Question 3	In your experience, what are some concerns that arise when it comes to claims around psychiatric and psychological injuries?
	<p>A significant challenge is how to determine pre-existing non-occupational condition versus a workplace injury. Further, interpersonal conflict with supervisors or coworkers can pose as depression or anxiety, but are not in themselves reasons to certify workplace injury claims.</p> <p>Mental health diagnosis reveals little about the degree of impairment.</p> <p>In <i>Martin v Alberta Workers Compensation Board</i>, the Court of Appeal upheld WCB policy provisions that exclude stressful employment factors that fall under the description of normal pressures experienced by workers in similar occupations and conditions, including interpersonal conflict and performance management including discipline.</p> <p>The WCB needs to be able to clearly define the incident time, date of occurrence and employee reporting of the occurrence before randomly accepting a claim as a workplace incident. As with all other claims, there has to be a clearly defined</p>

	<p>incident. The worker has an obligation to report the incident and the facility has an obligation to provide the necessary care including reassigning the worker to other duties to protect from an accumulative injury.</p> <p>Non-work-related personal issues should always be serviced by other government and social services, not WCB.</p>
Question 4	Please provide your views on some of the issues and concerns that arise in claims involving pre-existing conditions.
	<p>Treat repetitive strain injuries for older workers as an occupational illness similar to hearing loss (that is, the costs be borne by the industry group as a whole rather than an individual employer) for the following reason:</p> <p>Construction workers accumulate wear and tear through their career with a number of employers. Placing all the costs on the current employer may provide a disincentive to employing these experienced and skilled workers</p>
Question 5	Please provide your comments on the timeliness and effectiveness of the WCB claims process.
	<p>WCB decision writing has declined in the past year. WCB decision makers are not quoting all applicable legislation and policies to the decision. WCB decision makers are also not citing all evidence considered. In some cases, the employer has not even received a written decision. The specific policies should be identified and cited for all decisions made on claims.</p>
Question 6	What are your views about creating a mechanism in Alberta’s workers’ compensation system that would provide a single window for people to raise concerns about WCB claims management and service delivery? If you support this concept, what could it look like?
Question 7	Please describe your views on the willingness of physicians and other health professionals to interact with the workers’ compensation system on behalf of their patients.
	<p>There is limited interest among the physician community to provide timely completion of WCB forms and to cooperate in a timely rehabilitation process to support the WCB’s focus to safely restore an injured worker to employable status.</p> <p>We support the Canadian Medical Association policy “The Treating Physician’s Role in Helping Patients Return to Work after an Illness or Injury”. There were three (3) key points that stood out in the CMA policy: 1) Majority of physicians have not received training on the RTW processes. Educating physicians on the functional model of disability management and thereby eliminating the awkward role where the physician is gatekeeper of entitlement and ability to work.2) Recognizing the</p>

	importance of the patient returning to all functional activities including work as soon as possible post injury with resulting improved mental, physical and social wellbeing.3) Development of efficient strategies to combat the ever increasing demands that physicians experience for medical/functional information. While appreciating the immense value of RTW information for insurers and employers we need to recognize the time and priority demands of the physician
Question 8	What are your views on the WCB's current process for referring injured workers for medical treatment or services?
	It is well established in research that the longer a worker is off work, the greater the likelihood that they will never return to employment. It follows that eliminating delays in accessing treatment results in a reduction in worker pain and suffering, and helps to facilitate timely discussions regarding return to modified work and workplace accommodation as part of the rehabilitation process. The current WCB process of taking injured workers out of the public health care queue benefits both workers and employers. This is not queue jumping, as the Canada Health Act establishes Workers Compensation Boards as being outside the Act. We support the current practice.
Question 9	How do disagreements about medical issues impact the relationships that physicians and other health providers have with the workers' compensation system?
Question 10	In your view, who should be able to request a Medical Panel review? Why?
Question 11	What other roles, if any, could the Medical Panel Office play in resolving medical conflicts? Please describe.
Question 12	Should the Workers' Compensation Act contain a provision that influences or compels an employer or worker to cooperate on return to work? Why or why not?
	The current Act and processes are appropriate to support the WCB's focus to safely restore an injured worker to employable status. We do not support, or see value, in overlapping or competing legislation, which would be the case if the WCB Act and Human Rights legislation both had jurisdiction over accommodation. A requirement in the WCB Act that compels an employer to go any further than what is currently required is not practical and will creating conflict with human rights legislation. The appropriate dispute resolution mechanism if an employee believes they are not being accommodated is under human rights legislation. In addition, claim costs drive employer premium rates, so the motivation is already there for

	employers to support return to work as soon as it is safe for the worker to do so. Employers must have the ability to take into account business operations in considering return to work (eg seasonal work, operations in remote locations, overall worksite safety, etc.) and need the latitude to continue to make sound decisions that are in the best interests of their workforce as well as their business.
Question 13	What challenges do employers face in returning an employee to work? If there are challenges, what additional supports do employers need from the WCB?
	<p>One of the greatest challenges is receiving timely information on restrictions and limitations. Often what is provided is not objective medical information and there are no repercussions on the physician for delays in reporting or for incomplete reporting.</p> <p>An employer's ability to manage their workforce is impacted when a worker performing modified work violates a company safety policy, engages in misconduct, or has performance that is otherwise unsatisfactory. The WCB's approach to pay TTD benefits where the employer suspends or terminates employment, and therefore terminates modified work shields the worker from accountability for their behaviour and creates a financial "penalty" against the employer. Examples include failure of a drug or alcohol test, misconduct (workplace bullying through to violence), insubordination, or theft. Other jurisdictions have avenues to consider suspensions or termination of employment for cause and this should be adopted by WCB Alberta. Keeping a worker on modified duties after a policy violation to avoid the financial impacts of a TTD benefit claim creates a negative work environment. This approach also presents a challenge for the Labour Ministry since there are two sets of public policy that run counter to one another. On one hand, every worker on every site should be safe but because of the WCB interpretation, the message is that if you behave inappropriately on modified work you will still receive TTD or other wage loss benefits even if terminated for cause. The "no fault" provision in legislation was developed with respect to initial acceptance of a claim but it is now being applied to situations beyond claim acceptance. Worker has recourse to Human Rights to determine just cause.</p>
Question 14	In your view, do Vocational Rehabilitation Services provide injured workers with meaningful rehabilitation that prepares them for employment? Please explain.
	The mandate of the WCB is to return a worker to employability not actual employment. For this reason, the deeming process is essential and must be retained however the process and labour market research being relied on must be fair and balanced. The process and practices related to labour market research should be reviewed and consideration given to how this research will be done going forward. This is a critical area and ensuring that best in class practices are being followed, including the skills and expertise of the individuals doing this important work. There are a significant number of decisions being overturned at the Appeals Commission, which could point to a lack of rigor in this regard. There is also a lack of transparency and clarity regarding the database of information that is being used to deem workers. This may be further contributing to the concerns expressed by stakeholders.

Question 15	Please provide any other comments you have relating to the WCB claims process.
Question 16	Please comment on whether the current limits on insurable earnings should be changed.
	The current cap of 90% of net pre-incident earnings up to \$98,700 earnings is far higher than Alberta's average gross wage of \$58,000. The WCB Alberta formula provides for a cost of living adjustment to ensure the MIE covers the full wage of 90 percent of workers covered in the province. Raising maximum insurable earnings risks providing a disincentive to return to work. The number of injuries of those individuals making in excess of the MIE would be, by WCB data, be relatively low. However, the amount of premiums collected by the WCB, if there were no MIE cap, would increase an already inflated green zone.
Question 17	Should an option be made available for workers to obtain additional coverage through the WCB? Why or why not?
	This option is not in keeping with the principles of workers compensation and could introduce perverse incentives for both employers (to reduce their own coverage by pressuring workers to purchase their own coverage) and workers (increased coverage without corresponding accountability – would workers have individual experience rating?)
Question 18	Please comment on whether WCB benefits should recognize career progression.
	Do not support WCB recognition of career progression. There are too many variable factors. Some are within workers control, some involve the continued scope and operation of the employer, and others are impacted by general economic conditions. All would require speculation by the WCB and there is no ability to follow evidence based decision making when the WCB is speculating about potential earnings and possible career progression. Furthermore, WCB benefits are already adjusted for cost of living increases which is the only tangible element related to potential earnings. Maintaining a WCB system that is fair and balanced is paramount. The WCB does not speculate about or take into account the possibilities of future demotion, termination or restructuring of employer operations in making entitlement determinations, so it follows that they should not speculate about career progression either.
Question 19	Please comment on the WCB's use of "deeming" earnings for those workers who are not able to return to work with their original employer.
	The mandate of the WCB is to return a worker to employability not actual employment. For this reason, the deeming process is essential and must be retained however the process and labour market research being relied on must be fair and balanced. The process and practices related to labour market research should be reviewed and consideration given to how

	<p>this research will be done going forward. This is a critical area and ensuring that best in class practices are being followed, including the skills and expertise of the individuals doing this important work. There are a significant number of decisions being overturned at the Appeals Commission, which could point to a lack of rigor in this regard. There is also a lack of transparency and clarity regarding the database of information that is being used to deem workers. This may be further contributing to the concerns expressed by stakeholders.</p> <p>Jobs being used for deeming purposes must be available and be representative of potential work the injured worker could perform.</p>
Question 20	When circumstances arise that may be considered non-compliant (e.g., refusal to participate in medical treatment, refusal of return to work, etc.), what actions should WCB consider and what should happen with a worker?
	If there is a dispute in medical treatment there should be a review process to ensure WCB medical treatment is appropriate and if so benefits should be suspended. If a worker elects or refuses to participate in WCB medical treatment direction, all benefits should be terminated. If modified work is appropriate and worker refuse to return to work wage loss benefits should not be covered and medical cost should be covered.
Question 21	Please provide any other comments you have relating to the WCB benefits process.
	If a worker is on modified duties and they knowingly break employer rules this should be a considered a worker removing themselves from the course of employment. This could also apply to noncompliance with an employer A&D policy, if a worker is in noncompliance with the A&D policy and this is not related to the injury. A worker should be assessed by Substance Abuse Expert. If it is determined that the worker has a disability, benefits should be ongoing as long as the worker participates in the return to work program. If it is determined that it is recreational type use, benefits should be terminated. Worker has recourse to Human Rights to determine just cause.
Question 22	Please provide your views on the effectiveness and timeliness of the DRDRB process.
Question 23	What are your views about the one year limitation period to file a request for a DRDRB review?
	The one year limitation period is appropriate.
Question 24	Please provide your views on the effectiveness and timeliness of the Appeals Commission process.

	The structure is set up well with the Appeals Commission operating independently of the WCB. The transparency of the publication of Commission decisions on the Can LII website, inviting employers to serve as one representative on panels interviewing prospective Commissioners, and periodically meeting with stakeholder groups such as the Industry Task Force to explain performance and use of the funds provided via an allocation from WCB levies are positive.
Question 25	What discretion, if any, should the Appeals Commission have to examine issues relating to a claim that might not be the subject matter of the appeal, but might resolve the matter in its entirety?
	The principles of natural justice are best served when the Appeals Commission is limited to interpreting decisions within legislation and WCB policy. Would not support Appeals Commission having broader scope.
Question 26	What factors should be considered by the Appeals Commission when determining whether a case should be reconsidered?
	We believe the current legislation and policy are fair and reasonable, and should not be changed. A request for reconsideration should not be used by any of the parties as a means to arrange a second hearing if dissatisfied with the outcome. The need for finality of the appeal process requires that the test applied in a reconsideration threshold review be very high. Reconsideration must not become an appeal of the Appeals Commission decision which is intended to be the final decision, or be allowed to become an opportunity to re-argue the original appeal. Managing the claim is the sole responsibility of the WCB.
Question 27	What are your views about the ability of the Office of the Appeals Advisor to offer impartial and effective advice to workers?
	Separating this office from the WCB, and improving the competency of these individuals will go a long way to addressing concerns about bias and insufficient representation. Individuals should certainly remain free to seek assistance elsewhere, but if they access services outside of the Office of Appeals Advisor, they should be required to pay for them on their own, otherwise, would send a contradictory message to workers (i.e. here are the high quality services we are offering, but they may not be good enough so we will also pay for you to get external assistance).
Question 28	Should employers have access to WCB-funded representation at appeals? Please explain.
	Yes. The Office of the Appeals Advisor, acting solely as an advocate for the worker, is inherently unfair. Approximately half of Alberta construction employers have 20 employees or less. The presumption by the WCB that all employers have the knowledge and resources to effectively participate in the Appeals process through the Appeals Commission is inconsistent with the principles of natural justice.
Question 29	Are the safeguards currently in place by the WCB adequate to protect worker information during the appeal process? If not, what safeguards would increase your level of confidence?
	Yes the safeguards currently in place are sufficient. Existing provisions in legislation and policy adequately protect worker right to privacy. Employers require access to certain information in order to be able to make decisions and appropriately

	represent themselves in an appeal. There are provisions within the FOIP process that safeguard right to privacy as well as allow for disclosure of allowable information. The WCB has a mandate to follow relevant legislation, and emphasis should be placed on ensuring that requirements are met rather than introducing new or additional requirements.
Question 30	Please provide any other comments you have relating to reviews and appeals.
	Employer satisfaction with the fairness of WCB claims decisions has consistently been far less than the satisfaction of workers (68.5% vs. 81.2% in 2010, 71.3% vs. 80.7% in 2011, and 65.8% vs. 84.3% in 2012, not reported separately thereafter) (Source: Workers Compensation Board of Alberta Annual Reports). The WCB should be distinct from governance and operations of the Appeals Commission. Principles of natural justice are strengthened when the review of appeals is independent of the body that made the original decision regarding the claim.
Question 31	What involvement, if any, should stakeholders have in the nomination and recruitment process of WCB directors?
	The Board recruitment process should be lengthened so that employer associations are given sufficient time to recruit candidates for consideration. Employer reps be involved in the recruitment interviews as is currently the case with the Appeals Commission.
Question 32	How do you (or your organization) currently provide input to the Board of Directors? What works and what could be improved?
	Individual employers and their associations do not have direct access to the WCB Board of Directors. Communications are through the WCB administration. While the minutes of the meetings of the WCB Board of Directors are accessible on the WCB website, they contain little detailed information, limiting transparency. There is no obligation for them to communicate with stakeholders. There is no publication in advance of a Board meeting regarding what will be discussed, which limits the ability of stakeholders to help inform the discussions. There is also no opportunity for direct input in advance of the Board making policy decisions. We recommend the current WCB Corporate Governance policy be revised to oblige that all nine of the WCB Directors meet regularly with broad stakeholder groups such as the Industry Task Force (for employers) and the Labour Coalition (for labour) to seek input prior to any policy change.
Question 33	What are your views on the performance measures and targets currently set by the WCB? Are there additional or alternate measures you feel would be appropriate?
	Current focus on decision fairness, return to work, leveraging prevention, and financial stability are appropriate. Need to ensure Corporate Scorecard are aligned to these goals.

Question 34	In your experience, is the WCB's current policy development process effective? Please describe how you would like to be consulted in the development of WCB policies.
	The WCB should use in-person multi-stakeholder consultation, where the anticipated change will incur costs above a threshold, for example, where costs impacting those most affected by the change are going to increase by more than 5%. Previous consultations where multiple stakeholders were involved created the opportunities to share perspectives and increase stakeholder understanding of the potential impacts of the change. Many employers operate in more than one province, and are able to share approaches to the same policy issue that are employed elsewhere.
Question 35	What are your views about amending Alberta's Workers' Compensation Act to require that the government review the workers' compensation system on a regular basis? If you support this approach, how often should such a review occur?
Question 36	Please provide any other comments you have relating to the WCB's governance.
	<p>The Meredith Principles, which are the tenets upon which the Canadian workers' compensation systems were built, require that decision-making be based on evidence, law, policy and a fair, impartial and transparent process. In order to meet this requirement, the WCB and the Appeals commission must remain independent and operate at arm's length from government.</p> <p>The Board of Directors, comprised on stakeholder representatives, must have the mandate to oversee the operation of the Workers Compensation Board without undue influence or pressure from government.</p>
Question 37	What role should the WCB or Occupational Health & Safety have in the funding and oversight of safety associations?
	<p>The current practice of employer funding of safety associations through WCB premiums ensures all eligible employers contribute financially to a consistent standard of safety education, training, and audit programs. Safety Associations are not and should not be considered part of the WCB system.</p> <p>Safety Associations all have a governance structure that includes oversight by an elected Board of Directors by their membership. The Boards approve funding and are responsible and accountable to their membership for monitoring activities of the Association. The membership is comprised of employers and other stakeholders as appropriate. There is no need for the WCB to have any involvement in oversight of these associations, however the WCB should continue to periodically confirm employer support to fund the safety associations.</p>
Question 38	Please provide your insights below on the accountability of safety associations and the evaluation of their safety programs.

	<p>Safety Associations all have a governance structure that includes oversight by an elected Board of Directors by their membership. The Boards approve funding and are responsible and accountable to their membership for monitoring activities of the Association. The membership is comprised of employers and other stakeholders as appropriate. We disagree with your opening premise that the workers compensation system impacts OH&S and therefore the WCB Review should examine interactions between the WCB system and OHS. They are two independent systems with different mandates and roles. We believe the evaluation of safety associations is outside the scope of this WCB review.</p>
Question 39	<p>How is the data currently gathered by the WCB meeting your safety and injury prevention needs? Please describe.</p>
	<p>The use of claims data as one of the key measures to drive prevention is a significant concern; WCB data was meant for insurance purposes and not safety data/performance. The integrity and interpretation of the data has also been a long standing concern and continues to be so. Dissemination should be limited to aggregate data that can be used to monitor the performance of WCB programs and activities. They should not have a role in dissemination of individual company statistics to other organizations especially when the data may be used inappropriately. Construction employers' ability to win bids can be heavily influenced by their safety record. A perverse outcome of Government publication of employer safety records could be to reduce the desire to report all incidents, even those with no time lost and very low severity.</p>
Question 40	<p>What other data would be of assistance to you in meeting your safety and prevention needs?</p>
	<p>OHS should work with industry to develop leading indicators that correlate with a demonstrated reduction in injuries.</p>
Question 41	<p>Please provide any other comments you have relating to WCB and roles it could play in the prevention of workplace injury and illness.</p>
	<p>Ties to prevention through the funding mechanism (Partners in Injury Reduction, funding of safety associations, funding of OHS) are appropriate.</p>
Question 42	<p>To what extent is the WCB experience rating system an incentive for preventing workplace injuries and diseases? To what extent is experience rating an incentive for promoting claims suppression?</p>
	<p>The Alberta WCB has proven to be an effective and fair insurer of claims arising from occupational injury, in the provision of meaningful rehabilitation, and in the provision of economic loss where rehabilitation to return to previous income is not possible. The current funding model provides appropriate measures to ensure individual (experience rating, Partners in Injury Reduction) and collective (industry rate groups) employer accountability to ensure the Board provides high levels of benefits while maintaining long term actuarial sustainability.</p> <p>Employers are already being held to a high standard through various pieces of legislation that make claim reporting a priority issue. We have seen no evidence of claims suppression, and with the reporting mechanisms in place (independent reporting</p>

	<p>from the worker, physician and employer) we do not see that the experience rating system is, or should be, a factor in claims suppression. We have seen no evidence of a direct link between the experience rating system and alleged claim suppression. Studies in other jurisdictions have looked at claim suppression and noted that there are many contributing factors to non-reporting by the worker or the employer. To characterize keeping a worker on full pay as claim suppression as has been done in some jurisdictions is not accurate. This is often a benefit that has been negotiated by unions for their members. What has been noted by WCB Alberta is that actual or deliberate claim suppression is much less of an issue than employer misunderstanding regarding the types of issues that need to be reported, in particular the need to report no lost time/disabling injury cases.</p> <p>WCB Alberta has reported they have not had reason to take significant corrective action (levy fines, institute PIR holds, etc.) with an employer related to claim suppression in recent memory.</p>
Question 43	<p>Is there a sufficient investigative process in place to deal with complaints of claim suppression and are the penalties sufficient to deter employers from this practice? How could investigative and penalty processes be improved?</p>
	<p>The existing processes to investigate complaints of claim suppression are sufficient. Apart from investigation, the tripartite reporting requirements (worker, employer and physician) provide a safeguard against claim suppression by employers. We are strong advocates for evidence based decision making within the workers compensation system and have not seen any evidence that indicates claim suppression is an issue. This question asks stakeholders to speculate on ways to improve the process without providing any factual data indicating where and how claim suppression has been identified as an issue. Until it is demonstrated that this is an issue we do not see any need to change investigative or penalty processes. Furthermore, the effectiveness of a penalty process within the workers compensation system is questionable. The financial benefits of effectively managing the cost of claims is a much stronger motivating factor than penalties.</p>
Question 44	<p>Are employers of different sizes treated equitably in regards to ICP? If not, what strategies might be available to minimize inequities?</p>
Question 45	<p>What are your views about the WCB's current practice of providing a premium incentive for employers who participate in the PIR program?</p>
	<p>Strongly support PIR premium incentives to reward employer investments in safety.</p>
Question 46	<p>What are your views about the way the WCB establishes and implements WCB premiums, levies and distributions?</p>

	Employers support the need to ensure the WCB remains fully funded (at or above 100%) to account for current and future claims costs. The WCB funding policy established a “Green Zone” of 114-128% of fully funded to allow for fluctuations in market returns over time without having to dramatically adjust premiums year to year. Premiums surplus to maintenance of a fully funded position should be triggered once the funded position exceeded 128%, the upper end of the Green Zone. In practice, the WCB has operated for years above the 128% threshold, in effect, raising the upper threshold in apparent contravention of its own policy. The return of premiums surplus to the funding requirements would allow employers to reinvest these funds in maintaining and creating jobs for Albertans
Question 47	What other ways can the WCB ensure the sustainability of the workers’ compensation system?
	The best way to ensure the sustainability of the system is to ensure premiums are set in an actuarially sound manner to ensure that current premiums cover the net present value of current and anticipated future costs of claims, plus administration and appeals. Investment returns that exceed these costs should be returned to employers.
Question 48	Distributing surplus money from the Accident Fund to employers is one way to address better-than-expected investment returns. What are some other ideas about what to do with these surpluses?
	Surpluses in the Accident Fund that result from better than expected investment returns are not funds that the WCB or the government should be free to distribute as they wish. The surpluses exist because employers have paid more into the WCB system through WCB premiums than was required to fund current and projected future cost of claims. As a result the surplus is employer money; funds that must be returned to employers.
Question 49	Please provide any other comments you have relating to funding and financial sustainability.
Question 50	Where, if anywhere, do you see opportunities to incorporate consensual resolution processes (such as alternative dispute resolution) in the workers’ compensation system? What could these processes look like?
	All entitlement decisions must remain evidence based and we do not support consensual resolution processes when it comes to making benefit entitlement decisions.
Question 51	What do you like most about workers’ compensation in Alberta?
	Satisfied the current system strikes the right balance between safe rehabilitation and return to employability for injured workers, affordability, and financial sustainability.
Question 52	What are your primary concerns about workers’ compensation in Alberta?

Question 53	We invite you to provide any other comments you have, which you have not already provided.
	WCB must be independent of government and its processes must be evidence based in application to the law and policies.