

July 14, 2016

(via email: wcbreview@gov.ab.ca)

WCB Review, Alberta Labour
c/o Service Alberta Mailroom
11th Floor, Commerce Place
10155 – 102nd Street
Edmonton, AB T5J 4L5

Dear Sir/Madam:

**Re.: Canadian Association of Petroleum Producers (CAPP) response to the Alberta
Workers Compensation Board (WCB) Review Consultation Documents: Working Together**

The Canadian Association of Petroleum Producers (CAPP) and its members would like to thank the Government of Alberta for the opportunity to provide feedback on the Working Together: A Guide to the Review of the Workers' Compensation System.

We recognize the importance of providing healthy and safe working conditions, and of supporting workers and their families in the event of a workplace injury. This review provides an opportunity to strengthen the workers compensation system by seeking solutions to current challenges that will meet the needs of both workers and employers.

Our comments are founded on the following considerations:

- Commitment to a robust WCB system that provides no-fault insurance for injured workers.
- Recognition that the no-fault principle does not extend to post-incident behavior.
- Assuring evidence based decision-making, utilizing current medical research and accurate workplace information, and a fair test for claim acceptance. Decisions must be based on evidence, law, policy, and be made by way of a fair, impartial and transparent process. CAPP urges the WCB to remain true to these principles.
- Recognition that determination of work-related causation may be multifactorial, and that WCB provides coverage for work-related illness and injuries. Other systems are in place for illness and injuries that are non-work related.
- Ensuring that the WCB's principles of compensation promote prevention, workplace safety, and durable return to work.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the
Review of the Workers' Compensation System of Alberta**

CAPP asks the government to remain true to The Meredith Principles, upon which the Canadian workers' compensation system was built.

Key concerns are as follows:

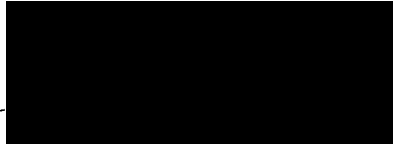
- CAPP believes the current practice of collection of excessive funding by the WCB which contributes to overfunding must be reviewed. CAPP asks the WCB to ensure that funding covers claim costs for life-of-claim. We request a review of the "green zone" (114-128%) that is applied to WCB employer premiums to determine surplus reallocation. Actuarial review is recommended and CAPP members look forward to future engagement.
- The existing cap on maximum insurable earnings is appropriate. It should not be increased, as it is the second highest in Canada.
- Alberta workers should not be able to purchase additional "insurance" coverage from the employer funded scheme. Private insurance organizations exist for this purpose.
- It is important to assure that the Appeals Commission remains independent from the WCB and government.
- The services available through the Employer Appeals Consulting Service (EACS) are too limited, and the office is unable to provide representation for employers in an Appeal hearing. An impartial employer specific appeal support function is needed, similar to that available to claimants.
- CAPP strongly supports the WCB continuing to make injury and illness information available within the existing parameters, assuring privacy and confidentiality. The harmonization and extension of WCB classification codes and statistics across provincial borders is helpful.
- There has been erosion of the level of consultation between the employer representatives to the WCB Board of Directors and the industry associations that represent employers. Greater consultation and engagement is sought.
- Oil and gas producers wish to participate in the selection processes for WCB Board representatives, and seek greater collaboration in this regard.
- Amendment of legislation to address identified concerns, such as personal coverage for Directors, WCB review frequency and other matters.

CAPP looks forward to gaining additional insight on many elements within this review and offering meaningful comment. CAPP and its members are open to further engagement and dialogue, and wish to coordinate with the Review Panel to ensure that an effective Workers Compensation System is in place for the province and stakeholders, and that opportunities for improvement are addressed.

CAPP respectfully submits the following detailed comments (see Appendix A, attached) in response to the specific elements outlined in the Guide and Workbook. We encourage the government to continue to engage collaboratively and implement improvement opportunities during the review process.

Thank you for the opportunity to comment on the Guide and Workbook. We also appreciate the opportunity to continue to provide input into the review of the Workers Compensation System in Alberta. CAPP and our members look forward to continuing our work with the government of Alberta and the Review Panel.

Sincerely,



Brad Herald
VP, Western Canada Operations

cc: Lenore Neudorf, ADM, WCB Review Secretariat

Attachments:

- Appendix A: Detailed Comments from CAPP on the on the Guide and Workbook

About CAPP

CAPP represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's member companies produce about 85 per cent of Canada's natural gas and crude oil. CAPP's associate members provide a wide range of services that support the upstream crude oil and natural gas industry. Together CAPP's members and associate members are an important part of a national industry with revenues from oil and natural gas production of about \$120 billion a year. CAPP's mission, on behalf of the Canadian upstream oil and gas industry, is to advocate for and enable economic competitiveness and safe, environmentally and socially responsible performance.

APPENDIX A:

***Detailed Comments from the Canadian Association of Petroleum Producers (CAPP)
Working Together: Alberta Workers Compensation Board (WCB) Review***

The WCB Claims Process

1. Determining a Claim's Eligibility for Benefits

- CAPP is of the opinion that the “but for” test as a basis of determining causation is a sound way of making decisions.
- Complex claims must involve meaningful employer engagement prior to entitlement decision. Sufficient time must be available to workers and employers to engage meaningfully in the process.
- The compilation and interpretation of information required for claim entitlement determination associated with complex claims can take a long time. Regardless of eligibility, claimants should have access to required medical assessment and treatment.
- CAPP believes that there are mechanisms for cost allocation or removal later once an entitlement decision has been made that could be utilized.

2. Presumptions about Injuries and Illnesses

- CAPP does not support any expansion of scope of presumptive diseases. Introduction of presumption was contrary to the fundamental principles upon which the WCB was established. Benefits should be determined based on the principles of “work-relatedness” (WCB Principle 10) which means that the injury or illness needs to be caused by work.
- Presumption by occupation is inconsistent with best practice, and CAPP advocates for a requirement for a definitive causal association as well as a strong statistical link, ensuring fairness and impartiality.
- CAPP refers to policy 03-01 Part II that outlines the existing interpretation associated with presumption. This is sufficient and should not be expanded. It already states that the WCB will consider any other disease condition. No change is required to the existing policy.
- CAPP and its members are of the opinion that a clear link to work related incidents must be established for claims for mental health issues to be accepted.
- Claim adjudication and management associated with psychiatric and psychological injuries are challenging for the claimant and employer, and case management practices need to be cognizant of this. Processes for adjudication and management for psychological and physiological illness and injuries should be transparent and aligned, including medically supported diagnoses meeting DSM

Review of the Workers Compensation System

Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta

(Diagnostic and Statistical Manual of Mental Disorders) criteria, illness or injury occurring of/in the course of employment, and application of disability management and duration guidelines.

3. Claims involving pre-existing conditions

- CAPP recognizes that it can be difficult to determine whether something in the workplace aggravates a condition. If no specific incident can be identified as aggravating a pre-existing condition, then members believe that a claim should be denied.
- The language of the existing policy is vague, and does not specify criteria such as time or resolution of pre-existing conditions prior to aggravation. The existing policy needs to be reviewed to enable greater consistency of interpretation during adjudication and application of cost relief provisions. CAPP requests that the WCB improve the policy statement so that greater consistency can be applied.
- Consideration should also be given when determining entitlement in situations when a deliberate, wilful and intentional act of the worker aggravates a pre-existing condition. This is aligned with the rights of both workers and employers to fairness and impartiality, and the presumption of honesty.

a) Cost relief for Employers

- Cost relief should be applied in situations where payments made are related to conditions that are not compensable, and where these present barriers to return to work. Where the WCB, in consultation with the employer, is of the opinion treatment should be provided for a non-compensable condition as a rehabilitative measure, then the costs associated with such measure should be relieved from the account of the employer.

4. Claims Management and Service Delivery

- Claim administration and return to work outcomes are enhanced when everyone in the rehabilitation team are working together to support the injured worker to return to work successfully. Enhancement of WCB processes and case management structure to enable greater relationship building and knowledge through utilization of dedicated case managers with knowledge of industries and workplaces will benefit workers and employers.
- A more targeted claim triage process is recommended that ensures that high risk, complex or sensitive claims are flagged for case management more quickly. This would form a potentially useful performance measure.
- Proactive intervention programs or similar early intervention programs could be developed to engage with high risk claimants quickly. These programs would support evidence based decision making through timely assessment, and support positive return to work outcomes through timely intervention for injured workers.
- CAPP members recognize the proactive education initiatives undertaken by the WCB.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta**

7. Medical services

- CAPP and its members recommend development and implementation of a physician engagement strategy that provides education and support on WCB to physicians on rehabilitation and return to work processes. A system to monitor for practice of concern to support physicians to utilize the scheme within the parameters of the scheme should be considered. We believe that this could be a joint initiative between the WCB and the Canadian Medical Association / Alberta Medical Association, and may include engagement at the AWCB and physician educational collages, and ongoing professional development forums. Monitoring for referral trends of concern or other atypical practices could help create opportunities for continuous improvement.
- The WCB is cautioned against inadvertently creating practices that may increase fraudulent use of the system or jeopardize care available through the public health care system.
- Opportunities exist to utilize technological solutions to optimize to shorten timelines and enhance communication.

9. Resolving disagreements about medical issues in a Claim

- We believe disagreements related to medical issues can be greatly reduced through a concerted focus on consistent application of the policy and objective decision making.
- CAPP supports the current provision that allows only the WCB or Appeal Commission to request that a Medical Panel be convened.
- CAPP does not support introduction of a formal mechanism that allows either the employer or the worker to request, directly for a Medical Panel for review. Requests from either stakeholder should be submitted to the WCB and should be supported with a statement of the facts and reasons for the request.
- A process for specialist consultation already exists within the medical community and interjecting the Medical Panel Office into this process is not necessary.

12. Returning to work**a) Return to full or modified duties at original employer**

- CAPP does not support WCB amending the WCB Act to compel employer cooperation in return to work. Existing duty to accommodate legislation and financial incentives are sufficient, and are aligned with international best practices.
- If an employee believes they are not being accommodated, the appropriate remedy is under human rights legislation.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta**

- It is imperative there be a discussion with the employer prior to implementation of vocational services.
- Vocational services should not be initiated when a claimant remains job attached and / or the employer has indicated they are able to accommodate. There should be a greater emphasis on Vocational Rehabilitation Services being customized on a case by case basis.
- Greater attention should be paid to work conditioning and work hardening programs to ensure that programs are more closely aligned to the source workplace. This will enhance return to work outcomes.
- Attention should be paid to ensuring that rehabilitation is only approved in situations where it has potential to improve functional outcomes.
- The WCB Act should be amended to enshrine the principle that no-fault does not extend to the worker's post-incident behavior. WCB policy should clearly define circumstances by which the worker has effectively removed themselves from the workplace.

b) No return to original employer

- No comments identified.

WCB Benefits**16. Loss of Earnings**

- Members agree that 90% of net earnings is an appropriate benefit amount, and that this is an appropriate balance of earnings replacement whilst maintaining incentive to return to work.
- The existing cap on maximum insurable earnings is appropriate. Having a cap is consistent with other jurisdictions in Canada and based on salary surveys. Currently the cap is the second largest in Canada.
- CAPP does not support an option for workers to purchase additional coverage through the WCB. Workers who are concerned about loss of income and who want to purchase optional or additional coverage in the event of an injury or disability should be encouraged to do this outside the WCB system, through existing insurance schemes.
- CAPP supports maintaining the existing formula to determine the WCB insurable earnings, which for 2016 is \$98,700.00.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta**

18. Benefits adjustments

- CAPP does not support the WCB recognition of career progression or potential earnings. We recognize that WCB benefits are already adjusted for cost of living increases.

19. Deeming earnings

- The process for deeming earnings must be based on best practices. CAPP urges the WCB to explore current best practices and ensure that processes are fair and transparent.

20. Non-compliance and effect on benefits

- Claimant non-compliance with reasonable medical and rehabilitation case management expectations (such as appointments) need to be linked to consequences within the Act, and it is the responsibility and the obligation of the WCB to adjust or terminate WCB benefits. Employers recognize that a claimant has the right to refuse treatment, however application needs to be balanced within the context of an insurance scheme, and appropriate consequences applied.

Other income replacement options for workers

- CAPP does not support the establishment of an emergency fund for workers. Income replacement should be funded within the existing system.

Other considerations

- The WCB Act does not mandate coverage for Corporate Directors.

Review and Appeal of WCB Decisions**22. The Dispute Resolution and Decision Review Body (DRDRB)**

- CAPP supports the DRDRB process, and members find the process generally effective and timely.
- CAPP asks that the DRDRB process be guided by evidence based decision-making and advocates that the DRDRB not be given authority to act outside policy and legislation.
- Recognizing the challenging nature of this role, staff engaged in these processes need to be highly trained and competent, and well supported by professional development, mentoring and support systems.
- We believe 1 year is reasonable and see no reason to change this.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta**

- The WCB is advised to include a consideration into the process that ensures that all parties have sufficient time to compile information, and grant extensions as required to enhance the effectiveness of the DRDRB decisions. Greater time to prepare will facilitate better decision making at the DRDRB level, and reduce the number of appeals that go forward.

24. Appeals Commission

- CAPP supports the current structure whereby the Appeals Commission operates independently of the WCB. The Appeals Commission is to be commended for efforts in recent years to improve and streamline processes, and ensure a fair and balanced system exists.
- We note that the timelines associated with appeals in Alberta are much shorter than in other jurisdictions (scheduling hearings / rendering decisions etc.). While timeliness is important, adhering to a timeline is not as important as reaching considered and informed decisions. Performance measures focusing on quality of decision rather than timelines are recommended.
- In the interests of ensuring evidence based, fair and transparent process the Appeals Commission must be restricted to only review identified issues of appeal and for which a decision has already been reached by the WCB / DRDRB.

26. Reconsideration of Appeals Commission decisions

- The current legislation and policy are fair and reasonable, and should not be changed.
- Reconsiderations should only be granted where a significant defect in the appeal process or content of the decision is shown, or in situations where new evidence is accepted by the Appeals Commission and it is determined that it would have changed the decision.

27. Getting help at the review and appeal stages

- CAPP members recommend transferring the Office of the Appeals Advisor to the Ministry of Labour. This office should operate at arms-length from the WCB, and be operated by staff external to WCB, to support claimants. Access to legal aid is not required.
- CAPP also recommends that employers be provided with equal access to WCB funded representation and recommends the establishment of an independent Employer Appeals Office, within the Ministry of Labour, also funded through an allocation of WCB premiums. This office should be established at arms-length from the WCB.
- The Employer Appeals Consulting (EAC) service offers limited advice for employers and no representation in an appeal. Because the service is so limited employers are encouraged to hire external consultants. This creates cost and often leads to a more adversarial appeal process. CAPP recommends that the mandate of this service be reviewed, and suggests that there is a need for both an independent appeals advisor function, as well as a WCB sponsored employer consulting service.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta**

29. Privacy and Confidentiality

- The safeguards currently in place are adequate to protect worker information. Existing legislative protections are in place and these are adequate to protect privacy and confidentiality.
- Employers have a duty to accommodate disabilities. To enable them to meet their legal duty it is imperative they be able to access and use information provided to the WCB in order to facilitate a return to work and better understand how employee's disabilities can be accommodated.
- Employers require access to certain information in order to be able to make decisions and appropriately represent themselves in an appeal. Any move to amend legislation to further restrict access to information in an appeal would disadvantage all parties.
- CAPP recommends that the WCB consider the approach taken within other jurisdictions which allows for the parties to review information that will become part of the documentation for an appeal in advance of information being released to other parties. This affords all parties the ability to request that specific information be redacted.

WCB Governance**31. Board of Directors of the WCB**

- A competency based selection for Directors to the Board of the WCB is important.
- Employer and Industry Associations should have direct input on their designated representatives. This may occur by way of stakeholder representative engagement in the recruitment process, or an alternative meaningful engagement.
- Board recruitment processes may need to be lengthened so that stakeholders are given sufficient time to recruit and put forward candidates for consideration.

33. WCB corporate objectives and key deliverables

- The WCB can be commended for a clear and consistent focus on alignment of goals, strategies, performance measures and communication.
- Recent changes in financial reporting do not provide as much clarity as in previous years. We recommend that improvements be made in the quality and timeliness of data available to stakeholders.
- The current WCB Corporate Scorecard and performance measures focus on elements that can drive undesirable actions, and should be reviewed. CAPP advocates for measures that drive service and outcome driven quality positive performance activities such as durable return to work, and take into consideration the needs of all stakeholders.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta**

34. Policies of the WCB

- The WCB needs to be more proactive in consulting and educating employers regarding policy changes. It is recommended that the WCB formalize consultation processes, and increase the range of forums by which consultation occur. For example, use of in-person multi-stakeholder consultation, face-to-face meetings with employer groups and other media.
- CAPP advises the WCB to work collaboratively with other provinces, as many employers operate in more than one province, and consistency of policy enables higher quality injury management practices, benefiting workers and employers.

35. Review of the Workers Compensation System

- CAPP agrees that there is a need for a requirement in the Workers Compensation Act for a periodic review of mandate and operations. CAPP recommends amending the Act to require a review of the workers compensation system every ten years. A more frequent review cycle would create uncertainty and confusion.

Prevention of Workplace Injury and Illness**37. Role of WCB in prevention**

- CAPP recognizes that workers compensation schemes in Canada differ in the application of the three functions; prevention, rehabilitation and compensation. We welcome further discussion on this subject.
- CAPP refers to the Report from the Auditor General that refers to opportunities for improvement within the Alberta Occupational Health and Safety Department (page 39).

39. Health and safety information

- CAPP strongly supports the WCB continuing to make injury and illness information available to assist in the development, implementation and measurement of initiatives to improve safety performance, in accordance with applicable legislation, thereby ensuring that the privacy of employers and injured workers is assured.
- CAPP strongly supports the availability of high level WCB information meeting rigorous confidentiality and privacy requirements to industry, to help develop the next generation of safety initiatives designed to improve safety performance, and harmonization of Canadian WCB statistics.
- CAPP wishes to thank the WCB of Alberta for showing leadership in this space.

Funding and Financial Sustainability

42. Employer premiums

- CAPP supports the experience rating system.

45. Partnerships in injury reduction

- We strongly support the current practice of providing PIR incentives, and recommend that the criteria that have been established remain in place.

46. The WCB accident fund

- CAPP agrees that the WCB scheme needs to be fully funded, however the current funding policy needs to be reviewed.
- CAPP recognizes the current WCB funding policy establishes a “Green Zone” range of 114-128% of fully funded premiums. We believe this range is excessive and recommend that the range required to maintain actuarial soundness be confirmed independently, and published on the WCB website.
 - The current policy was intended to cushion against fluctuations in market returns over time without having to adjust premiums year to year, however despite a recent period of deflation and significant economic downturn, the scheme remains overfunded.
 - The WCB has operated for years with a funded position above 128% (the top of the Green Zone) in effect raising the upper threshold in contravention of its own policy. The value of the discrepancy is substantial (each 1% above 128% is approximately \$70 million).
 - Compounding the overfunding is the cap on the amount that can be returned to employers in any given year.
 - Collecting more money from employer premiums than is required is not a practice that should be continued.
 - The existing system operates such that employers are over paying premiums each year, and then receive a portion of the surplus as a refund / dividend in subsequent years. This locks up company capital, and is not in the best interests of any stakeholders.
- Returning the surplus to employers does not impact benefits for workers and allows employers to access company capital.
- CAPP wishes to ensure that OH&S levies are applied to OH&S programs rather than flowing to General Revenue. CAPP also recommends that unallocated OH&S funds be carried forward into the next financial year, thereby reducing the OH&S levy rate for the subsequent year. We are seeking greater transparency and reporting back to employers.

Review of the Workers Compensation System**Re: CAPP Response to Working Together, A Guide to the Review of the Workers' Compensation System of Alberta**

- CAPP requests greater accountability and transparency regarding surplus distribution and reporting on utilization.

Additional Questions**Alternative dispute resolution**

- All entitlement decisions must remain evidence based and we do not support a consensual resolution processes when it comes to making benefit entitlement decisions.
- There may be room for introduction of an alternative dispute resolution process where the focus of discussions in on return to work, suitability of modified work, accommodation in an alternate position, etc.

Surplus distribution

- Refer to above comments. CAPP strongly urges the WCB to lower the “green zone” towards 100%. The workers compensation system is fully funded by employers. Funding has remained healthy through several significant industry downturns, supporting the hypothesis that a higher band is not warranted. Lowering of the “green band” to a more reasonable level returns needed revenue to the employers, thereby potentially supporting employment and investment.
- We recommend that WCB policy be amended so that any surplus is returned to employers within a period not greater than one year using the current formula. We do not support any move towards a “premium holiday” or other method of allocating the surplus.
- The cap on the annual surplus distribution to employers should be removed.
- CAPP requests that options for deductibles, waiting periods and reintroduction of a self-insurance model within the WCB system also be open for consideration.
- CAPP supports the Surplus Distribution Policy Principle. This is employer money, which should be given back to employers when excess premiums have been collected by the WCB. The WCB needs to review how it sets premiums to ensure there is little, if any excess premiums collected, thereby reducing the need for a cap on surplus distributions.