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RESPONSE TO
THE WORKPLACE SAFETY AND INSURANCE BOARD'S PROPOSED PRELIMINARY RATE FRAMEWORK

Submission to the WSIB Consultation Secretariat

SEPTEMBER 2015

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We would like to thank the following members of the Ontario Chamber of Commerce WSIB Taskforce, chaired by Jason Mandlowitz, for their contributions to this submission. Without their expertise and guidance, this submission would not have been possible.

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About the Ontario Chamber of Commerce

For more than a century, the Ontario Chamber of Commerce (OCC) has been the independent, non-partisan voice of Ontario business. Our mission is to support economic growth in Ontario by defending business priorities at Queen's Park on behalf of our network's diverse 60,000 members.

From innovative SMEs to established multi-national corporations and industry associations, the OCC is committed to working with our members to improve business competitiveness across all sectors. We represent local chambers of commerce and boards of trade in over 135 communities across Ontario, steering public policy conversations provincially and within local communities. Through our focused programs and services, we enable companies to grow at home and in export markets.

The OCC provides exclusive support, networking opportunities, and access to innovative insight and analysis for our members. Through our export programs, we have approved over 1,300 applications, and companies have reported results of over $250 million in export sales.

The OCC is Ontario's business advocate.

Author: Kathryn Sullivan, Policy Analyst, Ontario Chamber of Commerce, September 2015

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September 2, 2015

Mr. David Marshall
President & CEO
Workplace Safety and Insurance Board's (WSIB)

Thank you for the opportunity to respond to the Workplace Safety and Insurance Board's (WSIB) Proposed Preliminary Rate Framework consultation paper released in February 2015.

Building a 21st century workforce is a core component of the Ontario Chamber of Commerce's (OCC) five year *Emerging Stronger* economic agenda. Keeping the province's economy firmly on the path from recovery to growth will require changes to the way government and its agencies work. Ontario needs a workers' compensation system that is both responsive to labour market needs and fiscally sustainable.

Over the past number of years, the OCC has made a series of recommendations to the WSIB in an effort to make the organization more responsive to the needs of employers. The 2013 OCC report *Are We There Yet? An Employer Perspective on WSIB Reform* recognizes that achieving a self-sustaining workers' compensation system requires the continuation of structural reforms.

We have seen progress in some areas since the release of that report. Employer premiums have been frozen since 2013. The WSIB's unfunded liability – the difference between payments for future benefits to workers and the funding received from employers – has fallen by $5 billion since 2012. But more work remains.

While in some respects the Proposed Preliminary Rate Framework marks a positive change from the existing rate setting process, there are many elements within the proposed framework that could raise the cost of doing business in Ontario.

As such, we are eager to provide you with 10 recommendations that, if adopted, will create greater certainty for employers and ensure that Ontario benefits from an effective workers' compensation system. The recommendations align with the key goals of the Proposed Preliminary Rate Framework, including its commitment to transparency, balanced rate responsiveness, and its efforts to fairly allocate premiums.

Thank you for taking the time to review this submission. We look forward to working with you over the coming weeks and months to create a workplace insurance system that is more responsive to the needs of employers and workers.

Sincerely,

Allan O'Dette

Allan O'Dette
Ontario Chamber of Commerce

Below follows the coalition of signatories that endorse our position.

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HOW DOES THE CURRENT WSIB SYSTEM WORK?

The WSIB classifies employers according to the nature of the service or product that their business provides into one of nine classes. Each class has an alphabetic identifier:

A. Forest Products
B. Mining & Related Industries
C. Other Primary Industries
D. Manufacturing
E. Transportation & Storage
F. Retail & Wholesale Trades
G. Construction
H. Government & Related Services
I. Other Services

The WSIB then considers the business activity involved in providing the service or manufacturing the product to determine the premium rate that the employer will be charged. Each rate constitutes a rate group. There are currently more than 150 rate groups in the system.

Within each rate group, employers are further divided into classification units based on the similarity of their businesses in terms of service/product and risk profile. The WSIB tracks the relative claims experience of each classification unit within a rate group. If the accident costs of a particular classification unit diverge from the rate group average, it is flagged and potentially moved to another rate group that is more reflective of its current risk profile. There are currently more than 800 classification units in the system.

Problems with the current WSIB system

1. Rates can, and often do, change year over year
In the current retrospective system, all employers within a single rate group are charged the same initial premium rate, regardless of their payroll size. The employer is then charged a surcharge if their actual claim costs exceeded the expected claim costs. The employer receives a rebate if actual costs were less than the expected costs.

As a result of this surcharge/rebate system, employers can be subject to varying premium costs on a year-to-year basis. In fact, it is not uncommon for employers to move from a surcharge position to a rebate position or vice-versa from one year to the next. This variance is problematic: in both cases, an employer's cash flow will have been impacted for 20 months (the time it takes the WSIB to issue surcharges and rebates). Meanwhile, employers eligible for a rebate are not paid interest for the amount that they paid in excess of their actual claim.

The WSIB proposes to shift from the current retrospective system to a prospective system. In the prospective system, the premium rate paid by employers will be based on their individual claims history. The WSIB will review the employer's claims experience each year and adjust the premium rate on an annual basis as required. We support the implementation of a prospective system on the grounds that it would address the current system's issue of substantial premium rate volatility on a year-to-year basis.

2. The system relies on an outdated classification system

The WSIB classification system relies on Standard Industry Classification (SIC), an industry classification system. The SIC system is outdated and does not reflect significant changes in the economy that have occurred over the past 30 years.

Additionally, for the last twenty years, North American statistical agencies have moved away from the SIC system and towards the North American Industry Classification System (NAICS). One of the goals of the NAICS was to capture emerging industries. The changes in the economy as well as the replacement of the SIC with the NAICS means that, in practice, the WSIB's classification structure is out of step with the current context. This hinders the WSIB's capacity to accurately assess risk and determine rate groups.

The WSIB initially proposed to adapt the 22 class structure used in the most recent version of the NAICS (and more recently published an analysis suggesting an expansion to a 32 class structure to account for risk disparity within certain industries). This structure would be updated every five years to capture new and emerging industries. We support the implementation of the NAICS system on the grounds that it would improve the WSIB's capacity to assess risk and determine rate groups as well as the responsiveness of the system to changes in Ontario's unique economy.

THE PROPOSED RATE FRAMEWORK

The WSIB proposes to discontinue the practice of subdividing employers into rate groups and classification units. Instead, it proposes to capture the distinctiveness of employers by increasing the number of classes from nine to 32 (see Appendix 1 for a full listing of these classes).

However, instead of paying a premium rate in accordance to their rate group or industry class, employers will now pay an employer centric premium rate based on their own risk or claims experience in relation to the collective liabilities of employers within their class.

Within each class, employers will be assigned to a price point or 'risk band' that is indicative of their risk profile from the lowest level to the highest level of risk. Risk bands are defined as unique price points within each industry class (between 40-80 per industry class, with each representing a 5% increment in premium rate), to provide each employer with an annual prospective rate that reflects their own risk and experience. The greater variance of risk within a class, the greater the number of risk bands.

The premium rate paid by employers will be adjusted in accordance to their individual claims experience. Put simply, the new system will adjust employers' premiums based on their claims costs. To accomplish this, the WSIB will evaluate individual claims experience each year. In order to ensure premium rate stability for employers, every year an employer could move either up or down a maximum of three risk bands, with each band representing a five percent increase or decrease in the amount paid by the employer.

CHALLENGES WITH THE PROPOSED RATE FRAMEWORK

The proposed rate framework will create savings for some employers, and create new costs for others. The new proposed rate framework is a significant departure from the existing system and creates a great deal of uncertainty in the employer community. By eliminating the 155 rate groups that currently determine employer risk premiums and replacing them with 32 classes, many employers will find themselves paying different risk premiums.

In July 2015, the WSIB published a consultation update that explains how employers within a specific rate group in the current classification structure might be classified in the proposed classification structure. While the update provides information on the range of premium rates within a class, the actual rates paid by employers within a class will vary quite significantly in accordance to their individual claims experiences and the number of risk bands allocated to that class. There is still considerable uncertainty as to how much the actual premium rates paid by employers will change as a result of these reforms. Employers rates will increase or decrease based on their claims cost experience relative to their industry. However, the adoption of a new Rate Framework would not affect the total amount of premium dollars collected by the WSIB, thereby remaining revenue neutral for the workers' compensation system as whole. The proposal seeks to ensure that the costs of the system are attributed to individual employers and industries to better reflect the risk and claims experience that they bring.

RECOMMENDATION 1
The WSIB should provide a public and detailed analysis of how the proposed rate framework changes will impact employers.

Employers with effective health and safety programs could end up subsidizing employers with high claims costs as a result of the proposal to stop surcharges. In the current system, all employers within a single rate group are charged the same initial premium rate, regardless of their payroll size. The employer is then charged a surcharge if their actual claim costs exceeded the expected claim costs. The employer receives a rebate if actual costs were less than the expected costs. As indicated in the preceding section, this process is very inefficient.

In the proposed framework, employers will be assigned a rate that more accurately reflects their individual claims experience based on an analysis of the employer's claims cost history for the past six years. The WSIB will review employers' claims on an annual basis. If an employer performs well by submitting fewer than the expected number of claims, they might be moved to a lower risk band. Conversely, if an employer performs poorly they might be moved to a higher risk band. Employers can be moved a maximum of three risk bands (either up or down) per year, representing a maximum increase or decrease of approximately 15 percent (relative to their class). The maximum premium rate that an employer would pay in the proposed framework would be the rate charged to the highest risk band in their class.

The elimination of the surcharge mechanism in the proposed framework becomes problematic when an employer's costs far exceed the rate charged to the highest risk band in their class. The high claims costs incurred by the employer would be absorbed by the remainder of the class through increases to the average class premium rate.

We recognize that effective health and safety programs can significantly reduce injury rates and, subsequently, the claims costs incurred by employers. We feel strongly that employers with dedicated and effective occupational health and safety programs should not subsidize employers who fail to do the same. However, we are mindful that claim cost experience is not always directly related to occupational health and safety. A significant and costly accident can result even where an employer has taken all reasonable steps to implement and administer an occupational health and safety program. For this reason, it is unfair in many circumstances to surcharge an employer without first providing them an opportunity to address the cause of the accident(s).

The Workers' Compensation Board of Alberta developed a Poor Performance Surcharge (PPS) program to address this very issue. The PPS is applied only to those employers with consistently poor claims records that are at least 80 percent worse than their class average.

The PPS is a progressive system; in the first year that the employer is identified as a poor performer, they are issued a warning letter that includes recommendations as to how the employer might improve its health and safety programs to reduce its claims costs. In the second year, the employer may be charged a maximum surcharge of 25 percent. The surcharge rate increases each year that the employer remains a poor performer up to a maximum surcharge of 200 percent after five or more years of poor performance.

The PPS encourages employers to take immediate action to improve their health and safety management efforts to help reduce injuries and avoid further surcharges while also ensuring that other employers in their class are not forced to pay the cost of their poor performance.

RECOMMENDATION 2
The WSIB should implement a program similar to the Alberta PPS to encourage high cost employers to improve their health and safety management efforts and to ensure that the cost of poor performance is absorbed by poorly performing employers rather than other employers in their class.

A limited number of classes risks grouping employers with very different risk profiles. In July 2015, the WSIB provided further analysis illustrating a suggested expansion of the number of classes proposed in the Proposed Preliminary Rate Framework from 22 to 32 in response to feedback received that the original structure could have negatively impacted employers with low risk profiles that are classified in a group with employers with significantly higher risk profiles. For example, the WSIB originally proposed to classify both electricians and demolition workers in the same class, despite the fact that electricians have much lower risk profiles than their counterparts in the demolition business.

Although a 32 class structure represents a step in the right direction, many of our members have expressed concern that the proposed class structure still does not accurately reflect their risk profile. This is problematic and could impose undue costs on businesses, particularly low risk operations that have been classified amongst those associated with high risk.

RECOMMENDATION 3
Expand the class structure to more accurately reflect the risk profiles of employers, while maintaining the predictability of industry classes and premium rate stability for employers.

The shift towards predominant business activity classification will increase the cost of doing business. Under the current system, if an employer's operations involve two or more business activities, they are able to segregate their payroll and pay different premiums based on their insurable earnings. For example, if 30 percent of an employer's activities occur in the resins, paint, ink, and adhesives rate group, while 70 percent of the employer's activities occur in the oil, power, and water distribution rate group, the employer is able to pay premiums according to the rate groups that each of those operations is subject to, providing that the employer is able to segregate their payroll. Using this same example, under the proposed framework, this employer would be subject to a premium rate based solely on its predominant business activity, in this case, oil, power, and water distribution.

In some ways, this approach is not new to the system as it resembles the classification process used for small employers that are unable to segregate their payroll.

This new classification method for employers with multiple business activities raises some concerns. In the case of employers whose earnings for each business activity are similar, the employer will be paying a premium rate based on their predominant business activity, and risk profile. In some circumstances these employers may be paying more WSIB premiums as compared to the current classification and rate-setting model, and some may be paying less than the current system. Additionally, if the employer's insurable earnings between business activities fluctuate it is possible that the predominant business activity could change year to year. This would jeopardize the WSIB's stated goal of stable premium rates.

The WSIB has proposed that temporary employment agencies be exempt from these new rules, and instead be allowed to continue to pay premiums in multiple classifications/premium rates. We believe that all employers with fluctuating business activities would similarly benefit from the opportunity to report earnings in multiple rates.

RECOMMENDATION 4
The WSIB should reconsider implementing the predominant class model and continue to allow businesses to pay different rates based on their activities in different business areas.

The Elimination of the Second Injury and Enhancement Fund would reduce reemployment opportunities for injured workers. The WSIB proposes to eliminate the Second Injury and Enhancement Fund (SIEF). In the current system, employers can transfer health care and compensation costs incurred as a result of a worker's pre-existing condition to the SIEF. The SIEF encourages employers to return injured workers to modified work or regular employment.

The SIEF reduces the actual claims costs that are used to calculate rebates and surcharges. Greater usage of SIEF leads to higher rebates (or lower surcharges). Morneau Shepell argues that some employers use the SIEF excessively to reduce their claims costs, resulting in an inequitable sharing of common costs which could undermine the return to work initiative.

We believe that the opportunities for reemployment provided to injured workers by the SIEF contribute to the fairness of the WSIB structure. The SIEF is not a financial incentive used by employers to receive higher rebates (or lower surcharges) but to provide opportunity to injured workers. The continued success of second injury policies in other Canadian jurisdictions, including British Columbia and Alberta, where workplace insurance boards administer a budgetary surplus demonstrates that second injury policies do not undermine the financial sustainability of the system.

RECOMMENDATION 5
The WSIB should retain the SIEF to encourage the reemployment of injured workers.

The proposed claims experience 'window' to determine premium rates could result in employers being charged for risks that are no longer a feature of their workplace. The WSIB proposes to extend the number of years of experience used to determine both an employer's rate setting and experience rating up to six years. This proposed claims experience 'window' is much higher than other jurisdictions in Canada. Our members are concerned that this feature of the proposed framework could serve to penalize employers for historic claims costs that no longer reflect the risks of their workplace as a result of more recent improvements to health and safety.

Premium rates are determined by both the Workers' Compensation Board of Alberta and Work Safe BC using the preceding three years of claims experience. Work Safe BC weights the most recent year at 50 percent, the prior year at 33.3 percent and the most distant year at 16.7 percent. The weighting system used by Work Safe BC rewards employers who reduce claims costs through improvements to their health and safety programs.

RECOMMENDATION 6
The WSIB should implement a weighted cost claims 'window' based on employers' claims cost history over the past three rather than six years to ensure that the rate charged to employers is reflective of their recent commitments to health and safety.

OTHER WSIB ISSUES NOT RELATED TO THE PROPOSED RATE FRAMEWORK

The WSIB's unfunded liability is a drag on Ontario's competitiveness. According to the WSIB's 2015 Q1 Sufficiency Report. The WSIB's unfunded liability (UFL), the amount by which future payment obligations exceed the present value of funds available to pay them, stands at $8.3 billion. Ontario's premium rates, still among the highest in the country, have helped reduce that unfunded liability over the past number of years. High premium rates have been a long-standing concern for employers in Ontario, who are doubtful to tolerate further hikes. Rate increases impede job growth and could drive employers underground or encourage them to relocate elsewhere.

As recommended by the OCC previously, better oversight of the WSIB would inject more transparency into the system and help drive down the UFL.

RECOMMENDATION 7
The WSIB should be subject to oversight by the Auditor General.

The WSIB Fatal Claims Adjustment Policy will be redundant in the new framework. In 2008, the WSIB introduced the Fatal Claims Adjustment Policy in response to public criticism of a feature of the existing framework which made it possible for an employer to receive a rebate in the same year that they experienced a workplace fatality. The Fatal Claims Adjustment Policy effectively ensures that if an employer experiences a workplace fatality, they will be forced to pay a fee that is equal to the amount they would have received as a rebate.

Since neither rebates nor surcharges will be a feature of the proposed framework, this policy is redundant. In the proposed framework, workplace fatalities will contribute to the actual claims costs of the employer which could then result in the employer being moved to a higher risk band.

RECOMMENDATION 8
The Fatal Claims Adjustment Policy should be eliminated from the framework as soon as possible.

The workplace safety market should be opened up to competition. It is important to promote safe workplaces and broad insurance coverage for workplace-related injuries and illnesses. However, the WSIB's legislated monopoly on workplace insurance is not the best answer for enhancing workplace safety and protecting workers' incomes. The OCC supports competition in the marketplace and the ability for employers to choose from a range of workplace insurance options to achieve the best results. If the WSIB model truly represents the best coverage at the lowest price, employers will choose WSIB coverage over others. Competition, flexibility, and choice are the hallmarks of a good system.

Further, we have concerns about the inclusion of construction employers in the workers' compensation scheme as per Bill 119. Employers should be allowed the option to opt out of the workers' compensation scheme in instances when they have already obtained private insurance coverage.

RECOMMENDATION 9
The Government of Ontario should study the merits of introducing comparable WSIB delivery models including options such as full and/or partial privatization.

RECOMMENDATION 10
The Government of Ontario should amend the Workplace Safety and Insurance Act to exempt construction employers who have obtained comprehensive 24/7 insurance coverage from coverage under the WSIB scheme.

CONCLUSION

This submission has outlined some of our key concerns regarding the proposed rate framework reforms outlined by the WSIB. While our members support the WSIB in its efforts to improve its business practices through the implementation of a modernized classification framework, more work remains to be done.

The 10 recommendations outlined in this submission are intended to create greater certainty for employers and ensure that Ontario benefits from an effective workers' compensation system.

Our primary concern with the Proposed Preliminary Rate Framework centres on the undetermined impact it will have on the cost of doing business in Ontario.

The OCC and its province wide network of chambers of commerce and boards of trade will continue to work with government and the WSIB to ensure the needs of employers are considered in all areas of reform.

To get in touch, please contact Karl Baldauf, Vice-President, Policy and Government Relations at karlbaldauf@occ.ca or 647.888.2866.

Thank you.

APPENDIX 1: PROPOSED CLASS STRUCTURE BREAKDOWN

A Primary Resource Industries
B Utilities
C Public Administration
D Food, Textile and Related Manufacturing
E1 Non-Metallic/Mineral Manufacturing
E2 Printing, Petroleum/Chemical Manufacturing
F1 Metal/Transportation/Furniture Manufacturing
F2 Machinery/Electrical/Other Manufacturing
F3 Computer/Electronics Manufacturing
G1 Building Construction
G2 Infrastructure Construction
G31 Foundation/Structure/Building Exterior Contractors
G32 Building Equipment Contractors
G33 Specialty Trade Contractors
H1 Petroleum/Food/Vehicle/Other Wholesale
H2 Personal/Building Materials/Machinery Wholesale
I1 Vehicle/Building Material/Food & Beverage Retail
I2 Furniture/Home/Clothing Retail
I3 Electronics/Appliances/Personal Care Retail
J Specialized Retail & Department Stores
K1 Rail/Water/Truck & Postal Service Transportation
K2 Air/Ground/Pipeline/Courier Transportation & Warehousing
L Information & Culture
M Finance
N Professional, Scientific & Technical
O Administrative, Waste & Remediation
P Hospitals
Q1 Nursing & Residential Care Facilities
Q2 Ambulatory Health Care & Social Assistance
R Leisure & Hospitality
S Other Services
T Education