



CANADIAN ASSOCIATION
OF PETROLEUM PRODUCERS

Canada's Oil and Natural Gas Producers

June 27, 2014

(via email: ratemodelreview@wcb.mb.ca)

The Workers' Compensation
Board of Manitoba
333 Broadway
Winnipeg, Manitoba R3C 4W3

Dear Sir/Madam:

RE: WCB Assessment Rate Model Review

The Canadian Association of Petroleum Producers (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 90 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 of about \$110 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.

CAPP appreciates the opportunity to provide comments to the Workers' Compensation Board (WCB) of Manitoba regarding the multi-stakeholder WCB Assessment Rate Model Review. We are pleased to provide the attached detailed responses to the discussion paper for your review and consideration.

Again, we appreciate the opportunity to provide comments. If you have any questions, please do not hesitate to contact Rosa Fiorentino, Imperial Oil Resources, Chair, CAPP WCB Committee (905) 652-0108.

Yours sincerely,

Vicki Ballance
Manager, Regulatory Affairs

Att'd

2100, 350 – 7 Avenue S.W.
Calgary, Alberta
Canada T2P 3N9
Tel 403-267-1100
Fax 403-261-4622

1000, 275 Slater Street
Ottawa, Ontario
Canada K1P 5H9
Tel 613-288-2126
Fax 613- 236-4280

403, 235 Water Street
St. John's, Newfoundland and Labrador
Canada A1C 1B6
Tel 709-724-4200
Fax 709-724-4225

310, 1321 Blanshard
Street
Victoria, British Columbia
Canada V8W 0B5
Tel 778-410-5000
Fax 778-410-5001

www.capp.ca • communication@capp.ca

#248175 (Attach #248182)

**Canadian Association of Petroleum Producers (CAPP)
Response to Morneau Shepell's Discussion Paper
(Manitoba WCB) WCB Assessment Rate Model Review
And Stakeholder Consultation**

ISSUES FOR STAKEHOLDER CONSIDERATION

RATE SETTING AND THE COSTS OF THE SYSTEM

Security of benefits is central to the interests of injured workers. Workers compensation is unique in that it is intended to be a “fully funded” program. Thus, the most fundamental aspect of rate setting is that the process raise, on an annual basis, sufficient funds to pay the present and future costs of injuries in that year, including administrative expenses.

The process must start from an accurate determination of how much money needs to be raised to pay current benefits and maintain the fund for future benefits. This should be an actuarial and accounting exercise. There are some estimates that are required to be made, (for example: how much are medical costs expected to increase in the coming years) but there cannot be any “subjective overlay” external to the process of rate setting without running the risk of not being adequately funded. The benefit levels and entitlements are established in the legislation and the rate setting mechanism must collect sufficient funds to meet that legislative promise.

There can be a legitimate conversation about the “costs of the system” from the standpoint of the level of benefits offered or the utilization of those services, but costs will not go away simply by depressing assessment rates or avoiding recommended rate increases. Avoiding assessments today will simply pass costs on to future generations of employers and injured workers.

Do Stakeholders still agree with the above?

- CAPP members agree with the above.

WHAT IS FAIR IN RATE SETTING?

Any classification and rate setting framework for workers' compensation should be measured against guiding principles of efficiency and fairness. Focusing on those core principles that will guide improvements to the system for everyone is key to the success of this consultation and reform.

Meredith acknowledged that he was developing a system for an economy characterized by many small and transitory employers. In Manitoba, the WCB registers 3,400 new employers every year and closes 2,600 accounts every year. One of Meredith's primary concerns was that there not be any “intergenerational subsidization” amongst employers. This is an important part of the “balance of legitimate interests amongst employers”. Every workers compensation system in Canada is designed to ensure that the current year's employers pay the full costs of the current year's injuries (both the current year's cost and future costs of those injuries). While it is very difficult for WCBs to ensure that revenue collected in a given year matches the exact cost of claims incurred in that year, most Boards (including Manitoba) have policies in place to ensure that any revenue shortfalls (or excess amounts) are recovered (or re-distributed) in a reasonable timeframe.

Do Stakeholders still agree that there should be no intergenerational subsidization amongst employers?

- CAPP members agree with the above.

WHAT IS EACH EMPLOYER'S FAIR SHARE OF THE COSTS?

In the introduction to his report Meredith said that under a just law, the risks to workers arising from injuries in the course of their employment should be regarded as risks of the industries and that compensation for those injuries should be paid for by those industries.

Meredith's Report, and the original sections in the legislation that he drafted, speak about "hazards" of particular industries. Meredith speaks about the "hazards of steam and electricity" and the relative hazards of one industry to another. He recognized that some workplaces were more "dangerous" and employment in those workplaces entailed a greater "risk" of injury. This preceded the development of more sophisticated statistical and actuarial analysis.

Today we have actuarial and accounting tools available, as well as a substantial body of data. Manitoba WCB has years of claims cost history for individual employers and they have the ability to measure real, statistically reliable "risk" as opposed to relying on a subjective assessment of how "risky" a workplace environment might seem to be. Today, when we speak about "risk" in the workers' compensation system, we are referring to a real measurable relative factor as opposed to an abstract notion of "hazard".

When we talk about employers bearing their fair share of the costs of the system we often speak of the risk that the employer presents to the system. We use the concept of relative risk to apportion the premium responsibility of employers. It is important to realize that "risk" in these terms is not what comes to mind when we ask the simple question—*what is the risk in that employment?*

Meredith referred to his system as compulsory "mutual insurance". In the insurance world, the payment of a premium effectively acts as a risk transfer arrangement between the insured and the insurer. By paying a premium to an insurance fund, the insured accepts the notion of paying a fixed cost to protect himself / herself from the financial impact of an unfortunate and potentially catastrophic event. Whatever form of insurance (home, disability, car or life), the insured is willing to pay a fixed fee for protection against the occurrence of a random unlikely event. The insured should consider premiums paid over a long time, with no claim being made, as a prudent safeguard that was fortunately not required to be used. However, those premiums went to pay the claims of those who were unfortunate enough to experience the loss and require the protection.

Workers' compensation coverage is no different from these other forms of insurance. An employer pays an assessment rate to protect itself from the potentially devastating cost of a workplace injury. Employer premiums are pooled in a fund to pay the costs of those who experience a loss.

When we use risk in the apportionment of the premium costs for workers' compensation, we are using "cost of injuries" as a proxy for risk. However, this does not imply that an employer with a history of zero workplace injuries represents zero risk. For larger employers with more stable injury cost levels, the actual cost of injuries becomes more of a reliable proxy for risk. Because a relatively small proportion of employers are of sufficient size to have stable cost histories, the measurement of cost often must be done for groups of employers (for example, industries or risk categories in Manitoba). Within these groups, there may be some employers that have little or no cost while others have high cost levels. Furthermore, for employers that are not of sufficient size, it is not readily apparent looking at claims data whether the difference in cost levels is due to different workplace safety and return-to-work practices or simply the result of statistical fluctuations. For these reasons, it is not necessarily

unfair to include these employers in the same rate group if the observed cost levels on an individual basis are unstable and therefore unreliable.

Is setting premiums based on risk fundamental to fairness in rate setting?

- CAPP members agree, as long as it is based on true claims costs experience.

WHAT IS FAIR FOR SMALL EMPLOYERS?

For Meredith the real virtue of his system from the point of view of the small employer was two-fold. First, the injured worker of a small employer did not have to worry about being able to recover sufficient compensation for his injuries from that small employer; the worker is provided security of benefits. Second, the small employer did not have to worry about being bankrupt by a large claim; they were protected by collective liability.

One of the challenges in a rate setting system is maintaining the protection that collective liability provides small employers while introducing a system of risk adjusted premium rate setting that uses "cost experience" (sometimes referred to as "experience rating") as a measure of that risk.

Attached to this Paper, as an Appendix you will find a graph, with an explanation, that shows the impact on the assessment rate for small, medium and large employers in Manitoba and two other jurisdictions resulting from a hypothetical claim. We are not suggesting there is one best model. The graph is intended to inform stakeholders on where the balance between collective liability and individual employer responsibility is struck in the present Manitoba model, relative to where that balance is struck in other jurisdictions that use experience rating.

Is the existing system appropriately balanced between the competing interests of setting premiums based on risk and the protection of collective liability, particularly for small employers?

Currently the administrative costs of the system are borne by all employers based on a formula that does not distinguish between large and small employers.

Does treating all employers "the same" always result in all employers being treated "fairly"?

Should small employers contribute to the cost of administering the system based on a different formula that reflects the relative size of the employer?

- CAPP members believe that all employers should pay the same commencing with the base rate. The experience rating formula should provide the small employers with more insurance and the larger employers should be allowed to accept more risk.

IN ADDITION TO "FAIRNESS", WHAT ARE WE TRYING TO ACHIEVE IN RATE SETTING?

The consultation on a new rate setting model for Manitoba WCB that took place in 2000 set four guiding principles that the new rate model would have to support. They were:

1. **Prevention/Safety/Injury Reduction.** The rate model should provide employers with financial incentives to focus on safety in the workplace so that both the frequency and severity of injuries are significantly reduced.
2. **Disability Management.** Reducing the frequency and severity of workplace injuries is only part of the challenge. It is also imperative that time-loss injuries are reported quickly to the WCB, and that injured workers quickly receive the highest quality and most appropriate treatment and rehabilitation so that they can return to health and employment. The rate model should be structured to encourage these outcomes.
3. **Actuarial Soundness.** This means that the WCB must collect sufficient revenue to pay existing claims and administrative costs and have sufficient financial resources to be able to pay workplace anticipated future claims; and that each employer's premium accurately reflects the risk of injury at that workplace.

4. **Fairness.** There is always a risk that injuries will occur, so it is reasonable that employers, even the safest ones, pay premiums for insurance. The new rate model should ensure, however, that each business pay no more or no less than its fair share. The rate model should also be sufficiently simple and clear so that employers understand how their premiums were set.

Do stakeholders still support these principles?

- CAPP members support these principles.

Does the existing rate setting model further the above principles?

Our members believe that the existing fundamental structure of premium rates should be maintained. The basic structure is consistent throughout Canada.

Essentially the structure should continue to have three components:

- **Cost of New Injuries (CNI) – This component is the capitalized cost of new injuries expected to be incurred in the upcoming year. It should be set using best estimate, going concern assumptions. It should not be surcharged or subsidized. The expectation should be no gain or loss on new injuries. It should include a provision for claim administration expenses.**
- **Other Administration and Overhead Expense – This component covers all non-claim administration expenses and legislative obligations that will be required to be paid in the upcoming year. This is not a capitalized value but a cash cost in the upcoming year. A fair method of allocating between rate groups is required – some portion can be simply assigned pro-rata on covered workforce while some expenses may need to be assigned pro-rata at the class level.**
- **Amortization of Unfunded Liability (UL) if there is one and Other Gains and Losses – This component is the annual payment to help liquidate the accumulated deficit and is established by the funding policy.**

Over time, as Manitoba's economy has changed and the current rate setting model has evolved, have there been unforeseen and undesirable consequences?

- We are not aware of any.

ACHIEVING SAFER WORKPLACES

The public policy goals of advancing workplace health and safety, through enforcement of safety-related laws, preventing injuries, and encouraging safe and healthy return to work, have always been about carrots and sticks. The sticks are fines, administrative penalties, and higher premiums. The carrots are rewards (both tangible and intangible), reduced premiums, and, in some sectors, premium discounts for having a certified safety program. Other jurisdictions in Canada also include premium surcharges and rebates and impose “administrative penalties” based on performance criteria.

It is important that the carrot be an incentive for the behavior that you are trying to encourage and that it not be so attractive that it becomes a goal in itself. To influence Prevention/Safety/Injury Reduction and Disability Management through premium rate setting is possible. However, it might be done at the risk of encouraging less desirable employer behavior.

The consolidation of responsibility for workplace injury and illness prevention in Manitoba under SAFE Work Manitoba, an arm of WCB, will cause them to develop a variety of program responses to Prevention/Safety/Injury Reduction. Financial incentives, in the form of WCB premium reductions, are one such response and their effectiveness in achieving prevention goals should be compared to other programs.

Under the current model in Manitoba any financial penalty for poor performance relative to the employer's peer group is incorporated in the premium rate setting model. This results in the employer paying a higher premium relative to its peers. Again we refer to the appendix. It demonstrates how much of a financial penalty is imposed on a small, medium and large employer in Manitoba, under the existing rate setting model, as a result of a claim. The graph provides a comparison of what that penalty is relative to other jurisdictions.

In his report “Fair Compensation Review” Paul Petrie said, at page 15:

“There are effective safety programs in place in many workplaces that were designed to control the hazards, conditions and practices that cause injuries. As indicated earlier in this report, I found little persuasive evidence that the Assessment Rate Model provides a substantial direct incentive to develop and implement effective safety programs. The primary driver for these programs is the employer's genuine commitment to safety together with the Workplace Safety and Health Act, which prescribes the minimum standard for such programs and the enforcement of that standard by the Workplace Safety and Health Division. The WCB also provides valuable support for developing and maintaining effective safety programs through their Prevention Department.”

Are there limits to the effectiveness of premium adjustments, both up and down, as an incentive to creating a safer workplace?

- We see more benefits than limitations.

If the rate setting model does provide a financial incentive to implement effective safety programs would a more modest financial penalty achieve the same results?

- No, the WCB should consider an added incentive to the rate current setting model - an approach to help incentivize safe behavior would be to provide advance notification of the ‘safety discount amount’ that is available to an employer for their next year of premiums. This ‘safety discount amount’ of dollars can then be reduced over the course of 12 months based on the poor performance of the company – it could even be shown ticking down on whatever systems people use to track their WCB payments. For example, the

company could be told in 2014 that they have a discount of say \$100 for 2015 but with each incident in 2014 that discount amount is reduced by say \$20 until, potentially, the entire discount is gone. This is sort of like a company bonus where current year's performance impacts a future outcome. The future outcome in this case is next year's invoice(s). Each year they are told their discount for the following year and it's theirs to lose, or not.

Should WCB consider administrative penalties, based on measures related to failure to meet best practice prevention standards, for employers who consistently contribute greater costs to the system than their peers?

- The WCB is an insurance system and should solely be based on claims costs experience. Failure to meet prevention standards should be addressed through penalties in the Occupational Health and Safety Act.

Should rate adjustments be linked only to satisfactory workplace safety and health practices, only to claim cost experience, or to a blending of both?

- Only to claim cost experience.

If safety practices were incorporated into the rate model process, would it result in WCB having to administer an overly complex and inefficient system? How could that issue be addressed, especially for smaller employers?

- Safety practices should be part of an occupational health and safety program. Incorporating safety practices in the WCB would unnecessarily complicate system and possibly render it inefficient.

Are there design features in a system of rate setting linked to safety practices that might contribute to undesirable behaviours?

- It may contribute to employers concentrating on developing "safety practices binders" and not concentrating on prevention first and then claims management (return to work) second.

EXPERIENCE RATING AND THE ISSUE OF CLAIM SUPPRESSION

In the design of their system, claim suppression has always been a concern of the Manitoba WCB. It was an issue considered in 2000, when the current rate setting model was being put into place. Consideration was given then to a program to target the problem of claim suppression. The model has been in place for 12 years and now we can look at the experience over those years and the impact it may have had on "injury frequency" and "claim duration". We should be able to develop a sense of whether some elements of the model have the potential to encourage claim suppression.

In his report "Fair Compensation Review" Paul Petrie said, at page 15:

"Failure to enforce the fundamental right of making a claim for a workplace injury can undermine the perception of fairness of the system and if claim suppression is pervasive enough, it can raise serious questions regarding the integrity of the system, since it is directly contrary to the purpose of the legislation."

The right of injured workers to the benefits specified in the legislation and to the fair and just adjudication and administration of the system are fundamental legitimate interests of injured workers. A fair balance must exist between that interest and the employer's legitimate interest of a fair distribution of the costs of the system.

Do the stakeholders agree that a fair balance should exist between the interests of injured workers and employers?

- Yes we agree.

Are these interests properly balanced in the present system?

- No, the experience rating discount/surcharge is much too low. Both discounts and surcharges should be increased

Can the system be improved in such a way so that balance is achieved?

- Yes, see above

Is it possible that the very large financial penalty imposed by the existing rate setting model, as illustrated in the appendix, might be an incentive to unintended employer behavior?

- No. If there is evidence of unintended employer behavior, it should be dealt with by the OH&S Act.

Would the elimination of experience rating be a solution to the issue of claim suppression, or are there other factors contributing to claim suppression?

- It is an absolute necessity that Experience Rating be maintained. The program must be cost based – not activity driven. The purpose is to enhance pricing equity whether or not it has any measurable impact on accident prevention or return to work. Eliminating the experience rating would make the system unfair.

Would the elimination of experience rating create other undesirable outcomes such as employer subsidization and employers losing an incentive to invest in legitimate workplace safety improvements?

- The lack of cost based experience rating would have a negative consequence. It would insulate poor performers, providing them with a competitive advantage over good performers who may be discouraged from allocating the proper resources to maintain safer workplaces.

One of the specific recommendations Paul Petrie made in response to the issue of claim suppression was that the first two weeks of a wage loss claim be charged to the industry sector as opposed to the employer's claim costs. This recommendation goes directly to the balance in the system between collective liability and individual employer responsibility for the costs they present to the system.

Would this change achieve the desired results?

- We recommend that the first two weeks of a wage loss claim be paid directly by the employer (similar to Quebec CSST) and this be an optional feature in the system.

Is there a potential for negative consequences from this change?

- The recommendation to first two weeks of a wage loss claim be charged to the industry removes the accountability aspect. We strongly disagree with this recommendation.

EXPERIENCE RATING RESPONSIVENESS AND RATE VOLATILITY

Any discussion of rate setting should include consideration of rate responsiveness to cost measures. Some commentators have suggested that there may be a relationship between rate responsiveness and unintended incentives to game the system. There are two important aspects to this: first, what are the costs that are being measured, and second, how responsive are rate changes to variations in the individual employer's cost experience relative to the group.

The design elements in Manitoba's current rate setting model, relating to both these aspects, should be considered in relation to their impact on responsiveness and rate volatility.

The Petrie Report "Fair Compensation Review" commented as follows:

Manitoba's experience rating system, generally referred to as the Assessment Rate Model, is a relatively aggressive system when compared to other jurisdictions. Manitoba first introduced experience rating in

1989 and used the individual firm's claims costs over the previous 5 year years. Under that system a firm's rate within a category could range from plus or minus 40% of the category's average rate to reflect the claims experience. A new Model was introduced in 2001 that ranged from 40% below the category average rate to 200% above that rate.... Manitoba's maximum upper limit of 200% is significantly higher than Alberta's 40%, British Columbia's 80% and New Brunswick's 100%.

...

Under the Manitoba Assessment Rate Model, an employer's assessments can rise quickly when that employer's claims cost is above the average for that employer's rate group. However, when the employer's claims cost is reduced, the assessment rate goes down relatively slowly by comparison. The expression that assessments, "go up like a rocket, and come down like a snail" is often repeated when describing the Assessment Rate Model.

The graph found in the appendix provides an illustration of the relative responsiveness and volatility of the existing rate setting model in Manitoba.

Design elements in the Manitoba model allow a rate to go as high as 200% above the category average but only 40% below. Does this result in the employer incentive being skewed towards avoiding the upside potential as opposed to achieving the downside potential?

- **Yes. The surcharges should be double the discount.**

If the answer to the question above is 'yes', some follow-up questions would be:

Does the high upside potential create an incentive for employers to focus on inappropriate cost containment practices or is it more important to assign a higher rate to those employers that are generating higher costs?

- **If an employer is consistently at the maximum rate, Occupational Health and Safety should work with these employers to improve their performers.**

Would larger downside potential encourage employers to increase their investment in legitimate workplace safety improvements?

- **Yes.**

Would stakeholders be prepared to have smaller rate adjustments in order to decrease the motivation for inappropriate behavior?

- **No. Inappropriate behaviours should be dealt with under the OH&S system.**

Are there situations where financial penalties, unrelated to rate setting, might be an appropriate response to employers with high claim costs or injury frequency?

- **Consistently poor performers should have added penalties.**

Conversely, are there situations where financial rewards, unrelated to rate-setting, might be an appropriate response to those with low costs and frequency?

- **Should have an accreditation program for similar program i.e. Alberta COR (Certificate of Recognition).**

The Manitoba model uses actual claim costs in the last 12 month period for injuries that occurred in the last 5 years. This is referred to as the claim cost window. A consequence of that design choice is that the occurrence of an injury does not necessarily affect an employer's rate but a long-term claim can affect an employer's rate for 5

years. Under this model, a Manitoba employer can see an immediate benefit if the injured worker returns to work in the first year as there would be no costs attributed to that claim in the second and subsequent years.

This design choice is in contrast to some Boards which use a different claim cost window. For example, in a model that factors in 5 years of payments on 5 years of injuries, the employer has a greater incentive to prevent injuries since the claim costs will remain on record for five years.

Do employers lean towards disability management rather than prevention as a result of the 12-month claim cost window?

- We believe our members concentrate on prevention first. Reinforce efforts to concentrate on prevention.

The Manitoba model uses the actual full cost of claims when defining an employer's cost experience. There is no limit or cap on the costs that are allocated for any one injury. This design choice is in contrast to some Boards that place a limit on claim costs to be used in experience rating. In those systems, costs over the cap are part of the "collective liability" of all employers in the system.

Would a reasonable limit on a claim costs used in experience rating remove some incentive to claim suppression?

- Yes. This limit should vary based on employer size.

Would a reasonable limit on a claim costs used in experience rating result in a more desirable balance between the protection of collective liability and the individual employer's responsibility for its cost to the system?

- Yes. Again, this should vary based on employer size.

The design elements of a rate model include decisions about what kind of claim costs should be subject to experience rating. For example, the costs for specified occupational diseases could be excluded based on the rationale that the exposure to the hazard may have occurred many years in the past with different employers. The costs that are excluded from experience rating are considered to be part of the collective liability of the system.

What types of claim costs, if any, should be excluded from experience rating?

- Long latency occupational disease claims should be excluded from experience rating. Occupational disease claims manifest themselves many years after exposure has occurred. It would be unfair to penalize employers today for these claims when they would have been in compliance with whatever occupational health and safety requirements were in place years ago when the exposure is deemed to have occurred.

In the Manitoba model, small employers are treated the same as large employers, allowing a small employer's rate adjustment within a risk category to be determined in the exact same manner as a large employer. There is no adjustment for degrees of cost volatility that can occur at different employer size levels.

Does treating all employers "the same" always result in all employers being treated "fairly"?

Should employers be treated identically by the rate model regardless of size?

- Small and large employers should not be treated the same. Small employers require more collective liability whereas large employers can accept more individual responsibility for their claims costs. The rate adjustment should include higher maximum discounts and surcharges for large employers and smaller maximum discounts and surcharges for small employers.

TRANSPARENCY IN RATE SETTING

When we talk about “transparency” in rate setting, there are two levels of transparency we are concerned about. First of all, stakeholders should be able to understand the math of the rate setting mechanism. Individual employers must be able to see and understand how their “fair share” of the costs of the system are being calculated and translated to a “premium rate”. If the rate setting model is going to achieve its stated objectives of promoting prevention and injury reduction and promoting effective disability management it is important that employers are able to actually see the cause and effect relationship. On a more fundamental level, the policy decisions behind the mechanism (for example, how the mechanism strikes the balance between collective liability and individual employer responsibility for the costs of their claims), must also be transparent and understandable. This aspect of transparency is critical to the ability of the Manitoba WCB to further their policy objectives and balance the legitimate interests of stakeholders.

Is the current rate setting model “transparent” on both these levels?

- **It is transparent to a certain extent, but we believe there could always be improvement.**