

Final Report on Ontario Workers' Comp Reform Released



To address the Ontario Workplace Safety and Insurance Board (WSIB)'s huge funding deficit, in late 2012, the government appointed the Arthurs Commission for recommendations on how to reform the workers' comp system.

In Jan. 2011, the Commission issued a Green Paper outlining the WSIB's situation and the key issues the panel planned to address. On May 4, 2012, it released its final report. Here's an overview of the Commission's recommendations.

The Funding Fairness Report

The 188-page final report, *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System*, covers several key areas:

Funding strategy. Clearly, the WSIB's current funding strategy isn't working. So the Commission recommends that it adopt a new funding strategy with several key elements:

- The funding strategy should be based on realistic assumptions, including a discount rate based on the best available actuarial advice.
- It should aim to move the WSIB as quickly as possible beyond the tipping point of 60% funding and put the WSIB on course to achieve 90% to 110% funding within 20 years.
- Premium rates should be comprised of a) a variable "basic charge" that includes provision for new claims costs that are properly priced and fully funded on an annual basis; and b) a fixed "Unfunded Liability (UFL) component" that will change only in exceptional circumstances defined in the strategy.
- It should also include a corridor system that will signal the need to re-price the UFL component in a timely fashion. (Appendix E of the report contains a detailed guide to the proposed corridor system.)

The report also recommends that the WSIB adopt and publish a formal funding policy that outlines its key elements and the principles that are to govern premium rate setting. And the WSIB should publish an annual supplement to the policy that stresses the factors affecting rates for the following year.

To address the deficit, five percent of the annual cost of paying down the UFL should be distributed equally across all Schedule 1 employers. Meanwhile, half of the remaining UFL should be allocated among industry classes based on their

contribution to its growth over the past 20 years. And the other half of the remaining UFL should be allocated among industry classes based on their current contribution to their estimated new claims costs.

Costs borne by Schedule 1 employers. The government should review the requirement that the WSIB reimburse the Ontario Health Insurance Plan for providing routine medical services to injured workers and the MOL for the cost of safety education, accident prevention and workplace compliance provided by the MOL. Instead, the costs now borne by Schedule 1 employers should be spread among all employers whose workers enjoy access to similar services or are covered by the same programs. If that's not feasible, the government should consider relieving the WSIB of these obligations and instead providing full replacement funding from the consolidated revenue fund.

As to Schedule 2 employers, the WSIB should satisfy itself that they're making an appropriate contribution to its non-benefit costs.

Setting premium rates. In terms of setting premium rates, the Commission recommends that the WSIB set these rates on the basis of the actual costs of providing insurance coverage to employers, not on the basis of affordability. Accordingly, Sec. 96(3) of the *Workplace Safety and Insurance Act* (WSIA) should be changed to delete the language that bars the WSIB from charging premium that unduly or unfairly burden "any class of employers."

The report recommends that the MOL not interfere with rate setting except in designated exceptional circumstances and using adopted procedures. The WSIB should announce the annual average premium rate for the following year as soon as possible in the year and no later than July.

Rate groups. The report recommends that the existing system of rate groups and industry classes be replaced by a new system of "sectoral groups," which should be used to set premium rate and organize accident prevention, safety education and return-to-work programs. The WSIB and the Chief Prevention Officer should define the sectoral groups together, building upon existing safety groups, employer associations and other similar organizations. And to avoid the marginalization of small firms, the WSIB should consider a separate small business sector.

The idea is that each sectoral group would pay the full current and future cost of the new claims its members generate. Gains attributed to a sectoral group would be used to reduce the current cost portion of the premium rate charged in any given year to that group.

Experience rating programs. If the WSIB wants to continue its experience rating programs, the report suggests it does so *only* if it does three things:

- Declares the purpose of the programs as solely to encourage employers to reduce injuries and occupational diseases and encourage workers' return to work
- Adopts a firm policy to protect the integrity of these programs and commits the necessary resources to detect and punish abuses of it by employers
- Establishes a credible monitoring process to ensure the above two conditions are met.

Health safety and insurance officer. To ensure that workers know and are able to

exercise their rights under the WSIA, the Commission recommends that each employer be required to file with the WSIB the name of a designated Health, Safety and Insurance Officer (HSIO). That person's acts or omissions will be deemed to be those of the employer. If an employer doesn't designate an HSIO, the president or CEO will be deemed to hold that office.

Employers should assign responsibility to the HSIO for ensuring compliance with the WSIA and other OHS laws and for filing an annual statement on the employer's behalf recording all workplace accidents and certifying that the employer has complied with the law. HSIOs should also ensure that workers get information about their WSIA rights.

Most notably, the report recommends that HSIOs be held responsible for the acts or omissions of all agents, advisors or advocates representing the employer on WSIB matters.

Deterrence of reprisals. To enable the WSIB to detect and punish anyone who interferes with workers' rights to claim compensation or return to work, the report recommends, among other things, that employers who violate the WSIA or other OHS laws should be automatically ineligible for favourable premium adjustments or rate rebates for at least a year. In addition, the WSIB should get enhanced power to impose administrative penalties for reprisals.

The commission also recommends that:

- Whistleblowers who report violations of the WSIA be protected from reprisals.
- Employers that fail to report or misreport a compensable accident or injury should be presumed to have done so deliberately unless proven to the contrary.
- Fines for violations should be increased.

The report also makes other recommendations in these areas and on occupational diseases and partially disabled workers.

The MOL Response

In response to the Arthurs report, the MOL has already said it would establish a new regulation under the WSIA to require the WSIB's insurance fund to reach a sufficiency of 60% funding in 2017, 80% in 2022 and a full 100% by 2027. It will also increase benefits to injured workers on partial disability by 0.5% in 2013 and another 0.5% in 2014.

The report recommends that many of these changes be phased in over years. And some of them will require amendments to the WSIA. So don't expect to see any immediate changes to the workers' comp system in Ontario. But given the government's speedy response to the recommendations from the Dean Panel, such changes are clearly on the way—and probably sooner than you think.

Go to the Ontario OHS Reform Compliance Center to stay on top of the latest developments in Ontario, including both the OHS reform process and workers' comp reform.