

FRAMEWORK FOR OPERATIONAL POLICY DEVELOPMENT AND RENEWAL

1. Introduction

The purpose of this *Framework for Operational Policy Development and Renewal* (Framework) is to identify the legal foundation and role of operational policy, and to outline the WSIB's approach to operational policy development and renewal.

The approach is based on the premise that regular consultation and communication with stakeholders and the public are vital to designing good public policy and maintaining productive relationships with the individuals and groups most affected by the WSIB's decisions.

This is part of the WSIB's commitment to excellent service, efficient administration and building effective stakeholder relationships.

1.2 Background

The concept of workers' compensation has its origins in Germany, Great Britain and the United States between the late 1800's and early 1900's. In 1910, in response to concerns about a lack of adequate funding for injured workers and a slow, inequitable court system, the Ontario government commissioned Sir William Meredith to produce a report about workers' compensation.

The Meredith Report was published in 1913 and outlined a trade-off in which workers relinquish their right to sue in exchange for compensation benefits. The main principles of the Meredith Report included the following:

No-fault compensation: Workplace injuries are compensated regardless of fault. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury. Fault becomes irrelevant, and providing compensation becomes the focus.

Collective liability: The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.

Security of payment: A fund is established to guarantee that compensation monies will be available. Injured workers are assured of prompt compensation and future benefits.

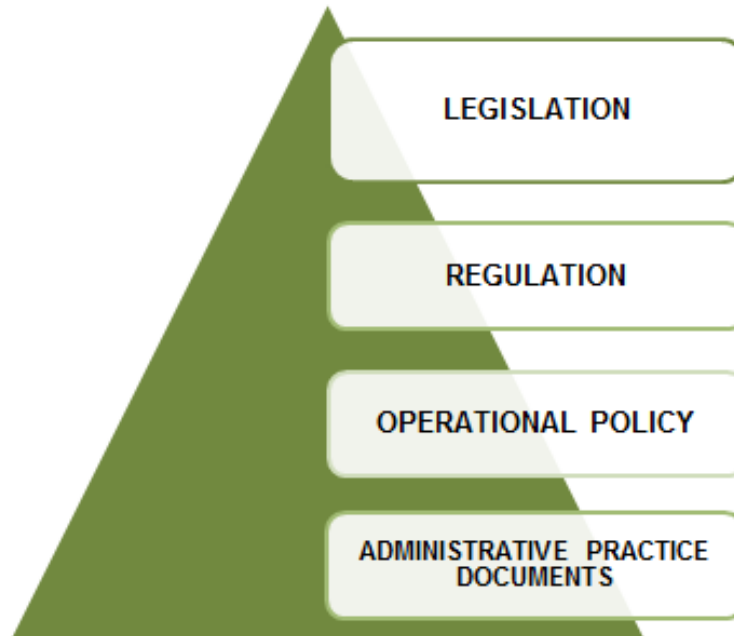
Exclusive jurisdiction: All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims. The board is not bound by legal precedent; it has the power and authority to judge each case on its individual merits.

Independent board: The governing board is both autonomous and non-political. The board is financially independent of government or any special interest group.

The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality.

These principles have provided the foundation for all subsequent workers' compensation legislation in Ontario. The meaning and application of workers' compensation legislation and supporting regulations are the focus of the WSIB's operational policies.

2. Hierarchy of WSIB decision-making authority



2.1 Legislation

Ontario's first workers' compensation act came into effect in 1914 following the completion of the Meredith Report. Since then, Ontario's compensation system has undergone a number of reforms and legislative changes. The current legislation, the *Workplace Safety and Insurance Act, 1997* (WSIA), applies to workplace accidents occurring on or after January 1, 1998. The WSIB also administers prior workers' compensation acts.

As an administrative tribunal, the WSIB derives all of its powers and duties, explicitly or implicitly, from its governing legislation. This legislation contains both general and specific provisions. General provisions are those that are broad, requiring interpretation. Specific provisions, on the other hand, are those that have a plain and straightforward meaning. While policy may address either, policy is particularly important for providing the WSIB's interpretation of the many general provisions contained in the WSIA. Whether interpreting a general or specific provision, it is important for any interpretation to be consistent with the purpose of the WSIA (section 1), which is to accomplish the following in a financially responsible and accountable manner:

- 1) To promote health and safety in workplaces.

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- 2) To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
 - 3) To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
 - 4) To provide compensation and other benefits to workers and to the survivors of deceased workers.

2.2 Regulation

Regulation has the force of law but must be authorized by a specific provision in legislation. Pursuant to the WSIA and subject to the approval of the the Lieutenant Governor in Council, both the government of Ontario and the WSIB have the power to develop regulations. Like legislation, regulatory provisions can be general or specific and policy may address either.

2.3 Operational Policy

As a matter of administrative law, the WSIB has the power to develop policies under its governing legislation and supporting regulations. While the WSIA does not contain an explicit statement regarding general policy making authority, this authority is recognized in various provisions throughout the WSIA.

The WSIB develops policies to clarify the meaning and application of its legislation and supporting regulations, and to guide decision-making. This in turn helps to ensure similarly situated workers, survivors and employers are treated the same way, and that external participants understand the rules that guide WSIB decisions.

Once approved, these policies are published in either the *Operational Policy Manual* (OPM) or the *Employer Classification Manual* (ECM). New and revised policies are generally reviewed at least once every five years. However, a shorter review period (e.g., two years) may be established in some circumstances, such as where the policy is the result of a new program or the issue has not been previously addressed in policy.

Operational policies serve both internal decision-makers and external participants, and are binding on the Workplace Safety and Insurance Appeals Tribunal (WSIAT)¹. However, policies must be consistent with the legislation and its supporting regulations. In the event of a conflict, the legislation and regulations prevail. Further, in the event that the application of a policy would lead to an unintended, absurd or unfair result, decision-makers may depart from a policy if it can be shown that the case has exceptional circumstances that justify doing so.

2.4 Administrative Practice Documents (APDs)

The WSIA also allows the WSIB to determine its own practices and procedures in carrying out its mandate and obligations. The WSIB develops APDs to promote understanding of

¹ *Workplace Safety and Insurance Act, 1997*, s.126.

and provide guidance regarding the interpretation and practical application of policy. However, APDs must be consistent with legislation, regulations and policy.

Not all policies have APDs. The need for an APD is generally assessed by the WSIB at the time of policy development, but can be identified at any time. Where a need is identified, the appropriate WSIB operational area develops and maintains the APD in consultation with Policy and Consultation Services. New or revised APDs are made available on the WSIB website.

While decision-makers may use APDs to assist their decision-making, unlike policies, the content of these APDs are not binding on the WSIAT.

3. Agenda setting

The WSIB engages in an agenda setting process to determine which policies or policy issue areas will be reviewed in a given year.

As a starting point, each year the WSIB reviews and prioritizes all identified policy issues based on a number of factors including

- alignment with legislative/regulatory provisions
- strategic directions
- business area requirements
- scientific or medical advances, ARO/WSIAT decisions, court rulings
- external stakeholder input and feedback
- adherence to scheduled policy review dates
- length of time since last substantive review

The WSIB then assesses these policy items to determine the number and combination of larger scale items it is feasible to undertake in the course of a year, while still reserving capacity to fulfill scheduled policy review dates and respond to unanticipated high priority items.

Following assessment, the WSIB engages with internal stakeholders and committees and in some cases external parties, such as **Chair's Advisory Committees**, to determine which policies to address in the upcoming year. The WSIB may identify both substantive and housekeeping items for review.

Chair's Advisory Committees provide forums for ongoing engagement with representatives from key industry, labour and worker groups. These committees are a source of advice regarding strategic issues, provide early insight concerning the impact of proposed operational policy and program

Significant substantive items generally include those that have the potential to

- financially impact the compensation system
- impact benefits or premiums
- impact entitlement
- change policy direction or intent

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- be contentious

Minor items generally include those that have the potential to

- result in uncontentious changes to policy provisions, including those related to benefits, premiums, entitlement, policy direction or intent
- clarify existing policy provisions, including those related to benefits, premiums, entitlement, policy direction or intent

Housekeeping items include non-substantive changes, such as

- minor consequential revisions resulting from legislative or regulatory amendments or from changes made to other policies
- correction of outdated or inaccurate information or terminology
- correction of typographical or grammatical errors
- updates to legislative references and others

Each year the WSIB publishes a policy agenda describing the policy items that the WSIB plans to review in the upcoming year. This ensures stakeholders are given advance notice of policy items intended for consultation. While a policy agenda may identify both substantive and housekeeping items, its primary focus is on substantive items which may involve consultation.

4. Operational policy development

The WSIB is committed to ensuring its policies are clear, up-to-date and provide appropriate guidance as to how they are to be applied. To fulfil this commitment, the WSIB engages in a transparent, consistent and comprehensive policy development process guided by the following policy development principles:

- 1) Policies will be grounded in the fundamental objectives of the WSIA and its supporting regulations.
- 2) Policies will be consistent with the WSIB's strategic direction.
- 3) Policies will provide clear direction to users.
- 4) The WSIB will consider stakeholder input received through consultation regarding new and/or substantially revised policies.
- 5) Policies will be fair, practical and effective to ensure they can be applied with timeliness, transparency and consistency.
- 6) Policies will be fiscally responsible and ensure the long-term sustainability of the system.

The Operational Policy Development Process



***Refers to the formal consultation phase; however, less formal stakeholder input may be considered at a number of phases (e.g., issue identification, research and analysis).**

4.1 Issue identification

Policy issues can be identified at any time, but it is during the policy development process that identified issues are explored and defined in greater depth. They stem from a number of sources, including the following:

- WSIB strategic priorities/directions
- legislative or regulatory changes
- internal and external stakeholder concerns or recommendations
- emerging trends, changes or advances in current knowledge
- appeals and WSIAT decisions
- judicial reviews
- value-for-money audits
- policy and program evaluation recommendations and outcomes
- ongoing policy evaluation and review
- environmental and inter-jurisdictional scans.

4.2 Research and analysis

The extent of the research and analysis conducted in relation to a policy issue depends upon its complexity. During this phase, the policy issue is further explored and potential

approaches for addressing it are identified and assessed, noting the benefits and challenges of each approach. Areas of research and analysis may include some or all of the following components:

- existing internal and external feedback
- environmental scans
- jurisdictional approaches and trends
- legal considerations
- internal consideration (e.g., financial, operational, systems, corporate)
- appeals trends
- stakeholder considerations (e.g., employers, workers, health care providers)
- literature reviews (e.g., scientific knowledge, clinical advances, policy instruments)

During this phase, and prior to consultation, policy staff may also engage with internal stakeholders and committees, external stakeholder committees, subject matter experts and other relevant parties as necessary to gain a greater understanding of the factors relevant to the issue under review.

4.3 Consultation

Consultation is an important element of the policy development process at the WSIB, contributing to transparent, evidence-based decision-making. Obtaining and considering a range of views enables the development of policies that are effective, responsive and viewed as legitimate by those they impact. This in turn contributes to better understanding and acceptance of and compliance with policies.

The WSIB's approach to consultation balances the benefits of consultation with the importance of timely policy development and respect for the finite capacity and resources of both the WSIB and its stakeholders. To achieve this balance, the WSIB consults with its stakeholders in a manner that is proportionate with the anticipated impact and scope of the policy issue at hand. Regardless of the consultation approach chosen, the WSIB strives to complete each policy development initiative, including consultation, within 12 months, noting that in some circumstances there may be exceptions to this. Where circumstances necessitate extending policy development timelines, or where it is known at the outset that a particular policy development initiative will exceed 12 months, the WSIB will communicate this and provide updates as appropriate.

With the exception of legislative or regulatory change, where a policy issue has the potential to result in substantive changes, the WSIB takes one of two consultation approaches: targeted stakeholder consultation through the WSIB's existing stakeholder forums or broad public consultation. Whether a consultation is targeted or broad, the WSIB strives to respect the consultation process and participants by providing a clear explanation of the issue at hand and the feedback sought, allowing reasonable time for input and giving careful consideration to the feedback received.

4.3.1 Targeted consultation

Targeted consultation is generally undertaken when there is a need to clarify existing policy provisions, or when an uncontentious minor change is being considered. When the clarification or change impacts a specific group of employers or workers, the WSIB generally limits its consultation to those stakeholders who may be impacted by the policy revision. When the impact of the clarification or change is broader, the WSIB consults with a broader group of stakeholders or all stakeholder groups/general public. Whether consulting with a select group or a broad group of stakeholders, the WSIB aims to obtain feedback specific to the identified policy issue prior to revising a policy.

4.3.2 Broad public consultation

Broad public consultation applies to significant changes, and builds upon the targeted stakeholder consultation approach by including public facing consultation as well. Generally, the WSIB publishes a consultation document (e.g., explanatory note, discussion paper) to identify and explain the policy issue and to guide feedback, which may be provided in writing and/or through planned outreach sessions. Where significant changes are anticipated, the WSIB may choose to retain an independent third party to lead the consultation. In some circumstances, the WSIB may determine it would be beneficial to obtain feedback both prior to and after drafting a revised policy.

4.3.3 Legislative or regulatory amendment

Where an amendment is made to the WSIA or an associated regulation the WSIB is required to ensure the policies are consistent with the law and will act to make any policy revisions to achieve this as expeditiously as possible.

4.4 Policy drafting

Policies are written taking into account research, analysis and consultation feedback. Where the WSIB determines that the policy development process, including consultation, has resulted in foundational changes, the draft policy will usually be posted for additional stakeholder and public feedback.

4.5 Implementation

The WSIB undertakes a number of internal activities leading up to policy publication to ensure a smooth implementation, such as system updates, staff training and, in some cases, the creation of APDs. Implementation is led by the appropriate operational area(s) with support from Policy and Consultation Services.

Where appropriate, the WSIB may engage in external outreach as well, such as publishing Q&As, hosting general information sessions or meeting with stakeholder groups to address specific topics.

5. Evaluation and review

As noted above in Section 3 (Agenda Setting), the WSIB prioritizes all identified policy issues on an annual basis to determine which will undergo formal review in a given year. By way of background, a policy review is the process of issue identification, research and analysis that is part of developing new or revised operational policies.

The policy review process involves an assessment of the extent to which a given policy is consistent with the six WSIB principles for operational policy development noted above in Section 4 (Operational Policy Development). These policy reviews rely on a variety of qualitative and/or quantitative research methods and in most cases are conducted in consultation with stakeholders as described above in Section 4.3 (Consultation). Any inconsistencies or issues then form the basis for policy change recommendations flowing from the review.

6. Conclusion

The WSIB develops operational policies to clarify the meaning and application of its legislation and supporting regulations. In doing so, policies guide the decisions made about the rights, entitlements and obligations of workers and employers. The WSIB engages in a systematic operational policy development and renewal process to ensure its policies continue to provide clear, up-to-date and appropriate guidance to those that apply them, and to ensure the policies guiding these important decisions are developed in a comprehensive and transparent manner. Like the annual Policy Agenda, this Framework is a demonstration of the WSIB's commitment to clarity, transparency and quality in the development and renewal of operational policy.