Construction Employers Coalition
(for WSIB and Health & Safety and Prevention)

CEC Submission to the WSIB Consultation on its Initial Rate Framework Reform Proposal

October 2, 2015

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Submitted via e-mail: (consultation_secretariat@wsib.on.ca)

Consultation Secretariat
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Re: WSIB Consultation on its Initial Rate Framework Reform Proposal

On behalf of our members, the Construction Employers Coalition for WSIB and Health and Safety and Prevention (CEC) would like to provide the following submission in response to the initial Rate Framework Reform (RFR) proposal, posted by the WSIB in March of 2015, with a subsequent update provided to stakeholders on this process in July of 2015.

About the CEC

The Construction Employers Coalition for WSIB and Health & Safety and Prevention (CEC) represents more than 2,000 firms employing approximately 80,000 workers in province. The CEC was formed in 2011 for the purpose of studying and responding to "big-picture" issues related to occupational health and safety (OH&S), accident prevention, and WSIB that affect the construction industry in Ontario.

Members of the coalition include:

- Ontario Sewer and Watermain Construction Association (OSWCA);
- Mechanical Contractors Association of Ontario (MCAO);
- Ontario General Contractors Association (OGCA);
- Ontario Road Builders' Association (ORBA);
- Heavy Construction Association of Toronto (HCAT);
- Residential Construction Council of Ontario (RESCON);
- Ontario Concrete and Drain Contractors Association (OCDCA);
- Ontario Formwork Association (OFA);
- Construction Formwork Association of Ontario (CFAO);
- Residential Tile Contractors Association (RTCA);
- Residential Framing Contractors Association (RFCA);
- Kingston Construction Association;

- Niagara Construction Association;
- Ottawa Construction Association; and,
- Sarnia Construction Association.

Preliminary Comment

Before making any specific comments on the RFR proposal, we believe that it is necessary to once again reiterate a long-held CEC position that a complete redesign of the rate classification system and experience rating program is unnecessary. While we agree that the current rate-setting system has some minor flaws, we believe that these can be remedied with minor tweaks and a much more stringent administration of existing WSIB programs. No comprehensive case has, thus far, been made for any change to the existing system, let alone a complete redesign. Before this process moves forward, the WSIB should simply look to make small adjustments to the existing rate framework to see if an overhaul can be avoided, as this should be considered a last resort.

Furthermore, this proposal to significantly reorganize the rate framework model should be put on hold at least until the WSIB accomplishes its primary organizational goal of eliminating its unfunded liability (UFL). Redesigning and implementing a new rate framework system at the same time as paying off the UFL is overly ambitious and will strain WSIB resources, making it difficult to adequately accomplish either goal. With this being said, the CEC would like to make a number of general comments and recommendations on the initial RFR proposal and consultation process thus far.

General Comments on the RFR Proposal

Recommendation #1 – Delink the RFR proposal from the WSIB messaging on lower premium rates

Following on the footsteps of the 2009 Auditor General’s report which first drew attention to the WSIB’s massive unfunded liability (UFL), the WSIB instituted a new premium rate setting policy in 2010 whereby premium rates would not be adjusted downwards no matter if it was earned through improved performance. And rate declines in the construction industry should have been forthcoming, given that lost-time injury rates have declined by 42% since 2005. Instead, premium rates have actually increased over the same time period by 14%.

The CEC has supported the WSIB in its endeavors to pay-down the UFL, which has required employer over-taxation for a number of years. As a result of this partnership, the UFL has been reduced from over $14 billion in 2011 down to under $7 billion in 2015. This reduction is remarkable, but is clearly a result of employer over taxation. It does not have anything to do with the current rate group make-up and could easily be remedied, by simply reducing rate group premium rates based on performance.

Although paying down the UFL and the new rate framework design process are both significant exercises that are occurring at the same time, they are mutually exclusive processes and should be identified as such.

Recommendation #2 – Take an appropriate amount of time to carefully design and fully consult on a new Rate Framework

Foremost among our recommendations is that there should be no urgency attached to this program redesign, particularly given that the more crucial and immediate task for the WSIB remains the elimination of the UFL. With the current WSIB framework working ably to pay-down the UFL in a much more expeditious manner than could have been predicted only three years ago, we believe that it is necessary for the WSIB to eliminate the UFL completely before risking a complete system change.

Taking this approach will also allow for a much more fulsome consultation and consideration of a new program design. It will allow the WSIB and its stakeholders to delve into the intricacies of this new system in much greater detail to ensure that a new system design is as close to perfect as possible before it is launched. This should include working groups and ongoing conversations with stakeholders on how to best capture and address the WSIB's ultimately goals in this exercise. A more fluid approach which sees constant discussions, rather than deadline focussed, hard-copy submissions, is necessary to ensure that this process gets the design elements of a new rate framework right. The current experience rating (ER) model took close to a decade to fully develop and implement, and the same degree of care and caution must be taken during the development and implementation of any model set to replace the existing system.

Recommendation #3 – Provide stakeholders with the necessary statistical data to inform them of the company-specific impacts before moving any further along in the current design process

In our view, the RFR process is *very* early in its initial design stages. In this submission we provide comments on some of the "big-picture" program items that have been identified in the RFR technical papers, but there needs to be a much more involved stakeholder engagement in the design of specific program elements related to industry class design and make-up once the WSIB gets to that point. In order to get this right, we, as the stakeholder community, need to see a much more robust statistical demonstration of the impact that any new system will have on our individual sectors of the labour market and on the companies within these sectors.

The CEC has previously made the request for company specific impact data for each of the different sectors that we represent. This information is critically important for us to understand precisely how the RFR will impact the operating costs for each of the companies within our individual memberships, and how these costs will change over time. Until we see this information, it is very difficult to provide detailed comments on the system design and make-up as we cannot truly understand the benefits and disadvantages that will be created across our respective sectors of the construction industry. This statistical information will allow for a more open and transparent conversation between stakeholders and the WSIB on how the system needs to be tweaked and adjusted before it is implemented. It will also help to ensure that the WSIB's projections for revenue neutrality and class average target rates are appropriately set, ensuring that the proper amount is being collected to address the system needs.

Specific Comments & Recommendations on the RFR Proposal

Recommendation #4 – Preserve the Second Injury Enhancement Fund as presently constituted under the new Rate Framework

The CEC strongly disagrees with the WSIB proposal to eliminate (or even reform) the Second Injury Enhancement Fund (SIEF).The SIEF is an essential insurance element that understands and addresses juncture between controllable costs and the "thin-skull" legal paradigm governing entitlements. Preservation of the SIEF has long been a central pillar of our advocacy around the Rate Framework Reform process. The CEC has made a principled point of detailing the merits of this program since the consultations around the WSIB Funding Fairness Review in 2011 and throughout the Pricing Fairness review in 2013.

Construction is a unique industry, where workers often move in between companies on a per-project basis. This is a point that has been argued from *both* the labour and management sides of the industry, and one which we both firmly agree upon. This program needs to stay intact, as presently constituted, in whatever rate system the WSIB utilizes moving forward.

As we have contended in previous submissions to the WSIB, construction is a labor-intensive industry and as such it is full of pre-existing conditions which seem to only proliferate as workers age. This is a commonly accepted fact, as physical capacities diminish with age. The SIEF is a collective cost-relief program for employers that does not add any additional cost to the WSIB system. Where a prior disability has caused or contributed to a compensable accident or where that pre-existing condition has prolonged or enhanced the period resulting from an injury, the WSIB may award cost relief of 25-100% of the cost of the injury.

In its July update on the RFR Consultation process, the WSIB noted that it had heard a number of perspectives on their initial recommendation to discontinue the SIEF program and that there is a "…clear consensus that some form of cost relief is required." The CEC disagrees with this statement because there is no need to construct a new cost relief program when the existing program is well suited to simply slot into the newly proposed rate class structure. The existing program is widely supported by both employer and labour organizations, as it is an integral component to our hiring practices and how we operate in the construction industry and it should be left as is. We strongly recommend that the SIEF remain in place, unaltered.

Recommendation #5 – Abandon the proposal to assess a company a single rate based on their "predominant business activity"

The WSIB proposal to rate a business in a single rate class based on its "predominant business activity" is very problematic as it unnecessarily inserts unfairness into the employer insurance program. The proposal cites administrative ease as the principal reason for pushing forward with this process, but it creates unfairness by artificially inflating/deflating the premium rates of companies that are currently multi-rated.

As the MCAO submission to the RFR Consultation points out (page 27.5) "there is no sound policy reasons for incongruent business risks to be assessed at the same premium rate. O.Reg 175/98 represents a thoughtful and well considered method to fairly and effectively assess distinct business activities operating within the same enterprise. [This] proposal creates an artificial premium rate that… skew[s] otherwise competitive markets and present[s] advantages and disadvantages where currently none exist."

The CEC opposes this scheme and would like to highlight two scenarios which are common in the construction industry that will be significantly disrupted as a result of this policy proposal:

1. *Rate Group 755 – Non-Exempt Partners and Executive Officers in Construction* was established in 2013 under Class G – Construction as a way of appropriating a more reasonable amount of risk to the executive officers of a construction company who do not actually work "on the tools." This move has reduced the premium rate for executive officers in construction from the same price as an individual working in the field (in 2015 anywhere between $3.69 and $18.31 per $100 of salary depending on the corresponding rate group) down to $0.21 per $100. In a much more appropriate allocation of risk, executive officers in construction are now appropriately assessed at the same risk level as someone in the financial services industry. The savings for medium- to large-sized companies are quite significant.

   The RFR proposal to assess companies based on their "predominant business activity" will eliminate this special rate for executive officers.

2. *Companies that are presently multi-assessed who maintain business activities outside of the construction industry* are likely to see significant swings in their premium rates under this proposal. In Ontario, there are construction companies whose premium rate class will fall outside of construction as a result of this proposal. As an example, there is an extremely large ICI and heavy civil construction company that also operates in the health care field, by staffing certain hospitals in Ontario with all non-medical personnel (a result of the Public-

Private Partnership construction procurement model). Based on their company make-up, their “predominant business activity” would fall in the healthcare field rather than in construction, as they employ more workers in the former. This would mean that the construction arm of their company would be grouped into a Class P: Hospital rate, rather than a G1: Building Construction or G2: Infrastructure Construction rate class. Based on this assessment, this company would be grouped into a rate class at approximately ¼ the rate of their direct competitors in the construction industry (based on the initially proposed Calls Target Premium Rates outlined in Technical Paper #3).

The level of concern in the construction industry around this specific proposal is significant, as it has the potential to create significant competitive advantages/disadvantages for companies operating in more than one sector or industry. A much more thorough review and consideration by the WSIB on this issue specifically is necessary. A more in depth consultation on the specific impact of this proposal on the construction industry needs to be undertaken before it moves forward as an across-the-board policy for a new rate framework.

Recommendation #6 – Start all employers at their new Class Target Premium Rate to smooth the transition towards company-specific rates

It is absolutely critical that the transition to a new rate framework be as smooth as possible for employers. A major component of this is related to the premium rate level. We would like to see a gradual move towards individualized rates so that companies are able to adjust over time to the new system. Presently, the rate group system is easy for companies to understand, as they pay the same amount up-front for insurance that every competitor in their marketplace pays. When the WSIB moves towards charging individualized rates, there will be a system shock that needs to be minimized to the greatest degree possible. The most clear-cut way to minimize a system shock – as noted above in Recommendation #2 – is to wait on implementing a new system until the UFL is eliminated. However, there are two complementary actions that can be taken in addition to waiting for zero UFL, to cushion against this shock:

1. <u>*Begin migrating all companies towards their class target rate beginning in 2017.*</u> While the existing system is still in place, rates should be gradually declining to their class target rates as a means of smoothing the transition to the new system. By migrating towards these rates over a matter of years in the lead up to a new system implementation, it will motivate companies to re-invest their saved capital into OH&S in order to prepare for the system change. It will also demonstrate to companies that it is not the system switchover, but rather the elimination of the UFL that is lowering their premium rates.

2. <u>*Everyone operating in the same Rate Class should be started at the same rate: the Class Target Premium Rate.*</u> Beginning in Year 1, every employer would start at this rate, similar to how the existing rate structure works now, and then would be allowed to migrate to their individualized rate beginning in year two. Rather

than starting at different rates for every employer, this will allow each employer to understand how important their individual performance is, as each year the good performers migrate lower while the poor performers migrate higher. We believe this would be a very good motivational tool for companies to enhance their health and safety programming and investment in order to keep pace with other employers in their rate class.

Starting everyone at the same rate will smooth the transition to the new system, will still allow companies to migrate to their individual rate quickly, but will give everyone the opportunity to start fresh. It will also serve to test the WSIB target rates and allow for a "stress test" on the system in its infancy to ensure that it can appropriately adjust the individualized rates year-over-year to account for the necessary level of capital to fund the system.

Recommendation #7 – Expand the number of rate classes; consider maintaining existing rate groups under new model

The WSIB's devotion to utilizing the North American Industry Classification System (NAICS) in its current RFR proposal is flawed. As the Ontario General Contractors Association has rightfully pointed out in a letter to the RFR consultation group on August 25, 2015, "the [NAICS] was developed as an industrial classification system, not as a method of allocating insurance risk." As such, there is no real necessity to limit the number of rate classes modelled in the system design phase. As the MCAO submission identifies (page 22.6 – 23.13), there are a number of existing rate groups that achieve the WSIB's stated "actuarial predictability" test of $2 billion in annual payroll, and other provinces that utilize similar framework designs based on NAICS (New Brunswick) are able to maintain seven construction rate groups at much lower predictability thresholds.

The CEC recommends that the WSIB consider a number of other potential rate class combinations for the construction industry, beyond the three proposed in the RFR technical papers of March 2015 and the five proposed in the WSIB industry-specific updates occurring since May (split of the G3 class into G3-1, G3-2, and G3-3). We believe that a host of different options should be modelled and tested for efficiency, including a model that reviews and compares each of the 13 existing construction rate groups versus other models. Stakeholder groups should be brought in to discuss this process to help identify where synergies may exist between current rate groups and how the classification process may be improved.

In terms of maintaining a degree of consistency in this transition process, modelling and understanding how the existing rate groups compare to some of the other proposed groupings is necessary to allow employers to understand the intricacies and impacts of the proposed changes to the rate group structure.

Recommendation #8 – Base per claim limits on a set percentage of insurable earnings, rather than on a graduated scale based on predictability

While the CEC agrees that there should be a graduated per-claim limit at the employer level based on the size of a company, we believe that the WSIB needs to modify its proposed approach. Rather than developing only four clearly demarcated categories of predictability with accompanying claim multipliers, we suggest that the WSIB move employers up the accountability grid in the same manner as current employer Experience Rating factors are calculated. This would mean that per claim limits would be based upon a percentage of the reported insurable earnings for a given company. Adopting a more equitable and transparent process like this would ensure that minor upward movement of assessable earnings does not push a company into a higher per claim limit category. The movement upwards will always be gradual.

Recommendation #9 – Review and adjust the technical limits for rate calculations as appropriate over the first five years

It remains difficult for the CEC to assess the validity of the current proposal to base company specific rates on their previous five years of claims history (combined with the class rate depending on the size of the company), without having the requested company-specific impact data that the CEC has requested a number of times since March. This information will help us better understand how individual companies within our collective memberships will fair within the new NAICS-based rate classes and how their premium rates will be affected by this model.

We also believe that is necessary for the WSIB to allow this time-period for claims history to be fluid and open to adjustment. We do not disagree with the technical limits that have been initially proposed, but with the understanding that they are likely to require adjustment as more information becomes available. As part of the design process for the RFR, we would like to see a firm commitment from the WSIB to review their rate setting standards after five years to ensure that what is being used is the most appropriate use of technical limits. This should include consideration of different technical limits for each different rate class depending on what is deemed the most appropriate snap-shot of a rate history for each industry.

We expect that the RFR will not undermine the WSIB's role in enhancing workplace OH&S and prevention. As part of the reform process we would like to see a dynamic feedback protocol developed and delivered through the WSIB Chair's Advisory Groups and ensure that this element receives comprehensive and ongoing attention. The OH&S and prevention statistics should be considered as part of the above suggested review, no later than five years following the initial implementation of the RFR to understand how these statistics have shifted (if at all) under the new system.

Recommendation #10 – Pilot the RFR model on a control group and perform a sunset review after five years to determine whether it is reasonable to expand across all rate classes and predictability levels

Our final recommendation is for the WSIB to consider piloting its new rate framework on a control group for a three to five year period to “work out the kinks” and ensure that this system meets the WSIB’s funding requirements and responsiveness to changes at the rate class level. We would recommend identifying one or two existing Rate Groups comprised of employers who are primarily above the 70% predictability threshold, as companies within this range will more ably adjust to changes in administrative practices and more easily absorb a changing financial burden. This control group could be analyzed under this new system over an identified control period to consider the benefits of expanding out this program to lower predictability levels within the WSIB system.

During the pilot process, the system design should be considered fluid and open to adjustment. This will allow the WSIB to perfect the model in a real world scenario, while maintaining it within a controlled group. If after a defined period of time the new framework is ultimately deemed beneficial and ready for expansion to other predictability levels, it will be freer of flaws that are likely to be experienced in the first few years of the new system after implementation.

While this system design is being piloted, it can also be compared in a side-by-side scenario with the existing rate structure under the same external scenarios. It will also allow the WSIB to make a sound decision on which system is more responsive to the changing employment scenarios in the province over time.

Concluding Comments

Overall, we believe that continuing to aggressively press forward with this initiative and implementing hard timelines on stakeholder consultations and future implementation is a mistake. The WSIB needs to approach a redesign of the current rate framework with a significant degree of caution and with full participation of stakeholder groups to ensure that all of the intricacies of the different provincial labour markets and sectors are appropriately addressed in this process. Moreover, we believe that the WSIB needs to remain primarily focussed and invested in eliminating the UFL before it presses forward with a rate framework reform.

Eliminating the UFL will be an achievement that no other WSIB administration has been able to achieve over the previous three decades. It is a legacy piece that will have a much more profound impact on the provincial workplace insurance scheme, and labour market more broadly, than a new rate framework will have. Considerable progress has been made towards accomplishing this goal, but there is still a lot of work to be done to reach the final objective. Engaging in the RFR design and implementation process will take much needed resources and attention away from the WSIB’s primary goal of eliminating the UFL. As such, we continue to reiterate the CEC position that the RFR needs to be paused until the UFL has been completely eradicated.

By adopting this approach, the WSIB can extend the new rate framework design timeline and eliminate the urgency from this process. This would signal to stakeholders that their concerns with the RFR are being heard and that the WSIB is willing to work with stakeholders groups to address all of the concerns that they are hearing with this current consultation process.

As this phase of the consultation comes to a close, we expect that the WSIB will consider all of the comments and recommendations received and revise the initial draft proposal. We also expect that our requests for more detailed statistical information related to company-specific impacts will be provided in advance of RFR version 2.0 being issued to stakeholders to allow us to better understand and communicate with our own memberships what the true impacts of this reform process may look like.

As always, we appreciate the ongoing dialogue between the CEC and WSIB on this issue and wish to continue with the discussion as the process moves forward.

We appreciate having the opportunity to make the above noted comments and are willing to discuss any questions that the WSIB may have with the information included in this submission.

Please feel free to contact me (patrick.mcmanus@oswca.org or 905-629-7766 ext. 222) at any time if you have any questions related to the CEC submission or its membership.

Sincerely,

Patrick McManus
Chair