

## STAKEHOLDER SUBMISSIONS TABLE

### NON-WORKSAFEBC RETURN TO WORK PROGRAMS

The Policy and Research Division has reproduced, as received, the comments below

**Option 2: Amend policy to state that insurance payments may be considered earnings provided that payment relates to the work being performed**

No.	Stakeholder	Preferred Option	Comments
1	<b>Foothills Silva Culture Inc.</b>  Employer Perspective	Option 2	The second option sounds reasonable as it addresses the workers earnings while working only.
2	<b>Canadian Natural Resources Limited</b>  Employer Perspective	Option 2	We believe the amended policy should be adopted to take in to account monies paid from insurance schemes to be considered as earnings as long as the conditions are met as laid out in the policy, when determining compensation for individuals participating in RTW programs.
3	<b>Central Interior Logging Association</b>  Employer Perspective	Option 2	We understand that the purpose of the discussion paper is to determine if insurance payments should be included in the calculation to determine earnings in the event that a worker is injured participating in a Non-WorkSafeBC Return to Work program. The CILA believes it is reasonable to consider insurance payments as “earnings” and the amount acceptable for the employer and employee are working in good faith with the objective to have the worker return to full productivity in a graduated and controlled manner. We concur with Option 2 to amend the policy to state that insurance payments may be considered earnings provided that payment relates to the work being performed.
4	<b>B.C. Federation of Labour</b>  Worker Perspective	Option 2	The B.C. Federation and its affiliates support Option 2, which amends the policy to state; that insurance payments may be considered earnings provided that payment relates to the work being performed.  We believe that this provides for a more fair assessment of a worker’s short-term average wage.

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5	<b>Workers' Advisers Office</b>  Worker Perspective	Option 2	The Workers' Advisers Office (WAO) supports the creation of a new policy to address this issue. Specifically, we endorse the policy Option 2 set out in the Discussion Paper.
6	<b>City of Port Coquitlam</b>  Employer Perspective	Option 2 [With additional comments]	<p>After review, the City of Port Coquitlam support Option 2 as this would be an improvement in service both to the Worker and Employer. However neither option fully addresses the issue and we offer the following additional comments for your consideration:</p> <ol style="list-style-type: none"> <li>1. Every claim for workplace injury that occurs when in a Return to Work Program either sponsored by WorkSafeBC or another carrier must be adjudicated by a WSBC Claims Manager to determine whether there is work causation, an aggravation of the pre-existing condition or purely caused by the non-work related activity or condition;</li> <li>2. All earnings should be amalgamated when considering insurable earnings for a workplace injury regardless of source;</li> <li>3. Any payment made by WorkSafeBC should take into consideration any third party payments/earnings and amended by an amount so as to avoid having the Worker paid more than what they would have earned if not for suffering a subsequent injury.</li> </ol>
7	<b>BC Nurses' Union</b>  Worker Perspective	Expansion of Option 2	Current practice of the Board is to not consider earnings from non-WorkSafeBC return to work programs as earnings when a worker suffers a work related injury while participating in such a program. For instance if a worker were on a return to work program in which 100% of their wages were being paid by the insurer the Board would consider the worker's short term average earnings to be \$0. If the employer were to be paying the worker 50% of their wages in such a program the earnings would be considered to be the amount the employer was paying.

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			<p>This practice creates a significant disincentive to participating in return to work programs (RTW). If a worker were to become injured while participating in such a program they would risk losing all income as a result of the injury caused by that work. The insurer does not have an obligation to continue payments when the disability is now due to an injury that is not related to the condition for which they are receiving insurance payments. If the injury that occurs during the RTW program is severe they may face a very significant disability without income. This presents a significant disincentive to a primary goal the Board has a strong interest in supporting which is returning workers with disabilities back to work.</p> <p>Option 2 in the discussion paper is to amend policy to state that insurance payments may be considered earnings provided the payment relates to work being performed. This is a small move in the right direction but it does not go far enough. All earnings while in a RTW program should be used when calculating short term average earnings whenever the injury will result in a loss of that income.</p> <p>If the worker for example is on a return to work from which the employer pays 4 hours per day and the insurer pays 4 hours per day and the injury will result in the worker no longer being able to earn both the employer paid and insurer paid portions of that income. All of the income should be included in the average earnings. If the insurer would continue to pay the 4 hours after the injury, or be responsible again for all of the income loss resulting from the new injury because it occurred in a program they had sponsored then that income should be deducted from the compensation payable on the claim. This approach would best support the goal of returning disabled workers to work and would ensure fair compensation for what best reflects the actual loss due to the injury.</p>
8	<b>Workers' Compensation Advocacy</b>	Expansion of Option 2	We agree that the status quo is unfair to workers who suffer a new injury while engaged in a return to work program sponsored by their employer or group insurer, in situations where the worker has been receiving insurance benefits instead of some or all of the wages the employer would normally pay.

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	<p><b>Group</b></p> <p>Worker Perspective</p>		<p>However, we cannot agree that it would be an acceptable solution to recognize such insurance benefits only where “they relate to the work being performed”.</p> <p>The examples described in section 4.2 of the paper nicely illustrate the inadequacy of the second (and only) option offered by the paper:</p> <p><b><i>For example, if a worker is only in the workplace for four hours, but receives a top up in insurance proceeds for an additional four hours not related to the work being performed, the insurance proceeds would not be considered earnings for the purposes of calculating short-term average earnings.</i></b></p> <p><i>Conversely, if the worker is in the workplace for eight hours, and the worker receives half of his or her wages through payment of insurance proceeds, the insurance proceeds may be considered earnings for the purposes of calculating short-term average earnings.</i></p> <p>This appears to mean that in the first instance, the worker would be compensated by the Board at a rate based only on the wages received for the four hours per day worked, while in the second example the worker be compensated at a rate based on full time earnings. In both instances, the return to work injury would have deprived the worker of his or her entire income. Why should the fact that the first worker had not yet recovered to the point of being able to work full time reduce those benefits by half?</p> <p>The Board consistently ignores the fact that s.33(1) of the Act, the starting point of the provisions dealing with wage rates, refers both to “average earnings” and to “earning capacity”. The general principle has been that past earnings history (average earnings) is usually the best indicator of future earnings (earning capacity), but that is obviously not true in every situation, and the very existence of this policy review is an acknowledgement that this is one of the</p>

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			<p>exceptional situations where the past averages (at least as determined by the restrictive definition of earnings used by the Board) do not fairly represent an injured worker's future losses.</p> <p>We support a different option: The Board should recognize all insurance payments as "earnings" for purposes of a new injury sustained in a return to work program. Where the worker is receiving partial wages and partial insurance payments, as in the first of the two examples quoted above, the total should form the basis for the short term average earnings, as that is what the worker was receiving in return for participation in the return to work program at which the injury occurred.</p> <p>We have a more general comment. This is at least the third consecutive policy paper in which only one "option" was presented for consultation other than the status quo. The community has objected that the notification of decisions and variable earnings discussion papers did not sufficiently address the issues, and they are now being redrafted. The purpose of consultation is defeated when the community and the Directors are only presented with one way of changing the current policy. Offering several options may take more time for research and analysis, but we believe that it will pay off in better assessment of the relevant factors, more meaningful and helpful consultation, and ultimately better policies.</p>
9	<p><b>BC Maritime Employers Association</b></p> <p>Employer Perspective</p>	Option 1	<p>It is the consensus of our group that WorkSafeBC should maintain the status quo which appears as Option 1 in your Discussion Paper. This option continues the past practice of excluding insurance payments from the calculation of short and long term wage rate calculations. We believe that the current practice best represents the original intent of the Workers Compensation system which was to provide income replacement to injured workers based on their pre-injury employment remuneration.</p> <p>Our first reason for supporting the current practice is that return to work programs are often a form of treatment sometimes referred to as work conditioning or work hardening. A worker, who is in the process of recovering from a</p>

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			<p>non-work related illness or injury, is sponsored directly or indirectly by an Insurance Company who will likely continue benefits if the worker aggravates the original injury or sustains a new injury while involved in treatment or a work conditioning program. If WorkSafeBC were to accept the insurance benefit as earnings the Worker may continue to receive the insurance benefit as well as have the prior insurance benefits inflate the wage loss rate and payments which the Worker may receive in addition to the insurance benefit.</p> <p>The second reason we support the current practice is that the Insurance Company who is sponsoring the Worker is not paying any assessment or insurance premium to WorkSafeBC as the Employer of the Worker while the Worker is in the return to work program. Without the Insurance Company's contribution to the accident fund, the Employers of BC would be subsidizing the wage loss rate if the Insurance benefit would count as earnings. All employment earnings are subject to an assessment for Workers Compensation coverage, however, insurance benefits are not. This is the same principle used in determining that employment insurance benefits are not used in setting a Worker's wage rate.</p> <p>The final objection to a change from the current practice is that there already exists a method for calculating a Worker's wage rate by taking out of the wage loss equation any significant period of medically required absenteeism.</p> <p>Reference is made to Section 33(4) of the Workers Compensation Act and Policy Item #67(2)(a) of the Rehabilitation &amp; Claims Manual II which allows for the deduction of a period of disability when considering a Worker's long term earnings or a Casual Worker's initial rate.</p> <p>As an Association of Employers paying regular assessments that underwrite the costs of not only workplace insurance benefits (wage loss, pension and health care costs) but prevention, education, health and safety programs as well, we believe that for the purposes of calculating a Worker's wage rate only income earned from employment should be included. Any departure from this past practice would unfairly burden the accident fund and the Employers</p>

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10	<p><b>Council of Construction Associations</b></p> <p>Employer Perspective</p>	Option 1	<p>We have a major concern that WorkSafeBC is attempting to provide an additional entitlement that was not intended within the original purpose of the Workers' Compensation Act.</p> <p>Essentially, no employer has paid assessments to pay for the additional payments that would follow from this proposed change of policy. And the stated purpose of workers' compensation is to provide financial benefits for work-related injuries and diseases:</p> <p><i>Compensation for personal injury</i></p> <p><i>5 (1) Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.</i></p> <p><i>(2) Where an injury disables a worker from earning full wages at the work at which the worker was employed, compensation is payable under this Part from the first working day following the day of the injury; but a health care benefit only is payable under this Part in respect of the day of the injury.</i></p> <p>The Workers' Compensation Act is not intended to provide social assistance; there are other agencies with this responsibility.</p> <p>Accordingly, we are opposed to any inclusion of insurance payments as earnings when calculating short-term average earnings for workers who are injured while participating in a non-WCB RTW program.</p>

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11	<b>Maplewood House Society</b>  Worker Perspective	Option 1 [Comments do not support preference for Option 1]	As the worker is injured and returning to work the worker should not be penalized monetarily for participating in a return to work program, whether or not it is a WCB sanctioned one or not.
12	<b>Ted Leroy Trucking</b>  Worker Perspective	Option 1 [Comments do not support preference for Option 1]	you are an insurance company not a employer! stop makeing changes that do not benefit injured workers. as one who has been injuered in the pass it is little comfort knowing I will be dealing with a employer based insurance program.
13	<b>Forrest Gray Lewis &amp; Blaxland</b>  Worker Perspective	Option 1 [Comments do not support preference for Option 1]	I have been practicing Workers' Compensation law for over twenty years. I have been practicing employment insurance and motor vehicle law for over thirty-one years. The proposed draft Policy #65.05 is wrong and ought not to be approved. I can tell you from experience that, on all too many occasions, WCB declines to assist the worker for a variety of reasons, such as a lack of belief that the injury has continued, or a lack of acceptance that the injury was work-related. While in the appeal limbo, the worker will rely upon the more reliable LTD benefits. Sometimes these benefits are purchased privately, with 100% of the expenses to the worker, and sometimes these benefits are paid for by the employer. However, in most occasions, they are part of the bargain that results in the exchange of services by the worker for wages and benefits. The cost of this benefit is like the doubling up of a private life insurance policy. The law has always accepted double recovery when private insurers are involved (see the Supreme Court of Canada decision in <i>Cunningham</i> ). Double recovery is due to the forethought, or luck of the employee working for a good employer. The expense often is part of the employee's remuneration. This LTD, which often includes private RTW, is a benefit earned by the worker, so why should WCB penalize the worker with a private insurance benefit? It is none of the WCB's business as to what monies are received by the worker for disability, or what benefits are provided

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			<p>by an insurer.</p> <p>WCB, who is charging the employer to create a fund in exchange for the employer being exempt from liability by the employee, should not benefit with the reduced expenses because of the good fortune of a worker to have private insurance and to be able to afford a private RTW program, or, alternatively, is lucky enough to have insurance for which the insurer will pay for the non-WCB sponsored RTW in the hope of limiting their expenses to LTD.</p> <p>Another additional policy factor is that many private insurers, in order to keep down their costs to the employees and keep down their costs to the employers, obtain an indemnification policy, by which any monies received eventually from WCB for monies paid in the LTD program must be reimbursed. If WCB was to benefit by not paying monies out to deserving workers, then the insurers would be less likely to approve any private RTW program, which would be a direct expense to the insurer. As a result, workers, who need to have a RTW program, would be denied this benefit, which might greatly enhance their future ability to be a wage earner in our Province while awaiting WCB appeals. If the worker won his or her WCB appeal, and WCB was obligated to provide a WCB-sponsored RTW, the success or failure of a private RTW could save WCB money, or assist WCB in creating a more relevant RTW program.</p> <p>If the worker unsuccessfully appealed in the WCB system, and was not able to establish that the injury either continued, or was work-related, then the worker would never obtain a WCB-sponsored RTW. Having been declined or delayed a private RTW program because the insurer was reluctant to provide this benefit, in the hope that WCB would eventually sponsor a RTW, would be a great injustice to the worker.</p> <p>In that Workers' Compensation system does not compensate the employee for all of their expenses, particularly legal fees, nor the actual loss of earnings, the fact that the worker might have a private insurance policy because they either funded it themselves, or had a private insurance fund, is of no concern to WCB. The status quo is in place because this is consistent with the general freedom in our society to have double coverage, or to obtain whatever</p>

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			products the worker wishes in the marketplace. WCB, being a mandatory policy that restricts the worker's rights to sue the wrongdoer, ought to be provided when, pursuant to Section 5, a worker is injured and, thereby compensate that worker, and ought not be concerned with what other non-income monies the worker received while disabled from an injury.