

STAKEHOLDER SUBMISSIONS TABLE

ANNUAL CLASSIFICATION CYCLE

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

Option 1: Status Quo

Option 2: Adopt an Annual Classification Cycle

No.	Organization	Feedback from a worker or employer perspective?	Preferred Option	Explanation
1	Mid Island Safety Services	Employer	Option 2	All companies need to be in their correct classification groups lest it give unfair advantage/disadvantage. Just because they have been wrongly classified, that should not mean "forever".
2	CAW Local 114	Worker	Option 1	I see no reason why Employers should benefit from a change to the 75 day rule, when workers cannot. Claims adjudicators make the same kind of delayed or flawed decisions as the Assessment Department. If you are proposing to change the 75 day rule for Employers, then change it for Workers. Better yet, get rid of it altogether.
3	AWG Northern Industries Inc.	Employer	Option 2	<p>I agree that the system as it is now is not ideal. I don't really understand the reasoning for the policy of not reviewing rates after 75 days. It seems that WorksafeBC has tied their own hands by implementing this fairly arbitrary policy in the first place. I have a few concerns about the annual classification cycle.</p> <p>They are:</p> <p>1) What is the annual assignment of CUs going to be based on? If you don't hear from a company over the year, it's status quo? Because, as stated in the discussion paper, companies that are benefiting from the misclassification aren't going to say anything. Will an annual questionnaire be sent out to the firms to ask about the nature of their operations? How will that change anything if a firm that knows it will pay more if it is just a little more truthful about its operations, chooses to omit certain details. Or will it be part of the enforcement officers' job when they do an inspection to ascertain the correct CU (I believe they already do this)</p> <p>2) Is it anticipated that most firms will stay in the same CU. I'm just thinking about</p>

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				<p>consistency from one year to the next. A firm likes to have some idea of costs, payroll costs being a big one, and if the firm is moved from one CU to another it is hard to plan for costs. I would think (hope) it would remain fairly stable except for those firms that aren't classified correctly and then once it is corrected there won't be a lot of changes.</p> <p>3)OK, cost. There is no mention of what this annual review is going to cost and how it will affect everyone's rates. It is a good thing to be more equitable but is there another way to do it. I guess I'm just missing the point about how an annual assignment of CUs is going to achieve this equity - where is the new information coming from to do this. How will you know that Company A is paying less and Company B is paying more? What about eliminating the 75 day policy so that firms can protest their rate classification or the Board is more at liberty to re-assess for other reasons besides fraud and misrepresentation?</p>
4	Willow Point Supportive Living Society	Employer	Option 2	<p>I agree totally that the classifications should be able to be reviewed and corrected to better balance the required payments.</p> <p>#2 is a better arrangement but how about: #3"Spot" review a certain number of businesses each year, randomly, plus any that come to your attention that may be improperly rated.</p> <p>By spot reviewing periodically rather than re-evaluating every business every year, takes less time and money. Hire a few more people and check only a certain percentage of businesses each year. Over a period of years, every business would then be re-evaluated (perhaps based on a 5 year or other pre-determined cycle)</p>

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5	AJ Safety Centre Ltd.	Employer	Option 2	<p>As a provider of Audiometric Hearing test services we receive a number of " complaints " from clients who are working in construction industry related activities, but do not have a construction CU due to clasification from previous activities. We have some clients who are doing the same work as other clients. One has a construction CU , the other doesn't. This is happening within the same orgenization as amalgamations of companies occures.</p> <p>The ability to adjust the clasification CU as companies shift activities would be advantagious.</p>
6	Aerofreeze Systems Inc.	Employer	Option 2	<p>It is unfair to not allow reconsideration of the CU after the 75 day mark has passed. I do not think there will be an influx of companies asking for reviews or changes in classifications.</p> <p>Employers should just be asked to review and confirm their company's CU and then WCB should do random checks to verify that there is no misrepresentation and their should be fines for misrepresenting their firm.</p>
7	Kal Tire	Employer	Option 2	<p>Firm classifications should be assigned annually, allowing WorkSafeBC to correct past misclassifications for future assessment years. It is the right thing to do. Employers should not pay or not pay for an error made by Adminstration - regardless of how many days have past. If it is an error it should be fixed.</p>

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8	New Car Dealers Association of BC	Employer	Option 2	<p>We support the proposed change to policy that would establish an annual classification cycle.</p> <p>We understand that the present situation is not satisfactory because WorkSafeBC is legally unable to change a firm's classification if the original decision on classification was made more than 75 days in the past. The 75day limit was imposed on all WorkSafeBC decisions - claims and others -- by a 2003 legislative change. The Workers' Compensation Appeal Tribunal has decided that Assessment Department decisions on classification must adhere to this 75-day limit on reconsideration.</p> <p>We support the change because it would promote fairness and allow either the firm or WorkSafeBC to reconsider the firm's assessment classification on an annual basis. If no change was made, then a firm may be permanently placed in a category that is either too high or too low a rate for that firm's business. This, of course, would be unfair to either that firm or to its competitors.</p> <p>The proposed policy change would permit the determination of the firm's classification on an annual basis.</p> <p>If the new policy were put in place, there would not be any additional paper burden on the employer. WorkSafeBC would simply use the existing information on file to continue the firm's assessment classification - unless new information comes to light. An employer is already required to inform WorkSafeBC of any change to operations that might result in a change of classification.</p>

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9	Health Employers Association of BC	Employer	Option 2	<p>In reviewing the options presented in the discussion paper, HEABC is supportive of Option 2 which is to adopt an annual classification cycle.</p> <p>HEABC supports this option for the reasons provided in the discussion paper. As noted in the discussion paper on page 2, when the <i>Act</i> was changed in 2003, the 75 day time limit on reconsidering decisions was not intended to apply to classification decisions; however, this was later changed and the time limit has since been applied to classification decisions where there is no change in operations and no fraud or misrepresentation.</p> <p>This has resulted in an inability to correctly classify misclassified firms which means that these firms are paying incorrect assessment amounts. This is contrary to insurance principles, it results in an inaccuracy of data to calculate experience rating and monitor industry-level health and safety performance. It was never the intent of the 75-day reconsideration legislation to create these outcomes.</p> <p>Adopting an annual classification cycle will allow WSBC to assign every firm a classification within a newly approved classification and rate list on an annual basis. Employers would be responsible annually to ensure that they are correctly classified and if they are not, there is the ability to correct misclassifications and ensure appropriate rate setting and assessment payment. Implementing an annual classification cycle will also promote the credibility of the experience rating system and ensure the accuracy of data with respect to occupational health and safety performance.</p>

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10	Council of Construction Associations	Employer	Option 2	<p>The issue that this paper addresses is that WorkSafeBC is not able to change the classification of a firm because the original decision was made more than 75 days in the past. The 75 day limit was imposed by a 2003 legislative change. A determination by the Workers' Compensation Appeal Tribunal has ruled that the assessment decisions on classification are subject to this 75 day limit on reconsideration.</p> <p>The only exceptions to this limit are where there has been fraud or misrepresentation. Then WorkSafeBC is able to reevaluate the classification. But, at present, an error due to incomplete information or a misunderstanding that results in a misclassification – too high or too low – cannot be corrected after 75 days.</p> <p>The misclassification of a firm typically results in that firm paying either less or more than other firms doing the same business. This means that other firms will be competing against a firm that should be paying the same assessment rate but is not.</p> <p>The proposed change in policy would allow WorkSafeBC to assign the firm classification on an annual basis. (At present, the Act and policy are silent on how long a classification assignment will last.)</p> <p>The annual assignment of classification would permit the reconsideration of a classification if either the firm or WorkSafeBC believes that an error of classification has been made.</p> <p>The current restriction means that about 3,000 cases each year – out of approximately 197,000 registered employers -- that should be reviewed are not. Some reviews would</p>

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				<p>result in higher assessment rates; some in lower. All such decisions would be subject to appeal.</p> <p>The proposed new policy would not result in extra paperwork for the contractor. The Assessment Department would base the classification each year on the firm information that is already on file. It would only be when the firm's operations change that a classification review would take place. Firms are already obligated by law to advise WorkSafeBC of any changes in operations.</p> <p>Note that this policy does not include a change in operations. WorkSafeBC is already able to make a change in classification if there has been a change in operations.</p> <p>We support the proposed change because it would result in greater equity and fairness.</p>
11	Employers' Advisers Office	Employer	Option 2	<p><u>Annual Classification Review:</u></p> <p>The Employers' Advisers Office supports the proposal to introduce an annual classification review process. We understand an annual review will allow the Board to correct misclassified firms once per calendar year and that any corrections to classification as a result will be prospective in nature.</p> <p>Given the legislated limitations on the Assessment Department's ability to correct classification errors in the absence of fraud or misrepresentation, and given the resulting unreliability of WorkSafeBC's data for rate setting purposes if classification errors remain unaddressed, we applaud this creative initiative.</p>

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				<p><u>Proposed amendments to Policy AP1-37-1:</u></p> <p>The Employer's Advisers Office has no concerns regarding the proposed changes to AP1-37-1.</p> <p><u>Proposed amendments to Policy AP1-37-3:</u></p> <p>We submit that the proposed annual classification review has far reaching implications. The proposed changes to AP1-37-3, in our view, fail to fully address the concept of an annual classification process.</p> <p>As a starting point, we submit that AP1-37-3 should clearly state the Board can change the initial classification of a business, based on new information, provided the classification change is implemented within 75 days of the initial classification decision.</p> <p>Secondly, we submit the policy should clearly state that a firm's classification may vary from year to year and may change as a result of an annual review by the Board. Information received by the Board between the annual classification review cycle dates (regardless of the source of this information) will be considered during the upcoming classification review and be implemented prospectively for the coming year.</p> <p>Given that all classifications will be reviewed on an annual basis, we submit there is no longer a need to establish different effective dates for a change in a firm's classification based on the reason for the change. In the absence of fraud or misrepresentation, all</p>

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				<p>classification decisions should be prospective and the annual classification decision should be binding on the Board.</p> <p>For example, assume the Board conducts an annual review in Year One and confirms the current classification based on information on file. In Year Two, the Board becomes aware that the firm is misclassified (as a result of disclosure by the firm of a change in its business operations; an audit revealing the firm is misclassified; or a competitor who seeks the Board's intervention to correct a perceived competitive advantage). Regardless of what sparks the reclassification, it is our submission that any resulting classification decision should be part of the upcoming annual classification review cycle and be prospective in application.</p> <p>We submit the policy should clearly state that retrospective classification will apply only in instances of fraud or intentional misrepresentation. We recognize a firm's obligation to provide accurate and current information to the Board for the purpose of classification, however, we submit that an annual review of classification puts some onus on the Board to conduct an investigation prior to confirming or changing a firm's classification. We submit that the quality of information needed to classify a firm annually is the same as that required for initial classification and is a shared responsibility.</p> <p>We object to the inclusion of "failure to provide timely, complete and accurate information to the Board regarding the firm's operations or changes to the firm's operations" in the definition of misrepresentation. Employers have no expertise in the Board's classification system and are generally motivated by rates rather than the precision of their classification unit assignment. We submit that a representation based</p>

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				<p>on ignorance or carelessness should not spark a retrospective classification unless the representation was made with the intention to deceive.</p> <p>Finally, we submit that the transfer of experience rating in an annual review process needs to be fully explored.</p> <p><u>Conclusion:</u></p> <p>In summary, as a general proposition, the Employers' Advisers Office supports the implementation of an annual classification review cycle as a means of minimizing the impact of misclassifications on the rate setting process.</p> <p>We have no concerns with the proposed amendments to Assessment Policy AP1-37-1.</p> <p>We do have concerns with the proposed amendments to AP1-37-3 as outlined above and submit that an annual classification review has broader implications than the proposed amendments address.</p> <p>We hope these comments are helpful and again wish to thank the Board for the opportunity to provide them.</p>
12	Canadian Association of Petroleum Producers	Employer	Option 2	CAPP supports fairness and equity in the workers' compensation system. Therefore, we cannot support the current system which places a time limit on when the WCB may consider a firm's classification. This limitation is causing inequities by allowing misclassified firms to possibly have a competitive advantage over their competitors.

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	("CAPP")			<p>Also, it is a concern that misclassifications result in inaccurate data to calculate experience rating, and measurement of health and safety performance.</p> <p>Therefore, CAPP supports Option 2: Adopt an Annual Classification Cycle. By assigning every firm a classification within the newly approved <i>Classification and Rate List</i> on an annual basis, the concerns stated earlier will be eliminated.</p> <p>We believe that if the time limit on reclassification is eliminated, it would prevent crosssubsidization, improve integrity to the data used for other programs relying on accurate statistical information, and promote equitable rates for employers.</p> <p>Although Option 2 may initially result in an increase in reconsideration, review and appeal requests as a result of a new classification decision, we believe that if accurate classification decisions are made initially, the reconsideration requests will diminish with time.</p> <p>In Summary, CAPP would like to reiterate that fairness and equity within the workers' compensation system is critical. Therefore, we support adopting an annual classification cycle which will prevent cross-subsidization, promote equitable rates and lend integrity to the data collected.</p>
13	Workers' Advisers Office ("WAO")	Worker	Option 2	We are writing in response to the above WorkSafeBC (the Board) policy consultation to provide the following submission. We also raise related concerns about the impact of section 96(5) of the <i>Act</i> (the 75 Day Rule) on workers and the need for a broader policy consultation by the Board on this issue and identify areas for further consideration.

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				<p style="text-align: center;">I) Annual Classification Cycle</p> <p>Based on our review of the policy discussion paper, the Workers' Advisers Office (WAO) supports <i>Option 2: Adopt an Annual Classification Cycle</i>. This option reflects the underlying intent of the <i>Act</i> in providing for ongoing flexible classifications assessment as opposed to the current restrictive approach. The amendment also makes sense from an administrative efficiency/fairness perspective in providing latitude to address obvious classification errors or unanticipated inequities between employer firms. Additionally it fulfills the critical purpose of fair and equitable contributions to the accident fund. In our view, any resulting administrative costs will likely be offset by the benefit of flexibility around re-assessment and increased accuracy and integrity in the classification process, as well as the likely reduction of appeals.</p> <p>ii) The Scope of the Consultation</p> <p>Many of the problems identified in the policy discussion paper resulting from the negative impact of the 75 Day Rule on employer classification decisions apply equally to worker decisions. For example, the inability of the Board to revisit wage rates and other decisions has a significant financial impact for some workers compared to other workers within the same injury group and ultimately results in inequitable treatment between similar classes of workers. Correspondingly, there is a high cost to the system in terms of administrative efficiency and integrity of the process; including increased applications for extension of time and appeals.</p>

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				<p>As with employer classifications, the inability of the Board to reconsider worker related decisions has far reaching implications for the system as a whole. Problems stemming from the 75 Day Rule and the resulting impact on both employers and workers have been acknowledged in various contexts by both the Board, and stakeholders; including the Employers Advisors office and the WAO.</p> <p>In our view the time is indeed appropriate and of some urgency for the Board to initiate a broader discussion on this issue, particularly, given the current consultation on employer classifications. The ideal “fix” for addressing problems associated with the 75 Day Rule is likely legislative, and thus beyond the scope of the Board or its stakeholders. However, it is critical to begin a dialogue on potential practice and policy related mechanisms aimed at mitigating the adverse, and frequently absurd, outcomes for workers. As a means of beginning this dialogue, we provide the following overview on the impact of the 75 Day Rule on workers, which will also be shared with community stakeholders.</p> <p style="text-align: center;">II) The 75 Day Rule</p> <p>i) Background/Legislative Intent</p> <p>As indicated in the policy discussion paper, the 75 Day Rule which came into effect on March 3, 2003 as a result of Bill 63 was introduced as part of the 2003 amendments to the <i>Act</i>. WCAT-2004-04020 considers the history of the 75 Day Rule in the context of a decision on the scope of Board authority to review a decision past 75 days. The panel noted that while one of the March 11, 2002 Core Services Review recommendations</p>

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				<p>was that the Board's discretionary reconsideration power outside of 75 days be removed, there was also a recommendation that the Board be provided with a re-inquiry power to revisit a final Board decision or a decision made by an appeal body based on new evidence. This power, however, was not incorporated into the amendments to the Act (at pp. 7-8). The panel concluded that based on section 96(4) and 96(5)(a), outside of fraud or misrepresentation, under section 96(7) of the Act, the Board has no authority to reconsider a prior decision outside of 75 days (at p. 8).</p> <p>Similar to above, see WCAT-2004-04141 where the panel also notes the dual legislative intent behind the 75 Day Rule of finality and circumscription of the Board's reconsideration power to 75 days (at p. 7). The panel points out the potential disparate impact of the 75 Day Rule in two contrasting scenarios. The first, where a worker misses filing an appeal on time and is not granted an extension of time, new evidence subsequently comes up, and the Board is precluded from reconsideration. The second, where a worker who has unsuccessfully exhausted all avenues of appeal is still able to apply for reconsideration at the appeal level, based on new evidence (at pp. 9-10). A similar outcome occurred in WCAT decision No. 2007-03764, where the panel commented:</p> <p>I appreciate the representative's submission that it was unreasonable for the Board to conclude that the worker had returned to his pre-injury state after the surgery and that he had no permanent impairment as a result of the surgery. However, I consider that the limitations on reconsiderations which are set out in section 96(5) prevent the Board from reconsidering that decision. The worker's remedies appear to be very limited. He may seek an extension of time to appeal</p>

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				<p>the Review Board findings to WCAT, in the hope that he might obtain a more favourable and/or more specific outcome than that obtained from the Review Board in June 2000. He may seek an extension of time to request a review of the Board officer's implementation decision of September 15, 2000 or he may seek a judicial review of the Board's implementation decision of September 15, 2000 and the review officer's decision that the worker is not eligible for vocational rehabilitation assistance, which is predicated on that decision. I appreciate that none of these options is very satisfactory but I consider that these are the only mechanisms for possible redress that exist within the current statutory framework for review and appeal of decisions made by the Board.</p> <p>WCAT-2006-02341 concludes that the legislative intent behind the 75 Day Rule is finality (at p. 11) However, that the intent is not for absolute finality regardless of circumstances, rather the legislature "tempered" the finality by allowing for an extension of time in certain circumstances under section 96.2(4) of the Act (at pp. 11-12).</p> <p>In conclusion, various authorities including WCAT and Hansard indicate that there is evidence of a legislative intent behind the 75 Day Rule aimed at emphasizing finality and certainty in decision making by limiting the Board's reconsideration power to a specified time period. However, it was not meant to work an injustice by effectively denying workers of compensation in certain circumstances. It was also not meant to force workers into appealing decisions for the sole purpose of preserving the right to reconsideration of Board decisions based on new evidence that may potentially become available at another time. Those workers who miss the appeal period and are unable to obtain an extension of time, experience the full brunt of the 75 Day Rule by being forever</p>

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				<p>barred from raising new evidence to rectify obvious errors, or challenge Board decisions. It is this latter group where the 75 Day Rule works a major injustice as can be seen by the following case examples.</p> <p>ii) The Impact</p> <p>One of the most poignant examples of the impact of the 75 Day Rule on workers is in the area of wage rates. Besides being an issue with significant impact on workers, this area is pivotal for most entitlement decisions. This is unfortunately, also an area where workers are most likely to be confused about the decision making process and its implications. For example, relevant pre-injury income, such as income from a second job, is easily overlooked. By the time such workers receive information and advice on proper wage rate considerations the appeal period has passed. The following case examples are illustrative of this problem.</p> <p>Case Example #1</p> <p>In 2003 worker #1 received his long term wage rate decision which showed a net weekly wage rate of \$425.41 based on one year of pre-injury earnings information showing that the worker earned \$28,025. However, although it was previously noted on the worker's file, the fact that the worker was on a different WCB claim in the one year prior to April 29, 2003, and had reduced employment earnings as a result of the other claim, this was not factored into the wage rate determination. As a result, the worker's wage rate was lower than it would have been if the information from the other claim had been used, the worker's long-term wage rate would have been \$485.60 per week. The worker did not</p>

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				<p>appeal this decision letter as he had no understanding of how wage rates were determined or any knowledge that a mistake had been made.</p> <p>In 2004 the worker contacted WAO asking for a review of a September, 2004 pension decision letter. While all aspects of the pension decision letter including effective date, PFI percentage, and no loss of earnings determination appeared to be correct; the adviser conducting the review noticed an error in the wage rate calculation (which was used to pay wage loss benefits and was used for pension purposes).</p> <p>In October 2004 the Board issued a letter indicating that long term wage rate was being corrected to account for the error that had been made, and indicating entitlement to retroactive repayment of temporary wage loss benefits. However, shortly after the letter was issued, the worker received a further letter from the Board rescinding the correction letter indicating that the Board lacked statutory authority to change the wage rate due to the 75 Day Rule. The decision letter also characterized the error in attempting to correct the wage rate as “administrative” and consequently, there was no need for repayment of retroactive benefits. The matter subsequently came under the scrutiny of an external agency.</p> <p>Case Example #2</p> <p>Worker #2 sought advice from WAO based on a concern that his pre-injury earnings were significantly higher than the initial earnings rate set by the Board. The adviser assigned to the file determined that not all of his employment income had been sent into the Board by his employer. The worker was employed on a contract that was taken over</p>

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				<p>by a new company. The initial employment income was never sent into the Board because the secondary employer did not have any of these records. The issue dates back to 2005 and in order to have the omission addressed the worker must now meet the EOT criteria to appeal this issue.</p> <p>Case Example #3</p> <p>Worker #3 sought advice from WAO on a wage rate issue. The wage rate was set without the proper tax information so it assumed a higher tax rate than appropriate, and consequently a smaller wage rate. The Board agreed that the tax information had not been requested and that there was an error that should be fixed however, it was precluding from addressing the error because of the 75 Day Rule. This resulted in an unnecessary appeal to the Review Division.</p> <p>Based on WAO experience, the above cases are representative of a much larger problem stemming from the vagaries of the 75 Day Rule. We suggest that they are illustrative of the high cost of the 75 Day Rule both for workers and for the system as a whole. The following provides recommendations regarding areas of consideration for minimizing the adverse impact of this provision.</p> <p>iii) Areas for Consideration</p> <p>It is important to premise this discussion by acknowledging that the ideal “fix” for this problem is likely a statutory amendment which is ultimately within the purview of the legislature. There are however, policy and practice mechanisms similar to the</p>

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				<p>amendment at issue which have the effect of avoiding or minimizing, the impact of 75 Day Rule which are within the scope of the Board. As examples of this we suggest that the following be considered:</p> <ol style="list-style-type: none"> 1. Expanding the exceptions that do not constitute a reconsideration of a previous decision, similar to the exception of vocational rehabilitation and health care matters under item C14 101.01 of the <i>Rehabilitation Service and Claims Manual</i>. This provision became effective on January 1, 2005, after the 2003 amendments to the <i>Act</i>, in recognition of the need to address the negative repercussions of the 75 Day Rule on these types of decisions. <p>Utilize existing policies that allow for provisional or preliminary 'decisions' that are not decisions for the purposes of section 96(5). This would include a wider application of policy items #66.12 <i>RSCM</i> Vol. I/#65.04 <i>RSCM</i> Vol. II and item #37.10 regarding provisional rates and policy item #96.21 regarding preliminary determinations. These policies could be utilized as a basis to make all long term wage rate decisions "preliminary determination" (while on wage loss) to be finalized as part of the permanent disability decision. This would allow time to make sure that the wage rate is accurate by allowing for:</p> <ol style="list-style-type: none"> i). the provision of evidence to correct erroneous findings of fact, at any time until the section 23 decision; ii). request review/appeal of the section 23 decision including the finalization of the long term wage rate.

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				<p>2. Given that there is no statutory definition of “decision” in the <i>Act</i> or policy it is open to the Board to provide policy that a finding of fact is not a decision for the purposes of section 96(5). This is in keeping with the reasoning in <i>WCAT-2006-04141</i> which in part adopted the reasoning in <i>WCAT</i> Noteworthy decisions #2006-02105 and #2006-02023 that findings of fact are not appealable decisions unless the finding of fact formed the basis of an entitlement decision (at p.3). The implications of these decisions are that unless a request for further consideration “impugns or questions” the basis for a decision it is not a reconsideration. This would result in the Board being able to address erroneous findings of fact including inadvertent omissions of pertinent evidence at any time.</p>
14	BC Building and Construction Trades Council	Worker	Option 1	<p>The 75 day rule on classification can not be changed for employers without allowing for flexibility for workers.</p> <p>The whole point of the 75 day rule was to provide certainty to the Board.</p> <p>Providing a variance to employers to change the 75 day rule for their purposes will be unfair to workers.</p> <p>If the Board wants to revisit the 75 day rule, as it should, to provide for the necessary flexibility on classification; we would support it.</p> <p>But that is not what is being proposed here.</p>

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15	Workers' Compensation Advocacy Group	Worker	Option 2	<p>We have had an opportunity to review the submission of the Workers' Advisers Office, and we concur fully their position. We agree that it makes sense to allow the Board to correct classification errors and inequities, both before and after the 75 day threshold has been passed, and that it makes no sense to allow the Board to correct an error after 75 days only if the review and appeal process has been exhausted.</p> <p>Those same considerations apply with far greater force to errors respecting a worker's compensation claim. It is, after all, still the Workers' Compensation Board, and the fair compensation of injured workers remains its central purpose. (The Board is not, incidentally, "WorkSafeBC", even if its public relations staff have concluded that the reputation of the "WCB" has become so toxic that it needs to disguise its identity by using an alias.)</p> <p>We therefore totally support the recommendation that the WCB immediately initiate a review to consider the compensation policy and practice changes outlined at pages 5 to 6 of the WAO's submission.</p>
16	Construction Labour Relations Association of BC	Employer	Option 2	<p>We support option 2, the creation of an annual classification cycle in keeping with the Business Council of BC's position for the reasons provided by the Maritime Employers' Association of BC and the Health Employers' Association of BC. We believe that this option addresses the issues created by the application of the 75 day time limit for reconsiderations to classifications decisions. As noted succinctly in your paper, such issues create significant inequities throughout the system and will create instability in the long term. Option 2 would mitigate these concerns significantly.</p>

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17	Judith C. Lee Law Corporation	Worker	Endorses two other submissions that express preferences for different options	<p>This is to confirm that I have reviewed the responses from the Workers; Advisors and the B.C. Nurses union on the above and do endorse their submissions.</p> <p>I wish to emphasize that the Board's current too-rigid and narrow interpretation and application of the 75 day rule to decisions about injured workers, causes undue hardship; excessive and unnecessary bureaucratic work and excessive appeals.</p> <p>Kindly note these opinions arise from Counsel's Administrative Law and legal practice in Workers' Compensation since 1979; preparing the legal arguments on Napoli v. WCB which first established the right of workers to see their WCB files; on immigration cases going to the Federal Court and Federal Court of Appeal; and taking some 6-9 Workers Compensation cases to Judicial Review.</p> <p>At the Environmental Appeal Board, B. C [EAB], we heard and decided on about 11 different statutes e.g. the Waste Management Act; the Water Act; applications for onsite sewage disposal in new developments, etc.</p> <p>I gained an understanding of what are the key factors in decision making while also deciding numerous Preliminary applications and many of its more contentious appeals between 1993 and March 2000 as the Chair, and Vice Chair and member of the EAB.</p>
18	British Columbia Nurses' Union	Worker	Option 1	<p>It is arbitrary and unfair to not permit a decision change to a decision no matter what new information comes in. Even if it was necessary for there to be a time limit on reconsideration, and we submit there is no compelling reason for such a time limit, 75 days is an exceedingly short period of time. To have an absolute inability to change a</p>

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				<p>previous decision despite plain facts that the decision is in error results in an injustice. It is obvious from the problems that have resulted from the 75 day rule that on balance it has created much more difficulties than it could possibility have prevented.</p> <p>...</p> <p>The <i>Core Review</i> provides no compelling reasoning why there is a need for finality in the Board's ability to reconsider a decision. We submit that there was in fact not such a pressing need for "finality" as was recommended. Under the previous provisions of the <i>Act</i> there was not an incessant flood of previous decisions being reconsidered. There were circumstances where new facts came to light, in some cases after a considerable period of time, which warranted reconsideration. In some cases decisions were changed based on the new information. It is entirely reasonable that where new facts become available after a decision has been issued, that a process for reconsideration be available. To replace an incorrect decision with a correct decision based on a reasoned analysis of the evidence is fair and equitable.</p> <p>Furthermore there is no reasoning as to why a period of 75 days is chosen as a time period to allow reconsideration. This is an arbitrary cut off and amounts to a very short time period in which significant new information could be obtained or become available.</p> <p>While it is recognized it is not in the scope of this policy discussion to change the <i>Act</i> the point being made here is that this essentially unnecessary rule has resulted in unfair and unreasonable results. For example, it is an absurd situation for the Board to be unable to correct the misclassification of firms such as the examples in Appendix A of the</p>

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				<p>discussion paper. It is also absurd that a worker could not have their wage rate corrected because they were unable to obtain earnings information from a second employer within 75 days. There are thousands of other examples of decisions that could not be corrected after the passage of 75 days. This also applies to circumstances where the information has been provided to the Board well before the expiration of the 75 days and the Board has failed to make the decision despite the request being put to them to conduct the reconsideration.</p> <p>It is plain that the intention of the <i>Core Review</i> was to have “finality” on all decisions under the Board’s jurisdiction. While we disagree with the rule and its results, we submit there is no justification to exclude firm classification decisions falling under section 96(1)(h) of the Act and not the other items under the Board’s jurisdiction. To create an exemption for this one category of decision would be completely arbitrary and contrary to the intent of the legislation. The real solution to the problem identified in the discussion paper is to change this legislation. Failing a change in the legislation all areas of Board jurisdiction should remain subject to the rule. If the rule applies to one area it must apply to all and not be selectively exempted.</p> <p>The adoption of a policy that assignment to classifications would be done on an annual basis is purely an artificial construction. The assignment of a firm to a particular classification is not done annually. Rates are set annually. This is completely different matter from the classification the firm is assigned to. The adoption of annual classification policy is plainly for the purpose of correcting previous decisional errors on the assignment of a firm’s classification. If there has been a material change to the nature of the business that it should be in a different classification, such a decision and</p>

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				<p>reassignment can be made.</p> <p>The reasoning in section 4.3 <i>Implementing an Annual Classification Cycle</i> of the discussion for adopting an annual classification cycle is faulty. The justification provided in this section is,</p> <p style="text-align: center;"><i>“Policy provides that firms must provide “timely, complete, and accurate information” concerning changes in their operations, so it would be reasonable for the Assessment Department to assign a classification to each firm yearly based on information that is already on file.”</i></p> <p>Unless there is a change to an employer’s operation there is no valid reason to change their classification. No valid reason has been provided to adopt an annual classification cycle other than to avoid the results of the 75 day rule. The information that is “already on file” does not constitute a reason to change classification. If there is a change in the nature of the firm there can be a change in the classification at any time.</p> <p>The proposal would allow for new decisions contrary to prior classification decisions to be made when there has been no change in the firm from the point in time at which the original classification decision was made. There is no more merit to arguing classifications are done annually than there would be to argue that wage rates are done annually as an adjustment is made on an annual basis to account for CPI.</p> <p>It is noted that at page 4 the discussion paper states:</p>

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				<p><i>“For firms paying more than they should, the Assessment Department in certain cases has incorrectly reconsidered the firm’s classification outside the 75-day time limit, to correct the misclassification. However, where the firm asks for a review or appeal on an associated issue, the appellate bodies have overturned the Assessment Department’s decision, as it did not have jurisdiction to reconsider the firm’s classification. In one such case, the firm will pay about \$10,000 more per year than it would if it was correctly classified.”</i> (emphasis added)</p> <p>The above statement from the discussion paper indicates the Assessment Department has in at least some cases chosen to disregard the requirements of the 75 day rule and reclassify firms outside of the time limit for reconsideration. This indicates the Board by practice is selectively applying the 75 day rule in a manner that favours employers. It is strongly doubted that the Board has ever undertaken to reconsider a decision in favour of a worker’s interest on a compensation issue outside the 75 day rule. Accordingly we submit that the practices are contrary to the Act and discriminate against workers.</p> <p>It is also concerning that the Board has been able to compile the information on the impact of the 75 day rule on assessments in the discussion paper but is unable to provide any information on the impact of this same rule on workers compensation entitlement. In an April 3, 2009 letter to the Senior Policy Analyst responsible for this discussion paper the BCNU requested information on:</p> <ul style="list-style-type: none"> • The number of compensation claim decisions on which the 75 day rule has been applied.

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				<ul style="list-style-type: none"> • The type of decision the rule has been applied to such as wage rate, condition not accepted, pension etc. • Whether the application of the 75 day rule had a positive or negative effect on the worker benefits. • The financial implication of the 75 day rule. <p>We were informed by the Director of Compensation and Assessment Policy that the Board's systems do not collect the data required to produce this requested information....It is submitted that it would be inappropriate to put in place a policy change for one area of the Board's jurisdiction that in effect removes the restrictions of the 75 day rule without knowing the effects of the rule on all of the other areas of Board jurisdiction.</p> <p>Without doubt a substantive case has been made that the 75 day rule results in an absurd circumstance of there being no way to change a classification decision after the 75 days have passed. The same is true though of every other type of decision under the Board's jurisdiction. Unfairness does result from cross subsidization but unfairness also results in every other types of decision.</p> <p>BCNU WCB Advocacy representatives regularly see several claims each year that are significantly impacted by the 75 day rule. We represent a very small fraction of the workers with claims. It would be likely that there are tens of thousands of workers negatively impacted by the 75 day rule each year. The April 3, 2009 request for information on the impact of the rule on workers was intended to be able to quantify the effect in some reasonable manner.</p>

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				<p>In conclusion we submit that there should be no change to the application of 75 day rule to any area under Board jurisdiction until there is a clear understanding of the effect of the rule on all other areas under Board jurisdiction. To proceed with making any changes would result in a discriminatory application of the policy. The Board should maintain the status quo until such time as there is proper information on the impact of the 75 day rule on all areas of Board jurisdiction, then at that time a discussion paper on all areas of jurisdiction would be appropriate.</p>
19	B.C. Federation of Labour	Worker	Option 1	<p>In 2003, the legislation which introduced the 75-day rule brought dramatic change to Workers' Compensation Board (WCB) decision making. This change brought finality to WCB decisions even those that were made in error. The purpose of the 75-day rule was to introduce to the WCB system the issues of certainty and finality. This legislation flew in the face of the view of the 1999 Royal Commission which stated "in worker's compensation claims, flexibility is more important than finality."</p> <p>The rigidity of the 75-day rule makes it an unworkable provision and the concerns raised by this discussion paper are proof of that. The rigidity of the 75-day rule has impacted both the collection of monies to maintain the accident fund, and the payment of benefits to injured workers.</p> <p>The Federation is concerned that the WCB has thoroughly considered the impact of the 75-day rule on employers, given the detailed analysis presented in item 4.1 and not considered the detrimental impacts on the benefits paid to injured workers.</p>

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				<p>In a letter to Mr. Jim Parker of the BC Nurses Union, responding to his request for information compiled in regards to the impact of the 75-day rule on workers' claims, Ms. Hynes confirms that the WCB does not collect any such data.</p> <p>This discussion paper concerns the restrictive impact of the 75-day rule on the WCB Assessment Department's ability to change the misclassification of an employer. The proposed solution to this problem is that the WCB assign classification on an annual basis to allow for correction of past errors.</p> <p>Of the challenges presented by the current policy as detailed in item 4.1 the Federation has the most concern in regards to misclassifications resulting in employers underpaying, thereby underfunding and compromising the accident fund. The Federation does not believe that the accident fund should be put in jeopardy.</p> <p>While the WCB is concerned about the frustration experienced by employers who file for a review of their classification, they have not considered that the 75-day rule can be economically devastating for injured workers. The restriction on the WCB's discretion to reopen a claim means that there can be no provision of additional benefits based on a later change in the worker's condition.</p> <p>The 75-day rule may result in an unlevel playing field for employers who are misclassified and are paying a higher rate, or are subsidizing employers who are paying a lower rate, but the results for a worker are devastating in that their livelihood can be put at risk.</p>

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				<p>The Federation cannot support any amendments to the 75-day rule policy that would provide two standards, one for employers and one for workers. There must be amendments across the board. The Federation considers any relief to employers to the 75-day rule policy without the same consideration for workers is discriminatory. There must be administrative fairness.</p> <p>The Federation therefore urges the Board of Directors of the WCB to delay the implementation of these amendments and direct the Policy and Research Division to undertake a thorough examination of the effects of the 75-day rule on injured workers' benefits and to develop policy that would allow for the reopening, and redetermination of claims in order that workers' be fairly compensated for their losses.</p>
20	International Association of Heat and Frost Insulators Local 118	Worker	Option 1	<p>Though we are actually as concerned about employers being misclassified and how this has a potential to jeopardize the stability of both the sub-class and the accident fund, we can't support any change unless the cause is fixed for all. The employer or the insurance agency should not be treated any different then the other stakeholder, the worker. What is good for one has to be good for all or the credibility of the system flies in the face of natural justice.</p> <p>What needs to be fixed is the statue that was introduced to offer the finality of the 75 day rule. This rule works no where in the system. It was a short term vision to a complex evolving system that requires the ability to review, alter and make changes to decisions that affect all facets of the insurance model.</p> <p>We recommend that the Board of Directors address the real problem, the introduction of</p>

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				the 75 day rule arising Bill 63.
21	Metro Vancouver	Employer	Option 2	<p>We are in favour of Option 2 within the Discussion Paper.</p> <p>Under this option, the WCB would assign every firm a classification within the newly approved <i>Classification and Rate List</i> on an annual basis. Policy would be updated to reflect this approach, and to clarify the reasons for classification changes.</p> <p>We believe that it is important that the Employer be placed within the appropriate assessment classification for ratemaking purposes.</p> <p>The present difficulty is that WorkSafeBC is not able to change the classification of a firm when the original decision was made more than 75 days in the past. This restriction is the result of a legislative change made in 2003, which applies to all WorkSafeBC decisions, such as claims and assessments.</p> <p>The Assessment Department had thought that its classification decisions were not included in this limitation, but the Workers' Compensation Appeal Tribunal (WCAT) has determined that these assessment decisions are subject to this 75 day limit.</p> <p>An Employer this is misclassified may pay less or more than other Employers doing the same business. Essentially, this situation sets up an unfair cross-subsidization.</p> <p>The proposed change in policy would permit WorkSafeBC to assign the Employer a classification on an annual basis. (At present, the <i>Workers' Compensation Act</i> and</p>

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				<p>policy do not address the issue of who long a classification assignment will last.)</p> <p>This annual assignment of classification would permit the re-evaluation of an Employer's classification – either at the initiative of the Employer or of WorkSafeBC. The Employer would not have to explain or document the classification each year. There would be no extra paperwork required.</p> <p>The Assessment Department would continue the classification each year on the basis of information from the Employer that is already on file. It would only be when the Employer's operations change that a review of classification would occur. Employers are already obliged to inform WorkSafeBC of any significant changes in operations.</p>
22	BC Maritime Employers Association	Employer	Option 2	<p>There are several reasons to support the proposed change to the Assessment Policy to incorporate an Annual Assessment Cycle but none better than the mandate that all employers in the Province pay their fair share of the costs related to workplace injury and disease. The previous policy allowed, as would the proposed change, an opportunity to evaluate decisions made concerning the placement of a new or existing business in a rate group and classification unit. Given the limitations of the information upon which to make a fair initial decision and the short time allowed to reconsider the decision, it is not surprising that many inequities have already resulted in the short time this policy has been in effect.</p> <p>The change to an Annual Classification Cycle would also restore WorkSafeBC's (WSBC) ability to adjust assessment classifications if the business of the firm changed.</p>

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				<p>An error in a WSBC assessment decision can have a significant ripple effect in a free marketplace economy. If a company competing for business within an Industry is assessed at a rate 25 % less than its competitors, there is no question that this company would have a decided advantage over their competitors. This advantage takes the form of being able to offer similar products or services for less money while their competitors subsidize the new firm's WSBC costs. An even worse situation is created if the new business is assessed at a rate 25 % higher than the competitors in an Industry. The chances of a new business surviving such a challenge are not very good.</p> <p>The WSBC former practice of correcting misclassifications as required, insured fairness and equity in the assessment system. When the current policy of a 75 day time limit came into being in 2007, the ability to correct misclassifications was lost. The perpetuation of misclassification errors causes a systemic effect of cross-subsidization over time. If the ability to annually revisit assessment classification were restored it would greatly reduce the impact of an error by limiting the inequity to one year.</p> <p>The viability of the WSBC experience rating system requires accurate, fair assessment of every employer in the Province. Despite the potential for more disputes/appeals and increased work for the WSBC Assessment Department, there is no question that an Annual Assessment Cycle is required to insure fair and equitable assessments. Fair and equitable assessments insure the long term stability of our compensation system.</p>