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

CEC Submission to the WSIB Consultation on its December 2015 Rate Framework Reform Proposal Update

March 18, 2016

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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 December 2015 Rate Framework Reform Proposal Update

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 WSIB's December 2015 Rate Framework Reform (RFR) proposal update.

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);
- Concrete Forming Association of Ontario (CFAO);
- Residential Tile Contractors Association (RTCA);
- Residential Framing Contractors Association (RFCA);
- Kingston Construction Association;

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

General Comments on the Updated Proposal

CEC members appreciate the December 2015 RFR update, which details areas where the WSIB has incorporated some of the stakeholder feedback into its initial Rate Framework proposal. While these changes are certainly welcomed, we believe there are still areas in the current design and transition plan that need to be revised and/or clarified. We will offer a few short comments below to outline these areas and why we believe they need to be adjusted before the new Framework is finalized.

Eliminate the Unfunded Liability before Implementing

While noted in our October 2015 submission for the initial RFR proposal, we do believe that it is necessary to reiterate a long-held CEC position that implementing any new Rate Framework model should coincide with the WSIB primary organizational goal of eliminating its unfunded liability (UFL). The CEC has long supported the WSIB in its pursuit to eliminate the UFL, even when this has required over-taxation. Significant progress has been made towards finally accomplishing this goal and we urge the WSIB to see this through before moving forward on implementing a new rate scheme.

Maintain the Executive Officer Rate Group

The proposed elimination of Rate Group (RG) 755 – *Non-Exempt Partners and Executive Officers* is of serious concern to our industry. As you know, the construction sector is governed by a unique set of rules under the WSIB system, including a requirement set out in Bill 119 (2012) that executive officers *must* have WSIB coverage. Where executives in other industries are, as a matter of law, expressly excluded from coverage (WSIA, s. 11(2)) unless they voluntarily “opt-in” (WSIA, s. 12(3)), executive officers in construction have no such choice and *must* pay into the system.

The December 2015 RFR proposal update notes that WSIB is considering reforming its stance on eliminating the multi-rating of companies; specifically, it notes that “the WSIB is interested in further exploring some exceptions to this general rule for separate classification and multiple rates for a single employer…” We would propose that RG 755 be included as an exception. Maintaining RG 755, or a separate grouping and rate for executives in construction, would ensure that they are being charged a premium rate that accurately reflects the level of risk that they are bringing to the system. With “revenue neutrality” and “rates reflecting risk” being keystones of the RFR, the WSIB needs to find a way to maintain this RG and rate, which appropriately fits the risk profile of these workers. Given the broad support for this issue, we believe it requires further discussion and exploration.

Begin Transitioning Companies towards Class Target Rates

Gradually transitioning companies to the new Rate Framework is absolutely critical to its initial success. This is particularly so in the construction industry, where operational costs have a much greater impact on the success that a company has in obtaining work than in other sectors. In order to ensure a smooth transition to the new rate scheme, we recommend that the WSIB begin transitioning all companies towards their Class Target Rate beginning in 2017.

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 cushion against a shock is to begin migrating all companies towards their Class Target Rate. By migrating towards these rates over a matter of years in the lead up to a new system implementation, it will motivate companies to further invest into any limitations that they may foresee in their Health and Safety Management Systems.

Starting all Companies at Class Target Premium Rate

Following on the above, it is our belief that the smoothest transition plan to the new Rate system would be to start every employer at their Class Target Rate. The approach would be familiar, as it mirrors the existing system set-up, and it would allow companies to migrate to their individualized rate in a timelier manner, 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. It will also give companies the opportunity to start fresh.

This approach will also serve to test the WSIB Class 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.

Shadow Billing as a Transition Tool

Part of the transition process to new Rate Framework should also include a period of "shadow billing" to educate companies on the likely impact of the new rate structure on their specific operations. "Shadow billing" has been used in the public utilities sector in a number of municipalities, when they transition from a flat-rate fee scheme to a user-based fee scheme. The utility issues two bills, one with the owed amount based on the current structure (the real bill), and a second hypothetical bill calculated with the proposed rate structure (the shadow bill).

"Shadow Billing" in this scenario would offer value by addressing concerns around rate shock, as it would clearly demonstrate to each company where their rates are headed under the new Framework versus where they are at presently.

Concluding Comments

Looking strategically at the WSIB's broad-based organizational objectives, we believe that the WSIB needs to clearly demarcate its goal of eliminating the UFL from the RFR project. An unambiguous way to accomplish this would be to publicly state that the new rate scheme will only be implemented after the UFL is eliminated. 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 on its own. 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. We believe that focussing in on this goal and accomplishing it before moving on to the next major organizational objective is critical to its success.

On the RFR project specifically, we believe that strong progress has been made towards addressing some of the "big-picture" issues with the initial Rate Framework proposal; however, the devil will be in the details of this new system design. It is for this reason that the CEC is continuing to request company specific impact data for the proposed Rate Framework. While we have offered feedback on the system design, we cannot truly understand how this system will impact our individual sectors of the construction industry until we have these impact analyses. Providing this information as soon as possible to all affected stakeholders needs to be a priority goal for the WSIB on this project, so that we can begin to understand and work through specific problem sectors and areas within our industry.

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