



# Independent living policy consultation

**Phase 2 submissions**

April 18 to June 12, 2024

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June 12, 2024

Ms. Tiffany Turnball  
Vice President, Policy and Consultation Services  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto, Ontario M5V 3J1

**Subject: Phase two – Independent living policy consultation (Serious Injury Program value-for-money audit consultation)**

Dear Ms. Turnball:

The Canadian Vehicle Manufacturers' Association (CVMA) representing Ford Motor Company of Canada, Limited, General Motors of Canada Company and Stellantis (FCA Canada Inc.) appreciates the opportunity to review the WSIB's proposed revisions to the independent living policies and the Serious Injury Program value-for money audit review. Our comments follow.

We recognize that the WSIB is proposing to end the use of a specific non-economic loss (NEL) or permanent disability rating as a criterion for entitlement under the independent living policies and is proposing new entitlement criteria. We support this general approach, including provisions in policy 17-06-02 that an injured worker can only receive one type of independent living allowance, even if there are multiple claims.

We recommend that the approach needs to include a clear "threshold limit" or criteria to determine what is a serious injury. As written, there is room for bias or inconsistent application of the policy, which could lead to inconsistent decisions. Furthermore, language should be added to take into account non-occupational factors and injuries, as well as pre-existing conditions that may have arisen from previous employment.

We trust that our comments will be duly considered and look forward to understanding how the draft policies and updates will be updated to address the feedback WSIB has received. Should you wish to discuss our input, please do not hesitate to contact me directly at 416-560-0167.

Yours sincerely,

Karen Hou  
Director, Vehicle and Workplace Safety

cc: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

## **Overview**

The Board's Serious Injury Program is a lifeline to the most vulnerable. Its services can mean the difference between ongoing economic and social exclusion based on disability and independence and full and equal participation in society.

We have significant concerns about the proposed changes to the Serious Injury Program. We agree that the current system of setting one rigid threshold for admittance into the program is a bad one. But the proposed new system – creating a catastrophic or total disability threshold that excludes many of the most disabling injuries including musculoskeletal and psychological injuries – is potentially worse. Worse because it may exclude more workers whose lives are devastated by workplace injury and disease, and will disproportionately exclude women and racialized workers. And worse because it discriminates against workers based on their diagnosis. It sends a message that their lives, and their ability to resume full and equal participation in society, are of less worth and value.

The proposed policies lack any reliable mechanism to ensure that workers' claims are identified where they need to be in the Serious Injury Program. The WSIB must establish an automatic review system to require systemic adjudication for the SIP in all cases. And the proposed policies introduce a maze of new entitlement (and disentitlement) decision processes once workers have proven they have a significant/severe disability. This will mean that many workers won't get the benefits they should. Many workers won't know what benefits to seek. They won't know how to ask for them. They won't know how to show they meet the entitlement criteria.

IAVGO has significant concerns about the process of this "consultation". The WSIB has refused to engage directly with injured workers to develop its policies. Its website explaining the proposed policy changes is unreadable except to those with a graduate level education. As a result, this "consultation" excludes the vast majority of the workers who most need to be able to advise the WSIB about how the proposed changes will affect their lives. We propose that the WSIB start over, with a meaningful and public consultation process headed by an independent expert in workers' compensation law and policy and disability rights.

## **About IAVGO**

The Industrial Accident Victims Group of Ontario is a community legal aid clinic. IAVGO has been funded for almost 50 years by Legal Aid Ontario.

IAVGO provides direct services to disabled workers injured on the job, and to the families of those who have been killed on the job. IAVGO's clients live throughout the province.

Our clients include some of the most vulnerable workers in Ontario. Every one of our clients, except for survivors of workers who have died, is a person with a disability or multiple disabilities. All are low-income, often living in poverty because of their inability to continue working.

Most of our clients also have at least one of the following characteristics:

- Racialized

- Live in rural and remote areas of the province
- Limited ability to read or write
- Little or no English language skills
- Low levels of education: usually high-school or below
- Mental health conditions including depression, post-traumatic stress disorder, or addiction
- No or limited Canadian immigration or citizenship
- Little or no job security
- Precarious housing or homelessness

For many years, we have worked alongside precarious and migrant workers to help them access compensation following workplace injuries.



## The Board's consultation process is deeply inadequate

This is not a real consultation process. We provide submissions because the Board has shut the door to anything else. Instead of engaging with stakeholders in an accessible way, it:

- Posted information on its website written for graduate-level academics.
  - The consultation webpage and the policies (we tested draft policy 17-06-01) are harder to read than the Harvard Law Review.<sup>1</sup>
- Failed to directly tell stakeholders about the consultation.
- Accepted submissions only in writing and only by email.

<sup>1</sup> See attached analysis from <https://www.thewriter.com/tools/readability> and <https://datayze.com/readability-analyzer>.

This “consultation” excludes the voices the Board needs to hear. Nearly half of Canadians struggle with literacy.<sup>2</sup> Many injured workers don’t read or write in English. Many injured workers don’t have reliable access to computers, the internet or email. Workers with serious disabilities (the people who most need to respond) often need accommodations to participate in consultations like this one.

The Board should start again with a public consultation about how to reform its Serious Injury Program. This consultation should include in-person and zoom hearings where workers can speak directly to the Board. It should be headed by an independent expert in workers’ compensation law and policy and disability rights.

It is disappointing to keep having to make these basic points about meaningful consultation to the WSIB without any response. We have now raised these same issues in several “consultations” without the WSIB either responding or taking any efforts to change.

This continual refusal to conduct a meaningful and accessible consultation is a failure of the WSIB’s obligations under section 161(2) of the WSIA to evaluate the consequences of any proposed change in benefits, services, programs and policies to ensure that the purposes of the Act are achieved. The WSIB’s refusal to engage is causing harm:

- Erosion of trust by injured workers who feel ignored and marginalized.
- Ineffective or counterproductive policies that don’t match actual needs or reflect real-work practicalities.
- Policies that aren’t sustainable or adaptable to long-term needs.
- Policies that disproportionately and negatively impact vulnerable or marginalized groups.

## **The proposed changes threaten to create an arbitrary threshold that excludes more workers from supports they need**

The proposed policy changes replace one unfair metric – a metric that decides which workers get supports they desperately need – with another.

The current 60% threshold for entry into the Board’s Serious Injury Program has failed. Over the years, fewer and fewer workers have been able to qualify because of the WSIB’s adjudicative austerity measures which have lowered NEL awards.

However, the new recommended threshold of “significant/severe functional limitations” is unclear, confusing and, as described below, discriminatory. The policy would leave decisions integral to the wellbeing of injured workers to the discretion of individual caseworkers, with little consistency or reliability of decision-making except that certain types of injuries are excluded.

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<sup>2</sup> CBC Radio, “Nearly half of adult Canadians struggle with literacy — and that’s bad for the economy” (January 17, 2021), online: <https://www.cbc.ca/radio/costofliving/let-s-get-digital-from-bitcoin-to-stocktok-plus-what-low-literacy-means-for-canada-s-economy-1.5873703/nearly-half-of-adult-canadians-struggle-with-literacy-and-that-s-bad-for-the-economy-1.5873757>

The new recommended threshold is not only an inadequate solution to the status quo, it introduces a presumption that musculoskeletal and mental health disabilities are not significant or severe – a discriminatory assumption that fails to reflect the reality of how injuries impair workers in their daily lives.<sup>3</sup>

The idea that musculoskeletal and mental health injuries don't cause significant/severe impairment flies in the face of any evidence-based approach to the adjudication of the WSIA and the WSIB's obligation under section 161(3) of the Act to ensure that accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of the Act:

- According to the World Health Organization, musculoskeletal conditions are the leading contributor to disability worldwide.<sup>4</sup>
- Mental health injury and musculoskeletal injury are the two leading disabilities that entitle Canadians to Canada Pension Plan Disability benefits, together accounting for 53% of recipients.<sup>5</sup>
  - Canada Pension Plan Disability benefits are only available to people who have a “severe and prolonged disability” that prevents them from being able to work at any job on a regular basis.
  - It therefore defies logic to base WSIB policy on a presumption that psychological injuries and musculoskeletal injuries “don't typically result in ... significant/severe limitations”.
- Musculoskeletal conditions are among the most debilitating nonfatal health diseases. Persons affected with back pain and arthritis have high rates of chronic pain and disability, reducing the quality of life and limiting ability to participate in many common activities.<sup>6</sup>
- Mental illness and substance use disorders are leading causes of disability in Canada. The disease burden of mental illness and substance use in Ontario is 1.5 times higher than all cancers put together and more than 7 times that of all infectious diseases. This includes years lived with less than full function and years lost to early death.<sup>7</sup>

The Canadian Survey on Disability (CSD) is the official source for the disability rate among the Canadian population and provides insight on the lived experiences of persons with disabilities.

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<sup>3</sup> Draft policy 17-06-01, p. 3.

<sup>4</sup> WHO, Musculoskeletal health (July 12, 2022), <https://www.who.int/news-room/fact-sheets/detail/musculoskeletal-conditions>.

<sup>5</sup> Evaluation of Canada Pension Plan Disability – Reassessment Element, <https://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/cpp-disability.html>, Table 4: Distribution of beneficiaries across different types of disabilities during 2010/11 to 2017/18.

<sup>6</sup> United States Bone and Joint Initiative: The Burden of Musculoskeletal Diseases in the United States (BMUS), Third Edition, 2014. Rosemont, IL. Available at <http://www.boneandjointburden.org>. Accessed on June 9, 2024. <https://www.boneandjointburden.org/fourth-edition/i1/big-picture>

<sup>77</sup> <https://www.camh.ca/en/driving-change/the-crisis-is-real/mental-health-statistics>

The CSD sets out a measure for disability severity that, rather than based on presumptions of injury severity guided by diagnosis, uses relevant measures of a) the number of disability types that a person has, b) the level of difficulty experienced in performing certain tasks, and c) the frequency of activity limitations.<sup>8</sup> The WSIB should consult with researchers who perform this type of work to understand how disability severity is assessed by independent experts and academics. WSIB is not an insurance company. It needs to be guided by public research and public policy, not by arbitrary determinations about what types of injuries “should” be severe and “should not” be severe.

## The proposed policies create and re-enforce discrimination

**"Exclusion from social supports marginalizes people with mental health issues, perpetuating cycles of disadvantage and preventing them from leading fulfilling lives."**

Source: Centre for Addiction and Mental Health. (2019). Social Determinants of Health. Retrieved from CAMH website.

In suggesting that psychological injuries are generally not significant or severe, the proposed policies reinforce discriminatory assumptions that psychological injuries are less real than physical injuries. The Supreme Court of Canada cautioned against such reasoning, stating:

In short, no cogent basis has been offered to this Court for erecting distinct rules which operate to preclude liability in cases of mental injury, but not in cases of physical injury... It follows that requiring claimants who allege one form of personal injury (mental) to prove that their condition meets the threshold of “recognizable psychiatric illness”, while not imposing a corresponding requirement upon claimants alleging another form of personal injury (physical) to show that their condition carries a certain classificatory label, is inconsistent with prior statements of this Court, among others. **It accords unequal — that is, less — protection to victims of mental injury. And it does so for no principled reason.**

Similarly, in *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, 2003 SCC 54 (CanLII), [2003] 2 SCR 504, the Supreme Court held that limitations on benefits for workers because they had chronic pain disability were discriminatory and unjustified contrary to the *Canadian Charter of Rights and Freedoms*.

Women experience disproportionate levels of disabilities related to pain and mental health, and so will be disproportionately excluded from the Board's independent living services under the proposed policies.<sup>9</sup>

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<sup>8</sup> Benoît-Paul Hébert, Christina Kevins, Amirabbas Mofidi, Stuart Morris, Diana Simionescu, and Madison Thicke, Reports on Disability and Accessibility in Canada: A demographic, employment and income profile of persons with disabilities aged 15 years and over in Canada, 2022, © His Majesty the King in Right of Canada as represented by the Minister of Industry, 2024, online: <https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2024001-eng.htm> [Canadian Survey on Disability (CSD)]

<sup>9</sup> Canadian Survey on Disability, *Ibid*.

## **The proposed changes remove consideration for the cumulative effect of multiple disabilities**

The Board is proposing a definition of serious injuries and serious illnesses that does not allow any consideration of the cumulative effect of multiple injuries or illnesses. It appears a worker must show a total inability or “extreme” difficulty with an activity of daily living, with no consideration about how multiple injuries causing restrictions below that level can create severe injury.

This change will remove the current system which, while inadequate, at least allows workers with multiple disabilities to be considered for Serious Injury Program services.

This policy would make the WSIB out of step with comparable benefit systems and the leading research:

- The federal Disability Tax Credit explicitly considers cumulative disability in its evaluation matrix.<sup>10</sup>
- Under the Canada Pension Plan Disability regime, it is an error of law for the decision-maker to fail to consider the cumulative impact of multiple injuries in deciding whether they have severe and prolonged disability that prevents them from working.<sup>11</sup>
- Statistics Canada’s largest survey of the Canadian population shows that the severity and magnitude of disability increases with the number of disabilities.<sup>12</sup>

## **The proposed changes need to incorporate the socio-economic contributors to severe disability**

The explanation prefacing the draft policies recognizes the critical role that socio-economic factors including age, personal support network, socio-economic status and physical environment play in the seriousness of an injury; but, strangely, the draft policies fail to consider a single socio-economic factor in assessing injury severity.

The Board’s policies about serious injury and independence of daily living must incorporate the reality that socio-economic factors play a part in the seriousness of the impact of injury. It is well accepted that that factors like race compound with disability to worsen the social and economic exclusion facing persons with disabilities.<sup>13</sup> Despite seemingly recognizing the indisputable evidence that socio-economic realities can worsen disability, the proposed policies engage only a medical model of disability, identifying severity and lack of severity based on diagnosis rather than lived experience of impairment.

<sup>10</sup> Disability tax credit (DTC), Cumulative effect eligibility, <https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit/eligible-dtc/cumulative-effect.html>

<sup>11</sup> *JN v Minister of Employment and Social Development*, 2020 SST 430 (CanLII) at para. 8-9.

<sup>12</sup> [Canadian Survey on Disability (CSD)], *supra*.

<sup>13</sup> Akobirshoev I, Mitra M, Li FS, Dembo R, Dooley D, Mehta A, Batra N. The Compounding Effect of Race/Ethnicity and Disability Status on Children's Health and Health Care by Geography in the United States. *Med Care*. 2020 Dec;58(12):1059-1068. doi: 10.1097/MLR.0000000000001428. PMID: 33177369.

The Ontario Human Rights Commission and the Supreme Court of Canada have both explained that disability must be understood through the recognition that “a disability may be the result of combinations of impairments and environmental barriers, such as attitudinal barriers, inaccessible information, an inaccessible built environment or other barriers that affect people’s full participation in society.”<sup>14</sup>

### **The WSIB should adopt instead a hybrid threshold for entry**

The WSIB should reject the threshold set in the proposed policies and instead establish a hybrid system. The 60% non-economic threshold should be lowered to 30%, and should remain an automatic threshold for entry into the SIP. In addition, individual cases below the threshold should be assessed based on criteria that speak to the way an injury or injuries affect a worker’s quality of life and functional limitations, taking into account the realities of how disability acts to create exclusions and limitations in their individual lives, not based on presumptions and assumptions based on their diagnoses.

### **The proposed policies fail to create a reliable way to identify Serious Injury Program cases**

The policies don’t provide a system for entry. With the current system, there is a benchmark at which the WSIB is required to engage with the worker around the needs created by their serious injury. In this new system, no criteria or systems have been established to ensure that the WSIB doesn’t miss adjudicating entitlement for the Serious Injury Program. We are concerned that the WSIB plans to rely upon their front-line staff – who are already overworked and overburdened – to proactively identify the need for adjudication around entry into the SIP. Just as this system has failed to identify the burden of workplace psychological injury, so too will it fail to identify serious injury. The WSIB must establish an automatic review system to require systematic adjudication for the SIP in all cases. For example, entry to the SIP should automatically be considered in all cases where NEL is re-adjudicated or increased.

### **The proposed policies create a unnecessary maze of entitlement decisions**

The proposed policies introduce many new decision points, where workers must present evidence to prove their right to specific services like home and maintenance support, transportation support, and quality of life support. It also creates new requirements for clinical evidence to justify support needed, such as with respect to a personal care allowance.

This enhanced bureaucracy will undermine the Act’s remedial goals because many workers won’t be able to understand or comply with the burdens it creates. These are some of the many barriers that will stand between workers and their access to independent living supports:

- Injured workers just won’t know about the supports available

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<sup>14</sup> Ontario Human Rights Commission, “2. What is disability?”, online: <https://www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability/2-what-disability>; Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City), [2000] 1 SCR 665, 2000 SCC 27 (CanLII) [Mercier].

- Information provided by WSIB is only readable for workers with university or even graduate level education
- Brain injuries or mental health can affect concentration, memory, and understanding
- Injury-related stress and anxiety can overwhelm workers, making it hard to focus on bureaucratic processes
- Physical injuries may limit the ability to attend necessary appointments
- Ongoing pain or exhaustion reduces capacity to research and pursue advocacy efforts
- Workers without strong support systems will struggle
- Limited funds can restrict access to legal advice or professional advocacy services
- Difficulty using computers or the internet to access information and submit applications

To reduce bureaucracy and the burden on injured workers, the WSIB should continue to provide, at minimum, an automatic annual lump sum amount under the Independent Living Allowance policy. In addition to this minimum amount, injured workers should be able to claim compensation for home maintenance or transportation expenses which exceed \$250.

## Conclusion

Instead of this *pro forma* consultation, the WSIB should conduct a public consultation that directly involves the workers who are most affected by the Serious Injury Program. Without such consultation, the Board's policies will continue to create barriers to social inclusion and independence rather than remove them.

Yours truly,  
IAVGO Community Legal Clinic



Maryth Yachnin



Jessica Ponting



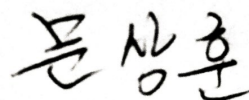
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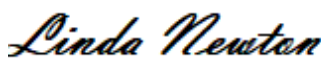
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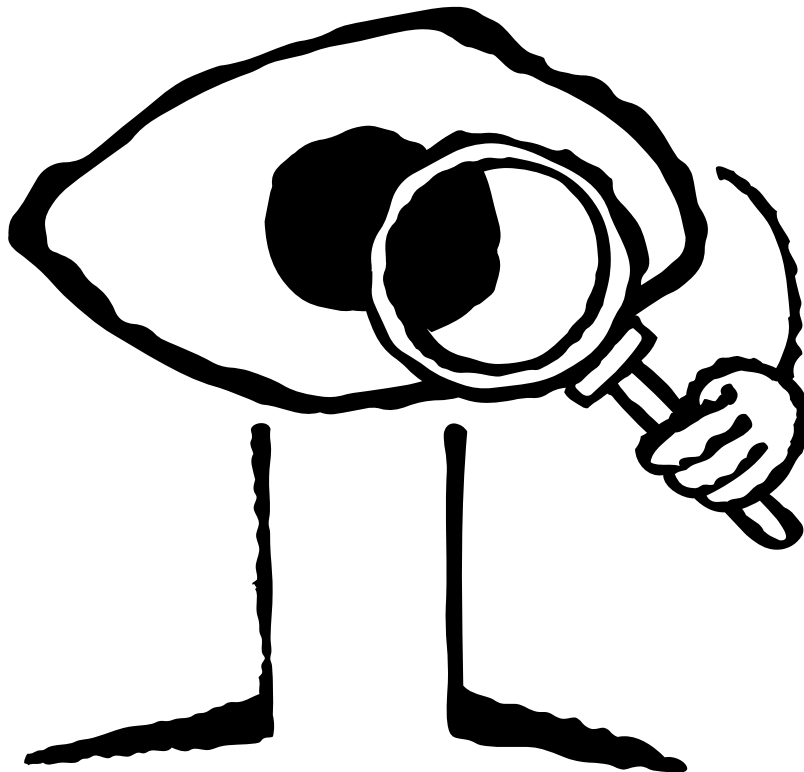
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Independent Living policy consultation

Phase two - Independent living policy consultation (Serious Injury Program value-for-money audit consultation)

Introduction

Under the Workplace Safety and Insurance Act, 1997 (WSIA), we are required to have an external firm review the cost, efficiency, and effectiveness of one or more programs through a value-for-money audit. Our Serious Injury Program was the focus of a recent value-for-money audit.

The main conclusion of the Serious Injury Program value-for-money audit is that the Serious Injury Program demonstrates value for money. The audit also identified challenges and opportunities that exist with our independent living policies, which we agree with. Separate from policy-specific issues, the audit identified a common challenge underlying the policies as a whole: the “severely impaired” threshold that forms part of the entitlement criteria for most of the

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Independent Living policy consultation

Phase two - Independent living policy consultation (Serious Injury Program value-for-money audit consultation)Introduction

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The main conclusion of the Serious Injury Program value-for-money audit is that the Serious Injury Program demonstrates value for money. The audit also identified challenges and opportunities that exist with our independent living policies, which we agree with. Separate from policy-specific issues, the audit identified a common challenge underlying the policies as a whole: the "severely impaired" threshold that forms part of the entitlement criteria for most of the benefits and services in our independent living policies. In some cases, this threshold limits our ability to provide the most appropriate benefits and services based on individual needs. Because the underlying challenge with the threshold impacts most of the related policies, we reviewed the policies in two phases. The focus of phase one was cross-policy issues, such as the severely impaired threshold. In phase two, we are sharing proposed revisions to address the cross-policy issues consulted on in phase one; and identifying and proposing revisions to address policy-specific issues.ConsultationPhase one (September 16, 2022, to October 14, 2022)

We sought feedback from stakeholders to support our review and analysis of the entitlement criteria for the various benefits and services in the independent living policies (OPM documents 17-06-02 to 17-06-08). We asked a series of questions about the severely impaired threshold entitlement criteria, as well as questions about the timing and duration of entitlement.

We received 15 submissions from stakeholders (see "Phase one stakeholder submissions" for a list of stakeholders and their responses). A general overview of stakeholder feedback is provided in the section, "External stakeholder feedback". Thank you to everyone who submitted feedback.Phase two

We have carefully reviewed and considered all stakeholder feedback in developing our proposed revisions to the independent living policies. We are now welcoming stakeholder input on the Serious Injury Program value-for-money audit review of independent living policies.

The draft policies include both the refreshed entitlement criteria proposed for each policy and revisions to address benefit and service-specific issues.

To supplement stakeholder review of the draft policies, this consultation report includes: a summary of the main themes we heard from stakeholder feedback in phase one of the consultation discussion about the severely impaired thresholdhighlights of proposed revisions for each policy, andhighlights of two new policies.

Note: In the sections that follow, reference to "permanent impairment" or "temporary impairment" should be read to include a permanent disablement or temporary disablement for accidents before January 2, 1990.Report back and proposed draft policiesExternal stakeholder feedback

Overall, while stakeholder feedback acknowledges the administrative ease offered by the non-economic loss or permanent disability rating threshold, there is strong support for focusing entitlement criteria on individual needs. Stakeholders offered a variety of thoughts about how to do this. For example:Maintain the current non-economic loss or permanent disability rating levels or move to a lower non-economic loss or permanent disability rating as a means of automatic entitlement, with decision-maker discretion for case-by-case entitlement for lower non-economic loss or permanent disability ratings.Consider the individual circumstances of each case do not use a non-economic loss or permanent disability rating. Consider the impact of the work-related injury or illness on the person's function and quality of life. Consider the person's work-related injury or illness and its impact to their function given their individual circumstances (e.g., social determinants of health).

The feedback of many stakeholders suggests that non-economic loss or permanent disability ratings are not a reliable indicator or are not the only indicator of the impact the work-related injury or illness has on someone's independent living or quality of life. The implication of this is that while many of the people who meet the current threshold are entitled to and receive the independent living and quality of life benefits and services they need, there are:some people who meet the rating threshold and therefore are entitled to be considered for all the independent living and quality of life benefits and services, but may not need every benefit and service some people who do not meet the rating threshold and therefore are not entitled to be considered for the independent living and quality of life benefits and services, despite being unable to function independently on a permanent basis, and,some people who will not meet the rating threshold on a permanent basis and therefore are not entitled to be considered for the independent living and quality of life benefits and services despite being unable to function independently on a temporary basis.

Stakeholders also provided feedback supporting: providing entitlement to certain benefits and services in the independent living policies sooner than currently occursmaking short-term or temporary entitlement available, and, reviewing entitlement to benefits and services as someone's condition changes.

Stakeholder feedback also suggested considering whether any of the benefits and services provided for in the independent living policies may be necessary, appropriate, and sufficient for workers with psychological injuries most of whom do not currently meet the rating threshold. The WSIB provides supports and services specific to psychological injuries. In doing so, people with these types of injuries have access to the health care most appropriate for psychological injuries, which may include benefits and services in the independent living policy suite where they meet the applicable criteria. Despite this, several stakeholders expressed a view that the independent living policies focus primarily on addressing physical functional limitations and this does not adequately address the needs of people with psychological injuries.

Among employer stakeholders, there was recognition of our obligation to administer the workers' compensation system in a financially responsible and accountable manner. There were also questions about the fairness of the last employer of record bearing responsibility for all costs in claims where someone becomes severely impaired through injuries or illnesses with multiple employers. Our rate-setting model features various tools to ensure fairness when considering an employer's individual claims experience, such as claim cost limits, a defined claim cost review period, and excluding claim costs for some long-latency conditions and diseases. Our Health and Safety Excellence program also helps make workplaces safer and reduces the risk of injuries and illnesses, thereby reducing claim costs. While changes to the rate-setting model and the last employer of record are outside the scope of this review, we have noted this feedback for the next time these items are subject to review.

In addition to feedback about entitlement and its timing and duration, some stakeholders provided opposing feedback about specific benefits or services. For example: The independent living allowance lump sum amount is inadequate given the services and equipment this benefit is intended to cover. The current allowance amounts should be the minimum amounts paid, with the opportunity to pay more depending on the facts of the case. The independent living allowance should continue to be provided as a lump sum, giving people discretion to choose which services and items to purchase to facilitate their independent living and improve their quality of life. The independent living allowance should be replaced with a reimbursement model and/or fee schedule.Emotional support/therapy dogs should be included in the Guide and Support Dogs policy.

The above offers a summary of the main themes from the stakeholder feedback. Stakeholder feedback in its entirety is available in the individual submissions.Entitlement threshold

As validated by the value-for-money audit and stakeholder feedback, using a 60% non-economic loss/100% permanent disability rating as the threshold for many of the independent living benefits and services is not the most appropriate or the best measure of the impact of the work-related impairment. It results in a misalignment between injured peoples' needs and their eligibility for the benefits and services available to support independent living and quality of life following a work-related injury or illness.

As we saw in the stakeholder feedback, the needs and potential of each person following a workplace injury or illness will depend on more than their non-economic loss or permanent disability rating. Individual circumstances such as age, general health, personal support network, socio-economic status, physical environment, and more, all play a role.

We propose ending the use of a specific non-economic loss or permanent disability rating as a criterion for entitlement to the benefits and services in the independent living policies. This will better meet the individual needs of people whose serious work-related injury or illness impacts their independent living and/or quality of life, permanently or for more than the initial acute period following the injury or illness onset.

Going forward, we propose new entitlement criteria in the place of a specific non-economic loss or permanent disability rating. In developing or revising the criteria for each benefit and service, we considered: the objective of providing the benefit or service (e.g., mobility, communication, self-care) the other benefits and services available in the independent living policies and all our other health care policies that serve the same objective (e.g., attendant services instead of a personal care allowance), and which

measures are likely to be necessary, appropriate, and sufficient<sup>1</sup>, and in which circumstances (e.g., a temporary ramp may be sufficient to meet the mobility needs of someone with a temporary impairment rather than structural modifications to their front porch).

The intended outcome is to provide people with the benefits and services that are necessary, appropriate, and sufficient to support their independent living, and in some cases quality of life, as soon as they need them, for as long as they need them.

Note: Despite proposing to end the use of the non-economic loss or permanent disability rating, we are committed to maintaining benefits and services already approved and provided under the existing independent living policies, such as the independent living allowance and personal care allowance, unless there is a material change in circumstances. We intend for the revised policies to apply to requests for benefits and services that result from a new entitlement or a material change in circumstances for an existing entitlement, and to requests for maintenance, repair, or replacement of previously approved and provided devices and equipment.

<sup>1</sup> Under s. 33 (1) of the Workplace Safety and Insurance Act, 1997, a worker who sustains an injury is entitled to such health care as may be necessary, appropriate, and sufficient as a result of the injury. Independent living and quality of life policies\*\*NEW\*\* 17-06-01, Independent Living and Quality of Life Measures - Overview and Definitions draft

This new policy defines serious injury, serious illness, and severe impairment for the purpose of independent living and quality of life benefits and services. It also provides information about the measures we consider appropriate to facilitate independent living and quality of life.

17-06-01, Independent Living and Quality of Life Measures - Overview and Definitions draft

Highlights of new draft policy Define key terms used throughout the independent living and quality of life policies, including serious injury, serious illness, and severe impairment. Provide guidance about the injury and illness outcomes that may impact someone's ability to live independently. Explain that independent living measures are those that assist a worker in carrying out their activities of daily living and instrumental activities of daily living and identify the specific benefits and services we find appropriate to facilitate independent living. Explain that quality of life measures are those that will increase a worker's ability to participate in personal, family, and social activities and identify the specific measures the WSIB considers appropriate. Explain that entitlement to an independent living or quality of life benefit or service depends on a finding that it is necessary, appropriate, and sufficient based on the individual facts and circumstances of someone's case. Identify benefits and services available to someone whose injury or illness has a temporary, short-term impact on their ability to live independently. Identify benefits and services available to someone whose injury or illness has a longer term or permanent impact on their ability to live independently or on their quality of life. Outline where a potential benefit or service is not considered to be necessary, appropriate, and sufficient, based on the individual facts and circumstances of someone's case. Independent Living Allowance (17-06-02)

The independent living allowance provides financial assistance to eligible people to offset the costs of services (e.g., home maintenance, taxis), devices under \$250, and other items or expenses (e.g., increased insurance for modified vehicle) that improve their ability to function independently and improve their quality of life. Key challenges and opportunities The 60% non-economic loss/100% permanent disability entitlement threshold prevents people with injuries or illnesses that significantly impact a person's ability to live independently, but that have not resulted in severe permanent impairments from receiving the allowance, even where it could help improve their outcomes following the injury. The 60% non-economic loss/100% permanent disability entitlement threshold results in eligible people not receiving the allowance as soon as they could benefit from it. The allowance structure of a single, annual lump sum covering a variety of services, devices, and expenses is not conducive to providing the right benefits and services to the people who need them, when they need them, for as long as they need them. The dollar value of the allowance is insufficient given the range of services, devices, and expenses people must cover using the allowance. Highlights of proposed revisions

To address challenges such as those listed above, we propose a number of revisions to 17-06-02, Independent Living Allowance. Some of these are described below. The changes we are proposing may be viewed in their entirety in the draft policy

17-06-02, Independent Living Allowances proposed revisions .

Replace the 60% non-economic loss/100% permanent disability entitlement threshold with criteria that take diagnosis into account and the temporary or permanent functional impairment resulting from the work-related injury or illness. Pending technological feasibility, separate the single, annual lump sum into four monthly allowances, each with a specific purpose: 1) home maintenance, 2) transportation, 3) additional expenses for WSIB-approved modifications or devices, and 4) quality of life.

Reduce the scope of services, devices, and items to be covered by the allowances. Entitlement to devices costing less than \$250 would be considered under

17-06-03, Independent Living Devices proposed revisions , similar to devices costing \$250 or more. Entitlement to hobby-related expenses would be considered under the new policy,

17-06-09 Quality of life benefits draft .

Publish the dollar values for each allowance in 18-01-05, Table of Rates to preserve the opportunity to annually revisit the values of these allowances in future years.

Note: The proposed guidelines for the quality of life allowance are available in the new policy,

17-06-09 Quality of life benefits draft

17-06-03, Independent Living Devices

We reimburse the costs of devices costing more than \$250 that help restore eligible peoples' ability to communicate, be mobile, engage in self-care, or help them avoid further injury or prevent future health complications due to the work-related injury or illness. Reimbursing the cost of these devices helps eligible people to function independently. Key challenges and opportunities The 60% non-economic loss/100% permanent disability entitlement threshold prevents people with injuries or illnesses that significantly impact their ability to live independently, but that have not resulted in such a rating from being considered for independent living devices that could help them to function independently. The policy precludes reimbursing people for independent living devices costing less than \$250 even where they may be necessary, appropriate, and sufficient. Instead, people are required to use their independent living allowance for such devices. It is unclear which devices should be considered under the Independent Living Devices policy (17-06-03) versus other policies that provide for health care items (e.g., 17-07-04, Hearing Devices, 17-07-05, Orthopaedic, 17-07-06, Health Care Equipment and Supplies) and hobby equipment (e.g., 17-06-02, Independent Living Allowance). Highlights of proposed revisions

To address challenges such as those listed above, we propose a number of revisions to 17-06-03, Independent Living Devices. Some are described below. The changes we propose may be viewed in their entirety in the draft policy

17-06-03, Independent Living Devices proposed revisions .

Replace the 60% non-economic loss/100% permanent disability entitlement threshold with the criteria that the person have a permanent impairment as a result of the work-related injury or illness that results in a permanent or long-term functional limitation. In addition to this, similar to the current policy, the independent living device must serve one of the objectives outlined in the policy and meet the criteria for devices identified in the policy. Consider entitlement to devices costing less than \$250 rather than requiring people to use their independent living allowances for these expenses.

Consider entitlement to hobby equipment under the new policy,

17-06-09 Quality of life benefits draft .

Cross-reference to policies that provide for other health care items someone may be eligible for to improve clarity about the scope of the independent living devices policy. 17-06-04, Guide and Support Dogs

We pay for the purchase and training of a guide dog or support dog, and for mobility training for the person. We also provide an allowance to cover routine veterinary care and maintenance costs (e.g., nutritional needs, annual examinations, and inoculations) and pay for extraordinary veterinary care and treatment. Key challenges and opportunities The 60% non-economic loss/100% permanent disability entitlement threshold prevents some people with significant injuries from being considered for guide and support dogs that could help them to live independently. Key terminology is outdated and is not defined in the policy, making it unclear what types of service animals are eligible for coverage. Highlights of proposed revisions

To address challenges such as those listed above, we propose revisions to 17-06-04, Guide and Support Dogs. The changes we propose may be viewed in their entirety in

the draft policy

17-06-04, Guide and Service Dogs proposed revisions .

Clarify that someone may be considered for entitlement to a guide or service dog where their ability to live independently is impacted as a result of a work-related designated condition, regardless of their non-economic loss/permanent disability rating. Clarify that the designated conditions listed are the only ones for which we consider there to be evidence of the effectiveness of animal-assisted intervention in reducing the impact of the work-related condition on someone's ability to live independently. Outlines the criteria for determining that a guide or service dog is necessary, appropriate, and sufficient for someone with a work-related designated condition. Personal Care Allowance (17-06-05)

People who have difficulty with their activities of daily living are entitled to a personal care attendant arranged through an agency that we pay directly. Severely impaired people are entitled to a personal care allowance to hire their own attendants to help them complete their activities of daily living. Key challenges and opportunities The policy does not address entitlement to an agency attendant for those who do not meet the 60% non-economic loss/100% permanent disability threshold. The 60% non-economic loss/100% permanent disability entitlement threshold prevents some people with injuries or illnesses that impact their ability to complete their activities of daily living from being considered for a personal care allowance that could help them. The three categories of attendant care, each with its own hourly rate, require complex calculations that may delay payments of the allowance. The policy does not address the provision of personal care on a temporary basis. Highlights of proposed revisions

To address challenges such as those listed above, we propose revisions to 17-06-05, Personal Care Allowance. The changes we propose may be viewed in their entirety in the draft policy

17-06-05, Personal Care Attendants and Allowance proposed revisions .

Clarify that people who need help to complete their activities of daily living on a temporary or permanent basis will be entitled to a personal care attendant provided by an agency, regardless of their non-economic loss/permanent disability rating. People who need help to complete their activities of daily living on a permanent basis or who need temporary personal care while undergoing treatment for a serious illness will be entitled to a personal care allowance to hire their own attendant, regardless of their non-economic loss/permanent disability rating. Pending technological feasibility, people who qualify for the allowance will be assigned to one of five levels of care based on their ability to complete their activities of daily living. Each level of care will have its own flat monthly rate which will be indexed annually. Monthly amounts currently being paid will not be reduced. 17-06-06, Home Care

A person may be entitled to a home care program to receive health care services (e.g., nursing care, physiotherapy, occupational therapy) in their own home when their needs cannot be met on an out-patient basis. Key challenges and opportunities The home care program is not clearly outlined in 17-06-06, Home Care. Highlights of proposed revisions

Clearly outline the home health care program, its purpose, and key features in the draft policy

17-06-06 Home Health Care proposed revisions .

17-06-07, Vehicle Modifications

We reimburse the costs of vehicle modifications for eligible people where these modifications are essential to the safe operation of, or to the person's ability to enter, leave, and operate their vehicle. Reimbursing the costs of vehicle modifications so that a person can perform their instrumental activities of daily living enables their independent living. Key challenges and opportunities Greater clarity could be provided about which vehicles are eligible for modification. Greater clarity could be provided about the scope of what we do and do not reimburse with respect to vehicle modifications (e.g., upgrades in new vehicles purchased by the person, multiple vehicles). Greater clarity could be provided about responsibility for costs related to vehicle modifications (e.g., maintenance, repair and replacement, insurance, damage arising from motor vehicle accidents). There may be circumstances where it is more timely or cost-effective to procure a purpose-built accessible vehicle, rather than modifying someone's existing vehicle. Highlights of proposed revisions

To address challenges and opportunities, such as those listed above, we propose revisions to 17-06-07, Vehicle Modifications. The changes we propose may be viewed in their entirety in the draft policy

17-06-07, Vehicle Modifications proposed revisions .

Introduce a definition of vehicle as well as criteria the vehicle must meet before we will consider it eligible for modification. Clarify our longstanding interpretation and/or practice to: reimburse the cost of features in a new vehicle purchased by the person that are required due to the functional impairment resulting from the work-related injury or illness, where these features are not standard in the base model of the vehicle. Approve modifications to a subsequent vehicle once the useful lifespan of someone's current modified vehicle expires or where there are permanent changes in the work-related injury or illness and it is not practical to further modify the current vehicle. Reimburse for maintenance, repair, and replacement of modification equipment, and not reimburse for general vehicle maintenance, insurance, and repairs arising from motor vehicle accidents. Introduce a new guideline where we will contribute a portion of the cost of a purpose-built accessible vehicle where this is a similar or lower cost than the value of someone's current vehicle and the cost of modifying it. 17-06-08, Home Modification

We authorize home modifications to facilitate independent living where the person meets the 60% non-economic loss/100% permanent disability entitlement threshold due to a work-related injury or illness. Key challenges and opportunities People with a temporary need for home modifications, and those who do not meet the 60% non-economic loss/100% permanent disability threshold, are excluded from provisions of the policy. Provisions of the policy regarding secondary residences, rental properties, relocation, and the purchase of a home by the person are not clearly outlined. The policy does not address moving costs or increased rent following an approved relocation, or the ownership of home modifications and installed devices. Highlights of proposed revisions

To address challenges and opportunities, such as those listed above, we propose revisions to 17-06-08, Home Modification. The revised policy aligns with our practice. The changes we propose may be viewed in their entirety in the draft policy

17-06-08, Home Modifications proposed revisions .

Clarify that entitlement is considered for people who need home modifications to live independently but who do not meet the 60% non-economic loss/100% permanent disability threshold. People with a temporary need for home modifications will be entitled to minor modifications (e.g., grab bars, railings, ramps), regardless of non-economic loss/permanent disability threshold. People with a permanent need for home modifications will be entitled to major modifications (e.g., widened doorways, lifts, additions to the home), regardless of non-economic loss/permanent disability threshold. Clarify the criteria for modifications to secondary residences, relocations following a significant life change, and the reimbursement of the costs of accessibility features in a home purchased by the person instead of paying for modifications to a current home. Clarify that people who rent or lease their homes are entitled to the same home modifications as those who own their homes. Introduce reimbursement for moving costs and increased rent following an approved relocation or home purchase by the person. Clarify that the person owns all home modifications and installed items. \*\*NEW\*\* 17-06-09, Quality of Life Benefits draft

This new policy will introduce a quality of life allowance that is currently provided as a component of the independent living allowance. The policy will also address entitlement to hobby equipment and related expenses, as well as mental health supports for eligible family members.

17-06-09 Quality of life benefits draft

Highlights of draft policy People with a work-related severe impairment that is permanent may be entitled to a quality of life allowance that covers physical fitness and recreational programs, and/or general interest courses. To be eligible, a maximum medical recovery date must have been determined, the person must be following their return-to-work activities, where applicable, and the work-related severe impairment must impact the person's ability to integrate into or participate in personal, family, or social activities. Pending technological feasibility, the quality of life allowance will be paid monthly, like the allowances related to independent living. People with a work-related severe impairment that is permanent may also be entitled to the reimbursement of certain hobby-related expenses. The same criteria as for the quality of life allowance apply, except the severe impairment must reduce the person's ability to participate in the hobby. The policy outlines that it must be feasible, safe, and practical for the person to participate in the hobby. Hobby-related expenses include required equipment and modifications, supplies, instruction or training, and start-up costs. The policy also includes mental health supports for eligible family members of people with a work-related severe impairment. How to respond

We thank all stakeholders for their feedback and welcome any new or updated feedback in response to this next phase of the Serious Injury Program value-for-money audit consultation.

We invite stakeholders to submit written feedback about the proposed entitlement criteria and proposed revisions addressing issues specific to benefits and services. All feedback is valuable to us and we will consider it carefully.

Please submit your response to the Consultation Secretariat. Written submissions will be accepted until June 12, 2024. We look forward to hearing from you.

Please note that all stakeholder submissions will be posted on this page following the consultation. Appendix

Phase one stakeholder submissions

Canadian Manufacturers and Exporters (CME)

Eugene Lefrancois

IAVGO Community Legal Clinic

Injured Workers Community Legal Clinic (IWCLC)

LA Liversidge, LLB

Mechanical Contractors Association Ontario (MCA)

Northumberland Community Legal Clinic

Office of the Worker Adviser (OWA)

Ontario Federation of Labour (OFL)

Ontario Network of Injured Workers Groups (ONIWG)

Schedule 2 Employers Group (S2EG)

The Legal Clinic

Thunder Bay & District Injured Workers Support Group

United Steelworkers District 6 (USW)

Workers' Health and Safety Legal Clinic (WHSLC)

Note: Submissions are posted in the format they were received. If you require them in an alternate format, please contact the [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca). Phase one - Serious Injury Program value-for-money audit consultation - Review of the Independent Living policy suite Introduction

Under the Workplace Safety and Insurance Act, 1997 (WSIA), the WSIB is required to have an external firm review the cost, efficiency, and effectiveness of one or more WSIB programs through a value-for-money audit (VFMA). The WSIB's Serious Injury Program (SIP) was the focus of a recent VFMA.

The SIP provides people who experience serious injuries at work with the specialized treatment, equipment, and services they need to enable functional recovery; support return to work where possible; facilitate independent living to the extent possible; and improve quality of life.

The main conclusion of the Serious Injury Program VFMA is that the program demonstrates value for money. To further improve the program's performance, recommendations were made across nine themes. The following observation (observation three) and recommendation (recommendation one) appear under theme 5.5, Policies, processes, and procedures: Observation summary: Specific policies have not been reviewed to determine if threshold criteria and benefits continue to match the needs of injured workers, and have not been updated to reflect changes in the needs of injured workers and/or workers' needs. Recommendation: Review and refresh benefits related eligibility criteria and services provided for in the suite of benefits policies to ensure they meet the needs of workers across the spectrum of service delivery, including seriously injured workers. As needed, engage key stakeholders as part of the consultation.

As identified in the VFMA, leading practice for eligibility criteria is to base severe impairment criteria on medical (e.g., diagnosis) and functional definitions (e.g., ability to participate in day-to-day activities) and tools, rather than solely or primarily a permanent impairment rating (whether through a single or multiple claims). Most Canadian workplace compensation boards consider the person's needs and reduced abilities resulting from their work-related injury or illness, rather than an impairment percentage, when determining entitlement to benefits and services similar to those provided for in the independent living policy suite. The boards that do identify an impairment percentage as part of their criteria will still consider providing benefits and services despite the permanent impairment percentage in some circumstances.

The VFMA and its recommendations present the opportunity to assess whether the current entitlement criteria result in people with serious work-related injuries being provided with the personalized benefits and services they need for improved recovery and return to work outcomes, to facilitate independent living, and to improve quality of life.

The VFMA identified the challenges that exist with the independent living policy suite; challenges that SIP staff have validated. The common challenge underlying the suite as a whole is the "severely impaired" threshold that forms part of the entitlement criteria for most of the benefits and services covered in the policy suite. Noting this, the policy review will occur in two phases: Phase one: The WSIB will seek information from stakeholders to support its analysis of the entitlement criteria for the benefits and services provided for in the independent living policy suite with a focus on the severely impaired threshold. Phase two: The WSIB will share its findings from phase one, and, if applicable, the refreshed entitlement criteria being recommended as a result. Revisions to improve the consistency and equity of benefits and services may also be proposed at this time. Background WSIB Serious Injury Program

The SIP is for people who experience a serious work-related injury (including those who are severely impaired as defined in the Operational Policy Manual).<sup>1</sup> The serious injury may result from a single incident, or a worsening of a prior impairment, or an accumulation of multiple impairments. Generally, this would be: a new catastrophic work-related injury (e.g., certain spinal cord injuries, major amputations, industrial blindness, extensive burns, moderate and severe brain injuries) with an anticipated non-economic loss (NEL) benefit of 60 per cent or greater, a new significant work-related injury that meets the criteria for acute care (e.g., certain bilateral fractures, bilateral hand burns, certain brain injuries), a 60 per cent NEL under one or more claims, a 60 per cent NEL equivalent after a composite rating which combines NEL and permanent disability (PD) benefits, or an injury prior to January 1, 1990, and a PD benefit of 100 per cent. Legislation

A person who experiences a work-related injury or illness is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury or illness and as determined by the WSIB. The WSIA (s.32) provides that health care means: professional services provided by a health care practitioner; services provided by or at hospitals and health facilities (prescribed) drug; the services of an attendant; modifications to a person's home and vehicle and other measures to facilitate independent living as in the Board's opinion are appropriate; assistive devices and prostheses; extraordinary transportation costs to obtain health care; such measures to improve the quality of life of severely impaired workers as, in the Board's opinion, are appropriate.

Many of the aforementioned forms of health care are oriented toward recovery, to the extent possible, from the injury or illness itself (e.g., prescribed drugs) or minimizing the functional impact of the injury or illness (e.g., assistive devices and prostheses). These forms of health care are broadly available to all people with work-related injuries or illnesses, provided the WSIB finds they are necessary, appropriate and sufficient as a result of the injury or illness.

In addition to these more broadly available forms of health care, the WSIB has discretion to provide coverage for measures it finds are appropriate to: a) facilitate independent living and b) improve the quality of life for those with severe impairments. The WSIA does not define independent living, quality of life, severe impairment, or

serious injury.Policy framework

The OPM includes a suite of policies that provide guidance about the benefits and services the WSIB has determined are appropriate to facilitate independent living and/or quality of life: the independent living policy suite.

These benefits and services are primarily available to injured people within the SIP. Most of these benefits and services require that the severely impaired threshold is met. However, not all injured or ill people in the program meet that threshold, particularly those in the acute care stream, and are therefore not eligible for many of these benefits and services.

Independent living policy suitePolicyEntitlement criteria17-06-02, Independent Living AllowanceSeverely impaired17-06-03, Independent Living DevicesSeverely impaired + benefit/service specific criteria\*17-06-04, Guide and Support DogsSeverely impaired + benefit/service specific criteria17-06-05, Personal Care AllowanceSeverely impaired + benefit/service specific criteria17-06-06, Home CareBenefit/service specific criteria17-06-07, Vehicle ModificationsBenefit/service specific criteria17-06-08, Home ModificationsSeverely impaired + benefit/service specific criteria

\* Details about the benefit/service specific criteria are available in Appendix one: Entitlement criteria for independent living policy suiteSeverely impaired entitlement threshold

Most of the benefits and services provided for in the independent living policy suite include the severely impaired threshold as part of the entitlement criteria. An injured person is considered severely impaired if their disabilities/impairments are:permanent and have been rated for either PD benefits totaling at least 100 per cent, or NEL benefits totaling at least 60 per cent, or likely to be permanent in the opinion of a WSIB medical consultant, and are likely to meet one of the criteria above.

The origins of the severely impaired threshold can be traced back to the pre-1989 Act2, which provided for "such other treatment, services or attendance as may be necessary as a result of the injury for those rendered helpless through permanent total disability", which was interpreted as being a 100 per cent PD rating. The 100 per cent PD rating was thus established as the threshold for those benefits and services available to people with the most serious injuries.

The pre-1997 Act3 contained a similar provision to that in the pre-1989 Act, but identified people "rendered helpless through permanent total impairment". The WSIA references neither total disability nor total impairment. Rather, the WSIA provides for health care measures specific to injured people with severe impairments.

The use of the 60 per cent threshold for NEL ratings (versus 100 per cent for PD ratings) arises from the difference between permanent disability and permanent impairment. As outlined in the pre-1997 Act, "disability" means "the loss of earning capacity of the worker that results from an injury", while "impairment" means any "physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss", and does not take into consideration the impact on ability to earn.

The basis for rating PDs is the Ontario Rating Schedule that estimates the impairment of earnings capacity in an average unskilled worker in more traditional jobs4. The basis for rating permanent impairments is the American Medical Association's Guides to the Evaluation of Permanent Impairment, Third Edition (Revised) (AMA Guides) that assesses "what is wrong with a body part or organ system and its functioning"5 as opposed to the impact of the impairment on employability. Of note, neither rating tool specifically measures the impact of the impairment on the person's ability to carry out their activities of daily living and other activities outside of employment. Very few medical conditions are assessed as 100 per cent under the AMA Guides. Requiring a 100 per cent NEL rating would result in people with injuries the same as or similar to those rated at 100 per cent PD not having access to the same benefits and services. To address this, the WSIB sought to identify a NEL threshold that was equivalent to 100 per cent PD. It was concluded that setting the threshold at 60 per cent NEL would result in similar benefits being available for similar groups of injured people under both the PD and NEL systems.Opportunity

The severely impaired threshold is a policy requirement for entitlement to certain health care benefits and services. While the threshold has been used as a way to identify which claims should be managed in the SIP, admittance into the program appropriately is not set out in policy. This is because the criteria for entitlement to the health care benefits and services set out in policy and the criteria for having a claim managed in the program are not necessarily the same.

In the past, admittance into the program was limited to those already rated or likely to be rated as meeting the severely impaired threshold. More specifically, catastrophic injuries, cumulative NELs/PDs, and worsening NELs/PDs were managed in SIP. The scope for admittance into the program has since expanded to include those with an injury meeting the criteria for acute care: those with a significant injury that temporarily requires specialized benefits and services similar to those required by an injured person who meets the severe impairment threshold.

People with injuries meeting the criteria for acute care often have immediate and significant needs given the impact of the work-related injury on their basic activities of daily living (ADLs). However, once maximum medical recovery is reached in these cases, the resulting permanent impairment does not usually meet the severely impaired threshold. The SIP temporarily manages these claims, immediately following the injury and up until the injured person reaches independence in their ADLs (typically up to nine months).

The benefits and services provided for in the independent living policy suite were not subject to a corresponding substantive review at that time, to take into consideration this change in scope for admittance into the program. Thus, while the SIP is able to leverage the benefit of the program's specialized and dedicated case management in these acute care claims, the severely impaired threshold limits the benefits and services available in these claims relative to others in the program. This, despite the fact that an injured person with an acute care claim actually may have similar or greater limitations and needs than others in the program, whether on a temporary or permanent basis.

As suggested in the VFMA, using the severely impaired threshold may be contributing to a misalignment between people's needs and the benefits and services to which they are entitled, as demonstrated by the two personas below.

Some injured people in the SIP are not considered for entitlement to benefits and services that could improve functional outcomes, return-to-work outcomes (where applicable), independent living and quality of life.

Evan sustains a traumatic injury at work, requiring a foot amputation. Evan has a spouse and young child, lives in a house on a large property, and is the sole driver and earner for the family. In the acute phase of the injury, Evan is unable to drive or help around the house or with child care. Evan's spouse is overwhelmed, adjusting to the new reality brought on by the workplace accident, caring for their child, and keeping the household running, all without the ability to make use of their personal vehicle. Because Evan's anticipated permanent impairment rating is 28 per cent, much lower than the 60 per cent necessary to qualify for severe impairment benefits and services, Evan does not qualify for the independent living allowance (ILA). The ILA could help Evan to cover expenses such as taxis, child care, and help around the house during the acute phase of recovery.

Some injured people in the SIP are considered for entitlement to benefits and services they need and to benefits and services they may not necessarily need.

Sam experiences a number of different work-related injuries over the years resulting in two different permanent impairments whose ratings total 65 per cent. Sam is widowed and lives alone in a condo. Sam now has some difficulties with activities of daily living due to the cumulative impact of the injuries. Following discharge from the hospital for the most recent injury, Sam receives a personal care allowance (PCA) and independent living devices (ILDs) to assist with the activities of daily living. While it is not yet clear whether Sam will require assistance additional to the PCA and ILDs to maintain their independent living and quality of life, Sam automatically qualifies for the independent living allowance (ILA) due to the 65 per cent permanent impairment rating. Sam is able to spend the ILA as they see fit to improve their independence and quality of life.

The VFMA and its recommendations present the opportunity to review the scope of benefits and services provided to people in the SIP and the associated entitlement criteria. In particular, to consider whether the current entitlement criteria result in people with serious injuries receiving the personalized benefits and services that:improve recovery and return to work outcomesfacilitate independent living and improve quality of life by enabling participation in all aspects of life.Questions for stakeholders

Below are questions about entitlement criteria, as well as the timing and duration of entitlement. Responses to these questions will support the WSIB's review and analysis of entitlement to the benefits and services provided for in the independent living policy suite.Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?Immediately following a work-related injury or illness, treatment and recovery are the primary focus.At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?Are there benefits and services that

should be provided immediately and reviewed as the injured person's needs change? Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are? Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries? Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

Appendix one: Entitlement criteria for independent living policy suite Policy Entitlement criteria 17-06-02, Independent Living Allowance Severely impaired N/A 17-06-03, Independent Living Devices Severely impaired

The device helps restore a worker's ability to communicate, be mobile, engage in self-care, avoid further injury, or prevent future health complications due to the work-related injury. It is not intended to accomplish any of the objectives of the services covered by the independent living allowance (if the worker is receiving the allowance) meets a permanent or long-term need is appropriate, given the nature of the worker's impairment and functional limitations (e.g., it can be used safely and effectively) is prescribed or recommended by a health care practitioner is reasonable in terms of costs and anticipated benefits is cost-effective considering alternatives on the market meets performance standards generally accepted by medical or clinical rehabilitation specialists, and is certified by Canadian Standards Association International (C.S.A.I.) or meets other applicable safety standards. 17-06-04, Guide and Support Dogs Severely impaired

The guide or support dog is necessary to enhance the worker's independent living and quality of life, or necessary to help in the worker's return-to-work (RTW) activities, and recommended by the worker's health professional 17-06-05, Personal Care Allowance Severely impaired Worker has difficulty with the activities of daily living 17-06-06, Home Care N/A

The worker/worker's is under the clinical supervision of a treating health professional work-related clinical condition is such that the worker can be treated adequately at home with the services available through the home care program needs cannot be met on an out-patient basis in need (according to the worker's treating health professional) of at least one of the professional services, such as nursing, physiotherapy, occupational therapy, or speech therapy home is suitable from a health care standpoint to enable the required care to be given family, where applicable, is willing and able to participate in the program where and when required resides in the area designated as being covered by the home care program 17-06-07, Vehicle Modifications N/A

Modifications will improve or enhance quality of life and facilitate mobility within the community, and socialization family, friends, organization

The modification must be essential to the safe operation of, or to the worker's ability to enter, leave and operate the vehicle 17-06-08, Home Modifications Severely impaired Severe impairment is permanent Modifications will provide access to an area within the home, and any other areas utilized for ordinary living necessities

\* Home modifications may also be extended to a worker under their return-to-work (RTW) plan if the worker is clinically capable of engaging or continuing in homebound employment.

1 The Occupational Disease and Survivors Benefit Program manages the claims of people with occupational diseases, including those who meet the severely impaired threshold as a result of an occupational disease.

2 Workers' Compensation Act, R.S.O. 1980, as amended. Applicable to accidents on or before January 1, 1990

3 Workers' Compensation Act, R.S.O. 1990, as amended. Applicable to accident dates from January 2, 1990 and December 31, 1997 (inclusive)

4 Operational Policy Manual document 18-07-02, The Ontario Rating Schedule. WSIB. October 2004.

5 American Medical Association. Guides to the Evaluation of Permanent Impairment, Third Edition (Revised)

## Re-Analyze

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Overall Readability

Paragraph Level Readability

Other Readability Tools

### » Passage Statistics

Number of Sentences:

Words Per Sentence:

Characters Per Word:

Percentage of Difficult Words (Estimated):


For more detailed analysis try the [Difficult and Extraneous Word Finder](#).

### » Readability Scores


Flesch Reading Ease :

Gunning Fog Scale Level :

Flesch-Kincaid Grade Level :

SMOG Grade :   
SMOG score requires passage to be at least 30 sentences long.

Dale-Chall Score :

Fry Readability Grade Level :   
Fry Grade Level requires passage to be at least 100 words long.

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## About the Readability Analyzer

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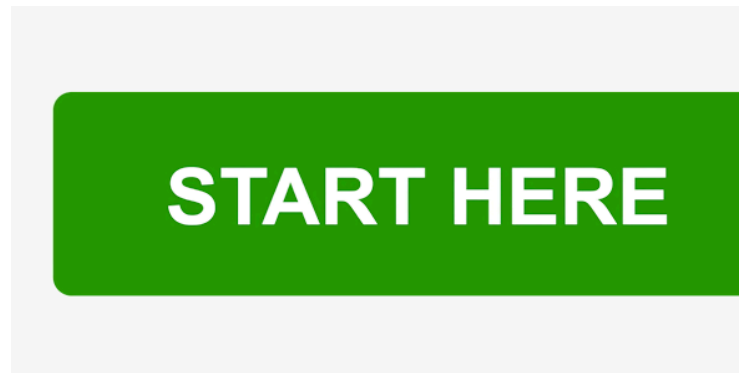
This Readability Analyzer estimates the readability of a passage of text using the [Flesch-Kincaid Reading Ease](#), [Gunning Fog Index](#), [Kincaid Grade Level](#), [SMOG formula](#) and [Dale-Chall Score](#) and [Fry Reading Graph](#) metrics. Which one's right for you? That will depend partially on your domain and writing style. Different readability metrics flag difficult words in different manners. For example, the Fog index considers words with more than three syllables difficult, where Dale-Chall has a list of easily recognizable words. We suggest using a few different samples of text and going with the metrics that more closely align with human evaluations.

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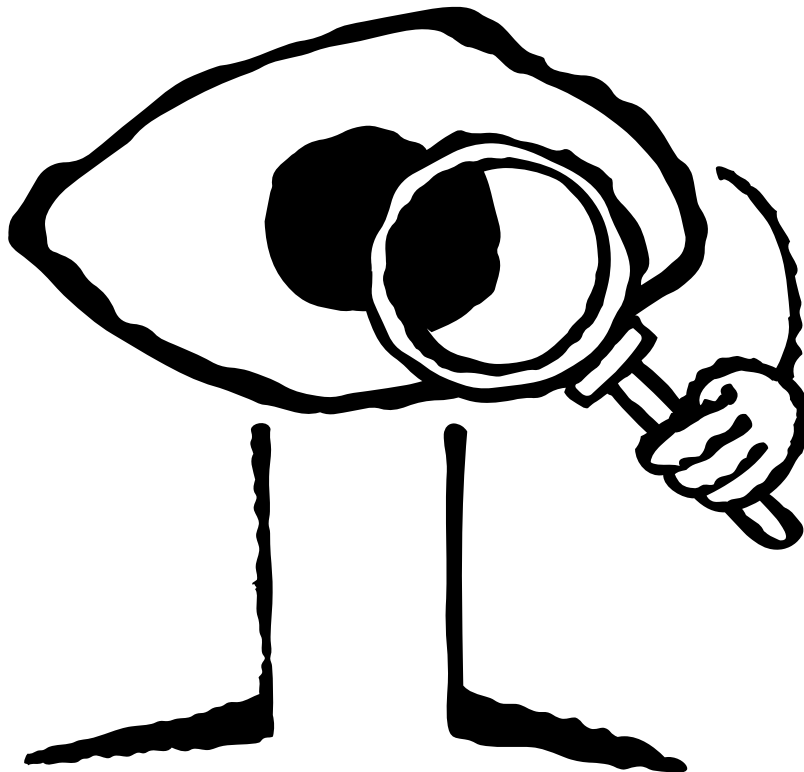
We have provided two tools to aid rewriting a passage. The [Difficult and Extraneous Word Finder](#) can be used to explore vocabulary. It identifies rare words, and long polysyllabic words with more than three syllables which may be harder for an audience to understand. The Difficult and Extraneous Word finder also finds extraneous words, such as adverbs and double hedge words which may make a sentence needlessly longer. [Passive Voice Detector](#) identifies sentences with passive structure. Passive voice is common in the scientific literature because it places the emphasis on the object being investigated rather than the author doing the investigation. Sentences with passive voice construction, however, tend to be longer, and harder to read.



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Readers prefer simpler writing – no matter their education level.\* Our checker will score your writing based on the [Flesch](#) reading ease scale, which looks at how long your words and sentences are. (There are a few readability tests out there, but we think this one's the clearest.)

*\*There are plenty of studies that show this. [Here's one](#) from Nielsen Norman Group.*

# Paste in your writing.



## Policy

Workers whose ability to live independently is impacted by a work-related injury or illness are entitled to benefits and services the WSIB considers appropriate to facilitate their independent living.

Workers with severe impairments that result from a work-related injury or illness are entitled to benefits and services the WSIB considers appropriate to improve their quality of life.

## Purpose

The purpose of this policy is to:

- define various terms including serious injury and severe impairment
- outline the measures the WSIB considers appropriate to facilitate independent living and

when the WSIB will carry out assessments to determine independent living

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## Your score

# -15

That's your Flesch reading ease score, out of 100. The higher the score, the easier your writing is to read.

Minus? Uh oh. You're either trying to break us, or your sentences are way too long. Try trimming them down a lot, and testing again. (At least you're not as hard to read as

## Hunger Games or Harvard Law?

Have a look at our table to see how you fare against other types of writing.

### Grade Score Which is like

4	100+	<b>This sign</b>
5	90	Most comic books
6	80	<i>The Hunger Games</i>
7	70	Large chunks of The Writer's website
8	65	Reader's Digest
9	60	BBC News website
10	50	<i>The Financial Times</i>
11	40	Most of William Shakespeare
12	30	<i>Harvard Law Review</i>

*Enough about us*

**Let's talk about you**

## Readability Analyzer

Estimates the readability of a passage of text using the Flesch Reading Ease, Fog Scale Level, Flesch-Kincaid Grade Level, and other metrics.

### Passage to Analyze:

#### Policy

Workers whose ability to live independently is impacted by a work-related injury or illness are entitled to benefits and services the WSIB considers appropriate to facilitate their independent living.

Workers with severe impairments that result from a work-related injury or illness are entitled to benefits and services the WSIB considers appropriate to improve their quality of life.

#### Purpose

The purpose of this policy is to:

- define various terms including serious injury and severe impairment
- outline the measures the WSIB considers appropriate to facilitate independent living and when the WSIB will carry out assessments to determine independent living needs, and
- outline the measures the WSIB considers appropriate to improve the quality of life of severely impaired workers.

#### Principles

Where independent living barriers exist, the WSIB will provide appropriate support, benefits, and services to facilitate independent living in a way that is fair and consistent, while recognizing each individual's unique needs and circumstances.

A severely impaired worker's quality of life may be improved by providing appropriate support, benefits, and services that enable them to participate to their potential in self-care, leisure, and productivity; and by providing appropriate supports to their families and caregivers.

A worker should be offered benefits and services to enable such participation, taking the interaction of a number of factors related to the person, occupation, and/or environment into account. The WSIB gives workers meaningful input into the benefits and services provided, recognizing that not all forms of self-care, leisure, and productivity lead to health, have therapeutic value, or improve quality of life.

#### Guidelines

##### Definitions

Activities of daily living (ADLs) are basic activities that are performed by individuals on a daily basis for self-care. Examples include, but are not limited to, ambulating (e.g., walking), mobility (e.g., transferring from bed to chair and back), feeding, dressing, personal hygiene (e.g., bathing, grooming, toileting), and taking medication.

#### DRAFT Document

##### Number

17-06-01

##### Section

Independent living and quality of life

##### Subject

Independent living and quality of life measures - Overview and definitions

#### Operational

##### Policy

Independent living describes the ability to function at home and in the community with reduced reliance on assistance from family, other people, or institutions.

Instrumental activities of daily living (IADLs) are basic activities that are performed by individuals on a regular basis to live independently. Examples include, but are not limited to, using communication devices (e.g., telephone), procuring basic necessities (e.g., groceries), preparing meals, housekeeping (e.g., sweeping, laundry), day-to-day travel, attending nonWSIB related health care appointments, managing medications, and handling personal finances.

Quality of life means the ability to participate in personal, family, and social activities.

A serious injury means a work-related injury that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures:

- for six months or more, or
- permanently.

A serious illness generally means a work-related illness that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures, that:

- the worker is unlikely to recover from, and/or
- is a progressive life-limiting illness.

Significant/severe functional limitations that may result from a serious injury or illness are outlined in the Serious injuries and serious illnesses section below.

A worker is severely impaired when a serious work-related injury or illness:

- is expected to permanently impacts their ability to live independently, and
- impacts their quality of life.

#### Serious injuries and serious illnesses

The following are the significant/severe functional limitations the WSIB generally associates with a serious injury or illness that impact a worker's ability to live independently.

#### Significant/severe gross or fine motor skill limitations:

- inability to ambulate or extreme difficulty ambulating (i.e., needs mobility aids to be mobile)
- inability to be mobile or extreme difficulty being mobile (i.e., needs assistance even with mobility aids)

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inability to carry out self-care or extreme difficulty carrying out self-care (e.g., grooming, dressing, feeding)

inability to communicate with a phone or computer or extreme difficulty communicating with a phone or computer, or

inability to prepare meals or extreme difficulty preparing meals.

Significant/severe cognitive limitations:

inability or extreme difficulty carrying out activities of daily living or instrumental activities of daily living with chronic limitation of adaptation and function at home and in the community,

requiring constant assistance or supervision.

Significant/severe cardiorespiratory limitations:

inability or extreme difficulty ambulating and/or being mobile, or

inability or extreme difficulty carrying out activities of daily living and instrumental activities of daily living.

Significant/severe vision loss:

visual acuity of 20/200 (6/60) or less on the Snellen Chart (or an equivalent) in both eyes after correction and/or medication, i.e., legal blindness.

Severe to profound bilateral hearing loss:

hearing loss greater than 70dB in each ear even when using any applicable hearing devices, such that

the person must rely on lip reading or sign language to understand a spoken conversation even when using any applicable hearing devices, and

the person is unable to hear or takes an inordinate amount of time to hear so as to understand a familiar person in a quiet setting, despite the use of hearing devices.

Serious injuries and severe impairments do not include those that do not impact a worker's ability to live independently or are expected to impact a worker's ability to live independently for a short duration, typically less than six months. The following injury and illness types do not typically result in the significant/severe limitations described in this policy for six months or more:

Musculoskeletal injuries (except bilateral fractures and major crushes)

Mild traumatic brain injuries

Psychological injuries (except those that are treatment-resistant with permanent cognitive limitations)

Digit amputations

Minor burns

Cuts, lacerations, abrasions, bruises

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Mild respiratory conditions

Mild myocardial infarction

Communicable illnesses without significant/severe complications (e.g., COVID-19)

Mild dermatitis

Allergic reactions.

General

A worker's ability to live independently and their quality of life may be impacted by functional limitations that result from a work-related injury or illness. To determine the benefits and services that are necessary, appropriate, and sufficient in each case, the WSIB considers the extent to which the work-related injury or illness impacts the worker's ability to live independently and their quality of life, and how long it is expected to do so.

To be eligible for most independent living benefits and services, a worker must have a serious injury or illness as defined in this policy. To be eligible for quality of life benefits and services, a worker must be severely impaired as defined in this policy.

Appropriate measures to facilitate independent living

The measures the WSIB considers appropriate to facilitate independent living are those that assist a worker in carrying out their activities of daily living and instrumental activities of daily living. The following benefits and services are the measures the WSIB considers appropriate to facilitate independent living:

the services of an attendant and/or a personal care allowance

home modifications

vehicle modifications

independent living devices, and

independent living allowances for home maintenance, transportation, and additional expenses from WSIB-approved modifications and devices.

Certain benefits and services that are provided during recovery may also facilitate a worker's independent living, such as:

health care equipment and supplies

assistive devices and prostheses, and

home health care.

Eligibility

The findings from independent living assessments administered by an appropriate regulated health professional are used to determine the extent to which the work-related injury or illness impacts the worker's ability to live independently and entitlement to the appropriate

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independent living benefits and services according to the applicable criteria. Independent living assessments generally include those for:

home accessibility

home safety

mobility, and  
personal care needs.

Arrangements to assess the assistance an injured or ill worker needs to live independently are generally made at the time of discharge from the hospital or care facility, trauma centre, or in-patient rehabilitation facility if the assistance needed is not already documented.

In cases where a worker was not hospitalized or where an assessment was not carried out, but there is some clinical evidence that the worker needs assistance to live independently, the WSIB may arrange the appropriate independent living assessment(s).

A worker must consent to being referred for assessment and must co-operate in the assessment for entitlement to independent living benefits and services to be considered.

This includes providing consent to the health care professional to:

- carry out the assessment, and
- provide their findings to the WSIB for the purpose of determining or reviewing entitlement to benefits and services.

Where there is no clinical evidence in the discharge report(s), assessments carried out after discharge, or from the worker's treating health professional that they require assistance to live independently, the WSIB will generally not arrange for such an assessment to be carried out.

#### Entitlement

To determine entitlement to any of the independent living benefits and services listed under the Appropriate measures to facilitate independent living section below, it must be established that they are necessary, appropriate, and sufficient in the individual case. The extent and duration of each benefit or service may vary according to the extent the workrelated injury or illness impacts the worker's ability to live independently, and how long it is

expected to do so.

In some cases, the benefit or service may not be necessary, appropriate, and sufficient. The WSIB generally will not approve any of the above benefits and services, or other requested benefits or services where:

- it may impede the worker's recovery, or
- there are other more appropriate measures to facilitate independent living for the specific injury or illness.

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Independent living and quality of life measures - Overview and definitions

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In cases where the WSIB initially determines there is not entitlement to the benefit or service, the WSIB may subsequently determine the benefits and services are necessary, appropriate, and sufficient in those circumstances where:

- a serious injury or illness is significantly impacting their ability to live independently and results in a permanent impairment
- conventional treatments have been exhausted
- there is up-to-date scientific evidence or evidence-based guidelines of professional health organizations on the efficacy of the requested benefit or service in facilitating independent living where other treatments or modalities have not,
- the potential benefits of the treatment or service outweigh any potential risks, and
- the benefit or service is reasonable in terms of cost when compared to other benefits and services that may achieve a similar outcome.

See the following policies for specific entitlement criteria for each independent living benefit and service:

Independent Living Allowances (17-06-02)

Independent Living Devices (17-06-03)

Guide and Service Dogs (17-06-04)

Personal Care Attendants and Allowance (17-06-05)

Home Health Care (17-06-06)

Vehicle Modifications (17-06-07)

Home Modifications (17-06-08)

Hearing Devices (17-07-04)

Orthopaedic (17-07-05)

Health Care Equipment and Supplies (17-07-06).

Workers who require short-term assistance to carry out activities of daily living or instrumental activities of daily living may be entitled to some independent living benefits and services and other WSIB benefits and services, such as:

- attendant care, see 17-06-05, Personal Care Attendants and Allowance
- minor vehicle modifications see, 17-06-07, Vehicle Modifications
- minor home modifications, see 17-06-08, Home Modifications
- health care equipment and supplies, see 17-07-06, Health Care Equipment and Supplies
- prosthetic and assistive devices, see 17-07-05, Orthopaedic, and
- such other health care the WSIB finds is necessary, appropriate, and sufficient, see 17-01-02, Entitlement to Health Care.

01-02, Entitlement to Health Care.

Appropriate measures to improve quality of life

The measures the WSIB considers appropriate to improve a severely impaired worker's quality of life are those that will increase their ability to participate in personal, family, and

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social activities. The following benefits and services are the measures the WSIB considers appropriate to improve a severely impaired worker's quality of life:

- quality of life allowance
- hobby expenses, and
- counselling for the worker's family.

Although these measures may not fully restore a severely impaired worker's quality of life, the WSIB considers them appropriate to improve their quality of life.

NOTE

Mental health supports for injured or ill workers are considered under 17-01-02, Entitlement

to Health Care.  
 Entitlement  
 To determine entitlement to any of the quality of life benefits and services, it must be established that they are necessary, appropriate, and sufficient in the individual case. The extent and duration of each benefit or service may vary according to the extent the severe impairment impacts the worker's quality of life, and how long it is expected to do so. See 17-06-09, Quality of Life Benefits for the specific entitlement criteria for each benefit.

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Overall Readability | Paragraph Level Readability | Other Readability Tools

» Passage Statistics

Number of Sentences: 308

Words Per Sentence: 7.06

Characters Per Word: 5.65

Percentage of Difficult Words (Estimated): 30.77%  
 For more detailed analysis try the [Difficult and Extraneous Word Finder](#).

» Readability Scores

Flesch Reading Ease: 31.29

F The Flesch score uses the number of syllables and sentence lengths to determine the reading ease of the sample.

SMOG score requires pas

A Flesch score of 60 is taken to be plain English. A score in the range of 60-70 corresponds to 8th/9th grade English level. A score between 50 and 60 corresponds to a 10th/12th grade level. Below 30 is college graduate level. To give you a feel for what the different levels are like, most states require scores from 40 to 50 for insurance documents.

F: Fry Grade Level requires p

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June 19, 2024

WSIB Consultation Secretariat  
200 Front Street West  
Toronto, Ontario M5V 3J1

Sent by email to: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

Dear Consultation Staff,

**Re: The WSIB's Consultation on Independent Living Policies**

Injured Workers Community Legal Clinic is a legal aid clinic with a province-wide mandate. We have specialized in the area of workers' compensation since 1969. As a legal aid clinic, our services are provided to people with little or no income for no charge. In addition to legal advice and representation, our mandate includes community development, public legal education and participation in law and policy reform.

Thank you for the opportunity to make a submission for Phase 2 of this consultation. We are, however, concerned with the scope of this review and strongly believe that further, more in depth consultation is required.

**Section 1: Summary of Positions on Major Issues in the Modified/Draft Policies**

The summary positions outlined in this section will be explained in further detail in section 2.

1. Further public consultation is required for each policy
2. There must be proactive adjudication and the establishment of benchmarks for doing so
3. A hybrid approach (threshold percentage + individual assessment) for entitlement to benefits and services in the Independent Living policies.
4. Clarify unclear, restrictive, & exclusionary definitions, such as "serious injury" & "serious illness"
5. Remove categorical exclusions and restrictions
6. Clarify annual rates for benefits and services
7. Eliminate the unnecessary stratification of benefits
8. Remove the unnecessary reviews of entitlements, which creates a culture of fear, uncertainty and anxiety

9. Add in lock-in protections

10. Make changes to the language in various policies

## **Section 2: Explanation of Positions on Major Issues**

**1. Further Public Consultation Is Required For Each Policy:** While we applaud the WSIB’s efforts in revamping these policies, we are of the position that the scope of the review is substantial and requires further in-person/online consultations with stakeholders, especially injured and ill workers, who will be the ones directly impacted by these policy changes. The magnitude of this policy review is considerable and warrants further consultation.

It would be reasonable for the WSIB to conduct in-person/online public consultations focused on 1 or 2 policies at a time. This would ensure a thorough discussion with stakeholders, allowing all parties to better understand the intent behind specific proposed changes, which will help inform submissions to the Board. It would also be an important opportunity to discuss concerns both big (e.g. a threshold or principle) and small (e.g. language or more minor – but still important – changes).

We acknowledge that this would be a more labour-intensive endeavour; however, the breadth of these policy changes is far-reaching, and the implications, including any unintended consequences, would be best to address now, rather than after the new policies have been rolled out. If this was one or two policy reviews, the current process may be adequate; however, because there are 9 policies to review, it is paramount that proper consultations transpire.

The WSIB has a long history of holding in-person consultations. However, that tradition has largely been forgotten, replaced by impersonal written consultations, where comprehensive conversations cannot take place. We would request that the WSIB revive the tradition of in-person consultations. To be clear, we do not mean a WSIB presentation with a short Q&A (a presentation is not a consultation). We mean soliciting feedback on each section of each policy to flesh out concerns and suggestions. New technologies can make this process much less cumbersome and increase accessibility for those unable to attend in person, as the consultations can be conducted virtually.

In short, this suite of existing and draft policies is complex; therefore, it would be best to facilitate a consultation process where policies can be examined individually – in-person and/or virtually, with direct input from injured and ill workers.

**2. There Must Be Proactive Adjudication And The Establishment Of Benchmarks:** The existing suite of SIP benefits can be challenging to grasp for experienced representatives, let alone injured and ill workers. With this consultation process, the number of Board policies will expand and the policies will become more technical and legalistic, and lead to more bureaucracy; therefore, it will be more difficult for injured/ill workers to navigate these policies and processes.

As a result, WSIB Case Managers must play a more proactive role in the adjudication of potential benefits and services within these policies, as injured and ill workers should not be expected to know what benefits and services that they may be entitled to. This proactive role would be consistent with the WSIB’s operation as an inquiry system. Policy 11-02-02 states: “As an inquiry system (rather than an

adversarial system), the WSIB gathers relevant information, weighs evidence, and makes decisions.” Unfortunately, over time, the WSIB has generally become less proactive in the adjudication of benefits and services, despite the Board’s mandate to inquire and adjudicate.

One way to ensure proactive and ongoing adjudication would be for the WSIB to establish benchmarks in a claim in which the Case Manager must adjudicate whether the injured/ill worker is entitled to any of the benefits and services under these policies. Three obvious examples of benchmarks would be: 1. When the injured/ill worker receives a NEL award; 2. When a NEL award is Re-Determined; and 3. If the injured/ill worker is deemed competitively unemployable. Importantly, this list of three benchmarks is not exhaustive and it should be expanded (for example, those requiring temporary entitlement would not be captured by these suggested benchmarks).

**3. A Hybrid Approach (Threshold Percentage + Individual Assessment) For Entitlement To Benefits And Services In The Independent Living Policies. :** We maintain the position from our 2022 submission to the Serious Injury Program (SIP) Value-for-Money Audit Consultation – Phase 1, in which we recommended a hybrid approach in determining eligibility to the suite of benefits and services in the Independent Living Policies. More specifically, we would submit that the best results can be achieved by combining a threshold (existing system) with an individualized assessment (proposed system). These two options are not mutually exclusive. We believe that a hybrid model would lead to the best results for injured and ill workers – and for the WSIB.

#### Threshold

We propose that the threshold be reduced from a 60% NEL rating/100% PD rating to a 30% NEL/PD rating to trigger automatic entitlement (**We explained our proposal for a 30% threshold in our Phase 1 submissions [the old PD chart rated a totally immobile back at 30%]**). However, the main point is, regardless of where that threshold is set (even if it were to remain at the current 60%), the existence of a threshold should absolutely not be eliminated.

A threshold type system is open, simple to apply and provides certainty. The debate in a threshold system is where you draw the line. There is clearly a problem with the ratings presently in use. But the answer is not to eliminate the threshold system entirely. It is to add the flexibility of an individualized assessment for situations which the threshold system does not capture.

#### Individualized Assessment

An individualized assessment of each injured workers’ needs and abilities would be consistent with the obligation to determine each case on the merits and justice and would enable the Board to recognize the individual circumstances of each injured worker.

On one hand, two people may have the same NEL rating but very different needs to support independent living, while on the other hand, two people may have the same needs but very different disability ratings. For instance, a worker with a 20% NEL rating and a worker with a 70% NEL rating may both require someone to shovel their snow, paint their house, drive their car, etc. This example demonstrates why individualized assessment is important.

Nonetheless, too much individualized assessment can be a drain on administrative resources, with compensation funds being directed away from injured workers. An individualized assessment system can only succeed if injured and ill workers have confidence in the decision makers and the decision making process. For a significant number of injured workers, that trust is not there. It should be noted that it's likely that most individualized assessments would be appealed, unless the Board gives the maximum to the injured worker.

In short, it's our position that a 30% rating combined with individualized assessments would be the best way forward for the Board when adjudicating entitlement to the benefits and services in the Independent Living policies.

**4. Clarify Unclear, Restrictive, & Exclusionary Definitions:** The definitions for serious injury and serious illness are flawed. Both definitions reference "significant/severe functional limitations". We disagree with the Board adopting two different standards in these definitions. The Board should eliminate the reference to "severe" and maintain the use of "significant". Moreover, the policy should not contain separate definitions for injury and illness, as eligibility is based on the criteria in the policies, irrespective of disability.

#### Draft Definitions

"A serious injury means a work-related injury that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures:

- for six months or more, or
- permanently.

A serious illness generally means a work-related illness that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures, that:

- the worker is unlikely to recover from, and/or
- is a progressive life-limiting illness."

#### Significant/Severe

The Board should exclude the term "severe", as it would be associated with the existing policies requiring a 60% NEL/100% PD, thereby maintaining a disproportionately high standard for entitlement. This would defeat the purpose of the WSIB's consultation to make the benefits and services more readily available for injured/ill workers. In addition, the use of two terms will create confusion for injured/ill workers and WSIB staff, resulting in barriers and delays in entitlement.

It is our position that maintaining the reference to "significant" is appropriate, as it creates a reasonable standard and one that does not raise the bar to an impractical level. Use of the word "significant" would also be familiar to staff at the Board, as it is regularly used when reviewing causation (i.e. a significant contributing factor).

We would submit that the reference to 6 months in order to be considered seriously injured is arbitrary and too rigid. An injured/ill worker who has significant functional limitations impacting their ability to live independently for which they require assistance for 1 month or 4 months should also be considered seriously injured and eligible for any entitlements that may be reasonable based on the circumstances. Many workers will require assistance much sooner than 6 months, especially during the acute phase. Ultimately, the 6 month minimum will lead to absurd results, similar to how the existing threshold for entry into the SIP can deny a worker with a 59% rating, even if they cannot work and if they require various types of assistance.

Furthermore, the examples listed under each “category” of functional limitations is far too restrictive. For example, it ignores the compounding effect of multiple disabilities: a person may have significant difficulty under several categories, which combined, render the execution of activities of daily living extremely difficult; however, no single category of functional limitation on its own may amount to “inability or extreme difficulty”. Therefore, the criteria as it is currently laid out in the policy is significantly flawed.

### Serious Illness

Our primary position is that the proposed definition for serious illness should be eliminated. There should be one definition for both serious injury and serious illness. There is no legitimate rationale to have separate definitions for different types of conditions. All that matters is whether someone requires the supports available through these programs. Creating different standards for different types of disabilities will leave the Board open to *Charter* and *Human Rights* litigation.

Furthermore, the definition for serious illness is flawed. It is too restrictive and too exclusionary. For example, the provision with respect to “progressive life-limiting illnesses” will exclude certain types of illnesses, such as those that last for a period of time, but lead to an eventual recovery (e.g. certain cancers which may be treated into remission). This definition would likely be challenged under the *Canadian Charter of Right and Freedoms* and/or the *Ontario Human Rights Code*.

## **5. Remove Categorical Exclusions And Restrictions**

We also have grave concerns with the categorical limitations outlined in draft Policy 17-06-01, Independent living and quality of life measures. This policy states that many musculoskeletal injuries, minor traumatic brain injuries, psychological injuries, etc. do not typically result in significant/severe limitations for 6 months or more, and therefore, cannot be considered a serious injury or severe impairment, preventing further entitlements.

The limitations outlined in this policy are discriminatory and unnecessary. The biggest source of injuries at the WSIB are musculoskeletal. Each claim should be reviewed individually to determine whether the worker meet the definitions for serious injury and severe impairment outlined in the policy. A musculoskeletal injury for one person may not meet the definition of serious injury; however, the injury may have a more significant impact on another worker and meet the requirements in the definition, especially when combining the impact from multiple conditions/disabilities. Blanket exclusions should be avoided at all costs.

Psychological conditions are another type of injury that occur often at the WSIB, yet they will generally be excluded from being deemed a significant injury or severe impairment, per the draft policy. As a result of *WSIAT Decision No 2157/09*, the WSIB was forced to create the Chronic Mental Stress policy because it was determined by the Tribunal's Panel that the existing legislation and policy discriminated against injured workers with chronic mental stress. By excluding many psychological impairments from being considered, the Board is perpetuating the discrimination and stigma against workers with psychological injuries, similar to the facts in *Decision No 2157/09*.

We insist that all categorical exclusions and limitations be removed.

**6. Clarify Annual Rates For Benefits And Services:** The draft policies provided by the Board outline confusing and partial information regarding the annual maximum rates outlined in the Table of Rates for the various allowances and the quality of life benefit. This must be clarified.

The draft ILA policy breaks down the ILA into three allowances – home maintenance allowance, transportation allowance and additional expenses allowance – with the addition of a quality of life benefit in a separate policy. While it is clear what type of expenses are meant to be covered by the home maintenance allowance, we cannot say the same for the transportation allowance and additional expenses allowance, given the details outlined. The purpose and advantage of separating the ILA into these three allowances is unclear to us.

The maximum outlined in the current Table of Rates for the ILA is \$4,887.97 per year.

After reviewing the policies, it is unclear how this amount would be applied to the proposed allowances. Would \$4,887.97 apply to each allowance separately? Or would \$4,887.97 be the combined total for all 3 allowances? It is challenging to make submissions when information provided is unclear and unknown. With that being said, we would make two recommendations based on this limited information: 1. The \$4,887.97 amount should apply to each of the 3 proposed allowances; and 2. Case Managers must have discretion to permit coverage/reimbursement for costs/expenses above the maximum rates. This discretion should be exercised on a case-by-case basis to ensure that workers are not out-of-pocket for something that they are entitled to, simply because the total annual amount provided by the Board is insufficient.

Furthermore, the Quality of Life Benefits policy references the Table of Rates for the annual amount for the quality of life benefit; however, there is no quality of life amount outlined in the Table of Rates. It's our position that there should not be an annual limit. Injured and ill workers will typically be limited to one hobby. Therefore, the Board should not establish a limit, as any limitation will likely force many injured workers to select a new/different hobby, especially those living in more remote environments who are more likely engaged in outdoor hobbies that can be more expensive.

The current ILD policy references hobby equipment. Using the financial criteria from this existing policy is logical: costs related to the hobby should be reasonable and cost-effective considering alternatives on the market. We would also note that case law does not provide specific financial limits for hobby equipment. For example, in *WSIAT Decision No. 198/19, 2019*, the injured worker was entitled to a RIP Chair to pursue their hobby related to off-road recreation, with an estimated cost of approximately \$40,000 USD. In short, the costs associated with this RIP Chair were considered

reasonable and cost-effective considering market rates. The Board should not be introducing policies which reduce injured workers' current entitlements.

We strongly urge the Board not to impose a financial limit for the Quality of Life Allowance benefit.

**7. Eliminate the Unnecessary Stratification of Benefits:** The stratification of benefits will lead to a reduction in injured/ill workers' ability to receive entitlement to benefits and services. It will also create an environment where administrative burdens increase enormously, delaying, prolonging, and complicating processes associated with obtaining entitlements. It will also increase the number of appeals as well as the overall cost of administering the system. It seems that the negative consequences of sub-dividing and stratifying the benefits as proposed outweigh any potential benefit to doing so.

For example, it is unclear what benefit is added by introducing five Levels of Care in the proposed Personal Care Attendants and Allowance Policy (17-06-05), when an assessment using the Activities of Daily Living Scale should provide the necessary information to assign the appropriate hours or level of care. What is it adding to the program other than further potential points of disagreement?

Another example, which has already been mentioned, is the division of the ILA into three different benefits. In our view, this triples the administration and appeals of the program, creating disproportionate costs/resources spent administering the program rather than paying out benefits. This is bad for the Board and it is bad for injured workers. The Board should take a critical look at the level of stratification and division within these policies and eliminate any which does not add significant value to the program.

**8. Remove the Unnecessary Review(s) of Entitlements:** Many of the existing and draft policies outline that a material change of circumstance must be reported to the Board and that entitlements/benefits can be altered when there is a material change. This is appropriate and consistent with the *Workplace Safety and Insurance Act (WSIA)*. However, numerous draft policies also include additional paragraphs stating that reviews can be conducted upon request by various individuals, such as Employers, and in some cases, that these reviews can randomly be initiated by the Board.

Injured and ill workers are already under significant stress as a result of navigating the bureaucratic WSIB. The fact that reviews can be done on a whim will only further exacerbate the anxiety and stress injured and ill workers experience as a result of dealing with the Board. This will create an atmosphere where injured and ill workers feel like they are under constant surveillance and that the Board's goal is to reduce/eliminate their entitlement to benefits and services. The Board should not introduce policies which create a culture of fear, uncertainty, and anxiety among injured workers.

The provisions stating that reviews can be conducted – sometimes at random – are excessive and needless and these new provisions should be removed from the policies, leaving only the reference to a material change in circumstance, per the *Act*.

**9. Add Lock-In Protections:** In order to address the above outlined concern of creating a culture of fear, uncertainty and anxiety (as well as reduce administrative burdens), we recommend that the Board include lock-in provisions to this suite of policies. Lock-in provisions were implemented in the context of LOE to provide injured and ill workers a certain level of stability and security.

Unfortunately, there are no references to lock-in provisions for these draft policies, meaning that the predictability and certainty associated with locked-in LOE benefits is not extended to the suite of benefits related to Independent Living.

Lock-in is important for injured workers. It signifies that certain entitlements are safe from WSIB interference and review. Lock-in should be extended to workers with serious injuries/illnesses and to severely impaired workers with entitlements in the Independent Living policies. These workers have experienced the most debilitating injuries and greatest hardships as a result of their accidents/illnesses and should not have to go through unnecessary bureaucratic hurdles to maintain their benefits and services. Like in the previous section, the unpredictability caused by the lack of security for the benefits and services in this policy suite will only increase the fear, uncertainty and anxiety experienced by injured and ill workers. We strongly urge the Board to enact lock-in provisions for these benefits and services, so that injured/ill workers can live their lives with less red tape.

**10. Changes Required to Language in Various Policies:** In numerous policies, the Board uses language that is too general and vague without clear parameters and criteria, which will lead to inconsistent adjudication by Case Managers. In other policies, the Board’s language is too restrictive and limiting, when it should be more flexible and liberal in order to establish entitlement in a reasonable manner.

One example of vague language is the use of terms such as “generally”, “typically”, or “may” – without further guidance as to the bounds of that discretion. Whenever the Board is granted discretion, it needs to be coupled with parameters or guidance on how and when that discretion is to be exercised. Whenever lists are provided, it should be explicit that those lists are not exhaustive.

Further examples will be provided below; however, we reiterate our position that there is too much to point out at once and that the policies need to be reviewed one or two at a time.

### **Section 3: Other Recommendations & Concerns**

In this section, we are outlining policy-specific concerns, comments and recommendations. Importantly, this list is not exhaustive. To reiterate, we would request that a public consultation in-person/online would be beneficial for all parties considering the scope of this consultation.

#### **3.A. Independent living and quality of life measures – Overview and definitions**

I. Page 1: Principles:

**Recommendation:** The individual injured or ill worker should determine whether a form of self-care, leisure and productivity leads to improved health, has therapeutic value or improves quality of life, not the WSIB. This is subjective and will differ from worker to worker. The WSIB should take the injured/ill workers comments at face value.

II. Page 2 and Page 3: Draft policy: “The following are the significant/severe functional limitations the WSIB generally associates with a serious injury or illness that impact a worker's ability to live independently.”

Recommendation: We already outlined our general concerns with respect to “significant/severe functional limitations” and our concerns with the definitions for “serious injury” and “serious illness.” We also have concerns with this list, as it’s too restrictive.

If the Board does not modify the definitions of serious injury and serious illness, per our request, and the Board maintains the statement outlined above, then the statement should be modified to **outline that the list of significant/severe functional limitations the WSIB associates with a serious injury and illness is not exhaustive.**

III. Page 5: Draft policy: “The WSIB generally will not approve any of the above benefits and services, or other requested benefits or services where: • it may impede the worker's recovery, or • there are other more appropriate measures to facilitate independent living for the specific injury or illness.”

Recommendation: The second bullet point should be eliminated. Injured and ill workers often have complex medical needs. In some cases, one benefit or service may assist an injured/ill worker with their condition(s), while other benefits and services may also improve the same or other condition(s). We disagree with the WSIB treating benefits and services as mutually exclusive (i.e. “either or”). The benefits and services should be seen to compliment one another to achieve the best result for workers. Exclusion for the provision of certain benefits and services because the worker is eligible for other benefits and services is inappropriate and inflexible and will be used to limit entitlements.

### **3.B. Quality of Life Benefits Draft Policy**

I. Page 1: Policy: “Severely impaired workers may be entitled to one or more quality of life benefits.”

Recommendation: Replace “may” with “will”. Severely impaired workers will be entitled to one or more quality of life benefits. The discretion is unnecessary. The eligibility is premised on whether a worker is severely impaired.

II. Page 1: Policy: “The WSIB may authorize one or more of the following benefits and services to improve a severely impaired worker’s quality of life: a quality of life allowance.”

Recommendation: For clarity, add the word “annual” when referencing the quality of life allowance.

III. Page 2: Quality of life allowance: “Where the worker lives in an institution on a permanent basis or for the foreseeable future, entitlement to the quality of life allowance may be considered on a case-by-case basis.

Recommendation: The statement above should be removed from the policy. An individual in an institution should have the ability to engage in a safe and appropriate hobby, like all other workers. Workers in institutions should not have fewer entitlements compared to workers who are not in institutions.

IV. Page 2: Quality of Life Allowance: “The allowance may cover physical fitness programs, recreational programs (e.g., art, music), and general interest courses.”

Recommendation: Modify language: The allowance may cover physical fitness programs, recreational programs (e.g., art, music), and general interest courses. **This list is not exhaustive.**

V. Page 3: Hobbies: “To enhance a severely impaired worker's quality of life, the WSIB may reimburse them for expenses related to a hobby, such as the purchase of hobby equipment and supplies, equipment modification and related training, and reasonable start-up costs of a new hobby.”

Recommendation: If a hobby is approved, the WSIB **will pay**/reimburse for expenses related to the hobby, such as the purchase of hobby equipment and supplies, equipment modification and related training and reasonable start-up costs of a new hobby. **The policy should state that the list of what the Board pays for is not exhaustive.** The WSIB should purchase supplies/equipment if the worker does not have the financial resources to do so. The Board currently pays vendors directly for supplies and equipment, so it can be done.

VI. Page 4: Eligible hobbies and related expenses: “Depending on the type of hobby and cost, the WSIB may recommend that the worker rent necessary hobby equipment or participate in the hobby in a community setting before purchasing hobby equipment.”

Recommendation: Depending on the type of hobby and cost, the WSIB may recommend that the worker rent necessary hobby equipment or participate in the hobby in a community setting before purchasing hobby equipment. **The WSIB will pay or reimburse the worker for any rental fees and/or costs associated with participating in the hobby in a community setting before purchase.**

VII. Page 4: “The WSIB does not support hobbies it considers to be inherently risky or perilous, including but not limited to those involving firearms or motorized vehicles. The WSIB does not pay for the construction of structures for hobby-related purposes, including but not limited to woodworking or automotive shops, pools, spas, or greenhouses.”

Recommendation: All exclusions identified above should be removed from the policy. The WSIB should not be in the business of making moral judgments. The WSIB should not dictate whether lawful hobbies and activities are considered risky or perilous – that is a very subjective.

Ultimately, millions of gun owners exist in Canada. This is a well known fact. The vast majority use their guns for hunting and/or target shooting. It is also a fact that these hobbies and activities are quite safe. Furthermore, the limitation on firearms would disproportionately impact Indigenous populations, and rural and Northern Ontario communities. It is imperative that this discriminatory provision be removed.

WSIAT decisions have granted entitlement to motorized vehicles such as Rip Chairs and Side-by-Side vehicles. See WSIAT Decision No. 1335/23, 2023 and Decision No. 198/19, 2019. Thus, any limitation on the purchase of motorized vehicles would conflict with existing case law and would result in a major roll back of potential entitlements for workers. Importantly, motorized vehicles can be modified to ensure safety (i.e. roll cage, 3-point harness, etc.). Hobbies such as off-roading are enjoyed by millions of Canadians and these devices are disproportionately utilized by Indigenous, rural and Northern Ontario communities. This discriminatory exclusion must also be removed.

We also object to the Board's provision that would exclude the construction of structures related to hobbies such as swimming, woodworking, producing food, etc. Per the policy, the Board will generally only allow the hobby allowance for one hobby. Because of this one hobby limitation, the Board should not restrict its ability to pay for more expensive structures, equipment, etc. Workers' lives has been radically transformed as a result of their accident/exposure. Therefore, the Board must pay for costs related to a hobby and should not exclude certain types of hobbies.

We would also point out that the existing policy does not limit hobby equipment purchases based on type of hobby nor is there a maximum amount outlined in the policy. The policy does dictate that costs should be reasonable in terms of costs/benefits and that the item is cost-effective considering market costs for similar items. This criteria is reasonable and should be maintained in the new policy.

In short, the WSIB must eliminate the section which excludes various hobbies from entitlement. Additionally, the Board must explicitly state that there is no maximum dollar figure on the purchase of hobby equipment/construction of a structure, and that in those cases, the Board must review the reasonableness of the costs/benefits and compare the costs to similar items in the market.

V. Page 4: Eligible hobbies and related expenses: "The WSIB will generally consider entitlement to one hobby only. Entitlement to a subsequent hobby may be considered following a permanent change in the severe impairment."

The WSIB **will** consider entitlement to a subsequent hobby following a permanent change in the severe impairment.

Recommendation: Further clarity on the criteria being used to evaluate subsequent hobbies is necessary. "The WSIB will generally consider entitlement to one hobby only. Entitlement to a subsequent hobby **will** be considered following a permanent change in the severe impairment, **if their age prevents them from participating in the hobby and/or if non-compensable condition(s) combine with the compensable condition(s) to prevent participation in the hobby.**"

VI. Page 4: Payment: "The WSIB may require the worker to provide a cost estimate of the requested hobby equipment and related expenses, as well as a summary of the worker's interest in the hobby and the intended benefits and/or goals of the hobby."

Recommendation: The second half of the statement should be removed from the policy. There is no criteria listed relating to proving or describing a worker's interest and the benefit to them; therefore, this is unnecessary and will create additional paperwork, serving no purpose. It would be absurd for the worker to explain their interest in a hobby and then allow the Board the decision-making power to deny entitlement to the hobby because the worker did not answer the question "correctly", according to the Board.

VII. Pages 4 and 5: Mental Health Supports for Family Members: "Eligible family members are generally entitled to a maximum of ten sessions. Additional sessions may be approved where there is a significant deterioration in the work-related injury or illness... If a person eligible for mental health supports under this policy does not qualify for bereavement counselling under 20-02-02, Bereavement counselling, the WSIB will provide up to ten sessions of bereavement counselling under this policy."

We support the WSIB's intention to provide mental health supports for eligible family members. While it appears to be the WSIB's intention to allow family members to access mental health support immediately following a traumatic workplace accident, the definition of serious injury (requiring disability of 6 months or more) seems to preclude this practicality. Hopefully corrections to the underlying definitions of significant/severe injury/illness (referred to previously) will address this concern within this policy.

Recommendation: The WSIB should not limit entitlement for mental health support/bereavement counselling to family members. These supports should be extended to the worker's primary caregiver and close friends so that it is consistent with the provision outlining who may be eligible if the worker does not have eligible family members.

Recommendation: The WSIB should eliminate the reference to the maximum number of treatments for mental health and bereavement treatments. If a family member, friend, or caregiver experiences a psychological condition stemming from the compensable accident and requires ongoing treatment, the Board should approve it. It would not be fair to provide a general maximum of 10 sessions and then cut the individual off if the treating health professional is requesting additional treatments. Our clients and their family are low income and would not be able to pay for ongoing treatments.

Recommendation: If the Board extends mental health/bereavement counselling to family members, a close friend or the primary caregiver, then the Board should also be required to pay for any medication prescribed by the counsellor/therapist/psychologist/etc. It is logical that if the Board pays for treatments, that any medications flowing from the psychological condition(s) also be paid for.

### **3.C. Independent Living Allowances Draft Policy**

I. Page 2: Independent Living Allowances: "For example, if the WSIB provides a worker with vehicle modifications, then the worker generally would not be entitled to the transportation allowance."

Recommendation: By including the aforementioned statement in the policy, the Board will all but guarantee that individuals do not receive entitlement to both benefits. As a result, the statement should be struck from the draft policy. There is no need to pre-emptively deny entitlement (i.e. "generally") for vehicle modifications if entitled to the transportation allowance. Just because an injured worker required modifications to their vehicle, does not mean they should not be entitled to use other modes of transit through the transportation allowance. For example, a wheelchair user may have needed modifications to their family vehicle in order to be a passenger, but the family member who usually drives them places may not always be available to take them where they would like to or need to go. That injured worker should have access to a transportation allowance to be able to take a taxi, for example, just like other injured workers in the serious injury program.

### **3.D. Independent Living Devices Draft Policy**

I. Page 3: Other Health Care Items: "Items such as hot tubs, pools, all-terrain vehicles, tractors, snowplows, and riding lawnmowers are not approved as the WSIB does not consider such items to be a

necessary, appropriate, and sufficient means of meeting the objectives of providing independent living devices.”

**Recommendation:** The paragraph above must be removed from the policy. There must not be a complete denial of such items. These items should be considered under this policy and/or the Quality of Life Benefits policy. Case law referenced above clearly indicates that the Board can pay for all-terrain type vehicles. Furthermore, snowplows/riding lawnmowers could greatly improve one’s ability to live independently. The Board should make a case-by-case decision.

### **3.E. Home Care Draft Policy**

I. Page 1: Guidelines: “Each home health care program is tailored to the individual's needs and may include medical treatment, therapy services, rehabilitative services, and palliative or end-of-life care. Home health care service providers may include nurses, physiotherapists, occupational therapists, speech pathologists and social workers.”

**Recommendation:** There should be a statement explaining that the list of home health care programs and home health care service providers identified in the policy is not exhaustive.

II. Page 1: Guidelines: “Home health care programs may be provided by public or private health care organizations, depending on the worker's location and specific treatment plan.”

**Recommendation:** We support the principle of a public health care system. As such, priority and preference should be given to public home health care programs by the WSIB. If there are no public options available, then private options should be used.

III. Page 1: Entitlement: “The worker is in need of at least one professional health care service, such as nursing, physiotherapy, occupational therapy, speech-language therapy, or social work.”

**Recommendation:** Add statement: “This list of professional health care services is not exhaustive.”

IV. Page 2: Payment: “Home health care program services are paid directly to the home health care provider.”

**Recommendation:** The policy should include a statement outlining that home health care program service rates can be negotiated between the Board and the provider. This will ensure that the worker receives the health care treatments that they have been granted. Workers, especially ones in rural and Northern Ontario, often have difficulty securing health care professionals when the professional discovers that the injury is work-related. This is often because the rates provided to health care providers are insufficient. For home care, costs will increase for the providers (i.e. mileage), so it becomes paramount that the WSIB negotiates with the provider to ensure the provision of treatments for the worker.

### **3.F. Personal Care Attendants and Allowance Draft Policy**

I. Page 2: Entitlement Criteria: There is reference made beginning on page 2 with respect to the Activity of Daily Living Scale Form.

Recommendation: You have not provided the form, so we cannot comment on it. Nonetheless, any form used by the WSIB should be publicly available on the website.

II. Page 3: Personal Care Allowance: “In choosing a non-agency attendant, the worker should ensure the attendant has received adequate training to provide the necessary care. The WSIB does not cover any costs associated with such training. Where a worker requires highly specialized care, the WSIB may require evidence of the attendant hired having received sufficient training before issuing the personal care allowance.”

Recommendation: The WSIB should not deny training requests from non-agency attendants. Non-agency attendants are typically close family and/or friends. These individuals are likely sacrificing employment opportunities in order to assist the injured/ill worker. Because of this, the WSIB should reimburse for necessary and reasonable training costs. The decision would be made on a case-by-case basis.

III. Page 4: Non-Agency Attendants: “The WSIB will pay the worker for the personal care provided by a non-agency attendant prior to the date an entitlement decision is made up to the date of entitlement, based on the lesser of:

- the actual costs incurred for the care provided, or
- the amount associated with the level of care needed.”

Recommendation: The worker should be reimbursed for all actual costs for personal care from a non-agency attendant, not the lesser amount, as indicated above. It would be unfair for the Board to deny costs retroactively, when the injured worker could not have reasonably known what level of care the WSIB would approve if occurring at a later date (e.g. after winning an appeal). This would be consistent with the fact that agency attendants are paid prior to the date an entitlement decision is made, up to the date of entitlement, based on the actual costs of the care provided, not based on the amount associated with the level of care needed. This inconsistency must be fixed.

IV. Pages 4 and 5: Hiring Non-Agency Attendants: “Workers who meet the criteria for the personal care allowance may hire one or more attendants to provide the assistance they require. An attendant could be a health care professional such as a nurse or personal support worker, or a spouse, family member, or friend.”

Recommendation: This section must state that the list of non-agency attendants outlined is not exhaustive.

Recommendation: We have very serious concerns with the fact that seriously injured/ill workers would be considered the Employer of the non-agency attendant. Our clientele is typically not sophisticated. English is generally the second language. Most have mental health condition(s), some of which are extremely serious. When you combine these factors, it becomes obvious that many of these workers will not be able to comprehend their responsibilities as an Employer due to the added complexity, bureaucracy, and paperwork, even with assistance from a bookkeeper. A former client of our clinic abandoned their entitlements granted by the Board when they were advised that they would have to register as a businessperson to receive care in their home. Imagine for a moment that you are seriously

injured, you do not speak English, you have mental health challenges and then the Board sends you a package stating that you have to register as a small businessperson in order to receive care. Ultimately, many workers will not pursue this entitlement for these reasons.

The Board has the administrative resources (Human Resources, Accounting/Finance Departments, etc.) and experience to hire the non-agency attendants as direct employees. If the Board is paying for a bookkeeper and is considered the Employer for WSIB purposes, then it would make sense for the Board to just pay the non-agency attendant directly, similar to how the Board pays the agencies. The worker would still collaborate with the WSIB to recommend and hire non-agency attendants, as the worker will have a pre-existing relationship with the person hired.

V. Page 4: Hiring Non-Agency Attendants: “According to the *Employment Standards Act*, all attendants are entitled to at least 11 consecutive hours free from performing work in each day. In addition, attendants are entitled to at least 24 consecutive hours free from work each week, or at least 48 hours free from work in every period of two consecutive work weeks. The *Employment Standards Act* also requires employers to pay an attendant overtime pay, or to provide paid time off work, for each hour that is worked over 44 hours in a work week.”

Recommendation: The *ESA* requirements should apply to agency attendants hired by the Board, too. The Board must provide the agencies with a copy of the pertinent provisions of the *ESA* and ensure that agencies provide sufficient staff to meet their statutory obligations.

VI. Page 5: Hiring Non-Agency Attendants: “The WSIB pays flat monthly rates corresponding with one of five levels of care, as outlined above, regardless of the numbers of hours the attendant works per week and/or whether the attendant is entitled to overtime pay.”

Recommendation: Attendants shouldn’t be forced to perform free labour and they must be compensated for the hours worked. Not paying someone for their labour is wage theft and violates basic labour standards and principles.

VII. Page 6: Registration as employer: “WSIB coverage is mandatory for all personal care attendants employed by an injured or ill worker for more than 24 hours per week under this policy. A worker employing their own attendant, including a family member, for more than 24 hours per week is automatically registered with the WSIB as an employer. The associated costs are paid for by the WSIB.”

Recommendation: We would submit that WSIB coverage must be mandatory for all non-agency attendants, irrespective of hours worked per week. The WSIB should expand coverage to as many workers as possible rather than limit coverage to certain types of workers, employed for a certain number of hours.

VI. Page 6: Continuation during attendant’s annual paid break: “Workers receiving the personal care allowance are required to provide their attendant(s) with up to two weeks of paid vacation once per year under the *Employment Standards Act*. The WSIB will continue to provide the personal care allowance during this two-week period to allow the worker to pay the attendant during their vacation.

With advanced notice from the worker, the WSIB will also cover the cost of an agency attendant while the worker's usual attendant is on vacation."

Recommendation: The WSIB must ensure that proper *ESA* entitlements are provided. The *ESA* states: "An employee whose period of employment is five years or more is entitled to three weeks of vacation time after the completion of each 12-month vacation entitlement year." This provision should be outlined in the policy to make it consistent with the *ESA*.

Recommendation: Entitlement to the Loss of Retirement Income (LORI) should be extended to all non-agency attendants hired by the worker and all non-agency attendants should be provided workplace benefits similar to WSIB staff. In most cases, the non-agency attendant will have to quit their job and/or reduce the number of hours worked in order to provide care to the worker. They will also lose out on future employment opportunities. Furthermore, they will be forced to reduce contributions toward retirement funds and they will likely have access to their benefit plans reduced or eliminated. In order to ensure that workers receive the care they are entitled to by providing fair compensation to non-agency attendants, the WSIB should extend LORI to those individuals employed for over 1 year, similar to injured/ill workers. Benefits should also be extended to non-agency attendants, beginning at the same time benefits are provided to Board staff. The provision of benefits and a LORI will provide extra incentive for non-agency attendants to be employed consistently and over the long term and this would create consistency with agency attendants who have access to pensions and benefits.

### **3.G. Home Modifications Draft Policy**

I. Page 1: Policy: "Home modifications to facilitate the living arrangements of a live-in caregiver will not be authorized."

Recommendation: This exclusion should be eliminated from the policy. A decision to modify living arrangements for a live-in caregiver should be made on a case-by-case basis. We oppose exclusions such as this.

II. Page 1: Policy: "Home modifications to create a hospital-like or clinical setting to allow the worker to receive health care at home, or so that the professional services of a health care practitioner may be provided to the worker in their home, are not considered necessary, appropriate, and sufficient as a result of a work-related injury or illness, nor are they considered an appropriate measure to facilitate independent living or improve a severely impaired worker's quality of life."

Recommendation: Home modifications to create a hospital-like or clinical setting to allow health care at home should be determined on a case-by-case basis. We oppose the complete exclusion of these types of home modifications.

III. Page 2: Entitlement Criteria: "Entitlement to home modifications may be considered where:... the work-related injury or illness and a non-work-related condition impact the worker's ability in the above way, where the work-related injury or illness is the primary factor and such financial assistance is not available through other agencies or sources."

Recommendation: The WSIB should not premise a decision for entitlement to home modifications based on whether the injury/illness is the “primary factor.” The “primary factor” establishes a higher threshold than is required by the law; therefore, it should be removed. The WSIB must continue to use the “significant contribution test” to determine whether a worker may be entitled to home modifications. It is our position that this legal test is applicable and should be enshrined in this section of the policy. Importantly, with “a significant contributing factor” test, the work-related condition(s) do not have to be the “primary factor” in order to establish entitlement.

IV. Page 3: Eligible Homes: “A secondary residence purchased by the worker after the date of the work-related injury or illness will not be considered for modification.”

Recommendation: This statement should be removed from the policy because it is too restrictive. In some situations, workers may have been saving for a second home, house hunting or in the process of purchasing a second home before the accident/illness. Therefore, the complete exclusion for home modifications to a second home purchased after an accident would be unfair.

V. Page 3: Eligible Homes: “The modifications to a secondary residence are limited to the entrance, one bedroom, and one bathroom, and must generally be completed without modifying other rooms of the home or outdoor areas of the property, other than to allow the worker to access the home. The WSIB will not approve separate modifications to additional rooms of a secondary residence such as a basement or second bathroom, or to outdoor areas of the property, such as a shed or waterfront area.”

Recommendation: This statement should be modified because it is too restrictive and exclusionary. The Board should not restrict modifications to specific areas of the home/only for access to the home. These limitations and exclusions will lead injured/ill workers to not use their second homes due to limited possibilities. Certainly, kitchens are essential to a person’s ability to use a home, and should definitely not be excluded. More flexibility should be provided.

VI. Page 3: Rental Properties: “Workers are not entitled to reimbursement for rent increases following a move, or to modifications to subsequent rental units, should the worker move due to substantial rent increases.”

Recommendations: This provision is patently unjust and unfair and must be removed from the policy. Generally, injured/ill workers are forced to move as a combined result of their injury/illness (rental unit cannot be modified), reduced income (85% or less of net income), reduced/no employment opportunities (unable to apply for higher paying jobs/unable to work) and rent increases. But for the accident, the worker would not likely be in the precarious situation in which they require a new rental. If a worker is forced out of their unit for any reason directly or indirectly as a result of the accident and compensable injuries (i.e. they have to change apartments because their apartment cannot be modified to assist with their work-related condition(s)), the WSIB must pay the difference in rent. Ultimately, renters are typically lower income individuals. Because of the injury, the LOE rate they receive cuts their income by at least 15%, a significant drop. This leads to many of our clients sleeping in their cars, sleeping on the streets or sleeping in shelters. The Board paying the difference in rent for a reason directly/indirectly related to the injured/ill workers’ compensable condition(s) is the moral, just and ethical approach the Board should take.

VII. Page 4: Existing Structures: “If the required major modifications, including additions, to an existing home are not structurally feasible, and the worker decides to purchase another home that meets their accessibility requirements and/or that can be modified, then the WSIB may provide a reimbursement amount to offset the cost of the required accessibility features in the purchased home. The WSIB will only provide a reimbursement amount once.”

Recommendation: The last sentence stating the reimbursement will only be provided once should be removed from the policy. A decision to allow home modifications more than once should be reviewed on a case-by-case basis.

IX. Page 4: Existing Structures: “The WSIB will determine a reimbursement amount based on the estimated cost of the accessibility features in the purchased home, as well as the estimated cost of any required modifications to the purchased home. Once the reimbursement amount is approved by the WSIB, and the worker's offer to purchase the home is accepted, the reimbursement funds will be dispersed in a manner that the WSIB determines will best ensure the security of the funds.”

Recommendation: A statement should be added explaining that any costs exceeding the estimate approved by the Board will be paid by the Board.

X. Page 4: Existing Structure: “The WSIB is not responsible for any aspect of the home purchase or financing, and does not purchases homes under any circumstance.”

Recommendation: The part stating that the Board does not purchase homes under any circumstance should be modified to allow discretion in certain circumstances. In some cases, due to the worker’s condition, the state of their home, where they live and where they plan to move, it may make financial sense for the WSIB to pay for the cost of a new home (the injured/ill worker would own the home). This would be decided on a case-by-case basis and would be premised on whether it is reasonable for the Board to pay for the house.

XI. Page 4: Existing Structures: “However, the WSIB will consider entitlement to modifications to the purchased home up to the estimated cost of modifying the prior home.”

Recommendation: The Board should not limit modifications up to the estimated cost of modifying the previous home. Reasonable costs above the estimated cost should be considered on a case-by-case basis.

XII. Page 4: Relocation: “Examples include:”

Recommendation: The policy should state: “Examples include, but are not limited to:”

XIII. Page 5 and Page 6: “Increased utility costs, property taxes, or rent: Where a worker's principal residence is a rental property that does not qualify for modification and the worker finds an appropriate alternate rental property, they may be entitled to reimbursement for increased rental costs. The WSIB will contribute up to a maximum of 40 percent of the worker's rent with documentary evidence of the increase. The WSIB will only contribute to the increased rent for a duration of five years.”

Recommendation: The WSIB should contribute the total difference in the rental fees between the initial apartment and the subsequent apartment. The worker should not lose money due to having to move because of their injury/illness. Furthermore, the Board is allowing possible modifications in 2 homes for eligible workers. The least the Board can do is ensure that the renter/worker is not having to move and pay increased rent due to their injury/illness. This proposal is providing lesser benefits to injured workers who rent over those who own, which is unacceptable.

In some cases, workers living in remote locations will have to move to the city for health care and treatments, which will lead to a substantial increase in rental costs. The WSIB must make sure that these people are properly taken care of.

Recommendation: The WSIB contribution for rent should be for the life of the worker. Where there is a spouse and/or children living with the worker, the Board should continue to contribute for a duration of five years subsequent to the workers' death to ensure the family has some level of financial stability stemming from the compensable injury/illness.

XIV. Page 6 and Page 7: Ownership and Removal: "The request must be made within one year of the home modification or installed device no longer being needed"

Recommendation: There is no need for a time limit to request removal of a modification and/or device. The modification/device should be removed upon request.

### **3.H. Vehicle Modifications Draft Policy**

I. Page 1: Definitions: "Vehicle for the purpose of this policy means a vehicle that meets the definition of 'motor vehicle' in the *Ontario Highway Traffic Act* and is primarily designed for year-round use on highways as defined in the *Ontario Highway Traffic Act*."

Recommendation: The definition is too restrictive and should not potentially restrict vehicles that cannot be used year round.

II. Page 2: Eligible Vehicle: "the vehicle will be the worker's primary mode of transportation."

Recommendation: The Board should not exclude vehicles that are not considered primary from being eligible for vehicle modifications. The decision should be made on a case-by-case basis. For instance, a worker may use a combination of public transit for local travel and a personal vehicle for longer distance travel, such as to visit family or to go on vacation. The draft policy, as written, would exclude vehicle modifications because the automobile is not the primary mode of transportation. This would be unfair and lead to an absurd result that could prevent the worker from going on vacation, traveling to see family, etc. That will lead to a reduction in the worker's quality of life and it would likely lead to a psychological condition. Public transit availability must not be used by the Board to deny vehicle modifications.

III. Page 2: Eligible Vehicle: "The WSIB may request a Safety Standards Certificate or other documentation that demonstrates the vehicle is safe and operable."

Recommendation: A statement must be added outlining that the WSIB will reimburse the worker for costs associated with providing these documents.

IV. Page 2: Purchasing a vehicle to modify: “The WSIB determines the amount to reimburse for the features. The WSIB does not reimburse the cost of the vehicle itself.”

Recommendation: The WSIB should not outright exclude the purchase/reimbursement of a vehicle itself. The decision should be made on a case-by-case basis. Based on the circumstances, it may be reasonable and financially responsible to purchase a new vehicle.

A former client of our clinic received entitlement to a 100% PD. As a result, the WSIB purchased the worker a taller wheelchair. However, the wheelchair did not fit inside his van. The client asked the Board to purchase a new van so that his wheelchair would fit inside. The Board denied the request, stating that they modify vehicles, but do not purchase new ones. The worker could not afford a new vehicle. This is an example of when the Board should pay for a new vehicle.

V. Page 2: Purpose-built accessible vehicles: “The WSIB does not contribute the full cost or purchase vehicles directly.”

Recommendation: The WSIB should retain the power to contribute the full cost of a purpose-built vehicle. If a worker requires a purpose-built accessible vehicle as a result of their compensable injuries/illnesses, the Board should bear the responsibility of contributing the full cost.

Recommendation: The Board should purchase purpose-built vehicles directly. Currently, the WSIB requests that vendors/providers sign up online with the Board, so that the companies can be paid directly. This practice is used for the purchase of side-by-side vehicles. This should be extended to purpose-built vehicles. Many injured workers are low-income and do not have the capability to purchase high cost items. It would be reasonable for the Board to purchase the vehicle directly.

VI. Page 4: Insurance: “The WSIB does not pay for repair or replacement of the vehicle modification where the damage is due to a motor vehicle accident.”

Recommendation: The WSIB should pay for the repair or replacement of the vehicle and vehicle modification(s) that are not covered by insurance, where the motor vehicle accident results from the compensable injuries.

### **3.I. Guide and Support Dogs Policy**

I. Recommendation: The policy should not be restricted to guide and support dogs. Research demonstrates that other animals can be effective as guide and support animals, too. There is no need to limit the policy exclusively to dogs.

II. Page 1: Designated Conditions: “Designated condition means one of the following serious injuries or illnesses for which there is strong and consistent evidence of the effectiveness of animal-assisted intervention involving ownership:

- significant/severe vision loss

- severe to profound bilateral hearing loss
- spinal cord injuries resulting in significant immobility necessitating the use of a wheelchair, or
- partial or full amputations resulting in significant immobility necessitating the use of a wheelchair, where a prosthetic device is not sufficient to facilitate independent living.”

Recommendation: The list of designated conditions is too restrictive and is discriminatory against psychological conditions in particular. As a result, the list should be removed in its entirety, or at the very least, modified to include psychological conditions and to explain that the list is not exhaustive.

The draft policy on Guide and Service Dogs is an example where those with psychological injuries are left out by the Bard, in essence, minimizing the severity of the effect of this type of compensable injury on activities of daily living. The medical literature supports that a service animal would be a necessary, appropriate and sufficient health care measure for psychiatric and psychological conditions. The WSIAT has also agreed that the acquisition of a service dog for mental health reasons may be an appropriate health care benefit.

For example, in *Decision No. 1835/21, 2022*, the worker was found to be entitled to a service dog in relation to compensable major depressive disorder, post-traumatic stress, and somatic symptom disorder with predominant pain, particularly in relation to the worker’s capacity to control negative emotions. Even in 2007, the WSIAT rejected the proposition that OPM Document No. 17-06-04, “Guide and Support Dogs,” applied only to dogs intended to service blind or deaf workers. In *Decision No. 410/07*, the Panel found that the services a dog performed for a worker in receipt of a 40% NEL award for PTSD were “indistinguishable in principle from those performed by guide or support dogs, namely to ‘enhance the worker’s independent living and quality of life’.” The decision concluded that OPM Document No. 17-06-04, “Guide or Support Dogs,” is applicable to dogs who perform a service to workers with compensable psychotraumatic conditions.

The WSIB should not now in 2024 enact a regressive policy which rolls back an entitlement which is already recognized as appropriate and available to injured workers. The proposed policy on Guide and Service Dogs must be revised to include psychological conditions.

Enacting the policy as proposed would in fact be discriminatory. A recent *Human Rights Tribunal of Ontario* case is instructive on this point. In *Robinson-Cooke v. Ontario (Community and Social Services)*, 2023 HRTO 1133, an ODSP recipient with a number of physical and mental disabilities challenged ODSP’s Guide Dog Benefit Policy. The applicant required the support of a service dog in order to be able to live independently, particularly with respect to managing her PTSD symptoms. After obtaining and training a dog to meet her specific needs, the applicant applied for an additional benefit provided by ODSP intended to cover the costs of feeding and maintaining a service dog [the Guide Dog Benefit] but was denied because her dog was not trained by a facility accredited by Assistance Dogs International [ADI].

The HRTO found the denial of the benefit was discrimination based on the ground of disability, as evidence was presented at the hearing to establish that it was not possible for her to obtain a dog trained by an ADI-accredited facility because of her particular disability-related needs. The HRTO required the respondent to review the certification process used in other provinces for determining eligibility for

similar benefits. It also ordered the respondent to consult with relevant agencies and individuals in its review and to consider in particular the appropriate process for individuals requiring dogs for mental health disabilities that are not veterans or first responders. The WSIB should undergo the same review and consultation process as ordered by the HRTO, in order to avoid the enactment of a discriminatory policy.

III. Page 2: Entitlement Criteria: “There are no contraindications to owning the recommended animal. Contraindications may include, but are not limited to, a history of violent or abusive behaviour toward humans or animals, worsening of symptoms, substance use or inability to control emotions.”

Recommendation: The exclusions premised on substance abuse, the worsening of symptoms or the inability to control emotions should be removed from the policy. They are too broad and vague. In addition, it would be discriminatory to prevent someone with a substance abuse problem from entitlement to a guide or service dog. Furthermore, research indicates that dogs can help to regulate a person’s emotions.

### **Conclusion**

In closing, we thank you for reviewing our submission. We would, however, like to meet with you directly to discuss our various proposals and discuss further details we have been unable to include. Please contact me via email at [chris.grawey@iwc.clcj.ca](mailto:chris.grawey@iwc.clcj.ca) to arrange further discussion.

Sincerely,

Chris Grawey  
Community Legal Worker  
Injured Workers Community Legal Clinic

Via email: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

April 26, 2024

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

**Re: Phase two - Independent living policy consultation  
(Serious Injury Program value-for-money audit consultation)**

I am responding to the Board's **Phase Two - Independent Living Policy Consultation** (Serious Injury Program value-for-money audit consultation) on the Board's [website](#). I provided submissions for Phase 1 of this consultation on October 14, 2022 (attached at **Appendix A**). My input below is in keeping with my initial response to the Phase 1 consultation questions.

**Criterion for Entitlement for the Independent Living Policies**

I suggest that the Board continue to use the specific non-economic loss or permanent disability rating (60%-100% NEL) as a default criterion for **automatic consideration** to the benefits and services in the independent living policies. I agree that the Board can and should review any case below that threshold on its own merit as per the consultation paper as circumstances warrant. The threshold continues to be a suitable inclusionary criterion, but never excludes discretionary consideration.

**Proposed revisions to 17-06-02, Independent Living Allowance**

With respect to Board's bullet point (at **page 6**):

Pending technological feasibility, separate the single, annual lump sum into four monthly allowances, each with a specific purpose: 1) home maintenance, 2) transportation, 3) additional expenses for WSIB-approved modifications or devices, and 4) quality of life.

I question if this action would be the best way to meet the needs of the injured workers requiring the funds. This proposed change seems to add more layers of "red tape" to the provision of benefits to injured workers and may make it more difficult for a worker to access, track, anticipate and/or plan for their needs. It may provide better service to the injured worker to provide the funds on the injured worker's timeline. I do note that it would likely be beneficial for the Board to gather and track how the funds are used in all claims of this type so that over time the Board can better understand what type of services/items are needed to those in receipt of this benefit.

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**Proposed revisions to 17-06-05, Personal Care Allowance**

With respect to Board's bullet point (at page 8):

Pending technological feasibility, people who qualify for the allowance will be assigned to one of five levels of care based on their ability to complete their activities of daily living. Each level of care will have its own flat monthly rate which will be indexed annually. Monthly amounts currently being paid will not be reduced.

If this proposed revision is meant to address the Board's noted concern that current "*three categories of attendant care, each with its own hourly rate, require complex calculations that may delay payments of the allowance*" (at **page 7**), I encourage the Board to consider ways to simplify and expedite the provision of these services when an injured worker is deemed entitled.

Thank you for the opportunity to provide these comments. Should you have any questions, please feel free to reach out at any time.

Sincerely,

A handwritten signature in blue ink, appearing to be 'L.A. Liversidge', written over a light blue circular stamp or watermark.

**L.A. Liversidge**

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October 14, 2022

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

### Re: WSIB Serious Injury Program VFMA Consultation

We are responding to the Board's Serious Injury Program Value-for-Money Audit Consultation as outlined on the Board's [website](#). Please find below comment on each of the questions posed.

#### Questions for Stakeholders:

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?
    - A. *The severely impaired threshold removes much of the subjectivity from the decision-making process, which can be good. However, the Board does have the discretion to review a case on its own merit and make exceptions to the criterion, as per the consultation paper. Consequently, the threshold continues to be a suitable criterion.*
  2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?
    - A. *Yes, and it was likely meant to be that. In the event that it is not, the worker has the opportunity to provide the objective evidence to establish that it is not.*
  3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?
    - A. *Yes, it likely does in most cases. However, where the worker feels it does not, the decision maker has the discretion to review the case on its own merit and make exceptions to the criterion.*
  4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.
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- A. *If more criteria are included, such as these, the decision making can be more precise and less subjective.*
5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?
- A. *Absolutely. Someone with a catastrophic injury may need significant assistance in the early stages of injury but no longer require it by maximum medical recovery (MMR). For instance, a stair lift or ramp may be required initially for a significant leg or hip injury but may no longer be required once MMR has been achieved.*
6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.
- a. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?
- A. *Benefits and services to facilitate independent living should be considered at any point where the worker cannot manage independent living and does not have sufficient support and assistance at their own disposal. For instance, someone recovering from an injury that limits their mobility and they have no other person living in their household that can assist. Temporary benefits and assistance to facilitate independent living should always be considered.*
- b. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?
- A. *Permanent entitlement to such benefits and services should only be considered once MMR has been determined and the evidence supports that such benefits and services continue to be necessary.*
7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?
- A. *All benefits and services should be provided as required and not provided immediately without assessment.*
8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?
- A. *If the Board provides what the injured worker needs to maximize recovery on a temporary basis, then their long-term needs should already be met. For instance, stair lift provided temporarily on the basis that it will be uninstalled and returned when no longer needed (this is done with motor vehicle insurance companies). If it is then determined that a service/benefit is required on a long-term basis then it's already there.*
9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?
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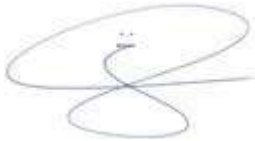
A. *Likely no. Everyone's needs will not be the same. People who have no personal support likely will require more than those with personal support. Right now, the allowance is paid out in a lump sum and workers are not required to provide receipts to show how it is spent. If the WSIB had such receipts, it could see how the money is spent and whether it meets the individual's needs.*

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

A. *They likely allow for individualized review of the individual worker's need.*

Thank you for the opportunity to provide these comments. Should you have any questions, please feel free to reach out at any time.

Sincerely,



**L.A. Liversidge**

# *Northumberland Community Legal Centre*

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June 11, 2024

## **WSIB Consultation Secretariat** [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

I am an advocate for injured workers, and have practised in this area of law for more than 30 years. In that time, I have served many injured workers who required the benefits available under the Independent Living suite of policies, although not all met the definition of severely impaired as previously set out.

I am pleased to be able to provide input in this policy consultation, included below. I would be happy to answer any questions.

Yours truly,

*Lois Cromarty*

Lois Cromarty (NCLC)  
Barrister and Solicitor  
Executive Director

### **WSIB Serious Injury Program Review of the Independent Living Policy drafts Phase 2 Consultation, Spring 2024**

#### **Comments on the Overall Draft Policies**

There are a number of concerns to be addressed with the overall suite of draft policies.

1. The VFMA recommended consistent reassessment processes for ILA benefits, and that the WSIB proactively reassess worker's needs at specific intervals to ensure needs are being met.

The WSIB must clearly set out the processes by which injured workers with serious illnesses and serious injuries will receive access to the Independent Living benefits and services. The onus must be on the WSIB to regularly screen and review a worker's entitlement to benefits, for the entire life of the worker. There cannot be just a "one and done" decision on entitlement, and it should not be left up to the injured worker to guess at what entitlements and benefits are available.

2. The policies must include statements of commitments found in the preamble to the consultation. More specifically:

- a. The draft policies and definitions make no mention of the other factors to use in determining eligibility for ILS. The factors outlined by the VFMA must be included in the definitions and all the draft policies (Other client factors: socio-economic factors, general health factors, availability of caregiver; worker factors (p81), WHO QoL criteria (p84) – standard of living, health, life achievements, personal relationships, personal safety, community connectedness, future security, religion/spirituality).

Information about the particular circumstances of the injured worker must be considered as a whole, not just in reference to the compensable injury. The injury does not occur in a vacuum: it occurs to a person with a certain set of life, health and personal characteristics and any assessment must take all of this into account.

The policies all need to state, as it does in the consultation preamble: “The needs of each injured worker following a workplace injury depend on **individual circumstances such as age, general health, personal support network, socio-economic status, physical environment and more.**”  
“Entitlement to an independent living or quality of life benefit or service depends on a finding that it is necessary, appropriate and sufficient **based on the individual facts and circumstances of someone’s case.**”

- b. The draft policies all define a serious injury as one that requires assistance for 6 months or more. The artificial 6-month requirement will leave out serious injuries that need support from the date of injury but last less than 6 months. The VFMA noted that the current SIP acute stream is applicable sooner than 6 months.

There is no time limit in WSIA on health care and nothing that would require time to pass before providing ILA benefits and services. This also does not align with the commitment stated in the preamble.

The policies all need to state the commitment from the preamble: “The intended outcome is to provide injured workers with the benefits and services that are necessary, appropriate and sufficient to support independent living and in some cases quality of life **as soon as they need them, for as long as they need them.**”

- c. The draft policy on Independent Living Allowance has a section entitled “Transitional Claims” that partially speaks to the stated commitment. None of the other draft policies has this commitment.

All the policies need to state the preamble commitment unequivocally: “We are committed to **maintaining benefits and services already approved and provided** under the existing independent living policies, unless there is a material change in circumstances.”

3. In addition to other criteria for entitlement to ILA benefits and services, the policies should contain a threshold that would automatically entitle an injured worker to the ILA benefits and services. A 30% NEL should automatically entitle an injured worker to the ILA benefits and services, and would ease the administration of the ILA suite of policies and benefits.
4. The categorical exclusion of psychological entitlement from the full suite of Independent Living policies, benefits and services is discriminatory. The VFMA stated that the WSIB must ensure worker's psychosocial needs are not forgotten (p80). A similarly restricted program through ODSP was discriminatory under the Ontario Human Rights Code. Further, the restriction to only "service dogs" is contrary to the Accessibility for Ontarians with Disabilities Act:
  - i. *Robinson-Cooke v. Ontario (Community and Social Services), 2023 HRTO 1133, the Human Rights Tribunal of Ontario ruled that ODSP's Guide Dog Benefit is discriminatory, as it is so restrictive that persons with mental health disabilities (except veterans and first responders) cannot obtain an accredited service dog in Ontario.*
  - ii. *Accessibility for Ontario with Disabilities Act, 2005 ("AODA"): service animals do not just include service dogs, but any animal used by a person with a disability for reasons related to their disability.*

All types of compensable injury must be eligible for the Independent Living benefits and services. There can be NO exclusions.

5. Maintenance therapy and treatment must be allowed on an ongoing basis for all Injured workers with serious injuries (both physical and psychological), rather than only in the acute phase as is the case currently. The policy suite on independent living should address this gap.
6. The VFMA specifically noted that there are varied levels of limited oversight of third party service providers to determine if they are meeting WSIB contractual requirements. According to the VFMA, and in my experience with injured workers, there is no WSIB process to review and assess the quality of services provided by external service providers to ensure the needs of injured workers are being met.

The policies must set out a clear description that outlines the Board's responsibility for the quality of the services provided through external service providers as well as the WSIB's responsibility to remedy errors/shoddy workmanship/damages caused by external service providers. It is unfair for the WSIB to leave it up to the injured worker to take steps to remedy defective workmanship on services, given that the work must be done by a provider (i.e. qualified vendors) approved and funded by the WSIB.

## Policy Specific Comments

The following is not an exhaustive list of the numerous changes needed in the draft policies. More time is required in the consultation process, given the volume of draft policies to review. The WSIB should also specifically reach out to the injured workers currently receiving benefits under the category of Independent Living to ensure that any changes meet their concerns and needs.

That said, the following are major concerns with the draft policies that require revision.

### 17-06-01 – Overview and definitions

- The list of functional limitations is not exhaustive and must state so. At best, the list gives examples, but the list are not the only impairments that should attract ILA entitlement. The limitations listed are too narrow:
  - Limitations must include the impact on the impairment of the instrumental activities of daily living.
  - Limitations must take into account the worker characteristics and factors that the VFMA recommended, including the impact on pre-existing conditions.
  - Limitations must include the effect of multiple conditions or of cumulative conditions.
  - Limitations must include the limitations from conditions such as psychological conditions such as PTSD (eg. anxiety that leaves someone housebound, etc), head injuries and concussions (eg. light sensitivity, noise sensitivity, etc), cancers (eg. fatigue, nausea, pain), occupational diseases, musculoskeletal injuries, etc
  - The limits on gross/fine motor skills that focus only on mobility and ambulation, for example, ignores the real limitations from other physical injuries:
    - from low back injuries/disc injuries that prevent a worker from most, if not all, of the activities of daily living and also from the instrumental activities of daily living;
    - from musculo-skeletal injuries such as to shoulders, which cause extensive problems in activities of daily living.
- The list of excluded types of conditions is unwarranted. The policies cannot determine entitlement to ILA benefits based on diagnosis or time length:
  - It equates “temporary” with an impairment that must last at least 6 months. This is not what is promised in the preamble to the consultation that states ILA benefits will be provided as soon as they are needed, for as long as they are needed. Entitlement to benefits and services to facilitate independent living should be assessed as of the date of accident, since the effect of the workplace injury starts on the date of accident. The injured worker should not have to wait to receive benefits and services to facilitate independent living.
  - It is discriminatory to exclude psychological conditions unless a cognitive limitation results. This means that conditions such as PTSD, major anxiety and depression, etc would not qualify. Yet the categories of

impairment under 18-05-11 describe injured workers with significant - and severe - impairments in activities of daily living, such that the ILA benefits are warranted, such as:

- Class 3 - “everyday activities restricted to such an extent that the worker may be homebound or even roombound at frequent intervals”;
- Class 4 - “incapable of self-care and neglects personal hygiene”;
- Class 5 - “unable to care for (self) in any situation or manner”.
- It is discriminatory to exclude workers with Chronic Pain Disability, and those with occupational diseases, cancers, Long COVID, etc as these conditions also come with significant or severe impairments in activities of daily living.
- The list of excluded types of injuries creates absurd results. For example:
  - An injury to the dominant arm, or an amputation of an arm, will create severe problems with activities of daily living, but these limitations are not captured in the list of functional limitations.
  - musculo-skeletal injuries are included if there are bilateral fractures, but a fractured arm and leg on the same side would not be sufficient;
  - digit amputations are excluded, so losing all the fingers and thumb on one hand would not qualify;
  - mild traumatic brain injuries are excluded, even though concussions can result from a mild head injury with profound effects on a worker’s functional abilities.

### **17-06-02 – Independent Living Allowance**

The current flat rate IL Allowance would be appropriate as a minimum. Those workers currently in receipt of the flat rate ILA should be grandfathered in.

The policy should go on to state how to claim more than the minimum. The payment of a flat rate – with the potential to get a further increase based on actual expenses above that amount – will lessen the amount of adjudication, receipting, submission and review required. As written, the case managers will be reviewing and adjudicating every \$10 snow shovelling receipt, which is hardly efficient.

The preamble to the policy consultation states that the revisions to the ILA will “reduce the scope of services, devices and items to be covered by the allowances.” This defeats the purpose of the Living Allowance. It makes the injured worker bear the costs of the injury. No rationale was given for the creation of the 3 categories of expenses that would qualify for an independent living allowance. At best, these should be examples only, such as in the current Policy.

Getting a retroactive monetary award or being reimbursed some months or years later cannot undo the hardship that the injured worker has endured in the meantime. It is also a stressful process to have to continually ask the WSIB for, and wait for, approval for any number of items required to support a worker with a serious injury.

Without knowing the value of these allowances, it is unclear whether the amount will be sufficient to meet the needs of injured workers.

### **17-06-03 – Independent Living Devices**

The draft says that IL Devices entitlement is only for those whose injury is likely to result in a permanent impairment. This leaves out anyone with a serious temporary injury.

It is not hard to imagine the types of devices that a seriously injured worker would need, even if the injury will not likely result in a permanent injury. For example, a worker who lives alone in a two-story home suffers a severely broken leg in a fall at work. The hospital releases the worker to return home with a full-length cast on the leg, and on a great deal of narcotic pain medication. While it will be a long period requiring intensive rehabilitation over a period of 4-5 months, a full recovery is expected. The severity of the injuries and the effects of the treatment mean that the worker has no means to cook, grocery shop, bathe, look after personal care, ambulate into and out of the home, and experiences a safety risk due to the amount of medication. Under the draft as written, this would not qualify as an injury warranting entitlement under the ILA suite of policies.

The IL Devices must also be available to those who have temporary injuries.

### **17-06-04 – Guide and Support Dogs**

The draft policy starts with a statement that ownership of an animal is generally not necessary “due to the lack of strong or consistent evidence of therapeutic efficacy”. No references are included for this statement.

Even a quick search of the peer-reviewed literature provides evidence that proves the therapeutic efficacy of service and assistance animals – **including for those with psychological conditions:**

- The effects of assistance dogs on psychosocial health and wellbeing: A systematic literature review, Kerri E. Rodriguez, PLoS One. 2020; 15(12): e0243302.  
*Research has indicated that beyond the physical or tangible benefits that an assistance dog is trained to provide (e.g. route finding, retrieving dropped items, alerting to a seizure), the assistance dog's companionship, emotional and social support, and social facilitation effects in public may be particularly salient to improving the quality of life of individuals with disabilities [7–9]*  
*Longitudinal studies have found that individuals report improvements to their emotional wellbeing, social functioning, and quality of life just 3 to 6 months after receiving an assistance dog [13–15].*
- Preliminary Efficacy of Service Dogs as a Complementary Treatment for Posttraumatic Stress Disorder in Military Members and Veterans  
February 2018 Journal of Consulting and Clinical Psychology 86(2):179-188  
February 2018 86(2):179-188  
*Results: Mixed-model analyses revealed clinically significant reductions in PTSD symptoms from baseline following the receipt of a service dog, but not while receiving usual care alone.*

Deliberately excluding psychological conditions from entitlement under this policy is regressive, unfair, and discriminatory. WSIAT decisions have ruled that injured workers with psychological conditions are entitled to service dogs. See Decision No. 1835/21, 2022 ONWSIAT 231; see also 410/07.

The list of “designated conditions” that would warrant entitlement under this policy are too narrow, and are discriminatory. There is no justification to exclude injured workers who have conditions other than physical ones. Other conditions that create significant or severe functional impairments where a service animal would be a necessary, appropriate and sufficient health care measure could include occupational disease, cancers, diabetes, seizures, as well as psychiatric/psychological conditions. The policy must include such conditions, and make it clear that any list of conditions where entitlement will follow are examples only and are not the only conditions that would qualify.

Further, the draft policy is too restrictive in referring only to “guide and service dogs”. This excludes service animals and assistance animals, and is contrary to the AODA:

Ontario.ca site: Accessibility in Ontario: what you need to know

Guide dogs and service animals

*According to the AODA’s Customer Service Standards, one of two conditions must apply for your animal to be considered a service animal:*

- *the animal is easily identifiable as relating to your disability (for example, it is a guide dog or other animal wearing a vest or harness)*
- *you can provide documentation from a regulated health professional confirming the animal is required due to a disability*

Other types of service and assistance animals should be permitted, when medically prescribed.

### **17-06-05 - Personal Care Allowance**

The draft does not indicate the process of periodic reassessment that should be in place to ensure that the worker always receives the right amount of care. There is no process described that defines who fits into each of the 5 new categories nor how one moves between the categories.

While those in receipt of a PCA currently are grandfathered in, their needs should also be periodically reassessed. Having said that, there seems to be a disconnect between the section “transitional claims” and the “claims prior to January 1, 1998” section (the latter seems to impose a higher standard to qualify than what is currently in place).

The Activities of Daily Living form and the criteria for each category must be provided in the consultation so that further informed comments can be made.

### **17-06-06 – Home Health Care**

The criteria that a worker’s health care needs cannot be met on an outpatient basis requires further refinement. As drafted, there is no limit on how far a worker would be expected to travel to get outpatient services.

Outpatient services must be local, not at a distance from the worker's home.

**17-06-07 – Vehicle Modification**

The policy should incorporate the costs of training the injured worker to use the modifications.

**17-06-08 – Home Modification**

The draft states that modifications would not be authorized for living arrangements of a live-in caregiver. There is no justification for this restriction if the worker requires such care.

The policy also needs to specify that the costs of the injured worker living elsewhere are covered while home modifications are underway.

**17-06-09 – Quality of Life Benefits**

Again, this draft excludes those whose injury is not expected to result in a permanent impairment. The worker also must have a severe impairment, not just a significant one. This must be corrected.

The policy draft states that hobbies will not be supported that are “inherently risky or perilous, including but not limited to those involving firearms or motorized vehicles”. This statement ignores the individual characteristics of the injured worker, such as culture and location. Instead, this impose a very urban-centric view of injured workers that could well give rise to a Charter challenge or Human Rights claim. Such wording must be removed from the policy.

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**Office of the Employer Adviser**  
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June 12, 2024

WSIB Consultation Secretariat  
[Consultation\\_Secretariat@wsib.on.ca](mailto:Consultation_Secretariat@wsib.on.ca)

Dear WSIB Consultation Secretariat,

Re: Independent Living Policy Review – Phase 2 Consultation

The Office of the Employer Adviser (OEA) appreciates the opportunity to comment on the WSIB's Independent Living policy consultation.

The OEA is supportive of the WSIB providing injured and ill workers with the benefits and services that are necessary, appropriate, and sufficient to support their independent living and measures that improve the quality of life of severely impaired workers.

Upon review of the draft policies, we would like to share the following comments for the WSIB's consideration:

- 1) We suggest it would be helpful to have Administrative Practice Documents (or other public facing guidelines) to accompany these policies to provide examples and additional clarity for workers and employers around how these decisions will be made. This could also help to promote the consistency of decisions.
- 2) Draft policy 17-06-01, Independent living and quality of life measures - Overview and definitions, provides that psychological injuries (except those that are treatment-resistant with permanent cognitive limitations) do not typically result in the significant/severe limitations described in this policy for six months or more. While the OEA understands that some benefit types within this policy suite would not be generally applicable to psychological injuries, we suggest the WSIB consider whether there are circumstances where providing some benefits under this policy suite might be necessary, appropriate, and sufficient health care for those with psychological injuries.
- 3) Regarding draft policy 17-06-05, Personal Care Attendants and Allowance, in the section on "Non-agency attendants" there is a reference to a worker's power of attorney. We

suggest clarifying if this refers to a power of attorney for property, a power of attorney for personal care, or both.

- 4) Regarding draft policy 17-06-09, Quality of Life Benefits, the OEA suggests that expenses related to a hobby should be covered by the quality of life allowance rather than as separate entitlement. Similarly, regarding mental health supports for the worker's family members, we suggest this not be separate entitlement under the policy.

Workers have the discretion under the draft policy to use this allowance as they see fit, without any requirement to provide receipts. If the WSIB includes entitlement for hobbies and mental health supports for family members within the quality of life allowance, workers who are entitled to this allowance would still have the flexibility to use the allowance as they wish to enhance their quality of life (including using it to pay for hobbies, for example); we suggest this approach would provide a clearer and more consistent level of entitlement for such benefits.

If you have any questions, please feel free to contact me.

Best regards,

*S Adams*

Susan Adams  
Director, Office of the Employer Adviser  
416-314-8735

Cc. Robin Senzilet, General Counsel

**Independent Living Policy Consultation**  
**Phase Two - Independent Living Policy Consultation**  
**Submissions of the Office of the Worker Adviser**

**Introduction**

These submissions are in response to the *Serious Injury Program VFMA: Phase Two Consultation Report*. The Office of the Worker Adviser welcomes the opportunity to make further submissions.

As we said in our submission in the Phase One Consultation, it is our view that the WSIB's Serious Injury Program (SIP) is a significant source of assistance for the most vulnerable group of injured workers. We are pleased with some of the proposed policy changes to the program and have concerns about others.

**Positive Aspects of the Policy Changes**

**1. Extending entitlement to those with a temporary need for independent living assistance, personal care, and home health care**

Expanding entitlement for independent living allowances to those who require assistance on a temporary basis is a major improvement. Many workers with traumatic injuries require home care assistance in the first months after injury. Even though such home care is obviously necessary and appropriate following injury, it has not been available because of the requirement of reaching maximum medical recovery and being assessed for a NEL prior to being allowed coverage.

**2. Dividing the ILA into categories**

The draft policy proposes separating the independent living allowance into four categories: home maintenance, transportation, additional expenses for WSIB-approved modifications or devices, and quality of life. This makes conceptual sense as, depending on the disability, some workers will have much higher additional costs in some areas than others.

However, if each category is capped at 25% of the current ILA, this will serve only to reduce benefits to seriously injured workers. We propose that benefits be increased to meet the needs of injured workers rather than decreased.

## **Concerns**

### **1. Entitlement threshold**

In our experience, the most frustrating aspect of the SIP program has been that it is limited to those who meet the threshold of a 60% NEL or 100% PD. Injured workers with NEL ratings of 56 or 58% are also severely injured but do not qualify for the additional assistance. Restricting entitlement to those with a minimum NEL or PD rating is arbitrary as many injured workers with lower ratings have a need for these additional benefits.

Our preference, as stated in our earlier submission, would be that workers with a 60% NEL or 100% PD would automatically have entitlement and that those below those ratings would be eligible if their healthcare practitioners documented a need for further assistance.

In our experience, it would be very rare for a worker with a NEL rating of 60% or more to fail to meet the test of “serious injury” or “serious illness.” Requiring injured workers with 60% NELs and 100% PDs to obtain independent living assessments before eligibility is considered would place an undue burden on them as these assessments are expensive.

At page 6 the draft OPM 17-06-01 says that the Board “may” arrange an independent living assessment. We suggest that the policy be amended to say that, in cases where a worker has a 60% NEL or 100% PD that the Board “shall” arrange an independent living assessment.

For workers with lower NELs and PDs, we propose that the policy be amended to say that, in cases where there is medical evidence that the worker needs assistance to live independently, the Board “shall” arrange an independent living assessment.

### **2. Exclusion of certain diagnoses**

It is unclear why the draft OPM 17-06-01 includes examples of serious injuries and illnesses that would be covered and examples of those that would not be. Later in the policy it says that eligibility will be determined based on an “independent living assessment administered by an appropriate regulated health professional.” The lists are unnecessary if eligibility is determined by the regulated health professional and may lead to workers being improperly denied entitlement based on the examples in the policy.

The list of excluded conditions includes musculoskeletal and psychological injuries. This is discriminatory. If the worker otherwise meets the eligibility requirements of needing assistance

to live independently, they should not be excluded from consideration for additional benefits based on their diagnosis.

### **3. Maintenance treatment**

Unfortunately, the draft policies do not add maintenance treatment to the range of services that can enhance independent living for seriously injured workers. We would like to see coverage for psychotherapy, physiotherapy and chiropractic therapy added as a category of benefits included in the independent living allowance.

If a worker has an injury, physical or psychological, that requires ongoing treatment to maintain their functional level, it should be covered as it is health care that is necessary and appropriate under s. 33(1).

### **4. Quantum of benefits**

The draft policies are silent on the question of the quantum of benefits other than to say that the maximums will be reviewed and published yearly. Since the VMFA found that the SIP did provide value for money, we are hopeful that the review of this program will lead to enhanced benefits to injured workers in order to assist them with living independently and participating in family and community life.

**All of which is respectfully submitted,**

Margaret Keys  
Legislative Interpretation Specialist  
Office of the Worker Adviser

June 12, 2024

Ontario Legal Clinics'

## **WORKERS' COMPENSATION NETWORK**

Réseau d'échange des cliniques juridiques  
de l'Ontario sur la loi des accidentés du travail

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Reply c/o: Injured Workers' Consultants, 815 Danforth Avenue, Suite 411, Toronto, Ontario M4J 1L2  
Tel: 416 461-2411 Fax: 416 461-7138

June 12, 2024

### **1. Introduction.**

The Ontario Legal Clinics' Workers' Compensation Network is a provincial group that includes many of the Workers' Compensation practitioners in the Legal Clinic system. There are individuals in the group that have decades of experience in representing injured workers individually at all levels of appeal, including the Supreme Court of Canada, and that actively engage in systemic advocacy on behalf of injured workers. Combined we have more than a century of experience representing injured workers in all aspects of their cases.

We would like to thank the Workplace Safety & Insurance Board for giving us the opportunity to provide our insights into the proposed changes to the Serious Injury Program.

We do have some concerns regarding the nature of this consultation. In particular, we do not feel that we can make final submissions regarding the proposed changes to the program without any knowledge of the quantum of benefits that an injured worker would receive under the program. Under the current policy for the independent living allowance, an injured worker that is eligible for the independent living allowance is eligible to receive \$4887.97 annually. Under the proposed policy, it is entirely unclear what an injured worker would receive under the independent living allowance and what the injured worker would receive under the quality of life allowance. Without knowing what an injured worker would actually receive under the new policy, we cannot fully make cogent submissions on the proposed policy.

Furthermore, the number of policies that you are proposing are extensive, and it is unclear whether the Workplace Safety & Insurance Board has sought the input of workers that suffer from serious injuries and that would be the beneficiaries of these policies. One example is with respect to the policy on service dogs. We will have specific comments with respect to this policy, however when you look at the draft policy we are left to wonder what input did the Workplace Safety & Insurance Board receive from injured workers that actually had the need for service animals. We feel that further consultation with respect to each of the proposed policies ought to happen and that the Workplace Safety & Insurance Board ought to ensure the participation of those injured workers that will be affected by these policies.

### **2. Entitlement criteria**

#### **Threshold triggers**

For all of the flaws of the current Independent Living Allowance and the Personal care allowance, it had the benefit of being both easy to determine whether someone was eligible for the benefit and with the Independent Living Allowance it was easy to determine what an eligible injured worker would receive.

The proposed policy attempts to cure the problem in the current policy by eliminating the requirement that a person is only eligible for these benefits if they have a 100% permanent

disability award or a 60% NEL award. However, the proposed policy involves much more bureaucracy and adjudication in order to determine whether an injured worker would be entitled to benefits. We are concerned that many injured workers that would otherwise receive the benefits would not actually receive the benefits because of the administrative burden that these policies place on an injured worker to even request the benefit.

The first burden that an injured worker faces in applying for these benefits is knowledge that these benefits exist and that an injured worker could apply for the benefits. While someone who is extremely knowledgeable about Workers' Compensation matters would know about these benefits, it is not reasonable to suppose that a worker that is injured on the job would be aware that these benefits exist and that they may be entitled to them. We feel that active adjudication is required in these circumstances; when the information on file makes it evident that an injured worker may be entitled to these benefits, it is incumbent on the Case Managers to start the enquiries regarding entitlement to these benefits and then engage in the adjudication of the issue.

We feel that there should be certain events in an injured worker's case that should automatically trigger adjudication on these benefits. The first would be whenever the WSIB grants a Non-economic Loss award and whenever the WSIB increases the Non-economic loss award on a redetermination of the Non-economic Loss award.

There is precedent for this type of adjudication. Before the passage of Bill 162, whenever an injured worker was assessed for a Permanent Disability award, the pensions adjudicator always made a decision on whether the injured worker was entitled to supplementary benefits pursuant to section 147(4) or 147(14) of the then Act. We feel that adjudicating whether a worker has a serious injury at the time of the Non-Economic Loss award determination is directly analogous to the prior practice with respect to pension supplements and would have similar administrative burdens on the adjudicators and the Workplace Safety & Insurance Board.

We feel that having this trigger for an adjudication relieves a seriously injured worker from having to know that they are entitled to benefits for their serious injury and having to work to get these benefits. Furthermore, we also feel that this trigger would cover almost all workers with a serious injury. There may be exceptions, but it is reasonable to suppose that almost all injured workers with a serious injury would eventually be assessed for a Non-economic loss award.

This should not be the only trigger for an adjudication on whether an injured worker has a serious injury. Other triggers could include whenever an injured worker has to undergo surgery for their compensable disability, or is hospitalized or committed because of their compensable disability. Furthermore, regardless of any triggers, whenever information comes to a file that would tend to show that an injured worker has a serious injury, the adjudication should happen. It should also be clear that if an injured worker asks for benefits under the serious injury program that the case manager ought to make a decision.

### **Significant versus Severe**

Draft policy 17-06-01 defines what would be a serious injury for the purposes of all of the independent living allowances (the ILA, the personal care allowance, the independent living devices, Home Health Care, home & vehicle modifications. There are definitions for a serious injury and a serious illness.

We have concerns. First, throughout draft policy 17-06-01, there is frequent reference to something being significant/severe. For example the policy states:

*A serious injury means a work-related injury that results in significant/severe functional limitations.*

As a matter of law, significant does not mean the same thing as severe. Courts and Tribunals always interpret the adjective “severe” to denote something that is worse than something described as “significant”. However, the policy offers no guidance on when something is “significant” or when it is “severe”. When discussing individual conditions, the only condition that is characterized as “severe” but not “significant” is hearing loss.

If the distinction did not matter, then this would not be an issue. However, the distinction does matter as the policy makes a distinction for eligibility to the independent living benefits and the quality of life benefits. An injured worker is entitled to the former when they have a serious illness or injury, but to receive a quality of life benefit, they must have a severe impairment. Without any guidance on when an impairment or limitation is significant or severe, the Workplace Safety & Insurance Board will make many mistakes in adjudicating these benefits. We also have some concerns with respect to the entitlement criteria for serious illnesses. In particular, an illness is serious only if the worker is unlikely to recover from the illness, or if it is a progressive life limiting injury. This limits entitlement to benefits for a serious illness for occupational cancers that are terminal, or result in significant surgical treatment. This must be fixed.

### **6 Month Requirement**

We also have some concerns with the requirement that the limitations of a serious injury last six months or more. There is no reason given for this limitation, and it appears to be inconsistent with the provision of benefits during recovery; many injured workers could use these benefits much sooner than six months and an injured worker should not have to wait six months for these benefits.

It may very well be other government programs would provide these services to injured workers during recovery in the first six months. However, taxpayers fund those programs, and the Workplace Safety & Insurance should not be downloading the costs a work-related injury to the taxpayer. A similar argument exists with respect to the requirement that there be independent living assessments to determine entitlement and level of certain independent living benefits. Regardless of who arranges the independent living assessment, the Workplace Safety & Insurance Board should be required to pay for these assessments when they arise because of a work-related injury or illness.

### **Discriminatory Exclusion of Psychological and Other Conditions**

What is more disturbing about the categorical limitation on providing these benefits to workers with a psychological impairment is that this is another way in which the WSIB holds the discriminatory attitude that psychological impairments do not cause someone, other than in very narrow circumstances, to have any limitation in function. This is not the first time that we have raised this issue in consultations. In 2022 this group participated in consultations regarding the Value for Money audit on dispute resolution and the appeal process. In discussing the failings of the Appeals Branch, we commented on the failure rate of appeals regarding psychotraumatic disability appeals. We stated:

*The statistics on the denial rate for psychotraumatic disability cases are disturbing. Since 2000 the average rate of denial for psychotraumatic disability cases has been approximately 75%. This is much higher than the denial rate for other types of cases. In 2000 psychotraumatic approximately 75% of all psychotraumatic disability cases were denied, versus a 52% denial rate for all cases. While the difference in the denial rate between psychotraumatic disability cases and all cases have shrunk, this is more due to an increase in the denial rate for all cases rather than any decrease in the denial rates for psychotraumatic disability cases.<sup>1</sup>*

*The statistics are even worse for Chronic Pain disability cases. The average denial rate for Chronic Pain cases is approximately 82%. Just like psychotraumatic disability cases, the difference between the denial rate of all cases and Chronic Pain cases is large and has only been shrinking due to an increase in the denial rate of all cases and not due to a decrease in the denial rate for Chronic Pain cases.*

*These statistics on the denial rate for psychotraumatic disability cases would lead a reasonable person to conclude that at the Appeals Branch, psychotraumatic disability is less real, more prone to fabrication by the injured worker, or that a psychotraumatic disability present few or no barriers to an injured worker returning to work. The same can be said for the attitudes towards Chronic Pain cases, only the Appeals Branch is more hostile to these cases. These are discriminatory attitudes and should not exist.*

We again see this attitude towards psychological disability that they are less real, more prone to fabrication by the injured worker and that psychological disabilities present few or no barriers to an injured worker.

If in many of our consultations, we identify discriminatory attitudes by the Workplace Safety & Insurance Board concerning psychological disability, that is evidence that these discriminatory attitudes are culturally embedded at the Workplace Safety & Insurance Board. These attitudes must stop.

The draft policy on Guide and Service Dogs is another example where those with psychological injuries are left out, in essence minimizing the severity of the effect of this type of compensable injury on activities of daily living. The medical literature supports that a service animal would be a necessary, appropriate and sufficient health care measure for psychiatric and psychological conditions. The WSIAT has also agreed that the acquisition of a service dog for mental health reasons may be an appropriate health care benefit.

For example, in Decision No. 1835/21, 2022 ONWSIAT 231 (CanLii), the worker was found to be entitled to a service dog in relation to compensable major depressive disorder, post-traumatic stress, and somatic symptom disorder with predominant pain, particularly in relation to the worker's capacity to control negative emotions. Even in 2007, the WSIAT rejected the proposition that OPM Document No. 17-06-04, "Guide and Support Dogs," applied only to dogs intended to service blind or deaf workers. In Decision No. 410/07, the Panel found that the services a dog performed for a worker in receipt of a 40% NEL award for PTSD were "indistinguishable in principle from those performed by guide or support dogs, namely to 'enhance the worker's independent living and quality of life'." The decision concluded that OPM

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<sup>1</sup> In 2021 the denial rate for psychotraumatic disability cases was 67.66%; this is the lowest denial rate since 2000. It is too soon to tell whether this is an outlier or the start of a welcoming trend.

Document No. 17-06-04, “Guide or Support Dogs,” is applicable to dogs who perform a service to workers with compensable psychotraumatic conditions.

The WSIB should not, in 2024, enact a regressive policy that rolls back an already recognized entitlement that is appropriate and available now to injured workers. The proposed policy on Guide and Service Dogs must be revised to include psychological conditions.

Enacting the policy as proposed would in fact be discriminatory. A recent Human Rights Tribunal of Ontario case is instructive on this point. In the *Robinson-Cooke v. Ontario (Community and Social Services)*, 2023 HRTO 1133, an ODSP recipient with a number of physical and mental disabilities challenged ODSP’s Guide Dog Benefit Policy. The applicant required the support of a service dog in order to be able to live independently, particularly with respect to managing her PTSD symptoms. After obtaining and training a dog to meet her specific needs, the applicant applied for an additional benefit provided by ODSP intended to cover the costs of feeding and maintaining a service dog [the Guide Dog Benefit] but was denied because her dog was not trained by a facility accredited by Assistance Dogs International [ADI].

The HRTTO found the denial of the benefit was discrimination based on the ground of disability, as evidence was led at the hearing to establish that it was not possible for her to obtain a dog trained by an ADI-accredited facility because of her particular disability-related needs. The HRTTO required the respondent to review the certification process used in other provinces for determining eligibility for similar benefits. It also ordered the respondent to consult with relevant agencies and individuals in its review and to consider in particular the appropriate process for individuals requiring dogs for mental health disabilities that are not veterans or first responders. The WSIB should undergo the same review and consultation process as ordered by the HRTTO, in order to avoid the implementation of a discriminatory policy.

We also have some concern regarding the inclusion of COVID-19 as an example of communicable illnesses without significant/severe complications. While that may be true of most persons that contract COVID-19, we do know that some persons who contract COVID-19 can go on to develop Long-COVID and that there are significant health impacts for people with Long-COVID.

### **3. Details of the individual allowances.**

The number of allowances have increased. Currently there is are policies with respect to the independent living allowance, independent living devices, Guide and Support dogs, Personal Care allowance, vehicle modifications and home modifications.

The policy breaks up the independent living allowance into a number of specific allowances and the polices create a further benefit, the Quality of life allowance. The proposed independent living allowance is very different from the current independent living allowance. The proposed independent living allowance will just look at:

- home maintenance costs
- transportation
- Additional expenses for WSIB-approved modifications or devices

Compared to the current independent living allowance, the proposed living allowance is unclear on how much money an injured worker would get. The current independent living allowance is

to give an injured worker a benefit for the things that they buy or services that they use that are less than \$250.00. There is a simplicity to this system in that the injured worker does not have to go to the administrative burden of asking for re-imbursement for small expenses and the Workplace Safety & Insurance Board does not have to undergo the administrative expense of adjudicating a series of small expenses.

This simplicity is gone. Currently, an injured worker would receive \$4887.93 annually for the independent living allowance. There is no discussion of how much any of those benefits would compare to the current independent living allowance. Would an injured worker get \$4887.93 for each of the home maintenance costs, the transportation allowance and the additional expenses for WSIB approved modifications of devices? Alternatively, would the injured get at most \$4887.93 for all of the components of the proposed independent living allowance. We do not know whether every injured worker that would be entitled to benefits for home maintenance costs would be entitled to some flat rate benefit, or whether each injured worker gets a different amount. There is no guidance in the policy of how the amount of the benefit would be determined. We feel that this issue ought to be clear in the policy.

The quality of life allowance may alleviate some of these concerns; however, it is unclear that it does. On the surface, the proposed quality of life benefit appears to be very similar to the current independent living allowance. The draft policy has two different types of benefits. First, there is the quality of life allowance; this looks to be similar to the current independent living allowance. Furthermore, the policy will provide re-imbursement for expenses related to a hobby and for mental health counselling for the injured workers' family members; these appear to be paid in addition to the quality of life allowance.

However, there is no discussion of the amount of the benefit. Would a severely impaired worker receive \$4887.93 for the quality of life allowance? Would receipt of an independent living allowance effect the amount that an injured worker would receive under the quality of life allowance. If not the flat rate of \$4887.93, how would the quantum of the quality of life benefit be determined?

We believe that much of the policy can eliminate much of the confusion by making clear that an injured worker would be entitled to, at minimum, a specified flat rate benefit for each of the components of the independent living allowances. The policy should also be clear that if the flat rate is insufficient, then the Workplace Safety & Insurance Board could pay a higher amount. Further any worker entitled to the Quality of Life benefit ought to receive the flat rate of \$4887.93.

While we applaud the decision to make the re-imbursement of hobbies in addition to the amount paid for the quality of life benefit, we are concerned about the limitations. The draft policy states:

The WSIB does not support hobbies it considers to be inherently risky or perilous, including but not limited to those involving firearms or motorized vehicles. The WSIB does not pay for the construction of structures for hobby-related purposes, including but not limited to woodworking or automotive shops, pools, spas, or greenhouses.

In particular, we feel that the blanket prohibition on the re-imbursement of costs related to firearms exhibits an urban colonial bias. In indigenous and rural communities hunting is an important part of the culture, lifestyle and there should not be a categorical limitation on hunting.

#### **4. Conclusion**

The Serious Injuries Program is so important to the most vulnerable and most seriously affected workers because its intent is to facilitate their independence and full and equal participation in society. The ILA policies should make the burden of serious injury easier to bear for the injured worker, regardless of the type of injury.

We have many specific comments to make on each individual policy but it is too cumbersome to write those suggestions out line by line. Therefore, we are requesting the WSIB revise the suite of policies based on the general feedback provided to address some of the major issues, and then engage in a consultation on each policy individually so that we can discuss the specifics and wording of each policy. We believe that targeted consultation must also be undertaken with injured workers who are already eligible for the ILA benefits, as well as with those may become eligible within the new definition of the program.

# SCHEDULE 2 EMPLOYERS' GROUP

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Via email [Consultation\\_Secretariat@wsib.on.ca](mailto:Consultation_Secretariat@wsib.on.ca)

June 12, 2024

Consultation Secretariat  
WSIB  
200 Front St. West  
Toronto, Ontario M5V 3J1

## Re: Serious Injury Policy Suite Consultation – Part 2

On behalf of the Schedule 2 Employers' Group (S2Eg), thank you for the opportunity to provide feedback on the policy review of the suite of Independent Living policies. The Schedule 2 Employers' Group Executive and members have reviewed and discussed the proposed policy changes despite the very short consultation period, and have the following high level comments for the WSIB's further consideration. We remain concerned about the apparent expansion of the program and the potential increased costs that do not appear to have been quantified or the necessary framework, criteria and review considerations incorporated which would serve to expect and allow the WSIB to remain accountable for the expenditures

The S2Eg's October 31, 2022 response to the initial consultation raised many points – none of which appear to have been incorporated into the policy changes or new policies. In fact, the proposed changes and enhancement appear to further expand the current entitlements that those meeting the 60% combined NEL quantum have received in the past. It was our understanding that the VFMA identified that the mandatory 60% NEL threshold might have the unintended effect of disqualifying some of those in need - but not that the current suite of benefits and services was inadequate.

We do not disagree that the suite of policies, eligibility, and services warrant updating and should be the subject of ongoing review as part of the WSIB's regular policy review framework. However, several of the additional benefits, do not abide by the legislative authority of the WSIB to grant (only) 'necessary, appropriate and sufficient' health care. We continue to opine that established limits and compliance with best practice and evidence that support function or improved quality of life, should be applied; all in a fiscally responsible manner (pursuant to the WSIA 'purpose' clause).

**We do not necessarily disagree that the 60% NEL threshold has/had its faults, but the new policy suite completely eliminates a tangible threshold. Would it not have made some sense to consider keeping the 60% combined NEL threshold (presumably excluding NEL awards for psychological conditions) and add an exceptional circumstance provision?**

There has been no recognition of, or attempt to address the costing issues that arise from multiple claim situations, especially those that straddle Schedule 1 / Schedule 2 employers or multiple Schedule 2 employers. The S2Eg respectfully submits that this fundamental costing responsibility must be resolved before the policies come into effect.

Policy Document 17-06-02 Independent Living Allowance should be eliminated as a stand-alone document since it is not clearly defined and does not require proof of receipts.

## SCHEDULE 2 EMPLOYERS' GROUP

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Policy Document 17-06-03 Independent Living Devices should not require entitlement criteria since those items listed under ILA Devices would normally be expenses covered under health care s.33 of the Workplace Safety and Insurance Act (WSIA) i.e., items which are medically necessary and helps improve the function and quality of life. Assistive devices are already covered under Policy Document 17-06-07.

Policy Document 17-06-04 Guide and Support Dogs should be amended to only apply if the need is recommended by the health care professional and validated through independent objective assessment.

It is our position that there is no authority in the law to provide benefits/services to family members, except as prescribed by law for survivors/dependant in fatal injury claims. While it may not be an expenditure of particular interest to or an identifiable risk to the Schedule 1 premium rates, the consideration of supports for family members as a potential WSIB cost to be passed on to Schedule 2 employers is not appropriate or acceptable. The supports such as mental health treatment (i.e. counselling) are more appropriately sourced in the Ontario universal health care system and/or employer/employee benefit plans. As such, Policy #17-06-09 should be abandoned.

Similarly, entitlement for 'hobbies' under a new Quality of Life policy is not appropriate unless there is a credible, objective, documented therapeutic value, the costs and effectiveness are monitored as any other health care benefit would be, and/or there is a potential labour market value outcome, therefore, the S2Eg opposes enactment of this entire policy.

Thank you, once again, for the opportunity to provide our feedback on the policy review of the suite of Independent Living policies. And please do not hesitate to contact the undersigned for any additional information.

Yours truly,



Laura Russell  
Chair, Schedule 2 Employers Group



## **WORKERS' HEALTH AND SAFETY LEGAL CLINIC**

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12 June 2024

*Via Electronic Mail*

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto Ontario  
M5V 3J1

**RE: Independent Living Policy Consultation  
Phase Two**

To Whom It May Concern:

The Workers' Health and Safety Legal Clinic ("the Clinic") appreciates the opportunity to make further submissions regarding independent living policies. These submissions are in response to the Workplace Safety and Insurance Board ("the WSIB" or "the Board") decision to stage a second phase following the publication of the Board's intentions going forward.

*Who We Are*

The Clinic is a community legal clinic funded by Legal Aid Ontario. Our mandate is to provide legal advice and representation to non-unionized low wage workers in Ontario who face health and safety problems at work. We also advocate for systemic change and law reform to improve health and safety legislation and protections for workers.

*Introduction*

The Board has recently undergone a value-for-money audit of its Serious Injury Program, which identified challenges and areas for potential improvement. While acknowledging the concerns of stakeholders, the WSIB's proposed revisions still fall short of sufficiently addressing the needs of injured workers.

*Perpetual Probation*

The critique submitted during phase one from worker representatives was that the non economic loss ("NEL") threshold was too high. It impacted workers by failing to appreciate that traumatic or severe injuries to one part of the area would require an independent living assistance even if the threshold was not met. Examples were submitted of what would be considered severe impairments below the 60% threshold.

The preference expressed was to reduce the NEL threshold. Instead the Board has decided to remove the NEL requirement. Replacing the threshold with more adjudication puts workers on perpetual probation. Every request will likely go through an onerous process of having the worker obtain evidence or a medical opinion to prove the request necessary, appropriate, and sufficient. These types of information gathering requests only hampers treatment. It leaves the workers responsible to gather evidence and increases bureaucratic oversight. Contrary to the Meredith Principles, workers will be expected to come “cap in hand” for every request.

*The High Bar Remains*

Also troubling is the policies as drafted still maintain the high bar for entitlement notwithstanding the removal of the 60% NEL threshold. The definitions found within Proposed Policy 17-06-01 can be construed narrowly such that few workers would qualify for any sort of benefits. It is troubling that, when there is a widespread call to improve and increase access to benefits, the WSIB sees fit to deliberately exclude specific injuries.

While the high NEL threshold removal should be seen as an improvement any congratulations the Board deserves are muted by the anticipated constant adjudication. The new process is not streamlined for efficiency. I anticipate, to the detriment of workers, more adjudication based on the subjective view of the decision-maker as to the severity of each worker’s disability and the necessity of the request in question.

I ask the Board to commit to a full review 5 years post implementation. Such a review would include publishing the amount of decisions made under these policies, the level of success of appeals at every level, the dollar amounts involved, and, for cases where there is a permanent impairment, the worker’s NEL award. Similar data and timeframes should be produced for claims involving temporary conditions.

Thank you for the opportunity to make additional submissions.

Yours truly,

*John Bartolomeo*

John Bartolomeo  
Lawyer / Co-Director