Joint Business Association response to report prepared by Paul Petrie:

"Restoring the Balance: A Worker-Centered Approach to Workers Compensation Policy"

Prepared for:

Hon. Harry Bains, Minister of Labour
Board of Directors, WorkSafeBC

Prepared and Endorsed by:

The Employers Forum
BC Chamber of Commerce
BC Council of Forest Industries
BC Hotel Association
BC Road Builders and Heavy Construction Association
British Columbia Common Ground Alliance
British Columbia Construction Association
British Columbia Restaurant & Foodservice Association
British Columbia Trucking Association
Business Council of British Columbia
Canadian Association of Petroleum Producers
Canadian Federation of Independent Business
Canadian Franchise Association
Canadian Fuels Association
Canadian Home Builders Association British Columbia
Canadian Manufacturers & Exporters
Concrete BC
Construction Labour Relations Association of BC
Council of Construction Associations
Greater Vancouver Board of Trade
Independent Contractors and Businesses Association
New Car Dealers Association of BC
Progressive Contractors Association
Restaurants Canada
Retail Council of Canada
Urban Development Institute

June 1, 2018

Executive Summary

Employer Response to Petrie Report

This letter is endorsed by 26 sectoral and cross-sectoral business organizations which collectively represent small, medium and large businesses in virtually all aspects of the British Columbia economy. Balanced WorkSafeBC policies and practices support healthy, safe and productive workplaces. We urge the Minister of Labour and WorkSafeBC to carefully consider the comments which follow on *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy* authored by Paul Petrie.

On March 31, 2018, Paul Petrie ("Petrie") presented his Report to the Board of Directors of WorkSafeBC (WSBC).

We are willing and available to provide our assistance and input to WorkSafeBC as it proceeds through its established consultation process with the stakeholders regarding the implementation and/or revision of policies in any areas raised by Mr. Petrie.

We are supportive of Petrie's overall vocational rehabilitation objective of restoring an injured worker to suitable employment with his/her injury employer as close as possible to the worker's pre-injury earnings. We are also supportive of Petrie's focus on seeking to resolve medical disputes on a timely basis early in the claims adjudication process. However, employers have raised numerous questions and concerns regarding the meaning, practicality, effectiveness and/or implementation of several of the recommendations raised by Mr. Petrie in his Report.

At the outset, we have one general overriding consideration – the pace of change. We are very concerned regarding the overall number of significant policy changes to the existing workers compensation system which are envisioned by Petrie's recommendations and which we anticipate will arise from the upcoming contemplated review of the *Workers Compensation Act* (the "*Act*") itself. We are of the view that WorkSafeBC must ensure that sufficient time is taken to fully consider the implications of any of Petrie's recommendations for policy change prior to effecting the implementation of such change.

There are three recommendations raised by Mr. Petrie in his Report which do provide us with significant cause for concern. Each of these concerns is elaborated on in the accompanying letter.

1. **Chronic Pain**:
   Of greatest concern is Recommendation #28 made by Mr. Petrie, regarding the application of Section 23(3) of the *Workers Compensation Act* (the "*Act*") (dealing with "loss of earnings" pension awards) to chronic pain cases as an interim measure.
2. **Section 5.1(1)(c) of the *Act* – the "Labour Relations Exclusion" for Mental Disorder Claims**:
   In our view, Mr. Petrie's interpretation of Section 5.1(1)(c) – to require a "direct reaction" to the employer decision itself – is too narrow and is inconsistent with both the wording and the intent of Section 5.1(1)(c).
3. **"Significant Loss of Earnings" for purposes of Loss of Earnings Pension Awards**:
   We believe that lowering of the "significant loss of earnings" threshold to "at least 10%" would likely result in the "loss of earnings" method being utilized in a significantly larger number of claims, and would no longer be limited to the "so exceptional" cases mandated by the legislation.

We note other comments with Mr. Petrie's recommendations:

1. Mr. Petrie has not provided any information or analysis in his Report regarding the cost implications of his recommendations.
2. With regard to Mr. Petrie's comments on Policy #2.20, we are of the view that Policy #2.20 already explicitly incorporates the requirement in Section 99(2) that "the Board must make its decision based on the merits and justice of the case." Also, in our view, it is the use of binding policies by adjudicators in the system which drives the objectives of consistency and predictability, and which must be balanced with the consideration of the merits and justice of the case – a balance which is currently mandated by Section 99(2) of the *Act*.
3. In our view there must be a balanced approach taken by WorkSafeBC to the evidence provided by the worker's treating physician. We believe that such balance must come from the continued involvement of WorkSafeBC's medical professionals in the injured worker's claim file.
4. As WorkSafeBC is already conducting a review of the Mental Disorder Policy C3-13.00, we do not see the merit in the Board of Directors proceeding at this time with consideration of Petrie's Recommendation #39 as a separate initiative from the overall review being undertaken by the PRRD. In our view, it would be more appropriate for the PRRD to consider Mr. Petrie's Recommendation #39 as part of its overall review of Policy C3-13.00.
5. We are not supportive of the Board of Directors proceeding with Recommendation #21 dealing with "Claims Suppression" for a number of reasons, including the fact that Mr. Petrie has provided no objective evidence of complaints of claims suppression being brought to WSBC.
6. As to the issue of payment of interest to injured workers who face delay in the payment of due compensation, we do recognize that this issue has historically been a controversial and contentious one, fraught with policy reviews, adjudicative challenges within the B.C. workers' compensation system, and judicial consideration by the Courts.

We look forward to fully participating in WorkSafeBC's consultation process on any of the policy initiatives recommended by Mr. Petrie which the Board of Directors decide to move forward.

June 1, 2018

Office of the Minister
Ministry of Labour
Parliament Buildings
Victoria, BC V8V 1X4

Attention: The Honourable Harry Bains, Minister of Labour

Board of Directors,
WorkSafeBC
6951 Westminster Highway
Richmond, BC V7C 1C6

Attention: Mr. Ralph McGinn, Chair

Dear Sirs:

Re: The March 31, 2018 Report prepared by Paul Petrie entitled "Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy"

On March 31, 2018, Paul Petrie ("Petrie") presented the above Report to the Board of Directors of WorkSafeBC.

This letter is endorsed by 26 sectoral and cross-sectoral business organizations which collectively represent small, medium and large businesses in virtually all aspects of the British Columbia economy. Balanced WorkSafe policies and practices support healthy, safe and productive workplaces. We urge the Minister of Labour and WorkSafeBC Board of Directors to carefully consider the comments which follow on *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy* authored by Paul Petrie.

Petrie describes the focus of his review on page 2 of his Report:

> The focus of this review is on identifying policy options within the bounds of the current legislation for consideration by the Board of Directors to ensure a worker-centred approach that maximizes recovery from the workplace injury or disease and returns injured workers to safe, productive and durable employment.

Petrie elaborates on the concept of a "worker-centred approach" on page 10 of his Report:

> A worker-centred approach for injured and disabled workers is one that takes into consideration the worker's individual circumstances in applying policy and making decisions about benefit entitlement and rehabilitation measures. It is designed to maximize the worker's recovery from the injury or disease and to restore as close as possible the worker to his pre-injury employment status without a loss of earnings.

When considering Petrie's Report from the above described perspective of a "worker-centred approach", we are supportive of Petrie's overall vocational rehabilitation objective of restoring an injured worker to suitable employment with his/her injury Employer as close as possible to the worker's pre-injury earnings. To this effect, we are in general concurrence with the focus of Petrie's recommendations regarding the issue of "Vocational Rehabilitation and Return to Work Support". However, we are also of the view that there are many significant details which WorkSafeBC will need to work out in developing the appropriate policy revisions in order to achieve this overall objective. In this regard, we are willing and available to provide our assistance and input to WorkSafeBC as it proceeds through its established Consultation process with the stakeholders regarding the implementation and/or revision of policies in this area.

We are also supportive of Petrie's focus on seeking to resolve medical disputes on a timely basis early in the claims adjudication process. (As noted by Petrie, a medical dispute most often arises when the opinion of a Board Medical Advisor or Consultant differs from the opinion of the worker's treating Physician or Specialist.) Petrie's recommendation that the WorkSafeBC Board of Directors consider establishing an Independent Medical Examination process to assist in seeking an earlier resolution of an established medical dispute – i.e., prior to having to utilize the review and appeal process – is one which we support. However, as noted by Petrie on page 17 of his Report, the use of an IME process by WorkSafeBC "has some challenges". Once again, we are prepared to offer our assistance and input to WorkSafeBC in seeking appropriate and workable resolutions to these challenges.

Our member Employers have raised numerous questions and concerns regarding the meaning, practicality, effectiveness and/or implementation in regard to several of the recommendations raised by Petrie in his Report. With respect to most of their questions and concerns, we anticipate that the Employer Community will have the opportunity to raise them with WorkSafeBC during the Consultation process in the event that the Board of Directors of WorkSafeBC decide to proceed further with any of these recommendations of concern to our members. Accordingly, we do not intend to deal with most of the questions and concerns in this letter.

However, there is one general overriding consideration, and 3 specific recommendations raised by Petrie in his Report, which do provide us with significant cause for concern. We will now elaborate on each of these areas of concern.

1. Pace of Change

By way of a general response, we are very concerned regarding the overall number of significant policy changes to the existing workers compensation system which are envisioned by Petrie's recommendations, and which we anticipate will arise from the upcoming contemplated review of the *Workers Compensation Act* (the "*Act*") itself. In particular, it is our view that there would likely be a significant deleterious impact on the BC workers compensation system as a whole should the pace of change not be a measured one.

From the perspective of the stakeholders, we are concerned about our capacity to provide thoughtful and needed input on a variety of significant and complex issues that may be proceeding simultaneously through the anticipated WorkSafeBC Consultation process, as well as our ability to adjust and adapt to significant changes which may be implemented contemporaneously.

From the perspective of WorkSafeBC, we question whether its concurrent consideration, and potential implementation, of a significant number of areas of substantial changes would, in effect, overwhelm the Board's ability to fully consider the implications of each change on injured workers, the stakeholders and/or the Board itself which may arise from the implementation of any/all of the proposed changes.

Simply stated, we are of the view that WorkSafeBC must ensure that sufficient time is taken to fully consider the implications of any of Petrie's recommendations for policy change prior to effecting the implementation of such change.

2. Chronic Pain

Of greatest concern is Recommendation #28 made by Petrie, regarding the application of Section 23(3) of the *Act* (dealing with "loss of earnings" pension awards) to chronic pain cases as an interim measure.

It is clear from Petrie's consideration of the issue of compensation for accepted chronic pain (on pages 46-49 of his Report) that he had concerns with WorkSafeBC's current "one size fits all" policy of providing "the single flat rate of 2.5%" as the permanent partial disability award for compensable chronic pain claims. Petrie also acknowledges that the Board's Policy, Regulation and Research Division (PRRD) has recently initiated a review of chronic pain policies and has embarked on an extensive pre-consultation process with stakeholders. Petrie further notes that the PRRD is planning to include the involvement of an expert panel as well as the stakeholders in its consultation process.

Petrie then frames the issue to be considered by him in the following manner (on page 47 of his Report):

> The Board is to be commended on its initiative to undertake a full review of this important issue. However, the PRRD review process is expected to take some time and the issue I must consider is whether there are some steps the Board of Directors can consider taking on an interim basis to provide a greater degree of fairness to the evaluation of chronic pain, particularly for the more serious cases.

Petrie first considers the approach that had been raised by Alan Winter in his March 2002 "Core Services Review of Workers' Compensation Board" Final Report – where he recommended 4 levels be used for assessing permanent chronic pain (i.e., Mild: 0-5%; Moderate: 10%; Moderately Severe: 15%; and Severe: 20%). Although Petrie describes this approach as having some merit, he dismisses it (on page 48) as not being practicable as an interim measure:

> In the end, however, I decided this option was not practicable. While it could provide a greater degree of fairness for individual workers who experience chronic pain going forward, its development and implementation would take time and it could take resources and focus away from the PRRD review while it was being implemented. The period following its full implementation would be limited.

Petrie then considers, and accepts, as an interim measure pending the completion of the PRRD review, revising WorkSafeBC's existing policy to allow for a loss of earnings assessment where the chronic pain condition meets the "so exceptional test" in Sections 23 (3.1 and 3.2) of the *Act*. We are most concerned about the potential implementation of this Recommendation, as an interim measure, for the following reasons:

(i) Chronic pain is very subjective and personal to each individual worker. It is accordingly difficult to readily validate or objectively measure.

(ii) Chronic pain is quite common among the general population. It is multifactorial in nature, which results in significant difficulties in attempting to determine the causation of the worker's chronic pain.

(iii) Prior to the Core Services Review in 2002 and the resulting revisions to the *Act* made by the then Provincial Government, permanent disability awards for accepted chronic pain claims were adjudicated pursuant to the "Dual System" for calculating pension awards (i.e., in each case, the Board assessed the worker's entitlement to a permanent disability award under the "loss of function" method (in Section 23(1) of the *Act*) and the "projected loss of earnings" method (in Section 23(3) of the *Act)*). The worker would then receive the higher award calculated through these two methods.

Under the "Dual System", there were a significant number of cases where the injured worker had received a small "loss of function" award for his/her permanent disability, but was found to be unemployable due to the subjective chronic pain that the worker was experiencing. In such cases, the worker was granted a permanent disability award of 100% under the "projected loss of earnings" method.

WorkSafeBC itself recognized a significant concern with respect to the cost implications of providing pension awards under the Dual System for chronic pain. As noted on page 9 in the Board's Briefing Paper dated September 24, 2001, entitled "Chronic Pain":

> There is a growing concern regarding the long-term financial implications of compensating for chronic pain. In particular, concern has been raised that a number of claims are being awarded functional pension awards for subjective complaints, in many cases in the absence of objective physical or psychological impairment, which then results in the consideration of an LOE pension.

(iv) Ongoing complaints of pain are often anticipated to occur due to the nature of the objective permanent physical impairment suffered by the worker. For example, a worker who suffers a significant permanent disability to his/her back will often experience ongoing complaints of back pain. Permanent awards under the "loss of function" method will often include a component related to this expected ongoing complaints of pain associated with the objective permanent physical impairment.

If one accepts Petrie's view that it would not be practicable, as an interim measure pending the completion of the Board's PRRD review, to move from the current "one size fits all" permanent

disability award for chronic pain to an approach based upon 4 levels of assessing the pension award, we are of the view it is equally impractical (if not more so based on our concerns as expressed above) to move to the consideration of utilizing the "loss of earnings" method for chronic pain as an interim measure. We therefore strongly urge the Board of Directors of WorkSafeBC to maintain the status quo (regarding Board policy with respect to the granting of a permanent disability award for chronic pain) pending the completion of the PRRD review process – which, as noted previously, is planning to include the involvement of an expert panel in its consultations.

3. Section 5.1(1)(c) of the *Act* – the "Labour Relations Exclusion" for Mental Disorder Claims

Section 5.1(1)(c) of the *Act* excludes the acceptance of a worker's claim for a mental disorder if it is:

> caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.

Petrie considers the application of Section 5.1(1)(c) on page 63 of his Report. Simply stated, Petrie appears to believe that the statutory provision may be read too broadly, thereby excluding some claims not intended to be excluded by the legislation. Petrie's interpretation of Section 5.1(1)(c) appears to be that it "only excludes mental disorders that are a direct reaction to the employer decision itself". In our view, Petrie's interpretation of Section 5.1(1)(c) – to require a "direct reaction" to the employer decision itself – is too narrow and is inconsistent with both the wording and the intent of Section 5.1(1)(c).

Petrie then sets out the following example, which he believes "would be particularly helpful" in illustrating his view:

> For example, if a worker hears that several co-workers are being laid off, his or her reaction to the employer's decision is not compensable, however traumatic, due to this provision. However, if a worker is forced to work long hours in stressful conditions due to her employer's downsizing, a resulting mental disorder that is due to the impact of these negative working conditions should not be excluded from consideration on the basis of the "labour relations exclusion" without consideration of all the relevant facts.

We strongly disagree with Petrie's example, with respect to a mental disorder resulting from the worker working long hours in stressful conditions due to the Employer's downsizing, as being a scenario which could fall outside of the "labour relations exclusion" in Section 5.1(1)(c) of the *Act*. A decision by the Employer to downsize its workforce is, in our view, clearly one which is "relating to the worker's employment" for the purpose of Section 5.1(1)(c), as it involves a "change in the working conditions" both for those employees who may lose their employment as a result of the downsizing and for those employees that will remain in active employment with the Employer as part of the downsized workforce.

In our view, a worker's mental disorder caused by the circumstances postulated by Petrie is exactly what Section 5.1(1)(c) intended to exclude from coverage under the *Act*. To revise the Board's existing Policy to potentially allow compensation benefits to be provided to the worker in such

circumstances would, in our view, be subject to challenge as being inconsistent with the wording and intent of the legislative provision.

4. "Significant Loss of Earnings" for the purpose of Loss of Earnings Pension Awards

Petrie considers this issue on pages 44 and 45 of his Report. He notes that the applicable Board Policy (Policy #40.00 of the *Claims Manual*) provides that Section 23(1) of the *Act* (i.e., the "the loss of function" method for assessing a worker's permanent disability award) may not appropriately compensate a worker where the worker cannot continue in a suitable occupation without incurring a "significant loss of earnings". He then accurately notes that the Policy does not provide a specific percentage of loss that would constitute a "significant" loss, but that the issue is addressed in the Board's Practice Directive C6-2. As quoted by Petrie on page 44 of his Report, that Practice Directive states that the Board:

> …recognizes that a "significant loss of earnings" exists where the difference between the worker's pre-injury earnings against the combined total of the post injury earnings and the amount in the section 23(1) award is at least 25%.... [and] does not exist where the calculated result is 5% or lower.

Petrie continues:

> That practice directive, which is not a policy of the Board of Directors, acknowledges that a lower figure than 25% may represent a significant loss of earnings. The practice directive indicates that a 10% difference in the pre and post-injury earnings may represent a significant loss in some circumstances.

In Recommendation #25 (on page 45 of his Report), Petrie recommends that the Board amend Policy #40.00 to recognize that a "significant loss of earnings" would exist where the difference between the worker's pre-injury earnings against the combined total of the post-injury earnings and the amount of the Section 23(1) award is at least 10%. In other words, Petrie recommends reducing the existing "at least 25%" threshold in Practice Directive C6-2 to "at least 10%" in Policy #40.00.

In our view, Petrie's Recommendation in effect takes an unusual set of circumstances, which is used as an example in the Board's Practice Directive C6-2 (where the worker's significant loss of earnings is below the "at least 25%" threshold, as one example where the "significant loss of earnings" is at 10%), and then converts that example of 10% to his recommended – and much lower – threshold. In our view, Petrie's Recommendation to this effect is inconsistent with the stated focus of his review (on page 2 of his Report) – "on identifying policy options <u>within the bounds of the current legislation</u> for consideration of the Board of Directors".

The legislation has established the "so exceptional" standard in regard to the payment of a loss of earnings pension award under Section 23(3). Section 23(3.1) of the *Act* states:

> A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of injury and the worker's disability resulting

> from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.

Current Board Policy #40.00 recognizes the intent of the legislation is that the "loss of function" method of assessing permanent disability awards under Section 23(1) of the *Act* will be used for the "vast majority of cases", and that the "loss of earnings" method would apply "in exceptional cases":

> In the vast majority of cases a worker's entitlement to a permanent partial disability award is determined under the section 23(1) method and the estimate of impairment of earning capacity is considered to be appropriate compensation.
>
> However, in exceptional cases, the amount determined under section 23(1) may not appropriately compensate a worker.

In our view, Petrie's Recommendation #25 – to lower the "significant loss of earnings" threshold from "at least 25%" to "at least 10%" – would, in effect, result in that threshold no longer resulting in a significant loss of earnings for the purpose of meeting the "so exceptional" test in Section 23(3.1) of the *Act*. In other words, we believe that the lowering of the "significant loss of earnings" threshold to "at least 10%" would likely result in the "loss of earnings" method being utilized in a significantly larger number of claims, and would no longer be limited to the "so exceptional" cases mandated by the legislation.

Accordingly, in our view the Board of Directors of WorkSafeBC should not consider the implementation of Petrie's Recommendation #25. Rather, we would request the Board of Directors to confirm that the current general threshold for a "significant loss of earnings" (of "at least 25%" as specified in Practice Directive C6-2) remains the appropriate threshold to meet the "so exceptional" legislative wording and intent in Section 23(3.1) of the *Act*.

Other Comments

(i) Many of Petrie's recommendations will have cost implications for the B.C. workers compensation system – some of which are likely to be significant if implemented. However, Petrie has not provided any information or analysis in his Report regarding these cost implications.

In our view, an essential aspect of the Board of Director's consideration regarding the potential implementation of any of Petrie's recommendations must be the cost implications to the workers compensation system associated with that recommendation. In this regard, we expect that the Board's Consultation process, regarding any potential policy revision or implementation arising from Petrie's Report, will identify the cost implications arising from the potential policy review or implementation, and will offer the Employer Community the opportunity to provide its input, comments and/or concerns with respect to those identified cost implications.

(ii) On page 12 of his Report, Petrie states:

> The introduction of binding policy has reduced the ability of decision-makers to apply the merits and justice of the case to the decision-making process.

Petrie then comments that:

> There is no specific reference in policy #2.20 to the requirement in section 99 that, "the Board must make its decision based on the merits and justice of the case." (Emphasis included in the Report)

Petrie then recommends that:

> the Board of Directors consider amending policy #2.20 to explicitly incorporate the requirement in section 99(2) that, "the Board must make its decision based on the merits and justice of the case." That amendment can provide for the adequacy of the investigation of the relevant facts and circumstances of the issue to be decided and take into consideration the evidence of the worker in all cases.

We wish to raise two comments by way of response to the above Recommendation. **First**, Policy #2.20 in the *Claims Manual* specifically reproduces Section 99(2) of the *Act*, which provides:

> The Board must make a decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in the case. (Emphasis added)

Policy #2.20 then continues:

> In making decisions, the Board must take into account all relevant facts and circumstances relating to the case before them. This is required, among other reasons, in order to comply with Section 99(2) of the *Act*. (Emphasis added)

Accordingly, we are of the view that Policy #2.20 does already explicitly incorporate the requirement in Section 99(2) that "the Board must make its decision based on the merits and justice of the case."

Second, although we are in agreement with Petrie's recommendation that the evidence of the worker must be taken into consideration in all cases, we are of the view that there must be a balanced approach to the consideration given to the personal comments and experiences provided by the worker.

WorkSafeBC is a mammoth organization which impacts all employers and workers in BC, and it has a very large workforce spread throughout the Province making literally thousands (if not tens of thousands) claim related decisions annually in a vast array of diverse and often complex issues. In our view, such an adjudication system requires a high level of consistency and predictability in the exercise of its decision – making function in order to instill a high level of confidence in the stakeholders' perception of the overall BC workers compensation system.

In our view, it is the use of binding policies by adjudicators in the system which drives the objectives of consistency and predictability, and which must be balanced with the consideration of the merits and justice of the case – a balance which is currently mandated by Section 99(2) of the *Act*.

(iii) There are several occasions in his Report where Petrie indicates his support for WorkSafeBC to provide greater weight to the evidence provided by the worker's treating physician. For example, when considering the issue of the referral of an injured worker for a Permanent Disability Evaluation, Petrie made the following Recommendation #23 (on page 38):

> I also recommend that the Board of Directors consider amending policy to indicate that the Board officer will consider the evidence of the worker and the worker's physician and where there is substantial evidence from the treating physician and from the worker that the worker has a potential permanent disability, this evidence will be given significant weight unless there is conclusive evidence to the contrary. …

We can certainly appreciate the worker's perception in those circumstances when a medical dispute arises between the worker's treating physician and the WorkSafeBC Medical Advisor – i.e., that his/her treating physician is in the best position to identify the nature and extent of the worker's disability based on their clinical examination. However, we would caution the Board of Directors from placing too much weight on the treating physician's evidence.

The Employer Community has its own perceptions based on their experiences in dealing with injured or sick workers – i.e., although there is no dispute that the worker's treating physician is qualified to provide medical opinions, they are often perceived to be doing so as a medical advocate on behalf of their patient. In our view, this is not an unreasonable perception on the part of Employers. A treating physician's focus is on the best interests of his/her patient, and an aspect of the treating physician's opinion would almost always be predicated upon the subjective – and uncontested – perceptions provided by the worker.

Accordingly, in our view there must be a balanced approach taken by WorkSafeBC to the evidence provided by the worker's treating physician. We believe that such balance must come from the continued involvement of WorkSafeBC's medical professionals in the injured worker's claim file.

(iv) On page 62 of his Report, Petrie considers Policy C3-13.00 of the *Claims Manual*, which sets out decision-making principles for determining a worker's entitlement to compensation for a mental disorder claim under Section 5.1 of the *Act*. In Recommendation #39, Petrie recommends that the Board of Directors consider amending the definitions for "traumatic event" and "significant work-related stressor" in Policy C3-13.00 to remove the requirement that events or stressors be "unusual" and to include a subjective element to the definitions.

We note that the Board's Mental Disorder Policies are already currently under review. On this point, we refer to the Board's Policy, Regulation and Research Division's "2018-2020 Policy Priorities - Compensation and Occupational Disease Policy Workplan", where the following is

stated under Item #7 (on pages 2 and 3) entitled "Mental Disorder Policies and Sections 5.1 and 55 of the *Act* – 2018/19":

> The mental disorder policy has not been reviewed since July 2012 when the *Workers Compensation Amendment Act, 2011* ("Bill 14") revised section 5.1 of the Act. Bill 14 broadened entitlement for mental disorders that are:
>
> - a reaction to one or more traumatic events arising out of and in the course of the worker's employment; or
>
> - predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors.
>
> Policy review will continue into 2018.

As WorkSafeBC is already conducting a review of the Mental Disorder Policy C3-13.00, we do not see the merit in the Board of Directors proceeding at this time with consideration of Petrie's Recommendation #39 as a separate initiative from the overall review being undertaken by the PRRD. In our view, it would be more appropriate for the PRRD to consider Petrie's Recommendation #39 as part of its overall review of Policy C3-13.00.

(v) In Recommendation #21 (on page 34 of his Report) dealing with "Claim Suppression", Petrie recommended that:

> the Board of Directors consider initiating an independent review of this issue by a qualified organization with a scientific methodology to determine whether and to what extent claims suppression is a significant issue in the BC workers' compensation system.

We do not condone claims suppression of any kind by an Employer. A worker has a statutory right to entitlement to compensation in the event of work-related injury, disease or death, and any Employer who knowingly seeks to interfere with that entitlement must be dealt with in an appropriate manner by the Board. Nevertheless, for the following reasons, we are not supportive of the Board of Directors proceeding with this Recommendation.

First, the concerns raised with Petrie by "some representatives of the worker community about what they consider to be misuse and in some cases abuse of light duties and in some cases bordering on claim suppression" are highly anecdotal in nature. We question the expenditure of time, cost and resources on "initiating an independent review by a qualified organization" based on such anecdotal concerns.

Second, the *Act* already contains a provision which prohibits claim suppression. Section 177 provides:

> An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting to the Board

(a) an injury or allegation of injury, whether or not the injury occurred or is compensable under Part 1,

(b) an illness, whether or not the illness exists or is an occupational disease compensable under Part 1,

(c) a death, whether or not the death is compensable under Part 1, or

(d) a hazardous condition or allegation of hazardous condition in any work to which this Part applies.

An Employer who knowingly contravenes Section 177 exposes itself to the imposition of a monetary penalty.

Third, Petrie has provided no objective evidence of complaints of claim suppression being brought to the Board and adjudicated under Section 177. As noted in our first point, the concerns raised with Petrie are anecdotal in nature. If claim suppression concerns are so widespread as to support the initiation of an independent review of the issue by a qualified organization, one would have expected to see some empirical evidence in Petrie's Report of such concerns having been brought to the Board under Section 177 of the *Act*.

Fourth, we believe that any undertaking by the Board of Directors with respect to this issue would more appropriately be focused on raising awareness among the stakeholders. In particular,

(a) among workers and their representatives, regarding the existence and intent of Section 177, and the process to be followed when a worker has a complaint concerning claim suppression, and

(b) among Employers, regarding the prohibition against claims suppression pursuant to Section 177, what practices may constitute claims suppression, and what penalties may be imposed for engaging in claim suppression.

(vi) In Recommendation #31 (on page 55 of his Report), Petrie recommended that the Board of Directors initiate a review of the issue regarding the payment of interest to injured workers who face delay in the payment of due compensation.

We are not opposed to the Board of Directors conducting such a review. However, we do recognize that this issue has historically been a controversial and contentious one, fraught with policy reviews, adjudicative challenges within the B.C. workers compensation system, and judicial consideration by the Courts. (Petrie provides an overview of this history on pages 53 – 54 of his Report.) Accordingly, this is an issue in which we perceive "the devil will be in the details".

Should the Board of Directors decide to initiate such a review, we reiterate our willingness to provide our assistance and input to WorkSafeBC regarding the anticipated challenging issues that will need to be considered with respect to this issue.

Conclusion

We greatly appreciate this opportunity to provide both the Honourable Minister of Labour and the Board of Directors of WorkSafeBC with our comments and concerns regarding the Petrie Report. As noted on several occasions previously in this letter, we look forward to fully participating in WorkSafeBC's Consultation process in regard to any of the policy initiatives recommended by Petrie on which the Board of Directors decide to move forward.

Should you require an elaboration or further information with respect to any matter dealt with in this letter, we would request that you contact Doug Alley, the Managing Director of The Employers' Forum at doug@employersforum.org or (778) 265-8813.

Sincerely,

Doug Alley
Managing Director
The Employers' Forum

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President & CEO
BC Council of Forest Industries

Greg D'Avignon
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c.c.: Hon. John Horgan, Premier of British Columbia
Mr. Don Wright, Deputy Minister to the Premier and Secretary to Cabinet
Mr. Trevor Hughes, Deputy Minister, Ministry of Labour
Ms. Diana Miles, President and CEO, WorkSafeBC