REPORT OF
THE ADVISORY COUNCIL ON WORKPLACE SAFETY AND HEALTH
2017 REVIEW OF THE WORKPLACE SAFETY AND HEALTH ACT

December 31, 2017

MANDATE OF THE ADVISORY COUNCIL ON WORKPLACE SAFETY AND HEALTH

In May 2017, the Minister of Growth, Enterprise and Trade tasked the Advisory Council on Workplace Safety and Health (Council) with undertaking the legislated five-year review of *The Workplace Safety and Health Act* and its administration. The Minister requested recommendations by December 31, 2017.

At the Minister’s direction, the review of the Act and its administration focused on:
- ensuring adequate protections for the safety and health of workplaces;
- reducing areas of red tape or barriers to economic growth;
- identifying areas to improve harmonization of legislation with other jurisdictions; and,
- ensuring existing requirements are clear and reasonable.

Over the summer of 2017, employer, labour and technical representatives on the Council each met with their respective caucuses and provided issues for deliberation. A corresponding three-month online public consultation on the Workplace Safety and Health Branch website [www.manitoba.ca/labour/safety](http://www.manitoba.ca/labour/safety) resulted in feedback from twenty-five organizations and individuals.

With technical support provided by the Workplace Safety and Health Branch, Council held a series of meetings to develop recommendations relating to the review mandate from October to December 2017. In addition to Council’s recommendations for legislative or regulatory amendments, a number of administrative items were raised by the Workplace Safety and Health Branch for Council’s review and feedback.

Items identified as more appropriate for public education and other initiatives, including frequently asked questions and other materials are not included in this report, but will be developed on an ongoing basis by the Branch to clarify legal requirements and Branch policies.
COMMENTS ON THE REVIEW AND THE ROLE OF COUNCIL

On December 4, 2017, *The Boards, Committees, Councils and Commissions Streamlining Act* was introduced to reduce, consolidate and improve the functioning of a number of provincially appointed boards. In response, members of the Council provided the following consensus comment respecting the role of the Advisory Council on Workplace Safety and Health:

"Council has served as a valuable forum for members of the safety and health community to work collaboratively and provide a voice for workers, employers and members of Manitoba’s technical/professional communities as it relates to workplace safety and health. As representatives of these communities, we are regretful that the Council is to be eliminated and would encourage ongoing and meaningful stakeholder consultation to continue."

Additionally, the Labour Caucus voiced the following concerns relating to the Manitoba Government’s red tape reduction strategy:

"We have great concern with references by government to *Bill 22 - Red Tape Reduction*, commonly known as the “2 for 1 Bill”, in this review process. There is no place for the term “red tape reduction” when it concerns the safety and health of workers. The limitation of new and removal of existing provisions within legislation that ensure the protection from ill health and death will result in workers being put at undue risk. This government, cannot, with good social conscience, apply Bill 22 to the review and administration of *The Workplace Safety and Health Act* and Regulation."
RECOMMENDATIONS

The following consensus and non-consensus recommendations regarding *The Workplace Safety and Health Act* and its associated regulations are respectfully submitted for the Minister’s consideration.

The administrative items brought forward by the Workplace Safety and Health Branch are also included, with the positions of the caucuses noted for each item.

CAUCUS ISSUES/PUBLIC SUBMISSIONS

**Consensus**

1. Inclusive Language
3. Aligning Definition of “Designated Materials” to Federal Hazardous Products Legislation
4. Unsafe Impairment from Alcohol and Drugs Prohibited
5. Competent Person to Perform Risk Assessments for Musculoskeletal Injuries
6. Classification of Confined Spaces
7. New Provisions for Rope Access
8. Drilling Near Misholes and Bootlegs in Mining
9. Drilling Near a Trace in Mining
10. Competent Worker to Inspect Repairs to Defective Moulds, Ladles or Slag Pots Used for Molten Metal

**Non-Consensus**

1. Entrenching the Internal Responsibility System
2. Safety and Health Programs for Workplaces with Less than 20 Workers
3. Role of the Chief Prevention Officer
4. Director’s Authority to Dismiss Complaints Raised in Multiple Forums
5. Holding Payment and Suspending Reinstatement During Appeal of Discriminatory Action Decisions
6. Administrative Penalties Tied to Payroll
7. Administrative Penalty for Failure to Notify Committee or Representative of Orders
8. Increase Maximum Fine Amounts for Convictions
9. Regulations for Psychological Health and Safety
10. Aligning Fall Protection Requirements in the Operation of Mines Regulation to the Workplace Safety and Health Regulation
11. Automatic Adoption of Standards into Regulation

WORKPLACE SAFETY AND HEALTH ADMINISTRATIVE ISSUES

1. Changing the Term “Discriminatory Action” to “Work Reprisal”
2. Time Limit for Raising Discriminatory Action Complaints
3. Director’s Authority to Dismiss Frivolous/Vexatious Complaints
4. Collection of Monies for Fines Awarded to the Educational Fund
5. Submission of Safety and Health Committee Minutes to the Workplace Safety and Health Branch
6. Aligning Requirements for Fixed Ladders
7. Correction of Drafting Error in the Definitions of “Quarry” and “Quarry Minerals”
8. Transferring Regulation of Peat Operations from the Operation of Mines Regulation to the Workplace Safety and Health Regulation
CAUCUS ISSUES/PUBLIC SUBMISSIONS

Consensus

1. Inclusive Language

Historically, legal writing exclusively used the pronouns “he” and “his” when indicating reference to a person. During the 2012 review of the Act, Council unanimously recommended modernizing legislation to use more inclusive language. At this time, it was noted that under The Interpretation Act, “he” and “his” apply to persons universally, regardless of gender.

Provisions introduced since this recommendation have been drafted in a more inclusive manner by indicting “he or she,” when referring to a person. However, language found in many existing provisions continues to be outdated.

Council unanimously supported updating the language used throughout the Act and its associated regulations to be consistently inclusive throughout.


(The Workplace Safety and Health Act, sections 40, 41 and 44)

Under the Act, employers must ensure safety and health committee members and worker safety and health representatives are trained to perform their duties. Employers have the responsibility to determine whether and how much training is needed to ensure a person is competent, as well as the types of training that may be needed.

However, additional provisions apply if a committee member or representative requests training, provided the training has been approved by the committee, or is provided for in their collective agreement. This is educational leave. Each year, safety and health committee members or worker representatives may request the greater of 16 hours, or the number of hours the worker normally works during two shifts, for safety and health training. If requested, an employer must allow the worker to take the training, and provide paid time to attend. The educational leave provisions do not apply to construction or seasonal workplaces.

Currently, these requirements are found in sections 40, 41 and 44 of the Act. The separation between the closely related requirements has resulted in long-standing confusion for employers and workers alike. Specifically, whether the minimum entitlement to educational leave ensures competency in all cases, and whether the employer is responsible for ensuring educational leave is requested each year.

In recognition of these issues, Council unanimously supported bringing greater clarity to this section of legislation. While the Branch has been working to address this confusion through frequently asked questions and prevention materials relating to safety and health committees and representatives, clarifying the relationship between educational leave and training requirements will assist employers and workers alike. It should be noted that this change is intended to reinforce existing requirements, and presents no further administrative burden or cost to employers.
3. **Aligning Definition of “Designated Materials” to Federal Hazardous Products Legislation**

*(Workplace Safety and Health Regulation, Part 1: Definitions and General Matters)*

In 2015, Workplace Hazardous Materials Information System (WHMIS) requirements of the federal Hazardous Products Act and Hazardous Products Regulations were amended to reflect the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). Also in 2015, the Workplace Safety and Health Regulation was amended to reflect the changes made at the federal level. However, a revised definition of “designated materials” was inadvertently missed. No substantive change was made at the federal level as to what constitutes a designated material, but the error resulted in differently worded definitions in the Workplace Safety and Health Regulation and federal legislation.

Council unanimously supported aligning the two definitions, as was intended in 2015.

4. **Unsafe Impairment from Alcohol and Drugs Prohibited**

*(Workplace Safety and Health Regulation & Operation of Mines Regulation, Part 4: General Workplace Requirements)*

Forthcoming legalization of cannabis has resulted in concerns from many employers and workers relating to maintaining safety and health in the workplace.

Council unanimously supported the mirroring of two impairment-related provisions from the Operation of Mines Regulation to the Workplace Safety and Health Regulation. First, to require employers to take all reasonable steps to ensure that a worker does not work while under the influence of a drug that impairs or could impair the worker’s ability to work safely. Second, to prohibit workers from working while under the influence of alcohol or a drug that impairs or could impair the worker’s ability to work safely.

To accompany these changes, Council supported greater education and awareness relating to the risks associated with impairment in the workplace. In addition to employer and worker responsibilities for maintaining a safe working environment, education materials should include information on recognizing impairment and its associated hazards.

5. **Competent Person to Perform Risk Assessment for Musculoskeletal Injuries**

*(Workplace Safety and Health Regulation, Part 8: Musculoskeletal Injuries)*

Council unanimously supported the addition of the word “competent” into the requirement for risk assessments where a work activity creates a risk of musculoskeletal injury. In the Workplace Safety and Health Regulation, “competent” means possessing knowledge, experience and training to perform a specific duty.

To effectively perform any risk assessment, a person must be competent to do so. Experience, knowledge and training must be demonstrable, and can vary depending on the complexity of the task. Clarifying this provision would be consistent with a significant
number of task-specific provisions in regulation that specify a competent person must undertake a task, and will present no additional administrative burden to employers.

6. Classification of Confined Spaces

(Workplace Safety and Health Regulation, Part 15: Confined Spaces)

Many workplaces struggle with understanding minimum requirements and determining the appropriate controls for confined spaces, ranging from low risk, to extremely hazardous scenarios. A gap in the regulation, combined with contradictory information in existing resource materials presents confusion and may result in unnecessary measures being taken in low risk situations.

Council unanimously supported clarifying the definition of confined space to provide greater guidance to employers in determining control measures for the level of risk encountered.

The adoption of a two-tier system for identification of a confined space as is used in Alberta will differentiate restricted spaces from hazardous spaces, and clarify where certain protections are required and not required.

7. New Provisions for Rope Access

(Workplace Safety and Health Regulation)

In recent years, the technique of using rope access to reach hard to access areas at great heights has been introduced as a less expensive and more efficient alternative to traditional scaffolding and crane applications.

This practice is growing within Manitoba and other Canadian jurisdictions. Existing regulatory provisions for fall protection and suspended platforms do not reflect the rapid growth in the number of uses and applications for the technique.

Council unanimously supported adoption of provisions similar to those used in Alberta and Saskatchewan for rope access, and a greater focus on the practice in public education materials. The Employer Caucus further noted that inclusion of regulatory provisions for rope access should not be considered additional red tape, as clear guidance on the safe use of rope access over more expensive applications could result in significant savings.

8. Drilling Near Misholes and Bootlegs in Mining

(Operation of Mines Regulation, Part 6: Care and Use of Explosives)

Current requirements in the Operation of Mines Regulation state that a hole must not be drilled within 1.5 metres of a mishole (a previously blasted drill hole) in a working heading (known as a face) and within 1.5 metres of a muck pile which might conceal a mishole. Changing the distance to 1 meter would allow installation of ground support closer to the mishole.

Council was unanimous that a reduction to 1 metre is appropriate. The Labour and Employer Caucuses agreed that 1 metre would be acceptable on the advancing face only once all of the area was visible, so workers can address misholes and bootlegs from a safe distance. The
Caucuses also agreed that the requirement to stay 1.5 metres from a mishole or suspected mishole below a muck pile must remain due to the potential of drilling into a hidden explosive.

9. Drilling Near a Trace in Mining

(Operation of Mines Regulation, Part 6: Care and Use of Explosives)

Currently, a hole may be drilled within 160 mm of a trace of a hole that has been blasted with a water-soluble explosive, if the trace is first washed to ensure that no residual explosive remains. This requirement is based on explosive products used in the past, and does not account for newer explosive products presently in use in mining operations.

Council was unanimous that removal of the word “water-soluble” will clarify that there should be no differentiation between water-soluble and emulsion explosives present in the trace, and clarifying that the trace must be “washed and cleaned” prior to drilling will address the risks associated.

10. Competent Worker to Inspect Repairs to Defective Moulds, Ladles or Slag Pots Used for Molten Metal


Currently under Part 10 of the Operation of Mines Regulation, moulds, ladles or slag pots used for molten material that are found to be defective must be removed from service until repaired, and certified by both a qualified worker and the supervisor to be safe for use.

The term “qualified” is not defined in the Operations of Mines Regulation, and presents confusion about who is able to perform the task in the context of this requirement.

Council was unanimous that the term “competent” as defined in the Operations of Mines Regulation captures the intent of the original requirement, and clarifies who is able to perform the task.
Non-Consensus

1. Entrenching the Internal Responsibility System

(The Workplace Safety and Health Act, section 2, Purposes of Act)

The Labour Caucus supported entrenching the principles of the Internal Responsibility System (IRS) into the objects and purposes of The Workplace Safety and Health Act. The IRS is a foundational principle of Canadian occupational safety and health legislation, and provides an overview of responsibilities at all levels in the workplace. The Labour Caucus supported this addition, noting the term is often used in publication education materials but is not found in legislation.

The Employer Caucus did not support the addition of the IRS into the Act’s objects and principles. Currently, only Nova Scotia explicitly references the IRS in their legislation. Further, changing the objects and purposes of the Act may have significant unintended consequences, and does not provide anything additional to the Act or its administration.

Some members of the Technical Caucus supported the inclusion of the IRS to provide clarity on shared responsibilities for safety and health in the workplace, while others did not see any additional benefit in doing so.

2. Safety and Health Programs for Workplaces with Less than 20 Workers

(The Workplace Safety and Health Act, section 7.4, Workplace Safety and Health Program)

Currently, the legislation requires formal, written programs for workplaces with 20 or more workers, and specified the 11 elements that must be covered within the program. It should be noted that a number of existing requirements within the Act and regulation reflecting several of the safety and health program elements do apply to smaller workplaces, and must be complied with regardless of whether a written program is required.

The Labour Caucus supported the introduction of specific provisions requiring safety and health programs for workplaces with less than 20 workers. Program requirements would be less complex than those required for workplaces with 20 or more regularly employed workers, though no specific program elements were identified. The Labour Caucus supported introduction of requirements similar to those found in British Columbia, and in federally regulated workplaces under the Canada Labour Code.

The Employer Caucus did not support the introduction of program requirements for workplaces with less than 20 workers, regardless of complexity. By adding these requirements, an additional administrative burden would be placed on smaller workplaces with limited resources and capacity for safety and health programming. Dedicating resources to practical, hands-on training is more beneficial to smaller employers than the maintenance of largely paper-based safety and health programs.

The Technical Caucus was uncertain if program requirements for workplaces with less than 20 regularly employed workers could reasonably be applied to all sectors, given the difficulty in prescribing minimum content that captures the diversity within and across industries.
3. Role of the Chief Prevention Officer

(The Workplace Safety and Health Act, section 17, Chief Prevention Officer)

The Workplace Safety and Health Act requires the minister to appoint a person as the provincial Chief Prevention Officer (CPO). First established in 2012 and formally legislated in 2014, the position was established to provide information, guidance and recommendations relating to workplace injury and illness prevention activities in Manitoba. The CPO is mandated to provide an annual report to the minister, containing an overview and analysis of the state of prevention.

The CPO role was established prior to the creation of SAFE Work Manitoba, the agency now responsible for injury and illness prevention. SAFE Work Manitoba was announced in 2013, and in 2014, The Workers Compensation Act was amended to establish Manitoba’s Prevention Committee. The Prevention Committee is responsible for providing guidance and oversight to the prevention activities of SAFE Work Manitoba. The CPO sits on this committee, along with the Deputy Minister responsible for Labour, the Chief Executive Officer of the Workers Compensation Board, and the Chief Operating Officer of SAFE Work Manitoba, as well as employer, labour and public interest stakeholders appointed by the minister. In 2015, the CPO was reduced from a full-time position to a per diem basis, taking into account the establishment of and expanded capacity of SAFE Work Manitoba and the Prevention Committee.

The Employer Caucus supported a removal of the mandated CPO position, noting significant evolution of prevention since 2012 and the establishment of SAFE Work Manitoba. Employers noted that Ontario’s CPO fulfills a mandate similar to the Chief Operating Officer of SAFE Work Manitoba, and of the Prevention Committee. In Manitoba, the CPO annual report is largely derived from information in reports already released by the Workers Compensation Board, Safe Work Manitoba, and Workplace Safety and Health. The Employer Caucus felt that any information gaps in these reports may be addressed directly with the bodies responsible, and by the Prevention Committee.

The Labour and Technical Caucuses supported returning the CPO position to a full-time role, to ensure regular reporting and auditing of the effectiveness of the province’s current prevention strategies. The Labour Caucus emphasized that the CPO position was created to provide an independent and unbiased account of the various bodies, and recommendations to the Minister to ensure the common goal of reducing workplace injuries and illness is achieved.

4. Director’s Authority to Dismiss Complaints in Multiple Forums

(The Workplace Safety and Health Act, section 42, Discriminatory Action and section 43, Right to Refuse Dangerous Work)

The Employer Caucus supported the introduction of a provision to allow the director of Workplace Safety and Health to dismiss a discriminatory action complaint where the same or similar complaint has been filed with another agency, and that could result in the same or similar remedy. This would reduce repeat conclusions from the same set of facts, as well as the length of time for which an employer spends responding to requests for information from government agencies.
The Labour Caucus did not support introducing the director’s authority to dismiss a complaint on the grounds of multiple forums, stating that the right to raise a complaint is an essential part of the Act. While it may be advisable to choose the most appropriate avenue, workers should continue to have the right to pursue whichever avenues are available and designed for the purpose of hearing their complaint.

The Technical Caucus indicated their experience on the subject is limited, and expressed that they would like to abstain from comment.

5. **Holding Payment and Suspending Reinstatement During Appeal of Discriminatory Action Decisions**

*(The Workplace Safety and Health Act, section 42, Discriminatory Action)*

The Employer Caucus supported changes to current provisions for discriminatory action relating to reinstatement and payment during appeal periods.

Where a discriminatory action decision relating to reinstatement or payment to a worker has been appealed, the Employer Caucus supported automatic suspension of reinstatement and payments held in trust while the appeal is decided. These changes would prevent the potentially harmful situation of a worker returning to work who has been dismissed or suspended with just cause, as well as the difficulty of recouping payment to a worker if it is later determined that a discriminatory action did not occur.

The Labour Caucus did not support the automatic suspension of a repayment or reinstatement order as it could needlessly delay resolution for workers who rely on timely reinstatement and payment of wages. The Labour Caucus further noted the Director currently has authority to suspend an appealed order; therefore, the appropriate mechanism already exists to hold payments or reinstatement if the circumstances require it.

As with the above noted proposal regarding complaints in multiple forums, the Technical Caucus indicated their experience on the subject is limited, and expressed that they would like to abstain from comment.

6. **Administrative Penalties Tied to Payroll**

*(The Workplace Safety and Health Act, section 53.1, Administrative Penalties)*

Currently, administrative penalties are set out in regulation and are issued based on the nature of the contravention and the number of previous contraventions, if any. Fines are set at $1,000, $2,500, $3,000 and $5,000, and do not take into account the size of profitability of the person or organization.

The Labour Caucus supported determination of administrative penalties based on the size of an employer’s payroll with minimum and maximum levels, similar to the formula applied in British Columbia. Larger companies may view existing administrative penalties as a minimal deterrent, particularly in comparison to a small employer who may be affected disproportionately. Appropriate minimum penalties would still apply, and would be increased in connection with the size of the employer’s payroll.

The Employer Caucus did not support a payroll based administrative penalty system, noting that a larger payroll does not always indicate greater profitability. Further, the
recently implemented SAFE Work Certification program means that employers who are SAFE Work Certified could lose the program’s annual Workers Compensation Board rebate, if they receive an administrative penalty from Workplace Safety and Health that year. For employers with large payroll, this could represent a significant loss.

The Labour Caucus did not see the loss of rebate as relevant when determining the appropriate size of administrative penalties.

The Technical Caucus indicated that although increased administrative penalties may act as a deterrent, they also take money away from the employer that could be allocated to the employer’s safety budget.

7. Administrative Penalty for Failure to Notify Committee or Representative or Orders

(The Workplace Safety and Health Act, section 53.1, Administrative Penalties, Administrative Penalty Regulation)

The Workplace Safety and Health Act outlines when an administrative penalty may be imposed, including failure to comply with orders, receiving repeated orders for the same contravention, resuming work that has been stopped, taking discriminatory action was taken against a worker, or for contravening one of 14 specific provisions, which are considered high risk offences. The Administrative Penalty Regulation contains the schedule of the 14 prescribed provisions under which an administrative penalty may be imposed for the first observed instance of non-compliance.

The Labour Caucus was in support of broadening the 14 prescribed provisions to include failure to notify the safety and health committee or worker safety and health representative (or workers where there is no committee or representative) of an order being issued, or other required communications.

The Employer Caucus did not support the Labour Caucus’ proposed changes to the existing fine structure or application of prescribed provision penalties, and did not support the use of administrative penalties as the primary enforcement tool for addressing lack of communication of orders. Employers felt orders would be an appropriate compliance tool, noting that repeated orders for communication could be considered for administrative penalty using the existing penalty provisions.

Some members of the Technical Caucus were in support of the changes proposed by the Labour Caucus, while other members agreed with the Employer Caucus regarding the rationale for why the changes would not be appropriate.

8. Increase Maximum Fine Amounts for Convictions

(The Workplace Safety and Health Act, sections 54-58, Offences and Penalties)

Manitoba’s current maximum fine amounts for convictions under The Workplace Safety and Health Act are $250,000, plus $25,000 for each day the offense continues for a first offense and $500,000 plus $50,000 for each day the offense continues for a second or subsequent offence. In addition, a convicted person may be jailed for up to 6 months, and supervisors may be prohibited from acting in a supervisory capacity at any workplace for up to 6 months. In addition to the severity of the contravention(s), the
courts consider the fines of similar cases, as well as business size when determining fine amounts. The largest fine issued to date has been $187,500.00.

Manitoba’s fine amounts are in line with those in the maritime provinces of New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island. The federal Labour Programs, British Columbia, Alberta, Saskatchewan and Ontario each provide for maximum fines of 1 million dollars or more.

The Labour Caucus and some members of the Technical Caucus supported an increase to the maximum penalty a person may be issued when convicted for an offence under the Act. In Alberta and Ontario, maximum fines for a first offense for a corporation are five hundred thousand and 1.5 million respectively, compared with Manitoba’s two hundred and fifty thousand dollar maximum. Labour indicated that these figures should be used to contemplate an increase to Manitoba’s fines. As Manitoba’s court-issued fines have not approached the current maxim, Labour felt it is possible Manitoba’s current maximum fines have played a contributing role in the court’s determinations being lower than those issued in other jurisdictions.

The Employer Caucus did not support an increase to the maximum penalties prescribed under the Act, noting that Manitoba consists largely of smaller businesses, and felt the current maximums are appropriate. The Employer Caucus expressed that greater education around the existing fine structure would be a more proactive and effective incentive for maintaining compliance with the Act and its associated regulations.

The support of Technical Caucus was divided between increases to the maximum penalties for convictions, and the use of increased education respecting offenses and convictions.

9. Regulations for Psychological Health and Safety

(Workplace Safety and Health Regulation, New Part for Psychological Hazard Recognition)

Psychological hazard recognition is an emerging issue across Canadian occupational safety and health jurisdictions. As with other jurisdictions with provisions relating to psychological hazards, Manitoba’s specific requirements in this area relate to harassment and violence prevention. On the prevention side, SAFE Work Manitoba’s current Psychological Health and Safety Strategy was recently launched to raise awareness of workplace psychological health and safety, showcase practical tools and resources for workplaces, and highlight the capacity of partners in mental health promotion to provide services for workplaces.

The Labour Caucus supported the introduction of explicit legislation requiring employers to have programs and tools in place which consider psychological health hazards arising out of the course of or in connection with the conditions of a workplace. In order to accomplish this, the Labour Caucus supported adopting the currently voluntary National Standard on Psychological Health and Safety in the Workplace into law.

The Employer Caucus did not support the adoption of the standard into legislation at this time, stating occupational safety and health jurisdictions and employers are still in the beginning stages of understanding how to identify and address complex psychological hazards as they relate to the workplace. The Employer Caucus
maintained that while some workplaces are progressive in providing resources to workers to promote psychological health and safety, many more workplaces do not have the resources or understanding to develop and maintain these types of programs and tools. Employers felt the resources and supports required to comply with legislation are not yet in place, and favoured prevention and awareness efforts in this area.

Some members of the Technical Caucus were in support of introducing psychological hazard recognition into legislation, while others indicated they were unsure if the standard is practicable enough to adopt into regulation. The members not in support indicated that many experts in the field do not agree on control measures to address mental health in the workplace.

In addition to the above noted positions, Council unanimously supported continuing to build on existing SAFE Work Manitoba prevention initiatives to provide greater awareness and education on the subject of psychological health and safety in the workplace.

10. Aligning Fall Protection Requirements in the Operation of Mines Regulation to the Workplace Safety and Health Regulation - 3 metres

Currently, the Operation of Mines Regulation requires guardrails and toe boards (as a form of fall protection) on any platform from which a person could fall more than 1.5 metres. In all other areas of a mine, fall protection is required where workers are at heights of 3 metres or higher, consistent with requirements of the Workplace Safety and Health Regulation.

The Employer Caucus supported a change to make the height for fall protection consistent across all areas of the mine at 3 metres, in line with the Workplace Safety and Health Regulation. This change would improve consistency with other industries and provide a definite height at which fall protection is required.

The Labour caucus felt the current requirements for platforms should remain at 1.5 metres, noting hard rock surroundings in an underground mine is a different than what is found in other industries, and the level of protection is appropriate to the risk.

11. Adoption of Publications, Codes and Standards

(The Workplace Safety and Health Regulation and the Operation of Mines Regulation, section 1.3)

There are currently over 80 third party standards cited in the regulations, that prescribe the minimum standard for various objects and processes. Currently, standards for objects must conform to the standard in existence at the time the object was made, or the date cited in the regulation, whichever is newer. Updates for standards relating to objects are done through specific regulatory amendments, as such, go through a review and consultation period prior to any changes being made. However, standards relating to processes are automatically adopted into regulation whenever a new version of the standard is released.

It should be noted that although some standards are object-focused (e.g. a crane) the standard may also contain process related components, such as inspections, maintenance, operator requirements, etc. As such, this can cause confusion as to which standard is the regulated requirement. Approximately 50% of the object-focused standards have process related components within them.
The Employer Caucus was in favour of removing automatic adoption of standards, and implementing static references to all standards. Employers felt this would allow time for review and consultation to determine the impact of adopting the new standard, as well as allow transition to come into compliance with the any new requirements. The Labour Caucus was not in favour of moving to static references for standards. Labour stated that regulations should adopt the most current version of the standards in order to ensure workers and processes are as safe as possible, and keep up with best practices.

The Technical Caucus was also not in favour of moving to static references for standards. The Technical Caucus felt that the current processes used by third party agencies already incorporates stakeholder feedback with representation from the various groups. Thus, the new standards should be balanced and well informed.
WORKPLACE SAFETY AND HEALTH ADMINISTRATIVE ISSUES

1. Changing the Term “Discriminatory Action” to “Work Reprisal”

In Manitoba, the term “discriminatory action” means any act or omission by an employer or any person acting under the authority of the employer or any union which adversely affects any term or condition of employment, or of membership in a union. Over the years, the term “discriminatory” has presented significant confusion for clients who understand the term in the context of human rights protected characteristics. This is especially problematic where the alleged act or omission is tied to a harassment concern. Replacing the term “discriminatory action” with “work reprisal” without changing its meaning will help to clarify the protections offered under The Workplace Safety and Health Act.

Examples of other jurisdictions with varying terminology include Ontario, which uses the term “work reprisal,” and Alberta uses “disciplinary action.” While British Columbia and Saskatchewan also use the term “discriminatory action,” misinterpretation is common.

There was general agreement amongst Council members that the term “discriminatory action” can present confusion.

2. Time Limits for Raising Discriminatory Action Complaints

(The Workplace Safety and Health Act, section 42, Discriminatory Action)

Historical complaints relating to discriminatory action have proven difficult for the branch to effectively investigate, and are typically lengthy and time intensive. Time limits of six-month and one-year for submitting complaints are found in The Employment Standards Code and The Human Rights Code in Manitoba.

Council unanimously supported the introduction of an appropriate time limit, provided that the director have the ability to hear complaints of a historical nature when extenuating circumstances have prohibited a worker from coming forward within the prescribed limit.

3. Director’s Authority to Dismiss Frivolous/Vexatious Complaints

(The Workplace Safety and Health Act, section 42, Discriminatory Action and section 43, Right to Refuse Dangerous Work)

The Workplace Safety and Health Branch occasionally receives repeated and frivolous complaints from workers. Typically this occurs after the outcome of the initial investigation is not to the worker’s satisfaction. Although vexatious and frivolous complaints are few, they consume significant amount of staff resources and place undue administrative burden on employers who are required to respond in the course of the investigation. There are currently no provisions in the Act which enable the director to dismiss these types of complaints.

Council unanimously did not support the adoption of provisions to refuse complaints on the grounds that they are frivolous or vexatious. Council felt that in order for the Branch to demonstrate due diligence that the complaint was indeed frivolous or vexatious, some form of investigation would need to take place. If the validity of a complaint is suspect, the director should currently be able to conclude the investigation at such a
point where it is found to be frivolous or vexatious and make a decision. Such decisions could then be appealed to the Manitoba Labour Board if the worker is not satisfied.

4. Collection of Monies

(The Workplace Safety and Health Act, sections 54-58 – Offences and Penalties)

Currently, when an employer is fined following an offence under the Act or the regulations the money is paid to the Manitoba Government general revenue fund. Under the Act, the court may order a portion or the entire penalty be paid to the Minister, which must be used for the purposes of educating the public on matters relating to workplace safety and health. However, when fines are ordered payable to this education fund, there is no mechanism for the Government or the Branch to collect outstanding monies on behalf of the Minister. As such, fines assigned to the education fund are only applied in limited circumstances, typically where confidence in payment is high.

Council unanimously supported strengthening the Act to include provisions for collection of payment, similar to those already in place respecting the collection of administrative penalties.

5. Submission of Safety and Health Committee Minutes to the Workplace Safety and Health Branch

(Workplace Safety and Health Regulation, Part 3: Workplace Safety and Health Committees)

Currently, all workplaces requiring a safety and health committee are also required to send copies of their quarterly meeting minutes to the Workplace Safety and Health Branch within seven days of the meeting. This requirement results in thousands of submissions annually, the collecting and tracking of which presents significant administrative challenges for the Branch. Further, the resources required to read and file minutes is significantly disproportionate to the value obtained from doing so, and would reduce the number of safety and health officers in the field conducting inspections.

Caucus unanimously supported a removal of the requirement to submit safety and health committee minutes to the branch. At present, safety and health officers have the power to request or view copies of minutes as needed, as workplaces are required to keep minutes on file for ten years.

Support from the Labour and Technical Caucuses was contingent on the Branch holding workplaces accountable for producing minutes in order to provide balance to the resulting reduction in oversight resulting from such a change. Use of compliance tools such as the immediate issuance of administrative penalties for failure to produce the minutes during inspection was identified as an appropriate deterrent. While the Employer Caucus did not agree that immediate administrative penalty was appropriate for a first instance of non-compliance, improvement orders to ensure appropriate record-keeping may result in administrative penalty for repeated non-compliance.
6. Aligning Requirements for Fixed Ladders

(Workplace Safety and Health Regulation, Part 13: Entrances, Exits, Stairways and Ladders)

Current provisions for fixed ladders require ladder cages and rest platforms every 5 metres (16 feet) or a fall protection system. Under these requirements, an average 20 foot commercial building in Manitoba with a fixed ladder requires a rest platform four feet from the top. The Branch regularly receives and grants exemptions from this requirement for commercial buildings.

Council unanimously supported a modification to the initial height requirement for rest platforms from 5 metres (16 feet) to 9 metres (20 feet) for the first platform, and then every 5 metres thereafter to more closely align with requirements in Alberta and British Columbia. The requirement for ladder cages should remain at 5 metres.
7. Correction of Drafting Error in the Definitions of “Quarry” and “Quarry Mineral”

(Operation of Mines Regulation, Part 1, Introductory Provisions)

As a result of a drafting error during the 2011 development of the current Operation of Mines Regulation, the definition of “quarry” has proven problematic for enforcement. The definition was revised from the previous regulation to clarify that sites using explosives to remove obstacles during road construction are not “quarries,” even if the blasted rock is subsequently used to build the road. Instead, the wording technically exempts all quarries that produce rock or stone used in civil works from the requirements of the Operation of Mines Regulation. Civil Legal Services further confirmed the need for a correction when it identified contradictory wording in the English and French versions of the regulation.

Council was unanimous that this error be remedied to ensure the Branch is able to enforce the requirements of the Operation of Mines Regulation at quarries and gravel pits.

8. Transferring Regulation of Peat Operations from the Operation of Mines Regulation to the Workplace Safety and Health Regulation

(Operation of Mines Regulation, Part 1, Introductory Provisions)

Recent amendments to The Mines and Minerals Act removed peat operations from the types of operations classified as a mine. As mining under the Operation of Mines Regulation has the same meaning as in the The Mines and Minerals Act, the definition of “mine” in the regulation should reflect the same intent.

Council unanimously supported a removal of peat operations from the jurisdiction of the Operation of Mines Regulation. With this change, peat operations would instead be enforced under the Workplace Safety and Health Regulation.