March 31, 2026

The Workers Compensation Act
Legislative Review 2025-2026
PO Box 309 Station Main
Winnipeg, MB R3C 2H6

Dear Review Committee Members,

Re: Legislative Review 2025-2026

On behalf of the administration of the Workers Compensation Board of Manitoba I am pleased to provide you the following submission for review of The Workers Compensation Act (WCA).

Sincerely,

Catherine Skinner
President and CEO
Workers Compensation Board

Submission to the 2025-2026 Legislative Review Committee from the Workers Compensation Board of Manitoba (WCB)

March 31, 2026

This submission is made by the WCB on behalf of its administration and may not reflect the views of the WCB Board of Directors generally or of its individual directors.

1. Modernize the Act with Plain and Gender-Neutral Language

The WCB supports amendments that will modernize *The Workers Compensation Act* (the Act), including the use of plain language principles.

The Act should be drafted in a way that is accessible to all participants in the system. Many of the Act's provisions have not changed from 1916, a time at which plain language drafting was not a consideration. As a result, the Act is often difficult to understand and apply. The complexity of the Act creates access to justice and procedural fairness issues. It is fundamental that participants know their rights and obligations under the Act, and how and whether it applies to them.

The Act currently uses gendered language when referring to workers. The Act is inconsistent, with some provisions referring only to male pronouns, while more recently amended sections use both male and female pronouns. The Act should be amended to contain gender neutral language throughout.

2. Expand Coverage, Adopt Universal Coverage Model

Approximately 27% of the workforce in Manitoba is not eligible for workers compensation coverage, leaving workers financially vulnerable in the event of a workplace injury or illness. Workers not covered must rely upon employer provided disability plans, if available, or Employment Insurance (EI). Even where private disability plans or EI is available, the compensation provided is often less than the wage loss benefits available under the workers compensation system.

The WCB supports moving towards a universal model of coverage, consistent with the approach taken in other Canadian jurisdictions. In the alternative, the WCB supports a recommendation to modernize the Excluded Industries, Employers and Workers Regulation, M.R. 196/2005, which has not been amended since 2008 and does not reflect modern workplaces.
In addition, the recent growth of the "gig" economy presents challenges to the existing framework of workers compensation coverage. The WCB supports providing express coverage under the Act for workers in non-traditional work arrangements

3. Clarify Various Definitions (Subsection 1(1))

The following definitions contained in subsection 1 of the Act should be amended:

- **Worker -** subsection 74(1) of the Act allows firms in excluded industries to purchase optional coverage with the WCB. The definition of "worker" does not include those who work for firms that purchase this optional coverage and should be amended to include those workers captured by subsection 74(1).

- **Spouse and common-law partner -** The Act contains separate definitions for "spouse" and "common-law partner." This distinction is historical. When the term "common-law partner" was added to the Act in the late 1980s, there was opposition to acknowledging common-law relationships. Amending the definition of "spouse" to include "common-law partner" would reflect modern legal standing of common-law partners and simplify sections of the Act that currently reference both terms.

- **Industry -** The term "industry" is defined as "all industries in Manitoba except those industries excluded by regulation under section 2.1." By not describing what an industry is, the term is ambiguous and should be amended.

- **Dependant -** The term "dependant" is limited to family members of a worker who were wholly or partially dependent upon their earnings at the time of death. As the term excludes family members who did not but ought to have received support from the worker, the term should be amended to capture these family members.

4. Change Occupational Diseases Standard (Subsection 4(4))

As Manitoba is an outlier in Canada in applying a dominant cause standard to occupational diseases, the WCB supports removing it as the applicable standard.

In the alternative, if dominant cause remains the standard, the definition of occupational disease should be amended. The definition is problematic because it is defined narrowly, which can exclude conditions strongly linked to certain types of work.

5. Clarify Coverage for Accidents Outside Province (Section 5)

Section 5 of the Act contains several provisions related to accidents occurring outside of Manitoba. There have been few amendments to this section since its introduction to the Act in 1972. These sections are long and difficult to interpret. Amendments to this section would provide clarity and establish appropriate coverage for remote workers, who are increasingly prevalent in the modern economy.

6. Add Consistent Notice Requirements (Subsection 17(4) and Various Other Sections)

The obligation to provide notice arises many times throughout the Act, but its requirement is inconsistent. Some provisions specify how notice must be given, while others are silent. Additionally, in only certain circumstances is notice by email permitted.

As an example, the Act prevents workers from notifying their employers of an injury by email. Subsection 17(4) requires them to provide this notice by leaving it at the employer's residence or place of business, or by sending it to them by registered mail.

Notice provisions throughout the Act should be amended to create a more consistent and efficient approach and reflect modern communication methods.

7. Clarify Employer's duty to Report Accident (Subsection 18(1))

Under subsection 18(1), employers must report an "accident giving rise to a claim for compensation" to the WCB. This wording is problematic as it may be interpreted as providing employers with discretion to determine whether an accident gives rise to a claim for compensation, which is and should remain a decision solely of the WCB. This subsection creates uncertainty as to when employers must report accidents occurring in the workplace. Although the WCB has attempted to provide clarity through policy, legislative clarification is recommended.

8. Change Contents of Employer's Report (Subsection 18(2))

Subsection 18(2)(d) requires an employer's report to the WCB to include the name and address of the physician the worker attended for injury. This requirement should be removed as employers often do not have this information and the WCB can obtain it directly from the worker.

In addition, to expedite the administration process, subsection 18(2) should be amended to expressly require employers to include worker wage loss information in their report.

9. Prohibit Discouraging Workers from Claiming Compensation (Subsection 19.1(1))

This subsection reads *"[n]o employer or person acting on behalf of an employer shall take any action that prevents or discourages or attempts to prevent or discourage a worker from applying for compensation, pursuing an application that has been made or receiving compensation under this Part."*

The WCB recommends amending this provision to include “or workers” after “discourage a worker,” to address situations of claim suppression that impact multiple workers.

10. Modernize Posting of Notices Requirement (Subsection 19.2(1))

Subsection 19.2(1) allows the WCB to require a person to post notices in a conspicuous place on the person's premise. The WCB recommends modernizing this provision as many workplaces no longer have physical premises in which a notice can be posted.

11. Increase Fairness of Monthly Payments to Spouse after Death of Worker - Undue Hardship (Subsection 29(9))

When a worker dies, the surviving spouse or common-law partner is entitled to a lump sum payment under subsection 29(1)(a)(i), as well as monthly payments for a period of 5 years.

Subsection 29(9) permits the extension of monthly payments beyond 5 years in limited circumstances. If, on the date of the worker’s death, the spouse or common-law partner is 50 years of age or older, or is an invalid, and the WCB is of the opinion that the death results in undue hardship, the spouse or common-law partner may elect to forgo the lump sum payment in exchange for an extension of monthly payments until age 65.

A spouse or common-law partner may not be experiencing undue hardship at the time of the worker’s death, or the extent of their financial circumstances may not yet be known to the WCB. As a result, they may not elect or have the option to elect for an extension of payments in lieu of a lump-sum payment. This has resulted in situations where financial hardship arises at the end of the five-year monthly benefit period, but an extension cannot be granted because the lump sum was previously paid by the WCB.

The Act should be amended to address this gap in responding to hardship that emerges, or becomes apparent, over time.

12. Increase Fairness for Wage Loss Benefits for Workers 61 or Older (Subsection 39(3))

The provision currently reads: *"[w]here a worker is 61 years of age or older age <u>at the commencement of his or her loss of earning capacity</u>, the board may pay the wage loss benefits for a period of not more than 48 months following the <u>date of accident</u>."* [emphasis added]

As the commencement of loss of earning capacity may not align with the date of accident, the WCB has denied workers older than 61 wage loss benefits where their loss of earning capacity arose more than 48 months after the date of accident.

The WCB recommends replacing "date of accident" with "date the loss of earning capacity began" to address this issue.

13. Remove Tax Sheltering (Subsection 39(5)(b))

Subsection 39(5)(b) allows the WCB to deem any entitlement to a refund or reduction of the probable income tax, Canada Pension Plan (CPP) premiums, Quebec Pension Plan premiums or Employment Insurance (EI) premiums payable by the worker to be earnings that the worker is capable of earning after the injury.

While employed, an employer deducts income tax, CPP contributions and EI premiums from a worker's pay. If a worker receives wage loss benefits for a portion of the year, the employer's deductions may no longer be accurate, as they were calculated based on an income level that has since decreased. This may result in a refund of excess deductions when a worker files taxes. The WCB treats any entitlement a worker may have to a probable refund of these excess deductions as earnings the worker is capable of earning after the accident. The WCB refers to this probable refund as a sheltered income benefit.

The WCB recommends removing tax sheltering as the WCB is an outlier in Canada in applying this practice.

14. Align Indexing of Benefits with Approach of Others (Subsection 40(2) and Various Other Sections)

The Act directs the WCB to adjust and index benefits for workers/dependants the first day of the month following the second anniversary of the accident, and annually thereafter, whereas most boards in Canada index benefits after the first year of the accident

The WCB suggests amending the Act so that benefits are indexed following the first anniversary of the accident.

15. Remove Retirement Annuity Option (Section 42)

Section 42 of the Act provides for the payment of an annuity to a worker who has received wage loss benefits for a total period of at least 24 months. Under subsection 42(2), the WCB invests a percentage on the worker's behalf to provide an annuity for the worker at retirement. Subsection 42(7) permits the WCB to pay the worker a lump sum instead of an annuity where the accumulated capital and interest fall below a threshold set by the WCB.

The WCB recommends amending the Act to remove the annuity model and to replace it with a lump sum payment in all circumstances. Lump sum payments reduce administrative complexity and the need for management of annuities long after claims have closed. Additionally, feedback from workers indicates a preference for lump sum payments.

16. Remove RPP Payment Option for Annuity Funds (Subsection 42(6))

Subsection 42(6) contemplates that the WCB may retain the annuity funds under subsections 42(2) and 42(3) in the accident fund or, on the request of the worker, pay those funds into a registered pension plan (RPP). The WCB is unable to pay these funds into a RPP as none can accept WCB benefit payments. The WCB recommends removing reference to paying the amounts into an RPP in subsection 42(6) as it cannot be done.

17. Clarify Spouse for Annuity Payment upon Death of a Worker (Subsection 42(8))

Under subsection 42(8), if a worker for whom contributions have been made under section 42 dies before electing an annuity under subsection 36(2), the WCB must pay a lump sum equal to the accumulated capital and interest to the worker's spouse or common-law partner, if the worker is survived by one.

The definitions of spouse and common-law partner under the Act are tied to the spouse or common-law partner at the date of the accident. This creates a problem when the worker is survived by both a current and former spouse or common law partner. Under the Act, if the former spouse or common-law partner was the spouse or common-law partner at the date of accident, the WCB would be required to pay the lump sum to the former spouse or common-law partner rather than the current one.
The WCB recommends amending section 42(8) to establish a separate definition of spouse or common-law partner for payment of the retirement annuity upon death of the worker

18. Remove PBA Reference for Division of Annuity Benefits on Marriage Breakup (Subsection 42(10))

Subsection 42(10) states that the annuity in subsection 42(2) is considered a family asset under *The Family Property Act* and is subject to division in the manner set forth in *The Pension Benefits Act* (PBA).

The WCB recommends removing reference to the PBA and codifying the division of the annuity within the Act. The provisions of the PBA are complicated and rigid, and applying them often requires workers and their former spouse or common-law partner to revisit separation agreements years later, as most do not consider the retirement annuity under subsection 42(2) to be a pension and therefore do not address its division upon separation.

19. Expand Re-Employment Obligation and Duty to Co-Operate (Section 49.3)

Section 49.3 requires employers with 25 or more workers to offer re-employment to workers who have been employed for more than one year and are unable to work because of an accident. This re-employment obligation could be expanded to apply to all employers or a broader group of employers.

In addition to, or in the alternative, consideration should be given to imposing a general duty on all employers, regardless of size, to cooperate in timely and safe return to work. Section 22 of the Act already requires workers to co-operate and mitigate during their claim, including participating in return-to-work efforts. The WCB supports extending a similar obligation to employers.

Under subsection 49.3(3), an employer's re-employment obligation continues until the earlier of:

(a) The second anniversary of the day of the accident;

(b) Six months after the worker is medically able to perform the essential duties of the worker's pre-accident employment or other suitable work;

(c) The date on which the worker would have retired from that employment.

In some situations, the day of the accident differs from the date on which the worker's loss of earnings begins. To address this, the WCB recommends amending subsection 49.3(3)(a) so that the two-year period is calculated from the date the loss of earnings began as opposed to the date of accident.

20. Limit Requestors for Rehearing of Appeal to WCB (Section 60.9)

Section 60.9 of the Act allows the WCB Board of Directors to stay the decision of the Appeal Commission and refer the matter back for a rehearing, if it concludes that the Appeal Commission did not correctly apply the Act, regulations or a board policy.

This section was intended to be used by the WCB where the Appeal Commission made an error in applying law or policy; however, workers and employers are increasingly resorting to section 60.9 as another level of appeal, which subsection 60.9(2) clearly states it is not meant to be. The WCB recommends that this section be amended to make it clear that only the WCB may apply to the Board of Directors for relief under section 60.9.

21. Expand Protection from Liability to Include Other Acts (Section 61)

Section 61 provides protection from liability to the WCB, board members, committee members, employees, agents, appeal commissioners, medical review panel members, the Fair Practices Advocate or person appointed under section 108 for actions, omissions or neglect in carrying out their duties or exercising powers under the Act or regulations.

With recent amendments to the Workplace Safety and Health Regulation, MR 217/2006, the WCB is now responsible for the asbestos training program set out in that regulation. However, because this regulation is pursuant to *The Workplace Safety and Health Act*, the liability protections under section 61 do not apply to the WCB's activities relating to the asbestos training program.

The WCB recommends amending section 61 to extend protection to the WCB from liability for performing a duty or exercising power under any statute that it administers.

22. Add Employer Requirement to Provide Employee Hours Worked with Payroll Submission (Subsection 80(1))

Employers are required to provide the WCB with a certified copy of their payroll for the previous year and estimated payroll for the current year - within 30 days of becoming an employer, and thereafter on or before the last day of February each year.

The WCB recommends amending this section by also requiring employers to provide an estimate of the number of hours worked by their workers each year. This additional information would allow the WCB to calculate the time loss injury rate and other metrics more accurately.

23. Increase Late Filing Penalty (Subsection 80(1.1))

If an employer fails to provide payroll information required under subsection 80(1), the WCB can apply a penalty of 5% of the employer's assessment - if the failure to report continues for a period of 61 days or less, or 10% of the employer's assessment for that year if the failure continues for a period of more than 61 days.

The WCB supports increasing the late filing penalty as it has seen a pattern of employers avoiding registering with the WCB, and only registering when a claim is filed by a worker or the WCB has another reason to identify the unregistered employer.

24. Add Authority to Create a Special Purpose Fund (Subsection 81(1)(b))

Subsection 81(1)(b) of the Act contemplates a stabilization fund separate from the accident fund to meet costs associated with extraordinary events that would otherwise unfairly burden employers.

The WCB recommends amending this subsection by replacing "stabilization" with "special purpose" and removing "extraordinary". This change would permit the WCB to maintain a separate reserve fund to pay for the WCB's expenses related to upgrading its technology without unfair burden to employers.

25. Clarify and Expand Production of Records Authority (Subsections 99.1(1) and 99.1(2))

Subsection 99.1(1) provides the WCB broad authority to order a person to provide information or produce records for inspection for any purpose relating to the administration of the Act. This section was intended to be broad; however, the wording of subsection 99.1(2) limits the WCB's authority as it states that an order under subsection 99.1(1) can be addressed to an employer, or a director, officer, agent or employee of an employer.

The WCB recommends amending the wording of subsection 99.1(2) so that orders can be addressed and given to a wider range of individuals beyond employers, including workers, witnesses, or health care providers, to ensure the WCB has the authority to obtain information from necessary parties.

The headings in section 99.1 refer to an obligation to "produce records, etc." These headings may create confusion to an individual receiving a request for information under this section. The WCB recommends amending the headings in section 99.1 to reflect the that the WCB has authority to obtain information in addition to records.

26. Add Production of Records from Law Enforcement Agencies Authority (no Current Section)

The WCB recommends amendments to the Act that would clarify and provide explicit power to the WCB to compel document production from law enforcement agencies. Specifically, the WCB recommends including similar provisions to those contained in *The Manitoba Public Insurance Act*, which provide authority for police services and RCMP to disclose and provide information and for the corporation to receive it.

27. Change Fair Practices Advocate Title (Sections 61, 62, 101(1) and 108.1)

The Act references a "Fair Practices Advocate" throughout. The WCB refers to this role as a "Fair Practices Officer" as the role is intended to be impartial, and not advocate for any party. The WCB recommends replacing the term "Fair Practices Advocate" with "Fair Practices Officer" to align with the terminology used by the WCB.

28. Reflect Modern Privacy Law Terms with Updates (Section 101)

The language used in section 101 predates modern privacy law terms. For example, this section uses the term "divulge" whereas modern privacy laws use the term "disclose". This section should be amended to align the language in the Act with current privacy laws.

29. Permit Limited Disclosure of Information Obtained by Inspection (Subsection 101(1))

The WCB works closely with external parties for the purpose of safety, prevention and compliance. Specifically, the WCB partners with Industry Based Safety Programs and works closely with regulatory bodies such as Workplace Safety and Health.
Subsection 101(1) of the Act limits the ability of the WCB to disclose information obtained during an inspection or in connection with any claim of a worker or dependant under the Act. Amendments to this section of the Act to permit disclosure of information in limited situations for the purpose of safety and prevention as well as regulatory enforcement, would assist the WCB in performance of its activities under the Act.

30. Clarify Destruction of Documents Obligation (Subsection 101(1.9))

Subsection 101(1.9) requires an employer or agent who obtains a document or record to destroy all copies in their possession within 60 days after obtaining it unless they make a submission in relation to a reconsideration or appeal within that period. This section does not contemplate destruction of documents or records following the completion of a reconsideration or appeal.

The WCB recommends amending this subsection to set clear timelines requiring destruction of documents following completion of a reconsideration or appeal.

31. Add WCB Right of set off Against Employers (Section 109.3)

Section 109.3 permits the WCB to set off any money due to it under the Act against "compensation" that is or may become payable to the person who is indebted to the WCB.

The wording of this section prevents the WCB from setting off amounts owing to employers against amounts employers owe the WCB. For example, the WCB cannot set off any surplus distribution owing to an employer against outstanding monies the employer owes the WCB because surplus distribution is not "compensation" owing to the WCB.

This section of the Act should be amended to allow the WCB to set off amounts owing to employers against monies owed by those employers to the WCB.

32. Expand Support for Prevention Activities (Subsection 109.5(1)(e.1))

Subsection 109.5(1)(e.1) permits the WCB to delegate an agent to perform prevention activities described in subsection 54.1(2) of the Act. The WCB recommends amending this subsection to delegate an agent to "support" activities under the Act as this would allow the WCB to establish and fund grants for matters related to promoting safety and health in workplaces and prevention of workplace injuries and illnesses.

33. Increase and Expand Administrative Penalties (Section 109.7)

The Act provides for administrative penalties for contraventions of the Act. The structure of administrative penalties differs depending on the contravention, but in many cases, it is a flat fine regardless of the size of employer. This structure disproportionately impacts smaller employers.

The WCB recommends amending the structure of administrative penalties so that penalties are proportionate to the size of employer.

In addition to, or in the alternative, the WCB recommends increasing fines so they are proportionate to the respective offence. Consideration should also be given to adding administrative penalties in the following circumstances:
For those persons that forge clearance certificates. The WCB has observed an increase in the amount of forged clearance certificates in recent years. There is currently no administrative penalty that may be applied in this scenario

- For misleading a WCB investigator or tampering with a witness to an investigation conducted under the Act. While section 99(10) makes it an offence to hinder, obstruct, or interfere with an inspector conducting an inspection under section 99, there is no administrative penalty for so doing.
- For filing a frivolous complaint against a worker for using the WCB system.
- For interference with the rights of a worker by a claims management firm. In some cases, employers engage a claims management firm during a claim.

34. Add Elections Between WCB and MPI (no Current Section of the Act)

Workers who are injured in a motor vehicle accident (MVA) while working have the option to elect coverage with either WCB or Manitoba Public Insurance (MPI). The Act is silent on this right of election. The right of election is only found in subsections 195(1)-(3) of *The Manitoba Public Insurance Corporation Act*. The Act should also include the right of election.

After an MVA, a worker may be incapacitated because of their injury and therefore unable to elect benefits with either WCB or MPI. This can delay the administration of benefits. The Act should allow for an alternate elector to make the election on behalf of a worker who is incapacitated.

Additionally, the WCB recommends amending the Act to require MPI to notify the WCB of MVAs that occur while the claimant was working.

35. Add Publication of Appeal Decisions Requirement (no Current Section of the Act)

The Appeal Commission publishes its decisions on its website; however, there is nothing in legislation or policy that requires this. The WCB recommends adding a section to the Act that decisions by the Appeal Commission must be published.

36. Add Additional Limitation Dates (no Current Section of the Act)

There is only one limitation date contained in the Act. Under subsection 19(2), an application for compensation must be filed within one year of the date of the accident or the date of death, as the case may be. There are no limitation dates for reconsiderations from initial adjudication to the Review Office, appeals from the Review Office to the Appeal Commission, or applications for judicial review. The WCB recommends amending the Act by including limitation dates to ensure that matters are resolved in a timely way and evidence is preserved.

37. Add Employer Requirement to Record Injuries (no Current Section of the Act)

The WCB supports amending the Act to require employers to keep a record of all injuries sustained by workers. Requiring employers to maintain a record of injuries would assist in identifying claim suppression.

38. Specify WCB as First Payer for EI Sickness Benefits (no Current Section of the Act)

A worker may receive employment insurance (EI) sickness benefits from Employment and Social Development Canada (EDSC) in relation to their workplace injury while awaiting a decision from the WCB. WCB Policy 36.70, *Assignment of Wage Loss Benefits*, outlines that the WCB will reimburse the Government of Canada on behalf of the worker for overpayment of EI sickness benefits when it receives a Notice of Debt from EDSC.

For clarity purposes, the WCB recommends setting out in the Act that WCB is the first payer when EI sickness benefits are involved.

39. Add Employer Requirement to Pay for Functional Abilities Forms (no Current Section of the Act)

The WCB recommends amending the Act to require employers to pay for functional ability forms required during the course of claims along with an accompanying administrative penalty for failure to comply