REPORT OF

THE WORKPLACE SAFETY AND HEALTH ACT REVIEW COMMITTEE

2022-2024 REVIEW OF THE WORKPLACE SAFETY AND HEALTH ACT

January 23, 2025

The original Review Committee consisted of nine members and an independent chair. In January 2024, the committee was expanded and modified to include additional members, with the chair role supported by Workplace Safety and Health. The following individuals contributed to the committee at various points during the review process. We would like to thank all the Review Committee members for their time and contributions throughout this review.

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MANDATE OF THE WORKPLACE SAFETY AND HEALTH ACT REVIEW COMMITTEE

In August 2022, the former Minister of Labour, Consumer Protection and Government Services tasked the Workplace Safety and Health Act Review Committee (Review Committee[1]) with undertaking the legislated five-year review of *The Workplace Safety and Health Act* (the Act).

In particular, the Review Committee was asked to deliver consensus recommendations and focus the review on:

- ensuring strong protections are in place that meet the needs of today's workplaces;
- improving harmonization and consistency with other jurisdictions;
- ensuring requirements are clear and reasonable; and,
- helping Manitoba meet its obligations under the Regulatory Accountability Act.

The Workplace Safety and Health Branch (WSH) launched the five-year review with three months of public consultation through the EngageMB website and a dedicated email address. This consultation resulted in 62 submissions, containing 197 unique recommendations.

Following the consultation, the Review Committee, comprised of labour, employer, and technical representatives, held a series of meetings from January 2023 to November 2024 to evaluate the public submissions and develop recommendations relating to the review mandate.

In addition to the public submissions, several administrative items were raised by WSH for the Review Committee's review and feedback.

Items identified as more appropriate for public education, referral to other agencies or inclusion in other initiatives, are not included in this report, and will be considered or actioned by WSH or other partners as appropriate.

[1] See Appendix A for a list of abbreviations used in this document.

ADMINISTRATIVE ITEMS

<u>Consensus Review Committee Recommendations – Act Amendments</u>

1. Access to Washrooms for Delivery Persons

Bill 227, *The Workplace Safety and Health Amendment Act (Access to Washrooms for Delivery Persons)* was introduced in the Manitoba legislature in March 2023. Following introduction of the private member's Bill, the Government requested consultation with the Review Committee on access to washrooms for delivery persons.

Bill 227 mandated the owner of a workplace to provide access to washroom facilities to a delivery person attending the workplace for the purposes of collecting or making a delivery. The mandated access is not required if the owner can demonstrate that access would pose a risk to the safety or health of any person in the workplace or that the measures required to provide access would cause undue hardship due to the activities in the workplace, the security requirements, and the layout of the workplace. Furthermore, the owner is exempted if the washroom is only accessible via a dwelling.

The Review Committee unanimously supported requiring the owner of a workplace to provide washroom access to a delivery person unless the access creates an unusual risk or requires entrance to a residence. While one employer member questioned whether it was a workplace safety and health issue, other employer members noted that the *Workplace Safety and Health* Regulation (WSH Regulation) may be a better place for this provision, instead of the Act. One technical member noted that this requirement was reasonable and humane, and one labour member noted that washroom access should be easy and not require a delivery person to go through multiple levels of security.

Bill 227 came into force in May 2023, with the provisions added to the Act as a new section.

2. Define "Dangerous Work" in Right to Refuse

The Act grants a worker the right to refuse work at a workplace if they believe on reasonable grounds that the work constitutes a danger to their safety or health or that of another worker or person. However, it does not provide an explicit definition of the term "danger".

The Review Committee discussed that the terms "danger" and "risk" are often used interchangeably, causing confusion about the threshold between raising a safety concern and exercising a work refusal.

The Review Committee supported the proposal to add a definition of “dangerous work” to the Act that aligns with current interpretation by WSH. The proposed definition would address circumstances where either the hazard or the worker’s health creates an unusual risk, where serious physical or health injury is imminent, and where reasonable controls have not been implemented.

3. Referrals to the Manitoba Labour Board (MLB)

The Act allows the Director of WSH to directly refer an appeal to the MLB rather than issuing a decision on the matter. On referring an appeal to the MLB, the Director is required to inform the appellant of the referral and provide the MLB with the appeal notice, as well as any written information the Director has that is relevant to the appeal. The Director is also required to provide the MLB a list of persons who the Director thinks are directly affected by the appeal and give each person on that list a copy of the appeal notice, as well as any relevant written information the Director has.

Although the Act currently refers to “written information”, officers are increasingly obtaining visual and audio recordings as part of their investigation. These materials may be relevant to the decision-making process of the officers, even though they are not “written information” as described by the Act.

The Review Committee considered the current requirements and practices and recommended that the Act be amended so that it is silent on the material that the Director of WSH must provide to the parties and the Board when referring an appeal. This approach would allow greater flexibility in the information provided and could be addressed as a matter of practice between the Director of WSH and the MLB. This approach would also align with Employment Standards legislation, which allows referrals to the Board, but does not specify the mandated information or how it must be provided.

4. Allow for Paper Appeals at the MLB

The MLB conducts appeals of decisions made by the Director of WSH in the course of administering the Act. The MLB is required to hold hearings on all appeals unless the Director found that the matter under appeal was frivolous or vexatious, or, in the case of an appeal of a reprisal, the Director determined that the reprisal was not referred to a Safety and Health Officer within the 6-month time limit set out in the Act.

Once an appeal is with the Board, the Board has no option to decide an appeal on any grounds without conducting a hearing.

The MLB proposed amending the Act to allow the Board to decide a WSH appeal without an oral hearing, if it is satisfied that the matter can be determined based on material filed or written submissions. In appropriate circumstances, this proposal could potentially save significant resources.

The Review Committee supported the proposal with the understanding that the MLB develop processes to ensure procedural fairness. A few members, both employer and labour, noted that parties should be given the opportunity to provide additional written information before the Board makes a decision on an appeal.

5. Allow MLB to Require Parties to Pay Costs of Another Party

Under *The Employment Standards Code,* the MLB can award costs against a party in certain circumstances. *The Employment Standards Code* states that the Board may, as part of any order it issues to a person, require them to pay all or part of another party's costs in relation to the hearing, if they believe that the person's conduct before the Board was unreasonable or that having the matter referred to the MLB was frivolous or vexatious. However, this ability to award costs has rarely been exercised by the Board.

The Review Committee agreed with the MLB's proposal to allow the Board to order one party to pay the costs of another party, if their conduct before the Board was considered inappropriate, or the appeal frivolous or vexatious. This would align with *The Employment Standards Code*, thereby improving harmonization and consistency. This would also deter unreasonable and egregious conduct by parties which unduly delay proceedings, thereby potentially saving resources.

6. Allow Associated Employers

WSH has encountered some employers who change names in an attempt to evade enforcement or penalties. For example, instead of complying with an order or addressing a hazard, the employer may close the business and reopen it under a new name. Often the new company has the same directors and shareholders, operates in the same business sector and does similar work. This practice results in enforcement challenges for WSH.

The Review Committee agreed with the proposal to allow WSH to treat more than one employer carrying on associated activities, under common control, as one business entity for the purpose of issuing an order or penalty, whether or not the businesses are carried on simultaneously. The Committee further recommended that the application of this provision be discretionary and not applied as a matter of course. The intent of this provision would be to address issues of repeated non-compliance of a similar nature by an employer with several corporate entities. This aligns with *The Labour Relations Act* which allows the MLB to treat more than one associated employer as a single employer, whether or not the businesses are carried on simultaneously.

7. Allow Employment Standards to Collect Amounts Owed to Worker on Reprisal

Under the Act, an employer found to have taken reprisal against a worker may be issued orders to pay wages and benefits to the worker. Though most employers comply with WSH wage orders, on rare occasions employers have refused to pay the amounts to the worker. If an employer fails to comply with the orders, WSH can issue an AP to the employer to encourage payment. If this is unsuccessful, the worker's only recourse is through the courts. WSH does not have the ability to secure amounts owed to a worker.

However, Employment Standards has a framework for securing wage amounts owed to workers. It can register judgments in court and then forward them to a collection agency. Collection costs can be charged back to the debtor. It can also give demands to third parties, including freezing bank accounts, intercepting receivables, and garnishing wages. Any funds received are held in a trust account, with funds released at the end of the appeal period or held in trust if there is an appeal. If an employer wins their appeal, funds are returned to the employer.

The Review Committee agreed with the proposal to recognize wage and benefit orders by WSH as wages owed under *The Employment Standards Code*. This would address WSH's enforcement challenge by allowing the Director of Employment Standards to use existing mechanisms to enforce payment of wages and benefits ordered by WSH.

8. Administrative Penalty (AP) for Failure to Report Serious Incident

The Act allows the Director of WSH to issue an AP as one of the enforcement tools used to deter non-compliance with safety and health laws. The amount of the AP ranges from $1,000 to $5,000, depending on the type and frequency of the contravention. Second and subsequent contraventions can lead to APs of $3,000 to $5,000.

Currently, APs can be issued for failing to comply with an improvement order within the specified time, failing to maintain compliance with an improvement order or a stop work order, taking reprisal against a worker, and non-compliance with one of 17 requirements prescribed in the WSH Regulation and the *Operation of Mines Regulation* (Mines Regulation). Examples of these include lack of fall protection, release of asbestos, and un-shored excavations.

The Review Committee agreed with the proposal to allow an AP to be issued if an employer purposely fails to report a serious incident to WSH as required, to evade enforcement. As with other APs, the application of this AP would be discretionary. Every effort would be made to educate an employer on their reporting obligations before issuing this AP.

Furthermore, the Review Committee recommended the amount of the AP be set at $1,000 for a first penalty, $3,000 for a second penalty, and $5,000 for a third or subsequent penalty, consistent with the amounts for other notice-related penalties.

9. Communication of Orders

An improvement order or a stop work order may be communicated to the person against whom the order is made by delivering a copy of the order to the person or an agent of the person, or by sending a copy of the order via registered mail. If those methods are unsuccessful, a copy of the order may be posted at or near the workplace. The Director of WSH may also authorize an alternate method of communicating an order to a person and may direct when the order is deemed to have been communicated. As such, WSH has been emailing inspection reports and orders to parties for many years in order to facilitate more timely communication and hazard control.

However, concerns regarding communication of orders have been raised in recent appeals, noting a lack of clarity on the process followed to communicate orders, and the definition of "an agent" as it relates to the person receiving an order.

WSH considers a person who has authority or charge of the work site as being an agent of the employer or owner. This includes site supervisors, lead hands and superintendents, as applicable. WSH will provide these agents with the inspection reports for the site, including any orders issued.

The Review Committee agreed with the proposal to amend the Act to more clearly state that the Director of WSH is allowed to approve another manner for communicating orders, in addition to hand delivery, registered mail, and posting in the workplace. This change would explicitly clarify that the Director is allowed to issue general direction for communicating orders that applies globally, rather than in specific cases only.

The Review Committee did not recommend defining "agent".

Non-Consensus Review Committee Recommendations – Act Amendments

10. WSH Jurisdiction Over Reprisals in Unionized Workplaces

In October 2021, a binding decision of the Supreme Court of Canada (SCC) in *Northern Regional Health Authority v. Horrocks* held that a labour arbitrator has exclusive jurisdiction over disputes arising from matters covered by a collective bargaining agreement (CBA), unless otherwise stated in legislation. As the Act does not say otherwise, remaining silent in the Act would leave open the question of whether WSH retains reprisal jurisdiction in a unionized workplace. A change was therefore required to provide clarity and certainty.

Labour members expressed their belief that the Act currently provides jurisdiction to WSH over reprisal complaints and no change was necessary. In addition, labour members stated that removing WSH jurisdiction over reprisals in unionized workplaces would penalize union members as they would be deprived of a venue that is available to others. In addition, union members would be subject to different process that may be overly lengthy.

All but one member of the Review Committee rejected the proposal to remove WSH jurisdiction over reprisal disputes in unionized workplaces and instead recommended that WSH retain the ability to hear a reprisal in a unionized workplace. This would maintain processes that allow a reprisal complaint to be raised to multiple agencies for resolution. With several options available, a complaint may be raised in more than one forum, duplicating resources and presenting legal issues unless amendments are made to legislation and/or process (see item #11).

The dissenting employer member recommended jurisdiction be assigned to labour arbitrators exclusively, noting this approach would be mirror provisions in *The Employment Standards Code,* streamline the process, lead to fewer appeals, and save resources. In addition, the member noted that safety and health officers are not trained in labour law generally, which is often relevant for reprisal investigations.

11. WSH May Decline Jurisdiction When a Party Raises Same Matter in Multiple Forums

This proposal for WSH to decline jurisdiction when a party raises the same matter in multiple forums is related to reprisals specifically, as well as multiple proceedings more globally. It is intended to prevent cases from being adjudicated and/or appealed in multiple forums with equivalent remedies.

The Review Committee unanimously agreed that a party should not be able to raise the same matter in multiple forums; however, they were unable to reach consensus on how best to address the issue.

Labour and technical members agreed that the discretion to decline jurisdiction should be granted to WSH if a matter is being heard in another, similar forum. This approach would align with *The Manitoba's Human Rights Code* and *The Employment Standards Code* which allow jurisdiction to be declined if the subject matter is being heard elsewhere. This discretion to decline jurisdiction would not be available if a worker came to WSH before pursuing a remedy in another forum.

The employer members were divided in their recommendations. One employer member favoured an amendment requiring the worker to choose a single forum, which would align with British Columbia, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and the Yukon, all of which require a

worker to choose a single forum: either a grievance or the occupational safety and health regulator.

The other employer member recommended jurisdiction be clearly assigned to a single entity in legislation, with no discretion to deviate from that path. Removing discretionary decision-making could lead to fewer appeals, thereby saving resources.

Consensus Review Committee Recommendations – Regulatory Amendments

12. Require Employers to Conduct Harassment Investigation

Under the WSH Regulation, employers are required to develop and implement a written policy to prevent harassment in the workplace and ensure that workers comply with the harassment prevention policy.

The harassment prevention policy must include specific statements and content outlined in the WSH Regulation, including information on the procedures for filing a harassment complaint, investigating a harassment complaint as well as informing the complainant and alleged harasser of the investigation's results.

As part of implementing the harassment prevention policy, an employer is required to conduct a harassment investigation when a worker raises a harassment complaint. WSH does not conduct investigations into allegations of harassment as the responsibility for harassment investigations rests with the employer.

However, many workers and employers frequently misunderstand the existing legislation and believe that WSH is responsible for investigating harassment complaints to determine whether harassment has occurred.

The Review Committee agreed with the proposal to add an explicit provision to the WSH Regulation, clarifying the existing requirement that an employer is required to conduct harassment investigations. In particular, the Review Committee suggested an addition near clause 10.2(1)(b) of the WSH Regulation which would require the employer to ensure that the harassment is investigated. This amendment would address the expectations of both workers and employers.

13. Align Incident Reporting Across Industries

The WSH Regulation and the Mines Regulation differ in their requirements for reporting incidents to WSH.

Under the WSH Regulation, when a serious incident occurs at a workplace, an employer is required to immediately and by the fastest means of communication available notify WSH. Serious incidents include those involving a worker's death or

injuries such as a fracture, amputation, third degree burns, loss of sight or conditions such asphyxiation or poisoning. Furthermore, serious incidents include the collapse or structural failure of a building, structure, crane, hoist, lift, temporary support system or excavation; an explosion, fire or flood; an uncontrolled spill or escape of a hazardous substance; or the failure of an atmosphere-supplying respirator.

However, under the Mines Regulation an employer in the mining industry is required to report a different set of incidents. A mining employer must notify a mines inspector at WSH and the workplace safety and health committee immediately, in the event of an incident or dangerous occurrence at a mine that results in a person's death, or an injury to that may reasonably contribute to a person's loss of life, as well as select serious injuries to a person. Other incidents, referred to as Mines Other Reportable (MOR), must be reported to a mines inspector within 24 hours.

This variation between the WSH Regulation and the Mines Regulation may contribute to confusion for employers regarding their reporting responsibilities and create inconsistency in reporting amongst industries. Confusion could prevent WSH from being informed of an incident requiring investigation and result in inconsistent protections for workers.

The Review Committee agreed with the proposal to improve alignment between the WSH Regulation and the Mines Regulation by defining and using the term "serious incident" consistently in both regulations. The newly aligned definition of serious incident would be:

- loss of life to a person or an injury to a person that may reasonably be expected to cause or contribute to the person's loss of life (expanded in WSH Regulation to align with Mines Regulation)
- fractured bone (see below)
- amputation (expanded to include any amputation)
- full thickness burn (modernize language and exclude second degree)
- permanent or temporary loss of sight (see below)
- internal hemorrhage (new for WSH Regulation)
- injury as a result of electrical contact (no change)
- unconsciousness due to injury or exposure (expanded to include exposure as a cause of unconsciousness)
- a cut or laceration (new for Mines Regulation; see below)
- asphyxiation, poisoning or total loss of bodily control ("total loss of bodily control" new for WSH Regulation)
- failure of an atmosphere supplying respirator resulting in risk of overexposure (clarify reporting expectations)
- fire or flood if it results in injury to a worker or causes serious damage to a structure or equipment (clarify expectations for fire or flood)

- an injury caused directly or indirectly by an explosive (new for WSH Regulation)
- uncontrolled, premature or unplanned explosion (updated for WSH Regulation; moves from MOR in Mines Regulation)
- unusual gaseous condition, uncontrolled spill, or escape of a hazardous substance (aligns provisions - new gaseous condition for WSH Reg, and add spill or escape for Mines Regulation)
- structural collapse, failure or tipping of a crane, heavy equipment, building, structure, hoist, lift, temporary support system or excavation (add equipment tip-over; crane incidents move from MOR in Mines Regulation)
- any other injury likely to cause permanent injury (new for WSH Regulation).

As noted above, the Review Committee discussed the definitions of cuts and lacerations, fractures, and loss of sight:

1) Cuts and lacerations would be defined as a significant laceration that requires or had the potential to require medical attention beyond first aid. This definition would include walk-in clinics and nursing stations. Several members of the Committee noted that “substantial loss of blood” is not good criteria for determining whether a cut or laceration is reportable to WSH.
2) Fractures would be defined as a crush injury or fracture, excluding a fracture of a finger or toe. However, the fracture of multiple fingers or toes would be reportable.
3) Loss of sight would be intended to include an incident that caused actual damage to the eye, rather than irritation to the eye, i.e. an injury that did or was likely to cause permanent loss of sight. The Review Committee recommended that WSH consult with the Chief Occupational Medical Officer (COMO) for assistance in accurate terminology.

In addition, the Review Committee recommended adding a definition of “dangerous occurrence” to the Mines Regulation consistent with its use in clause 2.9(1)(b) of the WSH Regulation, i.e. an injury to a person that results in the person requiring medical treatment.

The Review Committee also recommended adding a definition of “near miss” to the WSH Regulation (see subclause 2.9(1)(b)(ii) of the WSH Regulation which refers to occurrences that had the potential to cause a serious incident) and removing the term “accident” from clause 2.9(1)(b) of the WSH Regulation. To reflect this change in terminology, the term “accident” would be removed from the WSH Act and the WSH Regulation and replaced with “incident”.

14. Streamline Documentation Required to be Proactively Provided by Employer

The Mines Regulation mandates mining employers to provide select safe work procedures (SWP) to a mines inspector when they are developed. Examples include SWPs for the care and use of explosives, revised SWPs for any new types of explosives or blasting systems, and SWPs for the operation and use of remote-controlled equipment.

However, WSH does not approve the procedures prior to work commencing and no other industry is required to submit SWP proactively.

The Review Committee agreed with the proposal to remove the requirement for mining employers to send SWP proactively. This would foster consistency between the Mines Regulation and WSH Regulation and minimize administrative burden.

Nonetheless, mining employers would still be required to develop and implement the SWP, ensure workers are competently trained in the SWP, and monitor to ensure that the procedures are followed. Furthermore, employers would still be required to make the SWP available to a mines inspector if requested, consistent with the approach used for all other industries.

15. Notifications to Mines Inspectors

Under the Mines Regulation, mining employers are required to provide several reports directly to a mines inspector proactively or at regular intervals. Examples include design plans for mines, monitoring and routine testing results, monthly staffing information and first aid reports.

The Review Committee agreed with the proposal for proactive, routine reporting to be sent to WSH, rather than directly to individual inspectors. This will streamline reporting, ensure continuity of service, and facilitate the efficient flow of information.

WSH advised that a central email will be used for receiving these reports and an intake officer will vet and forward all documentation to the appropriate parties at WSH. By having a single intake for submitting proactive reports, mining employers will no longer have to keep track of individual inspectors' schedules and backup arrangements, nor will information be left unattended if sent during an inspector's absence.

16. Obligations of Owners of Rental Properties Regarding Asbestos

The WSH Regulation requires an employer to ensure that the abatement or removal of asbestos-containing material (ACM) is done in a manner that does not create a risk to the safety or health of any person.

The WSH Regulation also prohibits employers from allowing friable ACM to be applied in any workplace location, spraying asbestos or ACM at a workplace or bringing crocidolite asbestos or material containing crocidolite asbestos into a workplace. Furthermore, the employer must not authorize the use of pressure spraying equipment to remove ACM, compressed air to clean ACM, or dry sweeping or dry mopping of ACM. The Review Committee recommended amending the current provisions to apply not only to an employer but also to an owner. The current definition of "owner" includes a person who acts for or on behalf of an owner as an agent or delegate and would therefore include a property management company. The result would be to align duties for owners with duties for employers as it relates to asbestos.

17. Pole Climbing

Pole climbing is generally performed by arborists or utility workers. As the poles are generally higher than three metres, fall protection is required under the WSH Regulation. When the use of a guardrail system is not reasonably practicable or would not be effective, the WSH Regulation requires an employer to ensure that the worker is protected by a travel restraint system, a fall arrest system, a safety net, or another fall protection system approved by the Director of WSH.

Currently, the Director approves another fall protection system to allow workers to perform pole climbing safely. Employers have submitted numerous applications for exemptions to allow workers to undertake such pole climbing work. In approving an exemption, the Director has imposed terms and conditions relating to training, SWP, pole climbing equipment, and pole integrity assessments.

The Review Committee recommended that the WSH Regulation be amended to allow for pole climbing in certain circumstances. As the Director already grants exemptions to allow this at present, including the Director's criteria in the WSH Regulation would provide clarity for the public as to WSH's expectations.

Furthermore, the Review Committee noted that an employer may still apply for an exemption by providing an explanation as to why they are unable to meet the regulatory requirement and proposing an alternative solution that meets or exceeds the regulatory requirement.

18. Off Road Vehicles Protective Headwear

The WSH Regulation requires an employer to ensure that a worker who is required or permitted to travel in or on an off-road vehicle as defined by *The Off-Road Vehicles Act* is provided with protective headwear, including, where required, a liner, cold weather face guard and an eye protector for working in cold conditions.

In addition, *The Off-Road Vehicles Regulation,* administered by Manitoba Transportation and Infrastructure, outlines the specific helmet requirements when operating off-road vehicles in Manitoba.

However, while the WSH Regulation requires a protective helmet to be used any time a worker is working, *The Off-Road Vehicles Act* exempts helmets on off-road vehicles being used in the course of farming, commercial fishing, hunting or trapping operations.

The Review Committee recommended the reference in the WSH Regulation be amended from “protective headwear” to “safety helmet” to align with *The Off-Road Vehicles Regulation*.

Furthermore, the Review Committee proposed aligning *The Off-Road Vehicles Regulation* with the WSH Regulation, such that safety helmets are required any time a worker is performing work in an activity otherwise excluded by *The Off-Road Vehicles Regulation*. For example, a worker working in farming, which would otherwise not require a helmet under *The Off-Road Vehicles Regulation*, would require a helmet under the newly aligned provisions. The Review Committee noted that this would require working with Manitoba Transportation and Infrastructure to amend both the WSH Regulation and *The Off-Road Vehicles Regulation*.

PUBLIC SUBMISSIONS

<u>Consensus Review Committee Recommendations – Act Amendments</u>

19. Re-establish the Minister's Advisory Council on Workplace Safety and Health (Advisory Council)

The former Advisory Council was eliminated in 2018. Among other things, it used to be charged with undertaking the five-year legislative review. At the time this item was reviewed with the Review Committee, the Act required the five-year review to be conducted by the Minster and mandated that workers and employers be consulted in the process.

The submissions stated that since the Advisory Council’s elimination, consultation with labour and employers on existing or proposed amendments had been limited, and there had been no meaningful engagement on emerging priorities, such as psychological health in the workplace and pandemic response. A re-established Advisory Council would bring together labour, employers, and technical experts to provide advice to the Minister on occupational health and safety issues.

The Review Committee agreed with the proposal to re-establish the Advisory Council, with meetings held annually at minimum, to provide feedback on the administration of the Act (ex. enforcement strategies, processes) and to be consulted during legislative reviews.

In March 2024, the Government introduced Bill 17, *The Workplace Safety and Health Amendment Act* to re-establish the Advisory Council. The legislation came into effect in June 2024.

20. Mandatory Legislative Review Cycle

At the time this item was discussed with the Review Committee, the Act required the Minister to undertake a review of the Act, at least once every five years, that included consultations with representatives of employers and workers. The Minister determined the scope and set the mandate for the review.

Although not explicitly set out in the legislation, the Review Committee noted that the Act and its associated regulations can be reviewed and/or amended at any additional time within the five-year timeframe. The Review Committee agreed with the proposal for a mandatory five-year review cycle of the Act, its regulations, and administration.

As noted above, Bill 17 introduced in March 2024 proposed amendments to the Act related to Advisory Council. Bill 17, which came into effect in June 2024, also established a five-year review cycle for the Act and its administration.

21. Gender Neutral Language

The Act and its regulations utilize terms such as “he”, “she” and “each sex”. The proposal received recommended improving inclusivity within WSH legislation by using "their/they/oneself" instead.

> In March 2024, Bill 11, *The Statutes and Regulations Amendment and Interpretation Amendment Act* was introduced to provide regulation-making and revision powers to achieve a gender-neutral style in Manitoba’s legislation. In June 2024, it received Royal Assent.
>
> Bill 11 states that the chief legislative counsel may revise language and grammar in legislation to replace the exclusive use of masculine or feminine nouns and pronouns or binary pronouns with equivalent gender-neutral nouns and pronouns. Furthermore, it added that the revision power may be exercised only when it will not affect the substance or meaning of the legislation.

The Review Committee acknowledged and agreed with Bill 11 to ensure gender-neutral language in Manitoba’s legislation. They recommended using terms such as "worker" and "employer" instead of "he/she" where possible, with one member noting that the use of the term “they” in legislation may cause confusion.

22. Three-Year Timeframe for Repeat Offence APs

Under the Act, the Director of WSH may issue an AP for non-compliance with certain provisions of WSH legislation. In exercising the discretion to issue an AP for a repeat offence, the Director considers several factors including the time interval between contraventions of workplace safety and health legislation, the type of contravention, as well as the frequency of contraventions.

If an AP is issued, the fine amount is set by regulation, ranging from $1,000 to $5,000. The amount of an AP increases for second and subsequent offences, with no specific timeframe mentioned between the time of the first offence and the second or subsequent. As such, any subsequent AP is considered a repeat offence and is subject to higher fine amounts regardless of the amount of time that passed.

The Review Committee recommended a three-year timeframe for determining a repeat offence AP, i.e. an AP would be deemed to be a first AP if three years or more had passed since the previous AP was issued. In such a circumstance, the AP would be issued for the lower penalty amount of a first AP rather than the higher amount of a second or subsequent AP.

23. Safety and Health Committee/ Representative Documents

Under the WSH Regulation, employers are required to provide documents addressed to the committee or to committee members as soon as reasonably practicable but no later than seven days after the information or document is received.

Employers are also to provide a bulletin board for the use of committee members or the representative. Among other items, any improvement order, report, or other documentation issued by an officer must be posted on the bulletin board.

Additionally, the Act requires a safety and health officer to provide a copy of every improvement order to the workplace safety and health committee or the worker safety and health representative, or, if there is no committee or representative, to post the order in the workplace. The Review Committee noted that this requirement may be administratively burdensome and duplicative. Employers are already required to provide copies of compliance reports to the workplace safety and health committee or worker safety and health representative, or post the report in the workplace if there is no committee or representative. Although often done by policy or practice currently, amending the legislation to require an employer, rather than a safety and health officer, to provide copies of improvement orders and stop work orders to the workplace safety and health committee / worker safety and health representative or post in the workplace, would improve clarity.

24. Posting Improvement Orders and Stop Work Orders

Under the WSH Regulation, documents issued by safety and health officers or the Director of WSH are required to be posted on the committee/representative bulletin board. However, there is no timeframe for the documents to remain posted in the workplace.

A submission was received that WSH communication remain posted by the employer for seven days or until compliance with an order is achieved, whichever is longer, so as to ensure adequate time for sharing the information with the committee/representative. Another submission recommended that Improvement Orders relating to committees or representatives remain posted for 12 months.

The Review Committee recommended that Improvement Orders and Stop Work Orders remain posted by the employer until compliance is achieved.

25. Seasonal Workplace

Under the Act, an employer is required to establish a workplace safety and health committee for a seasonal workplace, where at least 20 of the employer's workers are involved, or are expected to be involved, in work and the work is expected to continue for at least 90 days.

The Review Committee suggested the term "seasonal" could be misinterpreted. This is because some employers may assign additional workers not due to calendar seasons but due to factors such as particular work orders or increased work volume.

As such, the Review Committee recommended replacing the word "seasonal" with "temporary". The intent is that a workplace safety and health committee is required at a temporary workplace that has at least 20 workers for at least 90 days. However, the time period of 90 days is unrelated to the calendar season.

26. Psychological Health and Safety

The Act does not include a definition of psychological health. However, it defines "health" as the condition of being sound in body, mind and spirit, and states that this definition shall be interpreted in accordance with the objects and purposes of the Act.

The Act notes that its objects and purposes are to protect workers and other persons from risks to their safety and health arising out of, or in connection with, activities in workplaces. Furthermore, it specifies several objectives including:

- "the promotion and maintenance of the highest degree of physical, mental and social well-being of workers
- the prevention among workers of ill health caused by their working conditions

- the protection of workers in their employment from factors promoting ill health, and,
- the placing and maintenance of workers in an occupational environment adapted to their physiological and psychological condition."

The Review Committee recommended adding a definition of "psychological health" to be drawn from the Canadian Standards Association (CSA) standard on Psychological Health and Safety in the Workplace. This would contribute to developing effective measures and resources to address the risks of psychological injuries in the workplace and foster environments that protect the mental health of workers across different sectors.

For regulatory recommendations, see #31 below.

27. Medical Surveillance

Medical examinations and health surveillance programs may provide for early identification of illness and facilitate timely interventions to protect health.

Under the Act, the COMO has the authority to carry out or arrange for another qualified person to conduct medical examinations or health surveillance of workers. The COMO can compel workers' medical information from physicians and hospitals if the worker is undergoing surveillance or has become ill/injured. However, the COMO has no authority under the Act to order employers to implement medical examinations or surveillance programs themselves.

The Mines Regulation requires all mining operations to have medical surveillance programs in place, including pre-placement examinations, and routine monitoring as determined by a physician. The COMO can also order more frequent testing if a worker is exposed to a hazardous substance at a mine.

The Review Committee recommended a legislative amendment to expand medical surveillance programs outside the mining industry.

The Review Committee then discussed whether the expansion of medical surveillance would apply broadly to specific industries which may have an increased risk of exposure to certain hazardous substances, or if the COMO would identify which individual workplaces require a medical surveillance program.

The Review Committee recommended the second option, i.e. that the COMO be authorized to order an employer to implement a medical surveillance program on an ad hoc basis, if the COMO had reasonable cause to believe that workers are being over-exposed to a hazardous substance. Specific substances would not be listed in legislation. As well, this process would be accompanied by an appeal procedure to

ensure that if a worker or an employer disagreed with the COMO's order, they could appeal to the Director of WSH.

Lastly, medical information provided to the employer would align with *The Personal Health Information Act* and be limited to the minimum amount necessary to control any overexposure. For example, a summary of information may be used, rather than providing access to a worker's medical file.

28. Competent Risk Assessment

The Act mandates every employer to ensure the safety, health and welfare of all their workers in the workplace. The WSH Regulation requires them to ensure that regular inspections of the workplace, work processes and procedures are conducted to identify any risk to the safety or health of any person at the workplace. If a risk is identified, the employer must correct the unsafe condition as soon as is reasonably practicable and, in the interim, take immediate steps to protect the safety and health of any person who may be at risk.

The WSH Regulation also mandates the employer to eliminate the risk to the safety or health of a worker, if reasonably practicable, through the design of the workplace, the design of the work process, or the use of engineering controls.

This discussion arose in the context of confined spaces. The WSH Regulation sets out requirements for a risk assessment before permitting workers to enter or work in a confined space or hazardous confined space. The control measures implemented for the confined space are determined by the hazards and risks identified during the assessment.

A labour member of the Review Committee noted that what is safe for one person may not be safe for another person; therefore, conducting risk assessments for each individual is crucial. The Review Committee noted the importance of ensuring that risk assessments are done well, by an individual competent in the subject matter to ensure all relevant environmental and individual factors are considered, including a worker's known medical conditions, as appropriate.

Though initially focused on confined space, the discussion expanded to acknowledge the importance of risk assessment in addressing hazards to workers more generally. Many sections require risk assessment to be done in order to inform control measures, some of which explicitly require assessors to be competent, while other do not.

After deliberation, the Review Committee recommended a new provision in the Act specifying that whenever a risk assessment is required in any context within the regulations, it must be conducted by a competent person. The Review Committee suggested using the definition of "competent" currently in the WSH Regulation as "possessing knowledge, experience and training to perform a specific duty". The intent

is to ensure that potential hazards are effectively identified so they can be mitigated to prevent workplace illnesses, injuries and fatalities.

Consensus Review Committee Recommendations – Regulatory Amendments

29. Harassment - Advise Worker to Seek Support Services

Under the WSH Regulation, employers are mandated to develop and implement a written harassment prevention policy and ensure workers comply with it. As applicable, the workplace safety and health committee/ worker safety and health representative/ workers must be consulted when developing the policy, and the policy must be accessible to workers at the workplace.

While Manitoba's harassment prevention legislation does not include any provision to advise affected workers to seek support services, its violence prevention legislation requires a violence prevention policy to include a recommendation that an affected worker is advised to consult with their healthcare provider. Such time is not explicitly considered paid time and would be subject to the employer's medical leave policies or collective agreements.

The Review Committee recommended a similar requirement be added to the mandated content of all harassment prevention policies. In doing so, employers would be required to advise workers who believe they have been harmed by harassment to consult with their healthcare provider, leaving it up to the worker to determine whether and who to consult with.

30. Harassment - Definition

The WSH Regulation defines harassment as objectionable conduct that creates a risk to the health of a worker; or severe conduct that adversely affects a worker's psychological or physical well-being. It offers further guidance on the interpretation of harassment in section 1.1.1, with explanation provided for the terms "objectionable" and "severe".

According to the WSH Regulation, conduct includes a written or verbal comment, a physical act or gesture or a display, or any combination of them. It specifies that conduct is considered objectionable if it is based on race, creed, religion, colour, sex, sexual orientation, gender-determined characteristics, marital status, family status, source of income, political belief, political association, political activity, disability, physical size or weight, age, nationality, ancestry or place of origin.

Additionally, the WSH Regulation notes that a conduct is considered severe if it could reasonably cause a worker to be humiliated or intimidated and is repeated, or in the case of a single occurrence, has a lasting, harmful effect on a worker.

Reasonable conduct of an employer or supervisor in respect of the management and direction of workers or the workplace is not harassment.

The Review Committee recommended merging section 1.1.1 of the WSH Regulation relating to the interpretation of “harassment” with the definition of harassment so as to create one single item. The Review Committee noted that if this is not possible, then public education material is recommended.

31. Psychological Health and Safety

The Review Committee noted the importance of addressing psychological safety in the workplace, noting that injuries of this nature are increasing and can be complex. The members acknowledged general expectations exist within the current scope of the Act, but felt employers may be unsure what to do and reluctant to implement measures without explicit requirements to guide interventions. The members noted that without effective prevention, psychological injuries may continue to grow, resulting in significant impact to workers, as well as increased social and financial costs.

To create a regulatory approach for psychological health and safety, the Review Committee recommended combining existing approaches used to address violence prevention and musculoskeletal injuries (MSI) in the workplace.

The existing provisions for violence prevention mandate specified, high-risk sectors to establish a policy, while all other workplaces must conduct a risk assessment to determine if a policy is required. A similar approach for psychological safety would require specific high-risk sectors to have a psychological safety policy. Specified sectors may include emergency response, such as police, paramedics, firefighters and crisis counselling/interventions, as well as other high-risk sectors, such as corrections, social work, healthcare, public transportation and education. As with violence prevention, all other workplaces would be required to conduct a risk assessment to determine if a policy is required.

Furthermore, the existing provisions for MSI mandate that if an employer is aware or ought to be aware of a MSI risk, they must ensure that the risk is assessed by a competent person, train workers in the signs and symptoms of injury, implement control measures and monitor for effectiveness. The Review Committee felt a similar approach could be taken for psychological safety, as it outlines concrete steps, but leaves room for controls suited to the workplace and its risks.

The Review Committee also proposed developing additional public education material and tools, noting this material would be essential to supporting compliance efforts. The Review Committee recommended additional consultation with mental health professionals on the development of practical risk assessment tools, resources and training, that encompass the factors that impact psychological safety in the workplace.

Finally, the Committee recommended additional consultation with mental health professionals prior to undertaking regulatory amendments.

32. Fatigue Impairment

The Review Committee discussed the submission to acknowledge the role of fatigue impairment in contributing to workplace injuries. They discussed the various sources and factors of fatigue and considered whether fatigue impairment would be regarded as a workplace safety and health concern if it stemmed directly from work activities, excessive work hours or factors outside of work and the workplace.

The Review Committee acknowledged that fatigue impairment was a complex and multi-faceted issue. The Committee noted that fatigue could arise from factors outside the workplace that the employer has no direct control over, including workers' personal circumstances, multiple jobs, etc. If an employer believed that a worker was impaired due to fatigue, and that the worker's fatigue posed a risk, the employer could send the worker home; however, the worker may or may not be entitled to pay, depending on the reason for the impairment and employer policies, collective bargaining agreements, etc.

One worker member emphasized the need for an employer to have conversations with workers to determine if they are able to continue working after working an extended period. However, an employer member stated that it may not be feasible for an employer with many workers to have conversations with each one of them. As such, it should be the worker's responsibility to come forward and inform management regarding their fatigue. Labour members noted that employers are responsible to set and monitor working hours, while workers do not determine or approve their hours of work.

The Review Committee noted that SAFE Work Manitoba (SWMB) has a course on impairment which includes a segment on fatigue.

The Review Committee recommended that fatigue impairment be added to existing prohibitions related to alcohol and drug impairment in the WSH Regulation and the Mines Regulation which obligates both the employer and the worker to ensure no work is performed that would be unsafe to perform while impaired.

33. Hot Water on Construction Sites

The WSH Regulation requires employers to ensure a washbasin is located near each toilet in a workplace and has a supply of clean hot and cold water, soap and individual disposable clean towels or other suitable means of cleaning and drying hands. Additionally, they must ensure that the washbasin is kept clean, sanitary and operational.

However, there is an exemption for construction project sites. According to the current regulation, if it is not reasonably practicable to provide washbasins at a construction project site, an employer and prime contractor must ensure that alternative adequate washing facilities are provided, such as waterless hand cleaners, hand sanitizers, clean water, soap and towels or other suitable facilities.

The Review Committee recommended a new requirement that hot water for handwashing be provided at certain large construction project sites, namely industrial, commercial, and institutional buildings that are greater than 600 sq m or greater than three storeys in height, with more than 25 workers.

This would ensure that workers at all large construction sites have consistent access to hot water for handwashing. The Review Committee noted that this requirement would contribute to a more consistent tendering practice for employers, as all large construction project sites would be required to comply with the same standard.

The Review Committee further noted that, while this requirement is unlikely to present challenges for large construction projects, it may impose considerable pressure on small or transient projects.

In addition, in multiple-employer workplaces, which may involve several different parties, confusion may arise regarding the responsibility to ensure that workers have access to hot water for handwashing. As such, the Review Committee suggested adding provisions that in multiple-employer workplaces, the duties imposed on the employers with respect to washroom requirements also apply to the prime contractor for the workplace. This would recognize that on a multiple-employer construction site, a prime contractor may have more control over the infrastructure of the site or be in the best position to know how many workers will be on site and to coordinate or provide washroom facilities accordingly. However, each employer's obligations would still be maintained.

34. Menstrual Products in the Workplace

Federally regulated employers are mandated to provide free menstrual products in all toilet rooms within an employer-controlled workplace. The menstrual products must be provided to all workers who menstruate, regardless of gender. Where it may not be possible to have menstrual products available in all toilet rooms, an employer may choose an alternate location, provided the products remain easily accessible, and the location allows for discreet access. Furthermore, the employer is required to make sure that worker privacy is maintained, menstrual products are available during toilet room closures and instructions for the safe use of menstrual products are available.

The Review Committee discussed a submission to require provincially regulated employers to provide free menstrual products in the workplace. An employer member questioned whether access to menstrual products was a workplace safety and health

hazard, while another employer member suggested that ensuring accessibility to menstrual products and adequate facilities is a human right, and it would significantly support workers, particularly in the construction sector.

The Review Committee recommended that provincially regulated employers be required to provide free menstrual products in the workplace. The menstrual products must be provided in an area that is readily accessible to workers, with a reasonable degree of privacy.

35. Gender-Based Toilets

The WSH Regulation uses the terms “sex” and “gender” interchangeably to mandate requirements for the number of toilet facilities and washbasins for workers. The Review Committee discussed the current framework, which is built on “sex”, and noted that simply changing the terminology from “sex” to “gender” would mean that the prescribed number of toilet facilities and washbasins would be required for every gender, not just two sexes.

Worker, employer and technical Review Committee members agreed that the issue of gender-based washroom requirements in the workplace is fundamentally a human rights issue. They recognized that washroom access is part of a much larger conversation in a highly complex and evolving societal and cultural landscape.

The Review Committee recommended that the minimum toilet requirements in a workplace be based on the total number of workers at the workplace, rather than a number of toilets per sex or gender. The Review Committee noted that the workforce changes constantly over time, whereas building infrastructure is more static; therefore, an approach based on number of workers may be more inclusive and adaptable to change over time.

Furthermore, the Review Committee suggested implementing adequate measures to ensure privacy such as full-height partitions and the door to the toilet facility being lockable from the inside should washrooms become shared spaces, noting this approach is currently used in some workplaces. However, the Review Committee acknowledged changes that impact building infrastructure may conflict with local building code requirements, and further consultation with other agencies should be done to ensure a coordinated approach to address the issue.

Lastly, the Review Committee recommended the term “feminine hygiene disposal” be changed to a more inclusive term, suggesting “personal hygiene product disposal” or “menstrual product disposal” as alternatives for the WSH Regulation.

36. Asbestos Surveyors

Asbestos surveyors are workers who conduct asbestos surveys to identify materials known or likely to contain asbestos. A survey includes a walk-through inspection, sample collection, sample analysis, and the reporting and communication of results used to create an asbestos inventory or a hazardous materials inspection report.

The WSH Regulation mandates owners and employers to ensure that a person who is competent in identifying ACM prepares an inventory of the ACM in the workplace. Suspect materials are deemed as ACM, unless proven otherwise. The employer must also ensure that any abatement or removal of asbestos is done in a manner that does not create a risk to any person. In addition, the employer must ensure that all processes carried out in the workplace are done in such a manner as to prevent, to the extent possible, ACM from becoming airborne.

The Review Committee discussed the submission to include provisions on the licensing of asbestos surveyors. They made two recommendations: firstly that workers who collect samples of asbestos be mandated to take standardized training to obtain a valid certificate and secondly that a registry of service providers be made publicly available.

With respect to the first recommendation, currently, the Manitoba Safety and Health Training Standards Council (Training Standards Council) is in the process of developing an asbestos survey and sampling training standard in collaboration with SWMB.

The Review Committee discussed the importance of asbestos surveyors receiving adequate training so that they can effectively conduct thorough inspections to properly identify, locate, assess, and document any materials containing asbestos. The asbestos survey and development of an asbestos inventory by asbestos surveyors are vital in determining whether the materials pose a health risk and in guiding decisions for managing or removing them safely, including the implementation of appropriate safety measures such as the use of personal protective equipment (PPE) or containment protocols. However, if an asbestos survey and inventory are inadequate, ACM may remain undetected, increasing the risk that appropriate safety measures will not be used in any future abatement or removal. This is turn increases the risk of asbestos exposure, which can lead to severe health issues such as lung cancer, asbestosis, and mesothelioma.

In addition, the Review Committee discussed the possibility of a conflict of interest when the same company who does the abatement or demolition also completes the asbestos survey. Similarly, the possibility of an improper survey arises when a surveyor agrees to sample materials where ACM is not suspected and not sample materials where ACM is suspected. If the mandated training for asbestos surveyors allowed for the removal of a surveyor’s certificate, this would hold asbestos surveyors accountable for maintaining the standard or risk their certificate being deemed invalid. This accountability may curb misleading deals that attempt to evade compliance with the WSH Regulation.

The Review Committee also recommended that the employer would be responsible to ensure that the asbestos surveyor they engage to perform work has a valid training certificate.

To facilitate a smooth transition process, the Review Committee recommended that workers who have already received asbestos surveyor training prior to the introduction of the standardized training may be eligible to take a challenge examination to continue their work.

With respect to the second recommendation for a public registry of service providers, this would ensure that stakeholders and clients have access to qualified asbestos surveyors. Surveyors with the required competency to work in a manner that does not pose a risk to workers or the public would contribute to reducing asbestos-related incidents and health issues.

37. Asbestos Training

Under the WSH Regulation, employers must ensure that a worker who is or is likely to be exposed to an ACM, or to be employed in a process which may result in an ACM becoming airborne, is provided information, instruction, and training on the hazards of asbestos, the means of identifying ACM at the workplace, the use of PPE, and the purposes and significance of any health monitoring that the worker may be required to participate in. However, there is no mandatory training standard to ensure workers' expertise.

In 2023, SWMB released three voluntary asbestos training standards, developed by the Training Standards Council: Asbestos Awareness, Asbestos Exposure, and Asbestos Abatement.

The Review Committee discussed the recommendation to establish a mandatory training standard for asbestos remediation and abatement work. Upon deliberation, they recommended making the SWMB Asbestos Abatement standard mandatory. This asbestos abatement training program is intended for employers, supervisors, and workers who actively work with ACMs. The program is a 30-hour course, comprised of an 18-hour basic theory module and a 12-hour practical module, accompanied by an exam.

In general, the Review Committee favoured a two-year timeline for phasing in a new asbestos abatement training standard requirement in order to ensure sufficient time for trainers to become certified to the standard, and for workers to become trained.

The Review Committee also recommended current certificates for asbestos abatement training would be recognized until they expired; however, upon expiry, the worker would be required to be re-trained to the new standard. The Review Committee also

recommended discussions be had with the Workers Compensation Board and the Training Standards Council to ensure the training standards allow for an exam challenge. This could be used to transition existing, competent workers into the regime, and/or be used to facilitate certificate renewals in addition to refresher training.

38. Working at Heights Training

The WSH Regulation requires employers to not only develop and implement safe work procedures concerning fall protection, but also train workers in them. Employers are required to ensure that workers using a fall protection system are trained in its use and maintenance. However, the current legislation does not contain an explicit provision on mandatory training standards for working at heights or standardized fall protection training.

The Review Committee recommended the Working at Heights Training Standard, developed by the Training Standards Council and endorsed by SWMB, be mandated into law. This training standard requires a 6.5-hour training program, comprised of a 3-hour theoretical and a 3.5-hour practical component.

One employer member noted that while some workers undergo awareness training, it often falls short in providing the practical component necessary to effectively apply learning in practice, noting the SWMB standard for Working at Heights may address the gap.

39. Standardized Confined Space Training

Currently, in every workplace where a worker works in a confined space or a hazardous confined space, the WSH Regulation mandates employers to develop SWPs and train workers in the SWPs.

The SWPs must include procedures for recognizing risks associated with working in confined spaces and hazardous confined spaces; procedures for isolating pipes, lines and sources of energy from such spaces; as well as the safety and PPE that must be used. SWPs for hazardous confined spaces require additional procedures for communicating with a standby worker, an emergency response plan and rescue procedures, and information about the entry permit.

The Training Standards Council has developed a voluntary, 12-hour confined space training standard, endorsed by SWMB. The standard incorporates a 6-hour theoretical and a 6-hour practical component.

The Review Committee discussed a submission to standardize confined space training requirements for workers performing work in a confined space.

Upon deliberation, Review Committee recommended that mandatory standardized training be required for supervisors or others who perform the assessment to determine whether the space is a confined space or a hazardous confined space, as well as the risks and control measures. As noted previously in this report, assessment of a confined space is an important step for ensuring appropriate monitoring and controls are put in place to keep workers safe. The Review Committee noted that workers who work in the confined space would not necessarily have to complete the same standardized training as supervisors or confined space assessors, as it is the supervisors and/or assessors who would be required to develop the SWPs, monitoring and controls required.

40. Intervals for Standardized Training

As noted above, the Review Committee recommended mandating the SWMB training standards for asbestos abatement and for working at heights into law. Additionally, they recommended that mandatory standardized training be required for supervisors who assess whether a space is a confined space (restricted space) or a hazardous confined space.

The Review Committee discussed the interval at which standardized training would be required to be repeated or refreshed. The committee noted that although the standards currently set out training intervals of three years, the standards may change at any time, which would lead to enforcement and compliance challenges.

The Review Committee also considered the frequency of a worker using the training and developing practical competency to be able to perform tasks in the respective areas.

The Review Committee recommended that for standardized asbestos abatement training, confined space training, and working at heights training, the regulation mandate workers to obtain an initial training certificate, valid for 3 years.

Additionally, the Review Committee suggested that options for re-certification may include competency-based testing or refresher training or challenge exams, possibly in consultation with the Training Standards Council.

41. Confined Space

Under the WSH Regulation, a confined space and a hazardous confined space are defined separately. A confined space is defined as an enclosed or partially enclosed space that, except for the purpose of performing work, is not primarily designed or intended for human occupancy, and has restricted means of access or egress, for example a broom closet.

On the other hand, as the name implies, a hazardous confined space has a higher level of risk. A hazardous confined space is defined as a confined space that is or may

become hazardous to a worker who enters or is in the space due to the design, construction or atmosphere of the space; materials or substances in the space; the work activities or processes in the space; or any other conditions within or related to the space.

To promote clarity about the measures required in each category of confined space, the Review Committee recommended that the term “confined space” be repealed and replaced with “restricted space”. The two types of confined space would be “restricted space” and “hazardous confined space”.

42. Electrical Safety

Under the WSH Regulation, employers and owners are mandated to ensure that energized electrical equipment is suitably located and guarded so that it is not contacted by a worker. Furthermore, employers must ensure that a worker working near exposed, energized electrical equipment works in a manner that prevents them from contacting the equipment.

The Review Committee discussed a submission to clarify the provision regarding an employer’s responsibility to make sure that workers working near exposed, energized electrical equipment avoid contacting the equipment, as the term “contact” could be misinterpreted as physical contact only.

The Review Committee recommended clearer language in the WSH Regulation to address preventing energy from contacting a worker, not only a worker contacting energized equipment. Specifically, this relates to a worker coming within the area at risk of an arc flash where energy could contact the worker.

43. *Workplace Electrical Safety* - CSA Z462 Standard

Under the WSH Regulation, every workplace where electrical work is performed is required to conform to the requirements of *The Electricians’ Licence Act, The Manitoba Electrical Code*, and where applicable, the by-laws of the municipality.

The Review Committee discussed the recommendation for electrical work to also conform to the requirements of CSA Z462, *Workplace Electrical Safety*. CSA Z462 includes specific information on the selection, type and level of PPE used when working on energized electrical equipment, appropriate to the level of risk involved. In addition, the standard provides guidance when working on energized low voltage electrical equipment.

While the WSH Regulation does not cite CSA Z462, the Mines Regulation mandates that, where electrical equipment cannot be de-energized before electrical work is done, SWPs must be developed that include the use of safety equipment that meets the requirements of CSA Z462.

Upon deliberation, the Review Committee recommended aligning the WSH Regulation with the existing provision in the Mines Regulation to ensure clear, consistent selection of safety equipment for working on electrical equipment.

44. Fire Extinguisher on power mobile equipment (PME)

Under the WSH Regulation, an employer and a supplier are required to ensure that PME is equipped with a portable fire extinguisher that meets the applicable requirements for extinguishers in the *Manitoba Fire Code*.

The Review Committee discussed the submission to amend the current provision to ensure that fire extinguishers are available near the area at the workplace where a hazard has been identified, rather than on the PME itself as some PME may not be designed to support a fire extinguisher.

The Review Committee considered the definition of PME in the WSH Regulation, which is a self-propelled machine or combination of machines, including a prime mover or a vehicle used to manipulate or move material, move workers, or provide a powered aerial device for workers. According to the current definition, a wide range of vehicles, including passenger vehicles used for work, would be considered PME.

The Review Committee also discussed *The Highway Traffic Act* which requires fire extinguishers on all commercial vehicles or passenger transportation vehicles with a Gross Vehicle Weight Rating of 4,500 kg or more.

The Review Committee discussed questions that frequently arise in determining when a passenger vehicle requires a fire extinguisher, for example, driving a work vehicle on personal time. Other scenarios involved the requirement for fire extinguishers on PME operated at large workplaces with multiple fire extinguishers located throughout the workplace.

After deliberation, the Review Committee recommended rewording the current provision to reference the current *The Highway Traffic Act* requirement. For PME not covered by *The Highway Traffic Act*, the Review Committee recommended an employer and a supplier be required to conduct a risk assessment to determine the need for a fire extinguisher.

45. Shock Absorber

The Review Committee discussed the submission to eliminate the term “shock absorber” and replace it with “energy absorber”.

The WSH Regulation references the term “shock absorber” six times.

In 2005, the CSA Standard for shock absorbers, as it was previously titled, was changed to Energy absorbers. CSA stated in the standard that the term “energy absorber” has replaced “shock absorber” to better describe the function of the device. The CSA Z259.11 standard is titled *Energy Absorbers and Lanyards*.

The Review Committee agreed with the submission to eliminate the term “shock absorber” and replace with the current term “energy absorber” to ensure alignment with modern language.

46. Scaffold Tagging

Scaffold tagging is a commonly used mechanism for showing the status of a scaffold, and allows both employers and workers to communicate at a glance whether the scaffold is safe for use or not. Much like traffic lights, scaffold tags are commonly colour-coded, with a green tag indicating safe for use, yellow indicating safe for use for but modifications have been made that workers must be aware of, and red indicating not safe for use. The use of a symbol or colour-coded tag can be an effective tool for sharing information quickly and consistently.

Under the WSH Regulation, a competent person is required to supervise, inspect and ensure components found to be defective are repaired or replaced on a scaffold system. The Review Committee noted that most jurisdictions require either a qualified or competent person to supervise and inspect to ensure the scaffold system is safe for use.

The Review Committee discussed a submission proposing to add scaffold tagging to the WSH Regulation as a mandated communication tool. In particular, the Review Committee discussed the use of scaffold for scaffolds that must already be designed by a professional engineer under the WSH Regulation because of their height and/or complexity. These include scaffolds over 7.5 m or 10 m in height, depending on other criteria. For these scaffolds, Review Committee recommended a mandated requirement for scaffold tagging.

47. Tag-Out

Under the WSH Regulation, “tag-out” is defined as the placement of a tag on a machine, tool or piece of equipment that states that workers are not to start or operate the machine, tool or piece of equipment.

The Review Committee discussed the submission to remove the definition of tag-out as it is no longer used in any part of the regulation.

The 2016 edition of the WSH Regulation allowed continued use of tag-out systems under section 16.18. However, during the last review, that section was removed, but the definition of “tag-out” was inadvertently missed. This has led to a misnomer

as the definition is no longer used in any section of the legislation.

The Review Committee recommended that the definition of “tag-out” be repealed from the WSH Regulation.

Non-Consensus Review Committee Recommendations – Regulatory Amendments

48. Record of Discussions Between Worker Representative and Employer

Employers are required to meet with worker safety and health representatives quarterly in workplaces with between 5 and 19 workers. While the meeting agenda must be posted on the safety and health bulletin board in the workplace, there is no obligation for minutes to be recorded or posted for meetings between worker representatives and employers.

While some members of the Review Committee proposed maintaining some form of documentation to record discussion and decisions made, others suggested that posting the agenda or having a summary with a list of action items was sufficient.

An employer member expressed concerns regarding the potential burden this may pose on small companies, while a worker representative emphasized the significance of records regardless of the size of the companies. Furthermore, a worker member suggested developing guidelines outlining document management expectations for employers of different sizes.

The Review Committee did not reach consensus on whether a record of discussions between the worker representative and the employer was required.

49. Occupational Exposure Limits (OELs)

An OEL is the maximum amount of a hazardous substance to which workers can be exposed.

Prior to 2019, OELs were automatically adopted into regulation based on the threshold limit value (TLV) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH), an independent organization made up of researchers with expertise in the area of occupational exposures. The recommended changes would be immediately and automatically adopted the same day they were published which contributed to enforcement and compliance challenges.

In 2019, a new provision was added to the WSH Regulation requiring the Director of WSH to seek input, at minimum, every three years on OELs. While a call for input was made in January 2023, targeting technical health and hygiene representatives exclusively, no feedback for specific chemicals was received.

The Review Committee discussed the process for reviewing and establishing OELs, however, were unable to reach consensus.

Upon deliberation, three employer members and one technical member recommended maintaining the status quo such that the Director of WSH issues a call for input every three years. If no stakeholder input is received, it is recommended WSH be responsible for undertaking the technical review to determine whether changes should be made. It was noted this this approach allows flexibility to partner with other agencies and align with other jurisdictions who may be reviewing similar exposures to ensure consistency and leverage expertise.

All four labour members originally recommended a return to immediate and automatic adoption of ACGIH recommendations. However, as a compromise, all four labour members plus one technical member recommended that OELs from the ACGIH be automatically adopted after a two-year time interval, unless specifically exempted from adoption. It was noted that this approach would provide stakeholders the opportunity to communicate and share feedback if they had concerns about specific chemicals. As such, it may prompt specific targeted feedback from the community if a new OEL were introduced, as opposed to a more general call for input. Furthermore, the automatic adoption after a certain time would allow for communication and transition periods in advance of OEL changes.

APPENDIX A

LIST OF ABBREVIATIONS

ACGIH	American Conference of Governmental Industrial Hygienists
ACM	Asbestos-containing material
AP	Administrative Penalty
Act	*The Workplace Safety and Health Act*
Advisory Council	Minister's Advisory Council on Workplace Safety and Health
COMO	Chief Occupational Medical Officer
CSA	Canadian Standards Association
MLB	Manitoba Labour Board
MOR	Mines Other Reportable
MSI	Musculoskeletal injuries
Mines Regulation	*Operation of Mines Regulation*
OEL	Occupational Exposure Limit
PME	Powered mobile equipment
PPE	Personal protective equipment
Review Committee	Workplace Safety and Health Act Review Committee
SCC	Supreme Court of Canada
SWMB	SAFE Work Manitoba
SWP	Safe work procedure
TLV	Threshold Limit Value
Training Standards Council	Manitoba Safety and Health Training Standards Council
WSH	Workplace Safety and Health
WSH Regulation	*Workplace Safety and Health Regulation*