

Modernization and Amalgamation of
the *Workers' Compensation Act* and the
Occupational Health and Safety Act



What we heard



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From the Board of Directors

Workplace health and safety, and workers' compensation are community issues and this report is a summary of the input from a broad range of Yukon citizens, governments and organizations into our review of the *Workers' Compensation Act* and *Occupational Health and Safety Act* on behalf of the Government of Yukon. With that in mind, we want to begin this report with a simple statement: Thank you. Participation in the public engagement that led to this report was inspiring. It demonstrated that we have the support of the community as we work to modernize this legislation and to empower Yukon's workers and employers by bringing our laws and systems more in line with other parts of Canada.

The concept of an "historic compromise," is a founding principle of our systems and it was in this spirit that we carried out the public engagement. Not everyone who participated agreed on all issues. That was not surprising. However, because our history is based on the balance of worker and employer interests, we were able in many cases to identify a middle ground. This was critical to our success. Yukon's economy benefits from businesses that are able to flourish with workforces that are safe and healthy.

The public engagement focused on issues that will bring us into the 21st century and drive us into the future. With the community, we explored how to make the workers' compensation and health and safety systems more transparent, easier to participate in and more accountable. The feedback summarized in this report came from people in all walks of life. It will be used by the Government of Yukon as it considers the best path for delivering new legislation to Yukoners that empowers workers to be safer and healthier, better supported in the unfortunate case they are injured, and enables employers to make their workplaces more successful.

Board of Directors
Yukon Workers' Compensation Health and Safety Board

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Vicki Hancock, Alternate Chair
Heather McIntyre, Representative of Employers
Lisa Martin, Representative of Employers
Christie Harper, Representative of Workers
Keith Ellert, Representative of Workers
Kurt Dieckmann, President/CEO



Summary

Principles

While the public engagement explored a variety of specific policy issues for the new legislation, through listening to people we discovered recurring broad themes. We collected these as principles that could be applied as new legislation is developed.

- Take a comprehensive approach to mental health.
- Be clear, simple and accessible.
- Reflect and accommodate the diversity of Yukon workplaces and workers.
- Accommodate and engage the community.

Implementation

Other recurring themes we heard had to do with how participants would like to see new legislation implemented. We summarized these as a set of recommendations from stakeholders and the public.

- Increase communication, education and training.
- Improve services.
- Take a positive approach.
- Leverage partnerships and community resources.
- Review the regulations.

Issues and input

Of course, the public engagement primarily dealt with details of how we can improve legislation. We grouped the issues and feedback under the following headings:

- Appeals
- Assessments
- Occupational health and safety
- Compensation
- Compliance and enforcement

More information

You can find details of what we heard about specific policy issues under each heading in this report. You can find the details of many of the original policy issue proposals on the Yukon Workers' Compensation Health and Safety Board (YWCHSB) website at wcb.yk.ca/actsreview.



Background

The activities and responsibilities of YWCHSB are governed by two pieces of legislation: the *Workers' Compensation Act* and the *Occupational Health and Safety Act*. The Government of Yukon is undertaking a full review and proposing to modernize both acts and bring them into step with 21st century workplace practices, the needs of Yukon employers and workers, and the ever-evolving global economy.

The ultimate goal of modernizing the legislation is to enhance worker safety while, at the same time, exploring ways to reduce workplace incidents and injuries, increase the efficiency of claim administration, reduce red tape and delays, and maintain a solvent Compensation Fund.

The *Workers' Compensation Act* governs YWCHSB's business, compensation and return-to-work efforts, while the *Occupational Health and Safety Act* provides for the "prevention" system to help everyone in the workplace stay healthy and safe. Together, the two acts identify the legal requirements and expectations for workplace safety and for compensation for injured workers.

On behalf of the Government of Yukon, YWCHSB carried out a public engagement in late 2019 and early 2020 to hear from stakeholders and the public about the acts. This report presents what we heard and summarizes feedback received from stakeholders and other members of the public during the public engagement.

The public engagement was, strictly speaking, about modernizing the legislation that governs YWCHSB. However, we quickly realized that people wanted to share thoughts and ideas on much more. Some of what we heard does not relate to legislation. Some indicated a misunderstanding of the legislation or of YWCHSB in general. Regardless, it is all included here.

This unabridged summary of what we heard will help us not only to modernize legislation, but also to inform YWCHSB's efforts to improve public understanding and awareness of its existing services, programs and processes in general. As such, this report is not about what will be done. It is not a commitment. It is a representation of the voice of the community.



Engagement process

Purpose

The purpose of this public engagement was to understand the views of stakeholders and members of the public about a range of policy issues relating to the two pieces of legislation that govern YWCHSB: the *Workers' Compensation Act* and the *Occupational Health and Safety Act*.

Through the engagement, our goal was to enable ways for stakeholders and members of the public to contribute to the development of legislation that meets the needs of Yukon's workers and employers now and into the future.

Engagement methods and participation

We offered a variety of ways for stakeholders and members of the public to participate and provide input.

- An External Advisory Group (EAG)
- Public open houses
- Written submissions
- Online surveys
- One-on-one meetings

Members of the EAG were invited from over 60 organizations including governments, agencies and other stakeholder groups representing the broad interests of workers and employers. We held facilitated discussions on key policy issues.

For more details about the engagement process, please turn to the Appendix.

Analysis

Following the close of the public engagement we thoroughly reviewed and analyzed all input that we received. This included the comments from the EAG and public open houses, written submissions, one-on-one meetings, and the data and comments collected through the online surveys. This analysis enabled us to measure the level of support for the various proposed policy issues and summarize feedback received from event participants, through written submissions and from the online surveys.

The results of this analysis are presented in this report.

There were a number of comments made by stakeholders or the public that were not contained in the Government of Yukon's proposals. This feedback is included in this report and will also be considered.



Principles

Throughout the engagement, a significant amount of what we heard reflected recommendations to guide revisions to the *Workers' Compensation Act* and the *Occupational Health and Safety Act*.

Take a comprehensive approach to mental health

Many comments indicated that mental health should be an integral part of the workers' compensation and occupational health and safety systems, and that it should be emphasized as an intrinsic element of healthy and safe workplaces.

- Mental health should be equivalent to physical health.
- Wherever possible in legislation, emphasize the importance of mental health and the prevention of psychological injury.
- Take every opportunity to reflect mental health as an integral part of health and safety management systems and the claims process overall.

Be clear, simple and accessible

Many comments requested the updated legislation be written in a more accessible manner to reach a broader audience and to support compliance.

- The language structure and content should be simpler and clearer using plain language.
- The processes reflected in legislation should be less complex and easier to understand and follow.
- Provide clearer, more precise definitions, particularly for words like, "workplace" and "casual basis."
- Provide clearer, more explicit explanations for roles in the workplace, particularly for "homeowner," "contractor," "constructor," "worker," "supervisor" and "employer."

Reflect and accommodate the diversity of Yukon workplaces and workers

Many comments indicated a need to explicitly recognize and accommodate the broad, varied and unique range of workplaces in Yukon, and the diversity of workers employed in them.

- Ensure that the legislation accounts for and accommodates its entire constituency: Yukoners in major centres, smaller communities and remote locations, particularly with regard to processes and timelines.
- Ensure that the full diversity of workers are explicitly recognized and accommodated, particularly women, gender non-binary workers, First Nations workers, new workers, foreign workers, young workers, aging workers, workers in small communities and remote locations, part-time workers, temporary workers and gig-economy workers.
- Take account of the changing workplace landscape, particularly with regard to the gig economy, temporary-worker services and casual-worker services.



Accommodate and engage the community

Many comments indicated a need for the updated legislation to comply with other legislation and the operations of governments, not-for-profit organizations and businesses.

- Verify that updated legislation complies with existing legislation, particularly the *Human Rights Act*.
- Consider the total landscape of private, not-for-profit and government services, in terms of the options and services available to workers and employers, to avoid unintended behaviours under the new legislation.
- Carefully consider the potential impacts of the option to amalgamate the *Workers' Compensation Act* and *Occupational Health and Safety Act* on worker, employer and community needs, interests and behaviours.



Appeals

Appeals framework

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To simplify the internal review process for claims for compensation matters and provide a less formal reconsideration process with the aim of decreasing complexity and time required to issue a decision. This process, for example, would allow for new evidence to be submitted at the reconsideration level, without the requirement that it be sent back to the original decision-maker.
- To introduce a three-stage appeal framework for occupational health and safety (OHS) and assessment appeals. YWCHSB's Board of Directors would no longer have the jurisdiction to hear appeals.

There was support for the proposal. Feedback received appreciated the common approach to all types of appeals and efficiencies that it would bring to both YWCHSB and its clients. The following notes summarize feedback received through the various public engagement events and written submissions.

- The proposed approach is focused on clients in that participation is simpler, clearer, fairer and easier.
- Alignment with processes in other jurisdictions is the right direction to go.
- Makes better use of resources, such as safety officers and the Board of Directors, and will result in better quality decisions.
- Procedural fairness is essential, and processes must be clearly documented and communicated.
- The proposal may result in increased costs as new processes are designed and established, and long-term cost impacts are unclear.
- It is important that all YWCHSB staff and the Workers' Compensation Appeal Tribunal (WCAT) receive training and that workers and employers are made aware of new processes.

Workers' Compensation Appeal Tribunal (WCAT)

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To establish training, education and experience requirements for WCAT members that promote independence, impartiality and fairness in decision making.

There was support for the proposal. Feedback received agreed with the need for training but expressed concern for the challenge of attracting and retaining tribunal members. The following notes summarize feedback received through the various public engagement events and written submissions.

- Better training and skills will lead to higher quality, more consistent decisions.



- The proposal will improve trust in the tribunal and reduce any perception of bias.
- The challenge of attracting and retaining high quality, skilled tribunal members with high levels of expertise will remain.
- The need for expert legal advice remains.
- Longer term, better compensated appointments would improve the proposal.

Time period to appeal occupational health and safety decisions

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To maintain the 21-day time limit for a person to appeal to a hearing officer, and allow an additional 21 days to appeal to WCAT following the date of the internal review decision.

There was support for the proposal. Feedback indicated support for improvements to timelines, but expressed concern that truncated timelines might disadvantage some clients. The following notes summarize feedback received through the various public engagement events and written submissions.

- Alignment with other jurisdictions is a good idea in principle, but in practice might introduce unnecessary challenges for some Yukon workers and employers, such as those in remote locations or with disabilities.
- Shorter timelines are good for expediency but do not align with the more common 30-day timelines in most other legal processes.
- Staff may be challenged to deliver on shorter timelines, and some employers will have to change their processes.
- Quicker resolution of appeals is a good outcome, but rushed decisions may be of a lower quality.
- There would have to be a clear, well-communicated strategy for a transition to the new processes.

Time period to appeal claims decisions

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To align the time allowed for a person to appeal a claims decision with the amount of time a worker has to file a claim, that being 12 months for each level of appeal.

There was support for the proposal. Feedback indicated support for improvements to timelines, but concern that truncated timelines might disadvantage some clients. The following notes summarize feedback received through the various public engagement events and written submissions.

- Alignment with other jurisdictions is a good idea in principle but in practice might introduce unnecessary challenges for some Yukon workers and employers, such as those with special medical needs or psychological injuries.



- More-timely decisions will have positive outcomes such as faster return to work for some claimants, but the quality of decision making might be jeopardized.
- Additional staff may be required to satisfy new time demands and employers may need to adapt to new processes.
- Exceptions may need to be built in for clients with unusual circumstances that extend beyond a new time frame.
- There would have to be a clear, well-communicated strategy for a transition to the new processes.

Time period to appeal assessments decisions

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To reduce the time limit for employer appeals from 180 days to 90 days.

There was support for the proposal. Feedback indicated support for improvements to timelines, but concern that truncated timelines might affect decision making and require more staff resources. The following notes summarize feedback received through the various public engagement events and written submissions.

- A briefer timeline will bring greater certainty to the process for employers.
- Alignment with other jurisdictions is a good idea in principle but in practice might introduce unnecessary challenges for some Yukon employers, such as those in remote locations or with seasonal businesses.
- A briefer timeline may affect the quality of decisions.
- There would have to be a clear, well-communicated strategy for a transition to the new processes.



Assessments

Domestic service workers

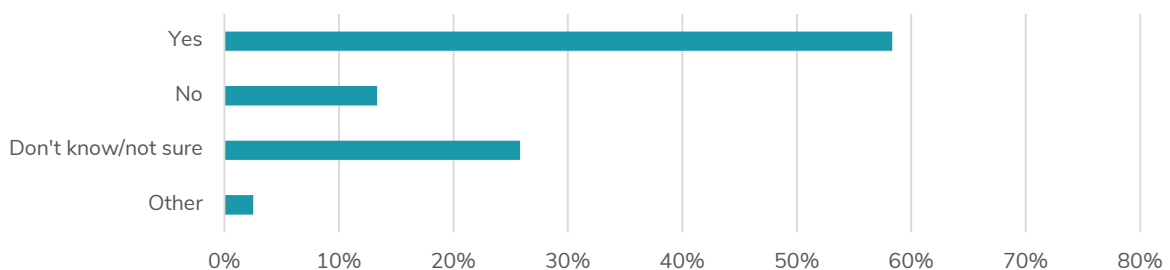
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To clarify the criteria that must be met for a domestic service worker to be considered a worker under the *Workers' Compensation Act*.

There was support for the proposal. Feedback received expressed certain areas for clarity and concern for the rights and interests of both workers and employers. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- Both the worker and the employer should have their rights protected through the clarification, and the terms of requirement for coverage should be clear to both.
- Worker discrimination is a concern and that risk must be addressed in the solution.
- Policy, rather than legislation, may be a more appropriate place for clarification of this matter.
- The solution should not introduce unnecessary red tape to the process of coverage or it may drive the industry underground.
- Ensure full awareness of issue and its requirements through communication and outreach.

Figure 1. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to clarify the criteria that must be met for a domestic service worker to be considered a worker under the *Workers' Compensation Act*. Do you agree with this proposal?”





Work outside Yukon, within Canada

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To align the period of extended coverage with other Canadian provinces, enhancing interjurisdictional harmonization;
- To reduce the time for extended coverage from 12 months to 6 months; and
- To allow for extensions beyond 6 months upon application.

There was support for the proposal. The following notes summarize feedback received through the various public engagement events and written submissions.

- Alignment with other jurisdictions is a very positive move.
- Time frame is more appropriate for purpose of coverage, but workers and employers may unknowingly lose track of coverage if they exceed limit.
- There is low awareness of this issue. Improved communications is required.

Work outside Canada

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To automatically cover workers travelling outside Canada for less than 10 consecutive days. Employers with workers travelling outside Canada for 10 or more consecutive days would still be required to apply for extended coverage.

There was a mixed response to the proposal. Some respondents supported the reduction in paperwork, but many expressed concerns for risks associated with international travel and work. The following notes summarize feedback received through the various public engagement events and written submissions.

- Automatic coverage will reduce administrative burden and make system more efficient, particularly for short-term work.
- Many international locations carry considerably more risk for workers, and the compensation system may be hard-pressed to support them if injured.
- Costs associated with international work injury claims could threaten the health of the compensation system itself.
- May be difficult to establish regions where employers might be eligible for coverage outside of default time frame.
- Workers and employers may unknowingly lose track of coverage if they exceed limit.
- There is low awareness of this issue. Improved communications is required.
- Consider transferring this risk to private insurance providers.



Optional coverage

This issue was introduced by the Government of Yukon for consideration. We proposed:

- All workers receive short and long-term earnings loss benefits. Specifically, the proposal is that short-term benefit rates for sole proprietors and partners will be based on purchased coverage, and long-term benefit rates will be based on proven earnings or purchased coverage, whichever is less.

There was support for the proposal. Feedback received appreciated the potential reduction in red tape but expressed concern for inconsistency in benefits provided when transitioning from short to long-term coverage. The following notes summarize feedback received through the various public engagement events and written submissions.

- The process would be expedited, encouraging adoption and use of coverage.
- The short-term option is appropriate for sporadic work patterns of many sole proprietors.
- The value and availability of coverage is clearer.
- Benefits provided in long-term scenario may not reflect actual earnings and may contravene other legislation such as the *Human Rights Act*.
- Simplify and clarify the roles and financial responsibilities of contractors, sub-contractors and “constructors.”
- There is low awareness of this issue. Improved communications is required.

Directors' liability

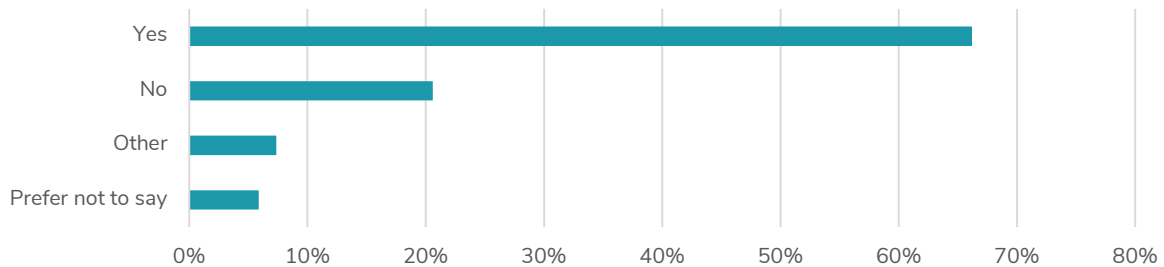
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To add a provision to make directors jointly liable for the debts of their corporation. This would provide an effective tool for YWCHSB to collect unpaid assessment premiums from the director or directors of a corporation.

There was support for the proposal. Feedback received indicated that, while the proposal may make it easier for YWCHSB to recover some fees, other solutions to the problem may be more appropriate. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- Improves opportunity for collecting assessment fees, which will protect the stability of rate groups in interests of other employers.
- Enhanced alignment with practices in other Canadian jurisdictions.
- May improve accountability and make directors more responsible corporate citizens.
- May introduce risks of financial hardship to owners of small businesses and dissuade people from participating on boards.
- May be more effective to adjust time frame and threshold limits to facilitate more-timely collection of funds.
- Work with other agencies' processes, such as Yukon Environmental and Socio-economic Assessment Board, for verification of compliance and to encourage payments.

Figure 2. Distribution of responses in Survey 1 to “Should directors of a corporation be jointly responsible for the corporation’s unpaid assessment premiums?”



Examination of Government of Yukon records

This issue was introduced by YWCHSB for consideration. It is proposed that:

- YWCHSB is allowed to examine the Government of Yukon’s payroll documents and other related information to ensure compliance with the legislation to confirm that all earnings and contractors are properly reported.

There was support for the proposal. Feedback received supported the Government of Yukon having the same level of accountability as all other employers. The following notes summarize feedback received through the various public engagement events.

- The government is the territory’s largest employer and should have the same level of accountability to its own legislation as other employers.
- The government should be a role model in legislative compliance and should not be exempt from assessment reviews.
- The assessment system should have the opportunity to verify government’s payroll reports in order to ensure the system is appropriately funded.
- There may be an increase in cost to government and taxpayers through the increase in administrative burden, at least at first.
- There may be privacy concerns related to government records.



Compensation Fund

This feedback was shared by participants in the public engagement.

- Clarify and legislate certain circumstances that would require YWCHSB to provide rebates to employers.
- Maintain current funded range of the Compensation Fund (121% to 129%).

Classifications and rates

This feedback was shared by participants in the public engagement.

- Review rate groups to ensure placement of industry classifications is appropriate.
- Provide provisions for employers with workgroups whose risk levels differ to be assessed in two separate rate groups.
- Tie assessment rates to rate of inflation.
- Partner with the Canada Revenue Agency for the collection of assessment fees through payroll remittances, as has been done in other jurisdictions.
- Streamline the rate classification and payment process, especially for small business, and especially in regards to billing and payment schedule.
- Establish an experience rating system.



Occupational health and safety

Serious incidents and injuries

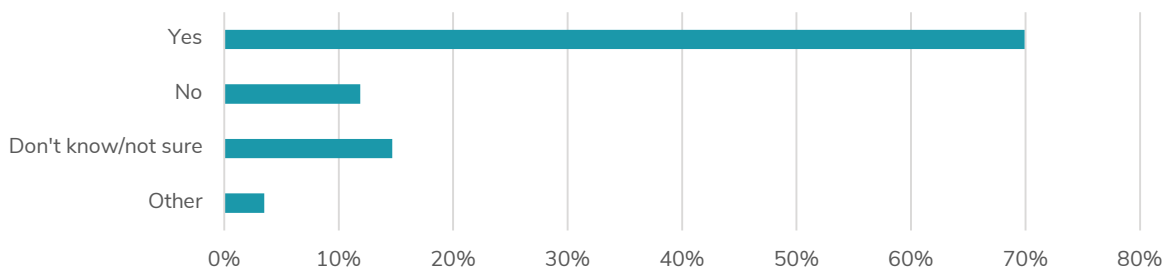
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To simplify and modernize the language used for the categories of incidents or injuries that require an employer to notify YWCHSB. We also proposed that a written report be required in these situations.

There was support for this proposal. Feedback indicated support for an increase in clarity, flexibility and simplicity. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- General guidelines are relevant across multiple industries and are easier to comply with than prescriptive lists.
- Clear definitions, plain-language communications and education tools would help employers comply with this proposal.
- Psychological injuries should be included in serious incident and injury reporting.

Figure 3. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to simplify and modernize the language used for the categories of incidents or injuries that should lead to mandatory notice. Do you agree with this proposal?”





Right to refuse unsafe work

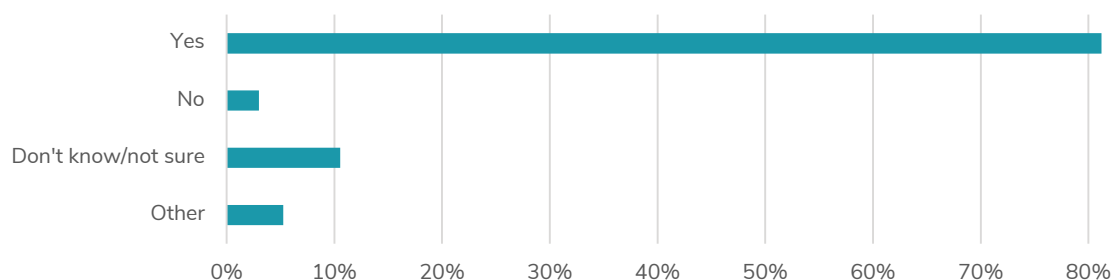
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To adopt an approach to reporting a refusal of unsafe work that would give an employer and worker the opportunity to remedy a situation before an investigation is required. As well, we proposed to clarify the trigger for exercising this right.

There was support for this proposal. Feedback showed that there is a preference for this process to be formalized and simplified—something that is already happening in many workplaces. This would allow workplace parties to resolve the issue before an OHS safety officer is required to be involved. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- Employers like the opportunity to enhance their internal responsibility systems for health and safety.
- The proposed change would likely lead to increased hazard control capacity and efficiency.
- The refusal threshold shouldn't be prohibitive for workers.
- Process of refusal should be clearly documented and communicated to ensure accessibility and transparency.
- Clarity on the whole process for resolution including OHS's role is required.
- Education tools and training for workers and employers are essential.
- Sometimes resolution will be difficult depending on the parties involved.

Figure 4. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to adopt an approach that would give the employer and worker the opportunity to remedy the situation before an investigation is required. Do you agree with this proposal?”





Prohibited reprisals

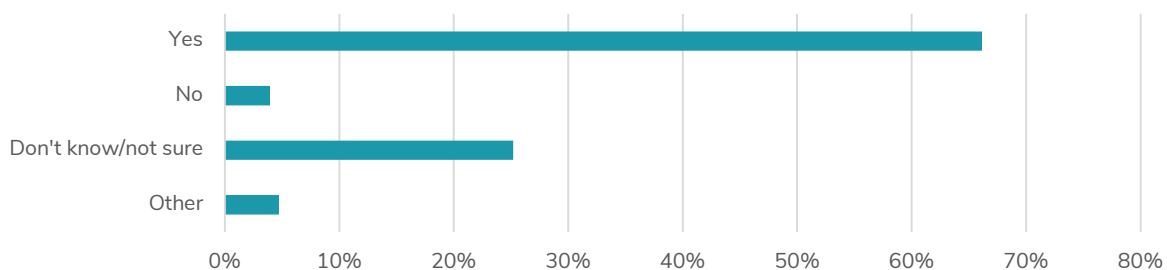
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To update and clarify the definition of “reprisal” as well as provide an administrative process for resolving complaints of prohibited reprisals.

There was support for this proposal. Feedback indicated that this is seen as a way to have unbiased and efficient resolution of reprisals with less burden on the worker. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- This would create faster resolutions with fewer costs for workers and employers.
- This would lead to better return-to-work outcomes for workers and may actually lead to parties being able to “shake hands” following resolution.
- Complaints could be handled on a case-by-case basis and the process would be much fairer to workers than the current process.
- Proper selection of third-party decision-makers is very important but can be difficult with Yukon’s small population base.
- Need to ensure the complaint process does not conflict with collective agreements or other decision-making bodies.
- Process would need to be clearly documented and communicated to ensure transparency.

Figure 5. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to update and clarify the definition of reprisal as well as provide an administrative process for resolution of prohibited reprisals. Do you agree with this proposal?”





Safety management systems

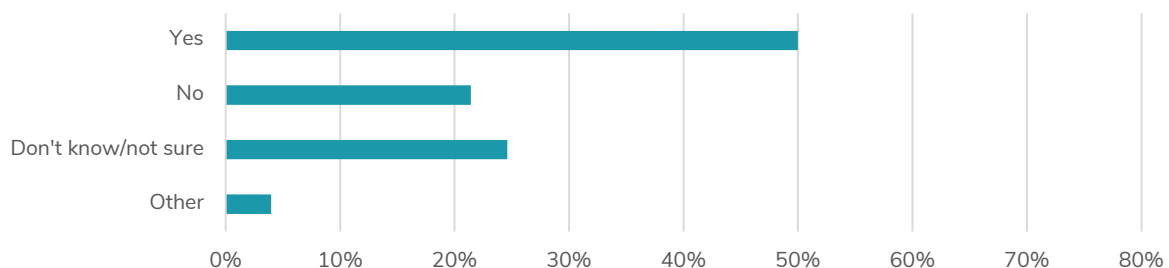
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To base the requirements for workplace health and safety management systems on the number of workers regularly employed, without reference to the hazard classification.

There was support for this proposal. Feedback indicated that safety management systems should be required in all workplaces. Some feedback questioned whether office or retail workplaces would need a safety management system and whether this would create additional work for employers. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- This would strengthen workplace internal responsibility systems and require safe work procedures based on the hazards associated with the work.
- This would create greater clarity for employers and would likely be administratively easier for workers and employers.
- This is more proactive than the current requirements.
- Helping employers with plain language education tools is essential to lessen the risk that YWCHSB is viewed as an enforcement body only.
- The current A, B and C hazard classifications work for some employers.

Figure 6. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to base the requirement to have a workplace health and safety management system on the number of workers an employer regularly employs, without reference to the hazard classification. Do you agree with this proposal?”





Joint health and safety committees

This issue was introduced by the Government of Yukon for consideration. We proposed:

- That a joint health and safety committee should be required when an employer has 20 or more workers that are regularly employed (without reference to the hazard classification) and that employers with 10 or more regularly employed workers should be required to have a health and safety representative. As well, we proposed to modernize the roles, duties and training requirements of committee members.

There was support for this proposal. Feedback indicated that this could lessen the administrative burden by creating clarity. There were concerns that taking hazard classifications out would increase risk to workers in high hazard industries where safety representatives are currently required with five or more workers. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- This would increase training for committee members and would likely improve the culture of safety.
- Workers may have less representation if the requirement for safety representatives starts at 10 or more workers.
- Clear definitions in the legislation are essential, especially regarding a “workplace” versus an “employer.”
- Accessible online training opportunities would help committee members and their employers.
- There is no consideration of the types of work and hazards involved.

Figure 7. Distribution of responses in Survey 2 to “The Government of Yukon is proposing that a joint health and safety committee should be required when 20 or more workers are regularly employed, without reference to the hazard classification. Do you agree with this proposal?”

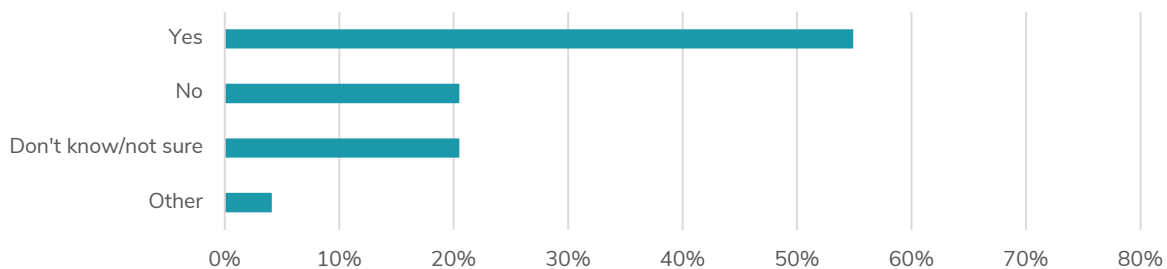
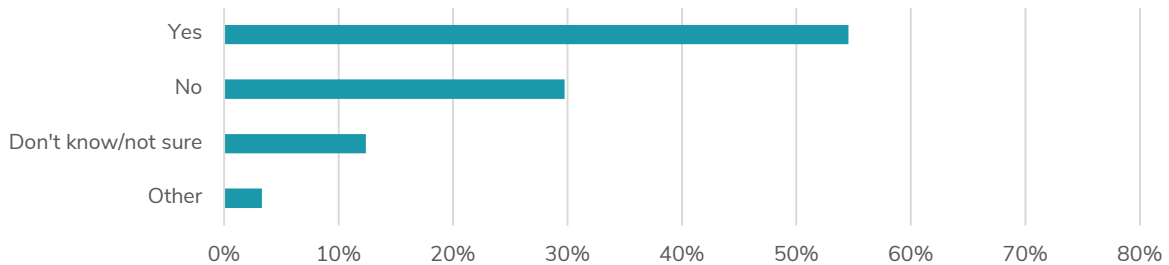




Figure 8. Distribution of responses in Survey 2 to “The Government of Yukon is proposing that all workplaces with 10 or more workers should be required to have a designated health and safety representative. Do you agree with this proposal?”



Duties of workplace parties

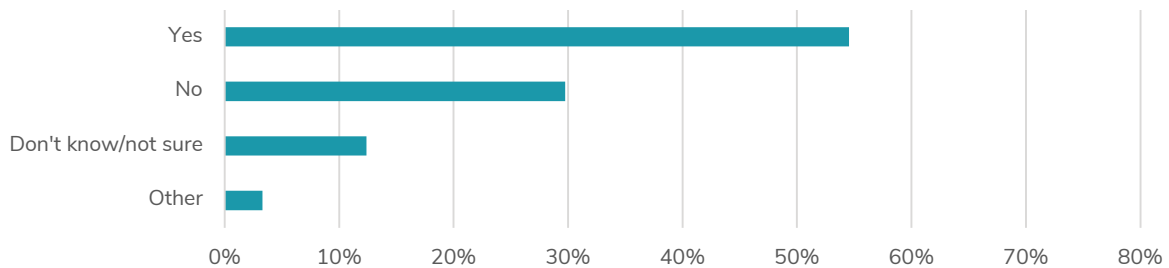
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To ensure that sections of the legislation that identify health and safety duties for workplace parties are consistent and comprehensive.

There was support for this proposal. Feedback indicated that clarifying the roles and duties of workplace parties would remove much of the current uncertainty, for example, about the requirements for training and training records. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- This proposed change would make it easier to interpret workplace duties and would clarify what employers, supervisors and workers are responsible for.
- This proposed change would remove confusion where duties and responsibilities overlap.
- There were concerns whether the proposed change to training records would create difficulties for small businesses who provide training for their workers.
- It is essential to ensure that this proposed change doesn't create extra paperwork for small employers.

Figure 9. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to update the legislation to ensure that duty sections are consistent and comprehensive. Do you agree with this proposal?”



Regulations

This feedback was shared by participants in the public engagement.

- The majority of Yukon’s *Occupational Health and Safety Regulations* are out of date and should be updated.
 - Many definitions in current regulations need to be reviewed.
- New regulations are needed for:
 - Avalanche hazard control
 - Traffic control
 - Excessive overtime hours
 - Staffing ratios, especially regarding working alone and rural camp worksites
 - Critical incident debriefing
 - Mental health, harassment and violence
 - Young worker safety
- The existing first aid regulations should:
 - Make language more inclusive to First Nations.
 - Be more flexible about the requirements for first aid kits.



Compensation

Annuities

This issue was introduced by the Government of Yukon for consideration. We proposed:

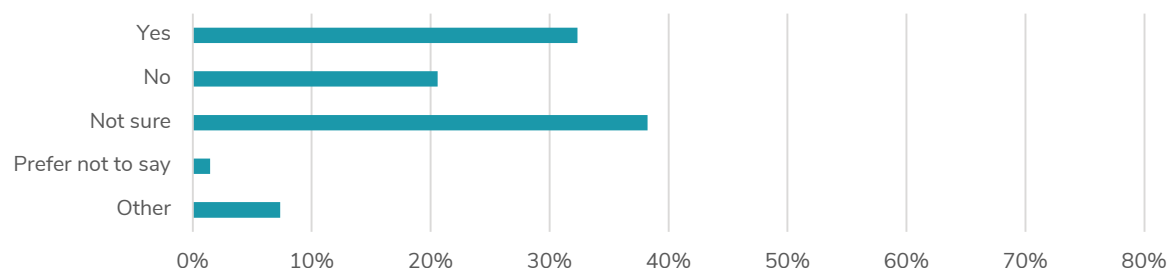
- To permit the payment of all annuities as a lump sum, regardless of the amount a worker is entitled to receive. Workers would still have the option to purchase an annuity or other financial product if they so choose, however, it would no longer be a requirement under YWCHSB legislation.

There was support for the proposal from participants at the various public engagement events. Survey respondents and written submissions did not express support. Feedback indicated an appreciation for the flexibility and simplicity of the proposal, but indicated concern for the burden of stress and financial responsibility on the claimant. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- Immediate, full access to funds eases the administrative burden and provides freedom and autonomy to the claimant.
- Claimants may not be able to manage funds responsibly, introducing stress.
- Claimants' existing social and medical supports may be disrupted by receipt of lump-sum income.
- The lump sum should be made available to claimants before they reach the age of 63 if they are "terminally ill."
- People stay at work longer so there should be no benefits cut off or age of delivery for the annuity.
- Rather than an annuity, YWCHSB should consider paying into the Canada Pension Plan (CPP) and include other long-term benefits, such as medical benefits, in calculations.
- YWCHSB should consider providing professional financial supports to recipients of lump sums.



Figure 10. Distribution of responses in Survey 1 to “Would it be beneficial to workers if there was no cap on being able to have this amount paid out as a lump sum?”



Permanent impairment benefits

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To update the definition of permanent impairment and have all awards be paid to an injured worker as a lump sum only. This approach aims to provide clarity for workers and simplify the way this benefit is paid.

There was support for the proposal. Feedback indicated appreciation for the flexibility and simplicity of the proposal, but indicated concern for the burden of stress and financial responsibility on the claimant. The following notes summarize feedback received through the various public engagement events and written submissions.

- The simplified approach gives more control and freedom to the claimant.
- The claimant should still have access to medical benefits.
- The claimant may not be able to manage funds responsibly, introducing stress.
- Other benefits of lower income earners may be disrupted by receipt of a lump sum.
- Claimants should be provided with professional third-party financial advice.
- Additional benefits should be made available to spouses and dependents of claimants.



Earnings loss benefits for low income earners

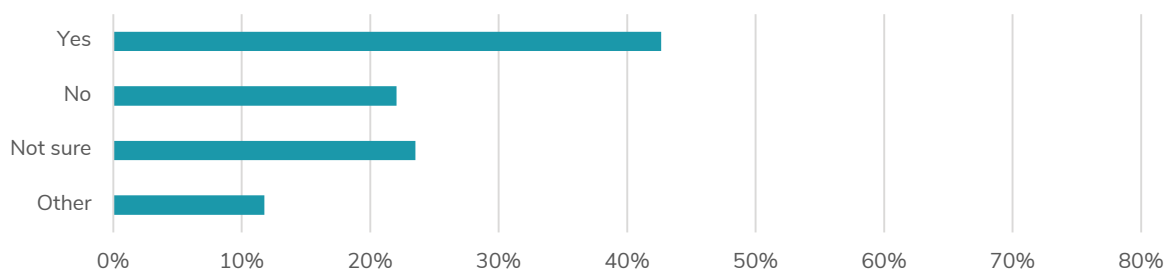
This issue was introduced by the Government of Yukon for consideration. We proposed:

- That earnings loss benefits for all workers whose pre-injury earnings are at or below the minimum amount be increased to 100 per cent of their pre-injury earnings, regardless of whether they are partially or totally disabled. This approach aims to enhance fairness and encourage an early and safe return to work.

There was support for the proposal. Feedback indicated favour for the proposal but offered cautions and advice on calculations and delivery of funds. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- The proposal improves fairness to claimants with very little additional risk to the workers' compensation system overall.
- The proposal may result in fewer complaints and appeals.
- The calculation of benefits is not fair to claimants in all modern employment situations, for example, shift workers who do not work on a seven-day cycle.
- Benefits should be calculated based on earnings on the day of injury.
- The minimum compensation amount should be tied to the minimum wage.
- This solution may improve return-to-work opportunities, depending on how much a claimant received compared to their actual pre-injury earnings.
- Additional services and training should be made available to claimants and employers.

Figure 11. Distribution of responses in Survey 1 to “Should all low income workers, whether partially or totally disabled, receive the same earnings loss benefit?”





Funeral expenses

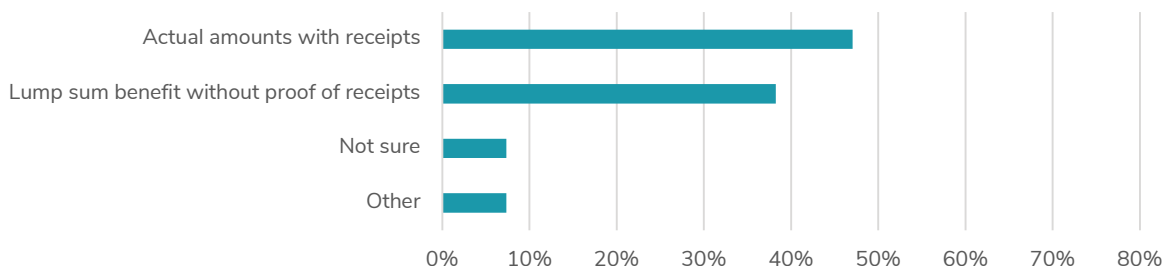
This issue was introduced by the Government of Yukon for consideration. We proposed:

- To simplify this provision by providing a set amount for funeral expenses and other additional related expenses as a benefit payable by lump sum, without the requirement to provide receipts, easing the family's burden during a very difficult time. Transportation expenses to transport the deceased would continue to be reimbursed based on actual costs.

There was support for the proposal from participants at the various public engagement events and in written submissions. Survey respondents did not express support. Feedback indicated the proposal respected the diverse interests of those grieving a significant loss. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- The delivery of a lump sum is simple, efficient and predictable, providing optimal flexibility to a family.
- There may be some confusion as to who would receive the lump sum if the deceased's estate is not in order.
- Accommodations should be made for situations where the eligible recipients are not those managing the affairs of the deceased.

Figure 12. Distribution of responses in Survey 1 to "Would it be better to provide a lump sum benefit without proof of receipts?"





Third-party actions

This issue was introduced by the Government of Yukon for consideration. To encourage the participation of a worker in a third-party action, we proposed:

- To allocate a specified portion of any settlement to the worker before YWCHSB recovers the compensation costs.

There was support for the proposal. Feedback indicated the proposal balances the interests of workers and the compensation system, but suggested worker interests should be put first. The following notes summarize feedback received through the various public engagement events and written submissions.

- Successful actions would benefit the compensation system and worker.
- There is little risk to the worker regardless of the outcome of the action, although workers and their dependents may prefer to avoid participation regardless based on experiences with the original incident, such as trauma.
- The uncertainty of a percentage of an amount that might be recovered (rather than a set, certain amount of money) may not be enough to encourage workers to participate.
- There should be a guarantee of benefit to the worker, perhaps based on a sliding-scale calculation that accounts for participation.
- Workers should receive the total amount recovered on their behalf since employer assessments already cover the costs of the system.

Definition of injury to determine if a psychological condition is an injury

This issue was introduced by the Government of Yukon for consideration. To enhance fairness and reduce stigma around workplace psychological injuries, we proposed:

- To make changes to the definition of “injury” to make it consistent with the majority of other Canadian jurisdictions. The concept of disablement will continue to exclude chronic stress, but would no longer exclude injuries caused by stress.

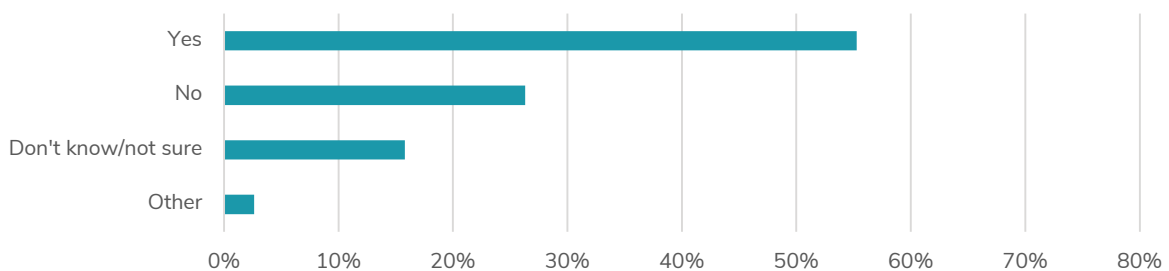
There was support for the proposal both with the EAG and survey respondents. Feedback indicated favour for an approach that aligns Yukon with other jurisdictions, but there was concern about exposure of the system to additional costs without a clear sense of resolution to the challenges presented by workplace risks to mental health. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- Modernizing legislation to bring it in line with other jurisdictions is good approach.
- Workers will feel more supported through a broadened approach to injury definition, which may help reduce stigma.
- Proposal feels reactive rather than proactive and may not go far enough to support workers who experience psychological conditions.
- All chronic stress claims should be accepted and covered.



- Change may expose the system to an increase in high-cost psychological injury claims, risking the health of Compensation Fund.
- The requirement for a diagnosis remains too stringent.
- Employers need to be held accountable for workplace psychological injuries.
- There is a need to be more active in preventing workplace psychological injuries.
- Legislation should align with the CSA standard, particularly in regards to terminology.
- A fund should be established to support the return-to-work efforts of workers and employers when workers experience psychological injury.

Figure 13. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to make changes to the definition of “injury” to make it consistent with the majority of other Canadian jurisdictions. The concept of disablement will continue to exclude chronic stress, but would no longer exclude injuries caused by stress. Do you agree with this proposal?”



Definition of injury to include a labour-relations exclusion

This issue was introduced by the Government of Yukon for consideration. To enhance fairness and reduce stigma around workplace psychological injuries, we proposed:

- To include a labour-relations exclusion in the legislation (consistent with the principles already in policy) similar to other Canadian jurisdictions.

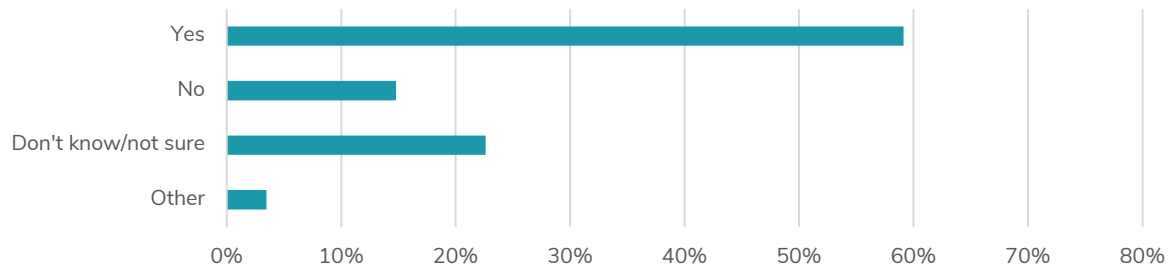
There was support for the proposal. Feedback indicated support for the concept of clarity around labour-relations issues in workplace but expressed concern that the clarity would be difficult to achieve. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- Establishing that “normal” workplace stresses are acceptable may lead to a reduction in abuse of the system, but may also be perceived as protecting employers and exposing workers to protected forms of harassment.
- If clarity can be achieved, it may lead to a reduction in complaints made to employers and claims for YWCHSB.



- There is a risk to workers' mental health if the issue is not clearly defined and understood, or appropriately managed by employers.
- Current "respectful workplaces" systems and measures are not always working well and efforts would need to be made to improve them.
- Ensure changes comply with the *Human Rights Act* and other applicable legislation.
- Be explicit in stating that violence, harassment, bullying and similar abuse of authority are not covered by "reasonable management actions."
- Provide training and educational resources to support clarity, understanding and positive behaviours.

Figure 14. Distribution of responses in Survey 2 to "The Government of Yukon is proposing to include a labour-relations exclusion in the legislation (consistent with the principles already in policy) similar to other Canadian jurisdictions. Do you agree with this proposal?"





PTSD presumption

This feedback was shared by participants in the public engagement.

- Expand post-traumatic stress disorder (PTSD) presumption to include:
 - Social workers
 - All nurses
 - Bus drivers
 - Educational workers
 - Corrections officers
 - Volunteer coroners
 - Frontline staff in continuing care facilities
 - Frontline staff in transitional support facilities
 - Frontline staff in women's protection facilities
 - Frontline staff in homeless and child and family support facilities
- The presumption may contravene the *Human Rights Act* as it discriminates against certain types of workers.
- Limit PTSD presumption to workers covered by the government rate group.

Firefighter cancer presumption

This feedback was shared by participants in the public engagement.

- Expand the cancer presumption to include all Yukon firefighters, including wildland firefighters.
- Include the following types of cancer in the presumption: prostate cancer, skin cancer, breast cancer, cervical cancer, ovarian cancer, penile cancer, multiple myeloma and pancreatic cancer.
- Add heart condition within 24 hours of training to the presumption.

Workers aged over 63

This feedback was shared by participants in the public engagement.

- People are working later in life, which results in a later retirement age, if retirement is taken at all.
- Ending loss-of-earnings benefits based on a person's age is discriminatory.
- Do not cut off workers' loss-of-earnings benefits just because they reach a certain age.



CPP offset

This feedback was shared by participants in the public engagement.

- The CPP offset unfairly deducts significant benefits from claimants for no purpose.
- There should be no deductions of this type made from claimants' benefits.
- CPP is a federal program to which workers and employers contribute which is a separate benefit from workers' compensation so there should be no deduction for this.

Temporary-employment agencies

This feedback was shared by participants in the public engagement.

- Require proper injury reporting by temporary-employment agencies.
- Ensure injury is attributed to employer for whom the worker is performing work rather than the temporary-employment agencies.

Third-party actions/subrogated claims

This issue was introduced by a stakeholder group.

- The current legislation has an exemption that allows action against another employer or co-worker if a vehicle is involved and there is negligence.
- With recovery of loss or damages not limited to the amount of insurance liability, a court's recovery decision could lead to bankruptcy of an employer or co-worker.

Government of Yukon provided information about the following approaches which exist in other Canadian jurisdictions for consideration by the EAG:

- **Approach A: Status quo in Yukon**

Yukon, Newfoundland and New Brunswick

1. Action not allowed against own employer or co-worker.
2. Action allowed against non-covered person who causes injury due to negligence.
3. Action allowed against another employer or co-worker if a vehicle is involved and there is negligence.
4. Recovery is not limited to amount of insurance employer has in place.
5. Motor vehicles, planes and helicopters are included.

- **Approach B: Limiting recovery to amount of employer's insurance**

Northwest Territories and Nunavut

1. Action not allowed against own employer or co-worker.
2. Action allowed against non-covered person who causes injury due to negligence.
3. Action allowed against another employer or co-worker if a vehicle is involved and there is negligence.



4. Recovery is limited to amount of insurance employer has in place.
 5. Motor vehicles, planes and helicopters are included.
- Approach C: Restricts the definition of vehicle to motor vehicle
Manitoba, Nova Scotia and Prince Edward Island
 1. Action not allowed against own employer or co-worker.
 2. Action allowed against non-covered person who causes injury due to negligence.
 3. Action allowed against another employer or co-worker if a vehicle is involved and there is negligence.
 4. Recovery is not limited to amount of insurance employer has in place.
 5. Motor vehicles only are included.
 - Approach D: No action permitted against any employer or worker
Alberta, British Columbia, Ontario, Saskatchewan and Quebec
 1. Action not allowed against own employer or co-worker.
 2. Action allowed against non-covered person who causes injury due to negligence.
 3. Action not allowed against another employer or co-worker if a vehicle is involved and there is negligence.
 4. Recovery is not limited to amount of insurance employer has in place.
 5. Motor vehicles, planes and helicopters are included.

Generally support was to pursue third-party actions without bankrupting employers. The following notes summarize feedback received through the various public engagement events and written submissions.

- The issue is extremely complex and situation-dependent.
- A solution should provide for optimum flexibility to enable YWCHSB decision making while balancing reasonable protections for employers.
- Limit subrogation to the extent of employers' insurance, the award to the government-regulated standards for insurance and the ability to subrogate to cases where negligence has been determined by other government bodies.
- The outcome of actions could cause financial hardship to employers, including bankruptcy.
- People should carry the appropriate amount of insurance and the provisions should stay the same.
- The workers' compensation system is supposed to be no-fault and this contravenes that founding principle.



Compliance and enforcement

Fines and administrative penalties – *Workers' Compensation Act*

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To update the legislation to permit the use of administrative penalties for violations of the *Workers' Compensation Act*. This approach is consistent with other jurisdictions and would allow for quicker, less costly enforcement of legislation.

There was support for this proposal. Feedback demonstrated an understanding of the need for enforcement of the legislation and a strong preference that it does not require court-imposed fines or prosecutions for any violation. The following notes summarize feedback received through the various public engagement events and written submissions.

- The change is positive and would be negative only for those who are not in compliance.
- Administrative penalties provide flexibility and remove current constraints such as requiring prosecution for a violation of the *Workers' Compensation Act*.
- This would provide a fair process for all employers and workers, and would deter fraudulent behaviour.
- Penalties could be used to positively affect safety culture and accountability.

Fines and administrative penalties – *Occupational Health and Safety Act*

This issue was introduced by the Government of Yukon for consideration. We proposed:

- To update administrative penalties and fines to encourage compliance and improve workplace safety.

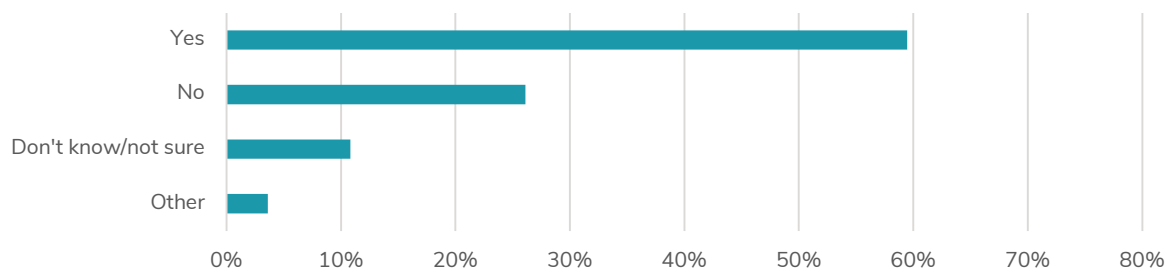
There was support for this proposal. Feedback indicated an interest in ensuring there is compliance with Yukon's occupational health and safety legislation, while ensuring any increases in amounts are necessary and do not negatively affect small businesses. Some participants were strongly in favour of the proposal, while some responded strongly against any potential increases. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- Updated administrative penalty and fine amounts would prevent some large employers from seeing violations of the legislation as the "cost of doing business."
- This proposal would provide increased worker safety and accountability, and could lead to employers investing more in workplace safety.
- It is possible that the recent trend of low numbers of fines under the Act means that current penalty amounts are not a problem.
- There are concerns that workers and employers may hide safety violations if penalties and fines are raised too high.
- Having a graduated scale of fines based on the size of the business could lead to more fairness and compliance. No one wants to see small businesses penalized unfairly.



- There are concerns that if nothing changes, violations of the legislation will continue.
- Outreach, training and education continue to be the preferred tools to increase compliance, yet proper financial deterrents are still necessary to ensure compliance at times.

Figure 15. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to update administrative penalties and fines to encourage compliance and improve workplace safety. Do you agree with this proposal?”



Alternative orders

This issue was introduced by the Government of Yukon for consideration. We proposed:

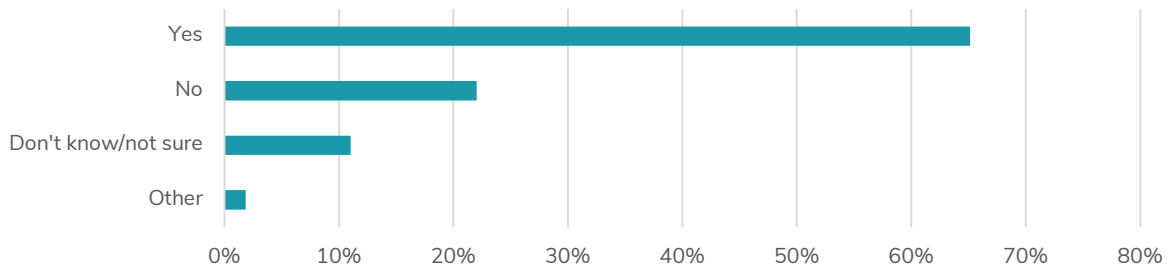
- To adopt an approach which allows alternative orders to be made by the court when a person has committed an offence under OHS legislation. Two examples of these initiatives include training or education programs relating to workplace safety and the establishment of scholarships towards education in health-and-safety-related disciplines.

There was support for this proposal. Feedback indicated a preference for flexible compliance tools that increase Yukon’s safety culture and want to ensure that the courts do not go too far and that monetary amounts associated with these orders are no higher than necessary. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- This proposal would combine corporate social responsibility with safety culture and improve both.
- This would help make positive changes towards injury prevention.
- The list of possibilities could be expanded further to outreach, messaging, and social and community initiatives on workplace safety.
- We would need to ensure there is no favouritism towards industries and that businesses are not seen as “getting off easy” if they are levied with an alternative order.
- There was also support for a graduated scale of fines based on business size.



Figure 16. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to allow alternative orders to be made by the court when a person has committed an offence under occupational health and safety legislation. Do you agree with this proposal?”



Limitation periods

This issue was introduced by the Government of Yukon for consideration. To establish time limitations that aim to improve consistency and allow adequate time for investigation of all occupational health and safety matters, we proposed:

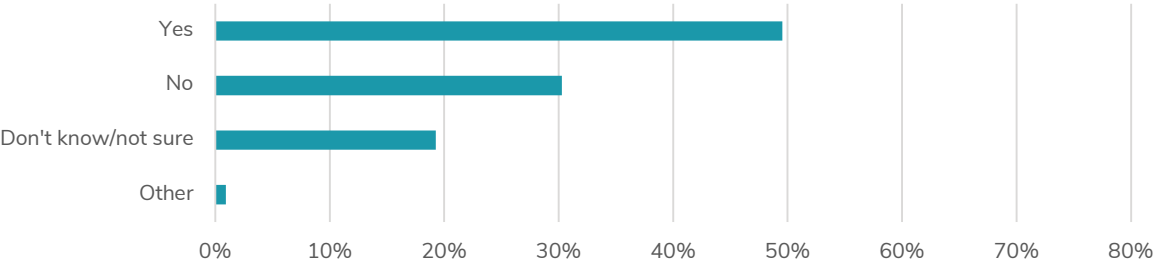
- To establish a two-year time limitation for all prosecutions that begins the date the offence occurs or when YWCHSB becomes aware of the offence, whichever is later; and
- To establish a one-year time limitation for administrative penalties that begins the date the offence occurs or when YWCHSB becomes aware of the offence, whichever is later.

There was support for this proposal. While feedback indicated an understanding of the complexity of investigations and a want for the limitation periods for prosecutions to be sufficient, concerns were raised about whether the proposal would increase wait times for workers and employers. The following notes summarize feedback received through the various public engagement events, written submissions and the online surveys.

- This would likely increase timely reporting of injuries and incidents.
- This would provide better opportunities to complete complex investigations and provide means to rein in “deceptive” parties.
- There are concerns that this would lead to longer periods of uncertainty and increased costs for the parties involved in an investigation, including YWCHSB, if more resources are required.
- There was support for a scale of timelines based on the severity of the offence, and for an “extenuating circumstances” clause for rare cases that require it (similar to Yukon’s *Human Rights Act*).
- Staff turnover, witnesses moving away, loss of information/evidence and seasonal employers should be taken into account when setting limitation periods.



Figure 17. Distribution of responses in Survey 2 to “The Government of Yukon is proposing to establish time limitations that aim to improve consistency and allow adequate time for investigation of all matters. Do you agree with this proposal?”





Implementation

A significant amount of what we heard throughout the engagement reflected participants' recommendations on how to effectively implement the updated legislation.

Increase communication, education and training

Many comments suggested that the success of any legislative changes would rely on how effectively the community is made aware of them and enabled to implement them.

- Improve, update and increase communications activities and available resources in support of existing services as well as any changes to the legislation.
- Provide more education and outreach programs in support of a collaborative approach to building awareness.
- Leverage marketing to foster changes in workplace behaviour, particularly in terms of mental health and worker equity and other evolving issues.

Improve services

Many comments indicated a need for significant improvements to the services currently being delivered to employers and workers.

- Improve client service, particularly to employers and claimants.
- Make processes supporting services to clients more efficient and easier to understand.
- Focus on workplace health and safety support over fines and penalties.

Take a positive approach

Many comments indicated a preference for focusing on positive reinforcement through legislative change, favouring the carrot over the stick approach.

- Focus on positive stories when discussing workplace safety.
- Celebrate the successes of the community such as improvements to health and safety systems and reductions in injuries.

Leverage partnerships and community resources

Many comments identified a wealth of existing partnership opportunities and resources, and recommended taking advantage of them.

- Collaborate on common initiatives with local and national organizations, such as the Women's Directorate, the Yukon Human Rights Commission and the Canadian Mental Health Association.

Review the regulations

A consistent and dominant trend in comments was the demand for a review of the *Occupational Health and Safety Regulations*.



What's next?

Following the public engagement and preparation of this "What We Heard" report, YWCHSB will present feedback from stakeholders and the public to the Government of Yukon. The Government of Yukon will take into consideration the stakeholder and public feedback when drafting the legislation.



Appendix – Engagement methods

We used a variety of methods to ensure stakeholder and interest groups, and members of the public had different avenues through which to contribute to the engagement.

Public open houses

We held public open houses in Yukon communities.

- Whitehorse
- Haines Junction
- Watson Lake
- Mayo
- Dawson

External Advisory Group meetings

- Participants: labour interest groups, employer interest groups, governments, associations
- Number: 45 participants attended
- Content: ten meetings covering key five policy issue areas
 - Compensation
 - Occupational health and safety
 - Assessments
 - Mental health
 - Appeals
 - Compliance and enforcement

Written submissions

- Submissions: 22 received from stakeholders and members of the public.

One-on-one meetings

- Meetings: 12 meetings held with stakeholders and members of the public.

Online surveys

- Survey 1: 68 respondents
- Survey 2: 109 respondents



Outreach events

- Volunteer, Education and Career Expo
- Yukon Geoscience Trade Show
- Reverse Trade Show, Government of Yukon

We promoted the public engagement and provided supporting documents.

Website

- 10 policy issue papers
- 13 policy issue summary reports from the EAG meetings
- “What We Heard So Far” reports from
 - public open houses
 - outreach events
 - community EAG meetings
 - one-on-one meetings

Advertising

- Newspaper
- Radio
- Posters
- Digital sign at the YWCHSB office
- Social media – over 16,000 people reached through targeted ads