

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries	Effective: <u>[Date]</u>	Release <u>67</u>

PROPOSED	CURRENT	RATIONALE FOR CHANGES
Authority	Authority	
<i>Workers' Compensation Act</i>	<i>Workers' Compensation Act (WC Act) RSNB 1973, c W-13</i>	
7(1), 7(2), 7(2.1), 7.1(1), 7.1(2), 7.1(3), 7.1(4), 34(1), 34(2), 34(4)	7(1), 7(2), 7(2.1), 7.1(1), 7.1(2), 7.1(3), 7.1(4), 34(1), 34(2), 34(4)	
Case law	Case Law	
<i>D.W. v. <u>Workplace Health, Safety and Compensation Commission</u> and Via Rail Canada Inc. (2005, NBCA 70)</i>	<i>D.W. v. WHSCC and Via Rail Canada Inc., 2005 NBCA 70 (CanLII)</i>	
<i>Hébert v. Workplace Health, Safety and Compensation Commission et al. (2017, NBCA 43)</i>	<i>Hébert v. Workplace Health, Safety and Compensation Commission et al., 2017 NBCA 43 (CanLII)</i>	
<i>Perry v. Workplace Health, Safety and Compensation Commission et al. (2018, NBCA 80)</i>	<i>Perry v. Workplace Health, Safety and Compensation Commission et al., 2018 NBCA 80 (CanLII)</i>	
<i>New Brunswick Liquor Corporation v. Sauvageau et al. (2020, NBCA 61)</i>	<i>New Brunswick Liquor Corporation v. Sauvageau et al., 2020 NBCA 61 (CanLII)</i>	
Definitions	Definitions	
Accident – includes a wilful and intentional act, not being the act of a worker, and also includes	Accident – includes a wilful and intentional act, not being the act of a worker, and also includes	

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries		Release <u>67</u>

a chance event occasioned by a physical or natural cause, as well as a disablement caused by an occupational disease and any other disablement arising out of and in the course of employment, but does not include the disablement of mental stress or a disablement caused by mental stress, other than as an acute reaction to a traumatic event (<u>Workers' Compensation Act</u>).	a chance event occasioned by a physical or natural cause, as well as a disablement caused by an occupational disease and any other disablement arising out of and in the course of employment, but does not include the disablement of mental stress or a disablement caused by mental stress, other than as an acute reaction to a traumatic event (<u>WG Act</u>).	
<i>Diagnostic and Statistical Manual of Mental Disorders</i> – a compendium of psychiatric diagnoses produced by the American Psychiatric Association. The manual codes and describes all recognized psychiatric diagnoses and is seen as the definitive work on the subject (The Canadian Health Care Glossary).	<i>Diagnostic and Statistical Manual of Mental Disorders</i> – a compendium of psychiatric diagnoses produced by the American Psychiatric Association. The manual codes and describes all recognized psychiatric diagnoses and is seen as the definitive work on the subject (The Canadian Health Care Glossary).	
<i>Disablement</i> – a limitation in movement, senses or activity (adapted from Oxford Dictionary).	<i>Disablement</i> – a limitation in movement, senses or activity (adapted from Oxford Dictionary).	
<i>Emergency response worker</i> – means a firefighter, paramedic or a police officer (<u>Workers' Compensation Act</u>).	<i>Emergency Response Worker</i> – means a firefighter, paramedic or a police officer (<u>7.1(1) of the WG Act</u>).	
<i>Firefighter</i> – a person who is employed or serves as a firefighter with a municipality or rural community or who serves as a firefighter with a fire brigade that provides fire protection services in a local service district or in a rural community (<i>Firefighters' Compensation Act</i>).	<i>Firefighter</i> – a person who is employed or serves as a firefighter with a municipality or rural community or who serves as a firefighter with a fire brigade that provides fire protection services in a local service district or in a rural community (<i>Firefighters' Compensation Act</i>).	
<i>Paramedic</i> – a person who <u>has</u> met the qualifications <u>for registration as a paramedic</u> and whose <u>se name</u> is <u>entered in</u> the register (<u>adapted from the Workers' Compensation</u>	<i>Paramedic</i> – a person who met the qualifications and who is registered as a paramedic with the register (<i>An Act Respecting the Paramedic Association of New</i>	Updated definition is intended to better match the text of the <i>Workers' Compensation Act</i> and <i>An Act Respecting the Paramedic Association of New</i>

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries		Release <u>67</u>

<u>Act</u> , An Act Respecting the Paramedic Association of New Brunswick).	Brunswick).	Brunswick.
Police officer – a police officer and an auxiliary police officer, but does not include a member of the Royal Canadian Mounted Police or an auxiliary police constable (<u>adapted from the Workers' Compensation Act, Police Act</u>).	Police Officer – a police officer and an auxiliary police officer, but does not include a member of the Royal Canadian Mounted Police or an auxiliary police constable (<i>Police Act</i>).	
Post-traumatic stress disorder – means post-traumatic stress disorder as that condition is described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (<u>Workers' Compensation Act</u>).	Post-traumatic Stress Disorder (PTSD) – means post-traumatic stress disorder as that condition is described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association (<i>WG Act</i>).	
Presumption – finding of a basic fact that gives rise to the existence of presumed fact until the presumption is rebutted (adapted from Black's Law Dictionary).	Presumption – finding of a basic fact that gives rise to the existence of presumed fact until the presumption is rebutted (adapted from Black's Law Dictionary).	
Traumatic event – <u>exposure to actual or threatened death, serious injury, or sexual violence in one or more of the following ways:</u>	Traumatic Event – a direct personal experience of an event or directly witnessing an event that:	To align with the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR).
1. <u>Directly experiencing the traumatic event(s).</u>	• Occurs at a specific time and place;	
2. <u>Witnessing, in person, the event(s) as it occurred to others.</u>	• Is sudden; and	
3. <u>Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.</u>	• Involves actual or threatened death or serious injury to oneself or others, or sexual violence.	
4. <u>Experiencing repeated or extreme</u>		

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries		Release <u>67</u>

<u>exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse).</u>		
<u>Criterion 4 does not apply to exposure through electronic media, television, movies, or pictures, unless this exposure is work related (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision).</u>		
Policy	Policy	
The <u>Workers' Compensation Act (WC Act)</u> excludes mental stress as a compensable condition, except when <u>it</u> is the result of an acute reaction to a traumatic event. <u>When this occurs, the worker may have a compensable traumatic psychological injury (TPI).</u>	The WC Act excludes mental stress as a compensable condition, except when the disablement of mental stress or a disablement caused by mental stress is the result of an acute reaction to a traumatic event.	"Mental stress" has been changed to "traumatic psychological injury" (TPI) throughout this policy, to reflect common language used by WorkSafeNB to describe these types of injuries. "Mental stress" continues to be used when referring to the cause of TPIs and the <i>Workers' Compensation Act</i> directly.
A <u>TPI</u> claim is compensable when the <u>worker has</u> :	A claim for mental stress is compensable when the following three conditions are met :	Bullet points aligned to reflect sequential order of events.
• <u>Experienced one or multiple</u> traumatic events <u>that</u> arose out of and in the course of the worker's employment;	• The traumatic event arose out of and in the course of the worker's employment;	
• Suffered an acute reaction <u>to the traumatic event(s); and</u>	• The worker has suffered an acute reaction (injury);	
• <u>Been diagnosed with a psychological or psychiatric condition as a result of an acute reaction to the traumatic event(s).</u>	• The acute reaction was caused by a traumatic event (accident); and	
For emergency response workers covered by the <u>legislated post-traumatic stress disorder</u>	For emergency response workers covered by the presumptive legislation, when the	Updated to better align with text of s. 7.1(2) of the WC Act.

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries		Release <u>67</u>

<u>(PTSD) presumption, and who have been diagnosed with PTSD, it is presumed, unless the contrary is shown, that the PTSD arose out of and in the course of employment in response to one or multiple traumatic events to which the worker was exposed to in carrying out their duties as an emergency response worker.</u>	emergency response worker is diagnosed with PTSD by a qualifying psychologist or psychiatrist, the PTSD is presumed to have arisen out of and in the course of employment unless the contrary is shown.	For consistent language, all references to the legislated PTSD presumption have been changed to “legislated PTSD presumption” throughout this policy.
<u>Except for those claims eligible for the legislated PTSD presumption,</u> WorkSafeNB adjudicates all <u>TPI</u> claims using the <u>additional</u> criteria outlined in Policy 21-100 Conditions for Entitlement – General Principles and Policy 21-104 Conditions for Entitlement – Tests of Time, Place, and Activity.	WorkSafeNB adjudicates all mental stress claims, except claims eligible for the PTSD presumption, using the criteria outlined in Policy 21-100 Conditions for Entitlement – General Principles and Policy 21-104 Conditions for Entitlement – Tests of Time, Place, and Activity.	Rephrased to improve clarity.
Interpretation	Interpretation	
<u>Determining date of accident</u>		
<u>1. For TPIs, WorkSafeNB considers the date of accident to be the date of the purported traumatic event.</u>		These two new sections reflect current practice.
<u>2. Where there has been exposure to multiple traumatic events, WorkSafeNB considers the date of accident to be the date of a purported traumatic event that predates diagnosis of the psychological or psychiatric condition.</u>		
<u>Determining traumatic event</u>		
<u>3.</u> A worker is considered to have experienced a traumatic event when <u>either</u> :	<u>4.</u> A worker is considered to have experienced a traumatic event when:	

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries		Release <u>67</u>

The worker is diagnosed with PTSD by a psychologist or psychiatrist <u>who is registered with the appropriate regulatory body in the province in which they work</u>, and WorkSafeNB has confirmed <u>that</u> the diagnosis is consistent with the diagnostic criteria set out in the <u>edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) that is</u> most recent <u>on the date</u> of diagnosis. In this instance, the occurrence of a traumatic event is inherent to the PTSD diagnosis; or	The worker is diagnosed with PTSD by a qualifying psychologist or psychiatrist and WorkSafeNB has confirmed the diagnosis is consistent with the diagnostic criteria set out in the most recent DSM at the time of diagnosis. In these instances, the occurrence of a traumatic event is inherent to the PTSD diagnosis; or	Updated for succinctness and clarity.
The purported traumatic event meets the definition of traumatic event. <u>In making this determination, WorkSafeNB uses</u> the “reasonable person standard”, <u>which</u> considers whether the event <u>qualifies as objectively traumatic</u> without regard to the personal, subjective perceptions of the worker.	The purported traumatic event, when considered objectively by using a “reasonable person standard”, meets the definition of traumatic event as <u>defined in this policy</u>. The “reasonable person standard” will consider whether the event, as experienced by a reasonable person, without regard to the personal, subjective perceptions of the individual worker, would qualify as an objectively traumatic event.	Updated for succinctness.
<u>4.</u> WorkSafeNB recognizes that, in some cases, there may be a delayed expression of symptoms <u>between the purported traumatic event(s) and the resulting diagnosis of a psychological or psychiatric condition</u> .	3. A worker may be exposed to a single traumatic event or multiple traumatic events. WorkSafeNB recognizes that, in some cases, there may be a delayed expression of symptoms.	Resequencing for policy flow and alignment. Updated to align with proposed text in Policy 21-106 Accident Reporting and Application for Benefits.
	4. Normal work pressures or decisions of the worker’s employer relating to the management and monitoring of the worker’s employment do not qualify as a traumatic event.	Not needed given that the policy has a clear definition of ‘traumatic event’.

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries		Release <u>67</u>

<u>Psychological and psychiatric information</u>		
<u>5.</u> Psychological and/or psychiatric information plays a key role in determining if the <u>TPI claimed</u> is compatible with the work-related traumatic event that caused it. To be compensable, the psychological and/or psychiatric information must show that:	<u>2.</u> Psychological and/or psychiatric information plays a key role in determining if the <u>mental stress</u> is compatible with the work-related traumatic event that caused it. To be compensable, the psychological and/or psychiatric information must show that:	
The traumatic event was significant enough to have caused an acute reaction;	The sudden and unexpected traumatic event was significant enough to have caused an acute reaction;	DSM diagnostic criteria does not require that a traumatic event be sudden nor unexpected.
The acute reaction could have reasonably caused the <u>diagnosed</u> psychological or psychiatric condition;	The acute reaction could have reasonably caused the psychological or psychiatric condition described;	To clarify that the condition must be diagnosed, not just described.
The <u>diagnosed</u> psychological or psychiatric condition is a mental or physical condition that is described in the <u>edition of the DSM that is</u> most recent <u>on the date</u> of diagnosis; and	The psychological or psychiatric condition is a mental or physical condition that is described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders at the <u>time</u> of diagnosis; and	To clarify that the edition of the DSM used will be that which is most recent on the date of diagnosis.
The psychological or psychiatric condition must be diagnosed by a psychologist or psychiatrist, who is registered with the appropriate regulatory body in the province in which they work.	The psychological or psychiatric conditions must be diagnosed by a psychologist or psychiatrist, who is registered with the appropriate regulatory body in the province in which they work.	
<u>Legislated PTSD presumption for emergency response workers</u>		
<u>6.</u> WorkSafeNB applies the legislated PTSD presumption if <u>the worker</u> :	<u>5.</u> WorkSafeNB applies the legislated PTSD presumption for workers if:	
<u>Is</u> an emergency response worker on or after June 28, 2016 and have a PTSD diagnosis by a psychiatrist or	They are an emergency response worker on or after June 28, 2016 and have a PTSD diagnosis by a psychiatrist	

POLICY		21-103
Conditions for Entitlement – Traumatic Mental Stress Psychological Injuries		Release <u>67</u>

psychologist;	or psychologist;	
Was an emergency response worker when they submitted a claim, and the diagnosis of PTSD by a psychiatrist or psychologist was made on or after June 28, 2016; or	They were an emergency response worker when they submitted a claim, and the diagnosis of PTSD by a psychiatrist or psychologist was made on or after June 28, 2016; or	
Ceased to be an emergency response worker on or after June 28, 2016 and has been diagnosed with PTSD by a psychiatrist or psychologist within 24 months of their retirement from emergency response work.	They cease to be an emergency response worker on or after June 28, 2016 and they are diagnosed by a psychiatrist or psychologist with PTSD within 24 months of their retirement from emergency response work.	
7. For claims involving the legislated PTSD presumption, the WC Act prescribes that the diagnosis for PTSD will be as that condition is described in the most recent edition of the DSM. Prior to applying the presumption, WorkSafeNB will therefore confirm that the diagnosis is consistent with the diagnostic criteria set out in the edition of the DSM that is most recent on the date of diagnosis.	6. For claims involving the legislated presumption for emergency response workers diagnosed with PTSD, legislation prescribes that the diagnosis for PTSD will be as that condition is described in the most recent edition of the DSM. WorkSafeNB will therefore confirm the diagnosis is consistent with the diagnostic criteria set out in the most recent DSM at the time of diagnosis prior to applying the presumption.	Updated for succinctness and to clarify that the edition of the DSM used will be that which is most recent on the date of diagnosis.