



RECOMMENDATION FOLLOWING AN APPLICATION FOR REVIEW OF THE INSURER'S WORK CAPACITY DECISION PURSUANT TO SECTION 44(C) OF THE *WORKERS COMPENSATION ACT 1987*.

1. The applicant for a review of the decision made by the Insurer.
2. The applicant was injured in the course of his employment on 10 January 2007 when he suffered injury to his left knee and in June 2012 when he suffered injury to his left shoulder. There is no dispute about the injury having occurred in the course of employment.
3. After an unsuccessful return to pre-injury duties, the applicant is not presently employed. He was in receipt of weekly payments immediately before 1 October 2012 and is therefore defined as an existing recipient of weekly payments.
4. The effect of being an existing recipient is that once transitioned to the new benefits scheme the amount of the pre-injury average weekly earnings is fixed by Clause 2 of Division 1 of Part 19H of Schedule 6 to the *Workers Compensation Act 1987*.
5. The applicant has included in his request for a Review by WIRO details of anomalies with his claim which are not within the jurisdiction of WIRO to consider. His one ground which I am able to consider is that he has suffered a reduction in his weekly payments because he was earning in excess of the transitional amount before his injury.
6. Whether or not that is correct is not relevant. The legislation is clear and the applicant is presently entitled (subject to complying with the usual requirements of submitting documentation) to the maximum weekly payment given that he has received more than 130 weeks of weekly payments.
7. For completeness I record that the applicant received notice of a work capacity decision from the insurer by letter dated 14 June 2013 which informed him that the change in his benefit would occur from 21 September 2013. That is the correct notice period pursuant to Section 54(2)(a) of the *Workers Compensation Act 1987*.



8. The applicant sought an internal review and that decision was made on 18 July 2013. The applicant sought a review by the WorkCover Authority (a merit review) on 20 August 2013 which was completed on 5 November 2013 some 82 days later. That is well outside the timeframe preferred by the WorkCover Authority promulgated Guidelines.
9. Neither the decision on the internal review nor the findings and recommendation of the WorkCover Authority were delivered in the form mandated by Section 44(a)(3)(a) of the 1987 Act. I have taken the view that it would be unfair to the applicant to await the correct and proper delivery of the outcomes of those reviews.

My Findings:

10. The applicant was an existing recipient of weekly payments as defined in the 1987 Act and once transitioned is entitled to receive the weekly payment calculated in accordance with the provisions of Section 38 of the 1987 Act.
11. The applicant is receiving the correct payment for a worker with no capacity

My Recommendation:

16. I make no recommendation.

KA Garling
WorkCover Independent Review Officer
2 January 2014