

**RECOMMENDATION FOLLOWING AN APPLICATION FOR REVIEW OF THE INSURER'S WORK CAPACITY DECISION PURSUANT TO SECTION 44(1)(c) OF THE *WORKERS COMPENSATION ACT 1987*.**

**SUMMARY:**

**a. The applicant has never sought either internal review or procedural review.**

**b. WIRO has no jurisdiction to determine an application for procedural review in the absence of a completed merit review.**

**c. No recommendation is made.**

1. The applicant has applied for procedural review of a work capacity decision dated 31 October 2013. The application to this office was made ostensibly on 26 June 2014. The applicant did not nominate the date of a merit review recommendation.
2. The grounds sought to be relied upon by the applicant show some familiarity with the legislation. He objects that the insurer did not advise him of the date when his medical benefits would cease, as well as raising the relevant notice period under the *Interpretation Act 1987* and making the point that the Insurer did not specify a time limit for the submission of a request for internal review. The latter might explain the lack of a merit review recommendation, since it appears that the applicant has never sought internal review.
3. The Insurer made the following submission:

Please note that the Worker has not submitted any application for review following the original work capacity decision other than the current review sought as evident in the application for procedural review respectively before you.

4. WIRO can only conduct a procedural review of a decision by an insurer which has been subject to internal review by the insurer and merit review by the Merit Review Service (MRS) of the Authority.<sup>1</sup>

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<sup>1</sup> See section 44(1)(c) of the *Workers Compensation Act 1987*.

5. It appears to be common ground that neither internal review nor merit review have occurred in this case.
6. There appears to be no legal impediment to the applicant seeking internal review even at this late stage (that is, none beyond the wording of a *Guideline* which specifies that it ought to be sought “as soon as practicable” after the original decision is received)<sup>2</sup> which means that he might be well advised to seek an internal review forthwith. If the Insurer refuses to conduct the internal review or does not do so within 30 days, the applicant might then approach the MRS.

## Finding

7. I find that I have no power to conduct a procedural review of the Insurer’s decision dated 31 October 2013 by virtue of section 44(1)(c) of the 1987 Act.

## RECOMMENDATION

8. I make no recommendation.

Wayne Cooper  
Delegate of the WorkCover Independent Review Officer  
15 August 2014

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<sup>2</sup> *Guideline 7.1.2.*