

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. There is no work capacity decision of the Insurer to review.**
 - b. I make no recommendation.**
1. The applicant seeks procedural review of a "work capacity decision" allegedly made by the Insurer on 12 February 2014.
 2. Prior to seeking Procedural Review, the applicant had unsuccessfully sought merit review by the Authority. The Authority had declined to make a recommendation on the following basis:

"The Insurer has provided the Authority with a copy of their decision made on 12 February 2014, which is made under section 57 of the *Workplace Injury Management and Workers Compensation Act 1998*.

"Accordingly the Authority has determined that it does not have jurisdiction to conduct a review of the Insurer's decision made on 12 February 2014."

The Decision

3. It is distressingly clear from what appears above that neither this scheme agent nor the Authority which regulates and licences it are aware that section 57 of the *Workplace Injury Management and Workers Compensation Act 1998* was repealed in 2012 and therefore did not exist as at 12 February 2014, being the date of the decision purportedly made in reliance on the section.
4. It seems likely that the Insurer has terminated the applicant's payments due to some perceived ability to do so arising out of section 48A of the



1998 Act; however in order to validly do so certain steps are required, none of which involve quoting a non-existent former section of the Act.

5. Such obvious shortcomings notwithstanding, it is clear that no work capacity decision under section 43 of the *Workers Compensation Act 1987* has been made. This office can only review such decisions, and can only conduct a review of those decisions following merit review. In the absence of any such decision, no merit review has taken place and therefore no procedural review is possible.
6. I do note that section 105 of the 1998 Act gives the Workers Compensation Commission exclusive jurisdiction “to examine, hear and determine all matters arising under this Act and the 1987 Act.” The applicant might seek legal advice about pursuit of a remedy in that forum.

FINDING

7. I find that the Insurer has not made a work capacity decision, nor has it purported to make a work capacity decision..

RECOMMENDATION

8. I make no recommendation.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
16 September 2014