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

SUMMARY:

- a. The work capacity decision of the insurer dated 30 October 2015 is set aside.
- b. The Insurer should make a new decision, giving the correct notice under section 54(2)(a), if required.
- c. The applicant should continue to receive weekly payments in the interim.

Introduction and background

1. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 30 October 2015. The Decision informed the applicant that his weekly payments of compensation would cease on 8 February 2016.
2. Confusingly for the applicant, the same decision also informed him that his payments would cease on 29 December 2015.
3. On page 3 of the decision the following appears:

“By the time this Work Capacity Decision becomes effective on **8 February 2016** an aggregate period of 60 weeks (whether consecutive or not) in respect of weekly payments would have been paid or payable to you which places you in the second entitlement period and as a result your weekly payment rate is determined in accordance with section 37(2) of the *Workers Compensation Act 1987*.”
4. None of what appears in paragraph 3 *supra* is exceptionable.
5. On page 4 of the decision the following appears:



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“ ... you will only continue to be entitled to weekly compensation payments until **29 December 2015** after which time your entitlement to weekly compensation will terminate (pursuant to section 54(2)(a) of the *Workers Compensation Act 1987*).”

6. It is not possible to reconcile the two pieces of information. Most confusingly of all for the applicant is that the latter date (ironically the earlier of the two) appears under the heading “**Required notice period.**”
7. It follows that even if 8 February 2016 had been the correct date (which would have provided the correct notice under section 54(2)(a)), the applicant could not possibly know that and might have been well justified in the belief that his payments were to cease on 29 December 2015, a date which does not comply with section 54(2)(a).
8. Accordingly the applicant has not been given clear, comprehensible notice as to when his payments will cease and one of the two options he was given does not comply with the statute.

Finding

9. I find that the Insurer has not provided the correct (or any) notice to the applicant under section 54(2)(a) and that therefore the decision must be found to be procedurally invalid.

RECOMMENDATION

10. The work capacity decision of the insurer dated 30 October 2015 is set aside.
11. The Insurer should make a new decision, giving the correct notice under section 54(2)(a), if required.
12. The applicant should continue to receive weekly payments in the interim.



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A handwritten signature in blue ink, appearing to read "Wayne Cooper", with a long horizontal flourish extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
17 May 2016