

*Gun & Davey*

***Covered***



---

**Vol 1, Issue 14 – February 1999**

---

## **CASE SNIPPETS**

*CHIRNSIDE -v- STATE OF SOUTH AUSTRALIA  
(PRIMARY INDUSTRIES & RESOURCES SA)*

*JD 1/1999*

Further to the views expressed by Deputy President *McCusker* in *McAvoy -v- WorkCover JD42/1995* featured in ***Gun & Davey – Covered*** Issue 11 (p3), the Deputy President in Chirnside examined the adequacy of the time limit permitted to a worker to make representations in respect of a Notice of Intention to Review / Section 38(3) Notice. In this case, the worker was allowed seven days from the date of the Section 38(3) Notice to provide written representations on the subject of the intended review.

The worker brought an application as a consequence of the Notice of Dispute lodged in respect of the associated Section 38(7) Outcome of Review of Weekly Payments Notice, seeking that the last mentioned determination be summarily set aside on the basis that, as a matter of law, seven days within which to respond to a Notice of Pending Review of Weekly Payments is wholly inadequate and thereby renders the associated Section 38(7) Notice invalid.

The Deputy President did not accept the worker's submissions and found that what constitutes "a reasonable time" for the purposes of Section 38(3)(b) is dependent on the circumstances of each particular case. He observed that in cases where there had been a substantial exchange of correspondence and information between the compensating authority and the worker it may be that the requirements of Section 38(3) might be a mere formality. Seven or even five days to respond to a Section 38(3) Notice may in those circumstances be considered reasonable.

He noted however that in other cases where there has been limited correspondence or exchange of information or where the worker is provided with a substantial amount of information that requires his or her consideration before a reply can be given, a time limit

of many weeks or even longer may be required for it to be said that the worker has been given a reasonable time within which to make representations. He then declined the summary relief sought as the parties failed to call evidence on these important issues.

**Commentary:**

The current standard of four weeks notice should be maintained but consideration should be given in each individual case to determine whether a longer period may be required. A little bit of commonsense is all that is required to avoid problems such as these!