

Gun & Davey

Covered



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COVERED CASES

*CIAMPI - V- STATE OF SOUTH AUSTRALIA
(PORT PIRIE REGIONAL HEALTH SERVICE INCORPORATED)*

JD 117/1999

A review conducted pursuant to Section 39 of the Act resulted in the worker's weekly payment entitlement being adjusted from \$80.94 to \$37.20 per week. The worker immediately lodged a Notice of Dispute. The matter proceeded to Conciliation. When Conciliation was unable to resolve the dispute the parties applied for the matter to proceed to immediate Judicial Determination.

At no stage had the Conciliator made an order pursuant to Section 36(4)(b) for weekly payments to be maintained at the original level. Nevertheless the employer continued to pay the worker at the higher rate. Upon being made aware of this the worker's solicitor advised the employer that it was under no obligation to continue paying the worker at his higher rate. The employer then advised of its intention to commence paying the worker at the reduced rate. The worker lodged an *Application for Directions* seeking an order that weekly payments of income maintenance be reinstated to the original amount.

The WCT relied upon the reasoning in *Mitsubishi Motors Australia -v- Sosa* to conclude that if a compensating authority is entitled to adjust a worker's weekly payments downward in reliance upon a review conducted in accordance with Section 39 of the Act, the consequential reduction requires the invocation of Section 36. As such the worker is therefore entitled to the benefit of Section 36(4).

The Tribunal made a further important observation about the policy behind Section 36(4)(b). Deputy President Gilchrist stated that the policy is to, if requested, preserve the worker's entitlements pending resolution of the dispute whilst at the same time promoting the expeditious resolution of the dispute. The objects of the Act would be best achieved by enabling the suspension order to be lifted and reinstated as circumstances require.

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However, His Honour refused the worker's application to make the suspension order *retrospective* on the basis that he was not empowered to grant such relief.

It is now clear that an initial failure to order a continuation of weekly payments under Section 36(4)(b) may not necessarily prevent the order being made at a later stage.