

*Gun & Davey*

**Covered**



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## **COVERED CASES**

*FALIDIS -v- UNISURE PTY LTD*

*Decision of the Full Workers Compensation Tribunal  
(JD67/1998)*

Unisure originally made a determination to accept a worker's claim for compensation for a *closed period* setting an average weekly earnings (awe's) at \$595.50 per week.

The worker lodged a Notice of Dispute on the basis his incapacity was ongoing.

Rather than re-considering the determination pursuant to Section 91 of the Act, Unisure re-determined the claim as ongoing pursuant to Section 53(7) and (7a) again setting awe's at \$595.50.

Unisure then became aware that the awe's were incorrect as they had included overtime and sought to issue a second *re-determination* varying the awe's to \$464.40 per week. The worker then lodged a second Notice of Dispute in relation to that re-determination.

The Tribunal held that the lodgement of the first Notice of Dispute had the effect of extinguishing any entitlements that the worker might otherwise have been able to enforce. This was so at least until the process of a reconsideration had been finalised. Accordingly, as the original determination was effectively vacated through the lodgement of the first Notice of Dispute, it was not appropriate to make a re-determination until the reconsideration process had been completed. Deputy President Gilchrist held that if re-determination were permissible following lodgment of a Notice of Dispute, the dispute resolution process could be stymied.

The Tribunal further held that the need to re-determine did not arise until at least the re-consideration had been completed. The Tribunal did not go so far as to hold that there was a blanket embargo upon the use of Section 53(7) and (7a) during the entire dispute resolution process, but it appears that there is until a re-consideration has been made