

Gun & Davey

Covered



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CASE SNIPPETS

TUCKER -v- MURRAY BRIDGE SOLDIERS MEMORIAL HOSPITAL INC

Decision of the Workers Compensation Tribunal

(JD63/1999)

Weekly payments were not reviewed pursuant to Section 39 in respect of a worker who was injured and in receipt of payments from 1989 until 1997. In January 1998 annual reviews were purportedly conducted for 1992, 1993, 1994, 1995 and 1996. The Tribunal held that the determination was not *ultra vires* in that such reviews could be conducted *retrospectively*.

The Tribunal proceeded to increase nwe's in accordance with the second alternative in Section 39(2)(a)(i) namely on the basis of changes in rates of remuneration payable to workers engaged in the kind of employment from which the worker's disability arose. Interestingly, the Tribunal used the actual earnings of other comparable enrolled nurses at Murray Bridge Hospital to perform the adjustment. We do not consider this approach is necessarily correct.

The Tribunal made a further important observation that where a worker applies pursuant to Section 39(2)(a)(ii) for an adjustment to be made on the basis of changes in rates of remuneration prescribed by an award or enterprise bargaining agreement, a review on that basis is mandatory – there is no discretion