



**WR&C ACT 1986**  
**INJURY MANAGEMENT PRACTICE NOTE**  
**FOR THE PUBLIC SECTOR**

**ANNUAL REVIEWS (SECTION 39)**

**1. PURPOSE**

- 1.1 To ensure a consistent approach is applied across public sector agencies when completing an economic adjustment ('annual review') of an injured worker's weekly payments, required under section 39 of the Workers Rehabilitation and Compensation Act, 1986 ('the Act').

**2. BACKGROUND**

- 2.1 Section 39 of the Act requires a review of an injured worker's notional weekly earnings at least once during the course of each year of incapacity, for the purpose of making an economic adjustment to the weekly payments. Within this document, this review is to be referred to as "the annual review".
- 2.2 Section 39 of the Act requires that the adjustment to an injured worker's weekly payments be based on either:
- 2.2.1 Changes in the rates of remuneration payable to workers generally or to workers engaged in the kind of employment from which the worker's disability arose – section 39(2)(a)(i); or
- 2.2.2 If the worker applies (in a designated manner and a designated form) on the basis of changes in the rates of remuneration in an award or enterprise agreement payable to a group of workers of which the worker was a member at the time of their disability – 39(2)(a)(ii).
- 2.3 The preferred position of the public sector is for the annual review to be based on changes in the pay rates contained in the relevant industrial award or enterprise bargaining agreement. In cases where this is not possible, it would be preferred if the annual review was undertaken on the basis of changes in the pay rates of a comparable employee (as opposed to changes in the rates of remuneration payable to workers generally).

**3. PRACTICE**

- 3.1 It is recommended that:
- 3.1.1 Before commencing the annual review, the agency gives the injured worker notice in the designated form of the proposed review at least 30 calendar days prior to the review occurring and invites the worker to make written representations in respect of the review.
- 3.1.2 Where the adjustment is based on changes in an award or enterprise agreement, the adjustment takes effect from the date of the decision, but is backdated to the date that the award or enterprise agreement took effect. In calculating the back pay, interest is not payable under section 47 of the Act as there has not been a delay in the payment of weekly payments.
- 3.1.3 Where the adjustment is based on changes in the rates of remuneration payable to a comparable employee, the adjustment is to operate from the end of the year of incapacity in which the review is made. A worker in this instance is not entitled to any back pay of the adjustment.
- 3.1.4 Where the adjustment is based on changes in the rates of remuneration payable to workers generally, the adjustment is to operate from the end of the year of incapacity in which the review is made. A worker in this instance is not entitled to any back pay of the adjustment.

3.1.5 On completing the review, the agency advises the worker in writing of the basis for the review, and provides details of their right to have the decision reviewed.

Should you have any questions in relation to this advice please direct your enquiry to Public Sector Workforce Relations (Workers Compensation Performance), Department of the Premier and Cabinet (phone 822 62683).

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