

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 6500/19
Applicant: Cheryl Maree Bendeich
Respondent: Mayo Home Nursing Services
Date of Determination: 2 April 2020
Citation: [2020] NSWCC 104

The Commission determines:

1. The respondent pay the applicant weekly compensation under section 38A of the *Workers Compensation Act 1987* as follows:
 - (a) from 23 April 2016 to 30 September 2016 at the rate of \$793 per week;
 - (b) from 1 October 2016 to 31 March 2017 at the rate of \$796 per week;
 - (c) from 1 April 2017 to 30 September 2017 at the rate of \$808 per week;
 - (d) from 1 October 2017 to 31 March 2018 at the rate of \$814 per week;
 - (e) from 1 April 2018 to 30 September 2018 at the rate of \$826 per week;
 - (f) from 1 October 2018 to 31 March 2019 at the rate of \$831 per week;
 - (g) from 1 April 2019 to 30 September 2019 at the rate of \$840 per week, and
 - (h) from 1 October 2019 to date and continuing at the rate \$845 per week.
2. The respondent to have credit for payments already made.

A brief statement is attached setting out the Commission's reasons for the determination.

Jane Peacock
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF JANE PEACOCK, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Sufian

Abu Sufian
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. By Application to Resolve a Dispute (the Application) Ms Bendeich (the applicant) seeks weekly compensation as a result of injury to her cervical spine and nervous system on 23 April 2016.
2. The respondent is Mayo Home Nursing Services (Mayo). Mayo was insured at the relevant time for the purposes of workers compensation by GIO Genera Limited (the insurer).

ISSUES FOR DETERMINATION

3. There is no dispute that Ms Bendeich injured her cervical spine and nervous system at work on 23 April 2016.
4. Ms Bendeich has received lump sum compensation under section 66 of the *Workers Compensation Act 1987* (the 1987 Act) in respect of 36% whole person impairment (WPI) in respect of the injury to her cervical spine and nervous system on 23 April 2016.
5. By virtue of the above, there is no dispute that Ms Bendeich falls within the definition of a worker with highest needs under section 32A of the 1987 Act.
6. As a worker with highest needs, Ms Bendeich seeks weekly compensation under section 38A of the 1987 Act to be paid from the date of injury on 23 April 2016.
7. Mayo does not dispute that Ms Bendeich is entitled to weekly compensation under section 38A but says that her entitlement to special payments under section 38A runs from when she was awarded lump sum compensation on the basis of 36% WPI as per the complying agreement entered into between the parties on 21 June 2018
8. In the event Ms Bendeich is successful in her claim for compensation from the date of injury, there is no dispute that the rates payable are those claimed in the Application as follows:
 - (a) from 1 October 2016 to 31 March 2017 at the rate of \$796 per week;
 - (b) from 1 April from 23 April 2016 to 30 September 2016 at the rate of \$793 per week;
 - (c) 2017 to 30 September 2017 at the rate of \$808 per week;
 - (d) from 1 October 2017 to 31 March 2018 at the rate of \$814 per week;
 - (e) from 1 April 2018 to 30 September 2018 at the rate of \$826 per week;
 - (f) from 1 October 2018 to 31 March 2019 at the rate of \$831 per week;
 - (g) from 1 April 2019 to 30 September 2019 at the rate of \$840 per week, and
 - (h) from 1 October 2019 to date and continuing at the rate \$845 per week.
9. Mayo says Ms Bendeich would be entitled to the rates claimed above from 21 June 2018 to date and continuing.
10. In the event Ms Bendeich is successful in her claim, Mayo seeks a further order that Mayo have credit for payments already made, which is consented to by Ms Bendeich.

PROCEDURE BEFORE THE COMMISSION

11. The parties attended a conciliation arbitration in Newcastle. Both parties were represented by counsel with Mr Hunt appearing for Ms Bendeich and Mr Baker appearing for Mayo. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

12. The following documents were in evidence before the Commission being admitted by consent, and taken into account in making this determination:

For Ms Bendeich:

- (a) Application and attached documents.

For Mayo:

- (b) The Reply and attached documents.

Oral evidence

13. Ms Bendeich did not seek leave to adduce further oral evidence and counsel for Mayo did not seek leave to cross-examine Ms Bendeich.

FINDINGS AND REASONS

14. There is no dispute that Ms Bendeich injured her cervical spine and nervous system a work on 23 April 2016. Ms Bendeich came to surgery on her cervical spine in May 2016 as a result of her work injury. She was left with consequential conditions in her nervous system.
15. Ms Bendeich has received lump sum compensation as a result of her injuries on 23 April 2016 for 36% WPI. The parties entered into a complying agreement on 21 June 2018 for Ms Bendeich to be paid compensation for 36% WPI as a result of her injuries on 23 April 2016. The complying agreement is expressed to be based on the assessment of Acting Professor Fearnside as per his report dated 11 December 2017.
16. Ms Bendeich was not assessed by an Approved Medical Specialist appointed by the Commission. Rather the insurer agreed to the payment of lump sum compensation for 36% WPI.
17. There is no dispute that Ms Bendeich is a worker with highest needs in accordance with the definition in section 32A of the 1987 Act which provides as follows:

“**worker with highest needs**’ means a worker whose injury has resulted in permanent impairment and—

- (a) the degree of permanent impairment has been assessed for the purposes of Division 4 to be more than 30%, or

- (b) an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or [Note: Paragraph (b) no longer applies once the degree of permanent impairment has been assessed.]
 - (c) the insurer is satisfied that the degree of permanent impairment is likely to be more than 30%.”
18. The dispute arises because Ms Bendeich seeks weekly compensation under section 38A from the date of injury on 23 April 2016.
19. Mayo disputes that such payments are payable from the date of injury but concedes that the payments are from the date of the complying agreement entered into on 21 June 2018.
20. I must make a determination in this case in accordance with the law.
21. The applicable law in respect of the entitlement to the payment of weekly compensation and rates of payment is set out in sections 33 to 38A of the 1987 Act which provides as follows:

“33 Weekly compensation during total or partial incapacity for work

(cf former s 9 (1))

If total or partial incapacity for work results from an injury, the compensation payable by the employer under this Act to the injured worker shall include a weekly payment during the incapacity.

[Note: Chapter 3 of the 1998 Act (Workplace injury management) provides that, if a worker fails unreasonably to comply with a requirement of that Chapter after being requested to do so by an insurer, the worker has no entitlement to weekly payments of compensation for the period that the failure continues.]

34 Maximum weekly compensation amount

(1AA) A weekly payment of compensation under this Subdivision is not to exceed the maximum weekly compensation amount.

(1) The ‘**maximum weekly compensation amount**’ is \$1,838.70.

(2) If the amount mentioned in subsection (1)—

(a) is adjusted by the operation of Division 6, or

(b) is adjusted by an amendment of this section,

the maximum weekly compensation amount applicable to a worker injured before the date on which the adjustment takes effect is, for any period of incapacity for work occurring on and after that date, to be determined by reference to that amount as so adjusted.

(3) Such an adjustment does not apply to the extent that the liability to make weekly payments of compensation in respect of any such period of incapacity has been commuted.

35 (Repealed)

36 Weekly payments during first entitlement period (first 13 weeks)

- (1) The weekly payment of compensation to which an injured worker who has no current work capacity is entitled during the first entitlement period is to be at the rate of 95% of the worker's pre-injury average weekly earnings.
- (2) The weekly payment of compensation to which an injured worker who has current work capacity is entitled during the first entitlement period is to be at the lesser of the following rates—
 - (a) 95% of the worker's pre-injury average weekly earnings, less the worker's current weekly earnings,
 - (b) the maximum weekly compensation amount, less the worker's current weekly earnings.

37 Weekly payments during second entitlement period (weeks 14–130)

- (1) The weekly payment of compensation to which an injured worker who has no current work capacity is entitled during the second entitlement period is to be at the rate of 80% of the worker's pre-injury average weekly earnings.
- (2) The weekly payment of compensation to which an injured worker who has current work capacity and has returned to work for not less than 15 hours per week is entitled during the second entitlement period is to be at the lesser of the following rates—
 - (a) 95% of the worker's pre-injury average weekly earnings, less the worker's current weekly earnings,
 - (b) the maximum weekly compensation amount, less the worker's current weekly earnings.
- (3) The weekly payment of compensation to which an injured worker who has current work capacity and has returned to work for less than 15 hours per week (or who has not returned to work) is entitled during the second entitlement period is to be at the lesser of the following rates—
 - (a) 80% of the worker's pre-injury average weekly earnings, less the worker's current weekly earnings,
 - (b) the maximum weekly compensation amount, less the worker's current weekly earnings.

38 Weekly payments after second entitlement period (after week 130)

- (1) A worker's entitlement to compensation in the form of weekly payments under this Part ceases on the expiry of the second entitlement period unless the worker is entitled to compensation after the second entitlement period under this section.
- (2) A worker who is assessed by the insurer as having no current work capacity and likely to continue indefinitely to have no current work capacity is entitled to compensation after the second entitlement period.
- (3) A worker (other than a worker with high needs) who is assessed by the insurer as having current work capacity is entitled to compensation after the second entitlement period only if—

- (a) the worker has applied to the insurer in writing (in the form approved by the Authority) no earlier than 52 weeks before the end of the second entitlement period for continuation of weekly payments after the second entitlement period, and
 - (b) the worker has returned to work (whether in self-employment or other employment) for a period of not less than 15 hours per week and is in receipt of current weekly earnings (or current weekly earnings together with a deductible amount) of at least \$155 per week, and
 - (c) the worker is assessed by the insurer as being, and as likely to continue indefinitely to be, incapable of undertaking further additional employment or work that would increase the worker's current weekly earnings.
- (3A) A worker with high needs who is assessed by the insurer as having current work capacity is entitled to compensation after the second entitlement period only if the worker has applied to the insurer in writing (in the form approved by the Authority) no earlier than 52 weeks before the end of the second entitlement period for continuation of weekly payments after the second entitlement period.
- (4) An insurer must, for the purpose of assessing an injured worker's entitlement to weekly payments of compensation after the expiry of the second entitlement period, ensure that a work capacity assessment of the worker is conducted—
- (a) during the last 52 weeks of the second entitlement period, and
 - (b) thereafter at least once every 2 years.

[Note: An insurer can conduct a work capacity assessment of a worker at any time. The Workers Compensation Guidelines can also require a work capacity assessment to be conducted.]

- (5) An insurer is not to conduct a work capacity assessment of a worker with highest needs unless the insurer thinks it appropriate to do so and the worker requests it. An insurer can make a work capacity decision about a worker with highest needs without conducting a work capacity assessment.
- (6) The weekly payment of compensation to which an injured worker who has no current work capacity is entitled under this section after the second entitlement period is to be at the rate of 80% of the worker's pre-injury average weekly earnings.
- (7) The weekly payment of compensation to which an injured worker who has current work capacity is entitled under this section after the second entitlement period is to be at the lesser of the following rates—
 - (a) 80% of the worker's pre-injury average weekly earnings, less the worker's current weekly earnings,
 - (b) the maximum weekly compensation amount, less the worker's current weekly earnings.
- (8) A worker's entitlement to compensation under this section may be reassessed at any time.

38A Special provision for workers with highest needs

- (1) If the determination of the amount of weekly payments of compensation payable to a worker with highest needs in accordance with this Subdivision results in an amount that is less than \$788.32, the amount is to be treated as \$788.32.
- (2) If the amount specified in subsection (1) is varied by operation of Division 6A, a weekly payment of compensation payable to a worker with highest needs before the date on which the variation takes effect is, for any period of incapacity occurring on and after that date, to be determined by reference to that amount as so varied.”

22. The purpose of section 38A is to provide that, in the case of a worker with highest needs, the rate of weekly benefits is adjusted so that it does not fall below the prescribed rate.

23. Counsel for Ms Bendeich relied on the authority of *Melides v Meat Carter Pty Limited* [2019] NSWCCPD 48 (*Melides*) which was a decision by Acting Deputy President Parker. In that case, the Acting Deputy President upheld an appeal by the worker from a decision of an arbitrator in circumstances where the arbitrator had held that the worker’s entitlement to section 38A payments did not commence until the date of issue of the Medical Assessment Certificate confirming an assessment that he was a worker with highest needs. The Deputy President on appeal held that section 38A applied from the date of injury such that the worker was entitled to payment of weekly compensation at the rates prescribed by section 38A from the date of injury. The Deputy President held that:

“Dating the payment of the special benefit to commence from the date of injury accords with the purpose of s 38A to provide that workers with highest needs should receive a prescribed minimum payment. This purpose is not advanced by limiting the payment to a date after the medical assessment declares the worker to be a worker with ‘highest needs’. In the majority of cases a ‘worker with highest needs’ is likely to have qualified as such from the date of injury even if the formal assessment of same does not occur until a later point of time”

24. In arriving at this conclusion, the Deputy President undertook the following useful analysis:

“Construction of section 38A

32. In *Adco Constructions v Goudappel*¹ the High Court said when construing a regulation that the appropriate enquiry should be directed to the ‘text, context and purpose of the regulation, the discernment of relevant constructional choices, if they exist, and the determination of the construction that, according to established rules of interpretation, best serves the statutory purpose’.²

33. A similar approach to the construction of s 38A is appropriate

34. It is necessary to identify the statutory context of the provision in the *Workers Compensation Act 1987* (the 1987 Act).

¹ [2014] HCA 18; 254 CLR 1 (*Goudappel*).

² *Goudappel*, [28].

35. Section 9 of the 1987 Act provides:
- (1) A worker who has received an injury (and in the case of the death of the worker his or her dependants) shall receive compensation from the worker's employer in accordance with this Act.
36. The right to receive and the obligation to pay compensation are determined by reference to receipt of an injury.
37. Division 2 of Pt 3 of the 1987 Act is entitled 'Weekly compensation by way of income support.'
38. Section 32A provides interpretation for Pt 3 Div 2 and Sch 3.
39. Mr Melides is defined as a 'worker with highest needs' because he satisfies the requirements of paragraph (a) of the definition in s 32A, which states as follows:
- 'worker with highest needs** means a worker whose injury has resulted in permanent impairment and:
- (a) the degree of permanent impairment has been assessed for the purposes of Division 4 to be more than 30%, or
- (b) an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or
- Note. Paragraph (b) no longer applies once the degree of permanent impairment has been assessed.
- (c) the insurer is satisfied that the degree of permanent impairment is likely to be more than 30%.'
40. Section 33 provides for weekly compensation:
- 'If total or partial incapacity for work results from an injury, the compensation payable by the employer under this Act to the injured worker shall include a weekly payment during the incapacity.'
41. Sections 34 to 42 quantify and qualify the entitlement to weekly compensation with respect to both duration and amount.
42. Before turning to the text of s 38A the following points may be made:
- a. Sections 36, 37, 38, 39 and 40, each make explicit reference to a temporal component. The Act is quite specific in defining that temporality. Section 38A does not contain any explicit temporal element.
- b. Section 38A is placed after the sections that define the amount of weekly payments to be made.

- c. It is followed by s 39(1), which provides that weekly compensation shall not be paid after 260 weeks. An exception is made where s 39(2) is satisfied.
 - d. Sections 40 to 42 contain provisions whereby weekly payments may be adjusted to accommodate particular circumstances of the recipient.
43. Section 38A provides:
- '(1) If the determination of the amount of weekly payments of compensation payable to a worker with highest needs in accordance with this Subdivision results in an amount that is less than \$788.32, the amount is to be treated as \$788.32.
 - (2) If the amount specified in subsection (1) is varied by the operation of Division 6A, a weekly payment of compensation payable to a worker with highest needs before the date on which the variation takes effect is, for any period of incapacity occurring on and after that date, to be determined by reference to that amount as so varied.'
44. Section 38A operates from 4 December 2015.
45. The transitional provision for s 38A is contained in cl 9 of Pt 19I of Sch 6 to the 1987 Act. That provides:

'9 Weekly payments

- (1) Section 38A of the 1987 Act extends to the determination of the compensation payable in respect of any period of incapacity occurring before the commencement of that section.
 - (2) The regulations may make provision for or with respect to the adjustment of the amount of weekly payments of compensation payable to an injured worker as a result of the operation of section 38A of the 1987 Act and this clause.
 - (3) Without limiting subclause (2), the regulations may prescribe the period within which any additional amount payable to an injured worker as a result of the adjustment is to be paid.'
46. A further transitional provision is contained in the Workers Compensation Regulation 2016 (the 2016 Regulation), clause 35 of Schedule 8 of the 2016 Regulation:

'35 Weekly payments – workers with highest needs

- (1) Section 38A of the 1987 Act does not apply to the determination of the compensation payable in respect of any period of incapacity occurring before 17 September 2012.
- (2) Section 38A of the 1987 Act does not apply to a worker whose pre-injury average weekly earnings have been deemed to be equal to the transitional amount for the purposes of the application under clause 9 or 10 of Part 19H of Schedule 6 to the 1987 Act of the weekly payments amendments (within the meaning of that Part) to the worker.'

47. The purpose of s 38A is to provide that in the case of a worker with highest needs the rate of weekly benefit payable is adjusted so that it does not fall below the prescribed minimum.
48. Section 38A is premised on the 'determination of the amount of weekly payments of compensation payable to a worker with highest needs in accordance with this Subdivision'.³
49. Pursuant to the Direction issued on 13 August 2019, the appellant submitted that whilst the Court of Appeal decision in *Hee No 3* did not directly consider the matters in issue in this appeal, the majority decisions are consistent with the proposition that the entitlement to the benefit of s 38A commences prior to any assessment of Whole Person Impairment by an Approved Medical Specialist. The respondent submitted that although the Court of Appeal considered s 38A, the decision is not on point in the current appeal because the Court was concerned with the issues of the construction and application of the phrases 'current work capacity' in s 37 and the 'amount of weekly payments under s 38A'.
50. In my view *Hee No 3*, provides considerable guidance to the correct construction of s 38A. Meagher JA said:

[31] The structure and terms of s 38A(1) confirm that it only operates in circumstances where there is an entitlement to an amount of weekly compensation, determined in accordance with ss 36, 37 or 38(6) or (7), and irrespective of whether that amount is zero, or less than zero. If the condition enlivening the 'special provision' is satisfied, that provision is to be made by treating the amount which is the outcome of that earlier and necessary 'determination' as being the specified amount, initially \$788.32. Section 38A does not in terms provide that a worker with highest needs with partial incapacity for work is entitled to weekly compensation at the specified or any other rate. It applies if there is an entitlement to an 'amount' determined in accordance with one of the earlier provisions, and then only to specify a minimum amount which is to be payable. ...

[32] The 'determination' describes the outcome of the calculation of the rate of weekly payments to which an injured worker is entitled under one of the relevant provisions. The use of the word 'payable' in s 38A(1) confirms that outcome is the weekly payment to which the injured worker is otherwise entitled under Pt 3 Div 2. As Giles JA observed (Allsop P and Hodgson JA agreeing) in *Speirs v Industrial Relations Commission of New South Wales* "employer's liability to pay compensation and a worker's entitlement to receive compensation each express compensation being payable."

[33] All of this is consistent with the language of s 33 and the scheme of Pt 3, Div 2. The general provision in s 9 makes clear that the injured worker is entitled to compensation 'in accordance with this Act'. Section 33 does not provide for the calculation of any 'weekly payments' to which the worker is entitled for partial or total incapacity. It is the other provisions of Div 2, Subdiv 2 that do so. That is confirmed by the language of s 35(1) which defines the integers to be used in those calculations and in doing so describes the operative sections – ss 36, 37 and 38 – as 'the provisions of this Subdivision used to determine the rate of weekly payments payable to an injured worker

³ *Hee No 3*, [31], [56].

in respect of a week'. Accordingly, the reference to a 'weekly payment' in s 33 is to a payment determined in accordance with those operative sections. In that context s 38A applies to a 'worker with highest needs' entitled to a determination of a weekly payment amount, even if the amount determined is zero.”

25. The Deputy President in *Melides* came to the following conclusion:

“48. Section 38A operates in the context of the determination made under ss 36, 37 and 38. Those provisions calculate the entitlement to weekly payments. The special payment under s 38A is substituted for the determined amount under those provisions. It follows that the entitlement to the special payment for workers with highest needs arises at the same time as the entitlement to weekly compensation under ss 36, 37 or 38 is determined. That date in my view is the date of injury.

49. In my view, dating the payment of the special benefit to commence from the date of injury accords with the purpose of s 38A to provide that workers with highest needs should receive a prescribed minimum payment. This purpose is not advanced by limiting the payment to a date after the medical assessment declares the worker to be a worker with 'highest needs'. In the majority of cases a 'worker with highest needs' is likely to have qualified as such from the date of injury even if the formal assessment of same does not occur until a later point of time.

50. The benefit paid under s 38A is substituted for the amount of weekly compensation determined under ss 36–38. It follows in my view that the entitlement arises at the same time as the entitlement under those sections. That in my view is the date of injury, in this case 14 August 2014.”

26. Ms Bendeich submitted that I would necessarily follow this construction of section 38A such that her entitlement to the special payments under section 38A would run from the date of injury on 23 April 2016. Ms Bendeich submitted that she was entitled to the benefit of the law as it currently stands that is as it has been interpreted by a Deputy President sitting at the appellate level of this Commission. As a first instance arbitrator, it was submitted, I was bound to follow that decision.

27. Counsel for Mayo conceded that Ms Bendeich is a worker with the highest needs and that she is entitled to payments at the section 38A rates but only from the date of the complying agreement on 21 June 2018.

28. Counsel for Mayo submitted that I was an “invidious” position as an arbitrator sitting at first instance given the authority of *Melides* but that I should reserve my decision pending the outcome of the appeal by the insurer in *Melides*. The appeal was filed on 4 December 2019 and, on counsel for Mayo’s estimation, will be heard in April 2020.

29. I simply cannot do what Mr Baker suggests and delay a decision in this matter by reason of speculation on the outcome of the appeal in *Melides* – that it will proceed, when it will be heard and what will be decided. Rather, as an arbitrator sitting at first instance, I must make a decision in accordance with the law as it currently stands.

30. Ms Bendeich is entitled to the benefit of the law as it stands currently. Counsel for Mayo was not able to make any submissions that would distinguish the application of *Melides* to the present case.

31. Counsel for Mayo submitted briefly on a Workcover Certificate which is in evidence dated 6 January 2017 which on its face certified Ms Bendeich fit for pre-injury duties. In fact, a proper analysis of that certificate reveals restrictions itemised in that same certificate that would prevent Ms Bendeich performing her pre-injury duties as an assistant in nursing. When counsel for Mayo was asked what the effect of his reference to the certificate dated 6 January 2017 and what finding I would make in this regard, he somewhat vaguely submitted that I would weigh it up when making my decision. The overwhelming weight of the evidence is that Ms Bendeich cannot and has not been able since injury perform her pre-injury duties. Indeed Dr Mastroianni, an independent medical expert qualified on behalf of Mayo, in a report dated July 2019 spells out very clearly that Ms Bendeich “will not be employed as an assistant in nursing or general service officer doing domestic housework” because of her restrictions. Those restrictions include those which were evident on the certificate dated 6 January 2017.
32. Given Ms Bendeich is entitled to a decision in accordance with the law as it currently stands, I will make an award for special payments of weekly compensation in her favour from the date of injury on 23 April 2016 in line with the decision of Acting Deputy President Parker in *Melides*.
33. Mayo agreed that in the event this was my finding, the rate of payments sought by Ms Bendeich as set out in the Application were the agreed rates. Further in accordance with the agreement of the parties, Mayo is to have credit for payments already made.
34. Accordingly, I will so order as follows:
- (a) The respondent pay the applicant weekly compensation under section 38A of the 1987 Act as follows:
 - (i) from 23 April 2016 to 30 September 2016 at the rate of \$793 per week;
 - (ii) from 1 October 2016 to 31 March 2017 at the rate of \$796 per week;
 - (iii) from 1 April 2017 to 30 September 2017 at the rate of \$808 per week;
 - (iv) from 1 October 2017 to 31 March 2018 at the rate of \$814 per week;
 - (v) from 1 April 2018 to 30 September 2018 at the rate of \$826 per week;
 - (vi) from 1 October 2018 to 31 March 2019 at the rate of \$831 per week;
 - (vii) from 1 April 2019 to 30 September 2019 at the rate of \$840 per week, and
 - (viii) from 1 October 2019 to date and continuing at the rate \$845 per week.
 - (b) The respondent to have credit for payments already made.

