WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **4439/17**
Applicant: **Seema Negi**
Respondent: **Nass Consulting Pty Ltd**
Date of Determination: **8 September 2020**
Citation: **[2020] NSWWCC 311**

The Commission determines:

1. Having reconsidered my decision of 15 February 2018 pursuant to section 350 (3) of the *Workplace Injury Management and Workers Compensation Act 1998* I amend the orders made therein by deleting order 4 of my Determination and inserting in lieu:

> "Respondent to pay the applicant's medical and hospital expenses pursuant to section 60 in respect of injuries to the applicant's neck and right shoulder on 30 January 2015."

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

Paul Sweeney
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 Paul Sweeney, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

L Golic

Lucy Golic
Acting Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. On 15 February 2018, I issued an Amended Certificate of Determination in this matter by which I found that Seema Negi (the applicant) suffered injury to her chest, neck and right shoulder arising out of and in the course of her employment on the 30 January 2015. I made an award for the applicant for a closed period of compensation between 2 October 2015 and 27 May 2017.

2. I found that the effects of the injury of 30 January 2015 ceased by 27 May 2017. I also ordered that the matter be remitted to the Registrar for referral to an Approved Medical Specialist (AMS) to certify the degree of whole person impairment of the applicant's neck and right upper extremity as a result of the injury of 30 January 2015.

3. On 12 March 2018, Dr Dixon, an AMS, certified that the applicant had 5% whole person impairment (WPI) of her cervical spine and 8% WPI of her right upper extremity as a result of the injuries on 30 January 2015.

4. By a further Certificate of Determination dated 11 May 2018, an award was entered in favour of the applicant for $17,050 in respect of 12% WPI.

5. On 16 June 2020, the applicant sought a reconsideration of my award of 15 February 2018 by reason of its inconsistency with the certification of Dr Dixon and the award of 11 May 2018. She sought orders substituting a continuing award of weekly payments in lieu of the closed period of weekly compensation in my decision of 15 February 2018. Nass Consulting Pty Ltd (the respondent) opposed the reconsideration of the matter and the making of the orders sought by the applicant. These reasons are to be read in conjunction with my previous decision.

PROCEDURE BEFORE THE COMMISSION

6. On 21 July 2020, I conducted a telephone conference where the applicant was represented by counsel and the respondent by a solicitor. As both parties had filed brief submissions, I indicated a preference to deal with the reconsideration on the papers after providing an opportunity for the parties to make further submissions if they thought it appropriate. As Mr Hammond strongly pressed for a conciliation and arbitration in the matter, I set the matter down for a conciliation conference and arbitration hearing by telephone on 17 August 2020.

7. At that time, Mr Hammond, of counsel, represented the applicant and Ms Belendra, of counsel, represented the respondent. Unsurprisingly, the parties were unable to resolve the dispute during conciliation.

8. Unfortunately, the arbitration was marred by problems with telephone connections and sound quality. Nonetheless, there is a transcript of the submissions of counsel which faithfully reflects the arguments advanced at the arbitration. Those arguments were not materially different to the submissions made in writing at the time of the commencement of these proceedings. Because of the sound deficiencies, I offered both parties the opportunity to lodge further written submissions following the telephone conference dealing with any matter that they had overlooked. Neither party accepted this invitation.

9. On 1 September 2020, a document, apparently prepared by the applicant, was lodged with the Commission by her solicitor. The respondent objected to the lodgement of these unsolicited "submissions" and I have not considered it in determining this reconsideration application.

EVIDENCE

10. At the arbitration hearing, it was agreed that all the evidence adduced by both parties in the initial proceedings should be admitted on the reconsideration together with the documents attached to the Application for Reconsideration dated to 16 June 2020 and the Reply which was lodged on 24 June 2020. As the arbitration unfolded, I was not referred to the evidence in the previous proceedings other than where it was incorporated in my reasons for the decision or in the Medical Assessment Certificate (MAC).

Submissions

11. By her written submissions dated 16 June 2020, the applicant submitted that the MAC of 12 March 2018 was "conclusively presumed to be correct" in respect of permanent impairment by operation of section 326 of the *Work Injury Management And Workers Compensation Act 1998* (the 1998 Act). The certification of permanent impairment was inconsistent with my finding that the effects of the injury of 30 January 2015 ceased by 24 May 2017.

12. The applicant referred to the presidential decision of *Jaffarie v Quality Castings Pty Ltd* [2014] NSWWCCPD 79 (*Jaffarie*), in which Deputy President Roche considered the potential for his reasoning to give rise to inconsistent findings between arbitrators and Approved Medical Specialists in the same proceedings. He counselled that it may be appropriate to refer questions of permanent impairment to an AMS, before the Commission determined entitlements to weekly compensation and other issues, to avoid this outcome.

13. The applicant submitted that the finding of permanent impairment was tantamount to a determination that the effects of the injury did not cease by 24 May 2017. The Commission was obliged to accept the determination of the AMS on this issue.

14. The applicant then referred to the reports of medical practitioners brought into existence since the initial decision, which were also at odds with my findings that the effects of the injury ceased in May 2017. Excerpts from the opinion of Dr Nair, an orthopaedic surgeon, and Dr Kaur, a general practitioner, were incorporated in in the submissions. Both doctors expressed the opinion that the applicant continued to suffer symptoms in her neck and right shoulder.

15. At the arbitration hearing, Mr Hammond stressed that the opinion of the AMS on permanent impairment was not solely dependent upon his examination of the applicant but took into account a review of the radiological and other medical evidence in respect of the applicant cervical spine and right shoulder. He continued:

> "the Medical Assessment Certificate is something that's binding on the parties. The medical assessor finds a permanent impairment and if you were to reconsider, if you were satisfied that the reconsidered was thus appropriate you would then be faced with, in my submission, Arbitrator, clear evidence, which is in the, in the bundle from about 115 onwards, as to there being, firstly, an ongoing requirement for medical treatment and, secondly, an ongoing incapacity for employment and, which would warrant the awarding of weekly compensation."

16. The respondent's written submissions addressed the "fresh evidence" adduced by the applicant's solicitor. It argued that the opinions of Dr Kaur and Dr Nair would not have "altered" the findings on critical issues at the initial arbitration, and, therefore, would not have led to a different result.

17. The respondent submitted that the applicant was merely trying to re-argue the issues litigated in the original proceedings. It submitted that in accordance with the reasoning in *Jaffarie* the Commission clearly had power to determine injury, causation, and the quantum of weekly payments in those proceedings. It continued:

> "Contrary to the Applicant's submissions, the Respondent submits that the Commission is not bound by the assessment of the AMS in terms of determining the issue of incapacity. The issue of whether there is any incapacity resulting from an injury within the meaning of section 33 of the 1987 Act is wholly within the jurisdiction of an Arbitrator (*Jaffarie*)."

18. The respondent argued that the certification of the AMS "would make no difference" to my findings in respect of incapacity, weekly payments, and medical expenses.

19. The respondent also referred to the fact that the Application for Reconsideration was commenced more than two years after the conclusion of the previous proceedings and there was no explanation in the evidence for this delay.

Legislation

20. Section 350 of 1998 Act is as follows:

> "(1) Except as otherwise provided by this Act, a decision of the Commission under the Workers Compensation Acts is final and binding on the parties and is not subject to appeal or review.
> (2) A decision of or proceeding before the Commission is not--
> (a) to be vitiated because of any informality or want of form, or
> (b) liable to be challenged, appealed against, reviewed, quashed or called into question by any court.
> (3) The Commission may reconsider any matter that has been dealt with by the Commission and rescind, alter or amend any decision previously made or given by the Commission."

21. Section 326 of 1998 Act is as follows:

> "**Status of medical assessments**
>
> "(1) An assessment certified in a medical assessment certificate pursuant to a medical assessment under this Part is conclusively presumed to be correct as to the following matters in any proceedings before a court or the Commission with which the certificate is concerned:
>
> (a) the degree of permanent impairment of the worker as a result of an injury,
> (b) whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality,
> (c) the nature and extent of loss of hearing suffered by a worker,
> (d) whether impairment is permanent,
> (e) whether the degree of permanent impairment is fully ascertainable.
>
> (2) As to any other matter, the assessment certified is evidence (but not conclusive evidence) in any such proceedings."

FINDINGS AND REASONS

22. In *Samuel v Sebel Furniture Limited* [2006] NSWWCCPD 141 (7 July 2006) Deputy President Roche considered the case law relevant to section 350 (3) of the 1998 Act and the similar provisions for reconsideration in the *Workers Compensation Act 1926* and the *Compensation Court Act 1984*. He set out a series of principles that he had distilled from the case law, which I will attempt to apply. They are as follows:

    (a) the section gives the Commission a wide discretion to reconsider its previous decisions (*Hardaker*).
    (b) whilst the word 'decision' is not defined in section 350, it is defined for the purposes of section 352 to include "an award, order, determination, ruling and direction". In my view 'decision' in section 350(3) includes, but is not necessarily limited to, any award, order or determination of the Commission;
    (c) whilst the discretion is a wide one it must be exercised fairly with due regard to relevant considerations including the reason for and extent of any delay in bringing the application for reconsideration (*Schipp*);
    (d) one of the factors to be weighed in deciding whether to exercise the discretion in favour of the moving party is the public interest that litigation should not proceed indefinitely (*Hilliger*);
    (e) reconsideration may be allowed if new evidence that could not with reasonable diligence have been obtained at the first Arbitration is later obtained and that new evidence, if it had been put before an Arbitrator in the first hearing, would have been likely to lead to a different result (*Maksoudian*);
    (f) given the broad power of 'review' in section 352 (which was not universally available in the Compensation Court of NSW) the reconsideration provision in section 350(3) will not usually be the preferred provision to be used to correct errors of fact, law or discretion made by Arbitrators;
    (g) depending on the facts of the particular case the principles enunciated by the High Court in *Port of Melbourne Authority v Anshun Pty Ltd* [1981] HCA 45; (1981) 147 CLR 589 (*Anshun*) may prevent a party from pursuing a claim or defence in later reconsideration proceedings if it unreasonably refrained from pursuing that claim or defence in the original proceedings (*Anshun*);
    (h) a mistake or oversight by a legal adviser will not give rise to a ground for reconsideration (*Hurst*), and
    (i) the Commission has a duty to do justice between the parties according to the substantial merits of the case (*Hilliger* and section 354(3) of the 1998 Act).

23. Section 352 no longer contains the broad power of "review" that it did in 2006. Otherwise, the list is comprehensive and apposite.

24. At the heart of the dispute in this case is the dichotomous jurisdiction conferred by the legislature in respect of the determination of permanent impairment pursuant to section 66 of the 1987 Act. It is for the Commission to determine liability issues in these claims, but for an AMS to determine permanent impairment. At the time I referred the permanent impairment aspect of this claim to an AMS, section 65 (3) stated:

> "If there is a dispute about the degree of permanent impairment of an injured worker, the Commission may not award permanent impairment compensation unless the degree of permanent impairment has been assessed by an approved medical specialist."

25. The difficulties which arise in this case were inherent in the Workers Compensation Legislation since the 1998 Act was amended by *Workers Compensation Legislation Amendment Act* 2001 No 61. That amendment introduced the present scheme for determining permanent impairment. The difficulties were made more acute by the decision of the Court of Appeal in *Bindah v Carter Holt Harvey Wood Products Australia Pty Ltd* [2014] NSWCA 264 (*Bindah*) and the analysis of that decision by Deputy President Roche in *Jaffarie*.

26. Prior to these decisions, it was accepted that a finding by an arbitrator, in a claim for weekly compensation or medical expenses, that the effects of an injury had ceased also put an end to a claim for permanent impairment. In *Total Steel of Australia Pty Limited v Waretini* [2007] NSWWCCPD 33 (*Waretini)* Deputy President Snell, said this:

> "The finding made by the arbitrator on causation, in dealing with the weekly claim, was open to him on the evidence, and was an issue he was obliged to deal with in deciding whether the Respondent Worker had an entitlement to weekly compensation and section 60 expenses. A decision on whether employment injury caused, in the relevant sense, the back symptoms of which the Respondent Worker complained, was a matter for decision by the Commission constituted by the arbitrator, rather than being a matter purely for an AMS to decide *Connor.* This finding having been made, it is clearly impossible, consistent with the finding, for the Respondent Worker to have a permanent impairment which results from the pleaded employment injury. There has already been a finding that the effects of the employment injury had ceased by the time voluntary liability was withdrawn by the Appellant Employer on 6 January 2006. The Appellant Employer's contention on this point is sound. After the finding on causation was made, there was no 'dispute' to be referred to an AMS. The 'dispute' had been resolved by the finding on causation."

27. The reasoning in *Waretini* was applied in *Peric v Chul Lee Hyuang Ho Shin Jong Lee & Mi Ran t/as Pure and Delicious Healthy and anor* [2009] NSWWCCPD 47 (4 May 2009) and *WorkCover New South Wales v Evans* [2009] NSWWCCPD 95 and followed in numerous cases by arbitrators.

28. If *Waretini* and *Peric* had not been questioned, I would not have felt constrained to contemplate the referral of whole person impairment as a result of injuries to the applicant's neck and right shoulder to an AMS. However, the reasoning in those cases was held to be wrong by DP Roche in *Jaffarie*. After analysing the judgments of Meagher JA and Emmett AJA in *Bindah*, and several earlier cases of the NSW Court of Appeal, the learned Deputy President said this:

> "The result is that, contrary to *Peric*, where there is a claim for weekly compensation and lump sum compensation and an Arbitrator decides that, because the effect of the injury has ceased, there is no entitlement to weekly compensation, and makes an award for the respondent in respect of that part of the claim, the assessment of whole person impairment must still be referred to an AMS. Depending on the AMS's assessment, this could give rise to a significant problem."

29. The problem contemplated in the above paragraph arises from the potential conflict between an arbitrator's finding that the effects of injury had ceased and the subsequent determination of an AMS that the same injury results in permanent impairment. That is what has occurred here. Such an outcome is obviously not conducive to the harmonious operation of the 1987 Act. Inconsistent findings can undermine the integrity of its scheme of compensation.

30. While *Jaffarie* suggests a method of dealing with this difficulty, it is cumbersome and involves an arbitrator in conducting two separate hearings. One before the determination of the AMS, and another afterwards, with the arbitrator yielding to the opinion of an AMS on the issue of whether a worker's entitlement to weekly payments and medical expenses should continue. In my opinion, as is evident from the circumstances of this case, that is an unsatisfactory method of resolving those disputes.

31. Arguably, these difficulties have been lessened or eliminated by the passage of the *Workers Compensation Legislation Amendment Act 2018*, which, inter alia, abolished section 65 (3) of the 1987 Act, a subsection which was central to the reasoning of Emmett AJA in *Bindah*. That occurred, however, after my referral of the applicant's neck and right shoulder to an AMS in this case.

32. While *Jaffarie* has no greater precedential authority than *Waretini* or *Peric* it is, of course, a recent decision and it is my impression that it has generally been followed by arbitrators. I have also applied the reasoning, although not without some nagging doubts arising from the primacy it affords to an AMS in the determination of claims for weekly payments and medical expenses.

33. Nonetheless, by my orders of 2 February 2018, I appointed a telephone conference to consider whether the questions of permanent impairment of the cervical spine and right upper extremity (shoulder) should be referred to an AMS. I do not have access to a record of that telephone conference. However, I am quite certain that the respondent did not object to the referral. Accordingly, it was unnecessary to formally determine whether I should apply the reasoning in *Jaffarie*. The matter was effectively referred for assessment by consent.

34. I next turn to the issues raised by the parties. First, the respondent argued that the "fresh" evidence relied upon by the applicant was not "different in substance" to the evidence relied upon at the hearing. I accept that is the case. There is nothing radically different in the recent medical opinions adduced on this application. It is a case of "more" rather than "fresh" evidence. Those opinions do not warrant a reconsideration of my determination.

35. Plainly, those opinions are not the sole basis for the application. The applicant clearly relies upon the inconsistency between my determination that weekly payments have ceased and the certification of Dr Dixon of permanent impairment of the neck and right upper extremity. *Jaffarie* states that such inconsistent findings may provide a proper basis for a reconsideration. It is difficult to see any cogent argument to the contrary.

36. Secondly, the respondent raises the issue of delay to defeat the application. It is true that the applicant gives no real explanation of a delay of more than two years between the COD of 11 May 2018 and the commencement of a reconsideration application. There is no doubt that a party seeking the reconsideration of an order of the Commission must act with the despatch in prosecuting the claim.

37. Equally, unreasonable delay is usually a matter of fact and degree. In this case, there is no evident prejudice caused by the delay other than the perennial prejudice caused by the fact that the respondent's insurer has not been able to close its books in respect of the applicant's claim. While the delay in the period following the COD of 11 May is largely unexplained, I doubt that it would ordinarily be a just and equitable to deprive the applicant of a right to reconsider the inconsistent findings of the AMS and the Commission because of a delay of two years.

38. Then, the respondent argues that the Commission is "not bound by the AMS's findings of impairment when determining the issue of incapacity or entitlement to weekly payments or medical expenses." That is probably correct. But it does not address the inconsistency raised by the applicant. The critical question is whether my finding that the effects of the injury ceased is inconsistent with the findings of the AMS some months later that the applicant had permanent impairment of the neck and right shoulder. Patently, the two findings cannot stand together.

39. I have not reviewed the evidence which led to my previous decision. I was not referred to it by counsel. Underlying the award, however, is a finding that applicant's account of her symptomatology in the neck and right shoulder was not reliable.

40. It will be remembered that Dr Wallace reported on 24 May 2017 that the applicant's presentation on his examination on 11 May 2017 was inconsistent with surveillance video of her taken later that day. Whereas the applicant requested a hire car to travel to the examination, she drove her own vehicle on return home. Whereas she wore a neck brace to the examination, she drove her vehicle shortly afterwards without it. Importantly, Dr Wallace recorded that whereas she had restricted neck and shoulder movements on examination, she had much freer movement when driving her own vehicle. He commented that she was able to rotate her head freely when driving the car and adjust her hair while shopping "with flexion and abduction at least to 160 degrees bilaterally".

41. Dr Wallace thought that these findings were "entirely inconsistent". I formed a similar view. Oddly, the applicant gave no explanation whatsoever at the arbitration hearing of why she was able to move her neck and right arm more freely on clinical examination than when she was observed later in the day. There is still no explanation of that inconsistency. I have carefully read the applicant's lengthy statement lodged with the reconsideration application and it makes no reference at all to this evidence. I remain of the view that the applicant is not a reliable witness.

42. Obviously, Dr Dixon, the AMS, accepted the applicant's complaints. Dr Dixon had access to the same material as was available to the Commission on the arbitration hearing. However, he does not refer specifically to the evidence in respect of the applicant's consultation with Dr Wallace on 11 May 2017 or on her range of neck and shoulder movements later in the same day. He does not refer to my findings in respect of her reliability. He does refer to a photograph taken of the applicant in which depicts her raising her arm above 90°.

43. The entirely different findings on credit may reflect the different approaches to evidence of medical practitioners and lawyers. It is probably tendentious to suggest that medical practitioners generally feel obliged to accept the complaints of patients as their account is not directly challenged on a medical examination. Conversely, credit is often in issue at an arbitration hearing.

44. As the certification of Dr Dixon is "conclusively presumed to be correct", my finding that the effects of the injury ceased on 11 May 2017 cannot stand and, in the circumstances, I am obliged to reconsider it. I do so, however, on the basis that the applicant is not a reliable witness. She has presented to many doctors with widespread severe pain, which she alleges results from the subject injury. That presentation is to be contrasted with her account of her symptoms to medical practitioners in the days following the incident.

45. Dr Singer, a psychiatrist, in a report of 21 December 2017 records that the applicant presented:

> "with right-sided body pain, neck pain, chest pain, abdominal pain, right leg pain, right arm pain with comorbid mood disturbance occurring against the background of a fall in the toilet at work in 2015."

46. On 24 February 2018, Dr Kaur, the applicant's general practitioner wrote to the respondent's insurer in the following terms:

> "Seema suffered a workplace injury in January 2015 where she slipped on a wet floor and bruised her back stop subsequent MRI's have found cervical dish bowl and nerve root impingement's. Seema explained to me that her pain presentation includes:

- Upper back (cervical spine) with radiating pain and weakness down the right arm into the fingers.
- Lumbar spine pain which extends laterally around to the anterior rib on the right side.
- Lower back pain.
- Shooting pain extending from the right buttock down the path of the sciatic nerve, deep perineal nerve, tibial nerve and sural nerve.
- Constant pins and needles at the right toes.
- Medial thigh pain."

47. It is true, as Mr Hammond argued, that the applicant has impressive medical support for a lesion in her neck that gives rise to neck and arm symptom. Both Dr Dixon, the AMS, and Dr Nair, the orthopaedic surgeon who has most recently treated the applicant, assert a connection between the lesion demonstrated on radiology and symptoms in her neck and right arm. That evidence would almost always trump the opinion of Dr Wallace. In the peculiar circumstances of this case, however, Dr Wallace is the only witness who has viewed and commented on the surveillance video. That video was exposed on the date of his examination. There is no real basis in the evidence to reject his opinion formed after viewing the video.

48. It is apparent from the extracts from the medical evidence above and from her most recent statement that the applicant has extraordinarily widespread symptoms. I reiterate that location of the symptoms is in stark contrast to the applicant's account to her doctors of her symptoms in the weeks following the injury.

49. It is not apparent to me that the applicant has objective signs of disability. There are references to radiculopathy in the right arm and right leg. However, Dr Harrison, an orthopaedic surgeon, who provided a report to the applicant's former solicitors, refers to "non-verifiable" radiculopathy. He records that the applicant has "electricity" pain "in a global pattern down from the right shoulder to and particularly into the forearm and hand." Dr Singh, one of several treating orthopaedic surgeons, took a history of "diffuse symptoms which are present all over the right side of her body, including her face". He recorded that sensory testing was normal.

50. Thus, although the term has been used by medical practitioners, it unlikely that the applicant displays objective evidence of radiculopathy. The validity of the tests carried out by Dr Dixon also assume the reliability of the applicant's response.

51. Equally, the applicant's capacity to work in her preinjury capacity as a business analyst or in similar clerical or administrative work is reliant upon her account of the severity of her symptoms. As her evidence is unreliable, I do not accept that she has established that she is unfit for this work after 27 May 2018 by reason of her neck and right shoulder injury.

52. It is not self-evident that a worker with permanent impairment of the neck and permanent impairment of the right arm is incapable of performing this type of work. Obviously, a different result might follow in this case if the applicant worked in a physical job that required bending and lifting. It must also be borne in mind that the threshold test for weekly payments is no longer whether a worker has some diminution of her earning capacity on the open labour market. That test which was first stated in *Ball v William Hunt* 1912 AC 496 was applied repeatedly for a century until the introduction of the present scheme of weekly payments by the *Workers Compensation Legislation Amendment Act 2012*.

53. I note that the applicant worked for a period in 2015 following her injury. As I understand the evidence, some of that work was on a full-time basis. There is no logical reason why the applicant is more incapacitated now than she was at that time.

54. It is true that also the issue of the applicant's psychological health. But the interrelationship between this and the applicant's cervical and right shoulder injuries also depends upon her credibility. While one might accept that the applicant has some continuing psychological symptoms as Dr Wooten states it is "difficult to know going on in her mind".

55. Ultimately, I have concluded that on reconsidering the matter pursuant to section 350 (3) that the Commission must accept that the effects of the injuries continue as determined by Dr Dixon in his MAC. It does not follow, however, that the applicant has established an entitlement to weekly payments of compensation, and I decline to vary the award I previously made in that respect.

56. It may be appropriate to note at this time that the primary jurisdiction of the Commission to award compensation is limited to the first and second entitlement periods. That expires on 18 April 2018. Had I determined on the reconsideration to vary the award; it could not have continued beyond that date.

57. Obviously, the theoretical framework in respect of medical expenses is materially different to that relating to incapacity for work. A determination that the effects of the injury continue inexorably leads to a conclusion that the applicant is entitled to an award pursuant to section 60 in respect of her neck and right shoulder. The section requires the applicant to establish that her medical treatment is reasonably necessary, and her credibility may be an issue in determining the need for a particular medical treatment. But if the ongoing effects of the injury contribute in a material way to the need for medical treatment, the applicant is entitled to an award in her favour for that treatment.

58. Having reconsidered my decision of the 15 February 2018, I delete order 4 of my determination and insert in lieu:

> "Respondent to pay the applicant's medical and hospital expenses pursuant to section 60 in respect of injuries to the applicant's neck and right shoulder on 30 January 2015."