CITATION: *Anne Margaret Bryant v Northern Territory of Australia* [2013] NTMC 030

PARTIES:	ANNE MARGARET BRYANT v NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT:	WORK HEALTH COURT
JURISDICTION:	Work Health
FILE NO(s):	21223581
DELIVERED ON:	13 December 2013
DELIVERED AT:	Darwin
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JUDGMENT OF:	Dr John Allan Lowndes

CATCHWORDS:

WORK HEALTH – NOTICE OF INJURY – FAILURE TO MAKE A CLAIM WITHIN 6 MONTHS – PROOF OF INJURY AND AGGRAVATION OF DEGENGRATIVE CONDITION – ISSUE OF CAUSATION – EVALUATION OF CONFLICTING EXPERT EVIDENCE
Ss 4(5), 6 4(6A)and (8), 80 and 182 Workers Rehabilitation and Compensation Act
Madda Lozza v *Maddick* (1992) 108 FLR followed
Susan Elizabeth Evans v *NTA* (unreported Work Health Court delivered 31 January 1996) applied
Murray v *Baxter* (1914) 18 CLR 622 applied
Tracey Village Sports & Social Club v *Walker* (1992) III FLR 32 applied
Van Dongen v NTA (2005) 16 NTLR 169 applied

REPRESENTATION:

Counsel:

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Employer:	Mr D McConnell

Solicitors:

Worker:	Ward Keller Lawyers
Employer:	Hunt & Hunt Lawyers

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IN THE WORK HEALTH COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21223581

BETWEEN:

ANNE BRYANT
Plaintiff

AND:

THE NORTHERN TERRITORY OF AUSTRALIA
Defendant

REASONS FOR DECISION

(Delivered 13 December 2013)

Dr John Allan Lowndes CM:

THE NATURE OF THE PROCEEDINGS AND THE ISSUES TO BE DETERMINED BY THE WORK HEALTH COURT

1. This is a claim for compensation made by the worker under the *Workers Rehabilitation and Compensation Act.*

2. The worker alleges that she suffered an injury to her neck arising out of or in the course of her employment with the employer as a consequence of the following accidents or incidents:

    (a) On or about 18 April 2000 the worker was a passenger in a police motor vehicle when it rolled causing her to suffer pain in her neck;

    (b) In or about January 2008 the worker suffered a jolt from a taser during a training session conducted by her employer causing her to suffer pain in her neck;

(c) On or about 5 June 2009 the worker was the driver of a police motor vehicle which rolled causing her to suffer pain in her neck (injury).

3. The worker goes on to allege that as a consequence of the injury to her neck she has suffered and continues to suffer from the following:

(a) Pain, weakness and restriction of movement in her neck;

(b) Aggravation of underlying degenerative changes in her neck; and

(c) A requirement to undergo cervical spine surgery.

4. Finally the worker asserts that in or about late 2011 the symptoms in her neck deteriorated and she became incapacitated for work as an operational police officer.

5. The employer admits the two motor vehicle rollovers, but denies the taser incident. However, the employer says that the injuries to the worker's neck suffered in the accidents of 18 April 2000, January 2008 (which is denied) and/or 5 June 2009 were of a temporary nature; and any such injury is not compensable under the Act as it did not result in or materially contribute to any impairment or incapacity.

6. Further, the employer denies the worker's claim that as a consequence of the injury to her neck she suffered and continues to suffer pain, weakness and restriction in her neck, an aggravation of underlying degenerative changes in her neck and requirement to undergo the said surgery. The employer says that the injuries to the worker's neck suffered in the accidents of 18 April 2000, January 2008 (which is denied) and/or 5 June 2009 did not contribute to the worker's medical condition as at 11 November 2011 when it was recommended that the worker undergo cervical spine surgery.

7. Whilst the employer admits that in or about late 2011 the symptoms in the worker's neck deteriorated and the worker became incapacitated for work as an operational police officer, the employer's position is that:

(a) The worker has suffered from a degenerative cervical spine condition for many years and preceding the first accident on 18 April 2000;

(b) The worker's condition by late 2011 was a consequence of her degenerative cervical spine condition and not one or more of the accidents;

(c) The requirement to undergo cervical spine surgery was a consequence of the degenerative spine condition and not one or more of the accidents;

(d) The worker's employment has not materially contributed to the worker's degenerative cervical spine condition; and

(e) The worker's degenerative cervical spine condition is not compensable.

8. Finally, the employer says that any incapacity for work on the part of the worker is due to the degenerative cervical spine condition and is not compensable.

9. The proceedings raise a number of other issues.

10. The employer says that the worker cannot maintain the claim for compensation for each of the injuries as no notice of injury was given as soon as practicable as required by section 80 of the Act. Furthermore, the employer says that the worker cannot maintain a claim for compensation for any of the injuries as any such claim was not made within 6 months after the occurrence of each of the injuries.

NOTICE OF INJURY AND CLAIM FOR COMPENSATION

11. Section 80(1) of the Act provides that a person shall not be entitled to compensation unless notice of the relevant injury has, as soon as practicable, been given to or served on the worker's employer. Subsection (2) provides that an employer who receives a claim for compensation shall be deemed to have given notice of the injury to which it relates.

12. The worker's position is that the relevant injury for the purposes of section 80 of the Act is a disc lesion in the cervical spine requiring surgery. The worker says that notice of that injury was given to the employer as soon as the worker became aware of the injury – namely in November 2011, after she underwent MRI imaging at Royal Darwin Hospital.

13. In support of this position, the worker relies upon what was said by Mildren J in *Maddalozzo v Maddick* (1992) 84 NTR 27 at 37:

> In my opinion the relevant reference point will often be the date that financial loss begins to occur. If an injury is not immediately productive of financial loss, if may not be practicable for a worker to give notice if the injury appears to be minor and not likely to lead to a claim.

14. Earlier at page 35 his Honour observed:

> …and it is to be noted that s80(1) does not use the expression " as soon as practicable after the injury", so that the fact that a worker was unaware that he had an injury or disease conferring a right to compensation under the Act, for example, is amply catered for by the wording of the section.

15. The worker's alternative position is:

> …if it is alleged that the worker should have given notice earlier then the worker submits:
>
> 1. She gave notice of injury to her neck on or about 25 April 2000 when she completed a statutory declaration and submitted it to her employer (W1).
>
> 2. In relation to the taser training accident the employer was aware of the incident as it was running the training course and advised that the worker was likely to suffer aches and pains as a result of being tasered.
>
> 3. She gave notice of injury to her neck on or about 9 June 2009 when she completed a statutory declaration and submitted it to her employer (W2)
>
> The employer was aware of both the accidents and the consequences certainly in relation to both motor vehicle accidents but arguably in relation to the incident involving the taser as well.

16. Section 182 of the *Workers Rehabilitation and Compensation Act* requires a worker to submit a claim for compensation within six months after the occurrence of the injury.

17. In relation to the section 182 requirement that a claim be made within six months of injury, the worker made the following submissions:

In relation to the first accident the worker says that she completed a claim form but did not submit it. The reasons for not submitting a claim form in relation to the accident of 18 April 2000 included:

1. A belief that a compensation claim form only needed to be lodged if the worker lost time from work and/or incurred treatment expenses.

2. A conversation with her supervising officer to the same effect.

3. A belief that she would recover from the effects of the accident.

In relation to the second accident the worker says that during the training course she was advised that she may experience aches and pains including bruising following on from being tasered. She thought that the symptoms in her neck were associated with the effects of being tasered and were normal. She also believed that she would recover from the effects of being tasered in due course.

In relation to the final accident the worker's evidence was that

1. She lost no time from work and only incurred one treatment expense for a chiropractor in September 2009.

2. She believed that she was only required to complete a claim form if she lost time from work and/or incurred treatment expenses.

3. She still believed that she would recover from the effects of the accident.

4. She was working remotely and experiencing both professional and personal problems unrelated to her neck symptoms.

5. She was unaware that her shoulder symptoms were in any way related to the symptoms in her neck.

18. The worker also submitted that if she suffered an aggravation of an underlying degenerative condition in her neck then incapacity only arose in or about November 2011 when she attended Royal Darwin Hospital. Prior to that time she had lost no time from work and had performed her full normal duties.

19. The worker made the following further submission:

Prior to her consultation with Dr Simpson in November 2011 the worker was unaware of the cause of the symptoms in her shoulder and had, prior to that consultation, been investigated for a rotator cuff injury. After that consultation

> she advised her employer that she should not be performing operational duties and in September 2011 after consulting with Dr Tomlinson and Dr Todman she became aware that the injury to her neck most probably arose as a result of the accidents which she suffered at work.

20. In relation to the rollover on 9 June 2009, the employer relies on the sequence of events following the accident and says that the worker failed to give notice, or proper notice, as required by section 80 of the Act. The employer says in line with *Maddalozza v Maddick* (1992) 108 FLR 159 that a failure to give notice of injury is incapable of being excused, and will be fatal to the worker's claim.

21. The employer relies upon the worker's evidence that she sought medical treatment on 12 June 2009, approximately a week after the rollover, and from that time on continued to suffer from symptoms. About a month after the accident the worker was x-rayed at Gove Hospital and underwent physiotherapy approximately two months after the accident.

22. According to Exhibit W2 the worker notified the employer of the injury to her neck when she submitted the statutory declaration following the rollover. The employer specifically relies upon the following statement made by the worker in her statutory declaration:

> I did not receive any injuries from the accident except I suffered stiffness and soreness to mainly my neck.

23. The employer stresses that at that time the worker had not sought any treatment for an injury – she had only undergone an examination at the health clinic.

24. The employer made this submission:

> The worker did not subsequently notify the employer that she had experienced any injury requiring treatment. Notification simply advising of stiffness and soreness in the worker's neck did not amount to notice of injury. Once the worker should have realised she had suffered an injury entitling her to compensation under the Act, she should have notified the employer. That is, once it became apparent that the worker required medical and other treatment for her neck, she had an obligation to notify the employer of that fact: *Maddalozzo v Maddick* (1992) 108 FLR 158 at 159; *Global Insulation Contractors (NSW) Pty Ltd v Keating* (2012) 258 FLR 129.
>
> The worker should have notified the employer that she had experienced ongoing neck soreness requiring treatment within a short time after the consultation at the Gapuwiyak clinic on 12 June 2009. She received an x ray referral on that occasion and it was clear that she required medical treatment. She should have

> realised at that time that she had suffered an injury entitling her to compensation.

25. The employer submitted that in relation to the 2009 rollover the worker was required to submit a claim within six months of the injury; and that a claim for the injury should have been made no later than 5 December 2009. The employer says that the worker has provided no explanation for the failure to submit a claim within six months. The employer draws the Court's attention to the fact that the worker had a continuation of symptoms throughout this period despite the lack of documentation of any treatment after September 2009.

26. The employer says that the worker provided no explanation for the failure to submit a claim; and therefore the Court has no evidence upon which it could be satisfied that the failure was occasioned by mistake, absence from the Territory or other reasonable cause so as to excuse the failure.

27. The employer contends that the worker should have notified the employer of the injury sustained in the taser incident in 2008 and was required to submit a claim for compensation within six months of the alleged injury. The employer also says that the worker has not provided any explanation for the failure to submit a claim for compensation within six months of the occurrence of the injury.

28. Finally, in relation to the 2000 rollover the employer says that the worker failed to give notice of the alleged injury as soon as practicable as required by section 80 of the Act; and further failed to submit a claim for compensation within the relevant period, which failure has not been satisfactorily explained by the worker.

29. It was made clear in *Maddalozzo v Maddick* (1992) 108 FLR 158 that because notice of injury may be given orally, there is no prescribed form of notice. Furthermore, as stated by Mildren J in that case:

> Clearly the Act contemplates that a worker may suffer an injury in circumstances where there is no immediate right to claim compensation: for instance the injury may not immediately prevent the worker from being able to work.

30. The purpose of the notification provisions is to ensure that an employer has the information necessary to consider and respond to the notification: see *Global*

Insulation Contractors (NSW) Pty Ltd v Keating (2012) 258 FLR 129. That authority also makes it clear that section 81(1)d of the Act does not exclude workers from the operation of the Act for not notifying of the specified matters that are not within their knowledge.

31. In *Susan Elizabeth Evans v Northern Territory of Australia* (unreported Work Health Court delivered 31 January 1996) Mr Trigg SM held that in completing a claim form it is not intended (nor is it necessary) for a worker/claimant to specify precisely the exact nature of the injury. His Honour went on to say "and clearly this may be impossible in a large number of cases." His Honour added:

> The "injury" requires general description only in the claim form. In a non-disease injury it is generally linked to a particular incident on a particular day at a particular place.

32. In my opinion, these observations are also apposite to a worker's notification of injury. In giving notice of injury under section 80 of the Act a worker need only describe the injury in general terms. In fact, a description of an injury in terms of a symptom or symptoms would suffice.

33. If the statements and observations made by Mr Trigg in *Susan Elizabeth Evans v Northern Territory of Australia* are correct, then it must necessarily follow that notice of injury under section 80 need not be specific because the giving of notice ordinarily precedes the making of a claim under section 82; and it is well established law that the submission of a claim form may serve as notification of injury for the purposes of section 80.

34. In my opinion, there can be no doubt that in relation to both the 2000 and 2009 rollovers, the worker gave notice of injury to her neck when she completed the statutory declaration (Exhibit W1) in relation to the first rollover and the statutory declaration (Exhibit W2) with respect to the 2009 rollover. Those two statutory declaration and their contents satisfied the notice requirement of section 80 of the Act. I agree with the submissions made by the worker and reject the employer's submissions in relation to the issue of notice of injury.

35. However, as regards the taser training incident on 25 June 2008, I am not satisfied the worker gave notice of injury as required by section 80 of the Act. It is clear on

the evidence that the worker did not notify the employer of any injury connected with that incident. The best the worker can say is that the employer was aware of the taser training incident as it was conducting the training course, and had informed the worker prior to the commencement of the course that there was a likelihood that she would experience aches and pains as a result of being tasered – but nothing more. Far more is required before the Court can be satisfied that the employer was given notice of an injury. It follows that the failure on the part of the worker to give notice of injury in relation to the 2008 incident is fatal to the worker's claim in relation to any injury suffered in that incident.

36. There is one further aspect that needs to be considered. As previously mentioned, the worker submitted (apparently at odds with the Amended Statement of Claim) that the relevant injury for the purposes of the notice provisions of section 80 of the Act was the disc lesion in the cervical spine requiring surgery. In my opinion, the relevant injuries are the neck injuries allegedly sustained during the three alleged accidents. The condition diagnosed in November 2011 is more properly viewed as a consequence of the two injuries – and that is as the worker has pleaded her case. The evidence before the Court is that the diagnosed condition resulted in an incapacity for work. However, should that be an incorrect analysis and I should have accepted the worker's primary submission about the relevant injury for the purposes of section 80 of the Act, then it would have to follow, on the evidence, that the worker gave notice of her injury as soon as practicable.

37. It is clear on the evidence that the worker failed to make a claim within six months of the injury notified in Exhibits W1 and W2. So the question is has the worker provided an explanation (in terms of one of the statutory excuses) for failing to make a claim within time: see section 182 (3) of the Act.

38. The relevant time frame for the inquiry as to delay in making a claim for compensation is that period of time commencing upon the date of the injury and expiring six months after the date of the injury. Therefore the court is only concerned with the failure within the relevant period. No other period of time is relevant for the purposes of the excusatory provisions: *Murray v Baxter* (1914) 18 CLR 622.

39. In *Tracey Village Sports and Social Club v Walker* (1992) 111 FLR 32 Mildren J set out the circumstances under which a failure to comply with section 25 of the then current Act (which was in similar terms to section 182 of the present Act) might be found to have been occasioned by mistake:

> If the failure to so comply was occasioned by mistake, it is immaterial to consider whether it was reasonable or otherwise: *Murray v Baxter* (at 629). In order to come within the proviso to s25(1), a mistake may be one of fact, or of law, or of mixed fact and law: *Murray v Baxter* (at 629-632). For there to be a mistake, there must be evidence from which a conclusion can be drawn that the person concerned misconceived the true position: for example, erroneously thought the law provides for a particular right or remedy in certain circumstances when in fact another set of facts existed, or the circumstances under which the law provided for the right or remedy, were different from that envisaged. Such a mistake might arise through an absence of information, if for example the worker did not know that his medical condition was due to a back strain at work, he thinking that it was due to some other cause. But, for there to be mistake, there must be evidence that the worker knew that in some circumstances he is entitled to compensation, applied his mind to the circumstances of his position as he knew them to be, to the law as he understood it and misconceived his true position in either fact or law or both: *Stevenson v Metropolitan Meat Industry Commission* (supra) (at 118). This is to be contrasted with the position of a person who does not think about the matter at all, who is in a state of passivity of thought owing to the absence of any conception of the matter, or who is not acting upon any misconception of law or facts or both. Such a person's state of mind is one of ignorance, not mistake: *Murray v Baxter* (at 630); *Stevenson v Metropolitan Meat Industry Commission* (at 117-118).

40. The provision excusing a failure to make a claim on the basis of other reasonable cause accommodates any matter which the reasonable person in the street might consider a good cause for a failure to make a claim within the specified period.

41. As said in *Black v City of Melbourne* [1963] VR 34 :

> The next question is whether there was "reasonable cause" for the failure to give notice. The inquiry here appears to be of a much wider kind justifying a more liberal attitude. The expression "reasonable cause" appears to us to mean some act or omission which operated to prevent the giving of notice, and which was an act or omission which was in the circumstances reasonable. In *Quinlivan v Portland Trust* Scholl J used these words:
>
> The subsection means to refer to a cause which a reasonable man would regard as sufficient, a cause consistent with a reasonable standard of conduct, the kind of thing which might be expected to delay the giving of notice by a reasonable man.

42. A hope and expectation that a worker might make a complete recovery may amount to a reasonable cause as a matter of law.

43. In *Van Dongen v NT of Australia* (2005) 16 NTLR 169 at 181 Riley J (as he then was) said:

> A hope or expectation that a worker may make a complete recovery may amount to a reasonable cause and may more readily do so where the injury is latent, difficult of diagnosis or possibly difficult of prognosis: *Fenton v Owners of Ship Kelvin* (1925) 2 KB 473.

44. In *Keating v Global Insulation Contractors (NSW)* Pty Ltd [2011] NTMC 21 (upheld on appeal in *Global Insulation Contractors (NSW) Pty Ltd v Keating* [2012]NTSC 04), proceedings brought out of time were found not to be barred where the worker had turned his mind to compensation, but misconceived the true position in both fact and law owing to a failure to understand the medical condition at the relevant time, thinking it would resolve quickly, or appreciate that the injury was work related and compensable, both being independent mistakes sufficient to overcome the time limitation.

45. In relation to the two motor vehicle rollovers, I am satisfied on the evidence before the Court, that her failure to make a claim for compensation within six months of the occurrence of each injury should be excused on the basis of either mistake or other reasonable cause.

46. I find that in relation to the first accident in 2000 the worker had sufficient reasons for not submitting a claim form within the prescribed six month period. They comprised:

    a. a belief that a compensation claim form only needed to be lodged if the worker lost time from work and/or incurred treatment expenses;

    b. a conversation with her supervising officer to the same effect; and\

    c. a belief that she would recover from the effects of the accident.

47. Similarly, I find that in relation to the second motor vehicle rollover the worker has explained, to the satisfaction of the Court, why she failed to submit a claim

for compensation within the prescribed six months. As pointed by the worker's counsel:

a. the worker lost no time from work and only incurred one treatment expense for a chiropractor in September 2009;

b. the worker believed that she was only required to complete a claim form if she lost time from work and/or incurred treatment expenses;

c. the worker still believed that she would recover from the effects of the accident;

d. the worker was working remotely and experiencing both professional and personal problems unrelated to her neck symptoms; and

e. the worker was unaware that her shoulder symptoms were in any way related to the symptoms in her neck.

48. I am also satisfied that up until the time the worker saw Dr Simpson in November 2011 the worker was not aware of the cause of the symptoms in her shoulder, and had prior to that appointment been investigated for a rotator cuff injury. I am further satisfied that following that consultation she informed her employer that she should not be performing operational duties, and in December 2011 after consulting with Dr Tomlinson and Dr Todman she became aware that the injury to her neck most probably arose as a result of the accidents which she suffered at work.

49. In my opinion, the reasons for the worker not submitting a claim in relation to each of the injuries alleged to have been sustained in the two motor vehicle rollovers are sufficient to establish an excuse based on either mistake or other reasonable cause. Some of the reasons straddle both mistake and other reasonable cause – but in the final analysis one or both those statutory excuses has been established on the evidence.

50. It should be pointed out that in order to overcome the procedural bar created by section 182(1) of the Act it is only necessary for the worker to excuse her failure to submit a claim form in relation to one of the accidents. So if I have erred in finding the worker has made out an excuse in relation to her failure to make a

claim in respect of the first motor vehicle rollover, but have not so erred in relation to the second rollover, and vice versa, that would still enable the present proceedings to be maintained.

THE ALLEGED INJURY AND AGGRAVATION OF THE DEGENERATIVE CONDITION

51. The injury claimed to have been suffered by the worker is an injury to her neck, including referred pain into her right shoulder and arm requiring surgical intervention. The injury is alleged to have occurred as a consequence of 3 separate accidents or incidents, all of which occurred in the course of her employment. It is alleged that as a consequence of the injury to her neck the worker suffered and continues to suffer from pain, weakness and restriction of movement in her neck, an aggravation of underlying degenerative changes in her neck and requirement to undergo cervical spine surgery. This is the case pleaded by the worker.

52. Although the worker's pleadings could have been formulated with greater precision the worker's claim is that one or more of the injuries to the neck that she sustained in three alleged accidents resulted in or materially contributed to her medical condition as diagnosed in November 2011 – namely a disc prolapse requiring surgery to the cervical spine – which incapacitated her for work.

53. It needs to be noted that the worker has not pleaded a case that at any time after the final accident in 2009 she sustained an injury, arising out of or in the course of her employment, in the nature of a C4/5 disc prolapse.

54. Nor is it part of the worker's case that the medical condition diagnosed in 2011 was a gradual process and that the worker's employment materially contributed to the injury, as an injury in terms of that referred to in section 4(5) of the *Workers Rehabilitation and Compensation Act* has not been pleaded. Nor does the worker rely upon the medical condition as an injury coming within the disease provisions of section 4 (6A) and (8) of the Act.

55. As pointed out by counsel for the employer, the burden rests on the worker to establish a connection between any of the alleged work accidents or incidents and

the worker's medical condition as at November 2011 which required surgical intervention – namely, the disc lesion found at C4/5 of the cervical spine. Again, as submitted by the employer's counsel, if the worker cannot prove that one or more of the claimed injuries resulted in or materially contributed to her condition as at November 2011 requiring surgery, then her claim must fail.

56. The worker must prove her case to the reasonable satisfaction of the Court, according to the civil standard of proof – namely on the balance of probabilities.

57. As noted earlier, the employer denies that any of the accidents caused the worker's medical condition as diagnosed in November 2011, and alleges that the worker's condition was a consequence of her degenerative cervical spine condition – the natural progression of her degenerative condition. Of course, the Court is not required to make a finding to that effect. It is for the worker to prove that it is more probable than not one or more of the alleged injuries resulted in or materially contributed to her medical condition as diagnosed in November 2011.

58. As also previously mentioned, the worker alleges that as a consequence of the injury to her neck she suffered and continues to suffer an aggravation of underlying degenerative changes in her neck. The employer's counsel conceded that this allegation arguably amounts to a pleading of an aggravation of a disease. I am inclined to take that view.

59. That being the case, the disease provisions of the Act come into play – in particular the provisions of section 4 (6A) and (8) of the Act. In order to establish the aggravation the worker must show that her employment materially contributed to such aggravation – that is to say that the worker's employment was the "real proximate or effective cause" of the aggravation. The worker must prove to the reasonable satisfaction of the Court that one or more of the alleged accidents (and concomitant injuries) were the real proximate or effective cause of the aggravation of the underlying degenerative changes in her neck.

CONSIDERATION AND EVALUATION OF THE EVIDENCE AND FINDINGS OF FACT

60. Andrew Ligertwood and Gary Edmond in their text Australian Evidence 5th edition at [2.65] provide the following useful commentary on the task that befalls the fact finder in relation to proof in civil cases:

> The fact finder is confronted with conflicting hypotheses and must, on the basis of experience of the ordinary course of events, determine with which hypothesis or hypotheses all the evidence is consistent. If, on this basis there is evidence inconsistent with a particular hypothesis, that hypothesis will be rejected altogether. If the evidence is more consistent with one hypothesis rather than another, that former hypothesis will be favoured. The more information consistent with a particular hypothesis, the more probable that hypothesis becomes until it reaches, by weight of evidence, a stage of acceptance by the fact finder as the likely explanation of all the available evidence. At this stage the hypothesis is described as proved on the balance of probabilities. One might say that the fact finder is persuaded or believes that hypothesis probably occurred.

61. However, from time to time there will be civil cases where conflicting hypotheses are advanced, and the evidence gives rise to "conflicting inferences of equal degree of probability so that the choice between them is mere matter of conjecture": *Holloway v McFeeters* (1956) 94 CLR at 480 per Williams J, WebbJ and Taylor J.

62. In discharging the fact finding function, and determining which of the two hypothesis advanced by the worker and the employer is the more probable, the Court must consider a number of aspects:

1. The worker's evidence;

2. Any objective medical records or evidence that either supports or refutes the worker's complaints from time to time; and

3. The expert medical evidence adduced and relied upon by the parties.

63. As submitted by counsel for the employer, the worker's "claim depends on a reconstruction of events to show any connection between any of the claimed work incidents and the worker's condition as at November 2011 requiring surgery". That a person in the worker's position needs to engage in a process of reconstruction is not at all surprising, given the number of accidents or incidents she has been involved in, and amount of time that has passed between the first

accident in 2000 and the diagnosis of her medical condition in November 2011. The question that the Court must answer is whether the worker's reconstruction of events is reliable, and whether it is supported by the objective medical records and the expert medical evidence.

64. The worker said that she experienced an onset of symptoms in her neck on an intermittent basis following the motor vehicle rollover on 18 April 2000 (being the first alleged accident or incident). She gave evidence that apart from a visit to the Daly River clinic she sought no treatment in relation to her neck until November 2001, when she consulted a chiropractor.

65. The worker said that she began to experience symptoms in her shoulder in 2003, having not been triggered by any specific event or activity. The worker sought some chiropractic treatment whilst residing in Katherine, in particular for her right shoulder pain. However, the worker was at the time unaware of any cause for the symptomatology in her shoulder.

66. The worker gave evidence that whilst she was on Groote Eylandt she had intermittent symptoms relating to both her neck and shoulder; however took no time off work.

67. In late November 2007 the worker returned to Darwin where she was based until May 2009 when she was transferred to Gapuwiyak.

68. On 25 January 2008 the worker underwent taser training as a part of her ongoing training in Darwin (the second alleged accident or incident). Prior to being tasered she was advised that she may experience muscle spasm or pain or bruising after being tasered. The worker said that the sensation she experienced was unpleasant and for a number of weeks she suffered from pain in the right side of her neck and down into her right shoulder. However, she did not seek medical treatment during that period, with the symptoms eventually settling.

69. On 5 June 2009 the worker, while driving rolled her vehicle near Gunbalanya (the third alleged accident or incident). Following the rollover she attended the Gunbalanya clinic and was given clearance to return to Darwin. The worker gave evidence that as a result of the accident she experienced pain in her shoulder and

neck. These symptoms continued such as to lead her to seek treatment at the Gapuwiyak clinic in June 2009, and subsequently in August 2009 when she saw a physiotherapist. In September 2009 the worker attended a chiropractor for treatment in relation to her shoulder.

70. The worker gave evidence that she left Gunbalanya early on account of a number of issues – problems in the community, a medical condition which required surgery in September 2009 and personal issues related to the sale of a property. In late October 2009 the worker returned to Darwin and commenced leave in December 2009 over a period of 2 months.

71. Over the course of 2010 the worker went on about 20 weeks leave, during which time she said that she suffered from worsening symptoms in her shoulder, which were particularly manifest by the middle of 2010. Throughout 2010 the worker said that she continued performing the exercises recommended by her Gapuwiyak physio-therapist, and purchased a heat pack and went for massages.

72. The worker gave evidence that she was transferred to Warruwi in November 2010. She said that by late 2010 she had increasing symptoms in her neck, and in early 2011 she attended the clinic at Warruwi seeking treatment. Subsequently, in February 2011, whilst on leave in Darwin she attended a chiropractor for treatment on her shoulder.

73. The worker gave evidence that in 2011 her symptoms, especially those relating to her right shoulder, intensified such that she was suffering from constant pain and was forced to seek medical treatment at the clinic at Warruwi. In August 2011 the worker was referred for investigation of a right rotator cuff injury. However, these investigations, which comprised an ultrasound and x ray of her right shoulder in October 2011, failed to reveal any problems in that region. The worker subsequently underwent an MRI which revealed problems in her neck.

74. Consequently, the worker was referred to an orthopaedic registrar at Royal Darwin Hospital. The registrar recommended she see a neurologist. When that consultation proved difficult to organise, the worker consulted the family GP in Queensland who gave her a referral to see a neurosurgeon, Dr Tomlinson.

75. Following the oral advice of Dr Simpson (the orthopaedic registrar at Royal Darwin Hospital), the worker informed her employer she was unable to perform operational duties. The worker was subsequently referred to Dr Todman, a neurologist, who saw her on 5 December 2011.

76. The worker gave evidence that on or about 6 December 2011 she was advised by Dr Tomlinson that she had pathology in her neck and that the condition was work related. On 8 December 2011 the worker lodged a claim form (Exhibit W3).

77. The worker had an anterior cervical spinal fusion on 7 March 2012 at St Andrews Hospital in Brisbane. As at the date of the hearing it would appear that the surgery had been reasonably successful, she having returned to work, although not yet re-assuming operational duties.

78. How then does the worker's evidence – which is relied upon as supporting a causal nexus between one or more of the alleged injuries to her neck and the disc prolapse which was diagnosed in November 2011 – stand up alongside the objective medical records and evidence and the expert opinions expressed by Drs Tomlinson, Todman and Coroneos?

79. In relation to the first motor vehicle rollover in 2000 it is significant that after the accident she returned to duties for the rest of the day, working until the end of her shift. Furthermore, the worker did not seek any further treatment on the day of the accident

80. Although the worker suggested during cross examination that she had sought treatment the following day because of a neck complaint, that evidence did not sit comfortably with the statement that she had submitted at the time of the accident. As a result of that inconsistency I cannot be reasonably satisfied that she did in fact seek treatment the following day.

81. The objective medical records do not support the worker's account of having sought treatment during the post-accident period. The worker sought to explain the absence of any record of treatment on account of her remote location at the material time. However, I found this explanation to be less than convincing as the evidence indicates that she was not working remotely during the relevant period.

The evidence shows that she was relieving at Daly River, and shortly afterwards returned to normal policing duties at Jabiru. It is a reasonable assumption that a level of health care was available at both places; and in any event if the worker required treatment, then she could have received treatment by travelling to Darwin or Katherine.

82. The following submission was made by the employer's counsel:

> The worker's evidence is telling in this respect. It shows that the worker was conscious of an absence of any objective evidence linking the vehicle rollover in April 2000 to any lasting complaints of neck pain, which would be necessary for the accident to be a relevant cause of her medical condition. The worker has sought to minimise and explain away a large gap in her history of symptoms in order to give an impression of a continuity of symptoms after the 2000 accident, because this is what she told the doctors who attributed her condition in 2011 to that accident.

83. This submission carries substantial weight.

84. As pointed by counsel for the employer, the only objective evidence of the 2000 motor vehicle rollover having a possible nexus with the worker's subsequent neck complaints is Exhibit W9 – a short note in the records of the chiropractor seen by the worker in November 2001. That particular entry appears alongside other entries, including a record of a fall and being knocked out while playing hockey in 1997, a record of a red back spider bite in 1999, and the incidence of headaches following glandular fever in 1994.

85. It is important to bear in mind the worker attended the chiropractor because she was experiencing hip problems, and not as result of a neck complaint.

86. The chiropractic records have a much wider significance and bearing on this case, for they disclose a history of the worker having hip problems beginning in 1999, and having experienced cervical spine pain off and on for several years. The records disclosed that the hip and knee problems occurred after running, netball and touch football, while the cervical spine pain was stress related.

87. I agree with the employer's submission that it is unlikely the chiropractor would have recorded the intermittent cervical spine if that had not been reported to him.

88. I also agree with the following submission made by counsel for the employer:

> In evidence the worker agreed with the accuracy of the records in every respect except one – the reference to her cervical spine problems having occurred off and one for several years… The fact that the rest of the record was accepted by the worker as accurate, but that one critical matter was disputed, strongly suggests that the worker is seeking to minimise the damaging effect of that entry, because the entry confirms that the worker's back problems pre-dated the accident…

89. The history of intermittent cervical spine problems is relevant because it goes to the existence of a degenerative cervical spine condition that predated the first motor vehicle rollover – which is postulated by the employer as the alternative explanation for the worker's medical condition as diagnosed in late 2011.

90. The x ray which was taken for the purposes of the consultation with the chiropractor (being part of Exhibit W9) disclosed the existence of a degenerative cervical spine condition, and is consistent with the history of symptoms recorded in the chiropractor's notes.

91. Therefore, the objective medical records, as early as 2001, lend support to the alternative hypothesis advanced by the employer.

92. A further aspect that militates against the likelihood that the 2000 rollover caused a neck injury is the paucity of evidence given by the worker as to the treatment she actually received following the accident. The worker says that she underwent a short course of treatment over a period of about three weeks. However, somewhat surprisingly, the worker gave no specific evidence as to the nature of the treatment she received. Had she in fact received such treatment, then one would have expected in the normal course of events that the worker would be able to say precisely what treatment she received. What is clear from the chiropractic records is that the worker is not recorded as having sought nor received any treatment for a neck injury or problem with her neck.

93. Despite some suggestion to the contrary during the course of the hearing, I am not prepared to accept that chiropractors are in some way inept at recording histories from patients, as well as the treatment administered by them to patients.

94. It is noted that when submitting her claim, and in evidence in chief, the worker gave an account of an onset of symptoms in her neck in 2003, when she

experienced difficulty turning her head to the right, when swimming. However, this apparent onset of symptoms manifested itself some 2 years after the motor vehicle rollover. The late manifestation of those symptoms provides a tenuous basis for satisfying the Court that there is a causal nexus between those symptoms and the rollover in 2000. Furthermore, the fact that the worker did not seek any treatment for the symptoms that emerged in 2003 does not assist the worker's case that the rollover in 2000 resulted in an injury to her neck.

95. What is particularly telling against the worker's case is that there is no objective medical evidence supporting the worker's contention that following the 2000 rollover she experienced a continuity of symptoms.

96. The developing picture is that the onset of symptoms from swimming was consistent with the proven fact that the worker had a degenerative cervical spine condition at the time, as well as with the recorded history that she had experienced those symptoms off and on for several years.

97. The evidence relied upon by the worker in relation to the motor vehicle rollover in 2000 is insufficient to satisfy the Court that the worker suffered an injury to her neck that can be attributed to her medical condition as diagnosed in November 2011.

98. The next incident relied upon by the worker as occasioning an injury to her neck is the time in June 2008 when she voluntarily subjected herself being tasered as part of her training within the Police Force.

99. Although the worker is precluded from making a claim in respect of any injury to her neck as a consequence of this incident, her evidence concerning any injury to her neck is nonetheless relevant to her claims in respect of the injuries to the neck said to have been sustained in the two motor vehicle rollovers.

100. There is a dearth of evidence as to the effects of the taser incident on the worker. I find myself agreeing with the following submission made by counsel for the employer:

> There is nothing to indicate that the physical effects of the taser on the worker were anything other than the ordinary, usual effects of a taser being discharged

> onto a person. No evidence was led as to the nature of a taser discharge and its physical effects on the body. Such evidence must have been attainable by the worker for the hearing.
>
> The significance of the lack of any evidence about those matters is the worker's admission that she did not seek any treatment for her back or neck afterwards, did not complain to anyone about her condition, and did not notify anyone especially the employer of any injury.
>
> There is absolutely no record of any reference to the worker being tasered until the worker mentioned it in the consultation with Dr Tomlinson in November 2011 (Exhibit W8). The only reasonable inference that can be drawn from the absence of any recorded symptoms following the taser incident is that there were none.

101. There is simply no evidence, or insufficient evidence, to satisfy the Court that the worker suffered an injury to her neck in 2008 as a consequence of being tasered during the course of her employment.

102. Furthermore, there is insufficient evidence to establish a continuity of relevant symptoms from the rollover in 2000 up to the date of the taser incident, and between that incident and the second motor vehicle rollover. In fact from the available medical records no complaint of neck pain was made by the worker at any time from 2001 until after the rollover in 2009.

103. The Court has only the evidence of the worker that she consulted a chiropractor in Katherine in about 2006; but there is no independent evidence to support that consultation, nor the nature and extent of any treatment she subsequently received.

104. The third work related accident or incident relied upon by the worker as occasioning an injury to her neck, culminating in her condition as diagnosed in November 2011 requiring surgery, was the motor vehicle rollover at Oenpelli in 2009.

105. The worker had numerous medical certificates for non-work related illness over the period, but did not provide discovery of any clinical records for the period (Exhibit E5). Included in the sick leave records is a reference to a whip lash injury in 2006. An injury of such description almost certainly would be relevant to a claim involving alleged neck pain caused by 3 distinct accidents over a 9 year

period, but the worker has not given discovery of any medical record for that illness, or that might explain that entry.

106. In evidence in chief the worker gave evidence that in 2005 while posted to Groote Eylandt she experienced shoulder pain but not neck pain intermittently. She was playing indoor netball and touch football. She said she attended the physiotherapy clinic in Gove. No records have been discovered.

107. In cross examination the worker revealed that she had injured her knee while playing indoor netball in 2006, but again no discovery has been provided of any records related to the worker's knee. No explanation has been given by the worker for her failure to disclose relevant documents when it is reasonable to assume that they exist.

108. Following the June 2009 rollover the worker felt no cervical or shoulder soreness, only stiff arm muscles (Exhibit W10). She later claimed to have multiple lacerations to her arms, but these were not noted at the clinic.

109. According to Exhibit W11 (the Gapuwiyak clinic records) the worker noticed soreness in her neck getting worse a week later. It was suspected to be muscle soreness, but she was nonetheless referred for a neck x ray, which was done 3 weeks later in Gove. The worker did not incur any time off work due to a neck condition. Although she underwent an x ray in Gove it simply showed the progression of her cervical spine condition. Once again, the objective medical evidence points to the alternative hypothesis advanced by the employer.

110. The worker attended one physiotherapy session on 18 August 2009. The worker reported that her neck and shoulder pain was worse after the motor vehicle rollover. During the physiotherapy session the worker received deep tissue massage, stretches and was given exercises to perform. The worker was discharged after that visit, and indicated that she would seek private physiotherapy if her condition did not improve.

111. The worker subsequently attended one session with a chiropractor in Darwin in September 2009; and then did not seek any further treatment.

112. Although the worker maintained that she had continuing symptoms after August 2009, she did not seek treatment because she was in a remote area, and found it hard to access medical treatment. However, she explained that she had reviewed the x ray result with the clinic at Gapuwiyak on an occasion when she just dropped in, because she worked closely with the clinic.

113. Counsel for the employer submitted the following:

> There is no doubt about the fact such a relationship would have been likely, and in those circumstances if the worker had in fact had continuing neck problems in this period, it is more likely than not that she would have consulted the clinic at some point. The likelihood of this occurring is borne out by the subsequent record of the Gapuwiyak clinic, where the worker in fact did consult the clinic on 2 consecutive days in January 2011 with a fresh neck complaint (Exhibit W 12).

114. I find this submission quite persuasive. The lack of objective medical records supporting a continuity of symptoms undermines the case advanced by the worker; and at the same time lends support to the employer's case.

115. The fact that the worker was not in a remote area during most of 2010 further undermines the case put forward by the worker. The evidence is that the worker was living in Darwin, and either working or was holidaying extensively during this period. The evidence is that at no time during that period did the worker seek treatment for her neck.

116. In my opinion, the worker's explanation for not seeking any treatment during the relevant period defies reasonable belief. Her explanation that she "had a lot on" (referring to issues with the sale of a property) and the fact that she went on holidays to Bali and on a cruise during the relevant period is not credible.

117. A fundamental weakness in the worker's case is highlighted by the following submission made by the counsel for the employer:

> The fact is the worker could not explain or adequately explain why, if she now asserts a continuity of symptoms from 2009 onwards, she did not once seek treatment for her symptoms after September 2009. The only rational explanation for the absence of treatment records is that she did not in fact experience a continuity of symptoms. If she had done so, it is likely she would have sought treatment. Her records of attendances in 2001 and in 2009, and later in 2011, show that when she had problems she would seek treatment.

118. It is of significance that it was almost 18 months after the rollover – January 2011- that the worker next sought treatment for her neck and back condition. The worker reported to the District Medical Officer at the Warruwi clinic that she had developed a headache, which appeared to be related to pain in the right neck and shoulder. She had suggested that it might be from having restarted running.

119. The evidence further shows that the worker returned to a chiropractor in Queensland in January 2011, and reported to the chiropractor that her right shoulder issues had an insidious onset, and had worsened after the last 2 months.

120. What does this suggest? The history provided to the Warruwi clinic and to the chiropractor indicates a fairly recent onset of symptoms significantly separated in time from the June 2009 rollover. This is consistent with the worker not having sought treatment during the intervening period.

121. Furthermore, the evidence points to the onset of symptoms having coincided with the worker commencing running. This is consistent with the presence of a degenerative cervical spine disease: and as pointed out by the employer's counsel, one could not discount the possibility that, with the benefit of the MRIs taken in November 2011, the resumption of running could have triggered the rupture of the worker's disc due to the severe degeneration of the vertebral endplate adjacent to the C5/6 disc.

122. The next part of the chronology is that the worker's headache and shoulder soreness as at January 2011 developed progressively into a suspected rotator cuff tear by the time the worker returned to her chiropractor in April 2011. After one treatment there was some improvement, but there was still some soreness. On 24 April 2011 the worker again consulted the clinic, when she was given an orthopaedic referral and a referral for an ultrasound.

123. What does one make of this recent chronology? What is apparent is that the complaints made by the worker in January 2011 (or possibly earlier in December 2010) persisted for approximately 8 months – having progressively worsened, to the stage where further investigations were called for.

124. The investigations showed that the worker had prolapsed disc material that was compressing the spinal cord at C4/5. It was this diagnosed serious condition that rendered the worker incapacitated for work, and required her to undergo cervical spine surgery.

125. Counsel for the employer made the following submission:

> The investigations showed that the worker had prolapsed disc material that was compressing the spinal cord at C4/5. It is likely that the disc prolapse occurred in about late 2011 for 2 reasons:
>
> (a) The prolapse was causing spinal compression and this appears to have been the cause of the right arm "torn rotator cuff" symptoms. Those symptoms began to emerge in December 2010 or January 2011.
>
> (b) The effects of a prolapsed disc causing cord compression would be felt within a short time (namely days) of its occurrence and once started would continue. That pattern of persisting symptoms began in late 2010.

126. If that submission be correct, then the Court would be unable to be satisfied that one or more of the alleged injuries to the neck resulted in or materially contributed to the disc prolapse and the consequent need for surgery as diagnosed in November 2011. The validity of this submission ultimately can only be tested in light of the expert medical evidence in this case, which I will shortly consider.

127. In my opinion, the evidence of the worker on its own – when viewed against the backdrop of the objective medical records and/or lack thereof - is not sufficient to satisfy the Court that one or more of the alleged injuries resulted in or materially contributed to her medical condition as diagnosed in November 2011.

128. I now turn to examine and evaluate the expert medical evidence.

129. In a case like present where there is conflicting expert medical evidence as to an issue of causation, there is a need for the Court to carefully examine all of the evidence, and where possible to resolve conflicts in the evidence by preferring the evidence of one expert to another.

130. In undertaking that exercise the Court must be satisfied that the basis or the grounds of the proffered opinion are established. If the factual premise on which the opinion is not established, the opinion must be considered to be undermined: see Justice Van Doussa "Difficulties of Assessing Expert Evidence" (1987) 61 ALJ 615 at 618. As pointed out by Mr Trigg SM in *Spellman and RSL* [2004] NTMC 087 "to be of value the opinion of an expert must be founded upon a substratum of facts, which facts are proved by the evidence in the case, exclusive of the evidence of expert, to the satisfaction of the court to the appropriate standard of proof".

131. The Court is also required to determine the extent to which a particular expert opinion is based on the history given by the worker, and to test the validity of the opinion by reference to the accuracy and reliability of the provided history. The validity of the opinion is also to be tested by having regard to objective medical evidence (as well as the absence of such evidence) and evaluating the extent to which the opinion is consistent with, and supported by, that objective evidence. Most importantly, the reasoning process underlying the expert medical opinion must be subjected to careful analysis. The degree of cogency and persuasiveness of the reasons underpinning the opinion must be assessed.

132. Again as pointed out by Mr Trigg SM in *Spellman and RSL* [2004] NTMC 087:

> [the court] cannot weigh and determine the probabilities for themselves if the expert does not fully expose the reasoning relied on… Underlying these observations is an assumption that the trier of fact must arrive at an independent assessment of the opinions and their value, and this cannot be done unless their basis is explained*: Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705 at 733

133. As the present case raises causation as a crucial issue, the following should be noted:

- It is generally accepted that there is a distinction between causation in a legal sense and causation in a medical sense;

- It is also generally accepted that there are cases where evidence of medical causation is not essential to prove causation in a legal sense;

- However, it is accepted that there are cases where evidence of "medical causation" assumes some importance, particularly in cases where

> there is conflicting expert opinion evidence, and the court is called upon to resolve the conflict by preferring one expert opinion over another.

134. It is also helpful to bear in mind the observations made by members of the Court in *Fernandez v Tubemakers Australia Ltd* [1975] 2 NSWLR concerning the relationship between causation and the civil standard of proof. Glass JA observed that "the evidence will be sufficient if, but only if, the materials offered justify an inference of probable connection". In a similar vein, Reynolds JA said " the question in every case is whether there was evidence, if accepted, could be regarded as making it appear, on the balance of probabilities, the injury complained of contributed to the result".

135. Beginning with Dr Tomlinson, he first saw the worker on 29 November 2011 on referral from a GP on 29 November 2011. After receiving a history from the worker he ordered some repeat scans to be conducted on the worker. He subsequently recommended cervical spine surgery. That surgery was performed on 7 March 2012.

136. In his report of 6 January 2012 Dr Tomlinson opined that the cervical spine condition was related to the injury she sustained in the course of her employment as a police officer.

137. He stated that when he first saw the worker he was dealing with the C4-5 disc protrusion for which she received treatment. Following that he said her symptoms improved and resolved, and he believed that she had returned to work.

138. Dr Tomlinson said that the history provided to him by the worker made reference to the two rollovers and the taser incident. He felt convinced that those incidents were "associated with injury to her neck and culminating in her presentation with this cervical disc problem".

139. The doctor gave the following evidence in relation to the contents of the reports provided by Dr Coroneos:

> What I expressed was that there are lots of opinions in lots of – in the reports. But the facts are that after the accident, as I understand in 2009, if we're taking that as the…the flow through from the workforce injuries that she presented with neck pain which persisted, she subsequently had some imaging which showed a simple disc protrusion. I believed that this was the cause of her

> problem. I sent it to Dr Todman, a very experienced neurologist to see if he thought the same thing. She underwent surgery. Following surgery her symptoms improved to the point now where she is going back to work. So her injury relates when I saw her condition is about the C4-5 disc protrusion. Dr Coroneos does comment about the rest of her spine, but the thing I treated because I am the treating doctor – not someone who is giving an opinion about something on a patient they've never seen, is that the injury that I am concerned with is C4-5 disc protrusion for which she received treatment surgery and she recovered. They're the facts. Everything else is opinion.

140. When it was put to Dr Tomlinson that the C4-5 protrusion was the one he associated with the trauma at work he said: " …that's the culmination of her presentation to me and the one that required surgical treatment".

141. Exhibit W8 was a bundle of reports prepared by Dr Tomlinson.

142. Under cross examination Dr Tomlinson stated that the views he held were based on the history given to him by the worker. He added that he did not doubt a person's veracity.

143. When questioned whether he was saying that the worker's symptoms, particularly her symptoms in relation to her right shoulder were being caused by the protrusion at C4-5, Dr Tomlinson stated:

> Yes, to do with her cervical symptoms had to do with the symptoms she described was radiating over her shoulders were related to the C4-5 disc problem and occasionally I see patients with these types of symptom discs who present like this. So if we're looking for the classic presentation of a disc present on the nerve root then specifically it would be located on one side. …she had protrusions described as shoulder discomfort and that from time to time you see that in a person with central disc protrusion…

144. Dr Tomlinson said that he was treating a patient who had a problem, with the result that her clinical problem was solved. However, he said that her work would have been a major contributing factor to her condition.

145. When it was put to the doctor that had the 2009 rollover caused the C4-5 disc protrusion then one would have expected the worker to experience neck pain within a few days up to a week after the accident, he said that he understood she had seen a doctor about a week after the accident – and that she still had neck pain, and an x ray was done to make sure she did not have a fracture.

146. It was then put to the doctor that had the worker sustained the C4-5 protrusion in the rollover, one would expect those symptoms of a sore neck that she presented with to have persisted from that time. Dr Tomlinson's response was:

> …she had derangement probably of the C4-5 disc at that time and that caused…a weakening or a protrusion which…just progressed over time, it doesn't have to necessarily stay the same or doesn't have to necessarily accelerate and it can just be a weakness and things just make it worse.

147. Dr Tomlinson was then cross examined in relation to the MRI report of about 3 November 2011. He accepted that the worker had severe cervical spondylotic change and it was a fact that she had some degenerative changes in the neck. He also accepted that the report disclosed that the disc at the C4- 5 level showed signs of desiccation, which is an indication of degenerative or age related change. He also accepted that there was marked degenerative change at the C5-6 level. However, the doctor pointed out that the report erroneously recorded a large extrusion from the C 5-6 disc level. It was in fact coming from the C4-5 level. The doctor was adamant because he saw it.

148. Dr Tomlinson agreed that a disc protrusion at C4-5 in someone who has marked degenerative change can occur in the absence of trauma. He also agreed that an MRI will not necessarily inform whether a protrusion was caused by trauma or not.

149. Dr Tomlinson accepted the things Dr Coroneos said about degeneration in his report.

150. During cross examination, the following exchange took place between the doctor and counsel:

> Q: ..if it was the case that there was an absence of symptoms for an extended period of time, would that make it more likely that the C4-5 disc protrusion was the progression of that degenerative condition that we see in Ms Bryant;
>
> A: I'd say that it to my mind the problem came from the – as I say the disc derangement which occurred as a relation – in relation to that roll over and then all things that followed due to weakening and I accept what you say that there is degenerative changes because they happen in the spine all the time…so discs just continually change over time.

151. Dr Tomlinson said that the one level at which the worker did not have degenerative change was at C4-5. He said that the reason why the report disclosed signs of desiccation at C4-5 was "because all the disc material had been blown out the back and there was nothing left in it".

152. The doctor said that a disc protrusion can occur in any person for a "whole lot of different reasons". Although he accepted that the worker has got some degeneration he believed that the worker's previous work related problems were a significant contributing factor. However, he conceded that his opinion that the C4-5 protrusion was likely to be work related was based on the history he received from the worker.

153. When it was put to the doctor that on the day of the accident in April 2000 the worker continued with her normal work, on the day after the accident she was reviewed at the clinic because it was a mandatory requirement of the NT Police Force that anyone involved in a motor vehicle roll over was to submit to a medical examination, and following the examination she returned to normal duties and completed her shift, and that there was no further complaint or medical treatment sought in relation to a neck condition from then onwards until November of the following year – all of which would suggest that the 2000 rollover is unlikely to have caused anything other than minor neck pain of a temporary nature - Dr Tomlinson had this to say:

> Well I think you'd have to ask in the specifics of all Ms Bryant, I know many people who have injuries and they want their jobs they don't want to be incumbent by a whole lot of things so they just keep going. So the answer to your question is yes, but I would also add the caveat that people often just want to keep going with their life and also too to have a rollover is not an inconsequential thing. People do get…soft tissue tearing and stretching and forces are placed through their body. So Ms Bryant is to me a very robust person…she must have been very strong back then. So that's all I can say. Yes to what you asked me, but all the other things obviously follow on.

154. Dr Tomlinson said that although the rollover would not have caused the C4-5 disc protrusion, it would have been a contributing factor. He added:

> …the result is greater than the sum of each of the problems…each of the facts of things, the result is much greater than the sum, so there's a compounding effect.

155. When it was put to Dr Tomlinson that once the disc protrusion occurred there would be symptoms associated with it more or less persisting, and perhaps worsening up to the point when he examined the worker, Dr Tomlinson gave this evidence:

> Well disc protrusions they can get a little bit better, they can progress, they can progress slowly, they can progress rapidly. So I don't really hold any – know that it is what it is when you see the patient.

156. Dr Tomlinson said that he liked to have both a CT scan and MRI so as to get a complete picture when dealing with a problem such as the cervical cord.

157. The question is what probative weight should be accorded to Dr Tomlinson's evidence, and how far does it support and advance the hypothesis that one or more of the injuries to the worker's neck resulted in or materially contributed to the disc prolapse diagnosed in November 2011.

158. The factual premise on which his opinion was based was the history provided to him by the worker. It is now known that the history provided by the worker is not supported by objective medical records and is otherwise less than reliable or credible. At once, the substratum of facts upon which Dr Tomlinson's opinion was based is undermined.

159. However, the opinion expressed by Dr Tomlinson that the disc prolapse found at C4-5 of the worker's cervical spine was most probably caused by trauma and by the accidents which occurred in the course of the worker's employment suffers from another fundamental flaw. The doctor proffered a bald opinion without exposing the process of reasoning that led him to form that opinion, beyond the history given to him by the worker.

160. Dr Tomlinson did not explain, or adequately explain, from a medical perspective, how the alleged injuries sustained in the three accidents probably contributed to the worker's disc prolapse that was diagnosed in November 2011. The doctor's evidence was deficient in terms of proof of "medical causation".

161. It is also noteworthy that Dr Tomlinson made various concessions as to the existence of the worker's degenerative condition – thereby not excluding the real possibility that the disc prolapse was the product of that degenerative condition.

162. In my opinion, Dr Tomlinson's evidence, taken in conjunction with the worker's evidence, is insufficient to persuade the Court that the hypothesis advanced by the worker is more probable than that postulated by the employer.

163. Turning now to the evidence given by Dr Todman, he said that he saw the worker on one occasion on 5 December 2011, on referral from Dr Tomlinson.

164. In his report Dr Todman concluded that the work related injuries were an underlying factor in relation to her medical condition as diagnosed in 2011.

165. Dr Todman described the MRI taken on 3 November 2011 at Royal Darwin Hospital as showing marked degenerative change with canal stenosis at C4-5 and C5-6. He said that "marked" meant severe and "degenerative" is a term commonly used to denote "age related". He said "change" referred to abnormal condition.

166. Dr Todman gave evidence that the changes observed by Dr Coroneos on the MRI are most likely to have been present for some years, but those changes may have been advancing over those years. He agreed that such changes can occur in a slow progressive fashion, and can occur in the absence of trauma.

167. During cross examination, the following exchange took place between the doctor and counsel:

> Q: That someone with marked degenerative change could sustain a disc bulge or a disc prolapse from a seemingly minor event such as sneezing.
>
> A: I think it is possible, but changes of this severity are established that minor trauma may lead to significant aggravation of them and that minor trauma is described sometimes just being a turn of the neck or even sneezing. Now if I did treat her in that for such symptoms, but I think there's a difference between triggering factor and underlying cause.

168. Dr Todman said that by underlying cause he meant the advanced degenerative change that he observed in the worker, who was a relatively young female. He went onto say that "on a probability basis trauma is the main factor in her case, so there may have been minor incidents that triggered aggravations".

169. Dr Todman gave evidence to the effect that the presence of symptoms of back pain were irrelevant to any degenerative condition that the worker suffers from as evidenced by the MRI and other investigations.

170. What then does one make of Dr Todman's evidence? To what extent does it assist the worker's case?

171. Dr Todman's conclusion that the work related injuries were an underlying factor in relation to her medical condition as diagnosed in 2011 was based on two things:

(a) the history given to him by the worker; and

(b) his opinion that trauma was probably the main factor.

172. The first difficulty with the doctor's opinion is that the substratum of facts upon which the opinion was based – namely the history provided to him by the worker - has not been found to be supported by objective medical records. The second difficulty is that the doctor failed to expose, or adequately expose, the process of reasoning that led him to form his opinion. As with the opinion expressed by Dr Tomlinson, Dr Todman failed to expound or explain the aetiology of the condition diagnosed in November 2011 – that is the causal connection between the various injuries to the neck and the disc prolapse.

173. Dr Coroneos, a consultant neurosurgeon, gave evidence of having examined the worker on 12 January 2012 and prepared two medico legal reports, the first dated 12 January 2012 and the second dated 5 July 2012(Exhibit E18).

174. At the time of the examination the doctor viewed the MRI and CT scan that had been prepared for Dr Tomlinson on 19 December 2011, as well as some x rays.

175. On page 4 of his first report Dr Coroneos noted " modic endplate degenerative change at C5-6 and a sequestered mass". He gave the following evidence:

> Modic endplate degenerative change is seen on the MRI scan of the cervical spine and it refers to changes of the vertebral endplate adjacent to the disc and there's type 1 and type 2…essentially they're markers of very severe segmental degeneration of the C5-6 disc and they appear as overly dense areas of the endplate that is the bone on either sied of the disc at C5-6 in this case.

176. Dr Coroneos gave the following evidence:

> I was of the opinion that the C5-6 was the most likely origin of the sequestered fragment that had travelled behind the body of C5 and was compressing the cord at C4-5 and that's because there was continuity between the disc fragment and

> the C5-6 discs, and also discs when they sequestrate they usually sequestrate going in a rostral fashion. In other words they go upwards. So the finding of the degeneration of the severe nature at C5-6 was in keeping with a degenerate disc protrusion…
>
> The fact that there's advanced changes at C5-6 and there was continuity, in other words the disc sequestration was near the C5-6 disc I thought it most likely that it had come from C5-6 and travelled northwards to C4-5.

177. Dr Coroneos considered that it had tacked northwards to C4-5 because that is what most sequestrations do – they travel rostrally.

178. When asked whether the presentation of modic endplate degenerative change at C5-6 says anything about the likely cause of the protrusion – whether it would be precipitated by trauma or could be a progression of a natural degenerative condition - Dr Coroneos gave the following evidence:

> …that would make it more likely to be due to a natural progression of the degenerative condition because modic endplates change is really very advanced and commence stage degeneration. So that would suggest more of a degenerative causation.

179. Dr Coroneos gave the following evidence:

> For a patient to have a large cervical disc extrusion and sequestration due to trauma, one would expect the patient at the time of the injury, if it is traumatic, to have significant cervical cord or nerve root signs. Trauma usually causes a rupture of the disc with the tearing of the annulus and extrusion of the disc material and one would expect contemporaneous significant symptomology and clinical signs if one is saying that an injury has caused the disc rupture extrusion and sequestration.

180. Even with the additional history of the two further incidents in the worker's employment – namely the taser incident and the 2009 rollover – Dr Coroneos adhered to his opinion that the disc protrusion was the "end stage of the natural progression of cervical spondylitis for degeneration". Dr Coroneos gave the following reasons for reaching that opinion:

> There was no reporting of upper extremities symptoms it would appear for at least three years and that's what consisted with the accident in April 2000 causing the disc to rupture and compress the cord nerve root. One would expect symptoms in the upper extremity to appear shortly after an injury of that – if that is the cause. More than likely I think this is the overall picture that we've seen here is of a patient with a degenerate neck that's gone on to develop a protrusion which is part of the degenerative process compressing the cord requiring surgery.

181. In relation to the 2009 rollover, after viewing the records, including the Gunbalanya Community Health records, Dr Coroneos thought that it was more than likely that the worker had suffered a soft tissue strain. He noted that the records reported no cervical tenderness: and that would not be consistent with a significant cervical spine injury having occurred.

182. Dr Coroneos disagreed with Dr Todman's evidence that the presence of symptoms of back pain were irrelevant to any degenerative condition that the worker suffers from as evidenced by the MRI and other investigations. He said that the chiropractor's records are quite clear. The chiropractor refers to mid back to cervical spine off/on for several years, and in the top right hand corner the chiropractor refers to phase 2 changes at C5-6. He said that speaks for itself: "there's several years' history of symptoms recorded 28 November 2001, so I would rely on those records because I asked for records. I wanted to see all the records". The doctor explained that "phase 2" refers to mechanical symptoms arising from that level C5-6.

183. Dr Coroneos stated that the radiological examinations showed long standing spondolytic changes at C5-6. By way of explanation he said spondolytic change is loss of disc height - osteophytes and they are changes of long standing degeneration. He stated that they do not occur quickly and those changes predated the accident in 2000, as the x ray done in 2001 showed long standing spondolytic change.

184. Dr Coroneos gave the following evidence as to why those changes predated the 2000 accident:

> Because it's anterior osteophyte formation with what's called beaking which means at the front. The osteophytes and the call like appearance and they're meeting each other, that's called beaking. Those osteophytic changes are marked as degeneration which take a number of years to develop.

185. Had there been a neurological spinal injury in the rollover of 5 January 2009 Dr Coroneos said that he would have expected the worker to have neurological deficits in her arms and legs and to be reporting severe arm pain or brachial neuralgia. One would have also have expected a fracture or dislocation, and expected imaging to show acute pathology, such as an acute disc herniation or

paralysis. Dr Coroneos said that there was no evidence of any indicia of a significant injury.

186. Dr Coroneos said that the most likely cause for the disc protrusion evident from the imaging in 2011 was cervical degeneration or cervical spondylosis.

187. Dr Coroneos was referred to Dr Tomlinson's evidence that in the operation performed on the worker he removed the disc material from the C4-5 space and on that basis he considered the worker suffered from a C4/5 disc protrusion. The doctor said that the evidence given by Dr Tomlinson did not alter his opinion as to the cause of the disc protrusion – the evidence did not point to causation in the sense of what event or incident might have triggered the rupture.

188. Dr Coroneos agreed that when the worker was examined by him she complained of symptoms in her neck and right shoulder and right arm. He also agreed that the symptoms in her right shoulder and right arm could be referred pain from spinal cord compression.

189. Dr Coroneos agreed that Dr Tomlinson had fixed the problem as the worker's symptoms disappeared after the operation.

190. The doctor did not necessarily agree that the pathology was at C4-5. He gave this evidence:

> To access where the disc material is you have to go through C4-5 to get to it because it's travelled northwards. I think it's largely of academic interest whether or not it came from C5-6 to a C4-5, but the only way to get to it surgically is to go through C4-5 as Dr Tomlinson did.

191. Dr Coroneos agreed that the radiological report from Gove District Hospital made no reference to any degenerative changes in the cervical spine at C4-5.

192. The following exchange took place between Dr Coroneos and counsel during cross examination:

> Q: …insofar as the history of trauma is concerned I want you to assume that the worker's evidence is to the effect that she had no onset of symptoms in her neck until the first rollover in April 2000…if that were the case even if there were degenerative changes you would agree.. that the rollover may have aggravated or stirred up those degenerative changes?

> A: It may have exacerbated them, aggravation would indicate a structural injury, exacerbation and aggravation are different.

193. Dr Coroneos said that the rollover could have exacerbated the underlying degenerative changes in her neck.

194. It was put to Dr Coroneos that if those symptoms continued intermittently that exacerbation was continuing. His evidence was as follows:

> It depends on what the symptoms are and an exacerbation with this sort of accident may cause symptoms of cervical discomfort, neck tightness, for a period of up to six to eight weeks and that would be an exacerbation that we normally see in clinical practice.

195. Dr Coroneos was then asked that if it had been an aggravation would those symptoms have continued for longer. His said:

> Yes, if it is an aggravation there's a structural change then one would expect ongoing symptoms and certainly symptoms in the upper limb structures brachial neuralgia or arm pain.

196. Dr Coroneos said that if there were pain behind the right shoulder and into the lower arm that would suggest an aggravation if there were ongoing symptoms of that tightness. However, Dr Coroneos said that there would not have been an aggravation in 2000 because there was no arm pain until 2003. The worker said the arm pain started in 2003.

197. It was put to the doctor that if the arm pain became progressively worse after the rollover in 2009 there would have been an aggravation of underlying degenerative changes in the worker's neck. Dr Coronoes said that the records he had viewed indicated no evidence of any significant injury having occurred. He was relying on objective medical records in order to work out what happened years earlier.

198. Dr Coroneos agreed that the Oenpelli clinic records suggested some sort of injury to her neck at the time of the 2009 rollover. Dr Coroneos also agreed that the fact that the worker has degenerative changes in her neck may not cause symptoms. He also agreed that in some instances degenerative changes can cause symptoms. He further agreed that on occasion trauma can cause an aggravation of underlying degenerative changes.

199. It was put to the doctor that it was possible that the two motor vehicle rollovers have caused some form of aggravation of the underlying degenerative changes in the worker's cervical spine. Dr Coroneos said:

> That's possible, but my concern is that there was no documentation of any significant clinical signs and a clinical summation to it that they were soft tissue strains or cervical strains…..that's my concern looking at the actual contemporaneous records of the accidents… the immediate records after the accidents don't document any significant injury.

200. Dr Coroneos accepted that in remote communities access to medical and health treatment is limited, and quite often there is no access or limited access to medical practitioners other than health workers. The doctor also accepted that the opportunity to properly investigate symptoms in remote communities does not necessarily arise. He went on to say that proper documented history of events via medical practitioners is limited, and often one does not get much in the way of records, and what records are available may not necessarily be accurate.

201. When it was put to the doctor that there may have been some form of spinal compression or spinal injury that occurred after the 2009 rollover, Dr Coroneos replied: "an aggravation or a strain, yes." However, he went on to say:

> …I think it's more likely there was a soft tissue strain because surely you wouldn't have expected the doctor in June – the physio in June 2009 to document heart symptoms. I'd be more in favour that a soft tissue strain occurred in June 2009 rather than an aggravation.

202. Dr Coroneos agreed that if a disc protrusion had occurred as a result of the motor vehicle rollover in 2009 and it was untreated it could progress; and one would expect " a continuum and worsening symptomology in signs".

203. The following final exchange occurred between the doctor and counsel during cross examination:

> Q: And if that worsening of symptoms or signs occurred to the point where the worker couldn't cope with the pain any longer and sought some medical treatment, would it be fair to say that that worsening of symptoms could be related to a disc protrusion in 2009?
>
> A: That's possible, but one would have expected that the severity of pain would have led to early intervention, but I take your point that…we don't always get the medical care out in remote centres in the Northern Territory so I accept that, and the answer to the question is yes.

204. Doctor Coroneos was re-examined as to the precise location of the disc protrusion, and whether the protruding disc material came from the C4-5 disc as Dr Tomlinson opined or from C5-6. In particular, the doctor was asked why it is academic whether the disc material came from C4-5 or C5-6. The doctor's evidence was to the effect that from the perspective of a surgeon it does not really matter where the disc material came from because the objective is to remove it. However, he accepted that it might be important from a legal standpoint.

205. When asked whether the removal of the C4-5 disc, as Dr Tomlinson did, rules out the possibility that the original protrusion of disc material came from C5-6. Dr Coroneos replied: "No… he had to go through C4-5 to get the disc because it was largely behind C 4-5".

206. The doctor gave evidence as to the significance of the presence of calcification. He said that there is evidence of calcification behind the cervical vertebral bodies at the side of the posterior longitudinal ligament, and that is the marker of degeneration. Although it can be idiopathic (without cause), he said as general rule it is due to degeneration, and pointed out the radiologist has said that it was contained within the posterior longitudinal ligament causing total canal stenosis. He also pointed out that the radiologist has said there is marked focal thickening of her posterior longitudinal ligament from C4-5 to C3-4, and this is a marker of degeneration. Dr Coroneos said that this is a marker of degeneration of the ligament.

207. Dr Coroneos stated that he was not aware of any studies that could objectively and accurately inform how longstanding the degeneration might be in light of the observed calcification. However, he did say that clinical experience would indicate that it has probably been there for a number of years.

208. Dr Coroneos said that based on the registered nurse's records in relation to the 2009 rollover no injuries were found, and there was no cervical or shoulder tenderness, but only stiffness in arm muscles from bracing at the time of the accident. The doctor said that was an indication that there was no significant cervical spine injury from the accident in 2009. He expressed the opinion that the

worker may only have suffered a soft tissue strain, and that an aggravation would be unlikely.

209. Counsel for the worker submitted that the evidence of Drs Tomlinson and Todman should be preferred over that of Dr Coroneos. It was further submitted that the evidence of Drs Tomlinson and Todman should be preferred in the light of the following concessions made by Dr Coroneos:

1. In cross examination Dr Coroneos conceded that the symptoms relayed by the worker to the clinic at Gapuwiyak could indicate compression of the spinal cord and could represent a clear progression of symptoms;

2. Dr Coroneos also conceded that trauma can cause an aggravation of underlying degenerative changes in the spine and can cause protrusion; and

3. Dr Coroneos further conceded that it can be difficult to access medical records in remote communities.

210. On the other hand, counsel for the employer made the following submission:

> Dr Coroneos was the only expert to have been provided with a complete documentary record of the worker's medical history from 2001 to the time of her diagnosis in 2011. He undertook a detailed examination of that history. There was no aspect of that history that was demonstrated to be mistaken.
>
> Under cross examination Dr Coroneos made appropriate concessions in relation to his opinion. In particular, he accepted the possibility that the worker's complaint of shoulder symptoms in August 2009 could have been due to nerve compression in her cervical spine.
>
> Ultimately, however, Dr Coroneos considered it unlikely that the worker would have had nerve compression in her cervical spine in 2009 because of an absence of continuity of symptoms from then on. He considered that if the worker's condition at that time was a prolapsed disc causing nerve compression then the worker would be experiencing pain and symptoms to such a degree that she would have sought treatment.
>
> To counter that conclusion, the worker's counsel suggested to Dr Coroneos that the worker's remote locality could provide an explanation for a lack of treatment and therefore, documented continuity of symptoms. Dr Coroneos reasonably conceded that possibility. However the evidence shows that for most of the period in question from the end of 2009 until December 2010 the worker was not in a remote location but had returned to Darwin and spent a significant part of 2010 on leave.

> In the circumstances the Court should be most comfortable with the opinions given by Dr Coroneos and, where they differ from Dr Tomlinson and Dr Todman, the Court should prefer the evidence of Dr Coroneos.
>
> Further, notwithstanding the concession made by Dr Coroneos, the Court cannot be satisfied the worker had a continuity of shoulder symptoms consistent with nerve compression in her spinal cord beyond August 2009. The absence of such symptoms over a period of more than 12 months means it is unlikely that the prolapsed disc causing nerve compression occurred in the June 2009 rollover or shortly afterwards.

211. Whilst I consider these submissions to have significant appeal, the instant appeal of Dr Coroneos' expert opinion lies in the fact that his opinion was not history dependant as were largely the opinions proferred by Dr Tomlinson and Dr Todman. Dr Coroneos' opinion was able to transcend the limitations of the inherently unreliable history given by the worker to all three doctors. The further appeal of Dr Coroneos' opinion that he was able to give a plausible medical explanation in support of the hypothesis that the need for surgery for the condition diagnosed in November 2011 was related to the degenerative changes in the worker's cervical spine, and not to any injury to her neck occasioned by one or more of the three accidents. This is to be contrasted with the opinions of Drs Tomlinson and Todman which, to my mind, did not have as a factual premise a plausible medical explanation.

212. Given the inherent unreliability of the history given by the worker (in the sense that it is not supported by objective medical records), the history dependant nature of the opinions expressed by Dr Tomlinson and Todman, and the failure of both doctors to provide a plausible medical explanation for their opinion, the opinion proffered by Dr Coroneos is to be preferred.

213. However, it is not only the preferred expert opinion of Dr Coroneos that points to the likelihood that the worker's medical condition as diagnosed in November 2011 was the result of a natural progression of her degenerative cervical spine condition, rather than a consequence of one or more of the injuries to her neck sustained in the three work related accidents. All three medical experts were in agreement that a disc prolapse could occur without trauma, in light of the well documented and observed degenerative condition of the worker's cervical spine. However, what is far more telling against the hypothesis advanced by the worker

is the absence of independent objective evidence of a continuity of symptoms. Had one or more of the injuries to worker's neck resulted in or materially contributed to the disc prolapse, one would reasonably expect, on the basis of experience of the ordinary course of events, there to exist a continuity of symptoms. The absence of a continuity of symptoms supports the hypothesis put forward by the employer that any injuries to the neck sustained during any one of the accidents were of a temporary nature, and that the disc prolapse was a consequence of the worker's degenerative cervical spine condition.

214. In the final analysis, the evidence before the Court is more consistent with the hypothesis postulated by the employer than the hypothesis advanced by the worker. The former hypothesis is to be favoured. In my opinion, that hypothesis is the more likely explanation of all the available evidence. The hypothesis put forward by the employer has been established to the reasonable satisfaction of the Court on the balance of probabilities. Accordingly the worker has failed to discharge the burden of proof borne by her.

215. However, in the event I have erred in arriving at that conclusion, the state of the evidence is at least such as to give rise to "conflicting inferences of equal degree of probability so that the choice between them is mere matter of conjecture". It is clear that in such circumstances the worker must also be found to have failed to discharge her burden of proof.

216. On either view, it is clear that the worker has failed to prove that one or more of the injuries to her neck resulted in or materially contributed to the disc prolapse as diagnosed in November 2011. On either view, the worker's claim must fail.

217. However, there remains one further aspect of the worker's case that needs to be considered. That matter relates to the worker's claim that as a consequence of the injury to her neck she suffered from an aggravation of underlying degenerative changes to her neck. As previously mentioned, this claim arguably amounts to a pleading of an aggravation of a disease. I will proceed to deal with the claim in that manner.

218. The first observation I make is that this part of the worker's claim was not strenuously pursued. However, that in no way relieves the Court of the onerous

task of deciding whether the evidence supports a finding that one or more of the injuries to the worker's neck materially contributed to an aggravation of the underlying degenerative changes to her neck.

219. There is a paucity of evidence in relation to the second part of the worker's claim. It was largely through cross examination of Dr Coroneos that counsel for the worker sought to elicit evidence in support of the claim that the injury to the worker's neck materially contributed to an aggravation of the degenerative condition.

220. Although Dr Coroneos accepted that it was possible that the two motor vehicle rollovers caused some form of aggravation of the underlying degenerative changes in the worker's neck, he gave plausible medical reasons why he did not think that the condition had been aggravated by one of more of the injuries to the neck. He conceded the possibility of an exacerbation or soft tissue strain, neither of which, if in fact they occurred, would amount to an aggravation.

221. After taking that evidence in account – as well as any other relevant evidence – I have come to the conclusion that the worker has failed to establish that as a consequence of one or more of the injuries to her neck (sustained in the three separate accidents) she suffered an aggravation of the underlying degenerative changes in her neck. I am not reasonably satisfied on all the evidence that her employment was the real proximate or effective cause of an aggravation of her underlying degenerative condition – that is to say that one or more of the accidents (and concomitant injuries to the worker's neck) were the real proximate or effective cause of an aggravation of her degenerative condition. Even if there were an aggravation – and even if one or more of the neck injuries contributed to an aggravation of her degenerative condition - the evidence falls far short of establishing that one or more of the accidents (and concomitant injuries) materially contributed to an aggravation of the underlying degenerative changes in her neck.

222. In my opinion, the worker's claim, insofar as it is based on an aggravation of underlying degenerative changes in the neck, must also fail.

DECISION

223. In light of the preceding factual findings and concomitant conclusions the Court orders that the worker's application to the Work Health Court be dismissed.

224. I propose to hear the parties in relation to the question of costs in due course.

Dated this 13 day of December 2013.

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Dr John Allan Lowndes
CHEIF MAGISTRATE