

PARTIES: SANDERS, Margaret Teresa

v

THE NORTHERN TERRITORY OF
AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN
TERRITORY EXERCISING TERRITORY
JURISDICTION

FILE NO: No 73 of 1996

DELIVERED: Darwin, 15 October 1996

HEARING DATES: 18 June 1996

JUDGMENT OF: MARTIN CJ.

CATCHWORDS:

Workers' Compensation - Alternative rights and election between different remedies - election between lump sum and weekly payments - Appeal from decision of Work Health Court not to record agreement of parties to commute weekly payments to lump sum payments - Commutation is a specially designed statutorily sanctioned means of obtaining compensation in a particular form - Agreement not an attempt to exclude rights and entitlements of worker but designed to obtain a benefit for worker under Work Health Act 1994 (NT) in appropriate circumstances.

Work Health Act 1994 (NT), ss65,74 and 108.

REPRESENTATION:

Counsel:

Appellant:	Mr W J Priestly
Respondent:	Mr M P Grant

Solicitors:

Appellant:	Waters James McCormack
Respondent:	Solicitor for the NT

Judgment category classification:	B
Judgment ID Number:	mar96019
Number of pages:	3

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 73 of 1996

BETWEEN:

MARGARET THERESA SANDERS

Appellant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**

Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Published 15 October 1996)

The appellant was entitled to and was receiving regular payments for weekly compensation from the respondent under s65 of the *Work Health Act* 1994 (NT) (“the Act”). Pursuant to s74 of the Act the parties sought the authorisation of the Work Health Court to commute those payments. They entered into an agreement and submitted it together with affidavit evidence in support of the application to that Court. The evidence was to the effect that the appellant’s condition had stabilised, her rehabilitation was complete, she was not totally incapacitated within the meaning of s65(6) of the Act, and she

had received financial counselling. The appellant deposed that she knew that if the agreement was authorised she would not be entitled to further payments of compensation under s65. She swore that having received financial counselling, she proposed to use the commuted fund of \$63526.97 to reduce the mortgage debt on her home. That sum was calculated at discounted present values. On the face of it, all of the conditions precedent to the exercise of the Court's power specified in s74 had been fulfilled.

The parties agreement and the evidence went before his Worship Mr Gillies SM pursuant to the provisions of s108 of the *Act* whereby they sought to have the agreement recorded. Upon being recorded, such an agreement is enforceable as if it were a determination of the Court (s108(6)). There are a number of matters to be considered by the Court before directing that an agreement be recorded as set out in s108(3), including its consistency with s74. The Act envisages an agreement relating to commutation as being an agreement relating to compensation which can come to the Court for direction under s108.

Without hearing the parties, his Worship directed the Registrar not to record the agreement upon the grounds appearing from his written reasons of 2 February 1996. The first was that it was not in the interests of justice that it should be recorded because the appellant believed that her "rights and entitlements to future weekly payments of compensation are extinguished once the Agreement is approved". That is the effect of commutation of weekly benefits; it changes the form of benefit from periodic payments to a lump sum

calculated in accordance with the Act. It is just that a worker thinking of seeking commutation should understand what the effect will be if he or she is successful. That is a far cry from holding that it would be unjust to approve such an agreement where it is made clear that the worker fully understands the consequences.

His Worship went on to say that the agreement “represents a contracting out of the workings of the Work Health Act so far as future payments of weekly compensation are concerned”. With respect, that is not so. Rather, a commutation is a specially designed statutorily sanctioned means of obtaining compensation in a particular form. In conclusion, his Worship said that the agreement represented “an attempt to exclude the rights and entitlements of the Worker and is accordingly null and void pursuant to Section 186A (2)” of the Act. To the contrary, the agreement is designed to obtain a benefit for the worker under the *Act* in appropriate circumstances.

The circumstances of this case not only fell within the statutory criteria for commutation, but there was nothing disclosed which would justify the Court directing that the agreement not be recorded.

These are the reasons why I set aside the order of the Work Health Court and directed that the agreement be recorded at the conclusion of argument. It was further ordered, by consent, that the respondent pay the appellant’s costs both of the Work Health Court and this Court.
