

CITATION: *Patmore v Acton Pty Ltd T/A Dexter Barnes Electrical* [2005] NTMC 039

PARTIES: CHRISTOPHER ROBERT PATMORE
v
ACTON PTY LTD T/A DEXTER BARNES
ELECTRICAL

TITLE OF COURT: Work Health Court

JURISDICTION: Work Health

FILE NO(s): 20219350

DELIVERED ON: 8 July 2005

DELIVERED AT: Darwin

HEARING DATE(s): 4 February 2005, 23 June 2005

JUDGMENT OF: Mr H Bradley

CATCHWORDS:

WORKERS COMPENSATION--WORK HEALTH--SETTLEMENT--
COMMUTATION

Settlement of claims by agreements operating outside of court approval – Validity

Work Health Act 1986 (NT) s74, s108, s186A

Fox v Star Newspapers Co Ltd [1898] 1QB 636, *Linprint P/L v Hexham Textiles P/L* (1991) 23 NSWLR 508, *Normandy Woodcutters Ltd v Simpson* [2002] NTSC 43, *Sobek v NTA* (1999) NTMC 035, *Winter v Fantome* (1999) NTMC 042, *Ogilvy v Woolworths (SA) Ltd unreported*, *Winter v Fantome* [2000] NTMC 001, *Hopkins v Collins/Angus & Robertson Publishers Pty Ltd* Angel J unreported 21 May 1997, *Mt Ringwood Partnership v Starr* [2001] NTSC 49, *Starr v Mt Ringwood Partnership* [2001] NTMC 21, *Rippon v Chilcotin Pty Ltd* 53 NSWLR 198, *Reichel v Magrath* (1889) 14 App Cas 665 considered

REPRESENTATION:

Counsel:

Worker: Mr Michael Grove
Employer: Mr Eric Hutton

Solicitors:

Worker: Ward Keller
Employer: Hunt & Hunt

Judgment category classification: A
Judgment ID number: [2005] NTMC 039
Number of paragraphs: 27

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

No. 20219350

BETWEEN:

CHRISTOPER ROBERT PATMORE
Worker

AND:

**ACTON PTY LTD T/A DEXTER
BARNES ELECTRICAL**
Employer

REASONS FOR JUDGMENT

(Delivered 23 June 2005)

Mr H BRADLEY CM:

1. Christopher Robert Patmore sought compensation payments under the *Work Health Act* to an injury sustained by him on 26 July 1989. On that day he received a 415 volt (3 phase) electrical shock. As a result of this injury he claims to still be suffering the effects which are incapacitating and which require ongoing treatment. It is said that he has chronic post traumatic stress disorder with possibility of brain damage. Those are the terms in which the case was opened by Counsel on the first day of the hearing. Mr Patmore gave evidence on that first day namely 25 October 2004. The matter had intended to proceed at that time for a period of three weeks.
2. On 26 October 2004 (the second day of the hearing) and prior to the worker completing his evidence the parties advised the court that an agreement had been reached and that it was proposed that the parties sign a "Hopkins agreement". The matter was adjourned and the balance of the hearing days vacated. It was adjourned to 23 November for mention and subsequently to

13 December and 28 January 2005. On 20 January 2005 a document entitled Notice of Discontinuance bearing date 18 January 2005 was filed in the court. The document was signed by the solicitors for both parties. On 28 January the matter was further adjourned to 4 February when the court was advised that an agreement, said to be in the nature of a Hopkins agreement, had been entered into between the parties. That the agreement contained a confidentiality clause and that therefore the agreement would not be provided to the court. The court was advised that the parties were not disadvantaged by this process and it was proposed that the court grant leave pursuant to rule 3.07 to the worker to discontinue the application for compensation.

3. The Work Health Court has a general supervisory role to protect the worker and, where matters are before it, to ensure compliance with the Act.
4. It is the view of some, perhaps many, that a party to proceedings ought to be able to agree to the terms of settlement and discontinue at any stage of the proceedings. This would not appear to be the law in relation to the *Work Health Act*. Specifically Work Health Rule 3.07 provides:

Division 4 – Discontinuance or Withdrawal

3.07 Notice of discontinuance or withdrawal

- (1) At any time before the date fixed for the hearing of a proceeding a party may, without the leave of the Court –
 - (a) discontinue an application or counterclaim by filing and serving a notice of discontinuance; or
 - (b) withdraw an appearance or notice of defence by filing and serving a notice of withdrawal.
- (2) A notice of discontinuance or withdrawal is to be in accordance with Form 3A.
- (3) Discontinuance or withdrawal is effective when the relevant notice has been filed and served.

It is apparent from this Rule that the leave of the court is required in this situation where the hearing has commenced. The purpose and the intent of the Rule is reflected in other jurisdictions where proceedings cannot be discontinued except with the leave of the court or consent of the parties. Traditionally the courts exercise control over the discontinuance of proceedings to ensure fairness between the parties and in some circumstances upon the principle that once a proceeding has reached a certain stage the plaintiff should not be permitted to abandon the proceedings in order to avoid a contest except upon terms determined by the court – see *Fox v Star Newspapers Co Ltd* [1898] 1QB 636 (approved by the House of Lords – [1900] AC 19) and *Linprint P/L v Hexham Textiles P/L* (1991) 23 NSWLR 508, per Clarke J at 526. Generally however the court will not prevent discontinuance where there has been a consent between the parties and where the terms appear usual and appropriate.

5. In the Work Health jurisdiction however additional requirements are placed upon the court; in particular the *Work Health Act* provides for limited rights of commutation of weekly payments and s 74 provides:

Subdivision E – Commutation of Certain Entitlements

74. Commutation

- (1) Where it appears to the Court on the **application in writing** –
 - (a) of or on behalf of the employer or the person to whom it is payable that, because of the small amount of regular payments of compensation under section 63 or 65, the administrative costs in calculating and paying the compensation is disproportionate to the benefit received; or
 - (b) of a **worker receiving regular payments** of compensation under section 65 that –
 - (i) his or her **condition has stabilized**;
 - (ii) **rehabilitation is complete**;
 - (iii) he or she **is not totally incapacitated** within the meaning of section 65(6); and

(iv) he or she **has received financial counselling** before so applying,

and, in either case, **it is satisfied that the person** to whom that compensation is payable **is fully aware of the effects of the proposed commutation** in relation to future benefits under this Act, **the Court may, in writing, authorise the commutation** of those section 63 or 65 payments at discounted present values and those payments may be commuted and, subject to subsection (3), the commuted amount paid accordingly.

(2) **Compensation payments shall not be commuted except in accordance with this section** and where payment of compensation is commuted as a result of an authorisation under this section, no person is entitled to any future payments under section 63 or 65 in respect of the injury to which the compensation relates.

(3) **The maximum amount that may be paid** as a result of a commutation under this section is not to be greater than an amount equal to 156 times the worker's normal weekly earnings indexed in accordance with section 65(3) or 156 times average weekly earnings (whichever is the greater amount) at the time the payment is made.

(4) **Where the calculated commutation exceeds the maximum** amount referred to in subsection (3), the Court is not prevented from authorising the commutation of a payment to that maximum amount **if it appears to the Court fair and equitable to do so.** (emphasis added)

6. Further where an agreement is reached between the parties for the payment of compensation or in respect of any other matter relating to compensation a memorandum of that agreement should be recorded. Relevantly s 108 provides:

108. Recording agreement

(1) **Where an agreement** is made –

(a) **for the payment** of an amount of compensation;

(b) for the variation of a weekly payment of compensation; or

(c) **in respect of any other matter relating to compensation,**

a memorandum of the agreement in the form prescribed by the Rules **shall be sent**, in the manner prescribed by the Rules, by the employer or worker **to the Registrar.**

(3) After the expiration of 21 days after the giving of the last of the notices under subsection (2)(b), **the Court shall consider the memorandum** and shall –

(a) where it considers that by reason of –

(i) its **inaccuracy**;

(ii) the **inadequacy** of the amount;

(iii) the agreement having been **obtained by fraud, undue influence** or other improper means;

(iv) its being **inconsistent with section 74**; or

(v) **for any other reason of justice**,

the memorandum ought not to be recorded – direct the Registrar not to record the memorandum; or

(b) in any other case – direct the Registrar to record the memorandum on such terms as the Court thinks fit.

(4) Where the Court gives a direction under subsection (3), it may make such order (including an order as to an amount already paid under the agreement) as it thinks fit.

(5) Subject to the Rules, the Registrar shall, on receiving a direction under subsection (3)(b) to do so, record the memorandum in a special register in accordance with the terms of that direction.

(6) A memorandum, on being recorded under subsection (5), is enforceable as if it were a determination of the Court. (emphasis added)

7. It would seem that where there is any agreement to make a payment of or “relating to” compensation a memorandum of the same must be sent to the Registrar unless it is an agreement for commutation under s 74. The provision had seemed to me not to be merely procedural because of the use of the word “shall” and the following procedures which set out the role of the court (see later). I note however that His Honour Mr Justice Mildren has indicated in *Normandy Woodcutters Ltd v Simpson* [2002] NTSC 43 (Normandy) that he considered that the deed in that case which was made outside of the scope of the Act was not required to be recorded under s 108. When that decision was made His Honour expressed that the intention of the

legislature was to be discerned having regard to a variety of factors including the language of the provisions, the purpose of it, its place in the legislative scheme and by construing the provision in its legislative context. In that case as mentioned later His Honour was not given the benefit of all the material relevant to determining the legislative intent. In any event the situation there was different from that faced by the court in the instant case.

8. Further s 186A provides that an agreement which purports to exclude or limit the application of the Act is null and void and in some circumstances can render a person subject to prosecution. In particular s 186A provides:

186A. Contracting out

(1) **This Act applies notwithstanding anything to the contrary contained in any contract or agreement**, whether entered into before or after the commencement of this section.

(2) A contract **or agreement which purports to exclude or limit the application of this Act or to exclude or limit the rights or entitlements** of a person under this Act is, **to that extent, null and void**.

(3) A person who urges, prevails on, persuades or offers an inducement to another person to enter into a contract or agreement whereby that other person would, but for this section, consent or agree to the application of this Act being excluded or limited in respect of that other person, or to waive or limit that other person's rights, benefits or entitlements under this Act, is guilty of an offence.

Penalty: \$100,000.

(4) A reference in this section to a contract or agreement is not to be taken to include a reference to –

- (a) a proposed commutation under section 74; or
- (b) an agreement under section 108.

9. Further Part 15 of the Work Health Court Rules set out specific processes for authorising commutation under s 74 and for registering agreements under s 108. That part provides as follows:

PART 15 – AGREEMENTS AND COMMUTATION

Division 1 – Agreements

15.01 Form of agreement

- (1) A memorandum of agreement referred to in section 108(1) of the Act is to be in accordance with Form 15A and is to be signed by all the parties to the agreement.
- (2) For the purpose of section 108(1) of the Act, a party who sends a memorandum of agreement to the Registrar must do so by filing it.
- (3) A memorandum of agreement is to be filed accompanied by the following documents:
 - (a) all medical reports obtained by the parties in respect of the injury or disease to which the agreement relates and on which the parties relied in reaching agreement;
 - (b) a statement of particulars showing, by the use of sub-totals, how the amount of each payment under the agreement is made up or calculated;
 - (c) all other documents on which the parties relied in reaching agreement, including documents that provide evidence of amounts to be paid under the agreement.

15.02 Notice of receipt of agreement

A notice of receipt of a memorandum of agreement given under section 108(2)(b) of the Act to a person having an interest in the agreement is to be in accordance with Form 15B.

15.03 Notice of objection

- (1) A person having an interest in an agreement who objects to the recording of the agreement may file a notice of objection not later than 21 days after the date of the notice given under rule 15.02.
- (2) A notice of objection is to be in accordance with Form 15C and is to state the objection and the grounds for it.
- (3) A copy of the notice of objection is to be served on each party to the agreement.

15.04 Registrar to make inquiries

- (1) On receipt of –
 - (a) a memorandum of agreement; or

- (b) a notice of objection,

The Registrar must make the inquiries and seek the information (including copies of documents) that the Registrar considers necessary for the Court to be satisfied that an agreed amount, or the information on which the agreement is based, is adequate.

- (2) The parties to an agreement must answer all questions relating to the agreement asked by the Registrar and provide all information requested under subrule (1).

- (3) The Registrar must make a report on the agreement to the Court –

- (a) if applicable – detailing the information the Registrar has obtained; and

- (b) if the Registrar is of the opinion that an amount is inadequate – stating the reasons for that opinion.

15.05 Court to consider report, &c.

- (1) The Court, in considering an agreement under section 108(3) of the Act, must also consider –

- (a) the attachments to the agreement;

- (b) any notices of objection; and

- (c) the Registrar's report on the agreement.

- (2) Before the Court gives a direction under section 108(3) of the Act, it may –

- (a) direct a Registrar to request the parties to the agreement, their legal practitioners or other persons entitled under section 98 of the Act to appear for them, to appear before the Court to provide further information (including copies of documents) and make further submissions as the Court thinks fit;

- (b) require the hearing of oral evidence; or

- (c) summon a person to appear to give evidence.

15.06 Notice on recording agreement

- (1) When the Court gives a direction under section 108(3) of the Act, the Registrar must give notice of the direction to –

- (a) the parties to the agreement; and

- (b) the persons who filed notices of objection.

- (2) A notice given under this rule –
 - (a) is to be in accordance with Form 15D; and
 - (b) if it is in respect of a direction not to record an agreement – is to include the reasons for the direction.

Division 2 – Commutation of Compensation Payments

15.07 Application for commutation

- (1) An application for the purposes of section 74(1)(a) of the Act is to –
 - (a) be in accordance with Form 15E;
 - (b) state the terms of the commutation;
 - (c) contain a statement made under oath or a statutory declaration by the person making the application stating the facts to establish that, because of the small amount of regular payments of compensation under section 63 or 65 of the Act, the administrative costs in calculating and paying the compensation are disproportionate to the benefits received; and
 - (d) contain a statement made under oath or a statutory declaration by the person to whom compensation is payable that the person is fully aware of the effects of the proposed commutation in relation to future benefits under the Act.
- (2) An application for the purposes of section 74(1)(b) of the Act is to –
 - (a) be in accordance with Form 15F;
 - (b) state the terms of the commutation; and
 - (c) contain a statement made under oath or a statutory declaration by the worker stating the facts to establish that –
 - (i) his or her condition has stabilized;
 - (ii) rehabilitation is complete;
 - (iii) he or she is not totally incapacitated within the meaning of section 65(6) of the Act;
 - (iv) he or she has received financial counselling before making the application; and
 - (v) he or she is fully aware of the effects of the proposed commutation in relation to future benefits under the Act.
- (3) An application under this rule is to be accompanied by –

- (a) a statement of relevant particulars including the amount proposed to be commuted and, by the use of sub-totals, how that amount is calculated; and
- (b) all documents relevant to the proposed commutation.

15.08 Consent to commutation

The other party may consent to a commutation by endorsing his or her consent on the application that is filed.

15.09 Service of application

An application for a commutation is to be served on the other party unless the party has consented to the commutation under rule 15.08.

15.10 Consideration of application

(1) The Court must make the inquiries and seek the information (including copies of documents) that the Court considers necessary for the Court to determine whether or not to authorise a commutation.

(2) The persons affected by a commutation must answer all questions asked by the Court and provide all information requested by the Court in respect of the commutation.

15.11 Hearing of application

Whether or not an application for a commutation is endorsed under rule 15.08, the Court may fix a date, time and place for a hearing in respect of the application and notify the parties of the hearing.

- 10. It is clear that the *Work Health Act* and scheme generally places considerable significance on these agreements.
- 11. In these proceedings there appears to be issues relating to incapacity, weekly payments, quantum of weekly payments, medical and rehabilitation expenses mostly both past and future. The outstanding issues therefore relate to matters relevant under a wide variety of sections of the Act. The court does not know what the terms of the agreement reached between the parties are, or the issues to which the agreement or agreements relate. The court is only told that it is in the nature of a Hopkins agreement and from that I surmise that some payment in addition to current entitlements is proposed on the basis that the worker discontinue his proceedings. Further

that all or some or part of it is refundable if the worker brings any future claims against the respondent employer. The background and circumstances of the agreement is otherwise not available to the court for consideration.

12. One of the problems of the Hopkins process is that the worker is required to discontinue his proceedings. If that is done there may be a considerable impediment to the worker recommencing them at a later date. Apart from him having to persuade the Court that it is appropriate to start again when he has previously discontinued the claim, it may be that appropriate evidence is no longer available to him or the employer to enable the matter to be properly resolved. In addition one would expect a future court to want to know the details and reasons for the discontinuing; that would seem impossible in this case because of the confidentiality clause which seems to have prevented/persuaded the parties not to provide the terms to the court now. The limitation period for commencing the claim will have expired. Given that the statutory period to commence a claim is 28 days (s 104) or 6 months (s 182) it is clear that the intention of the Act is for claims to be resolved quickly.
13. There is a Community interest in the early and final resolution of legal disputes. Any attempt to adjourn matters sine die is strongly resisted in all jurisdictions. Further the authorities suggest that the recommencement of earlier proceedings may be an abuse of process. In *Rippon v Chilcotin Pty Ltd* 53 NSWLR 198 the Full Court of Appeal in NSW said at [15]

“15....In *Reichel v Magrath* (1889) 14 App Cas 665 the House of Lords held that a defence which was not barred by res judicata estoppel may nevertheless be struck out as an abuse of process. Lord Halsbury LC said (at 668):

“...it would be a scandal to the administration of justice if, the same question having been disposed of by one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again ... there must be an inherent jurisdiction in every Court of Justice to prevent such an abuse of its procedure”

14. The matter is further dealt with in Williams – “Civil Procedures, Victoria at I 23.01.120 – 150. where matters involving compromises are dealt with .
15. In the result the argument put by counsel in other cases that the workers rights are not impinged upon by the agreement to discontinue cannot stand. Clearly there would therefore be an effect on the rights of a worker within the ambit of s 186A(3).
16. It is hard to avoid the conclusion that the court has a duty to supervise the resolution of Work Health claims. While reasonable agreements on matters other than commutation may be considered on the merits it seems that there are particular conditions as to when and how much commutation can be paid to commute weekly payments in the future. The Act has been referred to as a pension scheme which should not be able to be avoided or resolved by lump sum payments.
17. This court has previously held that it has a supervisory role to play in relation to commutation/settlement situations see *Smith v Roche Brothers* Wallace SM unreported 1 July 1998, *Sobek v NTA* (1999) NTMC 035, *Winter v Fantome* (1999) NTMC 042, *Ogilvy v Woolworths (SA) Ltd* an unreported decision of Mr Trigg SM on 6 December 1994 and *Winter v Fantome* [2000] NTMC 001, *Starr v Mount Ringwood Partnership* [2001] NTMC 21. In some of those decisions the court had held that it was inappropriate for a matter to be settled on the basis of a payment of a sum considerably larger than the maximum permitted by s 74 on the basis that if the claim were reopened in the future then the money would be repayable. This court took the view that such schemes were contrary to the legislation and of the expressed will of the Parliament. Notwithstanding these decisions when some of them were the subject of appeal the Supreme Court has held that an agreement which does not extinguish a claim for compensation does not run foul of s 186A nor require the scrutiny of the court pursuant to s 108. See *Hopkins v Collins/Angus & Robertson*

Publishers Pty Ltd Angel J unreported 21 May 1997 (*Hopkins*) and *Normandy Woodcutters Ltd & Simpson* [2002] NTSC 43 (*Normandy*).

Regrettably in both these cases there was no contradictor available to the Supreme Court to test the propositions being put up by the parties who had reached the agreement. The earlier decision was extempore and the latter a considered decision of His Honour Mr Justice Mildren but without a contradictor. In the latter case when considering whether or not the agreements constituted a sham His Honour Mr Justice Mildren commented at [40] -

“there was some evidence that the payment of \$175,000 was intended to be linked to the fact of commutation. However, that is the only link between the two documents and that does not mean that the Deed was not a real transaction, or a disguise for some other transaction, even when read with the agreement. I do not consider that it can be inferred that the parties intended that the Deed was not intended to have effect according to its terms, or that the transaction as a whole was a mere cloak for some other transaction. **It may be that the sole purpose of the Deed was to drive a prime mover and all four dogs through s 74 of the Work Health Act**, but unless the Deed is illegal or unlawful, the *Work Health Act* is irrelevant to defining the legal effect of the rights granted by the Deed”.

18. The agreements in *Hopkins* and *Normandy* were different. In *Hopkins* monies had to be repaid if the case was reopened by the worker; in *Normandy* there was an application under s 74 for commutation and a deed the registration of which was sought under s 108. His Honour Mr Justice Mildren in granting the appeal affectively upheld the validity of the deed then took that into account in deciding it was appropriate to approve the s 74 application to redeem weekly payments. It should be noted that in both cases full particulars of the agreement and the relevant circumstances were provided to the court.
19. Both decisions however acknowledge either expressly or impliedly the role of the court to supervise the jurisdiction. His Honour Mr Justice Mildren at [48] comments that “the inference from looking at s 74 as a whole is that the

provision is designed to protect workers from their own folly. It is clear from s 74 (1)(b) that workers are only able to successfully apply (to redeem) where the condition has stabilised, rehabilitation is complete and the worker is only partially incapacitated”. His Honour went on to hold that he could proceed to approve a commutation notwithstanding that the amount was more than the cap placed in s 74 of the Act. In the particular circumstances of that particular case he was satisfied that the redemption was just and equitable as between the parties and that the discretion should be exercised in favour of commutation.

20. In the matter of *Mt Ringwood Partnership v Starr* [2001] NTSC 49 (*Ringwood*). The Supreme Court constituted by Riley J upheld a decision of this court to refuse to approve applications under s 74 and 108. At [11] His Honour said:

“[11] His Worship had a number of concerns with the proposed agreement and also with the application to authorise commutation. He delivered careful and detailed reasons for his decision. In doing so he reviewed the history of the legislation and the relevant authorities.”

21. In the case before this court – *Starr v Mt Ringwood Partnership* [2001] NTMC 21, Mr Trigg SM sought to determine the meaning of s 74, s 108 and s 186A by reference to the history of the legislation and the expressions of intent in Parliament as well as the case law. In *Winter v Fantome* [2000] NTMC 1, a decision which was not appealed, I too looked to extraneous materials to determine the intent of the Act. The materials considered in the two cases include the previous Act, the Doody Report, the new *Work Health Act*, the amendments thereto and parliamentary speeches made on appropriate occasions when the Act was introduced and amended. All of this material expresses a clear intention of the legislature for a pension scheme with rehabilitation as its main aim and limited rights to commute payments or permit early payment of future entitlements. Some extracts include:

“We are concerned with....the removal of disincentives from and placing of real incentives in the system for the rehabilitation of injured workers and the return to remunerative employment” – Attorney General Hatton 25 November 1986.

“The Government does not support one of the outcomes of the disputes review committees deliberations. This is the matter relating to commutation of weekly compensation payments to a lump sum...any further move to facilitate payments of lump sum amounts under the legislation is totally contrary to the spirit and philosophical basis of the Territory’s Work Health Scheme which is pension based with a major emphasis on rehabilitation” – Attorney General Mansey, Hansard 18 August 1993.

“Members will be aware that the provisions to commute benefits to a lump sum under the *Work Health Act* are very limited and intentionally so. It is not a lump sum scheme. Large lump sum payment, such as those previously available under common law, are contrary to the return to work philosophy of the Act. The wording of section 74 has worked well in the past particularly since the amendment in October 1991 which has removed the requirement for an applicant for commutation to be living outside the Territory. However with the maturing of the scheme greater use has been made of section 74 and, with the usual resourcefulness of the legal profession a broader interpretation has been put on its wording than was originally intended. The amendment bill makes no changes to the intent of the original section. However, it clarifies beyond all doubt the precise circumstances in which the Work Health Court may approve an application for commutation. The only benefits that may be commuted are those for regular weekly benefits. Estimates of future medical, hospital and rehabilitation costs cannot be part of a commuted sum. Indeed, an injured worker may continue to claim these costs despite the weekly benefits under section 65 having been commuted to, and paid out as, a lump sum”

22. When amending the Act to add ss (4) to s 186A, Attorney General Bourke said:

“An example of contracting out would be if an insurer attempted to persuade a person on incapacity benefits to take a lump sum as final settlement of all future entitlements under the Act. The scheme, being pension-based, only allows a limited level of lump sum payments under very restricted circumstances, and such payments cannot include a future entitlement to medical, surgical or rehabilitation expenses. The penalty in respect of this section is to

be increased from \$5,000 to \$100,000. This increase will serve to discourage any attempts to contract out of the legislation, as this would be seen to undermine it fundamentally and would be considered a most serious offence.

Further, the magistracy and judiciary have also found some difficulty with the contracting out provisions of the Act particularly as it relates to commutation of weekly benefits under section 74 and consent agreements under section 108. Commutation, by way of explanation, is the conversion of future weekly benefits to a once only lump sum payment. The legislation provides for such conversions under limited circumstances. Consent agreements are compromise agreements that are reached between parties to resolve a matter in dispute. These agreements and commutations must be ratified by the Work Health Court. Section 186A will now clearly not apply to legitimate consent agreements and commutation arrangements”.

23. It is a concern that this material has not been made available to the Supreme Court to assist it in reaching conclusions in cases other than *Ringwood*. Indeed it would seem from a reading of *Normandy* that even the content of the *Ringwood* decision was not referred to. If this material had been made available to His Honour Mr Justice Mildren then it may be that he would not have reached the conclusion that s 74 was “designed to protect the workers from their own folly” – see *Normandy* at [48], nor I suspect would he have said that the *Work Health Act* had nothing to do with the validity of deeds designed to facilitate the payment of money in lieu of compensation ie. “to drive a prime mover and all four dogs through s 74 of the *Work Health Act*” see *Normandy* at [40]. Indeed the only time this material was considered by the Supreme Court in *Ringwood* it was considered to be an appropriate subject for examination of the issues.
24. The system established by *Hopkins* and subsequently adopted in a variety of disguises;
 - 24.1 fails to acknowledge the expressed intention of parliament,

- 24.2 does not make clear what must be repaid in cases where a subsequent claim for weekly benefits is pursued – it might be fair for example to repay weekly payments but is it fair also to make repayments of monies for anticipated rehabilitation whether or not they have been spent just because a claim is made for ongoing weekly benefits,
- 24.3 assume a right to resume litigation when, by operation of law, leave would need to be sought. In such cases where the claim is resumed perhaps many years later seeks an entitlement to exactly the same benefits as were sought in the litigation which was discontinued it would seem unlikely that such leave would be granted. In such circumstances it does seem the workers rights are not unaffected but rather severely so.
25. The issue of entitlement to payment of benefits other than as strictly anticipated by the *Work Health Act* has been before the court under many guises and in different situations. The situation facing in this court at this time is different from those cases previously considered. I would hope for a comprehensive review by the Supreme Court with the benefit of a contradictor.
26. As indicated in this case none of the features of s 74 have been made available to court nor have any of the facts matters and circumstances relevant to the s 108 being made available to the court. The court's discretion to grant leave to discontinue must be exercised judicially. It seems to me that where the parties assert the right to discontinue contrary to the rules with no proper application or reasons given then it amounts to an attempt to oust the jurisdiction of the court.
27. Accordingly my view would be inappropriate for me to grant leave to discontinue the proceedings in these circumstances.

Dated this 8th day of July 2005.

Hugh B Bradley
CHIEF MAGISTRATE