

SANTOS LIMITED v CHAFFEY & ANOR (D8/2006);
ATTORNEY-GENERAL FOR THE NORTHERN TERRITORY OF AUSTRALIA
v CHAFFEY & ANOR (D9/2006)

Court appealed from: Full Court of the Supreme Court of the Northern Territory

Date of grant of special leave: 9 February 2007

The first respondent in each matter, Cameron Owen Chaffey, sustained an injury on or about 10 September 2003 in the course of his employment with Santos Limited, for which Santos accepted liability to pay compensation pursuant to the *Work Health Act 1987* (NT) (the Act). On 26 January 2005 the Act was amended by the *Work Health Amendment Act 2004* (the amending Act). The amending Act in section 49 excluded from the definition of “normal weekly earnings” superannuation contributions made by employers. This amendment was said to have been a response to the decision of the Full Court of the Supreme Court in *Hastings-Deering (Australia) Ltd v Smith* [2004] NTCA 13, which concluded that superannuation contributions were encompassed by section 49 of the Act prior to the passage of the amending Act. The decision in *Hastings-Deering* was itself the subject of an unsuccessful application for special leave to appeal. The calculation of the compensation paid to the first respondent by Santos from the date of the injury and beyond the date of commencement of the amending Act did not include employer superannuation contributions.

The matter came before the Full Court of the Supreme Court (Angel J in dissent; Mildren and Southwood JJ) by way of a case stated which was referred to the Full Court by Mildren J. Mildren J identified two questions for determination:

- Whether for the period up to the date of commencement of the amending Act, the amendment constituted an acquisition of the worker’s property inconsistent with section 50 of the *Northern Territory (Self-Government) Act 1978* (Cth) and as such was invalid to the extent of such inconsistency, and;
- Whether for the period after the date of commencement of the amending Act, the amendment constituted an acquisition of the worker’s property inconsistent with section 50 of *Northern Territory (Self-Government) Act* and as such was invalid to the extent of such inconsistency.

Section 50 of the *Northern Territory (Self-Government) Act* provides that the legislative power of the Northern Territory parliament does not extend to the making of laws with respect to the acquisition of property otherwise than on just terms.

Mildren and Southwood JJ (Angel J dissenting) held that the amending Act did effect an acquisition of property otherwise than on just terms, finding that the worker’s rights under the Act were conferred in exchange for full common law rights to damages for personal injury and as such were not susceptible of modification or extinguishment by legislation, other than on just terms. Angel J held that the exclusion of superannuation from the computation of compensation was not an acquisition of property. His Honour held that the right

to compensation pursuant to the Act was a right subject to alteration and any diminution of the value of that right was merely a characteristic of the right and not a loss of it.

The grounds of appeal include:

- Whether the amending Act effects an acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act*.