

COMCARE V CARDROSS PTY LIMITED & ORS

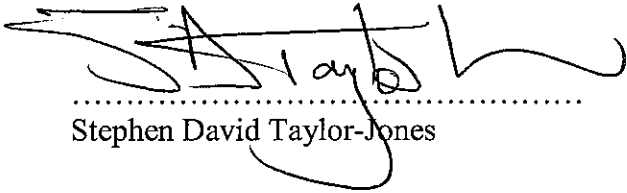
MATTER NO. DDT 8206 OF 2008

DECISION IN RESPECT TO THE APPLICATION BY DEFENDANTS PURSUANT TO CLAUSE 49(1) OF THE DUST DISEASES TRIBUNAL REGULATION 2007

1. I have received by a letter dated 28 January 2009 an application on behalf of each defendant to correct my Contributions Assessment dated 19 January 2009 pursuant to clause 49(10) of the Dust Diseases Tribunal Regulation 2007.
2. The application appears to be made within the time permitted by the said clause and is accordingly procedurally competent.
3. In substance the defendants assert that I made an error in determining contribution because, it is submitted, that clause 5(1) of the *Dust Diseases Tribunal (Standard Presumptions - Apportionment) Order 2005* limits my discretion to vary contribution as between the parties by a maximum of 20% such that, at most, I was permitted to vary the otherwise equal apportionment between Comcare and the succession of defendants to 70% to the employer defendant and 30% to Comcare.
4. The proposition of the defendants is supported by a submission as to construction of clauses 5(4) and 5(5) of the Order.
5. The submission can be simply disposed of by consideration of the matters which I am permitted to correct as defined by clause 49(10) of the Regulations. Those matters are limited to 'clerical mistake, or an error arising from an accidental slip or omission'. My methodology and determination of contribution was a deliberate calculation and as such does not fall into a mistake nor an error arising from an accidental slip or omission. As such, the controversial aspects of my decision do not fall within the matter which can be corrected. However, for abundant clarity I will provide additional reasons in support of my determination so as to assist the parties in further conduct of the contribution proceedings.
6. In my view the limitation on variation contained in clause 5(5) only operates to limit the variation to 20% with respect to apportionment between the two broad categories of defendants (being Category 1 Corporations and Category 2 Corporations) as contemplated in clause 5(1) and in particular the table, not as between a number of parties within the same category as is the case in this assessment.
7. Relevantly clause 5(4) provides an unfettered discretion to vary contribution as between parties within the same category. I do not accept the submission to the extent which it asserts the discretion contained in clause 5(4) is limited to a maximum of 20% by clause 5(5).

8. In the circumstances I reject the application to vary my determination of 19 January 2009.

Dated this 2nd day of February 2009



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Stephen David Taylor-Jones