

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D88/2005

**CATCHWORDS**

Domestic building – slip rule – reserved costs.

<b>APPLICANT</b>	Jonathan Hyde
<b>FIRST RESPONDENT</b>	Vero Insurance Ltd
<b>SECOND RESPONDENT</b>	Anthony Smythe
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member D. Cremean
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	20 July 2007
<b>DATE OF ORDER</b>	25 July 2007
<b>CITATION</b>	Hyde v Vero Insurance (Domestic Building) [2007] VCAT 1304

**ORDER**

- 1 Application is dismissed.
- 2 Order Applicant to pay costs of the First Respondent which I fix in the sum of \$700.00.

**SENIOR MEMBER D. CREMEAN**

**APPEARANCES:**

For the Applicant	Mr B. Wyatt, Solicitor
For the First Respondent	Mr M. Corrigan of Counsel
For the Second Respondent	No appearance

## REASONS

- 1 I am asked to act under s119 of the *Victorian Civil and Administrative Tribunal Act 1998* to alter orders I have made previously to order that reserved costs be included in the costs sought to be taxed on 31 July 2007.
- 2 Section 119 is as follows:
  - (1) The Tribunal may correct an order made by it if the order contains—
    - (a) a clerical mistake; or
    - (b) an error arising from an accidental slip or omission; or
    - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or
    - (d) a defect of form.
  - (2) The correction may be made—
    - (a) on the Tribunal's own initiative; or
    - (b) on the application of a party in accordance with the rules.
- 3 Having reviewed the matter I am not persuaded I should so order.
- 4 It is true that costs were reserved on 28 April 2005 and on 8 November 2005. However on 21 December 2005 I ordered the First Respondent to pay the costs of the Applicant and I specifically said (in paragraph 3) “I make no other orders as to costs”. I am clear, having now considered my orders made on that occasion, that that is what I intended – no other costs orders were made by me.
- 5 There is nothing I am persuaded about which stands out as, “at once”, something I omitted to do in December 2006. See *Storey & Keers Pty Ltd v Johnstone* (1987) 9 NSWLR 446 at 453.
- 6 I am quite satisfied no occasion arises for me to act under s119 to deal with costs reserved previously. Orders made on 21 December 2005 have the effect that they have supplanted earlier orders.
- 7 The application must fail.
- 8 It was agreed I should deal with the costs of this application – which I note is brought 18 months or more after my orders were made and 14 months or so after consent orders on 6 May 2006 specifying County Court Scale D.
- 9 I am satisfied under s109 of the Act I should order costs in favour of the Respondent (Vero). A sum of \$2,000.00 was sought by way of indemnity costs. I think that is quite excessive and the occasion is not sufficiently “extraordinary” or “exceptional” to justify indemnity costs.
- 10 I shall order the Applicant to pay costs which I fix in the sum of \$700.00.

**SENIOR MEMBER D. CREMEAN**