

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

**VCAT Reference: D845/2004**

**CATCHWORDS**

Domestic building – costs – functus officio.

**APPLICANTS:** Norman Sandman, Lorraine Sandman

**RESPONDENT:** Extension Factory Custom Designers and Builders, A  
Division Of Extension Designs Of Australia Pty Ltd (ACN  
006 286 826)

**WHERE HELD:** Melbourne

**BEFORE:** Senior Member D. Cremean

**HEARING TYPE:** Directions Hearing

**DATE OF HEARING:** 9 February 2006

**DATE OF ORDER:** 9 February 2006  
[2006] VCAT 105

**ORDERS**

1. The Tribunal has no further function to perform.

**SENIOR MEMBER D. CREMEAN**

**APPEARANCES:**

For the Applicants: Mr P Kistler of Counsel  
For the Respondent: Mr T Fennessy of Counsel

## REASONS

1. I published Reasons for Decision in this matter on 28 November 2005.
2. In those Reasons I specified: “No orders as to costs”.
3. The unsuccessful Applicants have asked me to revisit my orders made on that occasion regarding costs in light of a letter dated 15 August 2005, which I have viewed.
4. That letter is in substance in identical terms to the order I made – dismissing the claim but ordering for \$10,481.00 on the Counterclaim.
5. I agree I have power to revisit my orders, and alter the same if proper to do so, in the event of an offer of compromise made under s112 of the *Victorian Civil and Administrative Tribunal Act 1998*. See *Panieras v Home Owners Warranty* [2000] VCAT 41 at [11] and [12].
  11. It was argued on behalf of the Owner that because there was no express reservation of costs in the original order and the terms of the original order stated “No orders as to costs” that the Tribunal was functus officio and could not now revisit the question of costs. However s109 of the VCAT Act concerns the general power to award costs. The order related only to that section. I was unaware of any offer of settlement and accordingly could not have made any order pursuant to s112. A party who has made a settlement offer has a right to make an application to the Tribunal after an order is made under that section and the terms of the order cannot remove that statutory right.
  12. In the above circumstances the Respondent is entitled to an order in terms of the section that the Aboriginal [sic] pay to the Respondent all costs incurred by the Applicant in this proceeding after 15 March 1999.
6. However, this is not that situation. The offer made on 15 August is not an offer

of compromise in accordance with the Act. Finally I should say I do not believe I should treat the offer by letter of 15 August as an offer of compromise under the Act. It does not comply with the detailed requirements of s112 and I am unable to see a basis for me disregarding that circumstance.

7. Therefore it seems to me I otherwise have no power to re-open my previous orders. I consider, as was submitted to me, that I am *functus officio*.
8. I should indicate that I ruled on the question of costs in my Reasons because I was invited to do so. But I am intending no criticism of Counsel for having invited me to do so.
9. I note that the orders made on 28 November remain intact, as it were, as no appeal has been taken from them under s148 of the Act.
10. Being *functus officio* I decline to order in favour of the Respondent any costs on this occasion either. No fresh proceeding has been issued by the letter of 14 December 2005. I consider I exhausted my discretion on costs on 28 November 2005, as regards both parties, in the absence of an offer made under s112.
11. I determine I am *functus officio* and I became so on and after 28 November 2005. There was nothing left for me to determine, I consider, from that time onwards.

**SENIOR MEMBER D. CREMEAN**