

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *White v Victims Assist Queensland* [2018] QCAT 287

PARTIES: **DAVID JOHN WHITE**
(applicant)
v
VICTIMS ASSIST QUEENSLAND
(respondent)

APPLICATION NO/S: GAR241-17

MATTER TYPE: General administrative review matters

DELIVERED ON: 23 August 2018

HEARING DATE: 30 August 2018

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS: **The Tribunal sets aside the decision of Victims Assist Queensland of 29 June 2017 and replaces it with a decision to grant ‘Category A’ special assistance of \$8,000.00 under Schedule 2 of the *Victims of Crime Assistance Act 2009 (Qld)* and reasonable counselling expenses of \$1,200.00.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where claim under *Victims of Crime Assistance Act 2009 (Qld)* – where charge of assault occasioning bodily harm – where ‘Category C’ act of violence – where victim suffered trauma to eye including retina degeneration and fractured eye socket – where permanent and significant reduction in quality of life – where victim suffered ‘very serious injury’ to elevate grant payable to ‘Category A’ act of violence – where criminal compensation legislation is beneficial – where exceptions within the legislation are to be read down narrowly to preserve the scope of the beneficial effect of the legislation – where ‘could’ not sufficient to meet the threshold of ‘would’ in exception to definition of ‘very serious injury’ – where eye integral part of bodily function and appearance – where grant payable between middle and upper end of range

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 20, s 24
Victims of Crime Assistance Act 2009 (Qld), s 3, s 39, Schedule 2

Cole v Department of Youth and Community Services
 (1986) 7 NSWLR 541
Harley v Department of Justice and Attorney-General
 [2012] QCAT 620
Kehl v Board of Professional Engineers of Queensland
 [2010] QCATA 58
O'Brien v Gladstone Regional Council [2015] QCATA
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Re Applications of Foster [1982] 2 NSWLR 481
Richardson v ACT Health & Community Care Service
 [2000] FCA 654

APPEARANCES &
 REPRESENTATION:

Applicant: Self-represented
 Respondent: B James, Team Leader, Victims Assist Queensland

REASONS FOR DECISION

What is the act of violence?

- [1] On 22 December 2016, David White was struck to the left side of his head during an altercation at a bar. Police charged the offender with assault occasioning bodily harm.
- [2] Victims Assist Queensland ('VAQ') originally granted special assistance to Mr White for a 'Category C' act of violence of \$1,300 and \$1,200 for six counselling sessions.¹ Upon internal review, special assistance was increased to \$3,500 for a Category B act of violence.² Mr White has applied to the Tribunal to review the internal review decision.

What does the Tribunal do?

- [3] The Tribunal considers the matter afresh to produce the correct and preferable decision.³ This means that Mr White need not prove that VAQ made an error – VAQ's decision is not presumed correct.⁴
- [4] The Tribunal effectively "stands in the shoes" of VAQ and makes its own decision.⁵ The Tribunal may confirm, amend or set aside VAQ's decision and substitute a new decision or return it to VAQ to reconsider.⁶

¹ Decision dated 21 April 2017.

² Decision dated 29 June 2017.

³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20.

⁴ *Harley v Department of Justice and Attorney-General* [2012] QCAT 620, [8] citing with approval *Kehl v Board of Professional Engineers of Queensland* [2010] QCATA 58, [9].

⁵ *O'Brien v Gladstone Regional Council* [2015] QCATA 82, [18].

⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 24(1).

What is the relevant legislation?

- [5] The relevant version of the *Victims of Crime Assistance Act* 2009 (Qld) is the version in force at the time the decision under review was made on 21 April 2017 and then at an internal review on 29 June 2017. That is, the Act current as at 1 July 2016.
- [6] The minimum and maximum amounts of special assistance payable in relation to an act of violence as at the time the decision was made were:⁷
- (a) Category A - \$5,000 to \$10,000
 - (b) Category B - \$1301 to \$3,500
 - (c) Category C - \$651 to \$1300
 - (d) Category D - \$130 to \$650

What category is this act of violence?

- [7] Special assistance is available to primary victims only.⁸ The assistance is intended to help victims of violence to recover by giving them financial assistance representing a symbolic expression by the State of Queensland of the community's recognition of the injuries suffered.⁹
- [8] 'Category A' acts of violence, including rape and murder, are the most serious and receive the highest compensation.
- [9] Mr White's assailant was charged with Assault occasioning bodily harm. This is a 'Category C' act of violence.¹⁰ This means that Mr White can be granted an amount between \$651 and \$1300.

Do circumstances apply to elevate the act of violence to a higher category?

- [10] However, particular circumstances can elevate the grant to a higher category range.¹¹
- [11] The contemporaneous medical evidence¹² is that Mr White suffered trauma to the eye including:
- (a) Blood clotting (Periorbital hematoma);
 - (b) Broken blood vessels (Subconjunctival haemorrhage and microhyphaema); and
 - (c) Retina degeneration secondary to shock waves (Commotio retinae).
- [12] It was recommended that Mr White undergo surgical repair of his orbital fracture by a maxilla facial surgeon. A plate was permanently inserted to stabilise the fracture. He may require further surgery. However – and understandably – he is reluctant to

⁷ Schedule 2, s 2.

⁸ *Victims of Crime Assistance Act* 2009 (Qld), Schedule 2.

⁹ *Ibid* s 3(2).

¹⁰ *Ibid* Schedule 2, definition of 'category C act of violence'.

¹¹ *Ibid* Schedule 2, s 1.

¹² Qld Health Discharge Summary, dated 6 January 2017.

undertake this surgery because he has been advised it is complicated and he risks losing his eye.

- [13] Because Mr White has sustained retina degeneration and required surgery to stabilise his eye region, I am satisfied that he has suffered a bodily injury that has resulted in a permanent and significant reduction in quality of life sufficient to fall within the definition of ‘very serious injury’.¹³
- [14] Dr Richard Jiang also recently certified that Mr White has been suffering from watery left eye since the attack.¹⁴ Dr Jiang also reported that Mr White’s tear in his left eye ‘could be due to blocked tear duct, which could be treated by tear duct probing.’¹⁵
- [15] I do not accept this is sufficient to fall within the excluding part of the definition of ‘very serious injury’ which relevantly provides:
- A bodily injury is not a very serious injury if the injury, or illness or disorder or impairment, would stop being very serious if it were subjected to other treatment, including, for example, because the reduction in quality of life is alleviated.¹⁶
- [16] Criminal compensation legislation is beneficial¹⁷ because it is in the public interest to assist victims of crime. This means that exceptions within the legislation are to be read down narrowly in order to preserve the scope of the beneficial effect of the legislation.¹⁸ The plain meaning of ‘would’ in this context is ‘will’. To interpret the provision otherwise would mean reducing a victim’s entitlement based on a contingent event that might or might not happen, contrary to the beneficial purpose of the legislation.
- [17] Dr Jiang’s report merely states that Mr White’s ongoing symptoms ‘could’ be due to a blocked tear duct, which ‘could’ be treated. The plain meaning of ‘could’ in this context is to express a conditional possibility, or contingency. This means the report expresses a contingency on a contingency. I am not satisfied that this is sufficient to meet the threshold of ‘would’. The exception therefore does not apply to remove Mr White’s injuries from qualifying as a ‘very serious injury’.
- [18] Mr White said his eye is causing him a great deal of ongoing discomfort and distress. He has to take a wet rag with him wherever he goes to continually wipe the fluid out of his eyes. He said he is unable to see through his left eye. A recent ophthalmology report states he has reduced clarity of vision with no improvement.¹⁹
- [19] Mr White’s eye area is now more sensitive and he will no doubt need to be guarded with his movements. His appearance also affects how he is treated by others.

¹³ *Victims of Crime Assistance Act* 2009 (Qld), Schedule 2, s 1(1)(a).

¹⁴ Medical Certificate, dated 12 June 2018.

¹⁵ Report of Dr Richard Jiang, dated 19 June 2018. (emphasis added)

¹⁶ *Victims of Crime Assistance Act* 2009 (Qld), Schedule 2, s 1(2). (emphasis added)

¹⁷ *Re Applications of Foster* [1982] 2 NSWLR 481.

¹⁸ *Cole v Department of Youth and Community Services* (1986) 7 NSWLR 541; *Richardson v ACT Health & Community Care Service* [2000] FCA 654.

¹⁹ Referral of Dr Kirthi Sugnanam, Ophthalmology Registrar, dated 8 June 2018.

- [20] For these reasons, I am satisfied that Mr White has suffered a ‘very serious injury’ that elevates the category range to a ‘Category A’ act of violence of between \$5,000 and \$10,000.²⁰

What is the appropriate grant amount?

- [21] The eye is an integral part of bodily function and appearance. Mr White’s quality of life is permanently and noticeably reduced. In the circumstances, I consider the grant payable to Mr White should fall between the middle and upper end of the range for ‘Category A’.
- [22] Mr White is therefore granted an amount of \$8,000 for special assistance.
- [23] No basis was provided to change the grant for counselling sessions at \$1,200.²¹

What is the correct and preferable decision?

- [24] The correct and preferable decision is to set aside the decision of Victims Assist Queensland of 29 June 2017 and replace it with a decision to grant ‘Category A’ special assistance of \$8,000.00 under Schedule 2 of the *Victims of Crime Act 2009* (Qld) and reasonable counselling expenses of \$1,200.²²
- [25] I note that VAQ has already paid financial assistance to Mr White. The parties will therefore need to adjust their positions in accordance with these reasons.

²⁰ *Victims of Crime Assistance Act 2009* (Qld), Schedule 2, s 1(1)(a).

²¹ *Victims of Crime Assistance Act 2009* (Qld), s 39(a); Decision dated 21 April 2017.

²² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 24.