

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *DCN v Scheme Manager, Victim Assist Queensland, Department of Justice and Attorney-General* [2022] QCAT 360

PARTIES: **DCN**
(applicant)

v

**SCHEME MANAGER, VICTIM ASSIST
QUEENSLAND, DEPARTMENT OF JUSTICE AND
ATTORNEY-GENERAL**
(respondent)

APPLICATION NO/S: GAR131-22

MATTER TYPE: General administrative review matters

DELIVERED ON: 17 October 2022

HEARING DATE: 21 September 2022

HEARD AT: Brisbane

DECISION OF: A/Senior Member Browne

ORDERS:

- 1. The application to extend the time for filing the application for review filed on 6 April 2022 is refused.**
- 2. Other than to the parties to this proceeding, publication is prohibited of any information that may identify the applicant.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – TIME, EXTENSION AND ABRIDGMENT – where the applicant filed an application to review a decision out of time – where the applicant filed an application for an extension of time – whether the application for an extension of time should be granted – where applicant applied for a non-publication order – whether in the interests of justice to make a non-publication order

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 33, s 61, s 66

Victims of Crime Assistance Act 2009 (Qld), s 3, s 101, s 125

Harper Property Builders Pty Ltd v Queensland Building

and Construction Commission [2018] QCATA 70
Pappas v Meiklejohn's Accountants [2017] QCATA 60
Reeve v Hamlyn [2015] QCATA 133

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

REASONS FOR DECISION

- [1] DCN applies to the Tribunal to extend the time for filing an application to review the respondent's decision of 5 January 2017 to grant assistance under the *Victims of Crime Assistance Act 2009* (Qld) ('the Act').
- [2] As the application for review was filed outside the prescribed time of 28 days for filing an application, an extension of time to file the application is required.¹
- [3] On 21 September 2022, I refused DCN's application to extend the time for filing the application for review.² DCN requested reasons for my decision that are now set out below.

Why is DCN applying for an extension of time?

- [4] DCN does not cavil with the respondent's decision to grant financial assistance to him for his injuries suffered following an assault on 10 January 2010.
- [5] DCN accepts that his application for review has been filed more than five years late and recognises that he had 28 days from 5 January 2017, the date of the respondent's decision, to file an application for review.³ DCN wishes to proceed with an application for review because he says the respondent did not make adequate provisions in the grant for treatment of his injuries.⁴

Should the time for filing the application for review be extended?

- [6] The Tribunal may extend a time limit for the start of a proceeding unless to do so would cause prejudice or detriment, not able to be remedied by an appropriate order for costs or damages, to a party or potential party to a proceeding.⁵
- [7] The power to extend time involves the exercise of broad discretion and should be exercised according to established principles and any relevant statutory prescriptions.⁶ The usual considerations that apply in exercising the discretion to grant an extension of time include the length of the delay; whether the party has

¹ Application to extend or shorten a time limit or for waiver of compliance with procedural requirement filed 6 April 2022. See s 125(2) of the *Victims of Crime Assistance Act 2009* (Qld) and s 33(3) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act').

² Amended decision dated 21 September 2022.

³ Applicant's submissions filed 6 April 2022.

⁴ Applicant's response to submissions (filed by the respondent) filed 24 August 2022.

⁵ See s 61(3) of the QCAT Act.

⁶ *Reeve v Hamlyn* [2015] QCATA 133, [35].

provided an adequate explanation for the delay; the merits of the proceeding; prejudice to others; and the interests of justice.⁷

- [8] I am not satisfied that DCN has provided an adequate explanation for the delay that is considerable being some five years late and that DCN has good prospects of success on review.
- [9] DCN submits that at the time of the internal review decision in 2016 the medical evidence indicated that the likelihood of requiring the treatment that he now requires was, as stated, ‘unlikely, but possible’.⁸ DCN says that he did not believe that it was a good use of the courts time to consider external reviews based on ‘hypothetical situations’.⁹
- [10] DCN fails to appreciate, however, that compliance with time limits is consistent with the public interest in the finality of litigation.¹⁰
- [11] The respondent afforded DCN an opportunity to obtain and present relevant material including medical evidence for the purposes of completing an assessment. Indeed, Financial assistance including dental related expenses have been paid to DCN totalling \$47,896.42 following an assessment on 19 October 2010.¹¹
- [12] The Act contemplates that there is one grant of financial assistance with limits as to the amount of the grant. As provided under s 3 of the Act, the scheme provides financial assistance to certain victims of acts of violence to help recover from the acts and is not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise.
- [13] Although a person may apply for an amendment of the grant in certain circumstances such as a change or a likely change in the person’s circumstances, there are limitations on the time to apply.¹² Section 101(3) of the Act provides that an application for amendment of the grant of assistance for an adult must be made within 6 years after the assistance was granted.
- [14] Here, DCN applied for amendments to the grant at various times on 31 May 2011, 31 January 2013, 28 February 2013, 28 February 2014, 30 June 2015 and 14 October 2016. The six year amendment period for the purposes of s 101, expired on 19 October 2016. This means that even if the time for filing the application is extended, DCN has little or no prospects of success on review.
- [15] It is clear from the respondent’s reasons for the internal review decision that DCN was made aware of the six year amendment period for his grant. In the reasons provided to DCN, the respondent says the following (emphasis added):

Six Year Time Limit and Unpaid Assistance

⁷ *Harper Property Builders Pty Ltd v Queensland Building and Construction Commission* [2018] QCATA 70, [26].

⁸ Applicant’s submissions filed 6 April 2022.

⁹ *Ibid*, [20].

¹⁰ *Pappas v Meiklejohn’s Accountants* [2017] QCATA 60, [10].

¹¹ Respondent’s submissions filed 8 July 2022.

¹² The Act, s 101.

1. Financial assistance grants 'run' from the date that the first general grant is finalised. This means that **an applicant has, under s 101 of the Act, 6 years from the date the general grant is finalised to seek an amendment**. The 6 year time frame does not reset or run from when an amendment is granted. That is, applicants have one grant of assistance; interims and amendments are part of that one grant, not separate grants in their own rights.
2. Your first **grant was finalised on 19 October 2010**. This means that **as at 19 October 2016, you are no longer eligible to apply** for further assistance with Victim Assist Queensland.

...

- [16] The respondent considered DCN's medical evidence about his dental treatment contained in reports received on 29 July 2016 and 24 August 2016. The respondent makes clear in its reasons that the grant allows for 'an additional amount to cover price increases, inflation and any unforeseen expenses related to the treatment' required for the injuries sustained. The respondent also says, amongst other things, that the grant is based on the treatment options in the report received on 29 July 2016.
- [17] I accept, based on the medical certificate provided by DCN, that personal stressors were present in DCN's life resulting in a period of incapacity in or about May 2017.¹³ DCN has failed, however, to provide an adequate explanation for the delay in taking steps to protect his review rights for the period following any period of personal stressors from in or about 2017 to 6 April 2022, when the application for review was filed.
- [18] DCN also says that he travelled to the United Kingdom in 2019 and unfortunately became stranded due to the COVID-19 pandemic and was subsequently made redundant from his job in Queensland. DCN says that he decided to remain in the United Kingdom and has been unable to access medical support through Medicare, other health services in the United Kingdom and his own private health insurance.
- [19] DCN contacted the respondent on 14 March 2020 to advise that some of the dental work funded by the grant had failed or at least required further investigation.¹⁴ By email dated 4 February 2022, the respondent informed DCN that after a review of the matter, it was prepared to allow an alternative treatment option to the one specified in the amendment decision of 14 October 2016. Further to that, the respondent made clear to the DCN that no new grant had been or could be made and that the variation merely allowed him to access dental treatment for his injuries beyond the limit of the treatment previously specified.¹⁵
- [20] It is open for me to find that DCN was aware as of 14 March 2020 that the grant for financial assistance needed further investigation. Further to that, DCN was aware as of 5 February 2022 of the respondent's position with respect to the grant. Despite being made aware of the respondent's position with respect to the grant, DCN failed

¹³ See application for review and supporting material filed 6 April 2022.

¹⁴ Respondent's submissions filed 8 July 2022, [9].

¹⁵ Ibid, [10].

to take any necessary steps to protect his rights until 6 April 2022 when he filed the application for review.

- [21] The respondent says and I accept that the internal review decision of 5 January 2017 included clear, unambiguous notification of DCN's external review rights and obligations.¹⁶ Further to that, the respondent says that at all times it sought to progress the application for financial assistance in a timely manner and it could reasonably have expected, notwithstanding some ongoing correspondence, that in light of the significant passage of time since the conclusion of the internal review, DCN's matter was at an end. The respondent makes a compelling argument.
- [22] DCN's inability to access funding to pay for his medical treatment following his decision to stay in the United Kingdom is regrettable. This alone is not a reason, however, to exercise the discretion to extend the time for filing the application for review.
- [23] I am not satisfied that the Tribunal's discretion to extend the time for filing the application for review should be exercised in this matter. The delay is considerable being some five years and DCN has failed to convince me that he has a reasonable explanation for the delay. Accepting DCN's submission that he suffered serious injuries that continue to impact on his life, there is little or no prospect of success in this matter because the time for making any application for amendment of the grant expired on 19 October 2016.
- [24] DCN has failed to convince me that there is a compelling reason for granting an extension of time. The application to extend the time for filing the application or review filed on 6 April 2022 is refused. I order accordingly.

Non-publication order

- [25] The Tribunal may make an order prohibiting the publication of information that may enable a person who has appeared before the Tribunal, or is affected by a proceeding, to be identified.¹⁷ In the present matter, it would not be in the public interest for information to be published that would identify DCN who is a victim of crime and holds a genuine fear of retribution against him from the original perpetrators behind the act of violence.
- [26] I am satisfied that it is appropriate in all of the circumstances of this matter to make a non-publication order redacting the applicant's names from my published reasons. The respondent accepts that it is appropriate to make such an order and does not take issue with DCN's submissions made in support of the application for a non-publication order.¹⁸
- [27] I order that, other than to the parties to this proceeding, publication is prohibited of any information that may identify DCN.

¹⁶ Ibid, [14].

¹⁷ QCAT Act, s 66.

¹⁸ Application for miscellaneous matters filed 6 April 2022.