

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *LA v Department of Justice and Attorney General* [2018] QCAT 272

PARTIES: **LA**
(applicant)
v
VICTIM ASSIST QUEENSLAND
(respondent)

APPLICATION NO/S: GAR297-16

MATTER TYPE: General administrative review matters

DELIVERED ON: 16 August 2018

HEARING DATE: 18 December 2017, 16 May 2018

HEARD AT: Brisbane

DECISION OF: Member Murray

ORDERS:

- 1. The Tribunal confirms the decision of Victim Assist Queensland that the act of violence is category C under Schedule 2 of the *Victims of Crime Assistance Act 2009* (Qld).**
- 2. The Tribunal finds there were category B circumstances for the act of violence, in that the applicant suffered a serious injury.**
- 3. The amount of special assistance payable in relation to the act of violence and circumstance is \$2,400.**
- 4. The Tribunal does not have jurisdiction to review expenses that have not been the subject of an internal review; the application is dismissed.**
- 5. The Tribunal prohibits the publication of any information in these proceedings that could identify the applicant or her children in any way.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where claim made under *Victims of Crime Assistance Act 2009* (Qld) – where claimant is a primary victim – where victim sustained injuries during the murder of her partner – the category 'act of violence' committed – where no charges were laid in relation to claimant – the category of circumstances for the act of violence – where a serious

injury was sustained – amount of special assistance payable

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where claim made under *Victims of Crime Assistance Act 2009* (Qld) – jurisdiction of Tribunal to review original decision

Criminal Code Act 1899 (Qld), s 317, s 340
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 9, s 10, s 17, s 18, s 19, s 20, s 25
Victims of Crime Assistance Act 2009 (Qld), s 5, s 21, s 23, s 25, s 26, s 27, s 28, s 38, s 39, s 82, s 89, s 98, s 124, s 125, s 219, schedule 1, schedule 2

Bobak v Department of Transport and Main Roads
 [2015] QCAT 398
Kehl v Board of Professional Engineers of Queensland
 [2010] QCATA 58.

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: Brendan James, decision-maker, Department of Justice and Attorney-General
 James Murray, Case Manager

REASONS FOR DECISION

Background – act of violence

- [1] Late one evening in 2015, LA and her partner GL were at home with a friend visiting and with LA's children present in the house. TN unexpectedly entered the home carrying a knife. A violent attack ensued for some time inside and outside of the house that resulted in the stabbing and ultimate death of GL. LA was injured during the attack.
- [2] TN was charged with the murder of GL. TN entered a plea of guilty and was given a mandatory life sentence in early 2018.
- [3] LA made two Witness Statements to the Queensland Police Service ('QPS'). The first was dated 1 November 2015. The second Statement was an undated Addendum Statement. QPS Occurrence Reports were also filed in the Tribunal¹.
- [4] Police records show domestic violence matters in the past concerning TN where LA was the aggrieved. LA's evidence to the Tribunal was that she received text

¹ Bundle of documents, pages 1-9.

messages from TN in the weeks prior to the attack and that she was constantly fearful of TN for years prior to the attack.

Background to QCAT application

- [5] LA filed a review application in QCAT on 25 November 2016 to review decisions made by Victim Assist Queensland ('Victim Assist Qld').
- [6] Various directions hearings and compulsory conferences were listed from 23 January 2017 until 12 October 2017. Some were vacated due to LA's non-attendance due to personal circumstances.
- [7] A hearing was commenced 18 December 2017. LA attended by telephone due to her location and she said she was in hiding from TN's associates. The hearing was vacated due to psychological trauma experienced by LA in giving evidence.
- [8] A further directions hearing was held on 15 January 2018 to determine how best to conduct the resumed hearing and to discuss with the parties proposed directions for filing further material.
- [9] Material had been filed in the Tribunal about LA's psychological injuries. LA said at the hearing that she continued to suffer from physical injuries. I made directions for LA to file an up-to-date report by a medical practitioner that included her physical injuries sustained during the act of violence and whether she has any permanent injuries or disabilities as a result. I also directed that she provide a list of expenses to which she believed she was entitled and had been refused by Victim Assist Qld.
- [10] I also directed that Victim Assist Qld obtain information from the Qld Police Commissioner and the Director of Public Prosecutions about the act of violence committed against LA and whether any charge had been laid against TN and the outcome or, if a charge was not laid or not continued with, the reasons for this.
- [11] A further directions hearing was conducted on 23 April 2018. I granted LA an extension of time for filing her material. In consideration of LA's distress at the oral hearing, I directed that unless either party requested a further oral hearing, the application would be determined on the papers by the Tribunal.
- [12] No submissions were received and the resumed hearing was conducted on the papers on 16 May 2018.

Relevant legislation

- [13] The relevant version of the *Victims of Crime Assistance Act* 2009 (Qld) ('VOCA Act') is the version in force at the time the decision under review was made on 2 September 2016 and decided at an internal review 9 November 2016. That is, the Act current as at 1 July 2016.
- [14] The current version of the Act was amended on 1 July 2017 and subsequently on 4 December 2017. Section 219 appears in Chapter 8 of the Act – 'Transitional provisions for Victims of Crime Assistance and Other Legislation Amendment Act 2017'. This refers to the commencement of the amendments:

S219 Primary victims – special assistance

New schedule 2 applies in relation to special assistance for an act of violence if the application for assistance is an application decided after the commencement.

- [15] The minimum and maximum amount of special assistance payable in relation to an act of violence as at the time the decision was made is as follows:
- (a) Category A - \$5,000 - \$10,000
 - (b) Category B - \$1,301 - \$3,500
 - (c) Category C - \$651 - \$1,300
 - (d) Category D - \$130 - \$650

Applications to Victim Assist Qld for financial assistance

- [16] Primary victims of acts of violence may be granted assistance of up to \$75,000². Assistance may consist of reasonable counselling, medical expenses, incidental travel expenses, report expenses, loss of earnings, expenses incurred by the victim for loss of or damage to clothing, and, if exceptional circumstances exist, other reasonable expenses incurred to *significantly help the victim recover from the act of violence*, such as relocation expenses³ (my added italics).
- [17] On 27 August 2015, LA made an application to Victim Assist Qld for financial assistance with respect to witnessing the attack against her fiancé GL (A11097). She was assessed to be eligible as a witness secondary victim under the VOCA Act.
- [18] On 30 September 2015, Victim Assist Qld approved and provided to LA \$2,244 for counselling expenses and \$88 for other expenses.
- [19] On 2 March 2016, Victim Assist Qld received a second application from LA (A12293) for financial assistance for fuel, accommodation, vehicle repairs, security system upgrades, loss of earnings, change of name, flight expenses, relocation and clothing.
- [20] During the assessment process, Victim Assist Qld discussed with LA by telephone and confirmed by email on 24 August 2016 her applications for assistance and that subject to determining her eligibility as a primary victim, it was considered appropriate to move the expenses claimed under the second application (A12293) apart from damage to clothing, to her first application (A11097) as they related to her witnessing the act of violence against GL. LA agreed to this course of action.⁴

Claims for reimbursement for expenses

- [21] On 7 September 2016, Victim Assist Qld requested further information about LA's claim for financial expenses that were assigned to the first application (A11097).

² VOCA Act, s 38.

³ VOCA Act, s 39.

⁴ Bundle of documents, page 63; submission to the Tribunal received 9 May 2018.

- [22] Victim Assist Qld also advised LA that some other claimed expenses under A11097 were refused, including LA's request to attend a Retreat and Therapy Program, car repairs, accommodation, groceries, men's clothes, photo development and fuel.
- [23] On 17 October 2016, Victim Assist Qld provided a 'Notice of decision to grant assistance' under the amended application A11097. Further grants were approved for counselling (\$1,200) and other exceptional circumstances (\$6,571) for car rental, airfares, fuel costs and security system. LA was advised in the letter that she could request an internal review of the decision about expenses under A11097 if she was dissatisfied with the decision.
- [24] On 9 November 2016, Victim Assist Qld provided a 'Notice of decision to grant assistance – amendment (A11097) and made a further grant of up to \$7,000 for relocation expenses. LA was advised in the letter that she could request an internal review of the decision about the other expenses if she was dissatisfied.
- [25] On 25 November 2016, LA filed an application in QCAT to review a decision in the Tribunal relating to the category act of violence and amount granted to her under A12293. The application also refers to relocation and security expenses which form A11097.
- [26] On 24 April 2018, LA filed a list of expenses she says she incurred and ought to be reimbursed. Victim Assist Qld's view is that LA had not requested an internal review of the original decisions about these expenses. Nevertheless, Victim Assist Qld provided a response to this list as follows:
- (a) Accommodation expenses - \$3,850. This was refused in a decision of 17 October 2016 under application A11097 on the basis that proper receipts were not provided.
 - (b) Fuel expenses - \$538. On 30 September 2015, this was refused on the basis of no evidence that the expense would 'significantly help the victim recover from the act of violence' as set out in s 39(h) of the VOCA Act.
 - (c) Food - \$483. This was refused on the same basis in (b) above.
 - (d) Clothing - \$666. This was refused in the interim decision of 30 September 2015. She was granted \$280 for damaged clothing she was wearing during the act of violence.
 - (e) Storage - \$480. This was refused on the basis that proper receipts as evidence were not received and these were requested of LA. She was advised that she is able to ask for an amendment of her financial assistance grant for up to six years from the date of the respondent's original decision.
 - (f) Loss of earnings - \$20,000. Victim Assist Qld say they have no medical evidence that LA cannot work and no evidence was provided of actual employment at the time of the act of violence and any lost earnings.
 - (g) Memorial - \$979.22. This expense was refused in the interim decision made on 30 September 2015 for the reasons in (b) above.

Review jurisdiction of the Tribunal

- [27] In LA's QCAT application she requested a review of expenses that had been refused by Victim Assist Qld.
- [28] The Tribunal only has jurisdiction to review a 'reviewable decision' under an enabling Act.⁵ The enabling Act here is the VOCA Act. The original jurisdiction conferred on the Tribunal to decide the matter is set out in s 10 of the *Queensland Civil and Administrative Act 2009 (Qld)* ('QCATA').
- [29] A person aggrieved by a decision identified in Schedule 1 of the VOCA Act may apply to the scheme manager or departmental employee under s 124 for an internal review of the decision. The person conducting the review has the same powers as the original decision-maker.
- [30] Once the person is informed of the outcome of the review, and if they are dissatisfied with the internal review decision, they may apply under the QCAT Act for an external review.⁶
- [31] The VOCA Act confers jurisdiction on the Tribunal to review a decision made in an internal review of a decision about an application for financial assistance.

Did Victim Assist Qld conduct an internal review of the 'original decision' about expenses?

- [32] Victim Assist Qld's submission to the Tribunal is that LA has not sought an internal review under s 124 of the VOCA Act and therefore an external review under s 125 through QCAT cannot be conducted.
- [33] The submission is that the Tribunal does not have jurisdiction to deal with this part of LA's application for review. The limits of the scope of the review are to review a reviewable decision or to reconsider the original decision as it was put in *Kehl v Board of Professional Engineers of Queensland* [2010] QCATA 58. The Tribunal's role in exercising review jurisdiction is to reconsider the original decision and to make the correct and preferable decision.
- [34] In the matter of *Bobak v Department of Transport and Main Roads* [2015] QCAT 398, the member found there was no internal decision to review and therefore there was no jurisdiction.

Conclusion about the Tribunal's jurisdiction to review decisions about expenses not internally reviewed by Victim Assist Qld

- [35] I find that the Tribunal does not have jurisdiction because LA has not first asked the systems manager of Victim Assist Qld for an internal review with respect to financial assistance for expenses in her application A11097.
- [36] Because the Tribunal does not have a 'reviewable decision' to review, the application lacks jurisdiction and must therefore be dismissed with respect to these expenses.

⁵ QCATA, s 9, s 17.

⁶ VOCA Act, s 125.

Primary victim special assistance – category act of violence

- [37] Special assistance is available to primary victims only⁷. It is a moderate lump sum payment representing a symbolic gesture by the Queensland Government of the community's recognition of the injuries suffered by the victim as a result of the act of violence committed against them.
- [38] On 2 September 2016, Victim Assist Qld decided LA's second application (A12293) and assessed her as an eligible primary victim under the VOCA Act in relation to an act of violence consistent with an offence of assault occasioning bodily harm. This is a category C act of violence offence. This carries the maximum amount of \$1,300 and this amount was granted to LA⁸. LA was sent a Notice of the decision to grant assistance.
- [39] On 23 September 2016, LA requested an amendment of her application for primary victim as she disagreed with the 'victim type' determined as a category C. LA considered it should be category A as she believed the act of violence she experienced was attempted murder.
- [40] LA provided a lengthy submission that she considered TN intended to kill her and her partner. She said the extent of the physical and psychological injuries she sustained demonstrated it was attempted murder. She stated that the application form asked for a 'brief description' of what happened. She expanded on this in her request to amend her application, describing in more detail what happened during the act of violence and requested it be upgraded to category A.
- [41] Victim Assist Qld interpreted that LA was requesting an internal review of the decision of 2 September 2016 (A12293).
- [42] On 9 November 2016, Victim Assist Qld finalised the internal review of the original decision and confirmed the category C act of violence. This was on the basis that the seriousness of the impacts suffered by LA did not elevate the offender's behaviour from an assault to an attempt to kill. Further, the evidence did not support a finding of an attempt to kill LA nor an intention to do so. Therefore, Victim Assist Qld refused to re-categorise the level of special assistance from category C to category A and did not find the circumstances of the act equated to a *serious injury*⁹ or a *very serious injury*.¹⁰
- [43] LA sought a review of this decision in QCAT. The Tribunal has jurisdiction to review this decision in accordance with the QCATA and VOCA Act, the enabling Act under which the decision was made. The Tribunal has all of the functions of the decision-maker for the reviewable decision being reviewed.¹¹ The purpose of the review of a reviewable decision is to produce the correct and preferable decision following a fresh hearing on the merits¹².

⁷ VOCA Act, schedule 2.

⁸ VOCA Act (Current as at 1 July 2016).

⁹ VOCA Act, s 27(1), schedule 2.

¹⁰ VOCA Act, schedule 2.

¹¹ QCATA, s 19.

¹² QCATA, s 20.

- [44] LA also considered that she suffered a 'very serious injury'¹³ and this would uplift her to category A circumstances.
- [45] LA submits that she believes the act of violence committed against her by TN should be assessed as 'attempted murder' category A for the following reasons.
- (a) Diary notes purported to have been written by TN about two years prior to the act of violence. LA said TN sent her text messages the week before the murder of her partner. She believes this indicated he intended to murder both LA and her partner.
 - (b) TN punched her a number of times during the act of violence while holding a knife in his hand and she said she sustained a cut to her ear and partial deafness. She says TN threw her to the ground and into the garden, resulting in soft tissue damage, injury to her knee, serious back injuries and psychological damage including anxiety, Post-Traumatic Stress Disorder, panic disorder, social anxiety, mood disorder, Obsessive Compulsive Disorder and stress.
- [46] An oral hearing was commenced on 18 December 2017. LA gave evidence by telephone and told the Tribunal she had to change her name, relocate to an undisclosed location as she remained fearful of TN's associates despite TN being in prison. She discussed the trauma she experienced during the act of violence and provided additional details of the attack. LA said she believed TN's assault on her amounted to attempted murder. LA said she and her partner tried to protect each other from TN's attack. She described how the attack moved from inside the house to the garden and while she was defending her partner, TN threw her to the ground and continued to go after her partner. TN stabbed GL which ultimately led to his death.
- [47] LA could not continue with the hearing as she was traumatised by talking about the events of that night and the effect it has had on her and her family. The hearing was consequently adjourned.
- [48] The hearing was resumed on the papers on 16 May 2018.

Medical evidence filed in the Tribunal

- [49] LA filed Medical Certificates provided to Centrelink dated 10 October 2015 by Dr H, general practitioner for 'alleged assault at time of violent homicide'. He listed acute Post Traumatic Stress, ADHD, nightmares, depression, psychosis, social dysfunction, bruising, soft tissue injury. The treatment was ongoing psychiatric and psychology input, referred to a Community Mental Health service.¹⁴ On 2 November 2015, Dr H provided a 'Verification of a Medical Condition' for Centrelink citing the same symptoms recorded in the medical certificate dated 10 October 2015. The conditions recorded were 'impacting on patient's capacity to work or study' and 'trauma, grief – acute'. He recommended social work and psychotherapy.

¹³ VOCA Act, schedule 2.

¹⁴ Respondent material, p30 – p31.

- [50] Mr N, psychologist, provided a medical certificate which verified that LA was seen on 19 July 2016 for complex Post Traumatic Stress Disorder. The cause of the injury was listed as 'witness to violent homicide in 2015'. The treatment stated 'Ongoing psychiatric care under Dr J and psychological therapy – seen in community mental health in the past'.
- [51] Dr J, consultant psychiatrist, provided a letter to Centrelink dated 22 July 2016 which stated that LA had been a client of his service over the past year and she was suffering from complex Post-Traumatic Stress Disorder. Further, she had seen several psychiatrists and a psychologist at the service. Dr J stated that her 'condition had been fully treated and will not improve with any further treatment and her condition had stabilised. She remained fully disabled and could not function in any sort of workplace even at four hours per week'.
- [52] Dr G, consultant psychiatrist, provided a 'Verification of a Medical Condition' for Centrelink dated 27 July 2016 recorded symptoms of 're-experiencing phenomena, anxiety, depression, neuro-vegetative changes and insomnia. Adjustment Disorder'. Poor concentration, poor decision-making and cognitive deficits'. With the onset of post-traumatic stress disorder and adjustment disorder recorded as 14 November 2014 and attention deficit hyperactivity disorder in 2013. Dr G stated the conditions were 'chronic permanent conditions. Fully diagnosed treated and stable. Severe functional impact'. He ticked a box on the form, 'permanent – likely to persist for 2 years of more'.
- [53] Mr W, mental health social worker, provided letters and reports dated 1 September 2016, 23 September 2016, 28 September 2016 and 24 October 2017. Mr W also provided evidence to the Tribunal by telephone at the oral hearing 18 December 2017. He had provided 16 counselling sessions to date to LA including two sessions by telephone.
- [54] It was explained to Mr W in an email from Victim Assist Qld dated 26 September 2017 that the physical and psychological injuries needed to be assessed in isolation from those sustained through witnessing the murder of her partner as there is no capacity under the VOCA Act to take into account the injury sustained from witnessing the murder. The purpose of a special assistance payment is granted to primary victims only and in relation to the assault she experienced.
- [55] Mr W said at the hearing it was impossible to separate the injuries sustained from both the assault and witnessing the murder. He discussed the psychological trauma that LA has endured as a result of the act of violence she experienced and witnessed. He said the effect has been significant and devastating on her. Mr W stated in a letter to Victim Assist Qld dated 24 October 2017 that he found it very difficult to separate the resulting injuries sustained by LA from witnessing the incident as required by the VOCA Act. He provided a brief report outlining that LA experienced psychological injury and trauma. In an attached 'Critical Incident Report' he outlined the incident was 'assault sustained during a murder' and the psychological and emotional injuries will never heal.
- [56] LA's submissions were that apart from her psychological injuries, her physical injuries demonstrated that the act of violence against her was attempted murder. I directed on 15 January 2018 that LA file in the Tribunal an up-to-date report by a

medical practitioner that included her physical injuries, in particular whether she has any permanent injuries or disabilities as a result.

- [57] LA filed test results from AB Hearing Experts. Three questions are answered 'yes' and recorded on the form about finding it 'tricky to follow conversations, people complaining the TV or radio is too loud and finding it difficult to hear people from another room'. The test results dated 17 March 2018 show that the hearing rating is 'loss' and that LA could benefit from a hearing assessment. No further information was provided to the Tribunal.

Queensland Police Service and Director of Public Prosecution evidence

- [58] I made directions on 15 January 2018 for Victim Assist Qld to make enquiries with the QPS and the Director of Public Prosecutions about charges against TN and whether any charges were laid in relation to offences committed against LA.
- [59] QPS advised that no charges were laid in relation to LA. There is no record of her making an assault complaint, she is listed as a witness to the murder of GL.
- [60] She is listed as an aggrieved person in relation to previous domestic violence matters concerning TN.
- [61] Further inquiries with the investigating officer confirmed that the police investigation relating to the incident focused on the murder of GL rather than the assault against LA. The officer gave consideration to the appropriateness of an assault charge but it was ultimately decided to be of little assistance to the overall prosecution in the circumstances of the investigation. The officer confirmed however that at no point did police consider the offending against the applicant amounted to attempted murder.
- [62] The officer agreed it could potentially give rise to a charge of assault occasioning bodily harm, but in light of the homicide investigation and the strength of the evidence against TN no additional charges were laid¹⁵.
- [63] TN was not charged with an offence in relation to LA in connection with the murder of her partner GL.
- [64] TN was charged with the murder of GL. He pleaded guilty at the trial in early 2018 and was sentenced to a mandatory life term.
- [65] LA's evidence was that diary notes of TN made in 2013 show that he intended to kill her and her partner.
- [66] Diary notes that LA filed in the Tribunal purporting to have been made by TN state that it was his intention to kill LA's partner and then himself with no entry that he intended to kill LA. In any event, a link can not necessarily be made between what TN was purported to have written at the time as his intentions and the act he ultimately carried out.

¹⁵ Respondent's submission 15 March 2018 in response to the Tribunal's Direction 4 15 January 2018.

- [67] There is no police information before the Tribunal that shows that TN attempted to murder LA. There is no medical evidence before the Tribunal that shows that LA's injuries sustained during the attack amount to attempted murder, category A act of violence.
- [68] The elements of a category B act of violence include grievous bodily harm¹⁶ or acts intended to cause grievous bodily harm or other malicious acts¹⁷. The *Criminal Code Act 1899* (Qld) ('Criminal Code') sets out that grievous bodily harm means the loss of a distinct part or an organ of the body; or (b) serious disfigurement; or (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health whether or not treatment is or could have been available¹⁸.
- [69] There is no medical evidence before the Tribunal that LA sustained injuries prescribed in grievous bodily harm.
- [70] Section 317 of the Criminal Code sets out acts that are intended to cause grievous bodily harm and other malicious acts, such as any person who, has intent to maim, disfigure or disable any person. Medical evidence is that LA sustained bruising and soft tissue damage. LA says she has partial deafness caused through the assault and it has disabled her, but there is no medical evidence before me to this effect.
- [71] There is no evidence before the Tribunal of an intention to cause grievous bodily harm or that LA sustained injuries as a result of an offence described in the Criminal Code section 317, which would be category B act of violence.

Conclusion about the category of the act of violence

- [72] I find injuries sustained by LA amount to *serious assault*.¹⁹ I therefore find that this is category C act of violence. I confirm the decision of Victim Assist Qld.
- [73] The amount payable for category C acts of violence was between \$651 and \$1,300.

Circumstances for category C acts of violence – did LA suffer a serious injury or very serious injury?

- [74] Schedule 2 also provides categories A, B and C circumstances for a primary victim of an act of violence. In this matter and circumstances, the relevant question is whether LA suffered a *serious injury*²⁰ or a *very serious injury*.²¹
- [75] To paraphrase the meaning of *very serious injury* (Schedule 1), it is (a) a bodily injury that has (i) resulted in a loss of bodily function, capacity, impairment or disfigurement; **and** (ii) resulted in permanent and significant reduction in quality of life or is otherwise very serious; or (b) the loss of a foetus; or (c) a mental illness or

¹⁶ Criminal Code Act 1899 s320

¹⁷ Criminal Code Act 1899 s 317

¹⁸ Criminal Code Act 1899 Part 1 Interpretation 1 Definitions

¹⁹ As defined in s 340 of the Criminal Code: '(1) Any person who (a) assaults another with intent to commit a crime.'

²⁰ VOCA Act, s 27(1), schedule 2.

²¹ VOCA Act, schedule 2 - Amounts and categories for special assistance. Category A circumstances for a primary victim of a category C act of violence.

disorder or intellectual impairment that has resulted in a permanent and significant reduction in quality of life or is otherwise very serious. However, a bodily injury or mental illness or disorder is not a very serious injury if the injury would stop being very serious if it were subjected to medical or other treatment because the reduction in quality of life is alleviated.

- [76] Dr H, general practitioner, provides a contemporaneous medical certificate to Centrelink dated 10 October 2015 for ‘alleged assault at time of violent homicide’ and lists the physical injury as bruising and soft tissue injury. He also lists psychological conditions and post-traumatic stress disorder. He does not comment on the expected longevity of the injuries.
- [77] In their medical certificates and letters in 2016 for Centrelink, Dr G and Dr J, consultant psychiatrists, are silent on the causation of LA’s psychological condition and whether it is linked to the assault.
- [78] Mr N, psychologist, states that LA’s post-traumatic stress disorder was caused through being a ‘witness to violent homicide in 2015’.
- [79] The medical evidence before me does not show the assault of LA caused a very serious injury that has resulted in a permanent and significant reduction in quality of life or is otherwise very serious.²²
- [80] *Serious injury* means an injury involving two or more of the kinds of injury mentioned in s 27(1)(a) to (f):
- (a) Bodily injury; or
 - (b) Mental illness or disorder; or
 - (c) Intellectual impairment; or
 - (d) Pregnancy; or
 - (e) Disease; or
 - (f) Sexual offences.
- [81] Dr H’s contemporaneous medical certificate to Centrelink dated 10 October 2015 as discussed in paragraph 76 above lists a bodily injury²³ and a psychological disorder²⁴ which fit the meaning of serious injury.²⁵

Conclusion about a serious injury category B circumstances

- [82] I consider LA suffered category B circumstances as she suffered a *serious injury* as defined in the VOCA Act, in particular the psychological or mental illness. This

²² VOCA Act, schedule 2.

²³ The VOCA Act does not provide a definition of ‘bodily injury’. The Oxford Dictionary states bodily injury is ‘the fact of being injured, harmed or damaged’.

²⁴ VOCA Act, s 27(1)(b).

²⁵ VOCA Act, s 27(1).

would uplift the category of special assistance from C to B. The amount available is between \$1,301 and \$3,500.

- [83] Dr G, consultant psychiatrist, recorded in a Centrelink form dated 27 July 2016 that the onset of the symptoms of LA's psychological conditions pre-date the assault. 'Injury'²⁶ also includes an aggravation of an injury mentioned in subsection (1)(a) to (g), if the aggravation arises as a direct result of an act of violence.
- [84] It is evident that LA continues to suffer psychological trauma.
- [85] The special assistance is only available for the assault against LA, not witnessing the murder of her partner.
- [86] There is no evidence to proportion how much of LA's psychological injury is caused by witnessing the murder of her partner and how much is caused by the assault.
- [87] I consider it would be fair and reasonable to allocate an amount payable to fall between the minimum and maximum amount of special assistance in category B, which would be \$2,400.

Non-publication

- [88] The Tribunal prohibits the publication of any information in these proceedings that could identify the applicant or her children in any way.

²⁶ VOCA Act, s 27(2).