

**CITATION:** *Mayle v Department of Justice and Attorney General (Victim Assist Queensland)* [2012] QCAT 278

**PARTIES:** Ms Rosemary Mayle  
(Applicant)  
v  
Department of Justice and Attorney General  
(Victim Assist Queensland)  
(Respondent)

**APPLICATION NUMBER:** GAR352-11

**MATTER TYPE:** General administrative review matters

**HEARING DATE:** 12 June 2012

**HEARD AT:** Cairns

**DECISION OF:** **Catherine Benson, Member**

**DELIVERED ON:** 13 June 2012

**DELIVERED AT:** Cairns

**ORDERS MADE:**

1. **That the Respondent's decision to refuse financial assistance pursuant to the provisions of the *Victims of Crime Assistance Act 2009* be affirmed.**
2. **That the Applicant's Application be dismissed.**

**CATCHWORDS:** VICTIMS OF CRIME – APPLICATION FOR COMPENSATION – applicant assaulted – where offender convicted in Magistrates Court – where Victims Assist Qld refused compensation – whether applicant is eligible for compensation.

*Criminal Offence Victims Act 1995, s 24, repealed*  
*Victims of Crime Assistance Act 2009, s 154*

**APPEARANCES and REPRESENTATION (if any):**

**APPLICANT:** Ms Rosemary Mayle in person

**RESPONDENT:** Mr Boyd Kutz, Acting Team Leader, Victim Assist QLD

## REASONS FOR DECISION

### Agreed Facts

[1] Agreed facts:

- i) the Applicant was assaulted by a person unknown to her;
- ii) the assault occurred on 18 July 2008;
- iii) the assailant was convicted of one count of Common Assault, as a result of this incident;
- iv) the conviction occurred on 18 February 2009;
- v) the conviction was made in the Cairns Magistrates Court ; and
- vi) as a result of the assault the applicant suffered injuries and trauma.

### Procedural Facts

[2] Procedural facts:

- i) In or about July 2011, the Applicant applied to Victims Assist QLD (VAQ) for compensation regarding her injuries.
- ii) On 16 August 2011 the Respondent refused financial assistance, on the basis that she was not eligible, and sent her a Statement of Reasons setting out the reasons for the decision.
- iii) On 8 September 2011 the Applicant requested an internal review of the Decision.
- iv) On 11 October the Respondent notified the Applicant, in writing of its decision to affirm the assessor's decision to refuse the application.
- v) On 15 November 2011 the Applicant filed an Application to Review a Decision in QCAT.

### Respondent's submissions

[3] The Respondent made the following submissions:

- i) The *Victims of Crime Assistance Act 2009* states that victims who suffer injury as a result of a criminal act, after 1 December 2009, are entitled to seek compensation from Victim Assist QLD.
- ii) Prior to this Act, where the perpetrator of a crime was convicted, and such conviction occurred in the Magistrates Court (as opposed to the District or Supreme Courts of Queensland) the victim had no eligibility to receive compensation.
- iii) The 2009 Act is not retrospective.
- iv) Section 154(1)(a) *Victims of Crime Assistance Act 2009* provides what is called the transitional provisions which effectively state that if a victim would have had standing under the repealed Act, at the time of the conviction, then they have standing to bring an application under the existing Act, notwithstanding the conviction occurred prior to the Act coming into existence.

- v) The Applicant would not have been eligible to seek compensation under the repealed Act given the conviction occurred in the Magistrate's Court; and as such she does not meet the criteria to seek compensation under the current Act.

### **Applicant's submissions**

- [4] The Applicant made the following Submissions:
  - i) she accepted the wording of the legislation and that she was not covered by the transitional period between the two Acts;
  - ii) however, the above situation was unfair and unjust;
  - iii) there should be no difference between a conviction in the Magistrate's Court and the higher courts, and the fact the legislation was changed to amend this is proof that it was unjust;
  - iv) justice has not been done;
  - v) she understands the nature of the legislation but does not really accept that the Respondent is bound by it as it should not be bound and she should be entitled to receive compensation for the injuries she has suffered as the law as it is stated, is unjust.

### **Law**

- [5] Prior to 1 December 2009 the Act governing compensation for victims of crime was the *Criminal Offence Victims Act 1995* (COVA).
- [6] On 1 December 2009 the above Act was repealed and replaced with the *Victims of Crime Assistance Act 2009* (VOCAA).
- [7] Victims of crime occurring prior to 1 December 2009 who wished to seek compensation, did so pursuant to the now repealed Act.
- [8] COVA specified that victims of offences for which a conviction was received in the Magistrate's Court were not eligible to seek compensation. That position has been amended under VOCAA.
- [9] Victims who applied for compensation after 1 December 2009, but for whom, the offence occurred prior to that date, are covered by s 154 of the VOCAA which states that the victim is eligible for compensation only if they would have been eligible under s 24 of the repealed COVA.

### **Decision**

- [10] The Tribunal is bound by the legislation notwithstanding the fairness or otherwise of it.
- [11] It is accepted the Applicant has suffered injury and trauma from the effects of a criminal assault occasioned upon her.
- [12] However, pursuant to s 154 of VOCAA the Applicant would only be eligible to receive compensation if she would have been able to do so under the previous COVA.
- [13] The Applicant would not have been entitled to receive compensation under COVA given the conviction of the offence from which she suffered injury, occurred in the Magistrates Court.

[14] Regrettably therefore, the Applicant is not eligible to receive compensation.

[15] The Tribunal cannot, and does not, overturn the decision of the Respondent.

[16] The Application will be dismissed.