

**CITATION:** *Mayle v Department of Justice and Attorney General (Victim Assist Queensland)* [2012] QCAT 267

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

**APPLICATION NUMBER:** APL248-12

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Hon Kerry Cullinane AM QC, Member**

**DELIVERED ON:** 21 December 2012

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. Leave to appeal is refused.**
- 2. The appeal is refused.**

**CATCHWORDS:** ADMINISTRATIVE LAW – ADMINISTRATIVE APPEALS TRIBUNAL – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where the Appellant applied for financial assistance as a victim of crime – where Tribunal dismissed application – where relevant legislation was the *Criminal Offence Victims Act 1995* – where Act repealed by *Victims of Crime Assistance Act 2009* – where earlier Act applied to persons injured by another who is convicted on indictment of a personal offence – where Appellant injured by person convicted of summary offence and not on indictment – where new legislation extends compensatory rights to victims of criminal act – whether appellant entitled to claim compensation under new legislation

*Criminal Offence Victims Act 1995, s 24(1)*  
*Queensland Civil and Administrative Tribunal*

*Act 2009, ss 32, 142*  
*Victims of Crime Assistance Act 2009, s 154*

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

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* ('QCAT Act').

### **REASONS FOR DECISION**

- [1] The appellant has appealed under s 142 of the QCAT Act against a decision of the Tribunal delivered on the 13 June 2012 which dismissed the appellant's application for compensation as a victim of crime.
- [2] The question involved is one of law. The appellant thus appeals as a matter of right pursuant to s 142.
- [3] The relevant history of the matter is as follows.
- [4] The appellant was unlawfully assaulted at Cairns on the 28 July 2008 by one Mary Latiga. Her assailant was charged with, and convicted of, a count of common assault in the Cairns Magistrates Court on 18 February 2009.
- [5] The appellant sought financial assistance by an application received on 4 July 2011. At the time of the assault the relevant legislation in force dealing with this subject was the *Criminal Offence Victims Act 1995*. This Act was repealed by the *Victims of Crime Assistance Act 2009* which commenced on 1 December 2009.
- [6] The *Criminal Offence Victims Act 1995* applied to persons injured by another party, who is convicted on indictment of a personal offence.<sup>1</sup>
- [7] The convicted person in this case was convicted of a summary offence and not on indictment.
- [8] The new legislation reflected an important change in extending compensatory rights to victims of a criminal act. Had the legislation been in force when the unlawful act here occurred the appellant would have been entitled to compensation notwithstanding that the assailant was convicted in the Magistrates Court.
- [9] The *Victims of Crime Assistance Act 2009* is not retrospective in its application. It does however contain transitional provisions, which are found in Part 2 of Chapter 6 of the Act. The relevant provision here is s 154, which sets out that Division 2 of Part 2 deals with person who could have "applied to a court for an order requiring the payment of compensation for injury suffered because of a personal offence committed

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<sup>1</sup> *Criminal Offence Victims Act 1995, s 24(1).*

before the commencement of the Act". Such a person has the right to claim compensation under the new legislation.

[10] The appellant does not come within the provisions of s 154(1). For the reasons already set out she was not entitled to claim compensation.

[11] I have read carefully the written submissions of the appellant. She clearly has a grievance about the way in which the legislation applies in her case and considers an injustice has been done to her.

[12] However there can be no avoiding the effect of the legislation. The decision appealed from was clearly correct.

[13] The appeal is dismissed.