

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *SLK v Victim Assist Queensland* [2018] QCAT 146

PARTIES: **SLK**
(applicant)
v
**VICTIM ASSIST QUEENSLAND, DEPARTMENT
OF JUSTICE AND ATTORNEY-GENERAL**
(respondent)

APPLICATION NO/S: GAR102-17

MATTER TYPE: General administrative review matters

DELIVERED ON: 22 May 2018

HEARING DATE: 24 November 2017

HEARD AT: Brisbane

DECISION OF: Member Gardiner

ORDERS: **1. The decision of Victim Assist Queensland on 27 March 2017 is set aside.**
2. Victim Assist Queensland will pay SLK a further amount of \$30.00 in satisfaction of her claim for financial assistance received by Victim Assist Queensland on 23 September 2016.

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – general administrative review matter – where applicant sought financial assistance under the Victims of Crime Assistance Act 2009 (Qld) – where some claims were not made in the original application – whether claims should now be allowed

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: B James, legal counsel of Victim Assist Queensland

REASONS FOR DECISION

- [1] In early 2017 SLK received financial assistance from Victim Assist Queensland ('VAQ') under the *Victims of Crime Assistance Act 2009 (Qld)* (the 'VCA Act') in relation to an act of violence that occurred in November 2015.

- [2] VAQ granted the SLK up to \$8,000 for exceptional circumstances, \$1,300 for special assistance, \$500 for legal assistance, up to \$1200 for counselling expenses \$63.40 for medical expenses and refused other expenses.
- [3] VAQ refused to grant other components of the claim for exceptional circumstances, as well as the claim for loss of earnings.
- [4] This decision was confirmed by VAQ on an internal review.
- [5] SLK applied to this tribunal to review this internal review decision and in doing so, sought financial assistance for additional expenses, including gardening expenses, relocation expenses and other expenses not claimed in her original application for financial assistance.
- [6] SLK says she did not have the opportunity to claim these expenses in her original application for financial assistance due to VAQ's refusal to communicate and consequently they were not considered in the original decision or internal review.
- [7] SLK is a primary victim of violence. There is a statutory limit of \$75,000.00 on the financial assistance which may be paid to a primary victim.¹
- [8] VAQ submits that the tribunal, in exercising its review jurisdiction, can only consider those expenses that were claimed in the original application and consequently considered in the internal review decision.
- [9] Submissions were sought about this jurisdictional question.

What can be reviewed?

- [10] On 13 December 2017, this tribunal directed VAQ file in the tribunal and provide to SLK the following:
- (a) submissions on 'the breadth of QCAT's rights of review under section 20 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* and if the tribunal is limited to the issues raised in the Statement of Reasons under review'; and
 - (b) any policy documents and/or other aids to the tribunal's decision.
- [11] The VCA Act provides a scheme to give financial assistance to certain victims of acts of violence. The objectives of the scheme are set out in s 3(2) as:
- (a) to help victims of acts of violence to recover from the acts by giving them financial assistance; and
 - (b) for primary victims, to give the victims amounts representing a symbolic expression by the State of the community's recognition of the injuries suffered by them; and

...

¹ VCA Act, s 38(1).

- (d) to add to other services provided by or for government to victims of acts of violence.

[12] Section 3(3) further provides:

- (3) However, grants of financial assistance (including special assistance and assistance as mentioned in section 49(1)(f)) to victims of acts of violence under the scheme are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise.

[13] Section 39 of the VCA Act provides the components of assistance which might be provided to a primary victim of an act of violence. They are one or more of the following:

- (a) reasonable counselling expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
- (b) reasonable medical expenses incurred, or reasonably likely to be incurred, by the victim as a direct result of the act of violence;
- ...
- (g) if exceptional circumstances exist for the victim, other expenses incurred, or reasonably likely to be incurred, by the victim to significantly help the victim recover from the act of violence...

[14] VAQ submits as follows:

- (a) The tribunal has jurisdiction to deal with matters it is empowered to deal with under the *Queensland Civil and Administrative Tribunal Act 2009 Qld* ('the QCAT Act') or an enabling Act.²
 - (i) An enabling Act may confer on the tribunal:
 - A. original jurisdiction; or
 - B. review jurisdiction.
 - (ii) Original jurisdiction is the jurisdiction conferred on the tribunal under an enabling Act to decide the matter in the first instance.³
 - (iii) Review jurisdiction is the jurisdiction conferred on the tribunal by an enabling Act to review a decision made or taken to have been made by another entity under that Act.⁴ The tribunal may exercise

² QCAT Act, s 9(1).

³ Ibid s 10(1)(b).

⁴ Ibid s 17(1).

its review jurisdiction if a person applies to the tribunal to exercise its review jurisdiction for a reviewable decision.⁵

The Enabling Act

- (iv) Section 125 of the VCA Act confers review jurisdiction on the tribunal. This section applies if a decision is confirmed, amended or substituted on review under s 124, allowing SLK to apply to review the internal review decision.

Nature of the review

- (v) The tribunal, in exercising its review jurisdiction:
- A. must decide the review in accordance with the QCAT Act and the enabling Act under which the decision was made; and
 - B. may perform the functions conferred on QCAT by the QCAT Act or the enabling Act under which the decision being reviewed was made; and
 - C. has all the functions of the decision-maker for the reviewable decision being reviewed.⁶
- (vi) The purpose of the review of a reviewable decision is to produce the correct and preferable decision following a fresh hearing on the merits.⁷

Review involves fresh hearing

- (vii) The ambit of section 20 of the QCAT Act was considered in *Kehl v Board of Professional Engineers of Queensland*.⁸ The tribunal's role in exercising review jurisdiction is to reconsider the original decision and to make the correct and preferable decision.
- (viii) The review is conducted on the merits, by way of a fresh hearing. Unlike judicial review, the tribunal's function is to review the decision – not the process by which it was arrived at, nor the reasons given for making it. Accordingly, the tribunal is not required to identify an error in either the process or the reasoning that led to the decision being made. There is no presumption the original decision is correct.
- (ix) In a review on the merits, the tribunal 'steps into the shoes of the decision maker in making a fresh decision based on the framework under which the decision was made having regard to the

⁵ Ibid s 18(1).

⁶ Ibid s 19.

⁷ Ibid s 20.

⁸ [2010] QCATA 58, [9].

evidence before the original decision maker and any other evidence which is accepted by the Tribunal'.⁹

Scope of the review

- (x) While the tribunal is required to consider the matter afresh, section 20 of the QCAT Act nevertheless limits the scope of the review to a review of a reviewable decision, or, as it was put in *Kehl*, to 'reconsider the original decision'.
- (xi) A 'reviewable decision' is a decision mentioned in section 17(1) of the QCAT Act, namely, a decision made or taken to have been made by another entity under an Act that confers review jurisdiction on the tribunal.
- (xii) The VCA Act confers jurisdiction on the tribunal to review an internal review decision. An internal review decision is a decision to confirm, amend or substitute on review a decision made about an application for financial assistance. As such, both the first decision and the internal review decision are limited in their assessment to the financial assistance applied for in the application.
- (xiii) Consequently, in reviewing the internal review decision, the tribunal is also limited to a consideration of the financial assistance applied for in the application, although it can consider new evidence in support of the financial assistance originally applied for.
- (xiv) Any new requests for financial assistance which were not part of the original application would not have been considered in the first decision or in the internal review decision. Accordingly, in considering such new requests, the tribunal would not be reviewing a reviewable decision.
- (xv) If the tribunal considered and determined new requests for financial assistance, it would effectively be exercising original jurisdiction to decide a matter in the first instance. The tribunal can exercise original jurisdiction only where the enabling Act confers original jurisdiction on the tribunal.
- (xvi) The VCA Act does not confer original jurisdiction on the tribunal. As such, if the tribunal were to exercise original jurisdiction in considering an application for financial assistance, it would fall into appealable error.

[15] In her final submissions, SLK submits as follows:

- (a) While the tribunal is required to consider the matter afresh, section 20 of the QCAT Act nevertheless limits the scope of the review to a review of a reviewable decision, or, as it was

⁹ *Anderson v Chief Executive, Department of Employment, Economic Development and Innovation (No 2)* [2010] QCAT 645, [6].

put in *Kehl* and *Anderson*, to 'reconsider the original decision'.

- (b) Exceptional circumstances, counselling expenses, medical expenses, relocation expenses would be part of the 'reviewable decision' and could be considered a fresh decision taking the original evidence presented to the respondent and any other evidence the tribunal accepts. It should also include those items that were refused.

Discussion

[16] Both parties agree that section 20 of the QCAT Act limits the scope of the review to a review of a reviewable decision. However, VAQ limits this review to the parameters of the internal review decision. Although VAQ does concede new evidence in support of the financial assistance originally applied for can be considered.

[17] SLK submits exceptional circumstances, counselling expenses, medical expenses and relocation expenses would be part of the 'reviewable decision' and could be considered a fresh decision taking the original evidence presented to the respondent and any other evidence the tribunal accepts.

[18] SLK's original application included seeking grants of assistance for the following:

- (a) Household items (bed and cot, bed linen, washing machine, microwave oven and fridge);
- (b) A home security system installed at three addresses;
- (c) A Ford Ranger utility vehicle valued at \$35,680;
- (d) Items from Belly 2 Baby totalling \$5,100;
- (e) A lawn mower totalling \$468;
- (f) Relocation expenses to Perth totalling \$4,700;
- (g) Women's tops totalling \$13;
- (h) Children's play equipment and sand pit totalling \$96.93;
- (i) Harvey Norman bedding totalling \$12,860.99;
- (j) Harvey Norman furniture totalling \$5,500;
- (k) Harvey Norman white goods and kitchen appliances totalling \$6,913 and
- (l) Storage expenses totalling \$613.

[19] The original grant of assistance allowed grants for assistance with legal expenses, counselling and medical expenses. The grant also allowed a grant for exceptional

circumstances and allowed funds up to \$8,000 for bedding, white goods and security to be installed at SLK's usual place of residence.

- [20] VAQ grant of assistance refused grants for assistance as exceptional circumstances for security systems at SLK's parent's home, a vehicle, baby play and other items, storage expenses, women's tops and relocation expenses to Perth.
- [21] A claim for loss of earnings also refused in the original application.
- [22] During the hearing of the matter on 24 November 2017, SLK sought to claim the following expenses,¹⁰ to be considered as part of the review:
- (a) Relocation expenses – 3 houses;
 - (b) iPad and laptop;
 - (c) Loss of wages;
 - (d) Medical expenses;
 - (e) Gardening;
 - (f) Security for parents' houses;
 - (g) Women's tops;
 - (h) Travel expenses – taxi, bus, train, fuel;
 - (i) Whitegoods;
 - (j) Stationery;
 - (k) Printer;
 - (l) Sea World costs;
 - (m) Legal costs;
 - (n) Vehicle or costs thereof;
 - (o) Assistance for her dependant as a primary victim; and
 - (p) Assistance for her mother – counselling, relocation.

[23] VAQ submits that only the expenses at (f), (g), (i) and (n) above are open to review. The remaining expenses should not form part of the tribunal's consideration as they were not contemplated as part of the reviewable decision and therefore should not now be entertained by the tribunal.

[24] VAQ submitted this tribunal could only consider those expenses that were part of the original grant - not those refused. This is so because some categories of

¹⁰ Noted in a handwritten list provided to the tribunal.

expenses now claimed were also in the original application, in particular, relocation expenses, medical expenses and legal costs

[25] I am satisfied on review, that all the categories falling within the ambit of the original application (confirmed on internal review) can be considered afresh in this matter, whether granted in whole, in part or refused.

[26] However, at the hearing of this matter, SLK confined her submissions to a list of further claims for assistance. Some of these claims fall outside the original ambit of her claim and I am satisfied cannot be considered in this review.

[27] In her written submission, SLK also sought the review to include those claims not allowed under the original application. Some of these items were included in her further claims listed above. The remaining items SLK claims and not granted under the original allocation are:

- (a) a lawn mower;
- (b) items from Belly 2 Baby;
- (c) relocation expenses to Perth;
- (d) children's play equipment and sand pit;
- (e) Harvey Norman bedding;
- (f) Harvey Norman furniture;
- (g) Harvey Norman white goods and kitchen appliances; and
- (h) storage expenses.

[28] The further claims made prior to the hearing of this matter by SLK that will also be considered under this review are:

- (a) As exceptional circumstances:
 - (i) Relocation expenses – 3 houses;
 - (ii) Security for parents' houses;
 - (iii) Women's tops; and
 - (iv) Whitegoods;
 - (v) Vehicle or costs thereof;
 - (vi) Legal costs; and
 - (vii) Loss of earnings/wages.

The Claims Generally

- [29] The tribunal has jurisdiction to conduct a review of VAQ's decision pursuant to Victims of Crime Assistance legislation.¹¹
- [30] In conducting a review on the merits, the tribunal is not limited to considering the reasons for the internal review decision, or any other issues raised by the decision-maker that are articulated in the Statement of Reasons.
- [31] The tribunal can also consider new evidence submitted by SLK in support of her application.
- [32] If SLK's circumstances have changed or are likely to change, SLK can further apply to VAQ for an amendment of the grant of assistance.¹²
- [33] The tribunal may confirm or amend the decision, set aside the decision and substitute its own decision, or set aside the decision and return the matter to the decision maker.¹³
- [34] In conducting the review, the tribunal has all of the functions of the decision maker for the reviewable decision.¹⁴ The purpose of the review is to produce the correct and preferable decision following a fresh hearing on the merits.¹⁵
- [35] Further directions were made on 16 March 2018 to allow SLK to make submissions to support her claim for items not allowed in the decision of Victim Assist Queensland dated 7 February 2017, as confirmed in the internal review decision of Victim Assist Queensland dated 27 March 2017. These were:
- (a) a lawn mower;
 - (b) items from Belly 2 Baby;
 - (c) relocation expenses to Perth;
 - (d) children's play equipment and sand pit;
 - (e) Harvey Norman bedding;
 - (f) Harvey Norman furniture;
 - (g) Harvey Norman white goods and kitchen appliances; and
 - (h) storage expenses.
- [36] These further submissions were to be filed and served on VAQ by 17 April 2018, however no further submissions were received from SLK.
- [37] VAQ did not provide final submissions in response to the items listed as no further submissions were received from SLK.

¹¹ *Victims of Crime Assistance Act 2009* (Qld), s 125.

¹² *Victims of Crime Assistance Act 2009* (Qld), Chapter 3, Part 15.

¹³ QCAT Act, s 24.

¹⁴ QCAT Act, s 19(a).

¹⁵ QCAT Act, s 40.

The Claims Individually Addressed

- [38] Altogether the following items are claimed by SLK under section 39(g) of the VCA Act as exceptional circumstances or as other reasonable expenses incurred, or reasonably likely to be incurred, to significantly help SLK recover from the act of violence. Where possible, these claims have been aggregated.

A Lawn Mower

- [39] The Statement of Reasons records that this item was refused because the scheme is not intended to recompense for material losses but rather to aid the recovery from injuries sustained in the act of violence.¹⁶
- [40] In her original application, SLK submitted she was required to share the use of a relative's lawn mower as her ex-partner retained this item.
- [41] However, I accept the submission that the scheme is not intended to recompense for material losses but rather to aid the recovery from injuries sustained in the act of violence and will disallow this claim.

Items from Belly 2 Baby

- [42] The Statement of Reasons records that this item was refused because the scheme is intended to recompense the victim and although SLK's son would have been affected by the act of violence, he is not the applicant in this matter.¹⁷ However, in good faith, VAQ did allow funds for the purchase of a cot, mattress and linen to alleviate SLK's anxiety by ensuring her son had a clean safe place to sleep.¹⁸
- [43] I accept this view is in line with the legislation and will disallow this claim, other than the funds already advance to SLK for her son.

Relocation expenses to Perth

- [44] After a telephone conversation recorded in the Statement of Reasons in February 2016,¹⁹ these potential costs were refused by VAQ as the plans of SLK were conditional and prospective only. SLK remained in Queensland so that the claim was not actioned.
- [45] I am satisfied that the potential relocation did not occur and this claim is unnecessary. It is disallowed.

Children's play equipment and sand pit

- [46] For the same reasons the claim for items from Belly 2 Baby was refused above, this claim is also disallowed.

Harvey Norman bedding, furniture, white goods and kitchen appliances

¹⁶ Exhibit 2, page 147.
¹⁷ Exhibit 2, page 147.
¹⁸ Ibid.
¹⁹ Ibid page 148.

- [47] The Statement of Reasons records that these items were refused because the scheme is not intended to recompense for material losses but rather to aid the recovery from injuries sustained in the act of violence.²⁰ VAQ reasoned that these items did not meet the threshold as being items that would significantly aid in SLK's recovery.²¹
- [48] In my view, these items are characterised as replacing material losses rather than aiding the recovery from injuries and do not qualify as expenses in exceptional circumstances. I disallow these claims.

Storage expenses

- [49] The Statement of Reasons records that these items were refused again because the scheme is not intended to recompense for expenses incurred prior to the act of violence.²² The storage fees claimed pre-dated the act by some number of weeks and was not considered by VAQ to be a direct result of the act of violence but an expense incurred by SLK regardless of the act occurring.
- [50] I agree with this analysis and will disallow this claim.

Relocation expenses – 3 houses

- [51] The Statement of Reasons does not address this item specifically. In submissions, VAQ says SLK advised she moved house for the first time due to the act of violence, specifically because the offender was stalking her.
- [52] VAQ says no evidence was produced by SLK to support her claims of stalking or of the expenses claimed. At the hearing of this matter SLK's bank statements were produced by her to show purchases at various service stations which she claims were for fuel necessitated by the relocation.
- [53] VAQ submits that a transaction history should not be accepted as evidence sufficient for granting financial assistance under the VCA Act since there can be no scrutiny of the purchases made. That is, SLK can point to transactions at retailers that sell fuel products, however those retailers also sell other items including groceries and snacks and the ability to withdraw from ATM facilities.
- [54] It is very difficult for this tribunal to be satisfied that the purchases itemised in a bank statement are directly relevant. Further, there is no evidence that supports SLK's claim that she was being stalked.
- [55] On balance, I am not satisfied that these claims satisfy the requirements as exceptional circumstances and I will disallow them.
- [56] The second relocation occurred in February 2016 and the third in May 2017. There were no reasons provided for these moves other than to provide stability for SLK's son. SLK advised in a telephone conversation to VAQ on 6 February 2017 that the

²⁰ Ibid page 147.

²¹ VCA Act, s 39(g).

²² Exhibit 2, page 147.

offender had not contacted her since 2016,²³ and no further evidence was provided to the tribunal to support further contact.

[57] Again, I am not satisfied that these claims satisfy the requirements as exceptional circumstances and I will disallow them.

Security for parents' houses

[58] The Statement of Reasons records these items were refused because the assessor did not believe that securing SLK's parents' homes was a reasonable expense considering VAQ had provided funds to secure SLK's home.²⁴ In the assessor's view, VAQ was taking reasonable steps to re-establish SLK's personal safety.

[59] At the hearing of this matter, SLK abandoned this claim.

²³ Ibid.

²⁴ Ibid page 146.

Women's tops/clothing

- [60] At the hearing SLK claimed a further \$30.00 for clothing damaged in the act of violence against her. \$13 has already been paid by VAQ on the production of receipts to them.
- [61] I am satisfied on SLK's oral evidence that a further sum of \$30.00 is appropriate under this claim. I will allow this claim set at a further amount of \$30.00.

Vehicle or costs thereof

- [62] SLK claimed the replacement of a vehicle taken by her partner after the act of violence against her. I am not satisfied this claim is sufficiently causally linked to the act of violence to be claimable. The vehicle was jointly owned in a domestic situation. One of the owners took the vehicle. SLK argued it was the act of violence that deprived her of the vehicle and its use. However, it was directly the action of one joint owner not the act of violence.
- [63] The scheme is not intended to recompense for material losses but rather to aid the recovery from injuries sustained in the act of violence. The loss of the vehicle is in my view a material loss occasioned by the breakdown in the relationship not directly the act of violence. I will disallow this claim.

Legal Costs

- [64] At the hearing of this matter, SLK abandoned this claim.

Loss of earnings/wages

- [65] VAQ submits the VCA Act provides a specific loss of earnings component for primary victims.²⁵ SLK claimed that, prior to the date of the act of violence, she was coerced into leaving her employment with the offender's father. SLK was unable to point to any evidence supporting this allegation, nor was any evidence put forward to quantify her loss. VAQ assesses loss of earnings by considering an applicant's actual loss incurred, 'based on earnings at the time of the act of violence.'²⁶
- [66] SLK accepts that she was not working at the time of the act of violence and VAQ submits, the tribunal should refuse SLK's claim under this component.
- [67] I agree with this submission and will disallow this claim.

Conclusion

- [68] I have considered all of the matters and claims of SLK. One further claim was allowed for clothing set in the sum of \$30.00.
- [69] The decision of Victim Assist Queensland on 27 March 2017 is set aside. It is substituted by an order of this tribunal that Victim Assist Queensland will pay SLK a further amount of \$30.00 in satisfaction of her claim for financial assistance received by Victim Assist Queensland on 23 September 2016.

²⁵ VCA Act s 39(e).

²⁶ Victims Assistance Unit Guideline 7 'Granting Financial Assistance for Loss of Earnings'.