

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Spinosa v Scheme Manager, Victims Assist Queensland, Department of Justice and Attorney-General* [2024] QCAT 349

PARTIES: **DONATO SPINOSA**
(applicant)

v

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

APPLICATION NO/S: GAR574-21

MATTER TYPE: General administrative review matters

DELIVERED ON: 22 August 2024

HEARING DATE: 28 May 2024

HEARD AT: Brisbane

DECISION OF: Member Poteri

ORDERS: **The decision of the Respondent dated 28 May 2021 is confirmed.**

CATCHWORDS: GENERAL ADMINISTRATIVE REVIEW – VICTIMS ASSIST – where a claim has been made under the *Victims of Crime Assistance Act 2009* (Qld) – whether the Applicant has established that an act of violence took place – whether the Applicant has established that he has suffered an injury.

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 20, s 23, s 24
Victims of Crime Assistance Act 2009 (Qld), s 21, s 25, s 27, s 54

APPEARANCES & REPRESENTATION:

Applicant: Self-represented

Respondent: Self-represented

REASONS FOR DECISION

BACKGROUND

- [1] This review was heard before me in person on 28 May 2024. The review relates to an application ('Application') dated 6 October 2021 filed in the Tribunal by the Applicant, Donato Spinosa ('Spinosa') for the review of a decision.
- [2] The review relates to a formal application ('Application VA') dated 27 July 2018 for financial assistance pursuant to the provisions of the *Victims of Crime Assistance Act 2009* ('the Act'). Application VA was made to Victims Assist Queensland ('VAQ') which is part of the Department of Justice and Attorney-General. In Application VA Spinosa alleges that he suffers from psychological trauma resulting from an assault by an unknown person on or about 1 December 2011.
- [3] Application VA was accepted by VAQ pursuant to s 54(2) of the Act even though s 54(1) of the Act stipulates that a claim must be made within 3 years after the act of violence.
- [4] VAQ assessed Application VA and on 28 May 2021 decided ('Decision') to refuse Application VA. Spinosa requested an internal review of the Decision and Spinosa received a decision letter which confirms the Decision and outlines a Statement of Reasons. This letter is on page 118 of the documents filed in the Tribunal by VAQ on 29 November 2021 ('VAQ Documents'). There is an index to these documents which notes that the letter to Spinosa regarding the internal review is dated 10 September 2021.
- [5] The grounds for refusal of the Application VA can be summarised as follows:
 - (a) There is not sufficient evidence of the alleged act of violence as required under s 25 of the Act. That is there is not sufficient evidence that a crime or a series of crimes was committed against Spinosa in 2011 as alleged by Spinosa.
 - (b) There is not sufficient evidence to support Spinosa's claim that he suffered an injury, and continues to suffer from this injury, as a direct result of the alleged act of violence as required under s 25 of the Act. The meaning of an injury is set out in s 27 of the Act.
- [6] The review of the Decision is being undertaken by way of a fresh hearing on the merits. See s 20 of the *Queensland Civil and Administrative Tribunal Act 2009* ('QCAT Act'). The purpose of the review is to produce the correct and preferable decision. Pursuant to s 24(1) of the QCAT Act the Tribunal may:
 - (a) confirm or amend the decision; or
 - (b) set aside the decision and substitute its own decision; or
 - (c) set aside the decision and return the matter for reconsideration to the decision-maker for the decision, with the directions the tribunal considers appropriate.
- [7] In the Application, Spinosa has requested that the Application should be returned to VAQ for further assessment. Spinosa raised this issue with me at the hearing. It was his position that the matter should be further considered by VAQ. VAQ's representatives were not agreeable to this process as it is their position that all the relevant information and evidence regarding Application VA was before VAQ, and it was assessed in making the Decision and in assessing the request for an internal

review. In any event, all the relevant information, evidence and material is now before the Tribunal in this review by me.

LEGISLATION

- [8] For the perusal of the parties, I outline the relevant provisions of *the Act*. They are ss 21, 25 and 27.

21 Scheme for financial assistance

- (1) This chapter establishes a scheme for the payment of financial assistance—
 - (a) to a victim of an act of violence; or
 - (b) to a person who incurs, or is reasonably likely to incur, funeral expenses for—
 - (a) a primary victim of an act of violence; or
 - (b) an unborn child of a primary victim of an act of violence.
- (2) This chapter does not entitle anyone to the payment of financial assistance in relation to an act of violence if—
 - (a) the person committed or conspired to commit the act; or
 - (b) for a person claiming assistance as a primary victim of the act—the person's involvement in a criminal activity is the only reason, or the main reason, the act was committed against the person; or
 - (c) for a person claiming assistance for the death of a primary victim of the act—the primary victim's involvement in a criminal activity is the only reason, or the main reason, the act was committed against the primary victim, and the person was or should have been aware of the involvement.
- (3) Also, this chapter does not entitle anyone to the payment of financial assistance in relation to an act of violence if, in the absence of a reasonable excuse—
 - (a) the act has not been reported to a person as mentioned in section 81(1)(a); or
 - (b) for an act that is a crime or a series of related crimes—the person has not given reasonable assistance in the arrest or prosecution of the person who allegedly committed the act.
- (4) Further, this chapter does not entitle anyone to the payment of financial assistance in relation to an act of violence to the extent the person has received, or will receive, payment of an amount in relation to the act of violence from another source.

25 Meaning of *act of violence*

- (1) An *act of violence* is a crime or a series of related crimes, whether committed by 1 or more persons, that—
 - (a) are committed in Queensland; and
 - (b) directly result in the death of, or injury to, 1 or more persons, irrespective of where the death or injury happened.

Note—

In general terms, it is intended by this section that assistance may be granted to a person in relation to an act of violence even though the person who committed the act has not been, or can not be, found guilty of the relevant prescribed offence because of a justification, excuse or defence.

On the other hand, it is not intended by this section that assistance be payable for an act done or omission made by a person, for example, a police officer, if the act or omission is lawfully done or made in the course of the person performing duties under an Act.

See, however, sections 26(6), 50(2), 79 and 80.

- (2) Also, an ***act of violence*** is domestic violence, or a series of related acts of domestic violence, that—
- (a) is committed in Queensland; and
 - (b) directly results in the death of, or injury to, 1 or more persons, irrespective of where the death or injury happened; and
 - (c) is not an act of violence under subsection (1).
- (3) In this chapter, a reference to an act of violence in relation to an application for assistance includes a reference to an alleged act of violence.

27 Meaning of *injury*

- (1) In this chapter, ***injury*** means—
- (a) bodily injury; or
 - (b) mental illness or disorder; or
 - (c) intellectual impairment; or
 - (d) pregnancy; or
 - (e) disease; or
 - (f) for a sexual offence or domestic violence, the totality of the following adverse impacts of the sexual offence or domestic violence suffered by a person—
 - (i) sense of violation;
 - (ii) reduced self worth or perception;
 - (iii) lost or reduced physical immunity;
 - (iv) lost or reduced physical capacity (including the capacity to have children), whether temporary or permanent;
 - (v) increased fear or increased feelings of insecurity;
 - (vi) adverse effect of others reacting adversely to the person;
 - (vii) adverse impact on lawful sexual relations;
 - (viii) adverse impact on feelings; or
 - (g) a combination of matters mentioned in paragraphs (a) to (f).

- (2) For this chapter, *injury* 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.
 - (3) To remove any doubt, it is declared that, for this chapter, an aggravation mentioned in subsection (2) is an injury only to the extent of the effects of the aggravation.
- [9] To succeed in a claim for compensation pursuant to the provisions of the Act an applicant must establish:
- (a) The applicant is a victim of an act of violence. See s 21(1)(a) of the Act; and
 - (b) A crime or a series of related crime was committed by one or more persons in Queensland. See s 25(1) of the Act; and
 - (c) The crime directly results in injury. See s 25(1)(b) of the Act.
- [10] An applicant must, on the balance of probabilities, satisfy all of the above elements of the legislation to be successful in making a claim.

CLAIM

- [11] At the hearing I raised the issue of the medical evidence and whether the medical practitioners who provided reports would be available for cross examination. Spinosa and VAQ advised the Tribunal that the medical practitioners would not be giving oral evidence. In fact, Spinosa advised the Tribunal that one of the medical practitioners had passed away since providing the report. I note that Member Katter made an order on 17 July 2023 that neither party seeks to cross examine any witnesses at the hearing. I will comment on the medical reports later.
- [12] At this point I will not comment on the first ground of rejection of the Application VA. That is, on the balance of probabilities, Spinosa has not established that a crime was committed against him in the incident in 2011.
- [13] I intend to comment on the other threshold question of whether there is sufficient corroborative evidence to support Spinosa's claim that he sustained 'an injury' as a direct result of the incident in 2011. I raised this issue with Spinosa during the hearing.
- [14] Spinosa is firm in his conviction that he was assaulted whilst walking at Mt Gravatt in 2011. He says that he did not receive any physical injuries but suffered and continues to suffer trauma because of the incident in 2011. The problem for Spinosa is: how does he demonstrate to me, as the decision maker, that he has sustained and continues to suffer from this alleged injury?
- [15] The Act was enacted by the Queensland Government to provide a scheme to give financial assistance to certain victims of acts of violence. The Act sets out how a claimant can go about making an application for financial assistance. As this is a government funded scheme, there is no discretion for decision makers in the legislation in the way they assess applications. That is, only applications that fully comply with the provisions of the Act can be approved by decision makers.
- [16] In this matter Spinosa must demonstrate on the balance of probabilities that the injury falls within the provisions of s 27 of the Act. In s 27(1)(b) of the Act the

injury can be a mental illness or disorder and in s 27(2) of the Act the injury also includes an aggravation of an injury referred to in s 27(1)(b) of the Act.

EVIDENCE OF INJURY

- [17] The injury or aggravation of the injury is alleged to have occurred as a direct result of the incident in 2011.
- [18] There is no doubt that there was disclosure of the injury by Spinosa to Dr Funch in 2018, some 7 years after the alleged incident. This is accepted by all parties and is confirmed by Dr Funch. However, Spinosa says that he disclosed the injury to Dr Funch in 2015. Dr Funch says, in the medical certificate dated 27 June 2018 on pages 14 and 15 of the VAQ Documents, that he cannot recall the disclosure. In the report provided by Dr Funch dated 28 September 2021 which is on pages 128 and 129 of the VAQ Documents, Dr Funch says that Spinosa did not disclose the 2011 incident and injury to him until 2018. Notwithstanding this apparent conflict and Spinosa's insistence that he did make the disclosure to Dr Funch in 2015, I do not believe that this an important issue as far as proving that Spinosa received an injury as alleged.
- [19] Even if I accept that Spinosa disclosed the incident and injury to Dr Funch in 2015, this is still some 4 years after the alleged incident in 2011. The important issue in this review is what the medical experts say about the injury in the certificate/reports supplied to VAQ and the Tribunal to support Spinosa's claim.

Dr Funch

- [20] Dr Funch, who is a medical practitioner, provided a medical certificate dated 27 June 2018 and a report dated 28 September 2018. The certificate and report show that Dr Funch had been treating Spinosa for certain medical conditions in 2012 and had consulted with Spinosa on 17 occasions. Spinosa revealed that he was suffering from anxiety in 2014 from being harassed at work. Also, Dr Funch saw Spinosa in 2015 on at least three occasions. Dr Funch says that the 2011 incident and trauma was disclosed to him in 2018 but Dr Funch preferred not to disclose any information regarding the 2011 incident in his report.
- [21] Dr Funch treated Spinosa for mental health issues in 2014. He prescribed anti-depressants to Spinosa, and he referred him to a psychologist for treatment. Dr Funch does not outline what tests, if any, were undertaken by him regarding Spinosa's anxiety or mental health issues regarding the 2011 incident. Also, Dr Funch does not express any opinions or conclusions on how Spinosa's various medical conditions are relevant to his allegations of trauma and/or anxiety caused by or aggravated by the alleged assault in 2011.
- [22] Dr Funch does not make any comment or express any opinions on how the anxiety that Spinosa was suffering in 2014 because of the alleged harassment at his workplace is related to the injury that Spinosa alleges that he suffered as a direct result of the incident in 2011.
- [23] Dr Funch's report and certificate regarding the alleged incident in 2011 are only a reiteration of what Spinosa told him. Dr Funch is supporting Spinosa's claim but he does not provide any foundation or an opinion for this support.

Diana Peterson

- [24] Ms Peterson, psychologist, has provided a report dated 6 October 2021. In this report, Ms Peterson says that she first saw Spinoso in May 2018. This report outlines what Spinoso told Ms Peterson about the incident in 2011 and how Spinoso says that it has affected him. See paragraph 4 of the report.
- [25] In paragraph 6 of the report, Ms Peterson says “given he has received psychological injuries as a result from this assault”. Ms Peterson does not outline any foundation for this statement or how she reached this conclusion. I interpret this statement as part of the theme of this report. That is providing support for Spinoso’s claim and requesting VAQ to look favourably at “Don’s situation”.
- [26] In the report Ms Peterson makes no reference to Spinoso’s background, medical history, what tests that she conducted, how many sessions that she conducted with Spinoso or her formal diagnosis.
- [27] Further, the report from Ms Peterson does not include any reference to the anxiety that Spinoso was suffering in 2014 from the harassment by staff at his place of work. This incident is important and relevant in assessing the impact on Spinoso’s mental health (i.e. whether the injury is a new injury or an aggravation of another injury) when Ms Peterson treated Spinoso in 2018.
- [28] Because there is no foundation for Ms Peterson to make the statement outlined in paragraph 6 of the report, it is my view that the report cannot be considered as corroborative evidence to support Spinoso’s claim that he suffered an injury as a direct result of the alleged incident in 2011.

FINDINGS

- [29] At the hearing Spinoso advised the Tribunal that he did not seek medical treatment for the ongoing trauma caused by the alleged assault in 2011 for some years because he found the whole ordeal mentally taxing for him and he did not know how to deal with the problem.
- [30] The difficulty for applicants in these types of applications is to provide expert medical evidence that supports their claims. The health expert must make assessments some years after the incident that is alleged to have caused the injury. This is extremely difficult because health experts must look backwards to events that occurred many years ago and provide an opinion some years after the incident on how those alleged events impact on someone’s health.
- [31] In Spinoso’s case the health experts must assess Spinoso’s mental health regarding alleged events that occurred some years earlier. This evidence must also consider other factors such as the impact of the incident in 2014 on Spinoso’s health. This is a very difficult and onerous task.
- [32] Spinoso firmly believes that he is suffering from an injury and continues to suffer from this injury that was caused by the alleged crime in 2011. Spinoso is an ordinary person who has no medical qualifications or expertise so the Tribunal cannot accept any personal mental health assessments made or asserted by Spinoso alone as evidence to support his claim.
- [33] To succeed in the Application Spinoso’s assertions of an injury must be independently supported by an appropriately qualified health expert, such as a

medical practitioner, psychologist, or psychiatrist, who provides an opinion that Spinosa suffered an injury or an aggravation of an injury and continues to suffer from the injury as a direct result of the alleged crime in 2011. In this case, the injury or aggravation of an injury involves mental health issues.

- [34] It is my view that to properly support the Application, any opinion from a suitably qualified health expert must:
- (a) Contain an opinion that Spinosa is suffering from an injury or an aggravation of an injury and continues to suffer from the injury as a direct result of the alleged crime in 2011.
 - (b) Outline how the health expert reached the opinion.
 - (c) Any assessment should outline details of the tests that the expert has conducted, how many sessions were conducted by the expert, and detail that the expert has been fully briefed with Spinosa's previous health history, including the 2014 incident, and that the expert has considered this history in making the assessment.
- [35] I can appreciate that this is not an easy task for Spinosa, but I must interpret the legislation to give effect to the intention of the Queensland Parliament. I have no discretion.
- [36] The onus of proof is on Spinosa to provide this evidence. I find that Spinosa has not provided sufficient independent medical evidence to support his claim that he suffered an injury or an aggravation of an old injury as a direct result of the alleged crime in 2011. I find that Spinosa has not, on the balance of probabilities, proved that he has suffered an injury or the aggravation of an old injury as a direct result of the alleged crime in 2011. Therefore, Spinosa has not proved that an act of violence has occurred as required to satisfy s 25 of the Act.
- [37] Because Spinosa has not satisfied all of the provisions of s 25 of the Act it is not necessary for me to make any findings in respect of the issue of whether a crime was committed in 2011 as alleged by Spinosa.
- [38] Therefore, the Application must fail. I propose to confirm the Decision.
- [39] As mentioned previously there is no utility in referring the Application and Application VA back to VAQ pursuant to ss 23 or 24 of the QCAT Act. This is because I have all the relevant information and material before me and Spinosa has given oral evidence at the hearing. Therefore, all relevant material, documentation and evidence has been considered by me in reaching my decision.