

**CITATION:** *Spinosa v Victims Assist Queensland* [2016] QCAT 345

**PARTIES:** Donato Spinosa  
(Applicant)  
v  
Victims Assist Queensland  
(Respondent)

**APPLICATION NUMBER:** GAR012-16

**MATTER TYPE:** General administrative review matters

**HEARING DATE:** 26 September 2016

**HEARD AT:** Brisbane

**DECISION OF:** **Member Kanowski**

**DELIVERED ON:** 26 September 2016

**DELIVERED AT:** Brisbane

**ORDER MADE:** **The decision under review is confirmed.**

**CATCHWORDS:** GENERAL ADMINISTRATIVE REVIEW –  
EXTERNAL REVIEW OF DECISION – financial  
assistance for victim of crime – whether offence  
reported to police without delay

*Victims of Crime Assistance Act* 2009 (Qld) ss  
159, 160  
*Criminal Code Act* 1899 (Qld) s 663D

## **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 (Qld).

## **REASONS FOR DECISION**

### ***Introduction***

[1] This review is about whether Mr Spinosa is entitled to financial assistance as a victim of a crime. Mr Spinosa says he was injured in a physical attack by a workmate in 1995. He applied for financial assistance from Victims Assist Queensland 20 years later, in 2015. Victims Assist Queensland

refused the application. Mr Spinosa now seeks a review by QCAT of that decision.

### **History**

- [2] Mr Spinosa's account of the physical attack may be summarised as follows. It happened at a construction worksite in Brisbane in January or February 1995. The perpetrator was a co-worker whose first name is Fernando and whose surname is not known. In the morning of the day in question, Fernando jumped on Mr Spinosa. Later that day Fernando came at Mr Spinosa with a heavy steel scaffolding brace. Mr Spinosa ran but Fernando threw the brace. It hit Mr Spinosa in the back causing bruising and tenderness.
- [3] Mr Spinosa acknowledges that he did not seek medical treatment for the physical injury. Nor was the injury photographed. It is undisputed that Mr Spinosa first reported the matter to police on 6 February 2008 when he attended a police station and gave a statement. By that time Mr Spinosa and Fernando had long ceased being co-workers.
- [4] The police have not charged anyone over the incident. Their position is that they made a number of enquiries but they have no chance of tracing the alleged offender on the limited information available to them. Mr Spinosa, having provided police with information about where Fernando lived in early 1995, and with contact details for the construction company, the foreperson, and so on, believes that the police have not made sufficient efforts to find Fernando.
- [5] Mr Spinosa applied for financial assistance under the *Victims of Crime Assistance Act 2009 (Qld)* (the Victims of Crime Assistance Act) on 6 May 2015. On 15 October 2015 Victims Assist Queensland refused the application, essentially on the basis that it was not satisfied on the balance of probabilities that the offence had occurred.
- [6] Mr Spinosa then applied for an internal review but on 18 December 2015 an internal reviewer confirmed the decision. The reviewer confirmed the decision on two alternate bases, one of which was that Mr Spinosa had not reported the incident to police "without delay".

### **Analysis**

- [7] The Victims of Crime Assistance Act does not ordinarily apply to acts of violence committed before the Act commenced in 2009.<sup>1</sup> However, there are some exceptions for offences committed when previous legislative schemes were in force:
- Chapter 65A of the Criminal Code in the *Criminal Code Act 1899 (Qld)* – Chapter 65A was repealed in December 1995; and

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<sup>1</sup> *Victims of Crime Assistance Act 2009 (Qld)* s 153.

- the *Criminal Offence Victims Act 1995 (Qld)*, which was repealed in 2009.

[8] The incident reported by Mr Spinosa occurred while Chapter 65A of the Criminal Code was in force.

[9] It seems surprising at first glance that Parliament in 2009 left open rights in relation to offences committed many years earlier, especially in light of the three year limit that generally applies for commencing claims for financial assistance.<sup>2</sup> However, the rationale can be understood when it is realised that the Victims of Crime Assistance Act permits an adult to apply for financial assistance in respect of a crime committed against them as a child.<sup>3</sup>

[10] For offences committed while Chapter 65A of the Criminal Code was in force, the Victims of Crime Assistance Act permits applications for financial assistance in two situations. The first is where the victim could have made an application to a court under section 663B of the Criminal Code.<sup>4</sup> Mr Spinosa does not come within that category because section 663B applied only where the offender had been convicted. The second situation is where the victim could have applied for financial assistance under section 663D of the Criminal Code.<sup>5</sup> Section 663D covered a number of situations. The first two are not relevant in Mr Spinosa's case: injury suffered while assisting police in certain situations, and injury inflicted by a person not criminally responsible for the act. The latter category would cover, for example, the case of a perpetrator who successfully raised a mental health defence. It is the third category in s 663D, in s 663D(1)(c), that is relevant in Mr Spinosa's case. It provided that an application for financial assistance could be made by a person who suffers injury:

*by reason of the commission of an indictable offence relating to the person of that person and –*

*i. the offence has been reported to a police officer without delay and after due inquiry and search the offender cannot be found; or*

*ii. the offender has not been dealt with summarily nor has an indictment been presented in relation to that offence; or*

*iii. the offender has not been convicted on indictment presented in relation to that offence.*

[11] The phrase "dealt with summarily" refers to a prosecution in the Magistrates Court. The references to indictments are to criminal procedure in the Supreme Court or the District Court.

[12] On a literal reading, Mr Spinosa's case falls within both subparagraphs (ii) and (iii), as Fernando has not faced proceedings in any court for the alleged offence.

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<sup>2</sup> Ibid ss 54, 160.

<sup>3</sup> Ibid ss 54, 160.

<sup>4</sup> Ibid ss 154, 155.

<sup>5</sup> Ibid ss 159, 160.

- [13] However, those provisions must be read in context. I consider that they will apply only in cases where, despite the offence having been reported to the police without delay, a conviction has not ensued. An example would be where the alleged offender has been charged but has fled Queensland while on bail. If subparagraphs (ii) and (iii) were interpreted literally, as applying regardless of whether the offence had been reported to police without delay, this would deprive subparagraph (i) of effective operation. Put another way, there would have been no point in Parliament enacting the requirement for prompt reporting in (i) if (ii) and (iii) could apply regardless of whether a prompt report to police had been made.
- [14] Accordingly, where an offence has not been reported to police without delay, entitlement to financial assistance under s 663D(1)(c) will be lost.
- [15] In Mr Spinosa's case, there was clearly a very considerable delay in reporting the matter to the police. The delay was some 13 years. Mr Spinosa was a 22 year old adult when the incident occurred. A gap of 13 years might not be regarded as a matter of delay in a case of a child victim who was too young to understand the criminality involved or the role of the police. For an adult, however, a period of 13 years will almost invariably represent a very long delay.
- [16] Mr Spinosa has emphasised that he was young, inexperienced and scared in 1995. He says that Fernando was approximately twice his age. It can be assumed that Mr Spinosa gained experience and maturity in the following years. It appears that Mr Spinosa must have reached a point in 2008 where he felt that Fernando should be brought to account. Nonetheless, it was clearly not a matter that was reported to the police "without delay".
- [17] As the element of reporting without delay is not met, it is unnecessary to discuss Mr Spinosa's submissions on the question of whether there has been "due inquiry and search" by the police.

### **Conclusion**

- [18] As Mr Spinosa did not report the offence to the police without delay, he could not have applied for financial assistance under s 663D of the Criminal Code. Consequently, he does not have a preserved right of application under ss 159 and 160 of the Victims of Crime Assistance Act.
- [19] It follows that the decision of Victims Assist Queensland to refuse Mr Spinosa's application for financial assistance was correct.