

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *WJB v Scheme Manager, Victim Assist Queensland, Department of Justice and Attorney-General* [2018] QCAT 439

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

APPLICATION NO: GAR165-18

MATTER TYPE: General administrative review matter

DELIVERED ON: 20 December 2018

HEARING DATE: 22 November 2018

HEARD AT: Townsville

DECISION OF: Member Pennell

ORDERS:

- 1. The decision of the Scheme Manager, Victim Assist Queensland, Department of Justice and Attorney-General made on 22 May 2018 determining that the applicant is liable to pay the State the amount of \$3,500 is confirmed**
- 2. That pursuant to section 66 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* the publication of the identity of the applicant and the victim is prohibited**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – general administrative review matter – where the applicant was convicted of sexual offences against a child – where financial assistance was provided by the State to the victim child pursuant to the *Victims of Crime Assistance Act 2009 (Qld)* – where the applicant sought relief from a recovery notice because he is an aged pensioner and suffers from ill health – whether the application should be allowed

Victims of Crime Assistance Act 2009 (Qld), s 3(1), s 3(2), s 25, s 27(1)(f), s 115, s 116 and Schedule 2 – ss 2 and 3

*Queensland Civil and Administrative Tribunal Act
2009 (Qld)*, s 20(1), s 20(2), s 24(1) and s 66

APPEARANCES &
REPRESENTATION:

Applicant: Self represented
Respondent: Karene McCarthy

REASONS FOR DECISION

- [1] The applicant is an aged pensioner and a grandfather aged in his 70s. The victim is the applicant's granddaughter ("the victim"). In 2016, the applicant was residing in his son's family home when he sexually assaulted the victim, who was aged 11 at the time. The applicant was arrested and charged with multiple offences of indecent treatment of a child under 16. The circumstances of aggravation which existed was that the victim was his lineal descendent.
- [2] The matter proceeded to the District Court where the Office of the Director of Public Prosecutions ("the ODPP") presented a multiple count indictment, each count charging the applicant with the indecent treatment of his granddaughter. The applicant pleaded guilty to the charges.
- [3] In composing an adequate sentence, the sentencing judge considered the applicant's remorse, his age, his poor health and the lack of any criminal history. Considerations were also given to the applicant's offending behaviour and the assessment that the risk of him re-offending against the victim child, or any other child, was very low.
- [4] After taking into account all those factors, the sentencing judge considered that exceptional circumstances had been demonstrated by the applicant as to why he should not serve an actual term of imprisonment. He was sentenced to 12 months imprisonment on one of the counts, and 9 months imprisonment for each of the remaining counts. Those sentences were to be served concurrently with the whole of the sentences suspended for an operation period of two years. Convictions were recorded.
- [5] The victim subsequently made an application to the respondent for financial assistance pursuant to the *Victims of Crime Assistance Act 2009* ("the VOCA Act") and an amount of \$3,500 was granted to the victim.
- [6] After the applicant was sentenced in court, the respondent subsequently exercised its right under the provisions of the VOCA Act and commenced to recover that amount from the applicant. The applicant resisted the respondent's action and sought an internal review of the respondent's decision. That application was rejected, and on 22 May 2018 a liability notice pursuant to the VOCA Act was issued to the applicant. The applicant now seeks a review of that decision before the tribunal.

The applicant's position

- [7] Notwithstanding his plea of guilty to the offences of sexually assaulting his own granddaughter, the applicant argues that he should not have to pay to the respondent

the amount of \$3,500. He claimed that he has no assets, he is in poor health and his only income is by way of a fortnightly disability support pension. The applicant also asked the tribunal to consider that if it was to be determined that he should pay any amount to the respondent, then the tribunal should have regard to all those features just identified and give due consideration to reducing the amount to be paid.

The legislative pathway

- [8] The purposes of VOCA Act are, amongst other things, to provide a scheme to give financial assistance to certain victims of acts of violence.¹ That purpose is achieved by helping victims recover by giving them financial assistance. The amount given to a victim represents the community's recognition of the injuries that the victim suffered.²
- [9] The VOCA Act provides for a scale of maximum special assistance amounts payable to victims who experience an act of violence. Those maximum amounts are³ –

Act of violence	Amount
Category A	\$10,000
Category B	\$3,500
Category C	\$2,000
Category D	\$1,000

- [10] The offences for which the applicant was convicted were sexual offences, and sex offences are defined by the VOCA Act as falling within a category B act of violence.⁴ The meaning of an act of violence is defined to include a crime⁵ which directly causes an injury⁶ to a person.⁷
- [11] The VOCA Act provides the respondent with the discretion to recover from the applicant all or part of the monetary assistance provided to the victim. In exercising that discretion, the respondent is obliged to provide to the applicant details of the date and the amount of assistance, and the method in which that assistance was given. When he received that information, the applicant exercised his discretion for an internal review of the respondent's decision. Notwithstanding the internal review, the respondent still maintained its discretion to recover the amount from the applicant.
- [12] The applicant then opted to have the respondent's decision reviewed by the tribunal.⁸ Because he took that step, the tribunal's review must be undertaken by way of a fresh hearing on the merits of his application.⁹

¹ *Victims of Crime Assistance Act 2009 (Qld)*, s 3(1).

² *Victims of Crime Assistance Act 2009 (Qld)*, s 3(2).

³ *Victims of Crime Assistance Act 2009 (Qld)*, Schedule 2, s 2.

⁴ *Victims of Crime Assistance Act 2009 (Qld)*, Schedule 2, s 3.

⁵ A prescribed offence means an offence committed against the person of someone; or an offence of attempting to commit or conspiring to commit that offence.

⁶ *Victims of Crime Assistance Act 2009 (Qld)*, s 27(1)(f). An injury means and includes a sexual offence.

⁷ *Victims of Crime Assistance Act 2009 (Qld)*, s 25.

⁸ *Victims of Crime Assistance Act 2009 (Qld)*, ss 115 and 116.

- [13] In undertaking that fresh hearing, the tribunal effectively '*stands in the shoes*' of the original decision maker and the purpose of doing that is to produce the correct and preferable decision.¹⁰
- [14] In reaching that correct and preferable decision, the tribunal has the discretion to either confirm or amend the original decision; or set aside the decision and substitute that decision with its own decision; or set aside the decision and return the matter for consideration to the original decision maker with directions the tribunal considers appropriate.¹¹

Conclusion

- [15] The evidence provided to the tribunal shows that the offences for which the applicant was convicted were acts of violence; and financial assistance was granted to the victim in relation to those acts of violence.
- [16] The applicant does not dispute that he committed the offences, and nor does he dispute that his offending behaviour caused an injury to the victim. He simply says that he is an aged pensioner who has poor health and he cannot afford to repay the amount sought to be recovered from him.
- [17] In considering the position adopted by the applicant; along with the argument that he had mounted, his claims are not grounds for a dispute under the VOCA Act, and nor are his claims relevant to the decision made by the respondent.
- [18] The applicant also proposed that because he was a pensioner with health problems, I should give some consideration to reducing the amount payable. Neither his age or health are grounds to support any proposition that the amount should be reduced.
- [19] Having regard to all the circumstances of this matter, I am satisfied that the correct and preferable decision is to confirm the respondent's decision made on 22 May 2018.

Non-publication order

- [20] This matter involves circumstances whereby a grandfather sexually assaulted his 11 year old granddaughter. Notwithstanding that there was no application made by either of the parties for the de-identification of the applicant or the victim, I am of the view that it is not in the victim's interest for there be anything published which may lead to the identification of the applicant and the victim. The only appropriate step is to exercise my discretion to make a non-publication order to avoid that occurring.¹²
- [21] Therefore, the publication of the contents of any document or other thing produced to the tribunal; along with all evidence given to the tribunal that may lead to the identity of the applicant or the victim child is prohibited.

⁹ *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 20(2).

¹⁰ *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 20(1).

¹¹ *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 24(1),

¹² *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 66.

DECISION

[22] It is the decision of the Tribunal that –

1. The decision of the Scheme Manager, Victim Assist Queensland, Department of Justice and Attorney-General made on 22 May 2018 determining that the applicant is liable to pay the State the amount of \$3,500 is confirmed.
2. Pursuant to section 66 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* the publication of the identity of the applicant and the victim is prohibited.