

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Pavlovic v Queensland Building and Construction Commission* [2020] QCAT 128

PARTIES: **ZORAN PAVLOVIC**
(applicant)

v

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION
(respondent)

APPLICATION NO/S: GAR076-20

MATTER TYPE: General administrative review matters

DELIVERED ON: 24 April 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Cranwell

ORDERS: **1. The application to extend time filed on 18 March 2020 is dismissed.**

2. The application to review a decision filed on 25 February 2020 is dismissed.

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – application to extend time for leave to appeal

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – TIME, EXTENSION AND ABRIDGMENT – where the applicant filed an application to review a decision out of time – where the applicant filed an application for an extension of time – whether application for an extension of time should be granted

Acts Interpretation Act 1954 (Qld), s 39A
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 3, s 33, s 61

Cardillo v Queensland Building Services Authority [2011] QCAT 574
Coppens v Water Wise Design Pty Ltd [2014] QCATA 309
Crime and Misconduct Commission v Chapman & Anor

[2011] QCAT 229
*Jensen v Queensland Building and Construction
 Commission* [2017] QCAT 232

REPRESENTATION:

Applicant: Self-represented
 Respondent: Holding Redlich Lawyers

APPEARANCES: 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

- [1] On 6 November 2019, the Queensland Building and Construction Commission (QBCC) decided to decline Mr Pavlovic's claim under the statutory insurance scheme.
- [2] The letter advising Mr Pavlovic of this decision contained the following statement:
- You have the right to have this decision externally reviewed in the Queensland Civil and Administrative Tribunal (QCAT). An external review application must be lodged with QCAT within 28 days of receiving this decision.
- [3] I note that s 33 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act') provides that an application for the review of a reviewable decision must be made within 28 days of, relevantly, the day the applicant is notified of the decision.
- [4] The effect of s 39A of the *Acts Interpretation Act 1954* (Qld) is that the decision letter is taken to have been received 'at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved'. In the case of a regular letter, that is three to four business days, which in this case was by 12 November 2019. In any event, Mr Pavlovic indicated on the application to review a decision filed with the Tribunal that the decision was received 'before Christmas'.
- [5] The application for review was therefore required to be made by 10 December 2019.
- [6] On 25 February 2020, Mr Pavlovic filed an application to review the decision with the Tribunal. The application was filed out of time, so Mr Pavlovic subsequently filed an application for an extension of time on 18 March 2020.
- [7] Section 61 of the QCAT Act gives the Tribunal power to extend a time limit fixed for the start of a proceeding. The Tribunal cannot extend time if to do so would cause prejudice or detriment to a party or potential party to a proceeding, not able to be remedied by an appropriate order for costs or damages.

- [8] The relevant factors to be considered by the Tribunal in exercising its discretion to grant an extension of time were summarised in *Crime and Misconduct Commission v Chapman & Anor*:¹
- (a) Whether a satisfactory explanation (or ‘good reason’) is shown to account for the delay.
 - (b) The strength of the case the applicant wishes to bring (assuming it is possible for some view on this to be formed on the preliminary material).
 - (c) Prejudice to adverse parties.
 - (d) Length of the delay, noting that a short delay is usually easier to excuse than a lengthy one.
 - (e) Overall, whether it is in the interests of justice to grant the extension. This usually calls for some analysis of the above factors considered in combination.
- [9] In *Coppens v Water Wise Design Pty Ltd* (‘*Coppens*’),² Thomas J said that:

Each party is aware of the required time limits and the fair approach is to require that limits be complied with unless there is a compelling reason (such as those listed above) to the contrary. This is fair for all parties. Compliance with time limits also will lead to disposition of matters in the most efficient and quick way. Compliance with time limits is also consistent with the public interest in finality of litigation ...

Reason for the delay

- [10] In his application to extend time, Mr Pavlovic simply stated ‘details in application form’.
- [11] Mr Pavlovic’s application form, as best as I can discern, recounts a history of his dealings with the QBCC. However, I am unable to discern from this history an explanation for Mr Pavlovic’s delay in lodging the application for review with the Tribunal following the QBCC’s decision.
- [12] For completeness, I note that it is apparent from the face of the application for review that Mr Pavlovic had previously tried to file it on 22 January 2020, but that the application was returned to him.

Length of delay

- [13] Mr Pavlovic delayed approximately 10 weeks, from 10 December 2019 to 25 February 2020, before filing his application with the Tribunal. Even if I consider the earlier attempted filing on 22 January 2020, there was still a delay of approximately six weeks. In the context of a 28 day time limit, I am of the view that this is a considerable delay.

¹ [2011] QCAT 229, 3 [9].

² [2014] QCATA 309, 4 [14].

The strength of the case

- [14] I am not in a position on this application to make findings on the issues for determination in the substantive review should the extension of time be granted. However, in order to give Mr Pavlovic every benefit of the doubt, I will assume that his case has some merit.

Prejudice to adverse parties

- [15] The QBCC has referred to the following observations of Member Traves in *Jensen v Queensland Building and Construction Commission*:³

The 28-day time period is there for a reason. In administrative review proceedings it is important that time limits are observed so that the processes and procedures followed by the administrative decision-maker are not hampered or detrimentally affected and so that the statute, more broadly, operates effectively.

- [16] While I agree with the sentiments expressed by Member Traves, the QBCC has not pointed to any specific prejudice to it in its submissions.

Interests of justice

- [17] The interests of justice do not favour an extension. As Thomas J noted in *Coppens*,⁴ finality in litigation is highly desirable. The Tribunal's obligation under s 3(b) of the QCAT Act to deal with matters, fairly, economically and quickly would not be achieved by allowing Mr Pavlovic to file this application after a considerable delay.

Conclusion

- [18] The absence of prejudice to the QBCC, and the possibility of some merit to Mr Pavlovic's case, point in favour of extending the time for Mr Pavlovic to apply for review of the exclusion decision.
- [19] However, I am of the view that these factors are outweighed by the interests of justice and the absence of a satisfactory explanation for the delay. As Member Howe observed in *Cardillo v Queensland Building Services Authority*, 'it has ... been said that it is a precondition to the exercise of discretion in the applicant's favour that the applicant for extension show an acceptable explanation of the delay'.⁵ Mr Pavlovic has made no attempt to do this.
- [20] The application for an extension of time is refused. The application to review a decision is therefore dismissed.

³ [2017] QCAT 232, [94].

⁴ [2014] QCATA 309, 4 [14].

⁵ [2011] QCAT 574, 7 [33].