

Springvale Legal Service

The situation for victims of sexual assault seeking compensation from the state for the crimes committed against them has changed substantially over the past 10 years. Each state and territory now has different legislation guiding what victims can now access in terms of “victims assistance”. In this interview with **Meghan Butterfield**, legal clinic supervisor at the Joint Legal Clinic run by Springvale Monash Community Legal Service and the South Eastern Centre Against Sexual Assault (SECASA) we explore some of the changes that have occurred and discover what victim/survivors of sexual assault in Victoria can now expect if they seek compensation through the Victims of Crime Assistance Tribunal (VOCAT). ACSSA would also like to thank Fay Gertner and Carolyn Worth for the use of their paper *Sand, Sharks and Laboratory Rats – The Development of a Specialist Legal Clinic*, which assisted in the documenting of the history of crimes compensation and the Specialist Legal Clinic

ACSSA: By way of introduction to the clinic and its work, could you please explain the role of VOCAT and what it offers to victims of sexual assault in terms of compensation or “assistance”?

Meghan: The purpose of VOCAT is to provide assistance to Victims of Crime. It is, in effect, a last resort for victims and its objective is to assist victims to recover from the crime by paying them financial assistance for expenses they have incurred, or are reasonably likely to incur as a direct result of the crime. A further objective is to pay certain victims financial assistance as a symbolic expression by the State of the community’s sympathy and condolence for, and recognition of, the significant adverse effects experienced or suffered by them as victims of crime. Basically, the Tribunal helps to provide victims of crime with financial assistance where compensation for the injury cannot be obtained from the offender or other sources.

There are six types of payments that might be made. First, the Tribunal pays for past counselling expenses and, in some instances, likely future counselling expenses. Second, the Tribunal can make payments for medical expenses such as medication, medical reports and ‘like’ costs such as chiropractic treatment.

The third type of payment is for ‘other expenses’, which the victim might incur as part of her or his recovery. There are no guidelines around this and clients have been awarded costs for a range of things including yoga retreats and having their travel expenses paid so they can visit family members overseas. One client, who was assaulted in her home, had her relocation costs paid in addition to a new bedroom setting and security system. Other victims have been paid the cost of keeping dogs as protection. For such payments to occur, the victim must demonstrate how these costs will benefit her or his recovery.

The fourth type of payment the Tribunal can make is for loss of income (for up to two years from the date on which the crime was committed). For these payments to be awarded, the crime must have had to directly cause the victim to miss work and this generally requires a medical or psychological/psychiatric report. The Tribunal is also able to reimburse a victim for loss or damage to clothing which has occurred as a result of the crime.

Finally, if the assault occurred after the 1st of July 2000, the Tribunal is able to award a lump sum payment for ‘special financial assistance’ of up to \$7,500. The maximum lump sum allowable is dependent on the crime committed.

ACSSA: For people who are unfamiliar with the tribunal process, applying for compensation and attending court is likely to be a daunting process. Could you briefly explain in lay terms what the process involves?

Meghan: In my experience VOCAT is the most straightforward and least daunting of all the courts and tribunals in Victoria. In order to apply for compensation, a victim needs to fill out an application form which is available on

the web or from their nearest Magistrates Court in which the VOCAT is located. VOCAT hearings are heard in the Magistrates Court by Magistrates wearing their VOCAT 'hat' so to speak. A lawyer is not required to fill out or lodge the form, nor is it necessary to have a lawyer at the hearing. Many applicants do, however, have a legal representative. Details of the locations of the Tribunal and the eligibility and entitlement criteria can be found on the web at www.vocat.vic.gov.au/.

Once an application has been lodged the applicant has four months to collect the necessary documentation in support of their claim. This basically involves medical and psychological reports and police reports. If the claimant needs more time, they can write to the Tribunal to ask for this time. The claimant has to prove that they have suffered some adverse effects as a result of the crime. This type of information is usually presented via a medical or psychological report.

The claimant has to show on the "balance of probabilities" that an act of violence has occurred, which is a lesser standard of proof than in a criminal trial where the prosecution has to prove beyond reasonable doubt that the crime occurred. If there is a conviction then there is no question about the occurrence of the crime. In cases where there is no conviction (which is often the case in historical cases that occurred years prior, one can still make a claim). Generally, the victim needs to have reported the offences to the police in order for their claim to be successful. However, if exceptional circumstances exist, it is possible to succeed in a claim even when the offence has not been reported.

ACSSA: Does it cost money to make an application?

Meghan: No, it does not and the legislation states that any legal representative can only be paid by the Tribunal. Therefore, if the victim wins the claim the tribunal will pay her/his lawyer and if they lose, then the legal representative will not be able to seek costs from the victim. However, if the victim does not win the claim and has incurred medical expenses for a report then they will generally have to pay that cost, usually around \$150. Many psychologists and doctors will waive this fee as a sign of goodwill.

ACSSA: Once the application has been lodged, what is the process then?

Meghan: Once all relevant documents have been forwarded to the Tribunal a hearing date is set. In some cases, no formal hearing is required, however in most instances there will be a hearing. In cases involving young children, generally the parent/guardian of the child will be required to attend the hearing on behalf of the child.

The hearings are informal and often a very good experience for victims. They are generally in a closed court, so there is no-one in the public gallery watching. Often there are just four people in the room: the Magistrate, the clerk of the court, the victim and their representative. If we have supported a client through the process we will generally also attend as a support to them, which many clients have said was a great comfort. Our volunteers do not attend as legal representatives, as we brief barristers for that role. Often the barrister will not meet the client until the day of the hearing so it is of great comfort to have a familiar person there – and also a great learning process for our volunteers and students. Often, the victim's sexual assault counsellor will also attend the hearing.

ACSSA: What has been your experience of the court process?

Meghan: The vast majority of magistrates are sympathetic to the victims and see them as 'deserving' victims. Prior to the hearing, the police records will be read by the Magistrate and generally, therefore, victims will not have to give evidence personally. They will, however, be asked to tell the Magistrate about how the crime has affected them - their work, social and family life. For many people, this is the only opportunity they have to tell their side of the story to a sympathetic state representative and is, for many people, a therapeutic process.

As most victims are legally represented, their barrister will ask the questions of their clients about the effects of the crime. For those who are unrepresented, they also are required to tell the court of their experience, which is more daunting, but generally the Magistrates try to make this as easy as possible. As a general rule, the court is on the side of the claimant and therefore the process differs vastly to a criminal trial where the victim may endure days of aggressive cross-examination. Occasionally, the witness will be cross-examined but this is very rare. The hearing is not adversarial in nature and so the victim is not cross-examined by the other side as happens in a criminal trial.

ACSSA: Will the victim have to face the offender in court?

Meghan: Usually no, but occasionally an offender will be asked by the Tribunal to give evidence if the Tribunal deems it necessary and in these instances the offender must give notice that they will attend. It is, however, very rare that an offender does appear in court.

ACSSA: Readers who used the crimes compensation system prior to 1999 will notice that there have been some significant changes, particularly in terms of the amounts of the payments that can be awarded. Could you tell us a bit about the historical developments that have occurred in recent years?

Meghan: In 1972 the Victorian Hamer Liberal Government funded criminal injuries legislation for the first time, which provided for a maximum of \$3000 compensation. This was increased incrementally between 1972 and 1996 to \$20,000. In 1996, the Kennett Government unexpectedly moved to change the legislation without consulting victims groups or the general public. The result was the *Victims of Crimes Assistance Act 1996*, which in effect meant that unless you lost income as a result of an assault, or incurred medical, counselling or 'other expenses' you were not eligible for compensation. This disadvantaged children, the unemployed, the sick, the disabled and the old. The changes abolished payments for pain and suffering and left victims very little access to what is now known as "assistance".

The impact of these changes was enormous. While previously Victoria led the way nationally in terms of compensation, after these 1996 changes victims were effectively in the same position that they had been 30 years prior. Within our legal clinic we felt the change acutely. SECASA moved from writing approximately 150 reports annually for the Crimes Compensation Tribunal to writing four reports during the 1998/1999 financial year. Not only did our clients drop off but morale within the service and among victims also declined.

In October 1999 the Bracks Labor Government came to power having made a number of promises about changing the 1996 Act. The Government then appointed a Committee with wide representation to look at the *Victims of Crime Assistance Act 1996* and to come up with a more equitable system. The basic requirement, however, was that any changes would not cost the Government more than around \$26 million. The Committee therefore had to choose between either adequate compensation or a wide definition of victim. They eventually chose a wide definition of victim under the assumption that it would be easier to increase amounts of compensation, as had happened in the past, rather than try to get new categories of victims included in legislation. Unfortunately this assumption has not proved valid to date, as there has been no increase in compensation. The maximum amount has remained at \$7,500 for a "Category A Act of Violence" (which includes sexual penetration).

ACSSA: Do you have any data about how this compares with other states and territories?

Meghan: Prior to 1996, Victoria was at the forefront in terms of victim compensation but is now lagging behind. NSW has probably the best system, with payments of up to \$50,000. In Queensland it is difficult to get compensation, as a conviction is required, and in Tasmania it is also difficult, as victims need to apply to the Supreme Court, which is expensive. Similarly, in South Australia payments are made ex-gratia by the Attorney General and are dependent on the crime. In Western Australia payments of up to \$75,000 are made, but are difficult to come by unless a conviction has been achieved.

ACSSA: You are a supervisor at the specialist legal clinic in Springvale, which brings together counsellors from a sexual assault service (SECASA) and student volunteers from a community legal service. Could you tell us a bit about how it came to be established and what the original vision for the service was?

Meghan: The specialist legal clinic commenced in Melbourne in 1995 with the intention of providing a responsive legal service for victims of sexual assault, their family members and significant other related people such as flat mates or partners. It is still the only joint service of its kind in Australia, and one of its core functions is to assist clients to apply for crimes compensation to VOCAT.

The Clinic's focus was to give advice and/or representation in relation to all matters arising out of sexual assault including what is now VOCAT. It has now been in operation for 10 years and its aims and objectives remain much the same as they were in the beginning. Its aims are to:

1. provide quality free legal services to survivors of sexual assault in familiar and comfortable surroundings;
2. train law students in dealing with sexual assault matters;

3. provide opportunities for regular interaction between student lawyers and SECASA staff for their mutual benefit;
4. provide co-operative, client targeted delivery of legal services in sexual assault and clinical legal education; and,
5. train lawyers in dealing with traumatised people.

Its objectives are to:

1. enable victim/survivors who feel unable to approach a private legal firm to make an application for assistance or seek advice and/or representation in any of the matters with which the clinic deals;
2. increase the pool of lawyers in the general practice field whom have an understanding of the issues surrounding sexual assault; and,
3. increase the pool of lawyers in the general practice field whom have an understanding of trauma in general.

It has been my experience that the volunteers and students who move through the clinic do develop the skills and empathy necessary to work with survivors of sexual assault and other forms of assault and negative life experiences.

ACSSA: Could you talk a little about the success of the service in terms of outcomes for clients?

Meghan: In the last five years, the Specialist Legal Clinic has not lost one case out of the large number that have been worked on. We have, however, withdrawn about three over that time, as we firmly believed they would be unlikely to proceed. This, interestingly, is a much better success rate than I experienced working in private practice and I believe the success is due to the extra time and effort that the clinic's staff put into the claims, even though the clinic will run cases that would be considered too difficult by private legal practitioners. Also, given that all of our clients are victims of sexual assault in some way, they are most deserving clients and I think that is reflected in the outcomes we achieve.

ACSSA: The Joint Legal Clinic brings together a sexual assault service and a community legal service, both of which work within a particular philosophical model/framework. Could you talk about the philosophy of the clinic and how this influences the service your clients receive?

Meghan: Although we are physically housed at the Springvale Legal Service, we are there after hours and are really quite independent of the Legal Service. Basically our philosophy is to give clients the best service we can, which going by our success rate, we do. We also have many clients thank us for our work and compliment us, not only for achieving a positive outcome at VOCAT, but also for the emotional support and care we have shown them.

One client recently came to our 10th anniversary and said that he never thought that he would turn up to such an event, however, he felt so strongly about how much we had supported him that he came to give us thanks. This feedback is greatly valued. Many of our students remain working with us as volunteers once they have completed their training, and often while working full time as solicitors. Their continued commitment is indicative of the positive work we do.

ACSSA: In the original aims of the clinic, applications to VOCAT formed merely a part of the focus of the service. In what other ways does the clinic assist clients with legal issues?

Meghan: In addition to VOCAT applications, we also do applications for compensation under section 85B of the *Sentencing Act (1991)*, which enables victims to claim compensation from a convicted offender as part of his/her sentence. Unfortunately, few offenders have much money so there is often little point in making these applications. We also assist clients with family law matters and changes to wills that may have arisen out of incidences of sexual assault. Other areas that we cover are equal opportunity law and claims under specific compensation schemes such as the Catholic Church's compensation scheme.

ACSSA: Can you tell us about how you go about recruiting law students and whether you face any challenges in your recruitment?

Meghan: The Clinic recruits selected final year law students from Monash University who have undertaken Professional Practice and have enrolled in the Advanced Professional Practice unit, which places students in the joint clinic. Each student deals with a small number of files - 6 to 10 over approximately six months. Supervision is provided either by a Springvale Monash Legal Service solicitor with experience in Crimes Compensation and other related jurisdictions, or a volunteer lawyer.

Currently we have eleven staff including supervisors, volunteers (who are former APP students) and students working with us. Even though we are restricted to accepting clients only through SECASA, we are working at

capacity, with about 70 files on our books at the moment. Due to the success of our service, a number of other CASAs are interested in starting a similar service with another university law school program, which would be great.

ACSSA: There was considerable debate regarding the use of students within the clinic. Could you speak a little about this and how this has been resolved?

Meghan: I was largely unaware of the debates at the time regarding students working with clients. My experience over the last ten years in working both as a student/volunteer and as a supervisor is that it is great to have students working in the clinic. The students have proved to be respectful and eager to learn about this area of law, and have developed compassionate and empathic ways of working with clients in a supervised environment. This knowledge and work experience is invaluable, not merely for the students' work life, but also for them as individuals. As I mentioned before, they then begin their practice as a lawyer with a greater understanding of what many people endure in their childhood and as adults and see their work as more than just about the money. While working at the Clinic, students develop a greater empathy generally for people with mental illness as they have a better understanding of where that person might be coming from. This has flow on benefits to the whole community.

I think working at the clinic is a big eye-opener for many of our students and it is beneficial for them to have exposure to this type of work in a supervised and understanding environment. This is invaluable in terms of developing a stronger sense of humanity.

Agency South Eastern Centre Against Sexual Assault (SECASA)
PO Box 72 East Bentleigh, Victoria, 3165

Website www.secasa.com.au

Contact Carolyn Worth, Coordinator

Ph (03) 9928 8741

Fax (03) 9928 8749

The Clinic provides appointments every Monday evening 6.00 – 9.00 p.m. If clients are unable to attend at Springvale, appointments can be made at SECASA locations or a client's house in special circumstances. The client's counsellor may attend the first session if the client wishes.

Contact Information for Crimes/Victim Compensation Schemes (by State and Territory)

New South Wales

The Victims of Crime Bureau,
Level 6 299 Elizabeth Street, Sydney, NSW 2000
Telephone: (02) 9374 3005, 1800 633 063
Telephone callers needing speech or communication assistance: 133677, 1800 555 677 Fax: (02) 9374 3020
Internet: www.lawlink.nsw.gov.au/voc

Northern Territory

Attorney General's Office, Compensation Program,
P.O. Box 1722, Darwin, NT 0810
Telephone: (08) 8999 6047 Fax: (08) 8999 6347
Internet: www.justice.nt.gov.au

Queensland

Criminal Compensation Area, Department of Justice,
G.P.O. Box 149, Brisbane, QLD 4001
Telephone: (07) 3239 6546 Fax: (07) 3239 6557
Internet: www.justice.qld.gov.au

South Australia

Attorney General's Office, Compensation Program,
G.P.O. Box 464, Adelaide, SA 5000
Telephone: (08) 8207 1687 Fax: (08) 8207 2500
Internet: www.cso.sa.gov.au

Tasmania

Victims Assistance Unit, Ground Floor
Superannuation Management Fund (SMF) House,
169 Liverpool Street, Hobart, TAS 7001
Telephone: (03) 6233 5002 Fax: (03) 6233 5031
Internet: www.justice.tas.gov.au

Victoria

Victims of Crime Assistance Tribunal,
Level 2, 233 William Street, Melbourne, VIC 3000
Telephone: (03) 9628 7855 or 1800 882 752 (toll-free)
Fax: (03) 9628 7853
Internet: www.vocat.vic.gov.au

Western Australia

Victims of Crime Unit, Western Australia Police Service,
8 Burton Street, Cannington, WA 6107
Telephone: (08) 9356 0555 Fax: (08) 9356 0506
Internet: www.police.wa.gov.au

Australian Capital Territory

The Australian Capital Territory does not have a victim compensation program.