SECASA/SMLS Joint Legal Clinic

A Quantitative Analysis On Our Client’s Successful Awards

Submitted: 28 November 2016
Supervised by: Meghan Butterfield
Produced by: Ryan Ward
Introduction

The SECASA/SMLS Joint Legal Clinic (‘clinic’) specialises in acting for survivor victims of sexual abuse. It operates under the supervision of the experienced solicitor Meghan Butterfield, who is supported by a team of Monash University law students undergoing a clinical externship and skilled volunteers.

The clinic primarily operates by pursuing claims at the Victims of Crime Assistance Tribunal (‘VOCAT’) on behalf of its clients, but also brings Sentencing Act applications against perpetrators where there has been a successful conviction. While Sentencing Act applications can be useful, they are of little value if the perpetrator has no assets, which is too frequently the case.

For many of the clinic’s clients, being able to attend VOCAT also provides a cathartic experience that they would otherwise not receive if the offender has not been convicted. VOCAT also provides the financial assistance clients require to help them recover from the sexual abuses they have suffered.

This report was developed as a way to quantify the outcomes of the clinic’s VOCAT applications. It has looked at all cases heard at VOCAT – which includes all open cases, and all cases closed after August 2015. An internal dynamic program was also developed for the clinic to be able to assess its future performance. The hope is that this provides a useful tool for the clinic to regularly self-assess, and to give the clinic the capacity to provide data and statistics to any entity who would require it.
Data and Methods Overview

Collecting the Data
All cases that have had a VOCAT hearing had their data collated in Microsoft Excel. This includes:

- Date of Hearing;
- Date of Offence;
- Client Identification;
- VOCAT Venue;
- VOCAT Tribunal Member presiding over the hearing(s);
- Breakdown of the expenses awarded into counselling, medical, clothing, safety-related, loss of earnings, other expenses and Special Financial Assistance;
  - ‘Other expenses’ also briefly states what the award was made for
- Award of Costs made for the clinic and counsel

This data was then manipulated so the total sum and averages of our client’s awards could be calculated dynamically within the program. This gives the clinic the capacity to compare different variables such as:

- Comparing awards given through Section 33 determinations and those given in attended hearings;
- Comparing awards given by different VOCAT venues, and also looking at how individual magistrates differed in their awards;
- Comparing Awards over the years, or potentially even over months or quarters;
- Comparing the distribution of Awards between different categories such as counselling or safety-related expenses.

Future Analysis
The value in having a dynamic program is that the clinic can track metrics without the assistance of any person, as it is all automated. This report did not have the capacity to include archived cases stored offsite but future hearings should be included in the program to ensure future reports are based off the most complete and comprehensive data available to the clinic.

The program will also allow the clinic to critically consider avenues to provide the best possible service for their clients. For example, if the data shows that attended hearings provide substantially more generous awards than Section 33 determinations, this information could be used to advise a client to give them the best chance at being awarded the maximum for their circumstances.

This report covered all cases recorded in the program as it is intended as an initial report. However, it may be more useful for any future analyses to specifically look at performance within a calendar or financial year. This has been catered for within the program, but would clearly depend on the needs of the clinic at the time.
Analysis
Comparing the Clinic’s Performance with the State Average

General
It is difficult to directly compare the clinic’s averages to the State average as the clinic’s specialty, sexual abuse cases, are some of the most serious offences and are usually Category A offences. The VOCAT’s 2015/16 Annual Report does not distinguish between the general financial assistance awarded between Categories A to D.

The average award amount (for all categories) given by VOCAT was $7,784 for the 2015/16 financial year. Compared to the clinic’s average of $21,141 over the same period, it is clear the clinic has managed to obtain substantially larger amounts than the average for its clients.

It would be wrong to read too much into this amount though, as this does not truly compare the State average for category A offences. To be even more accurate, it would be ideal to solely compare sexual abuse cases (excluding homicide cases) as this would be an identical comparison. However, this data simply does not appear to be provided by VOCAT.

Special Financial Assistance
An award of Special Financial Assistance (SFA) is a token from the State that recognises the harm suffered by the victim as a direct result of a violent crime. While VOCAT’s 2015/16 annual report does not distinguish on the general financial assistance it provides based on category, it does provide substantive data for the award of SFA based on the category of violence.

Category A applications made up only 21.5 per cent of primary victim applications, but were awarded 58.1 per cent of the SFA given out by VOCAT. The average amount of SFA given for Category A applicants in the 2015/16 year by VOCAT was $8098.
The clinic’s average for this period was $8,312 for 16 applications. It is not immediately obvious how much better this is than the average as minimum awards must be given for SFA. This amount was amended in 2007 from a minimum Category A SFA award of $3,500 to $4,667. This $214 difference is more substantial than if there were no minimum at all, as a higher base is used for the calculation.

Assuming half the offences occurred before 1 July 2007 and half occurred after, this creates an effective minimum Category A SFA award of $4084. Under this analysis, for every SFA dollar a client received over the minimum, the State average was 95 cents. Using this ratio against a client’s total average award indicates the State average received $1078 less than the clinic’s average. For a victim of sexual abuse who needs financial support, this can be a substantial amount.

Assumptions
This analysis relies on two significant assumptions. The first is that half of the State’s Category A applications for an offence occurred prior to 1 July 2007, and half occurred after 1 July 2007, as for the clinic. This seems unlikely as an application’s limitation period in Victoria is 2 years after the offence, unless special circumstances apply such as where the applicant was a child at the time.

Considering the time gap between 1 July 2007 and the 2015/16 financial year, it appears unlikely half of the applicants would have been offended against before 1 July 2007 and still be able to meet the limitation period. While the clinic is referred many children from SECASA and can apply out of the standard limitation period, it is not clear how true this would be for the State on average.

The second assumption is that the amount of SFA awarded correlates with the amount of other expenses. While there is a correlation, only approximately 20 per cent of the variance in the total award given can be predicted by using the SFA as a guide according to the clinic’s data.

While various other calculations could have been done on this data, they would all suffer from one or both of the assumptions as above. However, it does appear the clinic’s clients are awarded higher amounts than the State average, although it is almost impossible to accurately say by how much. It goes without saying that more specific data would be invaluable in identifying this difference between the State and clinic averages.

Figure 2: Comparison of Special Financial Assistance awarded between the State’s average applicant and the average for clients of the SECASA/SMLS Joint Legal Clinic.
Comparing Awards between Section 33 determinations and Attended Hearings

A Section 33 determination without hearing is a process where VOCAT may determine an application, or make decisions relating to an application, without conducting a hearing. The applicant’s consent is required for a section 33 determination to proceed. This is useful for VOCAT as it saves time and reduces the administrative cost of conducting a full hearing for each decision. It can also be convenient for the applicant if they do not wish to attend court for any reason, such as where there are geographic or travel constraints to attending court.

Despite these administrative advantages and convenience, when considering the internal data it appears the clinic’s clients do substantially better when they choose to attend a hearing rather than accepting a section 33 determination. The total average award from a section 33 determination was $16,480, whereas the average for attended hearings was $23,839, an improvement of 45 per cent. Even after accounting for excess solicitor ($139) and counsel costs ($698), the client still received 40 per cent more ($6,520) from attended hearings.

While such a large difference probably has a variety of contributing reasons, one of the most significant could be that attended hearings gives the client a chance to make oral submissions, and to also have an experienced barrister advocating on their behalf. This can be especially important when making out exceptional circumstances required for other expenses, as these reasons may be difficult to satisfactorily explain without communicating with the Tribunal Member in person.

Considering this substantive difference, it appears that it is considerably more beneficial for clients to attend their hearings rather than choosing the convenience of a section 33 determination.

Figure 3: Comparison for clients of SECASA/SMLS Joint Legal Clinic of the average award from a Section 33 determination without hearing with awards granted from attended hearings.
Comparing Awards between different Tribunal Venues

**Total awards distinguished by venue**

VOCAT operates out of all 51 venues of the Magistrates’ Court of Victoria. The clinic deals primarily with the Dandenong, Frankston and Melbourne arms of VOCAT, having 21, 17 and 10 applications in total over the data set. There have also been some applications brought to other locations, such as 5 cases each being brought to Ringwood and Moorabbin.

As can be seen in Figure 4, Dandenong and Frankston applicants have been awarded relatively similar amounts of $20,865 and $19,829 respectively. However, this pales when compared to Melbourne applicants who received $28,900 on average. While this difference of approximately $8000 – $9000 appears significant, the difference can be explained by Figure 5 below.

![Average Award given by Tribunal Venues](image)

**Figure 4:** Comparison of the average award granted by the Dandenong, Frankston, Melbourne, Ringwood and Moorabbin venues of the Victims of Crime Assistance Tribunal to clients of SECASA/SMLS Joint Legal Clinic.

**Awards distinguished by venue and year**

Figure 5 shows how the venues granted awards on a yearly basis, which can also assist in expanding upon and explaining the data from Figure 4. The years 2011, 2012 and 2013 were all excluded as they had negligible data sets so would not add value to the analysis. Similarly, while Ringwood and Moorabbin have been included for completeness, they will not be discussed as they also have extremely small data sets.
Dandenong and Frankston had consistent awards from 2014 to 2016, matching its overall average from Figure 4. Melbourne increased by over $5000 from 2014 to 2015, and also increased by over $15,000 from 2015 to 2016. However, an explanation is available by considering the lack of data available so these results should not be taken unequivocally.

Considering Melbourne’s sample size, there was only 1 application for 2014, 5 for 2015 and 2 for 2016. The variance from the data’s small size is therefore likely affecting these results far more than what is accurate. This is especially clear when looking at Melbourne’s largest sample size in 2015, with 5 applications.

As it is on par with Dandenong and Frankston with this more significant sample size, it appears likely that 2014 and 2016 may have been outliers and more data will show Melbourne moving closer to the awards granted by Dandenong and Frankston. This is something that can only be verified by continuing to update the program, and by analysing the data in future years.

Figure 5: Comparison of the average award granted by different venues of the Victims of Crime Assistance Tribunal to clients of SECASA/SMLS Joint Legal Clinic from the years 2014 to 2016.

There were no applications from the clinic for Moorabbin in 2014.

n is equal to the number of total applications for that year recorded in the data set.

*2016 is not yet complete, and so could have future client hearings which alter the data set.
Conclusion

There are several useful points to be learnt from this analysis. It appears the clinic does do better than the State average, despite it not being completely clear by how much. Clients also clearly tend to be granted larger awards if they attend their hearings, rather than opting for section 33 determinations without hearings.

Additionally, assuming Melbourne awards eventually converge with other VOCAT venues, it is reassuring to know VOCAT performs similarly regardless of the venue, so clients are not being disadvantaged simply by applying when living in a particular locality. Alternatively, if Melbourne does continue to diverge with the other VOCAT venues, the clinic can use this information to advocate for larger awards for their Melbourne clients than they could hope for from other venues.

While it is difficult to pry more substantive information than the above from the data in its current state, this is to be expected considering this is the first quantitative report produced for the clinic. There was only a small amount of data that could be used for the different measurable metrics, but the data set will only grow going forward. This will provide an opportunity for any future analysis for the clinic to be more comprehensive, as well as further reaching in what is analysed.
References

3. Ibid.
4. Ibid, Table 14.
5. Ibid.
7. This assumption is made because the clinic had 16 Category A cases split into 8 cases with an offence date before 1 July 2007 and 8 with an offence date after 1 July 2007. As there is no data on this from the VOCAT Annual Report, the clinic’s ratio is extrapolated to calculate the difference.
8. The average of $3500 and $4667 is $4083.5. Rounded up, this is then $4084.
9. The States effective average is divided over the clinics effective average: 
\[
\frac{($8098 - $4084)}{($8312 - $4084)} = 0.949. \text{This is then rounded to 0.95, equivalent to 95 cents.}
\]
10. Clinic’s average of $21,141 multiplied by the ratio of 0.949 is $20,063. The difference is then $1078.
12. The clinic’s data of SFA with the total award has a correlation coefficient of 0.44. Squaring this determines the coefficient of determination (19.7) which defines the variance between SFA and the total outcome. This can be used to describe how much of the total award can be explained/predicted by the SFA.
14. Ibid.
15. Ibid s8(3).
17. Both 2011 and 2012 had 2 applications and 2013 had 4 applications.
18. Ringwood: 2014 and 2015 had 1 application, 2016 had 3; Moorabbin: 2015 had 1 application, 2016 had 3.