obtaining justice for victims of sexual assault has been the focus of sexual assault centres in Australia for 30 years. Justice can be sought in a variety of ways. It does not always take the form of a court case and conviction. In fact, it rarely does in the case of childhood sexual assault and rape. Statutory crimes compensation schemes have been an alternative avenue for victims of sexual assault. Australia introduced criminal injuries legislation in most States and Territories by the end of the 1960s. Victoria was the last State to introduce legislation, in 1972.

The development of the South Eastern Centre Against Sexual Assault (SECASA) and the Springvale Monash Legal Service Joint Legal Clinic (‘the Clinic’) brought together two diverse aims. The Clinic was intended to provide an alternative pathway for victims of sexual assault to receive recognition of their situation from the state through effective use of the crimes compensation system. It was also to give an opportunity for student lawyers to work with victims of trauma and deal with sexual assault matters, within a clinical legal education program that encourages law students to address issues of social justice, legal ethics and the provision of accessible, comprehensible legal assistance.

This article deals with the Clinic’s initial development, challenges to its operations over the past 11 years and its present situation.

The beginning of the specialist legal clinic
In 1994 the Director of Springvale Legal Service, Adrian Evans, who was at the same time a lecturer in the Monash University Law Faculty, approached the Manager of SECASA, Carolyn Worth with a proposal for a 12-month pilot for a joint legal clinic for victims of sexual assault. It was agreed that the clinic specialty was to be applying for compensation by utilising the criminal injuries legislation.

Adrian Evans wanted to direct the energy of female law students enrolled in the clinical law subject he taught at the Law Faculty to establishing a unique legal clinic in Australia.

I really felt that the energy of law students, especially female law students, was under utilized when dealing with family violence cases and sexual assault issues … I knew that the CASAs were active in the legal area. Also private practitioners did not have the amount of energy or time that was needed to deal with these clients or their application properly.

The Manager of SECASA also wanted more energy and time devoted to clients’ applications for criminal injuries compensation. Crimes compensation was seen at SECASA as enabling clients who had not pursued a criminal court option or whose alleged assailant had received a not guilty verdict to be heard in a legal setting. Crimes compensation was also seen as a way of empowering clients whose assailants may not have been dealt with by the courts, and an acknowledgement by a magistrate representing the state that a wrong had been perpetrated. Many years of experience had indicated that having a tribunal hearing with a magistrate who stated clearly that they believed the victim had been injured had assisted victims in their recovery. In recent Australian research Lievore found that the ‘most highly valued aspect of the criminal justice system stemmed from comments made by magistrates or judges presiding over victim compensation schemes: this was often the only form of belief and validation the women received through their involvement with the system’.

SECASA had struggled with private legal firms who had not provided a comprehensive or competent service to clients leading to adverse findings in the Victims of Crime Assistance Tribunal (VOCAT) which the agency believed could have been avoided. There were many reasons for private firms’ lack of performance in this area. These included clients requiring solicitors to put in many more hours on their file and work intensively with the client than was provided by VOCAT, fragile clients who felt unable to speak freely in corporate offices and the pressure of billable hours on sympathetic solicitors.

The Clinic commenced in October 1995 with four carefully selected student volunteers who had completed the elective law unit Professional Practice, and two unpaid volunteer clinical supervisors who were organised by Springvale Legal Service. The requirements for the two supervisors included being a qualified legal practitioner or a member of the Victorian Bar, experience and understanding of the methodology of clinical legal education, appropriate teaching experience, a developed feminist analysis and attendance at the Steering Committee meetings. The Clinic was purely a volunteer activity for the students and there was no assessment or credit given to the students towards their degree.

Support for the student volunteers was an integral part of the Clinic. They were trained in sexual assault issues, dealing with victims of trauma and interviewing

REFERENCES
3. Interview with Adrian Evans (15 June 2006).
5. A number of private firms had ceased to handle criminal injuries compensation due to the low application fees paid by VOCAT. This process has continued with Maurice Blackburn Cashman ceasing to represent VOCAT clients in late 2006.
6. Springvale Legal Service later became Springvale Monash Legal Service
The clinical supervisors attended the entire weekly session which ran from 4.00 pm – 7.00 pm one night a week.

The Clinic operated out of SECASA’s East Bentleigh office and clients were interviewed by a student volunteer and a counsellor together. Counsellors were also available to debrief volunteers if they found clients’ issues confronting or the work raised personal matters related to childhood sexual assault.”

The Clinic provided advice and representation in relation to all matters arising out of sexual assault including VOCAT applications, action against religious bodies, civil actions against offenders, and support for complainants giving evidence in criminal proceedings and for family violence issues arising from sexual assault complaints.

The Clinic commenced as a 12-month pilot. An evaluation was conducted at the end of this time to inform future directions. The pilot was seen as a success by Springvale Legal Service and SECASA and, following a positive evaluation, it was agreed to continue operating the Clinic on a permanent basis.

Challenges for the clinic 1997–2000

When the Clinic was established, the Criminal Injuries Compensation Act 1972 (Vic) (‘the old Act’) provided for reimbursement of medical costs and payment for pain and suffering of up to $20 000 for mental or physical injury resulting from a criminal act.

The Clinic operated with committed volunteer students and clinical supervisors, and regular Steering Committee meetings. It developed an expertise in drafting and submitting applications for compensation for pain and suffering, and the students successfully sought and obtained a number of maximum payments under the old Act. SECASA counsellors were supportive of the Clinic and clients gave positive feedback about their experience with the volunteers and the Tribunal.

Political and legislative changes, however, produced a different set of circumstances to which the Clinic had to adapt.

In 1996 the Kennett Liberal government enacted the Victims of Crime Assistance Act 1996 (Vic) (‘the new Act’) which significantly reduced amounts awarded by VOCAT and effectively limited eligibility to employed victims who had specifically lost income as a result of an act of violence, or victims who had incurred medical, counselling or ‘other expenses’.3 Awards for pain and suffering were abolished and were replaced by an initial payment for a limited number of counselling sessions which could be increased on application to the Tribunal.

Until late 1998 VOCAT was dealing with a backlog of cases filed in the last months of the operation of the old Act. Maximum awards were still being made to clients. To this date the Clinic had handled approximately 40 files to completion with 20 percent of them receiving the maximum award of $20,000. A total of $324,300 in pain and suffering had been awarded to clients with costs totaling $98,050 awarded to the Clinic.

Under the new Act however it was difficult to obtain financial compensation for victims such as children, the elderly, women not in paid employment and those on aged or disability pensions. The more vulnerable a person is the more likely they are to be sexually assaulted.” As a result these groups formed a significant proportion of SECASA’s clientele and thus of the referrals to the Clinic.

By 1999 student volunteers and SECASA counsellors were disillusioned with the capacity of the new Act to deliver awards to clients. SECASA counsellors did not want to refer clients to the Clinic as they regarded it as pointless. There is no fee for counselling at SECASA, and an award for costs of counselling was therefore not seen as a benefit for which it was worth putting in an application. The Clinic experienced difficulty for the first time in attracting student volunteers, volunteer clinical supervisors and referrals.

In late 1998 and early 1999, following a number of Steering Committee Meetings about the future of the Clinic it was agreed to change the Clinic’s operation in an attempt to help it survive. Following discussions with Monash University Law Faculty the Clinic became an elective undergraduate unit known as Advanced Professional Practice. It took female and male students from the Law Faculty who had completed Professional Practice. The Clinic moved physically from the SECASA premises to the Springvale Monash Legal Service (SMLS) to allow students greater access to supervision, which was important as the student work was now to be assessed. Clinical supervisors were to be paid by the Law Faculty to provide supervision and assessment.

These changes ensured the continued operation of the Clinic for the time being. Moving from the SECASA premises to SMLS gave students greater access to legal supervision and reduced the isolation of the Clinical Legal Supervisors. It did not, however, solve the participants’ increasing disillusionment with the whole system of crimes compensation. Counsellors remained resistant to referring their clients. Students were finding their capacity limited to apply for anything significant, except counselling which was free of charge for SECASA clients.

The Bracks amendments

Just as it appeared that the Clinic was losing direction it was saved, as it was previously threatened, by political changes outside its control. In October 1999 the Bracks Labor government unexpectedly came to power. During its years in opposition Labor had made a number of promises to various lobby groups in relation to criminal injuries compensation. It was under pressure to make good these promises. Soon after winning the election it established a Victims Compensation Schemes Review Committee to amend the legislation. However, the government was also keen to demonstrate its capacity for financial management given the widely
A member of the Review Committee commented that: ‘governments had been bad financial managers. A held view that the previous Cain and Kirner Labor governments had been bad financial managers. A member of the Review Committee commented that:

‘...one of the governing considerations of the Committee was how to provide victim assistance in a more generous manner than the Kennett legislation and not spend more money than the previous years. The decisions made were not based on victims’ needs at all but were driven by budgetary considerations.’

The amendments the new Labor government introduced to the legislation (the Bracks amendments) came into force in 2000 and still constitute the relevant legislation. These left in place payments for loss of earnings and financial loss such as counselling and medical expenses. In addition, a Special Financial Assistance (SFA) Table was established providing for awards to primary victims, secondary victims and related victims to a maximum of $7,500.11 This was for victims deemed to have (a) suffered a very serious physical injury; (b) been infected with a very serious disease; or (c) been the victim of a series of related criminal acts, being acts of indecent assault or sexual penetration.12

The work of the Clinic concerned acts of violence including any offence that involved the sexual penetration of a person, any offence that involved the attempted sexual penetration of a person, or an indecent act with, or indecent assault against a person and the deprivation of liberty of a person for the purpose of sexual penetration.13

The Bracks amendments also permit payments to be made where ‘exceptional circumstances’ can be established for ‘other expenses actually ... or reasonably likely to be incurred ... to assist [the primary victim’s] recovery from the act of violence’.14

The SFA maximum of $7,500 for a specified category of violence was less than the $20,000 maximum for pain and suffering under the old Act. But whatever were seen as the limitations of the new legislation, the counsellors and the Clinic students embraced the Bracks amendments. Students and counsellors showed creativity in using the s 8(3) ‘other expenses’ provision and quickly developed this area of expertise. The Women’s Legal Service, a state-funded community legal centre specialising in matters involving violence against women, issued a table, updated at intervals following discussions with CASAs and legal practitioners about the workings of VOCAT, listing awards received under s 8(3).15

These ‘other expenses’ could only be claimed where ‘exceptional circumstances’ existed. The students, volunteers and counsellors presented successful applications arguing that VOCAT should regard a sexual assault as providing ‘exceptional circumstances’. The Clinic obtained awards under this section for items such as driving lessons to develop mobility and independence, holidays to enhance recovery and assist with family bonding, removal expenses and security systems to increase a sense of safety, new bedroom suites, bedding and sofas to change the environment where an assault occurred, payment of mortgages and tutoring and university fees.16

The Clinic was in a unique position to explore this section of the legislation. The counsellors who had been seeing a client weekly for long periods of time were able to assess what was needed for their recovery. Their close relationship with the students then ensured that their recommendations could be presented to the Tribunal in a manner that maximized and enhanced the chances of the magistrate granting an award.

The Clinic’s students work in groups of four each semester and the clinical supervisor encourages teamwork and a co-operative philosophy. Without the pressure of billable hours and budget targets students have been able to research and develop ideas and options for maximising awards. In addition, the Clinic volunteers bring experience from outside legal practices.

Students who enrol in the law unit Advanced Professional Practice at the Clinic are required to have completed the unit Professional Practice, which provides them with basic skills including interviewing, drafting of letters and documents, student appearances at the Magistrates’ Court. The skills developed in Professional Practice are used to deal with clients whose problems might include divorce, consent orders, criminal charges, traffic offences, Infringements Court, neighbourhood disputes and motor vehicle accidents. While these are matters of concern to the client and to the student handling the file, they do not usually have the level of emotional content, client complexity and intensity of the matters dealt with in the Clinic.

The Clinic’s requirements of students are more demanding and more specialised. Students are expected to build on and develop the basic skills acquired in Professional Practice in a demanding area of law. In the Clinic students are exposed to clients who

10. Interview with Marg Darcy, Victorian Centres Against Sexual Assault Forum Representative (31 May 2006)
11. The Table incorporated Victims of Crime Assistance (Special Financial Assistance) Regulations 2000 and allowed for payments for a Category A act of violence between $100 and $7,500.
13. Ibid.
15. Women’s Legal Service Victoria, Other Expenses (2001).
present with a range of legal, personal and emotional issues. For students to be effective they have had to learn lawyering skills, together with compassion, strength and understanding. Students are also encouraged to consider the broader and underlying features of our legal system and society in light of the clients’ issues.

SECASA counsellors provide training to students which gives students insight into the ‘non-legal’ matters that need to be taken into account when dealing with victims of sexual assault. This, together with the seminars and regular and ongoing supervision provided by the supervisor, enhances the students’ experience and learning. The Clinic experience challenges students to question their assumptions about community, society and the law.

In a practical sense the students are responsible for the ongoing management of the files. This includes interviewing, negotiating, drafting letters and documents, preparing court documents and instructing or appearing in court, building on the basic skills acquired in Professional Practice. The supervisor’s expectation, and one of the aims of SECASA’s involvement, is that students participating in the Clinic develop a greater understanding of social justice, access to justice, domestic violence and empowerment issues and take that with them into legal practice.

Volunteers who work at the Clinic report anecdotally that the matters handled in the Clinic receive higher awards than those being obtained in private practice probably reflecting the amount of time available for the preparation of an application.

The Clinic continued until recently to achieve favourable outcomes and decisions at the Tribunal including one maximum payout of $60,000 and two amounts of $40,000 from the New South Wales Tribunal. The costs on average received for each successful matter range between $600 and $1100. Until late 2006 the Clinic had been successful in all matters that went to final hearing.

**Victorian Civil and Administrative Appeals Tribunal (VCAT)**

In 2005 barristers briefed by the Clinic to appear before the Tribunal reported some negative comments from magistrates about ‘SECASA wish lists’ under s 8(3). Almost all the requests under this section were granted but the barristers were concerned that the comments were indicative of a change of attitude in the Tribunal.

In December 2005 the use of s 8(3) was challenged by a decision of VCAT on appeal from VOCAT. VCAT held that being sexually assaulted or a survivor of childhood sexual assault does not constitute of itself an ‘exceptional circumstance’ under s 8(3).\(^\text{17}\) It stated that each case should be considered on its own merits at the time of application.

Since this date a number of applications have been refused or have been adjourned for amendments to be made to requests for assistance with the ‘other expenses’. For the Clinic and the counsellors this has proved challenging as the accepted practice of seeing a sexual assault as constituting an ‘exceptional circumstance’ in itself will need to be re-assessed.

SECASA is working with barristers to develop future strategies if magistrates continue to react negatively to these applications. Students and volunteers are now keeping a record of comments made in the Tribunal by magistrates in relation to ‘exceptional circumstances’ with a view to feeding them back into the Department of Justice. These comments will inform lobbying for legislative change if the Tribunal ceases to provide victims with a positive experience as an alternative pathway to justice. Given the intent of the new Victorian Victims’ Charter to ensure that ‘victims of crime can expect to be treated with courtesy, respect and dignity’\(^\text{18}\) it would be contradictory for the Department not to be concerned if the Tribunal ceased to provide victims with a process that will assist in their recovery.

**Monash Law Faculty Review 2006**

Currently the Clinic has four Monash Law Students, 12 volunteers and a clinical supervisor. It has handled 340 files since its inception and around 110 students have worked in the Clinic. Students work in the Clinic for a full semester, enrolled in the elective unit Advanced Professional Practice. The unit is offered three semesters each year, so that clients have ongoing management of their matters. On average each worker has six files.

In late 2006 the Law Faculty commissioned a review of the Faculty’s clinical program. This necessarily included the Clinic, its purposes and its operations. At the time of writing no firm decision has been made about the future of the Faculty’s involvement in the Clinic. However, the Review Committee has indicated that it would suggest that the Clinic be discontinued because, in its view, the work of the Clinic is quite narrow and can be undertaken by private solicitors. In some respects the Review findings will not impact on the Clinic’s existence. Springvale Monash Legal Service is committed to supporting the Clinic, and SECASA would seek other funding to prevent closure of the Clinic. There has been no formal response by the Faculty to the Review’s recommendations at this stage.

**Conclusion**

The Specialist Legal Clinic run by SECASA and SMLS was set up in 1995 to address two diverse aims. SECASA was seeking an accessible additional form of social justice to criminal proceedings for victims of sexual assault. The clinical legal education program wanted to draw on female law students’ energy around violence against women issues, and the opportunity to develop a unique specialist legal clinic.

The Clinic has been successful in achieving these aims. The clinical program’s involvement has indeed

---

17. RN v VOCAT (General), 2005 VCAT decision 2651, 14 December 2005.
18. The Victims’ Charter Principles, Victoria, Department of Justice.
broadened, with students often volunteering with the Clinic for a considerable period of time following the completion of their Course Unit.

Student awareness of issues arising from the clinic, outside the usual experience of private practitioners, enhances their understanding as lawyers about social issues and access to justice for the disadvantaged.

The Clinic is now well-established as a part of Victorian sexual assault clinics’ work. How the Clinic is viewed by the Law Faculty remains unknown at this time. Its future direction remains to be developed in view of the new challenges.

The current political climate is supportive of such ventures in relation to sexual assault. State-funded pain and suffering compensation for victims of crime will increase in Victoria by 30 percent from 1 July 2008 to a maximum of $10,000 under the SFA. The majority of the 201 recommendations in the Victorian Law Reform Commission’s 2004 Sexual Offences: Law and Procedures Final Report are being addressed by the Department of Justice. This includes overhauling counselling and support services across the State, the creation of a Child Witness Service and allowing vulnerable victims to give evidence by video link. The Victims’ Charter has been introduced in Victoria spelling out the rights of victims and giving victims a greater role in sentencing. The Charter sets out principles for the criminal justice system and victim support agencies’ response to victims of crime. All parts of the criminal justice system and related entities are required to take account of the principles in their dealings with victims.

These changes, some proposed and some already enacted, are part of the 2006/07 State Budget allocation of $34.2 million to support victims of sexual assault. The Clinic now sits, with its two aims, within a wider statewide system. It continues to fulfil its role of providing an opportunity for student lawyers to work with victims of trauma and to deal with sexual assault matters within a clinical legal education program. Counsellors are referring their clients confident that they will receive a professional and appropriate response. The Clinic is attracting volunteers, students and supervisors wanting to contribute in the area of criminal injuries compensation for victims of sexual assault.

FAY GERTNER is Director of Springvale Legal Service and teaches law at Monash University.*

CAROLYN WORTH is Manager of the South Eastern Centre Against Sexual Assault.

© 2007 Fay Gertner and Carolyn Worth

*The authors acknowledge the helpful comments made by Dr Bronwyn Naylor on earlier drafts of this article.