

# Chapter Eight

## Crime Prevention and People with Intellectual Disabilities

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### 8.1. Introduction

More than 20% of the people currently in New South Wales prisons have a mild to severe intellectual disability (see 8.2 below). This is a considerable over-representation, as only 2-3% of the population have an intellectual disability. This alone should suggest that this group should be a key target of crime prevention efforts. The committee believes that people with an intellectual disability are a group that can be particularly helped by crime prevention through social support. They are also a group for which the criminal justice system is a particularly blunt instrument to use to deal with behavioural problems.

The committee begins this chapter by considering the over-representation of people with intellectually disabilities in the criminal justice system and as victims of crime. Responses which could reduce crime both by and against intellectually disabled persons is considered. In making recommendations the committee is aware that this is a particularly difficult area involving the responsibilities of many agencies.

The committee uses “intellectually disabled” in this chapter to refer to a person with a permanent condition of significantly lower than average intellectual ability. This may be caused by hereditary factors, brain damage before or after birth or chromosomal abnormalities such as Down’s Syndrome.<sup>1</sup>

The committee’s discussion in this chapter will not consider in any depth the position of people with a mental illness, except where that person also has an intellectual disability. Only two submissions have been received on the issue of mental illness; the committee would welcome any comment on the similarities and differences of the issues for those with a mental illness such as schizophrenia, depression and bipolar disorder, compared to those discussed below in regard to intellectual disability. Any later report on this inquiry will then highlight these differences and suggested remedies.

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<sup>1</sup> This is the definition used by the NSW Law Reform Commission Report 80: *People with an intellectual disability and the Criminal Justice System 1996* p 54.

## 8.2 Over-representation in the criminal justice system

When the NSW Law Reform Commission began its major five year study into People with an Intellectual Disability and the Criminal Justice System<sup>2</sup> there were few accurate statistics available on numbers of the intellectually disabled in the criminal justice system. Two studies were then undertaken for the Commission by Professor Susan Hayes of the School of Behavioural Sciences in Medicine, University of Sydney:

- the first, in 1993, found that, testing a sample of 120 people appearing before four NSW Local Courts on criminal charges, 23% had either an intellectual disability or were borderline disabled;<sup>3</sup> and
- a second follow up study which examined a sample of 88 persons appearing before two rural courts, found that 36% had an intellectual disability and a further 20.9% were of borderline intellectual ability. Aboriginal persons appeared to be particularly disadvantaged.<sup>4</sup>

Professor Hayes is currently undertaking research on the prison population, and estimates that people with intellectual disabilities now make up one in five of all adult prisoners.<sup>5</sup> The Community Services Commission, in a submission to this inquiry<sup>6</sup> also states that young people with a brain injury or disability may comprise 14 to 20% of the total population in juvenile justice centres.

Professor Hayes, in evidence to this committee, argues that the involvement with the criminal justice system has increased over the last 10 years.<sup>7</sup> The graph below shows the results of a number of studies undertaken since 1998:

This graph shows the prevalence of intellectual disability in a number of studies conducted by Susan Hayes, in NSW prisons, juvenile justice centres, and amongst people appearing before local courts (1996), or attending Legal Aid offices.<sup>8</sup>

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<sup>2</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, p 4.

<sup>3</sup> NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System: Appearances Before Local Courts, Research Report 4, 1993*.

<sup>4</sup> NSW Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System: Two Rural Courts, Research Report 5, 1996*.

<sup>5</sup> *Evidence*, 3/8/99, Professor S Hayes.

<sup>6</sup> *Submission*, 4/12/98, Community Services Commission, p 14.

<sup>7</sup> *Evidence*, 3/8/99, Professor S Hayes.

<sup>8</sup> *Ibid.*

Explanatory note: the 1996 study was the rural courts; the 1998 study referred to intellectually disabled clients as a % of all Legal Aid clients appearing on criminal charges.

While some of these studies are not strictly comparable, the 1988 and 1999 studies by Professor Hayes both concerned the prison population and indicate a rise from around 12% in 1988 to just over 20% by 1999. The proportion of intellectually disabled in the population as a whole is estimated to be around 2-3%.<sup>9</sup> This means they are very heavily over-represented in the criminal justice system, perhaps by as high as six times.

The other group in NSW prisons which is even more heavily over-represented is Indigenous offenders. Many more Indigenous offenders have an intellectual disability than other groups, even allowing for cultural factors in the screening test used; it is possible this could be as high as 42% of those charged.<sup>10</sup>

As to the types of crimes committed by intellectually disabled persons, the Law Reform Commission<sup>11</sup> found that these will be of an impulsive or unpremeditated nature, such as:

- offences against property (arson, break and enter, car theft);
- offences in public places; and
- offences against the person (assault, murder, sexual assault).

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<sup>9</sup> *Submission*, 4/12/98, Community Services Commission, p 14.

<sup>10</sup> *Evidence*, 3/8/99, Professor S Hayes.

<sup>11</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, p 32.

Sexual offences are particularly prominent (see below re causes). In contrast, crimes involving planning, (such as drug trafficking or robbery) rarely involve this group. The pattern of offending will often show a high level of recidivism because of an inability to control impulses and a lack of post-sentence support services.<sup>12</sup>

It should be emphasised that the majority of intellectually disabled persons do not offend. The concern of the committee is how to ensure the minority that do offend can be reduced from its current unacceptably high levels.

### **8.3 Intellectually disabled victims**

A less documented but equally serious problem is the prevalence of people with intellectual disabilities as victims of crime.<sup>13</sup> The Community Services Commission in its submission to this inquiry<sup>14</sup> states it is not able to refer to the level of this problem, but notes there is believed to be great under-reporting of this problem, particularly in residential institutions. Much of this crime is said to be resident to resident, or staff to resident. An inquiry of the Commission into respite care in 1998 found that 52% of residents in long term respite care were reported to have assaulted other residents.<sup>15</sup> The Commission argues that strategies which effectively prevent intellectually disabled persons from committing crimes will also protect the same group from becoming victims of crime,<sup>16</sup> so to an extent both issues can be considered together.

### **8.4 Causes of the problem**

From evidence received to date the committee believes the over-representation of people with intellectual disabilities in the criminal justice system and as victims of crime has two general causes:

- the vulnerability of intellectually disabled persons themselves; and
- the lack of social supports available for those with disabilities living in the community.

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<sup>12</sup> *Ibid*, p 33.

<sup>13</sup> *Ibid*.

<sup>14</sup> *Submission*, 4/12/98, Community Services Commission, pp 28-31.

<sup>15</sup> Community Services Commission, *Respite Care – a system in Crisis 1998*.

<sup>16</sup> *Evidence*, 3/8/99, Ms A Tang and Ms J Quilty, Community Services Commission.

The committee will also consider the impact of de-institutionalisation, although this does not appear to be a cause in itself of the over-representation.

Alternative ways of analysing these causes are discussed in the 1996 Law Reform Commission report.<sup>17</sup>

#### **8.4.1 Vulnerability of intellectually disabled persons**

The *Pathways to Prevention* report lists<sup>18</sup> a series of risk factors for a child that act as a predictor of later offending. These include disability, low intelligence, difficult temperament, poor social skills and poor problem solving. Some or all of these factors are present in intellectually disabled children. As the report noted, the more risk factors experienced by a child, the greater the risk of antisocial behaviour later.<sup>19</sup> This has a cumulative effect because external risk factors such as failure at school and peer rejection can result from the earlier risk factors such as difficult temperament. The stress of having a child with a disability can also lead to marital conflict and other family problems, also important risk factors.<sup>20</sup>

The Community Services Commission in their submission to this inquiry describe the vulnerability of intellectually disabled persons as perpetrators or victims as follows:

People with an intellectual disability as a group have common experiences of vulnerability to abuse, discrimination, and social marginalisation because of their disability. Further, their cognitive and communicative difficulties can also contribute to the development of behaviour which is seen as criminal, or which disadvantages them in their dealing with the criminal justice system.

In general, people with an intellectual disability have a limited access to education and employment, a greater likelihood of being dependent on income support payments and consequent poverty, and may have a history of multiple or inappropriate placements. If these factors are compounded by a lack of family or advocacy support and patterns of challenging or aberrant behaviour, such individuals are at high risk of contact with the criminal justice system.<sup>21</sup>

Once an intellectually disabled person is at adolescence, an age when antisocial behaviour begins to be taken notice of by police, they are particularly vulnerable to contact with the criminal justice system, as two witnesses indicated:

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<sup>17</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, pp 26-34.

<sup>18</sup> National Crime Prevention, *Pathways to Prevention* March 1999, p 136.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid*, p137.

<sup>21</sup> *Submission*, 4/12/98, Community Services Commission, p 15.

The experience of the tribunal is that they simply get caught, to be perfectly honest. People with intellectual disabilities lack the sophistication and tend to be caught out in the more street-type offences or petty theft because they do it so obviously and they often do it in groups with other people who are better intellectually equipped who know when to disappear and all of that.<sup>22</sup>

I do not think police deliberately set out to victimise or harass people who have intellectual disabilities. I just think they often see them as smart, unco-operative recidivists. They see their poor behaviour as being smart rather than being an aspect of a disability. Of course, the person who has the disability has spent many years trying to hide their disability, so they would rather appear smart and streetwise than disabled.<sup>23</sup>

Three very important qualifications need to be made by the committee in identifying the particular vulnerability of intellectually disabled persons:

1. The majority of intellectually disabled people do not come into contact with the criminal justice system. As a witness to this inquiry has stated, "risk is not destiny":<sup>24</sup> the presence of protective factors such as attachment to family, supportive relationships to other adults and a positive school climate can and frequently do overcome these risk factors.<sup>25</sup>
2. The committee has seen no evidence that the risk factor increases with the severity of the disability. The opposite appears to be the case. The Intellectual Disability Rights Service states that of the 51 inmates in the Long Bay Developmental Disability Unit between 1 May 1997 and 30 April 1998 all but one had a mild to borderline disability rather than a more serious disability.<sup>26</sup> A problem for service providers is that persons whose disability is too mild to qualify for support services may be more likely to be involved in criminal activity than those with more severe disabilities.<sup>27</sup>
3. It is often impossible to separate the vulnerability of the intellectually disabled as a victim of crime from their vulnerability to becoming an offender. Studies have shown severe behaviour problems in both men and women with intellectual disabilities were most often as a result of traumatic sexual abuse involving multiple perpetrators and typically beginning in early childhood.<sup>28</sup> This is backed up by evidence from a

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<sup>22</sup> Evidence, 3/8/99, Mr N O'Neill, Guardianship Tribunal.

<sup>23</sup> Evidence, 3/8/99, Professor S Hayes.

<sup>24</sup> Evidence, 25/10/99, Professor G Vimpani.

<sup>25</sup> National Crime Prevention, *Pathways to Prevention* March 1999, p 138.

<sup>26</sup> Submission, 9/9/99, Intellectual Disability Rights Service p 3.

<sup>27</sup> Evidence, 3/8/99, Ageing and Disability Department.

<sup>28</sup> Sobsey D, *Violence and Abuse in the lives of People with Disabilities*, 1994, quoted in Submission, 44/12/98, Community Services Commission, p 28.

very experienced expert witness in trials involving offences by intellectually disabled persons:

The young people I see give pretty horrendous versions of violence and neglectful childhoods where they have been subjected to sexual violence. I do not think...that I have had one sex offender who has not been the victim of physical or sexual abuse.<sup>29</sup>

#### **8.4.2 Lack of social supports**

The committee is very conscious of the difficulties faced by government departments in times of tight budgets in dealing with a complex problem such as the plight of people with intellectual disabilities. It also recognises that since the Law Reform Commission highlighted the extent of the problem there have been attempts to implement some of the Commission's recommendations. However the over-representation of the intellectually disabled in the criminal justice system is in part due to the failure of government agencies to respond to the challenge of supporting a group of people with often difficult behaviours in the community; and also to the failure to respond to crimes within institutions. This systemic problem involves difficulties faced by:

- central funding agencies to provide sufficient funds for disability services;
- human services agencies to provide adequate supports to those in community based living;
- human service agencies to provide safe environments within institutions;
- criminal justice agencies to adapt to the special needs of this group; and
- criminal justice and human services agencies to co-ordinate effectively.

As agencies generally acknowledge that these problems exist there is little value in dwelling on past mistakes unless they contribute to understanding future solutions. Most of this chapter will examine ways in which agencies can prevent crime by an improved response to the needs of people with intellectual disabilities. To undertake this it is first necessary to describe the structure of services and agencies involved.

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<sup>29</sup>

*Evidence*, 3/8/99, Professor S Hayes.

### 8.4.3 The impact of de-institutionalisation

New South Wales has followed the trend seen throughout the world in the last 30 years in moving away from accommodating those with an intellectual disability in large institutions to community based living. The stimulus for this was the Richmond Inquiry which released its findings in 1983.<sup>30</sup> Since that time successive governments have pursued a policy of de-institutionalisation and closure of large institutions. Currently the State government has committed itself to a 12 year plan, to be completed in 2010, for the devolution of all existing institutional facilities.<sup>31</sup>

The committee supports the policy for its potential to prevent people with intellectual disabilities becoming victims of crime. Prior to this policy violence, assaults, stealing and sexual assaults which would normally be brought to the attention of the criminal justice system were regarded as the internal business of the institution.<sup>32</sup> Recent history indicates the containing of crimes within institutions also extended to those committed by staff against residents. The Community Services Commission refers to a number of its inquiries into residential facilities, both government and non-government, where serious criminal offences by staff were kept within the confines of the institution, including a staff member who threw boiling water over a resident and other serious physical assaults and theft.<sup>33</sup>

A parent provided a personal account of his son's experience:

While at the institution he developed into a very frustrated lonely young man. No communication, no peers, no means of refusing compliance except by very bizarre and aggressive behaviour, self inflicted injuries and blood letting. He had no other means of saying "no, I do not want to do that".

After he came home with all his aggression and antisocial behaviour, he assaulted a family friend in public. This could have led to injury and could have led to criminal proceedings against him. He would have been considered a danger to others. Now, in the changed environment of a group home, and in the care of very good staff and others who will listen to him and respect his wishes, his self-injurious behaviour is no more. He communicates with the carers who look after him. He can move freely in public and has learned to trust people...the changes have been dramatic; a triumph for de-institutionalisation.<sup>34</sup>

<sup>30</sup> *Inquiry into Health Services for the Psychiatrically Ill and the Developmentally Disabled 1983: "the Richmond Report".*

<sup>31</sup> *Submission*, 5/10/99, Ageing and Disability Department (NSW), p 8.

<sup>32</sup> *Submission*, 17/11/98, Professor S Hayes p 4.

<sup>33</sup> *Submission*, 4/12/98, Community Services Commission, pp 29-31.

<sup>34</sup> *Submission*, received 23/9/99, Mr P Hutten, p 3.

No-one has argued before the committee that de-institutionalisation should be stopped or even made slower; quite the contrary, the Intellectual Disability Rights Service is critical of the slow pace to date<sup>35</sup> and suggest the State is well behind world leaders such as Canada and Scandinavian countries.<sup>36</sup>

The committee does not identify the process of de-institutionalisation as a *cause* of the over-representation of people with an intellectual disability in the criminal justice system. There are studies by Professor Hayes which show an increase in the level of over-representation since 1988. However, there is no direct evidence in favour of this link, and two strong arguments against the link being made:

- despite closures of several institutions, the actual numbers of people living in them has not significantly declined;<sup>37</sup> and
- most intellectually disabled persons in prison have a mild disability whereas those in residential institutions typically have more severe disabilities.

## **8.5 Framework for services to the intellectually disabled in New South Wales**

### **8.5.1 Legal responsibilities**

Section 9 of the *Disability Services Act 1993 (NSW)* requires agencies to formulate Disability Action plans which demonstrate how they will ensure their services can be used by those with a disability. The *Disability Discrimination Act 1992 (Cth)* requires all agencies to provide their services in ways which do not discriminate against people with disabilities. In addition to these statutory duties, agencies which provide residential facilities and other services owe a common law duty of care to those in their care. This duty of care will be considerably higher for the intellectually disabled than other groups because of their vulnerability.<sup>38</sup>

To support these legal requirements the NSW Ageing and Disability Department in December 1998 established a Disability Policy Framework, the basis of which is:

<sup>35</sup> *Submission*, 9/9/99, Intellectual Disability Rights Service, p 2.

<sup>36</sup> *Evidence*, 8/11/99, Ms M Bellanta, Intellectual Disability Rights Service.

<sup>37</sup> the *Performance Audit: Large Residential Centres for People with a Disability in NSW 1997*, Community Services Commission, p 19 found that the total number had only declined by 75 persons between 1991 and 1997.

<sup>38</sup> Community Services Commission, *Who Cares?* 1996, p 23.

- mainstream service agencies need to provide for people with a disability as part of core business; and
- disability specific services should complement and assist mainstream provision.<sup>39</sup>

### **8.5.2 Human services departments**

The lead agency with a disability focus is the Ageing and Disability Department. Under this Disability Policy Framework it has two main roles relevant to crime prevention:

- to assist mainstream agencies to ensure their programs, services and crime prevention strategies are appropriate to minimise their being either victims or offenders; and
- to provide strategic leadership to those providing specialist service systems, including those funded through its own programs.

The Department funds services to a total of 12,000 persons,<sup>40</sup> including large institutions down to small group homes within the community. It is a funding body; it does not run the services, which are provided by a range of government, non-government, non-profit and private sector providers.

The next human services department with a specialist role is the Department of Community Services. Its role is complex and includes:

- preventing abuse of the intellectually disabled as part of its child protection function;
- being a provider of accommodation services (institutions and group homes);
- funding of non-government agencies supporting the intellectually disabled through its Community Services Grants Program;
- its responsibility for State wards, a significant number of which have an intellectual disability;<sup>41</sup> and

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<sup>39</sup> Submission, 5/10/99, NSW Ageing and Disability Department, p 5.

<sup>40</sup> Evidence, 3/8/99, Ms S Pierce, Ms M Fahey, NSW Ageing and Disability Department.

<sup>41</sup> Community Services Commission, *Turning Victims into Criminals: the Drift of Children in Care to the Juvenile Justice System 1996*.

- early intervention services to identify disability and provide support to parents.

NSW Health has a role which encompasses both specialist services and mainstream services which have a potential crime prevention role with the intellectually disabled. Community health and funding of home based support services; brain injury units within hospitals, mental health services, and early childhood nurses are just some of the services provided.

The Department of Education and Training is a mainstream provider in terms of the Disability Policy Framework. It has an important early intervention role in ensuring that disability is detected early before it leads to disruptive behaviour and the accumulation of other risk factors which can then result, such as peer rejection, truancy and low self esteem. Many other mainstream departments may have a small role to play in preventing crime among the intellectually disabled, such as the Departments of Sport and Recreation and Housing.

### **8.5.3 Criminal justice agencies**

The criminal justice agencies can be characterised as those whose crime prevention role is primarily associated with law enforcement: the police, the courts and prisons. The NSW Police Service is a crucial agency. The use of discretion by police when an intellectually disabled person is exhibiting challenging or difficult behaviour will determine in the first instance whether the person proceeds further in the criminal justice system. The police interview is the next threshold, with detection of a disability at this stage having major consequences later.

The Legal Aid Commission provides legal representation to the majority of intellectually disabled persons charged with criminal offences. It also funds community legal centres which assist intellectually disabled persons, both generalist services such as the Illawarra Legal Centre and the specialist Intellectual Disability Rights Service.

The Attorney General's Department funds and manages the courts system through which an intellectually disabled person passes when charged with criminal offences. As will be seen below, it has in recent years been seen as the lead agency for the criminal justice departments in liaising with their human services counterparts. For disabled persons who are victims it also provides a range of support services and administers the Victims Compensation Scheme.

Aside from the courts themselves the Guardianship Tribunal and the Office of the Public Guardian, while not directly concerned with criminal justice

issues, have an important role to play for the subgroup of the intellectually disabled who are within its area of responsibility (see below).

Should an intellectually disabled person be convicted then the responsible agencies become the Departments of Corrective Services or, the Department of Juvenile Justice. Within prisons or detention centres programs are provided to assist prisoners. This also extends to bail hostels and the funding of post-release support services through the Department of Corrective Services Community Grants Program.

There are also several agencies with a “watchdog” role. The Office of the Ombudsman investigates complaints against government departments, including the Police. The Community Services Commission monitors and reviews the delivery of services funded by the Departments of Community Services and Ageing and Disability and investigates complaints against community service providers. Its various reports<sup>42</sup> provide the most detailed information currently available on shortcomings in the current system.

The committee believes that of all agencies the Crime Prevention Division of the Attorney General’s Department is the best placed to drive many of the initiatives discussed in the next section of this chapter. This is because it has a specialist crime prevention function and does not have the other competing funding priorities of some of the other agencies, such as the Department of Community Services and the Ageing and Disability Department.

## **8.6 Gaps in services and lack of co-ordination**

### **8.6.1 Law Reform Commission criticisms**

The many agencies involved suggest that co-ordination between services will be a major problem. The NSW Law Reform Commission in its 1996 report summarised the situation as:

- there is little co-ordination between government agencies, including government departments, for example: there are no clear interdepartmental arrangements for the transfer of relevant information about a person or responsibility for a person from one agency to the next; there is uncertainty about which agency is the appropriate contact, provider of services or source of information; and there are people needing services for whom no agency will accept responsibility;

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*Submission, 4/12/98, Community Services Commission.*

- many criminal justice agencies do not have a systematic approach to clients who have an intellectual disability, for example they do not have appropriate procedures to identify people with an intellectual disability; staff often do not understand the needs of people with an intellectual disability or how to meet them; the agency's responses to difficulties may be inappropriate, based on wrong information or inconsistent; and there is no adequate formal system of liaison and consultation between agencies and people with an intellectual disability, their carers and representatives; and
- there is no overall co-ordination or continuity in the way support is provided to an individual when he or she comes into contact with the criminal justice system. It tends to be provided in a sporadic and crisis-based manner.<sup>43</sup>

The Commission identified the Ageing and Disability Department as being the key agency to lead a co-ordinated strategy involving all key departments. It also recommended the Department of Community Services establish a case manager service to oversee the plight of individuals within the system to ensure they receive the services they need from all the relevant departments.<sup>44</sup>

### **8.6.2 Improvements since 1996**

The committee believes progress has been made since 1996. Improvements identified during this inquiry include:

- the Interdepartmental Committee on Intellectual Disability, chaired by the Attorney-General's Department. Through this the Ageing and Disability Department is working with the Attorney General's Department to manage the implementation plan for making mainstream criminal justice agencies responsive to the particular needs of the intellectually disabled. This was established in September 1998 and reflects the responsibility of those agencies under Section 9 of the *Disability Services Act*;
- an interdepartmental working group on eligibility for services for persons with a dual diagnosis of intellectual disability and mental illness (see below);

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<sup>43</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, pp 359-360.

<sup>44</sup> *Ibid*, p 358.

- a committee has been appointed by the Attorney General's Department to monitor implementation of the Law Reform Commission's recommendations;
- an early intervention co-ordination project to support young children with a disability, jointly funded by NSW Health, the Ageing and Disability Department and the Department of Education and Training; and
- a pilot case manager project for sex offenders jointly run by the Department of Community Services, the Department of Corrective Services and the Office of the Public Guardian, and a pilot involving the same agencies in developing service models for people known to the criminal justice system.

The last project is described by advocacy group, the Intellectual Disability Rights Service, as demonstrating "a refreshing level of interdepartmental and regional co-operation".<sup>45</sup>

There have also been initiatives from the non-government sector aimed at improving local co-ordination of services. Both Professor Hayes and officers of the Ageing and Disability Department, in evidence to the inquiry,<sup>46</sup> spoke highly of the Illawarra Disabled Persons Trust as a model for other areas. This project, initially funded by the NSW Law Foundation and now by the Ageing and Disability Department, provides volunteers to support intellectually disabled persons in their dealings with the police and the courts while at the same time training local criminal justice agencies in how to respond to the needs of intellectually disabled persons.

There is already a State-wide funded network of court support schemes for victims of domestic violence, funded by the Commonwealth through the Legal Aid Commission. Support for a similar, smaller scale scheme for intellectually disabled persons could be considered, depending upon an evaluation of the Illawarra project.

#### **Recommendation 21**

**The committee recommends the NSW Attorney General's Department evaluate the success of the project of the Illawarra Disabled Persons Trust in terms of diverting intellectually disabled persons from unnecessary contact with the criminal justice system. Depending upon the outcomes of this evaluation the committee recommends the Department approach its Federal counterpart to fund a network of**

<sup>45</sup> *Submission*, 9/9/99, Intellectual Disability Rights Service, p 4.

<sup>46</sup> *Evidence*, 3/8/99, Professor S Hayes; *Evidence*, 3/8/99, Ms S Pierce, Ms M Fahey, NSW Ageing and Disability Department.

**similar court support services for the intellectually disabled as a crime prevention initiative.**

Another initiative is a partnership between the Intellectual Disability Rights Service and the Council for Intellectual Disability, jointly funded by the NSW Law Foundation and the Ageing and Disability Department. The purpose of this project is to develop a legal, policy and community services framework to prevent unnecessary involvement of the intellectually disabled in the criminal justice system. It appears this is aimed at addressing some of the issues of gaps in services for individuals, including the need for case managers. This is important because much of the moves to improved co-ordination to date have concerned departments' roles rather than working back from individuals; both approaches are needed.

**Recommendation 22**

**The committee recommends the Interdepartmental Committee on Intellectual Disability formally consider and respond to the findings of the current project by the Council for Intellectual Disability and the Intellectual Disability Rights Service to develop a legal, policy and community services framework to address the needs of individuals with a disability at risk of offending.**

**8.6.3 Dual diagnosis**

The many gaps in co-ordination between agencies will not be discussed in further detail because of the number of initiatives under way which are examining this issue. However one problem which was particularly raised by witnesses to the inquiry will be considered here. The problem concerns services for those with a double disability: a mental illness combined with an intellectual disability:

In my experience the mental health system has not adequately recognised the fact that people with an intellectual disability are more prone to mental illness than that non-disabled part of the community. Very often the mental illness part is overlooked when people come into contact with the mental health services. When they go to a mental health facility, taken by parents who cannot cope or police, once the fact is determined that they have an intellectual disability that is the deciding factor and no more inquiry is made about their actual mental illness status. It is a case of falling between the two systems.<sup>47</sup>

The committee is concerned that departments with tight budgets will attempt to look for ways to define clients out of their services and into those provided by another department. The committee has been informed by the Ageing and Disability Department that an interdepartmental committee on

<sup>47</sup>*Evidence, 3/8/99, Professor S Hayes.*

dual diagnosis has been established. This may address some of the concerns raised but the success of any joint protocols developed will need to be closely monitored.

One strategy which appears to have been successfully used by parents or others seeking support services for intellectually disabled persons is to make an application for guardianship. This allows for the guardian to act effectively as a case manager, determining the services required and negotiating with government departments to provide the required services. Guardianship can work effectively in some instances; however it is regarded by the Tribunal's President as an inferior option to a more extensive system of case managers.<sup>48</sup>

Moving from addressing gaps in services, this chapter now addresses ways in which firstly human services agencies and secondly criminal justice agencies can prevent crime involving the intellectually disabled as either perpetrators or victims.

### **8.7 Preventing crime within large institutions**

The number of intellectually disabled persons who still live in large residential institutions has not significantly declined despite closures of centres.<sup>49</sup> Significant numbers of people will remain in these institutions over the next decade. Investigations and inquiries of the Community Services Commission since 1995 have demonstrated that there are very serious problems with the level of unreported crimes against residents, both by other residents and by staff.<sup>50</sup>

There are therefore two ways in which crimes in large institutions can be reduced:

- by reducing the number of people in those institutions; and
- by creating safer environments within the remaining institutions.

An immediate allocation of funds for the transition of residents from large institutional centres to the community could significantly reduce the incidence of crime against the intellectually disabled if implemented

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<sup>48</sup> Evidence, 3/8/99, Mr N O'Neill.

<sup>49</sup> Submission, 9/9/99, Intellectual Disability Rights Service, p 2.

<sup>50</sup> Community Services Commission, *The Lachlan Report 1995; Who Cares? 1996; The Performance Audit Report into Large Residential Centres for People with a Disability in NSW 1997; Suffer the Children 1997; Inquiry into Cram House 1998; Respite Care – A System in Crisis 1998.*

effectively. It could have an opposite effect if poorly planned or not properly funded.

The committee is well aware that the biggest barrier to providing effective support to the intellectually disabled living in the community is the cost. The committee understands the tightness of funding at a State level and throughout this report has been reluctant to recommend large scale expenditure. However, if a policy of de-institutionalisation is to be effectively pursued there needs to be adequate levels of support, at a higher level than currently exists, to effectively prevent crime.

Regarding the devolution, the committee understands the Ageing and Disability Department has established a unit to undertake this work, and that the first 12 months have been allocated to developing a comprehensive plan.<sup>51</sup> Despite criticisms by advocacy groups as to the slowness of this devolution<sup>52</sup> the committee believes that the current transition plan is in too early a stage to pass judgement. If there is still little progress towards devolution over the next 12 months then critics may be justified in calling for greater action.

**Recommendation 23**

**The committee recommends that the policy of devolution be supported by a significant increase in funding of support services for those living in the community. Future closures of large institutions should follow successful past models of planned transitions for disabled persons into the community.**

Regarding improved safety within existing large institutions the committee is interested in the current research project to be undertaken by the Community Services Commission with funding from the Disability Council. This project will identify situational crime prevention strategies (see description of this model of prevention in Chapter Two) suitable to be adapted for large residences; it will also look for early indicators of offending behaviour in other residents or among staff which could require intervention to prevent crime.<sup>53</sup>

**Recommendation 24**

**The committee recommends the Ageing and Disability Department and the Department of Community Services consider and formally respond to any recommendations arising from the study by the Community Services Commission on crime prevention strategies suitable for use in large residential institutions.**

<sup>51</sup> *Submission*, 5/10/99, NSW Ageing and Disability Department p 8.

<sup>52</sup> *Submission*, 9/9/99, Intellectual Disability Rights Service, p 2.

<sup>53</sup> *Evidence*, 3/8/99, Community Services Commission.

Beyond that the major concern raised in evidence to this inquiry has been the selection, training and monitoring of staff in large institutions. This was discussed in detail in the Community Services Commission's 1996 report: *Who Cares – Looking at Recruitment and Screening in Residential Services*. As a result of the Wood Royal Commission the Office of the Commissioner for Children and Young People will include a probity screening unit which will apply to workers directly involved with young people;<sup>54</sup> however, there is no similar body for those with a disability. In evidence to the committee Commission staff confirmed there was still no minimum requirements for competency for staff who want to work in these institutions:

In terms of the disability area it is still an ad hoc system. Certainly for departmental workers there are more procedures in place and criminal checks are done. There is some limited screening when those staff are recruited.

In the non-government sector practices can be varied. Some organisations are very good and are thorough in their checks, others are less so. Across the board there is a high reliance on casual staff. There are many problems with casual staff and a likelihood the wrong kind of people might be attracted.<sup>55</sup>

There is evidence in the Commission's reports and inquiries that staff of institutions have unlawfully restrained and physically assaulted residents; sexually abused residents and ignored repeated physical and sexual abuses by residents against each other.<sup>56</sup> Some of the non-government services examined had no documented procedures for responding to allegations of abuse by staff.<sup>57</sup> The committee believes there is an undeniable need for improved consistency in staff selection and monitoring so as to prevent crime and protect the basic human rights of intellectually disabled persons within institutions.

#### **Recommendation 25**

**The committee recommends that the Ageing and Disability Department establish a probity screening unit for employment of staff working with adults with an intellectual disability with a similar role to that established for children and young people through the Office of the Commissioner for Children and Young People.**

#### **Recommendation 26**

**The committee further recommends that, through this unit or through another mechanism, minimum standards be developed for employment and training of staff applicable to the non-government as well as government run services.**

<sup>54</sup> *Submission*, 4/12/98, Community Services Commission p 33.

<sup>55</sup> *Evidence*, 3/8/99, Ms A Tang, Ms J Quilty, Community Services Commission.

<sup>56</sup> *Submission*, 4/12/98, Community Services Commission pp 29-30.

The recommendation is equally applicable to staff in smaller group homes; the same problems with staff persist. The difference is however that with group homes the smaller environment makes it harder to hide abuses and more likely that families and friends are involved in the service settings.<sup>58</sup> One particular problem appears to be the inappropriate use of police as a way of dealing with discipline or behaviour problems instead of development of behaviour management strategies.<sup>59</sup>

## **8.8 Preventing crime in community settings**

The committee, as indicated earlier in this chapter, fully supports the current policy of de-institutionalisation as being the most desirable for the welfare of intellectually disabled persons. In most cases supported living in the community will also be safer for the intellectually disabled person. However the over-representation of the intellectually disabled in the criminal justice system already demonstrates that there are serious issues which need to be considered as the transition proceeds.

### **8.8.1 Successful community living for those with difficult behaviour**

Intellectually disabled persons can live in a range of different settings in the community from supported accommodation with full time staff, to group homes through to independent living. It is difficult to generalise about the supports required for the intellectually disabled living in community, as these vary greatly depending on the individual. Arguably one benefit of community living over an institution is that support can be tailored to the individual rather than the needs of the institution. Where an intellectually disabled person has what is described as “difficult” or “challenging” behaviour it becomes vital that these supports are provided to avoid them becoming involved in an institution of another kind, those of the prison system. This highlights the need for case managers to be appointed to co-ordinate the delivery of these services to individuals.

One of the disturbing features of evidence and submissions received during this inquiry has been the lack of examples provided to the committee of successful models of community living where supports have been provided to people with difficult behaviour. Representatives of the Community Service Commission, the Ageing and Disability Department and the Intellectual Disability Rights Service were unable to provide specific

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<sup>57</sup> *Inquiry into Cram House 1998*, Community Services Commission.

<sup>58</sup> Evidence, 3/8/99, Ms A Tang, Ms J Quilty, Community Services Commission.

<sup>59</sup> *Submission*, 17/11/98, Professor S Hayes, p 7.

examples of which they were aware when asked in hearings.<sup>60</sup> The Community Services Commission in a later response arising from the hearing suggested several contacts to pursue this further, but aside from this the specific programs they referred to were both in other jurisdictions:

- the Intellectually Disabled Offender Program provided by the Victorian Offenders Support Association, which provides supported accommodation in the community for people with intellectual disabilities who have committed offences or are at very high risk of doing so; and
- the Special Offenders' Service in Lancaster County, USA.

The committee believes there is a need to clearly identify those services that have a good reputation within New South Wales for supporting intellectually disabled persons with challenging behaviours. It may be that the research project being undertaken by the Council for Intellectual Disability and the Intellectual Disability Rights Service is able to do this within its brief. If it is not, the Crime Prevention Division in consultation with the Ageing and Disability Department should undertake this role.

It would then be valuable to conduct independent evaluation of the success of these services in preventing crime. This could then provide a way for policymakers to be better informed in the development of crime prevention strategies run in conjunction with the policy of devolution.<sup>61</sup>

#### **Recommendation 27**

**The committee recommends that the Crime Prevention Division in consultation with the Ageing and Disability Department identify a list of specific services in New South Wales which allow intellectually disabled persons with challenging behaviour to live in a community setting. The most highly regarded of these should be the subject of independent evaluation of their success in preventing intellectually disabled persons from unnecessary involvement in the criminal justice system.**

<sup>60</sup> *Evidence*, 3/8/99, Community Services Commission & NSW Department of Ageing and Disability; *Evidence*, 8/11/99, Intellectual Disability Rights Service.

<sup>61</sup> Some references on outcomes of community living have been provided to the committee, although these do not generally focus on crime prevention outcomes. The studies include: "De-institutionalisation of persons with intellectual disabilities: A review of Australian studies" Young, Sigafos, Suttie, Ashman and Grevell, *Journal of Intellectual & Developmental Disability* Vol 23, No 2 pp 155-170; *People with Disabilities who Challenge the System* D Lehr and F Brown 1996 Paul Brookes Publishing, Maryland USA; "Outcomes and Costs of community Living: Semi-Independent Living and Group Homes" R Stancliffe and S Keane February 1999, Centre for Development Disability Studies, University of Sydney)

### 8.8.2 Eligibility for services

One difficulty in providing support to the intellectually disabled living in the community identified during this inquiry is that of criteria used for eligibility for services. This was raised by several witnesses and submissions.<sup>62</sup> Most of those in prison with an intellectual disability have a mild disability and Professor Hayes in her evidence confirmed these were the most likely to be involved in criminal activity. However, the criteria used for eligibility for services by Departments such as Ageing and Disability and Community Services is typically the level of disability; the likelihood of involvement in criminal activity is not a criterion.

This is a difficult issue: as the Ageing and Disability Department pointed out in evidence. Their responsibility for disability is much wider than that of the sub group who are at risk of contact with the criminal justice system. However, it is a problem which needs to be addressed, as these two examples provided by the Guardianship Tribunal indicate:

- an older man with mild disability had a history of inappropriate sexual behaviour, including alleged paedophilia. He was living in a boarding house. The appointed guardian argued support or supervision was necessary to prevent abusive activity and to protect the community. The relevant department cited lack of resources and declined to provide any services as the person did not fit their guidelines; and
- a man in his late twenties had been in prison a number of times for stealing, indecent exposure and offensive behaviour. Expert evidence was provided that the man required a structured environment combined with behaviour modification to prevent further offending. However because he only had a mild disability he was not able to fit into existing service delivery models.<sup>63</sup>

The Guardianship Tribunal provided seven other similar examples, including one example where a person with a moderate disability was charged with manslaughter in a situation where appropriate accommodation could not be provided.

The initiative of the Department of Community Services to trial a program for known offenders is a positive step to address this question. The committee believes there needs to be a category of “risk of offending”, however expressed, which will enable an intellectually disabled person to

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<sup>62</sup> *Submissions*, 1/12/98, Guardianship Tribunal, 17/11/98, Professor S Hayes; *Evidence*, 8/11/99, Ms M Bellanta, Intellectual Disability Rights Service.

<sup>63</sup> *Submission*, 1/12/98, Guardianship Tribunal, pp 2-3.

receive appropriate supports. Under the Disability Services Act framework it would appear a responsibility of criminal justice agencies to consider the needs of the intellectually disabled in this situation. Therefore the funding for these services should be shared between human services and criminal justice agencies, although administered by the human services departments.

**Recommendation 28**

**The committee recommends a category of “risk of offending” be used in criteria for determining services to the intellectually disabled. The Interdepartmental Committee on Intellectual Disability should consider how services provided under this criteria can be jointly funded by human services and criminal justice agencies and which department should administer the allocation of these services.**

### 8.8.3 Day programs

The committee has not received detailed evidence on the types of support programs required for the intellectually disabled living in the community other than accommodation, which is clearly the most fundamental need. The other specific needs for programs identified are:

- provision of day programs for people living in unsupported accommodation or with family members. Some crime is said to occur simply from boredom or lack of structured activities to occupy the intellectually disabled during the day. For families caring for the intellectually disabled day programs prove a form of respite from a very demanding role;<sup>64</sup>
- increase in availability of TAFE courses for those with intellectual disabilities. Most are currently only for six months, and are often tied to finding employment afterwards. There is a need for these courses to be used to teach life skills or for other purposes other than job seeking;<sup>65</sup>
- improved access to behaviour management programs, particularly during childhood. Professional assistance is said to be hard to find and typically excludes those with the most challenging behaviour on the grounds they will upset the smooth running of the program;<sup>66</sup> and
- increase in specialist health services for the intellectually disabled. Because the Health Department focuses on mental illness it does not provide any health promotion units for the intellectually disabled.

<sup>64</sup> *Submission*, 1/12/98, Guardianship Tribunal; *Evidence*, 3/8/99, Mr N O’Neill, Guardianship Tribunal.

<sup>65</sup> *Submission*, 17/11/98, Professor S Hayes, p 5.

<sup>66</sup> *Ibid*, p 6.

However, there are many health issues such as drug use which would benefit from specialist programs; there are also issues of medications which can be used for the intellectually disabled in limited circumstances to reduce their likelihood of offending.<sup>67</sup>

**Recommendation 29**

**The committee recommends the Ageing and Disability Department consider how to liaise with other agencies to improve the provision of day programs to the intellectually disabled, particularly:**

- **day programs for those in unsupported accommodation;**
- **increased availability of TAFE courses for purposes other than job seeking;**
- **improved access to early childhood behaviour management programs; and**
- **increase in specialist health services for the intellectually disabled, particularly drug and alcohol.**

## **8.9 Police and the intellectually disabled**

The NSW Police service is currently developing a Disability Plan for 2000-2003.<sup>68</sup> This will include developing a memorandum of understanding between the Service and the Department of Community Services. The Law Reform Commission's report dealt with police issues in great depth,<sup>69</sup> the monitoring committee in the Attorney General's Department will examine the implementation of the recommendations made so there is little value in the committee duplicating this review here.

The committee recognises that intellectual disability is one of many areas where the police are called upon to clean up the failures of other agencies. Despite this the contact with the police is at the threshold stage where intellectually disabled persons begin their contact with the criminal justice system, so it is a crucial contact. It is essential that police recognise they are dealing with a person with a disability, rather than attributing any behaviour to "smart" or unco-operative behaviour.<sup>70</sup> Failure to do so will not only deprive the intellectually disabled person of rights, it can also lead

<sup>67</sup> *Evidence*, 3/8/99, Mr N O'Neill, Guardianship Tribunal; *Evidence*, 3/8/99, Professor S Hayes p 6.

<sup>68</sup> *Submission*, 11/11/99, NSW Police Service, p 5.

<sup>69</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, pp 75-155.

<sup>70</sup> *Evidence*, 3/8/99, Professor S Hayes (see earlier quote).

to statements of interview being inadmissible under the *Evidence Act 1995* (NSW).<sup>71</sup>

This makes it essential that police are adequately trained to recognise intellectual disability, and to know how to respond once recognised. The committee is concerned that a witness said that training at the Police Academy at Goulbourn recently consisted of one two hour course.<sup>72</sup> When as much as one in five of all prisoners has an intellectual disability this training is far too brief for what will be a significant part of front line police officers work.

**Recommendation 30**

**The committee recommends that training at the Police Academy in intellectual disability be increased to a level more commensurate with such persons making up more than one in five of the prison population; and that regular in-service training should also be developed.**

The committee is also concerned at the apparent lack of interest by police in a screening test developed by Professor Hayes with funding from the Law Foundation. This test can be used to detect intellectual disability during interviews. This test has been successfully trialed with staff in the Departments of Corrective Services and Juvenile Justice and also NSW Legal Aid.<sup>73</sup> The committee has not had the opportunity to determine whether police are developing an alternative test of their own, but it is important that a formal training in detecting disability during police interviews be used. If police are not able to detect the disability there is little value in the current Police Commissioner Instructions which provide for safeguards such as a support person being present.

**Recommendation 31**

**The committee recommends that NSW Police adopt and train staff in use of a screening test or other method of identifying intellectual disability during police interviews.**

## 8.10 The Courts, legal process and the intellectually disabled

The committee has received a detailed submission from an individual who acted as a citizen's advocate for two intellectually disabled persons who went through lengthy criminal proceedings for serious offences.<sup>74</sup> He

<sup>71</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, p 131.

<sup>72</sup> *Evidence*, 3/8/99, Professor S Hayes.

<sup>73</sup> *Evidence*, 3/8/99, Professor S Hayes.

<sup>74</sup> *Submission*, received 23/9/99, Mr P Hutten.

describes a process of frequent adjournments for the purpose of obtaining reports. The departments concerned anticipated the need for the reports but, for budgetary reasons, avoided obtaining them until ordered by the court. The lack of consultation between the main parties involved, including Legal Aid, parole officers, the Departments of Community Services and of Juvenile Justice also unnecessarily prolonged both proceedings.

The lengthy court procedures had one important effect in the cases Mr Hutten describes: they removed any association made by the intellectually disabled persons between their act and punishment made by way of sentence. In her evidence Professor Hayes argued that offenders with a mild to moderate disability are able to realise the nature of their criminal act, and should receive a consequence which relates to the act to assist in reducing later offending. She was particularly critical of the way the “fitness for trial” hearings in District Court matters defeated this aim. She argues that prosecutors have turned what was supposed to be a non-adversarial pre-trial procedure into a “killing field”, “more brutal than your average murder trial”.<sup>75</sup>

For minor offences there are diversionary measures available. An important (if under used) provision is s32 of the *Mental Health (Criminal Procedure) Act 1990*, which allows magistrates in Local Court matters options including the ability to discharge a defendant into the care of a responsible person subject to certain conditions. Evidence to the committee suggested this was under-utilised by magistrates for two reasons:

- failure for magistrates (or anyone else earlier in the criminal justice system) to detect the disability; and
- that it encouraged recidivism, with concern by magistrates that a small number of offenders used this to be let off each time.<sup>76</sup>

In this latter instance there is an argument that this diversion is inappropriately used. However for many trivial offences it is desirable that the disabled person receives immediate consequences for their action under this provision, which may include conditions imposed which will lessen the likelihood of the offence recurring. If s32 is not being widely used the committee is concerned that this be investigated further.

Regarding detection of intellectual disability in court proceedings, one initiative which could be considered is the presence of a trained nurse attached to the court. If a solicitor or any other person believed the person charged had an intellectual disability, or a mental illness, they could be

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<sup>75</sup> Evidence, 3/8/99, Professor S Hayes.

<sup>76</sup> *Ibid.*

referred to the nurse for assessment. A pilot scheme in Newcastle Court was established in 1997. An independent evaluation funded by the Law Foundation has found the service has improved not just the assessment of those with a disability but has acted as a focus to bring together the various legal, health and community services agencies.<sup>77</sup>

On the issue of diversion, several witnesses to the committee commented favourably on the scheme operated by the Illawarra Disabled Person Trust (see above in this chapter). One outcome of the pilot has been local police liaising with government and non-government community services in the area to find appropriate diversionary courses for young people with a disability.<sup>78</sup> It would be valuable to examine how this could be extended to other areas.

The area of “fitness for trial” and the related area of diversion for minor offences were covered in depth by the Law Reform Commission in its 1996 report.<sup>79</sup> The recommendations made were for modification of the existing regime rather than a major overhaul. The committee is also aware that the Interdepartmental Committee on Intellectual Disability is examining many aspects of the interaction between the intellectually disabled and the criminal justice system,<sup>80</sup> and that the legal process is one of the areas that working groups are addressing.

The committee does not want to pre-empt the work of these departments in this area by making specific recommendations. It does however highlight the issues below as those which the Interdepartmental Committee should address as a matter of some priority.

**Recommendation 32**

**The committee recommends that the Interdepartmental Committee on Intellectual Disability examine the following aspects of the legal process for those with a intellectual disability charged with a criminal offence:**

- 1. Improved co-ordination between relevant agencies in the obtaining of required reports prior to trial, so as to avoid unnecessary adjournments.**
- 2. Review of the use of s32 of the *Mental Health (Criminal Procedure) Act 1990*, and how greater use of the provision as a diversion can be encouraged by magistrates.**

<sup>77</sup> “Justice and Mental Health Systems cheer new Court Liaison Program”, *Law Society Journal*, September 1999 pp 12-13.

<sup>78</sup> *Evidence*, 3/8/99, Professor S Hayes; *Evidence*, 3/8/99, NSW Department of Ageing and Disability.

<sup>79</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, p 157-217.

<sup>80</sup> *Submission*, 5/10/99, NSW Ageing and Disability Department.

- 3. Review of the “fitness for trial” hearings in District Court matters as to how their current adversarial nature can be reduced.**
- 4. Examining the diversionary strategies used in the Illawarra Disabled Person’s Trust scheme for their suitability for wider application.**
- 5. Examining the independent evaluation made of the Newcastle Court Liaison Nursing Service to determine whether a similar service could assist other courts.**

### **8.11 Preventing prisoner recidivism**

In a later report the committee will examine strategies to prevent prisoner recidivism, including post-release support programs for offenders. This will necessarily involve consideration of programs to assist intellectually disabled offenders, given their very significant representation in the prison system. The committee has not examined programs within prisons for intellectually disabled persons in depth for this reason. From submissions received to date the committee is aware that the issues for intellectually disabled include:

- the need for accommodation such as specialist bail hostels for those intellectually disabled denied bail or unable to raise bail. There appears to be an unnecessarily high incidence of intellectually disabled being imprisoned due to lack of available accommodation options suitable to satisfy bail conditions;
- the need for secure units post-release for those with challenging behaviours which make them likely to re-offend. The Law Reform Commission’s 1996 report was critical of the Department of Community Services for not funding such facilities, in contrast to the secure units funded by the Health Department for those with mental illness.<sup>81</sup> It appears that little progress has been made on this issue,<sup>82</sup> and
- some progress is being made with pilot programs aimed at preventing known offenders with an intellectual disability from re-offending (see above re Department of Community Services/Corrective Services initiative).

A stark example of the shortcomings of current systems was presented to the committee in a letter from a parent read during a hearing:

<sup>81</sup> NSW Law Reform Commission Report 80: *People with an Intellectual Disability and the Criminal Justice System 1996*, pp 404-406.

<sup>82</sup> *Evidence*, 8/11/99, Ms M Bellanta, Intellectual Disability Rights Service; *Submission*, 5/10/99, NSW Ageing and Disability Department, p 12.

He [her son] has now spent a total number of nine months in prison. His sentence for malicious assault (after he himself was assaulted with a bottle) was four weeks. However, it was realised that he required high levels of support and as no services could be found he was forced to serve his parole period in prison. As there were no programs for people in prison for people with disabilities ... my son committed two more offences in this time.<sup>83</sup>

### **8.12 Social support programs, intellectual disability and poverty**

Finally, the committee believes that the over-representation of the intellectually disabled in the criminal justice system has one major factor which is in common with every other over-represented group in the prison system. As described by Professor Hayes:

They come from families where seldom anyone has been employed. They themselves have attended many schools. In other words, they have all the features of the rest of the prison population. An interesting aspect of my work [as an expert witness in criminal proceedings] is that I seldom see a person with an intellectual disability who has come from a middle-class or upper-class family. People with an intellectual disability are over-represented in the lower echelons of society. There are more of them in the poverty groups so more of them end up in the criminal justice system.<sup>84</sup>

Any programs, particularly early childhood intervention, which assist lower socio-economic groups in general are likely to assist in reducing the numbers of intellectually disabled involved with the criminal justice system. Crime prevention through social support has many positive outcomes, often beyond its immediate target. The over-representation of the intellectually disabled in corrective services and juvenile justice is a powerful argument for the need for increased investment in early childhood intervention.

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<sup>83</sup> Pearson, quoted in *Evidence*, 8/11/99, Ms M Bellanta, Intellectual Disability Rights Service.

<sup>84</sup> *Evidence*, 3/8/99, Professor S Hayes.