



Office of the Public Advocate

SILENT VICTIMS

A STUDY OF PEOPLE WITH INTELLECTUAL DISABILITIES
AS VICTIMS OF CRIME

Prepared For The
Office of The Public Advocate By

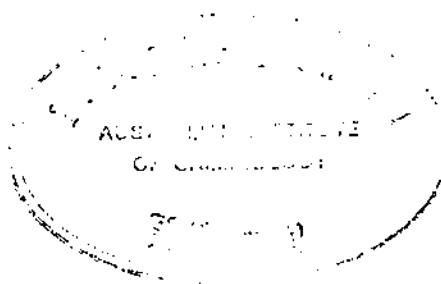
Kelley Johnson
Ruth Andrew
Vivienne Topp

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Office of the Public Advocate



The idea of an "underclass" is not new. It involves groups of people who remain helpless because they cannot organise adequately, cannot influence people with power sufficiently to ensure a better deal for themselves, and who have become so used to being "underclass" citizens that they accept their misery, misfortune and impotence as normal for themselves. This report reflects on a part of their world.

At a time when there is a conscious policy of deinstitutionalisation and a pinching of services, the rest of the community must struggle to ensure equity for these people. It would be a tragedy if their needs were not adequately noticed and they were left further behind.

I would like to thank the researchers, Kelley, Ruth and Vivienne for their perseverance and sensitive work, and the many people of goodwill who contributed to the report. I am also grateful to the Criminology Research Council who funded the project.

BEN BODNA
PUBLIC ADVOCATE

SILENT VICTIMS

**A Study of the Difficulties Encountered by Victims of Crime who
are Intellectually Disabled.**

**Prepared for the Office of the Public Advocate by Kelley Johnson,
Ruth Andrew and Vivienne Topp (Kelley Johnson and Associates.)**

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Dr Fay Jappie	Police Surgeon's Office (From Jan 88)
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Inspector Rod Norman	Victoria Police
Liesl Osman	Consultant Sociologist
Lou Papaleo	Solicitor
Ian Parsons	STAR Victorian Action on Intellectual Disability
Margot Powell	Director Public Prosecutions Office
Commander Laurie Rymer	Victoria Police
Paul Schlesinger	Hospital Employees Federation (No 2 Branch)
Peter Stewart	Ministry of Consumer Affairs
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PART 1 THE RESEARCH PROJECT

This part of the report begins with a case study to introduce the reader to the issues confronting victims of crime who are intellectually disabled.

It then provides a rationale for the study and a description of the methodology used to achieve its aims.

SECTION 1 CASE STUDY 1

A twenty seven year old woman who is intellectually disabled and a long time resident of an institution, alleged to a nurse that she had been raped twice on that day by an employee of the institution. The second alleged rape was witnessed by another resident with an intellectual disability. In the succeeding hours the investigation of these incidents by the police and the Office of Intellectual Disability Services (OIDS), in the words of the Public Advocate "wandered aroundthere was no framework of precision in handling the event."

For example:

- * Initial interviews including confrontation with the alleged assailant were handled by a ward assistant.

- * No support was offered to the victim.

- * Indeed a negative "thumbnail sketch" of her character was offered to police when they arrived at the institution to commence their investigations, some hours after the alleged crimes occurred.

- * The accused was not interviewed by the police until some time after the alleged offences took place.

- * The quality of the assessments of the witness's capacity and intelligence was criticized by the Public Advocate.

- * Similarly the interview of the witness by the police demonstrated a lack of skill by them in working with someone who is intellectually disabled.

Following their investigations the police decided not to press charges. They assessed the witness as "too weak-minded to testify." The Public Advocate pursued the matter but eventually the victim decided not to proceed. She had at this stage been transferred to another institution following apparent harassment about her allegations.

SECTION 2 THE METHODOLOGY

"A study should be carried out of intellectually disabled people as victims of crime, considering issues such as:

- (a) Incidence;
- (b) acceptance of intellectually disabled people as witnesses;
- (c) ease or difficulty experienced by intellectually disabled people in bringing charges." (1, page xii)

"Action research aims to contribute both to the practical concerns of people in an immediate problematic situation and to the goals of social science by joint collaboration within a mutually acceptable ethical framework." (2, page 499)

"In social research you are either disreputable or unhelpful." (3, page 14)."

1 Background

The study reported in these pages aimed to explore the reasons for the difficulties which people with intellectual disabilities have as victims of crime. It was based on findings from an earlier piece of research, Finding the Way (1) carried out by the Office of the Public Advocate. This revealed that the nature and extent of crime against people with intellectual disabilities and their subsequent experiences within the criminal justice system as victims were matters of concern. Consequently the current study adopted an action research approach which was designed to increase understanding of these issues and to develop strategies which might assist victims of crime who are intellectually disabled.

2 Rationale for the Research

This research has been undertaken for two major reasons. The first involves the increasing concern of the Public Advocate about the plight of people with intellectual disabilities who are victims of crime. Secondly, over the past 10 years, there have been radical changes in policies and philosophies affecting people with intellectual disabilities. These have meant that there is an increasing recognition of the need to ensure that this group of people have equal access with the rest of community to the criminal justice system.

2.1 Concerns about People with Intellectual Disabilities who are Victims of Crime.

(a) Cases at the Office of the Public Advocate

A number of cases of intellectually disabled people who were victims of crime in institutions and in the community were reported in the first twelve months of work at the Public Advocate's Office.

The problems raised by these cases both within the Office and the media indicated the need for some examination of the difficulties which victims encountered.

(b) Previous Research

In 1987 a research project was carried out for the Public Advocate's Office which examined difficulties confronting offenders with intellectual disabilities. A by-product of the results of this research indicated that people with intellectual disabilities were more vulnerable to some crimes than members of the general community. Further the research suggested that victims of crime who were intellectually disabled also experienced problems in taking action about crimes against them.

The research report, Finding the Way (1), recommended strongly the need for research to be undertaken in relation to crimes against intellectually disabled people.

(c) Lack of Information about Victims of Crime who are Intellectually Disabled.

The nature and extent of crime against people who are intellectually disabled are largely unknown and difficulties which they experience as victims of crime have not been well documented. (1) Generally the focus of researchers has been on the problems encountered by offenders who are intellectually disabled. It was anticipated that the present research would provide a first step in exploring these issues in Victoria.

2.2 Changing Philosophies and Policies

The past ten years have seen profound changes in the way intellectual disability is perceived by Government and workers in the field. Such changes have implications for organizations in the wider community.

(a) Normalization

The principle of normalization is one which has guided recent government legislation in relation to people with intellectual disabilities. It states that:

"Positive and appropriate services and approaches are those which aim to achieve two objectives.

*The image of the person should be promoted positively-the image should be enhanced. The location of the service in the community, the degree of integration achieved, the language used to describe the programme and the programme user all contribute to that image.

*The service should aim to increase the competency of the user since, in our society, real and perceived incompetence are basic millstones for the person to carry." (4, page 10).

The following sections from the Intellectually Disabled Persons Services Act 1986 (5) illustrate how this principle has been embodied in current legislation.

"Intellectually disabled people have the same right as other members of the community to services which support a reasonable condition of life. (5, page 4)

"The State of Victoria must ensure that government and non-government organizations providing services to intellectually disabled persons are accountable for the extent to which the rights of intellectually disabled persons are advanced and service quality ensured." (5, page 5)

Through this legislation there is an obligation on all services in the community to ensure that the needs of people with intellectual disabilities are catered for adequately.

(b) The Movement towards Deinstitutionalization

Allied with the principle of normalisation has been the increasing movement towards the deinstitutionalization of people with intellectual disabilities. Deinstitutionalization embodies the view that:

"The needs of intellectually disabled persons are best met when the conditions of their everyday life are the same as or as close as possible to, norms and patterns which are valued in the general community." (5, page 5)

Deinstitutionalization has meant that there has been a movement away from large segregated institutions to community living for some people with intellectual disabilities.

In practice in the 1980s this has involved:

- *The rapid expansion and development of regional teams working with people with intellectual disabilities in the community.

- *The development of Community Residential Units managed at a regional level and designed to assist people towards more independent living in the community.

- *A reduction of numbers of people with intellectual disabilities in institutions.

- * The closure of St Nicholas Hospital. In 1984 the first of the large institutions for people with intellectual disabilities was closed. This was particularly significant since the residents at St Nicholas were regarded as severely disabled. These residents were relocated to houses in the community.

There is one clear implication from these changes for workers within the criminal justice system. Now, more people with intellectual disabilities are living in the wider community and are in consequence coming into contact with workers in generic services.

Yet ignorance about the changes remains high outside the field of intellectual disabilities and service structures have not changed to accommodate this group of citizens.

(c) The Focus on Rights of People with Intellectual Disabilities.

The new concern for the rights of people with intellectual disabilities is illustrated by the Guardianship and Administration Board Act 1986 (6) under which the Public Advocate is appointed. Under this Act, the Public Advocate has specific powers to ensure that appropriate services are provided for people with intellectual disability and a general responsibility to ensure that their rights are protected.

In accordance with this Charter the Office of the Public Advocate has been important in investigating alleged offences against people with intellectual disabilities, lobbying service providers to gain more effective provision of services for them and working closely with government and nongovernment agencies to reform existing legal procedures eg work with the police in relation to interviewing procedures. The Public Advocate's work has revealed that people with intellectual disabilities are among the most disadvantaged in our community, in terms of their access to services and that they are also particularly vulnerable to offences committed against them.

2.3 Summing Up

Given the changing attitudes and practices in relation to people with intellectual disabilities, the finding that they were particularly vulnerable to crimes and appeared to have less than equal access to the criminal justice system was a matter of great concern to the Public Advocate.

Therefore the Public Advocate's Office made a submission to the Australian Institute of Criminology to fund a six month study of people who are intellectually disabled as victims of crime. Funding was received and the study commenced in August 1987. While the main focus of the research was on issues in Victoria, it was hoped that the findings would also be relevant to people in other states.

3 Aims of the Research

The researchers aimed to investigate the three key issues identified in previous research (1) relating to people with intellectual disabilities who become victims of crime.

They were:

(a) The nature and extent of crimes against people who are intellectually disabled. The study would provide a starting point for establishing reliable data in relation to this issue.

(b) The degree of acceptance of people with intellectual disabilities as witnesses by courts, police and government officials.

(c) The ease or difficulty of bringing charges where people with intellectual disabilities are involved as victims.

The research explored each of these issues within an action research framework.

4 Management of the Project

The Public Advocate accepted responsibility for the management of the project and employed the equivalent of one full-time researcher to carry out the study.

An Advisory Committee consisting of representatives from key agencies and consumer groups was formed to assist the researchers. It met on a monthly basis during the life of the research.

5 Definition of Key Concepts

Three key concepts were considered crucial by the researchers and the Advisory Committee in developing this research: 'crime', 'victims of crime' and 'intellectual disability'. The frameworks outlined below were adopted by the Advisory Committee and the researchers in the understanding of these concepts.

5.1 Definition of Crime.

Following accepted police and legal practice, crimes were defined as those offences which were listed in the following Victorian Acts: the Crimes Act (7), the Summary Offences Act (8) Vagrancy Act (9), the Police Offences Act (10) and like Acts.

Operationally the following guidelines were used in defining crimes:

(a) It was decided that the crimes listed on Police Crime Reports provided a useful guide for discussion of criminal offences (See Appendix 1).

(b) It was also agreed that crimes should be those which fell within the responsibility of the criminal justice system. This excluded from consideration civil offences such as tenancy or consumer issues. However it was agreed to monitor these as peripheral issues within the context of the current research in order to gain a general impression of their incidence and importance.

5.2 Victims of Crime

Victims of crime have been variously defined in the literature. However the most comprehensive definition is that offered by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (11).

The Advisory Committee adopted this definition in a shortened and slightly amended form as follows:

"(a) Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions which are in violation of criminal laws operative within Member States, including those laws which proscribe criminal abuse of power.

(b) A person may be considered a victim under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim." (11, page 4)

5.3 Intellectual Disability.

A discussion of the conceptual difficulties in defining intellectual disability will be developed in Part 2 of this report.

In order to assist the researchers in defining intellectual disability, the Public Advocate's Office was asked to prepare a paper describing key indicators of intellectual disability (12, and see Appendix 2). This was used as a basis for discussion of intellectual disability throughout the research.

6 Research Philosophy

The philosophy underlying the research was one of action research. This approach was used because it was hoped that the identification of problems encountered by people with intellectual disabilities could be used to develop and implement remedies during the study. It was also hoped that this method of working would encourage participation from the diverse groups involved with people with intellectual disabilities who are victims of crime.

This philosophy meant devising research strategies with such groups, the involvement of people with intellectual disabilities in the implementation of the strategies and a strong educational component in the research.

This research approach also meant that some changes to organizations and procedures were effected during the course of the research. Where possible such changes were monitored and incorporated in the final recommendations.

As part of the educative emphasis of the research and to assist in verification of data, information generated by the research was fed back to relevant groups and organizations. Inevitably this resulted in some alterations to the original research plan and methodology.

7 Problems in Developing Research Strategies.

Early in the research a number of problems were encountered which necessitated some changes to the strategies proposed in the original research submission. These problems are outlined below.

7.1 Lack of Information.

The first major problem confronting the researchers was the lack of information related to the research topic. This has affected the study in the following areas:

(a) Lack of Other Research Material. Literature searches by the Australian Institute of Criminology and the Victorian Law Reform Commission revealed that little has been written on people with intellectual disabilities as victims of crime in Australia and overseas.

(b) Lack of Information on the Nature and Extent of Crime against People who are Intellectually Disabled. In interviews with the Advisory Committee, other agencies working within the criminal justice system and with people with intellectual disabilities it became clear that few agencies keep records of people with intellectual disabilities who had become victims of crime.

(c) Unreported Crimes against People who are Intellectually Disabled. Further, because people with intellectual disabilities may not actually report crimes against them it was difficult to assess the extent of such crimes.

7.2 Access

The second major problem was gaining access to people who are intellectually disabled in the community. This was particularly difficult unless they were linked into particular networks of advocacy or services.

Contact with people who are intellectually disabled and staff in institutions required formal applications through the Office of Intellectual Disability Services. This was obtained but took some time.

8 Research Strategies.

In order to overcome the information and access problems just outlined, the researchers chose the following means of obtaining relevant data.

8.1 Literature Review.

A comprehensive literature review was undertaken and an annotated bibliography of relevant literature was developed. (A copy of this document is available from the Office of the Public Advocate on request.)

8.2 Interviews with Key People

Structured interviews were carried out with 75 representatives from organizations involved in issues relevant to the study. A structured interview schedule was developed for use in these interviews. Each interview lasted between one and a half and two hours. A list of the people interviewed is shown in Appendix 3.

8.3 Meetings with Relevant Groups.

(a) People with Intellectual Disabilities. Four meetings were held to gain data directly from people with intellectual disabilities. Two of these meetings were held with people in the community using advertising through established networks. Approximately 35 people attended each of these meetings. One meeting was held with a self-advocacy group within an institution with fifteen people present. The final meeting was held with an advocacy group at a TAFE college.

(b) Professional Seminars. A number of relevant seminars and conferences were attended in order to hear of the experiences of professionals in the criminal justice system and those who are working with intellectually disabled people.

(c) Meetings with Workers. Meetings were also held with staff at the Public Advocate's Office and at three regional offices of the Office of Intellectual Disability Services.

A meeting with delegates to the Hospital Employees Federation (No 2 Branch) was held to gain union members' views of the issues raised in the research.

Other meetings were held with groups of staff at relevant agencies including Ministry of Consumer Affairs, Sexual Assault Clinics and Director of Public Prosecutions.

8.4 Monitoring

Because no records were kept by any agency about the nature and extent of crime against people with intellectual disabilities, a system of monitoring was used to provide some basic data about the incidence of crime.

Nineteen agencies and organizations were asked to keep records over a three month period of any crimes reported to them by people with intellectual disabilities. (See Appendix 4 for list of agencies).

Representatives from all agencies agreeing to take part in the monitoring process were interviewed and the nature of the study explained to them. A letter indicating the information required by the researchers was forwarded to them with a paper describing indicators for intellectual disability. Because many agencies already had a general recording system in place, separate recording systems were not developed; rather agencies were asked to make changes to existing record keeping to ensure accurate data could be obtained.

Most agencies began the monitoring process in September-October and kept records for three months. (However some agencies were able to supply information on an annual basis.) The monitoring process was followed up each month with a phone call to the agency in order to check that the process was being carried out. In some cases further visits were made to specific agencies to discuss the monitoring process in more detail.

8.5 Case Studies.

Twelve case studies were examined for selective inclusion in the research report. Criteria for selecting case studies were developed and a structured guideline for writing them was drafted (see Appendix 5). Case studies were drawn from organizations involved in monitoring. Ten case studies were selected for final inclusion in the report.

8.6 Working with Institutions

Permission was given by the Office of Intellectual Disability Services to approach three Training Centres. A structured interview schedule was used in discussions with Superintendents/Chief Executive Officers at these Centres. Residents (both current and former) were encouraged to come to workshops held for people with intellectual disabilities and one meeting with residents was held at one of the Training Centres.

A meeting with the Superintendents/Chief Executive Officers of 6 Training Centres was held to discuss the research findings and two meetings were held with parents of people with intellectual disabilities currently living in institutions.

8.7 Surveys

As a result of discussions with the researchers two surveys were carried out during the research by the Hospital Employees Federation and the Federation of Community Legal Centres to seek the views of their members.

(a) Hospital Employees Federation No 2 Branch. A special union newsletter was sent to all members of the union outlining the nature of the research and requesting written information from them. No written submissions were obtained.

(b) The Federation of Community Legal Centres conducted a telephone survey of community legal centres to gain information about offences reported against people with intellectual disabilities and about special services available to them.

8.8 Working with Other Projects

A number of other initiatives both in Victoria and New South Wales provided valuable input to the present study.

(a) Victorian Law Reform Commission

A paper was completed by staff at the Law Reform Commission of Victoria on Rape and Allied Offences: Victims with Impaired Mental Functioning 1988 (13). The staff member involved in this report was a representative on the Advisory Committee.

(b) Consultant on Justice Issues: Office of Intellectual Disability Services

Concurrently with the commencement of this study, a Justice Liaison Officer was appointed by the Office of Intellectual Disability Services. She was a member of the Advisory Committee for this project and the researchers worked closely with her.

(c) Intellectual Disability Rights Service (Redfern Legal Service)

In the absence of records relating to crimes against intellectually disabled people the Intellectual Disability Rights Service provided valuable statistical data for the project. It also acted as a model for advocacy and research.

(d) Final Report on Special Accommodation Houses.

Seven hundred people with intellectual disabilities live in Special Accommodation Houses in Victoria. This report documented the discrimination and abuse to which some of them have been subject. The researchers consulted with the project's executive officer and Public Advocate's Office staff about developing appropriate procedures for residents to have grievances investigated and dealt with.

(e) Victorian Attorney-General's Department

Following discussion with the Director of Public Prosecution, the Public Advocate and the Victorian Law Department, a researcher was appointed by the Attorney General's Department for three months to examine the need for changes to the court system to cater for the needs of people with intellectual disabilities.

This report, Obtaining Evidence from Intellectually Disabled People, (14) was finalized at the same time as the present research.

8.9 Community Consultations

Six two hour seminars were held in country and metropolitan areas of Victoria during February-March 1988. They provided a forum for discussing the research and formulating recommendations. They were also an opportunity for people to provide input into the research results. Auspiced jointly by the Office of the Public Advocate and the Victorian Law Reform Commission the seminars were well advertised and attended with between 20 and 60 people attending each session. Although all seminars were open to anyone interested in the issues, one was specifically targetted at lawyers.

9. Conclusion.

Throughout this research the Advisory Committee and the researchers struggled with the difficulties of a lack of statistical data in relation to crimes against people intellectual disabilities. Efforts to monitor the incidence of such crimes proved to be of limited use. However interviews, case study material, group consultations and work with people with intellectual disabilities directly proved to be effective means of documenting concerns about crime and difficulties with the criminal justice system.

PART 2 THE NATURE AND INCIDENCE OF CRIME AGAINST PEOPLE
WITH INTELLECTUAL DISABILITIES.

This part of the report provides a case study example of the kinds of crimes committed against people with intellectual disabilities. It analyses why people with intellectual disabilities are particularly vulnerable to crimes against them and explores the available evidence on the nature and extent of crime against this group of citizens.

SECTION 1 CASE STUDY 2

M was 18 when she left an institution. She was a young woman with a mild intellectual disability, attractive in appearance and manner and socially very at ease. She was less stigmatized than many of her peers. The institution, though providing her with some basic schooling had not taught her many community living skills. The boys and girls at the institution had separate dormitories and apart from weekly social evenings had little to do with each other away from school.

M was discharged and then spent time living in a number of unsatisfactory circumstances with her family where relationships were strained, with peers who themselves were barely getting by with few skills and little support. Over this period of almost two years M and her family maintained contact with the Office of Intellectual Disability Services. When one of the first Community Residential Units opened M moved in. The facility was designed for such young people to allow them to learn to live independently and then move on. M had difficulty with the staffed setting and bucked the relatively unstructured system. Her two years of "independence" had given her a sense of autonomy and freedom that she wanted to experience fully. She decided to leave almost one year after moving there and returned to her family where relationships were now less strained.

M lost contact with most places that had offered her support. She had been a regular member of a social club, funded by OIDS, which closed. She was involved for a short time with a self-help organization but for the social support rather than political commitment. She moved on.

M's friendships and relationships at this stage were sometimes with other young people with intellectual disabilities and often with young men who picked her up in pubs and parks. The relationships with young men were generally sexual and short-lived. However these transient relationships offered her an identity, for she was desperate to appear normal, attractive and desired. M was free to come and go from her family as she pleased. They were supportive and liberal minded.

M was brutally sexually assaulted, mutilated and murdered at the age of 24. Her assailants were convicted and on appeal from the Crown were sentenced to twenty years jail.

SECTION 2 WHO ARE THE VICTIMS?

"It's difficult to identify people with an intellectual disability. They don't have labels." (Legal Service worker)

"Everyone who sits opposite me at this desk is intellectually disabled. They wouldn't be here otherwise." (Worker in a Government Department)

If cops know we have a disability I feel that they just put you back inside and throw away the key. Being known to have a disability goes against you. (Person with an intellectual disability).

1. Background

These comments illustrate the confusion, lack of knowledge and social myths attached to the concept of intellectual disability. These factors each contribute to the vulnerability of people with intellectual disabilities to crime and make taking action following such crimes extremely difficult.

This section of the report defines intellectual disability, and examines the reasons why people with intellectual disabilities may be particularly vulnerable to crimes committed against them.

2. Defining Intellectual Disability.

Service providers in Australia generally use the definition and classifications of intellectual disability published by the American Association on Mental Deficiency (15). Intellectual disability is defined as:

"a significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." (4, page 19).

IQ tests and assessment of adaptive behavior levels are the principal diagnostic tools associated with this clinical definition. People with an intellectual disability do not form a homogeneous group but differ markedly in their intellectual ability, social skills and capacity to live in the community.

The levels of mental functioning are usually identified by IQ tests as shown below:

Levels	IQ Range
Mild	50-70
Moderate	35-49
Severe	20-34
Profound	0-19

Table 1 shows the percentages of people with varying levels of intellectual disability as identified by the Office of Intellectual Disability Services.

The data presented in Table 1 underestimates the total number of people with intellectual disabilities in Victoria because it is based on people who are registered clients of the Office of Intellectual Disability Services. It is estimated that approximately 40,000 people in Victoria experience some level of intellectual disability.

Table 1 Office of Intellectual Disability Services Degrees of Intellectual Disability % (1985).

Age Group	Mild	Moderate	Severe	Profound
0-5	2.1	1.4	3.6	2.1
6-20	10.5	12.3	14.2	14.6
21-40	54.9	44.7	41.4	57.8
41-60	13.8	14.5	13.7	6.1
60+	3.7	4.1	3.0	1.2
Total %	100.00	100.00	100.00	100.00
No	2,300	3,623	1,376	793

Figures taken from the CSV-OIDS Ten Year Plan for the Redevelopment of Intellectual Disability Services 1987(16).

Table 1 shows that groups with severe and profound disabilities form a minority of the people with intellectual disabilities in our community. Generally these people are readily identified by the Office of Intellectual Disability Services.

People with mild intellectual disability form the largest percentage of people with intellectual disabilities. The underestimation of this group in Table 1 is due to the fact that only an estimated 8% of people with mild intellectual disability are known to the Office of Intellectual Disability Services compared to 85% of profoundly intellectually disabled people. (16).

It should be noted that people within each of these categories also differ markedly from each other in terms of their intellectual and social capacities and skills.

Over the past twenty years the clinical approach embodied in the definition of intellectual disability given above, has been complemented by the social systems approach to intellectual disability (4).

This perspective focusses not on a narrow view of individual pathology or disease but on the environment in which a person functions. A social systems approach draws attention to the consequences of labelling people as different.

For the purposes of discussing intellectual disability with workers in the criminal justice system, behavioral indicators of intellectual disability were used. A paper (see Appendix 2) which identified some external indicators of intellectual disability was prepared for the researchers by the Office of the Public Advocate. These indicators included:

- (a) Level and kind of education.
- (b) Employment status.
- (c) The person's pattern of living which may indicate residence in specialised accommodation or the use of specialist services.
- (d) Use of special services
- (d) Social behaviour
- (e) Income level eg possession of an Invalid Pension card (this indicator was not included in the paper prepared by the Office of the Public Advocate).

3. Why are People with an Intellectual Disability Vulnerable to Crime?

A number of factors associated with the experience of being intellectually disabled in our society makes this group of citizens particularly vulnerable to crimes and also affects their capacity to cope with being a victim.

3.1 Vulnerability because of Disability

Intellectual capacity is valued highly in the Australian community. People who are less able to demonstrate intellectual skills are at risk of being devalued and regarded as second-rate citizens or deviant. (17,18). Deviancy has a price in our society. It can make people more prone to depersonalisation and abuse and less able to assert their rights.

In a society where intellectual ability is among the most highly valued of human characteristics it is inevitable that people with intellectual disabilities will be rejected and wounded, metaphorically, psychologically and sometimes physically. The resulting situation is summed up below:

"Most of us have wounding experiences from time to time but we can compensate more easily and don't lose our status as typical citizens. Devalued people have fewer resources for compensation and by and large have never had a valued status to fall back on. Their wounds are more pervasive, more systematic, more long term and more serious and as a result they live with greater vulnerability." (19, page 3)

3.2 Powerlessness and Vulnerability to Crime

"Retarded adults form a social class who live in chronic poverty, in chronic sub-standard or otherwise inappropriate housing, are chronically un- or under-employed and educated, receive bad medical care. They are also wounded and rejected people, lonely, hurt, stared at, stereotyped, excluded, seen as sick when they are healthy, as children when they are adults and potentially dangerous when they are harmless, as unfortunates who are to be patronized, paternalized and sterilized. The list goes on." (19, page 2).

The consequences of this treatment are that people who are intellectually disabled, like other marginalised groups in our society lack power over resources, relationships, information and decision making. (20) As shown below this kind of powerlessness makes them particularly vulnerable to some kinds of crime and less able to gain redress once they are victims.

(a) Lack of Power over Resources

The majority of people interviewed in this study were living in poverty. Many were unemployed, were working for low wages in sheltered workshops or factories or were in institutions. In the community most were living in costly and insecure housing in the private rental market. Most had little support from services or the community.

There is evidence to suggest that this lack of power over resources may render people with intellectual disabilities particularly vulnerable to some kinds of crime.

For example in the 1975 Australian Bureau of Statistics crime victims survey "unemployed persons showed significantly higher rates of victimisation from assault, robbery, break and enter and theft than did respondents who were members of the active workforce." (21, page 73).

Lack of power over resources may also limit the person's capacity to deal effectively with the situation once they are a victim of crime.

For example in this study the researchers found that people with intellectual disabilities had very limited access to legal advice. In part this may have been due to lack of information, but it may also have been due to lack of financial resources.

(b) Lack of Power over Relationships

Because of the isolation of intellectually disabled people both within the community and in institutions they often lack the community supports and friendship networks which other people can develop. Further, relationships between intellectually disabled people and people working with them may well reinforce the sense of powerlessness. (22).

This sense of isolation is not just a characteristic attributed to people with intellectual disabilities. In a recent survey carried out by the Office of Intellectual Disability Services (23) 35 people who were intellectually disabled were asked why they did not speak out more about things they did not like in their lives, the largest response (60%) to this question was that there were not enough people to back them up. 54% said that at least sometimes they were afraid of being punished and 54% said they felt scared or nervous.

This kind of powerlessness over relationships leads people to be more vulnerable to threats, violence or sexual harassment and less able to take action about it. Some of the incidents related by intellectually disabled people at our workshops supported this view.

"At X... (an institution) we had no rights. Only staff had. When we went to the superintendent to complain nothing was done. We should have the right to complain about our mistreatment. People in institutions have horrible experiences and no way of getting people to listen or do anything." (Person with an intellectual disability)

Many people with intellectual disabilities lack power over their own bodies or sexuality. They have not been given the benefit of sexual autonomy or choice and are often uncertain about their rights to say no to sexual advances.

"The taxi driver touched me (sexually). I didn't know if I could say no or not. He was much older than me." (Person with an intellectual disability)

For some, sexual attractiveness or acceptance is an important part of being 'seen to be like everyone else (See Case Study 2). Others have had their sexuality denied. They have had little opportunity to explore and develop sexual autonomy. Because of this, sexual experiences may often be clandestine or lacking in dignity and respect.

The lack of power over relationships also means that people with intellectual disabilities are more compliant as witnesses (unless given appropriate support), and afraid to ask questions.

(c) Lack of Power over Information.

People with an intellectual disability have little access to information that would enable them either to identify some activities as possible crimes against them or to take action following such crimes.

For example an examination of materials produced by Government Departments and Legal Centres revealed that the most frequent form used was written brochures, often using language too complex for people with an intellectual disability to read even if they were literate.

Further there was an absence of programmes to assist people to find out about their rights or to make them aware of possible offences against them. The situation revealed by this research was similar to that found in institutions in NSW where:

"Most people...have no idea how to complain about treatment while in the institution. And there is no legal onus on institutions to distribute information to patients about watchdog schemes like Official Visitors." (24)

Lack of knowledge of rights and of crimes common in the community left people vulnerable to crimes of fraud, confidence tricks or to 'consumer rip-offs'.

Representatives from the Ministry of Consumer Affairs stated that some companies target groups "without knowledge of consumer rights and engage them in the purchase of goods at high interest rates."

One person who was intellectually disabled and on an invalid pension was sold goods worth \$100.00 by a door-to-door salesperson for \$4000.00. The salesperson kindly arranged finance payments through a large finance company. The payments were \$200.00 per month. (Worker at Community Residential Unit)

Such lack of information and knowledge also meant that in some cases the victim did not take action following an offence because of lack of information about available agencies.

For example one person did not take action following an assault because she was unable to find the police phone number in the telephone book.

(d) Lack of Power over Decision Making.

Because many people with intellectual disabilities lack power over resources, relationships and information they have limited decision making power over their own lives.

4 Societal Myths about Intellectual Disability

Some further issues which affected the vulnerability of intellectually disabled people to crime are located in the myths about intellectual disability held by people in the community. A summary of those which became apparent during this study is reported below.

4.1 Intellectual Disability is the same as Psychiatric Illness.

As Hayes and Hayes (25) comment the distinction between intellectual disability and psychiatric illness is "seldom made, in the law, or in the court." (page 168).

For many people the concepts of intellectual disability and psychiatric illness are the same. This confusion has been exacerbated by the fact that historically both groups received common services. Further, in law the two groups of people are not distinguished from each other (13). More recently the Victorian Intellectually Disabled Persons Services Act (5) and the Victorian Mental Health Act (26) make the distinction clear and require different services and approaches to clients.

Diagnostically this distinction is clear. Psychiatric illness has nothing to do with intelligence, it is a medical condition which is often treatable, and it may occur at any time in the person's life cycle. In contrast intellectual disability refers to sub-average intellectual functioning, it is a condition which is not curable, it usually occurs during the period of development or at birth and is permanent but can be compensated for through the development of the individual's full potential. Intellectual disability is developmental in nature; people affected by this disability are capable of learning about new situations and adapting to them.

When confronted with individual behaviour however it was clear that many workers in generic agencies found the distinction difficult to make.

This confusion was shown in the present study when representatives from agencies were asked to monitor reported crimes. They frequently referred the researchers inappropriately to cases concerning psychiatrically ill people.

Such confusion may lead to incorrect assumptions about the credibility of evidence of people who are victims of crime. If people are perceived as psychiatrically ill it may be assumed that their perception of reality is distorted and they may not be telling the truth. People with intellectual disabilities may thus be doubly disadvantaged if they are perceived to be psychiatrically ill by the police or courts.

For example police representatives informed the researchers that they sometimes did not proceed with a reported offence if they believed the person could not stand up to questioning in court. This disregards the fact that intellectual disability is developmental and many such people may perform well in court once they are given a chance to understand the processes.

4.2 Most Intellectually Disabled People are in Institutions

Some representatives from agencies interviewed in the course of this study expressed surprise that people with an intellectual disability may be at risk of offences against them or may be living in the community. This seemed to reflect a common community view that intellectually disabled people are severely disabled and are primarily residents in institutions.

The figures in Table 2 tell a different story. Of the 12,450 registered clients of OIDS in 1986 only 22.4% were to be found in institutions (training centres), while almost 78% were living in the community.

Table 2 Frequencies of People Registered with Office of Intellectual Disability Services in Institutions or the Community 1986.

Resident or Registered with Training Centres	Registered with Regional Teams	Registered with OIDS but not receiving Services
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2,800

7,700

1,950

(Figures taken from CSV-OIDS Ten Year Plan for the Redevelopment of Intellectual Disability Services 1987 (16))

The major consequence of this myth is that few of the generic agencies in the community interviewed in this research catered for the needs of this particular group of people in the preparation of information or in the way in which they dealt with their clients.

For example one government department which received many inquiries from the public had a policy of attempting to end each phone call at the end of three minutes. While this was not strictly adhered to it may well have provided unnecessary barriers for people finding it difficult to communicate their difficulty succinctly ..or at all.

4.3 Stereotypes about the Characteristics of People with Intellectual Disabilities.

Because of lack of knowledge about intellectual disability in the community many people rely on stereotypical views of people with such a disability. There is a tendency to categorize them as one homogeneous group and to identify them by one or two overgeneralized characteristics.

The comments below made about people with intellectual disabilities during this research illustrate some of the overgeneralisations and stereotypes common in the community.

"They're (people with intellectual disabilities) too good for this world",

"They will lie about things that have happened to them,"

"They're promiscuous."

Each of these stereotypes leads to a particular way of behaving towards intellectually disabled people which may both increase their vulnerability to some kinds of crime and prevent action being taken when such crimes occur.

5. Implications

A number of implications can be drawn from the material discussed in this section.

5.1 There is an urgent need for better information to be provided to generic agencies to increase their understanding of intellectual disability.

5.2 It is important that those working with people with intellectual disabilities within the criminal justice system understand that the problems which such people have in taking action on crimes relate both to their disability and to the social and economic environment in which they live. They are doubly disadvantaged in our society.

5.3 It is important that agencies within the criminal justice system know of and understand the role of groups which can advocate for and support people with intellectual disabilities.

5.4 The difficulties which people with intellectual disabilities experience are often common to other marginalised groups in our society for whom current provisions and services are inadequate eg ethnic groups, people who are economically disadvantaged, etc.

5.5 As the process of deinstitutionalization proceeds in Victoria more people with intellectual disabilities will live in the community. Many of these people will have spent a large part of their lives in institutions and may not have any knowledge of their rights or of the ways in which services or systems operate in the wider community. It is important that accessible rights programmes be available to them and that agencies with which they come in contact be aware of their difficulties.

6. Conclusion

This section of the report has set the scene for examining the incidence and nature of crimes against people with intellectually disabled people. This group of citizens are disadvantaged. However a case can be made that at least in relation to crimes against them they are equally disadvantaged by the environments in which they live and by social attitudes towards them.

SECTION 3 THE NATURE AND INCIDENCE OF CRIME AGAINST PEOPLE WITH INTELLECTUAL DISABILITIES

" Drop incidence from this research - it can't be determined."
(Legal Bureaucrat)

"There are no records kept of crimes against intellectually disabled people." (Representatives from two Government Departments)

"The issues of sexual assault, domestic violence and physical abuse against people with an intellectual disability is largely unexplored in Australia." (27, page 19)

1. Background.

The comments above indicate the problems involved in assessing the nature and incidence of crimes against people with intellectual disabilities. Because of these difficulties the Advisory Committee decided to adopt a variety of research strategies to explore the nature and incidence of crime against people with intellectual disabilities. The major approach used was an extensive consultation within the intellectual disability and criminal justice fields employing a structured interview schedule. In addition six consultative seminars and four workshops with people with intellectual disabilities were held. A number of case studies were subjected to analysis.

The literature searches conducted through the Victorian Law Reform Commission and the Australian Institute of Criminology yielded little pertinent comparative data and there were no relevant statistics in relation to this issue in the OIDS Ten Year Plan (16). Therefore it was decided that monitoring data would be collected from relevant agencies during the life of the project.

This section addresses a number of issues relating to the nature and incidence of crime from the data obtained during this research and explores their implications.

2. Difficulties in Identifying Crimes Against People with Intellectual Disabilities.

One of the major difficulties encountered in this research was the paucity of obtainable data in relation to the nature and extent of crimes against people with intellectual disabilities. Some of the reasons for this became apparent during the research process.

2.1 Confusion about the Nature of Crime Against Intellectually Disabled People.

Both the literature (28,29) and interviews in this research revealed 'grey areas' where workers with people with intellectual disabilities were unclear about when a crime had been committed. There was also evidence that some workers were oblivious of the fact that they had committed an offence against their client.

For example there was confusion amongst some staff in Training Centres and in Community Residential Units about when 'behavior management' became an alleged offence of assault. Lack of clarity about this issue could leave people with an intellectual disability vulnerable to offences committed in the name of 'control of challenging behavior'.

2.2 Ethical Dilemmas

Sometimes workers also found themselves in a dilemma when an alleged offence was committed by someone with an intellectual disability against someone else with a disability.

For example one community based committee was faced with the dilemma of whether or not to report an alleged sexual assault of a client because they were concerned that her best interests might not be served by going through the court system and because they felt that the alleged defendant was not aware of the nature of his act.

2.3 Crime as the Norm in Some Environments.

In some situations the environment in which people lived provided a constant backdrop of offences against them.

For example at one institution residents had no personal and secure place in which to place their possessions. The frequency of theft led them to carry their possessions with them in plastic bags around the institution. While this was deplored by staff, little action was being taken to rectify the situation. Such thefts were not seen as a high priority because of other more important problems and because they were in staff eyes, often petty or trivial. (At the time of our study, a residents' self-advocacy group was requesting keys to residents' lockers to ensure some privacy and security.)

A discussion with a group of residents involved in self advocacy at one training centre resulted in a series of complaints about violence (punching, hitting) and harassment of other residents.

2.4 Lack of Information about Crimes Against People with Intellectual Disabilities.

The attempt to gain statistical information about the level of crimes against people with intellectual disabilities revealed that the information systems in most government departments are poor and usually inferior to those which exist in non-government agencies.

For example sexual assault clinics kept clear and comprehensive records. However in other agencies the researchers often depended on the enthusiastic support of individual practitioners to obtain relevant information. Consequently they were often forced to rely on the recall by workers of their own cases rather than any organizationally based system.

2.5 Difficulties in Detecting when Offences Occur.

The problem of non-reporting of crimes by people with intellectual disabilities proved to be so widespread that it is dealt with separately in Part 3 of this report. However some workers also indicated problems in following up alleged offences against people with intellectual disabilities when they did occur. This was a particular problem when victims were living with family or guardians.

For example one worker was told of a woman who arrived at a sheltered workshop with severe bruising. When the worker visited the woman's home to discuss the issue she "had the door slammed" in her face. She felt she could take no further action on the matter.

It was particularly difficult to identify cases of fraud or theft from people with intellectual disabilities when they occurred within a family or institutional setting.

3. The Extent of Crime Against People with Intellectual Disabilities.

Because of the difficulties encountered in gaining clear information about the extent of crime against people with intellectual disabilities it was not possible in this research to develop objective figures on this issue. However the data which was collected suggests that they may be more vulnerable than other citizens to some forms of crime both because of their disability and because of the social situations in which they find themselves.

3.1 Crime in the General Community: The Vulnerability of People with Intellectual Disabilities.

Section 2 of this part of the report indicated that people with intellectual disabilities may be particularly vulnerable to crimes committed against them.

Data obtained from the Australian Bureau of Statistics Survey of Victims of Crime (30) provided some useful support for this view.

The following issues were raised by the data from the ABS survey.

(a) Victimization rates of unemployed people were consistently higher than the victimisation rates of the employed.

(b) Victimization rate for the never married and separated is three times as high as the rate for the married and four times as high as the rate for the widowed.

(c) The assault rate for never married males is two and a half times, and for never married females, nearly four times as high as the rates for the married.

(d) There is a clear relationship between particular types of offences and kinds of accommodation. High rates of victimisation occur for residents of all dwelling types but separate houses. The highest rate (1 in 5) is for persons in the category which includes, live in staff of boarding schools and institutions and residents of caravan parks, aboriginal settlements, boarding houses, hotels, hostels and flop houses. (It should be noted that people with intellectual disabilities in institutions were not included in the survey.)

Although the ABS Survey did not include people with intellectual disabilities within its sample, the groups which it named as reporting the highest incidence of victimisation shared many social characteristics with them.

3.2 Reported Crimes to Agencies.

The data obtained in this study from monitoring reported crimes to a range of different agencies (See Appendix 4) revealed that the total number of reported offences was relatively small. However for the reasons discussed above (see Section 2) and in Part 3 these figures should not be taken as indicative of a low crime rate against people with intellectual disabilities. In spite of the difficulties of gaining statistical evidence the figures gained in this study do reveal some trends of concern.

(a) The figures in relation to sexual offences are high in comparison with those for other reported offences considered in this research. This is particularly significant given the low reporting rates for these offences within the general population (21).

The conclusion that people with intellectual disabilities are particularly vulnerable to sexual offences was supported by interviews with workers and people with intellectual disabilities.

(b) The range and number of crimes reported to the Public Advocate's Office revealed the importance of agencies such as this with a clear role in relation to people with intellectual disabilities. That there is a need for such agencies was supported by information obtained from the Intellectual Disability Rights Services in New South Wales.

The Intellectual Disability Rights Service was established to provide legal advice and counselling and to research and advocate for the rights of people with intellectual disabilities.

For example in the year 1986-7 447 clients came to the service with 497 problems. This figure is far higher than any reported for Victoria and seems to reflect the importance of a legal agency specifically dealing with the rights of people with intellectual disabilities. Approximately 14% of these problems concerned criminal matters. (However it is not possible to separate victims from offenders in the figures provided by the agency.) (27)

Thus while the extent of crime against people with intellectual disabilities is impossible to establish clearly, the data gained during this study was sufficient to indicate concern about this group's vulnerability in comparison to the rest of the community.

3.3 Offences in Institutions.

Discussion with superintendents at three institutions revealed that rates of crime appeared to vary across institutions in a twelve month period, (four in one institution, one in another and nine (reported to police) in the third). These figures are an underestimation of the numbers of offences occurring in such institutions for the following reasons.

(a) There was evidence from workers that many crimes were not reported officially in institutions both because of peer pressure from other staff and because of poor reporting procedures (See Part 3).

(b) Many of the people in institutions are severely disabled and may be unaware that offences are committed against them.

(c) There was some degree of uncertainty about when either a theft or 'behavior problem' was serious enough to be regarded as an offence.

(d) Both workers and people with intellectual disabilities expressed concern about the incidence of offences (often undetected) committed in institutions.

(e) The Intellectual Disability Rights Service (27) concluded in its report that:

" The Service's experience .. emphasises the incompatibility of rights and institutions. Institutions seem almost inevitably to have blanket rules and routines; these are incompatible with individual rights such as individual rights to privacy and self-determination. Also where people are separated from society into institutions there is a tendency for some staff to regard the people as lesser people with lesser rights. This leads to lack of respect in many cases, and flagrant abuses in some." (page 11)

There is no reason to suggest that a different conclusion can be reached with regard to Victorian institutions.

4 The Nature of Offences against People with Intellectual Disabilities.

While it proved difficult to gain a picture of the extent of crimes against people with intellectual disabilities the research revealed a wide range of crimes were committed against them. Many of the reported crimes do not differ in nature from those experienced by other members of the community. However there was some evidence to suggest (supported by the monitoring data) that people with intellectual disabilities were particularly vulnerable to threats, to sexual offences and to physical assault.

4.1 Sexual and Physical Assault.

The monitoring data revealed higher levels of reported sexual assault than any other offence against people with intellectual disabilities (See Appendix 4). These data were supported by the views of workers interviewed during the research as the following comments illustrate:

"Intellectually disabled people are particularly vulnerable to sexual offences." (Police)

"Current intellectual disability cases include: physical assault within families, physical and sexual abuse within institutions, discrimination eg people removed from sheltered workshops without redress. (Advocate)

"Mostly the crimes reported to us are sexual assault and abuse." (OIDS Worker)

There was some reason to believe that the level of such offences is higher than that reported to agencies both because of the general trend in the community in relation to non-reporting of sexual offences (21) and because:

"The sexually abused people often don't feel victims because of low self-esteem. (OIDS Worker)

Discussions with people with intellectual disabilities confirmed a picture of widespread (and sometimes repeated) sexual exploitation and abuse.

Such offences did not seem to be restricted to either community or institutional settings but were a risk experienced by people with intellectual disabilities wherever they lived. This view was supported by findings reported by the Intellectual Disability Rights Service in New South Wales (27).

While only 4.43% of the total number of cases concerned sexual harassment the IDRS workers commented that "the service's advice and case work indicates that sexual assault of people with an intellectual disability is a major problem area." (27, page 17). They noted with particular concern attacks on people with an intellectual disability by disability workers, allegations of sexual assault by taxi drivers, family members and sexual assault in general community settings.

The focus on this kind of crime against people with intellectual disabilities throughout the research probably reflected the prevailing community attitudes to such people. They were seen as exploitable by some people in the community and in need of protective care by others.

4.2 Other Offences

It was difficult to obtain direct data about issues such as fraud or theft. However incidents reported by people with intellectual disabilities in workshops suggested that such offences were relatively common.

For example at the first workshop the following kinds of crime were reported by participants as happening to them in the community: theft (6 reports), robbery with assault (2 reports), incest (1 report), sexual harassment (2 reports), physical assault, (4 reports).

The particular vulnerability of people with disabilities to offences such as theft were demonstrated in the following report at one of the workshops.

I got my pension; so it was a Thursday. I went to the pub in - to have some drinks. Joe (a friend) said I shouldn't take my money with me so I slid it down...you know like this inside my sock. There were some people at the pub, a man and a woman. They bought me a drink. Then they said it was my turn. The man pushed me; like this. The bar-man said it was closing time. They said 'come with us and have a few more drinks.' I went outside with them and they pushed me into a taxi. I don't know where we went; it was dark. When we got to their house; there was a huge dog. They set it on me. I was scared and tried to run away. They chased me and took my money and hit me. I didn't know where I was. I walked home. It took hours. (Person with Intellectual Disability)

The researchers did not obtain direct evidence of cases of fraud against people with intellectual disabilities but were told of such cases by workers.

For example one family took their children out of an institution when they were 21. They got their savings from them and then sent them back to an institution. (Worker with People with Intellectual Disabilities)

4.3 Offences in Institutions

The crimes reported by those people who were living in institutions or who had left them were graphic in nature and suggested the powerlessness of residents to take action.

Some examples of reported crimes in institutions are shown below:

"Institutions took my rights away. They punished me by putting me to bed during the day, not giving me any breakfast, kicking me up the bum and hit me across the head." (Person with an intellectual disability)

"At X... staff tried to choke me and tear my arm out. Other people also assaulted. We didn't tell anyone about it. Another person was bashed and can't talk now. That staff person was dismissed." (Person with an intellectual disability)

One of the advocates bought a resident a new dress so she could go out. The next time the advocate visited the dress had disappeared. After a lot of argument it was returned: worn! (Citizens Advocate)

5 Who were the Victims in this Study?

As noted in Part 1 of this report, one of the major problems in the research was the difficulty in obtaining access to people with intellectual disabilities directly. The researchers relied on community advocacy networks to contact people in the community. This probably led to a sample of victims who were more street-wise than many other people with intellectual disabilities and may well not have included those people who were better off financially. Certainly most of the people with whom the researchers had contact either directly or through workers were on low incomes or pensions. This may explain the lesser emphasis placed on offences such as theft or fraud.

The researchers found that victims of crime who were intellectually disabled were found in all situations. Institutions were not safe refuges; people living in the wider community were vulnerable to offences against them and so were some people who lived with their families.

It is the view of the researchers that the vulnerability of this group of citizens to offences against them reflects both the social consequences of their disability and prevailing community attitudes towards them (See Part 2 Section 1).

6. Conclusion

People with intellectual disabilities in our community are disadvantaged in a number of different ways: by their disability, by the social and economic environments in which they live and by community attitudes towards them. These factors make them particularly vulnerable to offences against their persons. The evidence provided in this study indicates that the perceived level of crime against intellectually disabled people is a matter of concern, particularly since it focusses on the more serious offences of physical and sexual assault. However the statistical data which would provide a more detailed picture of the nature and incidence of crime against them is non existent or not easily obtained.

PART 3 TO REPORT THE CRIME....OR NOT?

One of the major problems identified in this research was that of non reporting of crime. This part of the report examines some of the reasons for the lack of formal complaints being made by people with an intellectual disability.

It reveals that the reasons for non-reporting lie both with the victims and with the workers with whom they are in contact. A further issue of real concern was the lack of clear reporting procedures in both institutions and Community Residential Units.

SECTION 1 CASE STUDY 3

This case study is taken from a reported case in The Age, Saturday 21 May 1988.

A man who threatened an intellectually disabled newspaper seller to the point where the victim tried to commit suicide was sentenced yesterday to three year's jail.

In the County Court Judge Murdoch said the actions of 20 year old Thomas James Ratcliffe were contemptible. He said Ratcliffe began threatening Noel Martin after Mr Martin saw Ratcliffe stealing a car and identified him to police.

Ratcliffe, unemployed of Glenroy, pleaded guilty to blackmailing Mr Martin between December 1986 and June 1987 and to a count of blackmail on 22 June 1987. Judge Murdoch set his minimum time in jail at 18 months.

The judge said: "You showed no compassion for a mentally retarded youth who had done no more than his duty as a citizen." He said Ratcliffe found out that Mr Martin had identified him to police and made it his "business to find out his address". He then "bullied and terrified" him with his threats.

Ratcliffe went to Mr Martin's home and told Mr Martin that he blamed him for the \$1100 fine he received for stealing the car, demanded money from him and threatened to bash him if he did not pay. Thereafter Ratcliffe went to Mr Martin's home frequently and collected \$20 a week from him.

The judge said Mr Martin was terrified of Ratcliffe and tried to sell more magazines and newspapers from his kiosk outside Glenroy railway station. For more than six months he feared to tell police about the threats.

Judge Murdoch said that in early June 1987, Mr Martin became so depressed by the threats that he tried to commit suicide by throwing himself under a train at Flinders Street Station, but he was stopped by railway staff.

On 22 June when Ratcliffe approached Mr Martin at his kiosk and demanded the day's takings, police arrested him.

SECTION 2 PROBLEMS IN REPORTING CRIMES

"Intellectually disabled people are not a homogeneous group. At one end of the spectrum are people who should be able to make a decision about whether they want to take legal action about crimes against them. At the other end, we must find ways of making decisions about this kind of thing as their advocate." (Psychiatrist)

"It's difficult to report things when people do not believe you. People do not believe people who have suffered brain damage." (Person with an intellectual disability).

Interviews, consultations and workshops carried out in this research indicated that there was good reason to believe that many crimes against intellectually disabled people go unreported or are not acted upon.

The comments above indicate the belief which was widespread among people with intellectual disabilities that they are powerless when a crime is committed against them. This was verified by workers in intellectual disability services and in the criminal justice system.

This section of the report discusses the reasons why non-reporting of crime appears to be so prevalent. The main reasons for non-reporting related to the nature of the crimes against people with intellectual disabilities, the characteristics of the victims and the reception which reports of crime received from staff or workers with whom they were in contact.

1. Characteristics of the Crimes

As indicated in Part 2 of this report, evidence was presented to suggest that two of the major kinds of crime against people with intellectual disabilities were sexual assault and physical assault. In the general community such crimes are the least reported; with the police being unaware of 71.6% of sexual offences and 66.4% of assaults (30). There is no reason to believe that people with intellectual disabilities would be more likely than general community members to report such crimes.

2. Characteristics of the Victims.

This study revealed that people with intellectual disabilities failed to report offences against them for a range of different reasons. Some of these were directly related to their disabilities and others were a result of the social consequences of being disabled.

2.1 Lack of Knowledge that an Offence had been Committed.

In some instances people did not report crimes because either they did not know that a crime had been committed or were uncertain about it. This uncertainty was particularly clear in relation to alleged sexual assaults and appeared to be due to lack of information about the nature of such offences and lack of knowledge of rights.

For example a young woman living at home and attending an Adult Unit was suspected by staff of having experienced sexual interference. They arranged sexual education for her which she attended for some time. A General Service Plan was formulated for her which included a range of accommodation options. Not long after, she experienced a significant abuse which she brought to the attention of staff. She requested alternative accommodation which was immediately found.

Sexual offences were not the only ones in which peoples' ignorance and lack of information were exploited. Such exploitation also occurred in relation to money and possessions.

For example one man in a boarding house was persuaded by his landlady to provide money to her in order to buy a car for him. As he was unable to drive and had no possibility of gaining a driving licence his landlady made sole use of the V8 which was purchased with his money. The landlady finally disappeared to another state: with the car!

2.2 Fear of Consequences.

Some people were found to be afraid of the consequences of reporting offences against them. When such offences finally surfaced it was because the victim found him/herself in a safe and secure environment.

A young woman boarding privately was sexually assaulted, physically abused and tortured. She did not report the offences until she had left this accommodation for fear of the consequences.

2.3 Lack of Knowledge about Reporting Offences

Both workers and people with intellectual disabilities reported instances where crimes had remained unreported because of a lack of knowledge of services or procedures. In part this was because information about such services was inaccessible to people with intellectual disabilities.

For example after an attack on the street, one woman failed to report the offence because she could not read the telephone book to ring the police.

While this lack of information was widespread it was particularly pronounced when people discussed incidents which had occurred in institutions.

For example: "I told the charge nurse, social worker and doctor. I felt after I told them that they treated me as though I was nothing. After a month, the matter was brought up again. It was too late. They wanted me to identify the person in a line. The person denied it. The people in the line saw me. If this happens again I know who to see about it to take legal action." (Person with Intellectual Disability who was harassed sexually by a man in an institution.)

2.4 Fear of Authority and of the Police.

Some people with intellectual disabilities expressed anxiety about reporting crimes to the police or to other relevant authorities. In some cases this anxiety was due to previous bad experiences or of repercussions which had followed such reports. Sometimes it was a generalised fear borne out of repeated experiences of powerlessness in relation to authority.

"I think they're scared of us; really nervous. We try to be nice and reassuring." (Police Officer)

"People are frightened to go to the police, because you only go when you're in trouble (with the law)." (Person with intellectual disability.)

"If it (alleged offence at training centre) happened now I'd go to the police even though I feel a bit scared of them too." (Person with an intellectual disability)

"I feel that because I've been in a training centre that I'm known and considered suspect by the cops. I've been stopped and asked about things because I'm a bit different." (Person with an intellectual disability.)

2.5 The Experience of Being a Victim.

For anyone, being a victim of crime is traumatic. Research on this experience (31,32) indicates that crime victims may respond in different ways, some of which may prevent reporting of crimes to the appropriate authorities. Such reactions are particularly pronounced in crimes against the person to which intellectually disabled people are particularly vulnerable.

"The actual victims of real person crime often suffer grievous and painful injuries that are not physical. They may lose their capacity to trust people, for example; they may be overwhelmed by guilt and shame; their relations with their loved ones may be disrupted." (31 page 7).

3. The Reactions of People to Whom the Crime is First Reported

While people with intellectual disabilities indicated reservations about reporting crimes against them to the police, many people spoke of social workers, other support workers or family as being their primary supports and only with their assistance were other agencies contacted. Comments at workshops for people with intellectual disabilities included:

"I told my auntie."

"I told a friend who contacted the police."

"I told the worker who took me to police."

Lack of support from workers generally meant that matters were taken no further.

Responses from workers with people with intellectual disabilities varied from direct action about the crime, advice on where to go to seek help to doing nothing. There was considerable evidence provided by people with intellectual disabilities to suggest that support workers at times discouraged reporting of crimes.

"I told the care worker, he did nothing; the housing worker told him off and then he did something."

"I told the staff who said ignore it."

"I told my supervisor and she won't do nothing"

Evidence from research on the experiences of offenders who are intellectually disabled (1) suggested that welfare workers are not enthusiastic about reporting offences to the police. The present study found that a similar situation existed when people with intellectual disabilities were involved in crime as victims. The reasons for reluctance of some workers to assist victims to take action became clear from the consultations and interviews with workers. These are briefly outlined below.

3.1 Difficulty in Deciding that a Crime Has Occurred.

Workers had little training to assist them in deciding whether or not a crime had occurred or what they should do about it when one did. Discussions with delegates to the Hospital Employees Federation revealed that no staff were given a statement of their duties in relation to alleged crimes against their clients. Sometimes the issues were further complicated when the alleged offender was also intellectually disabled.

"It's hard to sort out fact from fantasy." (Office of Intellectual Disability Services (OIDS) worker)

In one case of possible sexual assault at an institution the man had a high level of functioning, the woman was severely disabled. The question for the worker was: "Is this a crime? Who decides?"

A further case was described where people with intellectual disabilities were induced to accuse a staff member. "Authority figures are vulnerable to complaints against them". (Worker in an Institution).

Given these dilemmas it is hardly surprizing that some reports of alleged crimes get no further than the first support worker who decides on his/her discretion whether or not a crime has been committed.

3.2 Working Conditions of Staff

A major problem which was raised by representatives of all support agencies related to the lack of training and experience of many workers. A report by the Hospital Employees Federation indicated that in April 1987 there were approximately 1800 staff eligible for and awaiting Developmental Disabilities Certificate training (a basic training programme for staff in regional teams and training centres). This lack of training was a problem when a crisis occurred.

"Staff in Community Residential Units just aren't trained to deal with crises." (Parent of Person with Intellectual Disability)

Further, interviews with training centre staff indicated that ten hour shifts and low ratios of staff to residents were common.

"At night the ratio is 1 staff to 20 residents." (Parent)

"At our institution at night there are 23 staff with over 400 residents. Only three of them are trained." (Worker at Institution)

"With ten straight hour shifts at a time, it's hardly surprising staff get short in the grain towards the end of the day." (Worker at Institution.)

Working conditions which put stress and pressure on staff and training which does not include issues such as crisis management lead to "low morale" and lessen the probability of staff taking action following the report of a crime.

A number of workers also emphasised the importance of training Community Visitors and Citizens Advocates to identify and deal with offences against people with intellectual disabilities.

"Community visitors need better training about crimes against intellectually disabled people." (Community Visitor).

3.3 Peer Loyalty.

In situations where offences were alleged against other staff members it became clear that staff to whom such crimes were reported were confronted by a dilemma of divided loyalty and possible fear of repercussions.

Comments included:

"Staff tend to see situation as 'them' and 'us'. (Parent)

"There's a Ned Kelly syndrome. You don't dob in your mates." (Psychiatrist)

Some instances were reported of staff who had taken action and were consequently sent to Coventry or persecuted by other staff members.

3.4 Bad Experiences in the Past

Some workers reported experiences which had been devastating for the victim when a case was taken through the criminal justice system. This kind of experience may lead them to seek other means of taking action or to discourage future victims from officially reporting crimes.

For example "The case went on for about a year. The case wouldn't have gone to trial if I hadn't been there. The witness went through hell in court. I ask myself now: was it worth it?" (Worker)

Any one of these reasons may be sufficient to prevent a worker from taking action about a crime against them. It seemed that often more than one of these factors was operating in any one case. Further the problems facing workers were exacerbated by the lack of clear reporting procedures to assist them in making decisions.

4 Lack of Reporting Procedures.

Currently there are no formal accepted reporting procedures established by the Office of Intellectual Disability Services for its facilities whether they be community based or institutions. The lack of formalized guidelines was an issue of great concern to all groups with whom the researchers talked during interviews and consultations.

"There have been no clear reporting procedures discussed or mentioned. You use your own judgement but you're not required to report anything. You make a decision. You must consider each case on its merits." (OIDS worker)

"We don't have guidelines for reporting crimes. Can the Public Advocate provide them?" (Parent)

"There are no guidelines for us about this kind of issue" (OIDS worker)

"There is nowhere to go and no-one to refer to about violence perpetrated by staff or clients." (Parent)

In fact the researchers found that a plethora of provisional guidelines existed.

- (a) Health Department Guidelines for Managers on Disciplinary Process 1987 Discussion Document Only
- (b) Draft Circular Instruction No- Incident Reporting System (undated)
- (c) Policy Principles: People with an Intellectual Disability in Contact with the Criminal Justice System. Draft Only Undated.
- (d) Caloola Centre Draft Procedural Document Level A Incidents

With the exception of (d) all the above documents were draft. In relation to victims they all appeared to require further work. For example in the draft document (c) above the situation of people with intellectual disabilities who were victims was not addressed at all.

The documents all appeared to focus on who should be informed of incidents and any possible political and industrial consequences. There is less emphasis on classification of the incident, the rights and responsibilities of staff and clients and a standard explicit framework for investigating incidents.

The consequences of the lack of clear guidelines are that managers are forced to deal with incidents in their facilities and regions on the basis of discretion or procedures which they have individually adopted. Head Office involvement has tended to be ad hoc and reactive.

The results of this were revealed in discussions with staff. They included:

- (a) Uncertainty at regional level about the role of Directors and Co-ordinators in assessing, investigating and reporting incidents.
- (b) Diversity of views about what offences should be handled internally and which should be reported to the police.
- (c) There was confusion for staff in at least some training centres as to whom they should report an alleged offence. Discussions with union delegates revealed that to their knowledge this was not discussed as part of staff orientation nor was it covered in inservice training.
- (d) Currently there is no external process for investigating alleged offences within an OIDS facility. Rather it is the responsibility of management to do so.

(e) There was lack of certainty about the conditions under which an offence should be reported by workers directly to the police and who should take responsibility for this decision. Some workers discussed the frustration of reporting incidents to higher authorities and then seeing no action result.

(f) There was little evidence to suggest a legal or moral obligation on the part of OIDS facilities to actively promote among OIDS clients knowledge of their rights. One training centre had displayed phone numbers for the Public Advocate's Office and staff had been instructed to assist people if they requested outside assistance from an agency.

(g) The status of the draft documents was a source of confusion among workers. Some workers did not know of their existence, while others thought they were formally adopted.

Following 'Violence at Caloola', the Public Advocate's recent report to the Minister for Community Services (33), senior OIDS staff met to consider the Public Advocate's recommendations. These recommendations included the urgent need to establish a reporting and investigations framework. To this end the OIDS Consultant on Justice Issues, has prepared the following paper: Draft Guidelines for Reporting of Alleged Offences Against Intellectually Disabled Victims. Its relationship to its predecessor drafts is uncertain.

As this report was being finalised a Departmental Instruction was issued regarding the reporting of incidents involving Community Services Victoria. This document identifies three categories of incidents and indicates to whom such incidents should be reported. However it does not deal with the difficulties raised by people consulted in this research.

5. Conclusion.

For people to obtain access to the criminal justice system it is necessary that they take the first step of reporting crimes against them. This research revealed that for many different reasons offences against people with intellectual disabilities are likely to go unreported. Urgent action is required by all agencies concerned with such people to ensure that they do not remain silent victims.

PART 4 IN THE SYSTEM

This part of the report examines the experiences of people with intellectual disabilities who do report crimes against them to the appropriate authorities. It examines the role of support worker, police and the legal profession once the criminal justice system has been entered and suggests some possible changes to current procedures.

SECTION 1. CASE STUDY 4.

The following case study was supplied to us from the files of a generic agency. Names and the source of the case study have been removed to ensure confidentiality. The information provided by the agency has not been verified independently by the researchers.

"A young woman from the country was sexually assaulted in an inner city suburb. She claimed to have been treated very badly by a woman from the Sexual Offences Squad whose job it was to take a statement from her. The young woman involved had lived in a recurrent incestuous relationship with her brother and in part because of her intellectual impairment had lived a lifestyle of being sexually prevailed upon by males prepared to take advantage of her. On the occasion in question a man who had just been released from jail was brought to her flat for her sexual favours and insisted upon them even though she made her resistance known, albeit in a timorous and somewhat passive way.

Because of her prior sexual history and her inarticulateness, together with the preconceptions of the interviewing police about a victim's credibility if she does not complain immediately, it became clear that the Sexual Offences Squad member did not believe her. An unseemly scene took place at 412 St Kilda Rd with name calling on both sides and generally inappropriate behavior. Somehow the young woman, I think with some assistance made her way through the bureaucratic maze and contacted us.

She did not know what investigative work the police had done. She was terrified about whether the man was going to come back and attack her again and she did not understand the court processes in which she could be involved at all. What she did understand was that the policewoman who had taken her statement had not believed her and had treated her very unfairly and judgementally.

The case went on. It turned out that the police did charge the man who had attacked her but that by the time she got to court on the day of the committal no prosecution lawyer had spoken to her at all about what would ensue in the courtroom. I found her in the corner of the court, cowering with her brother, hopelessly inappropriately dressed and utterly terrified. She was a woeful witness. The alleged assailant not surprisingly was not convicted."

Issues

This case study raises a number of issues relating to our research.

1 It reinforces the view expressed by some workers interviewed in this research that some women who are intellectually disabled are particularly vulnerable to repeated sexual exploitation.

2 It demonstrates that the gap which often occurs in reporting a crime against someone who is intellectually disabled can have negative effects on their credibility with police or other authorities.

3 It does not detail the problems experienced by both police and victim in the actual police interview situation but does describe the resulting frustration and fear reported by the victim (whether this was justified it is not possible to tell). Evidence from this research suggests that both police and the person being interviewed experience great difficulty in communicating with each other. Such a lack of communication appears in this case since while the victim felt that she was not believed, in fact the police did decide to proceed.

4 It focusses on the lack of preparation of victims for their appearance in court by the legal profession or anyone else.

5 It demonstrates the powerlessness of some people with intellectual disabilities when confronted by the court process.

SECTION 2 EXPERIENCES WITHIN THE CRIMINAL JUSTICE SYSTEM

"If cops know we have a disability I feel they just put you back inside and throw away the key. Being known to have a disability goes against you." (Person with an intellectual disability)

"The police notified the social worker of when the (murder) court case was to happen, but didn't notify me (I was a witness), so I didn't go. The social worker didn't tell me." (Person with an intellectual disability)

"Mentally handicapped persons who are victims of crime are most in need of justice and are least likely to get it. If offenders against them are not detected and properly convicted, then the criminal justice system is of little value." (34, page 271)

This section of the report describes some of the difficulties and experiences of people who do report offences to the police and who begin to take legal action. Specifically it examines the relationship between victims with intellectual disabilities and the police and legal profession.

1. The Police

Few criticisms were made of individual police by either workers or people with intellectual disabilities throughout the research. However there were very real difficulties which confronted both police and intellectually disabled people who reported incidents. These issues are described below.

1.1 The Decision to Report an Offence.

The decision to report an incident to the police is often difficult for general members of the community (31,32). It may be even more difficult for the victim to make this decision if he/she is intellectually disabled, (see Parts 2 and 3). Particular difficulties included: a sense of powerlessness, fear of authority or specifically of the police, fear of the consequences and lack of knowledge of rights or of where to go. The comments below from intellectually disabled people highlight some of these difficulties:

"It took ages to sort through what she (the victim) wanted to do. Finally she decided she wanted to go to the police. But she was scared." (Worker)

"I didn't do anything about it when my money was taken. Just learned not to carry too much money." (Person with an intellectual disability)

"I feel if we went to the cops for help, they would do nothing, maybe make a statement but what use is that."

Some police indicated that they were aware of the fears and anxiety of victims who were intellectually disabled. However it was also clear that time, resources and knowledge were limited in police efforts to support victims reporting offences to them.

Further there was some evidence that police were unclear about their role when an alleged offence occurred within a training centre or a sheltered workshop. A number of incidents were reported where police, when called, had indicated that they saw the alleged offence as one which should be handled within the organization.

For example: "Some-one's money was taken at the sheltered workshop. The workshop manager did nothing. The police came but were not very interested because it was a sheltered workshop. They saw it as an internal matter." (Worker)

"Police don't want to know about crimes involving intellectually disabled people. See them as the worker's problem." (Worker)

1.2 First Contact with the Police

The first contact made with the police by a victim who is intellectually disabled is very important. Unfortunately the evidence presented by people with intellectual disabilities, the police and workers indicated that in some cases such contact was both frustrating and fruitless.

For example a woman alleging incest reported the crime after discussion with a support worker and was told during the first interview that because of her age and because the offence did not involve physical force she might also be charged. (This did not occur).

In the absence of clear guidelines or training the first reaction of the police to a reported offence by a victim who is intellectually disabled appeared to depend greatly on the attitude and knowledge of the particular police officer. In some cases the response was prompt and sympathetic.

"I told the cops about the gun and being bashed and they took me to the site of the crime with dogs to sniff out where people had taken me. I thought they were good." (Person with an intellectual disability)

"Police followed up some friends who had ripped off my money and spoke to them for me." (Person with an intellectual disability)

However such experiences seem to be the 'luck of the draw' rather than the result of good management.

Unfortunately those police with particular skills and training such as the Community Policing Squad or the Sexual Offences Squad were not the ones generally first seen by people with intellectual disabilities. The Community Policing Squad received praise from some workers for their approach to people with an intellectual disability suggesting that their role should be developed further in this area.

"The Community Policing Squads are good but are under-resourced and people don't get to see them first." (OIDS worker)

1.3 Establishing Credibility.

One of the major problems for both police and victims in their contact was the need to establish credibility of the victim and his/her story. In relation to some offences, such as theft or burglary, where independent evidence of the crime was available this was less important. Unfortunately it appeared from the evidence presented during this research that many of the offences experienced by intellectually disabled people involved physical and sexual abuse; crimes in which the evidence of the victim and/or witnesses was of key importance in a successful prosecution. In these situations it is not surprising that:

"the initial barrier, particularly for institutionalized people is being taken seriously by the police." (Solicitor)

This barrier was also widely recognized by the people with intellectual disabilities with whom we spoke during the research.

"People don't listen to us because they don't want to because we have a disability." (Person with an intellectual disability)

The need to be taken seriously when reporting an offence was very important to people with intellectual disabilities regardless of subsequent action taken by the police.

As with the rest of the community, the police too are prey to misconceptions about intellectual disability. One of the prevailing views was that such people are more likely than the rest of the community to lie or are unable to distinguish fact from fantasy. It is true that "police have to ensure that admissions (or complaints) are not just a desire to impress those in authority or a desire to continue a conversation with a normal person who has offered to chat." (15, page 9).

However there are good reasons for believing that generally people with intellectual disabilities are not likely to invent stories about offences against them.

"It is important to realise that because of their difficulties with abstract thinking many of the retarded, particularly those with lower IQs simply do not fantasise or fabricate. They are, to put it bluntly, not intelligent enough to do so.

Furthermore, fabrication and fantasy pre-suppose a pool of information from which to draw so that the story can be told. The retarded (sic) often cannot even name parts of their bodies let alone describe in detail sexual acts and their normal physical consequences unless they have actually experienced such acts." (35, page 11)

The major problem confronting the police with a complainant who was intellectually disabled involved the need to ensure that the person reporting the crime was able to communicate the story clearly and would be able to appear in court. This judgement was made often by the first police officer to whom the person spoke and was often also made in the absence of guidelines or knowledge of the nature or extent of the disability.

"We sometimes don't fill in a charge sheet for an incident reported by someone who is intellectually disabled if we don't think they could stand up in court. A policeman taking a statement makes a judgement about capacity with few supporting guidelines." (Police Officer)

At times the need to make such a judgement early in the proceedings affected the way in which police dealt with the complainant:

"I'm really tough when I interview an intellectually disabled person reporting a crime because if they can't stand up to my questioning they'll never stand up in court." (Police Officer).

The complainant could hardly be expected to understand the motivation for such an approach which may well undermine whatever confidence he/she had in approaching the police for assistance.

It would seem the police are frequently caught between conflicting needs to provide support for the victim, assess his/her credibility and to ensure the most effective use of resources.

Given the situation confronting the police the early judgement by a police officer untrained in working with intellectually disabled people about the credibility of a complainant should be regarded with concern. Wherever possible more detailed examination of the credibility of the complainant should be sought from people skilled in making such judgements.

1.4 Lack of Knowledge

Lack of knowledge of police procedures on the part of people with intellectual disabilities and lack of knowledge of the needs of these victims by police meant that interaction between police and victims was fraught with misunderstandings.

As noted in earlier parts of this report people with intellectual disabilities know little of their rights or of the services available to them.

Research (31,32) indicates that many complainants in the general community do not understand the consequences of reporting a crime to the police nor do they understand the procedures which are used by them in following up a crime. This lack of knowledge is exacerbated when the victims are intellectually disabled and explains some of the frustrations which they experience. These include; not being informed about the progress of a case, lack of understanding of the need for evidence, lack of knowledge about police action which would follow making a complaint.

Because of a general sense of powerlessness and possible fear of authority people with intellectual disabilities are less likely question the police or to complain if they feel their rights are not being safeguarded.

"What protection do we have in the streets? I went to the cops after I'd been hit by a person in the street but they said there was nothing they could do about it." (Person with an intellectual disability)

"I waited all by myself in a room for most of the night. then a cop came in and said 'Sorry son, we forgot you.' (Witness (with an intellectual disability who was witness to a murder)

"I was ripped off \$80.00 and rang the police. They came and took me to the scene and to the police station. Then to CIB who said there'd be a case. Had to go to Russell St, and identify person by photo. Police didn't catch them. Happened about three years ago. I rang them to ask about it the other day. They said they would contact me if there was any news." (Person with an intellectual disability)

Compounding the problems of victims who are intellectually disabled was the lack of knowledge by the police of the needs of this group. Police interviewed during the research admitted to little knowledge about intellectual disability. This was also shown by their repeated tendency to confuse intellectual disability and psychiatric illness and an expressed need for better guidelines in working with intellectually disabled people.

"We have to know so much about everything. We can't cover every group with special needs in the community." (Police Officer)

The exception to this lack of training was the Community Policing Squad, members of which had some specific training in this area. First contact with the police was likely to be with a relatively junior police officer who may (or may not) realise the victim had an intellectual disability, who had little knowledge of intellectual disability and whose focus was in checking the truth and credibility of the story which was being told.

1.5 The Problems of Interviewing

One of the major problems confronting both police and intellectually disabled victims was that of the police interview. Overseas research suggests that this is a widespread problem. (35, 36)

"It is very difficult for a victim to be repeatedly questioned about his case. Many victims have speech impediments which make their interviews even more difficult for both them and the questioner. Most victims of both physical and sexual abuse have been threatened about not revealing what has happened. Even if no explicit threats were made, most mentally retarded victims find it frightening to reveal their abuse. They are very concerned about what will happen to them now that they have told." (35, page 12).

An empirical study of police interviewing of intellectually disabled people in Britain (36) indicated that police tended to "drive" the interviews using leading questions and probes.

It also found that formal police structuring of interviews sometimes prevented the interviewee from telling his/her story accurately and increased the likelihood of the person agreeing with the police preconceptions and view of the incident. (36) The present research confirmed that there were real difficulties for people with intellectual disabilities and for interviewing police in the present form in which police interviews are conducted.

(a) Difficulty in Understanding the Language Used by Police.

The use of unfamiliar vocabulary, abstract concepts such as time or numbers can both confuse interviewees who are intellectually disabled and cast (sometimes unnecessary) doubt on their statements. At times this confusion is complicated by embarrassment for example in relation to sexual offences.

There is a need for better training for the police and for the use of 'interpreters' in police interviews. Some writers have advocated the use of concrete aides such as dolls to assist in the person with a disability to relate the story.

(b) Illiteracy.

Many people with intellectual disabilities read with difficulty if at all. This means that evidence which they provide to the police is inaccessible following the police interview. Consequently they find it difficult to check the accuracy of the statement or to correct it.

Further given the long time gaps between interviews and court appearances it is particularly important that the victim/witness be able to use a statement as an aide memoir (as can other citizens).

However currently this is not possible unless the person with an intellectual disability is assisted by a third person.

(c) Fear of Authority

Evidence from the literature (1,17,25,35,36) suggests that some people with intellectual disabilities may agree with a police version of events because of fear or because of a need to agree with authority figures. Anxiety and fear may lead to misinterpretation of police questions or attitudes by the victim.

" In one situation when a client was interviewed by the police following a crime against him, he felt the police were angry with him, (rather they were frustrated)." (OIDS Worker)

(d) Pre-conceptions of the Police

Frequently a victim reports a crime to the police (either from an institution or in the community) as a result of intervention by a third person or by the organization. At least in some cases police come into contact with the victim following, or concurrently with, statements from referring people. It was clear that in some cases the statements provided by such referring people influenced the view which the police had of the cases (See Case Study 1). While such intervention can be helpful at times as a means of interpreting the person's statement to the police, it can also act to prejudice the credibility of the victim or witness.

(e) Lack of Guidelines for Police Interviews

Police have few guidelines for alternative forms of interviewing, the use of official language and the structuring of questions during an interview can militate against a witness or victim telling their story credibly.

There can be no doubt that there are frustrations for the police in investigating cases where the victim or witness appears unreliable.

"The police were unable to take action (about a theft) because the stories kept changing." (Worker)

A number of similar instances were described by workers during our consultation. Such incidents make the continued open-mindedness of police when confronted with another alleged crime difficult to sustain. Unfortunately it is not possible currently to differentiate between a genuinely unreliable witness/victim and one who is a victim of unskilled interviewing.

2. The Legal Profession

Perhaps because they had had little experience with members of the legal profession, no people with intellectual disabilities interviewed in the study commented about either positive or negative experiences in relation to lawyers. However case studies and interviews with lawyers and workers revealed a number of issues of concern.

2.1 Lack of Knowledge and Experience

"Historically solicitors like the rest of society, have had little contact with people with an intellectual disability and their problems." (37, page 42)

The degree of intellectual disability may influence the problems which lawyers and people with intellectual disabilities have in working together. People with severe disabilities are less likely to come to the attention of lawyers and when they do may require special support and knowledge. On the other hand many people with mild disabilities may require support in a court appearance but not be identified as in need.

Lawyers interviewed in the course of the study indicated that they had little knowledge of the field of intellectual disabilities.

For example a phone survey of community legal centres, revealed that none had any particular expertise or interest in working with intellectually disabled people.

This lack of knowledge has been recognized by the Intellectual Disability Rights Services (NSW) which has produced a draft manual for lawyers and information to assist them in interviewing and acting for people with intellectual disabilities. (27,37)

2.2 Dependence on Police

Discussions with staff at the Director of Public Prosecutions Office revealed that frequently prosecution lawyers rely heavily on the information provided to them by police in preparing their cases. In some cases this means that people with intellectual disabilities are not identified as a special need group by the lawyers.

2.3 Lack of Contact with Victim/Witness

The importance of preparing a victim or witness who is intellectually disabled for an appearance in court is stressed in overseas guidelines for lawyers (35). However among the lawyers with whom the researchers spoke some saw such contact as fraught with risks. Some saw it as outside their role:

"Our job is to bring a case to court and to prosecute. We are not social workers." (Lawyer)

"Our main concern is with the offender. We run the risk of denying his or her rights if we change the system." (Lawyer)

Others felt that such contact could jeopardize the case for the prosecution since defence lawyers could charge that the victim/witness was influenced by the prosecution lawyers.

2.4 Lack of Contact with Office of Intellectual Disability Services or other Support Workers.

Some legal aid workers who were interviewed stressed the need for a close working relationship between legal aid offices and the Office of Intellectual Disability Services staff. While some of these comments were directed towards cases involving offenders, there was concern that some victims or witnesses passed through the system without adequate supports because of a lack of liaison between legal personnel and OIDS workers.

"We need to know if people are clients of OIDS" (Lawyer)

3. Conclusion

This section of the report has focussed on the possible difficulties which are experienced by both the victim and workers within the criminal justice system when a crime is reported. It demonstrates the need for changes to the system in order to ensure that intellectually disabled people receive the same access to the criminal justice system as the rest of the community. The next section of this report discusses some possible changes which may assist in achieving this goal.

SECTION 3 TOWARDS CHANGE

Following the recommendations of Finding the Way and during the life of this research a number of important changes have been instituted to assist clients of the Office of Intellectual Disability Services to gain easier access to the criminal justice system. Changes to Police Standing Orders due to come into force in June 1988 in particular should lead to positive changes in police-victim relations.

1. Seeking Advice

The new Police Standing Orders require police to contact the Police Surgeon for advice if they are unclear as to whether a person has an intellectual disability.

2. A Third Person at Interviews

In response to a submission from the Office of Intellectual Disability Services, Police Standing Orders have been amended to include a requirement that all suspects and witnesses who are intellectually disabled should be interviewed in the presence of an independent third person. This person may be a friend, relative or other responsible person who is able to facilitate communication.

Where an independent third person is not available through other sources, the Police are requested to contact the Office of the Public Advocate. Community Visitors will be trained to take up the position of third person at interviews when required.

3. Gathering Information about Crimes Against People with Intellectual Disabilities.

The Office of Intellectual Disability Services has also requested that in each instance where a person with an intellectual disability is interviewed by the police, certain non-identifying data should be forwarded to the Office of Intellectual Disability Services. This will enable a more accurate data to be gathered about the nature and incidence of crimes against people with intellectual disabilities.

Further when the person being interviewed gives consent, identifying information will be forwarded to the Office of Intellectual Disability Services who will then contact the person and offer appropriate assistance.

4. Police Training

The Office of Intellectual Disability Services has agreed to provide training in intellectual disability for operational members of the Victoria Police.

The Office of Intellectual Disability Services (OIDS) will appoint a project officer for a period of 12 months to implement a comprehensive seminar program to be conducted at local police stations throughout Victoria.

OIDS will also help to develop training programs at the Police Academy for police recruits, community policing squad trainees and trainee police prosecutors.

5. **Guidelines for Police Interviews.** The Office of Intellectual Disability Services has now drawn up some guidelines to assist police in interviewing people with intellectual disabilities. These will be distributed to police as part of the training programme.

6. Tape-recording of Interviews

Amendments to the Crimes Act providing for the tape-recording of all police interviews of people suspected of indictable offences is in place but has not yet been proclaimed. It will be proclaimed before the end of 1988 and thereafter taping of interviews will be the usual police practice in Victoria. Discussions with police involved in a pilot programme of this procedure revealed that in an office context it was very effective and did not seem to increase anxiety among those being interviewed. This system may well be of benefit to people with intellectual disabilities who are suspected offenders. If it were extended to cover witnesses or victims (with special needs) it would improve the accessibility of their evidence to those victims or witnesses who are intellectually disabled. If as seems likely the tapes (rather than a written transcript) become admissible in court they may provide a useful guide to the person's state of mind at interview.

7. Proposals in Relation to Police Interviews

A report is currently being prepared by the Victorian Attorney General's Department in conjunction with the Director of Public Prosecutions, the Office of the Public Advocate and the Office of Intellectual Disability Services in relation to Obtaining Evidence from Intellectually Disabled People. Draft proposals from this report in relation to police interviewing have been based on the Anunga guidelines for police interviewing Aboriginal witnesses. The draft report stresses the need for the presence of a third person (and a communication aide if required), the importance of taping police interviews, the need for careful structuring of questions and for non-leading questions to be used. It also emphasises the importance of interviews taking place as soon as possible after the incident and for such interviews to be short and to have frequent breaks. These ideas come from a different perspective to the present study but reflect similar conclusions.

8. Conclusion

There is no doubt that the changes outlined above will address some of the issues raised in this report. However it is also important that the new police procedures be monitored carefully. In particular the following issues need to be carefully considered.

8.1 People acting as third persons in interviews will require a clear statement of their role. Comments from workers who had attended police interviews with people who were intellectually disabled indicated problems in defining their role, lack of knowledge of police procedures and anxiety about their possible future appearance in court as a witness.

8.2 The extent of the need for a third person to be present is as yet unknown. It may be that the demand will be higher than anticipated placing demands on already overstretched agencies such as the Office of the Public Advocate.

8.3 Information gathered about the incidence of crimes against people with intellectual disabilities is much needed if steps are to be taken to reduce it. The information gathered by the Office of Intellectual Disability Services should be distributed regularly to agencies in contact with people with intellectual disabilities.

8.4 This study revealed that the way in which a complaint by a person with an intellectual disability was received by the police depended very much on the individual police officer's attitude. Training of police will need to take into account the varying attitudes of police to people with intellectual disabilities. Information alone will not change negative attitudes.

PART 5 IN COURT

This part of the report deals with the experiences of people with intellectual disabilities who appear in court as victims or as witnesses. It describes some of the difficulties which they and criminal justice workers have in bringing a case to court and suggests some changes which might be of assistance.

SECTION 1 CASE STUDY 5

The transcript reported below comes from a case of alleged rape against a woman who is intellectually disabled. The name of the woman has been changed. It illustrates graphically the problems which victims have in the rare cases when their cases go to court.

HIS WORSHIP: Jane would you sit over here (indicating). Jane there is a book here called the Bible. Do you know what a Bible is?----No.

Do you know why a Bible is used in a court room?-----No.

People swear on the Bible to tell the truth?---Yes.

Do you understand that?-----Yes.

And do you know that when you swear on the Bible to tell the truth that you then must answer questions truthfully? Do you know that? -----No.

You have said you know that swearing on the Bible in the court means that you then tell the truth; is that right? That you tell the truth after swearing on the Bible?----Yes.

JANE sworn and examined.

HIS WORSHIP. Sit down on the chair behind you and just relax. Can you tell me what you think that all meant, what you have just said. Think about it, what you have just done and what you have said to me. What do you think that all means, those words that I have just said and you have just said back to me?----Yes.

Do you know what those words mean?----No.

Do you have any idea, after saying those words, what you have to do in a court, any idea of what you have to say when someone speaks to you, after saying those words to me?-----No answer.

Whilst the words have been said clearly, bar a couple of words in the oath, which are insignificant ones, I really have to lend to the thought that the girl may not know the full obligation of saying those words.

PROSECUTING BARRISTER May it please Your Worship. I cannot take the matter any further.

DEFENCE BARRISTER. Your Worship I have an application to make at this stage in the absence of the witness who has just been put in the witness box.

HIS WORSHIP: Jane would you wait outside with your mother please?

The case was not proceeded with.

Issues:

A number of issues are raised by this transcript which relate to both the procedures adopted in court and the method of carrying them out.

1. The competence of the witness is judged by formal understanding of the meaning of the oath. Failure to 'pass this test' does not necessarily mean that the person cannot distinguish between truth and falsehood and does not understand the need to tell the truth in the court.

2. In this case the judge clearly tries to ensure that the victim understands but is handicapped both by the formal language of the oath and his own lack of experience and expertise in talking with people with an intellectual disability.

3. The victim had clearly not been prepared to cope with the court experience and did not understand the process through which she was going.

4. The decision not to proceed with the case indicates the great difficulty confronting people with intellectual disabilities and workers who do decide to take action on offences against them. Such difficulties are exacerbated when the alleged offence is one which depends on the evidence of the person with intellectual disabilities for proof.

SECTION 2 APPEARING IN COURT.

"Judges make decisions about competence on folk lore, not law."
(Lawyer)

"The case went on for about a year. The case wouldn't have gone on if I hadn't been there. Witness went through hell in court. Was it worth it?" (Worker)

"We ought not of course to convey the impression that there will be no problems whatsoever in admitting the testimony of persons whose functional capacities are severely limited. But first we have to say that it is the right and just thing to do and then we deal with the difficulties which particular individuals may encounter." (38, page 3)

1. Introduction

Originally it had been intended to focus strongly on the difficulties confronting people with intellectual disabilities who appear in court. However two factors led to less emphasis being placed on this part of the research.

(a) The research revealed that few cases involving people with intellectual disabilities as victims actually proceeded to court. An examination of the monitoring data from agencies (Appendix 6) indicated that in many cases there was a failure to proceed. These data were confirmed by interviews with legal workers. A major reason for this failure to proceed was the view that the victims in particular cases would not be able to give evidence competently in the courts. This view was held particularly strongly when the case relied heavily on the evidence of a person who was intellectually disabled. As a consequence of this finding it was not easy to obtain data about the experiences of people who had been in court.

(b) Two other pieces of work were undertaken concurrently with this research. In January of this year the Victorian Attorney General's Department (in conjunction with the Director of Public Prosecutions, Office of Intellectual Disability Services and the Office of the Public Advocate) employed a project officer to develop a discussion paper on this aspect of the criminal justice system. A complementary discussion paper was developed by the Office of the Public Advocate.

2. Problems Encountered by People with an Intellectual Disability in the Court System.

Discussions with magistrates, lawyers, advocates and with people with an intellectual disability revealed that many of the difficulties which victims and witnesses experienced in court are similar to those encountered in the general community. However when the victim is intellectually disabled the consequences can make the court experience extremely traumatic and frustrating. The major problems are outlined below.

2.1 Lack of Knowledge of the Court System.

While for many people in the general community the court system is mystified and threatening, (30,31) it is even more so for people with intellectual disabilities. This is particularly so for those people who have been residents in training centres or other facilities and have had little opportunity to become acquainted with organizations and systems in the community. This report has already documented cases of people "cowering in corners" of the court, experiencing the court process as "hell" and proving unable to give evidence because of a lack of understanding of the court process. The lack of understanding which such people have of the court and the legal system generally can be changed in many cases if adequate support is given.

There is a need for better preparation of witnesses and victims before their court appearances. A Manual in the United States (34) stresses the need for careful preparation by prosecuting lawyers of victims or witnesses who are intellectually disabled.

"It is absolutely crucial to be able to talk with the victim several times before going to court for the initial hearing. You need to get to know your victim, his speech impediments if any, establish rapport with him and explain to him what you will be doing in court so that the procedures are not a shock. Witness preparation will make or break your case, far more than any particular handicaps your victim may possess." (34, page 14).

Some lawyers in the present research expressed concern at the possible later accusation of influencing the witness if they spent time with the victim prior to the case. However a clear distinction can be made between discussion of the evidence and preparation of the witness to appear in court. This distinction is now made in relation to children and some other special needs groups.

2.2 Time Lapse between Reporting Crime and Court Appearance.

With approximately 700 cases awaiting trial in Victoria, it is hardly surprising that there is a considerable time gap between an offence being reported and a consequent court appearance. Such a time lapse is difficult for all members of the community but may be particularly difficult for people with an intellectual disability whose grasp of abstract concepts such as time may be hazy and whose short or long term memory may be affected by their disability.

The problem is made worse for those people who are illiterate and therefore do not find their written statements an accessible means of prompting their memories. Ironically the difficulties caused by long gaps in time before a court appearance are countered by the short notice sometimes given to people about a court appearance.

For example a woman who alleged rape waited twelve months for the case to come up and then was given one week's warning of her court appearance. This notice did not allow time to acquaint her with the processes of the court nor to assist her in preparing her statement.

2.3 Lack of Adequate Facilities at Court.

A frequent complaint by advocates and workers with people who are intellectually disabled involved the lack of adequate facilities for people appearing as victims or witnesses. Comments included:

(a) The accidental meeting of complainant and defendant in the court precincts.

For example a woman who alleged rape was brought face to face with the defendant prior to the court hearing. Because the complainant did not understand the court processes nor really understand her presence at the court, she became terrified at the sight of the defendant. There was nowhere in the court where she could be comforted and she was forced to enter the court in a very upset state.

(b) While some complainants were able to ask a friend or citizens advocate to attend court with them, this appeared to be a matter of good luck rather than design.

One alleged victim of a crime cried out to the only person she knew in the court to assist her in the witness box. He was unable to provide any support for her.

(c) The case study presented at the commencement of this part of the report indicates the urgent need for some system of interpreters for people with an intellectual disability who may require assistance with the formal language of the court.

2.4 The Oath.

"If the witness does not understand the nature of the oath or the obligation of the oath then in some jurisdictions the witness can give 'informal evidence.' There is no similar provision in the Victorian Evidence Act. As an adult's evidence must be given on oath (or affirmation) or not at all, the lack of a provision for 'informal evidence' may considerably disadvantage a witness with an intellectual disability." (38, page 1)

The capacity of people to give evidence in court relies upon their understanding of the importance of telling the truth in court. Unfortunately this is linked with an understanding of the wording of the oath. This requirement causes a number of problems for people with an intellectual disability.

(a) They may understand the difference between telling the truth and telling a lie but not within the context of the Oath.

However questions to ascertain their level of understanding may need to be worded simply and in a familiar context.

(b) They may not understand the formal words of the oath, but may be able to understand a simplified version of it.

(c) They may not understand the questions directed at them to ascertain the level of understanding of the oath. One may well ask how many people in the general community would be able to answer such questions in a court situation. Sometimes expectations of people with intellectual disabilities seem to be higher than for other people in the community.

The Oath need not be the only means of ascertaining a victim/witnesses level of understanding about truth. A Manual for Prosecuting Lawyers in America (34) provides a transcript as evidence that this can be ascertained by the use of simple language and concrete situations.

In Canada new legislation proposes that at the Judge's discretion someone "who does not understand the nature of an oath or solemn affirmation but is sufficiently intelligent that the reception of the evidence is justified may testify on promising to tell the truth. Further the Bill drops the requirement that such unsworn testimony has to be corroborated." (37, page 24) A further amendment has been proposed to the Bill which questions the court's ability to decide "sufficient intelligence" and substitutes "ability to communicate," a skill which is more readily assessed.

2.5 Cross-Examination

One of the major concerns expressed by lawyers during our consultation was the need to protect the right to cross-examine a witness or victim in the court situation. However it should be noted that people with an intellectual disability may not understand the reason for the cross-examination nor the process of which it is a part.

2.6 Lack of Knowledge of Intellectual Disability.

Reports from workers during the consultation revealed that generally Magistrates and other members of the Judiciary were sympathetic to people with intellectual disabilities when they appeared before them.

However there were also comments that the judiciary knew little about intellectual disabilities and that at times this meant that they were unskilled in working with such people.

"We need to educate magistrates about the special needs of people with an intellectual disability." (Legal Service worker).

3. Implications

" There is a great deal of evidence that people with intellectual disabilities are, in practice, disadvantaged when they are victims of criminal action and as acceptable witnesses. It is very rare for action to be taken that involves giving evidence in court. Police are inexperienced in obtaining evidence from victims and witnesses and accordingly are not confident of succeeding in court. If a complainant does not come to court it is highly unlikely that the decision-maker, prosecution or defence representatives, have had any practical experience in dealing with witnesses with an intellectual disability." (38, page 9).

This comment from a report by the solicitor to the Office of the Public Advocate and Guardianship Board, supports the findings in the current research about some of the difficulties in court experienced by victims and witnesses who are intellectually disabled. The need for changes to existing court procedures and for better support for people appearing in court has been recognized widely in the literature, (14,30,31,38,39,40,41).

The main implications which can be drawn from the current research are:

3.1 People who are intellectually disabled and are appearing in court need to be prepared for the court procedures. While it is recognized that the rights of the defendant must be protected it is also important that the victim or witness appearing in a case is not disadvantaged because of his/her disability. Such preparation may be undertaken by police, prosecuting lawyers or agencies such as the Victorian Court Information and Welfare Network.

3.2 The Australian Law Reform Commission has criticized the use of the Oath as a test of competence. Rather it has proposed that:

"19.(1) A person who is incapable of understanding that, in giving evidence, he or she is under an obligation to give truthful evidence is not competent to give evidence.

(2) A person who is incapable of giving a rational reply to a question about a fact is not competent to give evidence about the fact." (42, page 150).

This proposal is also supported by the Victorian Law Reform Commission. (14)

This view opens the possibility of exploring means other than the oath to test the competence of witnesses. Both the Canadian and American experience suggest some directions for such changes.

3.3 The right to cross examine a witness or victim is regarded as essential in the defence of the accused. However it is also important to ensure that witnesses are not subject to unfair cross examination. Problems experienced by people with intellectual disabilities in relation to cross examination may be reduced by the following actions:

(a) Adequate preparation of the witness or victims prior to their court appearance.

(b) The exercise of powers by the prosecutor and judge to protect the witness. A report by the Victorian Legal and Constitutional Committee on Support Services for Victims of Crime (41) makes the following statement in relation to cross-examination of witnesses and victims.

The protection of victims from unfair or harassing cross-examination by defence counsel must ultimately rest with prosecutors and judges. Clearly, it is the duty of a prosecutor and a judge to seek to defend a victim or witness from improper or unduly harsh questioning. The Committee expresses the strong view that this duty should be vigorously fulfilled. Likewise it is the obligation of the trial judge to rule upon questions asked of a victim witness, and provisions such as ss.37,37A, 39 and 40 of the Evidence Act 1958 give judges ample powers to protect victims from unfair treatment by defence counsel. Once again the Committee strongly believes that these powers should be firmly exercised wherever possible." (41, page 94-5)

(c) Examination of the use of out of court statements such as videotapes or closed circuit television. The use of such technology may in some cases provide a useful means of obtaining reliable and full evidence from a person with intellectual disabilities. However such a course of action would need careful testing for feasibility. This was not possible within the present study.

3.4 Developing Alternatives to Court Appearances.

(a) The use of tribunals for an increasing range of civil matters with a more flexible and inquisitorial (rather than an adversarial) approach may provide a more suitable environment for people with intellectual disabilities than the formal courtroom. (See Section 7).

(b) The Provisions of the Crimes Family Violence Act 1987 (43) which provides for the serving of Intervention Orders by a Court in relation to crimes of violence against family members may in some cases obviate the necessity for a court appearance by the victim or witness.

3.5 The Presence of an 'Advocate.' The present research revealed the need for the presence of a support person for people with intellectual disabilities in court.

The precise role of such a person is being examined in more detail by the Attorney General's Department and the Office of the Public Advocate. The role may well differ with the particular needs of the individual. For example some people may simply require psychological support for their appearance, others may require some form of interpreter to ensure that their communication is understood by the court.

4 Conclusion

There is a need for both better preparation of people with intellectual disabilities for court appearances and for changes to court procedures when they do appear. There are real difficulties in developing universal guidelines because the needs of individuals with intellectual disabilities for support and special consideration vary greatly. Consequently it is important that those professionals involved in a case be prepared to examine the particular needs of the victim or witness.

PART 6: THE NEED FOR ADVOCACY

The importance of advocacy in assisting people to gain their rights when they are victims of crime became one of the important emphases in the present research. This part of the research indicates the reasons why advocacy is so important and outlines the main kinds of advocacy services currently available to people with intellectual disabilities who become victims of crime.

SECTION 1 CASE STUDY 6

A seventeen year old girl who was living in a home board situation was sexually and physically abused and tortured by owner of the house. The girl did not report the offences during the time she lived in the house.

She had been matched with a Citizen's Advocate and was receiving support from this person. On leaving her accommodation she told the citizen's advocate about the offences against her (and against some other people with intellectual disabilities). The Citizen's Advocate informed the Regional Co-ordinator of the Citizen's Advocacy Scheme who in turn notified the Office of Intellectual Disability Services and the Office of the Public Advocate.

The matter proceeded to a committal hearing. The victim and other witnesses who were intellectually disabled came to court with OIDS workers. The Citizen's Advocate also attended to give support to the girl.

There was no need for the victim to give evidence as the Defendant agreed to plead guilty to two charges of indecent assault. All the young woman's representatives considered the result satisfactory.

SECTION 2: THE NEED FOR ADVOCACY

"I learn about rights from TV. Think in my own head about rights." (Person with Intellectual Disabilities)

"It's difficult to teach people about their rights. We are attempting to do this in Geelong. But it's hard to get funding for a rights education package." (Legal Service Worker)

1 The Need for Knowledge of Rights and Advocacy

One of the recurring themes in this research was the lack of knowledge of their rights expressed by people with intellectual disabilities. As shown throughout this report such a lack of knowledge prevented people from reporting offences against them and disadvantaged them at all steps in the criminal justice system.

Two interrelated factors may assist people in gaining increased power over decision making when they are victims of crime. The first is to learn about the steps they can take when they are victims and to have sufficient confidence to take such steps. The second is to ensure that advocates are available to assist those people who find it difficult to understand the processes or who find it difficult to articulate their grievance. This section of the report summarizes some of the findings of this research in relation to the needs of people with intellectual disabilities for information and for advocacy.

1.1 Lack of Information in Institutions.

There is no legal onus on institutions to provide residents with information about their rights, or actions which they can take if an offence is committed against them. While one institution had displayed phone numbers of the Public Advocate's Office in wards for residents, there was little evidence of a concerted effort to ensure that residents knew of their rights.

1.2 Lack of Information in the Community.

Few of the current brochures available in the community advertising advocacy or the services of relevant Government Departments are likely to be accessible to people with intellectual disabilities. The exception to this is material produced by REINFORCE (a self-advocacy group) and the National Self Advocacy Kit Project. Neither of these groups have a focus on providing people specifically with information about legal rights.

1.3 Lack of Rights Education

In this research there was no evidence of people being provided with learning experiences related to understanding the nature of crime against them, or being given ideas on what to do if they found themselves to be victims.

Such programmes could be built in to independent learning skills programmes, and be part of an orientation programme for people leaving or entering institutions.

1.4 Lack of Education about Intellectual Disability

At all levels of the criminal justice system, the researchers found that workers did not know very much about intellectual disabilities or how to work with people with such disabilities. Yet there are an estimated 40,000 Victorians with intellectual disabilities. Few people within the criminal justice system knew of the changes occurring within the field and few knew of the kinds of assistance available to people with intellectual disabilities.

1.5 Lack of Co-ordination between Services

While in some Office of Intellectual Disability Services regions, there were moves for workers with people with intellectual disabilities to meet with police, magistrates and others in the criminal justice system, the degree to which this happened varied with the personnel.

For example one legal service worker complained of the lack of co-ordination between her service and Office of Intellectual Disabilities.

Reports were received from some police of the difficulty of obtaining advice from the office of Intellectual Disability Services about people with whom they had contact.

While there are now a number of different advocacy groups operating which can assist people with intellectual disabilities, for example, Community Visitors, Citizens Advocates and Office of the Public Advocate, it was often difficult to sort out their roles in relation to any one individual.

2. Factors which Can Assist People to Gain Knowledge of their Rights.

The research revealed a number of factors which could assist people to gain better knowledge of their rights and increased confidence in pursuing them when they are victims of crime.

2.1 Self-Advocacy

In its constitution, REINFORCE (Victorian Union of Intellectually Disadvantaged Citizens), a state-wide self-advocacy group defines self-advocacy as "an "intellectually disadvantaged person advocating on his/her own behalf or on behalf of intellectually disadvantaged citizens."

A number of principles have been outlined by SAID (a South Australian Self-Advocacy group for people with intellectual disabilities) which provide a good basis for understanding how self-advocacy works.

Every person is their own best advocate.
Every person has the right to support.
Every person is capable of making some decisions.
Every person can learn to master new areas of decision making.
There is strength in numbers.
Every person has the right to information to help them make decisions.
Help does not mean loss of control.

Through workshops with people with intellectual disabilities the research process that self-advocacy is a very potent force in assisting people to gain a knowledge of their rights. Drama sessions organized by REINFORCE (a self-advocacy group) and personal accounts of the experience of being a victim proved to be useful ways of assisting people to examine their own experiences. A self-advocacy group organized at one institution was taking action on privacy issues and on the issue of petty theft.

The National Self-Advocacy Kit Project has utilized the skills and experience of people with intellectual disabilities to develop successful material particularly focussed at their needs.

A strong emphasis on self-advocacy groups both in institutions and in the community would assist people with intellectual disabilities to gain information in an accessible form and to gain confidence in taking steps to protect their own rights.

2.2 Information Needs to Be Concrete and to take the Recipients Needs into Account

The researchers found that concrete examples of offences against people with intellectual disabilities and clear information about what steps can be taken following such an offence were the most useful means of gaining peoples' involvement. Abstract information (often in written form) about rights or advocacy was not understood or was disregarded.

2.3 Use of Visual Information

While more expensive to produce, the researchers found that videotapes and posters which illustrated particular rights issues were more useful to people than any written information. The use of videotapes to explain police and court procedures should be explored to assist those people entering the criminal justice system. A search for such materials to use in workshops during the research revealed that none currently exist.

Similarly such methods could be used to explain the role of advocacy groups such as Community Visitors, Citizens Advocates and the Public Advocate's Office.

3. Conclusion

The presence of services to assist people with intellectual disabilities must be linked with information which tells them that such services exist and how to use them. People with intellectual disabilities form a significant minority group within the community and there is a need to focus materials to meet their special needs.

SECTION 3 WHO ARE THE ADVOCATES?

"Indeed, there are so many intractable people refusing to consume institutional services that we are now designing new systems that surround these individuals with professionally administered services. Thus, one can now see individuals whose lives are bounded by institutions "targetting" their services at an intractable individual through teachers, doctors, trainers, social workers, family planners, psychologists, vocational counselors, security officers, etc. This final solution is usually called a "comprehensive, multidisciplinary, coordinated, inter-agency service system." It is the equivalent of institutionalization without walls or the design of an environment to create a totally dependent system consumer" (44 page 24.

While there is a risk that increasing advocacy within the community may lead to "institutions without walls" the present research revealed that the use of advocates can act as both a watchdog to reduce crimes against people with intellectual disabilities and can also assist them when they are victims (See Case Study 6).

This section of the report outlines the main advocacy groups currently available to people with intellectual disabilities, and indicates the ways in which they can assist people who are victims of crime. Increased use of such advocates would in the researchers' view be of use to victims and to people working with them.

1. Self-Advocacy

A national self-advocacy group established in 1988 strengthens and unites the Australian self-advocacy movement and demands even more loudly that people with intellectual disabilities be heard.

This umbrella group seeks to provide support and linkage to the self-advocacy groups existing in different states. The movement in Victoria has been going for seven years with state-wide representation through REINFORCE, the Victorian Union of Disadvantaged Citizens. Smaller local groups have developed and meet regularly to discuss and act on issues which primarily concern individual group members. A self-advocacy group exists at one institution in Victoria where people discuss issues of privacy and maintaining personal possessions. They had a significant victory recently where they stopped lambs fry being served to them.

Another regional group, the members of which live independently and work, some in sheltered employment and some in the open workforce, discuss many interpersonal concerns particularly those arising from their work places.

The existence of this group allows people to share concerns and grievances and to socialize with peers who like and accept them. Of the groups in Victoria, REINFORCE has taken the most active role in promoting the rights of people with disabilities. The workers perform a proactive role in educating the community, service providers and people with intellectual disabilities. They often use drama to act out different situations and possible solutions. They run a newsletter which is widely distributed and have a regular radio programme. All groups act as a resource and actively disseminate information on rights and where to go for assistance to those with whom they have contact.

Self-advocacy is one of the best ways for people with intellectual disabilities to learn about their rights and to gain confidence in ensuring that they get them.

2. Citizen Advocacy

Under the Citizen Advocacy Programme, seven regional groups are funded by OIDS and the Commonwealth to run Citizen Advocacy programmes for people with intellectual disabilities of all ages and irrespective of the level of the disability. Citizen advocacy is a notion which was promoted by Wolf Wolfensberger (45). His view was that people with intellectual disabilities who do not have family or friends who are capable of representing their interests for them should have those interests represented by a citizen advocate who is an unpaid volunteer and free from conflicts of interest. Such advocates should function on a one-to-one basis and in any one of a number of roles, for example informal friend, guide, counsellor etc.

Victoria currently has 120 matchings between advocates and people with intellectual disabilities. The emphasis of the service is to match each person with an intellectual disability with a non-disabled person who will act as friend and advocate. Through the friendship the person with a disability has an opportunity to develop social networks and friendship. The scheme allows the advocate to help people with difficulties in their everyday lives for example, budgetting and literacy but the emphasis is primarily on advocacy.

A number of citizen advocates have offered support to individuals who have experienced a crime against them. On these occasions the citizen advocate also supported the family of the person with an intellectual disability. The relationship between the person with an intellectual disability and the citizen advocate significantly decreases that individual's vulnerability because it offers them an increased social network and acts as a resource which provides them with information and back-up on decisions and directions which affect their lives. The scheme offers support to people formerly uninformed and isolated.

3 Office of the Public Advocate.

OPA's brief ranges over all people with disabilities. The Office was established to promote the rights and dignity of people with disabilities and to lessen their vulnerability in society to neglect exploitation and abuse.

Generally this work requires OPA to identify and encourage service deliverers to develop problem solving and grievance procedures to protect those at risk and unmask concerns that are not being expressed for fear of retribution. It is required to take a pro-active role, to encourage and assist the development of citizen advocacy or other advocacy networks, to address problems which have not been recognized by other agencies. It is also involved in identifying systemic and structural problems and influencing the policies and procedures of services providing agencies.

The Office of the Public Advocate also has a direct role through the Community Visitors in assisting clients with intellectual disabilities to articulate and negotiate their concerns.

The Public Advocate can also be made a guardian when no other person is available. A guardian can be appointed to make decisions in the best interests of a person with an intellectual disability in relation to any aspect of their lives. Guardians have been appointed to take an active role in assisting people through the criminal justice system.

In relation to this research, the Office of the Public Advocate proved to be important in taking up cases which had been ignored or disregarded by other agencies and in negotiating changes in procedures in relation to police interviews, the courts and other tribunals.

4. Community Visitors

The Community Visitors Programme was established under the Mental Health Act 1986 and the Intellectually Disabled Persons Services Act 1986. The Programme is co-ordinated by the Office of the Public Advocate. Community visitors are community representatives of all ages with a wide variety of backgrounds and occupations.

OPA is endeavouring to recruit people to act as community visitors who identify with the philosophy underlying the two above Acts.

The community visitors are required to visit any residential institution, residential programme or registered residential service in the region for which the community visitor is appointed. They visit on a regular basis usually as a panel of three and talk to residents on issues such as the adequacy of services provided, the standard of the facilities, the care and treatment being received.

Community visitors respond to queries and investigate complaints made to them by residents.

5. Victorian Court Information and Welfare Network Inc.

This organization is a voluntary welfare agency. It is a specialized, court based, client focussed, crisis-intervention service for all people in contact with the Victorian Courts.

Service delivery of personalized assistance and information brings Court Networkers, in thirty courts of Victoria, into immediate daily contact with victims/witnesses, defendants/accused and the families of these people. The service is uniquely non-partisan, being available for all people involved with the criminal justice system.

Court Network's support is particularly relevant to people with intellectual disabilities. As victims or witnesses, these people are compelled to attend committal hearings and trials, they are frequently confused and frightened, adding to the trauma experienced at the time of the crime. Court Networkers are aware that appropriate support and information assist individuals and their families in these circumstances. They are aware of the difficulties being experienced, and act as a link to welfare agencies and to government departments that may be of assistance. Supportive care by a Court Networker can act as a bridge between the victim and the criminal justice system.

6. Sexual Assault Clinics

The work of CASA House (Centre Against Sexual Assault) typifies the kind of support which sexual assault clinics can do to assist people with intellectual disabilities who have become victims of sexual offences. It operates in conjunction with the Royal Women's Hospital in Melbourne.

CASA House provides a range of services which include:

- (a) A 24 hour crisis care service, including medical, emotional and legal support to adult (16 years and over) victims/survivors of sexual assault.
- (b) Longer-term follow-up support on an individual and group basis for adult victims/survivors of sexual assault, their families and friends.

CASA House has a strong public advocacy focus aimed at increasing community awareness about sexual assault. The Centre is committed to the goal of prevention and elimination of sexual assault in the community.

Approximately 10% of the women seen in the Crisis Care Unit following recent assault, have been women with some level of intellectual disability. All of these women were brought to the Unit by either support workers and/or the Police.

Workers at CASA House reported two main issues of concern to them in working with women with intellectual disabilities.

(a) The need to ensure that women can exercise "informed consent" in relation to future planned action on their case. This is particularly important where police are involved and medical examinations are encouraged. Workers' experience has been that the role of the support worker and/guardian accompanying the victim/survivor is crucial in providing support at this time.

(b) There is an urgent need to advocate for the rights of women with intellectual disabilities. Sexual assault is a serious criminal offence. Victims regardless of disability, have the right to proceed with legal/police action. Workers have reported that:

"Based on our experience we have some concerns that women with intellectual disabilities are discriminated against. This is most evident in police 'assessments' of the ability of victims to be an adequate witness for the police prosecution."

7. Family Planning Planning Association of Victoria

For the past six years the Family Planning Association has operated an Education Unit, to work with people with intellectual disabilities, their parents, care-givers and community workers. The following services are being provided in 1988.

- * Educational programmes for groups
- * Staff development and inservicing for workers
- * Community workshops
- * Individual Counselling
- * Family planning clinic services
- * Resource or library facilities
- * Referral services

These programmes are informed by a philosophy embracing disability, development, sexuality and rights. The main principles of this philosophy are:

- * All individuals, no matter how severe their disability, are capable of growth and development.
- * All individuals have a right to access to information about themselves as individuals and how they relate to others.
- * Behaviour is learnt through formal and informal means. Inappropriate behaviour is not part of a disability but is learnt. Inappropriate behaviour can be unlearned.
- * Life experiences of intellectually disabled people often means they miss out on social skills education that the non-disabled community gets (especially informally).
- * Many myths exist about intellectually disabled people especially regarding sexuality. eg they are non sexual, they are "over-sexed." Sexuality and the need for closeness with other persons are basic human drives like the need for food, water, air or shelter.

* Intellectually disabled people are entitled to the same sexual rights and responsibilities as any other citizen.

8 STAR Victorian Action on Intellectual Disability

STAR is an independent community group which promotes the rights of people with intellectual disabilities and their families throughout the State. Believing in the rights of all people with intellectual disabilities to a real place in all aspects of community life, STAR fights for social change. The organization does this through direct lobbying of Government, through providing information about rights to consumers and their families and through attempting to stir broader public concern and action about the injustices that people with intellectual disabilities experience. STAR also offers a free legal service which can be negotiated by contacting the STAR office. STAR can also offer ideas and support to individual consumers, parents and workers who are seeking to take action on any rights related issue. Any person is eligible to join STAR.

9 Conclusion

There are a number of different advocacy groups available to people with intellectual disabilities in Victoria. Many of them have been only recently established. One of the major problems encountered in relation to advocacy during this research was the fragmentation of the different groups. There is a need for clear role differentiation and for co-ordination between the different advocates.

PART 7 OTHER ISSUES

The final part of this report is concerned with issues of concern which arose during the research but lay outside the explicit tasks of the Advisory Committee and researchers. Three such areas were identified: The first involved the problems encountered by people with intellectual disabilities who were victims of civil offences. The second concerned the problems encountered by 'secondary victims, particularly those who were currently serving jail sentences. The third issue related to the implications of community attitudes towards people with intellectual disabilities.

SECTION 1 CASE STUDY 7

The following case studies illustrate some of the issues which were of concern to the researchers throughout this research but which remained outside the terms of reference of the current study.

1. Civil Offences.

Mick and Joe have mild intellectual disabilities. They have shared accommodation for some years and survive on invalid pensions and some earnings from casual employment. In the past 6 months they have moved 'house' three times. Each time they have moved because of "poor conditions", or threats from other tenants, or because their poor budgeting skills meant they fell behind in their rent. This case study documents some of their experiences as tenants in this time. It is based on researchers' observations and discussion with Mick and Joe.

(a) At the commencement of the six months Mick and Joe rented a small (2 roomed) flat. The roof leaked and windows were broken. They were also frightened of the other tenants. After some time they decided to leave and gave notice to their landlord. The day after doing this they returned home in the evening to find the landlord leaving their flat. He said "I've taken your clothes, clock and TV as payment of your rent till you go." They were too frightened to return to the flat and left the remainder of their possessions there, sleeping in a night shelter. They did not take any action on the matter because previous similar experiences where action had been taken had proved to be unsuccessful.

(b) After some time (during which they slept in night shelters, and empty offices) they found a room in a boarding house. Soon after they moved in, a fellow tenant attempted to break into their room at night and threatened to beat them up. They rang the police who said they couldn't do anything but if it happened again to ring them. No-one came to interview them about the incident. Mick became very frightened of possible further violence and only entered and left the building when he was sure the other tenant was not at home. Soon after they left this accommodation.

(c) After a further period of 'sleeping out', Mick and Joe obtained a Ministry of Housing flat. Immediately they took up residence they were warned by staff "to behave yourselves" or there would be trouble.

2 Secondary Victims.

This case study was taken from a report in The Age Saturday, 23 April 1988.

A magistrate accused the Victorian Department of Community Services of bungling after an intellectually disabled man spent a week in the Pentridge remand yard awaiting sentence.

Mr Lance Pilgrim said the case of Gerald Colin Hood, 20 of Livingston Street, Deer Park, was "outrageous and disgraceful". Prison was inappropriate for people with intellectual disabilities.

Hood last week pleaded guilty to car theft and related charges.

The magistrate's comments at Moe Court on Wednesday followed unsuccessful attempts to get help for Hood from the Office of Intellectual Disability Services which is part of the Department of Community Services.

Help was first sought in December after Hood was convicted on numerous charges relating to an earlier car theft, including unlicensed driving. He was jailed on the unlicensed driving charge and placed on a bond on the car theft charge. The bond was conditional on him living where the service told him to.

Mr David Ewart, counsel for Hood, said the service had not found suitable accommodation for him and had no contact with him while he was in prison.

Mr Ewart said Hood got an early release without help from the service, and offended again in January.

Mr Pilgrim said the circumstances of the case were frightening.

"This man also happens to be an Aborigine. The Muirhead Inquiry would be dreadfully alarmed if this man ever came before their inquiry with the sort of bungling that has occurred in relation to Gerald. It is very depressing to me as a magistrate and a person to listen to this."

Mr Ewart said the service also failed to provide plans to help meet Hood's needs, which are required under the Intellectually Disabled Persons Services Act. He first asked for a general-service plan for his client on 14 December.

Last week Mr Pilgrim asked for an individual-program plan to assist him in sentencing and was told one would not be available until May 6.

He said it was "totally unacceptable "for a disabled offender to be in a police cell or a prison for weeks "while some bureaucrat gets their act together....outrageous is an adjective not sufficient to describe the situation. "

Ms Eileen Fleming, a psychologist with the Gippsland office of the service, said secure accommodation for intellectually disabled offenders was extremely limited. But there were plans to provide more.

Mr Pilgrim said he had seen three people who needed such accommodation and Ms Fleming said she knew of 12.

After being told that Hood could live with his stepfather, Mr Pilgrim released him on his own undertaking and remanded him for sentencing on 9 May.

SECTION 2 OTHER ISSUES

"People with intellectual disabilities are particularly vulnerable to consumer abuse. They are too good for this world."
(Worker in Government Department)

"We don't know how many intellectually disabled people there are in prison. No-one owns these people. They are secondary victims." (Forensic Psychiatrist.)

"People are victims when they are placed in independent living too soon; before they are ready. When they can't cope they face the court system." (Parent of Person who is Intellectually Disabled.)

"How could we change institutions to make them better? Bring in the bulldozers." (Worker at Institution)

These comments illustrate some of the issues which were of concern to the researchers and the Advisory Committee throughout the current project. However the issues of civil offences, secondary victimization and community attitudes were not within the terms of reference of this project. Consequently they received peripheral attention. This section of the research describes briefly some of the implications of these issues for people with intellectual disabilities and makes some recommendations for further action in relation to them.

1. Civil Offences

Discussions with workers and with people with intellectual disabilities revealed that they were frequently victims of offences which did not lie within criminal jurisdiction. The following issues were raised as ones of particular concern.

1.1 Housing Issues.

The shortage of rental accommodation in Victoria has meant that people with an intellectual disability are severely disadvantaged in relation to obtaining suitable housing in the community. (46). Many of the people encountered in this study were living in costly and insecure housing in the private rental market, for example in special accommodation houses or shared flats and houses.

While it was outside the terms of reference of the current study to document in detail the difficulties such people experienced a number of cases were brought to the researchers' attention.

A Victorian Ministerial Review of Special Accommodation Houses (47) documented abuses experienced by people with intellectual disabilities who lived in some of these houses. Further during the time of study there were at least two reports of such abuses in the media.

For example: The Age (August 20 1987) reported that: " The operator of a special accommodation house for men had deprived residents of adequate food, hygiene, bed linen and medicine distribution, the Prahan Magistrate's Court was told yesterday."

People at workshops indicated difficulties experienced in private rental accommodation:

For example: Two people reported their possessions stolen by the landlord. In three other cases people had left accommodation because of persecution by other tenants.

There were also reports of sub-standard accommodation and high rents.

In no cases reported to us had the tenants taken action about the offences. The reasons given for this lack of action included 'not knowing where to go', previous past experiences where such action had proved useless, and a general sense of powerlessness.

1.2. Consumer Issues

Information obtained from workers suggested that people with intellectual disabilities were particularly vulnerable to consumer abuses.

For example a spokesperson from the Ministry of Consumer Affairs indicated that some firms target disadvantaged groups, encouraging them to purchase goods on high interest credit.

An advocate from the Office of the Public Advocate's Office stated that in the first year of the service they had experienced about "100 cases of consumer abuse" of disadvantaged people generally.

For example he told of one elderly woman with an intellectual disability whom he found in a house bare of furniture or food but filled with crates of soft drink, bought from a door-to-door sales person. Payments were consuming her pension. When asked why she had not sought help she said: "I did ring someone but she didn't seem to understand me."

However it was impossible to gain figures about reported offences of this nature. The Ministry of Consumer Affairs stated that no cases were reported to them by people with intellectual disabilities in the three month monitoring period. When compared with the reported incidence from the Office of the Public Advocate, this does not seem to be due to lack of offences occurring but rather is a function of the difficulties which people with intellectual disabilities have in identifying the offences and in knowing where to go to seek assistance.

1.3 People with Intellectual Disabilities and Tribunals.

It was outside of the terms of reference of this project to examine difficulties which people with intellectual disabilities might experience in appearing before tribunals dealing with civil offences. However some people suggested that these provided less frightening and more sensitive forums than the formal courtroom situation which confronted victims of crime.

Currently research is being undertaken on a national basis to examine the avenues of legal redress for disadvantaged consumers. The research will be completed in August and may indicate both the strengths and weaknesses of the tribunal system for people with intellectual disabilities.

2. Secondary Victims

One of the issues raised by workers in the consultation was expressed concern about people with intellectual disabilities who had been convicted of offences and were in jail. These people were categorized by one worker as 'secondary victims'.

The concerns expressed by these workers were reflected in cases raised at the Office of the Public Advocate.

For example the Public Advocate's first case involved a 19 year old man with intellectual disabilities who had been held for some time in the remand section of Pentridge. This young man was not a hardened criminal or a danger to society but as neither the Office of Intellectual Disability Services or the Office of Corrections provided an appropriate secure alternative to prison, he was in Pentridge.

Concerns expressed at consultations during this research included:

(a) The lack of knowledge about the numbers of people with intellectual disabilities in prison.

(b) The lack of programmes available to assist people with intellectual disabilities who are in prison.

(c) The treatment which they receive while in prison. Reports from workers included incidents of brutalisation, rape, sodomy, teasing and humiliation.

(d) The lack of safe secure accommodation for offenders who are intellectually disabled or for people who are exhibiting 'challenging behavior.' Staff at institutions commented that increasingly they are being asked to house people who have severe behavioral problems. This has created difficulties for other people who are residents of the institution and for staff.

The difficulties experienced by people with intellectual disabilities have been recognized by other researchers. Finding the Way, (1) a study of offenders with intellectual disabilities carried out by the Office of the Public Advocate, commented on the lack of rehabilitation programmes available to offenders with intellectual disabilities in jail.

Further, in New South Wales following the completion of a report in 1985, The Missing Services Report (48), a comprehensive study of offenders who are intellectually disabled is now being carried out. Funded by the Department of Corrective Services the researcher is using adapted IQ tests to identify offenders in NSW prisons who may be intellectually disabled. This will enable a more accurate identification of the numbers of people in this situation and of their needs. Following the completion of field work, programmes will be developed to meet the needs of prisoners with an intellectual disability.

3. Community Attitudes

Throughout the consultation the researchers became aware of a polarisation in the community about the relative merits of institutional care and community living for people with intellectual disabilities. For some people institutions were regarded as inappropriate for most people with intellectual disabilities and were strongly criticized for their custodial and over protective approach. These people regarded community living as the better option. Other people expressed concern about the expectations placed on people with intellectual disabilities who moved out into the community and they were concerned at the lack of protection such living afforded them.

Usually both of these sets of views were expressed in 'black and white' terms. In fact the research revealed that neither environment can protect people with intellectual disabilities from becoming victims of crime. There was an established need to create structures which would assist people who were victims of crime and to ensure that they had access to information about their rights and access to an advocate.

Both sets of views expressed during the consultation have implications for intellectually disabled people who are victims of crime. One version which focusses on the incompetence of people with intellectual disabilities and their need for care and protection increases the difficulty which they experience in establishing credibility when a crime is committed against them.

The community living view may place unreal expectations on people living within the community who are expected because of their "improved environment" to demonstrate a capacity to deal with agencies and services with little attention or understanding being given to their disability.

Currently workers in institutions and community facilities have few opportunities to meet and examine the nature of their work. It would enhance their understanding and assist in breaking down stereotypes if there were more opportunities to meet and discuss issues of common concern.

4. Conclusion

This research had a narrow focus which aimed to explore the relationship between people with intellectual disabilities and the criminal justice system. It was inevitable in doing this that other issues of concern should be raised. Further work is needed to examine the extent of the difficulties experienced by people with intellectual disabilities in relation to consumer and tenancy issues.

PART 8 RECOMMENDATIONS

Nature and Extent of Crime.

1. People with intellectual disabilities who are living in residential institutions, Community Residential Units or attending non-residential programmes or services funded or supported by the Office of Intellectual Disability Services should be provided with learning experiences to assist them in developing protective behaviours.
2. Such learning programs should be developed by the Office of Intellectual Disability Services in consultation with the Public Advocate, the Police and Advocacy Groups representing people with intellectual disabilities.
3. The development of protective behaviours should be considered explicitly by staff developing Individual Programme Plans for people leaving and entering institutions. Where appropriate special programmes should be made available for staff to assist in the development of such behaviours.
4. Information provided to the Office of Intellectual Disability Services on the new recording sheets (Notice to the Department of Community Services (VP Form 279A)) should be monitored and a report prepared on an annual basis indicating the nature and extent of crime against people with intellectual disabilities.
5. Such a report should be made available to the Police, the Public Advocate and relevant advocacy agencies to assist them in reducing crimes against people with intellectually disabled people.
6. As is the usual practice in relation to residential programmes in Community Services Victoria that the Office of Intellectual Disability Services should run police checks on prospective direct care staff to ensure that people are not employed in direct care who have been convicted previously of sexual and/or physical offences.
7. The ratio of staff to residents in institutions (particularly at night) should be reviewed and increased so that it is consistent with a level which will ensure good care and the safety of residents.

Reporting of Crimes

8. All staff employed by the Office of Intellectual Disability Services should be provided with an orientation program to assist them in identifying offences committed against clients and to instruct them on the appropriate action to be taken following such offences.

9. OIDS Head Office should provide a clear framework to guide its staff in investigating and reporting incidents against people with intellectual disabilities.

10. Guidelines should be drawn up to include (a) internal reporting (within each facility and to Head Office) (b) reporting to Police (c) reporting to other appropriate people for example parents. Such guidelines should specify procedures to be carried out within OIDS facilities, OIDS funded facilities and regional teams.

11. Such guidelines should include a review of the relevant legislation (Intellectually Disabled Persons Services Act, 1986, Crimes Act, Summary Offences Act Guardianship and Administration Board Act 1986) to establish when it is legitimate for OIDS to carry out an internal inquiry or to call in the police to investigate.

12. Internal complaints mechanisms should be established for each OIDS funded and supported facility.

13. Consistent with the Intellectually Disabled Persons Services Act, people with intellectual disabilities should be involved in the management of the services and facilities where they are clients or residents to ensure that issues of concern to them are brought to the attention of management and to increase accountability of the service to its users.

14. Incidents occurring in OIDS (and OIDS funded and supported) facilities should be reported to a central register to promote accountability and to establish a profile of where particular offences occur.

The Criminal Justice System

The Police

15. Training programs for the Police currently organized by the OIDS Consultant on Justice Issues should be evaluated at the end of 1988 and further programmes should be implemented to increase police knowledge of the needs of people with intellectual disabilities.

16. The Police Academy, in consultation with the Office of Intellectual Disability Services, should develop and implement training programmes for police recruits to assist them in working with people with intellectual disabilities.

17. Such training programmes should include an emphasis on an increasing awareness of the needs of victims who are intellectually disabled, developing interviewing skills in working with people with intellectual disabilities, knowledge of the role of OIDS and other support and advocacy groups available to people with intellectual disabilities.

18. The Office of Intellectual Disability Services, in consultation with appropriate professional bodies should develop and implement a training programme for police prosecutors to assist them in working with victims who are intellectually disabled.

19. Given the Police Surgeon's role in assisting police to identify someone with an intellectual disability, under the new Police Standing Orders, the Office of Intellectual Disability Services should provide an inservice programme to assist the Police Surgeon in this task.

20. In situations where police are involved in an investigation with a victim who is intellectually disabled and are unsure of appropriate action they should seek advice from their superior officer and/or the Community Policing Squad.

21. OIDS, the Office of the Public Advocate, the Police and the Community Visitors Co-ordinator should jointly prepare a clear written statement of the role of independent third persons appearing at interviews with people with an intellectual disability. Police Standing Orders should be amended to include this statement.

22. Such a statement should be available to the third person from the Police Officer prior to the interview.

23. The presence of a third person at interviews with people with intellectual disabilities is a new development. Given some of the possible problems raised in the research about its implementation the Office of the Public Advocate and the Office of Intellectual Disability Services should monitor the innovation over a period of six months.

24. Given the difficulties which many people with intellectual disabilities have in reading, it is recommended that wherever possible statements made by people with intellectual disabilities are taped.

25. Where sound taping of statements is not feasible a copy of the written statement should be given to people with intellectual disabilities and they should be advised by the police as to where they can obtain assistance in reading the statement.

26. Police should provide information to people with an intellectual disability about the processes involved in their case and should assist them in becoming familiar with court processes before their appearance.

27. Police should ensure that victims with an intellectual disability are informed of the progress of their case. This information should include a decision not to proceed with the complaint.

Lawyers

28. The Law Institute and the Leo Cussen Institute should be asked by the Public Advocate to organize inservice training for practising lawyers in working with people with intellectual disabilities.

29. The Public Advocate should seek to have a regular column on the needs of people with intellectual disability in relation to the law, placed in legal professional journals.

30. The Fitzroy Law Handbook and the Lawyers Practice Manual should be revised in keeping with new Mental Health Act, the Intellectually Disabled Persons Services Act and Guardianship and Administration Board Act.

31. Prosecuting lawyers should provide support to victims who are intellectually disabled prior to their cases. Such support should include familiarising them with the court process.

32. Alternatively victims of crime who are intellectually disabled should be referred to advocacy or support groups such as the Court Information and Welfare Network to ensure that the victim has an understanding of the court process prior to the court appearance.

33. A lawyer should be appointed to the Public Advocate's Office to provide legal advice and representation for people with intellectual disabilities. The work of this lawyer should include work on researching rights issues in relation to victims of crime and work with community legal centres to increase awareness of the needs of people with intellectual disabilities.

In Court

34. Magistrates and Judges should receive training and information sessions from OIDS to assist them in (a) identifying people with an intellectual disability (b) questioning people with an intellectual disability and (c) providing support to a victim who is intellectually disabled.

35. A person with an intellectual disability should be permitted to have with them in court a support person and someone to assist in communication (if needed).

36. The test of psychological competence proposed by the Australian Law Reform Commission should be adopted. A person who understands that he/she is under an obligation to give truthful answers and who is capable of giving a rational reply should be competent to be a witness. A court should be able to inform itself as it sees fit in determining whether a person is competent to testify.

37. Cases involving people with an intellectual disability should be given a "fast track" by police and courts.

38. An ongoing Justice Committee should be established to consider the needs of people with intellectual disabilities in relation to the criminal justice system. This should include representatives from the Office of the Public Advocate, Office of Intellectual Disability Services, Legal Aid Commission, Law Reform Commission, Police and the Director of Public Prosecutions.

Advocacy and Rights Information

39. The Public Advocate should encourage funding to produce information on rights and avenues for action for people who are intellectually disabled and who are victims of crime.

40. Information in a clear and accessible form should be provided to people with an intellectual disability about the consequences of police action and their appearance in court.

41. There is a need for the roles of the various advocacy groups to be clarified and for these roles to be made clear to people with intellectual disabilities, workers, and people within the criminal justice system.

Generic Agencies

42. Information should be provided to staff working in generic agencies and Government Departments on the needs of people with intellectual disabilities who use their services. This is particularly important in Departments such as the Ministry of Consumer Affairs.

Civil Offences

43. Further research should be undertaken to investigate the difficulties encountered by people with intellectual disabilities who are victims of civil offences.

44. Such research should include difficulties which people with intellectual disabilities encounter when they appear before tribunals, for example the Social Security Appeals Tribunal.

CONCLUSION

This research had two main aims: to examine the nature and extent of crime against people with intellectual disabilities and to explore the difficulties which such people have when they try to take action within the criminal justice system as victims of crime. It sought to achieve these aims by drawing on the information available from workers and from people with intellectual disabilities. This section of the report sums up some of the main conclusions which can be drawn from the data.

The researchers found that the information currently available from relevant agencies did not allow a conclusive picture to be drawn of the nature and extent of crime against people with intellectual disabilities. However the data obtained from monitoring the reported incidence of crime to agencies and the reports from workers and from people with intellectual disabilities provided a very disturbing outline. Offences against people with intellectual disabilities occurred in all of the situations in which they lived. People living in institutions, community residential units or with limited (or no) support in the community or with families were all vulnerable to offences committed against them.

The data also suggested strongly that people with intellectual disabilities were particularly vulnerable to sexual offences and to physical abuse.

Having an intellectual disability contributed to the vulnerability of people. However the social isolation and the poverty of many people with intellectual disabilities were also important factors. Community attitudes to such people leave them vulnerable to exploitation and their lack of power over resources, relationships, information and decision making severely limit their capacity to defend themselves against abuse or offences.

While not statistically conclusive the picture painted by the data relating to nature and incidence of crime against people with intellectual disabilities obtained in this study is bleak and painful. It was clear that (even if it were desirable) it is not possible to protect people with intellectual disabilities from criminal offences against them. However changes to their living situations can be made to reduce such offences and better and more accessible information can be made available to them about their rights as individuals. An important factor in reducing the incidence of crimes seemed to be the role of advocates and the development of self advocacy groups.

The research provided some evidence to suggest that many offences against people with intellectual disabilities go unreported. Reports from workers and people with intellectual disabilities indicated that non-reporting of offences was a 'frequent occurrence.'

Fear, previous bad experiences, discouragement from workers, friends or family and lack of information about rights were contributing factors to this issue.

However workers too, frequently did not report offences against people with intellectual disabilities. Of particular concern in relation to this issue was the lack of clear guidelines provided by the Office of Intellectual Disability Services for workers in institutions or other community facilities.

The experiences of victims of crime who are intellectually disabled within the criminal justice system revealed that even when victims are not silent they may not be heard. The researchers found that the Police, lawyers and the courts were not readily accessible to people with intellectual disabilities. While other minority groups in the community receive recognition of special needs little positive account was taken of the needs of people with intellectual disabilities. There was lack of knowledge on the part of professionals about the nature of intellectual disability, frequent confusion of it with psychiatric illness and inflexibility of structures and processes in working with victims of crime who were intellectually disabled.

The research data suggested that very few reported offences against people with intellectual disabilities actually end up in court, often because workers in the criminal justice system do not know how to work with people with intellectual disabilities and because their credibility is regarded as doubtful.

When offences are examined in a court situation, the researchers found that people with intellectual disabilities are severely disadvantaged by the court processes.

The key to many of the difficulties experienced by people with intellectual disabilities in the criminal justice system is the failure of workers within it to relate to the person reporting the crime rather than their disability. The particular needs of people with intellectual disabilities will vary with the degree of their disability and their life circumstances. Some assessment of these factors on an individual basis is needed if they are to have access to the criminal justice system.

The recommendations coming from this research focus on the need to develop more flexible and accessible structures and processes within the criminal justice system and to increase the knowledge of workers about intellectual disability and the knowledge of people with intellectual disabilities about their rights. It is hoped that if implemented these recommendations will lead to short-term change but also contribute to a changing attitude towards people with an intellectual disability.

For victims to be no longer silent they must know they are victims, be able to shout their wrongs but they must also be heard by those responsible for taking action about them.

REFERENCES

- 1 Office of the Public Advocate Finding the Way. The Criminal Justice System and the Person with Intellectual Disability. VGPO, 1987
- 2 Rapoport R.N. Three dilemmas in action research. Human Relations 1970, 23,6, pp 499-513
- 3 Marris P and Rein M Dilemmas of Social Research. Routledge and Kegan Paul, 1974
- 4 Cocks E An Introduction to Intellectual Disability in Australia STAR 1985
- 5 Intellectually Disabled Persons' Services Act VGPO, 1986
- 6 The Guardianship and Administration Board Act VGPO, 1986
- 7 Victorian Crimes Act 1985 VGPO, (Reprinted 1987)
- 8 Victorian Summary Offences Act 1966 VGPO, (Reprinted 1983)
- 9 Victorian Vagrancy Act 1966 VGPO, (Reprinted 1985)
- 10 Victorian Police Offences Act 1966 VGPO, (Reprinted 1987)
- 11 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, 1985
- 12 Williams G Notes on Identifying that a Person is Intellectually Disabled. Office of the Public Advocate (Unpublished), 1987
- 13 Victorian Law Reform Commission Rape and Allied Offences: Victims with Impaired Mental Functioning Discussion Paper No 9. Victorian Law Reform Commission 1988
- 14 Victorian Attorney General's Department. Obtaining Evidence from Intellectually Disabled People (Draft) 1987
- 15 Grossman H J (ed) Classification in Mental Retardation. American Association on Mental Deficiency Washington DC (revised) 1983
- 16 Community Services Victoria/Office of Intellectual Disability Services Ten Year Plan for the Redevelopment of Intellectual Disability Services, 1987
- 17 Hayes SC and Hayes R Mental Retardation: Law, Policy, and Administration The Law Book Co. 1982
- 18 Briton J Normalization: What of and what for. Part 11 Aus Journal of Mental Retardation 1979, 5,6.
- 19 Briton J Normalization. Talk Given to Housing Commission Psychologists (Unpublished) 1980

- 20 Benn C Attacking Poverty through Participation
PIT Publishing 1981
- 21 Grabosky PN Crime Victims in Australia. Topic 111.
Australian Institute of Criminology,
Canberra 1985
- 22 Briton J Normalization: What of and what for.
Part 111. Aus Journal of Mental
Retardation. 1979, 5, 7.
- 23 Office of Report on Consumer Participation in the
Intellectual Disability Southern Region. (Unpublished) 1987
Services
- 24 Smith D and Rau C Call to reform the hospital visitors'
system Times on Sunday 3/8/1987
- 25 Hayes SC and Hayes R Simply Criminal. The Law Book Company
1984
- 26 Victorian Mental Health Act VGPO
1986 (Revised)
- 27 Intellectual Report of Pilot Project, 1986-7 IDRS
Disability Rights Intellectual Disability Rights Service
Service 1987
- 28 Creyke R and Weeks P Duty of Care. Law the Direct Care
Worker Shield Press Canberra 1985
- 29 Ryan P and Thomas R The Politics of Intellectual Disability
Faber 1985 (Revised)
- 30 Aus Bureau of Victims of Crime Australia AGPO, 1986
Statistics
- 31 Bard M and Sangrey D The Crime Victim's Handbook Bunner
Mazel NY 1986
- 32 Shapland J, Victims in the Criminal Justice System
Willmore J & Duff P Gower Publishing House London 1985
- 33 Office of the Public Violence at Caloola (Unpublished) 1988
Advocate
- 34 Hewitt SEK Mentally retarded persons and the
criminal justice system. Medicine and
Law 1986, 5, pp265-272
- 35 Aguilar S Prosecuting Cases of Physical and
Sexual Abuse of the Mentally Retarded.
Prosecutor's Notebook Vol 111.
California District Attorney's Assoc.
1982
- 36 Tully B and Cahill D Police Interviewing of the Mentally
Handicapped. An Experimental Study.
The Police Foundation 1984
- 37 Simpson J Acting for a client with intellectual
disabilities. Law Society Journal,
April 1987 p42
- 38 Endicott To tell the truth. Entourage Spring
1987 2, 2, pp23-25
- 39 Office of the People with Intellectual Disabilities
Public Advocate as Witnesses (Draft) 1988
- 40 Warner K Juveniles in the criminal justice
system. In Zdenkowski G, Ronalds C, and
Richardson M The Criminal Injustice
System Pluto Press, 1987 pp171-90

- 41 Scutt J Sexual assault and the criminal justice system in Chappell D and Wilson P (eds) The Australian Criminal Justice System. The Mid 1980s. Butterworths 1986 pp57-84
- 42 Legal and Constitutional Committee Report to Parliament upon Support Services for Victims of Crime. VGPO 1987
- 43 Australian Law Reform Commission Report No 38 1987 p150
- 44 Victorian Crimes and Family Violence Act VGPO 1987
- 45 McKnight J L Regenerating community. Paper Presented before the Canadian Mental Health Association's Search Conference, Ottawa Canada Nov 28, 1985
- 46 Wolfensberger W The Third Stage in the Evolution of Voluntary Associations for the Mentally Retarded. Paper Given to the Fifth International Congress on Mental Retardation of the International League of Societies for the Mentally Retarded at Montreal, Canada. National Institute on Mental Retardation Toronto 1972
- 47 Ministerial Review of Special Accommodation Houses. Final Report. VGPO 1987
- 48 NSW Department of Corrective Services and Youth and Community Services The Missing Services. NSW Office of Corrections 1985

APPENDIX 1

Form 211 (1)

C.I.B. WORK ANALYSIS DIVISIONAL CRIME REPORT

Page 1

NUMBERS FOR MONTH 19

From to -

DIVISION

CODE

ITEM	OFFENCES	CRIME IN DIVISION			DETAILS OF WORK PERFORMED BY DIVISION		
		Offences Reported	Offences Cleared	C.I.B. Investigations	Total Offences Investigated by Division	No. of Offences Cleared by Division	Clearance Units
1	Homicide, Loss of Life etc.						
2	Rape, Attempts, Assault with intent						
3	Sex Offences, all other						
4	Abductions, Kidnap and Similar						
5	Robbery and Attempts						
6	Arson						
7	Criminal Damage other than Arson						
8	Assault—Serious Injury and Injury						
9	Assaults—Unlawful						
10	Deception greater than \$10 000						
11	Deception less than \$10 000						
12	Forge						
13	Utter						
14	Blackmail						
15	Drugs—Cultivate, Manufacture, Traffic						
16	Drugs—Possess						
17	Drugs—Use						
18	Burglary—Aggravated						
19	Burglary—Factory						
20	Burglary—House						
21	Burglary—Shop						
22	Burglary—Other						
23	Handle Stolen Goods						
24	Theft—from Motor Vehicle						
25	Theft—Shopstealing						
26	Theft—Motor Car						
27	Theft—Bicycles						
28	Theft—Other						
29	Other Serious Indictable Offences						
30	Other Indictable Offences						
31	Summary Offences, all other						
TOTAL:							

7-1111

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APPENDIX 2

Williams Graham: Notes on Identifying that a Person is Intellectually Disabled. Office of the Public Advocate, 1987

The following points should be regarded as indicators only. There is no definitive "check list." People who are intellectually disabled are not a homogeneous group. There are as many differences as there are individuals. The purpose of a list such as this is to provide indicators to "coal face" workers that a person has an intellectual disability. Confirmation and assessment of the degree of disability requires detailed assessment.

1. Care should be taken in the use of a label of intellectual disability about any person. It is a major disadvantage for a person in our society to be so labelled. Once a label is stuck on it can be hard to remove, often with disastrous consequences.

2. Care should be taken to ensure that the existence of one or more of the following indicators does not result in a presumption that a person is intellectually disabled.

Eg. Many people who have quite poor skills in communication are not intellectually disabled. The manifestations of many physical disabilities often include poor communication skills.

Further, some people who are intellectually disabled are able to overtly mask their lack of understanding by good communication capacity and well developed social skills.

It is not easy. Do not presume.

3. What is intellectual disability? It is essential that this is clearly understood. It is essential, for instance, that all practitioners know the difference between intellectual disability and psychiatric illness. The following definition is one that is accepted world wide. I urge you to see beyond the formal words and understand the implications.

"Intellectual disability in relation to a person over the age of 5 years means a significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behaviour and manifested during the development period."

Papers are available which comment upon and amplify this definition.

4 Some External Indicators.

4.1 Education - Where did the person attend school?

If the answer is "Special School", "Special Developmental School", "Day Training Centre", or some form of "Special Class" is mentioned, the person may be intellectually disabled. Further if there was a poor record of achievement at a normal school, it may indicate intellectual disability.

A typical story is not achieving at school, a number of years spent in early secondary classes and a simple sort of "dropping out".

4.2 Employment - What is the person's employment history/present employment?

If words like "sheltered workshop", "work preparation centre", "adult unit", "day training centre" or the like are mentioned, it may be an indicator of intellectual disability. The key factor to look for is specialist employment assistance.

Many people who are intellectually disabled have never worked and have been lifelong "beneficiaries" of the welfare system (of course the same can be said about many people who are not intellectually disabled).

4.3 Residential - Does a person's pattern of living provide an indicator?

There are lots of trigger phrases which might alert you - institutions (AKA Training Centres); the name of an institution; CRU (Community Residential Unit); a variety of other names of specialist services. Words like "home board", "Interchange", and "foster care" might also be indicators.

An adult who is intellectually disabled may continue to live with parents or other family members to an advanced age. It is, regrettably, rare to find a person who is intellectually disabled living in a "normal" nuclear family, with partner and children.

4.4 Other Support Services - Is the person involved with helping professionals?

Few registered clients of OIDS know or articulate that! However, they may speak of "my social worker", or "my worker". They may attend specialist "social clubs". They will seldom have a pattern of life which has involvement in the clubs, hobbies or range of activities which are characteristic of most members of society.

5. Other Indicators

5.1 Remember my warnings - There are no single indicators of intellectual disability. It hurts even to write down the following generalizations. They are contradicted by many people in many different ways.

5.2 The disability implies impairment of intellectual functioning together with behaviour patterns and personality characteristics which are the result of the way in which they have been treated as "disabled persons".

Manifestations are exhibited in a number of ways.

A person may lack "worldly wisdom" - have little understanding of the dynamics of society; a poor global appreciation; not read newspapers or see films; not be able to participate in most conversations; not be able to read or write; relate in a self-centred way; behave in the way you would expect an uneducated person to do.

Some with an intellectual disability may have difficulty in abstract conceptualising or expressing abstract concepts.

There may be verbal and other communication problems; the person may speak slowly or in an incoherent or unclear way.

There may be inappropriate social behaviour in interpersonal interactions.

For example: a poor sense of "distance": too close; stroking and pawing; too distant; baseless anxiety or fears; a cowering, compliant reaction to perceived authority figures; giving responses that the person thinks the questioner wants; comments or conversation which is unrelated to the matter on hand.

Many people with an intellectual disability live dreadfully isolated lives, having few or no joyous, genuine friendships. They frequently only have relationships in which they are the "client" or the "child". They then present to all people in the manner befitting such a status.

6 Conclusion

I have consciously resisted pressure to provide a comprehensive "check list" of what a person who is intellectually disabled is like. All persons using this material should understand the dangers inherent in generalising or categorising. Each person should be considered individually. Each person is different and there is no common characteristic which, per se, justifies the application of a label.

APPENDIX 3

LIST OF PEOPLE INTERVIEWED FOR THE RESEARCH

A series of interviews and community consultations were carried out during the research. Interviews were designed to cover issues such as:

- (a) Nature and Extent of Crime against people with intellectual disabilities as experienced by the particular agency.
- (b) Problems which people with intellectual disabilities confronted when taking action following an offence against them.
- (c) Reforms which the representative of the agency thought would assist people with intellectual disabilities who were victims of crime.

Agency	Name
AMIDA (Accommodation for Mildly Intellectually Disadvantaged Adults)	Bryan Walkinshaw Graeme Williams
Attorney-General's Department (Vic)	Kevin O'Connor Desmond Lane
Citizens Advocacy	
Citizens Advocacy Vic Resource Unit	Heather Hindle
Citizens Advocacy Sunbury	Helen Nish
Citizens Advocacy Barwon	Jacqui Trempel
Citizens Advocacy Barwon	Pauline McKenzie
Community Visitors	Eric Mushins
Director of Public Prosecutions	John Coldrey QC John Buckley Sue Caine Garry Ching Geoff Lawrence Richard Lewis Margot Powell
Family Planning Association of Vic	Philomena Horsley Sylvia Azzopardi Felicity Wiseman Chris Kelly
Forensic Psychiatry Services	Dr Alan Bartholomew Dr John Grigor Dr Lester Walton
Frankston College of TAFE	Libby Cross
Health Complaints Unit (Health Department NSW)	Roger Dunstan

Health Department (Victoria)	Allan Rassaby Gerry Naughton
Hospital Employees Federation (No2 Branch)	Paul Schlesinger Peter Bruce (telephone)
A meeting was held with delegates to the HEF during the research.	
Intellectual Disability Rights Service (NSW)	Jim Simpson Pam Simpson
Interested People	Liesl Osman Rosemary Crossley Dr Susan Hayes
Legal Aid Commission (Victoria)	Allan Nicholls
Law Reform Commission (Victoria)	Francine McNiff Joe Swarc
Lawyers	Lou Papaleo Richard Anderson
Legal Centres	
Federation of Community Legal Centres Fitzroy Legal Service	Chris Richards Megan Crowley,
Magistrates	
Chief Stipendary Magistrate Magistrate	John Dugan Murray Gerkins
Ministry of Consumer Affairs	David Hall Peter Stewart John Lallios
A meeting with managers of departments within the Ministry of Consumer Affairs was also held.	
National Self Advocacy Kit	Tibor Mulhally
Office of Intellectual Disability Services (Vic)	David Green Dr Mike Steer Vicki Hays Kerry Stringer Doug Dalton John Wallace Brendan Lilywhite Tibor Bakos Bill Taylor Alma Adams Jenny Bright Helen Spensely

Meetings with staff at three regional teams were held.
A meeting with the Chief Executive Officers of Victorian institutions was also held.

Office of the Public Advocate

Ben Bodna
John Briton
Graham Williams
Laural Childs
Robin Lansdowne
Lyn Gray
Jacqui Flitcroft
Dymphna Laurie
Marion Champion
Jeff Goldhar

Two meetings were held with staff at the Office of the Public Advocate during the research.

Parents' Groups

Kew and St Nicholas Parents' Group
Janefield Parents' Group

People with Intellectual Disabilities

Four meetings were held with people with intellectual disabilities.

Police Complaints Authority (Vic)

Hugh Selby
Ian Freckleton

Police Surgeon's Office

Dr James MacLeod
Dr Faye Jappie

Probation Officers Association (Vic)

Julian Kennelly
Lyn Clark

Public Interest Advocacy Centre (NSW)

Julia Hall
Roger West

**REINFORCE Victorian Union of
Intellectually Disadvantaged Citizens**

A meeting was held with representatives from REINFORCE.

Sexual Assault Clinics

Sexual Assault Clinic
Monash Medical Centre

Alison McMichael

CASA House (Royal Womens Hospital)
North-East CASA

Cathy Deans
Elizabeth Schneider

A meeting was held with representatives from all regional CASAs during the research.

STAR Victorian Action on
Intellectual Disability

Victoria Police

Ian Parsons

Commander Laurie Rymer
Inspector Rod Norman
Inspector Vicki Brown
Senior Sergeant Joy
Murphy
Inspector Bob Lovell
Sergeant Simon
Clemence
Senior Constable Toni
Stella
Senior Constable
Heather Frost
Chief Inspector Ian
Francis
Sergeant Steven Buckle

VOCAL (Victims of Crime
Assistance League)

Howard Bratton

In addition to these interviews a series of six community consultations were held in country and metropolitan areas. These were auspiced by the Office of the Public Advocate and the Law Reform Commission of Victoria.

APPENDIX 4

REPORTED INCIDENCE OF CRIME TO AGENCIES OVER A THREE MONTH MONITORING PERIOD.

1. The Monitoring Process.

Nineteen agencies agreed to monitor their cases of alleged crimes against people with an intellectual disability during the last quarter of 1987. The agencies included government and nongovernment organizations. (See Appendix). Basic data was sought, ie numbers of intellectually disabled clients seen, age, and sex of the victim, follow-up or outcome of the complaint and total agency numbers of reported crimes. Data was obtained from all agencies taking part.

Agencies were provided with a paper on intellectual disability indicators (Williams 1987). The researchers followed up the request with monthly phone calls to check progress.

Table 1 Monitoring Data by Agency.

Agency	Time Scale	No of Cases Intellectual Disability	Nature of Cases	Outcome/ Follow-up
OIDS North-East	Jan-March 1988	1	Sexual Assault	Did not proceed
OIDS Western Port	Sept 87 June 88	4	Sexual Assault	3 cases victims and families decided not to proceed. 1 case not concluded
OIDS Sunbury Training Centre	1987-1988	9	5 assault 3 alleged rape 1 murder	All reported to police
OIDS Jane field TC	1987-1988	4	2 thefts 2 assaults	Police Investigation No charges
AMIDA#0		2	1 assault 1 not specified	Not proceeded with
REINFORCE	No cases reported			

Agency	Time Scale	No of Cases Intellectual Disability	Nature of Cases	Outcome/ Follow-up
Office of the Public Advocate	1987- (mid) 1988	17	1 Murder Alleged theft, physical and sexual abuse of 6 Special Accomodation House residents 1 incest All other cases are rape and sexual assault	Investigation of SAH cases not concluded. Two offences by people with intellectual disabilities against other people with intellectual disabilities came to court. Case 1: unfit to plead. Case 2: conviction Incest: Conviction under Crimes and Family Violence Act. All other cases, no charges laid.
Police Surgeon	1985 1986	14 14	Not specified Not specified	
Police Bentleigh CIB#		1	Alleged Sexual Assault	Did not proceed.
Prahran Comm/ty Policing Squad#		0		
Heidelberg Comm/ty Policing Squad#	Sept 87 June 88	3	Alleged rape	Did not proceed
Sexual Offences Squad #		14	Rape Indecent assault	5 alleged offenders charged
CASA House Sexual Assault Clinic	May 87 Feb 88	13	Sexual offences including, rape, incest, sexual assault	1 conviction Ongoing support for 6 victims.

Agency	Time Scale	No of Cases Intellectual Disability	Nature of Cases	Outcome/ Follow-up
Monash Sexual Assault Clinic#		3	2 incest 1 sexual penetration	Not proceeded with.
Victorian Court Information & Welfare Network#		1	Incest	Intervention Order
Police Complaints Authority\$	1987-1988	1	Sexual Assault	To commital Hearing
Family Planning Assoc.	1987-8	26	Rape and sexual assault	10 victims received counselling
	1988 Jan-April	10	Rape and sexual assault	3 victims receiving counselling For all cases 2 charges laid Outcomes not known.
DPP\$	1985-May 88	8	2 murders 6 rape/sexual assault	1 murder conviction 1 offender unfit to plead 2 convictions sexual assault.
STAR##			No cases reported	

* Total number of clients.

Carried out monitoring for specified period of three months.

@ Housing or advocacy group of people with intellectual disabilities.

\$Director of Public Prosecutions

2. Problems with the Monitoring Process

The table above demonstrates some trends in the incidence and nature of crimes against people with intellectual disabilities. However the data shown in the table should be regarded as tentative only for the following reasons.

(a) It is unusual for agencies to identify intellectual disability in their statistics. Consequently some agencies were not skilled in identifying cases which may have occurred particularly when they involved people with a mild disability. Some cases may therefore have been missed.

(b) As noted earlier there is confusion for some professionals between intellectual disability and mental illness and between intellectual disability and other disabilities. While the data were screened to ensure that they were valid, it is possible that some inappropriate cases were included.

(c) While workers were asked to include all cases in the monitoring at least one agency began by screening out cases which they thought were inappropriate ie the person was not believed! Although this kind of error was rectified, when it was brought to the attention of the researchers, there is no way of assessing the extent of the problem.

(d) The time scales used by the agencies varied and often differed from those which were requested asked for. This made comparison across agencies very difficult. The reasons given for this discrepancy related to the information systems already set up by the agencies.

(e) There is some duplication in the records provided by the different agencies. For example some cases taken up by the Office of the Public Advocate also appeared in Police records. For reasons of confidentiality it was not possible for the researchers to check on the degree of duplication.

The data does however provide a first step towards assessing the incidence and nature of crimes against intellectually disabled people. The trends which it reveals were supported by the data obtained from interviews and workshops.

3. Results of the Monitoring.

The main implications which can be drawn from Table 1 are outlined below.

3.1 The figures captured by the different agencies are not large in total numbers. However it would be incorrect to draw the conclusion from the data that crimes against people with intellectual disabilities are less than for the general population. Our reasons for this view are:

(a) There was strong evidence of under-reporting of crimes by people with intellectual disabilities themselves and by workers. Further the failure of cases to be recorded later in the criminal justice process may reflect the failure of gate-keeping agencies to take action on reported crimes.

(b) The lack of adequate recording systems in many of the agencies involved in the study makes it difficult to gain an absolutely accurate assessment of crimes against intellectually disabled people.

(c) In some instances crimes which might have been recorded in the general population were not noted as crimes by the agency concerned. For example theft at one training centre was stated as a problem by both staff and residents but was not recorded in the data. Residents also reported harrassment and aggressive behavior by other residents. This too was not recorded as an offence.

3.2 The data suggest strongly that sexual offences and physical assault are the most frequently recorded crimes against intellectually disabled people. The recording of these figures is particularly significant in view of the low reporting rates for these crimes in the general population, (Grabosky, 198).

3.3 It was clear from the data that agencies with a particular mandate to investigate and provide support in cases of alleged abuse or crime (Office of the Public Advocate and sexual assault clinics) were reporting more cases than were other agencies. This suggests that the increased sensitivity of such agencies and their specialist nature make them more accessible to those working with intellectually disabled people. They may also be more accurate in record keeping and identifying people with an intellectual disability.

3.4 Case study material and examination of the recorded data from selected agencies indicated that most of the recorded cases were referred by workers (police or OIDS or other welfare workers). Very few were directly reported by people with intellectual disabilities.

APPENDIX 5

CRITERIA FOR SELECTION OF CASE STUDIES

1. Aims of Case Studies

1.1 To analyse and describe the processes through which an intellectually disadvantaged person goes when they are a victim of crime.

1.2 To examine some of the reasons for failure by particular agencies to follow-up reported crimes by intellectually disadvantaged people.

1.3 To note the difficulties and experiences of intellectually disadvantaged people in court by direct observation.

1.4 To contrast the processes involved in criminal proceedings with those taking place in relation to civil offences.

1.5 To explore some of the problems experienced by agencies within the criminal justice system in working with intellectually disadvantaged people as victims or witnesses.

2. Problems

2.1 Access. Access to documents and people involved in crime against intellectually disabled people is limited. The Public Advocate's Office is one source, but other agencies need to be involved.

2.2 Timing. In order to achieve the aims of this process it is important to use current cases. However often by the time we hear about them, they are at best in the recent past.

2.3 Confidentiality. It is important to discuss the issues with the victim and also with other agencies such as police and lawyers, this may lead to problems of confidentiality.

2.4 Representativeness of Cases. It has proved to be very difficult to gain more than an impression of the nature and extent of crimes against intellectually disadvantaged people.

2.5 Number of Cases. Given the time constraints of this project only a small number of case studies can be attempted. It is suggested that a maximum of ten case studies be developed during the study.

3. Suggested Criteria

It is clear that the issue of access is of prime importance in this work. Permission from the victim needs to be obtained and information about current cases gained from particular agencies. The criteria suggested below may provide a guide for agencies assisting us in the process.



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3.1 Range of crimes. It will be useful if case studies can cover a range of different crimes and offences. Our experience so far suggests that the following crimes should be considered:

- (a) Sexual Offences (incest, rape, assault).
- (b) Crimes committed in institutions.
- (c) Civil offence (1) Either tenancy or consumer issue.
- (d) Fraud or theft.

3.2 Decision not to Proceed.

At least one case study should cover the issues involved in deciding whether or not to proceed with a case by the agency to which it is reported.

3.3 Court Procedures.

At least one case where researchers can attend court and observe procedures.

3.4 Independent Discussion

Although we realise that some case studies will have to rely on case records we would like to give preference to those where it is possible to talk with workers (and victims) involved in the case.

3.5 Range of Agencies.

We would like to select cases from four main sources:

Office of Public Advocate.
Office of Intellectual Disability Services
Police
Community Based Agency.

4. Carrying out the Case Study.

4.1 Where only documents are available on a particular case, a content analysis will be carried out to track the processes through which the victim has gone. Particular attention will be paid to the views of agencies involved in the case.

4.2 Where it is possible to discuss the case with people involved in it then interviews will be held with selected personnel from agencies.

4.3 Notes will be taken by two researchers attending court.