

**INQUIRY INTO ISSUES RELATING TO THE OPERATIONS  
AND MANAGEMENT OF THE DEPARTMENT OF  
CORRECTIVE SERVICES**

**Organisation:** Intellectual Disability Rights Service Inc.  
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**Date Received:** 20/02/2006

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**Subject:**

**Summary**

The Hon Amanda Fazio MLC  
Committee Chair  
General Purpose Standing Committee No. 3  
NSW Legislative Council  
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Dear Ms Fazio

**Re: Inquiry into issues relating to the operations and management  
of the Department of Corrective Services**

Thank you for the opportunity to provide a submission to the General Purpose Standing Committee No. 3 inquiry into issues relating to the operations and management of the Department of Corrective Services (DCS) and for allowing an extension of the deadline for us to provide comments.

**1. About the Intellectual Disability Rights Service**

The Intellectual Disability Rights Service (IDRS) is a community legal centre that provides legal services to people with an intellectual disability throughout New South Wales. Our services include the provision of telephone legal advice and legal representation in select matters. We also engage in policy and law reform work and community legal education with a view to advancing the rights of people with an intellectual disability.

Our awareness of the high representation of people with an intellectual disability in the criminal justice system is reflected in the substantial proportion of work we undertake in the area of criminal law. It has been estimated that people with an intellectual disability make up 2 to 3% of the general population, but comprise at least 12 to 13% of the New South Wales prison population.<sup>1</sup> In 2001 IDRS and the

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<sup>1</sup> S Hayes and D McIlwain, *The Prevalence of Intellectual Disability in the New South Wales Prison Population: An Empirical Study*, Sydney, 1998, at 47.

New South Wales Council of Intellectual Disability published *The Framework Report*,<sup>2</sup> in which a comprehensive scheme of recommendations was made for the provision of services required by offenders with an intellectual disability and those at risk of offending.

IDRS has received funding until June 2006 from the New South Wales Department of Ageing, Disability and Home Care to establish a pilot project, the Criminal Justice Support Network (CJSN). CJSN is a 24 hour state-wide service based in three primary regions: Sydney Metropolitan, the Hunter and Southern New South Wales. Through an extensive recruitment and training program, CJSN continues to build its network of volunteer support workers who support victims and offenders with an intellectual disability in contact with the criminal justice system.

CJSN provides direct support to reduce the disadvantages experienced due to a person's intellectual disability at Court and legal appointments including Audio Visual Links (AVLs) from gaol. CJSN has more recently completed a pilot with the Disability Services Unit (DSU) of the Department of Corrective Services (DCS) to examine how the support role differs when a person is in a custodial environment either on remand or sentenced. This pilot looked in detail at identifying barriers for people with an intellectual disability and the particular skills and time required for support.

We draw upon the above experience including our experience in representing clients in criminal matters in making our submission.

## **2(a) Access and contact by non-correctional persons including their security screening**

We note that the terms of reference for this inquiry are restricted to the management of high risk prisoners by the Department and advise that the following comments reflect our experiences with people with intellectual disability who are being held by DCS and may cover the range of prisoner security classifications.

We have found access and contact by non-correctional persons to be difficult. This is particularly due to inconsistencies between different correctional centres, different facilities at correctional centres and different corrections staff at Courts.

### *Access and contact in correctional centres*

The CJSN has had difficulties accessing and supporting people with an intellectual disability when attending correctional centres. These problems are attributable to the classification and security screening currently in place. It would improve timely access to clients if designated support persons were able to be listed in the same manner as Legal Professionals; we have not encountered any problems with the security screening of IDRS legal staff when attending correctional centres.

The collaboration between the Disability Services Unit, DCS and the Criminal Justice Support Network has seen an improvement in the support available to people with an intellectual disability since the inception of the pilot programme. In particular, the

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<sup>2</sup> J Simpson, M Martin and J Green, *The Framework Report*, Sydney: New South Wales Council For Intellectual Disability, 2001.

DSU's assistance in facilitating approval for support persons to attend AVLs at gaol has been helpful. Nevertheless, problems still arise around access to people as the provision of support at AVLs is an unfamiliar process for corrections officers.

Whilst we recognise that AVLs have had a very positive effect in reducing the transportation of prisoners, it has come to our attention that people with an intellectual disability find AVLs to be a particularly confusing process which further alienates them from the Court process. As such, the role of the support person is even more vital. A person with an intellectual disability would find it difficult and confusing to understand that when they are in the AVL room looking at screens, they are actually appearing in Court. Clients, as well as trained support workers, have found it difficult when in the AVL room to ascertain who is speaking, what the outcome of the matter is and when the matter has finished. All of these problems impact to a far greater degree on a person who has an intellectual disability and further exacerbates their anxiety and fear around the process.

The following exemplifies the inconsistencies that can occur in access by non-correctional persons:

CJSN had approval to support a client on remand at MRRC Silverwater to attend an AVL. Support had previously been provided to this person at MRRC. At the first support, issues had arisen due to the person's disability, in particular difficulties with bringing the person to the AVL room. The support person had been able to assist with resolving difficulties as there was a level of trust and the support person was very familiar with the support required.

On the second occasion, the support person waited in the Legal Waiting Area, and the various Corrective Service Officers were notified that CJSN were there to support the person with an intellectual disability in his appearance before the court in the AVL room. After waiting for over an hour and checking on several occasions, it was found that the officers had brought the person to the AVL room without calling for the support worker. When the client was finally spoken to he stated "he didn't understand a word of it". The second time this occurred, the client refused to go into the AVL room and so did not appear before the Court.

### *Access and contact in Court cells*

It is important that support persons have access to clients held in Court cells before and after their matter has been heard. A person with an intellectual disability will find it extremely difficult to understand what has happened with their matter in Court. It is imperative that the person with an intellectual disability understands the outcome of their matter prior to returning to gaol as it may take a number of days to gain access to the person at gaol in order to explain the outcome of their matter.

CJSN has found the process of accessing clients in Court cells to be inconsistent. At times, it is the legal representative who will be able to facilitate the support person's access and at other times it is the Justice Health worker. The grant of access varies enormously depending upon the officers at the Court. It is also more difficult if the

person has been refused bail by the Police the night before as no established contact has been made with their legal representative or the DSU to assist in access.

The following are examples of the inconsistencies that can occur in access by non-correctional persons at Court:

A CJSN worker was refused access to see a client who had just been sentenced. The support person finally managed after half an hour of assertive negotiation and 3 telephone calls to see the client in the Court cells after his appearance. The first question the client asked was "Did they say I'm guilty? Did they give me life?" He had a huge sense of relief going back to gaol knowing what his sentence was.

The CJSN has encountered problems with access to persons with an intellectual disability to provide supports in Court. When a person is not in DCS custody, the support person sits next to the person in Court to explain what is happening, to support them with the court process, and to help reduce their stress and anxiety; this facilitates understanding of the proceedings. When a person with an intellectual disability is in DCS custody, the lawyer will often request that the Magistrate allow the support person to sit in the dock, or beside the dock, to undertake their support role. However, in one support the support person, who had had been with the client in the cells prior to their appearance in court, was told by DCS officers that he was not allowed to sit in or beside the dock to support the person with an intellectual disability. The support person followed their direction until in Court where the lawyer requested the Magistrate to allow the support person to sit in the dock and the Magistrate agreed. The DCS Manager subsequently made a formal complaint to CJSN that the support worker had disobeyed his request and, as such, support people would not be allowed access to the cells in the future. This issue was resolved but nevertheless, it highlights the necessity for consistent practices to be put in place.

CJSN has been informed by some CSOs that sitting in the dock supporting a client is deemed by DCS to be a personal contact visit and as such both the prisoner and support person may be subjected to a "strip search".

If there were consistent practices put in place, support workers would be able to act accordingly and people with an intellectual disability would have the necessary support to understand the processes and outcomes. On one occasion, after supporting a client at Court, we were contacted by Corrections Officers to say that the client had come back from Court and been able to tell them what had happened in his matter. This person had been on remand for over a year and had never before been able to explain what had happened with his matter at Court.

## **2(c) The objectivity of the prisoner classification system**

IDRS has found people with an intellectual disability may at times be disadvantaged by the classification process in circumstances where they are deemed to have tried to escape. This includes circumstances where a person runs away from Police prior

to being arrested. This can be deemed as an attempted escape and have an adverse effect on their classification within the prison system. It may result in a person with an intellectual disability being denied access to designated "disability beds" within Corrective Services. People with an intellectual disability are likely to try to run away as they are scared, anxious and distressed rather than attempting to escape and they may not understand the consequences of running away.

## **2(d) Staffing levels and over-crowding**

As previously stated, people with an intellectual disability are highly represented in gaol. They are at increased risk of being victims of assault and sexual assault whilst in prison. Incarceration in gaol has negative consequences for any person, but even more so for people with an intellectual disability. As at 2 February 2006 there were 143 identified people with an intellectual disability in gaol, 43 of whom are awaiting sentencing.

### *Protective Custody, separate units and the need for therapeutic programs*

It is often appropriate to keep prisoners with an intellectual disability separate from the general prison population when on remand or serving a custodial sentence because of their increased vulnerability to assault and sexual assault whilst in gaol.

Where there are real concerns about an inmate's safety, the options are either holding the person in protective custody or in separate units for people with an intellectual disability. The current capacity of the separate units within Long Bay Gaol is 20 (10 within Long Bay SPC and 10 in 18 Wing). It is of concern that these beds are often full. The result is that people with an intellectual disability are subjected to many more restrictions than those in the general prison population by virtue of having to remain in protective custody. For example, inmates in protective custody can only be let out of their cell for one hour each day and IDRS is aware of two cases where a person with an intellectual disability has been kept in their cell for 23 hours a day. In one case the person appears to have a severe intellectual disability and refused to let anyone near him to bath or feed him. In the second case a woman with an intellectual disability made a number of suicide attempts and had a marked deterioration in her condition.

Inmates in protective custody are also at risk of being suspected of being police informers or child molesters by virtue of the fact that they are in protective custody. IDRS is aware of one case in which an inmate with an intellectual disability had hot water thrown over him by another inmate who believed him to be a child molester.

We understand that there are plans within the Department of Corrective Services to increase the capacity of separate units within correctional centres, particularly at Long Bay Gaol. There are also plans to implement therapeutic programs for inmates with an intellectual disability in relation to sex offending and violence prevention. We believe these units are to be opened in 2006 but we are not privy to the timetable for implementation of these changes.

We commend these plans and the work of the Disability Services Unit within the Department. However, it remains unclear at this stage whether these units will be adequately resourced with professional staff.

There are no separate units for women prisoners with an intellectual disability. Women with an intellectual disability are currently housed in mainstream correctional centres or in the small Mum Shirl Unit at Mulawa Correctional Centre.

#### *Transport of prisoners*

There are risks for people with intellectual disability when transported to and from Court with other prisoners, such as a greater risk of being assaulted whilst being transported. For example, CJSN have assisted two clients who were so terrified of being transported to Court that they were willing to do anything to avoid being put on the truck. One client felt that if he pleaded guilty, this would mean he would not have to go to Court at all. The second client thought that if he pleaded guilty his matter would be heard at the Court closest to the gaol rather than him being transported for 4 hours. This was the only reason he thought he should plead guilty, even though he had at all times maintained his innocence. It took considerable time for the support workers in both cases to identify this fear and assist the clients to understand their options and the implications.

Transportation also raises the serious issue of the administration of medication to clients who are being transported. There are restrictions on who can administer medication, when this can occur and difficulties surrounding medication actually being taken on the truck. As a consequence, clients have not received medication and this has directly impacted on their poor presentation at Court. This is particularly serious for client's who have a dual diagnosis.

#### *Official visitors and the Inspector-General*

IDRS is concerned that there is no longer an Inspector General of Corrective Services. This position was important in ensuring that not only individual complaints from prisoners were independently investigated, but also systemic issues in gaols were raised. Both the roles of the Inspector-General and official visitors are essential to ensure independent scrutiny of Corrective Services. The availability of complaints to the Ombudsman is not sufficient without being extended to the sort of oversight role which was previously the responsibility of the Inspector-General.

We trust this submission is of assistance to you. Should you wish to discuss these matters further, please contact Tamara Sims, solicitor, on 9318 0144.

Yours faithfully,

Meredith MacDonald  
Executive Officer