

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO CRIME PREVENTION THROUGH SOCIAL SUPPORT

At Sydney on Tuesday 3 August 1999

The Committee met at 10.00 a.m.

PRESENT

The Hon. R. D. Dyer (Chair)

The Hon. P. Breen
The Hon. J. B. Hatzistergos
The Hon. J. F. Ryan
The Hon. Janelle Saffin

JOANNA MAUREEN QUILTY, Manager, Service Monitoring and Policy Unit, Community Services Commission, 128 Chalmers Street, Surry Hills, and

ANITA TANG, Senior Policy Officer, Community Services Commission, Level 3, 128 Chalmers Street, Surry Hills, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee?

Ms QUILTY: As a representative of the Community Services Commission.

Ms TANG: As the Senior Policy Officer of the Community Services Commission.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act, 1901?

Ms QUILTY: I did.

Ms TANG: Yes.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Ms QUILTY: Yes.

Ms TANG: Yes.

CHAIR: Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Ms QUILTY: As manager of the Service Monitoring and Policy Unit of the commission, and having been involved in these issues for three years. I have a background in community work, community services and social work.

Ms TANG: I have been the senior policy officer at the commission for almost five years where I have had major responsibility for all our policy research particularly involving people with intellectual disability, and children and young people in care, including those who have had or are at risk of contact with the criminal justice system.

CHAIR: The Community Services Commission has provided a written submission. I understand that you wish to table some written material as well.

Ms QUILTY: Yes, we do. We have distributed a number of other reports and research that we have undertaken that touch on relevant matters.

CHAIR: I take it that you rely on the commission's written submission and such further material as has been tabled here this morning?

Ms TANG: I do.

CHAIR: Ms Quilty, would you make a short oral submission?

Ms QUILTY: I might start by giving an introduction and then Ms Tang will give an overview of our submission and some of the other research the commission has undertaken that is relevant. The Committee is probably aware that the commission is an independent watchdog agency for consumers of community services provided by the Department of Community Services, the Ageing and Disability Department, Home Care and services funded by the Minister for Community Services.

The commission has a particular focus on people with disabilities in residential care, and children and young people who cannot live with their families and are in out-of-home care. The reason for that focus is that those groups are particularly vulnerable. They are totally reliant on the service system to meet their needs and they often do not have any other people involved in their lives.

The commission performs its work through a number of functions. It takes complaints, it tries to resolve those quickly or it investigates them. The commission reviews individuals in care, both children and young people and people with disabilities. The commission's community visitors actually go out and visit people living in care situations to check on the quality of the service that is being provided. The commission has a new disability death review team which reviews the deaths of people with disabilities in care.

The commission also has general monitoring, promoting standards and education roles. Through those various functions the commission has amassed quite a considerable amount of information since the five years of the commission's work. One of the disturbing trends coming out of that information is the high incidence of potentially criminal behaviour occurring against children and young people in care, and people with disabilities in residential care. The crimes range from assault, abuse, sometimes theft and very often are not treated as crimes by staff and others in those settings and are not dealt with appropriately. The other issue that has emerged is the increasing trend for children and young people in care, and for people with disabilities to end up either in the juvenile justice or the criminal justice system and that again the service system is not doing enough to either prevent that happening, or once it has happened to deal appropriately with the issues that are emerging.

The commission noticed these quite disturbing trends and felt that it needed to look more closely at the service system to work out what needed to be done to ensure better outcomes for these children and young people, and people with disabilities in care. The commission has undertaken quite a bit of research in these areas, much of which is outlined in its submission and in the other reports that we have brought today. Ms Tang will provide an overview of what is in the submission and also touch on some of the issues in the other reports.

Ms TANG: Firstly, may I take you through the package, which I have distributed. The package contains some general information about the commission, including our strategic plan, our most recent annual report, and our annual report summary, which we produce each year, which provides the highlights of our activities and achievements in a more digestible form than the fully detailed report. That is information for those of you who may not be familiar with the activities of the Community Services Commission.

I have also included some information that is specifically relevant to this inquiry, including our regular newsletter "Can Do", a number of editions of which have dealt with issues around preventing crimes being committed against people in care. For example, there is an article from Judy Cashmore, who was our consultant for the "Who Cares" report into recruitment and screening practices, which looked at what service providers

should be doing to protect children in care and adults with disabilities in residential care from crimes being committed against them by staff. A number of editions have also dealt with our other reports and research around the contact with the juvenile justice system by State wards and also issues around people with intellectual disabilities and the criminal justice system.

I have included the full report of "Just Solutions", which is the report of our research into factors contributing to the contact between State wards and juvenile justice and our recommendations about how those could be minimised. We did a youth version of the "Just Solutions" report, which highlights the sorts of things that the young people themselves told us about how they came into contact with the juvenile justice system and things that they thought service providers could have done better or differently to minimise that contact.

I have provided you with a copy of a paper that we presented at the first national conference on intellectual disability and the law about "Rehabilitation or Rejection", which looked at non-custodial sentencing options for people with intellectual disabilities. I have also provided the secretariat and the chairperson with our Group Review Report, which followed the circumstances of 17 young people with high-support needs who were State wards from Ormond and Minali through subsequent placements. Part of the report examines their contact with the juvenile justice system, their support needs in terms of their challenging behaviour and numerous other needs, and also allegations of abuse in care which involve those children and young people.

I have also provided the secretariat and the chairperson with the proceedings of our "Locked In, Locked Out" forum, which was a public forum that we posted following the release of the Law Reform Commission inquiry report into people with intellectual disabilities and the criminal justice system. That forum brought together interested parties to look at the recommendations of the Law Reform Commission and how they could be progressed.

CHAIR: Have you concluded your oral submission?

Ms TANG: I will review our written submission for you, if I may. In our written submission, as Joanna has pointed out, our particular focus has been on crime prevention as it applies to young people in care and people with disabilities in care. The focus is two-sided: first, how can the development of offending behaviour be prevented amongst those two populations; and second, how can crimes against those two groups be prevented, particularly where those crimes are committed by staff or other residents in the care setting?

As Joanna has pointed out, our work has shown that these two groups are extremely vulnerable to both developing and demonstrating behaviours that can later be subject to criminal charges, as well as being the victims of crime. However, many of the strategies that we believe could effectively prevent the development of that behaviour would also protect people in care from becoming victims of crime, so that it would have a multiple benefit.

Our submission outlines some of the factors in the service system that we believe contribute to the offending behaviour being developed by people in care. That includes lack of appropriate accommodation options, which can result in homelessness and

difficulties in meeting bail conditions; the failure of service providers to adequately address challenging behaviour of young people and people with disabilities, which can later bring them into contact with the criminal justice system; the failure to provide for basic material necessities, particularly amongst young people, which can lead to crimes of survival; and the failure to provide timely therapeutic intervention to deal with issues such as children in care, for example, being removed from their parents or past abuses that they may have experienced. Of equal concern is that the service system does not have sufficient safeguards to protect people in care from becoming the victims of crime. Our "Who Cares" report addresses many of those, so we would refer you to that.

We can outline for you in more detail during the question time some of the specific strategies that we think could help. But we would say that there is ample research that already identifies risk factors for criminal participation amongst young people—I believe that you have already heard some of that in the evidence presented to you to date—and that there is a need to ensure that young people who are already in the care system have those factors addressed. Usually they have already experienced them before coming into the care system and are then subject to further experiences, including frequent movements, poor educational outcomes, et cetera, which exacerbate those situations. I think the rest of our material can be covered during the question time.

CHAIR: In regard to any question asked by any member of the Committee, either or both of you may respond as you choose. Am I correct in believing that the commission does have a crime prevention project in train? If that is the case, could you indicate the nature and purposes of that?

Ms TANG: We do have a project in train at the moment. Following some submissions from us, we were provided with a grant from the Disability Council to undertake a scoping study to identify crime prevention strategies which may be useful in residential settings that accommodate people with disabilities. The aim of the study is to look at the generic crime prevention research and identify whether there are strategies that have been identified in that field of knowledge which could be applied to protect people in residential care from having crimes committed against them. That would include crimes which may be committed by staff or other residents. So it will have a particular focus on what is referred to as situational crime prevention strategies—that is, whether there are aspects of the environment or the service provision system that could be adapted or modified that would prevent or reduce the likelihood of crimes being committed. It may also identify strategies that target early indicators of offending behaviour, whether that be offending behaviour in other residents or amongst staff, which could be ameliorated.

CHAIR: When you refer to "institutional settings", do you include in that term large residential institutions and group homes?

Ms TANG: We do.

CHAIR: Are there differences in regard to, firstly, crimes against people with intellectual disabilities as between the two models? Secondly, are there differences in regard to the commission of offences by people with intellectual disabilities according to whether they are cared for in one or the other?

Ms QUILTY: I think that the research that we have looked at to date as part of our

study does indicate that there are features of institutional settings that make it perhaps more likely that crimes can occur there: for example, because they are large, because staff-to-resident ratios are often low, and just because of the institutional environment and often the attitudes and culture that grow up in those places.

All of these factors may contribute to the likelihood that crimes will be committed and often these crimes are hidden. They may not even be seen to be criminal. Such things as the use of unlawful restraint, which we uncovered at the Lachlan Centre in 1995, was not seen to be a criminal practice but a legitimate way of controlling the behaviour of the people living there. Often the very nature of the institutional setting will make it more likely that crimes can occur and that they will not be dealt with appropriately. The same sort of crimes can go on in a group home setting but it is a small environment it is part of the community and families and friends are probably more likely to be involved in those service settings. All of these are added safeguards against criminal behaviour occurring and hopefully it will mean that crimes are less likely to occur in those settings.

CHAIR: Without going to specific examples, I think you would agree that there have been some fairly notorious examples within group homes?

Ms QUILTY: That is right. We certainly cannot say that they are the perfect services. We would like to say that generally they are better than institutions but there have been some very stark examples where there has been atrocious stuff going on that has not been appropriately dealt with within the service system. That has placed really vulnerable people in very dangerous and unacceptable positions where they have been subjected to abuse and assault which have been ongoing over a number of years and nothing has been done.

Ms TANG: The other factor is that there are many variables that can contribute to the likelihood of crimes being committed against people in care; the size of the facility is only one of those variables. It is not as easy to say that one setting or another will necessarily be better or less equipped to do that but the other variables are those that may be more amenable to improvement, such as staff training and staff supervision, regardless of the size of the facility.

CHAIR: So your view is that moving in the direction of deinstitutionalisation and housing people with disabilities in a community setting is likely to lessen offences or abuse against them?

Ms TANG: Yes, because it will have all those factors that Joanna has mentioned. It would be a necessary but not sufficient condition I suppose would be one way of expressing it. That it is one part of the equation but that the other variables would also need to be addressed.

CHAIR: A matter that this Committee has to grapple with is the undoubted fact that people with intellectual disability regrettably are over-represented in the criminal justice system, including the prison system, and quite heavily over-represented. In your answers to date you have been referring to offences against people with disabilities. I ask you to turn your mind to people with intellectual disabilities who themselves commit offences under the criminal law. Why in your view, in summary, are such people overrepresented in the prison and criminal justice system generally?

Ms TANG: There are many reasons and I think it is probably far more complex than I would be equipped to summarise in a hearing like this. It was the subject of a five-year inquiry by the Law Reform Commission. However, there are a number of reasons that we would be familiar with in the work that we have done with people with intellectual disabilities who have had contact with the criminal justice system. That would include the fact that they may be more visible in the community and so when they do transgress or appear to transgress the law it is more easily brought to the attention of law enforcement agencies. They have less access to legal representation and individual advocacy outside of the legal system which can help negotiate the appropriate service provision for them. They may be vulnerable to being rejected by the service providers who could in fact assist them. If they lack appropriate accommodation or adequate supervision they may be less likely to meet bail requirements.

Ms QUILTY: It is often after an incident of challenging behaviour that they will then be charged. Again we would say that the service system does not deal appropriately with challenging behaviour and is not able to put in place management strategies so that that behaviour does not escalate and end up in criminal charges being laid.

CHAIR: When you refer to challenging behaviour, are you referring to such behaviour within an institution, whether a large institution or a small one, or are you referring also to activity outside such institutions?

Ms QUILTY: I was referring to people who live in institutional and group home care and their challenging behaviour can occur within those environments. Often it is service staff who may call in the police to deal with that also and the focus on community access and integration can occur when they are outside the actual service and in the community. That can draw them to the attention of the police and law enforcement agencies again.

Ms TANG: Regardless of where the actual behaviour occurs, the service provider who had been supporting the person generally would have had early indicators of that behaviour developing and there would have been opportunity for it to have been addressed if the appropriate support had been provided.

CHAIR: I think you will agree with me that people with disabilities as a matter of course would be more visible in a community setting than in a large residential institution where they are effectively behind walls or within an institutional building. For example, people in group homes go to the movies, go shopping in supermarkets and the like. Are you suggesting that people with disabilities who live in a community setting perhaps need more support that would otherwise be the case?

Ms QUILTY: We would argue that the level of support across-the-board needs to be tailored to the individual need and that is one of the problems with the current system. It is even a problem in the group home model, although we would like to think that it is better at meeting individual need. However, because we are not able to really assess people thoroughly and worked out exactly what their needs are and what services and supports they need, there are issues that are not appropriately dealt with—such as challenging behaviour—which under certain conditions can be exacerbated and can lead to criminal charges. It is all about focusing on the individual and catering to their specific needs rather than making generalisations.

CHAIR: I put it to you that if a person manifests what you describe as challenging behaviour to a major degree, that there is likely to be more of a problem in a community setting and require more support than if that person were more or less shut away from society in a large residential institution?

Ms QUILTY: Again it gets back to the notion of early intervention and early warning signs. If the right supports and specialised programs are provided early on when the person enters care, the challenging behaviour is lessened and when a person may be about to act out, if staff are appropriately trained and know the warning signs, they can put in place mechanisms so that that does not happen. But, yes, once you are in the community it is more of an issue and there is a higher need to have proper intervention and support programs because you want the people to be able to live in the community.

CHAIR: Do you think that the Police Service needs some special training to recognise intellectual disability and training as to how to respond and cope with people who have an intellectual disability?

Ms TANG: We do not have direct experience of that but certainly I am aware that the Law Reform Commission recommendations dealt with those issues.

CHAIR: So in principle do you consider that some allowances ought to be made together with some appropriate responses?

Ms QUILTY: That is right because it is a quite specialised area and having people with experience and expertise could only help.

Ms TANG: However, in addressing one part of the system such as the ability of police to identify people with intellectual disability, it can only go so far. If police determine that someone they are interviewing has an intellectual disability, they need to be able to access some appropriate contact points for support services and some independent representation and advocacy for the person in order for the next stage to work well for the person with a disability.

CHAIR: On a slightly different matter, the Committee received evidence on a previous occasion from Dr Weatherburn, Director of the Bureau of Crime Statistics and Research to the effect that neglect of a child can have a major impact on subsequent criminal activity and indeed is a major predictor of future criminal activity. Could you tell the Committee whether you think that the evidence given by Dr Weatherburn has any particular implications for people with intellectual disabilities?

Ms QUILTY: A lot of the work and inquiries we have undertaken into institutions, particularly for children with disabilities, have shown that they are not getting the appropriate standard of care within that service; and it could be argued that they are in fact being neglected in that their basic needs are not being met by that service and cannot be met because of the institutional nature of the care. We are talking about very young kids who need a family life, a loving, caring, nurturing environment that an institution cannot possibly provide. A place like the Hall for Children actually contributed to the neglect of those children and to their challenging behaviours by not providing them with the services they needed. One could predict that that would encourage or contribute to criminal behaviours. Yes, even though we have not done a lot of research on that issue,

one could draw some inferences.

CHAIR: You would agree with me, though, that once someone who has been in an institution such as the Hall for Children leaves and goes into a community setting, the need for support does not disappear?

Ms QUILTY: No, and because they have lived in an institutional environment, it is really important that once they move into the community setting, the right level of support and specialist services are provided because that placement in the community will fail, given this history and background, if that is not properly done.

The Hon. J. F. RYAN: Can I ask you a few questions relating to your work with State wards and your report entitled "Just Solutions: Wards and Juvenile Justice". Your report is consistent with many other reports and does not present a happy picture of wards in substitute care. Your survey on page 49 was particularly interesting where you asked a number of wards in different care settings what they thought the best and worst aspects of the care. Also interesting were the stories about how some wards found themselves coming into contact with the juvenile justice system, particularly the one of a 16-year-old residing in a SAP service who was charged with property damage for spraying whipped cream on a building.

Dr Weatherburn put to the Committee that a contributing factor to juvenile justice is poor parental supervision and you have already been asked about that with regard to intellectual disability. Do you have any perspectives to add to that with regard to the work you have done in relation to wards? Is poor supervision a factor for wards getting into difficulty with juvenile justice?

Ms QUILTY: Certainly the very fact that they have come into care in the first place means that there are problems with their family and with their family relationships which mean that they cannot remain at home. We see time and again in our work that once they come into care, the contact that they then have with their families, even though they regard it as important, is somewhat sporadic and not enough is done to maintain those family relationships and to improve them where they are dysfunctional. Given that once they leave care families are still the most important supports for these children and young people, it is really important that they are focused on while they are in care. Yes, certainly them coming into care is often a result of poor family supervision and involvement. Once they are in care family contact and involvement is limited. Also, supervision provided by the new parents of the child or young person—either DOCs or the non-government agency caring for them—is often inadequate once they are in care.

We found that the children and young people we interviewed for our juvenile justice report had only limited contact with their district officers. Whilst district officers are part of the service system, at least they are interested or supposed to be interested in the young people and concerned about their welfare. For the young people the contact was very limited. Even when they had been charged, they did not necessarily know that their district officer would be there to support them. Once in care, supervision is also an issue and one that was found to be lacking.

The Hon. J. F. RYAN: Referring to the table on page 49 of your report, a large number of the clients you interviewed referred to a lack of freedom and an almost institutionalised setting about aspects of their care. One comment was that all the

windows are plastic, which is usually only associated with a juvenile justice institution. Do you think that because some wards do not distinguish greatly between being in care and being locked up they may feel like criminals and therefore act up to that image?

Ms QUILTY: The facilities at Ormond and Minali were very similar to detention centres. There was not often a differentiation in the minds of the young people between being there and being in a juvenile justice institution. The staff who ran those centres did not have the training or specialist skills to deal with the high needs and difficult behaviours of those young people. In fact, that environment often exacerbated and brought out criminal behaviours or behaviours that could be labelled criminal—which the staff did, and responded by bringing in the police. Our inquiry into the Ormond facility found that in just one month in 1997, when the facility had a population of about 20 to 25 young people, about 42 arrests were made at that facility. That was the staff's main strategy for dealing with difficult, challenging and acting-out behaviour.

The Hon. J. F. RYAN: Do you think that problem of distinguishing between care and custody only relates to institutions such as Ormond and Minali or do you think it might relate to other settings as well?

Ms QUILTY: Many of the children and young people who are still in the care environment or in need of care have spent time in Ormond and Minali. It takes a lot for them to lose that institutional baggage. Having lived in those environments, they find it very hard to go into a family setting. In fact, a family setting environment can exacerbate their acting-out behaviour, because they are not used to the level of intimacy or the expectations that may be placed on them. The institutional mentality can stay with them for a long time.

The Hon. J. F. RYAN: With regard to your recommendation about regular visits from district officers, whilst it is well intentioned, could it be seen by some of the young people as akin to being visited by a parole officer?

Ms QUILTY: It was interesting because at interview these children and young people said that the district officer was important to them. Our preference would be for an advocacy system to be in place so that someone independent, who is focused on the individual's needs and wellbeing, is able to be there and look out for them. District officers also have an important and powerful role to play. However, because of their place in the service system, they are somewhat limited in terms of being an advocate for a child or young person.

The Hon. J. F. RYAN: For wards who do not find themselves in an institutionalised setting, one of the other features of wardship—particularly for those who are in care for a long period of time—is multiple placements. Presuming that is a contributing factor to young people getting into trouble, are you aware of any recommendations or research about ways to reduce the number of placements?

Ms QUILTY: Our juvenile justice report certainly highlights that issue and touches on some areas where improvements could be made to reduce the level of placements and placement mobility for children and young people in care. A man called Howard Bath from Canberra has done some research on children and young people in the care system who have high support needs and referred to the lack of access to therapeutic and specialist services to cater for their needs. Often, placements break down because the

wards are not keyed into other services and supports and the carers themselves do not have the skills or expertise to deal with their challenging or difficult behaviours.

I am talking about those children and young people in the system who are very damaged and have troubled pasts, so they are probably not in and out of care for short periods but need to be in the system for most of their adolescent years. Some research has been done. The recommendations we made in our juvenile justice report were about having more therapeutic and support services and getting better co-ordination and co-operation from health and education departments so that there could be access to those services, and we believe an advocacy system would assist. A range of factors could contribute to more stable placements.

The Hon. J. F. RYAN: For perfectly reasonable reasons governments are usually concerned about the allocation of resources. Obviously, the provision of therapeutic services and additional training and support for foster parents is expensive. Do you think there is a category of State ward that is more prone to fall into the juvenile justice system than others or do you believe that the risk of falling into the juvenile justice system applies equally across the board?

Ms QUILTY: We think that there are risk factors that can be identified and should be identified when children and young people first enter the care system so that there can be early intervention and the provision of appropriate supports and services. With early intervention their time in the care system will not exacerbate an entry into juvenile justice and they will have the kind of environment that will help them to become productive members of society.

The Hon. J. F. RYAN: I have a note about a report the commission did called, "The Drift of Children in Care into the Juvenile Justice System—Turning Victims into Criminals".

Ms TANG: That was attached to our original submission. The Committee already has that.

Ms QUILTY: That was a discussion paper that the final report builds on. It covers similar issues.

The Hon. P. BREEN: People with intellectual disabilities often live in the general community in private accommodation or in group housing. Sometimes what you would call challenging behaviour occurs in the general community. From time to time, most of us who live in the general community have witnessed that behaviour. Are there any statistics or other evidence to suggest that this challenging behaviour is less or more frequent when people with intellectual disabilities are able to live in the general community?

Ms QUILTY: It is not just a matter of bricks and mortar and where they live. It is also getting access to a whole range of other supports and programs that will assist them and staff to deal with their challenging behaviour. It is about a total service system and a focus on the individual and their individual needs rather than just the type of accommodation.

The Hon. P. BREEN: Is there any evidence that the challenging behaviour is reduced as a result of such people being able to live in the community?

Ms QUILTY: Anecdotally our information—which we get from community visitors, our reviews and investigations and inquiries—is that if someone is living in a more home-like environment, if their individual needs are better attended to, if they are getting the standard of care and quality of service that is appropriate to their situation, then their challenging behaviour is reduced.

Ms TANG: There is also a growing body of research that looks at outcomes and quality-of-life indicators for people who have lived in institutions and have been moved into the community. That research has shown changes in either the intensity or frequency of challenging behaviour for the same individuals. Also, studies that compare similar groups of people living in the two types of settings show differences.

The Hon. P. BREEN: Presumably circumstances improve when they go into the community?

Ms TANG: That is right. Again, the difficulty with that is trying to tease out the different factors that contribute and to what extent they contribute. The level of staff and support in the different settings may contribute. Access to specialist support and expertise to deal with challenging behaviour may be a factor. It is not just the facility. You would need to look at those factors in some detail. If the Committee is interested I could refer to some particular studies.

The Hon. P. BREEN: There is a perception in the community that many people are taken out of institutions and put into the community, not so much for their own good but for economic objectives? Is that a correct perception?

Ms TANG: It is correct that the public has that perception or it is a fair comment that it is economically driven?

The Hon. P. BREEN: I gather it is a perception in the general community. It may be that perception is not correct and that such people are genuinely better off in the community.

Ms TANG: Research and certainly the feedback from parents and family members of relatives who have moved out from institutions into community settings would show that. Provided, as Joanna has said, that all the supports are there and it is not a deinstitutionalisation without support, then the evidence shows that people are better off.

Ms QUILTY: Once you look at what goes on in institutions sometimes and the kind of care that is being provided, most people would agree that human rights issues are involved and in this day and age people should not be living in that kind of accommodation. People have a right to live in more family-like, suitable environments in the community.

The Hon. P. BREEN: What are the minimum standards that apply to the recruitment of staff, what qualifications do they need and what training is given to them?

Ms QUILTY: It is a big problem. We did a report into that very issue called, "Who Cares—Recruitment and Screening in Residential Services". As a result of the Wood royal commission, the Commission for Children and Young People will include a probity screening unit, but it will only apply to workers and volunteers who are directly involved with children and young people. In terms of the disability area it is still an ad hoc system. Certainly for departmental workers there are more procedures in place and criminal checks are done. There is some limited screening when those staff are recruited.

In the non-government sector practices can be varied. Some organisations are very good and are thorough in their checks, others are less so. Across the board there is a high reliance on casual staff. There are many problems with casual staff and a likelihood that the wrong kind of people might be attracted. It is a big problem in the disability sector. Unfortunately, the probity screening unit will not cover those sorts of workers, even though the consumers are just as vulnerable.

Ms TANG: In any case, the probity screening unit will not deal with training and competency issues. In answer to your question, there is no minimum requirement of competencies for staff who want to work in disability or children services.

The Hon. J. HATZISTERGOS: What role does the local government play in delivering services to people with intellectual disabilities? Is there any potential for a wider role?

Ms QUILTY: That is not our area of expertise. We are looking at people who once they are in care come under the responsibility of non-government agencies and/or the State Government. Certainly in terms of ensuring that people with disabilities have access to the same range of opportunities that other people in the community do and to the range of services that local government provides, then local government does have a role.

The Hon. J. HATZISTERGOS: I was interested in your comments relating to the desirability of putting people with intellectual disabilities out into the community as opposed to some form of institutionalised care. I am aware of a couple of instances in which proposals to that effect have led to widespread community opposition.

The Hon. J. F. RYAN: Only a couple?

The Hon. J. HATZISTERGOS: One in particular that I am familiar with is the closure of an old school in Hurlstone Park by your Government, Mr Ryan, and re-opened by this Government for the purpose of dealing with people with intellectual disabilities. That closure caused widespread community reaction. How do you handle situations of that kind? Do you have any policy in place?

Ms QUILTY: It is a problem that comes up from time to time. As well as those places that are not working—and we tend to hear more about them than others—there are places where it is actually working. Our evidence is that if the proper planning is done when these people are moved from institutions into the community, if they are living with people they get on with and with whom they want to live, if they have good, trained specialist staff who know them and are able to respond to their needs, if they are able to access a whole range of programs and have structured, interesting and varied days, the chances of them becoming bored or unhappy with their situation and acting out, exhibiting challenging behaviour, is significantly lessened. A service structure that is comprehensive, holistic and focused on individual needs is the best way to

minimise the incidence of that kind of thing.

The Hon. J. HATZISTERGOS: Have you looked at whether any Federal Government social support initiatives have impacted on services for people with intellectual disabilities?

Ms TANG: Again, that is not really within our jurisdiction. Our area of work is limited to State-provided services or State-funded services. There would be some impacts but other witnesses may be better able to comment on changes, for example, whether the labour market programs have created disadvantages for people with intellectual disabilities and had a follow-on effect in terms of increased contact with the criminal justice system or reduced capacity to meet bail conditions without employment prospects, et cetera. It is not something we have had direct experience of.

The Hon. J. HATZISTERGOS: Have you looked at what training is provided to police when dealing with people with intellectual disabilities who come into conflict with the law? Anecdotally, the view generally is that the police are not terribly sympathetic to people who may exhibit particular traits which bring them into conflict; they simply focus on the criminality of the behaviour that is being exhibited. Has that issue been looked at? Does it need to be looked at, and in what way do we look at it?

Ms TANG: It has been looked at although not by the Community Services Commission. Again, it is not within our direct jurisdiction. I mentioned before that the Law Reform Commission inquiry dealt extensively with the role of the police in terms of contact between the criminal justice system and people with intellectual disabilities, and made a number of recommendations about identification and training for police. I understand that a number of agencies have been working on that, but I think other witnesses today can probably better speak to that.

CHAIR: Are you aware of any evidence that State wards and people with intellectual disabilities perhaps receive harsher sentences than others when they come into conflict with the criminal justice system?

Ms TANG: We have had dealings with State wards and people with intellectual disabilities who have been unable to meet bail conditions and have remained in detention on remand. In that sense they have received harsher treatment than was even required by the courts and generally that is because of an unavailability of appropriate accommodation.

Ms QUILTY: Often in sentencing factors like family involvement, social supports and community networks come into consideration. Wards and other children and young people in care are less likely to have access to those things. Also, a lot of the diversionary schemes that are being introduced to keep children and young people out of the juvenile justice system or out of detention rely on having a very supportive family which can be involved and assist them in their rehabilitation. Often, wards and children and young people in care do not have access to those sorts of supportive relationships.

Ms TANG: Similarly with people with intellectual disabilities there may be opportunities for non-custodial sentences but the conditions are such that without adequate support they may find themselves inadvertently in breach of their conditions and thus earn a harsher punishment.

CHAIR: So in your view it is not a question so much of harsh treatment regarding sentencing; it is more a matter that focuses on the administration of bail conditions and the inability of people with intellectual disabilities to demonstrate that they have a background that will support them if they are released on bail.

Ms TANG: And young people. Other witnesses may be able to speak to this in more detail, but it is my understanding that in some situations the courts may feel unable to offer a non-custodial sentence or a bond because the person does not have the capacity to meet the conditions.

CHAIR: I hesitate to say this but there is increasing evidence that some people with intellectual disabilities who are exhibiting grossly challenging behaviours are not suited to a community setting. Realistically, the supports will never be there, and perhaps consideration should be given to a mini institution or something of that sort where they will get the support they need.

Ms TANG: We would certainly agree that some people with intellectual disabilities have very complex needs. Their behaviours may be entrenched and they may show no immediate or even medium-term prospects for change. I do not think the commission would go so far as to subscribe a mini institution, but I think what is missing for people with intellectual disabilities in these situations is a continuum of options ranging from what may be highly supervised accommodation units, whether it be a mini institution or more individualised supervision, through to more independent community-based options. Without a continuum of accommodation options and supervision levels, certain people with intellectual disabilities will be disadvantaged because they will be forced into more restrictive options because of a lack of other choices.

CHAIR: What I have in mind is that some people found in institutions who are then placed in a community setting in an ordinary group home in a suburban street may exhibit behaviours that are unacceptable. For example, it is not unknown for such people to masturbate in the street or something of that sort. Lest there be an undue reaction to placing these people in a community setting, should consideration be given to some middle way where they get much more support and they are much more protected than would be the case in an ordinary home in an ordinary suburban street?

Ms QUILTY: It may not be the fact that they are in a community setting that is the problem. It may be that within that setting they are living with people they do not get on with, there are not enough staff, the staff who are there are not appropriately trained or the staff as mistreating the residents. Any number of factors could be involved. To see it as just a problem with the community setting may not be getting to the heart of the matter. If strategies could be put in place to stop that kind of behaviour from occurring—and there is no reason to believe that cannot be done—then perhaps that is the more appropriate response, rather than responding to the community outcry and immediately removing the person from that setting. That is not to say that in some cases there is not much that can be done about the behaviour, but our evidence is that in a lot of cases other factors are involved, and if they are appropriately dealt with there is no reason that the person cannot remain in that setting.

Ms TANG: One of the difficulties in making those sorts of policy decisions is that very few attempts have been made to structure therapeutic, highly supervised environments and support services for people as you have described, so little is known about what can work. In the past people have been forced to choose between what already exists. If nothing in the current offerings works then people are forced into more restrictive options in order to protect themselves and the community. There is a crying need for some structured action research where a highly supervised support service with intensive therapeutic specialist support could be provided to what I believe would be a very small group of people in the category you have described.

The Hon. J. F. RYAN: Are you aware of any good examples in the community in New South Wales that the Committee could visit?

Ms TANG: Unfortunately not off the top of my head.

Ms QUILTY: We do have examples of individuals who have been living in institutions for 20 years and who have possibly been displaying quite challenging behaviour in that environment and they have been successfully moved into the community. They are much happier and the incidence of their challenging behaviour has decreased because the service has been able to do a good job in meeting the person's needs and providing the person with the necessary individualised service and supports. There are examples in the community where it has worked because it has been done well. However, it is not necessarily a feature across the board because there are also examples where it has not been done well.

The Hon. J. F. RYAN: The Blair Government in Great Britain is almost giving up on the process altogether and is beginning to return to a more institutional framework for looking after people with intellectual disabilities for almost exactly that reason. Are you aware of any other countries that have been more successful in prosecuting this agenda than us?

Ms QUILTY: I have heard from the Director-General of the Department of Community Services that Ireland is leading the way. I do not know if that is true but she seems to think that is the case.

The Hon. J. F. RYAN: I am not suggesting this as a trip; I am simply suggesting that it may be a way of getting some research.

The Hon. J. HATZISTERGOS: It is interesting that Mr Ryan should raise that matter because I note that in your summary of preliminary proposals the need for further research has been identified as a key factor in at least three recommendations. Correct me if I am wrong but the impression I am getting from the discussion this morning is that there seems to be a lack of information about the range of different options that are available for dealing with these people. Even with an organisation such as yours, which in some respects is at the centre of things, overlooking service provision, there is a distinct lack of research on what is available. I am not talking about interstate and overseas. There is almost a total lack of research in terms of what works and what does not work. Evaluation has been lacking. You have recommended on at least three occasions that I can identify the need for that research and evaluation to take place.

Ms QUILTY: The commission is not a research body and has not had time to explore.

The Hon. J. HATZISTERGOS: I am not suggesting that you are.

Ms QUILTY: But you are right.

The Hon. J. HATZISTERGOS: We need to go in two directions. First, we need to find out what is available and, of what is available and what has been looked at, what works and what does not work. At the moment we can all look at what we have and say that this is wrong and that is wrong. From what I have heard this morning it has been based largely on anecdotal evidence.

Ms QUILTY: There are certainly some good examples in New South Wales.

The Hon. J. HATZISTERGOS: I am not suggesting that that has no value in terms of committing the Government to spending substantial sums of money from the point of view of reducing criminal behaviour. We need to know what the options are and which of those options will assist.

Ms TANG: One difficulty with research in this area is that it is always difficult empirically to measure crime prevention, which I am sure you have probably heard from other witnesses. Another difficulty is that we are talking about a small group of people in some respects, although the impact is great both for them and for the community. Another witness today, Professor Susan Hayes, has done some overseas research. There is an issue about how much you can extrapolate from overseas research for our local environment, but it is certainly a starting point. Within Australia and New South Wales there is certainly a need for both information, dissemination about what is already out there and known, and more rigorous research about what could work.

Ms QUILTY: We are holding a seminar in conjunction with the Association for Children's Welfare Agencies [ACWA] and the National Industry Association for Disability Services, which represents disability service providers, to start looking at different forms of care for children with disabilities who cannot live at home, that are not simply the institutional or group home model. Some innovative things are going on in other State that we know about, so we are bringing speakers to talk to service providers about what they might do differently to meet the needs of this group.

The Hon. J. HATZISTERGOS: One of the things I asked a previous witness in this inquiry was what works better, having people in group care or living with families, that is foster families. I could not get an answer as to what works better. There are some analogies here because you are saying it is better to have them out in the community. But what does that mean? Does it mean having them out in the community or with other families? Does it mean having them in group homes? No-one seems to be able to tell me what will address this problem of crime prevention.

Ms QUILTY: We certainly agree that placing particularly very young children in foster care or a family-like setting is far more appropriate than placing them in a group home setting. One of the bigger barriers can be parents' attitudes. Sometimes they can be

hesitant about another family taking their child when they cannot cope with the child at home. Sometimes they prefer for the child to go into a group home or some sort of residential care setting that is less personal. But that simply highlights the need to work with parents, to talk to them about the options, about how they can maintain an involvement in their child's life. We would class placement in a foster family or a family-like environment as placement in a community setting and as distinct from an institutional one.

The Hon. J. F. RYAN: I suppose we have to ask you this question, given the discussion we have just had, and I recognise that it is a tough question. It could be said that so much research is required to make the community setting work that the policy is wrong. If we do not ask you that question a dozen media commentators and so on will say that we did not ask it. Is it possible that the policy of devolving institutions, particularly for people with acting-out behaviours as part of their mental illness, is wrong? Would they be better off out of trouble and in an institution?

Ms TANG: That question may be a bit broad. The group I was referring to that might need further research into how best to support it is a group of people with intellectual disabilities whose behaviour places other people or themselves at significant risk of contact with the criminal justice system, and behaviour that has been shown to be not easily shaped or changed. That is a very specific population group. The question about devolution is a much broader one, and I do not think that our comments about research apply to that group. There is already research about providing services to people in a community setting. The question was about people for whom there is no immediate or medium-term prospect of behaviour change, and whose behaviour is of such severity that it places them and the community at risk. That is the group for whom service provision has been—

The Hon. J. F. RYAN: I will confine my question to that category and say that some would say it would be better if they stayed in the institution because they go into the community and wind up in gaol.

Ms TANG: I would say they are not the only two options that should be offered.

Ms QUILTY: If, when they are placed in the community, that is done properly and the appropriate range of services and support are in place it will not necessarily mean that they end up in gaol. That is a more humane and caring environment that is in keeping with the Disability Services Act

The Hon. J. F. RYAN: No-one denies that it is more humane, but you might remember that a while ago I asked whether you could provide the Committee with some good examples to see this in practise. You were not in a position to do that.

Ms QUILTY: We can get some for you and provide them to you, but we certainly do not have them here. We could certainly find you examples of services where it is working.

The Hon. J. F. RYAN: I asked those questions playing the Devil's advocate, because it is a view that is held widely within the community.

(The witnesses withdrew)

NICHOLAS KEVIN FRANCIS O'NEILL, Lawyer, President of the Guardianship Tribunal of New South Wales, 2A Rowntree Street Balmain, sworn and examined:

CHAIR: In what capacity do you appear before the Committee?

Mr O'NEILL: As President of the Guardianship Tribunal.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr O'NEILL: Yes, I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr O'NEILL: Yes, I am.

CHAIR: Will you briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Mr O'NEILL: I am a lawyer with a background in human rights, and I have been Deputy-President and President of the Guardianship Tribunal since 1989. The Guardianship Tribunal from time to time is involved with some of the issues raised in the terms of reference.

CHAIR: As I understand it, the Guardianship Tribunal has made a written submission, which we have before us. Do you wish that submission to be included as part of your sworn evidence?

Mr O'NEILL: Yes.

CHAIR: I now invite you to briefly elaborate on the Guardianship Tribunal's submission, in other words to make a short opening statement.

Mr O'NEILL: As you have said, I have been invited to give a brief presentation on the Tribunal's submission, which was signed off by the Tribunal's Deputy-President, Marion Brown. In that submission we cited nine examples where people with an intellectual disability or an intellectual disability and mental illness were either victims of behaviour that was criminal in nature or the potential perpetrators of such behaviour. The Tribunal's submission concluded with the following, and I would like to read it to you because it nicely recapitulates our position:

The experience of the Tribunal indicates that an increase in services provided to people with a disability could result in the prevention of people with an intellectual disability becoming drawn into the criminal justice system, or being victims of crime. A number of measures could be taken in this regard, such as the development of a protocol to ensure that persons with a dual diagnosis receive services from an appropriate department.

We constantly see people falling through two holes—people with an intellectual disability and mental illness—and there is not, throughout New South Wales, an appropriate set of

arrangements by which either the Department of Health or the Department of Community Services provides the appropriate service to those people. In some places this is done at the local level and it works well; in other places there are fights, "It is not me; it is not me!"

The second factor is an increased availability of accommodation options that addresses the needs of people with challenging behaviour. An increase in the support of accommodation available for people with a disability and an increase in behaviour modification programs have made progress. More flexibility in eligibility requirements for departmental services is a matter that I would be happy to come back to. An increase in provision of case management services and in the provision of day programs for people with disabilities living in unsupported accommodation or with family members is another aspect. The tribunal has a role to play in crime prevention through social support, but I do not want to overstate that role. It is a supporting role and it requires the initiative of others. Nevertheless, I will state briefly what the tribunal can and sometimes does do.

Before setting out those matters, it must be said that the tribunal does not see itself as the solution; it is much preferred if the measures that I referred to in our submission were to take place. They would have a greater effect on people. In these circumstances guardianship is usually a mechanism to ensure that people with decision-making disabilities get access to accommodation and services appropriate to their needs. If this can be done through the efforts of case managers and others without the need for guardianship, so much the better.

From time to time upon the application of others—I emphasise "upon the application of others"—the tribunal appoints guardians usually for people with mild to moderate intellectual disability or with functional incapacity that puts them in the mild to moderate range. These are people with dual diagnoses, that is, intellectual disabilities and mental illness or personality disorder. These people would not normally be held liable for their actions under the criminal justice system. Sometimes there may be a question of their capacity to understand their actions and their consequences, but that is very rare.

The tribunal may only place people under guardianship where they have decision-making disabilities which affect them in one or more major life activities to such an extent that they require supervision or social habilitation. I think it is important to appreciate that point. People must also at least be partially capable of managing their person. It is a narrow range of people with considerable disabilities who fall within the jurisdiction of the guardianship tribunal. We may not appoint guardians unless the person either cannot or is severely limited in managing their personal matters.

The tribunal must give paramount consideration to the welfare and interest of people with a disability. We cannot make a guardianship order to protect others from the risk of a person, say, with intellectual disability who assaults physically or sexually. However the tribunal may make an order to protect the person from the real likelihood of their getting into a situation which they cannot handle and out of which, as a result of their behaviour, some other person may be assaulted either physically or sexually. It is important to appreciate that the tribunal can only make the order for the benefit of the person, not for the benefit of the community generally.

The tribunal is aware that guardianship cannot be used as a form of incarceration. However we also appreciate that guardians appointed by it may decide to place persons under guardianship in a large institution or other accommodation, such as a group home, where there are restrictions on their lives. Nevertheless those restrictions are nothing like the restrictions imposed as a result of imprisonment which are designed to prevent the person's escape and to demonstrate to them on a daily basis that they have been deprived of their liberty.

Restrictions placed on a person living in a large institution or a group home are imposed for their safety or as part of the duty of care owed to them by those responsible for their care. People who live in large institutions and group homes often have regular community access and many other activities which clearly mark their lifestyles as different from those who are in prison or in similar forms of incarceration. I think it is important to appreciate that point as well. Sometimes people say, "This is just a form of civil incarceration." I am suggesting to you that it is decidedly not that. People living in group homes and in large institutions that remain open live a very different life from those who are imprisoned and they have many more activities available to them in their home place. They have much more community access and when they are having community access, it is access akin to that of anybody else going down the street to a restaurant, to a picture theatre or whatever else.

The Guardianship Act requires guardianship orders to be regularly reviewed. Such orders can be maintained only so long as they promote the interests of the person under guardianship. It is expected of a guardian that they will advocate for a person under their guardianship in order to obtain more appropriate accommodation for them, access to behaviour management programs if that is what is required, and other programs to increase their enjoyment of life and their skills to cope in the world. These considerations emphasise the fact that guardianship resulting in institutional living, even if it is over a long term, is very different from the forms of institutional living that are imposed by the criminal justice system.

There is another aspect of the work of the tribunal to which I think I should refer the standing committee, that is, the medical treatment that can be used in certain circumstances. Where persons indulge in inappropriate sexual behaviour which, because of their disabilities, they are unable to control, again upon the application of others the tribunal may consent to the use of androcur or other androgen-reducing medications to reduce the person's sexual urges. Only the tribunal may consent to such treatment. There is androgen reducing medication for behavioural control that is specifically required under the legislation and under the regulations. The tribunal may not consent to such treatment unless the treatment is the only or most appropriate way of treating the patient and is manifestly in the patient's best interests. There are clear limitations.

An example of the behaviour to which I refer is a young man with a mild to moderate intellectual disability who was moved into a group home because his parents were no longer able to look after him owing to their ill health. After a period he began to exhibit inappropriate sexual behaviour towards other people in the group home and Elsewhere. A number of attempts were made to encourage him to change his behaviour through behaviourally orientated methods. It became apparent that he would lose his

place in the group home unless his behaviour changed significantly. In these circumstances an androgen-reducing medication was recommended and an application was made to the tribunal.

The tribunal received evidence of is increasingly inappropriate and assaulting sexual behaviours and how his behaviour had led to his being suspended from his job in a sheltered workshop. He was banned from community venues and he had been involved with the police on a number of occasions. The tribunal also received evidence of attempts to encourage the man to change his behaviour. With the support of his siblings—the siblings were in favour of what was being asked of the tribunal—the tribunal gave consent for six months of androgen-reducing treatment to assist him to control his behaviour while further behaviour strategies were implemented. If the combination of the treatment and the behaviour intervention strategy succeeds in changing the man's behaviour, he will cease to put himself and others at risk in the community and will begin to take a greater part in the life of the community again. That is an example of the sort of work that the tribunal can do.

In summary, the tribunal can make a contribution when others take the initiative to make applications to it in relation to those who do things that would be criminal in nature if carried out by those capable of understanding what they are doing. These people need supervision to see that they do not carry out actions which get them into trouble and cause harm to others and in this context guardianship can be a useful tool. They are the opening remarks I wish to make.

CHAIR: In the tribunal's written submission, signed by Ms Brown, a number of measures were suggested to deal with the problem of the undoubted underrepresentation of people with intellectual disabilities in the criminal justice system. The first suggestion is the development of a protocol to ensure that persons with a dual diagnosis receive services from an appropriate department. In your experience is there confusion as to where people who exhibit both intellectual disability and psychiatric illness should be held?

Mr O'NEILL: Yes. As I said in my opening remarks, there is a tendency for such people to fall between the stools, if you like, except, on anecdotal experience, where in some areas the people working in the Department of Community Services and the mental health team have got together and agreed to do it. There is not universally available throughout New South Wales such a protocol. That means that people often go without service, particularly if they are mentally ill, and they simply become sicker and sicker.

There is sometimes a failure on the part of mental health authorities to accept that people with an intellectual disability also can suffer mental illness. Similarly, there are times when really the best service options come from community services and they are reluctant to say that a person is really a person with a mental illness and not one with an intellectual disability, although there is such a diagnosis available.

CHAIR: Are there formal definitions used by the tribunal of intellectual disability and psychiatric illness?

Mr O'NEILL: Our legislation makes those descriptions but it does not define intellectual disability within the Act. The tribunal determines whether a person has an

intellectual disability on the basis of the evidence presented to it which is fairly successful. Justice Powell, who I think is still a member of the Court of Appeal of this State, made major contributions in the 1970s and 1980s by making the distinction between intellectual disability, mental illness and dementia. He said that such people had to be treated differently and that psychiatric institutions were not the right place for people with intellectual disabilities or dementia.

As a result of pressure from his decisions—a lot of community pressure, I am sure, and pressure from members of the medical profession—those distinctions are now made. That is why now very few people with an intellectual disability, and only a few with dementia, are in mental institutions. The differences are now well understood. I would have difficulty at this moment in giving the Committee a description of each of those separate forms of disability but I could provide one if that was required.

CHAIR: I think it is uncontested that people with disabilities, and intellectual disability in particular, are overrepresented in the criminal justice system, including in prisons. Would you give a generalised response as to why that is so?

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

It is the tribunal's experience that the sorts of people with whom it deals are more obvious and vulnerable to being caught. The sort of distinction I am making is between the sexual behaviour that might occur in more private situations and the more public things such as street offences, petty theft, shoplifting and that sort of thing.

CHAIR: Using the procedures of the tribunal are there any means of protecting, to any greater extent than is currently the case, people who almost inevitably will get into trouble with the law? Are there any applications that can be encouraged, orders made or steps taken that would help to keep people out of trouble?

Mr O'NEILL: Yes, one of the most significant group is people who have serious behavioural difficulties. Guardianship can be used to do two things. First, to provide them with appropriate accommodation and, second, to get behavioural programs to them. The guardian places them in an appropriate place and then advocates for and ensures that they get behavioural programs, and that is the major contribution that the tribunal can make.

The tribunal has to be careful not to overplay its hand and say it is the solution. That is why I pointed out the degree of disability not only in terms of lack of intellectual capacity but also functioning capacity that has to exist before a guardian can be appointed for a person. But some people who are presently in prison in New South Wales are under guardianship.

CHAIR: The second reform measure, if I can describe it that way, referred to in

the tribunal's submission is the increased availability of accommodation options that address the needs of people with challenging behaviour. This morning I questioned witnesses from the Community Services Commission about the problem of dealing adequately with people with challenging behaviours. My question dealt with the problem of such people who might hitherto have been in large residential institutions where their behaviours were largely hidden who might now be placed in a group home in suburbia. I asked whether we needed to think possibly of some middle way—I described it as a mini-institution—that is, a location where they received more help or supervision than would otherwise be the case. Could you comment on that?

Mr O'NEILL: There is a need for more community-based accommodation rather than the more domestic size accommodation. The anecdotal experience of the tribunal is that when people move out of institutions, provided care is taken to select their co-residents, their behaviours quite often improve as a result of that move. Environmental factors, people being around them and staffing factors all have a positive effect.

The tribunal is also aware that if a person's behaviour starts to change it is very important to look at whether there has been a change amongst the residents, a change in the environment or a change in staff. Often the solution is found by looking at those matters. It can be fairly said, and I would expect it to be sustained by research, that the behaviour of people improves outside but not in 100 per cent of cases. That would lead me back to the view that there is a need for the provision of some form of more intensive support for some people, but I am not clear whether that should be in the form of a mini-institution or simply maintaining and continuing to improve the existing larger institutions.

We have to be honest and say that some people do not succeed in the community but the overwhelming majority of those who get the opportunity of community living do succeed. We have to be able to respond to both, but the way forward through group homes has been found to be the most successful way of giving people with intellectual disabilities, including those who have had some horrific histories of behavioural problems, a far better life.

CHAIR: Is one of the main problems of the group home system the sheer pressure of applicants for places and the difficulty of the Department of Community Services to mix and match—in other words to place people in a given group home with people who are compatible with them?

Mr O'NEILL: The major problem is that the demand outstrips the supply, and is a considerable problem for whoever is in government to provide adequate resources for that. The secondary issue is how to get the best result in those places that are available. People have to be moved around, as you suggest, Mr Chairman. Sometimes it looks as if a number of people will be compatible and for some reason they are not and there is a need to chop and change.

That causes difficulties particularly if there has been an assault. Sometimes the victim is moved and family members for the victim say that things were going fine until "x" came along and why should our child, sister or brother be moved? That will continue to be a significant problem as long as the supply is so far short of demand.

CHAIR: Could you expand on the final suggestion made by the tribunal in its written submission relating to the provision of day programs for people with disabilities living in unsupported accommodation or with family members. The tribunal considers the availability of day programs to be crucial to the behaviours of people with intellectual disabilities.

Mr O'NEILL: Yes, boredom is one of the tremendous problems. How do they fill in their day whether they are living in institutions or at home? Day programs allow for people to be given activities outside the home and to be given the support they need to keep them from inappropriate behaviours. When families provide the support, day programs provide those families with the respite they need because we all know it is demanding to look after a person with an intellectual disability. In many families in this State the parents have done this for 20, 30 or 40 years, perhaps even 50 years. Occasionally we come across people in their fifties who are the subject of applications and have been supported at home by wonderful parents who have either died or become so exhausted or ill themselves that they cannot manage it any more.

CHAIR: You said earlier that people with intellectual disability tend to get into trouble due to their disability and that their behaviours are noticed in a public place. Could you endeavour to give a short response regarding the ways in which the criminal justice system would better respond to and meet the needs of people with intellectual disability?

Mr O'NEILL: I think the problem is that the criminal justice system is necessarily a blunt instrument. Our experience is that when those who are playing roles in it have clear evidence of a person having committed an act which is criminal in nature, leaving aside the question of criminal understanding, they really do not want to have that person in the system because they do not believe that the system is going to provide an answer that is relevant to them.

Certainly incarceration leads to people being taken advantage of, which has led to the need for special units in some prisons to protect people with an intellectual disability. The other forms of dealing with people are not hugely appropriate. If, because of their disabilities, people have limited capacity, say, to meet community service orders et cetera, such orders are not appropriate. With regard to fines, people with intellectual disabilities are often on disability support pensions and have no other resources and very little understanding of money.

The system is designed for people who have capacity to understand what they have done, and this system is not designed to deal with people who do not appreciate what they have been up to. They are the people we are talking about. Perhaps I ought to say that there are some people with intellectual disabilities for whom the criminal justice system is the appropriate way to deal with them, but they are not the sort of people who would fall within our jurisdiction. For those who fall within our jurisdiction or on the edges of it, really the criminal justice system is not appropriate, and those within it understand that. Occasionally we get calls for help from magistrates and others: "Can we do something about this person other than through the mechanisms that are available to us as magistrates?" I know that that is a fairly general answer, but I think that is the only

way I can attack it.

CHAIR: There was a major report within the last few years about intellectual disability in the criminal justice system, was there not?

Mr O'NEILL: Yes.

CHAIR: I take it you would urge upon the powers that be that they act on some of those recommendations?

Mr O'NEILL: Yes. Perhaps I should make the point that the people who come to the tribunal are people who are somewhat different from some of the people with intellectual disabilities who are caught within the system. Generally we would support the thrust of that report, so I guess the answer is yes.

The Hon. P. BREEN: You gave the example of a 19-year-old who was given an androgen-reducing medication to limit certain behaviour, particularly sexual behaviour. He had trouble and the tribunal decided, with the support of siblings, that he should be put on a trial of this androgen-reducing treatment for six months. Firstly, I was curious that you did not say whether the treatment had actually worked. Secondly, did the person consent to that treatment?

Mr O'NEILL: The person was incapable of giving a valid consent to his own treatment. Where a person cannot give a valid consent to his or her own treatment, and it falls within the category of declared special treatment, which androgen-reducing medication is, it is only the Guardianship Tribunal that can give consent. This young man's disabilities were such that he could not give a valid consent to his own treatment. That is why somebody else had to give consent for him, and it had to be the tribunal.

With regard to the other part of the question, that is, whether the treatment actually worked, in that particular example it is too early to tell because the six months has not expired. It is one of the matters that we need to do some work on. Until a few weeks ago when we upgraded our information technology system, we have not been in a position to pick out these cases and come back to and look at them. There is literature on these androgen-reducing medications that suggests that they can be helpful, and there is also literature that raises questions about that treatment. However, medical practitioners are still proposing it and, now that we can do so, we are going to start to have a more thorough look at the treatment from the point of view of how effective it is and see if we can build a profile from our own experience of the tribunal on this issue.

The Hon. P. BREEN: I recall that when Parliament dealt with the amendments to the Guardianship Act—which provided for people to be the subject of treatment such as this without their consent—there were a lot of media reports to the effect that this was a serious breach of the rights of these people and that people should not in any circumstances be subject to any kind of medical treatment without their consent. Can you explain to the Committee what have been the effects of the amendments to the legislation and whether it has been successful in general? Have there been ongoing problems in relation to human rights, and has the treatment worked generally.

Mr O'NEILL: I think you are talking about clinical trials, is that right?

The Hon. P. BREEN: I am, yes.

Mr O'NEILL: This is not a clinical trial. Androcur and some of the other forms of treatment are well-accepted treatments for what we are talking about, and so they are not experimental in nature. However we have put in the legislation a higher test to make sure that care is taken before they are consented to. Since 1989 there have been provisions in the guardianship legislation of New South Wales, and now in many other States of Australia, for substitute consent to medical treatment. There are a large number of people in this State—up to a quarter of a million adults—who cannot give a valid consent to their own treatment because they now have dementia, were born with an intellectual disability, are serious mentally ill or because they have brain damage of one sort or another as a result of trauma, drug overuse, or whatever. We do need a system of substitute consent.

In most cases their spouses or other family members are their automatic substitute decision-makers, and that system is working quite well. It is not universally applied because there are some medical practitioners who as yet do not appreciate that if the patient cannot consent for himself or herself, they have to get consent from somebody else before they give treatment. But basically that system, which is a universal system, is working well. I think you were actually referring to the clinical trials issue?

The Hon. P. BREEN: Yes. I believe that legislation came into force only last year, is that correct?

Mr O'NEILL: Yes, that is right. It came in in about June 1997. The Guardianship Tribunal is required to report on this issue in its annual report, and will be reporting on it. Also one of your colleagues, Mr Jones, has asked the Minister a question, and an answer has been provided. That answer, I am sure, will be tabled fairly soon. So if you want to pursue in detail what has happened about clinical trials, you could consult the answer to that question, together with our annual report when it is tabled later this year.

The Hon. P. BREEN: Do you have a view about it that, as a human rights lawyer, you are willing to express?

Mr O'NEILL: The purpose of the legislation is to give people who cannot consent to their own treatment access to new treatments that are available only through a clinical trial. The way the legislation was originally developed, these people could not get access to those treatments. The clinical trials are occurring in relation to stroke, dementia and severe pneumonia or severe sepsis in hospitals. The people who are being included in those clinical trials are people who, until they had their stroke or became seriously ill, were perfectly okay and perfectly able to give consent.

They can take part in those clinical trials only after the Guardianship Tribunal has given approval to the clinical trial being one in which they can take part, and there are a group of safeguards that have to be met before we can give our approval. Then we determine that the person responsible can give consent, and in most cases of the type we are talking about that would be the person's spouse. That system has been operating quite

well, because it is up to the spouse to decide whether or not the person actually takes part in the clinical trial. As I say, the clinical trials have been about stroke, dementia, severe sepsis or severe pneumonia in a hospital situation.

I think the system is working because it allows family members to decide whether the person is to be included; it is not us, the outsiders. We just give approval to the clinical trial being one in which they can take part. As I say, we have to be satisfied as to a range of safeguards, and we take that very seriously, we look very hard at it, and we have refused to give our approval.

The Hon. J. F. RYAN: I refer to some of the anecdotes that have been put together by Ms Brown in your submission. One refers to a 17-year-old man with a moderate intellectual disability who was evidently charged with the offence of either murder or attempted murder for the purpose of getting him appropriate accommodation. It says that the Guardianship Tribunal expressed the view that it appeared that the man had been charged more because of the lack of appropriate accommodation for the man than for any probative evidence of his involvement in the death.

What were the circumstances in which the Guardianship Tribunal would have expressed that view? Does it make any difference that the Guardianship Tribunal expresses such a view, that is, do the charges proceed nonetheless?

Mr O'NEILL: If the person is charged with murder, it is up to the prosecuting authorities to proceed, yes. Anything we say is not relevant to that issue.

The Hon. J. F. RYAN: Except for the fact that the person then would have been subjected to the trauma of being placed on trial, which obviously would have a significant impact on the person, would it not?

Mr O'NEILL: Sure, but if the person is charged under that system, the person either stands trial or, as you would be aware in more detail than me, there is the other diversionary mechanism whereby the person is put through the process of being subject to a form of trial by a judge alone and, if found guilty, is given what is called a limiting term under the Mental Health (Criminal Procedure) Act.

The Hon. J. F. RYAN: But there does not appear to be any legal mechanism whereby a reasonably serious view emanating from the Guardianship Tribunal in respect of a person charged with a criminal offence for what appears to be social reasons, can be dealt with before all the other things that go together to bring about a criminal trial, does there?

Mr O'NEILL: No, but that would be a matter that I am sure that the Director of Public Prosecutions or his staff would put their minds to as to what this is all about.

The Hon. J. F. RYAN: Would the DPP take some notice if you were to express such a view?

Mr O'NEILL: If we expressed a view, it would simply be a view. We do not have any legal authority. It is not a legally effective view, it is only a view.

The Hon. J. F. RYAN: The other issue refers to the 19-year-old man with a brain injury using drugs and living a largely itinerant lifestyle. It said that the Guardianship Tribunal decided to reappoint the Public Guardian to prevent the man from falling between the cracks in regard to the provision of disability services. I take it that means there was no service available or that you would prefer to have done something other than appoint the Public Guardian?

Mr O'NEILL: We do occasionally continue the appointment of the guardian or make the initial appointment of a guardian in situations where we are not sure that the person will comply with what the guardian will decide for them. My understanding of that case was that the person lacked the skills to advocate on his or her own behalf to get services and the guardian's role was to advocate on the person's behalf to get the appropriate services and to stop the person falling through the gaps. It comes back to the issue I was referring to where service providers are saying, "This person does not fit our criteria." This is where the Public Guardian in particular is helpful because those people are experienced in these fields and they push very hard for people under guardianship to get the right services. They usually do not take no for an answer when it is first put and will push further. That is what I think was in mind when this matter was put forward.

The Hon. J. F. RYAN: Is it possible that the Guardianship Tribunal in fact took the view that reappointing the guardian in this instance was the second-best outcome to finding appropriate accommodation?

Mr O'NEILL: What I think you are putting your finger on is that one of the difficulties is at the point of discharge from prison for people with an intellectual disability. It may have changed in the recent past but certainly until recently prison staff were told that the job finished when the person went out the prison door and a number of people realised that was just guaranteeing that the people would get themselves into trouble again. Sometimes we have had applications made to us, we think very appropriately but arguably beyond the directions that prison staff have been given, to make sure that something was put in place for the person to get appropriate accommodation. I can recall one or two cases where we did make such orders in the hope that it would work but the people tended to be itinerant and in one case the person stayed a month so and then went off in the usual way.

Whilst they were staying in the accommodation things were going okay for them but when they moved off, who knows? That sort of problem is quite real to provide appropriate support for people in an immediate post-release stage and that is one of the failures of the system. Perhaps I should have raised this earlier. If something could be done to make sure that people coming out who need support get the support and that that was part of the system, that will help avoid them getting into situations where they are likely to reoffend.

The Hon. J. F. RYAN: Some might argue that the reappointment of the guardian in this circumstance was not really a second-best option and that even if suitable accommodation had been found many people would say that it is far better for the person to also have a guardian?

Mr O'NEILL: Yes, I guess what is in mind is that sometimes there is the question

of whether it is relevant whether it is going to be useful to appoint a guardian or will it be a waste of time and if it is going to be a waste of time we would not appoint one.

The Hon. J. F. RYAN: Another option is that the Government might have provided some other service but presumably the guardian has had a relationship with the person and some might argue that it might be better to have a guardian appointed under those circumstances than a social worker or somebody take over that role.

Mr O'NEILL: Probably the preferred situation is that there be caseworkers working in the field because if a guardian is appointed, the guardian does take over some of the decision-making role of the person. It is preferable to leave the person as autonomous as possible and go for the support workers and caseworkers, yes.

The Hon. J. F. RYAN: Are you not able to appoint a guardian with qualified rights of decision making?

Mr O'NEILL: Guardians are appointed to make decisions in limited areas. We can appoint a plenary guardian but we almost never do. I do not know when the last one was appointed but it was some years ago. Where they have the function, they have the entirety of the function. That is the way the legislation works. Queenslanders are working on the notion of assisted decision making but we do not have it here, although in practice it can sometimes be carried out that way, where the guardian talks to and works with the person. However, the formal legal position is that the guardian is the decision maker but in practice they can sometimes be assistants and helpers rather than be full formal decision makers.

CHAIR: I apologise for the perhaps radical nature of this question. You are probably aware that under the Children (Criminal Proceedings) Act a child who is under the age of 14 years is proceeded against only if that child really understands that what he or she has done is wrong.

Mr O'NEILL: Yes.

CHAIR: Is similar legislation appropriate for dealing with people with an intellectual disability who appear before the courts? You may take the view that the question is outside your role as President of the Guardianship Tribunal, but it seems to me that there is a significant general problem with people with intellectual disabilities appearing before the courts.

Mr O'NEILL: Yes. I thank you for the offer of being able to squib it, but I will have a go at it all the same. I agree with the thrust of the question. I believe there is a problem in that the existing legislation and common law does not address it. The M'Naghten rules were designed a long time ago for an entirely different purpose and in different circumstances where mentally ill people were being hanged for offences. We should have a serious look at the question of being able to say, in the light of knowledge we have at this end of the twentieth century, whether a person can be criminally liable or not, and not just rely on things that developed in the common law nearly 150 years ago.

Yes, I think there is a case for a serious look at that. On the other hand, I would

have to say that part of normalisation for people with borderline disabilities is that there are good and bad parts about normalisation and that a person has to face the consequences of his or her actions if the person is capable of understanding what is going on. The people who fall into our jurisdiction I believe are either incapable or are very much on the border of capability.

CHAIR: Would it be your view that the best way to assist people with intellectual disability in their interface with the criminal justice system would be to provide them with more support than they currently have in terms of accommodation, day programs and the like?

Mr O'NEILL: As was suggested in our initial submission, I think steps should be taken to avoid people getting into the system in the first place by making sure that they have things to do in their lives so that they avoid getting into the street sort of situation. I think we need more work done on behaviour management issues but I would have to say that in the time I have been at the tribunal I have seen improvements there. I would encourage the continuation of those improvements, although I would have to say they were patch. However, I think they are real. At the level where people go into the system clearly they need legal aid type support, preferably from people who have some appreciation of what intellectual disability is. I do know of barristers of that kind, but it is not everybody.

If people are convicted or a given a limiting term, they need to be properly protected whilst they are in prison and then helped according to their needs to develop some of the skills they need to go back into the community. A post-release program orientated around such people is need to ensure that they do not have to fend for themselves as soon as the door is opened and they are let out of prison. I think there needs to be thought all the way through it. I would not have thought these were hugely expensive programs but programs that need people with insight within them to work them and support from the management level within both the prosecutorial parts of the criminal justice system and the custodial parts of the system, plus more insight from judges and magistrates through training programs to increase their understanding of the issues.

CHAIR: I ask you for a general view regarding the success or otherwise of the deinstitutionalisation process both from the point of view of society and people with a disability. People with a disability may well be paying the price in terms of their involvement with the criminal justice system and society may be paying the price or gaining unwarranted, possibly criminal behaviour. Is the cost too high or is the reform working reasonably well?

Mr O'NEILL: I can only speak from my experience through the tribunal. I would have to say that deinstitutionalisation is a good policy which has clearly improved the lives of a large number of people with intellectual disabilities. I think with good staff supervision most of the problem issues where there is the potential for victim-type crimes within the community can be dealt with. For example, if a person living in a group home is indulging inappropriate behaviour, say, towards children, that does not occur within the large institutions because the person is outside the community.

The other types of behaviour of people with an intellectual disability occur in the large institutions anyway, but they should always be looked at. It is a very important issue which still has to be handled, but it is not a deinstitutionalisation problem. We must be aware of that. It is only the other problems that might occur as a result of people being in the community. Our experience is that staff of group homes do get onto these issues and at times raise them with us. That is why we have the application in relation to Androcur and other androgen-reducing medications. Sometimes we have guardianship applications so that a person's access to the community might be more controlled as a result of guardianship decisions. I think it is working well. Frankly, there should be more deinstitutionalisation and more group homes for people who are in families who are having extreme difficulty coping.

CHAIR: Thank you for your attendance and for your assistance to the Committee.

(The witness withdrew)

(Luncheon adjournment)

SUSAN CAROL HAYES, Head of School, Department of Behavioural Science and Medicine, University of Sydney, sworn and examined:

CHAIR: Professor Hayes, in what capacity are you appearing before the Committee?

Professor HAYES: I am appearing in my capacity as a forensic psychologist with expertise in assessing people in the criminal justice system and also as an academic researcher in the area.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Professor HAYES: Yes, I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Professor HAYES: Yes.

CHAIR: Would you briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Professor HAYES: I have an honours degree and a PhD in psychology. I am a member of the Australian Psychological Society, a registered psychologist and a member of other learned societies relevant to my profession.

CHAIR: You have made a written submission to the Committee. Is it your wish that your submission be included as part of your sworn evidence?

Professor HAYES: Yes.

CHAIR: I invite you to briefly elaborate on your written submission, including the presentation of any overheads.

Professor HAYES: I have some overheads to simply illustrate some of the points I mentioned in my submission. The first one refers to the prevalence of intellectual disability in criminal justice populations over the years of the research studies that I have been conducting, beginning with 1988 up until the present research in 1999. On the first slide you can see that over the 11-year period there has been an increase in the number of people with an intellectual disability in the criminal justice system.

The two peaks that you see are the studies which have been conducted in the community. In particular, this one in 1996 refers to a study which was conducted in Local Courts in New South Wales. The prevalence of intellectual disability in Local Courts was much higher than in the incarcerated populations. This one in 1998 in the Legal Aid Commission also shows people who have not yet been sentenced to incarceration. This implies that the people who are charged with crimes have a far higher prevalence of intellectual disability than the ones who end up in gaol. Nevertheless, the

prevalence of intellectual disability in prison populations, which was about 12 per cent in 1988, has now climbed to just over 20 per cent this year in the study I am doing.

The next few overheads require an understanding of the prevalence of intellectual disability in the population. This is a normal curve showing how intelligence is distributed in the population with a mean intelligence quotient [IQ] of 100, which is simply a convenient number. The group that we are talking has an IQ below 70, or sometimes referred to as a standard score of 70, which forms about 3 per cent or less of the population. It is usually considered that 2 to 3 per cent of the population has an intellectual disability. If the prison population followed the community population you would expect a similar curve when assessing the intelligence of prisoners.

I take you first to a study which I did which involved 339 juvenile and adult offenders and a sub-group of Aborigines and Torres Strait Islanders. The peak is in the borderline range. So instead of the normal curve, it is skewed very dramatically towards the bottom end of the population. In fact, nobody fell into the top end of the population. The other half of the normal curve is simply not represented. The mean IQ for this group of Aborigines and Torres Strait Islanders in the criminal justice system is 78, which is significantly lower than the mean IQ of the community population of 100.

For non-Aborigines and Torres Strait Islanders the curve is a little bit better. There is a slight tail-off into the upper end of the above average group. The mean IQ for non-Aborigines and Torres Strait Islanders was 87, which is significantly higher again than the Aboriginal subgroup that I just referred to. So you can see that the curve has shifted up and there are more people in the average category for non-Aboriginal people.

The Hon. J. F. RYAN: Have these studies been done by various people at different times?

Professor HAYES: No, this is data from the one study I am presenting at the moment. The first overhead came from a series of studies that I have done in New South Wales.

The Hon. J. F. RYAN: With regard to intelligence measurements, the capacity of language is considered to be relevant. I take it that your testing accommodated for that because the Aboriginal community may not have the same capacity. They might register differently with various language-based tests, which could reflect their education rather than their intelligence.

Professor HAYES: That is certainly a valid point. The test I chose included performance, which has non-verbal as well as verbal components. Other research I have done on that test appears not to discriminate against the Aboriginal population. Also, as a corollary to your point, if they are verbally handicapped they are less likely to be able to understand the criminal justice process in any case. That in itself is a very relevant point.

On this slide the distribution shows the position for juvenile offenders. Again, in the 1998 study the juvenile offenders peaked in the average range, a few of them in the upper average range. However, a large group of them fell into the moderate to mild intellectually disabled category. Their average IQ was 85, again 15 points below the

population average.

Most relevant to the terms of this inquiry, however, is the fact that the juveniles' adaptive behaviour is particularly poor, and a lot poorer than their cognitive results. This test examined how they get along in the community: whether they can catch a bus, whether they can cook and tend to domestic tasks, whether they have appropriate social behavioural interactions. This very large group is peaking in the mild intellectually disabled category in the adaptive behaviour scale. It would appear that their ability to socialise in this broader sense in the community is severely lower than their cognitive skills.

When we look at adults we find that they seem to have become socialised to some extent. Few of them suffer such great deficits in social and adaptive behaviour and many more of them are competent in the community. Perhaps that is because they have had longer to adapt to the community, but perhaps also they have had different experiences in that the juvenile population may have more frequently been homeless and not as well-educated. That tends to be illustrated by this slide. Of the juveniles and adults leaving school, nearly 40 per cent left school at the age of 14 or less. Those school-learned skills and socialisation processes are not occurring with this group.

It is also relevant that more of the juveniles left school at the age of 14 or lower. So the older population of prisoners is better educated, if you like, than the juvenile population. Also in terms of social support, as to the residence of these groups it is reassuring to say that 76 per cent of them have their own place, share or live with their parents, although the parental accommodation is not always ideal. Indeed, a lot of violence is occurring in the home, either perpetrated by or against people with an intellectual disability. The remaining 22 per cent or so do not really have ideal home conditions. It is particularly interesting in this particular sample that only one of the people with an intellectual disability in the prison and juvenile justice setting had been in a Government group home.

Again on social support areas of need, 80 per cent of people in the local court study reported that they had been drinking on the day of the offence, and drinking to the point of drunkenness. Also, 14 per cent had said that they were on drugs. That is probably an underestimate because it was a self-reported and they may not have wanted to say that they took drugs. In terms of health, the 1998 study in the prisons and juvenile justice institutions found that 11 per cent of prisoners were hearing impaired and 27 per cent had sight impairments, although almost none of them had spectacles. The early intervention, ongoing support and post-school options had not been the case for most of these people.

As I emphasise in my submission, behaviour management and sex offending programs are two of the most important areas of need, as well as family support and child protection which many of your other witnesses have referred to. That ends the formal part of my submission.

CHAIR: Thank you for that presentation. First, may I ask you for a general response as to why people with an intellectual disability are so overrepresented in custodial institutions?

Professor HAYES: It is rarely directly related to their disability in the sense that it is rarely a behavioural problem related to the disability itself or to epilepsy, brain damage or whatever. It seems to be an issue of alienation. They come from families where seldom anyone has been employed. They themselves have attended many schools. In other words, they have all the features of the rest of the prison population. An interesting aspect of my work is that I seldom see a person with an intellectual disability who has come from a middle-class or upper middle-class family. People with an intellectual disability are overrepresented in the lower echelons of society. There are more of them in the poverty groups so more of them end up in the criminal justice system.

CHAIR: This morning I put a question to Mr Nick O'Neill, the president of the Guardianship of Tribunal, as to why these people tend to be overrepresented in the criminal justice system or, to put it in a shorthand way, why they get into trouble. His response was along the lines that they are more visible, they are noticed in the public setting and they are more likely to come to the attention of the law enforcement authorities. Do you think that is part of the explanation?

Professor HAYES: I think that is the case for a few people, but most of my clients have not been noticed by anyone prior to my assessment of them in the prison. The police have not picked up the disability when they have been questioning them. Often these people have not accessed or had anything to do with community services for people with disabilities, and they certainly go unnoticed in the prison system. So I think that explanation applies to only a few of them. But without necessarily being noticed they are sometimes the fall guy for the peer group. The others can talk their way out of trouble or provide an alibi but this group simply lack the intellectual capacity to do that.

CHAIR: Do you think there is a reluctance or an inability in the criminal justice system to recognise the problem and to react appropriately?

Professor HAYES: Yes. I draw the attention of the Committee to the Crimes Amendment (Detention After Arrest) Act and the regulation which attaches to that. As you are no doubt aware, that provides for vulnerable persons during detention by police. As far as I can determine from informal contacts with lawyers who practise in the field of intellectual disability, one difficulty is that the Act is simply not being used to ensure that the rights of people with intellectual disabilities are being protected during the police investigation phase.

CHAIR: In regard to the response you have just given, I draw your attention to section 32 of the Mental Health (Criminal Procedure) Act 1990 which, in outline, provides in general terms that if at the commencement of proceedings or at any time during the course of the hearing before a magistrate it appears to him or her that the defendant is developmentally disabled, is suffering from a mental illness or is suffering from a mental condition for which treatment is available in a hospital, the magistrate may take various actions, including adjourning the proceedings, granting the defendant bail in accordance with the Bail Act 1978 or making any other order that the magistrate considers appropriate. The section further provides that the magistrate may dismiss the charge and discharge the defendant into the care of a responsible person either unconditionally, subject to conditions or on the condition that the defendant attend on a

person or at a place specified by the magistrate for assessment of the defendant's medical condition or treatment, or both, or the magistrate may dismiss the charge and discharge the defendant unconditionally. Are you able say whether that provision is commonly availed of by judicial officers?

Professor HAYES: It is certainly used and used appropriately in many cases, but one difficulty is simply the volume of work that comes before magistrates. I have spoken to many magistrates' conferences about people with intellectual disabilities. Magistrates say that on a list day people represented by a duty solicitor see the duty solicitor for only a few minutes, and when the magistrate sees the person in court he or she may have no indication that the person has an intellectual disability. I think many people are simply slipping through because of what happens at the magistrates court level. Another point is that when the provision is used magistrates are concerned about the fact that a tiny proportion use this section repeatedly to get off. It is a fairly unpopular section although it does work well for some people who perhaps are not recidivist offenders.

CHAIR: On what evidence or on what basis would a magistrate commonly form a view that a person appearing before him or her has an intellectual disability?

Professor HAYES: Usually the nature of the crime—if it is something trivial, inexplicable or silly—or if the person comes before the magistrate on a number of occasions. Mostly it is based on the report of the solicitor, the police or the family.

CHAIR: Is it your view that in the usual case people with an intellectual disability appearing before a magistrate would slip through the net so to speak because the magistrate does not have the matter drawn to his or her attention?

Professor HAYES: Yes.

CHAIR: What can be done about that? Are you saying that it is a question of the magistrates courts being overloaded with a miscellany and multiplicity of cases and unless the duty solicitor draws the matter to the attention of the magistrate or it is drawn to his attention in some other way the condition will not be recognised?

Professor HAYES: Yes. To give magistrates their due, accused persons usually say almost nothing except their name so the interaction is brief. Some time ago in New Zealand they had a system whereby a nurse was attached to the magistrates court. If the duty solicitor or anyone else in the court thought that the person had an intellectual problem that person could be seen by the nurse. To this end and to the end of other important areas I have devoted some time to developing a screening test which could be used in this particular situation.

CHAIR: A summary of your detailed submission indicates that at least 20 per cent of the current prison population consists of people with an intellectual disability, although as you have said this afternoon they comprise only 2 per cent to 3 per cent of the population. Further, some 42 per cent of Aboriginal persons appearing in criminal proceedings have an intellectual disability. Do you agree that for there to be such a gross overrepresentation there must be a systemic problem?

Professor HAYES: Yes. I think that corrective services and juvenile justice are the sieve through which these people cannot pass. They have been subjected to exclusion from all sorts of other systems which should or could have served them in the past. Often educational facilities have simply passed them on to another school and another school. Some of my clients have been to 24 different schools. Similarly with health, their problems have not been picked up. In accommodation and other programs they are often considered too difficult or challenging; they are excluded on the basis that they will not get on with or will upset the other people in the program or they will be a danger to other people in the program. Corrective services and juvenile justice must deal with the systemic problem which has arisen from the lack of early intervention.

CHAIR: As you will be aware, this Committee is inquiring into crime prevention through social support. Without being unfair to you, if possible can you summarise what we should be recommending in order to grapple with an apparently very serious problem?

Professor HAYES: Research in New Zealand indicated that people, especially boys, with behavioural problems in the pre-school time would almost certainly grow up to be involved in the delinquent subculture. The protective factor in this was a high IQ. If there were behaviour problems and a high IQ they were likely to escape that fate; if there were behaviour problems and a low IQ at the age of four it was almost inevitable. That was identified behaviour problems at the age of four before they entered the formal schooling system. I think that is where it has to start. There have to be more early intervention programs to assess and assist children with behaviour problems. As those behaviour problems become entrenched there must then be almost whole-of-life programs.

Clearly, a whole-of-life behaviour management program is what happens in the prison system; they are having behaviour modification 24 hours a day. There must be residential units for people whose behaviour is such that their family cannot cope. There must be special boarding schools. I know there are a few of them, but often young people with behaviour problems go to them for a short period and then they must leave to make way for someone else coming through. All of those problems have to be addressed during the schooling period and specialist behaviour management programs must be ongoing. It must be recognised that it will take many years to address the behaviour.

CHAIR: Recently, Dr Don Weatherburn, Director of the Bureau of Crime Statistics and Research, indicated in evidence to the Committee that a firm predictor of subsequent criminal offending is child neglect. Do you feel that that finding has any relevance so far as overrepresentation of people with an intellectual disability is concerned?

Professor HAYES: Certainly few of my clients come from a typical, functional, cohesive family; usually it is a family that is under stress for any number of reasons. It could be single parenting, one constant parent with a series of other partners, often the parents themselves seem to suffer from intellectual deficits, although that is an armchair observation because I have not tested the parents, and they themselves have poor parenting skills. The young people I see give pretty horrendous versions of violence and neglectful childhoods where they have been subjected to violence by family members who have been alcoholic, or subjected to sexual violence. I do not think, and I think I

mentioned this in my submission, that I have had one sex offender who has not been the victim of physical or sexual abuse.

CHAIR: Dr Weatherburn tended, interestingly enough, to place more emphasis on neglect rather than abuse. His research appeared to indicate that neglect was a better predictor of subsequent offending than abuse. Would that tally with your perception or experience?

Professor HAYES: I am afraid I would not be able to differentiate that strictly between them.

CHAIR: You would be well aware that in recent years there has been a concerted move to place people with intellectual disability in a community setting rather than as was previously the case, that is care for them in a residential institution. What is your impression as to the impact that process has on the appearance of people in the criminal justice system? Could it be that when they were in large residential institutions, activities or actions that might have been criminal in character were hidden and now that people are in smaller institutions, if you could call them that, group homes, their behaviour is more likely to come to the notice of the authorities?

Professor HAYES: Yes, I agree with that. In a whole-of-life institution they could perpetrate violence on other people for years and years and it would never been reported to the police. A large sector of crime was simply unreported. On the other hand, as that slide about place of residence showed, not a lot of them come from a group homes in the community. It is often from a family situation, often from their own home or caravan parks, or less stable forms of accommodation. "Homelessness", the report to which I referred, indicates the proportion of young people with an intellectual disability in the homeless population. Although I agree with the proposition that much crime was probably unreported in a whole-of-life institution, perhaps some of the structures in society, family support and stricter family rules about going out, and stricter rules about going to school and not truanting and so forth, have also played a part in the neglect situation.

CHAIR: Given that there is this move toward people with intellectual disability living in a community are setting, would it be your view that they need more support than they are getting in terms of day programs, clinical support and programs of various types?

Professor HAYES: Yes, many people absolutely have nowhere to go during the day. They are bored so they hang out at shopping malls with other young people, some of whom may be much smarter and more deliberately criminally inclined than themselves. The other real risk factor is, of course, involvement in drugs and alcohol. In a whole-of-life institution there is often little access to alcohol, let alone illicit drugs; whereas now most of my clients are involved in alcohol abuse and many are involved in illicit drug abuse as well.

The Hon. J. F. RYAN: You have had a fair involvement in giving evidence and appearing at criminal trials. Do you believe that the current law is appropriate with regard to the responsibility it might place on people with intellectual disability? Do we

need some modification of the definition of "criminal responsibility"?

Professor HAYES: The section 32 provisions are good for less severe crimes in the sense that they provide a way of recognising the person's inability to cope with the ramifications of the criminal justice system and to drop the matter with or without conditions. The only difficulty is that those conditions are not able to be enforced. That is one way that it can be recognised. In the District Court it becomes more difficult because of the fitness to be tried to provisions. A fitness to be tried hearing is meant to be non-adversarial when, in fact, it is a killing field. It is probably more brutal than your average murder trial. I do not see why the notion that people with an intellectual disability who cannot participate in their own defence should have a special hearing and then be sentenced appropriately is necessarily lenient towards them, but that view is not shared by some of the prosecutors. I do not think the fitness to be tried system is working terribly well in recognising that some people cannot participate effectively in their own defence.

Moving on to the next aspect of criminal responsibility, I think that most my clients have some idea of criminal responsibility, and they have some idea of the consequences of their actions and the fact that their actions are wrong. It is very seldom that I get someone who literally it does not recognise the outcome of their actions, but having said that it is also important to say that they have no idea of the seriousness of the sanctions that can then be applied to them. They know what they have done is wrong, they know they should not have done it, but nobody has ever explained to them, nor have they ever realised, that they could end up in a criminal trial or in a prison cell. I do not know whether that has answered your question.

The Hon. J. F. RYAN: That response was very good. In an earlier slide you showed some figures that related to the number of people in the juvenile justice system and something about the background. One definition you used was the family situation. Does that family situation include or exclude State wards living with foster parents, or people who are not wards living with foster parents? I take it all of those are considered to be living at home with their family?

Professor HAYES: Living at home with their own parents, yes.

The Hon. J. F. RYAN: Which government services do you think are the most useful to people who are intellectually disabled with regard to the likelihood of appearing in the criminal justice system?

Professor HAYES: Legal aid is very useful for people who are accused of crimes. In terms of preventing their appearance if they can be involved in ongoing education and appropriate schooling is available to them until the age of 18, and then if they can be involved in a post-school option, say a TAFE course, a special course for people with an intellectual disability, those are enormously important preventative measures because of the impact on self-esteem, boredom, truancy and hanging out with the wrong peer group. Unfortunately many of the other services are very patchwork in their application to people with intellectual disabilities who are likely to end up in the criminal justice system, primarily because of the fact that this group is very difficult to deal with: they do not turn up to appointments, their families do not bring them to appointments, they do

not co-operate, they can be violent and aggressive, they may not access any community services, in other words case finding. Finding people before they appear in court is extremely difficult. For that reason many government and non-government community services for people with intellectual disabilities cannot cater for these people, or do not even know that they are catering for them in their local district.

The Hon. J. F. RYAN: Are you familiar with difficulties arising through different departmental definitions ranging between people who are intellectually disabled and people who are mentally ill? Are you familiar with cases in which that has resulted in people not getting a service?

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

The Hon. J. HATZISTERGOS: You are quite critical of the Police Service in your submission in terms of its lack of response to the sorts of problems you identified. Is it correct to say that if the police were adequately trained to deal with situations of criminal behaviour involving intellectual disability, particularly in terms of exercising their legal discretion as to how to handle minor offences in particular, that would assist with the sorts of problems that magistrates have at the moment when they get large bundles of cases thrown at them and they cannot distinguish?

Professor HAYES: Yes. Lack of recognition or lack of awareness of intellectual disability is fairly prevalent throughout the Police Service. There used to be some couple of hours devoted to it at the Goulburn Police Academy, but I am not sure whether that is still the case. Certainly in my experience police do not recognise the presence of intellectual disability. Concurrent with that is the fact that when the police commissioner's instructions were important in terms of how to go about questioning, they did not abide by them, nor did most of the police whom I have seen in court matters or with whom I have had dealings even know that the police commissioner's instructions about having a third party at present was relevant. As I pointed out, informal feedback about the application of the regulation of the amendments to the Crimes Act indicates that is not working either. Your point about extra training and awareness, and certainly in-service training, is important.

The police need to be supported in this role. You simply cannot say that you have to have a support person without providing some kind of access and appropriate mechanism to have a support person present. I am not sure whether the Committee has been provided with a submission from the Illawarra Disabled Person's Trust, but there is a pilot scheme to look at a diversion of people with an intellectual disability from the criminal justice system. That involves police involving community services and trying to find appropriate diversionary courses for young people, obviously not for very severe crimes, but it has raised local awareness of police about the prevalence of intellectual

disability amongst the suspects they pick up.

The Hon. J. HATZISTERGOS: At the moment, are you aware of how much training the police are being given in being able to recognise a person who has an intellectual disability?

Professor HAYES: The last time I was aware of it was some years ago, and it was a couple of hours during a course.

The Hon. J. HATZISTERGOS: Two hours during the course of police training at Goulbourn?

Professor HAYES: Yes.

The Hon. J. HATZISTERGOS: You are not aware of any changes?

Professor HAYES: I am not aware of any changes, whether it has changed for the better or for the worse.

The Hon. J. HATZISTERGOS: In terms of actual practical application of whatever principles are learned in that couple of hours, you would not be familiar with anything that the police have done that reflects that limited training?

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

The Hon. J. HATZISTERGOS: What level of training do you believe that the police should be provided with? What should be the content of it?

Professor HAYES: I think that the number of hours should be increased considerably. I think also that they should have some role plays or actual questioning of police suspects. For example, I gave a seminar at Queensland Legal Aid where we employed actors to act the role of the person with the intellectual disability being questioned by a legal aid lawyer. We found it was very, very effective in improving the types of questions that people asked and their ability to ask questions which would reveal the presence of an intellectual disability. That would not be difficult. I think that there needs to be more in-service training and more liaison between the police and groups in their local community, for example group homes and so forth. Often my clients have been retrieved by the police from a house where people are known to have an intellectual disability. The police have arrested them and taken them away without realising that that is the case.

The Hon. J. HATZISTERGOS: Assuming that police are trained and are able to recognise the situation of an offender who has an intellectual disability, what approaches should be taken in terms of police discretion?

Professor HAYES: I am not a madly keen advocate of police discretion because I think that it can be inequitably applied. Also I think that people who have an intellectual disability and who have realised the nature and effect of their criminal act should to some extent take a consequence. I do not think they should just have a ride in the police car, four hours in a police cell and then be taken home again and to have that regarded as an appropriate sanction. On the other hand, with a correct protocol for diversion—and that means open decision making such as in the Illawarra area—I think there is an avenue for appropriate diversion for people who commit trivial crimes. But it should be done in the open, not just by one police officer who is feeling good one day and bad the next.

The Hon. J. HATZISTERGOS: One of the approaches mentioned in another forum, namely the Drug Summit, was that in consideration of some minor offences, the appropriate diversionary method may be to actually formally caution a person for a minor offence rather than charge them, and combine that with the ability to lay the charge subsequently should there be some recurrence of behaviour or failure to respond to a diversionary program. For example, if a drug offender was not to be charged formally but cautioned and referred to some form of treatment which was not followed through, there would be the ability for the law to play a part and for a formal charge to be brought. Is that something that is feasible in the cases of minor offences involving persons with intellectual disability, or is it not feasible?

Professor HAYES: I think it is feasible. I think it would work well with some offenders who need some external sanctions on their behaviour and who would benefit from that. Having said that, many people with an intellectual disability are quite determined little criminals and are quite well aware of the fact that holding up a service station or doing a break and enter is serious.

The Hon. J. HATZISTERGOS: I would not suggest it be appropriate for any offence in that category.

Professor HAYES: The ones for whom I think it would be appropriate are the rather hapless people. For example, one of my clients shoplifted minor items from various stores and really needed an external sanction which was one to which her family could refer and say, "If you do that again, remember that the police will have the right to come and charge you again." There has a deterrent effect and an important effect for a small group of people with intellectual disabilities.

The Hon. J. HATZISTERGOS: My next question refers to your mention of the New Zealand scheme whereby a trained nurse is provided to assist the magistrate in detection of persons with intellectual disabilities. In most of the local courts in New South Wales there are probation and parole officers who provide some service. Is it possible that those persons may be equipped with skills to be able to assist a magistrate, particularly in cases of persons who are not legally represented, to at least recognise whether a person has or has not an intellectual disability?

Professor HAYES: If they have received the appropriate training, I think they could be useful in that role. As it stands, I think many probation and parole officers do not understand the nature of intellectual disability and are at a loss to determine whether somebody is intellectually disabled or not.

The Hon. J. HATZISTERGOS: You regard that as a feasible alternative to having a nurse to make an assessment?

Professor HAYES: Yes. There is no need for a person to be medically trained.

CHAIR: I believe I am correct in saying that you were an honorary consultant to the New South Wales Law Reform Commission Report entitled "People with an Intellectual Disability and the Criminal Justice System"?

Professor HAYES: Yes.

CHAIR: That being the case, can you give an indication of the progress that might have been made arising out of the recommendations made in that report?

Professor HAYES: I cannot give an exact progress report, but my impression has been that progress has been slow and that very few of the major recommendations have been taken on board which includes recommendations about police training and greater liaison between the relevant departments to assist the person with an intellectual disability—both in respect of their rights and the rights of the rest of the community.

CHAIR: I take it from the earlier answer you gave that you hold out some hope regarding the program or study that was funded in the Illawarra?

Professor HAYES: Yes. It seems to have had some very interesting ramifications. Some people are being appropriately diverted from the criminal justice system to do informal forms of community service or are having to meet a condition that they attend either a day program for occupation or learn skills that will address some of their behaviour problems. I think there has been a component of facing the victim too, and coming to terms with the effect that their behaviour has had on other people. Most importantly, it has drawn together many of the important agencies in the Illawarra area and has given them a chance to exchange information and become more aware of the problem in that area.

CHAIR: I think I am correct in saying that there is a developmental disability unit at Long Bay Correctional Centre. Is that correct?

Professor HAYES: Yes, there is.

CHAIR: Can you tell me how many inmates it can house and the criteria for admission to it?

Professor HAYES: It houses 18 inmates comprising sentenced and unsentenced, mostly maximum security classification prisoners. Some are B classification prisoners and sometimes some C classification minimum prisoners are housed there if there is nowhere else which is appropriate for them in the present system. As you can imagine, 18 inmates is simply skimming the most vulnerable cream from the top of the milk pail of intellectually disabled people in corrective services. There is also a minimum security unit at Goulburn gaol which is in part of X wing that is external to the main walls of

Goulburn gaol. That houses 15 inmates who are all sentenced and who all have a minimum security classification.

There is a special needs program at Kirkconnell which is a minimum security prison, but it was meant to be a progression from maximum to less secure to minimum security at Kirkconnell. Apparently that is not working out terribly well because of the social skills that the inmates lack. They just do not fit in with the other people at Kirkconnell. For the women, there is a unit called the Mum Shirl Unit at Mulawa which takes all classifications from maximum to minimum security, not just people with an intellectual disability. It is also for people with behaviour problems and psychiatric problems. The other aspect of your question about the Long Bay units is that I think people are admitted on the basis of intellectual disability but on the basis also of vulnerability within the prison system.

CHAIR: Can you tell me whether there is any similar facility to your knowledge within the juvenile justice system?

Professor HAYES: I am not sure of that, no.

CHAIR: I understand you wish to table a document entitled "Report to the New South Wales Law Foundation: Development of Screening Test for Intellectual Disability for Use in Legal Environments".

Professor HAYES: Yes, I would like to table that.

(The witness withdrew)

SUZANNE MARIE PIERCE, Senior Policy Officer, Ageing and Disability Department, Level 4, 83 Clarence Street, Sydney and

MEGAN LEANNE FAHEY, Senior Policy Officer, Ageing and Disability Department, Level 4, 83 Clarence Street, Sydney, affirmed and examined:

CHAIR: In what capacity do you appear before the Committee?

Ms PIERCE: As a senior policy officer of the department.

Ms FAHEY: As a senior policy officer of the department.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Ms PIERCE: Yes I did.

Ms FAHEY: Yes I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Ms PIERCE: Yes I am.

Ms FAHEY: Yes.

CHAIR: Could you please briefly outline your qualifications and experience as they are relevant to the terms for this inquiry.

Ms PIERCE: I am a senior policy officer within the strategic policy and planning division of the department. My responsibilities are not confined to but include policy work on challenging behaviour, abuse and assault, people with dual diagnosis or multiple diagnoses.

Ms FAHEY: As a senior policy officer with the department I have carriage of the work related to people with intellectual disabilities in the criminal justice system.

CHAIR: Has the department made a written submission to this inquiry?

Ms PIERCE: Yes, and it intends to make a further substantial submission in writing to the Committee.

CHAIR: Do you wish the existing submission to be included as part of your sworn evidence?

Ms PIERCE: Yes I do.

CHAIR: Ms Fahey, do you also rely on the written submission that has been

submitted to which Ms Pierce has referred?

Ms FAHEY: Yes.

CHAIR: Do you wish to speak to the Committee regarding the department's submission?

Ms FAHEY: I produce a document to the Committee.

Ms PIERCE: There is nothing worse than having a presentation and not knowing where it is going. Two documents have been given to you. One outlines the points I briefly want to cover and the second gives a summary of the key issues that we see and how to take them forward from the perspective of the department.

I wish to make a few brief points about the context of the presentation. First, to be clear about the role of the Ageing and Disability Department as the provider of funds, as a strategic policy and planning agency and in its whole of government cross agency co-ordination role including population group planning. The department is, of course, informed by the Government's disability policy framework.

The basic tenets of that framework and on which our work is premised is that mainstream service agencies need to provide for people with a disability as part of their core business and that disability-specific services complement mainstream provision. I should say in terms of population group responsibilities, although the work in which we have been engaged has primarily related to people's intellectual disability, we also have responsibility for older people and people with different kinds of disabilities that are also relevant for your consideration, including sensory, psychiatric, acquired brain injury and people with dual and multiple diagnoses. Today I will just talk about people with disabilities but the department will provide further information about those other groups in a following submission.

In relation to the context, we understand that, first, the inquiry is taking a broad construction of the concept of crime prevention and that it includes a range of abuse and assault, for example, physical, financial, emotional, psychological, self injurious behaviour, property damage and theft. The presentation I will give today reflects that broad understanding. Second, the inquiry will look at a number of points of intervention including individual life cycles, and in terms of events including prevention and response to incidents. We understand that the Committee will look at those points in relation to both the human service and criminal justice systems and agencies.

From the perspective of the Ageing and Disability Department those issues need to be considered in relation to service users who may be either a so-called victim or offender, they may be abused or assaulted or have property stolen and damaged by staff, other service users or other persons or they may in turn do that themselves. Staff and managers in funded services might be offenders or victims. Family and carers are a further consideration. At home people with a disability again may be in either role that I have outlined. Also we have to have consideration of the general community who again may be involved as either offenders or victims.

There are three key assumptions in crime prevention that we think need to be taken into account. The first is complexity. The factors resulting in crime as broadly defined to which I have just referred are very complex and there is a consequent need for a multifaceted response. It is also true to say that different variables may assume a greater importance depending on the setting at which you will be looking, for example, the family home, an individual living independently and an individual in a larger institutional setting. That is very important because the temptation upon us all is to provide quick and straightforward solutions but this is a complex issue and I guess that is why we are here today.

The second key assumption from the department's perspective is that we must look at both service delivery and programs. Successful outcomes depend on specific prevention and response programs but they are also highly dependent on quality service delivery and management approaches. Looking at research and various reports in this area, for example, the fundamental importance of having clear policies and procedures to be followed is clear as there is an ability to undertake risk assessments and actually put in place mechanisms to deal with it in terms of employment and training practices. Those, if you like, system infrastructures in the ordinary systems, be it mainstream or disability-specific, are as important as so-called specific programs on crime prevention.

The third key assumption from our perspective is that successful outcomes involve addressing both individual and systemic issues and the interplay between those two. Systemic issues might include attitudes, training, access to expertise, quality management and support systems. Individual issues that might have a bearing on crime include disability, a medication regime and review of that regime, medical problems that might impinge on behaviour, good assessment and management of individuals, personal history, community isolation and family circumstances. So again that feeds back to the concept of complexity.

For the purposes of today the document I have provided tries to link the key challenges and pathways which are deinstitutionalisation, maximising the efficiency and quality of the specialist service system, ensuring interagency co-ordination and addressing legal issues. I will briefly refer to each of those. In relation to each of those I will briefly state the context, the issue, and the way forward from my perspective or initiatives that are already under way.

With regard to deinstitutionalisation, the context is a State policy commitment to 12-year devolution. From the perspective of the Department of Ageing and Disability, issues around that are maximising the outcomes within existing resources, and also the knowledge that devolution can involve the transfer and reproduction of the same institutionalised models, approaches, attitudes and behaviours of both providers and service users, only to a smaller setting, and that needs to be carefully considered.

In terms of the way forward for that, there is a need to build capacity. Firstly, it is necessary to undertake a devolution commitment on a strategic and planned basis. There is a specific unit being established in the department to undertake this. The current year involves planning commitment of existing resources and will be reviewed year by year. There is an expected focus on children as a priority, consistent with an early intervention and prevention approach. This will, of course, require good interagency co-ordination. We will, of course, be seeking additional resources through the Commonwealth-State

processes that are there.

Devolution needs to be undertaken with reference to information about national and international good practice approaches and current research. We will be providing the Committee with some references. For example, one is work undertaken by the Centre for Developmental Disability Studies, which made a comparison of costs and outcomes of individuals living in group homes and semi-independently. Certainly the planned transfer of group homes provides an opportunity to build on that and to look at how that is done. Some of the points I make in terms of the second challenge, which relates to maximising the efficiency and quality of the special service system, would also apply to devolution. The department's context for looking at that special service system is that there is a policy and an actual funder-provider split, there is a focus on outcomes, and our way forward is informed by the disability policy framework and section 9 of the Disability Services Act, which looks at accessible mainstream service provision.

The issues in this regard are reports and research focusing on crime prevention; identifying a need to establish policies and procedures and other mechanisms within services to improve prevention mechanisms, including undertaking risk assessments; reporting of incidents; appropriate responses; protection of people who report incidents; recording of incidents, their antecedents and the patterns; application of past experience in advance for future practice; and co-ordination with other disability-specific and mainstream service agencies.

The reports and research that are available indicate that these factors are exacerbated or are a result of insufficient training and skills, absence or lack of adherence to systems, policies and procedures, insularity, inadequate collaboration, and insufficient access to expert advice and support. We understand that officers of the Community Services Commission gave evidence this morning and no doubt made reference to that.

The further point I would make is that anecdotally it is known that the situation is exacerbated by people coming into the service system, because families and carers need more or more strategic support. From the department's perspective we are looking at people who are not only in the system but who are not yet but are potentially at risk of coming into the system.

The way forward in this regard is by applying improved population group planning framework, which has been developed by the department; by improving industry responsiveness through policy initiatives around assessment; by building on current work, which is focused on improving our understanding and management of indicative costs and the impact that this can have on efficiency; by developing and implementing a service viability strategy, and as part of this recognising the variations of need that exist between small and large organisations. Of course, we must also anticipate new variables such as tax changes and use that strategy to inform new growth funding.

We need to facilitate access to expertise on a range of issues, including financial services and practice or behaviour management. There needs to be a strategic implementation of related policies—for example, around accommodation options, behaviour management, respite, abuse and assault. I remarked earlier that one of our key

assumptions is around improving that baseline system, and this is where this sits, if you like, and from the department's perspective it is very important that we go forward in a coherent way in relation to all of those policy initiatives.

The third challenge is ensuring interagency co-ordination. Again, the disability policy framework informs that. There are a number of processes at work that are relevant to this issue. First, at director-general level, there are the six human services directors-general forum, and there is also a criminal justice chief executive officers forum. That linkage is very important. Existing processes at departmental level include the interdepartmental committee on intellectual disability that the Attorney General's Department has carriage of; similarly the adult diversionary working group, which is associated with that department; an interdepartmental committee on people with a dual diagnosis; and an interagency working group on people with challenging behaviour. There are also relevant memoranda of understanding, such as joint planning initiatives between the Commonwealth and the Health Department.

One of the most important issues is that, as part of the managerial change over the last decade, public sector agencies have been required to identify and focus on their so-called core business. That has had many positive outcomes, one of which is a decrease in duplication. The challenge, which the Committee is no doubt aware of, is that people can fall between the systems. In terms of crime prevention, the most pressing problem is probably people with challenging behaviours, particularly arson, self-injurious behaviours, assault of others, and also people who have no clear diagnosis or who are on the fringe of service systems—for example, people with a mild intellectual disability or personality disorder. The challenge is that, at the same time, they can provide the greatest challenge in terms of management and may be very resource-intensive but they are not necessarily at the centre of service provision of the different agencies.

The way forward is to continue to work on identification of need and development of appropriate interagency responsibilities and initiatives through those processes at director-general level and interagency level, to which I made reference, and to nurture co-ordinated trials and innovative models. That may sound a little bureaucratic. However, I think we need to not only marry the hard core research that academics are undertaking in centres such as CDDS, but to go out and trial, in a co-ordinated way, different models of intervention and support on the ground, look at those complex issues and see what does and does not work. That may vary from setting to setting and area to area.

The last challenge that I would like to make reference to is addressing legal issues. The context for us is that there has been a substantial amount of work around the issues and mechanisms to prevent and manage people with intellectual disability, of which you would be well aware, and that the current legislative environment does not enable funding of secure accommodation or units. However, there is an identified need for a flexible system that provides a range of accommodation and support intervention. The issues from the department's perspective are, first, to improve the capacity of the criminal justice system and agencies to respond to people with a disability, particularly people with an intellectual disability, people with a dual diagnosis and people on the borderline of systems with challenging behaviour. The second issue is that there is some concern by key stakeholders to avoid engagement with the criminal justice system, which

I would like to elaborate on. Thirdly, we need a mechanism to manage the assessment and diversion of individuals where that is regarded as appropriate. Fourthly, as I indicated, we need a range of accommodation and support options.

I would like to briefly make reference to the issue about the concern of key stakeholders to avoid engagement with the criminal justice system. The position of the Ageing and Disability Department is that we adhere to the principle that everyone is subject to the law. That position is hard to apply in practice, for a number of very different reasons. One is past experience of contact with that system and concerns about it. Secondly, there is a concern held by some that, in the case of people with a disability, the fundamental problem lies with the service system, and to refer those individuals to the criminal justice system is victimising offenders who are themselves victims.

Thirdly, in some cases there is concern that a referral to police or acknowledgment of the existence of crime may make a service look bad; guilt may be a factor; a belief that the individual does not know what has happened to him or her, or it is better that he or she forgets about it; a belief by the victim that he or she has done something wrong, that he or she will be punished or that others will be punished; and fear of retribution, loss of job, loss of service, psychological or actual bodily harm. Those concerns are complicated by lack of clarity or a need for more clarity about the appropriate management of complex cases—for example, people who may repetitively assault other persons who have a severe level of disability and the appropriate management of them.

There is also concern about the potentially conflicting roles of the police and the need for clarity in terms of protection, safety and prosecution.

I said earlier that our position is that we adhere to that principle outlined above. While we acknowledge some of those concerns as being legitimate—for example, past experience concerns and how to manage those complex cases—there are a number of problems with not adhering to the principle. The first is that individual and informal decisions are made without any legal framework or protection for individuals, so it is an ad hoc management if you like. It results in a lack of records about the nature and extent of problems. There is a lack of proper and/or independent investigation. As part of this, many services are isolated and may experience conflicting roles—for example, as a gatekeeper between a service user and the police, or between so-called victims and offender service users. There is also concern that a failure to adhere to the principle means that there is a lack of adequate or appropriate response to either the victim or offender where they are service users, including a denial of process for the offender and a denial of the legal rights of the victim. It has a material impact, for example, on victims compensation claims.

What is the way forward in relation to those legal issues? In terms of improving responsiveness of the criminal justice system, under that disability policy framework there has been a transfer of co-ordination responsibility from the Ageing and Disability Department, which had carriage of a lot of those matters, to the Attorney General's Department through agreement at a chief executive officer level. Currently the Attorney General's Department has constituted an interdepartmental committee which is looking at three issues: proposed changes in giving evidence; police questioning of people with a disability, including support persons; and diversion. The Attorney General's Department is also responsible for the government response to the Law Reform Commission work on

people with intellectual disabilities in the criminal justice system.

With regard to the legal capacity issue that I was just talking about, the Ageing and Disability Department intends to refer the legal status and management of service user offenders to the Attorney General's interdepartmental committee to help inform the appropriate policy and practice in that area. That does not mean that we are simply shifting responsibility for that, but, rather, that we are seeking input on that so that we can work with both the human service and criminal justice agencies on that issue. The third area is to progress models and options in relation to secure accommodation. Essentially, that will be done in collaboration with the Attorney General's Department and human service agencies.

The last point in our presentation is about inquiry outcomes, which was a question that you had put to us. From our point of view there are five points: facilitating a greater understanding of the range and complexity of the issues; endorsing and facilitating that very necessary interagency work; identifying areas of best practice within this State and other States in relation to supporting people with an intellectual disability in the criminal justice system; identifying and promoting interstate linkages where they seem appropriate; and recognising the legal capacity issue I was just referring to as an issue of some substance and referring it for further work.

CHAIR: Ms Fahey, would you like to say anything?

Ms FAHEY: Not to the presentation but we will field questions, if that is okay with the Committee.

CHAIR: Either or both of you can respond to any question you choose. Professor Hayes in earlier evidence to us today indicated that at least 20 per cent of the current prison population consists of people with an intellectual disability, although as you would no doubt be aware, only between 2 per cent and 3 per cent of the population have an intellectual disability. Something must be very wrong for that disparity to occur. What are the main factors producing that obviously unsatisfactory outcome?

Ms FAHEY: I think it is important to bear in mind that the Ageing and Disability Department has responsibility for funding services that are delivered to about 12,000 in any given day, people with disabilities in New South Wales. When you talk about 2 per cent to 3 per cent of the entire New South Wales population of people with intellectual disabilities, you are talking about considerably more than 12,000 people. There are a number of factors that would contribute to over-representation of people with intellectual disabilities in prisons and the Law Reform Commission report identified a number of them. We would concur with the Law Reform Commission's identification of those factors.

Perhaps one of the most critical is previous contact in the juvenile system by people with an intellectual disability which will often be an indicator of their continued contact. In terms of where we would place emphasis and early intervention responses, working with younger people and children with disabilities would be one area we could look at, but we would need to do that in conjunction with all those other agencies which have responsibilities for people who fall into that category.

CHAIR: In regard to the process of deinstitutionalisation, would you agree with me that possibly that has brought in its train some problems in that those people interact with the community to a greater extent—and I am referring to the intellectually delayed—than they did previously when they were in a large institution. How do you think that the process of deinstitutionalisation is going in terms of the best interests of the community on the one hand and the people with disabilities on the other?

Ms FAHEY: I think that it is important to restate the current government policy in relation to deinstitutionalisation and that is that there is a government commitment to it and a commitment to developing a 12-year plan for it, so in a sense government commitment is there for deinstitutionalisation. The Law Reform Commission also identifies deinstitutionalisation as a contributing factor to the likelihood of people with intellectual disabilities coming into contact with a criminal justice system.

I do not have a view about how much of a factor deinstitutionalisation is in terms of contributing to that statistic of overrepresentation in the prison population but I think that as a principle the Government is committed to it. What that implies is that we need to work with the system that we have and the policy directions of that system. I would suspect that a number of other people who have given evidence today would recommend that deinstitutionalisation as a principle itself is not a problem but that the problem is more complex than that and that providing adequate supports for people moving into the community is absolutely critical.

Ms PIERCE: There are two things that need to be distinguished. There is a difference between contact with the criminal justice system and crime prevention. We understand the Committee is taking a very broad concept of crime prevention. The nature of crime may be different and more or less reported depending on what setting you are in, so while the statistics might show that you might have evidence around that, you need to differentiate between some types of crime that might be occurring. I said earlier that if one included abuse and assault, which may go unreported, it may simply be a lack of reporting rather than a lack of incidents. That is an important feature in thinking about strategies and not just contact with the criminal justice system.

The other point is that there has been a lot of work in terms of how to manage deinstitutionalisation. Certainly the more recent research has been looking at the nature of community settings, the importance of size and how they are managed and staff techniques in terms of quality of life and issues around crime prevention. That is also very important work that might influence your view.

CHAIR: Would you agree with me that judicial officers often have a problem in relation to a person with an intellectual disability appearing before them, either in relation to a bail decision on the one hand or a sentencing option on the other in that they may feel there is no secure environment in which to alternatively remand person pending a hearing or to impose a sentence. Is there a need for some model that is an alternative to a custodial option that nonetheless satisfies the judicial officer that the interests of the person appearing before him or her and of society are protected?

Ms FAHEY: The department responded to the Law Reform Commission report in

support of its recommendation about secure accommodation, however, the legislation that the Ageing and Disability Department has responsibility for administering does not allow us to fund accommodation of that type. Therefore, clearly what is required is some thinking about flexibility in the current accommodation system. A word of caution though. When Professor Hayes, for example, discusses the statistic about the number of people in the criminal justice system or the number of people in prisons, it is very easy to revert to thinking that the Ageing and Disability Department is the most appropriate agency to provide funding for their accommodation and that may be an adequate response, but it is important to place that in the context of all the other people with disabilities for whom the department provides accommodation. Often some of those people who would end up in the criminal justice system are people who are assessed as having mild to moderate support needs. It is important to think about what we can feasibly do now with our service system response as well as planning future needs, which I think is where the department's population group planning approaches will be very helpful. I just wanted to make that distinction.

Ms PIERCE: Certainly, as indicated in the legal issues we think that there needs to be work done on appropriate pathways and as part of that the issue of legal capacity needs to be addressed so that when police officers are in the situation, there are very clear protocols and guidelines on the way forward.

CHAIR: Without being too defensive, I did establish your department and I am not suggesting it has to solve all of the problems. However, there is a problem.

Ms FAHEY: Of course.

CHAIR: And someone has to solve it, one would hope?

Ms FAHEY: And I think in relation to the provision of a range of alternatives for accommodation for people with intellectual disabilities, the department is doing quite a lot of work in that area looking at a number of different alternatives. However, as I said, the current legislation does not provide the opportunity for the department to fund secure accommodation as defined and recommended by the Law Reform Commission.

CHAIR: But you do agree with me that there is an apparent problem in that area?

Ms FAHEY: There is a problem.

CHAIR: And that some solution has to be devised?

Ms FAHEY: A solution has to be devised and I would say that through our interagency work with the Attorney General's Department solutions are being discussed and a way forward is being developed.

CHAIR: In the department's written submission there is reference to "The Ageing and Disability Department would see the impact of changes to the social services support system as being significant in relation to people with an intellectual disability's criminal participation rates." What do you have in mind with regard to that?

Ms FAHEY: That was in reference to the capacity of the social services system to work co-operatively to meet the needs of this population group and in doing so it would, I think, have a reductionary effect on people's participation rates in the criminal justice system.

CHAIR: Is there an implied criticism there that perhaps the social security system does not achieve that objective?

Ms FAHEY: What do you mean by the social security system?

CHAIR: There is reference in the passage I just quoted to the social services support system. I am trying to clarify what the department is referring to. I assume it is a reference to the social security system?

Ms FAHEY: No, I think it is a reference to the social services system and how agencies like the Ageing and Disability Department work in co-operation with the Department of Community Services, the Department of Juvenile Justice, the Department of Health and the Department of Education and Training. That is how we constructed the term of reference in relation to the social services support system.

CHAIR: You are saying that there is perhaps a lack of co-operation between agencies that sometimes creates problems?

Ms FAHEY: Yes and I think that was echoed in the Law Reform Commission report.

Ms PIERCE: I think there is work currently under way that I have made reference to in the presentation, for example, people with challenging behaviours working group and people with dual diagnosis. That is there precisely to look at the needs of those people and how human services agencies can work together on that. Similarly, there are initiatives in case management that are relevant. That is a recognised issue but certainly there are real opportunities to improve on that and I think they are happening.

CHAIR: Returning to the matter I raised a moment ago, there is reference in the department's written submission to "The proposed model is therefore that there needs to be high level supervision and intensive programs that would meet both the individual's needs and the community's needs for safety." Are you talking about the concept I have in mind there, a secure system both in the interests of the offender and of society?

Ms PIERCE: Yes.

Ms FAHEY: And I would say that the site where that work and thinking is going on is in the Attorney General's interdepartmental committee of which we are members. We are trying to position the thinking around this idea of more secure accommodation in both the criminal justice system context and the human services context.

Ms PIERCE: Because the needs and priorities may be different. One may be about the needs of that individual. Another may be about the safety of others. For example, the guardianship arena is different. It looks primarily at the interests of an individual

whereas other systems look more at safety and we have to somehow marry those two. We need a mechanism for properly assessing people and there is currently no such mechanism as, for example, exists for people with psychiatric disability.

CHAIR: Perhaps a model can be developed that achieves both objectives.

Ms FAHEY: Indeed.

CHAIR: Would you agree that, unfortunately, people with a dual diagnosis of psychiatric illness and intellectual disability often fall into a gap.

Ms PIERCE: That is correct. For example, there is a policy, a memorandum of understanding, if you like, around that. The reason for the establishment of the interdepartmental committee [IDC] on that issue was to precisely look at how it was or was not working in practice and how it could be facilitated. The committee looked particularly at areas which seemed to be going well and the improvement of protocols, and also on-the-ground systems that could be put in place to improve application. Certainly, as part of that working group, an issue that was identified anecdotally was that things work best when people in the mental health system have knowledge of disability issues, and people were identified to jointly promote assessment and management.

The Hon. J. F. RYAN: You have referred to the IDC. Are you referring to a State interdepartmental committee?

Ms PIERCE: I have referred to a number of them. I am sorry if it was confusing.

Ms FAHEY: The Attorney General's Department and the Ageing and Disability Department [ADD] jointly negotiated a transfer of co-ordination responsibility for the issue of intellectual disability in the criminal justice system. The rationale for that came through the disability policy framework and section 9 of the Disability Services Act. It meant that mainstream agencies in the criminal justice system, which fall into that criminal justice agency category—particularly the Attorney General's Department as the lead criminal justice agency—needed to take some responsibility for managing the criminal justice system's response to people with intellectual disabilities. The way to do that was to establish a committee of key stakeholders with expertise in this area who would develop an implementation plan of activities to progress the work both of the Law Reform Commission and the ADD.

The Hon. J. F. RYAN: When was that established?

Ms FAHEY: That was established in September last year. It followed on from an IDC of which ADD had responsibility for about four years.

Ms PIERCE: The role of the department—and this is true of any issue, be it transport or any other matter—is to facilitate those mainstream agencies to address the needs of that group, rather than expecting our department, because there happens to be disability attached to it, to be responsible for all the services to individuals with a disability. The Disability Services Act states that all those mainstream agencies have to respond to those individuals.

Ms FAHEY: Also, that is part of the joint agreement amongst all government agencies through the disability policy framework.

The Hon. J. HATZISTERGOS: If it is not your responsibility but the responsibility of the other agencies to interact, how did you choose the 12,000 people that you say you have responsibility for?

Ms FAHEY: We fund a specialist service system through government and non-government service providers. The 12,000 people I quoted are the number of people who use the specialist service system. The government and non-government services take people according to their eligibility criteria. The department does not establish that. When we were established we took over the responsibility for funding a specialist service system that was already in existence.

The Hon. J. F. RYAN: Is it your responsibility to establish new services when they are identified as necessary?

Ms PIERCE: Part of the work I was referring to earlier—output-based funding, looking at better vacancy management and combined assessment processes—is all designed to improve the system's ability to deliver to as many people as possible and to have an agreed set of priorities within that system. As a funding and a strategic planning agency, it is our job to do that. But it is not our job to provide the service directly. We have to find the most efficient and effective pathways, according to agreed benchmarks.

The Hon. J. F. RYAN: It would be fair to say that the Committee has heard a significant amount of evidence during the course of the day that one of the reasons that one-in-five people in our criminal justice system are people with an intellectual disability is because they have missed out on services at various stages in their development. Does ADD have some knowledge as to what those services are and the level of demand for those services?

Ms PIERCE: I think that the department would say there is a very complex mix of systemic issues—access to services, types of services and delivery of services—combined with individual variables, such as a person's level of need at any one time, the effect of a medication regime and its management and personal history. We would not support the premise that it is simply about systems. We would certainly agree that is an issue, but the interplay of those two issues needs to be looked at. Our job is to determine how to best target those resources. The work around population group planning is specifically to better identify the needs of the population so that we can more effectively deliver those dollars.

The Hon. J. F. RYAN: Your submission states:

By improving the investment in the social services support system people with an intellectual disability as offenders will benefit through remaining with their families on support networks, living in the community and enjoying the same opportunities as other people and participating in specially designed community-based programs and initiatives that recognise the risk factors facing people with an intellectual disability.

That appears to be a recommendation for more services or at least some benchmark of what services ought to be available. "Improving the investment in social services

systems" obviously means additional resources. Is that a statement your department is making or are you simply paraphrasing the Law Reform Commission report?

Ms PIERCE: I certainly think that securing additional resources is important. But the department would also have the position that the more efficient management of what we already have is a very important factor. For example, I refer you to work undertaken by Roger Stancliffe and Sean Keene, who recently did a study comparing people living in group homes and people living in semi-independent living arrangements. I can provide you with the papers which explain the differences. Essentially, one is a smaller-sized, independent living situation with less direct staff hours.

Some individuals, not all, can have better outcomes at a lower cost by living in a more semi-independent situation. In terms of resource allocation, if we can identify those individuals and re-route some of the resources to people who have higher support needs, that is a better use of those dollars. As I indicated, the department has a role through Commonwealth-State processes to secure additional funding. But we certainly have the job of identifying how to better manage what we have.

The Hon. J. F. RYAN: Are you saying that the reason one-in-five members of our prison population are people with an intellectual disability is because the ADD, in part, has not been able to find the most efficient way to distribute the resources that are available? Some people would put to the Committee that the department has been able to but that something catastrophic is occurring. I would imagine they would suggest that simply reshuffling the resources will not go any distance towards improving that catastrophic outcome.

Ms PIERCE: The genuine response to you is that we would need to do both: secure more dollars, but also maximise every dollar that we get.

The Hon. J. F. RYAN: I do not disagree with that. Are you in a position to say what types of resources and services should be increased in order to bring about some impact on the number of people with an intellectual disability who are winding up in gaol?

Ms FAHEY: I think we can make comment on the kinds of services that currently operate and are funded by the ADD and the initiatives that are provided by other government agencies which are currently not accessible to people with an intellectual disability. There is a type of dual response to that.

The Hon. J. F. RYAN: Are you able to put that in the form of a written submission to the Committee?

Ms FAHEY: We can certainly do that. It is our intention to provide a more detailed written submission to you. However, I can run through a couple of things to give you a flavour of what I have in mind. In terms of the services funded by the ADD that have relevance for this population group, our early intervention co-ordination program is critical. That jointly funded program between New South Wales Health, the Department of Education and ADD is designed to provide a family centred approach to early intervention so that families with young children with a disability get the support they need very early in life. We fund a mixture of supported accommodation and day

programs to people with a disability. Both of those are very important to contribute to a stable life environment. Perhaps initiatives that should be examined, which are provided by other government agencies but are not accessible to people with a disability, are community-based treatment programs such as the Cedar House sex offender treatment program. That program is currently not available to people with an intellectual disability.

The Hon. J. F. RYAN: Is it true that such programs and other services that could be identified are not available to people with an intellectual disability because a vigorous turf war has been going on between agencies which supply disability services and agencies which supply mental health services? Those departments, which are anxious to protect their budgets, attempt to argue people out of their services rather than look for ways to argue them in. For example, it is possible for a person who has a mental illness to be classified as a person with an intellectual disability. The Department of Health would prefer the ADD to fund the service rather than take it on and vice versa. If you have a person with a mental illness which you believe is more significant than their intellectual disability, you would be looking for agencies like Cedar House to look after them.

Ms FAHEY: I cannot presume to respond for the intentions of New South Wales Health. Certainly the work that the ADD has done in securing a memorandum of understanding and joint planning for resources with New South Wales Health signals that if there was a turf war in existence it is not very fruitful because people would fall through the gaps. In terms of forging relationships with key agencies, such as New South Wales Health and the Department of Community Services, we use mechanisms such as joint memorandums of understanding, interdepartmental committees and joint protocols. We attempt to move those issues forward using those mechanisms.

Ms PIERCE: Some of that issue might not relate to any differences in the definition of disability. I think there is concern to get away from a position of the primary diagnosis because it just ends up in tail-chasing. As we said earlier, it is simply accessing services available to people without any type of disability or acknowledged disability. Again, a lot of our work is centred around section 9 of the Disability Services Act to get all of those mainstream agencies, which might be anything from transport to criminal justice, to provide services to that population group as part of their core business, not as an optional extra.

The Hon. J. HATZISTERGOS: I would like to know how you categorise the various services that you feel are useful or would improve the crime prevention situation. In your submission you do not give any specific details; you simply say, for example, that more resources should be put into early intervention and various other services. Have you identified the sorts of programs that you think would be useful?

Ms FAHEY: We have identified some programs, and we will provide you with more details about them in a further written submission. One program that I know has already been referred to is the Illawarra Disability Trust criminal justice program. The Ageing and Disability Department funded that project after an initial grant from the Law Foundation. The Illawarra Disability Trust project comprises two arms: a police support program and a court support program. We have recommended that the Attorney General's Department look at the principles behind the court support program and make

the program available on a statewide basis. That is an example of a particularly positive initiative that has worked successfully to divert people from the criminal justice system.

That is only one example. A number of what we would call key program areas, such as our respite program, our supported accommodation program and our day program services, work in conjunction to provide stable living environments and stable and regular day activities for people. We would certainly recommend that those programs continue. We would be looking at—and this is an area where further research is required—programs such as those currently offered by Health and the Department of Corrective Services for offenders and their application for people with intellectual disabilities because in principle those programs have been seen to have some effect in diversion. However, because they have not been tried we cannot say whether they are effective, but we could recommend that they be looked at in terms of further research.

Ms PIERCE: Another thing that may be of interest to you is that there are not necessarily programs but what we might call excellence in various organisations in terms of how they assess and provide for individuals in ways that minimise the risk of people engaging in behaviour that might be criminal. Earlier I referred to doing concrete pilot initiatives and fostering that innovation. One important thing is to ask what do specific agencies clearly do well and how do we get other agencies to do the same. We could refer you to some initiatives that we think would fit that category.

The Hon. P. BREEN: Ms Pierce, in your presentation you made a brief reference to the Victims Compensation Tribunal. Are there any figures that compare the number of people with intellectual disabilities in the community, which I understand from Professor Hayes is about 3 per cent, to the number of claims on the Victims Compensation Tribunal?

Ms PIERCE: We will be able to start doing that. I refer you to the Victims of Crime Tribunal, which was represented on our interagency group dealing with abuse and assault. That tribunal indicated that it would be changing its data collection system to identify people with a disability. One problem is that a lot of mainstream agencies do not identify people with disabilities. You would not get any back records of that but I believe you could access that information from the start of this year.

Ms FAHEY: The Committee may find it helpful to know that moves are afoot to standardise data collection by the police, courts administration and corrective services. Prior to that initiative being introduced they collected different sorts of data so it was not surprising that some people were identified only at the later stage of being sentenced. While those kinds of initiatives do not seem much by themselves, they are important in the scheme of things.

Ms PIERCE: One difficulty with information and data is that in a number of arenas people have not been reporting matters for a number of the reasons to which I alluded. I think we must be careful with our initiatives. For example, should an increased reporting rate be regarded as a problem or perhaps as an acknowledgment of a situation that should be reported. That would enable things to be brought out into the open so that they can be dealt with.

The Hon. P. BREEN: Are intellectual disability services sufficiently accessible at present to people who need them? If not, how can that access be improved?

Ms PIERCE: We have a better population group planning system in place. We are trying to get a vacancy management system. A lot of work has been done around vacancy management so that we can better use what we have, which is important. There are a number of big initiatives that will help improve that.

The Hon. J. F. RYAN: Vacancies in what?

Ms PIERCE: In services. For example, someone may have a need but there is not necessarily any coherent cross-system way of saying that someone has left this service, there is a vacancy and this person should have priority for that service. How do we utilise those resources quickly so that there no gap in terms of service provision?

The Hon. J. F. RYAN: What is the relationship between the Ageing and Disability Department [ADD] and the Department of Community Services with regard to the management of the substitute care of children with an intellectual disability? Which agency has responsibility for that?

Ms PIERCE: We have the funding responsibility but the Department of Community Services has the service delivery responsibility.

Ms FAHEY: I am not familiar with the substitute care system but we could certainly elaborate on that in our written submission.

Ms PIERCE: It would help if you could give us an indication of what you would find most useful.

The Hon. J. F. RYAN: It has been suggested to us that if particular at-risk children were given some level of intervention and their foster parents were better trained in behaviour management they would be less likely to act out. In particular, kids who have difficult behaviours to manage would be less likely to fall under the criminal justice system because their foster parents would be more tolerant and better able to manage the behaviour and the placements would be less likely to break down. It has been suggested that a break down in placements is another factor which sends people to participation in criminal activity.

While I recognise that there is a difference between funding the service and providing the service, nevertheless I would have thought that because your department funds the service you would be important in terms of evaluating its effectiveness. You would also be important advocates for people with intellectual disabilities who are in substitute care to ensure that the substitute care system is meeting their needs in terms of ensuring that they do not end up in the criminal justice system. I am trying to work out which department will put up its hand and take responsibility for ensuring that the service delivered meets this particular need.

Ms PIERCE: It is one of those issues for which there may be different responses that need to be well co-ordinated. The early intervention program for children under six, to which Megan referred earlier, involves ADD, community services—

Ms FAHEY: No, it is not. The early intervention program I mentioned is funded by New South Wales Health, the Department of Education and Training and ADD.

Ms PIERCE: But bureaucratically the Department of Community Services is involved in the management of that process and, therefore, the co-ordination and delivery of those services.

Ms FAHEY: The Department of Community Services would be the lead agency in terms of policy development for substitute care. If it is helpful to the Committee, in our written submission we could provide a joint section with the Department of Community Services on that matter so that it is clear what responsibilities fall within which agency.

CHAIR: That would be helpful.

(The witnesses withdrew)

(The Committee adjourned at 4.24 p.m.)