

Criminal Law - Two Strike  
Child Sex Offenders  
Submission 014

28 June 2012

The Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Madam/Sir,

**Re: Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012**

Please find below our submission on these proposed amendments.  
We appreciate the opportunity to contribute to the consultation process.

Yours sincerely,



Ken Wade, Director



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Patron: Her Excellency, Ms Penelope Wensley, AO Governor of Queensland

## Key Points

- We do not support the passing of ‘one size fits all’ sentencing, even for serious sex offences. Any mandatory sentencing law is contrary to fundamental legislative principles, removing the courts’ discretion to weigh relevant circumstances, including offenders’ intellectual disabilities.
- Portraying sex offenders as ‘monsters’ sells newspapers and boosts the ratings of current affairs programs on television,<sup>1</sup> but the reality is complex. Many criminal offenders, including sex offenders, are **people with intellectual disabilities**; indeed people with **intellectual disabilities are overrepresented in prisons**, and **overrepresented for sexual offences** (Glaser, 1991; Simon, 1980).
- **People with intellectual disabilities convicted of sex offences generally** are more likely to have been **victims of sexual and physical abuse**, especially in **childhood**, and in **institutional** settings (Glaser, 1991; Hayes, 2005, 2009; Lindsay, *et al*, 2001).
- Many offenders with intellectual disabilities are individuals who **have behaved inappropriately because of lack of knowledge about sexuality, or not knowing what behaviours are acceptable**, reflecting the **restricted life of the person with the disability**, who may have been denied sex education in the past or not provided avenues to pursue sexual interests in **a safe and appropriate way**.
- Once in jail, **‘peer abuse’** by one inmate against another is widespread and not recognised or dealt with (Hayes, 2005). Mental and physical abuse, disciplinary problems and the likelihood of regression in prison leads many prisoners with intellectual disabilities to spend their time in max security (Cockram, 2005).
- Imprisonment is likely to erode the living skills of people with disabilities, thereby increasing the challenges they will face on release.
- The likelihood of reoffending is determined more by a person’s socio-economic circumstances after release than by the length of their term in prison (Allan and Dawson 2004).
- Support and monitoring after release, not increasing time served, will deliver the best outcomes for both offenders and the community.
- **Prisons are poorly equipped** with the necessary resources for rehabilitation of offenders with intellectual disabilities.
- Whilst there is a need for programs inside prisons which are more useful for people with intellectual disability, it is difficult to separate any benefits such programs may have from the **negative effects of incarceration**, including reduction of living skills and self-esteem, and increased feeling of alienation and identification with an offending culture.
- Prison programs, by their nature, are fragmented. They operate around the demands of the prison environment. The downfalls of in-prison programs undermine the basic right of these people to receive **a therapeutic response** to their situation.
- The **high return to prison rate** for people with intellectual disability demonstrates the failure of imprisonment as a mechanism for individual or social change.

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<sup>1</sup> Media reporting of sex offending is all about sensationalism and titillation (Soothill & Walby 1991).

- When discharged from prisons, the negative effects of imprisonment combined with a lack of adequate monitoring and support, often **exacerbates re-offending**.
- Intellectual disability should be a **key mitigating factor** when sentencing child sex offenders.
- Mandatory minimum jail terms do not allow such mitigating factors to be taken into account. Mandatory minimums are likely **to increase, not lessen the harm** to communities.

### Some Relevant Statistics- Domestic and International

- Over **38% of Queensland prisoners** have **intellectual disabilities or borderline intellectual disability** (QDCS, 2002) compared to approximately 3% of the general Australian population (Frize, Kenny, Lennings, 2008).
- **Overrepresentation of People with Intellectual Disabilities in Prisons:** Based on IQ testing, 9.8 % of persons in Queensland prisons scored in the intellectual disability range, and 28.6% scored in the 'borderline' intellectual disability range (Queensland Department of Corrective Services, 2002).
- In New South Wales (Australia), the most recent figures indicate that about 19-20% of the prison population has an intellectual disability, an increase of nearly 8% since the 1988 study: Susan Hayes, Ability Screening Index (HASI) manual. Sydney: Behavioural Sciences in Medicine, University of Sydney (2000)  
<<http://www.criminologyresearchcouncil.gov.au/reports/6-87.pdf>>
- **Overrepresentation of People with Intellectual Disability in Prisons:** A more recent study examining the prevalence of intellectual disability among British prisoners (Mottram, 2007) found that 7.1 per cent of male prisoners and 8.3 per cent of female prisoners had an intellectual disability (IQs below 70), and a further 23.6 per cent of male prisoners and 31.7 per cent of female prisoner bordered on being considered intellectually disabled (IQs between 70 and 79): Mottram, P. G. (2007). HMP Liverpool, Styal and Hindley study report. Liverpool: University of Liverpool.
- **Sex Offenders and Learning Disabilities:** The incidence of sex offending is similar for prisoners with an intellectual deficit (3.7%) and the non-intellectually disabled (4%) (Hayes and McIlwain (1988) at 47, *The prevalence of intellectual disability in the New South Wales prison population: An empirical study*. Report to the Criminology Research Council Canberra).
- A study in the United States showed that 10-15% of sex offenders are intellectually impaired: W Murphy, E Coleman and M Haynes "Treatment and evaluation issues with the mentally retarded sex offender" (1983) cited in W Glaser " A comparison of intellectually disabled and non-intellectually disabled sex offenders" in Freckelton,, Greig and McMahon (eds) (1991) 243 at 243.
- A United Kingdom study indicated that the percentage of intellectually disabled offenders dealt with for sexual offences was six times higher than the percentage for all offenders:

G Simon "A manual of practice" (1980) cited in M Little "Sport and recreation: Help for intellectually disabled offenders" in Challinger (ed) (1987) 113 at 117.

- A 2004 study found that offenders with learning disabilities start offending at an early age, had a history of multiple offences, and that sexual and arson offences were over-represented: Barron, P., Hassiotis, A. & Banes, J. (2004). Offenders with learning disability: a prospective comparative study. *Journal of Learning Disability Research*, 48, 69-76
- **Link between abuse and later offending behaviour:** Hayes (2009) and Lindsay *et al* (2001) note that sex offenders with an intellectual disability are more likely to have been the victim of sexual or physical abuse, usually having been abused in institutions or by family members. Susan Hayes, 'Identifying intellectual disability in offender populations – and what then?' (Workshop presented at a seminar organised by the Prison Research Project) (2004) <http://www.qcjc.com.au/research/download/3/research/intellectual-disability-1/identifying-intellectual-disability-in-offender-populations.pdf>
- One of the reform objectives as stated in the Explanatory Notes is the restoration of public confidence in the criminal justice system. But public perceptions about crime are frequently *mis*perceptions. It is commonly believed, for example, that crime rates, especially for serious and violent crimes, are on the increase. We know in fact that the rates of 'street' crime have dropped over the last two years (SAC, 2011: 34). Indeed the Australian Institute of Criminology's 2010 statistical survey confirms that crime rates in most categories have fallen in the period 1996 – 2010, roughly the period since Justice Gleeson's speech, including falling rates of homicide (from 1.9 to 1.3 incidents per 100k population over the years 1996 to 2009) and other violent offences, and falling rates of property crime (in 2009 the lowest recorded in the 14 year period since 1996).<sup>2</sup>

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<sup>2</sup> While overall rates of robbery have declined since 2001, a dramatic decrease in robbery rates occurred between 2007 and 2009, falling by an average of 19 per cent each year. Since 1996, the rate of kidnapping has remained at between two and four per 100,000 population per year. The homicide rate was 1.9 per 100,000 population in 1996 (including the 35 victims of the Port Arthur massacre) and was at its highest in 1999, at two per 100,000 population. In 2009, the rate was 1.3 per 100,000 population. Sexual assault continued to fall between 2008 and 2009, decreasing from 93 to 86 persons per 100,000 population (Australian Institute of Criminology, 2010: 3-6).

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### 1. Executive Summary

‘The object of sentencing is to impose a punishment which is appropriate to the particular offence committed by the particular offender’ (Murray Gleeson CJ, 1994).<sup>3</sup>

To remove judicial discretion in sentencing for serious sex offences is wrong in principle and likely to be ineffective in practice. It is a violation of doctrine of the separation of powers, a denial of natural justice, and contrary to current research on reoffending. The courts must be able to take into account all the circumstances of each case, including the relevant characteristics of the offender. Intellectual disability is just such a relevant characteristic. There are firmly established principles - ‘Verdin’s Principles’ - that courts apply when sentencing offenders with intellectual disabilities. This legislation will deny the courts the freedom to apply those finely developed sentencing principles.

And this reform is unlikely to make our children any safer insofar as it affects offenders with intellectual disabilities. The *Explanatory Notes*<sup>4</sup> state that the principal justification for the *Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012* (‘the Bill’) is that the public interest and community safety trump fundamental legislative principles (such as the presumption against retrospective legislation and the protection of traditional individual liberties). The assumption here is that incarcerated offenders are no danger to the community. However, there are two flaws in this reasoning. First, other prisoners are, or

<sup>3</sup> NSW Law Reform Commission (1994: Ch 11) citing Justice M Gleeson in a recent speech entitled ‘Sentencing: The Law’s Communication Problem cited in “Justice when everyone’s a hanging judge” *The Sydney Morning Herald* (2 December 1993) at 12.

<sup>4</sup> <http://www.legislation.qld.gov.au/Bills/54PDF/2012/CrimLwTSCSOAB12Exp.pdf>

eventually will be, part of the community, and given what we know about the link between being a victim of sex offences and later being a perpetrator, prison may be a 'school for offending', to the inevitable detriment of other prisoners, and in time, given a continuing cycle, to the detriment of the community at large. Second, even 20 year sentences come to an end, and offenders themselves are released into the community.

Research suggests that at least as far as offenders with intellectual disabilities are concerned, the public interest is better served by reducing jail time and delivering offender programs in a community rather than custodial setting. The recidivism of offenders with intellectual disabilities will thereby be reduced and the victim/perpetrator cycle is short-circuited (Hayes, 2005; Sinclair and Murphy, 2000).

## 2. People with Intellectual Disabilities and Sentencing

Our particular concern here is with those who are found to have capacity and can instruct counsel,<sup>5</sup> but who nevertheless should be dealt with differently by reason of their intellectual, cognitive and other disabilities.<sup>6</sup> Courts need to be able to take into account their special circumstances<sup>7</sup> as **mitigating factors** and not be bound by legislative direction on custodial minimums.

Impaired mental functioning, whether temporary, or permanent, is relevant to sentencing:<sup>8</sup>

1. It may reduce the offender's **moral culpability**, as opposed to the offender's legal responsibility, and thereby reduce the need for denunciation and the punishment that is just in all the circumstances.
2. It may inform the kind of sentence which should be imposed and the conditions in which it should be served.
3. According to the nature and severity of the offender's symptoms, and the effect of the condition on the offender's mental capacity, at the time of the offending or at the date of sentence or both, it may moderate or eliminate **general deterrence** as a relevant sentencing consideration.
4. The same applies to **specific deterrence**.
5. The nature and extent of the condition may mean that a given sentence will **weigh more heavily on the offender** than it would on a person in normal health.

<sup>5</sup> Not those people with an intellectual disability who may be unable to instruct or may have lacked capacity at the time of an offence, who would ordinarily be dealt with by the mental health courts.

<sup>6</sup> For example, acquired brain injuries.

<sup>7</sup> Sex offenders with intellectual disability typically have confused self-concepts, poor peer relations, a lack of sexual and socio-sexual knowledge, negative early sexual experiences (including a history of childhood sexual abuse), lack of empathy, poor self-esteem and a lack of personal power: Lindsay, W (2002) 'Research and Literature on Sex Offenders with Intellectual and Developmental Disabilities', *Journal of Intellectual Disability Research*, 46(1), 74-85.

<sup>8</sup> Verdin's principles- see *R v Verdins, R v Buckley, R v Vo* [2007] VSCA 102  
<http://www.austlii.edu.au/au/cases/vic/VSCA/2007/102.html>

6. To the extent that there is a serious risk of imprisonment having a significant **adverse effect on the offender's mental health**, it will tend to mitigate punishment.

General deterrence should often be given very little weight in the case of an offender with an intellectual disability because such an offender is not an appropriate medium for making an example to others' (Chief Justice Young in *R v Mooney*). The disproportionate effect of imprisonment is discussed in '3' below.

### 3. People with Intellectual Disabilities and Child Sex Offences

We know that people with Intellectual and Learning Disabilities are overrepresented in prisons both here in Queensland, nationally, and internationally,<sup>9</sup> but in addition:

1. The percentage of intellectually disabled offenders dealt with for sexual offences is higher than the percentage for all offenders (from slightly higher to 6 times as high, depending on research).<sup>10</sup>
2. Sex offenders with an intellectual disability are **more likely to have been the victim** of sexual and physical abuse- in institutions, or by family members.<sup>11</sup> Lindsay et al (2001) found 38% of sex offenders with LD (= Intellectual Disability) had been abused c.f. 13% non-sex offenders with LD

<sup>9</sup> Hayes S (2006) 'People with intellectual disabilities in the criminal justice system- when is disability a crime?' Keynote presented at the "Lock Them Up? Disability and Mental Illness Aren't Crimes Conference", Sisters Inside, Brisbane, Australia, 17-19 May 2006.

<sup>10</sup> Incidence of sex offending is similar for prisoners with an intellectual deficit (3.7%) and the non-intellectually disabled (4%) (Hayes and McIlwain (1988) at 47, *The prevalence of intellectual disability in the New South Wales prison population: An empirical study*, Report to the Criminology Research Council, Canberra). A United Kingdom study indicated that the percentage of intellectually disabled offenders dealt with for sexual offences was six times higher than the percentage for all offenders: G Simon "A manual of practice" (1980) cited in M Little "Sport and recreation: Help for intellectually disabled offenders" in Challenger (ed) (1987) 113 at 117. A 2004 study found that offenders with learning disabilities start offending at an early age, had a history of multiple offences, and that sexual and arson offences were over-represented: Barron, P., Hassiotis, A. & Banes, J. (2004). Offenders with learning disability: a prospective comparative study. *Journal of Learning Disability Research*, 48, 69-76. A United Kingdom study indicated that the percentage of intellectually disabled offenders dealt with for sexual offences was six times higher than the percentage for all offenders: G Simon "A manual of practice" (1980) cited in M Little "Sport and recreation: Help for intellectually disabled offenders" in Challenger (ed) (1987) 113 at 117. A more recent study examining the prevalence of intellectual disability among British prisoners (Mottram, 2007) found that 7.1 per cent of male prisoners and 8.3 per cent of female prisoners had an intellectual disability (IQs below 70), and a further 23.6 per cent of male prisoners and 31.7 per cent of female prisoner bordered on being considered intellectually disabled (IQs between 70 and 79): Mottram, P. G. (2007). *HMP Liverpool, Styal and Hindley study report*. Liverpool: University of Liverpool.

<sup>11</sup> Hayes (2009) and Lindsay *et al* (2001) note that sex offenders with an intellectual disability are more likely to have been the victim of sexual or physical abuse, usually having been abused in institutions or by family members. Susan Hayes, 'Identifying intellectual disability in offender populations – and what then?' (Workshop presented at a seminar organised by the Prison Research Project) (2004) <http://www.qcjc.com.au/research/download/3/research/intellectual-disability-1/identifying-intellectual-disability-in-offender-populations.pdf>

3. Once in jail, “**peer abuse**” by one inmate with intellectual disability against another is a widespread problem, and can be ongoing. Because this type of offence is often not recognised, there is a lack of appropriate intervention. Therefore, in any programme for sex offenders with learning disability, one of the major aims must be to **protect participants against abuse from other participants** (Hayes, 2004).<sup>12</sup>

Hayes (2009) and Lindsay *et al* (2001) note that sex offenders with an intellectual disability are **more likely to have experienced significant levels of abuse, particularly while in institutional care** (and Glaser 1991). Where the state has been responsible for institutions in which abuse is known to have occurred, as recently revealed in Victoria (Wallace 1991), the community has a moral obligation to provide rehabilitation and treatment rather than punishment.

In their study of 46 sexual and 48 non-sexual offenders Lindsay *et al* (2001) note that a significantly higher proportion of sex offenders report having been sexually abused in childhood (38% versus 12.7 %) and that childhood sexual abuse may be a significant factor in later sexual offender behaviour- although they note that to suggest that this is the only variable in the ‘cycle of abuse’ is simplistic.

While some sex offenders with intellectual disability have deviant ideas about sexuality, many are individuals who **have behaved inappropriately because of lack of knowledge about sexuality, or not knowing what behaviours are acceptable**, reflecting the **restricted life of the person with the disability**, who may have been denied sex education in the past or not provided avenues to pursue sexual interests in a **safe and appropriate way**.

One of the major obstacles to developing this sort of understanding is the attitude of the media to sex offences. A study of British newspapers, both respectable and otherwise, over the last forty years, found little serious reporting of the subject and a great deal of sensationalism and titillation (Soothill & Walby 1991). An analysis of the Australian media along the same lines would, it is suggested, produce the same findings.

#### 4. The Prison Experience for People with Intellectual Disabilities

An offender’s intellectual disability is relevant in sentencing not as a ‘health’ issue, ‘but because **the experience of imprisonment for the intellectually disabled individual may be much worse than for other prisoners**’ (Hayes and Craddock, 1989: 242). The Report of the

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<sup>12</sup> Peer abuse, either sexual or physical or both, of one person with an intellectual disability by another, is a widespread problem, which many service agencies have failed to address; repeated offences are frequent and lack of appropriate intervention is the norm (Brown & Stein 1997).



Inter-Departmental Committee on Intellectually Handicapped Offenders in New South Wales (“The Missing Services Report”) commented that prisoners with an intellectual disability:

are subject to abuse and exploitation and are seen as being more susceptible to the negative influences of the prison environment, thus having any criminal behaviours reinforced rather than reduced by their period of incarceration.<sup>13</sup>

Mental and physical abuse by other prisoners, disciplinary problems, and the possibility of regression in the prison environment leads to many prisoners with an intellectual disability serving part or all of their sentences in maximum security.<sup>14</sup>

The New South Wales Court of Appeal recognised that:

in the case where a prisoner suffers from some illness *or disability* of such nature as to make more onerous the sentences which he must serve, that is a matter which can be taken into account in mitigation. [emphasis added]<sup>15</sup>

Gaol is inappropriate for the offender with an intellectual disability compared to other prisoners. In its submission to an inquiry by the NSW Law Reform Commission the Kingsford Legal Centre commented:

We believe that people with an intellectual disability are especially vulnerable when detained in custody, and that detention in custody imposes a greater hardship on such people than is usual. For many people with an intellectual disability, routine and patterns of life are essential to their wellbeing; they require familiarity and continuity. In addition, they often have little concept of the calculation of time or of the full extent of the criminal process. ... It is clear from our experience that the effect of custody threatens to **diminish the living skills of an intellectually disabled person**, and that the impact of custody will also be more severe than for an ordinary person.<sup>16</sup>

Other submissions, noted the NSW Law Reform Commission, have generally accepted that people with an intellectual disability **are particularly vulnerable in gaol**, for example to rape and other abuse. It is not possible to provide 24 hour protection for all prisoners with an

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<sup>13</sup> Report of the Inter-Departmental Committee on Intellectually Handicapped Adult Offenders in New South Wales *The Missing Services* (Departments of Corrective Services and Youth and Community Services, Sydney, 1985) at 3.

<sup>14</sup> Cockram, J. (2005a). ‘Careers of offenders with an intellectual disability: The probabilities of rearrest’. *Journal of Intellectual Disability Research*, 49, 525-536.

<sup>15</sup> *R v Peuna* (unreported) Supreme Court, NSW, Court of Criminal Appeal, 15 July 1993, CCA 60593/91 per Badgery Parker J at 9.

<sup>16</sup> Kingsford Legal Centre *Submission* (29 October 1992) at 5. See also The Law Society of New South Wales *Submission* (24 August 1992) at 4 in Law Reform Commission of New South Wales (1994).

intellectual disability. Gaol has also been seen as inappropriate because some of these offenders **'tend to copycat other deviants'**.<sup>17</sup>

The Law Reform Commission (1994) also notes that the New South Wales Court of Appeal recognises that:

in the case where a prisoner suffers from some illness *or disability* of such nature as to make more onerous the sentences which he must serve, that is a matter which can be taken into account in mitigation.<sup>18</sup> [emphasis added]

People with intellectual disabilities are often imprisoned simply **because there is no other alternative placement available**, yet the correctional culture and the physical realities of prisons are rarely conducive to therapy (Mullen, 2001).

Incarceration of people with intellectual disabilities is difficult for prison staff as well- staff are often not equipped to deal with individuals' particular needs, may find it difficult to communicate the rules of jail to them .

Preventive detention cannot be justified for people with an intellectual disability on grounds of 'treatment' – they are legally sane and the condition is permanent. **Continued incarceration is likely to make a person more dangerous rather than less** (given the acknowledged negative influence of prisons on prisoners generally – violent environment, resentment) (NSWLRC, 1994: at 12.22).

## 5. Treatment

In his 2001 review of the management of 'mentally abnormal' offenders, Paul Mullen noted that:

- no Australian State currently has a comprehensive service at every stage in the criminal justice process.
- often the mentally disordered and the intellectually disabled finish up in prison because the courts saw no alternative placement.
- difficulties arise in providing treatment within the prisons to those who on the outside would be candidates for outpatient and community care.
- the correctional culture and physical realities of prisons are rarely conducive to therapy.

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<sup>17</sup> New South Wales. Department of Family and Community Services [now Department of Community Services], Office on Disability *Submission* (26 November 1991) at 2 in NSW LRC (1994).

<sup>18</sup> *R v Peuna* (unreported) Supreme Court, NSW, Court of Criminal Appeal, 15 July 1993, CCA 60593/91 per Badgery Parker J at 9.

Nearly ten years later a national study by Heseltine *et al* noted in relation to Queensland that:

- while the 2009-2010 State Budget allocated money towards correctional services, including funding \$0.33 for the *Bridging the Gap* pilot program to meet specialised through-care needs of prisoners with a cognitive impairment or intellectual disability,
- often, programs of in-prison rehabilitation programs **are modifications from programs that have been developed for the dominant culture and sex**, and that
- **concerns have been raised as to the appropriateness** of these efforts.

Wendy Goodman talks about a cognitive behavioural treatment of a group for men with learning disabilities who are at risk of offending. After the group the men accepted more responsibility for their behaviour and understood more about the effects on their victims.

- Concerns were raised as to whether these positive results would actually be reflected in their future behaviour, or whether they conformed to the pressure of the group.
- She notes evidence that suggests that sexual offending is the result of a number of historical and current, individual, environmental and societal factors (Marshall et al (1999) *Cognitive behavioural treatment of sexual offenders*. England, John Wiley & Sons Ltd).
- Therefore, effective interventions are likely to be multi-faceted and enduring over time.  
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Group treatments for sex offenders with an intellectual disability based on a broad cognitive-behavioural model and continuing for one year, over a total of 50 sessions, are successful in changing the attitudes of offenders and reducing re-offending.

Using baseline measures that include both mainstream sex-offender and specific intellectual disability tests, the results indicate that treatment is effective in impacting on cognitive and social skills measures relevant to the commission of sex offences.<sup>20</sup>

More tellingly, Susan Hayes (2005; 2006) has passionately argued that:

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<sup>19</sup> Wendy Goodman *et al*, 'Group treatment for men with learning disabilities who are at risk of sexually offending: themes arising from the four-stage model of offending' (2008) *British Journal of Learning Disabilities* 249.

<sup>20</sup> Sinclair, N & Murphy, G (2000) 'Preliminary Results from a Treatment Group for Men with Intellectual Disability who Sexually Offend', *Journal of Intellectual Disability Research*, 44, nos 3 & 4, pp 466.

- a major reason for imprisonment of intellectually disabled offenders is the lack of secure and supervised community residential placements, including bail hostels and secure units, and specialised programs;
- there **must be a diversionary system established**, to divert people with intellectual disability out of the criminal justice system into more appropriate community based or secure services.

And others have noted that:

- Psychologically informed and structured interventions result in better outcomes than drug, counselling or regime-based interventions
- There is some evidence that attitudes towards offending can be changed positively (e.g. Lindsay et al. 1998; Rose et al. 2002)
- Longer length of treatment produces better outcomes that last longer (e.g. Lindsay & Smith 1998) <sup>21</sup>

Research focusing on the most effective strategies for programs for sex offenders with intellectual disabilities is inconclusive, partly owing to the diverse aetiology of the problem behaviour, and partly owing to methodological problems with research, including the ethical dilemma of having a 'no treatment' group. The few clear findings that emerge indicate that brief interventions are unlikely to be effective, cognitive behavioural techniques are useful, and multi-disciplinary approaches, together with **long-term support and follow-up**, are essential (Lindsay 2002).

## 6. Conclusion

The essence of discrimination is the treatment of equals unequally, or the treatment of people with significant differences in the same way as everybody else. Disabilities, especially intellectual disabilities, are significant differences.

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<sup>21</sup> According to John Taylor, speaking at a recent conference at Emmanuel College at the University of Queensland (2011), studies to date are quite limited: no control conditions; small and heterogeneous samples; unreliable measures; poorly defined outcomes; treatment descriptions vague and multi-modal Better research is needed using larger multi-site samples, wait-list or case-control designs, reliable outcome measures, and agreed criteria for inclusion and recidivism **Treatment and Management for Offenders with Intellectual Disabilities** John L Taylor *Northumbria University and Northumberland, Tyne & Wear NHS Trust*

The proposal for mandatory 20 year sentencing not only erodes the separation of powers- it weakens courts' powers to treat different people differently. Our job at Queensland Advocacy Incorporated is to advocate on behalf of Queensland's most vulnerable people with disabilities, and this submission is a plea for the legislature to let the courts take disabilities and other relevant qualities of offenders into account- to treat different offenders differently.

'The object of sentencing' said Murray Gleeson CJ in 1994, ' is to impose a punishment which is appropriate to the particular offence committed **by the particular offender**. To take a simple and not uncommon example, some offenders suffer from mental infirmity, or psychological problems, which are capable of diminishing the culpability of their conduct. These *cannot be ignored* by a system which aims to make the punishment fit both the crime and the criminal'.<sup>22</sup>

The legislative mandate of harsher sentencing - no matter what the offence - does precisely that by eroding judicial discretion that can account for the particularity of offenders.

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<sup>22</sup> NSW Law Reform Commission (1994: Ch 11) citing Justice M Gleeson in a recent speech entitled 'Sentencing: The Law's Communication Problem cited in "Justice when everyone's a hanging judge" *The Sydney Morning Herald* (2 December 1993) at 12.

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