

Helping Victims of Sexual Assault who have an Intellectual Disability



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Ali Craig, Solicitor, Intellectual Disability Rights Legal Service on 3 November 2015. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This factsheet looks at:

- How to recognise a person may have an intellectual disability
- Practical tips for working with clients with an intellectual disability
- How to respond when a client with an intellectual disability tells you they have been sexually assaulted
- Special provisions for persons with disabilities giving evidence in sexual assault matters

Intellectual Disability Rights Legal Service (IDRS)

IDRS is a specialist community legal centre working with & for people with intellectual disability in NSW, providing:

- Legal advice, casework & referral
- Community legal education
- Law reform & policy Work
- Parents Project
- Criminal Justice Support Network (CJSN): Support at Court & Police stations for Victims, Defendants & Witnesses.

IDRS can assist people with an intellectual disability in the following matters:

- Care & protection
- Consumer rights
- Fines
- Complaints about services
- AVOs
- Guardianship & financial management
- Discrimination
- Criminal matters
- Credit & debt
- Employment

What is intellectual disability?

A disability that affects the way a person learns, understands & undertakes activities of everyday living. It is characterised by:

- IQ of 70 or below
- Limitations in at least 2 areas of 'adaptive functioning' including:
 - communication
 - self-care
 - home living
 - social skills
 - self direction
 - use of community resources
 - functional academic skills
 - health & safety
- Arises during the developmental period (under age 18)
- Lifelong, permanent condition; not treatable

Intellectual disability vs mental illness

Intellectual disability:

- Thoughts are limited by cognitive understanding
- Is life long
- Onset occurs before age 18
- Medication cannot restore cognitive ability
- Assessed by a psychologist

Mental illness

- Disturbances in thought processes & perception. May experience hallucinations & delusions
- May be temporary, cyclical or episodic
- Onset may occur at any stage of life
- Medication can be prescribed to control the symptoms
- Diagnosed by a Psychiatrist



Common effects of intellectual disability

- Communication
- Reading
- Understanding
- Concrete thinking
- Sequencing
- Behaviour
- Difficulties problem solving
- 'Yes' bias
- Compliance
- Peer group pressure

Tips for working with clients with intellectual disability

- Minimise distractions
- Take extra time
- Keep it simple
- Use short sentences
- Avoid abstract concepts
- Raise only one topic at a time
- Ask your client to repeat back to you what you have told them
- Identify appropriate support person for them

Sexual abuse of people with an intellectual disability

- Studies have estimated that 50-90% of people with intellectual disabilities experience sexual exploitation & assault in their lives (Carmody, 1996; McCarthy & Thompson, 1996; Sobsey & Doe, 1991; Crossmaker, 1991)
- Along with higher incidence, research & practice points to a number of distinctive features of abuse:
 - Increased likelihood of sexual assault in places where congregate care is provided e.g. group homes & institutional care (Crossmaker, 1991)
 - Abuse is more likely to be severe & ongoing (Sobsey & Doe, 1991)
 - Service providers make up a significant proportion of the perpetrators (Sobsey & Doe, 1991) especially when the disability is more severe (Sobsey & Vernhagen, 1989)

Responding & reporting rates

- Brown & Craft (1992) in a study of 138 adults with disabilities in residential care found:
 - Staff raised concerns in only 25% of confirmed cases of sexual assault
 - Only 40% cases were acted upon
 - 75% of known offenders still had access to victims

Making a statement to the police

The problem of being believed - 4 Myths:

- 'They lie about being sexually assaulted'
- 'They can't be a witness'
- 'They are more promiscuous & consenting'
- 'Sexual assault is less traumatic for women with intellectual disability'

Case Study: Sarah was on her way home from work when the bus driver took her to an isolated spot & kissed her, fondled her breasts & touched her vagina. He also forced her to touch his penis. He drove her home & she told her father, who had been waiting for her. Her parents called the police who took a statement. Sarah was even able to describe the bus driver's underpants. They interviewed the bus driver, found a ticket with Sarah's phone number on it & the underpants Sarah had described. The driver denied the allegations. A week later, Sarah gave another statement which was consistent in detail. The senior police officer decided not to lay charges because he thought the court wouldn't believe Sarah. The family was advised to forget it.



Who would make an appropriate support person?

- Someone who does not have a conflict of interest – i.e. is not also an advocate or support person for the person accused of sexual assault
 - This would exclude group home staff when the victim & accused live in the same group home
- Ask the victim who they want to support them & be open to their response. They may prefer someone they know well or may find it easier to have someone independent
- Contact the Criminal Justice Support Network through IDRS
- Keep in mind the importance of not tainting evidence

Practical difficulties & solutions

1. Sequencing – time/location signposting

- Establishing the order of events may be a problem for clients & the information they give may not be specific enough for the police
- To assist clients remember what happened when, it helps if the person conducting the interview uses signposts or flags to assist the client in his or her evidence, especially relating to locations & times
- For example, it can be helpful to re-establish as much as possible that the questions being asked are about the event time, not now

2. Recognising the time delay in answering a question

- Let the client speak for themselves – this increases the likelihood of getting the information required, but also encourages greater confidence on behalf of the client in the interviewer
- Ask the client what happened with no prompting questions. Further questioning should be open & non-directive
- Extra time must be allowed for the interview - avoid time pressures on the client
- Minimise disruptions during the interview, eg, phone calls
- Be aware the client is likely to rely on non-verbal cues, be aware of inadvertent messages you may be sending, eg, frowning when a client answers a question

3. The effect of being a concrete thinker with abstract concepts

- Be aware clients may take things you say literally, taking the most obvious meaning no matter the context, eg, saying, 'take a chair' can be interpreted to mean take a chair rather than please sit down
- It is important for support people to point out to barristers, if they can, that when questioning people with intellectual, they need to use as few abstract concepts as they can or make the context of the question more obvious to avoid confusion

4. Keeping questions as simple as possible

- Short clear sentences
- Simple language
- No double questioning or double negatives

5. Permission to say rude words

- A client may think that she is going to get into trouble by saying 'rude' words or because of what has happened to them
- A support person can speak to the client generally about it being OK to say the correct words & talking about what happened to put their fears to rest



Sexual assault – the law

- Sexual Assault is the crime of having sexual intercourse with someone without their consent. It is also called rape
- Any sexual contact short of intercourse is still a crime if the victim has not consented
- Consent exists only when a person freely & voluntarily agrees to engage in sexual intercourse
- A person is not able to give consent when they were:
 - Asleep or unconscious
 - Significantly intoxicated or affected by drugs
 - Unable to understand what they are consenting to
 - Intimidated, coerced or threatened
 - Submitted to the abuse of authority of a professional or any other trusted person
 - Unlawfully detained, or held against their will

The *Crimes Act 1900* (NSW) outlines that it is now an offence for a person who:

- is *responsible for the care* of someone who has a cognitive impairment to have sexual intercourse with the person that has a cognitive impairment
- who has sexual intercourse with a person who has a cognitive impairment, with the intention of taking advantage of that person's cognitive impairment
- **Consent is not a defence**
- There are also similar offences for indecent assault & act of indecency
- NOTE: "*a person responsible for care*" is defined to include:
 - A person providing care to a person with a cognitive impairment at a facility where the person with cognitive impairment lives, is detained or attends (includes group homes & day centres) &
 - At the home of the person responsible for care in the course of a program of care. Includes voluntary carers, health professional care, education, home care & supervision.

Giving evidence in court

- Evidence can be given from behind a screen or via CCTV from a private room away from the courtroom & the case may be held in a closed court
- The victim may have a support person with them in court
- The court limits what information can be published in the media & on the internet; a 'non-publication order' meaning that the victim's name & any identifying information cannot be reported
- An unrepresented accused cannot directly question or cross-examine the victim. The lawyer representing the accused may not ask humiliating, harassing, repetitive & insulting questions
- Evidence will be recorded so that if the trial needs to be re-heard, the victim will not need to give evidence again

Capacity

- Most people with intellectual disability will have the capacity to make decisions for themselves
- Sometimes people with intellectual disability will not have the capacity to understand what has happened to them or make decisions about how to proceed
- Wherever possible the wishes of the person should be respected

Guardianship

- Sometimes a person with a disability will need to have a guardian appointed to make decisions for them. Sometimes the person responsible for a person's care may be the perpetrator of the abuse



- If the police require a forensic procedure an emergency application can be made to the Guardianship Division of NCAT to appoint a guardian
- This might be particularly relevant if a Sexual Assault Investigation Kit (SAIK) is needed

Mandatory Reporting

- The *Disability Inclusion Act 2014* (NSW) & the *Disability Inclusion Regulation 2014* (NSW) commenced on 3 December 2014
- The Act amends the *Ombudsman Act 1974* (NSW) through the insertion of a new Part 3C which requires that reports be made to the NSW Ombudsman about serious incidents of abuse or neglect of people with disability living in supported group accommodation. This is called the Disability Incident Reporting Scheme

Referrals

- Aging Disability & Homecare (ADHC) www.adhc.nsw.gov.au
- NSW Council for Intellectual Disability (CID) (02) 9211 1611
- People With Disability Australia (PWD) (02) 9370 3100
- Indigenous Disability Advocacy Service (IDAS) (02) 47223524

See also our past Ask LOIS webinar & factsheet on 'AVOs & Capacity' which looks at intellectual disabilities & AVOs