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Terms of Reference

Pursuant to section 10 of the Law Reform Commission Act 1967 (NSW), the then Attorney General, the Hon P E J Collins QC MP, referred, by letter received on 30 September 1991, the following matter to the Law Reform Commission.

To inquire into and review the law and practice relating to the treatment of the intellectually disabled in the criminal justice system and matters incidental thereto; and in particular, without affecting the generality of the foregoing, to consider -

- (a) whether there should be a new uniform statutory definition of "intellectual disability";
- (b) whether, and to what extent, the intellectually disabled should be diverted from the criminal justice system, including consideration of the custodial and non-custodial alternatives to the sentencing and detention of the intellectually disabled;
- (c) the treatment of intellectually disabled persons in police custody and in prison;
- (d) the release from custody into the community of intellectually disabled persons considered dangerous;
- (e) whether specialist units should be established within the Office of the Director of Public Prosecutions, the Legal Aid Commission, the Corrective Services Commission, the Police Service and other related bodies, to deal with the intellectually disabled; and
- (f) in so far as the law and practice relating to the treatment of the intellectually disabled is relevant to the treatment of the mentally ill in the criminal justice system, whether any recommendations should also be made in relation to the mentally ill

Preface

This report is a follow up study of an earlier court cohort study (Research Report 4) which was conducted in four New South Wales local courts. This study was designed to amplify the previous study, particularly in providing statistics about two rural courts with a substantial Aboriginal representation in the cohort of people appearing before those courts.

The Report was made possible by a grant from the Law Foundation of New South. This grant enabled the Commission to engage, as a consultant, Susan Hayes, Associate Professor and Head of the Department of Behavioural Sciences in Medicine in the University of Sydney. Professor Hayes is a leading authority on intellectual disability, has published widely in the area and has conducted a study of the prevalence of intellectual disability in New South Wales prisons. Professor Hayes was responsible for the design, implementation, coordination and analysis of the research study and prepared the report of the findings.

The Commission also acknowledges the contribution made by the field researchers, Ms Esther Alvares and Ms Maureen Bates-McKay who were indefatigable in their efforts to follow up participants. The trust and esteem with which the field researchers were regarded by the local communities, especially the Aboriginal people, rendered the research project highly successful. Their contribution was invaluable.

This Report would not have been possible without the assistance of the Chief Stipendiary Magistrate of the Local Courts of New South Wales, Mr Ian Pike, and of the Magistrates and Clerks of the Court at the participating local courts, Bourke and Brewarrina.

Additional assistance and comments on the contents of the Report came from the Commission. Secretarial and administrative assistance was provided by Catherine Ferla and Rebecca Charlton, and Julie Freeman undertook the desk top publishing.

Summary

Numerous research studies in Australia and other Western nations have reported that people with an intellectual disability are over-represented in prison populations when compared with the prevalence of intellectual disability in the general population. The question is whether or not the over-representation in prisons arises as a consequence of harsher sentencing of this group, or whether the over-representation occurs at each stage of the criminal justice process.

A previous study (Research Report 4) found that people with an intellectual disability were over-represented in a cohort of persons appearing before local courts in New South Wales. A limitation of the previous study was the small number of Aboriginal people who participated. The numbers were too small to allow adequate statistical analysis of this sub-group. The current study targeted two rural courts, Bourke and Brewarrina, in which it could be reasonably expected that a sizeable number of Aboriginal persons would appear. People aged 18 years or older who were appearing at these two courts on list days during July 1995 were asked to participate in the study. A 98 per cent response rate was achieved, as a consequence of tireless follow up efforts on the part of the field research officers. The participants completed a form which sought demographic and background information. In addition to information previously sought for RR4, the current study included items asking for information about alcohol and drug consumption on the day of the alleged offence. Participants also completed the matrices section of the Kaufman Brief Intelligence Test, and an abbreviated version of the Mini-Mental State Examination. The researchers noted any especial difficulties or abnormalities on the part of each respondent.

A total of 88 persons participated in the study, although complete data sets were not obtained for all participants. The sample differed from the NSW local court population on some parameters, possibly because of the targeting of two particular courts. The sample was, as intended, over-represented in terms of Aboriginality, but on many other variables the sample was not significantly different from the total NSW local court cohort. There is no reason to believe that people with an intellectual disability were over-represented in the sample owing to any bias in sampling procedures.

The results show that more than one third (36 per cent) of persons appearing before these courts were intellectually disabled, and a further 20 per cent were of borderline intellectual ability, indicating that more than half of the court cohort would have serious difficulties in understanding the court processes. More than 40 per cent achieved results on a mental state examination which would indicate the need for further expert assessment, and 22 per cent obtained results indicating serious mental state abnormalities on this screening test.

The results indicate that 54 persons (61.4 per cent) had results on one or both of the measures of mental functioning which would indicate the necessity for further expert assessment.

The study identifies a very important need for identifying people with intellectual disability in the local court population. The Aboriginal population, in particular, appears to be at a disadvantage in court proceedings. Although every effort was made in test selection and administration to reduce cultural bias, even if the results of the assessments were culturally biased, the results nevertheless indicate that many Aborigines would find it difficult to comprehend the non-Aboriginal sub-culture prevailing in the criminal justice system. Further research is needed to amplify the results of this study, to assess the population appearing before higher courts, and to evaluate possible methods for screening for intellectual disability not only in court proceedings but also in the prison system, the juvenile justice system, and probation and parole.

1. Background

INTRODUCTION

1.1 This report summarises results of a follow up study of people appearing before two local courts in New South Wales. The first study was reported in Research Report 4 (RR 4).¹ RR 4 describes the reasons for the comparatively recent interest in the philosophical, criminological, ethical and pragmatic issues associated with the apparent over-representation of people with intellectual disability in the criminal justice system in many jurisdictions both within and outside Australia.

1.2 Readers are referred to RR 4 for material on definitions of intellectual disability; discussion of research on the prevalence and incidence of intellectual disability amongst persons charged with offences; reference to previous court cohort studies; discussion of the role of local courts; characteristics of female accused persons in particular; and information on the recognition of the person with intellectual disability in the criminal justice system, including discussion of the importance of legal representation.

1.3 In summary, there is strong evidence that persons with intellectual disability are over-represented in the prison population, and in the population of people appearing before local courts in New South Wales. The over-representation which occurs in the prison population has been found in many other Western jurisdictions, and in other Australian states. Variations in prevalence rates occur, owing to differences in police practices, sentencing practices, and the availability of alternative forms of disposition for an accused or sentenced person with intellectual disability. Female prisoners with intellectual disability appear to be more likely than males to have a dual diagnosis, that is, intellectual disability accompanied by a second mental abnormality which might include a psychiatric diagnosis, a behaviour problem or some other disability.

1.4 RR 4 established that the over-representation of prisoners with intellectual disability does not appear to occur as a result of harsher sentencing of this group because there is no major difference between the numbers appearing before local courts and those in prison. In RR 4, however, there was an insufficient number of subjects who were Aboriginal or Islander, and one of the objects of the present study was to target this sub-population in order to investigate further the characteristics of this group in the local court system.

ABORIGINES IN THE CRIMINAL JUSTICE SYSTEM

(a) Over-representation of Aborigines

1.5 Since the civil rights movement in The United States of America in the 1960s, attention has been increasingly focussed upon the disadvantaged position of black minority groups in the criminal justice systems of white dominated societies. More recently research interest in this phenomenon has been apparent in Great Britain.² Australian Aborigines are essentially different from black populations in the United States of America and Britain because Aborigines were the original inhabitants, not immigrant populations, and are thus more similar to indigenous people in South Africa, the United States, Canada and New Zealand. The fact that Aborigines are the original occupants of the land does not seem to have provided them with any advantage - Aborigines have been described as "if not the most incarcerated people in the world, then at least second to no other".³ The 1986 population census conducted by the Australian Bureau of Statistics indicates that Aboriginal people (including Torres Strait Islanders) formed 1.46% of the total population, whereas 14.6% of all Australian prisoners were Aboriginal, an over-representation of exactly ten times.⁴ South Australia and Western Australia have the highest rates of over-representation whereas Tasmania and the Northern Territory have the lowest.⁵

1.6 Aboriginal young people are even more strongly over-represented than adults in the criminal justice system in Australia, including in prison. This process commences at an early stage. In South Australia, 1.2 per cent of the general youth population is Aboriginal, yet in 1985-86, 7.4 per cent of all police apprehensions of young people were of Aborigines.⁶ In Western Australia, which has the highest rate of imprisonment of juveniles in Australia, 76 per cent of youths placed in custody are Aboriginal and the level of over-representation of Aboriginal youth increases with the severity of the charges. Similar over-representation has been found in other States for both corrective and welfare institutions, although the data may underestimate the actual figures because Aboriginality is not always a factor which is identified in statistics for juveniles.⁷ A comprehensive study

of Aboriginal young people in the juvenile justice system⁸ suggests that this group are disadvantaged at every point in the criminal justice system. Not only are Aboriginal young people present in the juvenile justice system in greater numbers than non-Aborigines, they are more likely to receive harsh treatment. An example is the fact that they are twice as likely to be arrested rather than summonsed. Furthermore, the option for diversion to a Children's Aid Panel in South Australia is differentially used, with Aboriginal youths being far less likely to receive the lenient option compared with non-Aborigines. Aboriginal young people are significantly more likely to receive a custodial sentence in a youth training centre rather than a non-custodial sentence. The harsher treatment at every step of the criminal justice process results in Aboriginal youth becoming more and more over-represented as they proceed through the system so that at the end they are more than 20 times more likely to receive a custodial sentence.

1.7 In 1994 over 26 per cent of the New South Wales juvenile justice centre population was Aboriginal, compared with 1.7 per cent of the New South Wales youth population (zero to 24 years of age).⁹ Four out of five (81.5 per cent) of Aboriginal juveniles on a control order had 10 or more prior proven offences, and only one on remand had no prior proven offences. This group had the highest level of previous incarcerations of any juvenile group. The offence for which they are currently in custody is no more serious, however, than for non-Aboriginal youth.

1.8 Amongst adult prisoners there are proportionately more Aboriginal prisoners in the age groups 16 to 19 years and 20 to 24 years, whereas the rate tapers off in older age groups.¹⁰ Aborigines may be up to 90 times more likely to be imprisoned in regions where there is a high Aboriginal population.¹¹ Northern Territory has the highest crime rate for murder, assault, rape and burglary, the general imprisonment rate being the highest in Australia (291 per 100,000 inhabitants, compared with the Australian average of 67.8); 70 per cent of prisoners are Aboriginal.¹²

1.9 One of the few areas in which Aborigines are not disadvantaged is in access to legal aid. In 1982 more than 80 per cent of Aboriginal defendants facing charges requiring more than one hearing and 34 per cent of those having a single appearance before the Court were legally represented, compared with 78 and 27 per cent respectively for other defendants,¹³ partly as a result of the establishment of the Aboriginal Legal Service.

1.10 Some studies conclude that there does not seem to be strong racial bias within the criminal justice system. The life circumstances of Aboriginal people, including high rates of unemployment and a non-nuclear family or lower status residential situation, and the fact that they were arrested rather than summonsed or diverted from the criminal justice system, are factors which contribute to the harsher decisions during the criminal justice process.¹⁴ The single most important factor in determining a negative criminal justice outcome is unemployment, which has a predictive value ten times that of Aboriginality.¹⁵ The lesser influence of racial discrimination in explaining over-representation of Aborigines is not accepted by all researchers, however, with other criminologists indicating that according to a power conflict theory, racial discrimination affects employment rates and therefore can still be seen as the basic cause of the high Aboriginal criminality.¹⁶ Aboriginal prisoners are nearly twice as likely as non-Aborigines to be unemployed at the time of reception into prison.¹⁷ The poor economic circumstances of many Aborigines, referred to above in relation to unemployment, are also related to substandard housing, poor education, inadequate health care including psychiatric services, poor hygiene and nutrition. Poverty alone does not cause criminal behaviour, but the relationship between social disadvantage and crime cannot be ignored.

1.11 Other explanations have been put forward for the high rate of Aboriginals in the criminal justice system. One theory is that the high crime rate is a statistical artefact resulting from the high social visibility of Aborigines, which in turn leads to a selective perception of their involvement in crime.¹⁸

(b) Types of offences

1.12 While it may be commonly assumed that Aborigines are imprisoned for fairly trivial offences including public drunkenness or offensive behaviour, there is little evidence to support this.¹⁹ The percentage of Aboriginal and non-Aboriginal male prisoners charged with homicide is similar, whilst Aboriginal women are more likely to be charged with homicide than their non-Aboriginal counterparts. Furthermore, there is an over-representation of Aboriginal men and women imprisoned for assault. Aboriginal prisoners tend to be over-represented in the broad

category of offences against the person and also for break and enter, breach of bail and other justice procedure offences and traffic offences, but less likely to be in prison for drug offences or robbery.

(c) Aboriginal women

1.13 The proportion of Aboriginal women compared with non-Aborigines being imprisoned is increasing, and already the ratio for women is higher than that for men (16.3 per cent of the total female prison population consists of Aboriginal women compared with 14.1 per cent of Aboriginal men in the male prisoner population).²⁰ The most frequent offences committed are non-payment of fines and social security fraud, data which may be linked to the figures which show that Aboriginal women are the least employed and lowest socioeconomic group in Australia.²¹ There are important differences between regions. In local government areas where there is a high proportion of Aboriginal residents, the reported rate of delinquency among girls is four times that of other rural regions of New South Wales and three times that of metropolitan regions.²² This may occur in part because of over-policing of Aboriginal communities by the police service as well as child welfare and juvenile justice agencies, which occurs in part as a response to the over-commission of offences, but also because of institutionalised racism which perceives pathology and deviance in Aboriginal homes and communities on the basis that they may not necessarily function like white communities and families.

LEGAL REPRESENTATION

1.14 New South Wales local court statistics²³ indicate that 37.7 per cent of persons charged in local court appearances where the outcome was finalised in 1994 were not legally represented. Those without legal representation were less likely to have all charges dismissed at a defended hearing, and more likely to be found guilty of at least one charge, either at a defended hearing or ex parte. RR 4 referred to the findings that identification of intellectual disability is most likely to be made by the accused's lawyer, in 56.8 per cent of cases.²⁴ Therefore, those persons who are not represented lose a major opportunity for their intellectual disability (where it is relevant) to be brought to the attention of the court.

1.15 A study in 1987 of the relationship between legal representation and outcome in Victorian magistrates' courts found that legal representation makes a difference. After controlling for legally relevant variables, legal representation was found to be strongly related to concessionary withdrawals, the type of plea, the verdict, and the verdict in contested cases.²⁵ A 1973 Australian study found that the accused with legal representation had a higher chance of securing an acquittal, was less likely to be sent to prison if not acquitted, and was more likely to be found not guilty,²⁶ although these results were subsequently disputed.²⁷ Patterns of legal representation, and of decisions to prosecute have changed significantly in Australia in the past 20 years, especially with the introduction of legal aid. For the accused with an intellectual disability, legal representation may not necessarily mean the difference between an acquittal or a guilty verdict, but more importantly may offer an opportunity to put before the court relevant information regarding the disability.

SUMMARY

1.16 Previous research has demonstrated that people with intellectual disability are over-represented both in the prison population, and the cohort of persons appearing before local courts in New South Wales. The over-representation in the prison population has been demonstrated in other jurisdictions both within Australia and elsewhere. No other recent court cohort studies have been located, however, and so the issue of whether over-representation amongst court appearances in other jurisdictions remains unknown.

1.17 A UK study of suspects being interviewed by police found that 9 per cent of the sample had an IQ score below 70 and a further 42 per cent had an IQ scores between 70 and 79, that is, in the borderline range. On the basis of a brief clinical interview, 35 per cent of subjects were assessed as being not in a normal mental state, owing to extreme distress or mental disorder, or drug intoxication. Only three per cent of suspects were judged subjectively by researchers as being intellectually disabled, indicating the difficulty of identifying the condition.²⁸ The researchers outline three reasons why it is difficult to identify people with intellectual disability - first, many such persons may have reasonable social functioning and therefore may appear non-disabled; secondly, they may view their disability as a private matter, and may not wish to disclose it to police; and thirdly, even when social functioning is significantly impaired, this may not be easy to assess during a brief encounter.

1.18 No research into the prevalence of intellectual disability amongst suspects questioned by police has been located in Australia. The UK research indicates, however, that over-representation appears to occur at the police questioning stage, which may in turn indicate that people with intellectual disability are not necessarily suffering harsher treatment in subsequent stages of the criminal justice system, but are in fact more frequently coming into contact with the criminal justice system. This conclusion is borne out by a Swedish birth cohort study which indicates the complexity of the factors contributing to this over-representation. The study, which followed subjects from birth up to the age of 30, found that men with an intellectual disability were three times more likely to offend than non-disabled men, and five times more likely to commit a violent offence. Women with an intellectual disability were almost four times more likely to offend than their non-disabled peers, and 25 times more likely to commit a violent offence.²⁹ In over half of the subjects, the criminal behaviour appeared before the age of 18 years. These findings indicate that it is not necessarily or solely discrimination within the criminal justice system which contributes to the extent of over-representation, but rather, aspects of the lifestyle, characteristics and environment of the person with intellectual disability which increase the likelihood that they will engage in behaviours which will bring them to the attention of the criminal justice system. There is no doubt that their career in the criminal justice system is frequently marked by misunderstanding and mishandling by police, professionals and the judiciary, but this is the end point of a process of alienation, under-resourcing, and ineffective service delivery on the part of other institutions in society, including the health system, specialist intellectual disability services (particularly those which are responsible for addressing behaviour problems), schools, welfare services, vocational preparation agencies, and residential services.

1.19 The purpose of this study is to examine further the question of whether people with an intellectual disability are over-represented in the cohort of accused persons appearing before New South Wales local courts, and specifically to obtain a sample with Aboriginal people in sufficient numbers to enable statistical analyses to be undertaken on this sub-population.

FOOTNOTES

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28. G Gudjonsson, I Clare, S Rutter and J Pearse *Persons at Risk During Interviews in Police Custody: The Identification of Vulnerabilities* (Royal Commission on Criminal Justice, HMSO, 1993).
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2. Methodology and Data Collection

COURTS

2.1 The study was conducted in two Magistrates' Courts in New South Wales - Bourke and Brewarrina. These Courts were selected in consultation with an experienced lawyer familiar with the environment of each court, and its catchment area. It was considered that these courts would have a high Aboriginal population, and large numbers of appearances on list days.

2.2 The magistrates scheduled to sit during the time of the study, and the clerks of the court were contacted in advance and informed about the purpose and methodology of the research.

2.3 A copy of a letter from the Chief Magistrate of the New South Wales Local Courts, Mr Ian Pike, supporting the study was forwarded to magistrates and clerks.

2.4 Where possible, space for researchers was provided in sections of the foyer and/or in legal profession rooms or unused court rooms. Some follow up appointments were arranged in the homes of the accused persons in order to minimise missing data.

RESEARCH OFFICERS

2.5 Recruiting appropriate research officers who would be acceptable to the Aboriginal community was a major reason for delays in commencing the project. Many Aboriginal agencies were contacted, but either were not able to cooperate or knew of no-one who had suitable qualifications to conduct the research in the field. Research officers known and accepted by the Aboriginal community were vital, since lack of such persons appeared to be one reason for the low level of recruitment of Aboriginal accused persons in RR 4. One research officer was recruited via legal contacts, and she was able to select the second officer. The requirements were that research officers be mature individuals with experience or training in the health or human behaviour fields, having high levels of counselling and communication skills, and be familiar with and accepted by the Aboriginal community.

2.6 Researchers received a training kit which covered all aspects of the conduct of the field research. The research kits explained the project and contained detailed instructions, protocols, contact numbers for the chief investigator, marking sheets, copies of the letter from Mr Pike, identification posters for the walls of the court house, and the equipment (including survey booklets) required for the field work.

2.7 Owing to financial constraints the researchers were not personally trained by the chief investigator, although extensive telephone contact took place.

2.8 The two research officers were present together in each courthouse. One usually approached persons arriving for court appearances, and directed them to the other researcher who administered the survey instrument. Roles varied, however, with the numbers of people arriving at various times. Follow up appointments were sometimes conducted by a single researcher.

THE SURVEY INSTRUMENT

2.9 The survey instrument consisted of four parts (see Appendix A):

- (a) background and demographic information
- (b) Kaufman Brief Intelligence Test (K-BIT) Matrices Section
- (c) Mental State Examination (abbreviated)
- (d) Research officers' observations of and comments about the subjects.

2.10 Whilst Sections (a), (b) and (d) are reproduced in Appendix A, for copyright purposes the K-BIT is not reproduced. A brief description of the sections, and their purpose is presented here.

(a) Background Information

2.11 This section sought information about the subject's sex, age, Aboriginal or Islander background, place of birth, school history (including attendance at a special class or school), employment, receipt of a pension or benefit currently or previously, current charge(s), most serious charge, other charges, other reasons for attending court on this day, prior charges, consumption of alcohol or drugs on the day of the alleged offence, and legal representation.

2.12 The subject's name and the name and address of the solicitor were optional. Subjects were informed that if the test showed any unusual results, their solicitor could be informed and could opt to take further steps in seeking further assessment of the client - this was the only reason for seeking the solicitor's details. Details of subjects' names were not made available to the chief investigator, for reasons of privacy, but instead were retained in a separate log by the senior research officer.

2.13 Subjects were told that they could obtain assistance to complete this section of the instrument, if, for example, they could not read.

(b) Kaufman Brief Intelligence Test (Matrices Section) (K-BIT)

2.14 The K-BIT is a brief, individually administered measure of the verbal and non-verbal intelligence of a wide range of children, adolescents, and adults. It may be used for individuals aged between four and 90 years. The test is simple to administer and may be given by non-psychologists, provided the administrators have appropriate background skills and training. The full test takes approximately 15 to 30 minutes to administer, and is composed of two subtests: Vocabulary (including expressive vocabulary and definitions), and Matrices. Vocabulary measures verbal crystallised thinking, based on school-related skills. Matrices measures non-verbal skills and the ability to solve new problems (fluid thinking) by assessing an individual's ability to perceive relationships and complete analogies. All Matrices items involve pictures or abstract designs rather than words.¹

2.15 Age-based standard scores (SS) having a mean of 100 and a standard deviation of 15 are provided for the vocabulary and matrices sections, as well as an overall score known as the K-BIT composite. These scores are similar to IQ scores, and were normed to parallel numerous intelligence and achievement tests, permitting direct comparisons with global scores earned by an individual on the Wechsler Adult and Child Intelligence Scales, for example.

2.16 The K-BIT is not intended to substitute for a comprehensive measure of an individual's intelligence, and does not possess the same comprehensive attributes for diagnosis and placement as would be possible using multi-test batteries. One of the purposes of the K-BIT is estimating intelligence of a large number of people, eg prisoners, patients in a hospital, or juvenile delinquents. Further details concerning reliability and validity may be obtained from the Manual.²

2.17 The Matrices section only of the K-BIT was used in this study, for the following reasons. It is untimed. It is not dependent upon verbal skills or school-related learning, but rather demands non-verbal reasoning and flexibility in applying a problem-solving strategy. It tests fluid thinking, that is, the ability to be adaptable and flexible when encountering novel problem-solving situations. Because it is non-verbal, it can be administered to individuals of non-English speaking background, those from a different cultural background, hearing-impaired, illiterate, dyslexic, or speech and language disabled individuals. It is a well-normed, reliable and valid test.

2.18 According to the Manual, the Matrices subtest should be administered "when testing non-English-speaking individuals, bilingual people whose primary language is not English, individuals from a different cultural background, hearing impaired people, illiterates or severe dyslexics, and individuals with moderate to severe speech or language problems (including those with autism)".³

2.19 The Matrices subtest is an alternate form of the Kaufman Assessment Battery for Children (K-ABC), although both tests offer distinctly separate sets of items and modes of response. When the K-ABC was

compared with two other intelligence tests, no difference between the scores of black and white children in the USA was found.⁴

2.20 Data from the standardisation sample for the K-BIT (2022 individuals aged 4 to 90 years) were analysed to explore differences related to gender, race and education.⁵ In this sample, the mean IQ composite scores for black and Hispanic subjects were significantly lower than for white subjects. A cultural bias in the test is not the probable explanation for this discrepancy, however.

2.21 The higher the level of education, the smaller the difference between whites, blacks and Hispanics. Within the groups themselves, there were significant differences according to level of education and socioeconomic status. For example, blacks with less than nine years of education scored on average 33 points lower than those blacks with greater than 16 years of education. For the three ethnic groups investigated, scores on the subtests of the K-BIT and the composite IQ score were all significantly correlated at the 0.01 level of significance with highest grade completed. The standardisation sample was stratified according to the 1990 projections and 1985 estimates of US Census data on the variables of gender, geographic region, socioeconomic status, and race or ethnic group. The racial/ethnic groups were not matched for the proportion of each group attaining equivalent levels of education. The black group contained 12.7% of subjects with an educational background of greater than 16 years of education whereas the proportion in the white group was 22.5%. The differences in the means for the different educational groups were less on the Matrices score than on Vocabulary, or IQ composite score for both blacks and Hispanics, indicating that even at the lowest level of educational achievement, blacks and Hispanics scored better on Matrices than on Vocabulary or IQ Composite. Within the subgroups related to educational level, mean scores for blacks were significantly lower than mean scores for whites for the groups with 0-8 years education and 9-11 years, but not for those with 12 years or more of education. At the lower end of the range of educational attainment, mean scores for Matrices were higher than for Vocabulary for blacks, indicating that Matrices tends to give a more favourable result than Vocabulary for subjects with less formal education.

2.22 The Matrices mean scores for Hispanics were slightly but not significantly higher than for whites at the lower end of the educational range.

2.23 These analyses were unfortunately not performed for American Indians (the group most similar to Aborigines in terms of being the original inhabitants) owing to small sample size.

2.24 The differences in mean IQ levels for the racial groups reported in Kaufman and Wang's paper appear to be an artefact of the educational levels, and do not represent cultural bias, nor innate differences in intellectual ability between ethnic groups.

2.25 These results are consistent with correlations between educational attainment and IQ scores obtained in standardisation samples for other intelligence tests, within ethnic groups.

2.26 In summary, the K-BIT does not appear to have any consistent cultural bias. During the development of the instrument, any items which appeared to discriminate between racial groups was deleted. The use of the Matrices score would tend to favour subjects with low levels of formal education, rather than handicap them.

2.27 A study of the relationship between the K-BIT and the Wechsler Intelligence Scale for Children-Revised (WISC-R), using a sample of 35 students found a significant correlation between the K-BIT composite score and the WISC-R full scale IQ score ($r=0.81$). The mean scores differed significantly with the K-BIT mean being 6.2 points lower. The K-BIT matrices had a significant correlation of 0.72 with the full scale IQ, and the matrices mean was 1.7 points below the WISC-R full scale IQ mean.⁶

2.28 The difference between the K-BIT and the WISC-R was not significant (difference =0.45) when administered to a juvenile delinquent population, however.⁷

2.29 In summary, therefore, there is high correlation between the results of the K-BIT and other well-known intelligence tests, with perhaps a tendency of the part of the K-BIT to be a few points lower in child populations.

2.30 Although the comparison test batteries by Wechsler (the Wechsler Adult Intelligence Scale - Revised (WAIS-R) and the WISC-R) are possibly the most widely accepted tests for the evaluation of intelligence,

questions have been raised about the reliability of the WAIS-R among persons with mild intellectual disability. Some studies have found that the WAIS-R tends to overestimate ability at the mild to borderline levels of intelligence, by an average of 13 points when compared to the pre-revision WISC.⁸ Other studies hold that the discrepancy is negligible,⁹ whereas a further study indicated that the WAIS-R “demotes” some people from low average to borderline, and “promotes” some people from moderate to mild levels of intellectual disability.¹⁰ These results could account for the fact that the K-BIT and Wechsler tests are not more highly correlated. Furthermore, the results indicate that no test of cognitive abilities is completely infallible.

(c) Mini Mental State Examination, Abbreviated (MSE)

2.31 The Mini-Mental State Examination is frequently used as a screening device in psychiatric illness or dementias.¹¹ It has several sections - Orientation, Registration, Attention and Calculation, Recall, Language, and Visual-Motor Integrity. Owing to privacy difficulties in the courthouses, the Recall section was not administered. In the Language section only the three-stage command was used from the Language section, and Visual-Motor Integrity was omitted. Both Attention and Calculation options were administered, that is, serial sevens, and spelling “world” backwards.

2.32 The MSE is usually scored out of 30, with a score of 25+ being regarded as normal, 21-24 being regarded as indicative of mild impairment and a score of 20 or less indicated moderate to severe impairment. With the abbreviations described above, the total score was reduced to 26, and through pro-rating it was considered that a score of 21 or less would indicate abnormality.

(d) Interviewer’s Notes

2.33 Interviewers recorded whether in their opinion the subject appeared to be intellectually disabled (ID), non-English speaking background (NESB), mentally ill (MI), or affected by drugs and/or alcohol (D/A). They also recorded any other unusual or notable characteristics, including the use of an interpreter.

THE SAMPLE

2.34 The aim of the study was to obtain a sample of all persons presenting to the two magistrates courts during list days in July 1995.

2.35 It was predicted that not all persons listed for court appearances on a given day would cooperate. A sample of 98 per cent of persons listed for court appearances was recruited for the sample, however. The research officers were diligent in following up persons who left the court house without completing the research instrument, and because they were so well known to the respondents, cooperation was achieved to a remarkable degree. Therefore, it can be stated that the sample is representative of persons appearing before these two courts during this period.

DATA ANALYSES

2.36 Completed survey instruments were returned to the Department of Behavioural Sciences in Medicine at the University of Sydney for scoring. The surveys were coded according to court and date. Identifying data for individuals were not available to the chief investigator and were not used in any of the data analyses. Data were analysed on personal computers using the Statistical Package for the Social Sciences (SPSS).

FOOTNOTES

1. A S Kaufman and N L Kaufman *Kaufman Brief Intelligence Test Manual* (American Guidance Service, Circle Pines, Minnesota, 1990).

2. Kaufman and Kaufman (1990).

3. Kaufman and Kaufman (1990) at 6.

4. M C Anthony and G Etheridge "A comparison of black and white middle class children's performance on three ability measures", Paper presented at the 1988 Annual Meeting of the Mid-South Educational Research Association, Louisville).
5. A S Kaufman and J J Wang "Gender, Race and Education Differences on the K-BIT at Ages 4 to 90 Years" *Journal of Psychoeducational Assessment* 1992; 10: 219-229.
6. P N Prewett "The Relationship Between the Kaufman Brief Intelligence Test (K-BIT) and the WISC-R with Referred Students" *Psychology in the Schools* 1992; 29: 25-27.
7. Prewett (1992).
8. I L Zimmerman, J Covin, J M Woo-Sam, H Lotz and N Bley, "A Longitudinal Comparison of the WISC-R and WAIS-R", paper presented at the *American Psychological Association Convention* (Toronto, 1984).
9. J J McGee and F J Menolascino "The Evaluation of Defendants with Mental Retardation in the Criminal Justice System" in R W Conley, R Luckasson and G N Bouthilet (eds) *The Criminal Justice System and Mental Retardation. Defendants and Victims* (Paul H Brookes, Baltimore, 1992) 55-78.
10. J J Goldman "Differential WAIS/WAIS-R IQ Discrepancies Among Institutionalized Mentally Retarded Persons" *Mental Retardation* 1987; 91(6): 633-635.
11. M F Folstein, S E Folstein and P R McHugh "Mini-Mental State Method for Grading the Cognitive State of Patients for the Clinician" *Journal of Psychiatric Research* 1975; 12: 189-198.

3. Results

SAMPLE CHARACTERISTICS

3.1 A total of 88 people participated in the study, 49 appearing before Bourke Local Court and 38 before Brewarrina (for one subject this piece of data was missing). Full data sets for all sections of the survey instruments were not available for all participants, for a number of reasons:

- (a) participants were sometimes interrupted part of the way through the procedure, either for a conference with their lawyer, or to be summoned into the court room. The researchers were skilled at following up these subjects, but some missing data were inevitable; and
- (b) some subjects chose not to answer particular questions.

3.2 Throughout the report, the people who participated in the study are referred to as participants, respondents or subjects. Results will be compared with the results obtained in the previous court cohort study (RR 4).¹

DEMOGRAPHIC CHARACTERISTICS OF THE SAMPLE

(a) Gender

3.3 The sample consisted of 72 males (81.8 per cent) and 15 females (17.0 per cent) with one person not responding to the question. New South Wales local court statistics for 1994 indicate that 15.4 per cent of persons found guilty in matters which were finalised were women.² Thus, the gender distribution is probably consistent with New South Wales local courts generally.

(b) Ethnicity

3.4 The majority of respondents were Aboriginal (N=65; 73.9 per cent of those answering the question), and one was Islander (1.1 per cent). Fourteen respondents (15.9 per cent) indicated that they belonged to neither of these groups, and eight people did not respond.

3.5 Most respondents had been born in Australia (N=77; 92.8 per cent of those answering the question) and 6.0 per cent (N=5) indicated that they had been born elsewhere. This figure is lower than the 20 per cent of Australians, and of the New South Wales population who were born overseas.³ Only two subjects completed the item requesting information about where they had been born outside Australia, one indicating place of birth as New Zealand, and the other as Poland.

(c) Education

3.6 In this sample, 8 per cent had completed Year 12 at high school, 4 per cent fewer than in RR 4. A cumulative percentage of 84.7 per cent had completed Year 10, as shown in Table 1. This result is very similar to the 81 per cent who reported that they had completed Year 10 in RR 4, and is probably related to the legal age at which young people are permitted to leave school.

Table 1: Highest grade completed

Grade	Frequency	Cumulative percentage
2	2	2.4
3	5	8.2
4	7	16.5
5	2	18.8
6	5	24.7
7	2	27.1
8	10	38.8
9	26	69.4
10	13	84.7
11	6	91.8
12	7	100.0

N = 85

3.7 It is notable that 24.7 per cent of this sample had completed school only up until Grade 6, compared with 3 per cent of the sample in RR 4. This finding could reflect the difficulties faced by some children attending high school in rural areas, including distance of school from home, frequent family moves, or financial constraints preventing outlying students from being able to board in a country town in order to be able to attend high school.

3.8 The schooling history of the sample is shown in Table 2.

Table 2: Number of schools attended

No of schools	Frequency	Cumulative percentage
1	19	26.0
2	26	61.6
3	15	82.2
4	3	86.3
5 or more	10	100

N = 73

3.9 Of the 19 subjects who reported attending only one school, only four left school at or before Grade 6, whereas the remainder left school in Years 8, 9 or 10, dispelling the idea that attending only one school is associated with leaving school after primary school. Other reasons for attending only one school could include:

- (a) attendance at a private school which offers both junior and senior levels - possibly fairly rare in this sample;
- (b) attendance at a special school for students with disabilities or problems, which was ungraded in terms of primary and secondary differentiation;
- (c) attendance at only one school, with the student undertaking the remainder of schooling through correspondence, or informal education; and
- (d) attendance at only one school because of receiving schooling during time spent in a juvenile institution.

3.10 Students who attended two schools and who did not fall into category (a) above, might have had the "ideal" educational history, that is, one primary school and one secondary school. Only 35.6 per cent of the sample had experienced this possibly ideal situation. A further 13.7 per cent reported the other end of the spectrum of education, having attended five or more schools. The greatest number of different schools reported was ten, by one respondent. The figures at the high end of the scale are lower than those reported in RR 4, where 20 per cent indicated that they had attended five or more schools, the largest number given being 20 schools.

3.11 Those reporting that they had attended a special class or school formed 12.5 per cent of the sample (N=11), with 5.7 per cent specifying that they had been in an OA or OF class (specialist classes for students with an intellectual disability in the New South Wales educational system, although now other labels are attached to special classes).

(d) Employment

3.12 Unemployed people were vastly over-represented in the sample compared with the general population; 62.5 per cent (N=55) stated that they were unemployed, a figure which was slightly higher than that found in RR 4 (58 per cent). In May 1994, 9.5 per cent of the New South Wales population were unemployed (using the Australian Bureau of Statistics definition of unemployment).⁴ Teenagers recorded the highest unemployment rate at 21.4 per cent with those aged 20-24 years recording the second highest rate at 13.5 per cent. In 1991, Bourke Shire had an unemployment rate of 10.2 per cent, slightly down from a high of 12.2 per cent in 1987; in Brewarrina Shire the 1991 unemployment

rate was 10.5 per cent, down from a high of 23.9 per cent in 1987.⁵ The Australian Bureau of Statistics now includes the Northern, Far West, North West and Central West areas of New South Wales as one region, the unemployment rate for that region in May 1994 being 6.8 per cent, and for the May 1995 quarter being 7.6 per cent.⁶ The high rate of unemployment in both court cohort studies indicates that for the section of the community appearing before courts, unemployment is clearly a significant factor.

3.13 Fewer men (33.3 per cent) than women (42.9 per cent) were employed, although the difference is not statistically significant. Of those who were unemployed, 85.2 per cent were men, and 14.8 per cent were women, reflecting the M:F ratio of the sample; these figures were not significantly different from RR 4.

3.14 The categories of employment nominated by more than one subject were Commonwealth Development Employment Programme (N=6), labourer or road worker (N=3) and shire worker (N=2). Other occupations mentioned included shearer, counsellor, social worker, boner, gardener, postal worker, nurse, garbage worker, HIV/STD education officer, receptionist, police, shop assistant, and project supervisor. Very few of the respondents indicated that they belonged to professional or semi-professional categories of employment.

3.15 Seventeen per cent (N=15) of the total sample indicated that they were working full-time, and 23.9 per cent (N=21) indicated they were working part-time. The figure for full time employment as a proportion of those who were employed showed that 41.7 per cent were fulltime. In RR 4, 80 per cent of those working were in fulltime employment. The discrepancy between the two samples may reflect the difficulty of obtaining full time employment in a depressed and drought stricken rural sector. In New South Wales, 23.1 per cent of employed persons work part time.⁷

3.16 The total number of jobs is greater than the proportion indicating that they were employed, probably because some people had two jobs. Not all gave the numbers of hours worked per week, but for those who did the results are presented below in Table 3.

Table 3: Hours of work

Hours of work per week	Number	Percentage
Less than 10	1	3.4
10-19	6	20.6
20-29	6	20.6
30-39	4	13.8
40-49	9	30.9
50+	3	10.2
	N = 29	99.5

(e) Social Security

3.17 A total of 61.4 per cent (N=54) of the sample indicated that they were in receipt of a pension or benefit, a figure which is not significantly different from RR 4 (57 per cent). Table 4 shows the proportions in receipt of different types of benefit (one subject in receipt of a benefit did not specify the type).

Table 4: Pension or Benefit

Type of benefit	N	Percentage
Unemployment	14	26.4
Job Search	21	39.6
Disability Support	7	13.2
Sole/supporting parent	8	15.1
Other (Age, carer)	3	5.7
	N = 53	100.0

3.18 In comparison with RR 4, the proportion of the sample receiving unemployment or job search allowances is similar, whereas the number of those receiving disability support pensions or supporting parents benefits is greater.

3.19 A total of 17 respondents indicated that they had received a pension or benefit in the past; thus 79.5 per cent had at one time received a pension or benefit, predominantly unemployment benefits. Only six of the respondents in the borderline or intellectually disabled categories were in receipt of a Disability Support Pension, whereas 15 received unemployment or Job Search allowances, one a sole parent allowance, and one an aged pension. Thus, type of pension is not an accurate identifying characteristic for people with an intellectual disability.

(f) Age

3.20 The following Table 5 shows the age range of the sample compared with the age distribution of persons appearing before New South Wales local courts in 1994.

Table 5: Age range

Age	Frequency	Percentage	1994 stats %*
18 or less	5	5.7	6.2
19	2	2.3	6.2
20-24	25	28.4	26.9
25-29	19	21.6	17.6
30-39	21	23.8	24.0
40-49	9	10.1	11.1
50 plus	7	7.9	7.9
	88	99.8	N = 84816

(*See NSW Bureau of Crime Statistics and Research *New South Wales Criminal Court Statistics 1994*, Table 1.12.)

3.21 In relation to the New South Wales local court population, it can be seen that this sample is slightly under-represented in the under 19 years age range, and slightly over-represented in the 20-29 years range, but the differences are not statistically significant.

3.22 The age distribution of the sample may contribute towards the unemployment figures, as 36.4 per cent are aged 24 years or less, and as was mentioned above, unemployment is highest in these lower age categories.

3.23 The mean age of the sample is 30.7 years (standard deviation 11.0 years).

OFFENCES

3.24 Most of the responses to the question concerning reasons for being at court indicated that attendance at court was because of having been charged with an offence (88.5 per cent, N=77) or having breached an order; 29.6 per cent (N= 24) were charged with more than one offence (mostly two or three offences, but the highest number recorded was 12).

3.25 Table 6 shows the most serious charge reported by participants, categorised according to standard offence code categories.⁸

Table 6: Offence category of most serious charge

Category	Frequency	Percentage	1994 stats %*
Offences against the person	31	46.9	14.2
Break & enter, burglary etc	8	21.1	18.3
Property damage	-	-	4.5
Offences against good order	15	22.6	18.3
Drug offences	-	-	10.1
Driving, motor vehicle	10	15.2	33.9
Other	2	3.0	0.6
	66	99.8	N = 135262

(*See NSW Bureau of Crime Statistics and Research *New South Wales Criminal Court Statistics 1994*, Table 1.1, number of persons charged.)

3.26 The most frequent single charge was "other assault" which includes assault, aggravated assault, assault with weapons, assault with intent to resist arrest and assault in company (39.4 per cent of those responding to this question). This was the second most frequent charge in New South Wales local courts in 1994 (11 per cent of persons charged), the most frequent charge being "other driving" offences.⁹ In comparison with RR 4, this study group had a far higher proportion with respect to offences against the person (46.5 per cent, compared with 25.3 per cent). Unlike RR 4, however, this group were under-represented for drug offences. Both samples were under-represented on driving and motor vehicle offences.

3.27 Amongst ancillary charges nominated by respondents, offences against the person again formed the most frequent category (22.7 per cent) followed by offences against good order (18.1 per cent). Other research has found that people with an intellectual disability are most frequently convicted of offences against the person.¹⁰

3.28 Seventy participants (84.3 per cent of those responding to the question, and 79.5 per cent of the total sample) indicated a history of previous offences. Not all participants answered the question pertaining to the number of previous offences. Nevertheless, Table 7 shows the number of previous offences stated by 50 respondents.

Table 7: Number of previous offences

Number	Frequency	Percentage	Cumulative %	Previous study %
1	5	10.0	10.0	24
2	8	16.0	26.0	19
3	3	6.0	32.0	4
4	2	4.0	36.0	9
5	3	6.0	42.0	9
6	4	8.0	50.0	3
More than 6	25	50.0	100.0	33
	N = 50			N = 70

3.29 These results indicate that in this sample, respondents were more likely to have had six or more previous offences when compared with RR 4. Past offences were predominantly offences against the person, or against good order.

LEGAL REPRESENTATION

3.30 A total of 12.0 per cent of participants indicated that they did not have a lawyer; 81.9 per cent had Legal Aid representation; and 6.0 per cent had a private solicitor. This was indicative of a higher rate of legal representation than both the overall pattern in New South Wales where 37.7 per cent of persons charged are not represented by a lawyer,¹¹ and RR 4 where 30 per cent were not represented.

3.31 Although the proportion in this study is smaller, nevertheless there are important implications for those who are not legally represented, given the research reported in Chapter 1 indicating the possibility of more positive results for those accused persons who have legal representation.

ALCOHOL AND DRUG CONSUMPTION

3.32 An additional series of questions on alcohol and drug consumption was included in the survey form for this study. A total of 69 respondents (78.4 per cent of the whole sample, or 81.2 per cent of those who answered this question) indicated that they were drinking alcohol on the day of the alleged offence. Table 8 shows the amounts of alcohol indicated as having been consumed by those in the total sample who responded to the question, and those who fell below a standard score (SS) of 70 and who therefore could be categorised as intellectually disabled (see section below on Performance on the Kaufman Brief Intelligence Test, the K-BIT).

Table 8: Amount of alcohol consumed

Quantity of alcohol	% of total sample	% of ID sample
None	3.6	-
2-5 drinks	14.3	12.0
8-10 drinks	10.7	4.0
4-6 large bottles of beer	5.4	4.0
Half a carton of beer	7.1	12.0
1 carton of beer/1 cask	14.3	24.0
2 cartons	14.3	16.0
4 cartons	3.6	4.0
1 flagon + 2-5 cartons	8.9	12.0
Fair bit/too much	7.1	8.0
Lots/heaps	10.7	4.0
	100.0	100.00
	N = 56	N = 25

3.33 There are no significant differences in alcohol consumption between the total group and the sub-sample with SS<70. This is an important finding because it indicates that people with intellectual disabilities are consuming as much alcohol as non-disabled people, prior to engaging in behaviour which brings them to the attention of the police.

3.34 One of the notable aspects of the findings reported in Table 8 is the sheer quantity of alcohol consumed. In answer to the question "Were you intoxicated at that time?" 79.4 per cent of those who responded indicated that they were intoxicated, and 20.6 per cent stated that they were not. These responses are slightly at odds with the next question which asked "What effect did the alcohol have on you?", to which 13 per cent responded that they had not been affected by the alcohol, and a further 15.6% stated that they had been slightly affected. Respondents appeared to have some insight into the effect of alcohol, as most who reported drinking large quantities of alcohol also indicated that they felt drunk. Thus, most did not appear to be denying the effect of alcohol upon their state of soberness.

3.35 Ten participants (12.7 per cent) indicated that they had consumed drugs on the day of the offence, implying that alcohol is clearly the substance of choice in these two rural towns, at least amongst the offending population. One person stated that the drug consumed was ulcer medication, and one reported using pain killers, whereas the majority (62.5%) of those who indicated that they had used drugs indicated using marijuana. Five of those who had consumed marijuana had also consumed at least two cartons or more of alcohol. Polydrug use is an increasing problem, and this trend may have implications for treatment programmes for these accused persons.

PERFORMANCE ON THE K-BIT

3.36 Table 9 shows the numbers of participants falling into the various standard score categories on the K-BIT.

Table 9: K-BIT standard scores

Standard Scores*	Frequency	Percentage
100+	18	20.9
90-99	9	10.5
80-89	10	11.6
70-79	18	20.9
<70	31	36.0
	N = 86	99.9

*(Unless otherwise specified, these categories are used in K-BIT analyses throughout the report.)

3.37 The results show that 36.0 per cent of the sample (N=31) had a SS which was two standard deviations below the mean, that is below a score of 70, and could be regarded as falling into the intellectually disabled category. A further 20.9 per cent (N=18) obtained scores between 70 and 79, regarded as borderline. Thus a total of 56.9 per cent, more than half of the sample, have results indicating serious deficits in intellectual ability.

3.38 As in the previous study, social and adaptive skills were not assessed, owing to time constraints and privacy considerations since interviews were conducted in the relatively public environment of a court house. Inclusion of social and adaptive skills assessment may have indicated that some of the borderline group should definitely be regarded as mildly intellectually disabled, using the two-factor definition discussed in Chapter 1 of RR 4.

3.39 Tables 10 and 11 explore the lower end of the spectrum and show the distribution of scores below a standard score of 80; and the distribution of percentile ranks below 10.

Table 10: Distribution below standard score of 80

SS	Frequency	Cumulative %*
40	2	2.3
46	2	4.7
48	1	5.8
49	1	7.0
50	2	9.3
52	2	11.6
55	2	14.0
58	1	15.1
59	1	16.3
61	1	17.4
62	5	23.3
65	2	25.6
66	2	27.9
68	7	36.0
70	5	41.9
72	4	46.5
74	1	47.7
77	1	48.8
78	2	51.2
79	5	57.0

N = 49

(*Cumulative percentage refers to the total sample.)

3.40 Six subjects obtained scores of less than 50, placing them in the moderately intellectually disabled category.

Table 11: Distribution of percentile ranks 10 and below.

Percentile rank	Frequency	Cumulative %*
<1	15	17.4
1	9	27.9
2	12	41.9
3	4	46.5
4	1	47.7
6	1	48.8
7	2	51.2
8	5	57.0
10	1	58.1

N = 50

(*Cumulative percentage refers to the total sample.)

3.41 The seriousness of the cognitive deficits experienced by these low-functioning respondents is indicated by the fact that falling at or below a percentile rank (PR) of 10 means that 90 per cent of the general population is functioning better than these individuals.

3.42 The mean standard score for the total sample was 78, with a standard deviation of 18.9 and a minimum score of 40 and a maximum of more than 110. The mean PR was 19.4 with a standard deviation of 24.4, a minimum score of less than one and a maximum of 75.

3.43 These results indicate that overall the total sample is functioning much lower than the general population. By definition the mean standard score in the general population is 100, and a PR of 50 is average.

Table 12: Number of schools, and SS

SS	1	2	3	4	5+	N
100+	1	8	2	2	3	16
90-99	2	4	1	-	1	8
80-89	3	3	1	-	1	8
70-79	2	7	3	1	3	16
<70	10	4	7	-	2	23
	18	26	14	3	10	N = 71

3.44 There was a slight tendency for more of the respondents with SS=70-79 and <70 to report that they attended few schools, but there was no significant difference between those below 79 and those obtaining higher scores.

3.45 There were no significant differences in the proportion of males and females in the various standard score categories; nor were there significant differences with respect to the type of offence with which they were charged, or the number of previous offences.

3.46 The difficulty of accurately identifying an accused person with an intellectual disability is demonstrated by the fact that 18 of those with SS of less than 70, and 14 with SS=70-79 were classified as by the researchers as not having an intellectual disability. Three with SS=70-79 were fairly accurately described as "ID slight". The accuracy at the other end of the scale is greater - no respondent with a standard score of over 80 was classified as being intellectually disabled by the researchers. Thus the greatest difficulty in identification of intellectual disability is the occurrence of false negatives, that is, people who are incorrectly classified as having no problem when in fact they have an intellectual disability. The researchers were not experts in the field of intellectual disability, and no criticism of them is intended - rather, these findings reflect the difficulty in identification of intellectual disability encountered by lawyers and other court and health professionals.

MINI-MENTAL STATE EXAMINATION (MSE)

3.47 Table 13 shows the cross tabulation between MSE and K-BIT scores, and also indicates the proportion of the sample falling into the various categories on the MSE, those having a score of below 22 being regarded as possibly having some type of mental abnormality and requiring further specialist assessment. The mean score on the MSE was 21.6 (standard deviation 4.1, minimum 10, maximum 26), not significantly lower than the RR 4 where the mean MSE was 22.5.

Table 13: MSE and K-BIT results

MSE Value	K-BIT					MSE		
	100+	90-99	80-89	70-79	<70	MSE Frequency	MSE %	MSE Cum. %
22-26	16	8	8	9	10	51	59.3	59.3
19-21	2	1	1	5	7	16	18.6	77.9
<19	-	-	1	4	14	19	22.1	100.0
						N = 86	100.0	

3.48 Table 13 shows that 40.7 per cent fell below the cut off point of a score of less than 22, with 22.1 per cent being seriously affected (compared with 31 per cent, and 20 per cent respectively in RR 4).

3.49 On the other hand, 19 persons with SS<79 achieved satisfactory results in the MSE, whilst 5 with SS greater than 80 were unsatisfactory on the MSE and in need of further assessment.

3.50 Table 14 shows the number of males and females falling above and below the cut off mark.

Table 14: MSE and Gender

MSE Score	Males	Females	Total
22-26	43	8	51
19-21	12	4	16
<19	17	2	19
	72	14	86

(No significant differences were found.)

3.51 No significant differences were found between age categories and scores on the MSE, nor for category of most serious charge. Unemployment was significantly related to MSE score, however, (chi square 7.92, df=2, $p<0.01$). Of those respondents with a score of less than 19, 89.5 per cent were unemployed, whereas 71.4 per cent of those with a score of 19-21 and 54.0 per cent of those with a score of 22-26 were unemployed. Clearly, mental state has an interactive effect with employment.

3.52 Discriminant analyses were performed in an attempt to find variables which discriminated between those with $SS<70$ and those with $SS>100$. On the first analysis, the following variables were entered: work, pension, Serial Sevens, Backwards Spelling, Location, Orientation, Registration, and Three Stage Command. The following variables were found to be significant in discriminating between the groups at the $p<.000$ level of significance (degrees of freedom 4, 43) presented in descending order of strength: Serial Sevens subtest; being unemployed; being on a pension; and Location subtest.

3.53 The second discriminant analysis entered the variables of sex, work, drinking on the day of the offence, and total score on the MSE. The variables which were significant in discriminating between the groups at the $p<.000$ level of significance (degrees of freedom 2, 43) in descending order were: total MSE score, and drinking on the day of the offence.

3.54 These results indicate that those persons with lower standard scores are more likely to have lower levels of performance on Serial Sevens, Location and total score on the MSE, that is, to require further mental state examination; were less likely to be working, and more likely to be receiving a pension; and more likely to be drinking on the day of the offence.

CORRELATIONS BETWEEN SECTIONS OF THE SURVEY INSTRUMENT

3.55 The standard score (SS) obtained on the Kaufman Brief Intelligence Test (K-BIT) correlated significantly with the Mini-Mental State Examination (MSE) results ($r=0.55$, $p<0.001$) at a level almost identical to the results in RR 4 ($r=0.51$, $p<0.000$). The percentile rank (PR) on the K-BIT correlated with the total score on the MSE significantly also ($r=0.47$, $p<0.001$). As was the case with RR 4, these findings have important implications.

3.56 First, the significant agreement of the K-BIT SS and PR with the MSE indicates that to some extent they are assessing similar qualities. Secondly, the overlap or correlation between the two is not complete. Approximately 75 per cent of the variance is accounted for by other variables which might include English language proficiency (the MSE relies on English to a greater extent than the K-BIT, and the MSE cannot be entirely translated even if the subject has an interpreter present), and transient factors such as stress, anxiety, intoxication or mental illness.

3.57 The subsections of the MSE correlated with the K-BIT SS to the extent shown below:

MSE sub-section	K-BIT SS	K-BIT PR
Orientation	.34**	.32*
Location	.35**	.23
Registration	.05	.08
Serial sevens	.54**	.51**
Backwards spelling	.35**	.23
Three stage command	-0.9	-0.2
Total	.55*	.47**

(1-tailed test of significance, *p<.01, **p<.001)

3.58 These results differ from the results in the earlier court cohort study because Orientation and Location are now included in the group of subtests which have significant correlation with the K-BIT results. Serial Sevens emerges in the current study as having a higher correlation with K-BIT results, whereas Backwards Spelling has a slightly weaker correlation, which is not statistically significant.

3.59 These results indicate that the subsections of the MSE most reliant upon cognitive processes reflected by literacy and numeracy correlate most highly with the K-BIT. For this sample, however, questions pertaining to where the test is taking place, and the date and time, that is, short term memory function and awareness are also related to the subjects' cognitive test results, whereas subtests reliant upon ability to register information in very short term memory in order to complete a new task are not related strongly to the K-BIT results.

THE COMBINED SAMPLE

Correlations between sections of the survey instrument

3.60 The standard score (SS) obtained on the K-BIT correlated significantly with the MSE results ($r=0.54$, $p<0.001$) for the total sample.

3.61 The sub-sections of the MSE correlated with the K-BIT SS to the following extent:

MSE sub-section	K-BIT SS
Orientation	.24*
Location	.09
Registration	-.047
Serial sevens	.52**
Backwards spelling	.42**
Three stage command	.02
TOTAL	.54**

(2-tailed test of significance, *p<0.01, **p<0.001)

3.62 Thus, for the total sample the sub-sections most strongly related to the test of cognitive ability, the K-BIT, are Serial Sevens and Backwards Spelling, followed by Orientation.

(a) Gender

3.63 When data from both court cohort studies are combined, a total of 208 cases are included. Males comprise 80.6 per cent (N=166) and females 19.4 per cent (N=40) of the sample, with no data being obtained on this variables for 2 cases.

(b) Ethnicity

3.64 Aboriginal persons comprised 34.8 per cent of the total sample (N=69), Islanders 2.5 per cent (N=5) and non-Aboriginal persons 62.6 per cent (N=124). The Aboriginal and Torres Strait Islander population for New South Wales in 1993 (the last census) was 70,020 persons, or 1.2 per cent of the population, a rise from 1.1 per cent in 1986.¹²

3.65 The level of over-representation of Aborigines in custody in New South Wales is 13.1, with 14.3 per cent of persons in custody being Aboriginal.¹³ Data pertaining to the proportion of Aborigines appearing before New South Wales local courts have not been located. These findings indicate that Aborigines are over-represented in this sample compared with the proportion in custody, and are vastly over-represented compared with the proportion of the New South Wales population. Nevertheless, it should be noted that these samples are not necessarily a random sample of local courts in New South Wales, and indeed the two courts most recently studied were selected because they were likely to have a high proportion of Aboriginal accused persons attending. The proportion of persons born overseas is lower in the total sample than in the New South Wales population; in 1991, 74.8 per cent of New South Wales residents were born in Australia, compared with 80.6 per cent of the sample.¹⁴ The over-representation of Aborigines clearly contributes to the higher proportion who were Australian born.

3.66 In the total sample, 61.3 per cent reported that they were unemployed, in comparison with 9.5 per cent of the New South Wales population in May 1994.¹⁵ The lowest unemployment rate is in the Northern, Far West, North Western and Central West regions, where the rate is 6.8 per cent compared with 8.5 per cent in Sydney (although there are considerable regional variations within metropolitan Sydney). Approximately 23 per cent of all people employed in New South Wales in May 1994 were part-time workers, compared with 36.1 per cent in this sample. In the sample, 59.3 per cent reported being in receipt of a social security pension or benefit.

PERFORMANCE ON THE K-BIT

Table 15: K-BIT standard scores for Non-Aboriginal, and Aboriginal/Islander respondents

Score	Non - Aboriginal		Aborigines/Islanders		Total	
	Frequency	%	Frequency	%	Frequency	%
100+	57	44.5	10	14.1	67	33.7

People with an Intellectual Disability and the Criminal Justice System: Two Rural Courts

90-99	30	23.4	5	7.0	35	17.6
80-89	13	10.1	9	12.6	22	11.1
70-79	11	8.6	17	23.9	28	14.1
<70	17	13.3	30	42.3	47	23.6
	N = 128	99.9	N = 71	99.9	199	100.1

3.67 These results show that 23.6 per cent of the total sample (N=47) had a SS which was two standard deviations below the mean, that is, below a score of 70. This group would therefore be regarded as falling within the category of intellectually disabled. A further 14.1 per cent has SS=70-79, in the borderline range of intellectual ability. A total of 37.7 per cent of the sample, more than one third, obtained results on a non-verbal, untimed test of cognitive ability which indicated serious deficits in cognitive skills.

3.68 No significant differences were found between the standard score categories and the type of offence charged. Assault was the most frequent offence in all standard score categories.

3.69 There is a significant difference between the Aboriginal/Islander results on the K-BIT, compared with non-Aborigines (Chi square=50.22, df=8, p<0.000). More non-Aborigines scored 100 or above, and fewer scored less than 79.

3.70 Table 16 shows the relationship between the K-BIT and the scores on the MSE for the total sample.

Table 16: Cross tabulation of K-BIT results with MSE

	<70	70-79	80-89	90-99	100+	Total
22-26	15	9	13	26	46	109
	8.9	5.3	7.7	15.4	27.2	64.4
19-21	12	9	2	3	3	29
	7.1	5.3	1.2	1.8	1.8	17.2
<19	18	6	9	-	4	31
	10.6	3.6	1.8	-	2.4	18.4
	45	24	18	29	53	169
	26.6	14.2	10.7	17.2	31.4	100.0

3.71 The chi square test is significant, at the p<0.000 level of significance (df=8).

3.72 The table indicates that whilst there is some clustering of low MSE with low K-BIT SS, and high with high, nevertheless the overlap is not total. For example, 15 people with a SS of less than 70 obtained a score on the MSE which would indicate no further need for mental status examination. At the other end of the spectrum, four people with MSE score of less than 19 scored over 100 on the K-BIT. These results indicate that the MSE cannot be substituted for a test of general intelligence.

3.73 Discriminant analysis was performed in an attempt to find variables which distinguished between those subjects with SS<70 and SS>100, entering the variables Orientation, Location, registration, Serial Sevens, Backwards Spelling, Three Stage Command, Aboriginality, work, and

pension. The variables which distinguished most strongly between the groups at the $p > .000$ level (degrees of freedom 4, 83) were: Serial Sevens, Aboriginality, work, and Backwards spelling. Thus, low scorers on the K-BIT were more likely to score poorly on Serial Sevens, be Aboriginal or Islander, be unemployed and score poorly on Backwards Spelling.

3.74 Using a slightly different approach, discriminant analysis was performed in an attempt to distinguish between Aboriginal and non-Aboriginal people appearing before these local courts, entering the variables Orientation, Location, Registration, Serial Sevens, Backwards Spelling, Three Stage Command, Total MSE score and SS. The variables which were found to discriminate most strongly at the $p < .000$ level (degrees of freedom 4, 154) in descending order were: Standard Score, Location, Orientation and Backwards Spelling. Aboriginal/Islander respondents were more likely than non-Aborigines to perform poorly on the K-BIT and on the Orientation subtest, but to do well on Location and Backwards Spelling.

3.75 The Aboriginal and Islander subgroups were combined and a discriminant analysis performed to investigate within this population which variables discriminated between those with $SS > 100$, and $SS < 70$. The variables entered into the equation were Orientation, Location, Registration, Serial Sevens, Backwards Spelling, Three Stage Command, work and pension. The two variables found to discriminate at the $p < .005$ (degrees of freedom 2, 35) were in descending order, Serial Sevens and Location. These results, related to the MSE assessment, may indicate that those Aboriginal participants who had multiple problems, such as both intellectual disability and other mental abnormality, may be functioning overall at a lower level on tasks requiring cognitive reasoning.

3.76 Discriminant analysis performed on gender groups entered the variables age, Aboriginality, work, pension, total MSE score and SS on the K-BIT. The variables which distinguished between the groups at the $p < .01$ or greater (degrees of freedom 3, 141) were in descending order: receiving a pension, working, total MSE score, and age. Women were more likely not to be receiving a pension, yet to be unemployed, to have a low MSE score, and to be older than male accused persons.

3.77 Results of these discriminant analyses, however, must be regarded with caution. First, not all variables could be entered into the equation because many were not continuous variables. Secondly, variables which had high levels of missing data could not be entered because the remaining cases on which to perform the analyses were too few.

FOOTNOTES

1. New South Wales Law Reform Commission *People with an Intellectual Disability and the Criminal Justice System: Appearances Before Local Courts* (Research Report 4, 1993).
2. NSW Bureau of Crime Statistics and Research *New South Wales Criminal Court Statistics 1994* (Attorney General's Department, 1995).
3. J Powles and S Gifford "How Healthy are Australia's Immigrants?" in J Reid and P Trompf (eds) *The Health of Immigrant Australia - A Social Perspective* (Harcourt Brace Jovanovich, Sydney, 1990) at 77-107; *New South Wales Year Book 1995* (No 75, Australian Bureau of Statistics, Sydney, 1995).
4. *New South Wales Year Book 1995*, at 128ff. The Australian Bureau of Statistics definition includes people aged 15 years or over who are not employed, who are available for work, and who are taking active steps to find work.
5. Department of Health, Housing, Local Government and Community Services *Regional Labour Market Disadvantage*, Social Justice Research Program into Locational Disadvantage (Report 16, AGPS, 1993) Appendix 1.
6. Australian Bureau of Statistics telephone information service, October 1995.

7. *New South Wales Year Book 1995*.
8. I Castles *Australian National Classification of Offences* (Australian Bureau of Statistics, 1986).
9. NSW Bureau of Crime Statistics and Research (1995) Table 1.1 at 8-9.
10. S C Hayes and G Craddock *Simply Criminal* (2nd ed, Federation Press, Sydney, 1992).
11. NSW Bureau of Crime Statistics and Research (1995) Table 1.4 at 12.
12. *New South Wales Year Book 1995*.
13. D Biles and D McDonald (eds) *Deaths in Custody Australia, 1980-1989* (Australian Institute of Criminology, Canberra, 1992).
14. *New South Wales Year Book 1995*.
15. *New South Wales Year Book 1995*.

4. Discussion and Conclusion

MAJOR FINDINGS

4.1 In this study, using an untimed test of fluid intelligence (the matrices section of the Kaufman Brief Intelligence Test: K-BIT), 20.9 per cent of subjects obtained a standard score (SS) between 70 and 79, in the borderline category of intelligence, and 36.0 per cent obtained a SS less than 70, and could be described as intellectually disabled. A total of 58.1 per cent fell at or below a percentile rank of 10 which means that they would be performing at a level lower than 89 per cent of the population; 27.9 per cent were at or below a percentile rank of 1, that is below 98 per cent of the population.

4.2 A second major finding is that 40.7 per cent of the sample tested fell below the cut off point on the Mini-Mental State Examination (MSE) which indicates a need for further mental state assessment. This group may include people who have psychiatric problems, who are severely affected by stress, intoxicated by drugs or alcohol, who have difficulty with English language proficiency, and may include some who have an intellectual disability.

4.3 There is some correlation between the K-BIT and the MSE, particularly on the subsections of Orientation, Location, Serial Sevens, and Backwards Spelling, subtests which may be to some extent influenced by school-learned skills. Nevertheless, each test identified some subjects as "cases" who were not so identified by the other test, indicating that to some extent each test assessed different mental factors.

4.4 A total of 49 individuals had a SS on the K-BIT of <80, and 35 had an MSE score of <22. Identification as a "case" on both tests occurred for 30 subjects, whereas a further 5 persons on the MSE and a different 19 on the K-BIT were identified as falling below the relevant cut off points on each of the scales. Thus, a total of 54 individuals (61.4 per cent of the total sample) had scores on one or both tests which indicate that for some reason they would have serious difficulty in comprehending or coping with court procedures, and may need further expert assessment which could be relevant to the conduct and outcome of their court matter.

4.5 The difficulty in recognising the accused person with intellectual disability was highlighted by the fact that 18 of the 31 persons with a SS<70, and 14 of the 18 with SS 70-79 were not identified by the research officers as having intellectual deficits. The false positives were less likely to occur - no respondent with SS>80 was incorrectly classified as having an intellectual disability indicating that people of average intelligence are unlikely to be erroneously classified as having an intellectual disability. No criticism of the researchers is intended - rather the findings reflect the difficulty encountered by lawyers and other professionals attempting to identify the presence of intellectual disability amongst people appearing before courts.

4.6 According to discriminant analysis, respondents with SS<70 were more likely to be unemployed, to receive a pension, to have a low MSE score especially on the Serial Sevens and Location subtests, and were more likely to have been drinking on the day of the alleged offence.

REPRESENTATIVENESS OF THE SAMPLE

4.7 The sample included 98 per cent of persons listed to appear on list days in Bourke and Brewarrina Courts during July 1995, and being such a comprehensive sample, could be said to be representative of persons appearing before these local courts.

4.8 The sample was not significantly different from New South Wales local court statistics for gender. There was, however, a greater proportion of Aborigines in the sample (73.9 per cent) than occurs in prisons (14.6 per cent). Statistics have not been located describing the proportion of Aboriginal persons appearing before New South Wales local courts in general. As a consequence of the high proportion of Aborigines, the proportion of persons born in Australia was higher than the population for New South Wales.

4.9 Unemployed persons were over-represented in comparison with the New South Wales population, although the rate of unemployment was similar to the previous court cohort study reported in RR 4.¹ It has been well demonstrated that persons appearing before courts who can establish that they have secure employment

are more likely to receive lenient sentences,² a finding which implies that this sample will be at a disadvantage during the sentencing proceedings.

4.10 The sample was slightly under-represented for 19 year old persons, compared with New South Wales local court statistics, and slightly over-represented in the 25-29 age range, but the differences were not statistically significant.³

4.11 The offences recorded for the sample were dissimilar from the 1994 New South Wales local court profile, with the sample being over-represented for offences against the person, under-represented for break and enter, under-represented for drug offences and for driving offences. These findings may be affected by the high proportion of Aborigines and people with intellectual disability in the sample. Aborigines are over-represented in figures for imprisonment for assault, but less likely to be in prison for drug offences or robbery.⁴ Thus the pattern of offences reported by the sample, whilst differing from the overall New South Wales local court appearances, nevertheless is fairly typical of the pattern of offences for Aboriginal accused persons (see Chapter 1 - Types of Offences). Research has found that people with intellectual disability are most frequently convicted of offences against the person.⁵ In comparison with RR 4, this sample had a higher proportion of offences against the person, but were lower on drug offences.

4.12 Given the comprehensive nature of the sample, there is no reason why it could be supposed that this sample is atypical of persons appearing before these two local courts in New South Wales. The courts were chosen for the likelihood of having a high proportion of Aboriginal appearances, and some of the other parameters upon which the sample differs from New South Wales general population statistics or from New South Wales local court figures may be directly related to the high proportion of Aboriginal persons. Other research indicates that intellectual disability, communication difficulties, and social and adaptive skills deficits are relatively common amongst Aboriginal prisoners, perhaps related to poor access to health care especially in the pre-natal period, and to other health deficits.⁶

4.13 A total of 12.0 per cent of participants indicated that they were not legally represented, a finding which was indicative of a higher rate of legal representation than occurs generally in New South Wales courts (37.7 per cent being unrepresented in New South Wales local courts in 1994), and also in comparison with RR 4 (30 per cent being unrepresented).

ALCOHOL AND DRUG CONSUMPTION

4.14 An additional series of questions pertaining to drug and alcohol consumption was included in the survey form in this study. Four out of five (81.2 per cent) of those who responded to the question concerning drinking alcohol on the day of the offence answered in the affirmative. Those who had a SS of <70 did not differ significantly from those who scored over 70 although it is worth noting that 90% of those with an SS<70 had been drinking on the day of the alleged offence compared with 56% of those with SS>100. The most striking feature was the amount of alcohol said to have been consumed. Nearly the same proportion (79.4 per cent) indicated that they were intoxicated at the time of the offence.

4.15 A smaller proportion (12.7 per cent) had consumed drugs on the day, and amongst illegal drugs, marijuana was the most frequently cited. Most of those who had consumed marijuana indicated that they had also consumed at least two cartons of beer or the equivalent amount of other alcoholic drinks.

THE COMBINED SAMPLE

4.16 For the total sample of persons in RR 4 and the current study, the group was over-represented in terms of Aboriginality compared with Aborigines in prison,⁷ and unemployment, compared with the New South Wales population.⁸

4.17 Nearly one quarter (23.6 per cent) had a SS<70, that is, in the category of intellectual disability, and a further 14.1 per cent obtained SS 70-79, in the borderline range of ability.

4.18 Aboriginal/Islander respondents were more likely to have lower SS.

4.19 Results on the K-BIT were significantly related to results on the MSE, although the overlap is not total. These results indicate that MSE cannot be substituted for a test of general intelligence.

4.20 In the total sample, when high and low scorers were compared on the K-BIT, low scorers (below 70) were more likely to be Aboriginal/Islander, to be unemployed, and to perform poorly on the Serial Sevens and Backwards Spelling subtests (two subtests which are relatively reliant upon school learnt skills).

4.21 Discriminant analysis performed to distinguish between Aboriginal and non-Aboriginal participants found that the former were more likely to obtain low scores on the K-BIT and the Orientation subtest of the MSE, but to do better on Location and Backwards Spelling.

4.22 Within the Aboriginal/Islander group, the factors which discriminated between high and low performers of the K-BIT were Serial Sevens and Location, indicating that general mental state may be an important factor in the Aboriginal group, and the presence of a dual diagnosis may affect K-BIT results.

4.23 Women in the total sample differed from men in that they were more likely to not be receiving a pension, to be unemployed, to have a low MSE score, and to be older.

4.24 The results of discriminant analyses must be regarded with caution owing to the fact that only limited variables could be entered into the analyses, and variables with high levels of missing data had to be excluded.

CONCLUSIONS

4.25 In a total sample drawn from six local courts in New South Wales, more than one in four persons had a standard score (SS) of less than 70 and a further 14.2 per cent had SS between 70-79.

4.26 In two rural courts with a high Aboriginal population, 36.0 per cent had SS<70 and 20.9 per cent fell between SS 70-79. Seven per cent obtained a SS<50 placing them in the range of moderate intellectual disability.

4.27 As in RR 4, social and adaptive skills were not assessed, owing to privacy considerations in the relatively public environment of a court house. Had social and adaptive skills evaluation taken place, however, some of the borderline group may have been included in the mild intellectual disability category using the definition of intellectual disability which includes cognitive functioning as well as adaptive skills deficits in two or more areas.

4.28 On an assessment of mental state (MSE), 41.7 per cent of the second sample fell below the cut off point indicating the need for further mental state examination. Of the combined sample, 35.5 per cent fell below this cut off point.

4.29 These results indicate that in rural jurisdictions with a high Aboriginal population, more than half of the accused persons appearing before the local courts are likely to have significant difficulty in understanding court proceedings. Furthermore, their mental and/or cognitive state may have had significant bearing upon the commission of the offence(s).

4.30 Alcohol appears to have been consumed by most of the sample on the day of the alleged offence, and may have played a contributory part in the behaviour leading to apprehension by police.

4.31 Aboriginal persons appear to be significantly more at risk than non-Aboriginal people in both cognitive function and other mental state abnormality.

4.32 Although every effort was made to use culture-fair assessments, the possibility cannot be dismissed that Aboriginal people are disadvantaged by the K-BIT and the MSE. The K-BIT was chosen because it is an untimed, non-verbal test of cognitive reasoning which relies upon interpretation of patterns and pictures of objects which should be as familiar to Aboriginal people as they are to other rural and urban dwellers in Australia. Research indicates, however, that even a test which has been designed to be culture-fair (the Cattell Culture Fair Intelligence Test - CFIT) has items which are biased culturally and which may not have universal validity as a measure of fluid intelligence.⁹ The CFIT has been found to correlate with another mental ability test, and white

institutionalised delinquents in the USA did better on the CFIT than on the other brief measure of intelligence, but concurrent and predictive validity for different ethnic groups needs to be researched.¹⁰ As outlined in paras 2.14-2.26, however, the available evidence suggest that the K-BIT does not have any consistent cultural bias.

4.33 A study on urban and rural Aboriginal children matched with urban and rural Anglo-Australian children found that urban students scored higher than rural students and Anglo-Australians scored higher than Aborigines. Both psychometric test intelligence and cognitive style accounted for significant proportions of the variance shared by environment (cultural and location) and scholastic achievement. Psychometric intelligence was, however, a more powerful predictor of the effects of culture and location on school achievement than was cognitive style, that is, the way people from different cultures analyse problems.¹¹ Students scoring high on tests of cognitive ability could be less influenced by cultural factors or urban/rural location than those who are low scorers. Thus high levels of performance may be a protective factor against the cultural bias of tests, more so than cognitive style.

4.34 Very little is known about intellectual disability amongst Aboriginal populations, and where data are available they are usually included as part of epidemiological studies of psychiatric disorders. Seldom have psychometric tests been used to establish cognitive and adaptive skills deficits.¹²

4.35 Further research is needed to investigate the reasons why this rural sample appeared to perform worse than the previous court cohort sample, and why Aboriginal people in particular appear to be at a disadvantage in the criminal justice system. Given the poor health indicators and high levels of mortality and morbidity for the Aboriginal population,¹³ it would not be surprising if intellectual abilities were affected along with physical health. The factors which contribute to the over-representation of Aboriginal people in the criminal justice system, and which pose difficulties for this group in understanding and dealing effectively with court processes need to be researched further so that, in conjunction with Aboriginal people, effective means of addressing these problems can be developed.

FOOTNOTES

1. New South Wales Law Reform Commission *People with an Intellectual Disability and the Criminal Justice System: Appearances Before Local Courts* (Research Report 4, Sydney, 1993).
2. See Research Report 4, para 1.38; and F Gale *Aboriginal Youth and the Law: Problems of Equity and Justice for Black Minorities* (Australian Studies Centre, University of London, London, 1985).
3. NSW Bureau of Crime Statistics and Research *New South Wales Criminal Court Statistics 1994* (NSW Attorney General's Department, Sydney, 1995).
4. D Biles "Aboriginal Imprisonment - A Statistical Analysis" in D Biles and D McDonald (eds) *Deaths in Custody Australia, 1980-1989* (Australian Institute of Criminology, Canberra, 1992) 85-105.
5. S C Hayes and G Craddock *Simply Criminal* (2nd ed, Federation Press, Sydney, 1992).
6. S Hayes and D McIlwain *The Prevalence of Intellectual Disability in the New South Wales Prison Population: An Empirical Study* (Report to the Criminology Research Council, Canberra, 1988).
7. Biles (1992).
8. *New South Wales Year Book 1995* (No 75, Australian Bureau of Statistics, NSW, 1995).
9. N J Nenty "Cross-culture Bias Analysis of Cattell Culture-Fair Intelligence Test" *Perspectives in Psychological Researches* 1986; 9(1): 1.16.

10. J P Haynes, R C Howard and D Atkinson "Concurrent and predictive validity of two group intelligence tests in a juvenile forensic setting" *Psychological Reports* 1983; 53(1): 187-189.
11. L A Clark and G S Halford "Does cognitive style account for cultural differences in scholastic achievement?" *Journal of Cross-Cultural Psychology* 1983; 14(3): 279-296.
12. J P Reser "Aboriginal Mental Health: Conflicting Cultural Perspectives" in J Reid and P Trompf (eds) *The Health of Aboriginal Australia* (Harcourt Brace, Sydney, 1991) 218-291.
13. Reid and Trompf (1991).

Appendix A: The Survey Instrument

UNIVERSITY OF SYDNEY and the NSW LAW REFORM COMMISSION MAGISTRATES COURT STUDY

THANK YOU FOR AGREEING TO FILL OUT THIS FORM.

We want to find out about the **educational background** of people who come before Magistrates Courts. The NSW Law Reform Commission and the University of Sydney are collecting the information. The results will help the Law Reform Commission to understand the difficulties people face when they go to court. Then the Commission can decide if things need to be changed, to make the court process better. That will help everyone. There is another way **you** can be helped. If this form shows anything that needs to be followed up by your solicitor, that information will be passed on to your solicitor.

PLEASE FILL IN ALL THE ANSWERS TO THE QUESTIONS BELOW. IF YOU HAVE ANY PROBLEMS, ASK FOR HELP FROM THE PERSON WHO GAVE YOU THE FORM.

Surname _____

Other Names _____

Date of Birth ___/___/___ **Age** _____

Are you (please tick) Male____ Female____

Are you (please tick)

Aboriginal, Koori ____

Islander ____

None of these ____

Were you born in Australia? Yes ____ No ____

If **no**, where were you born?

What grade were you in when you left school?

What was the last school you went to?

How many different schools did you go to?

(write in number) _____

Were you ever in a special class or school?

Yes _____ No _____

If **yes**, what was the name of the school? (write in) _

Were you ever in an OA or OF class?

No _____

OA _____

OF _____

Are you in paid work, or unemployed?

Working _____ Unemployed _____

If you are in paid work, what work do you do?

Full-time or Part-time paid work?

Fulltime Parttime

No. of hours per week_

Do you get a pension or benefit?

Yes _____

No _____

If **yes**, tick what type

Unemployment_____

Job Search_

Sickness _____

War/Veterans_____

Disability Support (Invalid Pension)_____ Other (write in) _____

If you do not receive a pension now, have you ever been on a pension or benefit in the past? Yes _____

No _____

Which pension?

Unemployment____

Job Search____

Sickness ____

War/Veterans____

Disability Support (Invalid Pension)____ Other (write in) _____

Are you at court today because you are charged with an offence?

Yes ____ No ____

Are you charged with more than one offence?

Yes _____ No _____

How many? (write in number) _____

What is the most serious charge? (please write in) _

What are the other charges?

Are you at court for any other reason today? (please write in) _____

Have you ever been charged with an offence before? Yes _____ No _____

How many offences have you been charged with in the past? Please write in -

What offences were they? _____

Do you have a lawyer? (please tick)

No _____

Legal Aid _____

Private Solicitor _____

Please write in the name and telephone number of your solicitor, if you wish to.

Name: _____

Telephone Number: _____

Were you drinking alcohol on the day of the alleged offence?

Yes _

No _

How much alcohol did you have that day?

Were you intoxicated at that time?

Yes_No_

What effect did the alcohol have on you?

Did you have any other drugs on the day of the alleged offence?

Yes _

No _

Please write in what drugs you had - _____

Were you affected by the drug(s) on that day?

Yes No_

How were you affected? _____

FOR OFFICE USE ONLY

COURT - _____

DATE - _____

ORIENTATION (Year, season, month, date, day - Record) [5]

LOCATION (State, suburb, street, place, floor - Record) [5]

REGISTRATION (3 objects - repeat all three - repeat until learned -Record correct no. and no. of repetitions) [3]

SERIAL SEVENS (1 point for each correct, to max. 5) [5]

BACKWARDS WORLD (record no. of letters correct) [5]

THREE STAGE COMMAND (Paper right, fold, lap) [3]

TOTAL OUT OF 26 _____

INTERVIEWER'S NOTES

For all items, record as follows: 1= Serious 2= Mild 3= Slight 4= Not present 5 = Don't Know

ID _____

NESB _____

MI _____

D/A _____

OTHER OBSERVATIONS

RAW SCORE ON MATRICES -

STANDARD SCORE ON MATRICES -

PERCENTILE RANK -

CATEGORY