

1. THE COMPLAINANT

Ms Helena O'Connell, Executive Officer, NSW Council for Intellectual Disability ('CID').

2. THE PUBLIC AUTHORITY SUBJECT OF INVESTIGATION

The Department of Ageing, Disability and Home Care ('DADHC').

3. THE CONDUCT SUBJECT OF INVESTIGATION

DADHC's conduct as lead agency for the Senior Officers Group for Intellectual Disability and the Criminal Justice System in promoting the achievement of the outcomes and targets set out in the Terms of Reference for the Group.

4. BACKGROUND

Issues for people with intellectual disability who come into contact with, or are at risk of coming into contact with the criminal justice system have been subject of a number of initiatives in recent years.

In 1996 the NSW Law Reform Commission produced *People with an Intellectual Disability and the Criminal Justice System*, a report which identified that the rights of people in this group were at risk due to a lack of early intervention and prevention programs, inadequate access to fair procedures, inappropriate responses to their specific needs and a lack of systematic and coordinated approach to meeting their needs.¹ The commission made recommendations for a range of reforms, including legislative and administrative change and for an interagency approach to assessment and provision of community support services. It recommended that the then Ageing and Disability Department (ADD) coordinate *'the development of a comprehensive interdepartmental policy and procedural framework designed to protect the rights and meet the needs'* of this group.²

In response to difficulties in progressing a coordinated approach to the needs of this group, in 2001, CID and the Intellectual Disability Rights Service produced *The Framework Report*, which made detailed recommendations for a coordinated government approach to improve supports for the target group.

In mid 2002 a cross-government Senior Officers Group (SOG), chaired by DADHC, began meeting to bring about improved outcomes for the target group. Terms of reference for the SOG were developed in mid 2003 and were finalised in August 2003.

The terms of reference for the SOG included the following 'outcomes/targets':³

¹ NSW Law Reform Commission Report 80 (December 1996) *People with an Intellectual Disability and the Criminal Justice System*, Chapter 10, pp 359-368.

² As above, Recommendation 48.

³ Terms of reference for the Senior Officers Group are attached at Appendix 1.

1. To recommend a whole of government policy position on responding to the needs of people with an intellectual disability who come into contact with the criminal justice system, with the aim of providing appropriate support and preventing re-offending.
2. To clarify the respective roles, responsibilities and priorities of Government agencies in relation to the varying needs within the identified target group.
3. To map the strategies and actions currently being developed and implemented and to identify strategic priorities and opportunities across the range of Government agencies.
4. To develop a project plan which will identify strategies to be implemented across agencies which address the identified and agreed strategic priorities and against which progress will be tracked and reviewed, including defined outcomes and indicators.
5. To review and advise relevant committees with respect to their progress and actions in relation to this target group.

DADHC was the lead agency of the SOG and was responsible for progressing the work of the Group. Other agencies listed as members in the terms of reference were NSW Health, Department of Juvenile Justice, Attorney General's Department, Department of Corrective Services, Department of Education and Training, NSW Police, Department of Aboriginal Affairs, Department of Housing and Department of Community Services.

DADHC's responsibilities under the terms of reference also included preparation and distribution of agendas and meeting minutes, and the provision of executive support for the operation of the SOG. Responsibilities shared by DADHC and member agencies included attendance and participation in SOG meetings and for progressing the work of the Group.

The terms of reference stated that a report of the SOG's findings would be provided to the Human Services and Justice CEOs and Ministers by August 2004.

5. THE INVESTIGATION

On 2 July 2004, the Executive Officer, CID, complained to the Ombudsman about lack of progress by the Senior Officers Group for Intellectual Disability and Criminal Justice in achieving its outcomes and targets, as set out in the Group's terms of reference. In support of the complaint, CID cited problems with progress by the SOG since mid 2002.

CID provided information about its attempts over several months to seek information about progress by the SOG and participating agencies in relation to the outcomes and targets set out in the terms of reference. CID also provided a copy of correspondence from DADHC, dated May 2004, which referred to six cross-agency projects implemented by the SOG, designed to improve interagency collaboration.⁴ This correspondence provided limited information about progress in relation to the targets of the SOG and, in particular, made no reference to the development of whole of government policy in relation to the target group.

⁴ Letter from Acting Director, Community Access, DADHC, to Senior Advocate, NSW Council for Intellectual Disability, dated May 2004.

Having considered the issues raised by this complaint, we determined to make the conduct set out in section 3 the subject of investigation.

On 14 July 2004, a notice of investigation pursuant to section 16 of the *Ombudsman Act 1974* was issued to the Director General, DADHC. The notice also included a requirement, pursuant to section 18 of the *Ombudsman Act*, for the production of a statement of information and related documents, including: minutes of all SOG meetings; advice about action taken by DADHC to progress each SOG target; advice about relevant projects; and advice about support for the work of the SOG. In addition to the required information, DADHC was invited to provide any other information or comments it considered would assist the investigation.

On 14 July 2004, we advised the respective heads of member agencies, listed in the SOG terms of reference, of our investigation. The advice included a requirement pursuant to section 18 of the *Ombudsman Act* to provide information about projects developed through the SOG involving each respective department. The agencies were also invited to comment on the conduct the subject of investigation.

On 10 August 2004, DADHC provided the requested information to the Ombudsman, including sections of a draft report to the Human Services CEO forum, dated 19 August 2004.

Between 10 August and 26 August 2004, member agencies provided the requested information to the Ombudsman, including a complete draft report to the Human Services CEO forum.⁵

On 8 October 2004, we provided a provisional statement of our findings to the Director General of DADHC and sought further submissions.

On 2 November 2004, DADHC provided advice about action it planned to implement as a result of the investigation.

On 11 November 2004, we provided the Minister for Disability Services with a copy of the draft investigation report. On 30 November 2004, the Minister provided advice in relation to the draft report.

The department's submissions and the Minister's advice have been taken into account in the preparation of this final report.

6. ASSESSMENT OF ISSUES

6.1 Achievement of the outcomes and targets of the SOG terms of reference

6.1.1 Developing and recommending a whole of Government policy

Two key documents were developed by DADHC and provided to the SOG in December 2002:⁶

⁵ Response from NSW Police, 11 August 2004.

⁶ SOG minutes 9 December 2002.

1. A draft *NSW Government Policy: Intellectual Disability and the Criminal Justice System*. Among other elements, the draft included guiding principles, a policy statement and policy objectives.
2. A draft *Structure for the NSW Whole of Government Policy*. This is a diagrammatic model of a continuum of support services for the target group, from preventative strategies to intensive and specialist interventions. It was intended to inform the further development of a whole of government policy, and for identifying issues and gaps in strategies. This model provided the basis for mapping current strategies and services across the sector ('the mapping exercise').

In February 2003, the SOG decided not to progress work on a whole of government policy and the mapping exercise until terms of reference for the SOG were formalised.⁷ These were finalised and endorsed by participating agencies in July-August 2003.

The SOG terms of reference were reviewed and confirmed by participating agencies in February 2004, six months before reporting to the Human Services CEO forum. At that time, it was decided that DADHC would draft an 'overarching whole of government policy' and each participating agency would provide a policy statement with regard to the target group.⁸

Minutes for 30 March 2004 indicate an apparent shift in direction, stating '*Whole of government response – to be covered by the service mapping exercise and individual policy statements from each participating agency.*'

The draft report to the Human Services CEO forum includes a draft *NSW Government Policy Position: Intellectual Disability and the Criminal Justice System*, substantively the same as the document developed in December 2002, and a policy statement from each participating agency with regard to the target group. Areas indicated for further development in the December 2002 draft have not been progressed. There is no record of support, or otherwise, by participating agencies for the draft policy in the minutes.

DADHC states the draft whole of government policy '*...was not further progressed as the SOG decided to instead focus on a series of practically oriented projects aimed at improving cross-agency collaboration.*'⁹ The reasons for this change in direction have not been provided and are not documented in the SOG minutes.

Several factors are likely to have impacted on the failure to progress the development of a whole of government policy:

- SOG activities to clarify existing respective roles, responsibilities and priorities of participating agencies and to map current service provision (terms of reference 2 and 3) were not completed until just prior to reporting to the Human Services CEO forum in August 2004 (see below for additional comment in respect of these terms of reference).

⁷ SOG minutes 4 February 2003.

⁸ SOG minutes 17 February 2004.

⁹ DADHC response, 10 August 2004, page 1.

- It appears that DADHC revised its policy in relation to the target group sometime in early 2004.¹⁰

As the lead agency, the lack of clear DADHC policy on its own role in relation to the target group during the last six months of the SOG's term is likely to have impacted on the SOG's capacity to develop a whole of government policy defining the respective roles and responsibilities of the various agencies. It is also likely to have created uncertainty for other agencies in relation to cross-agency project work.¹¹

6.1.2 Clarifying respective roles, responsibilities and priorities

DADHC states '*In the process of developing a whole of government policy position each participating agency was requested to provide a policy statement concerning its role in relation to the target population...The policy statements, combined with the service provision mapping document, provides an overview of the current roles, responsibilities and priorities of the participating government agencies.*'¹²

As indicated, the collation of policy statements from participating agencies and the mapping document were completed late in the term of the SOG. Although SOG meetings in the first twelve months were used to discuss various agency initiatives in relation to the target group, it is difficult to determine whether roles, responsibilities and priorities were sufficiently clarified during the SOG's term to provide a sound foundation for identifying or initiating projects.

DADHC sought information about services to the target group (both generic and specialist services) from participating agencies at every meeting after the SOG terms of reference were formalised. By November 2003, this information had been provided by all but two agencies.¹³ In February 2004, the SOG decided to collate policy statements from each agency for the August report to the Human Services CEO forum, and in May 2004, DADHC wrote to all participating agencies requesting they update any information previously provided, and provide outstanding information.^{14 15} As noted, DADHC itself still did not have an endorsed policy in relation to the target group at this point. As lead agency, this is likely to have hindered the capacity of the SOG to clarify respective departmental roles and responsibilities and subsequently may have affected other SOG activities.

DADHC's advice in relation to this term of reference also refers to its document *Intellectual Disability and Criminal Justice*, provided to the SOG in May 2003. This document provides a

¹⁰ SOG minutes of 17 February 2004 state, "DADHC is in the process of finalising their policy position." Minutes of 11 May 2004, the last SOG meeting held, indicates DADHC's policy was still not available to the SOG. Comments from Department of Corrective Services (response dated 10 August 2004) indicate that DADHC revised its policy with regard to the target group.

¹¹ Comments from Department of Corrective Services, response dated 10 August 2004, page 5.

¹² DADHC response, 10 August 2004, page 2.

¹³ SOG minutes of 13 November 2003 indicate information had been provided by all agencies listed in the terms of reference except NSW Police and Department of Aboriginal Affairs.

¹⁴ Agencies that received this correspondence from DADHC included Department of Juvenile Justice, Attorney General's Department, NSW Health, Department of Corrective Services, NSW Police, Department of Education and Training, Department of Community Services, Department of Housing, and the Mental Health Review Tribunal. It is unclear from the minutes what information was outstanding.

¹⁵ Minutes indicate that agency membership of the SOG changed over time. The Department of Aboriginal Affairs attended only one meeting and has advised this office that it did not attend further meetings due to insufficient resources and other commitments. The Mental Health Review Tribunal attended most meetings after August 2003, and is included in the draft report to the Human Services CEO forum.

brief outline of the literature in relation to treatment options, and includes service system recommendations based on the literature, current gaps and issues in service provision drawn from SOG discussions, and a list of 'potential projects' (referred to as 'the overview document'). The document was intended to inform discussion of potential strategies for implementation across agencies.¹⁶ There is no further reference to this document after the SOG terms of reference were formalised, although 'possible projects' identified by the SOG in July 2003 are consistent with the potential projects identified in the document.

It is not possible to determine, on the information available, how effective the SOG's work clarifying agency responsibilities will be to inform future cross government work in relation to the target group. This is because the SOG focused on current activities and policies of participating agencies and did not undertake any analysis of agency responsibilities under existing legislation or policy frameworks. For example, under the NSW Government Disability Policy Framework, most state government agencies are required to have a Disability Action Plan that sets out how the agency will ensure its services are accessible to people with a disability.¹⁷ Some agencies reported activities being undertaken in the context of their Disability Action Plans. However, systematic analysis of agency responsibilities under this, or any other relevant frameworks, did not occur.

6.1.3 Mapping service provision and identifying strategic priorities and opportunities

DADHC advises that the 'mapping exercise' informed the development of projects by the SOG.¹⁸

The mapping document included in the draft report to the Human Services CEO forum provides a description of programs and activities across agencies along a continuum from prevention and early intervention to specialist and post-release services. It is based on the model provided in the *Structure for the NSW Whole of Government Policy* (December 2002). The document does not include any analysis of service adequacy or systemic gaps, which could be used to inform strategic planning.

Notwithstanding problems collecting information to inform the mapping exercise, in July 2003 the SOG identified ten 'possible projects', which reflected the priorities identified in the overview document referred to above. Some of the 'possible projects' have been implemented at least to some degree, although others were not progressed at all, were altered over time or were given a lower priority.

In March 2004, the SOG prioritised seven projects 'to be progressed and reported on at the August CEO meeting.'¹⁹ These included four projects reflecting the priorities identified in July 2003. They also included activities already in progress,²⁰ and a newly identified opportunity.²¹ This list of priorities was subsequently altered in May 2004, to include work that DADHC commenced prior to the SOG being established, on a Criminal Justice Resource

¹⁶ SOG minutes, 20 May 2003.

¹⁷ NSW Government Disability Policy Framework (1998).

¹⁸ DADHC response, 10 August 2004, page 2.

¹⁹ SOG minutes 30 March 2004.

²⁰ Development of a whole of government policy in relation to the target group and development of a Memorandum of Understanding between DADHC and Department of Juvenile Justice.

²¹ A project identified in the SOG minutes of 30 March 2002 as 'Interagency approach to multi-diagnosis (drug and alcohol, mental health, intellectual disability) from drug summit money'.

Manual for DADHC disability services staff.²² The draft report to the Human Services CEO forum includes reports about current projects and proposes others for future development. Together, these reflect most of the project priorities identified in July 2003.

In the absence of completed and comprehensive analysis of services and agency roles and responsibilities, it is difficult to determine what factors informed the prioritisation of projects. In some cases proposed projects were not advanced on the basis of other work and strategic opportunities identified in the sector. In other cases it is not clear why projects were not progressed.

For example, a priority area identified early on by the SOG was a lack of post-release accommodation and support for the target group. Several different projects to address this were considered and prioritised over the term of the SOG, including those for the development of accommodation models and for interagency projects to support transition from custodial facilities to the community. In one instance, a project brief for a post-release accommodation pilot was developed but was later put on hold on the basis of exploratory work on service models to support ex-offenders being commissioned through 'Partnerships Against Homelessness', an interagency auspiced by Department of Housing.

In another instance, a project brief for joint planning to support the transition of people in the target group from new specialist units at Long Bay Correctional Centre to the community was developed in July 2003. It involved the development of interagency protocols and interagency planning for release of offenders. There has been limited progress with this project over twelve months. The lack of clear DADHC policy in relation to the target group is likely to have impacted on the progress of this project.²³

The draft report to the Human Services CEO forum indicates that post-release support that meets the individual's basic, as well as their criminogenic needs, remains a priority area of need. In this context, it appears that even where the priorities identified by the SOG are sound, and the selection of projects has been strategic, their implementation has been problematic.

6.1.4 Plans to address the identified and agreed strategic priorities

As noted, project priorities changed over the term of the SOG. Some projects identified in July 2003 were implemented to some degree, while others were not progressed. This may have been the result of changing priorities of the SOG. However, it may also be the result of a lack of project planning.

No single 'project plan' was developed by the SOG to manage its strategic priorities at any one point. It is unclear whether plans were developed for each individual project – none have been provided by DADHC or any other agency.

'Project briefs' were developed for some projects. However, they do not include any planning detail for their implementation. The draft report to the Human Services CEO forum includes a

²² SOG minutes 11 May 2004. Minutes for 9 December 2002 refer to this project in a list of activities already in progress by participating agencies.

²³ Response from Department of Corrective Services, 10 August 2004, page 3. See also the project report included in the draft report to the Human Services CEO forum, August 2004.

'Project report' for those projects the SOG has chosen to report on. However, they are limited to a brief project description, history and progress.

Project planning is critical for successful implementation and for evaluating effectiveness. Project plans are usually characterised by, but not limited to, defined and measurable outcomes that relate to the project goals, timeframes, identified responsibilities for management and implementation, and criteria for evaluation. In the absence of plans that address these elements, and in the context of poor role clarity, it is perhaps not surprising that implementation of SOG projects has not met stakeholder expectations, and the effectiveness of the SOG projects for improving outcomes for the target group is difficult to determine.

6.1.5 Reviewing and advising relevant committees

DADHC reports that the SOG 'monitored and reviewed' the progress of five committees and provided advice via a representative of the committee's auspicing agency attending SOG meetings or a DADHC representative attending the committee meetings.

In the absence of detailed information about the objectives or progress of those committees, it is not possible to determine how effective this strategy has been in informing the work of those committees, or the SOG.

By way of example, the Challenging Behaviour Taskforce (CBT) is one such committee. This interagency, lead by NSW Health, was established in 2001.²⁴ Its aim is to '*develop more effective service system responses and service models...*' for people with complex needs 'blocking' services who do not neatly fall into any intake or eligibility criteria.²⁵ There is little detail in SOG minutes about the ongoing work of the CBT. However, minutes indicate that clarification of the roles and responsibilities of the CBT and the SOG were required to progress CBT budget bids, including clarification of the target populations of the two groups and the inclusion of people with 'borderline' disability. There is no reference to the CBT in SOG minutes after August 2003. The draft report to the Human Services CEO forum by the SOG states '*The next step of the Challenging Behaviour taskforce is, as yet, not confirmed, although it may produce benefits for the target group of the SOG.*' Informal advice to the NSW Ombudsman suggests that funding already approved by Cabinet for this project has not been implemented due to lack of agreement between DADHC and NSW Health with regard to responsibility for management of the project.

6.1.6 Maintenance of an issues log

The Terms of Reference state: '*An additional role for the group is to identify issues across the broader range of disabilities and to make recommendations with respect to how to progress these issues beyond this Senior Officers' Group. These issues will be maintained in an issues log.*'

An issues log was not kept. DADHC advises that issues identified through the work of the SOG are contained in the overview document and were documented in meeting minutes. These documents refer to wide ranging issues including those relating to the definition of the target group, the nature and complexity of their support needs, those who may not fall within

²⁴ Letter from Faye Lo Po', Minister for Community Services, to the Intellectual Disability Rights Service, dated December 2001.

²⁵ SOG minutes 4 February 2003.

the target group (such as those with borderline intellectual disability and people with mental illness), and service provision issues. It is not clear how these will be used to inform future work. The draft report to the Human Services CEO forum does not include any recommendations with regard to these issues, other than to highlight the general complexity of the issues facing the target group and the need for post release support.

6.2 Support for the Senior Officers Group

DADHC's responsibilities under the terms of reference include preparation and distribution of agendas and meeting minutes, and provision of executive support for the operation of the SOG. These administrative responsibilities have been met.

Other responsibilities under the terms of reference were shared by all participating agencies, including attendance and participation at SOG meetings and various responsibilities for progressing the work of the SOG.

Four different senior DADHC staff chaired the SOG; two in the first twelve months, and two in the last twelve months after terms of reference were formalised. Although unavoidable due to changes in DADHC senior positions, the change in leadership is likely to have affected the work of the SOG. Some agencies comment that departmental changes also contributed to lack of clear DADHC policy and a change in the SOG's focus over time.²⁶

The SOG was also affected by varying levels of representation from participating agencies. While some agencies had one or two consistent representatives over time, others had up to five different representatives. The level of responsibility of representatives ranged from those with limited delegated authority to Senior Executives. Some agencies were represented at all or most SOG meetings, while others attended very few. In some cases, this may have been a reflection of a changing focus of the SOG from policy development to that of practical projects.²⁷

6.3 Projects and activities undertaken under the auspice of the Senior Officer's Group

As noted, the priorities of the SOG changed over time, as did its focus on projects. Following is a summary table of projects undertaken under the SOG's auspice during its term. Projects 1 to 7 are included in the draft report to the Human Services CEO forum.²⁸ Projects 7 to 10 are included in the draft report as 'projects to be proposed for future development'.²⁹ Projects 11 to 12 are included as future projects in another version of the draft report.³⁰

²⁶ Responses from Department of Corrective Services, 10 August 2004, page 5, and Department of Housing, 19 August 2004, page 2.

²⁷ For example, Department of Community Services transferred representation from policy to operations staff in view of the operational focus of projects, response, dated 23 August 2004.

²⁸ Response from DADHC, 10 August 2004.

²⁹ Response from DADHC, 10 August 2004.

³⁰ Response from NSW Police, 11 August 2004.

Project/activity	Details	Progress/outcomes
1. Enhanced work practices between DADHC and Department of Juvenile Justice (DJJ).	Includes development of a Memorandum of Understanding (MoU) and ongoing participation by DADHC in the DJJ Disability Working Party.	Identified as a SOG project in March 2004. The DJJ Disability Working Party was established in 2002 to progress its Disability Action Plan, including the development of a DJJ-DADHC MoU. DADHC has been represented on the Working Party since its inception. The development of an MoU has been affected by structural and personnel changes in both departments. The Directors-General met in August 2004 to progress the MoU. Outcome not known.
2. Joint planning with regard to new units at Long Bay Correctional Complex (designed to provide services to men with intellectual disability).	Includes development of interagency protocols for supporting transition of offenders, and interagency planning for offenders	Identified as a possible SOG project in July 2003. Development of protocols with DADHC (and to a lesser extent, Housing and NSW Health) and interagency planning for offenders leaving custody has been affected by lack of available support options in the community, and lack of clarity around departmental responsibilities and policy in relation to the target group.
3. Practical arrangements for the implementation of amendments to s32 of the <i>Mental Health (Criminal Procedures) Act 1990</i> .	The amendments allow the courts to make and enforce diversionary orders under the Act. The project entailed identifying practical arrangements needed across agencies to support the changes, including the Community Court Liaison Service, DADHC, Probation and Parole Service, Juvenile Justice, NSW Police and court magistrates.	Identified as a possible SOG project in July 2003 through planned amendments to the Act and the work of the Criminal Justice CEO group. Work to identify the necessary practical arrangements was led by another SOG established by the Criminal Justice CEOs and led by Attorney General's Department (AGD). The amendments were commenced in Feb 2004. Practical arrangements are in place or in progress in the identified areas.
4. Joint case management – Orana Juvenile Justice project	Pre and post release joint case management for four young people in the target group at Dubbo Juvenile Detention Centre. Involves Departments of Juvenile Justice, DADHC, NSW Health, Education and Training, Community Services and NSW Police.	Identified as a possible SOG project in July 2003 and approved by the Directors General of Juvenile Justice and DADHC in Sept 2003. Four young Aboriginal people were identified in December 2003 for joint case management over twelve months. Draft report to the Human Services CEOs includes individual outcomes and identified systemic problems (such as lack of suitable accommodation options). Not clear how specific systemic issues will be dealt with, although draft report to the Human Services CEOs includes recommendations for targeted work around post-release services.
5. Dual diagnosis cross-agency awareness workshop	Promoting cross-agency awareness of the needs of offenders with dual and multiple diagnosis (mental health, including intellectual disability, and drug disorders) through a series of workshops for frontline staff of Corrective Services (Probation and Parole), NSW Health (Centre for Mental Health and Centre for Drugs and Alcohol) and DADHC.	Dual diagnosis (intellectual and psychiatric disability) was identified for a possible project by the SOG in July 2003, but was not developed into a project (no documented reasons). The current project was identified by the SOG in March 2004, out of funds available as an outcome of the Drug Summit. Cross-agency workshops are proposed for frontline staff and planning has commenced. No timeframes provided.

Project/activity	Details	Progress/outcomes
6. DADHC Criminal Justice Manual for disability support staff	Development of a resource manual for disability workers to support people with intellectual disability in contact with the criminal justice system.	Listed as a current DADHC activity in August 2002. Identified as a SOG project in May 2004. A draft manual for DADHC Disability Services has been developed in consultation with Departments of Corrective Services and Juvenile Justice. Once finalised, it will be modified for use across the sector. No timeframes provided.
7. Infrastructure mapping	To map the availability of technology resources and gaps across agencies (eg, video conferencing, internet use, web based chat), to enable future resource and information sharing.	Identified as a possible SOG project in July 2003, and a project brief was drafted. The project was not completed during the term of the SOG. The draft report to the Human Services CEO forum includes this project as an additional activity, stating the SOG will collate information about existing technology resources across the sector. No timeframes provided.
8. Joint case management – community based Juvenile Justice pilot project	Similar to the Orana project above, but involving four young people on community service orders. Proposed to include young people in the target group from CALD backgrounds, and to be piloted in the Blacktown area.	Identified as a possible SOG project in July 2003, and approved by the Directors General of Juvenile Justice and DADHC in Sept 2003. Not progressed due to delay in determining pilot location and in getting endorsement from Human Services CEOs. ³¹ Proposed for ‘future development’ in the draft report to the Human Services CEOs provided by DADHC.
9. Improving access to Youth Justice Conferencing	To improve access to Youth Justice Conferencing for the target group by ‘working with conference convenors around indicators of intellectual disability and identifying strategies’ to improve access.	Identified as a SOG project in August 2003, and approved by the Directors General of Juvenile Justice and DADHC in Sept 2003. Not progressed due to delay in determining pilot location and in getting endorsement from Human Services CEOs. ³² Proposed for ‘future development’ in the draft report to the Human Services CEOs provided by DADHC.
10. Joint case management - Probation and Parole pilot project.	Similar to the Orana project above, ‘but with emphasis on adult corrections.’ No other details available.	Identified as a possible SOG project in July 2003. Not clear why not progressed, no reasons documented in minutes. Proposed for ‘future development’ in the draft report to the Human Services CEOs provided by DADHC.
11. Post-release accommodation	Project detail not clear as two options have been considered: <ul style="list-style-type: none"> • short term post release accommodation for the purposes of assessment, skills development and transition to the community. • Supported housing models being considered through the Partnerships Against Homelessness interagency 	Identified as a possible SOG project in July 2003 with focus on short-term post release support. In August 2003 a project brief was developed for a pilot focusing on long term supported accommodation targeting a small number of people currently in prison, with a focus on pre-release interagency planning. This was put ‘on hold’ in November 2003, on the basis of work by the Partnerships Against Homelessness interagency, looking at supported housing for ex-offenders. There are two versions of a project proposed for ‘future development’ in the draft report to the Human Services CEOs. The draft report provided by DADHC states that post-release accommodation would be progressed ‘in the context of work undertaken by Partnerships Against Homelessness.’ The draft report

³¹ Response from Department of Juvenile Justice, 11 August 2004.

³² Response from Department of Juvenile Justice, 11 August 2004.

Project/activity	Details	Progress/outcomes
		provided by NSW Police proposes a project to develop short-term post release accommodation for adults in the target group for the purposes of assessment, skills development and transition to the community.
12. Emergency response	To trial a crisis/emergency service to assist with initial risk assessment for the target group.	Identified as a possible SOG project in July 2003. By August 2003 it was identified as difficult to progress without a broader accommodation framework. Proposed for 'future development' in the draft report to the Human Services CEOs provided by NSW Police.
13. Framework for accommodation and support for people to live in the community	To develop a framework of accommodation and support options, including looking at legislative issues (eg, secure accommodation, guardianship)	Identified as a possible SOG project in July 2003, and subsequently decided in August 2003 that the project was too broad and issues would be incorporated into the post-release accommodation project. Proposed for 'future development' in the draft report to the Human Services CEOs provided by NSW Police.

The draft report to the Human Services CEO forum provided by DADHC also includes work by the SOG to collate policy statements and map services (terms of reference 2 and 3) as another project.

In addition to the above projects, the SOG intended developing a whole of government response to *The Framework Report*.³³ Although some agencies completed work to inform this activity, it does not appear to have been finalised and is not included in the draft report to the Human Services CEOs. There are no reasons documented for not progressing this activity.

6.4 Action by DADHC to progress the work of the Senior Officers' Group for Intellectual Disability and the Criminal Justice System

The draft report to the Human Services CEO forum concludes that the area of most difficulty identified by the SOG is the provision of satisfactory post-release support that meets individuals' basic and criminogenic needs.³⁴ It includes two recommended options for progressing work in this area:

1. That the SOG continue with implementation of projects identified in the draft report, subject to any recommendation by the Human Services CEO forum concerning future priorities, or
2. That a targeted SOG be established, consisting of agencies particularly concerned with post-release services, with high-level agency representation. The functions of the targeted group would be to monitor and review current SOG projects and oversee implementation of the projects identified for future work, to implement an interagency decision making process in relation to complex cross-agency individuals around the provision of post-release services, and to use this work to inform recommendations for service system enhancements.

³³ Reference to this activity is included in SOG minutes from August 2002 to February 2004.

³⁴ Response from NSW Police, 11 August 2004.

7. STATEMENT OF PROVISIONAL FINDINGS AND RECOMMENDATIONS

In our 'statement of provisional findings and recommendations' we concluded:

- That at the time they were developed and formalised, the terms of reference for the SOG were a logical extension of the foundation work the group had begun over the first twelve months and clarified the direction and purpose of the group. The target of the SOG to develop and recommend a whole of government policy, underpinned by a clear understanding of agency roles and responsibilities and current services, reflected the urgent need for a systematic and coordinated approach to meeting the needs of the target group as identified in the reports *People with an Intellectual Disability and the Criminal Justice System* (Law Reform Commission, 1996) and *The Framework Report* (2001).
- The focus of the SOG clearly changed over time, from the development of whole of government policy to overseeing and reporting on a collection of interagency projects. DADHC as lead agency for the SOG unreasonably failed to satisfactorily fulfil its responsibilities to promote the achievement of the outcomes and targets set out in the terms of reference for the Group.
- In addition to the change in focus, the lack of clear DADHC policy is likely to have been a hindrance to DADHC as the lead agency, and to other participating agencies. These problems are likely to have impacted on the capacity of the SOG to identify and implement strategic projects. The lack of clearly identified priorities and changing project focus over time suggests that the SOG lacked strong leadership and/or a clear focus on its goals.
- A lack of project planning is likely to have contributed to the failure to progress or fully implement some projects carried out under the SOG's auspice, and is a likely factor in the changing focus on projects over time. Evidence suggests that some projects have been implemented without plans and with limited capacity to evaluate their effectiveness.

To address these findings we provisionally recommended that DADHC should review its role as lead agency of the Senior Officers' Group on Intellectual Disability and the Criminal Justice System for the purpose of:

- a) developing strategies to address the findings of this investigation; and
- b) progressing the work of the Senior Officers' Group.

8. DADHC'S RESPONSE TO THE STATEMENT OF PROVISIONAL FINDINGS AND RECOMMENDATIONS

In response to the statement of provisional findings and recommendations, DADHC has acknowledged the investigation's provisional findings, agreeing that while the SOG commenced on a strategic foundation, it was unable to achieve the terms of reference in the set time frame.

However, the department has submitted that the achievements of the SOG should be considered, given a number of factors hindered the work of the group. The department has

identified that these factors include the complexity of the population group; the competing priorities of the participating agencies; limited resources; and the number of agencies involved.

DADHC advises that in considering how to address these factors, the department raised the issue of the effectiveness of Senior Officer Groups and Interdepartmental Committees at the Human Services CEO forum meeting of 19 August 2004. This forum has agreed to work with the Premier's Department to develop principles for committee structures to enhance the effective functioning of Senior Officer Groups.

Specifically in relation to the SOG on Intellectual Disability and the Criminal Justice System, DADHC advises that the Human Services CEOs forum has reaffirmed its commitment to working within a whole of government policy framework to better meet the needs of people with intellectual disability who come into contact with the criminal justice system.

Against the background of this investigation, DADHC has advised that it is implementing the following strategies to progress the work of the SOG:

- a) DADHC will maintain the role of lead agency
- b) A Deputy Director General of DADHC will chair the SOG
- c) The department has commenced negotiations with key agencies to ensure high level and consistent membership of the group
- d) The group will reconvene to review the terms of reference and develop a strategic plan
- e) Human Service CEOs will receive regular reports to monitor the progress of the SOG

9. RECOMMENDATIONS

In light of DADHC's response to the provisional investigation findings and recommendations, I now recommend that:

1. By 1 May 2005, the Department of Ageing, Disability and Home Care should provide this office with a copy of the agreed terms of reference for the Senior Officers' Group on Intellectual Disability and the Criminal Justice System, and the strategic plan to implement these.
2. By 1 March 2006, the Department of Ageing, Disability and Home Care should provide this office with a detailed progress report against the terms of reference for the Senior Officers' Group on Intellectual Disability and the Criminal Justice System.

Steve Kinmond
Deputy Ombudsman

APPENDIX