



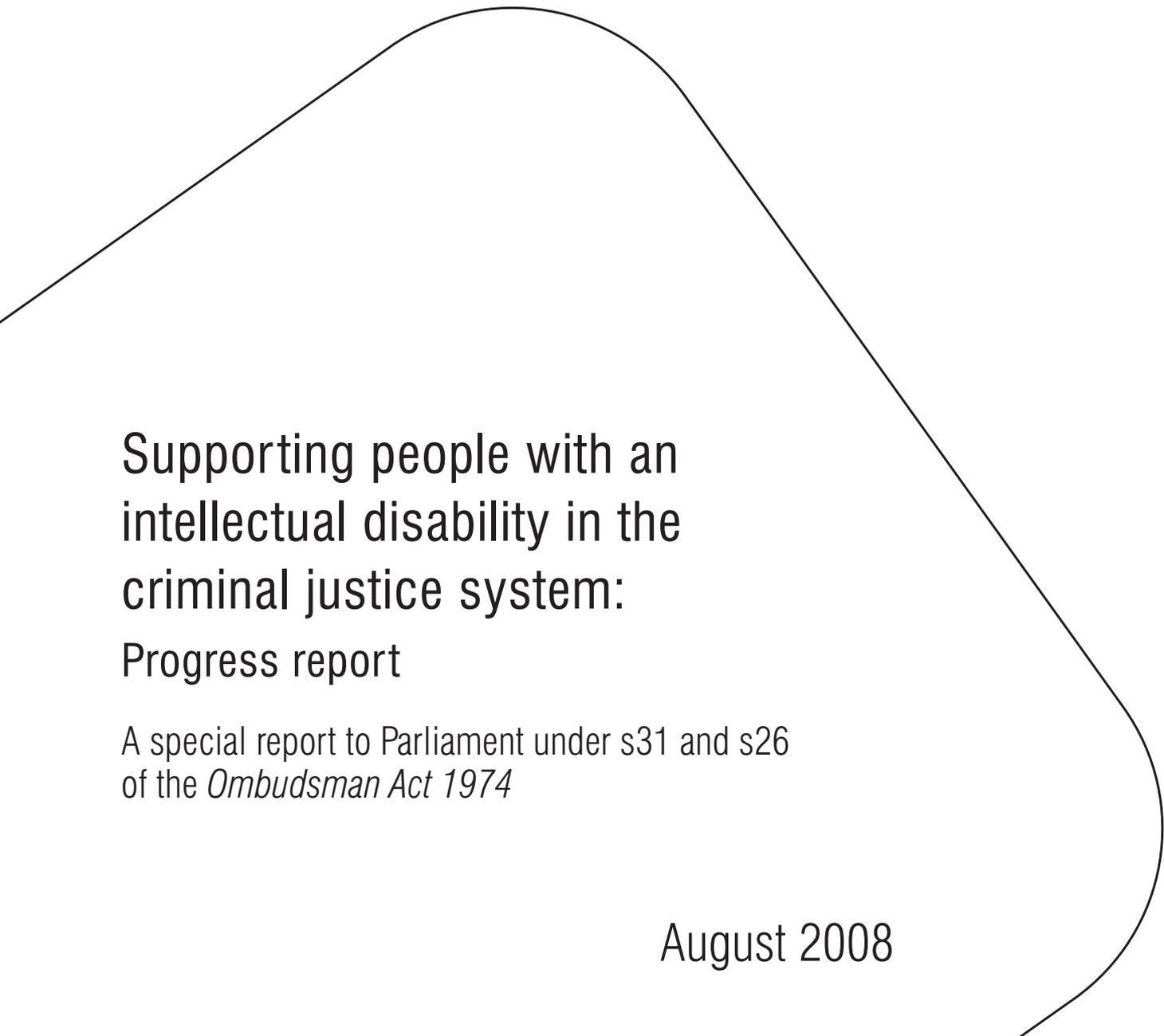
NSW Ombudsman

Supporting people with an intellectual disability in the criminal justice system:

Progress report

A special report to Parliament under s31 and s26
of the *Ombudsman Act 1974*

August 2008



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The Hon. Peter Primrose MLC
President
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Parliament House
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The Hon. Richard Torbay MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

I submit a report pursuant to section 31 of the *Ombudsman Act 1974*. In accordance with the Act, I have provided the Minister for Disability Services the Honourable Kristina Keneally with a copy of this report.

I draw your attention to the provisions of section 31AA of the *Ombudsman Act* in relation to the tabling of this report and request that you make it public forthwith.

Yours sincerely

Bruce Barbour
Ombudsman

Foreword

Research and inquiries over many years have indicated that people with an intellectual disability are significantly over represented as offenders in all aspects of the criminal justice system.

In 1996, the NSW Law Reform Commission recommended a range of reforms intended to ensure that people with an intellectual disability who come into contact with the criminal justice system have access to fair procedures, early intervention and prevention programs, and receive appropriate responses to their specific needs. The Commission highlighted the importance of a 'cross-agency' or 'whole-of-government' approach to achieving better outcomes for the target group.

In 2002, a cross-government Senior Officers Group (SOG) was formed to bring about better outcomes for people with an intellectual disability in contact with the criminal justice system. The group was chaired by the Department of Ageing, Disability and Home Care (DADHC).

In 2004, in response to a complaint about the lack of progress of the SOG, we initiated an investigation of DADHC's conduct as lead agency of the SOG.

Our investigation found significant problems with DADHC's leadership of the SOG, little progress on individual projects initiated under the auspice of the SOG, and little evidence of agencies working collaboratively and cooperatively to achieve better service delivery for people with an intellectual disability in contact with the criminal justice system.

The purpose of this report is to outline the findings of our 2004 investigation, DADHC's undertakings to address these findings, and the progress of the SOG since then.

There has been some progress since 2005. However, we are concerned that, in the five years since the SOG was formed to bring about better outcomes for the target group, the progress has been very slow.

Because of the human and financial cost of poor inter-departmental collaboration and coordination in this area of service delivery, we believe that the community would expect greater progress than the achievements made to date. Given the not insignificant cost to the public arising from inadequate service delivery, we believe more needs to be done to ensure the strengthening of cross-agency service delivery for offenders with intellectual disabilities.

In 2010, the Senior Officers Group will undertake a review of its progress, including evaluations of the impact of its work. We will continue to closely monitor the group's progress.



Bruce Barbour
Ombudsman

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People with an intellectual disability and the criminal justice system

Research and inquiries over many years have established that people with an intellectual disability are over-represented as offenders in all aspects of the criminal justice system. They are more likely to be arrested, questioned and detained for minor public order offences. They are more likely to receive harsher penalties and have less access to sentencing options available to other offenders. They may experience disadvantage when interviewed by police or when in contact with courts because they don't understand what is happening and what is being said. They are often highly vulnerable in prisons because of their disability. They have higher rates of recidivism than the general prison population.

The same research and inquiries also indicate that there is a lack of services to meet their needs and prevent re-offending. The cost to both offenders with intellectual disability and the broader community is substantial.

A number of government authorities come into contact with this group. In addition to police and the Departments of Corrective Services and Juvenile Justice, these include the Departments of Ageing, Disability and Home Care, Education and Training, Housing, Community Services, NSW Health and the Attorney General's Department.

In 1996, the NSW Law Reform Commission recommended a range of reforms intended to ensure that people with an intellectual disability who come into contact with the criminal justice system have access to fair procedures, early intervention and prevention programs, and receive appropriate responses to their specific needs.

To ensure an interagency approach to assessment and the provision of community support services to this group, the Commission recommended that the then NSW Ageing and Disability Department coordinate *'the development of a comprehensive interdepartmental policy and procedural framework designed to protect the rights and meet the needs'* of the group.

The Senior Officers Group on People with an Intellectual Disability and the Criminal Justice System

Five years after the release of the Commission's 1996 report *People with an Intellectual Disability and the Criminal Justice System*, and in response to difficulties in progressing a coordinated approach to the needs of the group, the Intellectual Disability Rights Service and the NSW Council for Intellectual Disability released a report about offenders with an intellectual disability — the *Framework Report*. This report also made detailed recommendations for a coordinated government approach to improve supports to the target group.

In mid-2002, a cross-government Senior Officers Group ('SOG'), chaired by DADHC and including the Departments of Education and Training, Corrective Services, Housing, Community Services, Juvenile Justice, NSW Health, the NSW Police Force and the Attorney General's Department, began meeting to bring about better outcomes for people with an intellectual disability in contact with the criminal justice system. The following year, the SOG developed terms of reference to achieve this objective. These included:

- the development of a whole-of-government policy position on responding to the target group.
- the clarification of the respective roles, responsibilities and priorities of government agencies in relation to the group.
- the identification of strategic priorities and opportunities across agencies.
- the development of a project plan to address agreed priorities and outcomes.
- a review of outcomes and the preparation of a report on these to be provided to the Human Services and Justice CEOs and Ministers by August 2004.

Ombudsman investigation

In July 2004, we received a complaint from the NSW Council for Intellectual Disability about the lack of progress by the SOG.

Following preliminary inquiries, we decided to investigate DADHC's conduct as lead agency for the SOG. Our particular focus was the adequacy of DADHC's actions to promote the achievement of the SOG's terms of reference.

As part of our investigation, we sought information from DADHC about meetings held by the SOG; the action taken by DADHC to progress each of the SOG's terms of reference; the progress of relevant projects; and information about support for the work of the SOG. We also considered information provided by government agencies involved with the SOG, and about projects developed through the SOG.

In summary, our investigation found that the focus of the SOG had changed over time from the development of a whole-of-government policy, to overseeing and reporting on a collection of interagency projects and activities. These included projects to improve services such as accommodation for people released from correctional centres, projects to improve joint case management between departments, and the development of manuals and training.

In relation to many of these projects, we found a lack of project planning, a changing project focus over time, and projects being started but not completed. More broadly, we found that:

- DADHC, as lead agency for the SOG, failed to promote the achievement of the outcomes and targets set out in the group's terms of reference;
- DADHC itself lacked a clear policy relating to people with an intellectual disability in contact with the criminal justice system;
- the change in the focus of the SOG and the lack of clear DADHC policy impacted on the capacity of the SOG to identify and implement projects;
- the lack of clearly identified priorities and changing project focus were indicative of the SOG either lacking strong leadership and/or a clear focus on its goals;
- the lack of project planning contributed to the failure to progress and/or fully implement a number of the projects carried out under the SOG's auspice; and
- some of the SOG projects had been implemented without plans and with limited capacity to evaluate their effectiveness.

We were particularly concerned with the changed focus of the SOG. It was unclear to us how a sustained whole-of-government approach to the needs of people with an intellectual disability in, or at risk of, contact with the criminal justice system could be achieved without a solid policy foundation.

In response to our findings, DADHC told us that the work of the SOG had been hindered by the complexity of the target group, the competing priorities of the participating agencies, limited resources, and the number of agencies involved.

DADHC also told us that the department had raised the issue of the effectiveness of senior officer groups and interdepartmental committees at the Human Services CEOs Forum meeting in August 2004. DADHC said that the Forum would work with the Premier's Department to develop principles for committee structures which, in turn, would enhance the functioning of senior officer groups. In this regard, we note that in early 2005, the NSW Premier's Department issued a set of principles to guide the operation and conduct of senior officer group meetings.¹

In relation to the Senior Officers Group for People with an Intellectual Disability and the Criminal Justice System, DADHC said that the Forum was committed to working within a whole-of-government policy framework to better meet the needs of people with a disability in, or at risk of, contact with the criminal justice system.

As to how the department intended to progress the work of the SOG, DADHC told us that:

- it would maintain the role of lead agency, and a Deputy Director-General of the department would chair the group;
- it had commenced negotiations with key agencies to ensure high level and consistent membership of the group;
- the SOG would reconvene to review the group's terms of reference and to develop a strategic plan; and
- Human Services CEOs would receive regular reports to monitor the progress of the SOG.

Progress 2005–2008

Since completion of our investigation, we have closely monitored the work of the Senior Officers Group on People with an Intellectual Disability and the Criminal Justice System. Acknowledging DADHC's observations regarding the complexity of the target group, we have been particularly interested to track progress in the development of a comprehensive inter-departmental approach to meeting the needs of the group.

Development of the 2005–2006 Action Plan

In October 2005, the SOG released its revised terms of reference. These said the SOG would develop and monitor a whole-of-government 2005–2006 Action Plan for improving services to the target group. The SOG would also provide biannual reports to the Human Services and Justice CEO Forums. The terms of reference also provided for the SOG to focus on the achievement of six cross-agency projects. These projects were:

1. The trialling of a court liaison service for people with an intellectual disability before the courts, involving assessment of their needs and identification and brokerage of support options.
2. The development of a cross-agency case management approach for offenders with an intellectual disability on community-based orders.
3. The development of a case management approach to assist adults who have repeated minor offences, and who are in frequent contact with police, without receiving community-based orders or custodial sentences.
4. The development of a cross-agency case management approach for young people with an intellectual disability in the juvenile justice system, with priority given to Aboriginal young people.
5. The development of supported accommodation options to assist parolees with an intellectual disability after their release from correctional centres.
6. The development of accommodation support models providing long and short-term accommodation options for people with an intellectual disability with a focus on those exiting correctional centres.

The success of these projects would be judged by the extent to which they resulted in:

- lower rates of people with an intellectual disability being arrested, charged and jailed;
- higher rates of people with an intellectual disability in diversionary programs; and
- lower rates of offending and re-offending of people with an intellectual disability.

In response to concerns that we raised in late 2005 about the apparent shift in the SOG's focus from a whole-of-government framework to six largely pilot or trial projects, DADHC told us that it believed the SOG's terms of reference and Action Plan would provide long term improvements in service delivery, and would provide for a consistent and coordinated approach across the human services and justice agencies.

Despite this advice, in early 2006 the SOG recommended to the Human Services CEOs Forum that the SOG should develop a set of overarching principles and a Joint Guarantee of Service. In our view, these initiatives were overdue. Once implemented, the principles and guarantee of service would provide the foundation for a sustained whole-of-sector approach to meeting the needs of the target group — something that, in our view, shared projects alone could not achieve.

In September 2006, it was agreed at a joint meeting of the Human Services and Justice CEOs that the SOG's Action Plan would be extended to include:

- the development of cross-agency service principles and protocols for agencies working with the target group;
- the preparation of a response to the *Framework Report* for consideration by the NSW Government; and
- a proposal for consideration by the NSW Government regarding the commencement of a feasibility study regarding the option of people with an intellectual disability in correctional facilities being accommodated in alternate facilities.

Implementation of the 2005–2006 cross-agency projects

From the time that the SOG initially settled on the six cross-agency projects in 2005, there have been some changes to these projects:

- a) In early 2006 a new project — 'Young people with an intellectual disability at risk of contact with the criminal justice system' — was added to the list. The Department of Education and Training has 'lead agency' responsibility for this project.
- b) Following the 2006 release of the NSW Government's 10-year plan for disability services — *Stronger Together* — the project concerning accommodation options for people leaving correctional centres became the Criminal Justice Program, a discrete program area in DADHC. DADHC has advised that the SOG no longer has oversight of the project, and it has been removed from the SOG Action Plan. As a result, we have not included this project in our consideration of the SOG's progress in implementing the Action Plan.

¹ NSW Premier's Department *Principle for the Operation and Conduct of meetings of Senior Officer Groups*, February 2005

- c) The project concerning coordinated case management for adults on community based orders and the project on parolee accommodation and support have now been included under the Shared Access Trials under the Housing and Human Services Accord. Accordingly, these two projects report to the Housing and Human Services SOG.

However, information provided by the SOG on People with an Intellectual Disability and the Criminal Justice System indicates that these two projects remain part of the current Action Plan. As a result, we have included them in our consideration of the SOG's progress to date.

In relation to the implementation of the individual projects, DADHC, on behalf of the SOG, told us that, as at May 2008, the following progress has been made.

The trialling of a court liaison service for people with an intellectual disability before the courts

DADHC, NSW Health, the Attorney General's Department and the NSW Police Force are responsible for this project. The trial, renamed the Disability Access Officer at Court trial, is yet to start and we have not been provided with a likely commencement date.

DADHC told us that, to date, progress has involved the revision of the project to be consistent with relevant interagency service principles and protocols and DADHC's planned criminal justice policy. Recruitment of the Disability Access Officer has commenced.

Coordinated case management for adults on community based orders

The project, renamed the Co-existing Disorders Project, involves Corrective Services, NSW Health and DADHC. It aims to improve interagency management of offenders with dual diagnosis.

A project group made up of representatives from the four agencies is overseeing the project.

Project progress has included:

- all high risk offenders within the targeted locations of Nowra, Newcastle, Gosford, Sydney (City), and Bathurst, and who are suitable for intervention, have been identified.
- a referral and client consent form has been developed and trialed.
- part-time project coordination positions within Community Offender Services have been developed and mostly filled.
- a services resource manual has been developed.
- work is underway to develop a Shared Access Agreement under the Housing and Human Services Accord for piloting in Gosford, Nowra and Newcastle.
- an evaluation strategy is in place.

Case management for adults in repeated contact with police

The project involves DADHC, the NSW Police Force and Corrective Services. It entails identifying four to six people with an intellectual disability in Blacktown and Parramatta Local Area Commands who have had repeated contact with police, and developing agreed case plans for each person, with defined agency responsibilities.

DADHC has told us that considerable progress has been made in relation to the project. Governance arrangements between the agencies have been agreed to; an operational framework for implementation of the project has been developed; and operational procedures have been established.

At the time of DADHC's May 2008 advice, nine people had been identified for referral to the project. Three of these had been assessed as eligible while four did not meet the criteria. Two people were yet to be assessed.

Additional candidates for the project will be identified in the Blacktown and Parramatta Local Area Commands. Training will be provided to both DADHC staff and police to support appropriate referrals.

DADHC advises that the project coordinating group will be provided with a report assessing the outcomes of the joint case management approach once it has been operational for 12 months.

Young people with an intellectual disability in the juvenile justice system

In 2003/04, the Department of Juvenile Justice and five other agencies piloted a case management project in Dubbo for young people leaving the Orana Juvenile Justice Centre. The focus of the pilot was the provision of effective support to young people at high risk of recidivism.

The aim of this project is to extend the Orana joint case management approach to support Indigenous young people who have complex needs and who are on community based orders, in the Blacktown area. The project involves the Departments of Juvenile Justice, Community Services, Education and Training, NSW Health and the NSW Police Force.

DADHC has told us that governance arrangements between the agencies have been agreed to; an operational framework for implementation of the project has been developed; and operational procedures have been established.

As at May 2008, the Department of Juvenile Justice had identified nine young people as potential candidates for the project, and referred five of these to DADHC. Three people were deemed eligible and are now in receipt of DADHC specialist disability services. Of these three, joint case management services between DADHC and the Department of Juvenile Justice has commenced for one person. We were told by DADHC that the development of joint case plans for the other two young people was pending the release of one from custody and the reallocation of the other person to a new Juvenile Justice officer.

A project group made up of representatives from the three agencies is overseeing the project. DADHC advises that the project coordinating group will be provided with a report assessing the outcomes of the joint case management approach once it has been operational for 12 months.

Parolee accommodation and support initiative

This project aims to provide accommodation and support to parolees with a mental illness and/or an intellectual disability who, on release, are at risk of re-offending without appropriate accommodation and support. The objective is for the Department of Housing to provide accommodation to eligible clients and the Department of Corrective Services, NSW Health and the Community Restorative Centre — a NSW community organisation dedicated to supporting people affected by the criminal justice system — to provide support. Available funding will enable the provision of support services for five to eight parolees in a 12-month period.

DADHC has told us that an operational framework for the project is nearing completion, and the Community Restorative Centre has begun accepting referrals.

Young people with an intellectual disability at risk of contact with the criminal justice system

The Department of Education and Training has lead agency responsibility for this project, which aims to engage a whole-of-government community program to assist young people with an intellectual disability at a special school in a disadvantaged area. The aim of the project is to improve education, training, employment, and social outcomes for the young people and to reduce the likelihood of them offending.

DADHC has told us that the project commenced in February 2006. In October 2006, DADHC advised that the project had involved preliminary meetings between the partner agencies, and the creation of four working groups. In November 2007 and May 2008, DADHC told us that it was awaiting updated information from the Department of Education and Training on the progress of this project.

Implementation of the other aspects of the SOG Action Plan

Development of cross-agency principles and protocols

In October 2007, DADHC developed draft NSW Interagency Service Principles and Protocols. A final version of the agreement has been provided to member agencies of the SOG for endorsement.

The document states that the cross-agency principles — to be supported by agencies' own policies and procedures — are intended to facilitate coordination, commitment and clarity of roles and responsibilities amongst agencies, and to identify and address gaps in the provision of services and support for the target groups.

The agreement states that SOG agencies are to report annually on the implementation of the agreement as part of their Disability Action Plans. Once it has been endorsed, DADHC will be responsible for implementing an annual review of the agreement for the first three years, and biannually thereafter.

SOG response to the Framework Report

DADHC told us that the SOG completed a review of the NSW Government's progress against the recommendations of the Framework Report in September 2006. This was not submitted to government as originally intended because, in March 2007, the NSW Council for Intellectual Disability released a new report that examined the provision of human services in NSW for offenders with an intellectual disability.

In May 2007, DADHC advised us that given the new report, it would review the draft response prepared for government. In May 2008, DADHC told us that it is still working on the draft.

Other relevant developments

Our 2004 investigation was critical of DADHC, as lead agency for the Senior Officers Group on People with an Intellectual Disability and the Criminal Justice System, because the department itself lacked a clear policy and clear service arrangements relating to the target group. DADHC has made some progress to address these deficiencies.

Development of DADHC's policy on working with offenders and potential offenders

In 2004, we identified that DADHC did not have a clear policy in relation to people with an intellectual disability in contact with the criminal justice system, and that this was likely to have impacted on the capacity of the SOG to develop a whole-of-government policy.

In May 2007, DADHC told us that it had started work on a policy framework in relation to the target group. The draft policy is currently the subject of consultation, and according to DADHC it will be released and implemented across DADHC at the commencement of the 2008/09 financial year.

Development of a criminal justice resource manual

DADHC has been working on a criminal justice resource manual since August 2002. The department has told us that the manual, which was expected to be released for consultation in June 2008, will provide practical guidance for staff working with people with a disability in, or at risk of, contact with the criminal justice system. The department also told us that the manual will complement DADHC's new criminal justice policy.

Integrated Services Project

In September 2005, the NSW Integrated Services Project for Clients with Challenging Behaviour commenced. This is a three-year pilot project administered by DADHC in partnership with the Department of Housing and NSW Health. Since its inception, the project has coordinated cross-agency responses for around 40 people.

The Social Policy Research Centre at the University of NSW has been engaged to conduct an independent evaluation of the project.

Criminal Justice Program

In May 2006, the NSW Government released a 10-year plan, *Stronger Together*. This outlines the direction for disability services in NSW and includes funding of \$88.4 million over 10 years targeted at providing services to people with an intellectual disability in contact with the criminal justice system.

The first round of funding in 2006/07 resulted in the creation of 36 long-term places within DADHC's Criminal Justice Program to support people with an intellectual disability leaving custody. This includes specialist accommodation, casework and clinical support. Currently there are 72 people receiving a service from this program, with nine accommodation units in operation.

In August 2006, a Reception and Assessment Centre opened for potential DADHC clients exiting correctional centres. The unit enables detailed assessments, coordination of clients' support needs and the development of future living arrangements. Four people entered the unit in 2006-07.

In 2006, DADHC also established the Office of the Senior Practitioner to improve the quality of services for people with complex needs. The Office of the Senior Practitioner has responsibility for overseeing the work of DADHC's Criminal Justice Program and the Integrated Services Project.

Conclusions

It is over five years since the Senior Officers Group for People with an Intellectual Disability and the Criminal Justice System commenced, and over three years since our investigation highlighted significant problems with the SOG's work to meet its terms of reference. While it is pleasing to see that the SOG has identified the need to develop an overarching whole-of-government agreement as to how the needs of the target group will be met, we note that the proposed interagency service principles and protocols agreement is yet to be signed off by all participating agencies. This is despite the SOG first identifying the need for such an agreement in early 2006.

A number of significant initiatives have commenced in the last three years intended to address the needs of people with an intellectual disability in contact with the criminal justice system, through collaborative initiatives across a range of agencies. However, progress has been slow. Five years after the commencement of the SOG, and two years after the development of the current Action Plan, the majority of the projects are either yet to be implemented or are in the early stages of implementation.

Work in relation to at least four of the six projects has not sufficiently progressed to a point where projects can be evaluated, outcomes for people with an intellectual disability assessed, and decisions made about whether the projects should be replicated state-wide. The number of people accessing the pilot and trial projects is small.

Clearly, the timeframes set by the SOG for the 2005/06 Action Plan have not been met.

While progress has been slow, it is apparent that critical work establishing procedures, governance arrangements, and operational frameworks for project implementation has been undertaken. The *Interagency Service Principles and Protocols* are hopefully about to be finalised, and the SOG is about to provide advice to the NSW Government on the progress made to implement the NSW Council on Intellectual Disability's *Framework Report* recommendations. In June 2008, the SOG reported to the CEOs Cluster on the SOG's progress to meet its objectives, and will make a similar report in June 2009.

On behalf of the SOG, DADHC has also told us that, in 2010, the SOG will undertake a review of its progress against the Action Plan. This will include an evaluation of the impact of the service principles and protocols, DADHC's criminal justice policy, and an update on the individual projects. Advice on the SOG's progress to meet its objectives will be provided to this office in June 2009, and annually to the CEOs Cluster.

The need for an interagency approach to effectively meet the needs of the target group is not in dispute. Progress to date has been slow. Accordingly, we will continue to monitor the SOG's progress.

Recommendations

In framing our recommendations, we have taken into account DADHC's advice that:

- commencing June 2009, it will provide a yearly report to this office on progress to meet its objectives; and
 - in 2010, the SOG will review its progress against the Action Plan, including an evaluation of the impact of the service principles and protocols, DADHC's criminal justice policy, and an update on the individual projects.
1. In light of this advice, we recommend that DADHC, as lead agency for the Senior Officers Group on Intellectual Disability and the Criminal Justice System, report to this office in June 2009 and June 2010 on:
 - a) The SOG's progress towards meeting its objectives, including completion of the Action Plan.
 - b) The SOG's assessment as to whether the initiatives implemented have been effective, and the evidence to support its assessment.

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