

# **People with Intellectual Disabilities and the Criminal Justice System**

## **The Framework Report**

### **EXECUTIVE SUMMARY**

The target group of this project is people with intellectual disabilities who are in contact with the criminal or juvenile justice system, or at risk of contact. The project was funded to develop a framework for provision of appropriate community services for this group. The project was focused on accommodation, case management, behaviour intervention and related services.

### **Where did the project come from?**

Since *The Missing Services* report of the Wran government in 1985, it has been well documented that people with intellectual disabilities do not get the services that they need to help them keep out of trouble with the law. The Law Reform Commission reaffirmed this in its 1996 Report 80, *People with an Intellectual Disability and the Criminal Justice System*.

Various studies have also indicated that people with intellectual disabilities are highly represented in the criminal and juvenile justice systems.

### **Process of the project**

The key steps in the project were:

- Consultation with a wide range of stakeholders about the characteristics and needs of the target group and barriers to appropriate service provision.
- An international literature review including successful service provision models.
- Intensively looking at a sample group of offenders with the assistance of a clinical issues group with diverse experience.
- Consultation on an options paper.

### **Nexus with government**

As well as being Government funded, the project was overseen by a reference group including representatives of eleven government agencies and four community representatives.

The project sought to dovetail with various current initiatives of the Government including:

- The Disability Policy Framework with its aim of ensuring that the services of all government agencies are appropriate for people with disabilities.
- The Disability Reform Directions of 2000.
- The Families First Program and the Children and Young People (Care and Protection) Act 1998.

- Initiatives of DoCS disability services and the Department of Corrective Services to better meet the needs of offenders with intellectual disabilities.

### **Issues of cost**

The Law Reform Commission concluded that the cost to government of properly meeting the needs of the target group would be recovered in the long term. There would be a reduction in recidivism and in duplicative and inefficient services to the target group. For example, imprisonment costs of up to \$73,000 per annum and court costs of over \$10,000 per day could be avoided. There are also the human costs to victims and the target group.

The project's literature review noted international studies where appropriate services had led to low rates of recidivism.

At the same time, properly meeting the needs of the target group is a very large task and related to the broader issue of unmet need for community services. It is obviously very important that these issues be resolved. However, in view of the current budgetary context in NSW, implementation of this report may need to occur over time. The project has sought to provide recommendations for priority action that is most needed in the first instance.

### **Problems and solutions**

Members of the target group are usually male and tend to come from deprived socio-economic backgrounds, leave school early, have unstable accommodation and have additional problems such as with alcohol and other drugs.

Members of the target group predominantly have mild to borderline intellectual disabilities. However, those with borderline intellectual functioning on IQ scores are only part of the target group if they have the same degree of limitations in their adaptive skills as are required for people with mild disabilities.

The needs of the target group vary greatly with factors including the extent of a person's disability. There is a widespread need for improved access to generic human services. Many of the target group also need specialist disability services.

The report found fundamental gaps in meeting the needs of the target group, including:

**Identification** - There is no systematic or reliable process for identifying members of the target group so as to provide a basis for meeting their needs. The report recommends adoption of screening tools and enhancement of skills in identifying members of the target group.

**Police interviews and court** - Members of the target group are severely disadvantaged in police interviews and in courts. A network of support people is recommended for these processes, as well as training of lawyers.

**Meeting individual needs** - Adequate assessment of people's support needs seldom occur. Those needs are seldom properly met. Few people have a case manager or support coordinator to coordinate planning to meet their needs. Where a person's needs range across a number of agencies, cooperation between those agencies is difficult to achieve.

Enhanced processes are proposed including access to support coordinators and case managers. The Department of Ageing, Disability and Home Care (DADHC) Service Access System has potential as a source of flexible funding for people whose needs cannot be met elsewhere. However, strategies are needed to ensure the system is accessible to the target group. The SAS should be complemented by funding of some services to meet common needs.

**Social networks, mentors and advocacy** – Members of the target group commonly lack positive relationships, role models and advocates in their family and friends. Families lack support in dealing with the pressures arising from offending behaviour.

The roles of advocacy and mentoring need to be developed with the target group. Families need better support.

**Programming interventions to address the offending behaviour** - Many members of the target group need professional intervention and support to address their offending behaviour. This usually does not occur. There is a lack of expertise in this field in NSW.

Recommendations aim at development of skills in behavioural and other clinical interventions.

**Education and training** - The problems of target group members are often apparent early in their schooling, but they are often not recognised and seldom properly addressed. Adult education also is not well attuned to the needs of the target group.

The school system needs to enhance its capacity for early identification of target group members and for action to avoid the development of offending behaviour. TAFE colleges need to make themselves more accessible to the target group.

**Health services** - Many members of the target group need assistance from mental health, drug and alcohol, and other health services. Those services cater poorly for the target group.

Recommendations aim at much better cooperation between disability services and health services. Professionals in health services need training to better serve the target group and disability professionals need a better understanding of health issues.

**Somewhere to live** – Members of the target group often lack appropriate accommodation and associated support and supervision. Many are homeless.

Existing services need to enhance their capacity to provide accommodation for the target group. However, DADHC also needs to plan a focused

development of accommodation and related support for the target group. This needs to cover a range of needs including people in urgent crises, limited term accommodation for intensive program support, an ongoing home and transfer of some individuals from prison or a detention centre during the term of a sentence.

**Aboriginality and NESB** - Right across the above issues, there are additional problems for people from a non English speaking background and Aboriginal people. There is a lack of sensitivity to language and cultural issues. Recommendations though the report aim to address the particular needs of Aboriginal people and those from a NESB.

### **Key themes**

Seven key themes run through the recommended framework:

**A cross agency problem** - It is neither feasible nor appropriate for specialist disability services alone to seek to address the needs of the target group. A wide range of government and community agencies needs to be accessible to the target group and provide them with an equitable share of services. These include health services, schools and TAFE colleges and child and family services. For example, child and family services have an important role since state wards with intellectual disabilities are vulnerable to developing offending behaviours. Child and family services also have potential to prevent the development of offending behaviour through support for families and children and young people who are in risky situations.

**Equity of access to disability services** – At present, specialist disability services usually do not provide services to the target group. This needs to change - The risk to an individual flowing from his or her offending behaviour should be recognised as an important component in assessing relative need for disability services under the Disability Services Act standards. This applies both to actual offending behaviour and clear indications that such behaviour may occur.

**A specialist capacity** - A specialist capacity is needed with expertise in assessment, interventions to address offending behaviour, support coordination and related tasks. The specialist capacity would do some direct work with the target group and foster a better response from existing generic and disability services. The need for this specialist capacity flows from:

- the complexity of the task of assessing and meeting the needs of members of the target group,
- the major difference between that task and meeting the needs of other people with disabilities, and
- the current lack of appropriate skills amongst intellectual disability and other professionals.

It would be very difficult to achieve a great deal through existing generic and disability services unless there was some specialist support available to them.

Those services are both highly stretched in their existing responsibilities and lacking in confidence to work with the target group.

There is a variety of options for how such a specialist capacity could be integrated with existing services. The recommended option includes a specialist capacity in disability services comprising:

- A forensic clinical team - This team would do assessments and design and implement behaviour intervention and support programs for some individuals. It would be a training and consultancy resource to other professionals. It would be multidisciplinary in line with the wideranging needs of the target group.
- A statewide network of forensic support coordinators and forensic support workers – The support coordinators would foster the roles of local services and communities including by being a consultancy and training resource. They would also develop support plans for some target group members, and be a link into the DADHC Service Access and service development systems. The support workers would provide a hands on support and case management role with some members of the target group.
- Some accommodation focused on the target group.

These systems would be linked to existing or proposed specialist capacities in other agencies.

**Links with the justice system** - Service provision needs to occur in close liaison with the justice system. This would allow the justice system to make well-informed decisions about issues like bail and parole. Where appropriate, non-acceptance of services would lead to sanctions.

This report proposes links including:

- Justice plans developed in cooperation between justice system and disability service personnel. These plans would link services that will reduce the likelihood of offending to bonds and parole conditions.
- A specialist capacity in probation and parole and Juvenile Justice community based services.

**Cross agency cooperation** - Given the range of agencies that have roles if the needs of the target group are to be met, cross agency cooperation is essential. This needs to cover both systemic issues and coordinated responses where an individual has complex cross agency needs.

**Prevention and early action** – Wherever possible, preventative and early action should occur before offending behaviour becomes entrenched. The roles of schools and child and family services are particularly important here.

**Additional budget allocations** – There is some scope to improve the situation of the target group through existing services and budget allocations. However, there need to be additional budget allocations if major improvements are to occur.

### **Principles for service provision**

The following principles should apply to service provision for the target group:

- The prevention or reduction of offending behaviour is very important both for the protection of the community and to meet the needs of members of the target group.
- The objects, principles and applications of principles in the Disability Services Act should apply to services for the target group.
- Restrictions on the freedom of members of the target group should only occur through due process of the criminal or juvenile justice system, or under the authority of an order of the Guardianship Tribunal. The guardianship system needs rigorous safeguards on the appropriateness of restrictive practices used with the target group. The report also includes a proposed legislative structure to allow some prisoners to be transferred into secure accommodation that might be administered by DADHC.

### **Complaints, monitoring and review**

A wide range of tribunals and other agencies have complaints, monitoring and review roles in relation to the target group. However, no independent body has an overall complaints and monitoring role. The report proposes that the Community Services Commission should have such a role.

### **Priorities for action**

The report proposes the following priorities that most need to occur in the first instance:

1. Action within existing resources to make the existing services of all relevant agencies more accessible and appropriate for members of the target group.
2. Establishment of the proposed specialist capacity in assessing and meeting the needs of the target group.
3. Establishment of a system for coordination between agencies.
4. Establishment of the system of justice plans to coordinate action between justice system and disability services personnel.
5. Ensuring that there is a significant pool of funding available to flexibly meet the needs of members of the target group and establish some services to meet common needs.
6. Funding some accommodation and related support for target group members.
7. Implementation of a screening process to enhance the identification of members of the target group.

**Full report available at [www.idrs.org.au](http://www.idrs.org.au)**