

**SENIOR OFFICERS' GROUP ON INTELLECTUAL DISABILITY
AND THE CRIMINAL JUSTICE SYSTEM**

NSW INTERAGENCY SERVICE PRINCIPLES AND PROTOCOLS

4 August 2008
(Incorporating addendum of 17 December 2009)

These Service Principles and Protocols agreed between participating NSW agencies

- Department of Justice and Attorney General, Attorney-General's (Attorney-General's)
- Ageing, Disability and Home Care, Department of Human Services NSW (ADHC)
- Department of Justice and Attorney-General, Corrective Services (Corrective Services NSW)
- Department of Education and Training (DET)
- Housing NSW, Department of Human Services NSW (Housing NSW)
- NSW Health (NSW Health)
- Juvenile Justice, Department of Human Services NSW (Juvenile Justice)
- NSW Health, Justice Health (Justice Health)
- Police and Emergency Services, NSW Police Force (Police Force)

have been developed to guide the individual and collaborative work of these agencies with the goal of improving general community well-being and the quality of life of individuals with an intellectual disability/low cognitive functioning¹ by:

- reducing the prevalence in the criminal justice system of people with an intellectual disability by helping them succeed in the community; and
- ensuring that criminal justice and supporting processes respond appropriately and equitably to their circumstances.

1 Background

- 1.1 This Agreement has been developed in response to concern about the prevalence of people with intellectual disability in the criminal justice system.
- 1.2 As a proportion of the general population, people with intellectual disability are over-represented in the criminal justice system, both as offenders and as victims. The explanations for the over-representation of people with an intellectual disability as offenders have included that offenders with an intellectual disability will be treated differently by the criminal justice system and people with intellectual disability who come in contact with the criminal justice system also experience significant psychological and socio-

¹ The term intellectual disability has been used throughout the Agreement to include people with intellectual disability as well as people with low cognitive functioning.

economic disadvantage. This over-representation is found amongst young people as well as adults.²

- 1.3 This Agreement follows a long term focus within government and by advocacy groups on finding ways that agencies in New South Wales can work more effectively together to prevent contact with the criminal justice system for people with intellectual disability and to achieve better outcomes when they are in contact with the criminal justice system.
- 1.4 The lead agency in this initiative is the Ageing, Disability and Home Care, Department of Human Services NSW (ADHC). The other signatories are those organisations that are represented on the Senior Officers Group on People with an Intellectual Disability and Criminal Justice convened by the ADHC (referred to forthwith as the SOG). Collectively, signatory agencies are referred to under this Agreement as participating agencies.
- 1.5 In mid 2006 the NSW Human Services Chief Executive Officers' Forum endorsed a recommendation by SOG agencies that its project based approach and the broader delivery of services to people with an intellectual disability in the criminal justice system should be guided by a set of overarching cross-agency principles, supported by Service Principles and Protocols across agencies. This more comprehensive framework is needed to guide the role of agencies as part of the reform projects and broader service delivery for people with an intellectual disability in the criminal justice system.
- 1.6 Accordingly this statement of Service Principles and Protocols provides the overarching framework for continuing work to achieve better outcomes for people with intellectual disability in relation to criminal justice. It is intended to facilitate co-ordination, commitment and clarity of roles and responsibilities amongst participating agencies. It will accommodate a range of key initiatives to identify and address gaps in service provision and support for the target groups.
- 1.7 This Agreement is consistent with a number of other initiatives of the NSW Government, including priorities identified in the *A new direction for NSW: State Plan*³ and new directions for people with a disability⁴.

² See Young People in Custody Health Survey 2003 and Young People on Community Orders Health Survey 2006 for discussion of the prevalence of intellectual and other disabilities in detention. Refer:

http://www.djj.nsw.gov.au/pdf_htm/publicatons/general/2003YoungPeopleInCustody.pdf

http://www.djj.nsw.gov.au/pdf_htm/publications/research/2006YoungPeopleCommunityOrders_KeyFindingsReport.pdf

³ The NSW State Plan *A New direction for NSW* identifies four priorities and strategies: *Rights Respect and Responsibility*:

R1 Reduced rates of crime, particularly violent crime

R2 reducing rates of re offending

The relevant strategies for R1 and R2 include

- Continuing to divert young people from the criminal justice system in line with the Young Offenders Act;
- Facilitating cross agency information sharing so that repeat offenders are dealt with through and integrated approach;
- We will also seek to provide more tailored support to help offenders reintegrate into the community and
- Intervening early, risk assessment tools can help us focus resources more effectively.

Fairness and Opportunity for the most vulnerable:

F4 Embedding the principle of prevention and early intervention into government services

2 Structure

This Agreement sets out

- Scope, target group and outcomes sought (sections 3 and 4)
- Purpose, aims and principles to guide cross-agency activities (sections 5 and 6)
- Governance arrangements for carriage and oversight of the Agreement (section 7)
- Commitments of participating agencies relating to the implementation of the Agreement (section 8)
- Roles and responsibilities (section 9)
- Operation and termination (section 10)

3 Scope and target group

- 3.1 This Agreement is focussed on achieving more appropriate outcomes for people with an intellectual disability in respect to their prevalence and treatment in the criminal justice system. To achieve this, the Agreement is concerned with all stages where people with intellectual disability may come into contact with the criminal justice system or are at risk of doing so. This includes ways of preventing or discouraging contact by people with intellectual disability with the criminal justice system, ensuring fair treatment within the system, and providing pathways beyond it.
- 3.2 Each agency separately determines client eligibility, access and prioritisation in line within its policies and procedures. The activities of some participating agencies will be limited to a subset of people with intellectual disability or part of lifecycle eg Juvenile Justice and ADHC, while others, most notably the Police Force, will be more broadly focussed.
- 3.3 It is crucial to acknowledge that people with an intellectual disability are not a homogeneous group and reflect the diversity of the general population.
- 3.4 Co-morbidities: It is recognised that some people with intellectual disability also have other conditions such as a mental health disorder or illness, alcohol or other drug misuse/dependence. The existence of co-morbidities may add to the complexity of diagnosis and have implications for eligibility and need for services and the range of agencies responsible for the delivery of services.⁵

Dual Diagnosis – Mental Illness and Intellectual Disability

There is considerable ambiguity in the literature about the concept of dual diagnosis. Essentially dual diagnosis can be applied to any combinations of illness and disability, including sensory, intellectual and physical disabilities, mental illness and substance misuse or abuse. The term 'dual

The relevant strategy is to shift resources to support early intervention and prevention within our government agencies

⁴ These initiatives include *Stronger Together* and *Better Together*.

diagnosis' is also used to refer to people with both a mental health problem and an intellectual disability.

There are different types of intellectual disability. Some types of disability increase vulnerability to psychotic illness, however many people with an intellectual disability do not develop mental health problems. Between 1.5 and 2.0% of Australians have an intellectual disability and they have two to three times the prevalence of psychiatric problems as the rest of the community. Intellectual disability increases vulnerability to psychotic illness. For people with this form of dual diagnosis there have also been difficulties in obtaining an accurate diagnosis, and finding effective treatment methods and care. Treatment options include a range of medication and both cognitive and behavioural programmes.

In the criminal justice system, dual diagnosis might involve: cognitive impairment with significant deficits in adaptive functioning combined with mental health issues exacerbated by problematic use of alcohol and other drugs.

In this context, it is noted that people with intellectual disability who are also mentally ill or those who have both conditions are dealt with under ss 32 and 33 of the Mental Health (Criminal Procedure) Act 1990 (NSW) and associated processes. People with intellectual disability who have been implicated in drug-related crime and are eligible for bail under the MERIT Scheme can be dealt with under that system. The NSW Attorney-General's Department is the lead agency under the MERIT scheme, which involves the co-operative effort of the Police Force, Magistrates, NSW Health, and the Legal Aid Commission/Aboriginal Legal Service.

- 3.5 The health care needs of prisoners with an intellectual disability can be compounded if not properly assessed. Health interventions can be targeted to this disadvantaged group through strong systems of partnership between Justice Health, the Department of Corrective services, Juvenile Justice and ADHC, as well as health and welfare services, to ensure that this population is identified and their health or other functional needs are met.

4 Outcomes sought for people with an intellectual disability

- 4.1 The primary outcomes sought are that people with an intellectual disability:
- have reduced contact with the criminal justice system through improved assessment, early intervention and triage;
 - are less prevalent in the criminal justice system because they succeed in the community and are able to live there;
 - have improved access to appropriate services and support to assist in meeting their day-to-day needs, particularly at key life transitions;
 - are treated fairly when they come in contact with the criminal justice system, with appropriate recognition of and response to the fact that they have a disability;
 - have improved access to a variety of accessible diversion options to allow them to stay out of custody;
 - only incarcerated when they should be (if their crime justifies it); and

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- are reintegrated into the community with stable accommodation, support and case management, including interventions, designed to reduce the risk of recidivism.
- 4.2 Recognising that people with an intellectual disability are not a homogeneous group, these general outcomes may be further broken down into detailed outcomes for sub-groups and, ultimately, individuals developing specific programs and approaches.

5 Purpose and aims of this Agreement

- 5.1 The purpose of this Agreement is to improve the planning, co-ordination and delivery of services and assistance to people with intellectual disability and to improve the operation and responsiveness of the criminal justice system to the circumstances of people with intellectual disability.
- 5.2 In keeping with this and the overarching goal and outcomes set out above, the aims of this Agreement are to:
- identify and respond to the needs of people with an intellectual disability;
 - lower the incidence and duration of people with an intellectual disability in the criminal justice system (arrested, charged, jailed);
 - achieve higher rates of people with an intellectual disability in diversionary programs; and
 - lower the incidence of crime perpetrated by people with an intellectual disability.

6 Principles

- 6.1 The following working principles have been adopted by participating agencies to guide their collective work and co-ordination of activities. The agencies are committed to:
- identifying and addressing all factors which have contributed to the involvement of people with intellectual disability with the criminal justice system;
 - working collectively to promote an environment that enables people with intellectual disability to succeed in the community without offending;
 - early intervention services for people with an intellectual disability to strengthen families, promote community inclusion and valued roles;
 - early identification of intellectual disability and joint agency approaches for people when they first come into contact with the criminal justice system;
 - facilitating the delivery of appropriate support and services for people with an intellectual disability, including borderline intellectual disability;
 - co-ordinating service delivery and reducing duplication;

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- identifying and responding to gaps within and across agency programs;
 - facilitating the delivery of an appropriate range of services to people with intellectual disability with co-morbidities (eg mental health disorder or illness, alcohol or other drug misuse);
 - improving the responsiveness of services for Aboriginal people and people from culturally and linguistically diverse communities;
 - improving responsiveness to clients needs through better provision and management of information. This includes fostering where possible informal support and self advocacy; and
 - better targeting available resources to achieving the overarching cross-agency goal and outcomes.

7 Governance

- 7.1 Participating agencies will report annually on the implementation of this Agreement as part of their Disability Action Plans. ADHC will review the reports and raise implementation issues, as required. In addition, participating agencies will provide a progress report for the first six months of the Agreement.
- 7.2 As part of the review of the Disability Action Plans, ADHC will be responsible for implementing an annual review of the Agreement for the first three years and biannual reviews thereafter.
- 7.3 Through this Agreement, participating agencies commit to working together and coordinating their activities to bring about better outcomes for people with intellectual disability.
- 7.4 Participating agencies are to carry out their statutory responsibilities towards the target group in keeping with their corporate priorities, and monitor progress under the Agreement in relation to their area of responsibility.
- 7.5 Nothing in this Agreement will have the effect of shifting responsibilities or duties of care between participating agencies.
- 7.6 Participating agencies agree to work cooperatively on joint projects initiated under or brought within this Agreement.
- 7.7 Progress in relation to the aims, outcomes and principles set out in this Agreement will be regularly monitored. Participating agencies will monitor and report on relevant progress in relation to their area of responsibility and activities they are undertaking under the ambit of the Agreement.

8 Commitments

- 8.1 All participating agencies are committed, within their area of responsibility, to working cooperatively to plan, coordinate and deliver services within their area to assist people with intellectual disability to live successfully in the community and to be treated fairly and equitably by the criminal justice system.
- 8.2 All participating agencies are committed to working more effectively within their sphere of influence and within the limits of their core activities, priority target groups and available resources to respond to the needs of

people with intellectual disability in respect to the terms of this Agreement.

- 8.3 All participating agencies are committed to maintaining regular formal contact and communication and contributing to cross-agency work for the purposes of implementing the directions of this Agreement, including:
- participating in interagency meetings and planning processes;
 - sharing information about approaches to addressing the needs of people with intellectual disability in relation to criminal justice and relevant activities being undertaken within their organisation or elsewhere;
 - identifying service gaps and obstacles to achieving better outcomes for people with intellectual disability in relation to criminal justice;
 - examining alternative approaches for coordinating and delivering services for people with intellectual disability with the aim of reducing the prevalence of this group in the criminal justice system, by assisting them to access appropriate services, programs and interventions;
 - coordinating activities to improve continuity of service and responsiveness to the needs of the target group;
 - developing and participating in interagency initiatives to improve service delivery and support for the target group;
 - monitoring and reviewing the effectiveness of programs and initiatives relating to the terms of this Agreement.
- 8.4 All participating agencies are committed to ensuring services for Aboriginal people are culturally appropriate.
- 8.5 All participating agencies are committed to ensuring that people from culturally and linguistically diverse communities receive culturally appropriate services.
- 8.6 Where appropriate and subject to the agreement of individual agencies, participating agencies are committed to contributing to and coordinating joint projects.
- 8.7 Nothing in this Agreement commits agencies to additional expenditure.

9 Roles and responsibilities

9.1 Introduction

9.1.1 Effective responses to the challenge of minimising the impact of the Criminal Justice system on people with intellectual disability require clear lines of responsibility to be drawn and improved cooperation between stakeholders. The roles and responsibilities of agencies under this Agreement reflect the service principles and directions agreed to be pursued and, in particular, to identify and address gaps in service provision and support for the target group.

9.1.2 In implementing these roles and responsibilities agencies will seek to recognise and respond to the diverse needs of people with intellectual disability.

9.1.2 These roles and responsibilities are to be understood to operate within a

NSW Interagency Service Principles and Protocols (Incorporating the addendum of 17 December 2009)

context that includes the relevant objectives of the State Plan, and should supplement and complement:

- existing policies to advance opportunities for people with intellectual disability;
- current initiatives to improve inter-agency co-operation and collaboration;
- initiatives within NSW Government agencies to improve services for people with intellectual disability;
- initiatives funded by the NSW Government to provide services to people with intellectual disability;
- policies of the Commonwealth Government affecting people with intellectual disability;
- initiatives funded by the Commonwealth Government that complement State government initiatives in this area; and
- initiatives designed to reduce crime, re-offending and anti-social behaviour.

9.2 General

9.2.1 Roles and responsibilities of participating agencies described in this section cut across all or some of points in the criminal justice continuum, while more specific roles relating to key points in the criminal justice system are set out in 9.3 below.

9.2.2 All participating agencies agree to:

- Develop evidence-based responses to the risk and challenges that face people with an intellectual disability in contact with the criminal justice system and accordingly, agree to develop service and practice approaches that identify people as they come into contact with the system to enable appropriate responses to be put in place throughout the service system.
- Drive progress in meeting the objectives of this Agreement by supporting local responses, ensuring links between local service frameworks and service management.
- Share records, as appropriate, in accordance with the Principles set out in the document "Information sharing for effective human service delivery", and review statistical collection and collation methods and update procedures and approaches in order to monitor the effectiveness of the strategies described in this Agreement.
- Professionals working in the criminal justice system have access to training resources about people with intellectual disability and their needs within the criminal justice context. These resources emphasise the need for early identification of intellectual disability, diversionary practices and awareness of accessible exit strategies, particularly for, but not limited to, released prisoners with intellectual disability.
- Appropriate procedures are implemented for screening, and assessing people who may have an intellectual disability.
- Wherever possible address the needs of children and young people with an intellectual disability in the juvenile justice system separately

from adult services.

- Where appropriate, pursue diversionary options from the criminal justice system as a first step for less serious criminal offences.
- Develop protocols for dealing with clients who have been identified as having an intellectual disability.

9.3 Pivot Points

The specific roles and responsibilities of agencies in relation to the key points in the criminal justice continuum are described under the following headings:

- 1 Early intervention to prevent criminal behaviour
- 2 Dealings with the Police (warnings, cautions and arrest)
- 3 Diversion of young people from the criminal justice system
- 4 Court process and sentencing
- 5 Detention, imprisonment and community based sentences
- 6 Reintegration into the community

For each of these areas a lead agency with central responsibility is identified to drive inter-agency work, ensure coordinated and relevant data collection, and lead the local support/case management process to encourage effective decision-making and responses. Partner agencies responsible for providing key support or related services and responses are also nominated.

9.3.1 Early intervention to prevent criminal behaviour

The number of people with intellectual disability who come into contact with the criminal justice system, whilst numerically small is nevertheless significantly disproportionate to their representation in the community. Participating agencies acknowledge that effective strategies are needed to reduce this overrepresentation. The prevention of initial contact with the criminal justice system and the prevention of early contact resulting in incarceration are recognised as important steps in avoiding pathways to entrenched criminal behaviour.

Early attention to the needs of children with intellectual disability and their families intervention when behavioural problems arise can reduce the risk of inappropriate behaviour escalating into criminal activity.

Participating agencies agree that particular energy needs to be focussed on keeping 10-14 year olds engaged with the education system, supported by appropriate services, including appropriate accommodation to the teaching and learning programs to help reduce the risk of exposure to the criminal justice system.

Roles and responsibilities

- DET, through a pilot project, will lead work in this area with the active support of ADHC, NSW Health and the Police Force, with research and evidence-based support from Attorney General's.
- Participating agencies will work together at a local level, for example through local area management groups or networks, to coordinate responses and provision of support in order to avoid contact with, or limit progression to, the criminal justice system by people with

intellectual disability.

- ADHC, as the lead agency of the SOG, will liaise with the Bureau of Crime Statistics and Research, Crime Prevention Division, to promote responses that are supported by research and associated materials relevant to the management of people with intellectual disability in the criminal justice system.
- NSW Health and ADHC will provide information and guidance to assist agencies in identifying if a client should be referred for assessment of intellectual disability and how the assessment process works.
- DET will actively implement priorities under the State Plan to increase levels of attainment for all students (S4), to ensure that more students complete Year 12 or recognised vocational training, and (S5), to improve the education for Aboriginal people (F1).
- DET will identify and address the teaching and learning needs of children with intellectual disability within the State education system. Where issues require interagency coordination to support teaching and learning, DET will work with ADHC and other service providers.
- When children demonstrate challenging behaviour within the State education system, DET will assess or arrange for assessment and, where a child is identified as having an intellectual disability, DET will seek the assistance of ADHC and other relevant agencies as required when developing teaching and learning programs.
- DET will follow-up students with an intellectual disability who have disengaged from the education system and work together with other agencies to address their needs and encourage reconnection with the school system.
- When undertaking assessments and delivering individual planning and family support for children, young people and adults with an intellectual disability, ADHC will acknowledge and respond to the increased risks/factors that cause people with an intellectual disability to come into contact with the criminal justice system. To reduce these risks ADHC will provide:
 - information to children and young people with an intellectual disability and their families to assist service access;
 - interagency coordination and liaison with generic and/or specialist services where required;
 - early assessment and response to risks indicators, eg family stress, school behaviour; and
 - address the risks of contact through individual planning, implementation and review.
- The Police Force will implement programs such as the School Liaison Officer program to build acceptance and support for the role of police, particularly in areas of greatest need, and to spearhead the development of information-exchange arrangements in the local areas and across agencies.
- ADHC and DET will develop close working relationships at the local level to foster improved coordinated service delivery to students with intellectual disability.

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- ADHC and DET will continue work together to facilitate the access for young people with a disability to Community Participation, Transition to Work, TAFE and Commonwealth employment programs.

9.3.2 Dealings with the Police (warnings, caution and arrest)

The Police regularly come into contact with people with intellectual disability in the course of performing their duties. Contact may be with people with intellectual disability causing nuisance or engaged in anti-social behaviour, as well as in cases of crime or suspected criminal activity where an alleged perpetrator or victim has an intellectual disability. Police may also be called upon to assist in circumstances where a person with intellectual disability is facing difficulties or causing disruption to others and a more suitable organisation cannot be identified or contacted. Such cases, though not involving a crime, can take up police time and may escalate into criminal activity.

The ability to identify people with intellectual disability and guide them to appropriate support services will help to reduce impacts on Police work and help to avoid circumstances where challenging behaviour or other problems can lead to criminal behaviour. Where criminal conduct is involved, Police need the capacity to access diversionary opportunities for less serious cases and/or to call appropriate supports for individuals concerned.

Roles and responsibilities

- The Police Force will lead responses in this area, and will be actively supported by ADHC and agencies delivering local services.
- Members of the Police Force will continue to work with the wider disability service system towards ensuring that people with intellectual disability are not subjected to the criminal justice system inappropriately. This includes ensuring the use of a support person when interviewing people with an intellectual disability.
- The Police will continue to implement their Disability Action Plan and, in consultation with ADHC, develop disability awareness training materials and include in training their operational and administrative personnel to:
 - i. appreciate the distinction and interrelationship between intellectual disability and mental illness and dual diagnosis and criminality;
 - ii. be conscious of the possibility that a person with intellectual disability may not want them to know that they have an intellectual disability or wish to hide the effect of the disability;
 - iii. identify indicators of intellectual disability that can be gleaned from careful questioning – questions about school (school history, number of schools attended, special school placement, school attendance record, teaching and learning outcomes);
 - iv. undertake questioning in a way that enhance the likelihood of detection of slow speech, poor memory, poor sequencing of events, childhood history of hospitalisation or other institutional placement; and
 - v. deal with people suspected of having an intellectual disability in a way that accommodates that possibility. This training will recognise the range of factors which the Police use to identify people with an intellectual disability.

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- When a member of the Police Force reasonably suspects that a person alleged to have committed a crime has an intellectual disability they will:
 - i. take reasonable steps to contact a support person where one is known or available;
 - ii. bring this to the attention of other Police through appropriate record-keeping, in particular the COPS system.
 - With the support of ADHC, the Police Force will develop a service referral pamphlet that provides general information on the types of assistance available from the disability service system and how to enquire about obtaining a service.
 - The Police Force and ADHC will jointly investigate ways to establish a pathway, consistent with privacy and informed consent requirements, for direct referral of people who may have an intellectual disability to ADHC.
 - The Police Force will actively participate in, local area networks with other relevant agencies to co-ordinate timely and effective responses for people with intellectual disability.
 - Where the Police Force knows a person is identified as having an intellectual disability, the Police will liaise with their family, carer and/or service provider before putting forward to a magistrate a proposed course of action regarding a breach of bail. This will occur in a way that reflects a collaborative, interagency approach
 - When ADHC receives a referral for a person in contact with the criminal justice system from any relevant agency or individual, it recognises this as a priority service request for assessment, individual planning and referrals to appropriate service providers. The focus will be early intervention to identify risks of further contact with the criminal justice system and address these through individual planning, implementation and review.

9.3.3 Diversion of young people from the criminal justice system

International research into brain development over the past 10 to 15 years has highlighted that there are significant developmental differences between adolescents and adults in the areas of motivation, impulse control and decision making, as well as psychological maturation. Ongoing research conducted by the University of Melbourne's Department of Psychiatry has found that the brain is not fully formed at puberty, but continues to mature until at least 21 years and possibly as late as 25 years.

As a result, adolescents are more likely to undertake high-risk activities because they have a reduced capacity to foresee consequences and assess risks and they are more prone to reacting explosively or misreading signals from others.

The Police come into contact with young people with intellectual disability in the course of performing their duties. The ability to divert young people from the criminal justice system can have a substantial impact on the likelihood of young people establishing a pattern of criminal conduct.

Although not specifically for children and young people with an intellectual disability, the Young Offenders Act gives the Police a range of diversionary options including, warnings, cautions and referral to the conference process administered by the Department of Juvenile Justice.

Roles and responsibilities

- The Police Force will lead responses in this area, and will be actively supported by Juvenile Justice and DET.
- The Police Force will work with DET, ADHC and Juvenile Justice to identify and respond to areas of high need.
- DET and the Police Force will work together to improve information-sharing arrangements so that members of the Police have ready access to information about whether a young person has an intellectual disability. DET will provide each local area command of the Police Force with a contact person in the local school district that has access to information about students and is able to identify students with intellectual disability
- In accordance with the provisions of the Young Offenders Act, Police will take the appropriate course of action, including warnings, cautions or referral to Youth Justice Conferencing when criminal activity by young people with an intellectual disability meets the criteria.

9.3.4 Court process and sentencing

The procedural formality of court processes can be bewildering and people with intellectual disability may be especially disadvantaged in putting forward their case and need additional support to do so effectively.

Principles of procedural fairness require that people with intellectual disability have all the assistance they need to enjoy real equality before the law. It is acknowledged that active measures are required to ensure that people with intellectual disability are treated justly and fairly in the court process and in sentencing, are not disadvantaged by reason of their intellectual disability and associated limitations putting forward their case, and have appropriate access to diversionary programs.

This challenge is greatest where people with intellectual disability are reluctant to disclose their condition.

Roles and responsibilities

- Attorney General's will lead responses in this area with the support of ADHC and Juvenile Justice.
- Attorney General's will work with the Legal Aid Commission, the Aboriginal Legal Service, the Intellectual Disability Rights Service and the chief judicial officers of NSW trial courts to build strategies to ensure that, where possible, their clients suspected of having an intellectual disability are appropriately assessed before they are formally charged and tried.
- Attorney General's will continue to implement reforms to accommodate vulnerable witnesses, including witnesses with intellectual disability.
- Attorney General's and its sub-agencies will continue to implement their Disability Action Plan.
- Attorney General's's Criminal Law Review Division will work with the

Director of Public Prosecutions to ensure that prosecutorial discretion reflects the thrust of this Agreement.

- While Juvenile Justice has no statutory responsibility in the area of bail, since January 2007 it provides intensive bail supervision (and monitoring) to divert young people from custody and reduce their numbers on remand. It also aims to reduce the average length of time young people are in custody or remand.

Juvenile Justice also seeks to assist those young people who remain in custody after being granted conditional bail because they are unable to meet bail conditions set by the court (eg: lack of suitable accommodation or community support).

- The Corrective Services NSW will continue to provide Pre Sentence Reports for people with intellectual disability when requested to do so by a Judge or Magistrate. The report is prepared to assist in the selection of the most appropriate sentence for offenders who have pleaded guilty to, or have been found guilty of an offence

While Juvenile Justice has no statutory responsibility in the area of bail, where possible, it will provide intensive bail supervision (and monitoring) to divert young people from custody, reduce their numbers on remand and reduce the average length of time they are in custody or remand.

Juvenile Justice will assist those young people who remain in custody after being granted conditional bail because they are unable to meet bail conditions set by the court (eg: lack of suitable accommodation or community support).

In sentencing a young person, courts have a range of options available under Section 33 of the *Children (Criminal Proceedings) Act* permits the courts to make the following orders:

- Dismissal and/or caution;
 - Good behaviour bond with or without supervision
 - Fine
 - Referral to a young justice conference
 - Conditional or unconditional probation
 - Community service order
 - Order that confines a young person for a specified period to detention
- ADHC will continue to broker and offer services for people with intellectual disability as defined under the ADHC guidelines in order to improve and increase options for people who can appropriately be directed from the criminal justice system. For these people, ADHC will respond with assessment and case planning, review and delivery, including liaison with legal representatives and the coordination of interagency responses to identify services that would assist in diversion from the criminal justice system.
 - Where appropriate, service delivery agencies will work together at a local level to co-ordinate and deliver services to address the offending behaviour of a person with intellectual disability to support the granting of bail and non-custodial sentences for less serious criminal offences. Diversionary options, bail and non custodial sentences may be

appropriate for more serious and not just less serious offences.

9.3.5 Detention, imprisonment and community based sentences

If an adult or juvenile with intellectual disability is denied bail, he or she will be placed in custody until their charge is heard by a court. If an adult is convicted, imprisonment is one option available. If a juvenile is convicted, detention is one option available.

Whatever the outcome, people with intellectual disability are entitled to respect for their human rights and, to the extent that this is possible, any assistance they need to realise those rights.

Prisoners with intellectual disability maybe more vulnerable than many other offenders and therefore may present a greater risk of being victimised.

In addition inmates with intellectual disability are often not as well equipped as other inmates to apply successfully for early release and parole where they are required to apply to the State Parole Authority for release. Appropriate protections and supports are needed to ensure that people with intellectual disability are fairly treated and not placed at undue risk of extended detention compared to inmates who do not have an intellectual disability.

Roles and responsibilities

- Corrective Services NSW and Juvenile Justice will lead responses in this area, with the support of ADHC, DET and Housing NSW.
- Service delivery agencies will work together to ensure that people with intellectual disability under court ordered community supervision are supported by appropriate services and appropriate interventions that help them to live successfully in the community, address the offending behaviour and meet the terms of their order.
- ADHC will provide relevant information on its clients entering custody or detention to the custodial agency including details of assessments and medical reports, treatment plans and service providers.
- Where ADHC or the custodial agency is aware a person with intellectual disability entering custody is a client of the DOH, the local office of the DOH will be advised.
- ADHC will work in liaison with the Correctives Services NSW and Juvenile Justice to provide assessment and input to support and service planning for eligible clients.
- Participating agencies with custodial powers (Juvenile Justice and Corrective Services NSW) will take active steps to minimise the risk of people with intellectual disability being victimised.
- Whilst many offenders are imprisoned for short periods of three to six months, Corrective Services NSW and Juvenile Justice will endeavour to ensure that psychological assessment of previously unassessed people takes place to enhance the likelihood of appropriate service provision by agencies dealing with the relevant people in future.
- Justice Health will ensure appropriate clinical assessment of inmates

and detainees with intellectual disability.

- Justice Health will assess young people within 48 hours of entering a Juvenile Justice Centre
- In addition where Corrective Services NSW is aware that the offender at the pre sentence stage is a client of ADHC the offender will be referred to ADHC as soon as possible after the initial contact in order that the results of the assessment can be reported to the court and the likelihood of appropriate service provisions by agencies dealing with the relevant people is enhanced
- Participating agencies who have responsibilities relating to custody and detention will take steps to ensure that appropriate services are available to meet the needs of the people with intellectual disability who are in custody or detention.
- Corrective Services NSW and Juvenile Justice will implement and evaluate pre-release programs and discharge planning to prepare people with intellectual disability to exit custody or detention, and consider the need for further expansion of these programs.

9.3.6 Re-integration into the community

One of the purposes of sentencing is to rehabilitate offenders. Rehabilitation is complete when a person successfully re-integrates into society without further offending. To achieve this objective, people with intellectual disability exiting custody need support to reduce the risk of recidivism and to help them realise their potential.

Adolescents are more likely to undertake high-risk activities because they have a reduced capacity to foresee consequences and assess risks and they are more prone to reacting explosively or misreading signals from others. These research findings support the department's experience of behaviours displayed by adolescents under its supervision.

Roles and responsibilities

- Corrective Services NSW and Juvenile Justice will lead work in this area, with the active support of Housing NSW, NSW Health and ADHC.
- Corrective Services NSW and Juvenile Justice will implement, evaluate and, where appropriate, expand post-release case management responses to people with intellectual disability in their care and control. Custodial programs will include a focus on developing independent living skills, work skills, problem solving and decision making skills and accessing services and support.
- Consistently with the NSW Government's *Stronger Together* statement of a new direction for disability services in NSW, ADHC will continue to work with Corrective Services NSW to smooth the transition of people with intellectual disability from prison into the community.
- Housing NSW will provide information about its housing services to people with intellectual disability who are about to be released from custody and those offenders who are supervised in the community.
- Consistently with the NSW Housing & Human Services Accord, the

Housing NSW, Corrective Services NSW and Juvenile Justice will work together with ADHC to deliver accommodation options for people with intellectual disability re-exiting the criminal justice system, to link housing and support, and to streamline pathways for case managers to assist people with intellectual disability into appropriate accommodation. In doing this, consideration will be given to the location of accommodation and access to intervention services.

- ADHC and DET will examine options for facilitating employment for people with intellectual disability who have high levels of supervision and who are re-entering the community.
- NSW Health and Corrective Services NSW will evaluate the effectiveness of existing drug and alcohol programs for people with intellectual disability and if appropriate, refocus or expand programs to better meet the needs of this group.
- Corrective Services NSW and Juvenile Justice will evaluate the effectiveness of existing sex offender programs for people with intellectual disability and if appropriate, refocus or expand programs to better meet the needs of this group.
- The ADHC will work in liaison with the Corrective Services NSW to implement post release plan, provide case management and interagency coordination and work with specialist services to address issues underpinning the individual's criminal behaviour, including referrals of eligible offenders to the ADHC Community Justice Program.
- ADHC will implement the ADHC Community Justice Program to provide clinical case management, accommodation support and behaviour support for people with an intellectual disability leaving correctional facilities, focusing on people who have continuing contact with the criminal justice system or committed a serious offence(s) (i.e. murder, serious assault, sexual assault, serious arson) resulting in a custodial sentence or has been remanded into custody and subsequently received a non-custodial sentence, and has demonstrated a significant or imminent risk of re-offending placing themselves at risk of harm.

10 Operation and termination

- 10.1 This Agreement is effective from --/--/2008.
- 10.2 This Agreement shall continue for seven years or a later time as agreed by participating agencies. It may be terminated, in writing, by mutual agreement of each of the participating agencies.
- 10.3 Any participating agency may withdraw from the Agreement after giving three months notice in writing to all other participating agencies.

Signatures etc

This document represents the 4 August 2008 Interagency Service Principles and Protocols, incorporating the addendum of 17 December 2009)