THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

Criminal Law Committee

Response to question papers

Parole: Question Papers 4-5

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NSW Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001
AUSTRALIA
nsw_lrc@agd.nsw.gov.au

Contact:

Thomas Spohr
President, NSW Young Lawyers

Alexander Edwards
Chair, NSW Young Lawyers Criminal Law Committee

Primary Author:

Andrew Tiedt

Contributors:

Caitlin Ackthar
Jessica Chan
Vanessa Chan
James Chin
Elizabeth Lehmann
Matthew Ward

NSW Young Lawyers
Criminal Law Committee
170 Phillip Street
Sydney NSW 2000

ylgeneral@lawsociety.com.au
www.younglawyers.com.au

Introduction

The NSW Young Lawyers Criminal Law Committee ("the Committee") refers to the terms of reference given to the NSW Law Reform Commission (“the Commission”) on 1 March 2013 on improving the system of parole in NSW. The Committee has structured its submission by reference to the Commission’s Question Papers 4 and 5.

NSW Young Lawyers, a division of the Law Society of NSW, is made up of legal practitioners and law students, who are under the age of 36 or in their first five years of practice. Our membership is made up of some 13,000 persons.

The Committee provides education to the legal profession and wider community on current and future developments in the criminal law, and identifies and submits on issues in need of law reform.

Question Paper 4

Case management of offenders in custody

4.1 How could case management of offenders in custody be improved to ensure that any issues that may impede successful reintegration on parole are identified and addressed?

It is important to acknowledge at the outset the difficulty in judging the effect of programs and policies in this area. Research is hampered by the difficulty in isolating a control group and then assessing outcomes. There are such a multitude of factors that impact on offending that it is impossible to assess a single factor.

The Committee is generally in favour of greater organisation and planning in relation to proposed paroling of an offender, although it acknowledges the ever present problem of resourcing. The administration of programs borders on unfair if they are selectively available and then are determinative in the assessment of parole. The Committee certainly does not accept that “nothing works”.

Aside from better resourcing, the Committee supports greater individual attention being applied to each offender from an independent source tasked to work in that offender’s interest. This could be the sort of “preliminary consultation” suggested by Legal Aid NSW and the NSW/ACT ALS, or could be more proactive along the lines of a representative. If persons are to be paroled based upon their perceived progress in addressing their offending, then they should be assisted to demonstrate their progress above and beyond what the Prisoners Legal Service is presently able to provide with the resources available.

Role of the Serious Offender’s Review Council

4.2 What changes, if any, should be made to the Serious Offenders Review Council’s role in the custodial case management of offenders?

Broadly speaking, the Committee supports the retention of the Serious Offenders Review Council.

The only comment the Committee seeks to offer is that, as a proposed release date for a Serious Offender approaches, it is counter-productive to limit their access to programs merely because of their classification as a Serious Offender. The community is far better served by making programs available to reduce the chance of reoffending. If it is taken that these programs are effective, denying the Serious Offenders access to them increases the risk of reoffending.

The possibility that a Serious Offender may, as their release date approaches, be afforded an opportunity to escape is in our view outweighed by the desirability of seeking to assist that offender on the road to rehabilitation and, further, providing the tools to survive on release without returning to criminal behaviour.

Custodial rehabilitation programs

4.3 (1) How could the process for selecting and evaluating the rehabilitation programs offered to offenders in custody be improved?

Programs should only be introduced or maintained when there is either evidence they are effective or a sound basis for concluding it is likely that they are effective. Limited resources should be applied intelligently and in the manner judged most likely to be effective.

It is also essential that the programs should be well-targeted, not with broad, inflexible rules, but rather with an individualised approach designed to reduce reoffending on release. Whilst noting the inherent difficulties, every attempt should be made to evaluate the effectiveness of the programs and use that data to decide which programs should be offered, which should not be offered, and what reliance should be placed upon completion thereof.

(2) How could offenders be given sufficient opportunity to participate in in-custody rehabilitation programs?

The limited resourcing of these programs creates obvious and unavoidable problems. The Committee has no particular suggestions above and beyond what is outlined in the Question Paper.

Access to education and work programs in custody

4.4 (1) What education and work programs would boost offenders' employability and improve their prospects of reintegration when released on parole?

Programs should be provided with the primary goal of reducing offending on release. With that as a touchstone, the Committee suggest that programs should be offered with a view to providing employment opportunities on release. This has benefits both in the short and long term as offenders are provided with an alternative to offending as well as an opportunity provide a better environment for their dependants on release.

It should be noted, however, that many well-educated people find themselves in custody. Poor education opportunities are a major but not exclusive cause of offending, and persons not in need to education should not be corralled into study programs.

(2) Are offenders given sufficient opportunities to access in-custody education and work programs in order to achieve these outcomes?

These systems will always be constrained by financial pressures. In an ideal world every jail would have every program available to as many inmates that are willing to take part, but obviously this is not possible.

The issue is a lack of resources, not inefficiencies in the allocation of programs and resources. Other than increasing the allocation of funds, the Committee has no particular recommendations for improving the system. The Committee does not feel that it is in a position to comment on the budgetary allocation on this issue.

Short sentences and limited time post-sentencing

4.5 How could in-custody case management for offenders serving shorter sentences be improved to reduce reoffending and improve their prospects for reintegration on parole?

The Committee has no complaint about the present system that provides referral to services on release. It would be helpful if the process for involving inmates in programs was reduced such that persons on shorter sentences were able to be involved in such programs, but the obvious practical issues would seem to preclude this.

Pre-release leave

4.6 How could pre-release leave programs be improved to:

(1) prepare offenders sufficiently for life on parole; and

(2) ensure offenders can access pre-release leave prior to parole?

Pre-release programs should act as a transitional step in preparing offenders for parole, such that they are not "thrown into the deep end" when released. The program should receive further funding to allow intensive case management and the setting of specific goals, including housing, re-establishing relationships, employment and assistance from other community services. Legal advice should also be made available to offenders on pre-release to address the problems offenders face. These include housing, debt, apprehended violence orders or benefit entitlements[1]. This assistance could be provided through Corrective Services, working closely with the NSW Legal Aid Commission.

The Committee also refers to its response in Parole Question Paper 3 regarding simplifying and streamlining the security classification process. This would assist in ensuring that the highest number of offenders can access pre-release leave prior to full time parole.

Finally, the Committee would support the softening of the rules surrounding pre-release leave to allow for the provision of a sponsor. Pre-release leave is particularly useful for offenders who have served long periods of incarceration, and yet these are the offenders least likely to have a person able to act as a sponsor. Some community groups may be willing and particularly well suited to such a role.

1 Victorian Legal Aid, *Submission to the Sentencing Advisory Council on the Review of Adult Parole System*, 9 September 2011, 1.

Transitional centres before release

4.7 (1) How effective are transitional centres in preparing offenders for release on parole?

The benefits are to a transitional approach to release are as follows:

- Cost efficient – lower inmate cost per day than mainstream correctional facilities.
- Lowered recidivism rates.
- Intensive case management, including identifying issues on case by case basis and recognising that no two offenders have identical issues.

There are, however, clear difficulties:

- Difficulties in recruiting inmates and negative attitudes towards the program.
- Admission criteria may be limiting the eligible inmates to those who have higher prospects of rehabilitation, thus affecting any assessment of effectiveness, particularly in regards to recidivism rates.
- Physical constraints of the facilities.
- Delay in transfer of inmates from correctional centres.

(See generally, NSW Department of Corrective Services, *Evaluation of the Parramatta Transitional Centre*, 2001.)

The Committee is of the view that it is difficult to properly assess the effectiveness of transitional centres due to the small number of participants. A pilot program should be used to closely monitor transitional centres being used on a larger number of offenders of varying security classifications. This may highlight whether the centres are effective for inmates with high levels of institutionalisation or a merely just a stepping stone for offenders who already had good prospects of rehabilitation.

(2) How could more offenders benefit from them?

Further funding needs to be provided to expand the use of transitional centres. The Committee notes that there are only two transitional centres run by Corrective Services NSW. Expansion of the program would also allow for a more accurate assessment of their efficiency in preparing offenders for full time parole.

It is also worth noting that the cost for housing an inmate in a transitional centre is lower than housing one in a custodial centre, meaning any additional cost would relate only to establishing such a centre, and would be at least partially recouped in lower ongoing costs.

Inmates should be fully informed about transitional centres. This should include all admission criteria, especially any security classification. This may also assist in changing the negative attitudes towards such programs.

Back-end home detention

4.8 Should the Corrective Services NSW proposal for a back-end home detention scheme, or a variant of it, be implemented?

The Committee is of the view that a variant of the Corrective Services NSW proposal could be implemented as an additional step in assisting some inmates with re-integration into society. However, the Committee is not of the view that it is appropriate for the court to determine at the time of sentencing whether certain offenders should be eligible or suitable for back end home detention.

The sentencing process is already complex and requires the court to consider a multitude of factors. Providing statutory criteria for courts to consider in deciding whether the offender should be deemed as suitable for back end home detention, potentially many years later, will only further complicate this process.

The sentencing court is not in the best position to decide whether such a course is suitable. This decision should be made, whether by the SPA or another entity, towards the end of the offender's non-parole period – when they have had time to demonstrate their efforts in rehabilitation and where such efforts and progress can be monitored over a sustained period. This is particularly the case when offenders are serving long sentences.

Back-End Home Detention is not significantly different to the present system of supervised and unsupervised day release during the term of their sentence. The truth in sentencing concern does not raise a new issue.

Having said that, it would be possible for Back-End Home Detention to be made available only to those inmates already eligible for parole, but who are for some reason not yet considered suitable for release.

Day parole

4.9 (1) How could a day parole scheme be of benefit in NSW?

First, a day parole scheme would act as another transitional step in re-integrating offenders into the community. It should be used in conjunction with other pre-release methods, depending on the circumstances of the offender, to ensure that the change from full time custody to full time parole is as smooth as possible.

Second, it has the ability to be used for serious offenders who the SPA has determined are not suitable for full time parole. It would give the SPA a further option when dealing with serious offenders. SORC should have input in relation to the suitability of closely monitored day parole for serious offenders.

Third, day parole not only allows offenders to organise or prepare for life on parole, but goes the further step of allowing them to actually participate in aspects of normal life. For example, offenders can commence employment during the specified hours before returning to the correctional centre.

However the benefits of any day parole scheme would depend on the location of the correctional centre in relation to where the offender intends to live/work. For example it may be difficult for an offender to obtain employment, seek community services or organise housing if they do not receive day parole in an area close to the community in which they intend to live upon release. This could possibly be dealt with by Corrective Services NSW regarding placement of offenders in correctional centres towards the end of their non-parole period.

4.9 (2) If a day parole scheme were introduced, what could such a scheme look like?

The scheme should only be available to offenders who have previously completed specific courses identified for them. While there may be some general courses for all applicants to complete, as much as possible the courses required should reflect the individual needs and circumstances of the offender. This would provide an incentive to complete such programs and also ensure that offenders are aware of their duties and obligations whilst on day parole.

The scheme should only be available no earlier than the last six months of the offender's non-parole period, or when parole is available but not yet granted. The Committee is of the view that this period is limited enough to not offend the principles of truth in sentencing. The Committee also notes that offenders would be returning to their respective correctional centres at night.

The day parole scheme should not apply to all sentences. Their use in relation to short sentences should be minimal.

Re-entry courts

4.10 (1) Should re-entry courts be introduced in NSW?

Yes.

Although the resource intensive nature of such a court requires that it should be carefully assessed for effectiveness against more traditional methods.

4.10 (2) If re-entry courts were introduced, what form could they take and which offenders could be eligible to participate?

Re-entry courts should contain the following:

- Regular appearances by the offender.
- A step by step process to be completed.
- Updated progress reports.
- Power to make binding orders with, to an extent, the force of law.
- Varying degrees of sanctions if there is non-compliance.

The Committee notes the structure and form of the NSW Drug Courts, but is of the view that such a structure could be amended to also assist offenders who do not have drug related issues.

Re-entry courts should not be limited to offenders with drug related issues. They should be directed at prisoners serving long sentences or prisoners who have, in a recent period, served a lengthy custodial sentence. The close monitoring of the offender by the court should be directed towards preventing institutionalisation and breaking the cycle of recidivism. It should not be used for offenders serving short sentences of imprisonment, unless there criminal antecedents display a history of institutionalisation.

4.10 (3) Alternatively, could the State Parole Authority take on a re-entry role?

No.

The value in re-entry courts is the authority and respect which they command from offenders. Offenders may be more receptive to courts because of their previous dealing in the sentencing process. It's possible that it would appear to the offender that the court is taking a genuine interest in their rehabilitation after previously handing down long sentences of imprisonment. The Committee is of the view that the SPA would not be as effective.

4.10 (4) If the State Parole Authority were to take on a re-entry role, which offenders could be eligible to participate?

The scheme should be directed at offenders with the greatest risk of institutionalisation and with the most barriers to re-integration into the community. It should be directed at offenders who are serving long sentences and are approaching the end of their non-parole period. Some factors in considering whether offenders are eligible could include:

- The nature of offence(s) for which they are serving their sentence.
- The length of the sentence.
- Criminal history – particularly previous offences committed whilst on parole.
- Strength of community ties.
- Likelihood of obtaining employment.
- Any other identifiable barrier to re-integration.

Planning and preparing for release to parole

4.11 How could release preparation be changed or supplemented to ensure that all offenders are equipped with the information and life skills necessary to be ready for release to parole?

Relevant forms could be provided to assist with obtaining identification documents, opening bank accounts and organising welfare payments. This will remove some of the burden on inmates to use their initiative in arranging for post-release life. Depending on the data collected by Corrective Services and some investment in programming time, it could be possible for parts of these forms to be automatically pre-filled using data from Corrective Services databases, which would reduce the time needed for community workers to help assist with these forms and increase the number of inmates who could be serviced.

Arranging accommodation for prisoners is understandably difficult given lack of certainty of income, the prejudice prisoners are likely to face in applying for rental properties and the competitive nature the NSW rental market; not to mention the high demand for public housing. Finding suitable affordable accommodation is currently difficult for many people in the community who have not served time in custody, and it could be that prisoners' dissatisfaction relates more to this issue than any particular failing by Corrective Services.

Increasing the resources/funding available for welfare workers assisting prisoners with transitioning to post-release life is always desirable.

Conditions of parole

4.12 (1) How could the three standard conditions that apply to all parole orders be improved?

(2) Should the power of sentencing courts and SPA to impose additional conditions on parole orders be changed or improved?

The condition to be of good behaviour is unhelpfully vague. The proposal to impose a standard condition that parolees not commit an offence that is punishable by imprisonment seems to be a sensible refinement of the good behaviour requirement. Having said that, a broader condition that allows flexibility for the SPA to act where there is repeated activity that falls short of an imprisonable offence is still desirable. This could perhaps be covered by the requirement to maintain a 'normal lawful community life'.

The power to impose additional conditions is appropriate to allow parole orders to be tailored to meet the needs and risks presented by individual parolees. As the SPA has unlimited discretion whether or not to revoke parole, it seems sensible to allow broad orders to be made initially, but allow the strictness of their application to be varied by the SPA in considering the merits of each case. There is much to be said for making conditions aspirational, but they must also be realistically achievable and promote long term changes in behaviour.

For example, a blanket prohibition on the use of alcohol or drugs may achieve compliance whilst on parole, but may do little to effect lasting change if support and rehabilitation is not offered during the parole period to address the root cause. Thus it seems prohibition orders could be improved if replaced by, or used in conjunction with, conditions that a parolee follow a Community Correction officer's directions about drug and alcohol use

Court based parole conditions pose the same difficulties as court ordered back end home detention, discussed in our response to Question 4.8. The Committee would prefer that comments made by the court in sentencing the offender be considered by SPA, but for the conditions to be ultimately decided by SPA depending on the needs of the parolee as they approach their release date.

Intensity of parole supervision

4.13 (1) Are there any improvements that need to be made to the intensity of parole supervision in terms of levels of monitoring and surveillance?

4.13 (2) How could the intensity of parole supervision be changed to strike the right balance between:

(a)monitoring for breach; and

(b) directing resources towards support, intervention and referrals to services and programs?

Paragraph 4.121 suggests that increased parole supervision of itself is ineffective at reducing recidivism rates. This is unsurprising - it seems that supervision of itself (once a week at the highest risk level of offending) would be insufficient to effectively prevent recidivism unless drastically increased to such a level that parolees were constantly in contact with Community Correction officers.

Rather, evidence based rehabilitation programs, ensuring stable employment/training and accommodation and facilitating support groups could help provide structure to reduce recidivism. It would seem a more effective use of resources to direct money towards support, intervention and referral programs rather than strictly increasing the number of meetings with community correction officers/home visits that are held. Monitoring for breach does not need to be mutually exclusive from providing support and intervention programs however, and could be integrated through drug and alcohol testing that is run as a part of these programs, and through more effective information sharing between agencies.

Duration of parole supervision

4.14 Should the duration of parole supervision in NSW be extended? If so, by how much?

It is difficult to give a meaningful answer to this question without data on re-offending rates after three years of supervision and whether it is significantly higher than base recidivism rates. In the Committee's view, in the absence of such data, it would seem that Community Corrections are best placed to assess both the need for supervision and the most appropriate allocation of resources, and the cap should therefore be removed.

Information sharing and compliance checking

4.15 (1) How sufficient are:

(a) current information sharing arrangements between Corrective Services NSW and other agencies (government and non-government) and

(b) compliance checking activities undertaken by Community Corrections?

4.15 (2) What legal obstacles are blocking effective information sharing between Corrective services and other agencies (government and non-government)

Information sharing arrangements should be improved such that non-compliance or non-attendance with external service providers are automatically notified to Corrective Services. That is, compliance checking should ideally be passive with the external party to notify Community Corrections of aberrations as they become aware of them.

However, it is important that the information shared is only that necessary to confirm compliance. For example, if a parolee is required to attend a psychologist, only confirmation of the parolee's attendance should be provided, not the content of the consultation.

The Committee must make a comment about information privacy. Despite the lack of cause of action, members of the community expect certain protections around their personal information, and various statutes and adminstrative policies and provisions protect this. Persons who commit criminal offences have their rights limited in a number of ways – but those rights should not be more limited than is necessary. As such, the Committee supports privacy being balances against the requirement for supervision and an appropriate middle ground being identified.

Electronic monitoring of parolees

4.16 (1) How appropriate is the current electronic monitoring of parolees?

The electronic monitoring of parolees is only appropriate in circumstances where the public needs to be afforded more protection against criminals that are at a high risk of exhibiting predatory behaviour. The classification of parolees as suitable for electronic monitoring should reflect this.

For example, using the Static-99 risk instrument test as the sole criteria for this determination is insufficient because although this test predicts recidivism fairly accurately, it does little to guard the public against more predatory criminals (see Gies S et al "Monitoring High-Risk Sex Offenders With GPS Technology: An Evaluation of the California Supervision Program, Final Report" (April 2012) p xvii). A classification system that specifically addresses the parolees who are at high-risk of exhibiting predatory behaviour would allow community corrections to devote their time to the parolees most at risk.

Whether a parolee needs to subjected to electronic monitoring should also be considered in light of their other obligations under parole.

4.16 (2) What are the arguments for or against increasing electronic monitoring of parolees?

The Committee, broadly speaking, agrees that electronic monitoring is overused. Parolees that would be considered appropriate for electronic monitoring are already under supervision from Community Correctives. Electronic monitoring is a limited tool in assessing the compliance of a parolee to supervision. It comes at a significant cost, in both the cost of the device and the resources used to monitor the device.

This cost is, generally speaking, not justified given electronic monitoring makes little or no difference to recidivism rates (see M Martinovic and P Schulter, "A Reseracher's Experience of Wearing a GPS-EM Device" (2012) 23(2) *Current Issues in Criminal Justice* 413). This money and resources would be better spent on programs proven to prevent recidivism, such as the CUBIT program, CORE Moderate program, Deniers Program and the Self-Regulation program.

The community's desire to electronically monitor offenders is understandable given the risks those offenders pose to the community, and there can be no doubt that there are occasions where it is useful and even necessary.

Workload and expertise of Community Corrections officers

4.17 (1) What improvements could be made to ensure parolees are supervised effectively?

There should be greater investment in the training of parole officers and in implementing strategies directed at retaining experienced officers. Areas that need to be addressed to encourage retaining workers include increasing salary, reducing workload, providing support, providing more staff in locations where the workload is greater and ensuring that there are career paths outside NSW Community Corrections.

Second, the Committee supports the establishment of specialised support structures for some high-risk offenders. We support the introduction of specialist case managers and specialist case management teams for certain offenders. It would be surprising if this did not already occur informally through more experienced and capable officers being allocated the more challenging cases, but if formalised then specialised training or support could be provided to the officers.

4.17 (2) What are the arguments for and against Community Corrections implementing specialist case managers or specialist case management teams for certain categories of offenders?

The effectiveness of assigning a parolee with a specialist case manager or case management team will depend on the skills and training of the officer. These officers need to have the expertise relevant to the particular types of offences, rather than just general experience.

Assigning a parolee to a specialist case manager allows the complex and specific needs of the parolee to be addressed.

One disadvantage of being assigned a sole officer is that there could be issues with engagement on a personal level that could hinder the parolee's rehabilitation.

The obvious benefit in being assigned a special case management team is that it allows several areas of need to be addressed, although we recognize that it can become too impersonal, burdensome, over-intrusive and inconsistent.

4.17 (3) If specialist case management were to be expanded, what categories of offenders should it apply to?

The offenders should be classified according to the complexity of the problems that need to be addressed rather than simply the category of offending conduct. The complexity of the problems can be ascertained by considering how many areas of need/risk factors are identified for the offender. Examples of suitable categories are:

- Drug and alcohol addiction.
- Anger management.
- Homelessness.
- Mental health.
- Paedophilic and/or predatory sexual behaviour.
- Relationship conflict.

Housing for parolees

4.18 What changes need to be made to ensure that all parolees have access to stable and suitable post-release accommodation, and that post-release housing support programs are effective in reducing recidivism and promoting reintegration?

The responsibility of providing offenders with suitable housing and accommodation is an area that it is of the upmost importance. Sufficient resources need to be allocated to provide housing services to offenders in a co-ordinated and integrated way. The services need to be accessible and provide a flexible approach so responses can be tailored to individual needs.

Having stable accommodation reduces recidivism and promotes rehabilitation. It would be more difficult for a parolee to keep appointments with their parole officer when they lack basic structure in their life, such as stable accommodation.

If there is a lack of enthusiasm amongst parolees towards engaging these services, then steps need to be taken to address that problem. It may be that the houses need to focus less on rehabilitation and more on simply providing a path back to community life.

Programs for parolees

4.19 (1) What level of access should parolees have to rehabilitation and other programs while on parole? Do parolees currently have that level of access?

Greater access to rehabilitation and other programs for an offender while on parole will assist in their rehabilitation. Access to drug rehabilitation programs in rural NSW continues to be significant problem, but the inevitable problem of resource allocation makes this problem a challenging one.

There are also limitations on who can access these centres. For example, many centres do not accept people that have previously been convicted of sexual assault.

Additionally, there is a focus in these centres on addressing social problems such as drug and addiction. These are important issues, but other challenges such as those centred on mental health can be as important in many cases.

4.19 (2) Are there any problems of continuity between custodial and community based programs?

Yes. It would be preferable if some custodial programs had a stream for persons living in the community, or some sort of relationship with a complimentary program. Supervisors should be encouraged to find programs for parolees that "link-up" with programs the offender completed whilst in custody to maximise their effectiveness.

4.19 (3) Can any improvements be made to the way the programs available to parolees in the community are selected or evaluated?

The Committee broadly favours more programs being available to assist parolees. If more programs are offered, then this allows the offenders to participate in the program/s most suitable for their rehabilitation.

Some programs are in higher demand in some locations, and can be better targeted. An example would be a program providing assistance to helping rural Aboriginal and Torres Strait Islander people to get their driver's licence.

The Committee is, however, not aware of any particular deficiencies in the way programs are made available, and suggest that the problem is less about selection of programs and more about the level of funding available to them.

Barriers to integrated case management

4.20 (1) To what extent is Community Corrections case management able to achieve a throughcare approach?

The more information that Community Corrections has available to them about an offender, the better the quality of service they will be able to provide. Information should be recorded on the electronic Offender Integrated Management System in a consistent, detailed and systematic way. The Committee agrees that throughcare would best be achieved if custodial and community case management was integrated such that programming and other support for an offender could continue with reasonable continuity whether the offender was in custody or in the community,

4.20 (2) What are the barriers to integrated case management?

The information needs to be recorded in a consistent, detailed, accurate and articulate manner. The information needs to be accurate to ensure that it is not wrongly interpreted. It should be fact-based and not opinion-based, unless that opinion is supported by a person with the relevant expertise to draw that conclusion.

Examples of fact-based information that could be included are:

- Details of any programs commenced.
- Sessions missed.
- Results of drug tests.
- Assessments for rehabilitation.
- Medical conditions and treatments.
- Details of treatment plans under section 32 Mental Health (Forensic Procedure) Act 1990.
- Justice Health Reports.

4.20 (3) What other services or supports do parolees need but are not able to access? What are the barriers to accessing these services and supports?

Parolees need access to:

- Psychiatric assistance.
- Buprenorphine Programs.
- Housing.
- Employment and training services.
- Programs offering assistance to support offenders to read and write.
- Programs offering assistance to enable them to get their Driver's Licence.

The major barrier to these services is that they are lacking, especially in remote NSW.

Question Paper 5

Exercise of discretion in reporting breaches and SPA's lower level responses

5.1 (1) What level of discretion should Community Corrections have to manage breaches of parole (or certain types of breaches) without reporting them to SPA?

Community Corrections should have significant discretion to manage breaches of parole without reporting them to SPA.

Referral to SPA is appropriate where Community Corrections are concerned that the offender has come to pose an unacceptable risk to the community and the authority of SPA is the appropriate body to deal with this situation. The safety of the community is paramount. However, it is well within the capability of Community Corrections, and more cost efficient, to manage many difficulties with an offender's re-integration into the community rather than report virtually all breaches of parole to SPA.

5.1 (2) What formal framework could there be to filter breaches before they are reported to SPA?

The current situation outlined in the Question Paper at 5.5 whereby Community Corrections exercise discretion in reporting breaches should be formalised in Corrective Services policy.

Eight instances where Community Corrections are currently required to report breaches to SPA are noted in the Question Paper at 5.4. Of these eight, only a new conviction, a court imposing a full-time custodial sentence for a further offence or an offender no longer being able to be contacted should be instances that mandate a reported breach to SPA. The other five instances are examples of conduct that Community Corrections should have the discretion to deal with without a report to SPA if Community Corrections considers appropriate.

5.1 (3) What lower level responses should be available to SPA? What lower level responses should be included in the CAS Act?

SPA should have a formal option to issue a warning to a parolee, or to note a breach of a parole condition but take no action on a breach, as noted in the Question Paper at 5.9. These options provide SPA with a flexible approach to respond to breaches of parole that do not lead to a finding by SPA that the parolee presents an unacceptable risk to the community.

Response to non-reoffending breaches

5.2 (1) Should there be any changes to the way SPA deals with non-reoffending breaches?

The Committee shares the view expressed by the Question Paper at 5.17 about the difficulty parolees face in adjusting to release. The approach expressed in the 2013 Callinan report at 5.16 does not facilitate community interests, because being too quick to revoke parole has the result of offenders being released at the end of their sentence with no assistance in this adjustment, which has greater potential to result in reoffending. SPA should have intermediate sanctions available to respond to non-reoffending breaches.

5.2 (2) What intermediate sanctions short of revocation should SPA have available to respond to non-reoffending breaches?

The Committee endorses the proposal at 5.18 to introduce sanctions utilised by the Drug Court as a direct alternative to revoking parole. This option would be more effective at protecting the community by promoting the rehabilitation of the parolee, as well as being more cost effective than revocation.

5.2 (3) Should SPA be able to revoke parole for short periods as a way of dealing with non-reoffending breaches?

While the Committee recommends the removal of the 12-month rule (see our response to 5.14), we do not support the proposal at 5.19 to revoke parole for short periods of time as a sanction. This has the potential to disrupt a parolee's progress in the community, particularly housing and employment.

Revocation in response to re-offending

5.3 (1) What changes should be made to improve the way SPA deals with parolees' reoffending?

The Committee recommends that SPA modify their approach to a parolee accused of re-offending and agrees with the observation in the Questions Paper at 5.22 that, when a parolee is accused of a fresh offence, the issue of community safety is addressed at the time a court makes a bail determination.

SPA's equating being charged with a fresh offence to failing to adapt to a normal lawful community life is of concern. By virtue of their prior convictions, parolees can be a very visible target for fresh charges, whether they are appropriately laid or not. Without a plea of guilty or finding of guilt it is difficult to see how SPA could be satisfied that a parolee has not been of good behaviour or otherwise failed to comply with their parole conditions.

Revocation of parole, currently for a minimum of twelve months, in circumstances where a parolee is not guilty of the fresh offence with which they are charged, can have dire consequences for the reintegration of a parolee into the community. The unfairness of the situation can lead to a sense of resentment in a parolee, militate against any progress they have made, and entrench the perceived identity of the parolee as an offender. The Committee does not argue that revocation is akin to 'second-guessing' the decision of a court as is suggested in the Question Paper at 5.22, but rather that SPA's different question about whether a parolee is failing to adapt to community life is not satisfactorily answered in the negative on the basis of a fresh charge.

The Committee does not make any recommendations about the revocation of parole for confirmed reoffending and considers it should remain the discretion of SPA to revoke or not revoke parole in this instance. However, the Committee does recommend the 12-month rule be removed (see response to 5.14).

5.3 (2) What provision, if any, should be made in the CAS Act to confine SPA's discretion not to revoke parole?

The Committee does not recommend any changes to SPA's discretion not to revoke parole.

Date of revocation and street time

5.4 (1) What further restrictions should be included in the CAS Act on selecting the revocation date?

5.4 (2) What changes, if any, should be made to the operation of street time?

The Committee recommends that a parole revocation order takes effect on the day it is made. The Committee supports the submission of the Aboriginal Legal Service noted in the Question Paper at 5.31 that this date most effectively ensures fairness in the administration of justice.

Review hearings after revocation

5.5 Should reviews of revocation decisions only be available if SPA considers that a hearing is warranted? If so, why?

The Committee recommends that a review hearing be conducted automatically following a revocation decision for each of the reasons outlined in the Question paper at 5.35.

Rescinding revocations to allow completion of rehabilitations programs after fresh offending

5.6 What provision should be made in the CAS Act in relation to how SPA's decision making should interact with rehabilitative dispositions in response to fresh offending?

Whilst the Committee recognises the ordinary practice of the SPA, and believes such a course to be appropriate, we are concerned that there is no legal obligation for the SPA to take such a course.

It would be appropriate to codify this practice in the CAS Act. This would ensure that the intention of a Court is not defeated by the SPA. However, it would be advisable to allow the SPA to retain discretion in limited circumstances where they have determined that the best means to protect the safety of the community would be to revoke parole, even if a Court has determined that rehabilitation is appropriate for the individual. The limited circumstances should be carefully and narrowly defined.

Appeals and judicial review of SPA's revocation Decisions

5.7 Should there be any changes to the mechanisms for appeal or judicial review of SPA's revocation decisions?

No.

Reasons for SPA's decision

5.8 What changes could be made to the manner or extent to which SPA provides reasons for its decisions in revocation matters?

In order to improve the transparency and accountability of the SPA it is the Committee's view that the SPA should be under a legal obligation to provide reasons for any decisions to revoke or not revoke an individual's parole. As it stands, the SPA is only obligated to provide the offender with reasons if their parole is revoked.

This process unnecessarily leaves interested parties without any understanding of the basis of the decision and the operation of the SPA. Moreover, in light of the recent focus on individuals re-offending whilst on parole, it would promote a greater degree of accountability and responsibility for the SPA if their reasons for revocation/non-revocation were accessible to the greater public.

Given that we have also recommended that decisions for the initial grant of parole by the SPA be available to the public, principally through an online medium, the same reasons of procedural fairness, accountability and an improved understanding of the parole process are applicable for revocation matters.

Emergency suspensions

5.9 What improvements could be made to SPA's power to suspend parole?

The ability to suspend an individual's parole is generally relied upon in the event that there is a reasonable basis to suspect that the offender has or is likely to breach their parole order, or that the offender is likely to harm another or commit a serious offence and the SPA cannot convene in a normal manner to deal with it. It is appropriate that such a power be continued to protect the safety and welfare of the community, notwithstanding that it appears to be rarely used.

However, one key concern is that a parole order can be suspended pursuant to ss 172A(3)(a)(iii) and (iv) of the CAS Act. Those sections permit suspension of parole for offences or harm that have not yet been committed, and that the individual can be held for 28 days in custody on that basis. In upholding principles of procedural fairness, it is worth considering whether a reduced maximum period of custody is more appropriate to deal with the prospective offence matters.

SPA's power to hold an inquiry

5.10 Should SPA use s169 inquiries more regularly? If yes, how could this be achieved?

The Committee is concerned about circumstances where an individual's parole is revoked and no inquiry is held into the breach of that individual's parole obligations, and subsequently the basis of the revocation is not made out at a later review hearing. Time spent in custody should not be viewed lightly, and should not be ordered without suitable safeguards.

Accordingly, even though it is understandable that holding a s 169 inquiry and then holding another review hearing adds a financial and resource burden to the SPA, this is the more appropriate course.

It is submitted that where the SPA suspects a breach, and that breach founds the basis for revocation, then the affected individual should be entitled to a s 169 inquiry. This inquiry should be undertaken within a reasonable period of an individual's parole being revoked.

If the s 169 inquiry has been held, and the prima facie case against the individual has been made out, the SPA will hold a discretion as to whether a further review hearing is warranted. This will prevent a 'double-hearing' of the same matter and moderate the financial burden of holding a s 169 inquiry.

Information sharing

5.11 What changes could be made to improve the way that agencies in NSW share information about breaches of parole?

It is clear that effective information sharing between key agencies is essential to the effective administration of the parole system. Better integration of the information of branches of corrective services, that is the custodial and community branches, is an obvious start.

Offenders' Probation & Parole officers not automatically having access to information about an offender's time in custody is clearly an obstacle to effective management of offenders in the community. If an offender has a file with Corrective Services it may be prudent for the file to travel with the offender so that the relevant branch of Corrective Services is aware of the pertinent information.

NSW Police, via their COPS system, are aware when an individual is on parole. It is unclear if the police notify the SPA as a matter of course that a parolee has re-offended or whether the SPA is notified by Probation & Parole. There should be automatic notification of either SPA or Probation & Parole of re-offending.

SORC is to resume management of serious offenders on their return to custody so it is appropriate that SORC should also be advised of breaches of parole. This need not manifest in SORC received a breach report at the same time as the SPA, but could be achieved by involving SORC in the review hearing.

Role of the Serious Offenders Review Council

5.12 What role could SORC have when SPA decides to revoke or rescind parole for serious offenders?

Given that SORC is tasked with the management of serious offenders while in custody, SORC has access to highly relevant information about these offenders. Indeed this is one reason that at SORC plays the gatekeeper role when it comes to serious offenders applying for parole. As such, SORC should be invited to submit a report to the SPA at parole revocation review hearings for serious offenders.

Making breach of parole an offence

5.13 Should breach of parole be an offence in itself? If breach of parole were to be an offence, what should the maximum penalty be?

No.There is no utility in making breach of parole an offence. The seriousness of a breach is already adequately addressed by the revocation of parole, as well as it being a significant aggravating feature of any new offence.

Reconsideration after revocation of parole

5.14 How should the 12 month rule as it applies after parole revocations be changed?

The 12-month rule should be changed to allow flexibility for parole to be considered earlier than 12 months.

It is in the interests of the community for offenders to have a period of supervision in the community before they are released on their own recognisance at the end of their sentence. The inflexibility of the 12-month rule can result in inmates having little or no supervision in the community with offenders serving short or medium terms likely to only have a single chance at parole.

The Committee is of the view is that the best approach is that, at the time of parole revocation, the time for further review be set at a default date being until half the unexpired time of parole has elapsed or 12 months, whichever is the lessor. There should be a further power for the SPA to vary this to another date should circumstances warrant the variation.

Breach processes for ICOs and home detention

5.15 What changes should be made to the breach and revocation processes for ICOs and home detention?

It should be possible for the court to set non-parole periods for both home detention orders and ICOs.

The present process relating to ICO breaches involving referral to the ICO Management Committee is overly bureaucratic and the Committee supports direct referral to the SPA. However, the Committee is of the view that offenders should be informed that the SPA is considering a breach of an ICO and be able to make submissions to the SPA in relation to the alleged breach.

The Committee thanks you for the opportunity to comment.

If you have any questions in relation to the matters raised in this submission, please contact:

Thomas Spohr, President of NSW Young Lawyers (president@younglawyers.com.au).

OR

Alexander Edwards, Chair of the NSW Young Lawyers Criminal Law Committee (crimlaw.chair@younglawyers.com.au)

Yours faithfully,

Alexander Edwards | Chair, Criminal Law Committee
NSW Young Lawyers | The Law Society of New South Wales
E: Alexander.Edwards@younglawyers.com.au | **W:** www.younglawyers.com.au