

Question 6.1: Different treatment of juvenile offenders

- (1) Should juvenile offenders (that is, offenders who are under 18) be treated differently from adults in relation to parole?
- (2) Should there be a separate juvenile parole system? If yes, why?

Juveniles should be treated differently, incorporating a separate juvenile parole system. The reasons already identified within the question paper provide a reasonable summary of the justification for this position.

Additionally, maintaining separate systems, in particular with a focus on diversion for juveniles, may also assist to minimise potential interactions with more experienced criminals who may either unduly influence or victimise young offenders. Such circumstances could arise in the community by means of having offenders reporting to the same office, or through participation in group programs. It is noted that these concerns will not apply equally to all juveniles, and will also be a consideration for some young adult offenders too. However on average the lower age groups (below 18) are considered likely to be more vulnerable overall.

The separation of juveniles within the parole system provides a reflection of other relevant issues, including accessibility of youth services / supports and legal definitions (eg drinking, smoking, criminal liability). A dedicated juvenile system is likely to be able to develop a more specialised level of expertise and familiarity with these separate systems, and awareness of the issues which are more common to juveniles, than if juveniles are amalgamated within the adult system.

Question 6.2: Features of the juvenile parole system in NSW

If a separate juvenile parole system is retained in NSW:

- (1) Who should be the decision maker in the juvenile parole system?
- (2) What special principles (if any) should apply in the juvenile parole system?
- (3) Do the decision making criteria in s 135 need to be adapted to the juvenile parole system? If so, in what way?
- (4) Should there be a separate legislative framework for the juvenile parole system?

Issues related to the appropriate decision maker and specific principles of a juvenile system are outside the expertise of Community Corrections.

A clear distinction between the juvenile and adult systems is preferable, even if the two are otherwise very similar from a legislative / principle perspective. This may assist in clarifying what provisions apply to an individual offender at any given time, and reduce the likelihood of future amendments to one system having an unintended impact on another (as is suggested at paragraph 6.61 with regard to the 12 month rule following revocation). This could alternately be achieved by greater clarity within a single legislative framework.

For example, whilst s29(1) of the Children (Detention Centres) Act 1987 utilises Parts 6 and 7 of the Crimes (administration of Sentences) Act, it does not make reference to any corresponding juvenile function with regard to the role of probation and parole officers, which are mentioned throughout these sections. This seems to imply that Juvenile Justice therefore cannot be involved in, for example, preparing pre release reports or supervising an offender on release, even though this would seem to be a logical possibility. Community Corrections currently undertake supervision of all offenders who are in custody at Kariong or an adult correctional centre at time of release, but it is not clear if this is an explicit intention of the legislation.

Question 6.3: Structuring the juvenile parole system

- (1) Are any of the options presented preferable to the current structure of the juvenile parole system? If yes, why?
- (2) Are there any other ways of structuring the juvenile parole system that we should consider?

The reasons provided at 6.1 in the question paper for distinguishing adults from children primarily hinge upon whether the offender is an adult or a child at a given point in time based on their level of maturity, not what legislative provisions may have applied at time of sentence, or what centre they happened to be located in at time of release. These reasons are considered the most relevant to maintaining separation of juveniles, and should therefore underpin the approach taken.

A cutoff of 18 is considered preferable in this context, although recognising that due to differing developmental trajectories it is also somewhat arbitrary at a case by case level since each offender is different. Nonetheless, it provides the most consistent approximation regarding the maturity of an offender.

The offender's age may also impact on issues such as the types of services and programs which may be available, which is then related to the expertise and resources of the agency providing supervision / the body making decisions regarding release and / or breach. For example, Community Corrections has very limited knowledge around child related services and issues compared to Juvenile Justice, but has the means to effectively manage adults. Therefore, Juvenile Justice should retain all offenders under age 18, whilst Community Corrections would take over for offenders at or over 18. It is also considered preferable, for the sake of simplicity, that the decision making body / system to be applied should be aligned to this structure.

For practical purposes it may be appropriate to provide a mechanism such as an overlap period rather than a strict cutover point. For example, if the offender has less than 6 (or 3) months remaining on their sentence (or NPP) at the time they turn 18 it might be simpler to leave them within the juvenile system than to apply the adult system. Any offender with more than 6 (or 3) months remaining would transfer to the adult system immediately. Although this adds some complexity compared to the simplicity of an immediate change at age 18, it might avoid the potential confusion of an offender being subject to a different system for what may be a very short period of time.

Use of a structure based on sentencing legislation, or similar, is considered more problematic because it may not relate to the status of the offender as a juvenile at the point in which they are in the parole system. That is, an offender who may have been sentenced as a child may otherwise be an adult, legally and developmentally, at time of parole. For example, some offenders will continue to serve children's orders into their 20's.

Conversely, offenders who are sentenced as children and are now over 18 but with ongoing vulnerability could be no different to an offender who has otherwise identical problems but had already turned 18 at the time of their offence.

Note that any changes which may increase the volume of offenders managed by CSNSW (ie, if all over 18s were to be placed in the adult system) must be considered in conjunction with appropriate distribution of resources.

Question 6.4: Parole process in the juvenile parole system

- (1) Should the parole decision making process in the CAS Act be adapted for use by the Children's Court? If so, how?
- (2) Should victims be involved in parole decision making for young offenders in the juvenile parole system through a restorative justice conferencing process?

No comment.

Question 6.5: Assistance with parole readiness

Should any improvements be made to the way young offenders in the juvenile parole system are prepared for parole?

The experience of Community Corrections through Kariong is that the pre release process is generally adequate, in particular through positive relationships with Juvenile Justice in providing expertise and advice relating to the management of offenders.

Community Corrections staff within the community often appear less confident regarding the management of offenders under 18 years of age, as such offenders are a very small proportion of the total workload, and most staff will only have very infrequent involvement in their supervision. See also comments at 6.7.

Question 6.6: Reconsideration after refusal of parole

Should the 12 month rule apply to young offenders if the Children's Court refuses parole? If no, what limit or restriction should there be on future applications for parole in such cases?

No. The 12 month rule is generally not considered appropriate, on the basis that for those few offenders to whom it will apply in practice there is limited flexibility in providing a proportionate response to breach. The same arguments as apply in the adult system should also apply here.

Question 6.7: Supervision of young offenders

- (1) Are there any issues with the selection of the supervising agency for young offenders paroled through the juvenile parole system?
- (2) Is Juvenile Justice NSW able to provide sufficient support, programs and services to parolees in the juvenile parole system?

The current process whereby Community Corrections undertakes supervision based on the last location of the offender prior to release is not considered satisfactory as it is somewhat arbitrary and inconsistent. As noted above at 6.3, the more relevant issue should be the needs of the offender.

Basing allocation on last centre prior to release can create uncertainty regarding release arrangements; for example, Community Corrections have recently experienced difficulties where considerable may be undertaken on post release arrangements through the parole unit and community office, only to have the offender transferred back to Juvenile Justice prior to release. This impacts on the post release plans, due to differences in the way offenders are managed in each system.

Nonetheless, it is also acknowledged that many – but not all – of the offenders who go to Kariong are more difficult to manage and that supervision in the adult system may push greater accountability onto the offender. Notwithstanding the frequency of contact, anecdotal operational feedback indicates that Community Corrections tend to have a stronger

compliance focus than Juvenile Justice, and that SPA also seems more likely to revoke an order than is the Children's Court.

The issues noted at Question 6.3 also apply here. A system where offender under 18 are all managed by Juvenile Justice / the Children's Court, and those over 18 (with the possible exception of those who have less than 6 months remaining) are managed by Community Corrections is seen as being the most appropriate mechanism for determining supervision.

There are concerns currently regarding the new Working With Children checks, and the possible implications for Community Corrections with respect to any offenders who are under 18. As under 18s represent only a tiny fraction of the work of Community Corrections (approximately 0.1% of offenders), requiring checks for all staff may not be feasible, since many will not work with juveniles at all, or very infrequently, and are likely to be resistant to having to pay to do so. Pre-empting where juvenile offenders will be managed to ensure a small number of staff in each area who can manage juveniles, is also difficult as these locations will change frequently. However some Community Corrections staff, including those at Kariong, have already obtained the check.

There will also likely be resourcing implications for CSNSW if all offenders over 18 are referred to Community Corrections. Juvenile Justice annual report data indicates that (in 2011-12) 40.5% of offenders were over 18 at the commencement of supervision in the community. The impact of this on resource needs would need to be considered in any changes to this area.

Question 6.8: Breach and revocation of parole in the juvenile parole system

- (1) Should the 14 day waiting period before revocation review hearings be removed for young offenders in the juvenile parole system?
- (2) Should the 12 month rule apply after parole revocation in the juvenile parole system? If no, what provision or limit, if any, should replace the 12 month rule?

No comment.

Question 6.9: Role of the Serious Young Offenders Review Panel

Should the functions of SYORP be expanded so that it has a role in parole decision making for serious young offenders?

No comment.

Question 6.10: Principles applying to young offenders in the adult parole system

- (1) Should similar principles to those found in s 6 of the *Children(Criminal Proceedings) Act 1987* (NSW) and s 4 of the *Children(Detention Centres) Act 1987* (NSW) apply when SPA is dealing with an offender who is under 18?
- (2) Should SPA make parole decisions for young offenders who are under 18 according to different criteria from those that govern parole for adults?
- (3) If yes to (2), what criteria should apply to young offenders in the adult parole system?

No comment.

Question 6.11: Composition of SPA

When SPA is making decisions affecting young offenders, should there be a special composition of SPA to include members with youth expertise?

This would seem appropriate, however it is noted that this does not necessarily occur with respect to other disadvantaged groups and is probably not essential. Managing all offenders who are under 18 through the juvenile system is considered preferable.

Question 6.12: In-custody and post-release support

- (1) What specific problems do young offenders in Corrective Services NSW custody have in accessing in-custody programs and preparing for parole?
- (2) How can the post-release programs, accommodation and support provided to young offenders supervised by Community Corrections be improved?

CSNSW compendium programs were developed and grounded in the empirical evidence around 'what works' with adult offenders. It is therefore not best practice to facilitate the same programs with juvenile offenders (under the age of 18 years) without evaluation with this population as further evidence is required that the risk factors or criminogenic needs of a juvenile population are the same as adult offenders. As such Kariong Correctional Centre currently runs primarily 'well-being' or readiness and reintegration programs, rather than criminogenic programs targeted to reduce risk of re-offending.

Current programs include:

- **Managing Emotions** – an introductory program that provides participants with a language to talk about feelings, thoughts and behaviour and understand the links between them
- **Real Understanding of Self-Help (RUSH)** – a dialectical behaviour therapy (DBT) based program aimed to assist with emotion regulation, distress tolerance and mindfulness concepts
- **Getting Smart** – an intervention based on SMART Recovery principles to address substance use
- **NEXUS** – a community engagement program to prepare offenders for reintegration and release to the community
- **Health Survival Tips** – CSNSW strategy to prevent the spread of communicable diseases especially Blood Borne Viruses such as Hepatitis B, Hepatitis C and HIV which should be facilitated within the first two weeks after reception to custody.
- **Alcoholics Anonymous and Narcotics Anonymous** – ancillary programs facilitated by external volunteers

Kariong CC is also facilitating the following programs to prepare juvenile and young offenders for the Young Adult Offender Program at Oberon Correctional Centre.

- **Young Adult Satellite Program (YASP)** - The YASP was designed for young adult offenders who have not yet accessed the Gurnang Life Challenge, Young Adult Offender Program at Oberon Correctional Centre. The YASP comprises of 10 days run concurrently addressing issues associated with Acquaintance and Openness; Trust and Empathy; Communication; Decision Making and Problem Solving; Social Responsibility; Personal Responsibility; Affirmations and Beliefs. During the program, inmates are provided with an opportunity to reflect upon their personal situation, cope independently with new challenges and constraints. The YASP builds upon adult learning principles and incorporates cognitive learning modules that balance the experiential learning modules to achieve specific learning outcomes.

- **Young Adult Preparation Program (YAPP)** - YAPP is a three day readiness program to “ready” young adult offenders for future programs and case plans. The program is a motivational preparation development program that utilizes experiential learning for initiative, openness, trust development and communication exercises that accelerates a person’s learning potential in a personal development growth process.

No issues were identified by correctional centre staff in relation to young offenders accessing these in-custody programs. Program needs/requirements are identified for each inmate and form the foundation of the case plan. The case plan sets the program pathway, including educational and vocational needs and also incorporates links with community organisations to provide pre and post release support.

(2) No issues were raised by Community Corrections staff regarding access to in custody programs as they relate to release on parole, indicating that one to one psychological intervention was often used as an effective intervention strategy. Offender Management and Policy would be better placed to comment on the level of program access.