**DEPARTMENT OF ATTORNEY GENERAL AND JUSTICE**

**LAW REFORM COMMISSION – REVIEW OF PAROLE**

**SUBMISSION IN RESPONSE TO QUESTION PAPERS 4-5**

## Question Paper 4

### Question 4.1: Case management of offenders in custody

*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?*

Offender Management and Policy (**OM&P**) in Corrective Services NSW (**CSNSW**) is reviewing current services and programs, including case management. A new model of case management, from reception to completion of an order in the community, is being developed. The model will focus interventions for higher risk offenders within the custodial period prior to release. The model will streamline and simplify the system to reduce the time required to progress through the three security classifications. Improvements in data entry in relation to program scheduling will facilitate completion of programs prior to consideration for parole. This will address competition between services and programs towards the end of the custodial period. Additional services at times of transition will be provided through partnerships with external providers. These changes will be introduced throughout 2014.

The case plan is critical to effective case management. In the new OM&P model, processes will be monitored to ensure that initial assessments, sentence plans, case reviews and discharge plans are included. Custodial and community staff will be trained to use and interpret case plan screens on the Offender Integrated Management System (**OIMS**). Community Corrections also released a new case plan guide in January 2014, which provides guidance on case plan development generally. Discharge summaries from custodial programs such as the Intensive Drug and Alcohol Program (**IDAPT**), Violent Offenders Therapeutic Program (**VOTP**) and Sex Offender Programs will be incorporated into case plans and pre-release recommendations developed by Community Corrections. A review of case plan screens and their use across both custody and community will be undertaken to ensure case plans are a practical and easily used source of information.

The statement in paragraph 4.28 of the Paper, that Community Corrections is always involved in case management in custody, is somewhat misleading, as this only occurs in relation to sentenced inmates who may be released to supervised parole and State Parole Authority (**SPA**) released offenders. Under current policy, only SPA released offenders receive significant case management input from Community Corrections, and then only at the time of sentence and in the final 12 months. For most offenders, involvement by Community Corrections commences towards the end of the non-parole period.

Lower risk offenders, even those in custody for sexual and violent offences, are usually not targeted for offence-related programs. There is considerable evidence that program effects for low risk offenders are negligible or adverse.[1] Lack of program attendance should not affect SPA decisions. However, limited program availability has been identified as a problem for female offenders who have fewer options due to their lower numbers, and parole recommendations may therefore need to account for the fact that programs may only be available when the offender is released into the community.

[1] Andrews, D. A., &Bonta, J. (2010). The Psychology of Criminal Conduct (4th ed.) Cincinnati, OH: Anderson Publishing.

Question Paper 4 identifies a number of 'challenges of the prison experience' which CSNSW is already endeavouring to address. For instance:

- Section 4.7 notes the effect of the rigid routine of correctional centre life on the ability to live independently in a world of technological change and take personal responsibility. Prison-based education includes a focus on computer literacy and related skills, including Certificates I–III in Information Technology. Taking personal responsibility for civil and family matters is encouraged through free calls via the Offender Telephone System to human service and legal agencies (e.g. Housing NSW, Child Support Agency, Legal Aid NSW), and through access to the Legal Information Portal on all offender computers.
- Section 4.19 notes that

  (1) Inmates leave custody with debts and insufficient funds to pay rental deposit. The Work Development Order (**WDO**) scheme is promoted in all correctional centres as a means to reduce fine-related debt prior to release through participation in approved education and programs.

  (2) Inmates have limited access to telephones in correctional centres to arrange accommodation, experience discrimination by real estate agents and landlords, and have limited access to public housing. Inmates are assisted in taking personal responsibility for managing their own affairs. For example, there is a free telephone service for Housing NSW; Legal Aid NSW's *Back on track* DVDs and the Legal Information Portal provide information and advice on public and private housing requirements; and Legal Aid NSW and community organisations provide legal education services.
- Section 4.10 notes the negative impact of incarceration, and lack of work experience while in custody, on post release employment. Corrective Services Industries (**CSI**) aims to provide on the job experience in areas of work for which there is community demand. CSI focuses on employment skills, and real workplace environments and behaviours, to improve and maintain employment outcomes. This is complemented by strategies to improve work readiness, particularly for those inmates with limited and/or low-skilled work histories, and work references covering work history, work ethic, and vocational skills and qualifications achieved. CSI is committed to expanding the current traineeship program, further developing vocational education opportunities linked to each of its business units, and expanding the work experience and further education components of the external leave scheme. There is also an Employment Portal on the offender computer network aimed at improving prospects for post release jobs.
- Section 4.11 notes the negative effect of incarceration on family/community ties. CSNSW promotes family visits and use of audio-visual facilities where families are geographically distant. CSNSW also engages NGOs to facilitate visits from inmates' children.
- Section 4.13 notes the need for more 'robust' post release arrangements and support. While addressing practical needs is important, there is no conclusive evidence on whether providing custody-based life skills programs and post-release resettlement programs make a significant difference to reintegration and reoffending outcomes. Evaluations of two United Kingdom reintegration projects, Greenlight and the Diamond Initiative, showed no improvement in reoffending outcomes.[2]

Section 4.27 of the paper notes, in relation to case management of sentenced inmates, a Law and Justice Foundation comment that case plans are undermined by custodial officers having dual responsibility for security/enforcement and case management. With the exception of inmates engaged in intensive programs, custodial staff have the most contact with offenders and play an important role in ensuring case plan objectives are addressed. The modern custodial officer has a mentoring role, such as pro-social modelling, in addition

[2] P Dawson and B Stanko (2011) *An evaluation of the Diamond Initiative: year two findings*, Criminal Justice Partnership, London; J A Wilson and R C Davis (2006) Good intentions meet hard realities: An evaluation of the Project GreenlightReentry Program, *Criminology and Pubic Policy* 5 (2) pp 303-38

to maintaining security and should be actively involved in inmate rehabilitation. Contact on a daily basis enables immediate needs to be addressed in conjunction with case plan objectives. The 2010 Biennial data collection survey found that for those inmates who received case management, there was a high level of endorsement, with case managers being ranked almost as highly as professional staff according to psychometrics.[3]

**Question 4.2: Role of the Serious Offenders Review Council (SORC)**

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

SORC oversees the management of legislatively defined serious offenders (who numbered 742 at 31 December 2012), as well as 75 high security inmates reviewed through the High Security Inmate Management Committee. SORC is also responsible for considering reductions in classification of offenders holding E2 (Escape) classifications through its Escape Review Committee (**ERC**). In 2012, the ERC considered 67 such applications.

At the request of the Commissioner, SORC reviews C3 Pre-Release External Leave applications for inmates identified as 'public interest' through its Pre-Release Leave Committee (**PRLC**). In 2012, the PRLC considered 180 applications for unescorted pre-release leave programs.

Consideration could be given to 'public interest' inmates and E2 classification inmates being considered through an internal CSNSW committee. This would not detract from SORC meeting its legislative responsibilities and its focus on serious offenders. It could enable greater involvement by CSNSW areas (such as Security and Intelligence) in the placement and release plans of such offenders, thereby assisting with risk management. It may also be beneficial for SORC to review initial case plans and provide further reviews only when an offender approaches their eligible release date (i.e. two years prior rather than every 12 months as currently occurs).

**Question 4.3: Custodial rehabilitation programs**

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

All CSNSW offender rehabilitation programs delivered in custody and the community meet a set of standards. In 2003, CSNSW published these standards in its Strategic Accreditation Framework, which draws on work in other speaking jurisdictions and sets out how program materials should be designed, how they should show evidence of being based on sound theory, and how they should be implemented.

The criteria on which accreditation is based ensures that programs address criminogenic needs; are matched to the level of risk of re-offending; use sound and robust research evidence; apply effective methods; help offenders engage with education and treatment; emphasise skills-based methods; offer training in appropriate skills; and apply the right method and intensity of intervention. The accreditation process is applied to programs developed by CSNSW and those licensed from external sources.

Accredited programs are included in the CSNSW Compendium of Correctional Programs and are authorised for use with offenders. The difference between programs in the Compendium and those not in the Compendium is that offenders may be directed to participate in Compendium programs as part of their case plan.

[3] M Kevin (2013), *Drug Use in the Inmate Population – prevalence, nature and context, DUIP NSW 6th Biennial Data Collection 2009-10: Overview and series trends*, CSNSW, Research Publication 52.

The Corrective Services Administrators' Council (**CSAC**) has developed national standards for the content and delivery of offender programs, which will contribute to the development of a national accreditation framework. The standards are pitched at a conceptual level, allowing states and territories to operationalise them in ways that meet local needs and circumstances. CSNSW is reviewing its own framework against the national standards.

CSNSW has also reviewed its accredited rehabilitation programs. As a result, all preparatory and reintegration programs will be consolidated and a generic program, which will be accessible across the state, will be developed. All offenders at higher risk of recidivism will receive the generic intervention, as well as modules addressing their criminogenic needs (e.g. sexual offending, violence and aggression, alcohol and other drug problems). Greater standardisation and availability will improve integrity and access, and will also address the issue of 'dosage'. Research suggests there needs to be a minimum of 100 contact hours to optimise program efficacy.[4] The new model will commence in September 2014.

CSNSW recognises the importance of evaluating programs. Program evaluations have been undertaken by CSNSW research staff or in partnership with a research organisation. Evaluations include long term comparisons between treated and untreated sex offenders (CUBIT program), domestic abuse offenders (Domestic Abuse Program), and recidivist drink drivers (Sober Driver Program). These evaluations showed moderate but significant success in reducing recidivism. A number of other evaluations are underway (e.g. Getting SMART). CSNSW has also completed a number of program evaluations in which pre- and post-measures of change showed that offenders completing the program demonstrate reduced criminogenic needs, or that the program was indeed targeting the issues it was meant to.

These evaluations could be improved with a greater level of independence. The Bureau of Crime Statistics and Research will shortly commence evaluations of the long term effectiveness of violent, sex offending, and intensive alcohol and drug treatment programs.

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

CSNSW has set targets for increasing participation and completion rates in key intervention programs, in line with *NSW 2021* measures to reduce reoffending. The following table shows 2012/13 completion rates for all programs (custody and community), compared to the baseline year and the set targets:

| **CSNSW Program category** | **Baseline program completion 2011/12** | **2012/13 financial year target** | **Outcomes for 2012/13 financial year** |
|---|---|---|---|
| Alcohol, drugs & addictions | 61.9% | 64.0% | 66.9% |
| Aggression & violence | 53.3% | 58.0% | 61.7% |
| Sex offending | 97.5% | 98.0% | 97.7% |

To ensure as many high risk offenders as possible have the opportunity to complete relevant programs prior to their earliest date of release, each custodial and community corrections agency receives a comprehensive overview of individual offender needs. This needs analysis draws on a number of sources and is updated weekly. Additionally, six monthly planning meetings are held to review the current and projected program needs of each custodial and community location in order to match needs and resources. Based on this analysis, a six month program schedule is developed.

[4] Andrews, D. A., &Bonta, J. (2010). The Psychology of Criminal Conduct (4th ed.) Cincinnati, OH: Anderson Publishing.

Program delivery capacity can be impacted by resource limitations (e.g. lack of suitable areas, trainer expertise, staff leave). The restructure of OM&P will ensure more effective and efficient use of staff resources for face-to-face delivery of programs and services across custody and community. Audio-visual technology will be used to support program and service delivery in remote locations and provide supervision to staff at those locations.

Strategies have also been developed to address other factors that can impact on program service delivery and participation (e.g. lockdowns, staff shortages, industrial disputes, incidents that breach centre security or safety). Inmate movements, non-associations, and legal or other visits can also affect program attendance and completion. Offenders may also fail to complete a program because they refuse to participate, engage in unsatisfactory behaviour, or are released from custody.

Addressing participant motivation is an important for optimising program efficacy and completion.[5] CSNSW has introduced the Corrections Victoria Treatment Readiness Questionnaire (**CVTRQ**) to measure readiness for treatment programs. CVTRQ can be used to determine the types of interventions and programs most suitable for an offender, understand why an offender is reluctant to participate in treatment programs, motivate an offender to participate in treatment programs, and reduce program dropout rates. A trial of CVTRQ by Community Corrections identified that as many as a quarter of offenders in the community were not suitable to progress directly into a criminogenic program without one-to-one motivational interviewing or completion of a readiness program.

**Question 4.4: Access to education and work programs in custody**

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

CSNSW delivers various custody-based education and employment programs to improve basic skills and employment prospects, and enhance rehabilitation outcomes. In 2012/13, 72.3% of eligible inmates were employed by CSI. Where possible, the focus is on industries known to be experiencing skill shortages. Vocational training, including traineeships, is attached to each CSI business unit, providing qualifications in areas such as construction, transport, retail and information technology. CSI also develops inmates' generic employment skills, such as teamwork, problem solving, self-management, and effective communication.

CSI has developed ongoing relationships with job service providers and employers to ensure as many ex-prisoners as possible are placed into work in the community. For example, CSI has achieved success in its recent heavy vehicle licence program. CSI also endeavours to engage with potential employers for the work pre-release program.

CSI is developing an employment portal, which will be piloted at three sites in March 2014 and installed on the state-wide offender computer network after July 2014. The portal will contain information on inmates' work experience, including work undertaken while in custody, and link to job service providers.

In relation to education, CSNSW focuses on improving basic literacy and numeracy, and aims to ensure that as many inmates as possible progress towards or complete an Adult Year 10 equivalent qualification at Certificate II level. CSNSW is establishing additional Intensive Learning Centres to provide full time opportunities to complete Certificate I or II in the TAFE NSW Access to Employment, Education and Training framework. This qualification can be commenced in custody and completed at any TAFE college post release.

CSNSW assesses literacy skills in the first month of sentence via a paper-based tool. However, there are plans to implement an electronic assessment tool at the end of 2014,

[5] D Harley, *Evaluation of the Corrections Victoria Treatment Readiness Questionnaire (CVTRQ) at the Compulsory Drug Treatment Centre (CDTCC) NSW* (University of New South Wales).

which will provide efficiencies, improve standardisation, and enable objective measurement of literacy progress over the course of a person's sentence.

In 2012/13, 7,788 inmates were enrolled in one or more education and/or vocational training courses. This represents a 36.1% participation rate, the highest inmate education enrolment rate in NSW in the past eight years.

In addition to basic education, CSNSW provides around $2.5M to TAFE NSW for the provision of vocational training in correctional centres. In 2012/13 18,295 hours of TAFE NSW courses were delivered resulting in the achievement of 2,319 statements of attainment. Importantly, TAFE NSW vocational training programs are linked to industry and business centre work opportunities offered by CSI.

CSNSW provides vocational support for offenders following release through the Preparation for Employment Education and Training (**PEET**) program. However PEET courses commence in line with TAFE semesters, limiting the ability of offenders to be referred into the program quickly following release. The prompt availability of such programs post release is an important consideration, given 20-30% of offenders will already have reoffended or returned to custody within four months of release from custody.[6]

PEET is also available to offenders on good behaviour bonds and other community-based sentences, e.g. intensive correction orders (**ICOs**). In 2012/13, 250 parolees participated in PEET. This represented 40% of PEET participants and less than 5% of parolees. CSNSW needs analysis data indicates 70% of supervised parolees in NSW present with risk factors relating to employment and education, and associated factors such as welfare dependency.[7]

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

Opportunities to participate in education and work programs in custody are limited by out of cell hours; local operational factors; and the industries, education courses and resources available at the centre. Out of cell hours vary according to security classification. Providing education in cell would improve access to education. From September 2014, CSNSW will pilot in cell computers for full time students in minimum security wings at South Coast Correctional Centre.

Locating the delivery of industry-specific basic literacy and numeracy skills in the workplace would also enhance access to education and ensure these skills have immediate relevance. CSNSW is currently developing this approach, which has the potential to reduce the conflict between education and employment needs when time is limited. CSNSW is also developing strategies to improve the sequencing of vocational training and high intensity therapeutic programs to optimise participation in both activities.

The new case plan, case management and classification process being developed will provide inmates with options for employment and vocational training in specific industries. Placement will take account of work and training preferences where possible. However, placement flexibility is constrained by high numbers and by classification and security issues.

CSNSW is also considering:

- developing an employment and training pathway to enable traineeships and apprenticeships commenced in custody to be continued in the community

[6] Gould D., Hainsworth, J., Manning, K. and McLackland, T. (2011) *Finishing the Job: Providing a roadmap for post release education and employment,* Australasian Journal of Correctional Staff Development, Corrective Services NSW

[7] CSNSW Community Offender Census (2011). 2012/13 Census data was not yet available, however note that the results mirror the 2010 and 2009 census, and are unlikely to have changed significantly.

- expanding the works release program to increase the number of offenders accessing and maintaining employment while still in custody
- strategies for providing low-skilled employment opportunities that require less training time for remandees.

Community employment outcomes are limited in cases where inmates do not have access to appropriate pre-release leave, or do not reside in a works release location. In general, employers view offenders as one of the least employable groups.[8] The conclusion in paragraph 4.50 that inmate participation in education in CSNSW, as reported in the *Report on Government Services* (**ROGS**), has markedly decreased from 51.3% in 1996/97 to 30.3% in 2010/11 is misleading for two reasons. First, the proportion of inmates reported to be enrolled in education in 1996/97 was 88% (as published on p.426 of ROGS 1997) not 51.3%. Second, there have been significant changes to counting rules since 1996/97, when inmates participating in education were manually counted as per centre, leading to over counting as movements between centres inflated the figures. The more recent system is based on individual enrolments, meaning that each inmate is counted only once. Other changes in counting rules, such as specification of exclusion categories and using yearly average data as the basis for calculations, have also impacted on data. These changes limit the reliability of making comparisons between sample years.

**Question 4.5: Short sentences and limited time post-sentencing**

*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 new model of inmate case management will include strategies for extending interventions to inmates serving shorter sentences. CSNSW is considering refining assessment processes and referral mechanisms conducted at reception into custody. It is also considering developing partnerships with government and non-government agencies to provide post release services and programs for offender's on short sentences assessed as high risk of reoffending.

Inmates serving shorter sentences have shorter parole periods, and Community Corrections has limited involvement in court-based releases until expiry of the non-parole period, when the focus tends to be on release rather than case management. Inmates with sentences of three months or less and inmates on remand who are not allocated case officers are not required to have case plans or a case officer, although these inmates do have a services plan addressing any immediate needs. The transition from custody to community continues to present challenges for program continuity. By improving standardisation of programs, it may be feasible for offenders to commence a program in custody and to continue the program in the community in a group delivery format or one-to-one with a supervising officer.

**Question 4.6: Pre-release leave**

*How could pre-release leave programs be improved to:*
*(1) prepare offenders sufficiently for life on parole*

There are four unescorted external leave programs: work release; education leave; day leave; and weekend leave. From 1 January 2014, CSNSW started implementing amended criteria for access to these programs, following a review of the relevant policy. It is too early to assess what impact these changes will have.

Leave programs assist offenders to reintegrate into the community and are only considered when strategies to ensure community safety are in place. For this reason, unescorted external leave programs are reserved for offenders who have demonstrated a genuine

[8]Graffam, J., Shinkfield, A. &Hardcastle, L. (2008) *The Perceived Employability of Ex-Prisoners and Offenders, International Journal of Offender Therapy and Comparative Criminology*, 52(6)

commitment to rehabilitate while in custody. CSNSW is considering whether to extend these programs to include attending rehabilitative programs and services in the community, as part of preparation for parole/release.

The amount of preparation required for parole differs for each offender. Some require no assistance, while others require assistance with daily living skills, financial management, job seeking, accommodation and support services. Offenders needing support are referred to the NEXUS program, which provides practical information and some skills training (see Question 4.11 below).

*How could pre-release leave programs be improved to:*
*(2) ensure offenders can access pre-release leave prior to parole?*

Transitional/post release support is currently provided through mentoring or support programs utilising case workers and volunteers (e.g. Red Cross, Aboriginal Legal Service, Tribal Dreaming). Expanding the parameters for partnership engagement in pre-release leave may broaden the range of offenders who can access the program. For example, offenders are generally targeted close to their release date, with the aim of providing support services shortly before release. Offenders who already have pre-release leave are likely to already have supports in place. Encouraging organisations to target offenders who do not have support, with a view to facilitating pre-release leave earlier in their sentence, may be one way to improve access.

CSNSW is considering partnerships with non-government organisations to sponsor and supervise suitable offenders on day leave. For example, a volunteer program could familiarise offenders with using banks and public transport, and assist with attending appointments. This would increase the number of offenders on preparation-for-release day leave programs. It is noted that not all inmates need to participate in unescorted external leave, and selection should be linked directly to the risk of reoffending.

In 2012, 1,129 offenders were externally employed by 148 accredited work release employers in fulltime, part time or seasonal paid work. Throughout 2012, 6,492 offenders were approved to participate in both day and weekend leave; 444 offenders gained employment from interviews; and CSNSW received 927 external employment enquires regarding external leave program partnerships.[9]

As at December 2013, there were 500 inmates eligible to participate in one of the four external leave programs. However, there are a number of constraints on accessing the program, including the location at which eligible inmates are accommodated. Regional and rural areas have limited employment, educational and family contact opportunities, while accommodation options in the Sydney metropolitan area are restricted by the high proportion of remand beds and special purpose and program specific beds.

***Question 4.7: Transitional centres before release***

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

In 2001, CSNSW published an evaluation of the Parramatta Transitional Centre (**PTC**) as part of the planning for the Bolwarra House Transitional Centre (**BHTC**). The evaluation found that PTC was:

- efficient - it had a lower cost per day than mainstream corrections
- effective – it had a low recidivism rate (since opening in 1996, only one former resident returned to custody)

[9]Figures obtained from the CSNSW Work Release Program – External Monitoring Group Brochure

- appropriate – residents in a pre-release program live, work, study and attend programs in the community. Also, residents attend the same workplaces, educational institutions and access the same community facilities and programs as non-offenders.[10]

In 2011, CSNSW published a research bulletin in relation to Drug Summit-funded treatment programs in NSW correctional centres[11]. The study found that BHTC program participants were around 30% less likely to reoffend than the non-program matched sample.

Transitional centres have also proven effective in establishing community support services and networks for suitable female offenders. Such networks are a significant factor in reducing recidivism. Establishing transitional centres to cater for suitable male offenders may prove beneficial, especially for long term inmates who have limited community support.

Transitional centres provide a through care link between custody and parole. Intensive community based case management of female residents establishes links with community agencies and support people that follow through into the parole period and beyond. Such case management assists residents to prepare for community living. Case management addresses socialisation and normalization, in addition to offence related needs, and provides a holistic approach to reconnection with family and community. The transition period also prepares residents for the requirements of parole, addressing any misconceptions about the process. The transitional centre incorporates external leave components, including employment, education and weekend leave with family or significant people as sponsors. This enables the resident to engage directly in areas that are empirically recognised as protective factors against recidivism. [12]

*(2) How could more offenders benefit from them?*

The availability of female beds has not kept pace with the significant increase in female offenders over the last 10 years. This has reduced access to appropriate programs prior to release.

Increasing transitional centres for female offenders would give more women offenders the opportunity to learn vital life skills before being released into the community. Depending on the offence, the early case plan should outline a process and time for the offender to progress through the classification levels to be accepted into a community based program.

There is no transitional program available to male offenders in NSW. Given that many more men than women serve long sentences, establishing a dedicated facility would assist them to reintegrate into the community. Alternatively, existing correctional centres could provide this service through expanding pre-release programs. Although transitional support was provided by the Community Offender Support Program, and continues to occur through Nunyara, the focus in these centres was community based offenders.

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[10] Corrective Services New South Wales (2001) Evaluation of the Parramatta Transitional Centre, Corporate Planning and Development Unit accessed on 8 January 2014 at http://csa.intersearch.com.au/csajspui/bitstream/10627/54/3/39339055633850EVA.pdf

[11] Research Bulletin 31 – September 2011 - Corrections Treatment Outcome Study (CTOS) on offenders in drug treatment: Results from the Drug Summit demand reduction residential programs

[12] Baumer, E. P., ODonnell, I., Highes, N. (2009). The porous prison a note on the rehabilitative potential of visits home. *The Prison Journal, 89*, 1, 119-126; Graffam, J., Shinkfield, Al, & Lavelle, B. (2014). Employment and recidivism outcomes for an employment assistance program for prisoners and offenders. *International Journal of Offender Therapy and ComparativeCriminology* 58(3), p. 348-63; *Analysis of Recidivism Rates for participants of the Academic/Vocational/Transitional education programs offered by the Virginia Dept Correctional Education* (2000) J Correctional Education , 51 (2), 256-61.

**Question 4.8: Back-end home detention**

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

Home detention is less expensive than full time custody. Back end home detention could be implemented, but Community Corrections would require additional resources. Community Corrections would need to assess the suitability of accommodation, and home detention would require 24 hour electronic monitoring.

Back-end home detention could be used to reduce the number of less serious offenders in custody (e.g. traffic offenders who might be eligible to serve their full sentence in home detention). Back-end home detention could also provide a structured way of reducing supervision levels following a long period in custody and could be a step that follows day parole.

Back-end home detention could be considered in conjunction with electronic monitoring of parolees, since parole with electronic monitoring is not dissimilar from home detention. The sequence of these graduated management strategies would need to be made clear, as, for example, unescorted day leave may in some circumstances be less onerous than home detention.

Given resource limitations, consideration would need to be given to what controls are necessary for which offenders to best manage risk to the community. There may be more value in lower risk/less serious offenders engaging in pre-release leave programs at an earlier stage, and focusing electronic monitoring resources on higher risk/higher impact offenders.

**Question 4.9: Day parole**

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

It is unclear what benefits day parole would have over pre-release leave. If offenders are required to return to a correctional centre on a regular basis, the benefits of allowing access to their post release community may be limited. If an offender can be adequately placed in their own accommodation in the community for several nights, it is unclear what benefit there would be in requiring them to return to custody.

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

Any day parole scheme prior to the non parole period (**NPP**) expiry could be served under the pre-release leave program, since the practical effect is similar and changes could be made if required. In this system, the offender would continue to be an inmate, rather than a parolee, who might also be subject to curfew and required to reside at an approved address.

Alternatively, day parole could be introduced after expiry of the NPP as a means of transitioning offenders who may otherwise not be considered eligible for full parole. This may increase parole numbers by providing an alternative mechanism within the existing system. It could be used in conjunction with electronic monitoring conditions if necessary, and may also provide a means for inmates with no suitable accommodation to access parole with the correctional centre as their place of residence. This would allow them access to the community to try and obtain suitable accommodation.

Day parole could assist inmates who are currently refused parole due to a lack of day release, and could be considered analogous to providing a presumption in favour of day release once the NPP is expired. In effect, this would be a pre-release mechanism approved by SPA as part of the management of parole. However, there would be resource implications of retaining in custody offenders who would otherwise have been able to go onto 'regular'

parole, in particular if resources of both custody and community are required to manage the offender simultaneously.

Clear guidelines would be required outlining the circumstances by which an offender is judged to have suitable accommodation/support in the community to leave the correctional centre for a period longer than one day and then return, as opposed to going to full parole. Net widening through requiring offenders to keep returning to correctional centres when they could remain in the community should be avoided. One criticism of the Community Offender Support Program was that offenders often felt they were being kept in custody rather than in the community; requiring offenders to keep returning to custody may have a similar effect.

A re-entry court approach (discussed below) could support this approach by engaging the offender with the relevant court/authority, rather than exposing them to the custodial environment. The re-entry court could alternatively determine whether the offender is required to return to custody at all.

Day parole could be considered a step before back-end home detention, should this option be supported. This would create a step-down approach to reducing structure and supervision prior to parole. It could also be considered after a period of escorted day leave as part of a pre-release case plan.

**Question 4.10: Re-entry courts**

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

There have been positive reviews about the efficacy of re-entry courts in jurisdictions where they have operated for some time. For example, the 2010 report by the Centre for Court Innovation examined the effectiveness of the Harlem Parole Re-entry Court and concluded that it had a positive impact on preventing new criminal behaviour as measured by re-arrests and reconvictions.

The underlying principles of re-entry courts are similar to those of the NSW Drug Court. In association with the Compulsory Drug Treatment Correctional Centre (**CDTCC**), the Drug Court manages and supervises eligible offenders as part of the Compulsory Drug Treatment Program (**CDTP**). A re-entry court, though open to all offenders, may duplicate some of these functions.

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

Due to the cost implications of establishing a new re-entry court, consideration could be given to SPA undertaking functions similar to a re-entry court. SPA could enhance the service provided by Community Corrections and supplement existing reintegration strategies. This could occur through SPA providing a support and problem-solving role for supervising officers and offenders. Video conferencing technology could allow an offender and their supervising officer (and other stakeholders or service providers) to regularly report to SPA and discuss any issues, in particular during the early stages of parole. The role of SPA would not be to take over case management, but provide advice and assistance, encourage dialogue, and reinforce the requirements of parole to the offender.

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

If SPA were to undertake a re-entry role, the most appropriate candidates in the first instance would be those who fall within SPA's jurisdiction for discretionary release. Resources permitting, SPA might also facilitate conferences at the request of the offender or the supervising officer. This could assist the offender to engage in circumstances where non-compliance has been identified, rather than be breached or warned, processes from which the offender is largely removed.

Expanding SPA's role to include re-entry court-type functions would have resource implications for SPA and Community Corrections. Nonetheless, using the existing system would be more cost effective than establishing a separate court process, and would maintain continuity of offender management with minimal duplication.

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

If SPA were to undertake a re-entry role, the most appropriate candidates in the first instance would be those falling within SPA's jurisdiction for discretionary release. Consideration could also be given to SPA facilitating offender management conferences at the request of the offender or supervising officer. This could assist an offender who may not otherwise be involved to engage in a re-entry program where non-compliance has been identified, rather than using the process of breach/warning.

**Question 4.11: Planning and preparing for release to parole**

*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?*

Preparation for release commences at the point of entry into custody and continues to the transition from custody to the community. The new model of offender case management being developed will provide greater integration across the various disciplines involved in offender case management.

Within Custodial Corrections, the NEXUS program provides information and resources to prepare offenders for re-entry to the community. All sentenced offenders are eligible and inmates who have three to six months left to their earliest possible release date are prioritised. The program includes one formal group session. Subsequent sessions to address individual reintegration needs may be run as a group or individual basis.

NEXUS aims to make inmates aware of information available in the *Planning your release* booklet; help inmates identify whether they need or want assistance with preparation for release; and make referrals to assist inmates with identified issues relevant to release.

NEXUS participants are guided through a checklist containing information on areas where they may need help to re-enter the community. The list includes having sufficient proof of identification for community services; accommodation; debt or unpaid fines; health concerns; property; clothing; employment; transport and family support.

**Question 4.12: Conditions of parole**

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

The condition regarding the commission of further offences captures a wide range of behaviors. Appropriate discretion must exist for SPA to defer a decision on revocation if the offender is charged but not yet convicted.

A possible alternative to the lawful community life condition might be 'undertake reasonable efforts to adapt to lawful community life'. Although still broad, this alternative places an onus on the offender to reduce their risk, rather than requiring strict compliance, and provides a slightly narrower scope.

The good behaviour condition is very vague and adds little to the other two conditions mentioned above, particularly for supervised offenders.

Standard condition (l) regarding supervision could be improved. For example, rather than requiring the offender not to use drugs, a condition requiring the offender to inform the

supervising officer of all drug and alcohol use, submit to testing as directed, and seek assistance in controlling their drugs/alcohol abuse as directed might be more relevant, realistic, and aligned with case management and long term risk mitigation objectives. Abstinence conditions could be imposed as additional conditions for offenders where zero tolerance is considered necessary.

Where possible, non-association (**NA**) conditions should be clearly defined. For example, NA with 'outlaw motorcycle gangs', 'criminal networks' and other similar terms are relatively vague. It is possible for the supervising officer to give clearer directions, however, it would be helpful for the court or SPA to provide more specific details if possible.

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

The existing capacity of both SPA and the courts to impose additional conditions enables all key areas of risk to be covered. Use of additional conditions by the courts is relatively infrequent.

**Question 4.13: Intensity of parole supervision**

Paragraph 4.120 refers to evidence given by the Commissioner of Corrective Services in a hearing before General Purpose Standing Committee No. 4. The Attorney General and Minister for Justice wrote to the Committee after the hearing to provide additional information regarding the advice that there had been a net reduction in 200 positions following the merger of the Community Compliance and Monitoring Group (**CCMG**) and Community Offender Services (**COS**) to create the Community Corrections Division. The Committee was advised that the figure of 200 was incorrect. The number of full-time equivalent (**FTE**) positions involved in direct supervision of offenders on community-based orders prior to the merger was 766.3. The number of FTE positions responsible for direct supervision of offenders subsequent to merger was 674.3. The difference therefore is 92 FTE positions.

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

The current risk assessment model and service delivery standards are designed to incorporate both intervention and monitoring. Offenders who are more likely to reoffend require higher levels of intervention (in accordance with the risk-needs-responsivity principle), while offenders with more serious offending require higher levels of monitoring/ accountability.

New parolees must be supervised at the new parolee supervision level of service delivery standards for the first eight weeks after commencement of their order (except for offenders in the Tier 2/High and Tier 3/High supervision levels, who are supervised at those levels). During this period, strategies for intervention/responsivity should commence in line with the assessed supervision level.

Where developments suggest an increased risk to the community beyond the initial period, the case should be reviewed, taking into account developments, criminal history, the offender's previous response to supervision, and re-application of the Level of Service Inventory-Revised (**LSI-R**)/Community Impact Assessment (**CIA**).

*(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?*

The higher level of supervision of new parolees during the first eight weeks recognises that the offender may require additional intervention and support during this period, and aims to

ensure that integration into the community is adequately monitored. This approach was introduced in May 2013, and represents an increase to previous supervision requirements.

The key areas for ongoing improvement are the quality of one-to-one interactions between supervising officers and offenders, and implementing the responsivity principle across both custody and community. The concept of responsivity is articulated within the risk-needs-responsivity model of Andrews and Bonta,[13] on which CSNSW offender management principles are based. In essence, the responsivity principle means that interventions or treatments must be delivered in a manner that is appropriate to the learning style and capabilities of the offender (and within the resources and time available in which to manage the offender).

CSNSW uses group programs, as they are the most efficient way to address offence related risk and needs. However, not all offenders have the capabilities or learning styles to benefit from group programs, and a group program may not be available for an offender due to its scheduling or where the offender is serving a short sentence.

An area for improvement is one-to-one engagement with offenders by supervising officers (predominantly in community management). One-to-one interactions between an offender and their supervising officer can be very effective if cognitive-behavioural concepts, similar to group work programs, are used.[14] Community Corrections has identified the improvement of the qualitative aspects of supervisor interaction in line with current literature as a priority.[15]

**Question 4.14: Duration of parole supervision**

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

Once an offender has remained in the community for three years without significant incident, the ongoing risk they present will, on average, be relatively low. For these offenders, ongoing supervision is unlikely to provide significant benefit. Where an ongoing risk is identified, SPA is likely to extend supervision. Under current policy, progress reports must be submitted for all eligible offenders reaching the end of the three-year supervision period.

Since amendments in 2006, offenders who are currently subject to life parole have been and will continue to be supervised for their entire lives. Although the impact on resources is low due to the small numbers, the benefit of supervision in these cases may be limited when weighed against using the same resources for newly released and untested offenders who present a higher risk to the community.

**Question 4.15: Information sharing and compliance checking**

*(1) How sufficient are:*
*(a) current information sharing arrangements between Corrective Services NSW and other agencies (government and non-government)*

In some circumstances, s.257 of the CAS Act prohibits disclosure of information where there may be a public interest doing so, e.g. disclosing information to provide programs and services to offenders subject to certain sentences and orders; disclosing information for the purposes of other Acts relating to sentences and orders; disclosing information for law enforcement purposes.

There are information sharing arrangements between CSNSW and other agencies in relation to offender case management in custody. However, there are challenges because agencies

[13]Andrews, D., &Bonta, J. (2006).*The psychology of criminal conduct.* Newark, NJ: LexisNexis.
[14]Bonta J., Bourgon G., Rugge, T., Scott T., Yessine A., Gutierrez, L. & Li, (2010) The Strategic Training Initiative in Community Supervision: Risk-Need-Responsivityin the Real World; Public Safety Canada, Bonta, J., Rugge, T., Scott, T., Bourgon, G. &Yessine, A. (2008) Exploring the Black Box of Community Supervision, Journal of Offender Rehabilitation, 47(3)
[15] Community Corrections Business Plan 2012-13

use different systems that do not link to each other, and there is reliance on key personal contacts for the exchange of some information.

There is a long-standing arrangement between the NSW Police Force (**NSWPF**) and CSNSW to ensure that information crucial to a person's safe custody is provided when police transfer the person to CSNSW custody.

CSNSW provides information to other government agencies when remandees and offenders enter custody. These agencies include Centrelink, Housing NSW, Office of State Revenue and the Public Guardian. Cross agency information-sharing arrangements are also in place to assist the reintegration into the community of offenders being released from custody. While some of these arrangements work well, others could be enhanced through the development of formal information sharing protocols.

*(1) How sufficient are:*
*(b) compliance checking activities undertaken by Community Corrections?*

There is adequate information sharing between CSNSW and other agencies for compliance checking (e.g. attendance), but scope for improvement in relation to case management. Information sharing for case management generally takes place informally at the local/individual level, rather than through high level information sharing agreements. There is scope for more structured collaboration, cooperation and information sharing in relation to common clients/families.

An option may be to expand the scope of the case plan to include other agencies. Use of a common or consistent case plan template by key government agencies might be one way to ensure each agency is aware of key information; that there is clarity around roles, responsibilities and how services provided fit together; and to ensure the offender receives consistent messages.

*(2) What legal obstacles are blocking effective information sharing between Corrective Services and other agencies (government and non-government)?*

The extent to which information sharing is permitted with other agencies/supports for case management is not always clear. In particular, the nature and format of consent required to share information about an offender is not always clear, and the extent to which information provided by a third party can be used in the ongoing management of an offender is not always clear.

**Question 4.16: Electronic monitoring of parolees**

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

CSNSW uses electronic monitoring for offenders on parole (if required by SPA), home detention, ICOs, external leave programs, extended supervision orders, and the Compulsory Drug Treatment Correctional Centre Program (Stages 2 and 3).

As at 17 December 2013, there were 113 offenders subject to electronic monitoring conditions across all community order types. Of these, 12 were subject to parole. Given that the 2012/13 daily average number of parolees was 4,530, the small number of parolees subject to electronic monitoring suggests that the technology is not being overused by SPA. It is noted that an offender's risk profile is relevant to determining whether electronic monitoring is appropriate.

A small team in CSNSW, located in the Sydney metropolitan area, manages parolees subject to electronic monitoring. Expanding electronic monitoring to some regional areas is not feasible for the same technical reasons that home detention is not always available. There are also resource implications, as use of the technology requires scheduling and/or

monitoring, including call-outs in the event of an alarm. While an alarm does not always indicate a significant risk (it may be due to equipment failure, loss of signal or a minor deviation from the offender's schedule), it nonetheless requires a CSNSW response.

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

Electronic monitoring can be an effective management tool. However, the community may have unrealistic expectations about the capabilities of electronic monitoring. While electronic monitoring can be used to reduce risk, it cannot eliminate risk entirely. While electronic monitoring is useful for tracking and validation purposes, there is still a risk that an offender may offend or abscond while subject to such monitoring. This may adversely affect public confidence in the justice system, despite the overall reduction in risk.

CSNSW currently uses two forms of electronic monitoring - radio frequency (**RF**) and global positioning system (**GPS**).

RF monitoring involves the offender wearing an electronic bracelet around their ankle or wrist. The bracelet transmits a signal to a central monitoring unit - a Data Collection Unit (**DCU**) - connected to a fixed phone line at a specified location, usually the offender's home. The offender's presence at, and proximity to, the specified location can be continually monitored while the offender wears the bracelet. RF does not enable an offender's exact whereabouts to be tracked when the offender's whereabouts are unknown. RF can only track presence at, or absence from, a set location. For RF to operate, the offender must have a stable address, a landline, and a standard power source.

GPS monitoring enables an offender's precise location to be tracked via satellite technology. GPS tracking is usually reserved for serious offenders. GPS enables CSNSW to mark off particular areas as exclusion zones (e.g. schools), and to be immediately notified if the offender enters these zones. Offenders on GPS monitoring are also intensively case managed through, for example, unannounced home and workplace visits and drug and alcohol testing. For GPS monitoring to operate include, the offender must have a stable home address and a standard power source, and must adhere to a strict schedule of movements and ensure the GPS device is fully charged. The GPS system is more onerous for offenders than the RF system, as offenders are responsible for three pieces of equipment, each of which requires more maintenance than RF equipment.

**Question 4.17: Workload and expertise of Community Corrections officers**

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

There is limited scope to significantly enhance supervision within existing resources. If additional resources were available, they could be used to increase the supervision of offenders, and improve the performance of supervising officers by allowing time away from supervision for case discussions, training and professional development. Research indicates that improving the quality of supervision has the greatest impact on reoffending.

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

Community Corrections already has specialised teams, although these are usually established due to local management decisions that take into account local needs and the most efficient and effective way to use available resources. It is not uncommon to have specialised community service teams and assessment teams across Community Corrections. In some locations, there are also teams for home detention and high risk offenders. Individual officers may also be regarded as specialists due to their skills and experience.

The nature of specialist teams varies depending on local needs. There may be culturally specific teams or specialists officers for locations with high cultural needs. For example, specific client service officers are employed at a number of locations with high populations of Indigenous, Pacific Islander, Arabic and Vietnamese offenders to engage with the community to assist in offender management. There may also be teams covering certain geographic areas, particularly in regional areas.

The nature and structure of any specialised team needs to be flexible and adaptable. Many small regional offices do not have a sufficient number of any category of offender to justify specialised teams. Some larger offices may have a high proportion of experienced senior officers, and may choose to spread higher risk offenders across the office to reduce strain on individuals and maintain skill sets.

Ensuring all officers have exposure to all types of offenders improves sustainability of experience and expertise within CSNSW. A small pool of psychologists is available to provide expert advice and assistance to supervising officers in managing higher risk/more serious offenders, particularly in relation to assessment and case management strategies.

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

Having specialist roles for specific categories of offender may not be an efficient model when considered on a state-wide basis. Additionally, categorising offenders can lead to a simplistic approach, which may result in stereotyping rather than a management approach that considers relevant risks and behaviours. All offenders are managed in a similar way with respect to risk and intervention. However, what may be needed is specialist knowledge to interpret information or behaviours, which can be provided state-wide through psychologists.

**Question 4.18: Housing for parolees**

*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?*

Approximately 5,500 offenders are released to parole in NSW each year, and it is not possible to ensure that all of them have access to stable and suitable post release accommodation. There are significant mainstream housing and affordability issues, and shortages in private rental, short and medium term, and crisis and supported accommodation. Appropriate and affordable accommodation is limited due to the quantity of housing stock and competition from other vulnerable groups in the community.

Under current policy, any offender released on parole must have suitable post release accommodation. Suitable accommodation includes short/medium term and crisis or supported accommodation. It also includes arrangements with family or friends.

For housing and support programs to effectively contribute to reducing reoffending and promoting reintegration for higher risk offenders, adequately resourced, long term funding arrangement are required, focusing on offenders with histories of violence. Some projects have provided higher levels of support and involved partnerships with housing and support providers. However, there is no evidence that such programs have reduced reoffending because, despite the resources allocated, client numbers have been small.

CSNSW's Funded Partnerships Initiative (FPI) introduced additional support for offenders who have a higher risk of reoffending through collaboration with NGOs. This aims to support the work of Community Corrections in addressing an offender's criminogenic needs.

A possible area for improvement is extending the time during which offenders in custody could become eligible to access emergency accommodation through Housing NSW prior to

release. Offenders being released to parole will, however, be competing against other members of the public who have a similarly urgent need (including other offenders and parolees already in the community).

A broader acceptance of crisis or short term accommodation as a suitable option for the offender may be beneficial, noting that Community Corrections is able to negotiate the complex service system more effectively as soon as the offender is in the community.

In cases where SPA is considering granting parole and accommodation is the only outstanding issue, parole could be granted (with a date fixed) on the condition that Community Corrections is able to arrange accommodation. This may facilitate a more responsive and flexible approach to bed allocation by service providers in the community. The use of day parole following NPP expiry may be another way of putting the offender 'into the community' to facilitate access to these services. Without such approaches, the situation remains that an address cannot be provided without release arrangements, and release arrangements cannot be set without an address.

If suitable accommodation cannot be found and an offender is refused parole, the offender may eventually be released to reside unsupervised in the same circumstances which were previously deemed unsuitable. This is not a good outcome. A pragmatic approach could be to utilise whatever means are possible to manage an offender in the area he/she will return to when released, than not manage the offender at all. An offender will often seek to return to family or friends in an area that he/she has lived or knows. It is preferable to facilitate that return while the offender is under supervision and to coordinate the support services needed to enable successful reintegration.

**Question 4.19: Programs for parolees**

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

Programs provided to parolees are generally the same as those provided to offenders on other community based orders. Resource and access issues impacting on parolees in the community are similar for offenders across all order types.

Paragraph 4.148 of Question Paper 4 cites the Sober Driver program as an example of a community program. However, in 2012/13, less than 10% of participants in the program were on parole. The majority were on good behavior bonds, with some on ICOs and community service orders (**CSOs**). Parolees constituted a larger proportion of the participants in the PEET program (40%), as well as drug and alcohol and aggression programs (30% to 40%). This partly reflects the total number of offenders in the community rather than level of access; parolees constitute around 35% of all supervised offenders in the community.

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

Due to limited numbers and resources, not all locations are able to run programs on a regular basis. Many smaller locations will often run one type of program at a time. Consequently, offenders with a specific need (e.g. domestic violence) may have to wait until their specific program commences. This scheduling issue impacts on all community based offenders, not just parolees.

CSNSW uses strategies, e.g. referrals to other community-based programs or counseling services, to address the increased risk period immediately following release. However, a proportion of offenders may breach or reoffend before their program commences.

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

If sufficient resources were available, Community Corrections officers could deliver program material to offenders one-to-one. This would enable an offender to commence program content immediately upon release, and reinforce the lessons of similar programs undertaken in custody. This model fits with recent research on the 'Black Box of Community Supervision' and Strategic Training Initiative in Community Supervision (**STICS**) model. This research suggests interaction between supervising officer and offender can have a significant impact on reducing reoffending, provided key criminogenic needs are addressed through appropriate interview techniques.[16] Providing structured interview content based on programs would be compatible with the STICS approach. However, Community Corrections' culture and skill sets are currently focused on group work programs and external referrals.

The restructure and review of OM&P case management includes consideration of strategies to ensure that programs and services delivered in custody are considered in the parole period, and interventions in the community are considered upon an offender's return to custody. An extension of community-based in-reach services to provide ongoing continuity of appropriate care beyond the length of an order could be beneficial.

**Question 4.20: Barriers to integrated case management**

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

Community Corrections aims to promote throughcare management of offenders being released to parole (see comments on Question Paper 3 at Question 3.6). Information concerning case management of an offender is recorded on the OIMS database and available across the organisation to all staff involved in managing the offender.

Implementing case plans for offenders in custody is the responsibility of the offender and Custodial or Community Corrections officers who have significant contact with the offender. The current review of case management by OM&P is considering strategies to improve cross discipline involvement in the case management process from sentence commencement to sentence expiry.

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

Barriers to integrated case management, in particular practical problems in the case plan systems, have been addressed in previous answers.

*(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?*

Service availability across all key need areas varies widely, depending on the specific area and local relationships with service providers. Some offenders have limited options, due to their history (e.g. violence) or due to previous experiences with service providers who may be reluctant to engage with them again. Improvements could be made across all key service areas, including drug and alcohol services, accommodation, mental health, and education and employment (see responses to previous answers).

**Question Paper 5**

**Question 5.1: Exercise of discretion in reporting breaches and SPA's lower level responses**

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

[16] J Bonta et al (2008) Exploring the black box of community supervision, *Journal of Offender Rehabilitation* 47 (3) 248-70; G Bourgon et al (2011) The evolution of community supervision practice: The transformation from case manager to change agent, *Irish Probation Journal* 8 (October) 28-49

Reporting all breaches to SPA may provide Community Corrections officers with a measure of protection. However, a degree of discretion is required to effectively manage offenders and avoid overloading Community Corrections and SPA with administrative work that detracts from offender management. For example, attending an appointment late is technically a failure to comply with a direction to report at a particular time/place for interview. However, in practice, this would not be reported to SPA.

The risk of offenders committing serious offences varies considerably. For instance a relatively harmless breach can be construed as a significant shortcoming after a serious incident occurs, even if reporting the breach to SPA would have had no practical impact. The ability for Community Corrections officers to use their discretion to deal with minor breaches provides an immediate response and enables resources to be used effectively. There is also a margin for discretion in determining whether or not a breach has occurred with respect to "adapt to normal lawful community life".

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

A formal breach framework based on risk assessment, severity of breach and possible impact on the community is more appropriate than prescribing specific conditions or scenarios. For instance, if an offender relapses into drug use but promptly enters rehabilitation, or changes address without permission but advises of the change immediately and the new address is assessed as suitable, the risks incurred are mitigated by the change in circumstances following the breach. Alcohol use, for example, may not be significant for one offender, but an indicator of significant risk for another. Some identified matters such as a minor re-offence may be automatic breaches and yet not reflect increased risk.

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

Delegating discretion regarding breaches to senior managers may have resource implications for Community Corrections. A formal structure enabling the Community Corrections officer to give warnings may be an option. Although officers do issue formal warnings, the practice is relatively ad hoc in terms of when and how they are given. In contrast, a formal warning structure in relation to community service work exists for CSOs and ICOs. The structure includes parameters for when a warning is required, and templates for the types of warnings that may be issued. Creating a formal warning structure for community work is relatively easy, as it relates to the single condition of whether the offender works as directed. Providing clearer guidelines and standards around the use of warnings in a case management context may be feasible. However, CSNSW's review of ICOs found that warnings from directors had little meaning to offenders and tied up senior managers with additional administrative work.

Another suggestion would be to differentiate types of breaches based on reason for reporting/type of recommendation, e.g. there could be a designated format for technical, non-urgent breaches where no significant response is requested (e.g. 'for information only'). This may allow SPA to set up alternative processes for dealing with such breaches.

Similarly, a mechanism for notifying SPA about events such as drug use (where no significant risk is identified) could allow streamlining. For instance, urinalysis records in the CSNSW OIMS could be used to automatically generate reports, leaving supervising officers to prepare reports only where a risk is identified or action by SPA is sought.

These options could significantly reduce SPA's work volume, free up time for managing serious matters, and allow more discretion to Community Corrections officers.

Alternatively, any matter falling into the category of no action or technical breach could be documented, with reasons for inaction retained at a local level, and not reported to SPA. This

documentation could be used in the event of further incidents and/or audited to ensure inaction was appropriate. Community Corrections unit managers could assist by determining where inaction is appropriate.

**Question 5.2: Response to non-reoffending breaches**

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

Issues raised in relation to the manner in which SPA deals with non-reoffending breaches intersect with issues raised regarding conditions imposed and discretion held by Community Corrections.

The volume of technical and less serious breaches reported to SPA has increased. This may partly be explained by a risk-averse approach in response to recent adverse media, which prioritises compliance over case management. In part, the volume of technical and less serious breaches stems from requirements relating to the reporting of breaches (refer to 5.1). Community Corrections will continue to refer all identified breaches to SPA unless there are clear guidelines to the contrary.

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

Increasing interaction between the offender, supervising officer and SPA along the lines of the re-entry court model may improve SPA responses. As an example of how this could work, the offender might be called up to SPA in person (ideally with their supervising officer) to explain their actions and/or discuss appropriate management strategies and outcomes, rather than be issued a warning via their supervising officer.

However, if the SPA warning system is eradicated, there will not be adequate distinction between more serious and minor infractions. Given the high volume of matters reported to SPA, this may mean more serious breaches are not dealt with as promptly as they have in the past, although there are mechanisms for SPA to deal with breaches urgently.

Consideration could be given to intervention strategies being managed or dealt with by Community Corrections officers prior to breaches being referred to SPA. For example, when offenders who have a history of substance use do not comply with parole conditions relating to drug use, Community Corrections could play a greater role in:

- presenting alternative interventions to the offender
- giving the offender opportunity to engage with such interventions
- determining the success or failure of such interventions.

Rather than SPA being the first point of reference for dealing with non-compliance with orders which do not involve reoffending breaches, SPA could be notified after other case management options have been exhausted. However, the assessed risk level of the offender should be taken into account when devising the most appropriate response to non-compliance and non-reoffending breaches.

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

SPA could revoke parole for short periods for non-reoffending breaches. Consideration could also be given to non-offending breaches being dealt with by SPA by sanctions other than return to custody.

**Question 5.3: Revocation in response to reoffending**

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

SPA considers several matters in response to a parolee's re-offending, including the police facts, bail results, referral to rehabilitation programs, probability of a custodial sentence, the offender's criminal history, current index offence, compliance with parole conditions, community safety, and the possible impact on the victim(s).

SPA considers whether the offender has been charged but not yet convicted, in order to maintain an appropriate balance between deferring revocation where the matter is low risk, and revoking where charges are more serious and may indicate higher risk. If charges are more serious and represent too great a risk to the community, revocation may be based on SPA's determination that the offender is "unable to adapt to normal lawful community life".

Current provisions limit SPA to not revoking (or rescinding) or revoking so that the offender must spend another 12 months in custody. However, as some of the offences for which an offender is sentenced may not result in a court determination of imprisonment or, if they do, may involve periods significantly less than 12 months, a situation may be created where the offender is excessively penalised in a manner disproportionate to the new offence. Unless this is resolved, SPA's discretion to not revoke parole on re-offence should not be limited.

Allowing for a shorter period of revocation would provide greater flexibility to revoke parole to a degree commensurate with the severity of any further offending.

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

In considering any amendments to the Act, the practice of the Children's Court in relation to juvenile parole orders and the ramifications for juvenile offenders should be taken into account.

**Question 5.4: Date of revocation and street time**

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

It is important that SPA maintain discretion in determining an effective revocation date, as SPA has access to relevant information.

In cases where the order is to be revoked due to re-offence, the date of revocation should be the date that the re-offence occurred. The question paper refers to all re-offending as "alleged re-offending". However, a SPA revocation due to re-offence is generally not given until the offender has been convicted of the offence, unless the offender entered a guilty plea at court. If the offender is high risk and charged with further offences, SPA may revoke on the grounds of "unable to adapt to normal lawful community life".

Defining a date of revocation for "unable to adapt to normal lawful community life" and other non-re-offence breaches is more problematic. In the latter case, Community Corrections policy requires that breach reports include a recommended date of revocation. For example, if the offender has provided a positive urinalysis result, moved address without permission, failed to report etc, the supervising Community Corrections officer would, if recommending revocation, outline the date of the "alleged" breach in the report to SPA and this would be the date of revocation. When an order is revoked because an offender is "unable to adapt to normal lawful community life", it is usually the result of multiple indicators obtained/observed by the Community Corrections officer and, in this instance, it may be appropriate to use the date of the officer's report.

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

The suggestion that interstate incarceration not be taken into account as "street time" has some merit. However, administering this would be resource intensive and problematic

without inter-jurisdictional cooperation. The process would require calculating the exact amount of time an offender spent in interstate custody and obtaining confirmation of this, then amending the Balance of Parole Warrant to reflect the period of interstate custody. This would be particularly problematic if the offender is not serving a sentence interstate, but is only being held on remand. A better option may be to consider interstate cooperation in allowing the execution of NSW Balance of Parole Warrants interstate, thereby allowing the offender to serve his/her interstate and NSW sentence concurrently (similar to an interstate transfer of prisoner order). However, this may not be possible for offenders with an "unsentenced status" interstate.

**Question 5.5: Review hearings after revocation**

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

If the 12 month revocation rule remains, review should be automatic because of the significant consequences for the offender. The offender's input during the review of the breach decision is important. Community Corrections does not always have all relevant information at hand, e.g. when the offender's whereabouts is unknown.

If SPA were to have greater discretion regarding the duration of revocation, review hearings may not be desirable if the period of revocation was able to be set for a short period (e.g. one month). The resource needed to facilitate reviews for Community Corrections, as well as SPA, may outweigh any benefit to the offender.

If review of revocation were to be at SPA's discretion, there should be a presumption in favour of review, in consideration of the offender's time left to serve and the strength of the reasons for revocation.

SPA review hearings for all revocation matters provide a safeguard and transparency in the decision-making process.

**Question 5.6: Rescinding revocations to allow completion of rehabilitations programs after fresh offending**

*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?*

SPA takes into account the sentencing court's intention and the safety of the community. SPA takes into account all information supplied before making a decision. Provisions to require SPA to rescind the revocation of parole to facilitate the offender's participation in a program may not be in line with preserving community safety. Current provisions allow for offenders charged with new offences to participate in rehabilitation programs if appropriate.

**Question 5.7: Appeals and judicial review of SPA's revocation decisions**

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

SPA applications to the Supreme Court to revoke orders are assisted by the resources of the Crown Solicitor's Office. In most cases the Attorney General becomes an intervener in the case. This process ensures procedural fairness as it distances the SPA from the Supreme Court process should the offender again need to be considered by the SPA.

Appeal matters to the Supreme Court contribute to enhancements in the SPA's procedure, process and decision-making. When the Attorney General becomes the contradictor and specific matters are highlighted, this can assist the SPA in future decision-making and policy guidelines. For a recent example, see *Palizio v NSW State Parole Authority NSW SC 1829*

(Decision date 13 December 2013) regarding section 171(3) of the *Crimes (Administration of Sentences) Act 1999*.

The number of Supreme Court applications is very small, as the majority of Supreme Court appeals are in relation to decisions to refuse parole. Applications regarding revocations are estimated to be less than 5 a year. Applications by the State to revoke a parole order are virtually unheard of, apart from one matter in 2011.

The provisions regarding the State application to the Supreme Court for intervention in decisions regarding revocations could also apply to decisions regarding rescissions.

**Question 5.8: Reasons for SPA's decision**

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

Increasing transparency of decision-making may improve public confidence in the parole system. Research on public attitudes to sentencing indicates that the more informed the community is, the more support there is for judges' decisions.[17] It is reasonable to expect a similar outcome for parole, provided adequate consideration is given to individual privacy to avoid harming an offender's rehabilitation prospects. As noted in the paper, decisions not to revoke an order are often in the public interest, and these reasons should be included.

However, publishing reasons for revocations as a matter of general practice would have resource implications for SPA, and may raise privacy issues. Offenders receive a copy of the documents used to inform SPA's decision to revoke the order (with the exception of matters such as those that may prejudice public interest, certified as s.194 material by the judicial officer). The offender or his/her legal representative can challenge SPA's decisions.

**Question 5.9: Emergency suspensions**

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

Community Corrections can submit an application to SPA to urgently consider revocation. If a serious breach has occurred, the offender is often already in custody, usually having been charged with new offences. The urgency of the request is to ensure parole is revoked as a safeguard against possible release on bail.

While SPA has the power to suspend parole, the process is cumbersome. However, given suspensions are rare, improvements to internal administrative process may assist.

**Question 5.10: SPA's power to hold an inquiry**

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

Section 169 confines the purposes for which such inquiries can conducted to, for example, establishing whether a breach has occurred or whether the medical grounds under which an offender was granted parole no longer exist. It is generally not an avenue to hold an inquiry for a minor breach or to issue the offender a verbal warning. Such hearings would only be warranted for a very small percentage of breach matters reported to SPA.

SPA's initial private meeting seems to be the most appropriate forum for revoking parole. SPA gives particular attention to the consequences of revoking parole and the deprivation of liberty. If there is some doubt as to whether a breach has occurred, SPA generally stands the matter over and seeks further information from Community Corrections, or gives the offender an opportunity to demonstrate compliance.

[17] For example, Warner, K., Davis, J., Walter, M., Rebecca Bradfield, R. &Vermey, R. (2011) *Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study*, Australian Institute of Criminology

The s.169 inquiry is a fall-back position to establish if a breach has occurred. Using public review hearings as a process to determine revocation raises the following issues:

- community safety, i.e. the breaches are not being dealt with in a timely manner
- resource implications for legal representatives (e.g. Prisoners Legal Service, Aboriginal Legal Service), Community Corrections who would need to attend to provide evidence, and court personnel, given offenders are present in court.

**Question 5.11: Information sharing**

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

Including representatives from the NSWPF and Community Corrections on SPA ensures meetings are provided with up to date and accurate information relating to offenders, including police facts sheets and police intelligence. SPA is provided with correctional intelligence information by a custodial officer based in SPA's Secretariat.

The NSWPF Computerised Operational Policing System (**COPS**) automatically shares arrest and rearrest information with the CSNSW OIMS on a daily basis. The notifications:

- inform CSNSW when an offender on an active CSNSW supervision order has been arrested/rearrested
- supply CSNSW with arrest data to assist with the accurate identification of newly arrested offenders who CSNSW may need to hold in custody.

When the automated COPS file is received, a series of checks on each person occurs on OIMS. If the offender has a MIN, the checks create a record and populates an OIMS screen called the Pre-Book Queue. Community Corrections uses this screen to perform an intake and create a booking number if required. A case note with re-arrest information is automatically generated.

If the offender does not have a MIN, Community Corrections uses a manual process to create a booking record on OIMS which assigns a MIN. If the offender is already under supervision, this process enables the appropriate response by Community Corrections, such as a breach report. The manual process also enables a thorough search of the system in the event that the offender was arrested under an alias. This search will enable the alias to be linked to the MIN.

Although these operational systems work well, there is room for improvement in terms of information sharing with the NSWPF. The development of Local Area Service Agreements between the NSWPF and CSNSW has the potential to enhance information-sharing for both agencies. Such agreements may enhance the monitoring of high risk offenders and may increase the ability of both agencies to target resources to offenders who have a risk of reoffending in the community.

SORC has access to breach reports prepared by Community Corrections. These reports are stored in OIMS and TRIM (the electronic record-keeping system used by CSNSW).

**Question 5.12: Role of the Serious Offenders Review Council**

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

In managing serious offenders in custody, SORC considers any relevant matter about the offender that has been reported or recorded by correctional centre staff, e.g. assaults, non-compliant behaviour, failed urine tests, refusal to participate in programs. While SORC is not involved in determining a penalty for such matters, SORC must take them into account when

interviewing the offender, determining appropriate management, and making recommendations to the Commissioner.

It is important that a serious offender's non-compliance while on parole is reported to SORC. SPA has procedures for advising SORC when a serious offender has breached parole and been returned to custody. This includes providing SORC with the breach report to allow SORC to resume its management role with up-to-date information. Given SORC is not involved in managing offenders in the community, any advice to SPA about community management would be of limited benefit to SPA's decision-making.

Community Corrections are best placed to advise SPA about the management of serious offenders in the community. The notion of providing additional expertise to SPA in the revocation or rescission decision-making process appears sound. However, feedback from Community Corrections and ICO Management Committee suggests an additional layer of administration may cause unnecessary complexity, delay and duplication. It is important that SPA revocation and rescission decisions are made quickly to reinforce the consequences of non-compliance or minimise the impact of unnecessary revocation on the offender.

**Question 5.13: Making breach of parole an offence**

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

Section 63 (Double jeopardy) of the *Crimes (Administration of Sentences) Act 1999* prevents proceedings for a correctional centre offence being taken against an inmate if criminal proceedings for the offence have been brought against the inmate in a court. The same principle should apply to parolees, i.e. the offender should only be punished once for a breach of parole.

The extended supervision order (**ESO**) is the only order supervised by CSNSW where a breach of the order is a criminal offence. This could be used as a benchmark if breach of parole were to be an offence. However, as breach of an ESO is an offence, the breach process is a more onerous process than breaches under the current parole process. There would be resource implications for CSNSW, and possibly for the NSWPF, if breach of parole were to be an offence.

Consideration could be given to extending supervision within finite boundaries, such as allowing supervision to be extended within the community for up to three or six months where the risk is manageable or there is rehabilitative justification for doing so. By comparison, ICOs can be extended for up to six months, the ICO being in practical effect like a form of parole which can be served without time in custody. Alternatively, breach of a s.9 bond can result in re-sentencing (including a custodial sentence) without constituting re-offence. A similar mechanism to either extend or revoke parole could be explored.

If breach of parole were made an offence, the maximum penalty should be no more than six months because, if a serious re-offence has occurred, the offender will be subject to the appropriate penalty for that offence. Therefore, any further sentence would only be in relation to technical breaches. As there is a high volume of technical breaches, it would need to be clear under what circumstances an offender should be prosecuted, as opposed to allowing SPA discretion to deal with an administrative breach.

It may be appropriate for any further sentence for breach of parole to be community-based rather than custodial, otherwise the purpose of parole would be defeated, e.g. imposition of a three month sentence should be equivalent to an additional three months of parole.

**Question 5.14: Reconsideration after revocation of parole**

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

The 12 month rule limits SPA's ability to impose a custodial sanction for less serious parole breaches where revocation is nonetheless justified (e.g. it is not possible to impose a one month custodial sanction). If such a penalty were considered appropriate, the alternative may be either no action, or rescission of revocation. Due to the minimum reporting threshold for breaches, the 12 month rule does not affect whether or not a breach report is submitted to SPA. The rule may, however, influence Community Corrections' recommendations in response to the breach. In response to a minor breach, Community Corrections may recommend a warning or that additional conditions be imposed as opposed to revocation, as a 12 month custodial sentence may be seen as too punitive. If a shorter term custodial sanction were an option, this could enable an offender to complete a program during the custodial sanction and return to parole with minimal disruption to earlier progress on parole.

Abolishing the 12 month rule may have an impact on resources. It could impact on both the number of offenders in the community on parole, and the number of offenders in custody. There would also be an impact on the number of SPA review hearings and pre-release preparation by Community Corrections.

If the 12 month rule were abolished, consideration could be given to SPA having the capacity to set a release date at the time of revocation, in particular for minor breaches where only a short period of incarceration would be warranted. This would reduce the net impact on resources.

As advised in response to Question 3.18, on 20 November 2013, the Minister for Justice introduced into Parliament the *Crimes (Administration of Sentences) Amendment Bill 2013*. The Bill includes a proposal to allow SPA to consider granting parole to avoid manifest injustice, in relation to an offender whose parole order has been revoked, at any time after the revocation of the order. The circumstances constituting manifest injustice are to be determined by the Minister and prescribed by regulation. The amendment will allow SPA to deal with offenders who have had their parole orders revoked following release on parole in the same way as it deals with offenders who have been refused parole.

**Question 5.15: Breach processes for ICOs and home detention**

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

Administrative changes to ICOs commenced on 2 December 2013. The changes improve communication with the offender and provide a simpler compliance model, including acceptable boundaries for the offender to follow and for Community Corrections staff to administer. If breach action is warranted, the following is communicated to the offender:

- a breach report referred to SPA, including the basis of the referral
- the next steps that SPA will take
- what the offender can do while the breach report is being considered by SPA
- what procedural fairness opportunity will be available to the offender while SPA is considering the community corrections breach report, and how this will be facilitated
- the timeframe involved
- advice on SPA's decision.

The breach process for ICOs and home detention could be improved by SPA revoking the order for a specified period of time, after which the offender could be released, rather than requiring a further review hearing. SPA can review the breach prior to revocation if appropriate. Prior to 2 December 2013, all breaches were referred to the ICO Management Committee (**ICOMC**) before being referred to SPA. SPA's use of reviews may not be

indicative of the extent to which this may occur, as this function may have already been exhausted by ICOMC prior to referring the matter to SPA.

Home detention and ICOs are custodial sentences, distinguishing them from the breach process for other community-based orders such as a s.9 bond, CSO or s. 12 order. The expeditious return of the offender to full-time custody underscores this point. The breach of a s.9 bond, CSO or s.12 order may result in imprisonment only if the order is revoked and the offender resentenced, or the suspended sentence is imposed.

The question paper hypothesises that offenders sentenced to ICOs and home detention are generally less serious than other parolees because they have sentences of two years or less or 18 months or less. However, 56% of offenders sentenced to full time imprisonment in 2012 received sentences of more than six months and less than two years. Nearly all these offenders had parole as a component of their sentence. The majority of the remaining 44% were offenders with sentences of six months or less, with less than 20% of offenders receiving sentences of more than two years.[18] Compared with the large number of offenders who receive comparable custodial terms, offenders on ICO or home detention are already at a significant advantage by having avoided full-time imprisonment in the first instance.

Recent changes to the work administration component of ICOs provide flexibility for offenders with legitimate reasons for being unable to fulfill the work component of their order, however, they require strict compliance where no reasonable excuse is available. The work component is significant as the majority of ICO offenders are assessed as lower risk, and therefore have no significant need for intervention programs or supervision.

Previously, a major shortcoming of ICOs was the delay and protracted response to breaches caused through processes such as the ICOMC. It has been the experience of CSNSW that failure to respond promptly to a breach may have undermined the offender's perceptions of the order as a serious penalty, with serious consequences for failure to comply. Offenders often undertake community service work in groups and there is the potential for the perceived lack of immediate response to order compliance to spread in discussions with other offenders. This may have influenced overall levels of compliance with the order.

[18] NSW Law Reform Commission (2013) Sentencing – Patterns and Statistics, pp29-30