

Police Association of NSW



Parole: Question Papers 4-5
Police Association of New South Wales Submission
December 2013

Version Control

Purpose

The purpose of this document is to provide to NSW Law Reform Commission, the Police Association of New South Wales response to its Question Papers 4-5 regarding Parole.

Document Control

<i>Version Number</i>	V 0.1
<i>Release Date</i>	December 2013
<i>Copies</i>	Public
<i>Confidentiality</i>	Non-confidential
<i>Release Restrictions</i>	Nil
<i>File Name</i>	
<i>File Location</i>	
<i>File Reference Number</i>	
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<i>Status (Draft/Out of Draft)</i>	Out of Draft

Parole: Question Papers 4-5

The NSW Law Reform Commission has released for public comment Question Papers 4-5 regarding NSW Parole.

Question Paper 4 discusses the way case management in custody prepares offenders for parole and looks at the management of parolees in the community.

Question Paper 5 examines the State Parole Authority's powers in relation to breach and revocation of parole, home detention and intensive correction orders.

You have to ask why people end up in prison in the first place. It's because they haven't taken responsibility in the past. Putting them into prison just takes their responsibility away. It means they can just float through the sentence. If you don't choose to take responsibility, you still get fed; you still have a roof; you are still babied. This is a self-help prison. You ask to come to a prison like this [resettlement prison-the successful re-integration of people after prison]. You know what you are taking on when you choose to come here. Some people are perfectly capable of exercising responsibility. (McNeill and Weaver, 2010; Pryor, 2001)

As mentioned in its response to Question Papers 1-3, the Police Association believes that the granting of parole requires a careful and thorough assessment of the risk to the community involved in the prisoner's release from goal. Parole is and should be intended to help the offender move back into society, while at the same time protecting society from further crime.

The size and complexity of the NSW Correction System means that the NSW Parole Authority has the most significant caseload in Australia. In addition to those offenders sentenced by NSW and ACT courts, it also deals with those convicted of federal offences and a significant number of inmates who have transferred to NSW after being convicted elsewhere. These challenges are augmented by the continuing and sizeable increase in the number of offenders, both in custody and being supervised in the community, and the impact of legislative change on the Authority's workload. The Parole system needs to be equipped to perform all its functions with sufficient resources. Furthermore when resources are limited (ie when resources of Government are limited), then the SPA needs to make a more careful and realistic assessment of just how much supervision a parolee will have on release and that everything possible is done to scrutinize a potential parolee's before they are granted freedom and if this scrutiny means that some offenders have to remain in prison until the authorities are satisfied that they no longer pose a threat to society, then so be it.

Society has a right to expect that offenders are effectively punished. Prisons will become places of hard work and industry, instead of enforced idleness. There will be greater use of strenuous, unpaid work as part of a community sentence alongside tagging and curfews, delivered swiftly after sentencing. When fines are a sensible sentence, we will place a greater focus on enforcement and collection. We will put a much stronger emphasis on compensation for victims of crime. From The Ministry of Justice, Breaking the Cycle, UK, 2010

If parole is going to exist, then it needs to exist properly; it does have a critical role to play in the protection of the wider community and without it, community safety would be in danger. This means respecting the legislation (all cases need to address the factors which are set out in the legislation) as well as respecting the parole board's independence. In November, it was reported that the state government will close seven of eight parole residences that house 104 people before they are released into the community. Parolees in these houses are monitored as they reintegrate into the community and get help finding jobs. As a result of this decision, will it put the community at risk from ex-prisoners who are not properly rehabilitated?

It was also reported as part of reforming the monitoring system, the Community Compliance and Monitoring Group was merged with the Community Offender Services groups, which cut 92 parole supervisors. With the 92 job losses the question needs to be asked, are parolees as a result of these job losses being monitored less? It is crucial that all parolees are supervised throughout their parole period.

The best way to protect the community is by being able to supervise criminals freed from jail, by having them serve parole. Spoken by former Chair of Board Justice Simon Whelan.

Ultimately, the purpose of parole is to promote public safety by supervising and supporting the release and integration of prisoners into the community, thereby minimising their risk of while they are on parole and after they complete their sentences. When assessing whether parole should be granted to a prisoner, community safety is the paramount consideration. The supervision system (if it is to work properly) needs to have the appropriate levels of accountability and oversight for offenders; you cannot cut corners when talking about the supervision of high-risk criminals.

No system is perfect (and no such system can eliminate the risk of reoffending). But if one is trying to alter the criminal rate in the community, investment and effort is required in attacking the root causes of criminality ie poverty, child abuse, family dysfunction, domestic violence, drug and alcohol abuse all need to be looked at; what a parole system should be able to do is reduce the risk that prisoners will commit further offences when released into the community by providing a supervised transition into the community and by seeking to deal with the factors that may lead to reoffending. If an offender does potentially pose a risk, either because of the likelihood of reoffending or because of special needs, that person should be released under parole supervision, rather than be retained in prison and then at a later date released without such supervision.

It is quite imperative that a prisoner is provided supervision and support particularly in the first six to 12 months after their release from prison. This has been deemed to be the critical period that can have an impact on whether a person released from prison resettles or reoffends. More than four in 10 of NSW criminals return to jail two years after their release – higher than the national average. An Auditor-General's report (2013) on law and emergency services found 42.5 per cent of NSW prisoners were back in jail within two years of release. The national average was 39.3 per cent, the report said. Data about re-offending needs to be collated and analysed particularly on the frequency and types of reoffending by individuals on parole. The rate at which offenders return to prison can be influenced by a number of factors including: increases in the number of police; changes in sentencing legislation; improved monitoring and supervision of offenders on parole; and the quality of interactions and integration between offenders and the community¹.

...there is little point knowing who is most likely to reoffend if we cannot do anything to reduce the risk of reoffending. There is, accordingly, a clear need for more Australian research into which programs and interventions are effective in reducing the risk of involvement in crime. from Reducing the Risk of Recidivism, Talina Drabsch, Australia, 2006

Linked to the issues mentioned thus far is the concern that more attention needs to be directed at the ineffectiveness of the Australian prison system in bringing about change or in reducing risk during the whole period of imprisonment and not just the parole system itself.

Criminals should face the robust and demanding punishments which the public expects. There must be consequences for breaking the law. Hard work for offenders is at the heart of our plans to make punishments more rigorous. Prisoners will increasingly face the tough discipline of regular working hours. This has been lacking in prison regimes for too long.

¹ Reducing the Risk of Recidivism, Talina Drabsch, Australia, 2006

Community sentences must be tougher and more intensive, with local communities benefiting directly from the hard work of offenders. From The Ministry of Justice, Breaking the Cycle, UK, 2010

Police Association members have voiced such concerns;

There is obviously not enough money available in the current budget to give every prisoner released a proper chance to integrate back into the community. Unfortunately many of them would receive token assistance and have probably been set up to fail again. It is my view that at best gaol only serves to warehouse people from the community so they cannot subject it to crime.

In relation to the issues raised in the Question Papers, we provide the following comments:

Question Paper 4 Reintegration into the community and management on parole

This question paper considers:

- *Custodial case management of prisoners and the provision of in-custody rehabilitation, education and work programs, in terms of whether they effectively prepare offenders for release on parole*
- *The process of transitioning offenders from custody into the community, including external pre-release leave programs, transitional centres and other transition options, and*
- *The ongoing management, supervision and support of parolees in the community.*

Question 4.1: Case management of offenders in custody

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

As the LRC states, reoffending data suggests that existing NSW parole strategies have not prevented high reincarceration rates.

As we know, Corrective Services NSW is responsible for managing offenders serving their sentences and their aim is to reduce rates of re-offending by effectively managing offenders from their first point of contact to the completion of their legal orders and their transition to law-abiding community living. As the LRC states, this process is called, Throughcare. Throughcare refers to treatment and support that commences in custody and continues after release into the community.

Throughcare has two central tenets:

1. All information about an offender's management is recorded and accessible at all stages of their contact with Corrective Services enabling a whole of sentence approach to the offender's case management
2. Offenders access appropriate community services while under the supervision of Corrective Services and transitional support on completing their sentences in regard to income, employment, housing, health care and family connections.

It is important to note here that, in 2008, the Justice and Law Foundation conducted research on prisoners' needs. The report found that prison inmates are, as a group, disadvantaged. At the

aggregate level they are under-educated, have high rates of mental illness and intellectual disability, have drug and/or alcohol addictions and are financially compromised. The report indicates that imprisonment tends to compound this disadvantage. Each time the person cycles through the justice system personal supports are strained, skills become atrophied, financial resources are depleted and the capacity to operate well 'on the outside' and without resort to unlawful means is further diminished. Many of the symptoms and causes of these problems have legal implications, with family breakdown, difficulties with housing, high levels of debt, and conflict with government authorities all generating and reflecting the disadvantage that prisoners experience.

One of the themes to emerge via the research findings was the seemingly inverse relationship between the accessibility of legal help and the quality of that assistance. For instance, while other inmates were a very immediate source of assistance, the quality and relevance of advice given was variable. In contrast more reliable sources of assistance such as lawyers were much harder for prisoners to reach. The need to bring quality legal assistance within more direct reach of inmates and the improvement in resourcing more accessible sources were two clear implications for future policy. The recent placement of LIAC materials into prison libraries and the addition of the LawAccess telephone number to inmates' phone cards were two examples of such strategies.

A second theme concerned the mismatches between what inmates needed to access justice and what opportunities were available. For instance, legal processes often rely on written information, and yet many prisoners are poorly educated and face difficulties with literacy. Further, resources within the systemic environment often fell short of demand for them — telephones, public legal professionals and welfare staff for example were in high demand but often, apparently, short supply. There was also evidence of mismatches between the routine and realities of life inside prison and the way services to prisoners were delivered. For example, lawyers were most accessible by telephone or in person at the times that inmates were more likely to be locked in cells unable to access the telephone. Similarly, restrictions on inmates' movements within prison could prevent their access to the prison library when it was open.

Disempowerment was a third theme concerning barriers facing prisoners when they try to prevent or address legal issues. The pervasive need for prisoners to rely on other people to carry out tasks on their behalf (such as calling government agencies, passing on messages and arranging legal visits) meant that inmates were often not in control of obtaining information and advice on their own behalf. Consequences included delays, essential activities not taking place at all, and the creation of unequal power relationships that sometimes were to the detriment of the inmate. Additionally, the loss of skills and resources through repeated incarceration and concomitant reliance upon others may cumulatively erode inmates' capacity to address their legal needs on their own behalf even when released.

A final theme concerns how the capacity of prisoners to address certain legal issues varies at different stages of their incarceration. When first incarcerated, inmates are generally too unstable, stressed and focused on their criminal matters to have the capacity to focus on their longer term civil law problems. By the time they are in sentenced prisons, inmates appear to have more personal capacity to address these issues, but are faced with more systemic barriers to doing so (e.g. placement in a rural prison and less access to welfare or regular legal assistance). If civil law assistance was provided at a point in the incarceration when inmates were most able to engage with that assistance, the effectiveness of that assistance may be increased.

It is important to recognise that some of the factors that affect prisoners' access to justice may not be easy to modify or will change slowly. These include the overriding priority given to security in jails, limited resources within both correctional and legal service delivery systems, the complex histories of prisoners and the limited cognitive capacity of many inmates, particularly during the early stages of custody.

Some of the key elements that could address a number of the barriers identified in the study and relevant in responding to this question include:

- bringing quality legal help (information, advice, representation and access to processes) closer to inmates so as to reduce the number of intermediaries between the inmates and quality assistance (e.g. direct access to legal assistance telephone lines and visiting civil legal advice services)
- providing legal help in formats that can be used by inmates, given that some inmates have a reduced capacity to comprehend material and retain information (e.g. lawyers spending more time with inmates to help them understand the advice or providing legal information in DVD format)
- providing clear access points to legal help (e.g. a single telephone number or contact point)
- recognising points in the incarceration process when it may be most beneficial to engage with inmates to address their civil legal needs (e.g. once prisoners are sentenced or past the early remand period)
- having greater awareness of the routines and limitations facing prisoners in accessing legal services, and incorporating such awareness into the legal processes (e.g. legal services being aware of when prisoners are out of their cells and available, or that a prisoner should not be left on hold during a telephone conversation as they can only make time-limited calls)
- having greater cognisance of how prison culture may affect the decisions inmates make about where and how to seek help with their legal problems
- providing some continuity of legal service provision from inside to out of jail (e.g. having access to the same telephone help line inside and out of jail).

As the research states, satisfying legal needs from within the prison environment can be a complex process. Isolation from services, the formal and informal regulation of movement and interactions, personal capacity and the conflicts between components of the justice system all affect how opportunities to access justice are exploited or missed.

It would benefit the whole community if the rate of recidivism among ex-prisoners could be reduced. However, the greatest benefits to the community would accrue if ex-prisoners not only ceased to reoffend, but also productively contributed to community life, and integrated into the life and activities of mainstream society (Borzycki and Bladry 2003). There is increasing recognition that all interventions, regardless of content, are best delivered as part of an integrated program designed to address an individual prisoners' specific issues, disadvantages and problems. Areas of need identified as important range from practical physical considerations (providing viable, comfortable and secure housing, not simply temporary accommodation), to less tangible factors such as fostering social interactions that permit ex-offenders to give back to their communities.

Programs aimed at supporting the children and families of prisoners and at building offenders' parenting skills should also be incorporated to minimize the probability of continuing a cycle of offending across generations. The implementation of case management to coordinate the delivery of multi-agency throughcare services to individuals can ensure continuous care between custody and the community, allowing in-prison rehabilitative gains to be maintained and applied in mainstream society. It is important to note that throughcare can only be delivered if adequate human and financial resources are committed to it and its associated services and programs.²

Another quite significant finding in the research from Borzycki and Baldry is that each jurisdiction has unique legislative, penal, social, economic and demographic characteristics that may underpin differences in prisoner challenges and in rehabilitative outcomes. Comparative research between Australian jurisdictions may help uncover causal relationships between correctional interventions, offender and community characteristics and successful post-release integration. Importantly, addressing these knowledge gaps will assist in ensuring that Australian correctional resources are allocated for optimal outcomes in terms of crime reduction and maximising the possibility of successful community return.

Question 4.2: Role of the Serious Offender's Review Council

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

As mentioned in the Police Association's Question Paper 3 response - unlike other states, the State Parole Authority in NSW has the luxury of having the serious offenders review council that manages the incarceration of serious offenders throughout their incarceration. They interview a prisoner every six months and the council is chaired by a retired Supreme Court judge and unless they recommend to the SPA that the inmate should be released or that they are eligible to be released. At the end of the day it's the decision of the NSW Parole Authority, whether they do or don't take on the recommendation. SPA cannot release someone to parole. So SORC does a lot of good monitoring and mentoring. SORC are the people that have to be convinced that the person that comes before them has done appropriate programs, and are not manipulating the system.

It must be repeated here that parole for serious offenders in NSW must be strictly monitored. Those prisoners found guilty of murder or have life sentences, or have at least 12 years in full time custody, must be closely supervised by a Serious Offenders Review Council who works with prisoners right through their time in prison and when they come up for parole, the Parole Authority cannot release them unless the Serious Offenders Review Council says they are ready for release.

...it's very hard to predict human behavior. The reality is this: that everybody who's serving a prison sentence has to be released at some stage and if you make them go to the end of their sentence and release them when they've been in prison for a number of years, they've got no idea how life has changed out there...and they have no way to reconnect to the community, so they're almost certainly bound to reoffend." Spoken by James Wood, 22 November 2013

² Maria Borzycki and Eileen Baldry, Promoting Integration: The Provision of Prisoner Post-release Services, Trends & Issues in crime and criminal justice, Australian Institute of Criminology, No. 262, September 2003.

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

The use of offender treatment programs and other rehabilitation efforts is becoming common practice in correctional jurisdictions due to the increasing level of international research concluding these efforts to having a greater impact on recidivism than imprisonment. It is therefore crucial that there is a sharing of programs and information relating to program development and implementation. There needs to be a continuing pooling and sharing of resources for ongoing program development to be continuous.

Offenders should be required to tackle their criminal behavior. It is crucial that all those managing offenders make it clear to them that they will be swiftly caught and punished if they do not accept the opportunities offered to them and instead return to a life of crime. Evidence indicates that the relationship between an offender and the person managing them is an important factor in successful rehabilitation. There is also good evidence about the interventions (ie CUBIT, CORE, VOTP, IDATP, POISE) that can give offenders the best chance of changing their lives. The offending behavior programs, which make offenders confront and acknowledge the damage their behavior does, and then learn how to change the patterns which have often grown up over many years and have become a way of life. These specific programs which have demonstrated their effectiveness are accredited (as the LRC states), and continue to play an important role in rehabilitating offenders.

There is also a need to have published evaluations on the efficacy of these programs, including cost-effectiveness, process reviews and the affect on recidivism in order to conclude that the prison-base offender rehabilitation programs have the desired impact on recidivism and in turn, public safety.

As the LRC states, some programs are only available in certain correctional centres. An offender would have to be transferred to one of these facilities to access the program. Corrective Services NSW acknowledges that there is high demand for programs and that waits for some programs are impinging on prisoners' parole periods. If prisoners are facing delays in accessing rehabilitation programs, this may affect prisoners' prospects of successfully reintegrating into the community, because less time is available for parole supervision and assistance from Community Corrections. This needs to be looked at.

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

It is well established that education and employment have a relationship to offending. Different forms of community based education and employment support programs for offenders have been implemented in numerous jurisdictions, both in Australia and internationally. The consistent themes of the more successful programs include; targeting of higher risk offenders, coordination of service delivery between custody and community, and delivery of services as part of a coordinated case management approach. Networks between corrections agencies and community service providers have also been identified as an important feature in producing tangible benefits to offenders. These factors are consistent with principles which have been identified as important within key CSNSW offender management initiatives such as Throughcare.

As the LRC states, prisoners tend to have lower levels of educational attainment than the general population. So, through the Adult Education and Vocational Training Institute (AEVTI), Corrective Services NSW delivers a range of educational and vocational services to offenders in custody. All prisoners serving three months imprisonment or more take a Core Skills Assessment to help determine their level of literacy and numeracy. Most offenders study part time and work for Corrective Service Industries (CSI) within the prison to get on the job training.

As the LRC states the types of work available in custody may not always be good preparation for employment in the community. Although, unlike offenders in custody, offenders in the community have access to all the education and employment services available to any other member of the general public. But, they are often at significant disadvantage. Recent research suggests that Australian employers and employment service workers tend to perceive offenders negatively, viewing them as less employable than most other disadvantaged groups, except those with intellectual or psychiatric disability. Some employment support may be provided by supervising probation and parole officers. Providing offenders with informed support to develop reasonable expectations and attitudes may be, for example, one reason why some employment programs seem to produce benefits even where placement does not occur³.

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?

Short sentences do pose the issue of providing little to no real opportunity for offenders to participate in the varied constructive activities that may help to, not only address the causes of their reoffending, but also to equip them with better employment and educational opportunities upon release. Issues include the limited involvement in in-prison programs due to their lengthy duration; prisoners with short terms never have their cases reviewed as case management plans are reviewed every six months and most short term prisoners are not eligible for Probation and Parole services. But, the purpose and use of a short sentence of imprisonment ensures that the offender is adequately punished for their offence; achieves a deterrent effect and denounces the conduct of the offender.

In the Local Court, the most common offences which resulted in a short prison sentence were: "non-aggravated assault", followed by "driving while license cancelled, suspended or disqualified". The Department of Corrective Services ("DCS") provided data on the characteristics and size of the population serving prison sentences of 6 months or less. In summary, the vast majority is male, almost a quarter is Aboriginal, almost all have a prior record and almost 70% have previously served a period of imprisonment. Short prison sentences also can have negative effect on family, housing and employment which additionally calls for ways in how the prospects of these offenders could successfully reintegrate on parole. A recommendation to assist or rather overcome these obstacles is if programs could be streamlined and broken into workable modules, which could be completed within the custodial setting and in the community (and perhaps continued if the offender is transferred between prisons). This may enable offenders to 'pick up where they left off' when released on parole.

³ David Gould, Jason Hainsworth, Kevin Manning and Toni McLackland, *Finishing the Job: Providing a roadmap for post release education and employment*, Australasian Journal of Correctional Staff Development (AJCSD) 2013

Question 4.6: Pre-release leave

- 1. How could pre-release leave programs be improved to:**
- 2. Prepare offenders sufficiently for life on parole; and**
- 3. Ensure offenders can access pre-release leave prior to parole?**

There is solid evidence that transitional support services are effective in easing prisoners' experience of the transition from custody to community. There is also good evidence that these services can assist in delaying or preventing further offending when provided as part of an integrated, systematic response.

To put simply, reintegration is the process of successfully transitioning offenders to the wider community from the custody of, and/or control by Corrections. Reintegration is most successful when offenders take some responsibility or ownership of their needs and have strong community involvement/engagement. Therefore, offenders require support in;

- finding and maintaining accommodation
- working towards having a job on release from prison
- improving their skills and knowledge through education and training
- gaining basic life skills such as budgeting, parenting and communications
- obtaining positive support to stay crime-free after completing their sentence
- engaging with volunteers who play a key role in establishing and keeping community links and relationships active.

Throughout NSW, correctional centres accommodating minimum-security inmates provide a range of External Leave Programs. The External Leave Programs developed by the Department in consultation with the community provide an opportunity for selected inmates approaching the end of their sentence to:

- re-establish themselves in the community while still supported by the specialist services available through the correctional centre
- gain meaningful employment which may be ongoing upon release
- re-establish family relationships which have been affected
- assume financial responsibility for themselves and their families
- participate in external education and/or training
- make retribution to the community
- contribute towards the cost of their incarceration

The current NSW transitional support service framework is well developed. For instance, consideration for inclusion in External Leave Programs can only occur through a comprehensive case management process whereby a case management plan of integrated programs is developed to provide an inmate with relevant social and cognitive skills to assist him/her to avoid re-offending.

Approval for an inmate to participate may only be granted if the inmate has achieved the requirements of his/her case management plan and it is considered that s/he will benefit by participating in such programs. To enable full participation on the program it is essential that staff obtain and assess the necessary reports and documentation in sufficient time prior to the date that the inmate becomes eligible for entry into the External Leave Program.

Priority for inclusion in External Leave Programs should be given to those inmates facing significant barriers to reintegration to society after release, for example inmates serving long terms of incarceration, those with little or no previous employment history, and those with a long term history of recidivism. Some inmates may not progress as well as others within the correctional system. Where such inmates

are identified, Case Officers/Case Managers and Inmate Services & Programs (IS&P) staff should be actively involved in providing additional assistance to such inmates to fulfil the objectives of their case plans in terms of addressing their criminogenic and risk needs through appropriate course/program participation.

All inmate applications for entry to External Leave Programs are to be considered having regard to the criteria applicable to the program at the time of application.

Question 4.7: Transitional centres before release

- 1. How effective are transitional centres in preparing offenders for release on parole?**
- 2. How could more offenders benefit from them?**

As the LRC states, transitional centres enable offenders still serving their non-parole period to adjust gradually from the custodial environment to the community and provide support to address the challenges they face. An evaluation conducted on the Parramatta Transitional Centre found it to be efficient, effective and appropriate.

- **Efficient** - the Transitional Centre has a lower cost per inmate per day than mainstream corrections.
- **Effective** - it has low recidivism. Since opening in 1996, only 1 former resident has been returned to custody within the 2-year time frame used by the Department to define recidivism.
- **Appropriate** - residents in a pre-release program live, work, study and attend programs in the community into which they will be released. They attend the same kinds of workplaces, educational institutions and access the same kinds of community facilities and programs as non-offenders.

The evaluation also compiled a set of recommendations, entitled, *Lessons for Future Projects*, which is quite relevant to answering the above questions. The recommendations include the following;

- Any future community-based transitional centre should be designed so that all residents have their own room. In addition the Centre should be designed to look as 'home-like' as possible but also to enhance the safety of the residents and premises.
- The experience of the Parramatta Transitional Centre indicates no particular need to locate such centres near a correctional facility. Indeed if the purpose of a Transitional Centre is to reintegrate offenders into the community then a community location would appear to be more appropriate.
- Consideration to be given to the development of a similar program for women deemed unsuitable to, or who do not want to live with children and women perceived to be of risk of not complying with their case plans.
- Risk and incident management strategies and responses should be incorporated into the planning of any centre for a higher risk population so as not to compromise the viability of the program. A media strategy should be incorporated into this planning.
- Any training and career development strategy devised for Transitional Centre Workers should also be applicable to workers at future centres, particularly with a view to the development of career paths.

- Any future transitional centre should continue to take advantage of community programs.
- Continuation of an emphasis on individualised case management and management plans for residents in any future centre/s to enhance their likelihood of success, particularly at any centre for repeat offenders or women perceived to be at risk of not complying with their case plans.
- Participation in an appropriate 'Transitional Centre' program should be part of the normal case management plan for female inmates.
- The success of the Parramatta Transitional Centre for women suggests that the feasibility of a similar program for men should be investigated.

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?

There has not been enough evidence found in the research and practice literature review for the greater effectiveness of back-end or even front-end programs. When comparing Australian jurisdictions there seems to be a variance in whether front-end, back-end or both options are available. NSW, NT and up to September 2005 the ACT, operate only front-end HD programs. Queensland operates only a back-end (post-prison) option. Victoria, SA and NZ operate both a back-end and front-end scheme. Home Detention is available for unsentenced offenders in SA and, up to September 2005, in the ACT. One jurisdiction (Victoria) has only been operating an HD program for a short period of time. Two jurisdictions (NSW and Victoria) operate in limited areas of their states only. Authority for determining the making of a HD order and its conditions varies both for front-end home detention (generally the decision of the sentencing court, although in NZ the court's decision-making role is limited to granting permission to apply for an order to the Parole Board) and for back-end programs. In the latter case, this is generally the responsibility of Parole Boards or their equivalent, except in SA where the Act empowers the Corrective Services Chief Executive Officer to make orders, set conditions, and revoke orders.

Research conducted on Home Detention in New Zealand for the periods 2007-2011 (a combination of front-end and back-end home detention) reveals that home detention is provided as an alternative to a short-term sentence of imprisonment (two years or less) under the Sentencing Act and as such it presents a higher short-term risk to public safety. Home detainees remain in the community and consequently have greater opportunity to commit further offences than those sentenced to a short term of imprisonment. About a fifth of those sentenced to home detention between October 2007 and December 2010 was convicted of an offence that occurred in the term of the sentence but over 80% of these offences related to the administration of the sentence. A very small proportion of offences committed on home detention involved other types of offending. In terms of long term risk to public safety – reoffending by those who have completed a sentence imposed by the court – home detention has significantly lower reconviction and imprisonment rates than a short-term sentence of imprisonment and compares favourably with other non-custodial sentences. The data presented in this review indicates that the home detention sentence has operated very successfully since its introduction in October 2007.⁴

In terms of the Corrective Services' proposal for a back-end home, the same problems that have limited the use of front-end home detention as a sentence in NSW would affect back-end home detention. These include:

⁴ Ministry of Justice, Home Detention, A review of the sentence of home detention 2007-2011, October 2011, www.justice.govt.nz

- Restricted availability in regional areas (due to lack of adequate supervision and monitoring options)
- Lack of suitable housing, particularly for those offenders with cognitive or mental health impairments and/or no pre-existing accommodations options, and
- The burden imposed on co-residents and the potential risks to the safety of co-residents.

Question 4.9: Day Parole

- 1. How could a day parole scheme be of benefit in NSW?**
- 2. If a day parole scheme were introduced, what could such a scheme look like?**

Day parole is a form of unescorted temporary absence that allows offenders to participate in community-based activities to prepare them for release on full parole or statutory release. Offenders granted day parole must return nightly to a penal institution or a halfway house. The eligibility rules for day parole are the same as for any temporary absence. None of Corrective Services NSW's existing pre-release programs permit offenders to be absent from correctional centres for more than two consecutive days. A study of Canadian offenders on day parole found that about two-thirds of offenders successfully completed the day parole period without being returned to custody. Most of those returned to custody had day parole terminated because of breaches of conditions rather than reoffending. The LRC correctly states that day parole raises some of the same issues as back-end home detention and a system of day parole may too offend the principle of truth in sentencing. It might also depend on an increase in supported accommodation options and transitional centres for offenders.

Question 4.10: Re-entry courts

- 1. Should re-entry courts be introduced in NSW?**
- 2. If re-entry courts were re-introduced, what form could they take and which offenders could be eligible to participate?**
- 3. Alternatively, could the State Parole Authority take on a re-entry role?**
- 4. If the State Parole Authority were to take on a re-entry role, which offenders could be eligible to participate?**

A reentry court is a court that manages the return to the community of individuals being released from prison, using the authority of the court to apply graduated sanctions and positive reinforcement and to marshal resources to support the prisoner's reintegration, much as drug courts do, to promote positive behavior by the returning prisoner. The expectation is that the focus on reentry issues in the courts will help reduce the recidivism rate of returning prisoners and will encourage a broad-based coalition to support the successful reintegration of those offenders.

When introducing reentry courts in NSW, the core elements will have to be:

- Assessment and Planning eg assessing inmates' needs upon release and building linkages to social services, health and mental services, housing, job training (etc) that would support reintegration.
- Active oversight eg the judge to actively engage the parole officer and the policing officer responsible for the parolee's neighborhood in assessing progress.
- Management of Supportive Services eg reentry court to have at its disposal a broad array of supportive resources, including job training, substance abuse treatment services, housing services etc

- Accountability to Community eg ongoing restitution orders
- Graduated and Parsimonious Sanctions eg the reentry court to establish a predetermined range of sanctions for violations of the conditions of release.
- Rewards for success eg reentry court to incorporate positive judicial reinforcement.

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?

It is true that some offenders may be motivated and organized enough to follow the detailed advice in the Planning Your Release: NSW Exit Checklist and Getting Out handbooks (which are quite detailed with useful information and assistance). However for those offenders with poor literacy, poor social and life skills and who are institutionalized, assistance from a welfare officer may be essential - yet there appears to be a shortage of welfare staff in NSW prisons and that prisoners experienced difficulties and delays in accessing welfare officers – this needs to be improved. As the LRC notes, the current approach to release preparation seems to mostly require offenders to take the initiative in readying themselves for release and may be an unrealistic way to provide assistance. An alternative recommended by the LRC could be to resource additional officers within prisons who are specialized housing and throughcare workers.

The existing literature and research shows that (to which is relevant to when considering planning and preparation for release to parole);

- Homelessness makes a person vulnerable to imprisonment or re-imprisonment
Homeless people are arrested and incarcerated at a rate that far exceeds the domiciled population. This problem may be even worse for ex-prisoners. The disadvantages faced by ex-prisoners are of a kind that leaves them at a heightened risk of being re-imprisoned.
- The homelessness experiences of ex-prisoners are essentially consistent across time and place
Ex-prisoners do not seem any better off today than they did 30 years ago.
- Ex-prisoners face multiple social disadvantages
Ex-prisoner population suffers from multiple social disadvantages and that these disadvantages can have compounding effects.
- The private housing profile has changed in ways that make it harder for people to avoid homelessness
The most significant change affecting the accommodation prospects of ex-prisoners and others has been rising property values, particularly in inner-city and neighbouring areas. This has affected the lower-end, cheap and affordable private hotels and boarding houses that have often been the only resort of those on very limited incomes
- The public housing profile has changed in ways that make it harder for people to avoid homelessness
Major changes which is a consequence of not only increased property values and changing urban profiles, but of changes in government policy and resource allocations.
- Ex-prisoners need housing that is appropriate in type and location
Ex-prisoners' offending history and associations may make it difficult or inappropriate to house them in certain locations and areas.

- Stable and secure housing is vital to a successful return to the community for many ex-prisoners
Without appropriate housing a person's ability to find employment, access assistance and services, address substance abuse issues or other aspects of offending behaviour, maintain self-esteem and start to think of him or herself as a 'normal' member of society can be severely undermined. Without appropriate housing it can be almost impossible for some ex-prisoners to begin putting order into lives characterised by chaos. Stable housing, the research shows, engenders more stable lives. This stability is likely to contribute to a reduction in recidivism, which can in turn provide multiple benefits to society.
- Support is critical
To be able to have support in place at the point of release support services, including supported accommodation agencies, need to be able to work with potential clients some time before release
- Addressing problems of homelessness in ex-prisoners requires collaborative relationships that must include correctional services
One of the fundamental difficulties with undertaking interventions for prisoners and ex-prisoners is the question of where responsibilities fall.
- Interventions to address homelessness in ex-prisoners must begin at the point of reception into prison
- Those in prison for a short time may be worse off than those staying longer
- Indigenous post-release homelessness
Indigenous people are also greatly overrepresented in the prisoner and ex-prisoner population and little is known about the post-release experiences of Indigenous people. The relatively little research that has been conducted in Australia shows that Indigenous ex-prisoners, particularly females, experience serious problems with maintaining accommodation post-release and are highly vulnerable to re-incarceration.
- Post-release domestic violence and links to homelessness
Anecdotal evidence to suggest that some men may leave prison with a heightened propensity for domestic violence; if valid, it may be that ex-prisoners in some circumstances may contribute to an increased risk of homelessness including cyclical homelessness for others.
- How best to address ex-prisoners' needs
Ex-prisoners have special needs that may be better served if staff have special training or education to meet those needs
- Regional/local differences
A need for more information to be gained about the post-release experiences of people in regional areas
- Impact of current policy interventions
Any new policy interventions need to be evaluated in order to assess their effectiveness
- Changes in public and community housing profiles
Further examination of changes in public and community housing would provide information useful for policy development in this area⁵

⁵ Australian Government Department of Social Services, Ex-Prisoners, Housing and Homelessness in Australia, 21 August 2013.

Question 4.12: Conditions of parole

- 1. How could the three standard conditions that apply to all parole orders be improved?**
- 2. Should the power of sentencing courts and SPA to impose additional conditions on parole orders be changed or improved?**

When deciding whether to release an offender on parole, the Authority considers the interests of the community, the rights of the victim, the intentions of the sentencing court and the needs of the offender. The Authority considers a broad range of material when deciding whether or not to release an inmate to parole and must have determined that it has sufficient reason to believe that the offender, if released from custody, would be able to adapt to a normal lawful community life. The standard conditions that apply to all parole orders are to the point;

- The offender must, while on release on parole, be of good behaviour.
- The offender must not, while on release on parole, commit any offence.
- The offender must, while on release on parole, adapt to normal lawful community life.
- The offender must, until the order ceases to have effect or for a period of 3 years from the date of release (whichever is the lesser), submit to the supervision and guidance of the Probation and Parole Officer and/or Compliance and Monitoring Officer (hereafter referred to as "the Officer") assigned to the supervision of the offender for the time being and obey all reasonable directions of that Officer.
- The offender is to report to the Officer or to another person nominated by that Officer at such times and places as that Officer or nominee may from time to time direct.
- The offender is to be available for interview at such times and places as the Officer (or the Officer's nominee) may from time to time direct.
- The offender is to reside at an address approved by the Officer.
- The offender is to permit the Officer to visit the offender at the offender's residential address at any time and, for that purpose, to enter the premises at that address.
- The offender is not to leave New South Wales without the permission of the Officer's Manager.
- The offender is not to leave Australia without the permission of the Parole Authority.
- The offender, if unemployed, is to enter employment arranged or agreed on by the Officer or make himself or herself available for employment, training or participation in a personal development program as instructed by the Officer.
- The offender is to notify the Officer of any intention to change his or her employment if practicable before the change occurs or otherwise, at his or her next interview with the Officer.
- The offender is not to associate with any person or persons specified by the Officer.
- The offender is not to frequent or visit any place or district designated by the Officer.
- The offender is not to use prohibited drugs, obtain drugs unlawfully or abuse drugs lawfully obtained.

Parole officers need to be mindful that parole conditions need to be appropriate for offenders for the duration of their time on parole. As the LRC states, conditions need to avoid being overly onerous or unrealistic because of the risk of setting offenders up to fail. Adequate support with respect to issues such as housing, education and treatment for substance abuse instead is required. It is a strong incentive to encourage prisoners to do programs to address their offending behavior. Studies show that an inmate released to parole is three times less likely to commit further offences than one who serves his or her entire sentence without parole.

Question 4.13: Intensity of parole supervision

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

As mentioned, community safety is paramount in decisions regarding the granting of parole by the State Parole Authority. In NSW, the purpose of parole is really to assist the integration to the community, allowing offenders to connect with services, to be subject to a period of supervision. If they breach - they go straight back into prison and the other factor - if they breach by committing offences on parole - the next time they appear for sentence, they get a longer sentence than they would have otherwise. Given the substantial treatment, health, housing, education and employment needs of the parole population, it is essential for parole to partner with other agencies – such as community health care providers and housing authorities for instance.

Parole officers' case loads need to be carefully monitored as high case loads make it virtually impossible to ensure success. For instance, parole officers have a lot of different roles that they need to fulfil as part of their job; they are supervising people on probation as well. They are writing pre-sentence reports, they might be running groups for offenders, and they are now taking on home detention clients. They have caseloads on average of 40-50 offenders and for many of those probation officers are working in areas with few resources to assist the offenders in addressing the conditions of their parole and issues around their offending behaviour. There are long waiting times to see drug and alcohol workers. Mental health services are often lacking in rural and regional areas. So it needs to be asked how intensively can somebody be supervised when there is not a lot of support around doing that. Parole officers need to be appropriately resourced.

As mentioned, the Community Corrections division was recently formed from a merger of two separate units. The new structure has set minimum standards and introduced a new risk assessment system which considers not just the risk of reoffending but also the potential impact on the community. By merging the two units and setting clear standards, it was reported that duplications can be avoided and the community can be better assured that parolees are appropriately supervised – this needs to be followed through. On the other hand, high risk violent and sexual offenders who have shown no sign of rehabilitation, must be detained in custody, or kept under strict supervision orders.

Question 4.14: Duration of parole supervision

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

As it currently stands, the duration of parole supervision in NSW seems quite adequate. Under the CAS Regulation a parole order can only require an offender to be supervised for a maximum of three years or until the expiry of the head sentence, whichever is lesser. If the sentence is longer than three years, he or she will still be subject to the other obligations of parole and liable to be returned to custody if the order is revoked but will not be monitored in any way by Community Corrections and will not be obliged to comply with the requirements of supervision. SPA can vary the conditions of a serious offender's parole order while the offender is on parole to extend supervision for extra periods of up to three years at a time.

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) and**
- b. Compliance checking activities undertaken by Community Corrections?**

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

Monitoring parolees' compliance with their obligations and the directions of their supervisors is an important part of supervision. It is critical and essential that timely sharing of information always abounds between Community Corrections and other agencies or providers in detecting parolees' breaches or any escalation of the risks they post to the community.

Compliance checking activities undertaken by Community Corrections seem sufficient enough. Corrective Services NSW has the benefit of a number of exemptions from compliance with the relevant Acts – the exemptions seem reasonably broad enough – the LRC suggests that it may not cover all circumstances. Additional analysis is required from relevant stakeholders.

NSW Police perform an important role in relation to parole. The most obvious aspect of its role is the compliance with the condition to not commit further offences; however, police are also potentially in a position to monitor compliance with some parole conditions. For example, a parolee may be subject to a condition to abstain from alcohol, and police may detect the parolee appearing drunk in a public place. Can the LRC's review of parole assist in NSW Police's procedures for dealing with parolees who are in breach of parole, and streamline the process removing any complexities that exist? Also, is there any coordination or oversight of information sharing between relevant stakeholders? The information sharing requirements for the effective management of parolees are complex and the amount of information difficult to manage - in the LRC's scrutiny of NSW Parole - can this process be improved? What kind of gaps are evident for instance in the flow of this information? It is crucial that effective communication is kept open between all relevant stakeholders and the feedback loop between these agencies leads to better clarity of roles and responsibilities for all. From the Police Association of NSW Parole Scoping Paper, August 2013.

Question 4.16: Electronic monitoring of parolees

- 1. How appropriate is the current monitoring of parolees?**
- 2. What are the arguments for or against increasing electronic monitoring of parolees**

Electronic Monitoring has been used in some form or another to keep an eye on people who've served time but are still considered a risk for almost 30 years now. In the US, the birthplace of electronic monitoring, GPS tracking and electronic monitoring in general has produced varying results.

Electronic monitoring is very good in terms of keeping track of people particularly where they're located. The problem, however, is not with the technology. It is with the response to the information that is generated by the technology. There is 24/7 data collected that is downloaded and it's a very job intensive requirement to pay attention to what it says. So, while the information is being collected, often the problem is in response to the data that has been downloaded. Sometimes there are just very disastrous consequences for the fact that people who are monitoring GPS downloaded data are overwhelmed with the workload that they have, and problems get overlooked. What is required is competent planning on how to use the data that is collected by GPS or any other monitoring system.

There's very little data on electronic monitoring because there has been very little research done in this area – though the research that is available has shown that electronic monitoring has had a delaying effect on offenders reoffending.

The public and the media have been known to consider electronic monitoring as a soft option. But in many respects it is a soft option, because it doesn't try to change people's behaviour. It is not an intensive supervision penalty that actually tries to change someone's attitudes and behaviour. Simply releasing somebody early on electronic monitoring does save money as far as keeping people in prison are concerned, but unless they're provided other forms of social work support it can't really be said to be reintegrating them.

Arguments in favor of electronic monitoring are mainly directed to the fact that these devices would be able to improve the tracking of offenders in remote locations as well as repeat offenders who held a serious risk in addition to removing the onus off the victim.⁶

⁶ Police Association of NSW Submission, Inquiry into Domestic violence trends and issues in NSW, September 2011.

Question 4.17: Workload and expertise of Community Corrections officers

- 1. What improvements could be made to ensure parolees are supervised effectively?**
- 2. What are the arguments for and against Community Corrections implementing specialist case managers or specialist case management teams for certain categories of offenders?**
- 3. If specialist case management were to be expanded, what categories of offenders should it apply to?**

The Callinan review of 2013 in Victoria highlighted a particularly important aspect in the high levels of turnover for Victorian parole officers and the difficulties that Corrections Victoria experienced in attracting and retaining experienced officers. This is particularly relevant to NSW example, especially during the decision to merge COM and CCMG into Community Corrections – and the concerns that were expressed at experienced staff taking voluntary redundancies resulting in a loss of experienced officers. The Victorian review recommended (which too applies to NSW);

- Supervising officers' caseloads should be reduced
- Incentives should be introduced to attract and retain experienced officers, and
- Experienced managers should directly oversee in the field other parole officers' supervision of offenders.

The consideration in establishing specialised supervision structures for some categories of high risk offenders (such as sex offenders and high risk offenders involved in interpersonal family violence) would;

- ensure that the offender is well understood
- the offender's relevant range of needs are identified and addressed
- Such a collaborative effort may help supervise high risk offenders more effectively and would also ensure that cases are discussed and various perspectives are considered

This approach is worth considering.

The LRC states that Corrective Services NSW uses specialist teams to supervise some offenders in the community, such as Drug Court teams for offenders with alcohol and drug issues subject to orders of the Drug Court, and an "ESO team" which manages high risk sex offenders and violent offenders subject to extended supervision orders.

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?

A significant minority of offenders are homeless before they enter custody. Many return to homelessness upon leaving custody, or have unstable housing causing them to move several times in the months immediately following release. Therefore it is important that sufficient funding is made available to fund housing places and that housing services are provided to offenders in a coordinated and integrated way. Corrective Services NSW currently funds transitional accommodation and support services provided to parolees by non-government organisations and also participates in a number of National Partnership Agreement on Homelessness funded projects.

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?**
- 2. Are there any problems of continuity between custodial and community based programs?**
- 3. Can any improvements be made to the way the programs available to parolees in the community are selected or evaluated?**

Corrective Services NSW provides a number of programs to parolees of which Corrective Services NSW reports that 489 offenders attended the PEET program in 2011-12, while 782 offenders attended the Sober Driver Program. Some other rehabilitation programs for offenders are offered in the community, such as Community-based Sex Offender Programs treatment groups for low-moderate and moderate-high risk/needs sex offenders. A number of in-custody rehabilitation programs, such as CUBIT and VOTP, also have community components. Some in-custody programs are also designed to feed into community programs run by non-government organisations such as Alcoholics Anonymous. As one can see, there is a fairly good level of access to such rehabilitation programs on parole. A Program Accreditation Panel evaluates Corrective Services' programs to ensure they comply with design, implementation and evaluation criteria that reflect the risks, needs and responsivity principles, which are identified by "what works" literature as central to effective correctional programs. The only issue is that despite the range of programs provided by Corrective Services, parolees living in regional areas may have troubles with access to the said programs. This needs to be further evaluated.

Question 4.20: Barriers to integrated case management

- 1. To what extent is Community Corrections case management able to achieve a throughcare approach?**
- 2. What are the barriers to integrated case management?**
- 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?**

As mentioned already a lack of resources and increased workloads for parole officers have been identified as highly detrimental to the provision of services and support to offenders on parole. As the LRC rightly states, the issue of integrated case management becomes particularly important if an offender's parole is revoked and he or she is returned to custody. An offender may be in custody for some time and it could be important not to lose any gains made on parole. Throughcare would best be achieved if custodial and community case management was integrated such that programming and other support for an offender could continue with reasonable continuity whether the offender was in custody or the community.

Again, as mentioned by LRC, as well as issues around the interface between custodial and community case management, it is not clear to what extent Community Corrections officers can provide "activist" case management that includes active procurement of employment and other supports for offenders. A 2005 survey of Australian parole officers found that the majority of officers felt that the ideals of throughcare were not being achieved in practice because of a chronic lack of accommodation, mental health, employment and training services available to offenders after release from custody. Officers also reported difficulties in accessing crucial information from other agencies about offender's needs and the services that were available to meet those needs.

Apart from housing and rehabilitation programs, parolees may need a range of other assistance and support. Eg mental health treatment. Parolees are highly likely to need some form of drug or alcohol treatment, including residential drug treatment.

Question Paper 5

Breach and Revocation

In this Question Paper we examine the powers of the State Parole Authority (SPA) to respond to breaches of parole.

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?**
- 2. What formal framework could there be to filter breaches before they are reported to SPA?**
- 3. What lower level responses should be available to SPA? What lower level responses should be included in the CAS Act?**

As of 30 June 2006, there were 3 990 people being supervised on parole in NSW (NSW DCS, 2006 p. 11, Table 6), comprising just over two-thirds of all released offenders. A key issue for parolees is to avoid breaching parole conditions and returning to jail for the remainder of their sentence. Research has suggested that 'many people who fail on probation or parole do so because they have breached the technical conditions of their parole orders and not because they have committed a criminal offence' (Jones et al., 2006).

As the LRC states, it may be desirable for policy to clearly delineate the types of breaches that must always be reported to SPA and those that Community Corrections can exercise some discretion in reporting. In the US research has found that, where there are only limited rules to govern parole officers' discretion to report breaches, decisions varied unpredictably from one officer to another. The Crimes (Administration of Sentences) Act 1999 (NSW) (CAS Act) states that, in response to a breach, SPA may either revoke a parole order or vary its conditions. The CAS Act does not expressly mention warnings or noting the breach as options available to SPA.

The LRC also suggests that it may be desirable for options to warn parolees about conduct which constitutes a breach, or to note the breach but take no action, to be expressed in the legislation. SPA could take prior warnings or notes of breaches into account when dealing with future breaches. Giving these options a statutory basis would guard against challenges to revocation orders where prior warnings and decisions to note breaches were taken into account.

Question 5.2: Response to non-reoffending breaches

- 1. Should there be any changes to the way SPA deals with non-reoffending breaches?**
- 2. What intermediate sanctions short of revocation should SPA have available to respond to non-reoffending breaches?**
- 3. Should SPA be able to revoke parole for short periods as a way of dealing with non-reoffending breaches?**

The LRC makes a suitable suggestion in stating that perhaps it would be desirable for the CAS Act to explicitly grant SPA a wider range of sanctions to use in response to non-reoffending breaches along the lines of the Drug Court model. Such sanctions could include community service work, curfews or home detention-style conditions. In South Australia, the Parole Board has the option to respond to non-reoffending breaches by imposing a further condition requiring the parolee to perform between 40 and 200 hours of community service work. Attendance at an approved educational course can count towards these hours of community service.

The LRC further suggests another option which would be to give SPA the flexibility to revoke parole for a short period of time. SPA already has power to reinstate an ICO on the application of the offender one month after revocation,³¹ and to reinstate a home detention order on the application of the offender three months after revocation. In 2013 LRC sentencing report, recommended replacing ICOs and home detention with a community detention order, which it also recommended that SPA should have power to revoke community detention orders for set periods. For example, SPA could revoke a parole order for four weeks. After four weeks in custody, the offender's parole order would be automatically reinstated and they would be rereleased to parole. At present, an offender whose parole is revoked cannot be rereleased on parole until a 12 month period has elapsed, except in circumstances constituting manifest injustice. Both these suggestions are worth considering.

Question 5.3: Revocation in response to reoffending

- 1. What changes should be made to improve the way SPA deals with parolees' reoffending?**
- 2. What provision, if any, should be made in the CAS Act to confine SPA's discretion not to revoke parole?**

The Parole Authority has jurisdiction to revoke parole orders and also sentences of home detention, periodic detention and intensive correction orders.

In NSW, there is no provision for automatic revocation of parole (unlike in other states), although in practice SPA will always revoke parole if a parolee commits a fresh offence that results in a new prison sentence. If the fresh offence receives a penalty other than full-time imprisonment, SPA will decide whether or not revocation is warranted. If the fresh offence is minor, such as a fine-only offence, SPA may decide to continue parole and formally warn the offender about his or her offending behaviour. However, as the LRC suggests it may be desirable for the CAS Act to provide that parole is automatically revoked if a parolee is sentenced to a new period of full-time imprisonment. This would bring NSW into line with other Australian jurisdictions and ensure that the legislation reflects SPA's current practice.

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

The Authority backdates the revocation to the day the breach occurred. This means that the period in the community up to the date of the breach counts towards the completion of the person's sentence, but any period in the community after the breach does not.

As the LRC reports the operation of street time means that SPA's selection of the revocation date can have a significant impact on an offender and in some cases can add months to an offender's sentence. The LRC suggests it may be desirable for there to be some guidance to SPA in the CAS Act about the selection of the revocation date in different types of cases. It provides as an example, the CAS Act could provide that the revocation date is always the date of alleged fresh offending unless there is sufficient reason to select another date. In the case of non-reoffending breaches, the default date could be the date of the breach report sent to SPA by Community Corrections. This is worth considering in the operation of street time.

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?

According to the Crimes (Administration of Sentences) Act 1999, after SPA has revoked an offender's parole order, SPA must hold a review hearing within four weeks to reconsider the revocation. A review hearing is only unavailable to an offender if there is less than 30 days left to run on the offender's sentence. This contrasts with the situation for parole refusals, where a review hearing is only held if SPA considers that a hearing is warranted.

It is quite relevant to note that the Callinan report was critical of the Victorian Adult Parole Board's practice of always conducting a review of a decision to revoke parole. The report argued that, in many cases, the review hearings generated unnecessary extra work for the Board and also weakened the enforcement of parole conditions. The report stated that "the best way of bringing home to prisoners the necessity of compliance with conditions of parole is to visit non-compliance with serious and automatic consequences".

As the LRC points out, reviews of revocations are certainly resource intensive. On the other hand, they may be an important safeguard to ensure that SPA has not relied on inaccurate information and that it is able to take into account any extenuating circumstances that favour parole being reinstated. Most importantly, automatic review hearings may also help to protect the safety of the community.

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?

After a warrant is executed and the offender is in jail, the Authority must hold a hearing to reconsider the revocation of parole, home detention, periodic detention or intensive correction order (s.173). The prisoner may appear by video link and be legally represented. There is a waiting period of four to six weeks between the date the person is apprehended on the warrant and the date of the hearing. At the end of the hearing, the Authority must decide whether or not it will rescind (that is, cancel) the revocation (s.175). There is no right of appeal. If the revocation is rescinded, the order for parole, home detention, periodic detention or intensive correction order is revived. If the revocation is not rescinded, the revocation is confirmed. In relation to a revocation of parole this means that the offender cannot apply for parole again until they have served 12 months. In relation to revocation of the other orders, the offender can seek reinstatement of home detention and periodic detention after served three months; and, seek reinstatement of an intensive correction order after served one month. In relation to revocations of periodic detention and intensive correction orders, instead of reinstatement, the offender can also seek to have the balance converted into home detention.

First of all, the overall priority is the safety of the community and therefore choosing what provision should be made in the CAS Act (ie in relation to how SPA's decision making should interact with rehabilitative dispositions in response to fresh offending) must be decided upon via the best means to protecting the safety of the community. SPA advises in such cases that it generally stands over a matter for later consideration rather than revoking parole where there are fresh charges and the court dealing with the charges has referred the offender to a program.

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?

There should not be any changes to the mechanisms for appeal or judicial review of SPA's revocation decisions, as already, an offender may apply to the Supreme Court for a direction that SPA relied on false, misleading or irrelevant information when making a revocation decision. Also, under s 172 of the Crimes (Administration of Sentences) Act 1999 (NSW), the State may request that SPA revoke a serious offender's parole order on the basis that the decision to make the parole order was based on false misleading or irrelevant information. Also, at common law in NSW and under s 69 of the Supreme Court Act 1970 (NSW), SPA's decisions are also subject to judicial review by the Supreme Court on the grounds that there was a jurisdictional error, a denial of natural justice, fraud, or an error of law on the face of the record.

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?

Again, as mentioned, it is of paramount importance to the State Parole Authority that all decisions are "appropriate in the public interest". Breaches include re-offending, the failure to maintain contact with the supervising Probation and Parole Officer, changing address without permission, leaving the State without permission, failure to attend a drug and alcohol rehabilitation centre or a positive urinalysis reading in respect of the use of drugs. The majority of breaches usually relate to another conviction or to a combination of a breach of conditions and outstanding charges.

As the LRC reveals, although SPA publishes online reasons for a limited number of decisions to grant or deny parole, it does not publish any reasons for decisions related to revocation. The WA Prisoners Review Board publishes online reasons for revocation cases where the Board has decided that parole should be revoked. It does not publish reasons for decisions not to revoke parole. The reasons are brief, simply setting out the conditions of the parole order and the type of breach that led to the revocation decision. The LRC considers that cases where parole has not been revoked may be of greater interest to the community. This needs further analysis from relevant stakeholders.

Question 5.9: Emergency suspensions

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

If there is insufficient time to call a meeting of the SPA, the Commissioner of Corrective Services may apply to a judicial member to suspend an offender's parole order and issue a warrant for arrest. Such circumstances would occur when an offender has breached their parole and there is a serious and immediate risk that the offender will abscond, harm another person or commit an indictable offence. A suspension order remains in force for up to 28 days after the offender is returned to custody to allow time for an inquiry to be conducted into allegations.

The power to suspend parole allows SPA to respond quickly to an emerging risk. Similar powers exist in other Australian jurisdictions. In Queensland, suspension periods are limited, as they are in NSW. In WA, however, there are no limits on the length of a possible suspension. SPA rarely uses the power to suspend parole. In fact it was not used at all in 2012 and so far has not been used in 2013. Improvements then really do not need to be made if the use of the power is hardly used.

Question 5.10: SPA's power to hold an inquiry

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

As a suggestion, the LRC states that it may be desirable for the CAS Act to specify that review hearings are only available if SPA considers a review is warranted in cases where a s169 inquiry has already been held. This could increase the use of these inquiries and minimise causes where parolees spend weeks in custody as the result of a breach that is then found at a review hearing not to be established or not to warrant revocation. It was found that SPA held 21 s169 inquiries in 2012 and 15 in 2013.

Question 5.11: Information sharing

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

As the LRC reports, one of the Ogloff report's key criticisms of the Victorian parole system was the poor sharing of information between Victoria Police, Corrections Victoria and the Victorian Adult Parole Board. The report highlighted instances where parole officers were not informed of police incidents or intelligence involving parolees, with the result that the Adult Parole Board in turn was not informed of relevant reoffending or other matters of concern. The report also criticised the fragmented flow of information between the custodial and community branches of Corrections Victoria. In several cases, Victorian parole officers did not have access to key details about a parolee's prison performance which may have affected their response to breaches. If parole was revoked and an offender returned to custody, custodial officers did not have access to details of the offender's progress or behaviour in the community. This is important that these shortfalls are not repeated in NSW.

Again as the LRC reveals, in NSW, the Serious Offenders Review Council (SORC) has responsibility for the case management of serious offenders while they are in custody but has no involvement with the management of these offenders on parole. SORC has advised the LRC that it would prefer (along with SPA) to receive Community Corrections breach reports for these offenders so it can track their progress in the community. Such information may be important for SORC if a serious offender's parole is revoked and he or she is returned to custody under SORC management. These changes need to be considered in going towards improving the way that agencies in NSW share information about breaches of parole.

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?

As is known SORC is a statutory body comprised of official members from CSNSW, Community Members and Judicial Members. The principal function of SORC is to act as an advisory body in relation to the classification and placement of inmates. As well as functions relating to the management of serious offenders in custody, SORC performs a gatekeeper role when SPA considers these offenders for parole. However, as LRC reveals, SORC is not involved in any breach, revocation or rescission matters that may arise during a serious offender's parole.

As the LRC suggests, in order promoting continuity in SORC's management of serious offenders, it may be desirable for SORC to also have a role in revocation and rescission decisions for these offenders. One way to achieve this would be for SORC to receive all Community Corrections breach reports relating to serious offenders and then, if SPA revokes parole, be invited to make a submission to SPA at the subsequent review hearing. This is definitely worth considering in the type of role SORC could have when SPA decides to revoke/rescind parole for serious offenders. Alternatively it is also suggested that if a serious offender's parole is revoked but SPA is considering rescinding the revocation after a review hearing, it could be required to seek SORC's advice on the desirability of rescission.

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?

Very recently, the Victorian government amended the Corrections Act 1986 (Vic) to create a new offence of breach of parole. The offence is punishable by up to three months imprisonment or 30 penalty units or both, which must be served cumulatively on the offender's original sentence. No other Australian jurisdiction treats breach of parole as an offence in itself, although breach of parole is an offence in NZ punishable by imprisonment for up to one year. Just like the LRC purports, it is not clear where the advantage lies in making a breach of parole an offence.

As it is already, currently, if a breach does not amount to criminal conduct, a parolee may still be punished by revocation of parole and a return to full-time custody to continue serving the original sentence. If a breach does constitute reoffending, parole may be revoked and the parolee will also have a new sentence imposed for that fresh offence. In effect, one would think that there is already a penalty of a return to full-time imprisonment to deter any type of breach.

Question 5.14: Reconsideration after revocation of parole

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

The LRC through its recent report on sentencing highlighted some of the problems with the 12 month rule. The 12 month rule is considered inflexible and allows SPA almost no discretion to consider an offender before 12 months has elapsed from the date of the revocation as 'manifest injustice' in narrowly defined. It was also reported that the 12 month period in custody severely disrupts a parolee's efforts to reintegrate into the community.

In revising the 12 month, one option is suggested by LRC that is worth considering would be a shorter set period, say three or six months, after which SPA may consider an offender's re-release on parole. However, this may not remedy the problem of inflexibility;

The Callinan review of the parole system in Victoria recommended that an offender not be considered for re-parole after revocation unless:

- half the unexpired time of parole has elapsed
- the offender has a prima facie case that he or she was unable to comply with a substantial condition of parole by reason of matters beyond the control of the offender, or
- the breach should be excused for other truly exceptional reason

A better alternative according to LRC which is worth considering, might be for SPA to set, at the time of revocation, a reconsideration date that is appropriate to the circumstances of the case, taking into account factors like the nature of the breach, the time until the expiry of the offender's head sentence, the interests of any victim, the risk the offender poses to the community and the offender's personal situation.

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?

Home detention and ICOs are both court orders that allow offenders to serve their terms of imprisonment in the community. In its recent report on sentencing, the LRC recommended that home detention and ICOs be combined into a single hybrid community detention order. The recommendation is worth considering. In case the said recommendation was not adopted, the LRC also made recommendations for the improvement and strengthening of home detention and ICOs as they currently exist. In particular, the LRC recommended that the court should be able to set a non-parole period for both home detention and ICOs, and that both orders should have a maximum length of three years. The LRC also recommended that, whether SPA revokes an offender's ICO or home detention order during the non-parole period or the parole period, an offender should be able to apply to SPA to have the order reinstated after one month. With any changes made to the breach and revocation processes for ICOs and home detention, it should be followed with provisions of better information or a more straightforward process in order that relevant stakeholders' concerns are allayed and a better understanding of changes is accomplished.

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