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Response to the NSW Law Reform Commission

Parole reference - Release of Questions Papers Four and Five

General comments

The Department of Family and Community Services (FACS), Ageing, Disability and Home Care's (ADHC) response focuses on those issues raised in the two Question Papers on Parole prepared by the New South Wales Law Reform Commission ("NSW LRC"), which are relevant to ADHC clients.

The ADHC *Justice Services Policy and Criminal Justice Resource Manual* provides direction and advice to all staff in the disability sector on working with people with an intellectual disability in, or at risk of, contact with the criminal justice system. This involves taking a proactive and early intervention approach, supporting people if they do come in to contact with police, courts and custodial settings, as well as pre-release planning and post-release support.

In addition, a key role of ADHC is to provide accommodation and clinical support services to people with an intellectual disability exiting the criminal justice system. The Community Justice Program aims through these services to reduce the incidence and impact of offending behaviour by people with an intellectual disability.

The National Disability Insurance Scheme (NDIS) is a major national reform that is currently occurring in disability services and will impact on all disability support into the future. The NDIS delivers funding to people with disability and will increase their choice and control regarding the supports they need. People with disability will be enabled to decide how, when and from whom they access support.

The NDIS is currently being launched in the Hunter area. It will be progressively implemented across NSW between 2016 and 2018. From 2018 onwards all disability supports will be provided under the NDIS and ADHC will no longer be a provider of disability services.

People with an intellectual disability in contact with the justice system may be eligible for NDIS funding to support their disability needs. The NDIS also promotes inclusion of and access for people with disability to mainstream services. Much of the feedback in this response is about ensuring that services in prisons and under parole in the community are more accessible to people with disability.

In formulating its response, ADHC is also mindful of the United Nations *Convention on the Rights of Persons with Disabilities* (“CRPD”) which was ratified by Australia in July 2008, in particular, Article 14 which articulates the principle of liberty and security of the person. Article 14 provides that:

Article 14 - Liberty and security of the person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

Enjoy the right to liberty and security of person;

Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

ADHC’s main concern is not so much about the legislative and policy framework for parole (mainly the *Crimes (Administration of Sentences) Act 1999*, the *Crimes (Administration of Sentences) Regulation 2008* and Corrective Services NSW Policies), but the way in which these are implemented, including the lack of available options for offenders with a cognitive disability.

As Question Paper 4 points out at 4.12, a recent 2013 study commissioned by the Australian Human Rights Commission has reported that 8% of NSW prisoners had an intellectual disability compared to 2% of the general population, and that 49% had suffered from a brain injury compared to 6% of the general population. Figures like these highlight the disproportionate and discriminatory impact of the criminal justice process, of which parole is a part, on people with an intellectual disability.

In its report, *“Taking Justice into Custody: the legal needs of prisoners”* the Law and Justice Foundation of NSW found that people with a cognitive impairment are particularly vulnerable to extended and repeat incarceration, and are not granted parole as readily as other inmates because of a lack of appropriate programs.¹

It also found that offenders with an intellectual disability need support in developing general living skills as well as offence specific interventions. Such courses, however, are hard to find.

The case of *R v Muldrock; Muldrock v R* [2012] NSWCCA 108 highlights this issue. In 2009, Mr Muldrock, a 33 year old man with an intellectual disability, was convicted of sexual intercourse with a child under the age of 10 years. Originally sentenced to serve 9 years imprisonment with a non-parole period of 96 days and considered to be at risk of re-offending, he was, after several

¹ Abigail Gray, Suzie Forell and Sophie Clarke, *“Cognitive impairment, legal need and access to justice”*, Law and Justice Foundation of NSW, Justice Issues Paper 10, March 2009.

appeals concerning his sentence, released unconditionally on 18 May 2012 by the Court of Criminal Appeal (CCA), having spent three years in gaol.

In considering his sentence, the CCA took into account Mr Muldrock's intellectual disability as well as the issues of deterrence and protection of the public. It also noted that Mr Muldrock had received no treatment for his behaviour while in prison. This was despite the original sentencing judge, apparently being influenced by the availability of a place for Mr Muldrock in a residential facility "designed to assist intellectually handicapped individuals to moderate their sexually inappropriate behaviour" which he would attend after his release on parole.

As one commentator noted:

"While Justice Allsop was careful to not enter into a critique of the way the prison system has treated Mr Muldrock, what is evident from his judgment is that Mr Muldrock has not been given access to the rehabilitation programs that he desperately requires, despite the sentencing judge being rightly concerned about that matter."²

Access to parole also requires offenders to be able to participate effectively in correctional programs. This can be a particular barrier for people with an intellectual disability, either because the way certain courses are delivered is not appropriate for them or because it is deemed that because of their intellectual disability they wouldn't have the capacity to participate. This may not necessarily be correct.

A further issue is difficulty understanding written agreements and fully understanding the consequences of non-compliance. Although not an issue unique to prisoners, prisoners are subject to a range of obligations and conditions, the contravention of which can have considerable repercussions for them. Offenders with cognitive impairment are at particular risk. An offender agreeing to parole conditions that they have not fully understood could well result in their return to gaol.

Finally, the transition needs of people with an intellectual disability should be considered. Many people with an intellectual disability will have additional difficulties managing transitions as they frequently have executive functioning deficits. This includes the ability to plan, organise and understand potential consequences of actions. There are a number of good practice principles that should be considered when assisting a person with an intellectual disability to prepare for a transition. These include being goal oriented, being individualised, providing skill development opportunities, being collaborative and well coordinated and promoting continuity³.

² Australian Lawyers Alliance National President Greg Barns, Media Release, 30 May 2012 - http://www.lawyersalliance.com.au/documents/300512_mentally_ill_prisoners_3.pdf

³ Corfield, D., & Brearley, K. (2011). Transition: More than an event. In D. Dossetor, D. White & L. Watson (Eds). *Mental Health of Children and Adolescents with Intellectual and Developmental Disabilities*. IP Communications: Melbourne.

PAROLE QUESTION PAPER 4 – REINTEGRATION INTO THE COMMUNITY AND MANAGEMENT ON PAROLE

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

The current system of case management appears to treat each custodial episode separately.

People with an intellectual disability tend to have high numbers of shorter stays in custody and more stays on remand. This group of people tend to be cycling in and out of custody.⁴

Because case plans are not prepared until after sentencing and are only prepared for prisoners with six months or more remaining until their earliest release date, prisoners with an intellectual disability are likely to be receiving less case management. This is counter-productive as the nature of their disability suggests that they are more likely to require assistance in order to meet the challenges of reintegration.

Without such assistance, prisoners with an intellectual disability are more likely to serve longer periods of their parole in custody. This could be improved through:

- Greater investment in welfare officers;
- Improved training of correctional officers; and
- Use of external agencies in supporting case management which could include disability supports or advocates.

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

SORC would benefit from closer interaction with external services so that recommendations made by SORC reflect the contextual variables in the community. Recommendations may often be made in the absence of an awareness of what community supports are actually available. This impedes optimal case management and rehabilitation.

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

People with intellectual disability are more likely to find it difficult to manage their behaviour and can be seen as disruptive in group work programs. People with an intellectual disability have higher rates of mental illness than the general

⁴ Baldry, E. Dowse, L. and Clarence, M. (2012) *People with intellectual and other cognitive disability in the criminal justice system*. Sydney, University of New South Wales.

population⁵. Therefore they are more likely to experience all three barriers to group work programs identified in paragraph 4.40 of the report. Given the significant over-representation of people with an intellectual disability in the prison system and their higher risk of re-offending this practice appears at odds with the 'what works' approach identified in paragraph 4.20 in the Report.

Programs and the staff running these programs need to be more flexible to cater for a range of needs amongst prisoners. Staff need additional training in responding appropriately to difficult behaviour and in motivational interviewing techniques to overcome prisoner resistance and/or reluctance.

In-custody rehabilitation programs need to be designed with the 'what works' approach in mind, particularly the Responsivity principle – providing treatment in a style and mode that is responsive to offenders learning styles and abilities.

This also includes the need for community exposure to effectively implement behavioural work.

In relation to evaluation ADHC suggests increased funding for evaluation and transparent reporting of evaluation outcomes. This could reduce stigma that treatment doesn't work and may promote community support for a rehabilitative model.

4.3b How could offenders be given sufficient opportunity to participate in in-custody rehabilitation programs?

ADHC suggests this could be achieved through:

- Programs being made available to those on remand;
- Increased availability of treatment services, including therapy staff;
- Use of Forensic Psychology Services to support those completing programs if on remand and are released;
- The increased availability of programs for specific groups (e.g. prisoners with low literacy and cognitive disability); and
- Increased focus on responsivity issues which should increase the prospect of offenders engaging with such programs.

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

People with an intellectual disability would benefit from better access to education and work programs in custody.

The Report does not mention what barriers are faced by prisoners with an intellectual disability to participating in Corrective Services Industries (CSI), however, anecdotally ADHC staff note that prisoners with an intellectual disability have extremely limited access to CSI as a result of the same factors that are identified in paragraph 4.40.

ADHC suggests that participation could be improved through the provision of:

⁵ Department of Developmental Disability Neuropsychiatry University of NSW (June 2011): *Report to the Office of the Senior Practitioner – Mental Disorders in Intellectual Disability Survey and Training Workshops*

- Increased options for day leave; and
- Incentives for employers to hire offenders with intellectual disability.

4.4b Are offenders given sufficient opportunities to access in-custody education and work programs in order to achieve these outcomes?

ADHC's experience is that offenders receive some support around literacy, however those with an intellectual disability often require support with more basic and functional skills, such as hygiene and cleaning.

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

Where a person is a repeat offender and is serving a number of short sentences, a case plan should be developed which provides the offender with access to education, employment and all other programs as and when the person is in custody.

Efforts should be made to continue access to programs both while in custody and in the community to improve continuity. People with an intellectual disability may be over-represented within this group (as identified in Question 1).

Other suggestions include:

- Increased coordination with external services to ensure throughcare;
- Taking an advocacy role to secure services; and
- Supporting offenders to understand the requirements / expectations of them on release when entering community services.

This would require the allocation of additional time to case management in custody. It would also require staff training and selection of staff with skills/ interest in this work.

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

(a) prepare offenders sufficiently for life on parole

Many offenders with an intellectual disability have very antisocial networks with poor structured leisure options and few skills for employment. Leave that promotes structured pro-social leisure can be just as important as other activities provided it promotes pro-social interaction.

To increase their availability, pre-release leave programs should be undertaken in collaboration with specialist agencies such as ADHC to ensure that continuity of supervision and facilitate offender's engagement with community services

The conditions of pre-release leave programs should also be simplified to make it easier for offenders with an intellectual disability to comply.

(b) Ensure offenders can access pre-release leave prior to parole?

ADHC suggests that Corrective Services:

- establishes protocols with agencies such as ADHC and non government organisations (NGOs) that can facilitate leave while community corrections maintain responsibility for supervision;

- Liaise with community agencies to ensure activities result in outcomes that promote effective integration, for example, being skills based; and
- Include other conditions beyond classification to determine the opportunity for leave, e.g. those determined to be at risk in custody often receive a higher classification, but this factor might in fact make them more suitable for leave.

4.7a How effective are transitional centres in preparing offenders for release on parole?

There are currently no transitional centres targeting people with an intellectual disability. As a result of their disability, this group of people have more difficulty transitioning from prison to the community and tend to re-offend or breach their parole conditions within a short time period as identified at Question 4.1.

ADHC's Community Justice Program has had excellent experiences with transitional centres. Centres that provide structured settings that promote rehabilitation and set clear boundaries have resulted in very successful reintegration experiences for some very high risk female offenders.

They are also very good at liaising with other services and have a good understanding of what is available in the community. This model should be also provided to male offenders. The level of support they provide is also suitable for those with an intellectual disability.

4.7b How could more offenders benefit from them?

More transitional centres should be set up for those who have offended early into release or have complex needs such as mental/cognitive disabilities or complex life issues to manage.

A significant advantage is their ability to graduate leave arrangements so that offenders are rewarded for positive behaviour with greater freedom. Small changes based on behaviour is a strong incentive.

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

ADHC supports Corrective Services NSW proposal for the establishment of back-end home detention, however issues of availability and accessibility, particularly for people with an intellectual disability must be resolved in order for the scheme to not further discriminate against this group.

Back-end home detention could be of great benefit to offenders with an intellectual disability as it would allow them to secure housing (a very challenging aspect for those with disability and a significant challenge for most clients in the Community Justice Program given the majority of services do not come with accommodation attached).

The responsible officer in such a model should still be Corrective Services as it is not appropriate that responsibility for security be placed on NGOs which lack of training/attitudes/ skills in this area.

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

For offenders with an intellectual disability, it would allow access to interventions available in the community, along with employment or structured leisure options. This would free up Corrective Services resources and allow for ongoing access to programs. This can be a challenge as placement in custody often results in offenders losing access to services.

4.9b If a day parole scheme were introduced, what could such a scheme look like?

It could involve a curfew system either at home or a correctional centre and access to a program or service that has been pre-approved to support the offender. This service would then have responsibility to report any compliance issues. A case manager would also be required who is responsible for supervision/managing risk and supporting the relationship with the service provider.

4.10a Should re-entry courts be introduced in NSW?

ADHC does not have a strong view regarding re-entry courts, however, if they are to be considered it is essential that they be designed in such a way that does not discriminate against offenders with an intellectual disability.

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

“Taking Justice into Custody” found that diversion programs such as the Drug Court are reluctant to accept offenders with an intellectual disability.

Diversionary programs such as the Drug Court should be promoted, particularly for those with complex needs such as those with an intellectual disability given the range of issues these individuals need to manage.

The State Parole Authority could take on this role, however, it would need to be a specific arm of the State Parole Authority to reflect the features common to the Drug Court. A key element would need to be a focus on the current behaviour of the client and processes which ensure quick responses to that behaviour. It would also need different levels of supervision and intensity such as the Compulsory Drug Treatment Correctional Centre (CDTCC).

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

Yes. See above.

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

Those with complex needs, who have a range of issues to address and require case management to address these issues. This would be individuals with significant mental health/cognitive disability/drug and alcohol/domestic abuse issues.

The success of such a model would depend on the provision of infrastructure such as that which is available in the CDTCC where step down models and case management services are available.

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

Offenders with an intellectual disability need more assistance than can be provided by being given a booklet. As noted in the Report in paragraph 4.102 people with poor literacy, social and life skills need additional support.

The Report mentions the Nexus program and some other sources or release planning, however, it is not clear how these supports are targeted and whether they are routinely provided to prisoners with an intellectual disability.

The ADHC Justice Services Policy identifies that for people with an intellectual disability known to disability services, the disability service provider has a role to play in working with Corrective Services to develop coordinated pre- and post-release planning, case management and clinical/behaviour support.

Assessment of adaptive functioning needs could be done to identify the offender's deficits. This might include observing them do many domestic tasks often not available in custody.

Those with an intellectual disability often get released with very few skills. Greater emphasis is needed on their developing skills in IT, domestic chores and being able to access services independently, rather than being dependent on case management.

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

For people with an intellectual disability the key factors for parole conditions are:

- that they are presented in plain English and are easy to understand;
- that they are clearly explained to the person; and
- that the person receives sufficient assistance to be able to comply with the conditions.

Some people may also need to be reminded of their conditions from time to time.

Conditions should be contextualised for the individual. Many offenders with intellectual disability might not see their behaviour as offending and consider themselves as acting appropriately or in response to others. Conditions should be simplified and targeted for these individuals to specify which behaviours they need to address.

4.12b Should the power of sentencing courts and SPA to impose additional conditions on parole orders be changed or improved?

As suggested above, the list should be adjusted to suit offenders with low literacy and be contextualised to the individual.

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

People with an intellectual disability may need additional support to comply with parole conditions. This should be provided in a positive manner, not as higher levels of monitoring and surveillance. For people who are known to a disability service, the staff from Community Corrections should coordinate services with disability supports.

Supervision works better without the Community Compliance Management Group (CCMG) because of its punitive approach. However, the challenge is the attitude not the level of support. A more supportive form of supervision, such as case management, could increase supervision, and reduce the punitive approach.

4.13b How could the intensity of parole supervision be changed to strike the right balance between: monitoring for breach; directing resources towards support, intervention and referrals to services and programs?

Rules for breaching should be spelt out early and in the context of the offender's programs. Rules should be developed to ensure they are achievable by the offender and understandable to them. From a service provider perspective, breaches often occur in a haphazard manner with different offices responding in very different ways, making it difficult to determine what might constitute a breach.

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

Increased parole would be beneficial to offenders with an intellectual disability particularly given the negative experiences they have in custody, provided there are more options for community placement and step down approaches.

4.15a How sufficient are:

(i) Information sharing arrangements between Corrective Services NSW and other agencies (government and non-government)

Very poor. Services that provide offender rehabilitation should have access to offender records in order to develop risk/needs plans and intervention. Lack of detailed information not only inhibits rehabilitation but places staff at risk. For ADHC this is a significant issue – as one expects greater sharing of information between government departments.

(ii) Compliance checking activities undertaken by Community Corrections?

Haphazard. It depends on the office with different offices undertaking checks differently and according to different standards. There is also high expectation of offenders attending offices with little engagement with the community or with service providers. Community Corrections could adopt more of a partnership approach with other agencies to an offender's rehabilitation.

4.15b What legal obstacles are blocking effective information sharing between Corrective Services and other agencies (government and non-government)?

The Principal Officer, Disabilities within Corrective Services has advised the Community Justice Program (CJP) that they can only provide client information as it relates to a referral to CJP. This follows legal advice to them that providing offence histories or third party forensic reports would be a breach of privacy. This is despite this information often being important in the development of risk management plans.

4.16a How appropriate is the current electronic monitoring of parolees?

Under CCMG, electronic monitoring processes were very poor and hampered rehabilitation. There was an expectation on offenders to report travel plans too far into the future. This is an extremely difficult task for people with an intellectual disability particularly as no support was provided by Corrective Services to support them to do so.

In some cases the signal would be lost when an offender entered buildings, preventing the person from attending therapy sessions. In addition, there were problems wearing the equipment when undertaking structured leisure activities – one of the seven primary areas for offender rehabilitation.

4.16b What are the arguments for or against increasing electronic monitoring of parolees?

Monitoring could be useful if the technology did not inhibit daily activities. It would also be helpful if the monitoring was shared with services responsible for supervision in the community (e.g. ADHC or NGOs under the Community Justice Program), but only where there is an identified need for monitoring (i.e. the offender has a tendency to not attend agreed services or poses a risk to themselves [e.g. low functioning when unsupported or suicidal]).

The current system of monitoring seems to do little to prevent offending as those supporting the offender are not made privy to relevant information and the equipment prohibits many rehabilitative functions.

4.17a What improvements could be made to ensure parolees are supervised effectively?

Community Corrections officers would benefit from additional training and support in working with parolees with an intellectual disability. The content of their training should cover:

- skills in identifying the presence of a cognitive impairment, including intellectual disability;
- the use of plain English in both verbal and written communication;
- the use of a range of techniques to check with an individual for understanding;
- strategies to assist parolees with a cognitive impairment to comply with their parole conditions;
- an understanding of the disability sector and how to assist a person to access the disability specific services; and

- an understanding of challenging behaviour and positive behaviour support techniques.

Other strategies include:

- Increased liaison with service providers so more services are available for offenders with identified risk / needs; and
- Incentives for the provision of services. This would mean less supervision of idle time.

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

Case management is only effective when there are services to place the offenders. This means community options which can address criminogenic needs. This should be prioritised over specialist case management.

Greater access to employment, housing, education, leisure and therapy services would provide greater benefit. These services could then provide case management as required.

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

ADHC suggests:

- Offenders with mental health issues (including personality disorder);
- Offenders with cognitive disability;
- Offenders with Alcohol and other Drug issues; and
- Aboriginal and Torres Strait Islander offenders.

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

Many offenders with an intellectual disability need more than just accommodation, they also require support to maintain a successful tenancy. The Parolee Support Initiative has been successful in providing an appropriate level of support and should be expanded.

Other strategies include:

- Increased availability of public housing;
- Increased availability of public housing in pro-social suburbs; and
- Incentives for behaviour resulting in improved housing.

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

Many current rehabilitation programs are inaccessible to people with an intellectual disability without additional support.

For the 'what works' approach to be fully utilised more attention should be paid to the responsivity principle, ensuring that offenders learning styles and abilities are catered for. This may mean additional support to get to the program on a regular basis, behaviour support, smaller group sizes, assigning a buddy or mentor to the offender to assist them to join support groups, such as Alcoholics Anonymous.

The types of barriers identified in paragraph 4.40 of the report also exist in programs for parolees and need to be addressed so that they do not discriminate against parolees with a cognitive impairment.

ADHC agrees with the views expressed in paragraph 4.154 that there are additional barriers for people in regional areas, people from an Aboriginal or Torres Strait Islander background and those with multiple and complex needs. These groups of offenders have next to no access.

Apart from Forensic Psychology Services, no funding exists for private services to deliver treatment. The Australian Government Better Access to Mental Health service does not include treatment related to offending.

Some services go beyond their brief to provide this but it is becoming even more limited.

There is also low motivation for offenders to attend.

4.19b Are there any problems of continuity between custodial and community based programs?

Yes. There are particular limits for offenders with an intellectual disability. Whilst some programs are now run in custody, no adapted programs are available in the community.

Attempts between ADHC and Corrective Services to establish a community based version of the intellectual disability sex offender program (self regulation) have hit an impasse as a result of information sharing issues and problems in establishing joint run programs. This is despite ADHC's Community Justice Program being available to run the program with staff experienced in running psychological therapies.

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

The issue is more about availability generally, particularly for offenders with an intellectual disability.

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

Greater levels of case management and access to the full range of community supports required are needed to assist parolees to overcome a range of issues that will frequently contribute to re-offending.

Paragraphs 4.158 and 4.159 describe these clearly. It appears that Community Corrections do not provide a case management service that meets the needs of parolees. This may be due to the existence of large caseloads, the nature of the

training staff receive and their approach and prioritisation of the work they undertake.

ADHC has few formal interactions with Community Corrections and there are no joint protocols around shared work for rehabilitation.

Community Corrections focus appears to be more on determining and responding to breaches rather than throughcare, particularly once a client is back in custody.

4.20b What are the barriers to integrated case management?

Barriers include:

- Perceptions by other services that they are directly accountable and required to “report” to Corrective Services;
- Lack of resources for intervention makes it difficult to identify ‘what’ needs to be case managed;
- Differing views on what reintegration might look like. Corrective Services will often request ideal models of support which cannot be realised with the resources available in the community (as seen in MHRT situations).

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

A major issue is the provision of long term accommodation for offenders with an intellectual disability in a safe and pro-social environment. A further issue is the availability of pro-social recreational activities that are desired by the parolee.

PAROLE QUESTION PAPER 5 – BREACH AND REVOCATION

People with an intellectual disability often have difficulty understanding and complying with their parole conditions. It is essential that there is a level of flexibility to assist, support, warn and vary conditions so that this group of offenders are not unnecessarily disadvantaged.

The level of education and awareness of cognitive impairment varies greatly among Community Corrections staff. Great guidance on working with offenders with cognitive impairment and discretion in decision making in managing breaches would be useful.

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

Provided there are clear guidelines and some level of consistency is maintained, staff should have a high level of discretion.

This would allow staff to intervene more quickly in relation to breaches and would ensure that responses are more closely linked in time with offender behaviour. This is crucial for offenders with an intellectual disability, who struggle to their link actions with consequences.

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

ADHC suggests:

- Use of house arrest; and
- The ability to make conditions more offender specific and contextualised.

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

Yes.

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

SPA should be able to make directions to offenders to attend certain programs, activities or places. This might include attendance at service provider programs (provided funding is available).

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

Yes. This could be to a placement in lower level security settings. However it is important that options such as day release be included as part of the order in order to maintain the offender's participation in community programs, as revocation often negatively impacts on community rehabilitation.

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

No changes suggested.

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

The current level of discretion should be maintained to allow consideration of a range of extenuating factors and the likely negative impact of custody on an offender.

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

Limits should be placed on street time. The Act should also allow for extenuating circumstances to be taken into account. Given the lack of supports available to offenders with an intellectual disability and the transient nature of many of these offenders lives, they are more likely to be on 'street time'.

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

The application of street time to offenders who have spent time in custody in another state or territory before being returned to NSW should be removed.

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

No. These reviews provide an important check on a decision which may have serious consequences for an offender.

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

The CAS Act should permit ongoing rehabilitation as access to rehabilitation will likely have a positive impact on current charges. The SPA should be permitted to make orders ensuring that the offender attends a rehabilitative program, with serious implications if he/she does not.

This is particularly important for those with an intellectual disability given the likelihood of experiencing a short sentence but high number of offences, leading to their entrenchment in the criminal justice system.

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

No.

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

Decisions should be presented in a manner that is simple to read to ensure the offender understands the reasons for the revocation.

5.10 Should SPA use s 169 inquiries more regularly? If yes, how could this be achieved?

Yes. This could be used in situations where service providers are engaged and rehabilitation is at risk if parole is breached. It would also provide service providers a stronger voice in the process.

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

Information should be shared more widely both between SORC and service providers. Service providers such as Mental Health or ADHC including programs such as the Community Justice Program could assist the process if breaches are made known to them and assist Community Corrections in their enforcement of breaches and ultimately, in the future rehabilitation of the offender.

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

SORC, along with other risk management or rehabilitation services should be able to make submissions to the SPA.

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

No. Behaviours that often lead to a breach of parole are often not offences in themselves (for example, to not be in the proximity of a school). It is clearer for the offender if the breach is clearly linked with the original offence.

One of the functions of parole is to see if the offender can function under strict rules in the community. There is a risk, particularly for those with an intellectual disability that restrictions may be too tight for a particular offender to obey not just as a result of any anti-social behaviour but as a result of their capacity to adhere to the requirements.

If breaches are made offences on their own, some groups of offenders, such as offenders with an intellectual disability may find themselves unfairly over-represented in breach offences.

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

The 12 month rule should be removed. Time returned to custody should be based on the nature, severity and risk of the breach, whilst considering the impact on rehabilitative. For those with an intellectual disability, return to custody for this length of time does not provide access to treatment programs, given they tend to take longer than 12 months. But it is long enough for the offender to lose the gains made in treatment in the community and to lose their place in a program.

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

The recommendations previously made by the NSW LRC should be applied, allowing for flexible responses to breaches that are in line with the nature of the breach and risk posed by the offender.