

## **FACS response to the NSW Law Reform Commission parole reference Question Paper 6 - Parole for young offenders**

### **General comments**

The Department of Family and Community Services (FACS), Community Services, notes the finding in paragraph 6.8 of Parole Question Paper Six that 27 per cent of young offenders in detention had been placed in out of home care before the age of 16. Young people in detention, particularly those who have been in out-of-home care, are likely to have faced a number of barriers to their personal development and unique challenges in their lifetime. It therefore seems inappropriate for the Children's Court to use the same criteria under Section 135 of the *Crimes (Administration of Sentences) Act 1999* when deciding whether to grant parole to a young person as it does for an adult. It would be preferable if there was a separate parole system for offenders under 18 years of age that caters to the particular characteristics and needs of vulnerable young people. Community Services would support an amendment to the Section 135 criteria to reflect the special circumstances of young offenders and to ensure that emphasis be placed on rehabilitation.

The Ageing Disability and Home Care (ADHC) division of FACS refers to the General Comments section in its previous response to Question Papers 4 and 5 on Parole by the New South Wales Law Reform Commission.

Young people with an intellectual disability are significantly over represented in the juvenile justice system. As identified in Question Paper 6 (6.8) the Young People in Custody Health Survey 2009 estimates that 13% of young people in custody could have an intellectual disability<sup>1</sup>.

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. The Policy highlights the need to ensure that the specific needs, safety, welfare and wellbeing of children and young people are prioritised in the provision of support and services and apply this principle in any interagency collaboration.

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 (CJP) aims through these services to reduce the incidence and impact of offending behaviour by people with an intellectual disability. Children and young people referred to the CJP

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<sup>1</sup> Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J., Champion, U., Gaskin, C., Heller, E., Kumar, S., Mamone, N., Muir, P., van den Dolder, P. & Whitton, G. (2011) *2009 NSW Young People in Custody Health Survey: Full Report*. Justice Health and Juvenile Justice. Sydney.

are considered for admission on the basis of their reoffending risk over the extent or severity of their offence history.

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 will provide people with disability, their families and carers and the general community with information and support. The scheme is a new way of providing community linking and individualised support for people with disability that involves more choice and control and a lifetime approach to a person's support needs. The NDIS promotes the inclusion of people with disability. It does not replace other mainstream supports and assists people with disability to access mainstream services.

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

People with a disability, including an intellectual disability in contact with the justice system may be eligible for NDIS funding to support their disability needs. The NSW Government Justice Cluster, including Corrective Services and Juvenile Justice is examining its interface with the National Disability Insurance Agency (NDIA) to ensure people with disability in contact with the justice system are supported, including in relation to pre- and post-release planning and support. The Justice Cluster is developing a change plan for transition to the NDIS ('transition plan') to identify the key impacts and issues arising from the interface with the NDIA and to outline the work needed to prepare the Cluster for transition to the full scheme NDIS.

Given the significant over-representation of young people with an intellectual disability in the juvenile justice system Juvenile Justice has a responsibility to ensure that all its services are accessible to young people with cognitive impairment. In October 2013 ADHC staff provided disability awareness training to specialist Juvenile Justice staff as part of the capacity building process.

In addition, in developing an appropriate parole system for young offenders, a significant proportion of whom have a disability, regard should also be had to Articles 4(3) and 7 of the United Nations *Convention on the Rights of Persons with Disabilities* ("CRPD") which provide the following:

**Article 4(3) – General obligations**

*In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.*

### **Article 7 - Children with disabilities**

- 1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*
- 2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.*
- 3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.*

Barriers experienced by adult offenders with cognitive impairment identified by the Law and Justice Foundation of NSW in its 2009 report, “*Cognitive impairment, legal need and access to justice*”, such as lack of awareness of their legal rights and options, their disability or impairment not being recognised, communication barriers and under-resourcing of specialist services, are even more acute for young offenders with disability.

Article 13 recognises that effective access to justice will be only be realised by people with a disability if justice system interventions are age appropriate and staff working in the justice system receive appropriate training.

### **Article 13 - Access to justice**

- 1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*
- 2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote, including police and prison staff.*

The need for greater resources to be provided to young offenders with a disability is highlighted in a June 2013 report by Legal Aid NSW on high service users of legal aid services. The report, which profiled the 50 most frequent users of legal aid services between July 2005 and June 2010.

The report found that:

- 80% of the cohort were 19 years and under;
- 82% had their first contact with Legal Aid NSW by the time they were 14 years old;

- evidence of multiple and complex needs within the cohort was identified; and
- approximately 30% of this group were likely to have an intellectual disability.

This report sits within a number of reports and studies completed highlighting the vulnerability of people, especially young people with complex needs, often including intellectual disability, in contact with the justice system. This is exacerbated at the point of parole.

Of particular note is research undertaken at the University of NSW, with assistance from ADHC, which demonstrates a downwards trajectory of young offenders with disability when they do not receive the services they need<sup>2</sup>.

## 6.1

### **(1) Should juvenile offenders (that is, offenders under 18) be treated differently from adults in relation to parole?**

Yes.

Such an approach is consistent with research into the biological, psychological and social factors that make juvenile offenders different from adult offenders which necessitates unique responses to juvenile crime and with the United Nations' (1985: 2) *Standard Minimum Rules for the Administration of Juvenile Justice* (the 'Beijing Rules') which stress the importance of nations establishing:

*“a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights.”*

Community Services endorse the view expressed at paragraph 6.9 of the Paper. The document clearly outlines the differences between adult and juvenile offenders. As stated in the paper “The Beijing Rules state that the “young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development”” (p4-5). Given this alone, Corrective Services predominantly work with adult offenders and may overlook the developing needs of young people.

If young people are to succeed they need the assistance and support of staff who are aware of their social, physical and mental development. The evidence presented in discussion paper points 6.5 through 6.11 provides a sound summary about the cognitive and social development factors and vulnerability of this population that require specific consideration for

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<sup>2</sup> 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.

appropriate parole monitoring and risk assessment compared to the adult population. This is further supported when considering the dependence of children and young people dependence on their family and caregivers (compared to that of adults) requiring family inclusive approaches to planning and supervision of parole.

**(2) Should there be a separate juvenile parole system? If yes, why?**

Yes.

It is widely acknowledged in Australian jurisdictions and internationally, that juveniles should be subject to a system of criminal justice that is separate from the adult system which recognises their inexperience and immaturity. The same should apply to the juvenile parole system which is part of this system.

Juveniles are at a different developmental stage from adults and have social systems that function differently in their lives, such as family/education. These systems have different expectations on juveniles. This means those running the parole system would benefit from having specialisation in the unique needs and systems related to young people. Juveniles with an intellectual disability are particularly over-represented in the criminal justice system. This group are particularly vulnerable and would benefit from a separate system.

A specific juvenile parole system will also better respond to children and young people's care needs given the prominence of young offenders who have been subject to abuse and neglect, and ongoing care concerns.

Young people entering the criminal justice system are treated by professionals according to their age and development status. These professionals are aware of young people's immaturity and risk taking behaviours, family breakdown, mental health issues, substance abuse and peer pressure during their adolescence and early adulthood. The professionals are also aware that this may be a point in time for the young offender and that change is possible provided the support is available.

The support provided should be appropriate to the young person's age and maturity and is focussed on providing an understanding of their offending behaviour and strategies to overcome the behaviour. Other support may include assistance for re-integration back into the community, possibly housing, finance, therapeutic counselling, drug and alcohol counselling, anger management, family counselling etc. Given the number of adults on parole, this support may not be available for a young offender and the risk of re-offending as an adult may occur; by having a separate parole system for young offenders there is more chance the support will be there.

In the document it stated on page 5; "In 2011-12 in NSW, offending rates were second highest in the 15-19 age bracket at 3715.8 per 100 000 and peaked in the 20-24 age bracket at 3876.8 per 100 000." This statistical evidence only reinforces the need for a separate juvenile parole system.

## **6.2**

### **(1) Who should be the decision maker in the juvenile parole system?**

It is supported that the Children's Court has a continued decision-making function in the juvenile parole system (other than perhaps in matters dealt with before a higher court such as the District or Supreme Court), as recommended in the paper. The decision maker requires specialisation in juvenile offending, child/adolescent development and legal/justice systems relating to juveniles.

A parole board made up of a representative from the above, children's court magistrate, psychologist, youth expert, an Aboriginal representative, a representative for victims and a community representative, should be established.

### **(2) What special principles (if any) should apply in the juvenile parole system?**

Guidance in relation to parole decisions should be taken from the principles articulated in section 7 of the *Young Offenders Act 1997*, which are derived from the *United Nations Convention on the Rights of the Child* (CROC), in particular, the principle of imposing the least restrictive form of sanctions, right to legal advice, that detention not be maintained solely in order to provide services to a young people and the principle that young people be dealt with the community:

*(a) The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act.*

*(b) The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.*

*(d) The principle that criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group.*

*(e) The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties.*

Principles should also acknowledge and take into account the diversity of juvenile offenders within this system, in particular characteristics such as gender, age, Indigenous status and of course, disability.

Further principles derived from CROC should be considered, in particular:

1. Non-discrimination (Article 2);
2. The best interests of the child (Article 3);
3. Survival and development (Article 6); and
4. Participation in decision making (Article 12).

CROC also enshrines the principle that imprisonment of children must be a measure of last resort and that a variety of other appropriate measures should be available for children the focus of which should be on rehabilitation. It is also recommended that Section 6 of the *Children (Criminal Proceedings) Act 1997* and Section 4 of the *Children (Detention Centres) Act 1987* are applied to all juvenile parole matters. The application of these principles will provide consistency in juvenile criminal decision making as it does with sentencing, and safeguard parole decisions being based on the rights of children and young people, as well as their special needs and circumstances.

There should also be new principles specific to young offenders and the Children's Court. Community Services generally endorses the views of stakeholders summarised at paragraph 6.21 of the paper with regard to the question of special principles.

**(3) Do the decision making criteria in s 135 need to be adapted to the juvenile parole system? If so, in what way?**

It would benefit from being adapted to take into consideration the potential long term effect on society by a young person being exposed for an extended period of time to a custodial environment during their developmental period. This is a particular issue for people with a cognitive disability who already struggle to engage with the community.

As mentioned in the paper, the principles need to reflect the unique circumstances of young offenders and an emphasis needs to be placed on rehabilitation. It is recommended that the criteria set out in Section 135 of the *Crimes (Administration of Sentences) Act 1999* be adapted to give weight to the principles of Section 6 of the *Children (Criminal Proceedings) Act 1997*. And as such, emphasis placed on the re-entry of young offenders into the community with rehabilitation, reductions in recidivism and successful transition into adulthood as primary objectives.

Community Services also considers that the following principles contained in the *Children and Young Persons (Care and Protection) Act 1998* could be considered for insertion in any framework of principles governing a separate juvenile parole system in NSW:

- S.8(b) that all institutions, services and facilities responsible for the care and protection of children and young persons provide an environment for them that is free of violence and exploitation and

- provide services that foster their health, developmental needs, spirituality, self-respect and dignity
- S.17 that all agencies responsible for the care and protection of children and young people have a duty to cooperate to the extent possible consistent with their functions.

Community Services notes paragraph 6.22 and considers the decision making criteria outlined therein is generally appropriate. However, Community Services notes that the issue of prospective homelessness may arise in relation to a child or young person released on parole, and this engages child protection services under Sections 120 and 121 of the *Children and Young Persons (Care and Protection) Act 1998*. Parole decisions which have this result necessitates a child protection intervention, which unreasonably diverting resources from core functions. It is imperative that the Children's Court and Juvenile Justice NSW consult with the relevant FACS office before a parole decision is made.

**(4) Should there be a separate legislative framework for the juvenile parole framework?**

Yes.

As stated in the report there needs to be new legislation as the existing Acts do not accommodate the specific circumstances of young offenders. A separate legislative framework for the juvenile parole system is strongly recommended. This is evidenced in so far as requiring adaptations of existing legislative principles and criteria's as noted in question 6.2 (2) & (3) above.

This will help ensure the integrity of a separate juvenile parole framework and provide it with a solid legal foundation for its operation. It will also help ensure that policies and procedures are consistent with and promote the distinct objects and principles of a juvenile parole system.

Responsibility for administering such a system is a separate issue. The decision as to who should administer the system should be based on whether the relevant agency has demonstrated the required skills, expertise and resources necessary to effectively address parole issues relating to young offenders.

There appears to be additional considerations for young people. This could either be in separate legislation however recommendations as per NSW Bar Association appear appropriate such that additions to the current CAS Act are developed.

A dedicated youth parole framework is likely to provide a more consistent platform for the handling of juvenile parole matters, compared to the



alternative option which would require ad-hoc adaptations to existing legislations for juvenile matters.

A dedicated juvenile parole framework will also provide a consolidated foundation for the ethical and equitable management of young offenders (recognising that children and young people's needs and circumstances differ to adults) and appreciating the significant vulnerabilities of this population of children and young people. It offers a foundation for the various and specific systems required to support successful integration into the community, reduced reoffending, connection with family, education and employment.

The success of a developmentally suitable systems approach such as what is being suggested, is evidenced through the '*Michigan Youth Reentry Model*', a multi-dimensional framework that is designed around the specific vulnerabilities and needs of the youth offending population, with an objective to reduce the cycle of reoffending in the young offender population of Michigan. A report released in September 2011 about this model indicated a reduction in reoffending by 32 per cent.<sup>3</sup>

### **6.3: Structuring the juvenile parole system**

#### **(1) Are any of the options presented preferable to the current structure of the juvenile parole system? If yes, why?**

Ageing Disability and Home care notes that people with a cognitive disability are likely to benefit most from parole under the juvenile system as they are likely to be at a developmentally earlier stage and require more supports consistent with younger offenders. In this way, aspects of option 2A (and to a lesser extent 2B) is advantageous as it allows those who are vulnerable to be paroled under the juvenile system.

However, these options do not provide certainty and may make case management and flow-through challenging due to the changes in systems and the potential for operating between different systems (ie Corrective Services NSW working with the Children's Court and SPA within juvenile justice centres).

Community Services notes that of the options presented, option 2A provides a structure that most effectively encompasses the complex ethical and practical considerations. This position is based on the following factors:

- the flexibility to include those young people over 18 with specific vulnerabilities such as disability and mental health issues who would be most appropriately managed by the juvenile system
- the capacity for the juvenile system to manage those young people under 18 who were incarcerated in a correctional facility. These young people, are likely to be particularly vulnerable and require a higher level of expert support and services

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<sup>3</sup> Michigan Council on Crime and Delinquency (<http://www.njjn.org/uploads/digital-library/Michigan-Youth-Reentry-Model-9.11.pdf>)

- continuity between the agency managing the custodial institution and parole responsibility, except in those instances that a young person under 18 was incarcerated in a correctional facility. In these instances it is recognised that strong interagency work will be required in order to involve Juvenile Justice in the young person's exit and parole planning.

**(2) Are there any other ways of structuring the juvenile parole system that we should consider?**

Option 2A would be improved if there was clear direction on how this transition could occur to ensure seamless flow-through care.

**6.4**

**(1) Should the parole decision making process in the CAS Act be adapted for use by the Children's Court? If so, how?**

The flexibility of the current system is more likely to assist in rehabilitation, particularly for those with cognitive disabilities. This flexibility should be maintained.

The flexibility afforded through these practices allows for consideration of the specific vulnerabilities and risk factors of individual young offenders and victims.

Community Services endorses the use of restorative justice conferencing in appropriate matters.

**(2) Should victims be involved in parole decision making for young offenders in the juvenile parole system through a restorative justice conferencing process?**

The applicability of restorative justice processes to parole requires careful consideration.

Youth justice conferences form part of a carefully tailored hierarchy of diversionary options for young offenders, eligibility for which is based on the type and circumstances of the offence, admissions by the young person and their consent to the process.

Conferencing should only be considered if the approach is consistent with that taken under the *Young Offenders Act 1997*, otherwise this could impact on the integrity of the Act.

A key question to be asked is what outcomes are hoped to be achieved for both the young person and the victim through such a process? Is it appropriate that these outcomes be sought at parole, after a young person has served part of their sentence?

Ideally, the young person should have been offered the option of a youth justice conference prior to or on sentencing. If not, consideration should be given to any reasons for refusal.

A further issue for young people with a disability may their ability to effectively participate in a restorative justice process. Care needs to be taken to ensure that young people who are not able to participate are not disadvantaged by reason of their non-participation in parole decisions. Many people with a cognitive disability struggle to effectively communicate in that setting and this could make it more harmful than positive, unless very well supported through the process.

On the understanding that all of the points identified above have been carefully considered, the Children's Court recommendation for the use of less restrictive processes for victim involvement is supported, including the implementation of restorative justice conferencing procedures. Such processes will provide victims with a range of less formal options to participate in parole decisions, and a greater capacity for youth offenders to engage in this process.

#### **6.5 Assistance with parole readiness. Should any improvements be made to the way young offenders in the juvenile parole system are prepared for parole?**

Yes.

Increased effort should be made to engage with disability services, where appropriate, and clearly identify their roles and responsibilities in working with the client to fulfil parole conditions / reporting. This is an issue in both adult and juvenile systems. Disability services can inadvertently undermine parole conditions due to support characteristics and similarly JJ can make it difficult for disability services to provide their role in an effective (and cost efficient) manner.

As detailed in 6.3 (1), it is recommended that the parole of young people under 18 be managed by the juvenile system. This will require thorough dual agency planning (between Juvenile Justice NSW, Corrective Services and FACS) for young offenders incarcerated in correctional facilities, however, it may assist to overcome existing concerns raised by stakeholders about the lack of planning and clarification provided by Correctional Services for those young people managed by them.

A greater emphasis on collaborative, holistic planning and community-based support is required. Generally, most young offenders have undertaken criminal acts resulting from exposure to multiple challenges impacting on their pro-social decision making capacity. These challenges include poverty,

intellectual disability, cultural disadvantage, abuse and neglect, unstable family and support systems, poor or harmful relationships, lack of positive role models, poor school engagement and mental health issues.

Although skills and strategies may be taught successfully in the residential setting, if the child/young person is returned into the same environment that led to the previous criminal activities, the likelihood of reoffending is much greater.<sup>4</sup>

It is vital that parole preparation planning is a collaborative family and interagency effort from the commencement.

It is recommended that cultural needs are included as a primary consideration for those young offenders from a Culturally Linguistically Diverse Background, as they currently are for Aboriginal and Torres Strait Islanders.

These needs are not currently listed as a primary consideration in Juvenile Justice case planning. Similarly (alongside physical, mental and behavioural health needs) pro-social development should be noted as a primary matter in planning, to support cognitive behavioural interventions and social skills-building to overcome social disorganisation, often related to delinquent behaviours.<sup>5</sup>

It is important to note that a successful transition requires more than just the preparation of the young offender. The preparation of the family (or caregivers) and community for the release of the young offender is vital to their successful transition into the community and ongoing positive engagement in society.

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

No.

For people with a cognitive disability, support systems need to be in place for effective release to the community. This can take some time. There should be provisions where the 12 month rule is set aside in situations where parole was refused due to inadequate supports being available but services are attempting to establish an alternative option. For those with a cognitive disability, often parole is refused as the service provider is unable to submit an option that SPA or the court feel is adequate to effectively address risk and meet needs for rehabilitation. This can then result in the young person being punished for a service's poor planning or a lack of coordination

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<sup>4</sup> Michigan Council on Crime and Delinquency (<http://www.njjn.org/uploads/digital-library/Michigan-Youth-Reentry-Model-9.11.pdf>)

<sup>5</sup>National Criminal Justice Reference Service (<https://www.ncjrs.gov/html/ojjdp/201800/page4.html>)

between JJ and the service. Rather than the process ending at this point, there should be greater opportunity for there to be an ongoing process of services developing options.

Significantly, New Zealand's *The Children, Young Persons and Their Families Act 1989* enshrines the principle that youth justice interventions should work in a time frame appropriate to the age of the child or young person. This is included in acknowledgement of the fact that timeframes for interventions need to be realistic given the age of the child or young person.

The discussion paper notes that the 12 month rule was introduced in 2005 '*because it was considered that early and repeated reconsideration of parole consumes the resources of SPA and Corrective Services NSW*', and goes on to note that '*most young offenders subject to the juvenile system will be serving sentences of three years or less and will be released automatically on a court based parole order.*' It is suggested that given the rationale for its introduction, and that there are few young offenders to which this rule would effect, that the rule should not be applicable for young offenders. It is unlikely to consume considerable agency or court resources as is the case in the adult system, and prevents an equitable and suitable process for reviewing matters for children and young people.

#### **6.7: Supervision of young offenders**

##### **(1) Are there any issues with the selection of the supervising agency for young offenders paroled through the juvenile parole system?**

Both systems have similar difficulties for those with an intellectual disability. Although it is fortunate that JJ officers tend to have a more rehabilitative, as opposed to a punitive, orientation. But this is not a reflection of the current legislation.

Community Services suggest that as noted in 6.3 (1), option 2A would resolve this issue, having clear determinants for which supervising agency would oversee parole.

##### **(2) Is Juvenile Justice NSW able to provide sufficient support, programs and services to parolees in the juvenile parole system?**

No.

Juvenile Justice NSW alone is not able to provide for all the needs of young offenders re-entering the community. Supports, programs and services require a collaborative multi-agency approach, with particular responsibilities with NSW Health regarding the child/young person's physical and mental health needs, and Family and Community Services to respond to care and protection, housing and disability issues.

Those with a cognitive disability tend to be excluded from programs due to inability to effectively engage without support. Juvenile Justice, unlike CSNSW, also do not have a dedicated disability unit which provides adapted programs and coordination with disability services. It would be beneficial if JJ were able to work with the community sector (and ADHC, such as the Community Justice Program) to develop adapted programs for people with a cognitive disability that were run in the community.

#### **6.8: Breach and revocation of parole in the juvenile parole system**

##### **(1) Should the 14 day waiting period before revocation review hearings be removed for young offenders in the juvenile parole system?**

Yes, as stipulated in the paper. The removal of the 14 day waiting period before revocation review hearings is supported, to ensure timely decision making reviews for young people.

A consequence following negative behaviour is more powerful when it is closely follows the behaviour. A delay in behaviour consequences can negate any positive impact from that consequence. This is even more important for those with a cognitive disability. Organising legal representation should be catered through other means within the legislation.

##### **(2) Should the 12 month rule apply after parole revocation in the juvenile parole system? If no, what provision or limit, if any, should replace the 12 month rule?**

This paper emphasises the differences and similarities between the correctional and juvenile systems for young offenders. It is recommended that the 12 month rule not be applicable to parole revocation in the juvenile parole system and that the Children's Court practice a flexible approach to decision making on a case-by-case basis. Strategies need to be implemented to ensure that young people have the opportunity to resubmit their case/position.

The 12 month rule needs to have alternative options to ensure every effort is made to effectively get the person on parole release as soon as it is viable from the perspective of risk and needs. This is particularly the case for people with a cognitive disability. It is suspected that custody only increases a young person's risk in future and is likely to have even greater effect on those with a cognitive disability, particularly since they often cannot access programs due to their disability. Instead, as stated above, there should be option for adjournment where the reason for refusal is due to external parties when it is deemed the juvenile would benefit from release for the purpose of rehabilitation and that risks could be managed.

#### **6.9 Role of the Serious Young Offenders Review Panel**

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

The option of SYORP involvement in parole decision making for serious young offenders should be available, but not mandated. Given that the SYORP provides input into the report prepared by Juvenile Justice, they are not likely able to offer more advice than already provided. However the option to call upon them to provide additional advice or materials should be made available, particularly in the context of complex cases. Since offender risk is dynamic and reliant on environmental factors, the SYORP may provide valuable input provided it is able to assess the environment in which the young person is being released.

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

**(1) Should similar principles to those found in s 6 of the Children (Criminal Proceedings) Act 1987 (NSW) and s 4 of the Children (Detention Centres) Act 1987 (NSW) apply when SPA is dealing with an offender who is under 18?**

Yes.

Decisions regarding risk and rehabilitation should be based on the individual, with recognition of their developmental stage rather than just the offence. This change would assist this process if SPA did have to continue dealing with those under 18 years.

As noted earlier, Community Services suggest that option 2A is the recommended structure that would therefore remove any current functions of the SPA for offenders under 18. If option 2A is not adopted, it is strongly recommended that a juvenile offenders parole framework outlines the requirement for the SPA to apply the principles in s6 of the *Children (Criminal Proceedings) Act 1987* (NSW) and s4 of the *Children (Detention Centres) Act 1987* (NSW) to ensure ethical, equitable and appropriate treatment of young offenders on parole and to minimise the exacerbation of existing vulnerabilities.

**(2) Should SPA make parole decisions for young offenders who are under 18 according to different criteria from those that govern parole for adults?**

Yes.

Greater emphasis should be placed on rehabilitation as opposed to retribution given the developmental stage, vulnerability to influence and likelihood of future reoffending by younger offenders. Young offenders often have a lower than average cognitive capacity and for a significant minority this falls into the definition of an intellectual disability. This can be difficult to recognise without the appropriate assessment.

**(3) If yes to (2), what criteria should apply to young offenders in the adult parole system?**

As above.

As mentioned in the paper, there should be a member who has knowledge regarding young offenders and of a young person's development.

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

Preference is that all youth are dealt with by the Children's Court. If this is not possible, then SPA should have available a number of people with specialisation in youth matters. This should include knowledge of developmental stages, social systems, cognitive capacity and the juvenile criminal justice system itself.

**6.12: In-custody and post-release support**

**(1) What specific problems do young offenders in Corrective Services NSW custody have in accessing in-custody programs and preparing for parole?**

It would be more advantageous if young offenders had clearer access to rehabilitation programs. There should be some access to youth-specific programming as they can be vulnerable to older offenders. Cognitive capacity can impact on the ability of the young person with a disability to complete generic programs.

Young offenders often have more complex community support networks. This can create difficulty in preparing for release given the number of people involved in case management.

**(2) How can the post-release programs, accommodation and support provided to young offenders supervised by Community Corrections be improved?**

There should be made available treatment programs that are specific to those with a cognitive disability. These could be run in collaboration with ADHC. At present, no such adapted programs are available in the community. Younger offenders should also be prioritised for accommodation with others deemed as progressing well or less likely to influence them, given their vulnerability to influence. There should also be a closer relationship with Family and Community Services (Community Services and ADHC inclusive) so they are partners with clear roles and responsibilities in maintaining parole conditions.

FACS localisation strategy will contribute to cross portfolio and agency collaboration through local case management and decision making. Often



~~staff in FACS can feel like they are being supervised rather than an equal partner.~~

There needs to be more resources placed into programs and facilities that are working and new initiative piloted which fill the gap. There also need to be more preventative programs such as drug and alcohol rehabilitation centres/services, access to emergency and permanent housing for young homeless people, and supported apprenticeships.