PAROLE

QUESTION PAPERS 4 AND 5

Legal Aid NSW submission

to the New South Wales Law Reform Commission

January 2014

Introduction

Legal Aid NSW welcomes the opportunity to provide comments in response to parole question papers 4 and 5 about the reintegration and management of parolees in the community and breaches and revocation of parole. The Legal Aid NSW Prisoners Legal Service (PLS) provides legal advice and minor assistance to prisoners; and representation for prisoners at:

- hearings at the State Parole Authority (SPA)
- life sentence determinations
- segregation appeals
- visiting magistrate hearings

Compliance monitoring and surveillance is an essential part of managing parolees in the community and is necessary to ensure community safety. However, proactive case management in custody, a throughcare approach to case management pre and post release from custody and specialist case management for parolees with high and complex needs will also increase compliance with parole conditions and community safety. A significant government investment in welfare services and throughcare programs, as well as transitional centres and accommodation and support services in the community, is needed to assist parolees to reintegrate successfully into the community and reduce breaches of parole and parole revocations.

Should you require further information, please contact Dara Read on 9219 5714 or at Dara.Read@legalaid.nsw.gov.au or Will Hutchins on 8688 3963 or at William.Hutchins@legalaid.nsw.gov.au.

Question Paper 4

Question 4.1: Case management of offenders in custody

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

- **A comprehensive case plan, prepared in the early stages of custody which is made available to SPA, the offender and their legal representative**

A comprehensive case plan setting out a timetable for completing relevant programs and training in custody prior to the expiration of the non-parole period is crucial to managing offenders in custody. Case plans set the goal posts for offenders and give them clear goals to work towards. In the experience of PLS, it is not uncommon for Corrective Services NSW to make submissions just before an offender is eligible for parole that the offender should participate in a particular program prior to release. Often this is the first time an offender has been advised of this and in some cases, the offender had previously been told that they were not eligible to participate in the program.

The case plan should be formulated at the front end of an offender's term of imprisonment and put before the Parole Authority so that there is transparency and clarity around the programs that an offender is expected to complete prior to release. PLS solicitors have never seen a case plan put before SPA. The case plan should accompany the Parole Reports put before SPA. If the case plan hasn't been followed for reasons beyond the control of the offender, Corrective Services NSW should be required to explain why.

As we emphasised during the preliminary consultation for this reference, there is considerable scope for in-custody case management to improve. Making the case plan a public document, referred to regularly by SORC and SPA is likely to encourage Corrective Services NSW to prepare a thorough and considered case plan and support an offender to complete their case plan.

The case study below highlights the need for case management planning and the importance of documenting the case plan, so that the goal posts are on the record for SPA, as well as the offender.

Case Study – Mr A

Mr A was taken into custody on 3 April 2002. He was sentenced in early October 2003 for 'use offensive weapon with the intention of preventing lawful arrest' and possession of a firearm. He had a history of violence and was on parole at the time of these offences.

Mr A applied to undertake the Violent Offenders Therapeutic Program prior to 2007 and in July 2009 he was assessed and placed on the 'moderate' waiting list. At this time he had a B classification and was advised that he could not undertake the program as offenders required a C classification to participate.

On 4 March 2011 the Parole Authority decided not to release the inmate to parole. The reason given for refusing parole was that Mr A needed to address his offending behaviour by completing the VOTP.

On 10 March 2011 the offender was advised that he had been found suitable to participate in the program with a B classification. The offender's non-parole period expired on 2 April 2011. He was refused parole until he had completed the program.

- **A case plan that incorporates rehabilitation programs as well as training and employment programs**

In practice, offenders need to complete therapeutic programs in prison in order to achieve parole. However, to survive and find employment in the community once released to parole they need to participate in training and employment programs. Careful planning should enable the offender to complete both types of programs and ensure they can demonstrate their prospects of rehabilitation to SPA, as well as strengthen their capacity to 'adapt to normal lawful community life' and find employment when on parole in the community. It can be difficult to balance an offender's rehabilitation and therapeutic needs with any training or employment programs. Setting out a plan in the early stages of an offender's time in custody would ensure that all relevant programs can be completed over the course of the offender's term of imprisonment.

In some cases, PLS solicitors have had clients with a case plan, but various administrative obstacles have meant that the case plan could not be followed.

Case study – Mr B

Mr B's case plan provided for him to obtain qualifications as a welder in custody so that he could obtain work when he was released from custody. In order to complete his studies, he needed to have classification C2 rather than C1, and to move to another gaol. In mid 2013 and in November 2013, the management at his current gaol recommended C2 classification and gaol transfer so that he could finish his welding studies. However, on both occasions, the Commissioner refused the classification and transfer, and did not give reasons for this.

- **A throughcare approach to case manage clients prior to and post release**

We strongly support a 'throughcare approach' to managing offenders prior to and post release. Throughcare works to identify and address the social issues that exclude people from mainstream society when transitioning from custody to the community. With a strong Government commitment, Throughcare has the potential to dramatically impact upon recidivism rates in NSW.

Eileen Baldry comments in her conference paper, *Throughcare, Making Policy a Reality,* that 'Throughcare is more a reality in the rhetoric of departmental documentation and policy than it is in grass roots practice.'[1] This observation is consistent with the current experience of PLS solicitors. PLS solicitors are not aware of any throughcare workers having contact with their clients in correctional centres, other than at Junee Correctional Centre, which is operated by CIRCO. This facility does have Throughcare staff and in the experience of PLS, the clients in this facility have had more success in being supported by these staff to for example, secure a place in a residential rehabilitation program.

The North Australian Aboriginal Justice Agency (NAAJA) Throughcare program was awarded a National Certificate of Merit in the Australian Crime and Violence Prevention Awards in 2012. The program incorporates two prison-based caseworkers who provide coordinated support to clients upon reception at Darwin Correctional Centre and Throughcare Support Workers who provide intensive case management services. The intensive case management commences six months prior to release and continues as long as necessary post release. Participation in the

[1] Eileen Baldry, 'Throughcare: Making the policy a reality', (Paper presented at Reintegration Puzzle Conference, University of New South Wales, 7-8 May 2007) 12.

program is voluntary and caseworkers have a maximum of 15 clients. Only 13% of Throughcare clients returned to prison while part of the program, which is in stark comparison to a recidivism rate of 50% for all prisoners in the Northern Territory.[2] This is an example of a successful Throughcare program operating in Australia that the Commission could analyse in detail to make recommendations about key components of a successful Throughcare model. Significantly, this Throughcare program is run by a non-government organisation (NGO) with a history and culture of advocating for their Aboriginal clients.

A successful Throughcare model is likely to require a substantial investment of resources and a significant shift in the corrections paradigm to reconsider the role of correctional services. The NAAJA Throughcare program is an example of a program run by an agency other than Correctional Services. Consideration could be given to taking this approach and having an NGO, or various NGOs provide this service in NSW. There are advantages and disadvantages to this model. On one hand, an organisation that advocates for clients may be better placed to establish a rapport and work closely with clients to support them to reintegrate into the community. On the other hand, Correctional Services NSW staff have greater access to internal information and government resources which may enable throughcare workers to be more effective.

If Correctional Services NSW is responsible for implementing a Throughcare program, it is important that Throughcare staff have a separate role to Probation and Parole Officers. The Throughcare role needs to be clearly defined as a support role rather than a compliance monitoring and enforcement role. This will enable a rapport to be established between the throughcare worker and the offender.

Question 4.2: Role of the Serious Offenders Review Council

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

- **SORCs case management recommendations should be followed by the Commissioner unless there are exceptional circumstances**

In the experience of PLS, SORCs recommendations are considered and relate to an offender's case plan. We think that more weight should be given to SORCs recommendations regarding

[2] Jared Sharp, 'Throughcare in the Territory: small steps to big change', (Paper presented at Reintegration Puzzle Conference, Auckland, 21-23 August 2013) 17.

custodial case management. In our view, SORC's recommendation for progression in classification and/or program placement should be accepted and implemented by the Commissioner unless there are exceptional circumstances. The Commissioner should be required to give reasons if SORCs recommendations regarding case management in custody are not followed. PLS solicitors find that SORCs recommendations are not always accepted by the Commissioner and their plan for an offender's rehabilitation can be undermined, for example, if a client isn't accepted into a program that SORC recommends for them. For example, a PLS solicitor had a client who SORC recommended should do the 'Deniers' program but his security classification did not permit him to participate in the program. If SORC's recommendations are more likely to be followed, SORC would become more pro-active in formulating individual case plans.

- **Regular prison visits to monitor the implementation of case plans**

SORC should visit serious offenders in custody more regularly. The question paper indicates at 4.31 that 'SORC's role in the case management process involves regular visits to prison by its Assessment Committees to interview serious offenders and speaking to their case officers and other relevant staff in the prison involved with the management of the prisoner.' In the experience of PLS, SORC only visits once a year and not all serious offenders are visited by SORC. In the experience of PLS, sometimes a client will not be visited by SORC unless PLS makes contact with SORC and asks them to visit the client. It is preferable for SORC to have contact with serious offenders regularly to monitor the implementation of their case plan. This contact should be made automatically without the offender having to make contact with SORC to arrange for a visit.

- **The E1 and E2 classifications should be replaced with an alert system**

At present, offenders who have been charged with escaping from custody, either the custody of police or Correctional Services, receive an E1 or E2 classification. This classification impacts on their access to programs and prison placements. Once an offender is classified E1 or E2, it follows them for life. This classification can operate as a significant barrier for offenders having optimal case management in custody. We think that the E1 and E2 classifications should be replaced with an alert that doesn't automatically impact on their classification. There should also be an ongoing, automatic review of these alerts.

The Question Paper indicates at 4.35 that 'SORC provides advice and recommendations about varying and revoking escape risk classifications to the Commissioner through its Escape Review Committee'. In the experience of PLS, an offender's escape risk classification will only be considered by SORC if an application is made by an inmate. Offenders aren't always aware of how to do this or that they can do this. This classification has a very significant bearing on an offender's classification in custody, and in turn their access to programs. If this classification system continues, SORC should regularly assess and monitor those inmates.

We also think that 'escape from police custody' should not be considered for the purpose of classifications or alerts within a correctional centre. It is not uncommon for escape lawful custody matters involving police to involve an offender moving a matter of metres away from a police officer. This type of offence is very different to an offender who attempts to escape or actually escapes from prison and should not be treated in the same way.

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?

Legal Aid NSW does not have a view on how selecting and evaluating rehabilitation programs in custody can be improved but believes that there should be some form of independent evaluation or measuring yardstick for programs which is publically available and the programs should be regularly evaluated, for example, every 3 years.

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

- **A clear program outlined in a case plan**

As we have emphasised elsewhere in our parole submissions, case plans are essential and should set out a plan for completing therapeutic and education programs prior to the expiration of an offender's non-parole period. At present, offenders are often required to organise themselves to participate in programs. The onus should not be on offenders to arrange to get into programs.

From time to time, PLS solicitors have clients who were originally found unsuitable to participate in a program be assessed as suitable when they are coming up for parole. A case plan setting out rehabilitation programs to be completed prior to parole would avoid this situation.

- **Programs tailored to suit a wider range of inmates**

More resources are needed to deliver programs that are tailored to the needs of a wider range of inmates, including inmates with mental health and cognitive impairments. In the experience of PLS, because of limited services and staffing constraints, it is people with cognitive and mental health impairments who are often assessed as falling outside the criteria to participate in programs.

PLS solicitors have also seen higher risk offenders being prioritised for programs and people with a lower risk not get onto a program. Similarly, some clients get 'stuck in the middle', not being suitable for the mainstream program or the program for people with a cognitive or mental health impairment. Ideally, there would be a range of programs that can better accommodate the needs of all offenders.

Case study – Mr C

Mr C was convicted of sex offences which were committed over a number of years. He denied the last set of convictions for sex offences and received partly cumulative sentences totalling 4 years six months and a non parole period of 2 years and 6 months. Individually none of the sentences exceeded 3 years and, therefore, he was entitled to 'automatic parole'. His non parole period expired at the beginning of 2012. SPA revoked Mr C's parole before release in 2012 and again in 2013. The main reason that the revocation was confirmed in 2012 and 2013 was that SPA wanted Mr C to do a Deniers program before release to parole.

Mr C has an acquired brain injury and an intellectual disability. The Community Corrections reports for the 2012 and 2013 parole review hearings stated that he had not been able to do a Deniers' Program in gaol because of this intellectual disability. His full term expires in early 2014.

- **Additional programs and culturally specific programs**

There is a clear need for a Violent Offender Treatment Program and a sex offender program for women. Access to one-on-one treatment with a psychologist is also important, particularly when clients have a history of abuse or trauma in their lives.

Aboriginal offenders may also benefit from culturally specific programs. We understand that there is an Aboriginal Programs Unit within Correctional Services NSW but we are not aware of any Aboriginal specific programs being offered in prison.

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?

The best work programs are those that maximise an offender's opportunity to obtain paid work upon return to the community. Learning to be a barista at the cafe at Dilwynia or doing call centre work are examples of work opportunities made available to prisoners that could lead to paid work in the community. Likewise, working in the bakery or as a tailor, or learning to build pre-fabricated homes are also very useful skills in the community. We appreciate that this isn't always possible, but this type of skilled work is preferable wherever possible.

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

As we have noted elsewhere in this submission, there is a need for offenders to be given greater opportunities to access in-custody education and work programs. A good example is the TAFE workskills programs run by AEVTI. Unfortunately, these programs are not available across all gaols in the State.

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?

There are very few programs available for offenders while they are on remand, particularly those that require acceptance of responsibility and guilt. However, there are a range of programs that are broadly applicable to most prisoners that could be made more readily available to prisoners on remand. These include Drug and Alcohol, anger management, living skills, work skills, literacy and other educational programs. Admission into programs such as this needn't depend on the nature of the index offence or a finding of guilt. These general programs could be offered on a rolling timetable for prisoners on remand.

Question 4.6: Pre-release leave

How could pre-release leave programs be improved to:

(1) Prepare offenders sufficiently for life on parole; and

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

Again, this falls within having a detailed case plan prepared shortly after sentencing which is adhered to. Leave should be planned from the outset of an offender's term of imprisonment rather than only given attention when an offender becomes eligible for parole. Many offenders don't know how to access leave. More pro-active case planning and management would enable Community Corrections to work with offenders and prepare a proposed timeline for access to leave. Further, if SORC recommends that an offender access leave, the Commissioner should be required to give reasons to SPA if the recommendation isn't followed and the Commissioner doesn't approve leave.

In general, if an offender has committed a serious offence and falls within the purview of SORC, pre-release leave is expected before an offender will be given parole. This is usually because of the length of time that the offender has spent in custody and the need for a staged return to the community. It is desirable for an offender who has served a very long sentence to access pre-release leave. However, PLS solicitors have observed that too much emphasis can be placed on pre-release leave, even when an offender hasn't been in custody for an extended period of time. A PLS lawyer recalls a client who was 22 years old, and was in jail for the first time for a period of 2 years. The Commissioner took the view that this offender needed to do external leave. While there are clear benefits to taking leave, such as setting up employment and testing out accommodation, in this situation it arguably wasn't necessary to 'establish positive community support networks' and place such an emphasis on the need to have external leave before being released to parole.

Question 4.7: Transitional centres before release

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

We strongly support transitional centres. Although the offender is still in gaol, they reside in a non-gaol dwelling with much more freedom of movement which allows for normal employment and attendance at drug and alcohol programs and counselling. In the experience of PLS, the

environment and culture of the centres are more respectful than Community Offender Support Program Centres (COSPs). Anecdotally, PLS lawyers are aware of less offenders returning to custody after living at a transitional centre before release to parole.

(2) How could more offenders benefit from them

More transitional centres are needed to make them an option available to more offenders.

Question 4.8: Back-end home detention

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

In our Sentencing submission Legal Aid NSW submitted that back end home detention should be further explored as a sentencing option in NSW.[3] Legal Aid NSW is concerned that, in relation to parole, back-end home detention may only be a realistic option for a limited cohort of offenders. The availability of the current home detention legislation is quite limited. Certain offences are prohibited, as are offenders with a certain history. It is only available in certain geographic areas and is only available to offenders who have an acceptable residence with a landline phone. The model is likely to require considerable resources to operate and effectively monitor offenders. Legal Aid NSW is concerned that back-end home detention could divert resources away from programs such as throughcare services and transitional centres that would increase options for conditional release for a much larger cohort of offenders. In our view, resources should not be diverted from programs that would benefit the majority of offenders. Legal Aid NSW supports the model if it can be implemented while maintaining and improving services that will assist the majority of offenders.

Question 4.9: Day parole

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

Offenders already have access to day leave through work-release and study leave options, as well as day and weekend leave. We are concerned that a day parole scheme may only benefit a limited number of offenders and divert resources away from programs that benefit the majority of offenders, such as transitional centres.

[3] Legal Aid NSW, *Submission* SE31, 6

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

If such a scheme were introduced, it should be integrated into an offender's case plan and utilised to assist offenders to reintegrate into the community.

Question 4.10: Re-entry courts

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

We support initiatives such as this that enhance parolees' access to support and case management services. While the model does have the potential to give offenders access to more support services, there is also a risk that they will be exposed to closer scrutiny and monitoring by participating in such a program. The Harlem Reentry Court has been successful in reducing the number of reconvictions, but participants were more likely to have their parole revoked and return to prison.[4] An evaluation of the program found that 'revocations for technical violations were significantly higher at one, two and three years (15 percent versus 8 percent at three years). Revocations (for any reasons) were significantly higher after two and three years (56 percent versus 36 percent at three years).'[5]

Care would need to be taken in designing a re-entry court model for the NSW context to ensure that participation in the program doesn't disadvantage offenders and make them more likely to have their parole revoked. Further, participation in any pilot project should be voluntary.

A model such as this will require a significant amount of resources to develop and implement, and the court would only be accessible to a small number of people in the initial stages. We support the model being explored in more detail. However, initiatives such as Throughcare and transitional centres should be prioritised by the Government because of their capacity to benefit more parolees. The support and services attached to the court will be crucial to the success of the model, as will the approach taken to 'technical' or non-reoffending breaches. Staff who are able to prepare and support offenders to comply with tailored, relevant case plans will be central to the operation of any re-entry court.

[4] Robert Wolf, *Reentry Courts: Looking Ahead*, (2 December 2013) Centre for Court Innovation <www.courtinnovation.org>
[5] Robert Wolf, *Reentry Courts: Looking Ahead*, (2 December 2013) Centre for Court Innovation <www.courtinnovation.org>

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

A demonstration or pilot court could be set up to trial the model in the NSW context. Lessons learnt from the Harlem Re-entry Court as well as other problem solving courts such as MERIT and the Drug Court in NSW could inform the development of the court model.

The court should be separate to SPA. It will be important to ensure that there is sufficient resourcing and funding for not only the Judges, court staff and support staff, but brokerage funding to enable support staff to set up and resource workable post release plans for program participants.

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

We do not think it would be appropriate for SPA to take on a re-entry role. It is appropriate for a sitting Judge, rather than a retired Judge and community members to be operating a court.

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

We do not think it would be appropriate for SPA to take on a re-entry role.

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?

We strongly support the approach suggested in paragraph 4.103 of the question paper to 'resource additional officers within prisons who are specialised housing and throughcare workers.' Please refer to our response to question 4.1 for more information.

Question 4.12: Conditions of parole

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

As we outlined in our previous submission, we do not support standard or mandatory conditions being imposed. However, should these 'standard' conditions continue to be imposed, we

consider that there is value in rephrasing of the conditions to make them as plain English and common sense as possible.

'Be of good behaviour', should be replaced with 'not be convicted of an offence that attracts a term of imprisonment.' This would mean that very low level crimes such as fare evasion or minor traffic matters will not jeopardise an otherwise compliant parolee's liberty. 'Unable to adapt to normal, lawful community life' could be changed to 'fail to adapt to lawful community life' as 'unable' is not particularly precise.

We agree that non-association conditions may be appropriate in some cases. However, it is important that non-association conditions aren't overly onerous and don't limit access to family and community.

We agree with the observation that requiring long term alcoholics to abstain from consuming alcohol may be setting them up to fail and support the idea of giving the Community Corrections officers discretion. We support a general condition that requires a parolee to follow the supervising officer's directions about consumption of alcohol, drug use, treatment and counselling.

Consideration could be given to adopting rules recommended by the Commission in relation to bail conditions including the following rules:[6]

- Not impose a condition unless SPA is of the opinion that, without such a condition, the person should remain in custody
- Not impose a condition that is more onerous or more restrictive of the person's daily life than is necessary to protect the safety of the community
- Not impose a condition unless SPA is satisfied that compliance is reasonably practicable

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

As we have submitted previously, we think that courts should impose parole conditions on a case by case basis and SPA should have the power to add or remove conditions. We do not consider that supervision should be mandatory.

[6] NSW Law Reform Commission, *Bail*, Report 133 (2012) 233

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?

In the experience of Legal Aid NSW, there is a significant emphasis placed on monitoring and compliance and less emphasis placed on case management and support to assist parolees reintegrate into the community. We appreciate that supporting and monitoring parolees does require surveillance to be carried out but in our view more resources need to be directed towards support, intervention and referrals to services and programs.

Question 4.14: Duration of parole supervision

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

Regulation 228(3) of the *Crimes (Administration of Sentences) Regulation 2008* enables SPA to extend supervision for serious offenders for up to 3 years at a time. In practice, it is unlikely that there would be many, if any, offenders who would need to be considered for an extension of parole supervision who are not caught by this provision. Given this, we do not think that there is any need for further reform. The current legislation is appropriate.

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)?

Legal Aid NSW does not have a view on these matters.

Question 4.16: Electronic monitoring of parolees

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

Electronic monitoring is an appropriate tool for the surveillance of some serious, high risk offenders on parole when used in conjunction with other risk and case management strategies. Electronic monitoring is a serious invasion of civil liberty and should only be made a condition of an offender's parole when there is a nexus between the offending, the risk of reoffending and the need for place restrictions and surveillance. A cautious approach should be taken to the use of electronic monitoring as it is not a panacea. It is simply a tool to monitor a parolee's whereabouts.

PLS solicitors have observed that the electronic monitoring technology utilised by Correctional Services NSW can be unreliable. One solicitor had been conferencing with a client at the Parramatta Justice Precinct when the monitor malfunctioned and the alarm went off.

The New Zealand Department of Corrections introduced a trial of GPS technology on a limited basis in 2007-2008, but found it unreliable.[7] New Zealand authorities concluded that the technology should only be used in limited situations in conjunction with standard electronic monitoring equipment.[8] In addition, electronic tracking was not shown to be effective in reducing recidivism and enhancing compliance with orders. Of the ten offenders who were subject to EM, four (40%) were convicted for a breach or convicted for another offence during the pilot period.[9]

Evaluations of EM GPS pilots in England and Wales found that 58% of the offenders were either recalled for breaching their licence/notice of supervision or had their community penalty revoked whilst being satellite tracked.[10] In one study only 46% of offenders reported the satellite tracking had helped them to 'stay out of trouble', but that 26% were either reconvicted for an offence committed during their period of tracking or while unlawfully at large following their revocation.[11]

---

[7] Minister for Police and Corrective services the Honourable Judy Spence, *'NZ Trials prove messenger wrong on GPS monitoring of sex offenders',* 5 September 2007, 1
[8] Ludo McFerran, *International strategies to protect women in their homes,* Australian Domestic and Family Violence Clearinghouse, Newsletter 34, 4
[9] New Zealand Department of Corrections, *Annual Report 2007-2008* (6 January 2014) <http://www.corrections.govt.nz/__data/assets/pdf_file/0005/295241/07-08-Annual-Report.pdf>
[10] Stephen Shute, *Satellite Tracking of Offenders: A Study of the Pilots in England and Wales,* Ministry of Justice, Research Summary 4, 2007, 1
[11] Stephen Shute, *Satellite Tracking of Offenders: A Study of the Pilots in England and Wales,* Ministry of Justice, Research Summary 4, 2007, 11

It is important that electronic monitoring is only used in appropriate cases where it will assist in the risk management of an offender.

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

Electronic monitoring should only be made a condition of an offenders parole if it is likely to increase the protection of the victim and community and meaningfully assist Community Corrections to manage and monitor an offender. We do not support setting any targets to increase electronic monitoring of parolees in NSW. The carrying/wearing of the equipment and the requirement to submit movement details in advance does not assist an offender to reintegrate and lead a normal lawful community life.

Electronic monitoring can allow offenders who may otherwise not be found eligible for parole to live in the community while serving the remainder of their sentence. There may be some significant cost savings for Government in having offenders living in the community rather than in custody. However, electronic monitoring can also create unrealistic expectations about the extent to which victims and the community can be protected. Electronic monitoring is not a substitute for rehabilitation programs that address underlying causes of offending and lead to long-term behaviour change. Having a large number of parolees being electronically monitored could also divert resources into monitoring and away from more in-depth risk and case management that may be more likely to reduce the risk of reoffending.

It would be useful to evaluate the effectiveness of the current electronic monitoring regime for parolees in NSW.

Question 4.17: Workload and expertise of Community Corrections officers

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

It would be helpful to introduce 'specialist' officers to work with particular types of offenders. Ideally, more senior officers would be supervising offenders with complex needs. The recommendation for interdisciplinary teams to manage high risk offenders is also worth exploring further.

Offenders with cognitive and mental health impairments should be supervised by officers who have specialist training in this area. It can be difficult for offenders with mental health or cognitive impairments to 'adapt to normal, lawful community life' and comply with parole

conditions such as reporting conditions. A specialist officer would be able to take a more informed and flexible approach to these types of offenders.

Case study – Mr D

Mr D has a brain injury and mental health diagnosis. He was released with one day's supply of his medication. Within 3 days of being released to parole, Mr D was taken to a psychiatric unit and hospitalised for 10 days. He breached the conditions of his parole as a result of being in hospital and parole was revoked on the basis that he was 'unable to adapt to normal community life.' The parole revocation may have been avoided if arrangements had been made for him to have enough medication and he had been case managed by a Throughcare worker or an experienced Probation and Parole Officer.

Case study – Mr E

Mr E has an intellectual impairment and schizophrenia. He lived with his mother while on parole. He didn't return home on two consecutive nights and his mother informed his Community Corrections Officer. He had spent all night at an Internet cafe playing games on a computer. The Community Corrections officer considered this to be a breach of his residential condition. Mr E was also smoking marijuana and his mental health deteriorated. His mother took him to the mental health unit but they formed the view that he was only unwell because he was smoking marijuana and did not admit him. His parole was revoked for not residing at the approved address and not being able to adapt to normal lawful community life. When he was returned to custody as a result of the parole revocation, his medication was changed and he stabilised.

Case study – Mr F

Mr F missed a monthly depot injection for schizophrenia while he was on parole. He didn't have enough money for the bus and he couldn't arrange a lift to the doctor. His parole was revoked because he was seen as a risk to the community when he missed his monthly injection. He had not committed a further offence and had complied with all of his other parole conditions, including reporting and residential conditions. With appropriate supports in place, particularly for transportation, this parole revocation may have been avoided.

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

Many offenders have high and complex needs and the underlying causes of their offending are often inextricably linked to health and social issues. The management of offenders will only be improved if specialist officers or case management teams with an in-depth understanding of these issues are assigned to manage offenders with high and complex needs.

There are very few arguments against having highly trained and specialised staff for certain offenders. Attracting appropriately experienced staff with specialist skills could require more resources. It would be problematic if these resources were taken from other important areas of the corrections budget.

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

Specialist case management would be very helpful for offenders with drug and alcohol problems and offenders with mental health and cognitive impairments. Violent offenders and sex offenders could also benefit from specialist case management.

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 Government investment is required to meet the current demand for post-release accommodation. In our experience, many clients have their parole revoked before they are released to custody because they don't have any post-release accommodation. In these situations, accommodation is the only barrier to a client obtaining parole.

We acknowledge that there were significant problems with COSPs. They were widely viewed as an extension of jail with a prison like culture.[12] However, their closure has left a significant gap in the service infrastructure, particularly for serious offenders.

[12] Louise Schetzer and StreetCare, *Beyond the Prison Gates,* (16 December 2013) Public Interest Advocacy Centre < http://www.piac.asn.au/publication/2013/08/beyond-prison-gates> 24-25

We endorse the recommendations outlined in the *Beyond the prison gates* briefing paper prepared by the Homeless Persons' Legal Service (HPLS) and StreetCare:[13]

- The NSW Government should take immediate steps to increase the available stock of crisis, transitional and short-term accommodation options for people exiting prison
- The NSW Government should provide funding to increase the availability of community-based transitional accommodation options for people being released from prison and remand, which is administered by non-government, community organisations with expertise in providing accommodation and other supports for people exiting prison.
- The NSW Government should take active measures to increase the availability of affordable social and private rental housing stock in NSW
- Corrective Services NSW should undertake a review of all processes and policies in respect of exit planning for prisoners to ensure:
    - Prisoner release dates are identified and planned for
    - Identification of prisoner post-release accommodation and support needs to facilitate appropriate exit-planning
    - Appropriate early intervention support services, and crisis and transitional accommodation options for people being released from remand who do not have safe accommodation options
    - Early contact with community-based support and accommodation services, to ensure continuous case management commencing prior to release, and continuing post-release
- The NSW Government should provide additional resources to community-based accommodation and support services that focus on people released from prison, to enable more intensive, higher quality case management and support for people about to be released from prison, and continuing post-release
- The NSW Government should provide resources for specialist and generalist homeless services for specific case management and support programs targeting ex-prisoners

[13] Public Interest Advocacy Centre, *Briefing Paper - Beyond the Prison Gates* (16 December 2013) <http://www.piac.asn.au/publication/2013/08/beyond-prison-gates-briefing-paper>

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?

Parolees should have access to a range of programs on parole but at present, there are significant barriers to parolees accessing them. The experience of parolees can differ depending on their Probation and Parole Officer and other factors, such as the area that they live in. Some officers are very resourceful in sourcing appropriate programs for parolees that they are managing. It may assist if there was a coordinated data base of programs so that this information is made widely available to all Probation and Parole Officers. It would also assist if there were more resources made available for Welfare and Throughcare Officers to assist parolees to arrange rehabilitation and other programs to participate in upon release from custody while clients are in custody.

There are a number of very good programs available to offenders on parole that begin when an offender is in custody. For example, 'Connections' works with offenders with a drug habit, providing them with support in custody and on release. The program provides pre-release assessment and comprehensive case planning to address a range of issues in their life including health, financial, family, education and employment issues. Connections staff develop and implement comprehensive, tailored release plans and assist the individual to link in with community based health and welfare services according to the care plan developed with them.'[14] The Intensive Drug and Alcohol Treatment Program (IDATP) is another noteworthy program that starts when an offender is in custody and continues upon release.

A corrections model which linked Throughcare workers with all offenders pre and post release would dramatically improve access to rehabilitation and other programs in the community.

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

In our experience, there is little continuity between the programs available in custody and those available in the community. Programs should be designed to be taken to a certain level in custody and then continued and developed in the community.

[14] Ruth Layton, 'Valuable Programs for Vulnerable Clients' (Breakout Session at the Annual Legal Aid NSW Criminal Law Conference, 31 July 2013)

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

As outlined in response to question 4.3, we think that the programs should be independently evaluated regularly and the relevant reports made publically available.

Questions 4.20: Barriers to integrated case management

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

With appropriate resourcing Community Corrections case management could certainly achieve a Throughcare approach. As we note elsewhere in this submission, a significant shift is required if Correctional Services NSW is to implement a Throughcare model. We also think that it is very important that Throughcare Officers have a clearly defined role that is focused on support and is clearly differentiated from the role of Probation and Parole Officers and other custodial staff. Consideration should be given to whether these officers should sit within Corrections, or whether NGO's are best placed to provide this service in custody.

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

The barriers to integrated case management include a lack of appropriate accommodation, rehabilitation and support services in the community, coupled with limited resources for welfare and case management services within Corrective Services NSW and non-government services in the community.

(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?

Participants in the PIAC consultation project, *Beyond the prison gates*, identified the following barriers to accessing services and supports in custody:[15]

- lack of access to information about accommodation and support services for prisoners about to be released
- difficulties in accessing welfare support services in prison
- inadequate access to training and education courses while in prison

[15] Public Interest Advocacy Centre, *Briefing Paper - Beyond the Prison Gates* (16 December 2013) <http://www.piac.asn.au/publication/2013/08/beyond-prison-gates-briefing-paper>

The barriers identified by the participants are consistent with our observations. Participant's suggestions for improvement included:[16]

- more resources for welfare services within prison
- increased availability of life-skills training and educational courses within prison
- increased availability of written information in prison about available support and accommodation services in the community
- more visitors from community organisations and advocates to meet with prisoners about to be released

[16] Public Interest Advocacy Centre, *Briefing Paper - Beyond the Prison Gates* (16 December 2013) <http://www.piac.asn.au/publication/2013/08/beyond-prison-gates-briefing-paper>

Question Paper 5

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?

Community Corrections should have a broad discretion to manage breaches of parole. They are well placed to make an assessment of the seriousness of a breach in the context of the offenders progress on parole and rehabilitation more generally.

A system that revokes parole first and then enquires about the circumstances and seriousness of a breach later can undermine positive steps made on parole, such as obtaining full time work. For example, a parolee might breach a reporting condition because they have obtained full time work and haven't made arrangements to ensure that they are able to report as well as go to work. The Community Corrections Officer is best placed to make the collateral checks and verify whether the parolee does have full time employment and then work with the parolee to plan how they can comply with their reporting conditions and keep their job. In a situation such as this it is not in the interests of the community for the offender's parole to be revoked if they have obtained full time work and have not reoffended.

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

The current Corrective Services NSW policy[17] is too prescriptive and inflexible. We favour an internal policy which empowers Community Corrections Officers and their managers to determine which breaches need to be forwarded to SPA, and which breaches can be dealt with by Community Corrections. The Probation and Parole Officers and their managers are best placed to assess the nature and seriousness of a breach.

Case study – Mr G

Mr G, a young PLS client, was paroled and directed to report to his Probation and Parole Officer a few days after being released to parole. He stole a t-shirt because he wanted to have a clean t-shirt to meet his parole officer. He received a sentence of 7 days custody for stealing the shirt and his parole was revoked. He had a balance of eight months remaining on his sentence, and

[17] NSW Law Reform Commission, *Parole Question Paper 5,* [5.4]

returned to custody to serve this eight months. Legal Aid NSW appealed the sentence for the shoplifting offence, but was unsuccessful. The approach in this matter is in keeping with the current Corrective Services NSW policy as 'the offender was convicted of a new offence' and the 'court imposed a full-time custodial sentence for a further offence.' Applying a discretionary approach to this breach, and giving consideration to the risk posed to the community and the effect of revoking parole may have resulted in a different outcome.

Further, it is not uncommon for a court to backdate sentences and impose a sentence of imprisonment which reflects the time that an offender has already served in custody, with the intention that the offender is released from custody forthwith. A policy requiring Community Corrections to send a breach report to SPA when a court imposes a full-time custodial sentence for a further offence may not be appropriate or necessary in every case, particularly if the term of imprisonment was very short sentence for a minor offence.

We favour a policy that gives Community Corrections more discretion to consider each breach on a case by case basis with reference to a number of key considerations such as:

- the risk posed to the community by the breach,
- the number of previous breaches and the parolee's history of compliance with the order
- the likely effect of revocation on their ongoing rehabilitation

This approach could be outlined in the CAS Act in a provision similar to s 89 of the CAS Act which sets out the Commissioner's powers to deal with a breach of an Intensive Corrections Order (ICO). This section provides that 'the Commissioner can decide to impose a sanction on the offender under this section or can decide to take no action in respect of the breach.'[18] A provision such as this would empower the Probation and Parole Officer and their manager to make a determination about whether to refer the matter to SPA or not.

Section 89(2) of the CAS Act sets out the sanctions that the Commissioner can impose on an offender for a breach of an ICO. The CAS Act could set out the following options for a breach of parole:

- formal warning
- a more stringent application of the conditions of parole

[18] *Crimes (Administration of Sentences) Act 1999* (NSW) s 89(1)

- as an alternative or in addition to imposing a sanction on the offender, the Commissioner can decide to refer the breach to the Parole Authority because of the serious nature of the breach
- in considering whether and what action should be taken in respect of an offender's breach of parole, the Commissioner may have regard to any action previously taken in respect of the breach or any previous breach of the order by the offender.

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

The lower level responses could be modeled on section 90 of the CAS Act which sets out the Parole Authority powers to deal with a breach of an ICO. The lower level responses available to SPA could include:

- a formal warning
- a more stringent application of the conditions of parole

Another option would be to enable SPA to revoke parole for a short, sharp period as a denunciation and punishment for a breach of parole. Legal Aid NSW would only support this as an option if the 12 month rule no longer operated or was suspended in this situation.

Question 5.2: Response to non-reoffending breaches

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

SPA takes a very strict approach to non-reoffending breaches. In 2012, SPA revoked a total of 2,261 parole orders and of these, 1,097 were revoked due to a breach of conditions rather than as a result of reoffending.[19] Many of these revocations may be for serious infractions, such as a parolee's whereabouts being unknown for an extended period of time or for a sex offender not complying with a non-association order. It is highly likely, however, that these figures are indicative of a very strict approach to conditional breaches of parole across the board.

In a paper on re-entry courts titled '*A conversation about Strategies for Offender Reintegration*' Judge Carpenter expressed the following view when he reflected on their initial approach to re-entry courts:[20]

[19] State Parole Authority, *Annual Report* (2012) 15
[20] R Wolf, *Reentry courts: Looking ahead – a conversation about strategies for offender reintegration,* Centre for Court Innovation, 9

> We wanted to establish credibility with the community and with the participants, and so we took probably too hard a line on technical violations, and now we've learned that that's not really what it's about. And we treat dirty tests differently than we do in drug court, and we realise that our goals are much different and that our population is much different, and our techniques have to change, and it took us a while to figure that out ...And I look back at some calls that I made that were just wrong...because I was still treating it like drug court, and I wasn't realising that my goal was really – my goal was to keep people out of prison, not to make sure that they were model citizens.

We think that there is a need for a significant shift in the approach that is taken to non-reoffending breaches. Non-reoffending breaches need to be looked at in the context of a process of rehabilitation for people who may be institutionalised, have cognitive and mental health impairments, few social and family supports in the community, a history of trauma and abuse, may face periods of homelessness and may lead quite dysfunctional, complex lives. In many cases it is not realistic to expect parolees to make a completely smooth transition from prison to life to life in the community as a 'model citizen'. Taking a 'zero-tolerance' approach to non-reoffending breaches can be counterproductive. If the ultimate goal is supporting parolees to reintegrate into the community, returning them to prison for non-reoffending breaches is not always the most appropriate response. More intensive case-management and support is likely to be more effective and useful in the long term.

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

As outlined in response to question 5.1(3), intermediate sanctions could include a formal warning, a more stringent application of the conditions of parole, and for serious non-reoffending breaches, a revocation of parole for a short period of time to reinforce the importance of complying with conditions of parole. However, this should be a last resort for non-reoffending breaches. These sanctions could be set out in the CAS Act.

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

SPA should be able to revoke parole for short periods, as a last resort, for serious breaches of parole conditions, for example, if a parolee's whereabouts are unknown for an extended period of time and there is no reasonable excuse for their failure to report and failure to reside as

directed. If the '12 month' rule continues to apply it should be suspended in these circumstances. If the 12 month rule is abolished, there may not be any need for a provision enabling SPA to revoke parole for short periods, although it may still be a useful device to deal with relatively minor breaches provided that parole is automatic at the expiry of the revocation period.

Question 5.3: Revocation in response to reoffending

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

At present, SPA is overly proactive in responding to allegations of fresh offending. Contrary to the observations in 5.25 of Question Paper 5, in the experience of PLS, SPA will revoke parole when it becomes aware of a fresh charge in almost every case and does not base its decision on the apparent seriousness of the alleged reoffending. This can result in people who are ultimately found not guilty of an offence spending a significant period of time in custody. PLS solicitors don't become aware of these people until after their parole has been revoked and a review hearing has been set.

Revocation in response to alleged reoffending should be based on the seriousness of the alleged reoffending. Parole should not be revoked for a minor offence which is considered a technical breach of parole. On the other hand, where the alleged reoffending is a serious offence giving rise to public safety concerns, we acknowledge that immediate revocation of parole will be inevitable.

However, there is an intermediate class of less serious offending which does not give rise to public safety concerns where parole should not be revoked automatically. These matters warrant further consideration of a range of factors such as the risk posed to the community by the alleged offending, the history of the parolees compliance with the order, the likely effect of revocation on their ongoing rehabilitation and/or the outcome of the court proceedings for the reoffending. These considerations should be set out in the CAS Act.

Even when a person is found guilty of an offence, it may not always be appropriate for parole to be revoked.

Case study – Mr F

Mr F received a section 9 bond for a 'technical' breach of an apprehended violence order. His parole was revoked even though the breach of the AVO was not considered sufficiently serious to warrant a term of imprisonment.

This approach is particularly problematic under the current regime which includes the '12 month rule'.

Contrary to the observation in 5.28 of Question Paper 5, we do have serious concerns about the way that SPA approaches decision making in this area. We do not support mandatory revocation of parole if a parolee receives a term of imprisonment for an offence committed on parole. There are many situations where this will operate very unfairly in practice, such as in the case we outline in response to question 5.1(2) where a young man received a term of imprisonment of 7 days for shoplifting and had to serve the balance of 8 months imprisonment remaining on his sentence.

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

We think that SPA should have unfettered discretion to decide whether to revoke parole or not. Each matter should be considered on a case by case basis by SPA. At present, the decision to revoke parole does not appear to be made consistently by SPA. Some consistency of approach from SPA would be preferable. This could be achieved by developing an internal policy rather than outlining this in the CAS Act.

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?

The revocation date should be the date that the order to revoke parole is issued. Section 171(1) of the CAS Act should be amended to read 'a revocation order takes effect, or is taken to have taken effect, on the date on which it is made' and s 171(2) of the CAS Act should be deleted.

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

We agree with the Aboriginal Legal Service submission that time spent in custody interstate should not be added onto a sentence. It should be taken into account in the same way that time spent in custody in NSW is taken into account.

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?

Every decision to revoke parole should be subject to review. Without a formal process to review the revocation decisions made by SPA, there is no procedural fairness for parolees. In 2012, a rescission order was made in nearly 16% of all matters in which parole was revoked.[21] This is not an insignificant number of rescission orders. Procedural fairness is particularly important when the parole regime includes the '12 month rule' and parole revocation has such serious ramifications for a persons liberty.

Incarceration can have a detrimental, even devastating effect, on people's lives and a decision to revoke parole should only be confirmed after an SPA conducts an inquiry and hears all of the available evidence in a matter. The comments in the Callinan report about review hearings being unnecessary do not foresee situations in which there is human error, findings of not guilty for fresh allegations, miscommunication or incorrect information. Without a hearing, people could be held in custody for extended periods of time, based on insufficient evidence or incorrect information.

Review hearings also give parolees an opportunity for parolees to provide an explanation for a breach of parole that is supported by evidence and satisfies SPA that a revocation of parole is not warranted. For example, a client may instruct his lawyer that they failed to report as directed because they or a family member went to hospital in an emergency. A lawyer can make enquiries with the relevant hospital to confirm whether this is in fact the case and can put this information before SPA. Clients have a limited opportunity to prepare for a hearing once in custody. With legal assistance and representation they may be able to present relevant and persuasive evidence to SPA in an application to have the revocation of parole rescinded.

[21] NSW Law Reform Commission, *Parole Question Paper 5,* [5.35]

In practice, review hearings are dealt with relatively efficiently. They tend to involve calling evidence from the client and the Probation and Parole Officer and brief submissions from the client's legal representative. The benefits of having review hearings far outweigh the resource implications of not having them. The initial decision to revoke is made in the absence of the parolee. To refuse a review hearing would be a denial of procedural fairness.

Question 5.6: Rescinding revocations to allow completion of rehabilitation 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?

In our experience, parole is almost always revoked by SPA when alleged fresh offending comes to light. This approach has a significant impact on the rehabilitative dispositions available to the court for fresh offending. The question paper indicates that 'SPA has advised us that it will generally stand 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 under s 11.'[22] This is not consistent with our experience.

In the experience of PLS, there is no communication between the court and SPA when a person is charged with fresh offending and parole has been revoked. In practice, SPA wants the court to make a final decision first and the courts want SPA to make a final decision first. This can result in rehabilitative dispositions not being available to many clients. Often a court will indicate to a solicitor that they would be considering a non-custodial disposition if parole had not been revoked. At present, if a client's parole has been revoked, they cannot be considered for a section 32 order in the Local Court, they are not eligible to participate in MERIT and it can be very difficult to have them accepted into a rehabilitation program in the community.

PLS solicitors find that the arrangements in place between the Drug Court and SPA work well. Similar arrangements are needed between SPA and other courts. If a court is contemplating a non-custodial disposition for fresh offending there should be a system in place that enables them to advise SPA of this. This could then be taken into account by SPA when deciding whether or not to rescind the parole revocation.

[22] NSW Law Reform Commission, *Parole Question paper 5,* [5.37]

If the 12 month rule is abolished, SPA could confirm the revocation and immediately grant parole to enable an offender to attend a rehabilitation 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?

SPA's decision to revoke parole should be appellable to a single judge of the Supreme Court.

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?

While it may be too time consuming for SPA to publish its decisions in revocation matters, SPA should give detailed reasons for its decision to confirm or rescind a parole revocation. In the experience of PLS, SPA will usually give detailed reasons if they decide to rescind a revocation. It would be useful to have SPA give detailed reasons when they decide to confirm a revocation as well. At present, SPA tend to say 'revocation confirmed for reasons stated' without expanding on the reasons in any great detail.

If SPA decide to revoke parole, contrary to the recommendation of a Community Corrections Officer, it is particularly important that they give reasons for this.

Question 5.9: Emergency suspensions

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

We do not think that any changes need to be made to SPA's power to suspend parole.

Question 5.10: SPA's power to hold an inquiry

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

SPA should use section 169 inquiries more often. However, the current systems and processes in place for section 169 inquiries require significant improvement. At present, PLS solicitors tend to become aware that a client has a section 169 inquiry on the morning of the inquiry. A system needs to be put in place to enable clients to access legal advice and representation prior to their appearance before SPA. There are also problems with section 169 hearings only being

available for clients who appear in person at SPA. This poses particular barriers for clients from regional and remote areas of NSW. Section 169 inquiries need to be made more accessible to parolees. This could be done by allowing parolees to attend by AVL.

Question 5.11: Information sharing

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

An area that requires significant improvement is communication between the courts and SPA. We have raised this issue already in relation to question 5.6. PLS solicitors often come across clients who have had their parole revoked, are taken into custody, and are unable to attend a future court date for allegations of fresh offending for which they are on bail. It is not uncommon for clients in this situation to be charged with failing to appear at court and convicted ex parte with a bench warrant issued. It can be an involved process to have the conviction annulled, the charge of failing to appear dismissed and the bench warrant recalled.

A system should be put in place to ensure that SPA notifies the relevant court if a parolee has their parole revoked and is in custody with a future court date. The court should check whether a person is in custody before charging a client for failing to appear and dealing with the matter ex parte.

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?

There is no need for SORC to have a role when SPA decides to revoke or rescind parole for serious offenders. SORC are not involved in the management of an offender in the community. Involving SORC in the revocation decision is only likely to extend the timeframe required for revocation decisions to be made. This is particularly problematic because clients are usually in custody during this process. SORC should become involved if parole is revoked, but until this occurs, it is not necessary or relevant for them to be involved.

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?

There should not be an offence of 'breach of parole'. Introducing this offence may offend the rule against double jeopardy, particularly if the breach arises due to re-offending. In practice, parolees who breach their parole in any significant way are likely to have their parole revoked and return to custody. This is sufficient punishment and it is not necessary to introduce a separate offence to punish people who breach their parole. Further, if the breach relates to re-offending while on parole, this is taken into account as an aggravating factor at sentence.

It is likely that the Victorian government has created an offence of breach of parole in response to recent law and order concerns regarding breaches of parole in Victoria. The Victorian Government may have an interest in being seen to be proactive and legislating to create a new offence for breaching parole. NSW has a different parole system which has not attracted similar criticisms and there is no sound evidence base to take a similar approach.

Question 5.14: reconsideration after revocation of parole

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

The 12 month rule should be abolished. The rule operates unfairly, particularly when parole is revoked for a relatively minor conditional breach or further offending and there is a significant amount of time remaining on the sentence. As outlined in response to question 3.18, Legal Aid NSW strongly supports a return to the pre-2005 provisions. This system ensured that applications and re-applications for parole were more accessible and the system was more transparent and procedurally fair.

We do not support replacing the 12 month rule with a 3 or 6 month rule. This is too prescriptive and may operate unfairly in practice. We support the option outlined in 5.56 of Question Paper 5 for SPA to set a reconsideration date when parole is revoked, taking into account factors such as the circumstances and nature of the breach, the parolees full term and the offenders personal circumstances. Dealing with each matter on a case by case basis will ensure greater procedural fairness and ensure that SPA's resources are allocated appropriately.

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?

As outlined in our Sentencing submission, we think the following changes should be made to the breach and revocation processes for ICO's and home detention: [23]

- breaches of ICO's and home detention orders should be dealt with by the sentencing court; and
- non-parole periods should apply to ICO's and the court should fix a non-parole period at sentencing or when the ICO is revoked taking into account the offenders compliance with obligations under the ICO.

At present, the legislation places the responsibility on the offender to apply for a hearing to consider reinstatement of the ICO or home detention order. Both s 163(5) and s 167(2) of the CAS Act specify that a revocation order may be made whether or not the offender has been called on to appear before the Parole Authority, and whether or not the Parole Authority has held an inquiry. We think that these provisions should be amended to require a defendant to be notified and given a right of reply. If breaches continue to be dealt with by SPA:

- the offender should be given notice that the order may be revoked and be given a right to reply to this notice when SPA is first considering a breach of an ICO or home detention order
- there should be a formal review hearing to confirm any revocation of an ICO or home detention order and
- the time when an application for reinstatement can be made should be the same in both cases, namely, one month.

[23] Legal Aid NSW, *Submission PSE31,* 12