PAROLE

QUESTION PAPER 6

Legal Aid NSW submission

to the New South Wales Law Reform Commission

February 2014

Introduction

Legal Aid NSW welcomes the opportunity to provide comments in response to parole question paper 6 about parole and young offenders. The Legal Aid NSW Children's Legal Service (CLS) advises and represents children and young people involved in criminal cases in the Children's Court, including young people appearing before the Children's Court for parole matters. CLS lawyers also visit juvenile justice centres and give free advice and assistance to young people in custody. The Prisoners Legal Service (PLS) represents young people detained in Kariong juvenile correctional facility appearing before the State Parole Authority for revocations of parole, including revocations of parole prior to release.

In this submission we outline our support for a separate legislative parole regime for young offenders, a regime that includes a clearly articulated object of parole and a different set of principles and criteria to consider when making a parole determination for a young offender. We propose amending the *Children (Criminal Procedure) Act 1987* (CCPA) to include a division regarding parole. We also propose that this system apply to all young offenders under the age of 21 who have committed an offence as a child. Under this system the particular facility a young offender is detained in does not determine the parole system that applies. It is an approach that reflects the principles regarding young people enshrined in domestic and international law and the primary purpose of paroling young people, namely the successful rehabilitation and re-integration of young people in the community as law abiding citizens.

Pragmatic issues involving arrangements between Juvenile Justice and Community Corrections that may arise under this model should be addressed through policy and guidelines.

It is widely accepted that children should be treated very differently to adults in the criminal justice system. The CCPA defines a 'child' as a person under 18[1] and, qualified by other criteria, covers offences committed by children who are charged prior to the age of 21 ("young offenders").[2] It provides a higher sentencing court sentencing a young offender with the power of the children's court, subject to certain guidelines and considerations. Further, it provides the Children's Court and higher sentencing courts with the power to order that young offenders sentenced under both the CCPA or at law be detained in a Juvenile Detention Centre. The qualification to the exercise of this power is that any non parole period expires prior to the young offender turning 21. This reflects a uniform approach to age, a recognition that young offenders should be treated differently to adults and a recognition that the vulnerabilities and issues relevant to youth do not disappear at 18.

The proposed model reflects and follows this approach. It ensures that specialist Children's Magistrates and specialist children's lawyers will deal with young offenders who have been sentenced in a manner that has already brought them within the juvenile system. In essence these will be young offenders that the courts have already deemed appropriate to treat differently to adults.

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[1] *Children (Criminal Proceedings) Act 1987*, s 3
[2] *Children (Criminal Proceedings) Act 1987*, s 28

Question 6.1: Different treatment of juvenile offenders

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

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

We strongly support the introduction of a separate legislative regime for the juvenile parole system. It is anomalous that there is not separate parole legislation for young people in NSW. There is separate legislation for young people in almost all other key areas of the law relating to young people including youth diversion, sentencing and the management of young people in detention.[3] It is widely recognised that children should be treated differently to adults in the criminal justice system. This is reflected in domestic legislation, case law and international covenants. It is incongruous that parole determinations regarding young people should be treated differently. The principles of the best interest of the child, detention as a last resort, and principles of rehabilitation are particularly pertinent in relation to parole determinations for young people.

Young people differ to adults in terms of their cognitive capacity, maturity and ability to assess risk which has a range of significant implications in the context of the criminal justice system. Adolescence in particular is 'marked by changes in the biological, psychological, cognitive and social dimensions of the individual, as well as by changes in the adolescent's multi-level context (ie, the peers, family, school and other institutions in his or her ecology.)'[4] When developing criminal law policy and legislation, '…adolescents should be recognised as being situated within their developmental context, including the family, school, community and society and there should be recognition of their potential for change, the interdependence in these changes and the reciprocal nature of the relations.'[5]

The result of applying the particular principles and practices relevant to young offenders in a sentencing context means that young offenders receive very different sentences to their adult counterparts.[6] Custodial sentences are shorter than for adults, with shorter non parole periods. Findings of special circumstances are regularly made. Delay in having matters finalised or rules

[3] Bail laws are a notable exception.
[4] Lerner and Castellino, *Adolescents and their Families* (Routeledge, 1999) 5
[5] Stewart, Allard, Dennison, *Evidence Based Policy and Practice in Youth Justice* (the Federation Press 2011) 48
[6] See for example the Judicial Information Research System statistics at Attachment A which show the difference between the penalty types and terms for robbery in the NSW Children's Court in comparison to adults in the NSW Higher Courts.

restricting parole applications have a disproportionately negative impact on young offenders. Under an adult parole system where time frames are set in consideration of adult offences, lengthier sentences, different programs and more entrenched behaviours, young offenders would regularly see their parole expire in custody, would regularly have less time supervised in the community than the sentencing court determined and would regularly be detained in custody longer than was necessary or appropriate.

In practice, a separate juvenile parole system has evolved in New South Wales that is not reflected in parole legislation. Specialist Children's Court magistrates determine parole matters giving consideration to the interests of the public and the interests of the young person. At present, key features of the adult parole system, such as the 'section 135 criteria' and the '12 month rule' are not given the same emphasis in the youth parole system. The current approach recognises the importance of the rehabilitation of young offenders and their need for specialist support due to their 'state of dependence and immaturity'[7]. The current approach also recognises that the level of support and focus of the programs employed in the rehabilitation of young offenders can often see quicker, more significant results than is the case with adult offenders who are more entrenched in their behaviors and have less access to programs. It is important to enshrine in legislation the different practices and philosophies that are currently applied to young people by children's magistrates in all parole determinations involving young people. The new provisions could sit within the *Children's (Criminal Proceedings) Act 1987*. If a separate legislative parole regime for young people is not introduced, it is essential that the *Crimes (Administration of Sentences) Act 1999* is amended to include youth specific provisions with separate procedures and considerations for young people.

Options 2A and 2B are the best options for a youth parole system outlined in the question paper. These models acknowledge that there are some young people with particular vulnerabilities and complex needs in youth detention up until the age of 21 and acknowledges the benefits of keeping these young people within a youth parole system. The discussion paper rightly suggests that 'if it is appropriate to retain these offenders in the juvenile custodial environment, it is also likely to be appropriate that they remain subject to the juvenile parole system'.[8] This logic should also apply to those 'juvenile inmates', that is, offenders aged under 21 detained in a juvenile correctional facility as opposed to an adult correctional centre. Often the young people at Kariong are the young people most in need of intensive support and

[7] *Children (Criminal Proceedings) Act 1987*, s 6(b)
[8] NSW Law Reform Commission, *Parole Question Paper 6*: *Parole for young offenders*, 14

supervision. However, the models outlined in the discussion paper do not include juvenile inmates over 18 as part of the youth parole system.

None of the models outlined in the discussion paper include young offenders, sentenced at law or under the CCPA, who have been transferred to an adult correctional centre. It is the experience of CLS that young offenders on occasion will request to be transferred to an adult facility impulsively as a result of simplistic decision making or to access privileges not available in the juvenile system. By way of example, a young person may request a transfer because of an ability to smoke cigarettes in the adult system or to attempt to access particular adult correctional centres that allow a young person's child to reside at the centre. Further, it is the experience of the CLS that the young people that are transferred as a result an administrative decision of the detention centre or juvenile correctional facility (as opposed to a request) are often those whose behavior is problematic. It is easier to keep a 20 year old completing their HSC at Baxter Juvenile Detention Centre than it is to keep a 20 year old who is difficult to engage. However, arguably the latter is in as much, if not more, need of the intensive supervision and specialist programs available within the youth parole system.

We consider that the juvenile parole system should apply to all young people under the age of 21 who have committed an offence as a child. In addition to the categories of young offenders discussed above, this would also include young offenders who have committed offences as children and have the criminal proceeding originate in the Children's Court but are not detained in a juvenile facility. In these matters, a section 19 order may not have been made or may have been refused. We consider that the age of the young person, both when the offence was committed and at the time the parole determination arises, should determine the parole system that the young offender comes within. On both a principled and pragmatic basis this category of young offender should be included within the youth parole system.

Options 2A and 2B differ in the approach to breach and revocation proceedings. Option 2A is in line with current practice. Our proposed model applies to both initial parole eligibility and breach/revocation proceedings. We submit that young offenders in breach of a parole order granted by the youth parole system should appear within that system prior to the age of 21. After the age of 21, young offenders should fall within the adult parole system.

The discussion paper cites the continuity between the agency managing the custodial institution and responsibility for parole management as a criteria by which to assess a structure for the juvenile parole system. We propose that all of the young offenders that come within our

proposed model are managed by Juvenile Justice with any community parole supervision to be transferred to Community Services when the young person turns 21 years of age. Practical issues such as access to detainees should not determine the appropriate model and can be managed through appropriate policy and procedures.

The nature of Juvenile Justice supervision, the range and focus of the programs and the culture of Juvenile Justice as an organisation mean that their ability to case manage and support a young person's transition and reintegration in the community is far superior to Community Corrections. The staff's expertise and the programs are youth centered. Their policies, procedures and practices are youth centered. A youth parole jurisdiction provides this specialist support, as well as the benefits of specialist Children's Magistrates and specialist children's lawyers that are associated with matters dealt with in a youth parole jurisdiction. Often those most in need of such support and supervision are the young people that are currently excluded from it under the current model.

In summary this approach:

- is in line with the established approach to age in the Children's Court jurisdiction
- reflects and supports the principles regarding youth, already enshrined in both domestic and international law
- ensures that those young offenders under 18 or those under 21 who have been identified as vulnerable or in need of intensive supervision are dealt with in the same manner and in a jurisdiction that specialises in dealing with young offenders, regardless of the facility in which they are detained
- ensures that all young offenders under the age of 21 who have committed offences as children are dealt with in the same manner and in a jurisdiction that specialises in dealing with young offenders, regardless of the facility in which they are detained
- ensures that young offenders who have attained the age of 21 who have committed offences as children are dealt with in the same manner, in the adult parole system.

Examples:

- Matt commits a number of offences for which he receives a head sentence of 3 years with a non parole period of 18 months. Matt is 15 when he is sentenced. At 16 ½ years of age Matt is granted parole. At 17 he breaches his parole and appears before the parole jurisdiction of the Children’s Court.

- Simon commits a number of offences for which he receives a head sentence of 3 years with a non parole period of 18 months. He is 17 ½ when he commits the offences and 19 when he is sentenced in the Children's Court. An order is made that he serves his sentence in a juvenile detention facility. At 20 ½ Simon is granted parole. At 22 Simon breaches his parole and appears before SPA.
- John commits a number of offences for which he receives a head sentence of 12 years with 6 years non parole. John is 16 at the time of the offence. John is detained in a juvenile justice facility until he reaches 18 and then is transferred to an adult correctional centre. John is eligible to apply for parole at age 22. He appears before SPA.
- Alex commits an offence for which he receives a head sentence of 19 years with a non parole period of 12 years. He is 14 at the time of the offence. He is detained in a juvenile justice facility until he reaches 18 and then is transferred to an adult correctional centre. Alex is eligible to apply for parole at age 26. He appears before SPA.
- Sarah commits a number of offences for which she receives a head sentence of 12 years with 6 years non parole. Sarah is 14 at the time of the offence. Sarah receives a section 19 order directing that she be detained in a juvenile detention centre for the duration of her non parole period. Sarah is eligible for parole at 20. She appears before the parole jurisdiction of the Children's Court.
- Tammy commits a number of offences for which she receives a head sentence of 9 years with 4 years non parole. Tammy has just turned 16 at the time of the offence. Tammy receives a section 19 order directing that she be detained in a juvenile detention centre for the duration of her non parole period. At 18 Tammy is transferred to an adult correctional centre at her request as she is hoping to get classified and sent to Jarrah House where inmates can have their child stay with them. Tammy is eligible for parole at 20. She appears before the parole jurisdiction of the Children's Court.
- Ryan commits many offences as a juvenile. At 19 he is charged with an offence committed when he was 17 years old. He was on parole at the time, supervised by Juvenile Justice. Ryan has not committed any offences for the last two years. Ryan is sentenced to a 9 month control order by the Children's Court, with a non parole period of 1 month. Ryan is detained at Silverwater Correctional Centre. He is granted parole by the Children's Court and is supervised by Juvenile Justice.

Question 6.2: Features of the juvenile parole system in NSW

If a separate juvenile parole system is retained in NSW:

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

Children's Court magistrates should be the decision maker in the juvenile parole system. They have the best knowledge of the jurisdiction and the principles that apply to young people, as well as experience implementing and applying these principles. In practice, the Children's Magistrates are often familiar with the young people who appear before them for parole matters. Their specific knowledge of the young person gives the young person consistency as well as familiarity when being dealt with by the court and the relationship between a young person and a magistrate can have therapeutic benefits in and of itself.

When young people appear before the court for a breach of parole by way of reoffending, the fresh offence or offences are often dealt with at the same time, by the same magistrate. There are economies of scale when both matters can be dealt with at the same time. Court time is saved as the Magistrate has a familiarity with the circumstances of the fresh offending. The Prosecutor and the Juvenile Justice representative also have the benefit of having access to the information held by the other party.

Further, when a young person's parole matter is heard by a Children's Magistrate, it is highly likely that they will have continuity of legal representation if the sentencing matter originates in the Sydney Metropolitan area. Where possible, the Children's Legal Service will assign a young person the same solicitor for their sentence and parole matter at Parramatta Children's Court, and CLS lawyers will communicate amongst themselves when sentence matters arise at other courts that relate to parole matters before the Parramatta Children's Court. Totality principles can also be given appropriate consideration in this context and sentences that promote rehabilitation can often be better constructed by the court when the fresh offending and breach matter is being dealt with in the same jurisdiction. It is not unusal for the breach report and the sentence report to be prepared by the same author.

Case study 1 – Geoff

Geoff appeared before the Children's Court for a breach of parole and a fresh offence of break/enter/steal. Both the parole breach report and the background report for sentencing identified a need for treatment regarding Geoff's drug problem, particularly given its correlation

with his offending. Geoff was at Kariong and was unable to access day leave for a face to face interview with a rehabilitation centre. As such, parole was not recommended. However, his matter was adjourned to investigate further and during the adjournment period Geoff was able to secure a place at a residential rehabilitation centre that accepted an interview by phone. He was subsequently given a fresh grant of parole with the specific condition to attend the rehabilitation centre. Geoff was looking at receiving a custodial penalty for his fresh offence. Given the importance of drug treatment to his rehabilitation, which was in the interest of the community, Geoff's sentence matter was adjourned with a view to sentencing Geoff after he had completed the drug rehabilitation program.

Case study 2 - Kylie

Kylie was before the Children's Court for a breach of parole. The initial breach report did not recommend parole, noting that Kylie's behavior was problematic and concerning. Juvenile Justice were aware that Kylie was particularly self conscious about having bad teeth and that this would often manifest itself in anti-social behaviour. Kylie, as a juvenile, did not have access to the funds for dental work. Kylie then had her teeth fixed in custody. The change in her behavior was significant and swift. The Magistrate was familiar with Kylie's history and fully appreciated the change in her attitude and behavior. The updated breach report was very positive and recommended parole. Kylie received a fresh grant of parole.

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

The key principles that should apply in the juvenile parole system are:

- Detention as a last resort. Parole would be determined in favour of the young person unless it was 'wholly inappropriate' to do otherwise. This would mirror the requirement under the CCPA that the court can only sentence a young person to control if to do otherwise would be 'wholly inappropriate'.[9]
- The rehabilitation of young people is in the interests of the community.
- The principles set out in s 6 of the *Children's (Criminal Proceedings) Act* 1987:

[9] *Children (Criminal Proceedings) Act 1987*, s 33(2)

- Children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard and a right to participate in the processes that lead to decisions that affect them
- That whilst children bear responsibility for their actions, they require guidance and assistance because of their state of dependence and lack of maturity
- It is desirable, wherever possible to allow a child to reside in his/her home
- The penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind
- It is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties
- Consideration should be given to the effect of parole on the victim

We note that if a new 'parole division' was inserted into the CCPA, the provisions would be subject to the principles set out in s 6 of the Act. The other principles noted above should then be included within this division.

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

The section 135 criteria need to be adapted to the juvenile parole system. Many of the criteria set out in section 135 are not appropriate considerations for young people. In practice, the section 135 criteria are not specifically referred to in parole proceedings for young people in the Children's Court. A separate legislative framework should be established for the juvenile parole system which sets out separate criteria to be referred to when making a parole determination.

In determining whether a young person should be released from detention, the court should have regard to the following matters:

- Any relevant subjective circumstances of the young person
- The likelihood that the young person would, if released, commit a serious offence or offences
- The young person's overall behavioral response while in detention[10]
- The young person's involvement in various programs offered at the detention centre[11]
- Any significant community support available to the detainee on discharge[12]

[10] *Children (Detention Centres) Regulation 2010,* cl 91(2)(a)(i)
[11] *Children (Detention Centres) Regulation 2010,* cl 91(2)(a)(ii)

- The details of any proposed post-release supervision[13]
- Any relevant comments made by the sentencing court
- The young person's criminal history
- The period the person would be obliged to spend in custody and the conditions under which the young person would be held in custody if parole was refused
- Any report in relation to the granting of parole to the offender that has been prepared by or on behalf of Juvenile Justice or Corrective Services
- Any other relevant matter

A consideration about the 'likelihood of the offender being able to adapt to normal lawful community life' should not apply to young people. Young people often have very little agency over their lives and can be entirely dependent on adults or government agencies to adapt to 'normal lawful community life'. The Care and Protection system acknowledges that there are times when families are not able to adequately care for or protect their children from a risk of serious harm. Children and young people cannot be held accountable for circumstances of their lives that are beyond their control. This consideration does not take into account the dependence of children on others to assist them to 'adapt' to lawful community life.[14]

Case study 3 - Jade

Jade was given a parole condition requiring her to engage with education programs as directed by Juvenile Justice. Jade enrolled in Open Training and Education Network (OTEN) to complete her year 10 certificate. Jade enjoyed the program and wanted to complete it and continue training and work in childcare. The course required online access to receive and submit subject materials. As a result of severe physical abuse and exposure to domestic violence, homelessness, chronic drug use and neglect, Jade was under the care of the Minister. Community Services had contracted the care of Jade to Marist Youth Services and agreed to purchase Jade a computer if Marist provided Jade with internet access. No agreement was reached. Jade was provided with 30 min internet access once a week at an internet café. Jade was unable to keep up with her studies and discontinued the course.

Any consideration regarding the 'protection of the community' should be interpreted with reference to the principals outlined in response to question 6.2(2), in particular, the principle that

[12] *Children (Detention Centres) Regulation 2010,* cl 91(2)(a)(iii)
[13] *Children (Detention Centres) Regulation 2010,* cl 91(2)(a)(iv)

the release of a young offender will contribute to the protection of society by facilitating the reintegration of the offender into society as a law-abiding citizen and that the rehabilitation of young people is in the interests of the community.

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

We strongly support the introduction of a separate legislative framework for the juvenile parole system. As stated in our response to 6.2(3), the criteria in s 135 of the CAS Act are not appropriate criteria by which to determine parole decisions regarding young people. They do not reflect the principles that apply to children in all other aspects of the criminal justice system, in case law and in international covenants. Nor do they take into account the particular issues faced by young people. The separate legislative framework could sit within the CCPA and as such would be subject to the principles set out in s 6 of the Act.

Question 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?

Options 2A and 2B are the most preferable options outlined in the question paper as they include all young people under 18, regardless of the custodial centre that they are detained in and they recognise the special circumstances of young people kept in juvenile detention beyond the age of 18. They do not, however, include young people detained in Kariong past the age of 18.

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

Option 2A should be expanded to include all young people under 21 who are currently serving a sentence or who have served the whole or any part of their sentence in a juvenile detention centre or juvenile correctional centre, in keeping with the jurisdictional limits of the Children's Court.[15] This will also ensure that youthful offenders continue to benefit from the expertise of specialist Children's Magistrates and specialist lawyers until they are 21 where the original proceeding commenced in the Children's Court. Please refer to our response to question 6.1 which expands on this proposed model.

[15] *Children (Criminal Proceedings) Act 1987*, s 28

Question 6.4: Parole process in the juvenile parole system

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

The decision making process in the CAS Act should not apply to young people in a youth parole jurisdiction. As outlined above, the considerations currently outlined in the CAS Act for adults are not all appropriate for children and there are principles and considerations particular to children that should be included in the legislation (refer to 6.2(2)). The current practice in the Children's Court is more flexible and more relevant to young people than the decision making process set out in the CAS Act.

The Children's Court appears to have developed a parole decision making process that gives greater consideration to a young person's prospect of rehabilitation and the workability of the proposed post-release plan, than the specific criteria set out in section 135. The Children's Court gives consideration to the 'public interest' within a decision making framework that recognises that it is in the interest of the public that young people be successfully rehabilitated.

Further, the reports prepared by Juvenile Justice to assist in a parole determination address very different criteria than that set out in s 135. Clause 91 of the *Children (Detention Centres) Regulation 2010* sets out a number of matters that must be included in reports, including material describing the details of any proposed post-release supervision. The clause does not reference any assessment of the detainee's risk of re-offending or likelihood of adapting to lawful community life. In practice the reports provided by Juvenile Justice do not cover all the matters listed, although it would be preferable if they did.

The process developed by the Children's Court to deal with parole matters is unique to the juvenile system. It recognises the particular vulnerabilities and dependant status of young people, as well as allowing for the fact that, with intensive support, the assessment of a young person's suitability for parole can change in a relatively short period of time. The practice of adjourning parole matters while a particular issue is addressed is preferred to a simple parole revocation.

When a parole breach is alleged, there should be greater reliance by the Children's Court on the serving of a notice to attend court as opposed to the issuing of a warrant. While some young people appear before the Children's Court for a parole breach from the community, the majority of young people breached on their parole appear from custody, having been subject to the

same process that applies in the adult jurisdiction where a warrant issues following revocation. It would be helpful if juvenile parole legislation set out the type of matters where a notice to attend should be used. For example, where the breach alleged is a failure to comply with supervision, a notice to attend court should be the first option employed.

Case study 4 - Mark

Mark committed the offence of robbery armed with a dangerous weapon (SCIO) as a child and was sentenced to 32 months imprisonment by the District Court. His non parole period was 16 months. Mark was breached on his parole for a failure to comply with supervision. The report requested a 'lengthy 8 to 10 week adjournment..while allowing Mark to remain in the community to demonstrate his commitment and compliance to the conditions of his parole and his medication treatment plan.' Parole was revoked, the matter listed for mention and no warrant was issued. The updated report for Mark's parole revocation review hearing noted that Mark had "complied with his medical treatment plan, ceased use of alchohol as directed and successfully commenced a scholarship with the Australian Institute while maintaining full time employment." The Court declined to confirm the revocation of Mark's parole and his parole continued.

Case study 5 - Maddie

Maddie was sentenced to 9 months imprisonment by the District Court. Her non parole period was 1 month. Three months before the expiration of her sentence Maddie appeared before the Children's Court regarding a breach of her parole for failing to be of good behaviour. No warrant issued and Maddie appeared before the Court from the community. The short period of supervision Maddie had left on her parole was noted. The focus of the court was on ensuring Maddie was complying with her parole and was 'on track' during that time. Her matter was adjourned on three occasions with short updated reports requested to monitor whether Maddie was complying with her supervision, in particular that she was engaged with education. The final report noted that Maddie had engaged with Juvenile Justice on a weekly basis and engaged in and attended school. The revocation of Maddie's parole was confirmed and fresh parole granted.

Case study 7 - Joshua

Joshua received a 9 month sentence for Aggravated Break and Enter. His non parole period was 19 days. A condition of his parole was to accept the supervision of Juvenile Justice until his

relocation to Israel and to take all steps to facilitate this relocation. Until his relocation Joshua was to reside at his family's address. Joshua relocated to Israel without informing Juvenile Justice. In May, breach action was instigated, Joshua's parole was revoked and a warrant issued. In December Joshua returned to Australia to visit family over Christmas. He was arrested and taken into adult custody at Silverwater Correctional Centre. The review hearing for his revocation hearing was initially listed for the end of January. After Joshua was able to contact Juvenile Justice and legal representation his matter was re-listed earlier in January. Joshua was given parole.

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

We do not think that it is appropriate for victims to be involved in parole decision making for young offenders. The CAS Act currently provides 'that other submissions may be made at the hearing by the State and by victims of the offender'.[16] We do not support this provision being replicated in juvenile parole legislation or applying to young people. Victims have an opportunity to be involved at the time of sentencing. The focus of the court at the time of a parole hearing for a young person should primarily be on rehabilitation, rather than restorative justice, deterrence, just deserts or incapacitation.

At present, the Children's Court doesn't involve victims in parole proceedings for young people. This reflects the court's focus on protecting the privacy of young people and ensuring confidentiality about their matter as well as their personal circumstances. The Australian Law Reform Commission addresses the particular privacy issues affecting children and young people in their report on *Identification in criminal matters and in court records*:[17]

> The privacy of children and young people inside the courtroom has attracted more judicial and legislative protection than the privacy of children in other circumstances. Both the United Nations Convention on the Rights of the Child (CROC) and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules) refer specifically to a young person's right to privacy at all stages of juvenile justice proceedings. Rule 8.1 of the Beijing Rules notes that this is 'in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.' The rule is explained in the official commentary.

[16] *Crimes (Administration of Sentences) Act 1999*, s 148(5)(e)
[17] Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice,* ALRC 108 (2008), [69.85]

> Young persons are particularly susceptible to stigmatization. Criminological research into labeling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as 'delinquent' or 'criminal'. Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example, the names of young offenders, alleged or convicted).

Parole decision making doesn't occur in a vacuum. For victims to have any meaningful involvement in decision making for young offenders in a system which focuses primarily on rehabilitation, they would need to be aware of all of the relevant information impacting upon the parole decision, including the young person's personal circumstances. Research indicates that a large proportion of young people in detention have low educational attainment, significant physical and mental health needs, and have experienced childhood neglect and abuse.[18] It is not appropriate for victims to be privy to a young person's personal information which is likely to be relevant to their offending and rehabilitation.

Further, young people who have been sentenced to parole have almost certainly committed a serious offence in order to receive this penalty and the victims of these offences may well be very traumatised from this experience. This may cloud their view and could impact on parole proceedings in a manner that does not promote the rehabilitation of the offender, but instead stigmatises the young person. It could also be detrimental to a victim to have them involved in the process, particularly if the young person is still immature and has difficulty expressing remorse or expressing themselves more generally.

Question 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?

For the most part, the CLS finds that Juvenile Justice assists young people to prepare for parole very well. They are invariably very efficient and proactive in working with young people and their families to develop a case plan and a post release plan. In the experience of CLS, the detention centre staff and staff from different regions work collaboratively to develop case plans for young people.

[18] Indig, Vecchiato, Haysom, Beilby, Carter, Champion, GTaskin, Heller, Kumar, Mamone, Muir, van den Dolder, Whitton (2011) *2009 Young People in Custody Health Survey: Full Report,* Justice Health and Juvenile Justice Sydney, 12-15

There is some scope for Juvenile Justice to make some improvements to the way that serious sex offenders are prepared for parole. It should be outlined to these young offenders at an early stage what they need to achieve to be considered for parole, including what programs they will need to complete and how long these programs run for. The CLS have developed a Community Legal Education package about parole. With additional funding, CLS could look at providing CLE sessions to young people and staff in detention centres and correctional facilities across NSW to inform them about the parole system, including the importance of completing relevant programs in order to achieve parole.

We have observed that the case loads of Juvenile Justice officers are increasing. This is likely to have an impact on the level of attention and detail that can be given to each young person in preparation for parole and the support that can be put in place for their parole preparation and reintegration into the community.

Parole planning and preparation for young people supervised by Community Corrections is generally far less proactive and responsive to the needs of the young person, and the Children's Court. Community Corrections work in a system designed for adult offenders. Different policies and practices apply that do not mirror those in Juvenile Justice. Staff are trained to work with adult offenders, with longer sentences and longer non parole periods. There is an expectation of adult offenders to be independent and self sufficient. Time is not of the essence in the same way that it is in the juvenile system.

In the experience of CLS, it is not uncommon for a parole matter to be adjourned for a number of weeks for a Community Corrections Officer to look into a particular issue and find that there is no updated information available for the court on the next adjournment date. When a young person is transferred from one adult facility to another any request from the Court does not follow the young person and the request will have to be made again but to the new facility. This is in contrast to common practice within Juvenile Justice to maintain clear lines of communication and responsibility when young people are transferred between Juvenile Justice centres.

Case study 8 – Brian

Brian appeared before the Children's Court for a breach of parole as he failed to attend appointments. Two main issues were highlighted in the parole report, namely, a need for drug rehabilitation and a need for suitable accommodation. The report noted that these issues had

not been addressed so the author of the report does not support parole. The Court ordered an adjournment with an updated report in regard to these issues. The updated report stated that the issues were not resolved but noted development with regard to a potential placement at a drug rehabilitation centre. A further two week adjournment and updated report was ordered. The updated report noted that the potential placement did not eventuate and accommodation was again noted as an issue. The Court ordered a further adjournment with an updated report addressing accommodation. The young person provided an address where he said he could stay and he said that the address has been approved previously by Community Corrections. It was noted in court that Corrective Services ordinarily requests a 6 week adjournment to conduct an address check. The Court ordered a two week adjournment, noting that the matter may not be resolved on the next occasion.

Case study 9 – Paul

Paul is supervised by Wyong Community Corrections Service. On 20 December 2013 the service issues a breach report, Paul's parole is revoked and a warrant issued. Paul is admitted to Wyong Cells in mid December and a request for an updated report is made of Wyong CCS. On the 29 January an update report is received from Wyong CCS which states that Paul was transferred to another Centre on the 9 January. The report suggests contacting the Batthurst Correctional Centre Parole Unit if more detailed information is required. The matter is adjourned to the 12 February 2014 and an updated report prepared for that date. The report relies on a 'telephone interview' with Paul. The report notes that Paul has put forward a residential address to stay at if he were to be granted parole but that this address has not been able to be verified as yet. The usual time requested by Community Corrections for that information is 6 weeks. The Magistrate is able to obtain other information on the day of court that shows the address has already been verified by another court. This is information that was available to Community Corrections. Paul is given a fresh grant of parole.

Case study 10 – Joe

Joe is charged with fresh offences. His parole is revoked, a warrant issued and he is taken into adult custody. When he appears before the Children’s Court for a determination of his parole there is no parole report. Inquiries by the Registry reveal that as the request for the report was received late no report has been started. A further two week adjournment is requested for the report.

Question 6.6: Reconsideration after refusal of parole

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

We do not support the 12 month rule applying to adults or to young offenders and there should not be a restriction on future parole applications for young people. The 12 month rule is not consistent with the principle of detention as a last resort for children. Further, it would operate very unfairly as young people are often subject to circumstances outside of their control and reliant on others, such as family or a government agency to develop a strong post release plan. They should not be disadvantaged by having their matter put off for a 12 month period if post release plans, such as appropriate accommodation, are not entirely in order when their matter is first before the court.

The sentences imposed on young people tend to be shorter than their adult counterparts and a finding of 'special circumstances' is common. Enforcing a '12 month rule' in relation to young people will mean that many young people will serve their full term in custody as a 12 month deferral will take them beyond their full term. As such, any identified need for assistance with rehabilitation in the community will not be met.

In practice, the 12 month rule is not currently applied in the Children's Court. Children's Magistrates will adjourn matters if they do not consider it appropriate to grant parole when a young person first comes before the court eligible for parole.

Case study 11 – Melody

Melody appeared before the Children's Court regarding a breach of her parole. Melody instructed her solicitor that she did not want parole as she wanted to stay in custody because her girlfriend was in custody. Melody's parole was to expire within 12 months. The Magistrate adjourned Melody's parole for 3 months. Within two weeks of her court appearance Melody contacted her solicitor and said she had changed her mind and did want to apply for parole.

Question 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?

Young people who are assigned to Community Corrections for supervision are at a disadvantage compared to young people who are supervised by Juvenile Justice. Juvenile Justice specialises in working with young people and provides a much higher quality of case management for young people assigned to them. Community Corrections should not be given case management responsibility for young people under the age of 18, even when young people are in corrective services facilities. This category of offenders requires specific programs and specialist case management and it is appropriate for Juvenile Justice to case manage these young people.

The logistics involved in Juvenile Justice case managing young people in, or released from, Juvenile Correctional Centres is often cited as an impediment to this occurring. However, any logistical issues could and should be addressed through the development of appropriate policies and procedures between Community Corrections and Juvenile Justice. There currently appears to be a somewhat arbitrary system in place. The first case study outlined below demonstrates that it is possible for Juvenile Justice to continue to supervise a young person in a facility managed by Corrective Services NSW and upon release from custody. Both case studies demonstrate that there is no firm rule applied to the current supervision arrangements arrived at between Juvenile Justice and Community Corrections.

Case study 12 – Adam

Adam is 18 and was released on parole from Kariong, a Juvenile Correctional Facility. He has previously been supervised by Juvenile Justice and Juvenile Justice continue to supervise him. As Community Corrections is 'administratively' responsible for him, any breach action would have to be instituted by Community Corrections. However, Juvenile Justice is responsible for Adam's day to day supervision and any decision by Community Corrections would be made based on information provided by Juvenile Justice.

Case study 13 - Craig

Craig was 16 and detained at Cobham Detention Centre when his parole and sentencing matters were initially before the Children's Court. He was then transferred to a Juvenile

Correctional Facility, Kariong, prior to the finalisation of his matters. Juvenile Justice continue to work with Craig and prepare the parole and sentencing reports. The reports note a very clear need for supervision and indicate that he will be supervised by Corrective Services when he is released on parole. Craig will be 17 when he is released.

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

As noted previously, we are aware that Juvenile Justice Officers' caseloads are increasing which impacts on the support, programs and services that can be provided to parolees. As a rule, Juvenile Justice provides a high level of support and high quality programs and services to parolees in the juvenile parole system.

Question 6.8: Breach and revocation of parole in the juvenile parole system

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

The 'upper limit' for a revocation review hearing for young people should be reduced from 28 days to 14 days and the 14 day waiting period should be removed. The provision should be amended to read that 'a revocation notice must set a date (occurring not later than 14 days after the date on which it is served) on which the Parole Authority is to meet'. The main practical consideration in the juvenile parole system is allowing sufficient time for Juvenile Justice to prepare a parole report. Juvenile Justice have a practice of preparing reports for young people who are in custody within 2 weeks so we anticipate that this is a workable proposal.

(2) Should the 12 month rule apply after parole revocation in the juvenile parole system? If so, what provision or limit, if any, should replace the 12 month rule?

The 12 month rule should not apply after parole revocation in the juvenile parole system and there should not be any restriction placed on the magistrate's discretion. Magistrates currently adjourn matters on a case by case basis. This practice should be set out in the juvenile parole legislation and specifically state that a magistrate may adjourn or defer a revocation decision.

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 role of the SYORP should not be extended. SYORP do not have any face to face contact with young people so they are not well placed to make decisions about serious young offenders. Juvenile Justice Officers have regular contact with the young offender and their family and are best placed to gather information about a young person, including their risk of reoffending, and put it before the court. We understand that specific sections and specialist staff within Juvenile Justice work with serious young offenders, in particular, violent offenders and sex offenders and their knowledge and expertise is fed into the parole reports.

The juvenile parole jurisdiction is smaller than the adult parole jurisdiction and there are a limited number of magistrates dealing with parole matters. In practice, they often have a considerable amount of background knowledge about a young person and their personal circumstances when making a parole determination and there is not a need for the SYORP panel to feed any additional information to the magistrates.

We do not support the role of SYORP being extended to include face to face contact with young offenders. Establishing a rapport with a young person can be quite an involved process and young people can be reticent to open up to a wide range of people about personal matters. If there is a need for more detailed information and reporting about young people who have committed serious offences, Juvenile Justice should be provided with additional resourcing to enable specialist juvenile justice officers to provide further, more detailed information to the magistrate or enable more highly qualified Juvenile Justice Officers to be employed by Juvenile Justice.

Question 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 Centers) Act 1987* (NSW) apply when SPA is dealing with an offender who is under 18?

All of the principles in section 6 of the *Children (Criminal Proceedings) Act 1987* should apply to juvenile parole matters. Section 1(a) and (b) of the *Children (Detention Centres) Act 1987* are particularly important, as is the principle contained in section 4(c) of the *Children (Detention Centres) Act 1987*.

We support a presumption in favour of parole for young people that is identified as an option in the question paper (see 6.82). This is consistent with the principle of detention as a last resort for young people. Naylor and Schmidt observe in their article, *Prisoners' right to fairness,* that:[19]

> In NSW, there is a presumption against release. Pursuant to s 135(1) of the *Crimes (Administration of Sentences) Act 1999* (NSW), the parole authority 'must not make a parole order for an offender unless it is satisfied, on the balance of probabilities, that the release of the offender is appropriate in the public interest.'

We do not support a presumption against parole for young people.

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

Different criteria should apply to parole decisions for young people and adults. As outlined previously, we do not support SPA being the decision maker for juvenile matters. As we outline in response to question 6.1 and 6.3(2), we think that the Children's Court should make decisions in relation to all young people under 21 who are currently serving a sentence or who have served the whole or any part of their sentence in a juvenile detention centre or a juvenile correctional centre.

Please refer to our response to question 6.1(3) which outlines the criteria that we think should apply to juvenile parole determinations. If SPA continues to have jurisdiction to hear juvenile parole matters, the same criteria that apply to young people in the Children's Court under a new legislative regime should apply to children appearing before SPA.

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

We do not think that SPA should have jurisdiction to deal with young people under the age of 21 who have served the whole or any part of their sentence in a juvenile detention centre or a juvenile correctional centre. However, if SPA continues to make parole determinations in relation to young people, the criteria we outline in response to question 6.2(3) should also apply to children in the adult system. The CAS Act should also set out additional considerations to be taken into account in cases where the index offence was committed as a juvenile. The

[19] Naylor and Schmidt, 'Do Prisoners have a Right to Fairness before the Parole Board?' (2010) 32 *Sydney Law Review* Vol 32, 2010, 443

considerations could include the age which the offence was committed and evidence of rehabilitation since the offence was committed.

Question 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?

We do not think that SPA should continue to have jurisdiction to deal with young offenders. Children's Magistrates have specialist training and are experts in working with children in the criminal justice system. It is far preferable to have Children's Magistrates as the decision maker in parole matters for juvenile offenders than making provision for a parole member with 'youth expertise' to sit on SPA. However, we do support SPA having members with youth expertise given that many offenders appearing before SPA are 'youthful offenders'. If SPA continue to have jurisdiction to deal with juvenile parole matters, we support a special composition of SPA including members with youth expertise. The Corrective Services member could be replaced by a Juvenile Justice member, for example.

Kemshell argues in her chapter on *Young people and parole: risk aware or risk averse* that parole board members, practitioners and parole report writers 'require high levels of expertise and an extensive knowledge base such as':[20]

- Knowledge of risk factors and the patterns and circumstances of sexual and violent offending pertinent to young offenders;
- Knowledge of the development and maturation of young people; the Court of Appeal ruling in the case of Lang (R v Lang and 12 others (2005) 2 All ER 410) stated that children may 'change and develop…within a shorter time than adults' and that 'their level of maturity may be highly pertinent when assessing what their future conduct may be and whether it may give rise to significant risk of serious harm';
- Knowledge of thinking patterns and cognitive skills of the young person;
- Familiarity with key risk-assessment tools for high-risk youth, for example, the structured assessment of violence risk in youth (SAVRY) and specific risk-assessment tools for high-risk youth, for example, the structured assessment of violence risk in youth (SAVRY), and specific risk-assessment tools for youth who sexually abuse;
- Knowledge of childcare legislation, including the complex needs of children 'in need';

[20] Blyth, Newman, Wright, *Children and young people in custody: Managing the risk* (the Policy Press, 2009) 88

- Expertise and access to relevant services and resources required to effectively resettle and risk manage young offenders back into the community;
- Knowledge of how young people make decisions on risk, and the processes associated with a transition away from risky behaviors and crime; and
- Knowledge of the factors that contribute to desistance from crime, the role of protective factors and mechanisms of resilience to crime pathways

Arguably, this skill set is closely aligned with the experience and qualifications of Juvenile Justice Officers. It is questionable how many Corrections Officers would have this level of knowledge and expertise about young people. Children's Magistrates are also more likely to have this specialist knowledge and expertise than community members on SPA.

In the United Kingdom, young people are dealt with under a 'largely adult-focused system'[21] and Kemshall states that 'members are recruited as lay people, and it is reasonable to presume that this will not necessarily offer high levels of expertise.'[22] Kemshall states that, 'In essence, Board members are highly dependent on the quality of information gathering and analysis offered by those who compile the parole dossier and provide reports. Such reports are key and their quality is crucial.'[23]

We support a juvenile parole model which ensures that specialist Juvenile Justice officers with the relevant knowledge and skill prepare high quality parole reports, including case plans and post-release plans for young people, for a Children's Magistrates who has specialist knowledge about young people.

Clause 91 of the *Children (Detention Centers) Regulation 2010* sets out the material that must be provided to the Children's Court to assist them to make their parole determination. Ideally, parole reports would also address any identified concerns about the young person achieving parole and outstanding issues that should be addressed before parole can be achieved. The parole report should also include the date that parole was revoked. In practice, not all of these matters are covered in every parole report. It would be helpful if a provision such as this could be given prominence in any new juvenile parole legislation to clearly outline the matters that must be addressed in a parole report, similar to section 25 of the CCPA.

[21] Blyth, Newman, Wright, *Children and young people in custody: Managing the risk* (the Policy Press, 2009) 84
[22] Blyth, Newman, Wright, *Children and young people in custody: Managing the risk* (the Policy Press, 2009) 88
[23] Blyth, Newman, Wright, *Children and young people in custody: Managing the risk* (the Policy Press, 2009) 89

Question 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?

In the experience of CLS, young offenders have significant difficulty accessing in-custody programs and preparing for parole when in the custody of Corrective Services NSW in comparison to those in juvenile detention centres. The staff-to-detainee ratio's are lower at Kariong and other correctional centres than at juvenile detention centres and staff are not subject to the same legislation and policies that specifically address the rehabilitation of young people in detention centres.

Young people in correctional centres are subject to the same practices as adult inmates are, such as being restricted to individual cells at 3.30pm each day. This has a direct impact on young people's ability to access programs and assistance to prepare for parole when detained at Kariong. Indeed, the rehabilitative benefits of juvenile detention centres are acknowledged in relevant case law.[24] Young people in juvenile detention centres and juvenile correctional centres should have access to the same programs and the same staff-to-detainee ratio.

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

Juvenile Justice is best placed to support and supervise young offenders. It would be preferable for all young offenders under 18 and those under 21 identified as vulnerable be detained in juvenile detention centers. However, given that this is not the situation, we consider that Juvenile Justice should supervise all young people in this category. This would involve Juvenile Justice preparing any parole report required.

Practical difficulties regarding Juvenile Justice staff accessing young people in correctional facilities are often cited as a concern with this proposition. However, as referred to in previous case studies, such access can and does occur. Young offenders can have their parole breached by Juvenile Justice and be detained in Kariong. Juvenile Justice will be responsible for preparing the breach report. Young offenders can have their parole breached by Community Corrections and then be detained in Cobham or breached by Community Corrections, detained at Silverwater Correctional Centre, and appear before the Children's Court for parole. There are

[24] See for example

young offenders who are transferred to Community Corrections supervision at 17 and young offenders who are kept under Juvenile Justice supervision at 19. Logistical difficulties in the current system are already overcome but there does not appear to be any uniform and transparent approach to supervision. Having clear guidelines and specific policies in place would address this and provide for a more streamlined process whereby any logistical difficulties could be addressed.

Currently, young offenders of any age who receive an initial grant of parole from the Children's Court and are who are subsequently supervised and breached by Community Corrections appear before the Children's Court with regard to the breach. Unlike the situation with Juvenile Justice, there is no officer from Community Corrections based at the Children's Court and there is no legal representative to appear on behalf of Community Corrections. Reports are not always easy to access and we have been advised that it is policy not to look for a missing report until the day the parole matter is before the court. It is impossible to verify or clarify information on the day a parole matter is before the court and there is a resulting pressure on young people not to challenge such information or be faced with a further adjournment and period in custody.

Case study 14 - Joel

Joel appears before the children's court in regards to his breach of parole. Community Corrections prepare a report for the court. Joel disputes many of the allegations in the report. The dispute cannot be fully canvassed on the day. If Joel was to instruct his lawyer to press the issues, the matter would have had to be adjourned for further investigation while Joel remained in custody.

A clear approach that assigned Juvenile Justice as the supervising body for all young offenders that received parole in the Children's Court, would complement the model we have outlined in this submission. It would ensure that the most appropriate organisation was supporting and supervising young offenders to be rehabilitated. It would ensure that when a young person appears before the Children's Court for a parole determination, Juvenile Justice would be responsible for any report and any supervision. Further, it would ensure that when an offender, over the age of 21 and supervised by Corrective Services would appear before SPA.

If Community Corrections continue to have responsibility for supervising young people in their custody and upon release into the community, the Department could improve their responsiveness to young people by assigning specialist youth officers within Community

Corrections to work with young offenders. It would also be useful for these specialist officers to work closely with Juvenile Justice when they take over supervision of a young person. It is not uncommon for the same Juvenile Justice Officer to work with a young person for many years and have a detailed knowledge of their personal circumstances and criminogenic needs. This knowledge and experience should be utilised by Community Corrections who do not have a history with the young offender. Community Corrections should also encourage their officers to respond to queries raised by the court in a timely manner.

Additional comments

There are a number of other miscellaneous matters which we think need to change in order to impove current practices and processes in the juvenile parole system.

Paperwork provided to the young offender and their legal representative

At present, the CLS lawyer is provided with some paper work for the parole matter when the young person first comes before the court, but this does not include the sentencing remarks or the young person's criminal history. It is provided to the PLS for adults in the bundle of material provided for a parole hearing and should be provided to the CLS so that the legal representative can be across all of the relevant information in relation to the matter. Section 135(2)(d) and (e) of the CAS Act requires the Parole Authority to have regard to 'any relevant comments made by the sentencing court' and 'the offender's criminal history'. Procedural fairness should be afforded to the young person to ensure that their legal representative is provided with the information and documents that the 'Parole Authority', namely, the Children's Magistrate is referring to in making their decision whether to release a young offender to parole.

Further, the breach notices that are currently sent to young people are based on practices and procedures in the adult jurisdiction. The revocation papers that are sent to young people do not relate to the youth system, do not use plain English and are misleading. The breach notices should be updated to reflect the youth system and how it operates. The problems with the paperwork can have serious ramifications for young people. For example, the paperwork currently indicates that their matter will be before the Children's Magistrate in two weeks time and that young people have an option whether to attend court in relation to the breach if they're in the community. This reflects the adult system where adults can choose not to appear before SPA in relation to the breach or simply accept that parole will be revoked. For young people, all parolees are required to appear before the Children's Court if they are in custody or in the community and alleged to have breached their parole.

Case study 15 - Sarah

Sarah breached her parole and received a notice of revocation. The notice stated that she could attend court to make a submission if she wanted to and that she had to contact the registrar 7 days before her matter if she intended to come to court. Sarah did not attend court, a warrant was issued and she was arrested and taken into custody. Sarah had checked with both her carer and Juvenile Justice and was advised that she didn't have to attend. This was confirmed

in the breach report. The notice also stated that Sarah was to contact the Registrar to advise them whether or not she was in need of legal aid. This is not in fact expected of young offenders on parole as Sarah is automatically entitled to legal aid.

The breach report that is provided to the young person's legal representative should particularise the alleged breach of parole. This is not currently the practice. In cases where fresh offending is proven, this is not as important, but it is particularly necessary for conditional breaches. The paperwork should specify what condition is alleged to have been breached and how. The current CLS parole solicitor is aware of one case in which a young person was brought before the court in relation to an alleged 'fresh' breach of parole for which the young person had already been dealt with by the court. It was only because the CLS lawyer and the representative for Juvenile Justice recalled the particular details of the alleged breach that they realised that the young person had in fact been dealt with by the court in relation to this allegation already. Had the alleged breach been appropriately particularised in the paperwork, this could have been avoided.

A clear process for determining and dealing with alleged breaches of parole

A more transparent process for dealing with alleged breaches of parole is required. At present, there is nothing set out in the legislation about the process to be followed where a breach of parole is alleged. The juvenile parole legislation should include a provision similar to s 48P of the *Children (Criminal Proceedings) Act 1987* which relates to the failure to comply with a youth conduct order:

> (1) On an application made in accordance with the regulations, the Children's Court may call on a child in respect of whom a youth conduct order has been made to appear before it if the Court suspects that the child may have failed to comply with the order.
>
> (2) If the child fails to appear, the Children's Court may take any action referred to in section 98 (1A) of the *Crimes (Sentencing Procedure) Act 1999* as if the child were an offender for the purposes of that subsection who had failed to appear.
>
> (3) If the Children's Court is satisfied that a child appearing before it has failed to comply with a youth conduct order, the Court may:
>
> (a) administer a warning to the child, or
>
> (b) decide to take no action with respect to the failure to comply, or

(c) vary the order, or

(d) revoke the order.

Arrangements between Juvenile Justice and Corrective Services NSW

We are aware that Juvenile Justice and Community Corrections have a Memorandum of Understanding to manage the arrangements about the supervision of young people in detention and custody and we understand that this document is not publically available. It is important that the court and legal practitioners know which agency is responsible for supervising a young offender and what considerations apply to the decision about where to detain a young person. We think that the arrangements between Juvenile Justice and Corrective Services NSW should be made publically available. This will enable young people and their legal representative to understand who is supervising them and why. It may also have a bearing on submissions that the legal representative makes to the court.