

JUDGES' UPDATE

SEPTEMBER 2005

Information for the Judiciary

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COMMUNITY WORK WRAP

The Courts imposed just under 28,000 new sentences of Community Work in the year to 30 June 2005, slightly down on the previous year, but the total muster managed last year rose.

Offenders serving Community Work are managed in 56 centres around the country. Work parties and individuals have been involved in a variety of projects to benefit the wider community including foodbank gardening, marae makeovers, recycling for community groups, wood chopping, school construction projects, and improving wildlife reserves and walkways.

The number of new sentences managed in the 12 CPS areas ranged from 1071 in Nelson/ Marlborough/West Coast to 3068 in Whanganui/Tararua/Taranaki.

Tararua Area Manager Mike Dale has nine Probation Officers, 27 supervisors and six senior supervisors involved in Community Work in his area, which stretches from Levin to New Plymouth, Dannevirke, and Taihape.

"Servicing smaller communities from main service centres involves travel time for staff and public transport issues for offenders on Community Work.

"Despite these challenges, we have an excellent range of projects sponsored by local authorities, service groups, voluntary organisations, and marae. Regular sponsor meetings are held with sponsors."

Most (67%) of the area's Community Work offenders serve their sentences in supervised work parties, while the rest work on approved agency placements, says Mike.

Service Managers meet regularly with local judges to discuss Community Work and, from time to time, judges visit local service centres and projects.

Mike says Community Work enables offenders to make general reparation through projects, and also increases community awareness of the work of CPS.

YOUR INPUT

Judges' Update is distributed quarterly to the judiciary, courts, and Parole Board. If you have any comments or suggestions for this publication, please contact:

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DEPARTMENT
OF CORRECTIONS

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From the General Manager

Tena koutou katoa

Judges' Update once more seeks to provide you with information about the work CPS is doing - much of it positive, some of it addressing areas for improvement.

The article on Extended Supervision highlights some important issues emerging from the implementation of this relatively new legislation.

The Department is eager to address the length of time it takes to process applications for ES orders, as well as the delays that are allowing child sex offenders to finish their sentences before the ES application is resolved.

As the Courts have affirmed, Department psychologists can be relied on to provide accurate risk assessments based on the actuarial tools.

This Judges' Update also profiles the findings of a recent review of Tikanga Maori Programmes in our Central Region. These motivational programmes provided by iwi, hapu and marae are a vital aspect of our responsiveness toward Maori offenders and communities.

CPS remains committed to improving both the delivery and availability of these programmes, as well as the rate of offenders graduating from them.

Other stories in this issue also highlight the real diversity of our roles and responsibilities, from managing Community Work sentences to sharing our expertise with Pacific neighbours.

You'll read about CPS's role in Court-referred Restorative Justice and recent opportunities for Psychological

Service staff to help counterparts in Queensland to develop rehabilitative programmes for offenders there.

If you have any questions or issues you'd like to see addressed in Judges' Update, please contact the CPS Communications Team. The contact details are on the cover.

Noho ora mai



Katrina Casey, General Manager
Probation and Offender Services

Restorative Justice Pilot and CPS

CPS staff have made a small but useful contribution to the Court-referred Restorative Justice (RJ) Pilot.

The fledgling government scheme has been positively evaluated and will continue in District Courts at Waitakere, Auckland, Hamilton and Dunedin.

Probation Officer Lynda Bell of Waitakere's Court Servicing Team says CPS staff developed a good working relationship with the RJ coordinator Garry Summers, himself a former Probation Officer.

When the Judge indicates a restorative justice conference may be appropriate, the offender is screened by the RJ coordinator, and, if suitable, the case is referred to facilitators to investigate further with the victims.

If a case is remanded for a pre-sentence report and not RJ, a Probation Officer may still identify the case as suitable and refer to the co-ordinator. Initially, RJ could only be investigated following direction from a judge. However, a policy change means RJ co-ordinators and Probation Officers can also initiate referrals.

"We pick them up through the screening process, and would probably refer one a week," says Lynda.

If an RJ conference has taken place, the Probation Officers often have taken the outcome into account in the pre-sentence report when recommending sentence options to the court.

Lynda says the court-referred process can be of real help to victims of crime. "It allows offenders to take responsibility, but it very much allows the victim to say how the offending affected them."

Meanwhile, Garry Summers says the Probation Officers have an important role in restorative justice. Their knowledge in assessing an offender's motivation to change is helpful when considering whether the RJ process is appropriate.

Garry says the RJ process has helped in instances where judges have asked Probation Officers to provide emotional harm reports. In some instances the information generated by the restorative justice conference can spare the victim from retelling their ordeal.

Findings

(from evaluation of cases between Feb 2002 and Feb 2003)

- 92 percent of victims who took part in an RJ conference were pleased they had done so
- Most would recommend the RJ process to other victims
- Almost 3/4 of victims said that their offender understood how they felt after the RJ process
- Around 2/3 said their offender had been made accountable through RJ and shown they were sorry
- Victims became less satisfied by the outcome if reparation was not paid in full.

Extended Supervision Applications in the Courts

The implementation of the Parole (Extended Supervision) Amendment Act 2004, which provides for ongoing supervision of child sex offenders beyond the end of their sentence, has slowed in recent months.

This is primarily due to an increase in the number of offenders defending Extended Supervision (ES) applications. This article provides some updated statistics on ES and outlines the Department's view on a number of issues that have emerged as a result of recent defended ES cases.

Facts and Figures

As at 17 August, the Courts have decided 35 ES applications, granting 34. Seven of these applications were defended in relation to either the order or its length, and 28 offenders consented to the order. Three offenders have appealed, and the Department is appealing the one decision declining an order. The appeals have not yet been heard.

Adjournments

The Department is concerned at the length of time it is taking for ES cases to progress through the Courts. Of the resolved cases, defended applications took an average of 93 days from the date of first call to the decision being delivered. Where offenders consented, the applications took an average of 23.4 days to process.

As at 17 August there were 26 applications still before the Courts, with hearing dates scheduled out to November. Of these unresolved cases, 15 have a final hearing fixture set, all of which are defended hearings. The average length from first call to final hearing for these cases is 180 days.

Of the 26 offenders currently before the Courts, 19 are not currently serving any sentence or order. This includes five 'transitional' offenders who were not on a sentence or order at the time of the application and 14 'eligible' offenders whose sentences or orders expired after the application was lodged (s107F of the Parole Act 2002 requires that the application be lodged prior to eligible offenders' sentence expiry date or the end of their release conditions).

A further two respondents have not reached their sentence expiry date but are not currently subject to any conditions or supervision.

The fact that ES applications are taking such a long time, with frequent and lengthy adjournments, is of concern because of the high number of respondents coming off their sentences before the application is resolved. These respondents are serious child sexual offenders deemed at a high risk of re-offending; they present a high risk if unsupervised in the community.¹ There is also a risk that offenders no longer being supervised will avoid ES by changing address and this has already occurred with warrants of arrest outstanding for five offenders.

CPS is making efforts to ensure Crown Solicitors and judges are aware of offenders' sentence end dates and the need for urgency where offenders are soon to end their sentences.

The main reason for the delays appears to be that many respondents are defending ES applications than previously. This has resulted in legal aid applications, disclosure requests and independent psychological reports, all of which take a considerable amount of time to process.

In several instances, delays have been caused by respondents who have not instructed counsel sufficiently or counsel who have not met submission deadlines. Adjournments have also been necessitated by hearings running overtime with both Department and defence psychologists giving evidence and being cross-examined. The fact that hearing dates must fit in with experts' schedules also means court dates are being pushed further out.

The possibility of offenders choosing their own psychological assessors was contemplated and rejected in the drafting of the governing legislation, the Parole (Extended Supervision) Amendment Act 2004.²

This was because few professionals working outside the Department of Corrections have experience with the actuarial tools used to assess risk in child sexual offenders.

The accuracy and reliability of the actuarial assessments over assessments based only on interview or file information has been affirmed by the Courts.³

The Department's concern is for those situations where lengthy adjournments could potentially result in a high-risk offender being unsupervised in the community. It believes that adjourning ES applications to allow for opposing psychological evidence of limited benefit is

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¹ Although some offenders are on bail conditions these are not as strict as their release or parole conditions.

² Department of Corrections, Parole (Extended Supervision) and Sentencing Amendment Bill: Departmental Report: Part 2: Clause by Clause Analysis. Report to the Justice and Electoral Committee (Department of Corrections, Wellington, 10 May 2004) p22.

³ Chief Executive of the Department of Corrections v Belcher (High Court, Auckland, CRI 2004-404-000444, 12 April 2005).

difficult to justify in the face of the risks.

However, it is recognised that the decision whether to grant an adjournment for this purpose is one that correctly remains with the presiding judge.

Victim Notification: S107H

The issue of victim notification has arisen in several recent cases. The ES legislation requires that victims who have registered with the Department of Corrections are notified of ES hearing dates and outcomes (s107H(4)).

If victims are not registered the Department does not have their names or contact details and therefore is unable to notify them.

As a matter of standard procedure, the Victims Information Manager is informed of all ES hearing dates and outcomes. The Victims Information Manager then ensures that any registered victims are notified and provided with information about their rights in relation to ES orders.

It is the responsibility of the New Zealand Police, under the Victims Rights Act 2002, to provide victims with the

opportunity to register with the Department to receive information about offenders.

Extended Supervision Commencement Dates: S107L(1)

The Department would also like to take this opportunity to remind the judiciary of, and clarify the legislation's provisions concerning, the commencement dates of ES Orders. Section 107L(1) stipulates that

“An extended supervision order comes into force,

(a) if the order is made while the offender is detained or liable to be recalled, on the offender's statutory release date; or

(b) if the order is made at any other time, on the date specified in the order.”

When making an ES Order, therefore, judges need to note whether or not the offender is currently in prison or subject to recall.⁴ If so, the order takes effect on their statutory release date (identified in the offender's Release License accompanying the application). There is no discretion to specify a different date.

⁴ This information is provided in the application on the offender's Release Licence and s60(2) of the Parole Act 2002 which defines those who are eligible to be recalled.

Re-offending rate drops

The rate of re-offending while on Home Detention dropped sharply at the end of the 2004/05 financial year, giving an annual rate of 0.6 percent.

In the April-June quarter, only two of the 726 people on Home Detention were arrested for re-offending during their detention. This equates to a re-offending rate of 0.3 percent for the quarter.

Both detainees arrested for re-offending whilst on Home Detention had been released on front-end orders and were charged with drug-related offences. Both were recalled to prison and one was also charged with breaching his detention conditions.

The re-offending rate of 0.3 percent is a marked drop from the previous quarter January-March when seven offenders were charged with further offending while on Home Detention.

In the April-June quarter, CPS laid a total of 16 breach charges and made 16 applications to recall offenders to prison. This equates to CPS taking enforcement action against 4.4 percent of all offenders on Home Detention in the three-month period.

The rate of absconding while on Home Detention was also down compared with the previous quarter. In the April-June quarter, six offenders absconded, compared with 16 offenders in the January-March quarter.

None of the absconders in the April-June quarter was also charged with re-offending during their Home Detention - a significant improvement on the previous quarter when 33 percent of offenders who absconded also re-offended.

The Department has added a new measure to its Statement of Intent for 2005/06 that the number of offenders who abscond from Home Detention not exceed two percent.

Re-offending rates on Home Detention	Jul/Sep 04	Oct/Dec 04	Jan/Mar 05	Apr/Jun 05	2004/2005
Total no. of Home Detainees	1027	955	845	726	3553
No. of detainees charged with further offending	8	5	7	2	22
No. of breach charges laid in relation to re-offending	4	2	4	1	11
No. of recall applications in relation to re-offending	6	5	6	2	19
% of all detainees charged with further offending	0.8%	0.5%	0.8%	0.3%	0.6%

Internal review has positive impact

The number of offenders attending Tikanga Māori Programmes (TMPs) in the CPS central region has more than doubled following an internal review.

In the year to 30 June, 259 offenders started TMPs compared with 108 the previous year in the central region, which encompasses the Hamilton, Hawke's Bay, East Coast, Taranaki, Bay of Plenty, and Taumarunui areas.

Regional Manager Heather Mackie commissioned the review last year in response to a substantial under-delivery in meeting national targets for TMPs, despite the fact the central region manages 51 percent of all Māori offenders on community-based sentences.

Whakatane Service Manager Peri Mason was seconded to carry out the review, to address the issues and look for solutions.

The review found that one of the key factors was the importance of building and maintaining good relationships between CPS and existing providers, iwi, hapu and whanau networks, says Peri.

In June, the region hosted a hui of field staff, CPS programme

liaison officers, and programme providers from around the region.

Peri says the discussion was extremely valuable and the hui is likely to be held annually. Efforts are also underway to improve staff awareness and support for TMP referrals. Meanwhile, Heather Mackie says the review has already proved worthwhile and CPS remains committed to offering such motivational programmes.

“We are fortunate to have such a skilled and dedicated group of providers who are being well supported by liaison POs and CPS managers.

“I have heard of many examples where attendance at a Tikanga Māori Programme has led to significant changes for offenders. Many continue to benefit from the connections that they have made in their communities through attending a programme.”

While the number attending TMPs was not previously to target, statistics show a graduation rate in the central region of 77 percent - above the national average of 67 percent for the 2003/04 financial year.

TĪKANGA MĀORI PROGRAMMES IN THE CENTRAL REGION

	2002-03		2003-04		2004-05	
	<i>Started</i>	<i>Graduated</i>	<i>Started</i>	<i>Graduated</i>	<i>Started</i>	<i>Graduated</i>
Hamilton	0	0	5	4	34	30
Waiariki	27	22	30	22	74	60
Whanganui/Tararua/Taranaki	28	23	34	31	112	66
Hawke's Bay/Gisborne	7	7	39	29	39	35
	62	52	108	86	259	191
Target	180		180		238	

What are TMPs?

Tikanga Māori Programmes (TMPs) are motivational programmes available to offenders, in prison or in the community, who identify as Māori.

Delivered by external providers, TMPs are designed to develop an offender's

sense of awareness and responsibility for their behaviour and its impact on their whānau, hapū and iwi. Some programmes are based on marae, others in urban settings.

Working on the regeneration of Māori identity and Māori practices, TMPs

motivate participants to address their rehabilitation, specifically focusing on their offending behaviour.

Programmes are available in all three CPS regions, and the country's prisons, but more providers are being sought in some areas.

Australia eyes New Zealand rehabilitation programmes

Queensland Corrective Services have embarked on a set of major initiatives to improve the rehabilitative programmes for offenders there.

The initial focus is on improving programmes for sex offenders. They have recently had Bill and Liam Marshall from Canada training psychologists and counselling staff in the treatment of sex offenders.

Many of the issues facing Corrective Services in Queensland are familiar to the New Zealand Department of Corrections, and the Australians have paid close attention to the initiatives that New Zealand took with the implementation of IOM (Integrated Offender Management).

They have developed a computerised system to support their new approach and, like its New Zealand counterpart, they've named it IOMS. The similarities don't end there.

Corrective Services have selected two offence-focused programmes developed by the New Zealand Department of Corrections to adapt for their own use.

They have selected the mixed criminogenic programme (M-PRO) and the newly-developed Kowhiritanga criminogenic programme for women and are presently modifying the content to best match the requirements of their offender population.

They will also use the Structured Individual versions of these programmes. The programmes will be included in a

new suite of programmes, selected from around the world, which meet Queensland's requirements.

Corrective Services have contracted a New Zealand training organisation, Hall McMaster & Associates (which has undertaken similar work in New Zealand) to deliver training to programme providers in Queensland.

Recently David Wales, Manager Special Projects with the Department's Psychological Service, visited Queensland at the invitation of Corrective Services to look at their initiatives and provide advice based on New Zealand's experience in implementing IOM.

Together with Bill Marshall, he met with the Minister, Treasury representatives, and the Community Corrections Board (the equivalent of the NZ Parole Board).

David also met with Corrective Services managers and key staff involved in the initiatives, and visited a number of corrections centres where the new programmes will be implemented.

Corrective Services have looked carefully at "what works" with offenders and have embarked on an ambitious set of initiatives aimed to introduce best practice rehabilitative approaches into their system, says David.

"The Queensland initiatives create an excellent opportunity for collaboration and information sharing with one of New Zealand's near neighbours."

◀ (Community Work Wrap - continued from front page)

Community Work by numbers	2003/04	2004/05
New starts (imposed between 1 July and 30 June)	28,043	27,928
Completion rate (as measured in IOMS)	76%	75 %
Muster (the number of offenders on CW at 30 June)	43,949	45,241
Breaches (from total year's muster)	9488	10,558
Breaches*	22%	23%

* as a percentage of all offenders on Community Work during the period.

Fact, not fiction

The sentence of Community Work is often wrongly referred to by the news media and in television programmes as "community service" and sometimes even "PD" (Periodic Detention).

CPS is keen to encourage the use of the correct terminology - as set out in the legislation - and is raising the matter with media representatives as the misnomer arises.

It would help if reporters in Court had a clear message from the Bench that offenders can no longer be sentenced to community service or PD because these no longer exist in law.