

LAW REFORM QUESTION PAPER – QUESTION 4

Question 4.1: Case management of offenders in custody

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

No comment to be made by the Parole Authority.

Question 4.2: Role of the Serious Offender's Review Council

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

Effective case management requires regular contact with offenders. It is suggested that SORC should, minimally, be seeing offenders at 6 month intervals. SORC should have the benefit of updated information from Community Corrections, Offenders Service and Programs Staff and custodial staff who have regular contact with the offender.

Consideration should be given to allowing SORC to have the mandated authority to approve classification ratings for serious offenders, rather than the Commissioner of CSNSW. Given the knowledge possessed by SORC through the case management and classification of such offenders (including such things as conduct, attitude, behaviour, program completion or otherwise, and reintegration needs), it would appear that SORC are better placed to make determination about suitability of progression in programs, correctional centre placement and participation in external leave programs.

It would be of assistance to SORC, SPA and the offender if the rationale/reasons regarding classification decisions made by the Commissioner, were provided.

Participation in external leave programs (whether works release or day/weekend leave), needs to occur in a timely manner, i.e. more than 6 months prior to their release. The benefits of external leave programs are for both the community and the offender. It allows offenders to reintegrate prior to release and acclimatise them to the community, it also allows for the "testing" of offenders in a non-custodial environment.

Question 4.3: Custodial rehabilitation programs

(1) How could the process for selecting and evaluating the rehabilitation programs offered to offenders in custody be improved?

Rehabilitation programs should be offered to offenders in sufficient time for completion of the program prior to their earliest release date.

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

It is acknowledged that this is primarily a resource issue, both human and financial. With CSNSW' focus to move psychologists to the community, there has been a reduction in program availability in custody.

Question 4.4: Access to education and work programs in custody

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

Central to the reintegration of offenders, does amongst other things turn upon the critical issue of the self confidence of the individual to reintegrate back into the community. This is no more so than in the important life skills areas of literacy, numeracy and fundamental financial/social skills (the programs currently conducted at John Morony Correctional Centre underpin the importance of these observations). Endorsement for such programs in all correctional centres is central not only to the issue of the offender's employability and potential prospects, but as important to their successful reintegration in the community.

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

No – limited programs are available in limited centres for few offenders. Again, this is a resourcing/budget issue.

Question 4.5: Short sentences and limited time post-sentencing

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

Urgent intervention is required for these offenders; however, it is acknowledged that this would again have resource implications. Programs needs to be developed and established that reduce recidivism and target issues such as AOD use, employment skills, domestic violence and life skills as discussed previously. Mental health, lack of suitable accommodation and peer pressure all exacerbate the potential to reoffend.

Question 4.6: Pre-release leave

How could pre-release leave programs be improved to:

- (1) prepare offenders sufficiently for life on parole; and
- (2) ensure offenders can access pre-release leave prior to parole?

The comments made from 4.2 should be noted. Participation in external leave programs should be made available to more offenders a significant time prior to the earliest release date.

For offenders that do not have sponsors, consideration should be given to allowing those offenders day/weekend leave in the remaining COSP centres. This would provide the opportunity of a staged release in circumstances where sponsors are unavailable.

Question 4.7: Transitional centres before release

- (1) How effective are transitional centres in preparing offenders for release on parole?
- (2) How could more offenders benefit from them?

The current utilisation of transitional centres for female offenders has application in terms of the overall reintegration of male offenders into the community and would also be of significant benefit.

Serious consideration should be given to the establishment and operation of additional transitional centres by non government organisations specifically for male

offenders. Further information can be found about this program at <http://www.bridgesofamerica.com/>.

The benefits of this approach provide opportunities for education/employment skills, living skills, program participation to address offending behaviour, long term accommodation assistance, referral to community services and resources, and the development of pro-social engagement and renewal of family contact prior to release.

Given both the aging prison population and the number of young offenders in custody, private partnerships with organisations such as SIRCO and GEO, could manage residential pre-release/transitional centres to target the reintegration of these two offender populations.

Question 4.8: Back-end home detention

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

The Authority support the concept of back-end home detention as proposed by Corrective Services, however, consider that further consultation and development is required.

Question 4.9: Day parole

- (1) How could a day parole scheme be of benefit in NSW?
- (2) If a day parole scheme were introduced, what could such a scheme look like?

Day Parole has benefits for the purpose of reintegration into the community by the offender and demonstrates his/her capacity for compliance with the overall conditions for release to parole prior to full release.

The Canadian day parole system should be given serious consideration for integration into NSW' system.

Question 4.10: Re-entry courts

- (1) Should re-entry courts be introduced in NSW?
- (2) If re-entry courts were introduced, what form could they take and which offenders could be eligible to participate?
- (3) Alternatively, could the State Parole Authority take on a re-entry role?
- (4) If the State Parole Authority were to take on a re-entry role, which offenders could be eligible to participate?

NSW currently has Drug Courts that operate as a form of re-entry Court, for example, the Compulsory Drug Treatment Program is an effective case management system operated by the Drug Court that allows for offenders to transition between custody and the community while addressing their drug problems.

It is not the role or function of SPA to case manage offenders in the community nor upon their return to custody, indeed this is the role of CSNSW.

Question 4.11: Planning and preparing for release to parole

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

Previously raised points regarding holistic plans for the timely implementation of programs, transition, classification is considered paramount. Further, the Throughcare process needs to be implemented as designed and have the appropriate staff and resources in place to assist in the success of the process.

Question 4.12: Conditions of parole

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

There is no need for improvement to these standard conditions.

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

No.

Question 4.13: Intensity of parole supervision

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

(2) How could the intensity of parole supervision be changed to strike the right balance between:

(a) monitoring for breach; and

(b) directing resources towards support, intervention and referrals to services and programs?

SPA would favour that the focus of case management and parole supervision should be in relation to support, intervention and referral to service providers rather than compliance requirements being paramount.

Question 4.14: Duration of parole supervision

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

It would appear that there is no need to extend the duration of the parole order past three years. All case management strategies should have been met during this period. Further, there needs to be some recognition for successful reintegration into the community while on parole and supervision in excess of three years could be considered punitive and an inappropriate use of this provision and resources.

Question 4.15: Information sharing and compliance checking

(1) How sufficient are: a) current information sharing arrangements between Corrective Services NSW and other agencies (government and nongovernment) and (b) compliance checking activities undertaken by Community Corrections?

Primarily this is a matter for CSNSW, however, SPA is of the view that current compliance checks are adequate.

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

None known to the Parole Authority

Question 4.16: Electronic monitoring of parolees

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

The current arrangements would appear to be appropriate.

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

The guidelines for electronic monitoring should be reviewed to ensure the appropriate use of these devices. Paragraph 4.129 is supported and must be predicated on the key principle of significant public interest.

Question 4.17: Workload and expertise of Community Corrections officers

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

The selection and recruitment of qualified personnel (in appropriate numbers) is critical to the effective supervision of offenders. Additionally ongoing education, training, development and support of these personnel are critical both in terms of their self development and the overall requirement of effective supervision of offenders.

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

There is greater utility in the professional development of all Community Corrections officers, rather than specialist case management officers for both the individual officer, organisation and offenders.

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

Not applicable

Question 4.18: Housing for parolees

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

More funding for non-government agencies would assist in the establishment and development of medium to long term supported and stable accommodation for offenders upon release. The programs run by the organisations mentioned in paragraph 4.139 and 4.140 should be expanded and given further resources to assist in support of housing programs. Accommodating offenders in the community is a far more economical option than having them remain in custody.

Urgent attention needs to be given to court based parolees unable to be released at the expiration of their non-parole period given the lack of accommodation assessed as suitable. Accommodation for parolees should be addressed 14 weeks prior to their earliest release date by Community Corrections to reduce the number of requests for revocation prior to release.

Question 4.19: Programs for parolees

(1) What level of access should parolees have to rehabilitation and other programs while on parole? Do parolees currently have that level of access?

It appears that resources for parolees are limited, thereby impacting on their ability to successfully participate and complete relevant programs (rehabilitative or otherwise).

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

With the exception of therapeutic programs (VOTP, FPS and Ngara Nura maintenance programs), there is a perception that continuity of programs is lacking. Programs utilised by CSNSW are not facilitated in every correctional centre or community based location. As such, dependent on where an offender is housed in custody and the community and their risk rating on the LSI-R, program participation may be limited or reliant on available staff to facilitate programs.

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

The effectiveness of programs should be the subject of ongoing evaluation and review both as it relates to the effectiveness of those programs (content and relevance) and their delivery in the field. Such evaluations and reviews ensure the contemporary nature of the programs, most notably, in the area of the reintegration of the offender within the community.

Question 4.20: Barriers to integrated case management

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

As mentioned, SPA endorses Throughcare in the context of an effective case management system. It is critical therefore, that the ongoing training and development of personnel in the utilisation of Throughcare be provided on an ongoing basis, along with the necessary supports and resources being made available.

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

Barriers to integrated case management would primarily be the availability of resources/service provision and staff commitment and training to the Throughcare principles.

- (3) What other services or supports do parolees need but are not able to access? What are the barriers to accessing these services and supports?

Geographic remoteness can be a barrier both to the delivery and access to relevant programs for offenders. In some instances, isolation from these programs can be detrimental to the overall reintegration of the offender back into the community. In these situations, it may be possible for a technical or IT based solution, which delivers these programs through community resources (government facilities available after hours – schools, TAFEs and the like).

In addition, in consultation with the agencies of the Federal government (Department of Human Services, Medicare Local, Centrelink, Education), consideration should be given to access programs which provide skills in the areas of employment, education/training and human development. Such programs are designed to provide participants with fundamental learning skills which go to support participation in existing programs delivered by CSNSW and provide the offenders with the critically important trait of self confidence.

LAW REFORM COMMISSION – PAROLE QUESTION PAPER 5

Question 5.1: Exercise of discretion in reporting breaches and SPA's lower level responses

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

It is critical to the effective management of the offender that minor breaches of parole be identified and actioned at the first available opportunity. This is both in the interest of the offender and the overall effective management of the parole system.

It appears that through Community Corrections policy there is no discretion afforded to Community Corrections Officers (CCO) to deal with minor breaches of parole (particularly drug use in general and/or when self admitted). This is of particular concern when the majority of offenders have drug and alcohol issues.

The ability for Community Corrections Officers to utilise their discretion and deal with minor breaches of parole can provide an immediate sanction in respect of the offender and will provide significant time and cost savings in the reporting of such matters to the Authority.

A discretionary power vested in the CCO and built around appropriate guidelines would be beneficial.

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

Community Corrections should issue formal warning letters for minor breaches of parole. The authority for such warnings should be at a Director level, much like Intensive Correction Order warning letters. In the event that a warning is considered an inappropriate sanction by the Director, the matter should be forwarded to SPA for their consideration.

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

SPA takes into account the prior history of the offender, including compliance or otherwise with previous orders before exercising its decision making as to an appropriate course of action.

There would appear to be no basis upon which to legislate the use of warnings. The utilisation of warnings, both as it relates to their current application (through SPA deliberations) or the proposed application (discretionary power through CSNSW) is regarded as an effective tool in the management of offenders and their compliance with the conditions of parole.

In addition to the current use of SPA warnings (drug use, fail to report/reside et al) there is a case for the application of sanctions in lieu of revocation, such as curfews, home detention, short period of custody (eg. 7 days). Such responses could be prescribed in legislation to allow the Authority to impose these sanctions.

Question 5.2: Response to non-reoffending breaches

- (1) Should there be any changes to the way SPA deals with non-reoffending breaches?
- (2) What intermediate sanctions short of revocation should SPA have available to respond to non-reoffending breaches?
- (3) Should SPA be able to revoke parole for short periods as a way of dealing with non-reoffending breaches?

There is a thought that the rise in the reporting of breaches for technical or non-reoffending matters is as a result of a supervisor's priority for compliance rather than case management. The perception is that supervisors may be held responsible for parolees' behaviour and that results in a report to SPA in the first instance rather than attempting case management intervention and solutions.

Thought needs to be given to the value in SPA dealing with notifications of drug use prior to any intervention strategies being a) presented to the offender, b) being given the opportunity to engage with such interventions, c) determining the success of intervention or otherwise, particularly as the vast majority of offenders have a history of substance use and abuse.

Rather than being the first point of reference to deal with non-compliance of orders in relation to non-reoffending matters, the Authority should be advised only after every other case management option has been exhausted.

SPA should be able to revoke orders for short periods— specifically there should be some consideration for penalties for non-offending breaches by way of sanctions other than return to custody. For example, SPA could impose curfews, community service (which could include program/education attendance e.g. Literacy, TOP, SDP, Getting SMART etc), home detention, temporary incarceration order (TIO), in lieu of return to custody for the balance of the parole order as outlined in paragraphs 5.18 and 5.19. We agree with point 3, SPA should be able to revoke parole for short periods for non-reoffending breaches.

Question 5.3: Revocation in response to reoffending

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

In general SPA handles breaches of outstanding matters robustly and fairly, ie. SPA take notice of several matters, including information contained in the Police Facts, whether bail has been granted or not and the likelihood of a custodial sentence. Other matters that considered criminal history, current index offence, compliance with conditions of parole, community safety and possible victim issues, Other issues considered are referral to MERIT/Drug Court, whether a PSR has been requested, a long remand period or Section 11 GBB. There is little we can suggest that needs improvement in this area.

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

There is agreement with paragraph in 5.23, which again raises the 12 month rule in instances where offenders may receive short sentences and are then required to serve over 12 months on parole.

With consideration to paragraph 5.28, it is hard to argue against amendment to the legislation, as it reflects SPA's current practice. The LRC in considering the proposal

to legislate should have regard to the practice of the Children's Court in relation to juvenile parole orders and the ramifications for juvenile offenders.

Question 5.4: Date of revocation and street time

(1) What further restrictions should be included in the CAS Act on selecting the revocation date?

It is the opinion of the Authority that there are no further restrictions required to choose an effective revocation date to be included in legislation. It is considered important that the Authority maintain discretion in determining an effective date.

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

It is not considered that there should be any changes to the operation of street time. The ruling in *Palizio v State Parole Authority* (13 December 2013) is attached.

Question 5.5: Review hearings after revocation

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

The comment raised in paragraph 5.35 about review hearings for all revocation matters acting as safeguard is considered to be one of the strengths of the Authority given the transparency in the decision making this provides.

Question 5.6: Rescinding revocations to allow completion of rehabilitations programs after fresh offending

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

No, by and large, the Authority takes into account the intentions of the sentencing court and balances this against the safety of the community.

Question 5.7: Appeals and judicial review of SPA's revocation decisions

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

No

Question 5.8: Reasons for SPA's decision

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

In revoking parole orders, SPA identifies those conditions of the order upon which the offender has revoked. It does not appear there is a need for further provision of reasons by the Authority. Offenders also receive a copy of the documents that the Authority relied on in revoking the order (with the exception of matters certified as s194 material by the Judicial Officer). However, the Authority provides reasons for non-revocation when revocation has been sought by Community Corrections.

It remains open to the offender or his legal representative to challenge the decisions of the Authority.

Question 5.9: Emergency suspensions

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

SPA doesn't have the power to suspend parole; a suspension order is made by a Judicial Member of SPA, upon application of the Commissioner of CSNSW. The current provisions are considered to be satisfactory.

Question 5.10: SPA's power to hold an inquiry

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

Section 169 inquiries should be confined to the purposes as outlined in the legislation (i.e. establishing whether a breach has occurred), rather than being used for the purpose of calling up the offender for a verbal warning.

Question 5.11: Information sharing

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

The Authority is fortunate to have representatives from NSW Police and Community Corrections that represent their services on the Authority. This ensures the provision of up to date and accurate information about offenders at SPA meetings, including police facts sheets and police intelligence.

The Authority is also provided with correctional intelligence information by a custodial officer based in the Secretariat of the Authority.

Question 5.12: Role of the Serious Offenders Review Council

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

SORC should retain their case management duties in relation to serious offenders while in custody. As they do not supervise serious offenders in the community, it would be difficult for them to make comment about revocation or rescission matters. SPA feels that Community Corrections is best placed to advise the Authority about such matters.

While SORC already have the means to monitor serious offenders in custody via OIMS, SPA has recently put in place procedures to advise SORC when a serious offender has breached parole and returned to custody, including provision of the relevant breach report.

Question 5.13: Making breach of parole an offence

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

Paragraph 5.57 is supported.

Question 5.14: Reconsideration after revocation of parole

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

The definition of *parole eligibility date* should be amended to provide that the 12 month rule apply to the granting of parole matters only. The Authority should have the discretion to set a date for re-parole consideration at any time after a revocation has been confirmed.

Question 5.15: Breach processes for ICOs and home detention

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

SPA considers that ICO and HDO are an integral part, not only of the sentencing options available to the courts as an alternative to full time custody, but also in the effective case management of offenders. Breaches of these orders are considered against the background of the breach, overall compliance with existing and past orders and on the basis of legal or personal representations made by the offender.

The suitability and compliance for the work component of ICOs needs to be closely assessed by Community Corrections. The Authority has found that the majority of revocations are in relation to failure to complete the work component.

It would assist greatly if Magistrates were trained in the sentencing requirements of ICOs. If an offender is to be placed in custody, consideration should be given as to how long a custodial sentence should be provided, the equivalent sentence should then be provided as the ICO sentence.

ICO sentences should have both a parole and non parole period, much like the previously available periodic detention orders and home detention orders. ICO sentences exacerbate the problems of an offender being incarcerated for a much longer period than the order intended.

It is not considered that any changes need to be made to the breach and revocation processes for home detention.