

# ALS

Aboriginal Legal Service (NSW/ACT) Limited

ABN: 93 118 431 066

19 December 2013

The Chairperson  
NSW Law Reform Commission  
By Email: [nsw\\_lrc@agd.nsw.gov.au](mailto:nsw_lrc@agd.nsw.gov.au)

Dear Chairperson,

Re: Parole Question Papers

This submission is made on behalf of the Aboriginal Legal Service ('the ALS') in response to the NSW Law Reform Commission ('the Commission') question papers 4 and 5 on paroles.

Thank you for your invitation to respond to the question papers.

## **Question Paper 4: Reintegration into the community and management on parole**

### **Question 4.1: Case management of offenders in custody**

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

It is the experience of this Service that many offenders serving a term of more than three years are unaware of the programs that they will be required to complete or the classification they will be required to achieve prior to release. Often offenders in this category are not informed until close to or after their earliest possible release date. Similarly, many offenders serving a term of three years find their parole revoked prior to release because appropriate housing options have not yet been sought out. This Service sees earlier and more structured case management with interaction between Community Corrections and offenders as being critical to addressing these issues.

### **Question 4.2: Role of the SORC**

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

This Service would be in favour of earlier involvement of the Pre-Release Leave Committee with serious offenders required

to complete leave prior to release. It is contended that this would help to address the problem of offenders serving a significant period beyond their earliest release date due to the significant delays that often accompanies progression through this process.

**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?*

This Service would support the introduction of a process whereby quantitative data is collected in relation to program participation by offenders and their subsequent recidivism rates post-release. This Service would also support the establishment of an independent body to undertake annual reviews of the effectiveness of rehabilitation programs using this data.

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

This Service accepts that there are budget and staffing constraints which limit the availability of certain programs. It is, however, the view of this Service that priority access should be given to offenders who are likely to be required to complete a certain program before the Authority will consider their release. It is also suggested that priority access should be given to offenders, such as those with limited literacy skills, who would be expected to require more time and assistance to complete a program.

**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?*

This Service is of the opinion that any education and work program would improve the prospects of offenders gaining employment and reintegrating into the community. It is also contended that programs should be made readily available to disadvantaged offenders, such as those with limited literacy skills or those suffering from an intellectual disability.

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

In the experience of this Service offenders usually face significant obstacles in accessing in custody work and education in custody. Usually there are significant waiting lists for such programs. A more significant issue stems from

the fact that many programs are unavailable at certain correctional centres. When an offender is transferred it is often the case that they are unable to resume the relevant program at their new centre. Closer consideration of program participation during the transfer determination process would serve to ameliorate this problem to an extent.

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 of reintegration on parole?*

This Service supports the ongoing and intensive referral of offenders serving shorter sentences to services such as health providers, housing and welfare. We would also support the introduction of shorter-term work and education programs to allow offenders serving shorter terms access to these opportunities.

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?*

This Service has noted the significance that the Authority ascribes to pre-release leave for offenders who have served extended sentences. In the experience of this Service, a lack of participation in pre-release leave is often the only obstacle to offenders in this category from being released to parole. It is also often the case that this situation is beyond the control of the offender – for example, due to delays in classification consideration. In many cases this leads offenders to serve a considerable period of time in custody beyond their earliest possible release date. Earlier and more intensive engagement with offenders expected to undertake pre-release leave would serve to address this problem. It is also contended that a greater frequency of pre-release leave would be of great benefit in terms of assisting their successful reintegration into the community. In the experience of this Service it remains very difficult for an offender be approved for, or progress to, fortnightly leave.

Question 4.7: Transitional centres before release

The Aboriginal Legal Service is not in a position to directly comment upon the efficacy of transitional centres. In theory, however, this Service would support the continued availability and the potential expansion of these programs.

#### 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?*

In theory this Service would be supportive of the implementation of a back-end home detention scheme as an additional transitional option alongside day and weekend leave. This Service would, however, be opposed to any step making participation in such a program mandatory given the issues regarding eligibility of offenders and suitability of housing raised in the discussion paper. The involvement of the sentencing court in determining whether an offender should be considered for the scheme could serve to address this concern to a certain degree.

#### Question 4.9: Day Parole

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

Again, this Service would be supportive of the implementation of day parole as another additional transitional option to assist offenders with reintegrating back into the community. Such a scheme would be of particular benefit to offenders who have served longer sentences. This Service would, however, be highly concerned if a situation arose whereby participation in day parole comes to be viewed as a compulsory requirement before such offenders are considered for full parole.

#### 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?*

Again, this Service would be supportive of the implementation of re-entry courts as another additional transitional option to assist offenders with reintegrating back into the community. It is submitted that there would be great benefit in employing a therapeutic model in this particular jurisdiction. This would appear to be borne out by the quantitative results outlined in the discussion paper showing that the use of such a model has reduced recidivism in a number of jurisdictions in the United States. It is agreed that such courts could produce significant benefits in dealing with offenders with substance dependencies. It is also submitted that offenders with mental illnesses could benefit greatly by diversion into such a program.

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?*

This Service concurs with PIAC's submission that offenders regularly cite the lack of access to information regarding accommodation and support services, the lack of access to welfare officers and the lack of access to educational and vocational programs in custody as major concerns.

Addressing these concerns, particularly in relation to offenders approaching their earliest release date should be a priority. It is particularly concerning that 73% of offenders have reported receiving no information regarding housing or post-release assistance. It is the opinion of this Service that an increase in the number of welfare officers would go some way towards addressing these issues.

Question 4.12: Conditions of parole

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

This Service agrees with the Bar Association's submission that the standard condition requiring offenders to "adapt to normal lawful community life" is vague in its scope. It is the case that factors such as social disadvantage, mental illness and substance dependency often restrict the ability of our clients to lead what could be described normal community life. There are additional, obvious difficulties in the definition of 'normal'. This Service feels it would be more appropriate for this mandatory condition to be replaced with a condition requiring offenders not to incur any further convictions.

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

In the opinion of this Service the current powers available to the courts and to SPA in relation to the imposition of additional parole conditions is sufficient in terms of its scope. It is suggested that there would be some benefit in improving awareness amongst judicial officers with respect to their power to impose conditions at the time of sentence to assist offenders when their non-parole period expires.

**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?*

No. The ALS is of the view that the intensity of supervision of parolees is adequate.

*(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?*

The ALS is of the view that less emphasis should be placed upon monitoring for breaches and more focus should be directed towards the rehabilitation and personal development of parolees. A more collaborative approach to parole between the parolee and their CCO (Community Corrections Officer) would allow the parolee to feel they have a greater sense of involvement in the process and detract from the 'us versus them' mentality which seems to be rife amongst parolees. A shift in focus away from monitoring breaches and towards rehabilitation would also encourage more open and effective communication channels between parolees, CCOs and other interested parties.

**Question 4.14: Duration of parole supervision**

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

No. The ALS is not in favour of extending the duration of parole supervision.

**Question 4.15: Information sharing and compliance checking**

*(1) How sufficient are:*

*(a) current information sharing arrangements between Corrective Services NSW and other agencies (government and non government)*

*and*

*(b) compliance checking activities undertaken by Community Corrections?*

In respect to information sharing and the compliance checking activities undertaken by Community Corrections the ALS has concerns about the reliance that is often placed upon information which is provided by external agencies. The reality is that unfavourable information provided by external agencies can often give rise to breach proceedings. The ALS has concerns that different agencies have different systems of

recording information with varying levels of reliability and ALS would encourage CCOs to exercise caution when solely relying on the information provided by external agencies when undertaking compliance checks.

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

The ALS is of the view that Corrective Services have adequate scope to achieve effective information sharing and that any legal obstacles which do exist are reasonably necessary to protect the privacy of parolees.

#### Question 4.16: Electronic monitoring of parolees

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

The ALS agrees that the electronic monitoring of parolees may be appropriate for a small category of high risk offenders.

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

The ALS does not encourage increasing the electronic monitoring of parolees. The ALS is of the view that too much emphasis can be placed on the role of the electronic monitoring device in an offender's parole. The ALS believes that there are other equally important aspects of parole and individual rehabilitation which electronic monitoring cannot assist in gauging. There is a risk that the electronic monitoring device may be relied upon too heavily as a tool for which to measure a parolees overall compliance and be relied upon as a substitute for effective management of a parolee by their CCO.

#### Question 4.17: Workload and expertise of Community Corrections Officers

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

The ALS is supportive of greater cultural-awareness training being offered to CCOs so that they are better equipped to work with Aboriginal parolees and effectively deal with issues which arise by virtue of a parolees Aboriginality. For example, a greater understanding of the importance of kinship and extended family ties would allow CCOs to better understand a parolees desire to travel lengthy distances to attend funerals or family commitments and assist in negotiating a plan to allow

a parolee to attend whilst still staying compliant with their parole obligations.

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

The ALS supports the implementation of specialist case managers for certain offenders. The ALS believes that specialist case managers will allow a more tailored approach to parole for particular offenders and allow parolees to be linked in with CCOs who have a greater understanding of their criminogenic behaviours and the factors which influence those behaviours.

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

The ALS would support the introduction of specialist case management particularly for young adult offenders (18 -25) who have had considerable exposure to the criminal justice system in their juvenile years and continued to offend in their adult lives. The ALS deals with a large number of offenders in this category who have limited personal and life skills and need greater levels of intervention to assist them in reintegrating successfully into the community and more intensive support to allow them to develop pro-social skills.

#### 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?*

Stable and supportive accommodation is integral to the successful reintegration of parolees into the community. The lack of appropriate and suitable accommodation is an issue which disadvantages many ALS clients. The ALS is extremely keen to see stronger relationships forged between Community Corrections and other government and non-government organisations which can provide assistance with securing accommodation for parolees.



**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?*

The ALS strongly supports parolees participation in rehabilitation and other programs whilst on parole and believes that greater ease of access to such programs would benefit parolees. For example, the running of more programs directly from Community Corrections offices whereby a parolee's attendance at the program could coincide with their reporting conditions could be an effective way of engaging parolees.

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

The ALS often encounters parolees who are reluctant to continue attending community based programs as they have completed the program in custody, sometimes numerous times. The issue of repetitiveness of the program is something that deters some parolees from engaging in the programs in the community or can impact on levels of interest or participation. The ALS is supportive of Community Corrections offering wider and more varied programs for parolees to engage in whilst on parole rather than placing emphasis on the maintenance programs which are offered as an extension to the custodial based programs.

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

The ALS does not hold any strong views in this respect.

**Question 4.20: Barriers to integrated case management**

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

The ALS is of the view that there are limits to Community Corrections achieving a throughcare approach largely because of lack of consistency in supervision of offenders. The ALS is supportive of greater more collaborative efforts between those who work with offenders in the custodial setting and those who work parolees upon release. A more collaborative approach will mean that offenders are encouraged to use their time more productively in custody with a goal of having their custodial achievements or goals further built on in the community.

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

The ALS agrees that there are significant barriers to integrated case management. Largely there appears to be administrative barriers surrounding information sharing. A more universally accessible way of sharing information about offenders should be developed to ensure that there is consistency and continuity in managing offenders when they transition from the custodial setting into the community.

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

The issue of struggling to have access to employment opportunities is a huge issue faced by ALS clients. Many parolees have hopes of gaining employment but do not have the skills to seek out and secure employment. Whilst many parolees are required to engage with job providers as part of their Centrelink requirements there often seems to be little gain, the result is that parolees often become discouraged or complacent about their prospects of gaining employment. The ALS encourages the implementation of a more formal framework for assisting parolees to develop the skills to gain employment.

## **Question Paper 5: Breach and Revocation**

### **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?*

The ALS believes that CCOs should be given greater scope to exercise a high level of discretion to manage breaches of parole internally, without reporting them to SPA. A parolee's compliance should not be considered in an arbitrary manner as there are many complex factors at play which may give rise to a breach. The CCO is the person who is in the best position to understand and consider any extraneous considerations which contribute to a breach. Allowing the CCO the autonomy to exercise a high level of discretion will encourage greater accountability for their role in the parolee's reintegration into the community. Furthermore, it would also help foster a more two-sided relationship between the CCO and the parolee.

**Question 5.4: Date of revocation and street time**

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

The ALS supports the inclusion of a provision to require the revocation date to be the date of alleged re-offending, or the date the report is submitted by Community Corrections, unless there are substantial reasons to select another date.

Furthermore, the ALS confirms its position regarding the time spent in interstate custody which at present is entirely considered as street time. In fairness, only the time that the offender is at large should be considered as street time and added onto the offender's sentence.

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

The ALS is of the view that SPA should have greater flexibility in dealing with the outstanding street time. There could, for example, be a provision in appropriate cases to allow SPA to require an inmate to serve the additional street time as part of parole.

**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?*

No. The ALS firmly supports a right to all review hearings, including parole refusals. Noting the high proportion of Aboriginal persons in custody, it is our view that placing an additional onus on offenders to make applications for reviews without adequate support or assistance in custody, creates an inherent unfairness and loss of confidence in the parole system. Usually the only assistance that an inmate has are Welfare Officers, who rarely have insight into the inmate's particular parole circumstances.

Automatic reviews as they were prior to the legislative changes in October 2005, ensure that all offenders seeking parole are represented by solicitors of either the PLS or ALS, enabling a transparent, yet firm system of parole.

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

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

The ALS adopts its earlier submission as referred to by the LRC. CAS should require SPA to allow rescission where a court has determined that a new offence, notwithstanding constituting a breach of parole, should undertake rehabilitation. With respect, SPA standing a matter over is of little utility as the offender by that stage is usually parole revoked (with the exception of matters being dealt with under s169). The decision SPA must reach is whether the revocation should be confirmed or rescinded, and by standing a matter over, the revocation still stands and the inmate cannot be released. The ALS supports a legislative provision requiring SPA to rescind in such circumstances to facilitate the rehabilitation, unless there are special reasons not to do so.

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?*

Yes. The ALS adopts its views as expressed in response to question paper 3. An appeal from SPA's decisions should exist on merit by right, similar to that available from the Local Court to the District Court under the Crimes (Appeal and Review) Act 2001. It may be that such an appeal should go to the court where the sentence was imposed, or to the Supreme or District court.

Although the above is the primary position of the ALS, the Commission may wish to consider such appeals in defined circumstances, where a refusal of parole will result in the offender serving out the entirety, or substantial majority, of the sentence in custody. It is our view that the public interest in having supervision, especially after a lengthy period in custody, becomes so paramount, that at the very least, it must be a decision open to review on merit to uphold the public interest.

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?*

The ALS supports additional transparency regarding SPA's decisions to either grant or refuse parole. Such reasons including the minutes should be available to any interested party.

**Question 5.9: Emergency suspensions**

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

We do not propose any changes to the current system.

**Question 5.10: SPA's power to hold an inquiry**

*Should SPA use s169 inquiries more regularly? If yes, how could this be achieved?*

The ALS agrees with the NSW Bar Association insofar as SPA should conduct more s169 inquiries. LRC may wish to consider a legislative amendment to require s169 inquiries to be held unless the breaches are due to major, repeated drug use or serious fresh offending.

**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 ALS supports information sharing to provide better services and support facilitating reintegration. One way may be a common 'parole information system' that can be securely accessed by relevant stakeholders with updated information about a parolee's progress.

**Question 5.12: Role of SORC**

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

The ALS does not oppose SORC providing additional information to SPA about the offender; however the ALS is ardently opposed to SORC being as involved as in the original parole proceedings, including the exceptional circumstances test.

**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?*

No. The ALS is vehemently opposed to making breach of parole an offence, and agrees with the reasons provided by the LRC in the question paper at 5.57.

**Question 5.14: Reconsideration after revocation of parole**

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

The ALS supports the abolition of the 12 month rule.

The ALS supports an alternative that gives SPA flexibility, depending on the particulars of the inmate's circumstances as well as the inmate's sentence and breach conduct, to allow SPA to set a review date following a revocation.

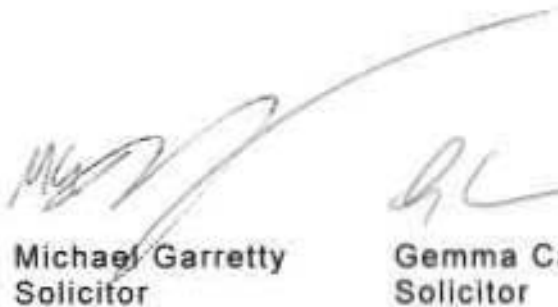
Question 5.15: Breach processes for ICOs and home detention  
*What changes should be made to the breach and revocation processes for ICOs and home detention?*

The ALS does not appear for such revocations and cannot assist the Commission.

Yours faithfully  
ABORIGINAL LEGAL SERVICE (NSW/ACT) LIMITED



Bharan Narula  
Solicitor



Michael Garretty  
Solicitor



Gemma Campagna  
Solicitor