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Dear Mr McKnight

PAROLE REVIEW

Enclosed is the Department of Attorney General and Justice submission in respect of the Law Reform Commission's review of parole (Question Papers 1–3).

The Department's submission contains comments by Corrective Services NSW and Victims Services.

Yours faithfully

Andrew Cappie-Wood
Director General 6.1.14

DEPARTMENT OF ATTORNEY GENERAL AND JUSTICE

LAW REFORM COMMISSION – REVIEW OF PAROLE (2013)

SUBMISSION IN RESPONSE TO QUESTION PAPERS 1-3

Question Paper 1

Question 1.1: Retention and objectives of parole
(1) Should parole be retained?
(2) If retained, what should be the objectives of the parole system in NSW?
(3) Should there be an explicit statement of the objectives or purposes of parole in the *Crimes (Administration of Sentences) Act 1999* (NSW)?

Comment

(1) Parole is an integral part of a custodial sentence that can be an effective management and monitoring mechanism. Most offenders will be released at some point in time. It is therefore preferable that post release support and monitoring be provided at the time of release to ensure offenders are provided with an individualised and mandated framework that promotes pro-social community integration. In the absence of parole, an offender would be released to the community with no conditions governing their behaviour and social circumstances.

Parole is sometimes incorrectly perceived as early release. In fact, a court imposed non-parole period is the minimum period that the court has decided an offender must spend in custody. The court has also decided that the offender may be released to parole at some point between the end of the non-parole period and the end of the head sentence.

An offender's period in custody provides greater visibility of the offender's specific risks and needs than is available at the time of sentencing, and how these risks and needs may best be mitigated should it be considered appropriate to release the offender to parole. Release to parole is based on careful assessment and the State Parole Authority (SPA) will return an offender to custody if the offender's progress on parole is deemed unsatisfactory or exposes the community to risk. In 2012, the SPA refused parole on 265 occasions and granted parole on 1,051 occasions.

Additionally, the SPA revoked the parole of 235 individuals prior to their automatic court ordered release (4,419 individuals were automatically released to parole). In the same period, the SPA revoked the parole of 479 individuals to whom it had previously granted parole and revoked the parole of a further 1,782 individuals on court based parole orders.

In 2012/13, the average daily number of offenders on parole was 4,530 and the cost of community based correctional services per offender, per day was $26.02. By contrast, the average daily inmate population was 9,808 and the cost per inmate per day was $188.82.

If parole were to be abolished and offenders required to serve their full term in custody, there would be an additional $269 million per annum recurrent cost to NSW taxpayers based on 2012/13 average costs. Further, given the correctional system's current operational bed utilisation rate and the limited number of beds available for recommissioning, abolition of parole would necessitate an extensive capital works program to construct new correctional facilities. The average capital cost of constructing new correctional facilities is approximately $300,000 per bed. Based on current bed stock, an additional 4,000 beds would be required at a capital cost of $1.2 billion.

In March 2012, the Victorian Sentencing Advisory Council released a report on its *Review of the Victorian Adult Parole System*. The Council considers it reasonable, based on research in other jurisdictions, to adopt the hypothesis that, to the extent that parole addresses factors likely to contribute to reoffending, the supervised, conditional release of prisoners on parole is likely to reduce the risk of reoffending. The Council found that a parole system can reduce the risk of offenders committing further offences when released into the community, although no parole system can eliminate the risk of reoffending, as the reasons for reoffending are complex. The Council also noted that decisions concerning parole are complex political and social judgements about which risks are acceptable. The mixture of judicial members and community members seeks to ensure that a range of perspectives is taken into account in making these complex judgements.

There is limited literature on the efficacy of parole. To assist the LRC, some of the literature not referenced in Question Paper 1 is summarised below.

Melinda D Schlager and Kelly Robbins (2008) "Does Parole Work – Revisited: reframing the Discussion of the Impact of Postprison Supervision on Offender Outcome". *The Prison Journal* 88, 2 pp 234-251
The authors, in contrast to the Solomon et al study referred to in Question Paper 1 which used aggregated national US data from over an extended period, used more recent data from a single State (New Jersey). The purpose of the study was to compare outcomes for offenders released from prison at the completion of their sentence with those released to discretionary parole. It is the authors' view that national evaluations sometimes obscure State-level policy and practice. The authors concluded that "discretionary parole releases in New Jersey are rearrested and re-incarcerated less often than offenders who max out." However a cautionary note was that two years after release 78% of parolees and 88% of the "max outs" had returned to custody.

Although not directly examining parole efficacy, other research that is relevant to this subject is literature around the criminogenic effects of incarceration - in particular research around whether increasing the duration of prison sentences increases reoffending.

Gendreau, P., Goggin, C. and Cullen F.T. (1999) "The effects of prison sentences on recidivism", Public Works and Government Services Canada
A meta-analysis of 50 studies dating from 1958 involving 336,052 offenders produced 325 correlations between recidivism and length of time in prison, and

recidivism and serving a prison sentence rather than receiving a community-based sanction. The results indicated that in both cases the experience in prison produced a slight increase in recidivism of 4% and 2% respectively, and that there was some tendency for lower risk offenders to be more negatively affected by the prison experience.

Cullen F. T., Jonson C. L. and D. S. Nagin (2011) "Prisons do not Reduce Recidivism: The High Cost of Ignoring Science". ***The Prison Journal*** **91 (3) 485-655** The authors examined case studies and systematic reviews of the evidence on the effects of imprisonment on reoffending and concluded that "there is little evidence that prisons reduce recidivism and at least some evidence to suggest that they have a criminogenic effect. The policy implications of this finding are significant, for it means that beyond crime saved through incapacitation, the use of custodial sanctions may have the unanticipated consequence of making society less safe."

Other papers that make similar findings include Listwan, S. J., Sullivan, C. J., Agnew, R. Cullen, F.T. and Colvin, M. (2006): "The Pains of Imprisonment Revisited: The Impact of Strain on Inmate Recidivism". *Justice Quarterly*, 30:1 144-16; and Villetaz, P. Killias, M & Zoder, I.(2006):*The effects of custodial versus noncustodial sentences on reoffending: A systematic review of the state of the knowledge* The Campbell Collaboration Crime and Justice Group.

The weight of available research evidence arguably shows that the maintenance of a system of parole does not increase reoffending and in fact may have a modest impact on reducing it. The financial burden however of replacing current parole arrangements with imprisonment would be significant. The Washington State Institute for Public Policy has been able to demonstrate that a number of interventions that have no effect on reducing reoffending have a net positive cost benefit because the cost of an alternative incarceration option is so high. Furthermore, developments in the way supervision is focussed coupled with improvements in the quality of treatment programs and better reintegration services that are already being implemented in NSW may result in further improvements in reoffending results.

(2)The Victorian Sentencing Advisory Council's report on its *Review of the Victorian Adult Parole System* noted that it is generally agreed that the purpose of parole is to promote public safety by supervising and supporting the release and integration of prisoners into the community, thereby minimising their risk of reoffending (in terms of both frequency and seriousness) while on parole and after sentence completion. This is consistent with the sentiments in the Second Reading Speech for the *Parole of Prisoners Act 1966,* which introduced the modern system of parole into NSW.

A further purpose of parole is to implement the intention of the sentencing court. The parole system is one component of the overall sentencing framework and should be considered in this context. Nearly all of the stated purposes of sentencing are either directly or indirectly concerned with community safety: to punish, deter, protect, rehabilitate, denounce and recognise harm. The framework in which an offender is managed on a community order, which is an alternative to custody, is not substantively different to a parole order; they are part of the same continuum.

(3) In 2005, Ms Irene Moss AO conducted a statutory review of the *Crimes (Administration of Sentences) Act 1999*. The Review, and the Government response to it, was tabled in Parliament in April 2008. The Review considered that there was no barrier to introducing explicit policy objectives in the Act and recommended incorporating policy objectives based on the following principles: safe, secure, humane containment of offenders, and a safe environment for those working with them; assurance of a safe community; rehabilitation of offenders, with a view to eventual reintegration with the community; and due regard to the impact of offences on victims. Section 2A *Objects of Act* was subsequently inserted into the Act in 2008. The Review did not identify a need for a specific objective relating to parole, although it is arguable that section 2A(1)(d) which reads: *to provide for the rehabilitation of offenders with a view to their reintegration into the general community*, covers parole and, as such, already serves this purpose

Question 1.2: Design of the parole system
(1) Should NSW have automatic parole, discretionary parole, or a mixed system?
(2) If a mixed system, how should offenders be allocated to either automatic or discretionary parole?
(3) Does there need to be a mechanism to ensure supervised reintegration support for offenders serving short sentences? What should such a mechanism be?

Comment

(1) A mixed system provides for 'truth in sentencing', the practical reality that most offenders will be released at some point in time, and a risk management process for those offenders who present the greatest risk of harm to the community. A release to parole prior to the expiry of a head sentence provides greater scope for reintegration and behaviour management in the community. This goes some way to ensuring that Corrective Service NSW's (CSNSW) community and custodial resources are used most effectively. The release to parole of low risk offenders allows CSNSW to concentrate on those offenders in custody who present a more serious threat to the community.

There are resource implications associated with discretionary parole and it may be preferable for it to be reserved for those cases where the risk to the community is greatest. Automatic parole (with appropriate safeguards) could apply where the risk is lower. In practice, a release to parole will only significantly benefit those offenders who are compliant and address their relevant risk factors within the community. Those who are not compliant will not benefit to the same extent as they face revocation and return to custody.

(2) The Second Reading Speech for the probation and parole package of Bills introduced in 1983 records that the period of three years or less coincides with the maximum sentence which can be imposed by courts of petty sessions (now Local Court). The maximum sentence which a Local Court is now able to apply for a single offence is two years imprisonment and the limit for consecutive offences is five years, with some exceptions. In terms of any proposals to extend the sentence period eligible for automatic parole, it is noted that a court cannot predict at the time of sentencing, with any certainty, whether an offender will attempt rehabilitation. In

some cases, this will only become apparent towards, or following, the expiry of a non-parole period; the longer the sentence length the greater the difficulty for a court to accurately predict the offender's future behaviour. CSNSW records indicate that approximately 88% of offenders released from custody each year were serving sentences of less than three years and a further 7% were serving sentences of between three to five years.

(3) Offenders with shorter sentences can represent a high risk/high rotation group. If the UK proposal outlined at page 22 of Question Paper 1 is adopted, an option could be for support after sentence expiry to be delivered by an agency other than CSNSW, to avoid the perception (or practical experience) that the support is part of sentence administration or a punitive measure. This approach may be relevant where significant risk factors are identified during the post sentence period.

At present, CSNSW's Community Corrections may identify accommodation solutions for people who are leaving custody to supervised parole. Supported accommodation is available at a number centres operated by non-government organisations, including emergency accommodation. DAGJ provides funding to non-government organisations through the CSNSW Funded Partnership Initiative (FPI) to assist offenders exiting custody to find suitable accommodation. Some of these offenders are released to supervised parole having served short sentences. Under the FPI there is a total of $16.73m available over a three year period. Of this, $13.78m is directed to strengthen support and accommodation options for parolees.

Question 1.3: Difficulties for accumulated and aggregate sentences
What changes should be made to legislation for aggregate and accumulated approaches to sentencing to ensure consistent outcomes for parole?

Comment

CSNSW's Offender Integrated Management System (OIMS) contains the primary administration record of a court's sentencing decision which may be accumulated or aggregate. Accumulated sentencing decisions require additional data entry to override meaningless parole eligibility dates and sentence expiry dates which increases the possibility of sentence administration error. An inmate's assessment for program participation and employment in custody is generally determined by his or her overall period in custody. Therefore individual sentences add to the possibility of administrative error and provide no guidance during the inmate's detention in terms of support whilst in custody. Requiring a court to set one non-parole period on a sentence or combination of sentences would be administratively simpler. A new non-parole period could be set for subsequent sentences which affect the overall sentence length. The Commonwealth sentencing process uses this model.

Question 1.4: SPA's power to take over decision making responsibility
(1) What safeguards should there be on automatic parole?
(2) Should there be any changes to SPA's power to take over parole decision making for offenders with court based parole orders?

Comment

(1) and (2) The ability for the SPA or its predecessors to rescind a parole order prior to release in prescribed circumstances has existed for the past 30 years. In 2012, the SPA revoked 235 parole orders prior to release, of which 95.3% were court-based parole orders.

Despite the provision for the SPA to revoke a parole order prior to release owing to the lack of satisfactory accommodation arrangements, lack of accommodation may not always constitute a risk to the community. It is, however, the predominant reason for SPA revoking parole prior to release. In some cases, an offender may have had accommodation available which was assessed as unsuitable by CSNSW.

By way of clarification, in respect of paragraph 1.91 in Question Paper 1, the SPA does not consider revoking court based parole prior to release for an offender who fails to undertake programs or demonstrate good behaviour in custody as eligibility for release has been determined by the court. The SPA revokes parole prior to release if an offender demonstrates that he or she is unable to adapt to a normal lawful community life while in custody through a serious assault, drug use or psychotic behaviour. The differences between "likelihood of adaptation" and "unable to adapt" were considered by the Supreme Court of NSW in *Murray v NSW State Parole Authority [2008] NSWSC 962.*

Question 1.5: Supervision conditions on court based parole orders
Should there be any changes to the way supervision conditions are imposed on a court based parole order?

Comment

Supervision conditions are based on risk and are not tied to order length or offence type. Many offenders serving short sentences are at high risk of reoffending and supervision may assist to stabilise them in the community. Offenders serving longer sentences may also be capable of functioning well with no support. Decisions about supervision require the assessment of individual risk near the time of release. Short supervision periods are often associated with backdated sentences, where there is little or no opportunity for pre-release preparation (for example, the offender is released to parole from court so a short period of supervision is only likely to address short term crisis issues and have a less benefit in terms of reducing reoffending. In the past year, as at October 2013, approximately 7% of court based parole orders registered by CSNSW were for periods of less than 3 months duration.

Community based orders, including parole orders, requiring an offender to enter into residential rehabilitation upon release from custody can be problematic for several reasons, including that many rehabilitation centres do not accept people released from custody or on methadone, psychiatric medication or offence-type restrictions. Such orders could be worded as an 'option' to be considered during the pre-release stage.

Question Paper 2

Question 2.1: Membership of SPA
(1) Does the balance of members on SPA or SPA's divisions need to be changed in any way?
(2) How can the selection and performance of SPA's community members be improved?
(3) Should SPA's community members be representing the community at large or be representing specific areas of expertise?

Comment

(1) and (2) No comment.

(3) The Minister for Justice makes SPA appointments in accordance with the legislation and the *NSW Government Boards and Committees Guidelines* issued by the Department of Premier and Cabinet (DPC). Under the Guidelines, an appointment must be submitted for Cabinet consideration where a Minister's approval or endorsement of the appointment is required or occurs at any time during the course of putting forward the member to the board or committee. The DPC maintains data on the composition of boards and committees, particularly the representation of women, young people, Indigenous persons and persons from culturally diverse backgrounds.

Section 183 (2)(b) of the Act requires community members to reflect the composition of the community at large "as closely as possible". In reality, given the highly diverse nature of the community and limited number of positions available for community members it would be problematic to ensure that the composition of the SPA's membership accurately represents the community at large at all times.

Other jurisdictions have more specific legislative guidelines than NSW in respect of the non-judicial membership of their respective parole authorities and there may be merit in NSW exploring or at least considering a similar approach.

The references to medical practitioners, experts in criminology/sociology, persons with an understanding of the perspective of victims, women and persons of Aboriginal or Torres Strait Islander descent are contained variously in the Queensland, South Australian and Tasmanian legislation. The Western Australian *Sentence Administration Act 2003* establishes the WA Prisoners Review Board and its membership and provides criteria for the appointment of community members. Under the WA Act (section 103) the responsible Minister is not to nominate a person as a community member unless satisfied that the person is able to make an objective and reasonable assessment of the degree of risk that the release of a prisoner would appear to present to the personal safety of people in the community. The proposed community member must also have one or more of the attributes listed in the Act such as knowledge and understanding of: the impact of offences on victims; Aboriginal culture local to Western Australia; a range of cultures among Australians; and the criminal justice system; or the person must have broad experience in a range of community issues relating to employment, substance

abuse, physical or mental illness or disability, or lack of housing, education or training.

The factors to be considered by the SPA in determining, on the balance of probabilities, that the release of an offender is in the public interest are enshrined in the legislation (section 135). Importantly, section 135 refers to any report in relation to the granting of parole prepared by CSNSW's Community Corrections. Section 135A prescribes the matters which such a report must address. Section 135 also requires the SPA to consider any report prepared by or on behalf of the Serious Offenders Review Council (SORC), the Commissioner of Corrective Services or any other authority of the State. Section 198 details what matters the SORC must consider when exercising its functions. Without limiting the generality of the meaning of public interest, the matters which the SORC must take into account when considering public interest are identified. It is therefore arguable that specific areas of expertise are also represented in these reports such as views of medical professionals and psychologists.

Question 2.2: Membership of SORC
(1) How can the selection and performance of SORC's community members be improved?
(2) Should SORC's community members be representing the community at large or be representing specific areas of expertise?

Comment

There is no requirement for at least one community member to have an appreciation or understanding of the interests of victims, as there is with SPA community members.

Question Paper 3

Question 3.1: The public interest test
Should the current public interest test in s135(1) of the CAS Act be retained, or does the Queensland test, or something similar, better capture the key focus of the parole decision?

Comment

The factors to be considered by the SPA in determining the public interest test are enshrined in the legislation (section 135). Section 135 specifically refers to reports prepared by CSNSW's Community Corrections and prescribes the matters which must be addressed. Section 135 also requires the SPA to consider any report prepared by or on behalf of the SORC, the Commissioner of Corrective Services or any other authority of the State. In the case of the SORC, section 198 details what matters the SORC must consider when exercising its functions.

Section 135(2)(j) requires the SPA to consider such guidelines as are in force under section 185A. The SPA's *Operating Guidelines* have been established in accordance with section 185A.

It is probable that a serious offender serving a lengthy sentence will have issues associated with institutionalisation that need to be addressed prior to the expiry of the offender's sentence.

Whilst the current public interest test does not explicitly indicate risk, the offender's age, type of offence, criminal history and likelihood of being able to adapt to normal lawful community life are key means by which risk is assessed and defined (for example, criminal history is one of the strongest predictors of risk of reoffending). The explicit terminology of risk more clearly articulates these concepts.

Question 3.2: The matters that SPA must consider
Should any matters for consideration be added to or removed from the lists in s135(2) and s135A of the CAS Act?

Comment

The SPA's *Operating Guidelines* have been established in accordance with section 185A. In terms of an offender's behaviour during previous periods on parole, the *Operating Guidelines* indicate that, among other things, in principle an inmate should show a willingness and demonstrated ability and/or a realistic prospect of compliance with the conditions of parole. Section 135(2)(k) enables the SPA to consider such other matters as the SPA considers relevant. An assessment of the risk of reoffending and measures to be taken to reduce the risk are relevant considerations, but could be made explicit in the Act if considered appropriate.

Question 3.3: Specific issues given weight by SPA
(1) Should any changes be made to the way SPA takes completion of in-custody programs into account when making the parole decision? If so, how?
(2) Should any changes be made to the way SPA takes security classification into account when making the parole decision? If so, how?
(3) Should any changes be made to the way SPA takes homelessness or lack of suitable accommodation into account when making the parole decision? If so, how?
(4) Are there any issues with the way that SPA makes decisions about risk?

Comment

(1) Participation and completion of programs is a vital part of rehabilitation and effective in reducing reoffending[1] and is one of several matters that the SPA takes into account. One of the matters addressed in the Community Corrections pre-release report to the SPA is the offender's willingness to participate in rehabilitation programs, and the success or otherwise of his or her participation in such programs. CSNSW understands that if the SPA is advised that the offender had little or no access or opportunity to complete programs, consideration is given to the availability of suitable programs in the community.

[1]See for example. Andrews. D.A. and Bonta. J. (2010) Rehabilitating Criminal Justice Policy and Practice *Psychology, Public Policy and Law* 16 (1) 39-55

Section 2.6 of the SPA's Operating Guidelines states that an inmate's inability to access programs because of prison location, protection status, gaps in service provision or any other reason may not solely be used to justify release on parole. In such situations, parole should only be granted where certain relevant factors (identified in section 2.3 of the guidelines) are met and the SPA is of the view that having regard to section 135 of the Act it is appropriate to make a parole order. The SPA's Operating Guidelines can be viewed on its website and are included in its annual reports, which are submitted to the Minister for presentation to Parliament, in accordance with section 192.

There should be a balance between the risk to the community of an offender not being given a period of community supervision prior to expiration of their head sentence, and the risk of non-completion of a program in custody which the inmate may not have had access to given resource limitations. The assessment made for intervention, that is, is the program necessary or of likely benefit to the offender, is of vital importance.

Program participation should be directly related to the risk of reoffending. In some cases, failure to complete programs may not indicate an increase in risk, particularly for lower risk offenders. In other cases, some higher risk offenders subject to court based parole may also fail to complete programs. In these cases, such failure might be indicative of the offender being unable to adapt to normal lawful community life. It is important that adequate flexibility be given to assess each case on its individual circumstances and merits, rather than there be a presumption for programs.

(2)An inmate's security classification at the time of their parole consideration by the SPA does not necessarily equate to the risk to the community, that is, an inmate may have a classification which does not allow access to external leave programs for various reasons but may have successfully completed programs/employment related education courses which have been assessed as required to reduce the risk of reoffending in the community.

The risks to the community of an offender released at the expiry of their head sentence without the benefit of community supervision and support needs to be taken into account regardless of security classification. In many cases the security classification given to an inmate reflects behaviour in custody at a particular time, or for a particular situation/incident, which is not necessarily synonymous with behaviour in the community, for example a fight between two inmates may not be indicative of behaviour in the community.

Paragraph 3.36 of Question Paper 3 states that there are nine levels of classification for male inmates and seven levels for female inmates. There are essentially only three levels of classification: maximum, medium and minimum. Within both maximum and minimum security there is a step down regime. With each step down there is a lessening of the security-related operational management requirements. The classification levels and step down regimes provide flexibility in the management of inmates.

While there is a requirement for security classification reviews at intervals of no more than 12 months, an inmate may, at any time, request that the Commissioner review a determination of his/her placement, classification or case plan. The Commissioner is required to review a determination only if the inmate can present information relevant to the determination that was not available to the inmate or provided to the Commissioner at the time the determination was made, or the inmate demonstrates that he or she was denied procedural fairness at the time the determination was made. The Commissioner may refuse a request to review a determination if the Commissioner is of the opinion that the request is frivolous or vexatious.

(3) It is important for the SPA to be satisfied that an offender has an appropriate and Community Corrections approved address in order to ensure that the offender can be effectively monitored/supervised. Without a relatively stable base it is difficult for offenders to access services. Accommodation is viewed as an important responsively need.

Homelessness can range from sleeping rough (that is, sleeping in parks or streets) to staying with family/friends or relying on supported accommodation. In simple terms, a person who does not own or have a lease for a home is effectively considered to be homeless. Therefore short term, supported and crisis accommodation, staying with family/friends temporarily and so on are all considered categories of homelessness (secondary or tertiary). CSNSW does not support the release of offenders on parole to sleeping rough (primary homelessness). In some cases, crisis or short term accommodation will be assessed by Community Corrections as being suitable noting that once the offender is in the community, Community Corrections and the offender are able to negotiate the complex accommodation service system much more effectively.

Post release accommodation can be problematic. Supported accommodation services cannot and often will not guarantee a placement for any person without knowing the arrival date and places cannot be kept for months or weeks on end because a person may require a service. The accommodation service system needs to be able to respond to clients effectively, and most services are assessed against their ability to maintain a very low vacancy rate, which means that beds cannot be earmarked well in advance for a situation where parole may or may not be granted. As such, situations arise whereby a post release address cannot be provided as a release date is not set and a release date cannot be set as a post release address cannot be provided.

Sexual or violent offenders are difficult to place due to the nature of their offence and community concerns. CSNSW's internal policies such as the restriction on sex offenders residing within 500m of schools, parks, or other child related facilities further limit the accommodation options available to some offenders. At times, accommodation will be assessed as unsuitable due to the criminal history of a co-resident. In some cases when a person is not allowed to reside with 'family/friends' their risk of more serious homelessness, such as cycling through crisis accommodation, is heightened and that they may ultimately end up with their 'family/friends' at the end of their parole period.

It is unlikely that an offender on parole would ordinarily be breached, or have their parole revoked, if they became homeless, or changed their accommodation following release. If an offender's sentence is backdated so that they are released immediately or prior to assessment by Community Corrections staff, the current CSNSW policy is to undertake the relevant assessments within the two weeks following release, whilst the offender is in the community, rather than apply for revocation.

(4) The duty of Scotland's Risk Management Authority (RMA) is to protect the public by ensuring that robust and effective risk assessment and risk management practices are in place to reduce the risk of serious harm posed by violent and sexual offenders. The independent status of the RMA is seen as vital to its capacity to fulfil the duty of providing a fair and objective service.

CSNSW has a Serious Offenders Assessment Unit (SOAU) which is a team of psychologists located at the Metropolitan Special Programs Centre (MSPC), Long Bay Correctional Complex. The SOAU conduct comprehensive psychological assessments to assist in 'whole of sentence' case management planning for identified sexual and violent offenders. Case management plans are based on an offender's level of risk, treatment needs, and responsivity factors. The SOAU makes judgements based on a number of actuarial and structured professional judgement assessments in its case formulation. The SOAU aims to provide services as close to the beginning of an offender's sentence as possible. The SOAU has links with units within CSNSW including Community Corrections parole units.

Assessment of risk is a core function of CSNSW. Risk assessments attempt to quantify particular types of risks which allow supervision and services and programs to be prioritised appropriately. CSNSW uses a range of risk assessment tools in respect of harm to others, general reoffending, sexual reoffending and violent offending. These tools include:

1. Level of Service Inventory – Revised (LSI-R) which is a 54 item actuarial assessment used to measure the likelihood of general reoffending and underlying criminogenic needs which contribute to reoffending. Research conducted by CSNSW in 2011 revealed the LSI-R was twice as predictive as other assessments for domestic violence. The LSI-R is highly predictive of violent offending. Inter-rater reliability in the LSI-R has improved over the years due to a number of quality assurance measures put in place for staff conducting the LSI-R assessment. These include: initial accreditation process (prior to conducting LSI-Rs), refresher training, scoring rules and the LSI-R hotline. The rate of LSI-R overrides by CSNSW staff has decreased from 24% in 2007 to less than 5% in 2012.

2. Community Impact Assessment (CIA) which complements the LSI-R by introducing a standardised method to assess the consequence of re-offence both to the community and CSNSW. It allows CSNSW to focus more attention on more serious offenders.

3. Historical Clinical Risk Management – 20 (HCR-20) which is a checklist of risk factors for violent behaviour.

4. Risk of Sexual Violence Protocol (RSVP) which provides a set of guidelines for assessing risk of sexual violence.

5. Stable and Acute 2007 (SA07) which were designed to track changes in risk status of sex offenders over time by assessing changeable 'dynamic' risk factors.

6. Sexual Violence Risk – 20 (SVR-20) which is a 20 item checklist of risk factors for sexual violence that were identified by a review of literature on sex offenders.

7. Static99-R which is a 10 item static actuarial assessment instrument for use with adult male sexual offenders who are at least 18 years of age at time of release into the community. It is the most widely used sex offender risk assessment instrument in the world.

8. Violence Risk Scale – 2nd edition (VRS-2) which assesses the offender's level of violent risk, identifies treatment targets linked to violence, and assesses the offender's readiness for change, his/her post treatment improvements on the treatment targets and post-treatment violence risk. The VRS-2 was specifically developed to assess the risk of violence for forensic clients.

9. Violent Extremism Risk Assessment – 2 (VERA- 2) is designed to assess the risk of what has been referred to as "violent political extremism". The user makes a guided rating judgement for each of the 25 risk items and 6 protective indicators based on criterion definitions.

The findings of these risk assessment tools are included in reports prepared by and for Community Corrections in accordance with section 135A, which requires such reports to address, among other things, the risk of the offender reoffending while on release on parole, and the measures to be taken to reduce that risk.

The HCR-20, SVR-20, and VERA are structured professional judgement based tools. In May 2012 the Sentencing Council released a report entitled *High-Risk Violent Offenders, Sentencing and Post-Custody Management Options* which contains discussion on risk assessment.

CSNSW is looking at enhancing risk prediction by combining the LSI-R with a statistical model for predicting risk, similar to models used in the UK, Canada, New Zealand, Queensland and other jurisdictions.

Question 3.4: Deportation and SPA's parole decision making
Does there need to be any change to the way SPA takes likely deportation into account when making the parole decision?

Comment

The 2005 statutory review of the *Crimes (Administration of Sentences) Act 1999*conducted by Irene Moss AO considered this issue. The Review found that in the case of *The Queen v Shrestha* (1991) 193 CLR 48 the High Court considered the problem of parole for foreign offenders. The High Court considered the case of an offender liable to deportation and rejected the argument that there be a blanket approach of denying parole to any offender facing deportation at the conclusion of the sentence. Instead, the court held that this should be a factor in setting the non-parole period or in considering whether the offender should be given parole. The majority (Deane, Dawson and Toohey JJ) considered that probable deportation upon release to parole was simply one factor to be taken into account by the Parole Board (SPA), to be balanced alongside all other relevant factors.

The Review expressed the view that the circumstances in which an offender is released on parole and subsequently deported do not conform to, or comply with, the purposes of sentencing; in particular, the aims of ensuring the offender is adequately punished, deterrence, protecting of the community and accountability are thwarted.

The Review recommended that consideration be given to amending the legislation so that in situations where it is known, or suspected, that an offender will be deported if released on parole, that that offender must go back before the sentencing court for re-sentencing of the term between the non-parole period and the end of the sentence.

The Review recommended that the then Minister for Justice refer the re-sentencing proposal to the then Attorney General for consideration. The recommendation was superseded when the issue was referred to the national Corrective Services Ministers' Conference (CSMC) in 2007 for consideration as to whether the CSMC should endorse nationally consistent legislative provisions. The CSMC referred this matter to the then Standing Committee of Attorneys General (SCAG) [subsequently renamed the Standing Committee on Law and Justice]. The SCAG did not resolve to endorse nationally consistent legislative provisions in respect of re-sentencing.

Deportation or removal from Australia causes an offender to be released to unconditional freedom and extinguishes the balance of the offender's sentence. The offender is not subject to community supervision and has no liberty related incentive to be of good behaviour, as the offender's parole order cannot be revoked meaning the parolee is essentially "let off" serving the remainder of his or her sentence.

A relevant consideration is whether the court has taken into account the likelihood that an offender will be deported or removed from Australia when released on parole at the time of sentencing. In the majority of cases involving federal offenders and prohibited imports, the court will, in all probability, be aware of the offender's status under the *Migration Act 1958*. In cases involving NSW State offenders, the sentencing court is often aware that the State offender may be subject to deportation or removal when released on parole as a result of advice obtained from either the Department of Immigration and Border Protection, or the agreed facts of the case, or some other disclosure made by the Crown Prosecutor or defence counsel.

At the time of sentencing a court cannot predict whether an offender will attempt rehabilitation. This will only become apparent towards or following the expiry of a non-parole period. An offender liable for deportation or removal could be remitted to the sentencing court for re-sentencing prior to the expiry of his or her earliest possible release date in certain cases. In this way, the sentencing court would retain control over the offender's sentence.

Incidentally, the *International Transfer of Prisoners (New South Wales) Act 1997* gives effect to a scheme for the international transfer of prisoners set out in the Commonwealth's *International Transfer of Prisoners Act 1997* by enabling prisoners to be transferred into and out of NSW. The international transfer of prisoners scheme provides for the transfer of prisoners between participating countries whether or not a prisoner has been released on parole. Participation in the scheme is voluntary. On deportation the offender's parole period is effectively extinguished so there is no incentive for an offender who is to be deported on release to parole to apply to have his or her parole order transferred to the country of deportation. The international transfer scheme is also limited in the sense that it is only relevant to participating countries. Australia is able to undertake transfers with over sixty countries through the Council of Europe Convention on the Transfer of Sentenced Persons and a number of bilateral treaties.

Question 3.5: SPA's caseload and resources
Do any changes need to be made to SPA's administrative practices, workload or resources?

Comment

The SPA's workload includes the consideration of reports submitted by CSNSW's Community Corrections requesting formal SPA warnings for parolees who may have committed minor breaches of parole. Offenders are advised in writing by the SPA that their behaviour may result in the revocation of their parole order. There is no legislative basis for SPA warnings, rather they are a tool used in the management of offenders. In 2012, SPA issued 2,118 warnings to offenders.

Question 3.6: Planning for parole and assistance with parole readiness
What changes (if any) are needed to improve parole planning and ensure that suitable offenders can demonstrate their readiness for parole?

Comment

All sentenced offenders in custody and offenders under supervision in the community must have a case management plan. Case management plans must take into account the whole of an offender's sentence, regardless of whether the sentence comprises custodial, community or both custodial and community components. This includes relevant parole considerations.

Offenders have only one case management plan per correctional system episode with CSNSW. The case management plan is updated (new versions made) to reflect changes in the offender's circumstances, including movement between custody and the community (for example, parole) and vice versa. Implementation of case management plans for all offenders in custody is the responsibility of the offender and any Custodial or Community Corrections staff members who have significant contact with the offender.

An initial Case Management Team (CMT) meeting is held for all newly sentenced offenders as soon as possible. In the case of an offender who is to be subject to the SPA parole process, the plan is updated within the next 12 weeks by a Community Corrections officer. This is intended to ensure any relevant considerations regarding parole are identified early on; however, case planning is also intended to focus on whole of sentence planning. Not all aspects of parole suitability will be evident at time of sentence, particularly for offenders with longer sentences.

At 12 weeks after sentence a further CMT meeting is held for all offenders with more than 6 months remaining from their date of sentencing until their earliest possible release date. The case management plan is updated based on the LSI-R and any other relevant information. Updates by the CMT for offenders subject to the SPA process are done in conjunction with the Community Corrections officer, where possible.

The case management plan is subject to review by the CMT at least every 12 months. The Community Corrections officer also reviews the case management plan within 12 weeks of the pre-release report task being allocated (at 12 months prior to the offender's earliest possible release date) and on every occasion that the offender's parole is refused (that is, parole is formally refused, not following an intention to refuse parole). If necessary, the Community Corrections officer may request an unscheduled CMT meeting when there have been changes in the offender's circumstances that require changes to the offender's case management plan, classification or placement.

Where a Community Corrections officer is responsible for the case management plan of a serious offender, the officer, or a Community Corrections representative, is required to attend the offender's SORC Assessment Committee interview that precedes the offender's first pre-release report being due.

The timeliness of pre-release parole inquiries/preparation for parole is often of greater significance for court based releases than it is for SPA releases. Factors such as the backdating of sentences and operational needs for offender movements which may disrupt the continuity of management plans, can impact on timeliness of pre-release inquiries and planning cannot always be controlled.

Program availability/suitability can also be an issue depending on factors such as sentence length, classification and time to serve. Some low risk offenders may not be eligible for programs and may have very few pre-release needs, and may not benefit from participation in any treatment. Whilst priority for services is afforded to higher risk offenders, some serious or high profile offenders are considered low risk.

The availability of accommodation may be a more significant concern than demonstrating readiness for parole.

The SPA's primary role is to consider whether to release an offender on parole. The SPA is not empowered with the ongoing management of an offender in custody. Section 193B of the Act authorises the SPA to make recommendations to the Commissioner of Corrective Services as to the preparation of offenders for release on parole, however, the Commissioner is not bound by such recommendations.

Question 3.7: Victim involvement and input into SPA decisions
(1) Should victims' involvement in SPA's decisions be changed or enhanced in any way?
(2) Does the role, purpose or recommended content of victim submissions to SPA need to be changed or clarified?

Comment

The responsibility to maintain a Victims Register was transferred from the SORC to CSNSW effective from 1 July 1997. CSNSW continues to maintain the Register, which records the names and contact details of victims who have requested that they be given notice of the possible parole of the offender(s) concerned. While a victim of a non-serious offender has no statutory right to make a submission to the SPA in respect of the release of an offender on parole, in practice SPA allows submissions from such victims.

The provision of information is an important element in catering for the needs of victims and is not substantially canvassed in Question Paper 3. Section 193A(2) of the Act provides for a registered victim of a serious offender to be given access to documents held by, or on behalf of, the SPA in relation to the offender but only to the extent to which the documents indicate the measures that the offender has taken, or is taking, to address his or her offending behaviour. The rationale behind this provision is that, among other things, some victims may change their view on the proposed release of an offender, or have their concerns partially allayed, if they have access to relevant information. Access to information is co-ordinated through CSNSW's Restorative Justice Unit. The Victims Register of this Unit writes to victims advising that the SPA has commenced consideration of a matter and reminds victims of serious offenders that they are able to access information on the offender. In 2012, the SPA provided 12 victims with access to such information.

(1) DAGJ would be concerned about any proposals to wind back the rights of victims or to restrict their voice, as victims have few opportunities to participate in the criminal justice process and their recovery may be assisted by being 'heard'.

(2) In 2012, 58 victim submissions were received by the SPA. Of these, eight were in respect of serious offenders. Most victims choose to make only a written submission, and not an oral submission, and most apply for a direction under section 194 of the Act (*Security of certain information*)for the content of their written submission to be withheld from the offender and his/her representatives. A section 194 direction on the basis that disclosure may endanger the victim accords with the

general thrust of the Charter of Victims Rights. CSNSW understands that it is the practice of the New Zealand Parole Board to meet with victims prior to the parole hearing and without the offender being present.

At paragraph 3.77 of Question Paper 3, there is a reference to the *Submissions Concerning Offenders in Custody, Parole Consideration for Serious Offenders, Information Package & Submission Template* prepared by the Victims Register, Restorative Justice Unit, CSNSW. The reference notes that the template for making a submission contains a heading which contains the words "*provide your views about how the potential release of the offender on parole will affect you*" and comments that this can be interpreted as a request for information about the victim's emotions and the ongoing impact of the offence on the victim. The quote is correct, however its purpose on the template is to identify where the victim should make the appropriate entry. In the body of the Information Package under the heading "*What should I write about in my submission*" the complete entry provides guidance to victims on the content of submissions:

> *The written submission is the opportunity for you to state how you feel about an offender's proposed presence in the community. The submission also provides you with an opportunity to suggest conditions, which you would like to be considered if the offender is granted parole. For example, if you are fearful about coming into contact with the offender you might request that a condition be imposed excluding the individual from your neighbourhood. The submission should not include any additional evidence or fresh allegations. The Authority cannot vary a sentence imposed by a court, nor can it refuse parole because there is a perception that the sentence imposed was lenient.*

The SPA, victims and offenders may benefit from clearer guidelines concerning victim submissions. In line with the goal of involving victims in the justice process, and in the interests of providing clarity to all parties about when victim submissions may be disclosed and to what extent, the issue of whether there should be a presumption of non-disclosure of victim submissions, unless otherwise indicated by the victim (as some victims will want the offender to know exactly how they feel)may need to be addressed. If section 194 directions were to be denied in respect of victim submissions on a regular basis, there may be a decrease in the number of victims seeking to participate in the parole process, owing to concerns over possible retribution. In relation to section 194 materials, currently, where appropriate, summaries of the material are provided to offenders in keeping with procedural fairness.

Question 3.8: Role of the Serious Offenders Review Council
(1) Should the separate parole decision making process for serious offenders be retained?
(2) If yes, do any changes need to be made to the role played by the Serious Offenders Review Council in parole decisions for serious offenders?

Comment

The focus of the SORC is on the management of serious offenders in custody. The SORC provides reports and advice to the SPA, which is the decision making body for the release on parole of serious offenders. Release into the community requires input from other areas, such as Community Corrections, NSW Police, the legal profession and victims. As at 31 December 2012, there were 742 serious offenders in custody which represents approximately 7.6% of the inmate population. In 2012, parole was ordered in 1,051 cases, of which 50 related to serious offenders.

In July 2013the report of the review of the system of parole in Victoria conducted by Ian Callinan AC was released. One of the measures suggested in the report (Measure 5) proposes different processes applying to different categories of offenders. It is arguable that the SORC performs the role of the first panel in the two panel system envisaged for Victoria by Mr Callinan.

The SORC is an advisory body. The legislative provision that, except in exceptional circumstances, the SPA is not to release a serious offender on parole without receiving advice from the SORC that it is appropriate for the offender to be considered for release, is not a power of veto in the classical sense. Given its role, expertise and the information at its disposal, an offender must first satisfy the SORC that it is appropriate for the SPA to consider the offender for release on parole. The combined SORC and SPA mechanism is a structured assessment process so the SPA is provided with information to make informed decisions on serious offenders.

Question 3.9: A different test for serious offenders
Should SPA apply a different test when making the parole decision for serious offenders? If yes, what should it be?

Comment

The legislative definition of a serious offender does not, in itself, indicate that non-serious offenders are less risk to the community. Research indicates that an offender designated a serious offender for a domestic murder is unlikely to reoffend or be a risk to the community. Every offender's criminal history and any changes to the behaviour in custody must be considered in determining their risk to the community.

All offenders should be assessed on the same basis with the seriousness of their offending behaviour factored into the process. Any increase in the seriousness of offending behaviour should become a more significant factor to consider, irrespective of whether the offender is designated as a serious offender. The increased relative seriousness of an offender justifies increased integrity to the decision making process (such as the combined SORC and SPA mechanism as opposed to simply the SPA).

Whether an offender is identified as a serious offender is, in some respects an arbitrary designation, which denotes a particular point on a continuum of increasing seriousness. Whatever the definition of a serious offender, there will always be

individuals immediately below that threshold who present very similar issues and risks.

To designate an offender as 'potentially dangerous' is to make an assessment that the offender presents an unacceptable risk. Impliedly, the potential must be high. A traffic offender has the potential to be dangerous; however, a repeat violent offender is more likely to inflict harm than a repeat traffic offender. Acceptable risk in this context takes account both of the likelihood and the consequence in a proportionate manner (as with a standard risk matrix); as consequence increases, the threshold for an acceptable risk requires diminishing likelihood. However, if the risk falls to an acceptable level, within the ordinary test, then the offender should no longer meet the criteria of being 'dangerous'.

Question 3.10: Security classification and leave for serious offenders
Are there any changes that can be made to improve the interaction between security classification, access to external leave and the parole decision for serious offenders?

Comment

The fact that an inmate does not achieve a C3 (male) or Category 1 (female) security classification (the lowest security classification) and participate in an external leave program should not, of itself, equate to a lack of preparation for successful release into the community.

The external leave program was established to primarily focus on inmates who have limited personal resource sand would find it difficult to successfully reintegrate into the community. Participation is not necessarily a requirement for all inmates. For example, a skilled and financially secure inmate who will return to an established family situation upon release from custody will not require the same level of support in preparation for release as an inmate from a dysfunctional background or an inmate lacking employability skills.

External leave participation is one strategy available to prepare an inmate for release into the community under supervision. The primary function of the external leave program is not to "test" inmates before release. Inmates in custody can be prepared for release through other means such as: placement in an open camp/farm location with minimum physical restrictions and staff supervision; participation in community projects; and performing work outside a correctional complex. These options allow inmates to prepare for release outside the secure physical confines of a secure correctional centre.

Level of risk does not automatically decrease with time spent in custody and the amount of time prior to release should not be an indicator of an offender's level of risk to the community. It is important that the decision maker determining progression to external leave take into account all known matters to prepare each inmate for successful return to the community.

Question 3.11: Submissions by the Commissioner and the State
Do any changes need to be made to the powers of the Commissioner and the State to make submissions about parole?

Comment

The current powers provide an important safeguard mechanism.

Question 3.12: Parole and the HRO Act
What changes, if any, should be made to improve the interaction between parole decision making and the provisions of the *Crimes (High Risk Offenders) Act 2006* (NSW)?

Comment

The SPA plays no role in respect of persons subject to orders under the *Crimes (High Risk Offenders) Act 2006*(HRO Act).

The parole and continuing detention or extended supervision order processes are two discrete processes, with different considerations and objectives, which operate independently of each other.

Depending on sentence construction, parole consideration for offenders usually commences some years before sentence expiry and then each twelve months thereafter (except in the case of manifest injustice). If parole is refused at the end of the offender's non-parole period, or anytime thereafter, the last time parole is considered in the majority of cases is twelve months before sentence expiry. In the case of offenders being potentially subject to the HRO Act, consideration of their cases commences twelve months (sex offenders) to twenty four months (violent offenders) before sentence expiry. The HRO Act allows an application to be filed six months before sentence expiry, as such the last parole consideration is usually completed before a possible application under the HRO Act is considered and certainly before an application is filed and a determination made by the Supreme Court.

In the case of an offender subject to parole consideration, the SPA, Community Corrections and the SORC (if applicable) are informed when the CSNSW's High Risk Offenders Assessment Committee (HROAC) identifies an offender and makes a recommendation to the Attorney General about a possible application.

Bringing the date of filing for an application under the HRO Act forward to 18 months before sentence expiry may be problematic. The present system allows for offenders either released to parole or remaining in custody to be monitored for as long as possible before a final decision is made as to whether a recommendation should be made to the Attorney General in respect of a possible application. This is particularly relevant when an offender has a shorter sentence. CSNSW has found that offenders have exhibited the re-emergence of high risk behaviours or unstable behaviours close to sentence expiry on a number of occasions, which has raised sufficient concerns as to their risk to the community to warrant the making of an application. CSNSW has also observed instances where an offender's risk of

reoffending has been mitigated within the last 6-12 months of a sentence through improved engagement in treatment programs. A change in application date may fail to capture offenders whose risk is becomes elevated and also may unnecessarily capture offenders whose risk has been mitigated.

Question 3.13: The definition of "serious offender"
Should any change be made to the current definition of "serious offender"?

Comment

The focus of the SORC is the management of serious offenders in custody. The primary, but not only, purpose of the abovementioned HROAC is to identify and make recommendations concerning serious sex and violent offenders who may come within the ambit of the HRO Act. Some offenders subject to HROAC consideration are in the community rather than in full-time custody.

All offenders fall within a continuum of seriousness/risk. In the vast majority of cases, the current legislative definition of a serious offender captures inmates who have perpetrated offences which are seen as serious crime by the community and the judicial system. The definition also provides for an offender who does not meet the definition to be managed as a serious offender in accordance with a decision of the sentencing court, the SPA or the Commissioner of Corrective Services. As at October 2013, there were 19 offenders in custody who, while not meeting the offence or length of sentence legislative definition of a serious offender, were being managed as serious offenders.

As previously stated, whether an offender is identified as a serious offender is in some respects an arbitrary designation which denotes a particular point on a continuum of increasing seriousness. It is the combination of increased likelihood of reoffending, and the impact of that offending, which constitutes risk to the community. On its own, high risk can simply mean likely to commit a further offence. This may mean traffic or shoplifting offences which will have a relatively small impact on the community with respect to each specific offence (even if, for example, shoplifting as a whole may have a significant financial impact).

The definition of serious offender has been subject to change over time. In 1991, the definition included an inmate who was subject to a minimum or fixed term of imprisonment of greater than 3 years and who, in the opinion of the former Director General (now Commissioner) should be managed as a serious offender. On 14 January 1994, the *Prisons (Amendment) Act 1993* commenced which included in the definition of serious offender an offender serving a minimum term of 12 years or more.

Question 3.14: Parole in exceptional circumstances
Are there any issues with SPA's power to grant parole in exceptional circumstances?

Comment

The granting of parole in exceptional circumstances has been exercised on a limited basis in the past, mostly when an inmate is not expected to live for more than a short period of time. For example, if an offender is experiencing a critical/intensive medical condition and is kept alive through a life support apparatus, and a treating medical specialist advises that death is imminent, it is likely that parole would be recommended.

The Table below is drawn from CSNSW's internal records, and demonstrates the number of applications referred to the SPA and the number of applications for which the SPA granted parole (excluding remand and Commonwealth offenders):

Year	s160 applications to the SPA	SPA granted parole
2013	10	5
2012	10	3
2011	5	1
2010	7	3
Total	**32**	**12**

An ageing prison population and the onset of age related disease, exacerbated by the already significant health disadvantages of this cohort, may warrant a review of the purpose of this power. Early onset dementia (and dementia caused by alcohol and substance abuse) is represented in the inmate population. When inmates experiencing advanced dementia need expert care, and do not present a risk to the community, it may no longer be appropriate for them to remain in a correctional centre. Similarly when inmates reach a point of frailty that they need expert care, and do not present a risk to the community, it may no longer be appropriate for them to remain in a correctional centre.

Question 3.15: Offender involvement and input into SPA decisions
(1) Should there be more scope for offender input and submissions to SPA at the first stage of the decision making process (ie the private meeting where a decision is taken or an initial intention formed)?
(2) Should any change be made to the availability of public review hearings after a decision is made to refuse parole?
(3) Is there currently sufficient assistance available to help offenders make meaningful applications for and submissions to review hearings, and to help offenders understand what happens at review hearings?
(4) Are there any problems with offenders not being provided with the material which supports SPA's decisions?

Comment

The SPA is not bound by the rules of evidence and may inform itself of any matter in any appropriate way. Proceedings before the SPA are conducted with as little formality and technicality, and with as much expedition, as fairness to any affected person and the requirements of the Act permit. A decision of the SPA is not vitiated merely because of any informality or want of form (Schedule 1, item 11).

(1) In practice, offenders are able to have input into the SPA decision making process at the private meeting stage; however, the onus is on the offender to make a written submission. Generally speaking, offenders are aware of their impending parole consideration owing to the necessary interviews and other preparations conducted by Community Corrections. The right for offenders to make oral submissions at the first stage of the decision making process would have resource implications, particularly when the SPA determines that parole should be granted on a reading of the papers.

(2) The SPA provides reasons when refusing an offender parole. Offenders are advised in writing of the following information: the material that the SPA considered, the material facts of their case, consideration of the matters under section 135, the critical issue for parole refusal and why release is not considered appropriate. Offenders are also provided with a copy of all documents that the SPA considered. This information is then also provided to their legal representative (if appropriate) upon a review hearing being granted.

In 2012,the offender was given an automatic review hearing in approximately 52% of cases in which the SPA made a decision or formed an initial intention to refuse parole. The remaining 48% were given the opportunity to apply for a review hearing, of which approximately 50% applied. Of those who applied, approximately 35% were able to convince the SPA that they should be afforded a review hearing. Review hearings for offenders with no immediate prospect of obtaining parole may create false expectations and public hearings for such offenders may cause unnecessary concern among victims that the offender is about to be released.

(3) Any proposals concerning the provision of additional assistance to offenders will have resource implications.

(4) Given the range of matters which the SPA takes into account when reaching a decision, it is difficult to determine the extent and frequency that victim submissions affect the ultimate decision. At present, in keeping with procedural fairness, where documents are withheld in accordance with section 194, where appropriate, attempts are made to provide summaries of the material. Existing cases about SPA decisions and procedural fairness have not turned on the point of the disclosure or otherwise of victim submissions. In *White v SPA of NSW & Anor* [2007] NSWSC 299, the SPA's withholding of a victim submission was raised as a ground in the appeal; however, prior to the Supreme Court hearing any deficiency in procedure was cured by the provision of further documents, including the victim submission.

Question 3.16: Reasons for SPA's decisions

Should any changes be made to the manner or extent to which SPA provides reasons for its decisions?

Comment

The *Crimes Legislation Amendment (Parole) Act 2003* introduced a requirement for the SPA to give reasons for its decisions to make it accountable. These reasons are recorded in the minutes of SPA meetings.

As a matter of course, where parole is refused or revoked, the offender and/or the offender's legal representative is provided with documentation containing the reasons for the SPA's decision. Where parole is granted, the minutes which contain the reasons for the SPA's decision are not provided to the offender as part of general practice.

In both cases, the reasons for the SPA's decision are generally not made publicly available, but may be accessed by the public after fulfilling the requirements of the *Government Information (Public Access) Act 2009*.

Registered victims may access reasons for the SPA's decisions by way of application to the SPA. Most commonly, the Victims' Register (CSNSW) liaises directly with the SPA on behalf of the victim.

Publishing reasons as part of general practice would therefore have resource implications for the SPA, and could potentially raise legal issues regarding privacy of information.

Notwithstanding this, it is to be noted that there are potential benefits, apart from the issue of general transparency, to publishing SPA's reasons, particularly where parole has been granted. The granting of parole can often be a contentious issue in the public's view. Providing access to the reasons for the SPA's decision – which may indicate, for example, that the offender has successfully completed programs which address the causes of his or her offending behaviour – could serve as a useful explanatory tool to inform the public about the logic behind SPA's decisions and to potentially mitigate any adverse public response.

Question 3.17: Appeal and judicial review of SPA's decisions
Should there be any changes to the mechanisms for appeal or judicial review of SPA's decisions, including the statutory avenue in s 155-156 of the CAS Act?

Comment

Under section 193C of the Act a decision of the SPA is final, subject to the provisions of the Act. The SPA 2012 Annual Report indicates that four matters were referred back to the SPA in 2009 and six matters were referred back in 2011. In 2012 three appeals were withdrawn and two were dismissed. In the past five years, the number of appeals has fluctuated between a low of five and a high of 14.

Question 3.18: Reconsideration after refusal of parole
(1) Should the 12 month rule (as it applies to applications for parole after parole refusal) be changed in any way? If so, how?
(2) Are there any issues with the requirement to apply for parole reconsideration or the assistance that offenders receive to apply?

Comment

(1) On 20 November 2013, the Minister for Justice introduced into Parliament the *Crimes (Administration of Sentences) Amendment Bill 2013*. The miscellaneous amendments include a proposal to allow the SPA to consider the granting of parole to avoid manifest injustice, in relation to an offender whose parole order has been revoked, at any time after the revocation of the order. The circumstances constituting manifest injustice are to be determined by the Minister and prescribed by regulation. The amendment will allow the SPA to deal with offenders who have had their parole order revoked following release on parole in the same way as it deals with offenders who have been refused parole.

The SPA has informed the LRC that the 12 month rule is not necessary from its perspective to conserve resources (paragraph 3.146). The issue of resources is not limited to the SPA. When the SPA reconsiders a case it has resource implications for the CSNSW's Community Corrections and possibly the SORC.

(2) The SPA Secretariat has an administrative practice to safeguard against inmates inadvertently failing to apply for parole after being refused parole at the expiry of their non-parole period. If an application is not received at the time of an offender's annual review date, the SPA Secretariat contacts the appropriate Community Corrections office to find out whether the offender intends to apply for parole.

Question 3.19: Drug Court as a parole decision maker
Are there any issues with the Drug Court's operation as a parole decision maker?

Comment

The DAGJ has completed a review of the legislation governing the Compulsory Drug Treatment Program and the Compulsory Drug Treatment Correctional Centre. One of the recommendations contained in the Review relates to the parole eligibility date for offenders subject to a compulsory drug treatment order. The Attorney General and Minister for Justice is expected to introduce legislative amendments in response to the Review in2014.