

QUESTION PAPER 6

Question 6.1: Different treatment of juvenile offenders

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

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

Yes, juvenile offenders should be treated differently than adults seeking parole consideration or when being considered for breaches of parole. SPA agrees with the general observations of paragraphs 6.6-6.9 as to why there ought be two separate and distinct systems of parole.

However, juvenile offenders classified as inmates rather than detainees, should continue to be considered by the adult parole system.

Question 6.2: Features of the juvenile parole system in NSW

If a separate juvenile parole system is retained in NSW:

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

SPA is committed to the view that there should be two separate and distinct parole systems within NSW, most notable amongst those being a juvenile parole system.

Consistent with its adult counterpart, a juvenile parole board should be established. Its primary function should be to consider the totality of issues relevant to the grant or rescission of parole and as important, a framework for the rehabilitation of the juvenile. For these reasons, it is critical that a decision making body associated with juvenile parole be drawn from an appropriately qualified and experienced based persons.

For comparative reasons, an examination of the skills base of the membership of the SPA finds its membership drawn from a range of professional, legal and community based skills and qualifications. Such membership - in collaboration with SORC, CSNSW and relevant government agencies - provides holistic decisions regarding the release of offenders in the community (including rehabilitation programs, accommodation, compliance, testing and monitoring).

If a juvenile parole board were to be established, it would be SPA's recommendation that its composition include appropriately qualified persons from the field of juvenile offending and rehabilitation.

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

Special principles of juvenile parole should include the successful reintegration of the juvenile back into the family and community environment. As important, should be the principle of rehabilitation of the offender and their non-return to the juvenile justice system.

The comments raised in 6.21 are endorsed by the SPA.

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

As outlined in 6.23, the SPA would agree that the decision making criteria in s 135 is not appropriate in isolation and should be amended to reflect the special circumstances of young offenders. In particular, this should apply when considering the rehabilitation of young offenders and safety of the community.

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

The CAS Act could be amended to add a section/part specifically for the release and revocation of juvenile offenders and the establishment of a juvenile parole board. Amended legislation would provide a greater accountability mechanism, not only for a proposed juvenile parole board, but as important, for the realisation of the rehabilitation of juvenile offenders.

The section/part of legislated changes would provide the benefits of a review system (like the adult parole board) and would not change the present arrangements of considering juveniles in the adult system.

Question 6.3: Structuring the juvenile parole system

(1) Are any of the options presented preferable to the current structure of the juvenile parole system? If yes, why?

While 2A provides a theoretical solution, it presents a number of practical difficulties in its implementation. This includes changing the current arrangement for juvenile inmates, from the jurisdiction of SPA to the jurisdiction of the juvenile system for parole. You would then have Juvenile Justice staff working in CSNSW facilities, leading to the possibility of duality of roles, functions and responsibilities. Therefore, SPA prefers the current arrangements.

Supervision arrangements for young offenders aged 18 or above and released from juvenile facilities does provide for some confusion between Juvenile Justice and Community Corrections, however, this should be overcome by interdepartmental policy/decision making.

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

Central to any system is the removal of the uncertainty created by present functional responsibilities of a number of agencies including Juvenile Justice, CSNSW and the Children's Court. A one-stop-shop approach to juvenile parole must ensure a greater efficacy in the overall management of the juvenile in meeting their requirements of parole and the safety of the community.

Question 6.4: Parole process in the juvenile parole system

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

As stated previously, the CAS Act could be amended to add a section or part specifically for the release and revocation of juvenile offenders and establishment of juvenile parole board. Amended legislation would provide a greater accountability mechanism, not only for a proposed juvenile parole board, but as important, for the realisation of the rehabilitation of juvenile offenders.

This would provide the benefits of a review system (like the adult parole board) and would not change the present arrangements of considering juveniles in the adult system.

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

Victims' involvement in the juvenile parole is essential in that it ensures that victims' views are considered as part of the overall decision making process. Such an approach compliments that which exists in the adult parole board deliberations.

The views of victims, could as in the case of adult deliberations, be facilitated through the victims register, rather than through a restorative justice conferencing process. This is not to devalue a restorative justice process, but rather defining such a process as one that should occur separate to the process of parole.

Question 6.5: Assistance with parole readiness

Should any improvements be made to the way young offenders in the juvenile parole system are prepared for parole?

SPA has no comment to make in relation to this question.

Question 6.6: Reconsideration after refusal of parole

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

SPA would agree with the comment in 6.62 of Question Paper 6. Experts (juvenile parole board members) should have the discretion to determine when a young offender should next be considered for release to parole (not as prescribed in legislation as the parole eligibility date) and what conditions should be prescribed in respect of the juvenile's parole, if initially refused release to parole.

Question 6.7: Supervision of young offenders

(1) Are there any issues with the selection of the supervising agency for young offenders paroled through the juvenile parole system?

SPA is not aware of any issues with the selection of the supervising agency. In the event there are any issues, more comprehensive liaison between each agency could assist in determining the appropriate supervision agency.

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

SPA has no comment to make in relation to this question.

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

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

No. The 14 day waiting period is a practical and administrative measure that benefits the juvenile, their legal representative and the parole decision maker. It allows for due consideration of the circumstances leading to revocation, the history of the young person, any representations that his/her legal advisor wishes to make and the views of the supervising agency. The waiting period also allows, where relevant, for the provision of specialists services such as interpreters.

(2) Should the 12 month rule apply after parole revocation in the juvenile parole system? If no, what provision or limit, if any, should replace the 12 month rule?

No. The releasing authority should have the discretion to set a parole eligibility date. The 12 month rule is punitive and draconian, where technical breaches of parole are punished by a severe prison term. It often takes away the opportunity for the young person to have a considerable period of supervised parole in the community.

Question 6.9: Role of the Serious Young Offenders Review Panel

Should the functions of SYORP be expanded so that it has a role in parole decision making for serious young offenders?

Similar to SORC, the SYORP should provide advice to the releasing authority about the suitability of a young person's release to parole. However, SPA does not recommend that the provisions of section 135(3) of the *Crimes (Administration of Sentences) Act* should be applicable.

Question 6.10: Principles applying to young offenders in the adult parole system

(1) Should similar principles to those found in s 6 of the *Children (Criminal Proceedings) Act 1987 (NSW)* and s 4 of the *Children (Detention Centres) Act 1987 (NSW)* apply when SPA is dealing with an offender who is under 18?

SPA comments under 6.2 are maintained and it would be appropriate that when considering young offenders, SPA consider the principles of s 6 of the *Children (Criminal Proceedings) Act 1987 (NSW)* and s 4 of the *Children (Detention Centres) Act 1987 (NSW)*.

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

While different criteria are not required, consideration should and is given to the fact that the person is a juvenile, i.e. not an adult and SPA should remain cognisant that rehabilitation of a young offender is paramount for the safety of the community.

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

Not applicable

Question 6.11: Composition of SPA

When SPA is making decisions affecting young offenders, should there be a special composition of SPA to include members with youth expertise?

The only young offenders SPA makes determinations about are those that have been held in adult custody at the time of release. The composition of SPA provides members with sufficient professional and life experience skills to make decisions regarding the few young offender matters dealt with in the jurisdiction.

Reports prepared by Community Corrections (whether Pre Release Reports or Breach Reports) are specific to young offenders and their needs. This includes contact with specialist youth resources in the community, including mental health, AOD workers, youth workers, police and juvenile justice.

Question 6.12: In-custody and post-release support

(1) What specific problems do young offenders in Corrective Services NSW custody have in accessing in-custody programs and preparing for parole?

Similar to adult offenders, resources are limited and consequently, program access is difficult.

Behaviour, conduct and maturity of young offenders can also impact on their ability to access in-custody programs, in particular, where that behaviour, conduct and maturity has been viewed as being negative.

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

The comments made in paragraph 6.90 by the Children's Court are supported by the Authority.

Education and training for Community Corrections officers could assist in the support provided to young offenders. Liaison between Juvenile Justice and Community Corrections should occur to allow for program participation by young offenders in Juvenile Justice programs, despite being supervised by Community Corrections.