



## Children's Court of New South Wales

31 January 2013

Mr Paul McKnight  
Executive Director  
NSW Law Reform Commission  
Level 13, 10 Spring Street  
Swire House  
Sydney NSW 2000

Dear Mr McKnight

### **Law Reform Commission Review of the Parole System in NSW**

Thank you for the opportunity to comment on the Law Reform Commission's review of parole for young offenders (Question Paper 6).

#### ***Question 6.1***

The Children's Court is of the view that juvenile offenders should be treated differently from adults in relation to parole. The Children's Court submits that a separate parole system for juvenile offenders is appropriate to delineate and address the discrete issues relevant to juvenile offending.

These unique factors include the young person's lack of maturity, propensity to take risks and susceptibility to peer influence. Consideration of these issues ensures that an emphasis on rehabilitation is retained as the overarching principle for parole decision making for young offenders.

This proposition is consistent with common law principles, specifically the comments in *R v GDP* (1991) 53 A Crim R 112 at 116, where Matthews J (Gleeson CJ and Samuels J A agreeing) adopted comments made by Yeldham J in *R v Wilcox* (15 August 1979, unreported):

*"...in the case of a youthful offender...considerations of punishment and of general deterrence of others may properly be largely discarded in favour of individualised treatment of the offender, directed to his rehabilitation."*

In practical terms, a separate parole system for young offenders reduces their contact with adult offenders. Physical separation between juvenile and adult offenders is significant to ensure that juvenile offenders are not placed in a situation where they are susceptible to the criminogenic influence of adult offenders. Further, it reduces the

possibility of others becoming aware of the young person's circumstances, which may hinder rehabilitation.

### ***Question 6.2***

The Children's Court of NSW should retain responsibility for parole decision making for juveniles and the overarching principles outlined in s 6 of the *Children (Criminal Proceedings) Act 1987* (CCPA) should apply to parole decisions.

The Children's Court holds the view that the considerations in s 135 of the *Crimes (Administration of Sentences) Act 1999* (CASA) are applicable (excluding those relating to the Drug Court) to young offenders. Whilst the existing framework under s 135 of the CASA is sufficient, special provisions should apply to young people. Specifically, s 135 of the CASA should be interpreted by reference to the principles outlined in s 6 of the CCPA.

### ***Question 6.3***

The Children's Court underscores the significance of tailoring parole decision making to the needs of young offenders. Therefore, the body dealing with the young person should have the appropriate expertise to assess and address the psychological, social and emotional maturity of the parolee. The Court is opposed to administrative determinations guiding the transfer of parolees.

The Children's Court submits that all parole decisions for juvenile offenders under 18 should be made by the Children's Court. This should be the case regardless of whether the decision relates to breach or release and regardless of the sentencing court or facility. The Court should have the power to make all parole decisions for offenders over 18 who have been sentenced by the Children's Court.

Any decision making regarding release (ie for sentences over 3 years) for offenders over 18 should be made by the State Parole Authority (SPA). The SPA should make this decision regardless of the juvenile justice or correctional facility in which the parolee is based.

Decision making power for all parole breaches for offenders over 18 who have not been sentenced by the Children's Court should be with the SPA. Where offenders are over the age of 18 but under 21, the SPA should be the decision maker. To facilitate appropriate decision making in these matters, the SPA should have a member with expertise in dealing with younger offenders.

### ***Question 6.4***

The Children's Court is not aware of any matters where the Court has dealt with a serious offender. Therefore, the Court does not object to the Serious Offenders Review Council (SORC) and SPA dealing with parole decision making for all serious offenders.

The Children's Court submits that administrative procedures governing the provision of the details of registered victims require improvement. The Children's Court is

supportive of the use of restorative justice conferencing processes to facilitate victim involvement in parole decision making for young offenders. If restorative justice conferencing is utilised, procedures will need to be instituted to enable victim participation prior to making a release decision.

### ***Question 6.5***

The Children's Court holds the view that the approach taken by Juvenile Justice to determine parole readiness is comprehensive and appropriate. However, the Court has observed that in many cases the same level of preparation is not applied to young offenders in adult correctional facilities.

Many young offenders in adult correctional facilities have similar needs to those of their slightly younger peers. Despite this, their location in adult correctional facilities precludes them from receiving the comprehensive accommodation and post release support as that which is provided by Juvenile Justice.

Therefore, the Children's Court is of the view that young offenders in correctional facilities should be provided with the level of assistance with parole readiness afforded to young offenders in juvenile detention centres.

### ***Question 6.6***

The Children's Court submits that the 12 month rule is arbitrary and inappropriate for parole matters dealt with by the Children's Court.

For decisions to release, the 12 month rule may result in the erosion of a parole period that has been carefully considered and determined to be so necessary that the legislative ratio of non-parole period to parole period requires alteration.

In relation to breaches, the parole period is usually less than 12 months, so the result will be that there is no opportunity for parole for the young person. In practice, this means that matters will continue to be adjourned until it is appropriate to order release.

In each of the cases mentioned above, whether a young person is deemed unsuitable for release may be outside of the control of the young person. For example, the young person may be deemed unsuitable for release due to a:

- Delay in Family and Community Services considering funding for release to a residential drug rehabilitation centre
- Lack of sex offender programs commencing close to the release date
- Lack of suitable accommodation

If an application is refused and the young person wishes to make a fresh application, a leave provision may be appropriate to deal with frivolous applications. If Juvenile Justice policies result in the young person's ineligibility for programs, then Juvenile Justice needs to review their policies.

### ***Question 6.7***

The practice of the Children's Court is to determine the appropriate supervising body when making the decision to release to parole. However, the Court submits that the administrative decision regarding the transfer of supervision from Juvenile Justice to Corrective Services requires more clarity.

The Children's Court holds the view that the assessment of parole supervision should be based on a comprehensive consideration of the need and circumstances of the parolee. The choice of supervisory body should not be wholly based on the age of the young offender, as age may not directly correlate to the offender's level of maturity. The same suite of resources and interventions available to a parolee who is 17 ½ should be available to a parolee who is 18.

### ***Question 6.8***

Whilst the intention of the 14 day rule was to provide fairness to the parolee, its operation in practice has been quite different. This rule often results in young people remaining in custody longer than necessary, offending against Rule 28 of the Beijing Rules. Principally that:

*"The early release and full supervision of young people should be used to the greatest extent and at the earliest possible time."*

For further discussion on the 12 month rule, see question 6.6.

### ***Question 6.9***

Generally, the reports received from Juvenile Justice regarding release decisions are comprehensive and provide a great deal of assistance to the Court. The Court is not aware of whether consideration by the Serious Young Offenders Review Panel (SYORP) would add valuable information to parole decision making for young offenders.

In circumstances where a serious young offender might be dealt with by the Children's Court, the sentence imposed is relatively short (compared with adult sentences), despite being greater than three years. In such circumstances, SYORP involvement may be valuable at a systemic level to ensure that standards of post release planning remain high.

### ***Question 6.10***

The Children's Court proposes that if the SPA is to deal with someone under 18, the principles enunciated in s 6 of the CCPA should apply to SPA's parole decision making.

### ***Question 6.11***

The Children's Court is of the view that a member of the SPA with youth expertise would be beneficial. This is especially the case if the SPA is dealing with someone

under 18, or someone serving a sentence imposed for an offence committed when they were under 18, and the person is under 21 at the time of consideration.

***Question 6.12***

The Children's Court retains its view, expressed in the submission to Question papers 1 – 3.

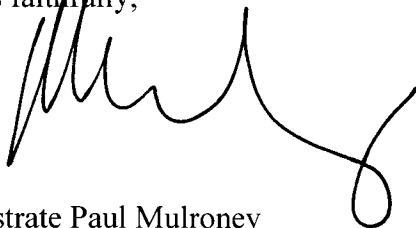
***Additional issue for consideration***

The Children's Court raises an additional issue for consideration relating to 'street time'. The practice of the Children's Court is to issue court attendance notices wherever possible to avoid young people going into custody unnecessarily. As a consequence, the young person's sentence continues to run where a young person has breached parole and effectively remains 'on the run' in the community. S171 refers to when a young person is "taken into custody".

Whilst the young person has breached their parole, the order cannot be extended to take account of any period of non-compliance. In effect, this results in the young person facing no consequence or a limited consequence for breaching their parole.

In order to support the practice of avoiding issuing warrants for arrest, the Children's Court submits that the Court should have the discretion to extend an order due to non-compliance in the same manner as if a warrant is issued.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Paul Mulroney', written in a cursive style.

Magistrate Paul Mulroney  
Acting President of the Children's Court of NSW