

Parole (NSWLRC Submissions)

**Question Paper 6:
Parole for Young Offenders**

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?

Response:

Yes, since juvenile offenders and adults have different circumstances and issues to deal with. They are in critical stages of development physically, socially and mentally. Their specific needs should be reflected through different treatment within the parole system. With their vulnerability, more discretion should be used regarding juvenile offenders compared to the adult parole systems, in order to cater to their different circumstances.

There should also be a reduction of rules as the parole period progresses rather than one set of conditions throughout the entire process of parole for an offender. This would serve as an incentive for positive behaviour on the part of the offender, whilst also addressing the goal of reintegration for these offenders. Reinforcement of positive behaviour would better serve both the offender and the community.

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

Response:

Yes, as a separate juvenile system operated by the Childrens' Court would highlight the importance of different treatment for juvenile offenders. This separation would improve efficiency in case management as officers are able to specialise in reintegrating juvenile parolees. This change also results in reduced confusion in the parole system. It clearly sets out a different protocol for juveniles. The merge of current juvenile parole systems (as already in place in Victoria, Western Australia, South Australia, Queensland and Tasmania) causes greater confusion and extra work for the parole system, leading to greater caseloads and loss of efficiency.

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?

Response:

Retaining the current arrangement where the Magistrate in the Children's Court is the decision maker would be the best option. The specialised decision maker can allow for the specific needs of the juveniles to be considered. Decision makers in the adult parole system can then focus on adult parolees without being burdened by deciding whether additional considerations should be given to the age and development of the offender.

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

Response:

Since juvenile offenders have a greater range of special considerations compared to adults, the juvenile parole system should have some special principles of its own regarding parole for juvenile offenders. For example, section 6 of the *Children*

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(Criminal Proceedings) Act 1987 sets out special sentencing principles for children and juveniles which could also apply to juveniles seeking parole, since they acknowledge different needs and rights existing between adults and juveniles. These could be adopted by the *Crimes (Administration of Sentences) Act 1999* (NSW) to facilitate uniform sentencing and decision making principles specifically for juvenile offenders.

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

Response:

In order to accommodate the greater needs of juvenile offenders, the criteria in s 135 of the *Crimes (Administration of Sentences) Act 1999* (NSW) (“CAS s 135”) (while exhaustive) should be amended. While the safety of the community should still be a significant consideration in the decision of granting or refusing parole, there should be additional considerations which incorporate section 6 of the *Children (Criminal Proceedings) Act 1987*, such as potential impacts on family life or the desirability of maintaining the juvenile’s education whenever possible. Additionally, there should be wider discretion when dealing with juvenile offenders.

Any potential changes should also focus on the relevant bodies and legislation for juveniles, such as the removal of references to the Serious Offenders Review Council. However, since the current legislation is aimed adult offenders, it would be easier to have two separate systems, as adaptations of CAS s 135 for juveniles acting in concert with the original provisions for adults would likely be more confusing and drawn out.

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

Response:

A separate framework for juveniles should be implemented, as it would avoid significant changes to the current section for adults. A separate system would highlight different treatment of adults and juveniles, as well as remove the need of adapting the one piece of legislation to convenience two separate groups of offenders.

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?

Response:

Justice Action’s position is that all charged offenders who are under the age of 18 should be governed by the Children’s Court and that Court should manage such cases to completion, even when the offender passes the age of 18.

This essentially means that the Children’s Court will control the case from sentencing to parole decisions. This should be done in order to maintain continuity and efficiency within the case.

However, Justice Action’s main concern is that a separate parole system for juveniles should ensure different treatment of young offenders from that of adults due to their stage of development, which requires a decision maker with special youth expertise such as the Children’s Court.

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

Response:

See response above.

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?

Response:

In NSW, the criteria for making juvenile parole orders for juvenile offenders, as given in CAS s135(2) are no different for those of adult parole orders. However, it is the view of Justice Action that the list of criteria should be altered to better suit the circumstances of young offenders. Various factors make juvenile offenders different from adult offenders, including a lower level of maturity, a higher propensity to take risks and increased susceptibility to peer influence. These factors, combined with the greater potential of young offenders to rehabilitate, necessitate a different response to juvenile crime and thus the parole decision-making process.

Certain aspects (such as the use of a non-parole term of 12 years or more as a basis for being a serious offender) would not be effective in relation to young offenders. The list of criteria set out in CAS s 135(2) should be modified to promote reintegration and reduce recidivism in young offenders. Additionally certain provisions such as subsections (f), (i), (ia), (j) and (k) confer too much discretion to parole and state authorities and should be reconsidered.

Justice Action endorses the approach undertaken in ACT which has adopted a separate set of criteria for juvenile offenders. The "youth justice principles" outlined in the *Children and Young People Act 2008* (ACT) s 94 reflect an approach which attempts to take into account the issues and factors unique to juvenile offenders. For example, the provision explicitly urges parole decision-makers to consider the "age, maturity and developmental capacity"¹ of a young offender and to prioritise his/her reintegration back into the community.²

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

Response:

Given the focus for juvenile offenders is rehabilitation, restorative justice conferencing should be implemented as a means of moving towards reintegrating the juvenile detainees and inmates back into the community. However, Justice Action recommends **against** involving victims in the parole decision making process as this would expose offenders to social disconnection and inhibit their ability to reintegrate into society after meeting with their victim.

Question 6.5: Assistance with parole readiness

¹ *Children and Young People Act 2008* (ACT) ss 94(1)(c), (g).

² *Ibid* s 94(1)(h).

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

Response:

Young offenders need more assistance preparing for parole as opposed to adult offenders. A stronger focus should be placed on the possible avenues for reintegration during the parole period.

In preparing 'juvies' for parole, Juvenile Justice should encourage and facilitate social reintegration for juvies. Positive peer mentoring, for example, from ex-parolees should be organized. They should be encouraged to maintain and strengthen family and community ties by having increased opportunities and resources for visitation. Juvenile Justice should ensure that the parents of the juvenile maintain regular communication with their child. They should encourage them to become active participants in their child's journey and do their best to aid them in any way possible. They should encourage family members to be actively involved in their child's reintegration back into their community. This can easily be achieved by providing Computers in Cells, a development Justice Action has long advocated for. Other simple ideas for social reintegration include sporting activities and vocational training/courses for older juvenile parolees.

Justice Action would like to raise concerns about the tendency for older and more mature juvenile parolees to request to conform to peer pressure be 'treated like an adult' and be transferred into adult parole preparation programs. Justice Action notes that such peer pressure often inhibits juveniles from properly reintegrating into society, albeit as a 'child'. Justice Action recommends that attention needs to be focused on that prevalence and perhaps incentives should be offered for more mature juvenile to stay in the juvenile parole system.

Justice Action would also like to take this opportunity to comment on management of Kariong Correction Centre. Justice Action suggests that even since it has been managed by Corrective Services, Kariong Correction Centre has been run effectively as an adult prison and no longer caters to the specific needs of juveniles. This particular culture at Kariong is particularly inhibitive of parole readiness for the juveniles that reside there.

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?

Response:

There should be more opportunities for juvenile offenders to apply for parole, especially regarding those serving shorter sentences. Only giving one or two chances for parole during a sentence would be more of an injustice to those with shorter sentences. Furthermore, they are at an age where they are more susceptible to changing their behaviour in return for short term rewards/encouragement. There should be a more proportional rule to juvenile offenders with shorter sentences, for example, every 6 months. This change should increase incentives to alter behaviour, effectively reducing recidivism.

Question 6.7: Supervision of young offenders

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

Response:

Justice Action is of the view that except in special circumstances, the appropriate supervising agency for young offenders is NSW Juvenile Justice. Only in special circumstances, for example, at the specific request of the offender, should Community Corrections be the supervising agency for the young offender.

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

Response:

Yes, Juvenile Justice NSW is in a position to provide sufficient support, programs and services to parolees in the juvenile parole system. However, Justice Action is of the view that they have not done this in the correct way.

Please refer to our response in Question 6.5. Justice Action is of the view that social reintegration should be the focus. Whilst the purpose of the existing programs are clear, Justice Action is of the view that changing the closed atmosphere is vital as support for parolees. Examples, as mentioned before, include Computers in Cells, increased access and reintegration with family and the community.

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?

Whilst the 14 day waiting period provides the benefit of adequate legal preparation, it may pose as an unnecessary and lengthy waiting period for others. Justice Action suggests that this period be reduced to a compulsory 3 day waiting period, with a 7 day period option still open for those who wish to pursue it. A shorter period between a revocation decision and review hearing for juveniles is justified, as young offenders are not likely to represent themselves in hearings and more frequently rely on outside legal representation to prepare cases on their behalf. This alternative structure essentially reduces the risk of unnecessary and unwanted delays whilst still giving the juvenile adequate preparation time with their legal representatives.

- (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?

Justice Action strongly recommends that the 12 month rule be reduced. The first reason for this is in relation to proportionality. When taking into consideration that the average sentence for a juvenile is relatively short, it becomes apparent that a 12 month waiting period is grossly disproportionate. This rule greatly limits the amount of times that a juvenile can apply for parole. In saying this, we do not recommend that the period be removed altogether. Instead, we suggest that it be reduced to 6 months. This allows for adequate preparation for the next parole review. A complete removal of a waiting period may lead to an unnecessary strain on the

SPA.

Question 6.9: Role of the Serious Young Offenders Review Panel

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

Yes, without a doubt the SYORP should play a role in the parole decision making process of serious young offenders. Given the multitude of areas in which the body considers when reviewing a parole application, it seems only logical that they use the information they have gathered to play an active role in the decision making process. The SYORP should mimic the role of the SORC. But before this can happen, the SYORP must be first able to interview the offender face to face so as to increase the validity and reliability of their recommendations.