



Ms S Button  
Policy and Research Officer  
NSW Law Reform Commission  
Department of Attorney General and Justice  
GPO Box 5199  
SYDNEY NSW 2001

Dear Ms Button,

**Re: Law Reform Commission Review of Parole – Question Paper 6**

I write regarding the Law Reform Commission's review of the parole system in New South Wales. Please find attached the NSW Police Force and Ministry for Police and Emergency Services submission to Question Paper 6.

Should you require any further information please contact Ms Samantha Knox, Senior Policy Analyst, Ministry for Police and Emergency Services on (02) 9228 4280 or at [samantha.knox@mpes.nsw.gov.au](mailto:samantha.knox@mpes.nsw.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. Battilana'.

**Mary-Louise Battilana**  
Executive Director, Policy and Finance

21.2.14

## **Question Paper 6 – NSWPF and MPES**

### **6.1 Different treatment of juvenile offenders**

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

**Response:** Yes, juvenile offenders should be treated differently from adults in relation to parole, as their needs differ from adult offenders.

#### **6.1.2 Should there be a separate juvenile parole system? If yes why?**

**Response:** Yes, juveniles should be treated differently to adults in relation to parole.

### **6.2 Features of the juvenile parole system in NSW**

#### **6.2.1 If a separate juvenile parole system is retained in NSW, who should be the decision maker in the juvenile parole system?**

**Response:** The decision maker should be a juvenile parole authority.

#### **6.2.2 If a separate juvenile parole system is retained in NSW, what special principles (if any) should apply in the juvenile parole system?**

**Response:** Rehabilitation and community safety are special principles that should apply to the juvenile parole system.

#### **6.2.3 If a separate juvenile parole system is retained in NSW, do the decision making criteria in s 135 need to be adapted to the juvenile parole system? If so, in what way?**

**Response:** Yes, the decision making criteria in the *Crimes (Administration of Sentences) Act 1999* could be adapted to the juvenile system, however, any legislative change will be of limited value unless accompanied by enhanced resources that address the issues that drive offending.

#### **6.2.4 If a separate juvenile parole system is retained in NSW, should there be a separate legislative framework for the juvenile parole system?**

**Response:** Yes, however, consideration could also be given to amending the *Crimes (Administration of Sentences) Act 1999*.

### **6.3 Structuring the juvenile parole system**

#### **6.3.1 Are any of the options presented preferable to the current structure of the juvenile parole system? If yes, why?**

**Response:** Option 2A is preferable to the other options, as it sets clear boundaries for parole decision making and removes the ambiguities of transferring parole when the offender turns 18. This way, if the offender is subject to juvenile parole he/she is managed by Juvenile Justice NSW and

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parole decisions are made by the Juvenile Parole Authority (instead of Children's Court).

While the structure put forward at 2A is supported, in relation to high risk offenders, a risk management approach would need to be adopted to provide a more intensive level of supervision and support appropriate for these offenders, in order to reduce the risk of re-offending.

### 6.3.2 Are there any other ways of structuring the juvenile parole system that we should consider?

**Response:** Either option 2A or 4 with the decision maker being the Juvenile Parole Authority instead of the Children's Court. However, several practical problems with the current system are noted in this paper, namely that:

1. Young offenders can be transferred between Juvenile Justice NSW and Corrective Services NSW custody up until the day of their release. This changes the parole system applicable to them, including the parole decision maker and the agency that will supervise them on release. As a result, post release planning can be seriously disrupted, impacting on issues such as supervision and accommodation arrangements.

NSW Police have observed that there are at times serious deficiencies in the supervision of young offenders while on parole, particularly serious offenders who, in some cases, continue to commit crime whilst on parole. If structural change can assist in addressing this issue, these should occur.

2. In situations where Community Corrections takes on the supervision of a parolee when they turn 18 (in place of Juvenile Justice) the Children's Court remains the decision maker on revocation if a breach occurs. Therefore, whilst the person is being supervised by Community Corrections, the offender is over 18 and any new offences are dealt with by the adult court.

At times the Children's Court appears to be reluctant to return a person to custody in breach of their parole. In dealing with serious, recidivist offenders who are over 18, in particular, consideration could be given to whether the State Parole Authority may be a more appropriate parole decision making body.

3. In some cases where an offender who is over 18 is paroled from a detention centre (therefore through the juvenile parole system), there can be confusion about whether Juvenile Justice or Community Corrections is responsible for their post release arrangements and supervision.

As noted above, at times serious deficiencies in the supervision of young people on parole have been observed. There is a need for clarity with respect to which agency is responsible for supervising the young person.

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### **6.4 Parole process in the juvenile parole system**

#### **6.4.1 Should the parole decision making process in the CAS Act be adapted for use by the Children’s Court? If so, how?**

**Response:** There should be consideration given to establishing a process that allows other stake-holders to be involved the decision making process.

#### **6.4.2 Should victims be involved in parole decision making for young offenders in the juvenile parole system through a restorative justice conferencing process?**

**Response:** Yes, victims should have the opportunity to be involved in the parole decision making process of young offenders, particularly for serious offences. The victim’s views should be taken into consideration as some of the victims may be related to the offenders which may be an important consideration in granting parole.

Utilising restorative justice conferencing procedures through Children’s Registrars is supported and the outcome presented to the Decision Maker. If there is no restorative justice process then the victim/s should be allowed to make submissions and it should be considered by the Decision Maker under provisions similar to s 194 of the *Crimes (Administration of Sentences) Act 1999*.

The system should be transparent and flexible, with victims provided with a range of options, including a restorative justice process if appropriate.

### **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?**

**Response:** No, prior to the offender being released there is a requirement that they have undertaken a tailored plan which will equip the young offender for their release. Question paper 6 refers to ‘assistance with parole readiness’ and those programs/support available to the young offender in detention centres. Paragraph 6.57 refers to young offenders who are serving a sentence of more than three years and the responsibility of Juvenile Justice NSW, through case conferencing several months before the expiry of the non-parole period, to assist a young offender to be prepared for parole.

### **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:** The 12 month rule should be able to be reduced, if not, to do so would result in manifest injustice.

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### **6.7 Supervision of young offenders**

#### **6.7.1 Are there any issues with the selection of the supervising agency for young offenders paroled through the juvenile parole system?**

**Response:** All young offenders should be supervised by Juvenile Justice for the duration of their parole. The question paper discusses the difficulty of juvenile offenders who are transferred into the custody of Corrective Services prior to being released on parole. The question paper supports Juvenile Justice as the supervising agency for young offenders. The question paper suggests that Juvenile Justice have appropriate community based programs and support for the young offender.

#### **6.7.2 Is Juvenile Justice NSW able to provide sufficient support, programs and services to parolees in the juvenile parole system?**

**Response:** In some cases, it appears that young offenders are not provided with adequate support or supervision while on parole and this contributes to re-offending. A report entitled NSW Police Force Bail Compliance Review focused particularly on juveniles and included a quantitative and qualitative analysis of Computerised Operational Policing System (COPS) data. This analysis revealed deficiencies in the supervision of high-risk juvenile offenders while on probation, parole, bonds, and other types of supervision by the Department of Juvenile Justice. Accordingly, there is a need for relevant agencies to review juvenile offender case management from a whole of government perspective in order to enhance rehabilitation prospects and offender management.

NSW Police Force is currently working with the Department of Juvenile Justice to develop a framework for the exchange of information with regard to the impending release of juveniles on parole, particularly high risk juvenile offenders. This will enable NSW Police Force to put proactive measures in place to reduce the risk of re-offending. A framework promoting information exchange is essential to improving the interagency case management of offenders.

Further, in rural areas, in particular, there is an inadequate level of programs and services available to support juveniles on parole. In some cases juveniles are released on parole into inappropriate accommodation, for example, in situations where the juvenile will be co-habiting with their victim/s or with people with extensive criminal histories. The Department of Juvenile Justice should be aware of the situation into which they are releasing the young person.

### **6.8 Breach and revocation of parole in the juvenile parole system**

#### **6.8.1 Should the 14 day waiting period before revocation review hearings be removed for young offenders in the juvenile parole system?**

**Response:** No, as per s 173(2) of the *Crimes (Administration of Sentences) Act 1999*, the 14 days should elapse between a decision to revoke parole and

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the automatic review hearing which is held to reconsider the revocation of parole. The 14 day waiting period is sufficient for the offender to obtain legal assistance and prepare material for the review hearing.

### **6.8.2 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?**

**Response:** The 12 month rule should be able to be reduced in relation to parole revocation, to not do so would result in manifest injustice.

The time at which the offender should be able to apply for parole re-instatement should depend on the length of any further sentence, i.e. if a young offender with a remaining two year term of parole commits an offence on parole (or in custody) and receives a further 6 month control order/term of imprisonment, following which their parole is revoked (or after which parole is refused) they should be able to apply for parole re-instatement after serving the 6 month term if not to allow such would result in manifest injustice. No offender should be able to apply for parole or reinstatement of parole before the end of serving three months in custody following revocation. The decision maker should be satisfied that, disregarding the time served since the previous application or revocation, the circumstances that founded the previous decision have changed.

### **6.9 Role of the Serious Young Offenders Review Panel**

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

**Response:** No.

### **6.10 Principles applying to young offenders in the adult parole system**

**6.10.1 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?**

**Response:** Offenders who are under 18 should be dealt with by a juvenile parole system and not by SPA.

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

**Response:** While offenders who are under 18 should be dealt with by a juvenile parole system and not by SPA, such a system must utilise a risk management approach when making decisions relating to high risk offenders.

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

**Response:** Programs and community support should be provided to young offenders serving custodial sentences in the adult parole system. This would ensure that the young person's integration into the community is assisted. Currently, the supervision provided by Corrective Services NSW to young offenders subject to parole is less frequent than for those young offenders under the supervision of Juvenile Justice.

### **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?**

**Response:** The SPA should not be retained as a parole decision maker for juvenile offenders.

### **6.12 In-custody and post-release support**

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

**Response:** No comment.

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

**Response:** No comment.