

**Police Association of NSW**



# Scoping Paper: Parole

Police Association of New South Wales Submission

*August 2013*

Version Control

Purpose

The purpose of this document is to provide to the LRC's Scoping Paper: Parole, the Police Association of New South Wales response to its Inquiry.

Document Control

<i>Version Number</i>	V 0.1
<i>Release Date</i>	August 2013
<i>Copies</i>	Public
<i>Confidentiality</i>	Non-confidential
<i>Release Restrictions</i>	Nil
<i>File Name</i>	Scoping Paper: Parole
<i>File Location</i>	
<i>File Reference Number</i>	
<i>Author</i>	Vicki Sokias, Research and Resource Centre
<i>Status (Draft/Out of Draft)</i>	Out of Draft

## **Scoping Paper: Parole**

The LRC has released for public comment a Scoping Paper regarding Parole in NSW. The primary aim of the LRC's Scoping Paper is to improve the system of parole in NSW. The LRC has been asked to review the mechanisms and processes for considering and determining parole in NSW. It is seeking brief submissions on the scope and direction of its reference on parole. The Association has the following to report on the LRC's scope and direction.

Some time ago it was reported that \$5.7 million was cut from the supervision of serious sex offenders and this decision was made knowingly with 69 murderers and 296 sex offenders currently on parole. The government was heard to have scrapped the elite Community Compliance and Monitoring Group within Corrective Services that conducted around-the-clock, unannounced home visits on dangerous parolees; this all comes in the light of recent cases of paroling prisoners who've gone out to reoffend in some horrendous murder cases. One such case was the case of the murder of police constable Glenn McEnally. All four offenders had been released on parole between two and eight months before the murder. They managed to somehow convince their case management team, the probation and parole service, the parole board that they were trusted individuals who could be released into the community and lead law-abiding lives, yet somehow along the line of the parole process their risk of reoffending should have been detected but it wasn't and with tragic consequences.

Although respect and independence must be granted to the decisions made by the parole board it too must ensure respect to the legislation, and place the community interests at foremost of their decision making. The NSW community has a right as well as an expectation that parole authorities are doing everything possible to scrutinise potential parolee's before they are granted freedom and if this scrutiny means that some offenders have to remain in prison until the authorities are totally satisfied that they no longer pose a threat to society, then so be it. Community safety is paramount in decisions regarding the granting of parole by the State Parole Authority (SPA).

While there is unfortunately no failsafe way of predicting the behavior of human beings, parole offers an opportunity to supervise offenders and facilitate their integration into the community. On the other hand, those high risk violent and sexual offenders who have shown no sign of rehabilitation, must be detained in custody, or kept under strict supervision orders. When contemplating parole, three aspects must be taken into account; the security of the community, the need for effective rehabilitation and, most importantly, the interests and needs of victims.

Parole means the conditional release of an offender who must abide by terms and conditions, during the additional term or balance of his or her sentence. If granted parole he or she completes his or her sentence in the community obeying the conditions set out in a parole order at the time of release. Parole

is and should be intended to help the offender move back into society, while at the same time protecting society from further crime. When the parolee completes his or her parole, the sentence is fully served.

No parole system can eliminate the risk of reoffending. The reasons for reoffending are quite complex. Underlying problems such as dependence on drugs and alcohol, poverty and mental illness or impairment, all play a role. In addition, prisoners face many practical obstacles to adjusting to life in the community, such as difficulties in finding appropriate accommodation and employment. These obstacles are compounded for the many prisoners who, even before entering prison, have been at the margins of mainstream society. What a parole system can and should do is reduce the risk that prisoners will commit further offences when released into the community, by providing a supervised transition into the community and by seeking to address some of the factors that may lead to reoffending. All these aspects need to be scrutinized in the LRC's review of parole in NSW. Statistical analysis of parole outcomes in NSW can prove worthwhile in this regard and as such processes need to be in place to collate such data.

The LRC needs to review and report on the legislative (ie the adequacy of the parole laws) and administrative framework governing the release and management of sentenced prisoners on parole in NSW and ensure that a range of perspectives are taken into account in making these complex judgments of parole. The review needs to identify the strengths of the NSW parole system. It also needs to review how; for instance, it prepares prisoners for parole in a multidisciplinary and non-legalistic manner when making decisions. The review also needs to identify its weaknesses in the current parole system. One example of this could include process related barriers for instance. Questions it needs to ask is how can the SPA improve in its decision-making guidelines; can it recommend more in terms of recommendations and safeguards to ensure that decisions about parole are based on adequate and accurate information and that relevant information flows effectively between stakeholders such as the SPA, Corrective Services NSW and the NSW Police Force. Accurate and timely information sharing – particularly as it relates to breach of parole – is a vital element in the proper management of parolees. Also, are appropriate systems in place to allow for the collection of comprehensive parole data?

The aim of the review must be in how it can ensure that the parole system best serves the NSW community, including promoting public safety and reducing re-offending. In conducting the review, the LRC needs to have regard to the purposes and operation of parole and legislative arrangements in other Australian and comparable overseas jurisdictions. Ultimately, 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 they are on parole and after they complete their sentences. Therefore, when assessing whether parole should be granted to a prisoner, community safety (as mentioned) is the paramount consideration. Subject to the paramount

consideration of community safety, the SPA should seek to facilitate the rehabilitation of the offender, in recognition of the fact that the community benefits from the rehabilitation of offenders.

Consequently, the Association agrees with the LRC considerations in the topics outlined (below) against a backdrop of broader consideration of the history and purposes of parole as well as consideration of the existing quantitative research on parole (as mentioned), reoffending and rehabilitation. These should include;

- court-based parole orders, including for accumulated and aggregate sentences
- whether the split of responsibility between the courts and SPA is well designed
- the threshold for SPA decision making (currently a sentence of more than three years imprisonment) and whether this should be raised or lowered
- the powers of SPA to revoke court-based orders and assume decision making responsibility for offenders serving a term of less than three years imprisonment
- the membership of SPA and SORC, including the representation of expertise and interests on both bodies, and
- the role of the Drug Court as a parole decision maker.

As the LRC discussion paper states, the LRC should look at the process for SPA's decision making, the involvement of victims and offenders in decisions, the factors that SPA takes into account and the avenues for review and appeal. This must involve examining the different decision making processes for serious offenders and all other offenders. It must also involve close consideration of issues that can affect the parole decision, such as homelessness (as mentioned already), the offender's security classification and completion of in-custody programs.

The Association agrees and considers it crucial in the LRC's plan to look at and scrutinize the relationship of reintegration into the community and management of parole. The LRC must examine the ways offenders are prepared for release, the relationship between in-custody and post-custody programs, the extent of the reintegration support provided to offenders as part of their parole periods, and any issues connected to the conditions attached to parole orders. The focus should be on the way parole works or does not work to prevent reoffending and achieve rehabilitation and reintegration.

The Association also considers it relevant that the LRC must examine in relation to SPA's powers to manage breaches and revocations of parole. In this area the LRC should also consider the way Community Corrections detects and reports breaches of parole orders and the avenues for offenders to access parole after refusal or revocation (including the "12 month rule"). The review also should include the SPA's other powers to manage breaches, revocations and reinstatements of home detention and intensive correction orders.

As the LRC states, for most juvenile offenders, the Children's Court performs the functions of SPA and makes decisions according to the same provisions of the *Crimes (Administration of Sentences) Act 1999* (NSW) that SPA applies to adult offenders. Therefore the LRC must look at the way the Children's Court makes and revokes parole orders for juveniles.

NSW Police perform an important role in relation to parole. The most obvious aspect of its role is the compliance with the condition to not commit further offences; however, police are also potentially in a position to monitor compliance with some parole conditions. For example, a parolee may be subject to a condition to abstain from alcohol, and police may detect the parolee appearing drunk in a public place. Can the LRC's review of parole assist in NSW Police's procedures for dealing with parolees who are in breach of parole, and streamline the process removing any complexities that exist? Also, is there any coordination or oversight of information sharing between relevant stakeholders? The information sharing requirements for the effective management of parolees are complex and the amount of information difficult to manage - in the LRC's scrutiny of NSW Parole - can this process be improved? What kind of gaps are evident for instance in the flow of this information? It is crucial that effective communication is kept open between all relevant stakeholders and the feedback loop between these agencies leads to better clarity of roles and responsibilities for all.

The Association is also concerned with the re-offending by persons on parole or bail. It is the Association's understanding that data regarding these persons is available, but not currently collated by any agency. It would seem appropriate that the body responsible for reporting on criminal statistics, the Bureau of Crime Statistics and Research (BOCSAR) should be analyzing this information and providing it to the public and the judiciary. Again, this has become relevant in light of recent very serious instances of parolees committing violence crimes. There needs to be reporting of instances and rates of re-offending by persons on parole or bails.

The LRC must also question whether there is any consistency in Australian law regarding victim input into the parole process. Some jurisdictions make no provision for it, whilst others provide comprehensive arrangements. How specific are laws in New South Wales regarding allowing victims to participate in the parole process? If victim submissions are likely to have a large impact on parole decisions, disparity may arise between offenders whose victims make submissions and those whose victims do not. Is there a need for clarification in how victim submissions should be used? Legislators may need to specify more clearly the way in which parole boards should use victim submissions. These clarifications are needed, particularly if victim submissions are influential in parole decision-making. Another important issue concerns victim satisfaction. Victims of crime may be further alienated if the framework for using victim submissions is not clear and well managed in the parole process. There is currently a need for empirical research into victim involvement in the parole process.

Parole supervision is an essential and necessary part of sentences. Perhaps the LRC needs to dissect this part of the parole process as well. As we know, prisoners appearing before the State Parole Authority are amongst the most disadvantaged in the legal system and parolees experience various difficulties following release from prison as mentioned. Parole supervision is intended both to assist offenders re-settle and protect the community from further offending. Effective parole supervision requires re-settlement, re-integration and rehabilitation. Effective parole supervision also takes time. Early support, monitoring and resource allocation is warranted to maintain and improve survival rates.

The LRC must also consider the criticism that has been directed at parole which includes the perceived leniency on offenders particularly those convicted of violent crimes (as mentioned). It is argued that it is unfair that an offender walk free while his or her victims must still suffer. Additionally, it is believed by some that parole weakens the general deterrent effect of incarceration by weakening the severity of imprisonment as punishment. There is also the fear that an offender released into the community on parole will pose a threat to public safety (as has currently happened) and particularly to former victims. Some of the strongest criticisms of parole relate to a perceived lack of due process in Parole Board hearings, a result of the discretionary nature of the process. It is also argued that the parole process usurps the role of the judiciary in sentencing offenders. In the interests of the safety of the community, parole must be restricted or abolished for dangerous offenders.

It is important that there be an articulated purpose of parole. As mentioned, the fundamental aim of parole (and the LRC's aim in its review of parole) is to provide the prisoner with an incentive for rehabilitation through the prospect of early release, and perceived benefits of parole stemming from this prospect include increased likelihood of reform of prisoners and better overall prisoner discipline. Other benefits of parole include easing the transition from prison to the community through supervision, which reduces the risk of recidivism.

*[N]otwithstanding that a sentence of imprisonment is the appropriate punishment for the particular offence in all the circumstances of a case, considerations of mitigation or rehabilitation may make it unnecessary, or even undesirable, that the whole of that sentence should actually be served in custody...as stated in the High Court in R v Shrestha (1991)*

The Law Reform Commission summarized the purpose of parole rather succinctly as follows:

*Acceptance of the place of parole in the penal system involves a balancing of conflicting and uncertain priorities. Parole reflects the philosophy of rehabilitation, and recognizes the advantage to both the community and the individual offender of conditional release from custody occurring in a supervised and supported manner conducive to rehabilitation. It is attended by the ultimately unpredictable risk of recidivism by any particular prisoner, but that risk is balanced*

*by acknowledging the risk of releasing the offender unconditionally and without any support when the full sentence of imprisonment has been serviced.*

It must also be mentioned here that there are economic advantages to parole; a reduction in recidivism will reduce the burden on the criminal justice system at all levels, and the cost of community supervision is low compared to the cost of incarceration.

In terms of dangerous offenders, there is no doubt that there are some offenders who pose a real threat to the safety of members of the public, the government, Parliament and the court have a duty to try to protect the public from the risk of injury by these dangerous individuals. However, the next step of establishing a system for detaining dangerous persons is made difficult by ethical, practical and legal problems. Any dangerous offender legislation needs to address a range of issues, including the following;

- Who is dangerous and what potential harms will make a person 'dangerous'?
- Selective or group incapacitation ie selective incapacitation involves measures that restrain individual offenders who are identified as 'dangerous'. Group incapacitation involves detaining offenders not on the basis of their individual 'dangerous' character, but on the basis of their past offences.
- Role of judicial and executive discretion ie to what extent should the legislature direct the exercise of judicial sentencing discretions?
- Constitutional limitations
- Role of rehabilitation or treatment ie what resources should be put into efforts to treat persons perceived as dangerous? Which offenders can be treated?
- Effects of dangerous offender legislation ie to what extent will dangerous offender measures increase public safety?
- Balance between public safety and individual rights ie attempts to predict future dangerousness are far from accurate, and tend to over-predict the likelihood of future harm. That is, in any group of persons classified as likely to commit a serious act of violence, there will probably be a significant number who in fact would not have committed any such acts. Provisions that detain offenders solely for the purpose of community protection involve a choice between possible injury to the members of the public and certain deprivation of liberty for offenders whose future conduct can only be estimated.

However one looks at it, in terms of and dealing with dangerous offenders will require hard decisions to be made. In doing so, it is important to conduct debate in public, and clearly spell out the facts and policies on which such decisions are made against a backdrop of broader consideration of empirical research on parole and parole statistics.

The recognised benefits of parole are lost to the community when a robust assessment shows an offender has a very high risk of reoffending. The LRC should consider management of such persons with the view that incarceration prevents further offences and may become the sole purpose of sentencing i.e. there is no legitimate purpose or use for parole.

As the review of the Victorian Adult Parole System recently stated in its findings,

*Under an integrated, well coordinated parole system that has all the necessary frameworks in place at the inter-agency level – for example, information sharing, risk management and quality management – human error and human failings generally will be minimized.*

The Police Association thanks the LRC for the opportunity to make a brief submission and looks forward to the release of further question papers regarding parole in NSW.