



**New South Wales
Law Reform Commission**

**Parole
Question paper 2**

**Membership of the State
Parole Authority and
Serious Offenders Review
Council**

September 2013
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Question Paper 2:

Membership of State Parole Authority and Serious Offenders Review Council

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- 2.1 In this Question Paper we examine the membership of the State Parole Authority (SPA) and the Serious Offenders Review Council (SORC). SPA's parole decision making and the role of SORC are discussed in Question Paper 3.

Membership of SPA

- 2.2 SPA has the following members:
- at least four judicial members (appointed by the Governor of NSW on the recommendation of the Attorney General);
 - at least one police officer (appointed by the NSW Commissioner of Police);
 - at least one Community Corrections officer (appointed by the NSW Commissioner of Corrective Services); and
 - at least ten community members (appointed by the Governor of NSW on the recommendation of the Attorney General).¹
- 2.3 Judicial members may include judges or retired judges of a NSW court or federal court, and magistrates or retired magistrates. Judicial members may also be people qualified to be appointed as a judge of the Supreme Court.² One of the judicial members is appointed as the Chairperson of SPA.³ The role of the Chairperson is to lead the overall operations of SPA and make decisions about SPA's procedures and the way it conducts its meetings.⁴
- 2.4 At least one of SPA's community members must be a person who, in the minister's opinion, has an appreciation or understanding of the interests of victims of crime.⁵ This was intended to add to SPA's expertise in dealing with victim's issues and give

1. *Crimes (Administration of Sentences) Act 1999* (NSW) s 183(2).

2. *Crimes (Administration of Sentences) Act 1999* (NSW) s 3.

3. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 1.

4. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 11.

5. *Crimes (Administration of Sentences) Act 1999* (NSW) s 183(2A).

victims confidence that their interests and submissions would be given appropriate consideration.⁶

- 2.5 SPA's members are appointed for a period of up to three years, after which they are eligible for reappointment.⁷

Meetings and decisions

- 2.6 In practice, meetings of SPA are conducted with a division of five members. The division includes one judicial member, one police officer, one Community Corrections officer and two community members.⁸ The meeting is chaired by the attending judicial member.⁹ The meetings are also attended and supported by the Secretary of SPA, who leads SPA's secretariat.
- 2.7 The quorum for a meeting of SPA is three members in total, including at least one judicial member and two non-judicial members.¹⁰ A decision on whether or not to grant parole must be supported by a majority of the members at a meeting, and the presiding judicial member will have the casting vote in the case of an equality of votes.¹¹
- 2.8 The number of community members able to attend any one meeting was reduced from four to two in 2009,¹² which in turn reduced the total number of voting members present in a division from seven to five. The rationale behind this change was not explained in the corresponding second reading speech.¹³ The past practice of seven members for a division may better ensure strong majorities in decision making (although most decisions are in fact unanimous).¹⁴
- 2.9 The past composition also enabled the four community members to theoretically form a majority.¹⁵ Now if community members are agreed on an outcome they can be overruled by the other members. This differs from most other Australian jurisdictions where community members outweigh (or can potentially outweigh) judicial and official members in a division of the parole decision maker.¹⁶

6. See the second reading speech to the *Crimes (Administration of Sentences) Amendment (Parole) Act 2004* (NSW): NSW, *Parliamentary Debates*, Legislative Assembly, 27 October 2004, 12099.

7. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 4.

8. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 14, 14A.

9. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 1.

10. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 13.

11. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 17.

12. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 14 (amended by *Crimes (Administration of Sentences) Amendment Act 2008* (NSW), commenced on 13 February 2009).

13. NSW, *Parliamentary Debates*, Legislative Council, 27 November 2008, 11966.

14. State Parole Authority, *Preliminary Consultation PPAC1*.

15. N Beddoe, *Preliminary Submission PPA1*, 3.

16. *Corrections Act 1986* (Vic) s 64(2); *Corrective Services Act 2006* (Qld) s 224; *Correctional Services Act 1982* (SA) s 60; *Corrections Act 1997* (Tas) s 62; *Parole of Prisoners Act* (NT) s 3F(4); *Sentence Administration Act 2003* (WA) sch 1 cl 5(4).

Appointment and expertise of community members

Representing the community

- 2.10 Under the *Crimes (Administration of Sentences) Act 1999* (NSW) (the CAS Act), community members appointed to SPA must reflect, as closely as possible, the composition of the community at large.¹⁷ At the same time, SPA is not currently subject to specific requirements to represent particular sections of the community like Aboriginal and Torres Strait Islander people, women, or people from rural and regional areas. SPA's guiding principles, developed internally, include developing "a membership that embraces diversity and is reflective of the community."¹⁸ As at December 2012, 26% of all members were female, 7% identified as Aboriginal, 14% were from culturally and linguistically diverse backgrounds, and 21% lived in rural areas.¹⁹
- 2.11 According to some stakeholders, true community representation has only been achieved intermittently, particularly in terms of balancing city members and members from rural and regional communities.²⁰ Also, while SPA currently has two Aboriginal and Torres Strait Islander members, it may be preferable for this representation to be increased as a formal requirement to reflect high Aboriginal and Torres Strait Islander representation in the prison population.²¹
- 2.12 Several other Australian jurisdictions specifically require women and Aboriginal and Torres Strait Islander people to be represented on parole boards.²²

Selection, appointment and professional development

- 2.13 At present there is no formal selection process or standardised selection criteria for SPA's community members. In preliminary consultations, stakeholders suggested that a formalised process and set of selection criteria may better ensure that all community members have the interest, capacity and expertise to be parole decision makers.²³ The use of selection criteria would improve the quality of community members appointed as well as increasing the transparency of the selection process.²⁴ All prospective community members could be required to progress through a merit selection process including a written application and panel interview.²⁵ This would allow the best candidates to be selected for appointment.

17. *Crimes (Administration of Sentences) Act 1999* (NSW) s 183(2)(e).

18. NSW State Parole Authority, *Annual Report 2011* (2013) 27.

19. NSW State Parole Authority, *Annual Report 2012* (2013) 27.

20. N Beddoe, *Preliminary Submission PPA1*, 3.

21. State Parole Authority, *Preliminary Consultation PPAC2*.

22. *Corrective Services Act 2006* (Qld) s 218(1)(b); *Correctional Services Act 1982* (SA) s 55(3); *Parole of Prisoners Act* (NT) s 3B(1)(f).

23. State Parole Authority, *Preliminary Consultation PPAC1*; State Parole Authority, *Preliminary Consultation PPAC2*; Serious Offenders Review Council, *Preliminary Consultation PPAC4*.

24. State Parole Authority, *Preliminary Consultation PPAC1*; State Parole Authority, *Preliminary Consultation PPAC2*; Serious Offenders Review Council, *Preliminary Consultation PPAC4*.

25. Some community members have been appointed this way in the past: see N Beddoe, *Preliminary Submission PPA1*, 3.

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- 2.14 A related issue is professional development for SPA members. Currently, community members are given SPA's *Operating Guidelines* and members' handbook, and then receive on-the-job training by sitting as observers with a mentor for a few meetings. SPA also holds at least two "policy days" per year where all members are able to meet to share views and experience and receive professional development.²⁶ Its members, particularly community members, may benefit from more opportunities and resources for professional development.
- 2.15 Professional development could be enhanced by introducing performance appraisals. The system of appraisal for the UK Parole Board includes peer observation, with all members being appraised by their colleagues "at regular intervals".²⁷ Performance appraisals of SPA community members might assist in standardising approaches to decision making and in rectifying any problems that may arise with particular members, as well as bringing the quality of community representation in line with community expectations.²⁸

Purpose of community members

- 2.16 More broadly, stakeholders have questioned the role of community members and the purpose of their inclusion in a division. Possible purposes of having such members participating in SPA's decision making might be to that the community at large is represented, as the legislation currently provides for,²⁹ or to provide SPA with specific expertise (for example, in the areas of forensic psychology or criminology).
- 2.17 Parole decision making may be more robust if community members represent specific areas of expertise. In practice, some members may already be appointed for their expertise. For example, it appears that at least five of 12 community members (as at December 2011) represented specific relevant expertise in SPA, including three former members of the NSW Police Force, a former officer of Corrective Services NSW and a legal professional.³⁰ If in reality members are appointed for their specific expertise, it may be desirable for this to be done as transparently as possible.
- 2.18 In several other Australian jurisdictions, legislative guidelines are in place to specify the expertise necessary among parole board members who are not legally trained. Of five community members, the Queensland Parole Board must include at least one Aboriginal or Torres Strait Islander person, one doctor or psychologist, two women, and one representative of Queensland Corrective Services.³¹ The nine members of the Parole Board of SA must include one legally qualified medical psychiatric practitioner, one expert in criminology/sociology, one person who understands the perspective of victims, one former police officer and one Aboriginal

26. State Parole Authority, *Annual Report 2012* (2013) 12; *Member's Handbook* (2012) 5.

27. Parole Board for England and Wales, *Member Handbook* (2006) s A ch 5; see also S Shute, "Parole and Risk Assessment" in N Padfield (ed) *Who to Release? Parole, Fairness and Criminal Justice* (Willan Publishing, 2007) 21, 30-1.

28. N Beddoe, *Preliminary Submission PPA1*, 3-4.

29. *Crimes (Administration of Sentences) Act 1999* (NSW) s 183(2)(e).

30. NSW State Parole Authority, *Annual Report 2011*, 20-1.

31. *Corrective Services Act 2006* (Qld) s 218.

or Torres Strait Islander.³² In Tasmania, two of three members of the Parole Board must be experts in sociology or criminology, or otherwise possess appropriate knowledge and experience.³³

- 2.19 One stakeholder suggested that SPA’s community members could be reframed as “independent members” with relevant expertise, with the aim of attaining members with an understanding of offenders and the criminal justice system. Alternatively, community members could each be required to represent specific expertise or a section of the community. Another possibility would be to allow a list of areas of expertise and sections of the community to be covered flexibly among a pool of community members, as in Queensland and SA.³⁴
- 2.20 On the one hand, it may be important for SPA to reflect community sentiment. This affects whether a parole board is perceived as legitimate by the public, and acknowledges that the decisions made by a parole board can have a significant impact on the community.³⁵ On the other hand, community sentiment may not always be well informed. US research has found that that people in the community make different decisions (and are significantly more pro-release) than parole board members when their opinion is sought on a case-by-case basis in relation to non-violent offenders.³⁶
- 2.21 The legitimacy of a parole board could be increased in ways other than the inclusion of community members, such as by adopting factors the community considers important in making parole decisions³⁷ or focusing on public education about its role and decision making principles.

Police and Community Corrections members

- 2.22 Police and Community Corrections members of SPA (the “official” members) can provide valuable expertise to inform SPA’s decision making. Both official members remain serving officers of their organisations. Through their agency’s computer systems, they are able to access additional information that may not otherwise be available to SPA, or may not be available in a timely way. Such information could include the police facts in cases of alleged reoffending by parolees, current intelligence or the most recent case notes recorded by a parolee’s Community Corrections supervisor.
- 2.23 Two recent reviews of the Victorian parole system have highlighted the importance of information sharing between the parole decision maker and other agencies,

32. *Correctional Services Act 1982* (SA) s 55.

33. *Corrections Act 1997* (Tas) s 62.

34. *Corrective Services Act 2006* (Qld) s 218; *Correctional Services Act 1982* (SA) s 55.

35. SC Lindsay and MK Miller, “Discretionary release decisions of actual and mock parole board members: implications for community sentiment and parole decision-making research” (2011) 18(4) *Psychiatry, Psychology and the Law* 498, 501-2.

36. SC Lindsay and MK Miller, “Discretionary release decisions of actual and mock parole board members: implications for community sentiment and parole decision-making research” (2011) 18(4) *Psychiatry, Psychology and the Law* 498, 502.

37. SC Lindsay and MK Miller, “Discretionary release decisions of actual and mock parole board members: implications for community sentiment and parole decision-making research” (2011) 18(4) *Psychiatry, Psychology and the Law* 498, 502.

particularly the police.³⁸ However, rather than recommending that the parole decision maker's membership include a police officer, the Callinan review recommended that a section of the Victoria Police Fugitive Taskforce should be co-located with the parole board.³⁹ The review also recommended that the parole board should be required to seek police input to all parole decisions for serious offenders.⁴⁰ The possibility of including police officers in the parole board's membership was rejected due to lack of support from Victoria Police and also some concerns about possible perceived conflicts of interest.⁴¹ Similar concerns could be raised about Community Corrections officers being members of the parole decision maker, as these officers are also deeply engaged in the management of parolees. An alternative to police and Community Corrections members would be their presence as observers or advisers to SPA.

Question 2.1: Membership of SPA

- (1) Does the balance of members on SPA or SPA's divisions need to be changed in any way?
- (2) How can the selection and performance of SPA's community members be improved?
- (3) Should SPA's community members be representing the community at large or be representing specific areas of expertise?

Membership of SORC

2.24 SORC has a special role in relation to the parole of serious offenders. The definition of serious offender and SORC's responsibilities are examined in detail in Question Paper 3. SORC's full membership is:

- three judicial members (appointed by the Governor of NSW on the recommendation of the Attorney General);
- two official members (officers of Corrective Services NSW appointed by the NSW Commissioner of Corrective Services); and
- between three and nine community members (appointed by the Governor of NSW on the recommendation of the Attorney General).⁴²

The CAS Act specifies that SORC's community members should be selected to reflect, as closely as possible, the community at large.⁴³ As with SPA, judicial members of SORC can be judges, retired judges, magistrates, retired magistrates, or any person qualified to be appointed as a judge.⁴⁴ The three judicial members

38. Victorian Sentencing Advisory Council, *Review of the Victorian Adult Parole System* (2012) ch 5; I Callinan, *Review of the Parole System in Victoria* (2013) 69-70, 73, 94.

39. I Callinan, *Review of the Parole System in Victoria* (2013) 70, 94, measure 11.

40. I Callinan, *Review of the Parole System in Victoria* (2013) 94, measure 11.

41. I Callinan, *Review of the Parole System in Victoria* (2013) 43.

42. *Crimes (Administration of Sentences) Act 1999* (NSW) s 195.

43. *Crimes (Administration of Sentences) Act 1999* (NSW) s 195(2)(c).

44. *Crimes (Administration of Sentences) Act 1999* (NSW) s 3, 195(2)(a).

are appointed as the Chairperson, Alternate Chairperson and Deputy Chairperson. The Chairperson presides over meetings of SORC unless he or she is absent, in which case the Alternate Chairperson will preside.⁴⁵

- 2.25 In practice, SORC generally meets as a panel of six, including two judicial members, two official members and two community members.⁴⁶ As the composition of SPA and SORC are fairly similar, the issues discussed above about the selection and role of SPA's community members and the nature of SPA's official members may also apply to SORC.

Question 2.2: Membership of SORC

- (1) How can the selection and performance of SORC's community members be improved?
- (2) Should SORC's community members be representing the community at large or be representing specific areas of expertise?

45. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 2 cl 1.

46. Serious Offenders Review Council, *Preliminary Consultation PPAC4*.



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