



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Criminal:JDad776630

31 October 2013

The Hon James Wood AO QC
Chairperson
New South Wales Law Reform Commission
DX 1227 Sydney
By email: nsw_lrc@agd.nsw.gov.au

Dear Mr Wood,

Parole Question Papers 1 - 3

I write to you on behalf of the Criminal Law and Juvenile Justice Committees ("the Committees") of the Law Society of New South Wales in relation to your question papers on parole.

I thank you for the invitation to comment.

I now attach the Committees' submission for your consideration.

Yours sincerely,

John Dobson
President

per

NSW Law Reform Commission

Parole - Question Papers 1 – 3

Submission by the Criminal Law and Juvenile Justice Committees
of the Law Society of New South Wales (“the Committees”)

Question Paper 1: Design and objectives of the parole system

Question 1.1: Retention and objectives of parole

(1) Should parole be retained?

Yes.

(2) If retained, what should be the objectives of the parole system in NSW?

The objectives of the parole system should be to:

- a) Offer protection to the community;
- b) Give offenders the opportunity to reform and address their offending behaviour;
- c) Reduce the risk of reoffending.

(3) Should there be an explicit statement of the objectives or purposes of parole in the Crimes (Administration of Sentences) Act 1999 (NSW)?

Yes.

Question 1.2: Design of the parole system

(1) Should NSW have automatic parole, discretionary parole, or a mixed system?

It is the Committees' view that NSW should have a mixed system of parole.

(2) If a mixed system, how should offenders be allocated to either automatic or discretionary parole?

The Committees note that the current mixed parole system has been in existence since the commencement of the *Sentencing Act 1989* and has been working reasonably well.

The Committees submit that if NSW retains a mixed system of parole, for offenders receiving a sentence of four years or less, an automatic period of parole should apply. Currently an automatic period of parole applies to a sentence of three years or less. The Committees see some scope for this to be increased to four years.

- (3) **Does there need to be a mechanism to ensure supervised reintegration support for offenders serving short sentences? What should such a mechanism be?**

The Committees submit that it is not possible to have a mechanism to ensure supervised reintegration support for offenders serving short sentences and therefore is not supported.

Question 1.3: Difficulties for accumulated and aggregate sentences

What changes should be made to legislation for aggregate and accumulated approaches to sentencing to ensure consistent outcomes for parole?

The Committees' view is that no changes should be made to legislation for aggregate and accumulated approaches to sentencing.

Question 1.4: SPA's power to take over decision making responsibility

- (1) **What safeguards should there be on automatic parole?**
- (2) **Should there be any changes to SPA's power to take over parole decision making for offenders with court based parole orders?**

It is the Committees' view that the power to revoke automatic parole should be limited so that lack of accommodation alone should not be a basis for revoking parole before it commences.

Question 1.5: Supervision conditions on court based parole orders

Should there be any changes to the way supervision conditions are imposed on a court based parole order?

It is the Committees' view that Corrective Services NSW should assess an offender's access to accommodation at an early stage in the sentence or leading up to automatic parole.

Question Paper 2: Membership of State Parole Authority and Serious Offenders Review Council

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?**

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?**

The Committees have chosen not to comment on question paper 2.

Question Paper 3: Discretionary parole decision making

Question 3.1: The public interest test

Should the current public interest test in s 135(1) of the CAS Act be retained, or does the Queensland test, or something similar, better capture the key focus of the parole decision?

It is the Committees' view that the current public interest test should be retained. It is potentially a very broad test which captures a wide variety of matters which go to the "public interest". The public interest cannot be easily defined with precision. The Committees say further that there is no reason why the current public interest test cannot include the concept of risk encompassed in the Queensland test.

Question 3.2: The matters that SPA must consider

Should any matters for consideration be added to or removed from the lists in s 135(2) and s 135A of the CAS Act?

The Committees do not suggest that other criteria need to be added.

Question 3.3: Specific issues given weight by SPA

- (1) **Should any changes be made to the way SPA takes completion of in custody programs into account when making the parole decision? If so, how?**

The Committees' view is that completion of in custody programs should be taken into account, however there needs to be a distinction between offenders who are referred to programs (and fail to complete them), and those offenders for whom programs are not made available despite their preparedness to attend. The Committees say further that the SPA should

give serious consideration to why offenders do not complete programs. It is the Committees' view, that through no fault of their own, some offenders simply cannot access the programs.

- (2) Should any changes be made to the way SPA takes security classification into account when making the parole decision? If so, how?**

The Committees recognise that security classification would normally be taken into account when making the parole decision. However, if failure to achieve a low security classification is because of systemic factors, allowance should be made for this and failure to achieve a low security classification under those circumstances should not be a factor which results in parole refusal.

- (3) Should any changes be made to the way SPA takes homelessness or lack of suitable accommodation into account when making the parole decision? If so, how?**

In relation to homelessness, it is the Committees' view that it is most important that the SPA take into consideration the person's circumstances and in particular the type of offending.

In some circumstances lack of a residential address may amount to a good reason to refuse parole but in other circumstances (often depending on the type of offending) homelessness of the offender might have no bearing on assessment of the risk posed to the community. For example, a child sex offender without suitable accommodation would potentially pose a much greater risk than a person convicted solely of driving offences.

- (4) Are there any issues with the way that SPA makes decisions about risk?**

The Committees recognise the difficulties the SPA faces when it makes decisions about risk and are of the view that each case should be considered on its own merits.

Question 3.4: Deportation and SPA's parole decision making

Does there need to be any change to the way SPA takes likely deportation into account when making the parole decision?

The Committees recognise there are a number of competing issues in relation to the question of deportation and are of the view that each case should be considered on its own merits.

Question 3.5: SPA's caseload and resources

Do any changes need to be made to SPA's administrative practices, workload or resources?

No. The Committees' view is that the SPA should continue to be adequately resourced.

Question 3.6: Planning for parole and assistance with parole readiness

What changes (if any) are needed to improve parole planning and ensure that suitable offenders can demonstrate their readiness for parole?

The Committees hold a similar view to that expressed in paragraph 3.63 of the question paper. The Committees agree that it is logical for parole planning to start early in an offender's sentence. The Committees note the comments made in paragraph 3.67 of the question paper regarding negotiated agreements and would support a program similar to the North Carolina program for certain offenders.

Question 3.7: Victim involvement and input into SPA decisions

- (1) Should victims' involvement in SPA's decisions be changed or enhanced in any way?**
- (2) Does the role, purpose or recommended content of victim submissions to SPA need to be changed or clarified?**

The Committees are not in a position to comment.

Question 3.8: Role of the Serious Offenders Review Council

- (1) Should the separate parole decision making process for serious offenders be retained?**

Yes.

- (2) If yes, do any changes need to be made to the role played by the Serious Offenders Review Council in parole decisions for serious offenders?**

The Committees are not in a position to comment.

Question 3.9: A different test for serious offenders

Should SPA apply a different test when making the parole decision for serious offenders? If yes, what should it be?

The Committees' view is that the same test should apply to all offenders.

Question 3.10: Security classification and leave for serious offenders

Are there any changes that can be made to improve the interaction between security classification, access to external leave and the parole decision for serious offenders?

The Committees are not in a position to comment.

Question 3.11: Submissions by the Commissioner and the State

Do any changes need to be made to the powers of the Commissioner and the State to make submissions about parole?

The Committees are not in a position to comment.

Question 3.12: Parole and the HRO Act

What changes, if any, should be made to improve the interaction between parole decision making and the provisions of the *Crimes (High Risk Offenders) Act 2006* (NSW)?

The Committees support the view expressed in paragraph 3.103 of the question paper. A possible improvement might be to bring forward the date at which the State may apply for a continuing order to, for example, 18 months before the expiry of the offender's head sentence instead of the current six months.

Question 3.13: The definition of "serious offender"

Should any change be made to the current definition of "serious offender"?

The Committees are not in a position to comment.

Question 3.14: Parole in exceptional circumstances

Are there any issues with SPA's power to grant parole in exceptional circumstances?

No.

Question 3.15: Offender involvement and input into SPA decisions

(1) Should there be more scope for offender input and submissions to SPA at the first stage of the decision making process (i.e. the private meeting where a decision is taken or an initial intention formed)?

The Committees are not in a position to comment.

(2) Should any change be made to the availability of public review hearings after a decision is made to refuse parole?

It is the Committees' view that a parolee should have access to a hearing as a matter of right if the 12 month rule continues. However, if the 12 month period was reduced to, for example, six months, then the Committees do not believe the review hearings are necessary.

- (3) **Is there currently sufficient assistance available to help offenders make meaningful applications for and submissions to review hearings, and to help offenders understand what happens at review hearings?**

The Committees are not in a position to comment.

- (4) **Are there any problems with offenders not being provided with the material which supports SPA's decisions?**

The Committees are not in a position to comment.

Question 3.16: Reasons for SPA's decisions

Should any changes be made to the manner or extent to which SPA provides reasons for its decisions?

The Committees are not in a position to comment.

Question 3.17: Appeal and judicial review of SPA's decisions

Should there be any changes to the mechanisms for appeal or judicial review of SPA's decisions, including the statutory avenue in s 155-156 of the CAS Act?

The Committees are not in a position to comment.

Question 3.18: Reconsideration after refusal of parole

- (1) **Should the 12 month rule (as it applies to applications for parole after parole refusal) be changed in any way? If so, how?**

Yes. Given that the SPA has indicated that the 12 month rule is not necessary from its perspective to conserve resources the Committees recommend that it be replaced by a six month rule. The 12 month rule appears to have the effect that too many offenders have only a single chance of being released to parole.

- (2) **Are there any issues with the requirement to apply for parole reconsideration or the assistance that offenders receive to apply?**

Yes. A high proportion of the prison population are affected by intellectual or mental disability or have issues with literacy. These inmates may lack the capacity to make applications themselves. The Committees' view is that such inmates (if they can be readily identified) should be automatically reconsidered. If it is not possible to readily identify that group of inmates, all inmates should be automatically considered after the relevant period (i.e. 12 months or six months if the Committees' recommendation at 3.18(1) is adopted).

Question 3.19: Drug Court as a parole decision maker

Are there any issues with the Drug Court's operation as a parole decision maker?

The Committees are not aware of any issues with the Drug Court's operation as a parole decision maker and support its continuing role as a parole decision maker.