NSW GOVERNMENT | Ministry for Police & Emergency Services

DOC009181

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 Papers 1-3

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 Papers 1-3.

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.

Yours sincerely

Mary-Louise Battilana
Executive Director, Policy and Finance
11.12.13

QUESTION PAPER 1

Question 1.1: Retention and objectives of parole

(1) Should parole be retained?
The option of parole is potentially a valuable tool to a sentencing court and should be retained.

(2) If retained, what should be the objectives of the parole system in NSW?
The objectives should be the first four outlined in Question Paper 1, i.e, reducing reoffending, incentive for offenders to address their offending behaviour, reintegration and supervised release and risk management. Parole should not be used as a cost-cutting or prison population-control mechanism.

(3) Should there be an explicit statement of the objectives or purposes of parole in the Crimes (Administration of Sentences) Act 1999 (NSW)?
It would be useful for an explicit statement of the objectives and purpose of parole to limit it to the four areas outlined above.

Question 1.2: Design of the parole system

(1) Should NSW have automatic parole, discretionary parole, or a mixed system?
NSW should retain a mixed system for granting of parole.

(2) If a mixed system, how should offenders be allocated to either automatic or discretionary parole?
The current system based on length of sentence is appropriate.

(3) Does there need to be a mechanism to ensure supervised reintegration support for offenders serving short sentences? What should such a mechanism be?
Whether there is this need may be answered through provision and analysis of empirical evidence on whether persons sentenced to six month or less fixed terms of imprisonment are more likely to re-offend within varying post imprisonment time periods than those offenders who are sentenced to longer terms that include a non parole period of similar length. The comparison being between what happens or does not happen in the time periods post full-time imprisonment. There may be other factors that, for example, an organisation such as BOCSAR may deem appropriate to consider. For example, whether the offence committed is an offence of violence or a property offence; whether the offender has a particular history of committing offences of violence, property offences or a combination of both.

Allowance would also have to be made for the principle that imprisonment is a last resort. However, many repeat offenders are ultimately sentenced to a term of imprisonment after having received many and various less severe and more rehabilitative sentences. Whereas, there are other offenders who initially commit such a serious offence that a term of imprisonment is the only appropriate sentence. i.e. a comparison should be made within and between repeat and non-repeat offenders at the time of receiving their first term of imprisonment. The above would give meaningful and informative context to the bare statistic that may show that all persons who are sentenced to a term of imprisonment are more likely to commit further offences once released than those persons who are sentenced to a 'more' rehabilitative less severe sentence.

Accepting there are positive aspects to supervision that are effective in terms of financial cost plus cost to the community, and taking into account that the legislation either limits the availability of parole to sentences of six months or less or limits the length of parole by virtue of a statutory ratio, these positive aspects can be met by allowing the court to impose a bond on an accused person to take effect from the end of any term of imprisonment or limited term of parole. Adopting this more flexible approach will provide for more public confidence in the length of non-parole periods/full-time imprisonment in terms of at least the sentencing purposes of denunciation, adequate punishment and deterrence, whilst also allowing for appropriate periods of time to meet the objectives of cost effective rehabilitation.

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?
Nil comment.

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

(1) What safeguards should there be on automatic parole?
The current safeguards (ie SPA power to assume parole decision making) are appropriate

(2) Should there be any changes to SPA's power to take over parole decision making for offenders with court based parole orders?
No.

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?
There should not be any changes to the current legislation regarding supervision. Supervision is a vital factor in reducing the chance of a parolee re-offending.

QUESTION PAPER 2

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?

The current balance of membership appears to be appropriate.

(2) How can the selection and performance of SPA's community members be improved?

The selection of and performance of the SPA's community members could be improved by ensuring a selection process that can filter and identify significant or extreme personal bias. A formal interview process for the selection of community members is critical to ensuring the impartiality of community members. Additionally, if the SPA is to properly reflect the community, then perhaps the tenure of each member should be reviewed after the initial period of three years. Any renewal should only be for a one year period. This would ensure that representative views of the community are maintained by SPA community members and may reduce demands on performance measures and peer reviews; though it would mean an increase in recruitment and basic training.

(3) Should SPA's community members be representing the community at large or be representing specific areas of expertise?

If the community members are to represent the community then there should be no areas of expertise required or sought. Expertise on the SPA is provided by the judicial member, the police representative and the corrective services member. Perhaps an additional "official" member could be added to provide victim support expertise, but if the ultimate concept is to ensure that community members are representative, then expertise should be excluded as a bias.

Question 2.2: Membership of SORC

(1) How can the selection and performance of SORC's community members be improved?

Refer to question 2.1 (2)

Note: The paper states that the 'composition of SPA and SORC are fairly similar' (pg 7 at 2.225) when in fact there is a stark difference – police are not involved. The current balance of two judicial officers, two correctives officers and two members of the community should be addressed so as to more reflect the SPA. Serious offenders are of significant concern to police and as such, there should be a police voice within that council.

(2) Should SORC's community members be representing the community at large or be representing specific areas of expertise?

Refer to question 2.1 (3)

QUESTION PAPER 3

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?

A test similar to the Queensland test, where the risk to the community is the overriding factor for consideration, as opposed to the open-ended 'public interest' test, would result in better decisions regarding the granting of parole for serious offenders.

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 offender's behaviour during any previous period on parole, period of leave or community-based sentence (as per para. 3.23) should be included as a matter for consideration as a good indication of future compliance with parole conditions.

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 principle outlined by Justice Callinan in Question Paper 1, i.e. that parole should not be viewed as a right, is the preferred view. Completion of in custody programs should therefore be a major consideration.

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

This is the same as outlined in response to Question 3.3 (1), i.e, classification should be a significant factor in the decision-making process, regardless of the reasons why an offender is given that classification.

(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?

No, for the reason stated in the answer to the above two questions.

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

The risk assessment tool that is shown to have the best validity and reliability for predicting the risk of re-offending should be adopted.

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?

If there is no effective way to supervise or monitor compliance with any parole conditions, then parole should not be granted.

Question 3.5: SPA's caseload and resources

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

Nil comment.

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?

Nil comment.

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?
The current regime for victim's involvement in the State Parole Authority's decisions appears appropriate and allows victims an adequate opportunity to be heard.

(2) Does the role, purpose or recommended content of victim submissions to SPA need to be changed or clarified?
No.

Question 3.8: Role of the Serious Offenders Review Council

(1) Should the separate parole decision making process for serious offenders be retained?
Yes, for the reasons outlined in the question paper.

(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?
No changes are required as SORC has access to all the same information as the SPA, as they are responsible for case managing a Serious Offender. SORC reviews a serious offender every six months to ensure that all available programs and classification is considered.

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 current system of SORC managing a Serious Offender is adequate and although SPA cannot grant parole unless SORC supports the release, SPA's decision to grant parole should be based on the principle that the offender is 'unlikely' to be a risk to the community.

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?
Any changes should not limit the Commissioner for Corrective Services' power to disregard the recommendation of SORC or SPA based on access to police or other law enforcement intelligence not available to those bodies.

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?
No.

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)?
It seems appropriate that the suggestion put forward at para. 3.103 be adopted, to allow a more informed decision to be made.

Question 3.13: The definition of "serious offender"

Should any change be made to the current definition of "serious offender"?
The final option at para. 3.108 appears to be the most appropriate. There are certainly serious offenders given non-parole periods of 8-10 years, particularly for violent armed robbery offenders, who have been shown to have a high risk of reoffending upon release.

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 (ie the private meeting where a decision is taken or an initial intention formed)?
No. The current arrangements are more than adequate and fair to the offender.

(2) Should any change be made to the availability of public review hearings after a decision is made to refuse parole?
No. These help to maintain public trust in the process.

(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?
Yes.

(4) Are there any problems with offenders not being provided with the material which supports SPA's decisions?
There should be no changes that would discourage victims from making submissions and any model that resulted in a victim statement being provided to or viewed by the offender is not supported. Encouraging victim participation in the process is important in ensuring good decision making.

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?
Greater transparency through publishing reasons for granting or not granting parole is generally in the public interest, subject to any restrictions required for victim safety. However this would be resource intensive and thorough analysis would be required to determine whether it was viable.

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 statutory appeal mechanisms under s.155-156 should be repealed for the reasons outlined at para. 3.142.

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?
The 12 month rule should be maintained so as to avoid further anguish for victims.

(2) Are there any issues with the requirement to apply for parole reconsideration or the assistance that offenders receive to apply?
No.

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?
No.