

NSWLRC Parole Question 5 – Breach and Revocation

Question 5.1: Exercise of discretion in reporting breaches and SPA's lower level responses

(1) What level of discretion should Community Corrections have to manage breaches of parole (or certain types of breaches) without reporting them to SPA?

Response: For a first time offence, a written caution should be given. The State Parole Authority (SPA) may either revoke a parole order or vary its conditions if there has been a breach. Justice Action believes warnings and cautions should be expressed in the CAS Act as optional responses to be used at the SPA's discretion. Extending upon this, reporting conditions should be restructured as having multiple levels of monitoring and reporting, that could either increase or decrease. For example, if the parolee progresses through their parole period without any breaches, there should be a decrease in reporting conditions (e.g. reporting once a week reduced to reporting once a fortnight).

(2) What formal framework could there be to filter breaches before they are reported to SPA?

Response: A written warning, including a formal meeting with the parolee and the support persons for the parolee (such as family) should take place. However JA maintains that there should be discretion available to the parole officer at all stages. Before a breach is to be reported to the SPA, the parolee must be given the opportunity to provide information and/or defence before their parole can be revoked. Very often there are substantial and compelling reasons that will defend a breach allegation. Currently, parolees are not given the opportunity to provide reasons. This process is unjust, with people returning to gaol without justification.

(3) What lower level responses should be available to SPA? What lower level responses should be included in the CAS Act?

Response: The power to give a warning should be incorporated in legislation. [5.12] highlights that warnings are already used informally. Formalising this practice legitimises this additional response. Additional responses should be left to the discretion of the parole officer.

Question 5.2: Response to non-reoffending breaches

(1) Should there be any changes to the way SPA deals with non re-offending breaches?

Response: JA agrees with some of the recommendations noted in Question Paper 5, specifically community service work and curfews. The option to impose compulsory attendance in education courses is highly regarded by Justice Action.

Justice Action Submission

Justice Action is opposed to the recommendation of any form of short term revocation of parole as suggested in [5.19].

(2) What intermediate sanctions short of revocation should SPA have available to respond to non-reoffending breaches?

Response: The recommendations JA supported in our response to Question 5.2(1) should be used accordingly.

(3) Should SPA be able to revoke parole for short periods as a way of dealing with non-reoffending breaches?

Response: No. Returning a person to prison for any period of time is destructive as it interferes with their ability to re-establish themselves. Revocation of parole should only be used for reoffending breaches.

Question 5.3: Revocation in response to re-offending

(1) What changes should be made to improve the way SPA deals with parolees' reoffending?

Response: JA is satisfied with the current regime the SPA has to deal with parolee's reoffending as stated in [5.27].

(2) What provision, if any, should be made in the CAS Act to confine SPA's discretion not to revoke parole?

Response: JA agrees with the current provision, however we emphasize the parolee's need to be heard by the SPA before possible revocation of their parole.

Question 5.4: Date of revocation and street time

(1) What further restrictions should be included in the CAS Act on selecting the revocation date?

Response: The SPA should ensure that the period a person spends waiting for a SPA breach decision should also be counted in their parole period. Every day a person is not in gaol must count. Gaol time served outside of NSW must be counted as parole time in NSW.

(2) What changes, if any, should be made to the operation of street time?

Response: As suggested above, the concept of street time must be removed from the parole process completely.

Question 5.5: Review hearings after revocation

Should reviews of revocation decisions only be available if SPA considers that a hearing is warranted? If so, why?

Response:

JA agrees with the procedure as stated in [5.33]. We agree that only in situations such as that provided by the ALS in [5.36], should reviews be available.

Question 5.6: Rescinding revocations to allow completion of rehabilitations programs after fresh offending.

What provision should be made in the CAS Act in relation to how SPA's decision making should interact with rehabilitative dispositions in response to fresh offending?

Response:

JA feels that any directions given by the sentencing court should be taken into account by SPA.

There should be provisions allowing the court to override SPA's current and future decisions where the intention of the court would otherwise be frustrated.

Question 5.7: Appeals and judicial review of SPA's revocation decisions

Should there be any changes to the mechanisms for appeal or judicial review of SPA's revocation decisions?

Response: The Supreme Court is currently precluded from considering the merits of the decision. In addition to our response above, JA is of the position that the Supreme Court should be allowed to consider the merits of the SPA decision rather than merely issues of procedural fairness.

Question 5.8: Reasons for SPA's decision

What changes could be made to the manner or extent to which SPA provides reasons for its decisions in revocation matters?

Response: [5.41] informs us that offenders do not have access to SPA minutes that outline the reasons for which the revocation was made. JA believes that people should always have access to reasons affecting their liberty.

Question 5.9: Emergency suspensions

What improvements could be made to SPA's power to suspend parole?

Response: JA believes s172A (1), (3), (4) of the CAS Act should be repealed. The purpose of responding quickly to an emergency risk as described in [5.46] and addressed in s172A (3), (4) of the CAS Act should be addressed by the police. There is no need for SPA involvement.

In relation to s172A (1) of the CAS Act, the SPA should wait for the breach to occur before seeking an order to revoke.

Question 5.10: SPA's power to hold an inquiry

Should SPA use s169 inquiries more regularly? If yes, how could this be achieved?

Response:

In a similar vein to our views in our previous response, the SPA should wait for the breach to occur. It is unjust that a parolee is taken in custody before they have been given an opportunity to be heard.

Question 5.11: Information sharing

What changes could be made to improve the way that in NSW share information about breaches of parole?

Response:

JA believes it would be helpful for the SORC to receive reports from Community Corrections if the parolee is returned to custody.

Parolee should be entitled to a degree of confidentiality when seeking support from external support agencies (NGOs). Justice Action has 23 years experience with parolees and we understand the importance of confidentiality in facilitating personal development.

Question 5.12: Role of the Serious Offenders Review Council

What role could SORC have when SPA decides to revoke or rescind parole for serious offenders?

Response:

SORC should have no role in the process other than to receive information from SPA regarding the breach.

Question 5.13: Making breach of parole an offence

Should breach of parole be an offence in itself? If breach of parole were to be an offence, what should the maximum penalty be?

Response: Justice Action does not believe that parole breaches should be an offence.

Question 5.14: Reconsideration after revocation of parole

How should the 12 month rule as it applies after parole revocations be changed?

Response: JA agrees with the recommendation as listed in [5.65].

Question 5.15: Breach processes for ICOs and home detention

What changes should be made to the breach and revocation processes for ICOs and home detention?

Justice Action Submission

Response: ICOs and home detention processes should be treated like parole processes as suggested above.