



Law Reform Commission – Parole Scoping Paper

In reference to the Law Reform Commission Scoping Paper for the review of parole, Juvenile Justice supports the three areas identified for juveniles, and recommends further consideration of the following.

6.1

1. Should juvenile offenders be treated differently from adults in relation to parole?

Yes, Juvenile Justice strongly advocates that children and young people should be considered separately to adults throughout the parole process. All aspects of parol should reflect relevant principles contained in section 6 of the *Children (Criminal Proceedings) Act 1987*. The following general principles are significant in this context:

- (a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them;
- (b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance;
- (c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption;
- (d) that it is desirable, wherever possible, to allow a child to reside in his or her own home.

Children warrant different treatment to adults involved in criminal proceedings. There is overwhelming evidence that frontal lobe development does not culminate until the early to mid-twenties, which means younger people exhibit behavioural and emotional deficits compared to adults. They have less capacity for forward planning, delaying gratification and for regulating impulse. Rehabilitation should be the foremost consideration when making parole decisions for young offenders.

2. Should there be a separate juvenile parole system? If yes why?

Yes, Juvenile Justice recommends that there be a separate juvenile parole system.

This is in recognition of the *United Nations Convention on the Rights of the Child*, in particular Article 37, which requires parties to ensure that:

- (a) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(b) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(c) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Juvenile Justice recommends that the *Children (Criminal Proceedings) Act 1987* and the *Children (Detention Centres) Act 1987* should contain specific sections about matters to do with parole.

6.2

If a separate parole system is retained in NSW:

1. Who should be the decision maker in the juvenile parole system?

Juvenile Justice recommends that the Children's Court sitting as the parole authority should be the decision maker in the juvenile parole system.

All matters finalised in a Children's Court should remain with the Children's Court. This includes revocations, reviews or where a decision is taken to seek a parole revocation prior to release, should be determined by the President of Children's Court irrespective of whether they are in custody of a juvenile detention or juvenile correctional centre.

2. What special principles should apply in the juvenile parole system?

The principles set out in section 6 of the *Children (Criminal Proceedings) Act 1987* and section 4 of the *Children (Detention Centres) Act 1987* should apply in the juvenile parole system.

3. Do the decision making criteria in section 135 need to be adapted to the juvenile parole system? If so in what way?

Some of the criteria noted in section 135 are adult focused. Juvenile Justice recommends that specific children's parole legislation be included in current children's acts. The principles that apply to juveniles in the *Children (Criminal Proceedings) Act 1987* such as;

- it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties.

There are also relevant principles stated in the *Children (Detention Centres) Act 1987* should be included such as

- persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law.

There are also relevant principles stated in the section 135 such as;

- the nature and circumstances of the offence to which the offender's sentence relates,

- the offender's criminal history,
- the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
- any report in relation to the granting of parole to the offender that has been prepared by or on behalf of Probation and Parole - (Juvenile Justice) and
- other matters as the Children's Court considers relevant.

4. Should there be a separate legislative framework for the juvenile parole system?

As previously noted Juvenile Justice recommends that the *Children (Criminal Proceedings) Act 1987* and the *Children (Detention Centres) Act 1987* should contain specific legislation about matters to do with parole. The *Crimes (Administration of Sentences) Act 1999* was developed for adults and therefore not specifically aimed at children and young people. This would ensure that sentencing of juveniles is contained within children's law which is governed by different principles than adults.

6.3

1. Are any of the options presented preferable to the current structure of juvenile parole system? If yes, why?

If the sentence exceeds 3 years and the offender serves the non-parole period in a juvenile detention centre, jurisdiction is with the Children's Court because the offender is a detainee.

If the sentence exceeds 3 years and the offender is sentenced to a correctional centre, the jurisdiction should be the Parole Authority.

2. Are there any other ways of structuring the juvenile parole system that we should consider?

As previously noted there Juvenile Justice recommends that the *Children (Criminal Proceedings) Act 1987* and the *Children (Detention Centres) Act 1987* should contain specific legislation about matters to do with juvenile parole.

6.4

1. Should the parole decision making process in the CAS Act be adapted for use by the Children's Court? If so, how?

No, the current decision making process by the Senior Children's Court Magistrate ensures that children and young people are dealt with in a juvenile setting.

2. Should victims be involved in parole decision making for young offenders in the juvenile parole system through restorative justice conference process?

While the restorative justice conference process can have positive results for both victims and offenders there would be problems associated with linking it to the parole process. Registered victims have the ability to make submissions to the Serious Young Offenders Panel about the reclassification and granting of leave to detainees on Serious Children's Indictable Offences.

The process in convening a restorative justice conference can be protracted depending on the readiness of the victim, the offender and their families/support

people to participate. This process may have the potential to delay parole decisions for young offenders who generally have shorter sentences than adults, and therefore a shorter period to prepare victims and other participants for a conference.

Restorative Justice processes in the adult system are not linked to parole decisions.

6.5

1. Should any improvements be made to the way young offenders in the juvenile parole system are prepared for parole?

Juvenile Justice ensures young offenders are prepared for release on parole through a case management process. A pre post release case conference is held with all relevant stakeholders including community based staff, Post Release Support Services, Justice Health, Education and family/carers. The conference outcomes include suitable accommodation, re-engagement in education or training, services to support health issues such as alcohol and other drug use or mental health concerns and non government services to provide re-integrative support. The agency also provides supervision and programs aimed at addressing offending behaviour.

6.6

1. Should the 12 month rule apply to young offenders if the Children's Court refuses parole? If no, what limit or restriction should there be on future applications for parole in such cases?

The 12 month rule should not apply to young offenders. Problems arise for the Children's Court in the application of the 12 month provision. In some cases there may not be 12 months left in the sentence therefore the young person would be in custody without the benefit of a parole period and therefore have no opportunity to benefit from supervision, community supports, rehabilitation, counselling, education or employment programs which often form part of a young person's parole conditions. If the 12 month provision was enforced it may leave a minimal parole period which also would not allow the benefit of supervision and other supports.

6.7

1. Are there any issues with the selection of the supervising agency for young offenders paroled through the juvenile justice system?

Juvenile Justice is mandated to provide supervision to young people released to parole.

2. Is the juvenile justice NSW able to provide sufficient support, programs and services in the juvenile parole system?

Juvenile Justice provides intensive supervision to young people released to parole. This includes weekly face to face contact as well as participation in programs relevant to the young person's individual needs. The agency also funds non government services to provide additional support whilst integrating back in the community. These services are required to provide face to face

support as well as assisting the young person to attend education or employment services.

6.8

1. **Should the 14 day waiting period before revocation review hearings be removed for young offenders in the juvenile justice system?**

Children warrant different consideration to adults in the case of revocations. In some cases the young person should be brought before the Senior Children's Court Magistrate due to a range of concerns as soon as possible and in other cases 14 days is appropriate. The decision about the review hearing should be determined by the Senior Children's Court Magistrate based on information provided by Juvenile Justice.

2. **Should the 12 month rule apply after the parole revocation in the juvenile parole system? If no, what provision or limit, if any, should replace the 12 month rule?**

The 12 month rule should not apply. The limit should be based on the young person's individual circumstances, their offending history and successful participation in programs or education. The decision to discontinue supervision before completing 12 months should be decided by Juvenile Justice based on a comprehensive assessment and managerial review.

There is also a need to ensure that young people are not kept unnecessarily in the criminal justice system.

6.9

1. **Should the functions of SYORP be expanded so that it has a role in parole decision making for serious young offenders?**

No SYORP should not be expanded to have a role in parole decision making. Unlike the Serious Offenders Review Council SYORP has no case management power and does not have the power to interview a detainee.

6.10

1. **Should similar principles to those found in section 6 of the *Children (Criminal Proceedings) Act 1987* and section 4 of the *Children (Detention Centres) Act 1987* apply when SPA is dealing with an offender who is under 18 years?**

Juvenile Justice recommends that all young offenders under the age of 18 years should be dealt with in the jurisdiction of the Children's Court. Only offenders 18 years and over should be subject to SPA.

2. **Should SPA make parole decisions for young offenders who are under 18 according to different criteria from those that govern parole for adults?**

As previously noted only offenders 18 years and over should be subject to SPA.

3. **If yes, what criteria should apply to young offenders in the adult parole system?**

6.11

1. **When SPA is making decisions affecting young offenders, should there be a special composition of SPA to include members with youth expertise?**

Yes when SPA is making decisions affecting younger people in the criminal justice system there should be members that have expertise in this area. There should be specific consideration of recent medical research into brain development has confirmed that young people's brains are not fully developed until they reach their early twenties. As a result, 'the adolescent mind works differently [to adults]. Their brains are physiologically underdeveloped in the areas that control impulses, foresee consequences and temper emotions'¹. Therefore this cohort of offenders should be afforded a parole hearing that considers the difference between adult and young offenders.

6.12

1. **What specific problems do young offenders in Corrective Services NSW custody have in accessing in custody programs and preparing for parole?**

No comment

2. **How can the post release programs, accommodation and support provided to young offenders supervised by community corrections be improved?**

No comment

Other considerations

- The Children's Court ordinarily use the term 'street time' to describe the time period from the date of the revocation of the parole order to the date the young person is taken into custody. The amount of days in this period are calculated and added onto the young person's sentence, thus extending the expiry date of the order.

This highlights the different ways the legislation S171 (3) of *Crimes (Administration of Sentencing) Act* can be interpreted in different situations

- Currently Juvenile Justice is negotiating an agreement with Corrective Services proposing that Juvenile Justice retains the supervisory responsibility of young people aged 17 and under, this includes young people exiting Kariong. Young people who turn 18 years, and have three months or more remaining on their order to be transferred to Corrective Services.

¹ Amicus Brief to the United States Supreme Court 2005

