

Criminal Law Committee

Parole

23 August 2013

Submission in response to scoping paper

NSW Law Reform Commission

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Introduction

The NSW Young Lawyers Criminal Law Committee ("the Committee") refers to the terms of reference given to the NSW Law Reform Commission ("the Commission") on 1 March 2013 on parole. This submission is delivered in response to the Scoping Paper released on 22 July 2013.

NSW Young Lawyers, a division of the Law Society of NSW, is made up of legal practitioners and law students, who are under the age of 36 or in their first five years of practice. Our membership is made up of some 13,000 persons.

The Young Lawyers Criminal Law Committee provides education to the legal profession and wider community on current and future developments in the criminal law, and identifies and submits on issues in need of law reform.

Significant issues

There are two issues mentioned at [1.5] of the Scoping Paper (as indicated by Figure 1) that the Committee considers should be explored in significant detail.

Program completion and access to programs

In the interests of fairness in the granting of parole, the Committee recommends that the Commission explore how the inability to access and complete programs while in custody may adversely affect an offender's prospects of being granted parole. According to point 2.3(c) of the State Parole Authority's Operating Guidelines, "satisfactory completion of programs and courses aimed at reducing their offending behaviour" is a factor that an offender should, in principle, achieve before being granted parole.

There may be many reasons why an offender cannot complete a custodial treatment program or participate in an external leave program. These include the following:

- The offender may have a physical disability that prevents the offender from participating in a treatment program.
- The offender may have an intellectual disability that prevents the offender from achieving the expected treatment gains.
- The treatment program may not be available at the offender's centre.
- The external leave program may only be available to offenders with certain classifications.
- The offender may be unable to participate in an external leave program because there is no suitable family member available.
- The offender may be unable to participate in external leave program because the centre is in "lock down".

Point 2.6 of the Operating Guidelines states that where there is an "inability to access programs because of prison location, protection status, gaps in service provision or any other reason ... parole should only be granted where relevant factors in 2.3 are met and the Authority is of the view that having regard to Section 135 of the *Crimes (Administration of Sentences) Act 1999* it is appropriate to make a parole order."

However, an inability to complete a relevant custodial program can itself make it less likely that the other factors in 2.3 of the Operating Guidelines are met. An offender who has not completed a treatment program may be less likely to receive a recommendation for release by the Probation and Parole Service (2.3(a)). An offender who has not participated in an external leave program may be less able to demonstrate a realistic prospect of compliance with the conditions of parole (2.3(e)). Offenders who are unable to participate in programs have less opportunity to demonstrate that they are unlikely to re-offend. This may impact on the reports prepared by the Probation and Parole Service and the Serious Offenders Review Council, which the Authority must have regard to under sub-ss 135(2)(h) and (i) of the *Crimes (Administration of Sentences) Act 1999* in deciding whether or not the release of an offender is in the public interest.

Provision and publication of reasons

The Committee recommends that the Commission explore whether more of the Authority's parole determinations should be published online. Although the Authority meets frequently each year (for example, 284 occasions in 2011 according to the Annual Report) it appears that since 6 May 2008 only five determinations have been published on the Authority's website.

Publishing reasons (with identifying details of offenders and victims redacted where appropriate) would facilitate transparency; encourage consistency in decision-making; and allow practitioners and self-represented offenders to make more relevant submissions.

The Committee thanks the Commission for the opportunity to comment.

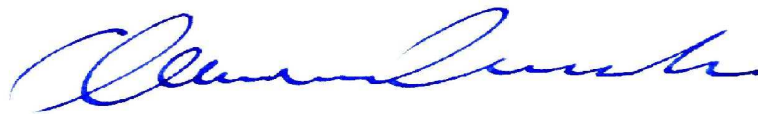
If you have any questions in relation to the matters raised in this submission, please contact:

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Yours faithfully,



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