



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Criminal:REad818898

6 February 2014

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 Paper 6

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 Question Paper 6 on parole.

I thank you for the invitation to comment.

I now attach the Committees' submission for your consideration.

Yours sincerely,

Ros Everett
President

NSW Law Reform Commission

Parole - Question Paper 6

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

Question Paper 6: Parole for young offenders

Question 6.1: Different treatment of juvenile offenders

- (1) **Should juvenile offenders (that is, offenders who are under 18) be treated differently from adults in relation to parole?**

Yes.

- (2) **Should there be a separate juvenile parole system? If yes, why?**

Yes. The purposes of sentencing for persons under 18 years of age are not the same as the purposes of sentencing for adults. In the Committee's view, this principle also applies to the purposes of parole, i.e. persons under 18 years of age should be treated differently from adults.

Other reasons why a separate juvenile parole system should exist are:

1. the Children's Court, including its Magistrates and staff, have specialist expertise in working with persons under 18 years of age;
2. more work and greater care is taken by the juvenile parole system in areas such as offering pre-release and post-release programs which are not as readily available for adult offenders;
3. the criteria set by the juvenile parole system is different to that set by SPA, and accordingly, a greater emphasis is placed on children's rehabilitation than is the case with adults; and
4. international agreements to which Australia is a party require that children be treated differently from adults within the parole system.

Question 6.2: Features of the juvenile parole system in NSW

If a separate juvenile parole system is retained in NSW:

- (1) **Who should be the decision maker in the juvenile parole system?**

The Children's Court of NSW.

(2) What special principles (if any) should apply in the juvenile parole system?

The Committees support the approach of the NSW Bar Association mentioned at paragraph 6.21 of the question paper. However the Committees also support a separate legislative framework for the juvenile parole system, rather than simply inserting additional principles in the *Crimes (Administration of Sentences) Act 1999* (NSW) ("CAS Act") applicable when dealing with children and young people. The Committees' view is that the insertion of the principles in s 7 of the *Young Offenders Act 1997* (NSW) is unnecessary because these principles were designed to be applicable to children and young people who are eligible to be diverted from court and custody, not to those who are serving a control order.

The Committees submit that the criteria in s135 of the CAS Act should not be applicable to persons who come within the juvenile parole system. However, if this provision is used for children, the Committees' view is that s 135 should be amended to incorporate s 4 of the *Children Detention Centres Act 1987* (NSW) ("CDC Act") and s 6 of the *Children (Criminal Proceedings) Act 1987* (NSW) ("CCP Act").

(3) Do the decision making criteria in s 135 need to be adapted to the juvenile parole system? If so, in what way?

No. The Committees submit that the juvenile parole system should remain separate, with separate principles and decision making criteria (not those found in s 135 of the CAS Act). These principles should be an amalgam of the principles set out in s 4 of the CDC Act and s 6 of the CCP Act.

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

The Committees' view is that there should be a separate legislative framework for the juvenile parole system.

Question 6.3: Structuring the juvenile parole system

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

The Committees' view is that option 2A is preferable.

The Committees submit that young persons under 18 years should be dealt with by the Children's Court regardless of where they have been accommodated during their sentence(s) so that these young offenders have access to programs managed by Juvenile Justice. The expertise at this Court, including access to intensive programs, would benefit young offenders.

While it is the Committees' view that 2A is preferable, a problem with 2A relates to the supervision option that is provided.

The Committees' view is that if the offender has served his or her time in a juvenile detention centre, this young person still has unique needs which justify continued access to the juvenile parole system and the programs that are

available via Juvenile Justice. It is most important for these persons to remain under Juvenile Justice supervision if at all possible. Age should not give rise to any presumption about which organisation should be the supervising authority.

The Committees further submit that those young people held in juvenile correctional centres should also be governed by juvenile justice principles and the juvenile parole system.

The Committees also submit that there should be no last minute transfers of offenders to adult correctional centres, which seriously disrupts pre-release planning. Late transfers clearly undermine efforts by Juvenile Justice to focus on the importance of rehabilitation for young people and their reintegration into the community.

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

The Committees refer to their previous answer above and submit that while 2A is the preferred option, at times administrative decisions are made at the last minute regarding transfers. When this happens Juvenile Justice is sometimes putting together final adjustments of case plans and the result is that an offender is moved to adult corrections where there is no plan. With inadequate support, young people suffer because of these late transfers. If under 18, this is in breach of Australia's obligations under the Convention on the Rights of the Child ("CROC"). The Committees submit that if it is less than three months before the end of a non-parole period, there should be no capacity for a late transfer. It is the Committees' view that late transfers should cease.

Question 6.4: Parole process in the juvenile parole system

(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 Committees' view is that the process for making parole decisions in the Children's Court should be separate and different to the CAS Act, because different principles should apply. It is the Committees' further view that some parole decisions made by SPA are made in the absence of the offender. This process does not allow a right to be heard. Children and young people should remain present during all parole decision making, to ensure that there is no breach of obligations under CROC.

(2) Should victims be involved in parole decision making for young offenders in the juvenile parole system through a restorative justice conferencing process?

No.

Question 6.5: Assistance with parole readiness

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

The Committees submit that one particular improvement relates to an offender who is under 18 years of age, who is then transferred to a juvenile correctional centre or an adult gaol. It is the Committees' view that when this occurs, the relevant community corrections officer should make contact with the relevant juvenile justice officer ("JJO") who should then work with that person when they are transferred from the juvenile parole system to an adult gaol. The Committees' further view is that if a young person goes from meeting with a JJO and is then transferred to the supervision of a community corrections officer, the latter should have the capacity to adopt all the young person's requirements previously commenced with a JJO.

Question 6.6: Reconsideration after refusal of parole

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?

No. The Committees' view is that a reconsideration date should be set at the Court's discretion of six to eight weeks for another application date to be heard.

The Committees note that this is a different approach to that adopted in their answer to question 3.18 in question paper 3 because the relevant considerations for young offenders are different to those for adults.

Question 6.7: Supervision of young offenders

(1) Are there any issues with the selection of the supervising agency for young offenders paroled through the juvenile parole system?

It is the Committees' view that all young offenders paroled through the juvenile parole system should be supervised by Juvenile Justice. The reasons are that this department has good in-custody and post release programs. A young offender should be supervised by Juvenile Justice and not at the discretion of the Director General because the types of programs managed by Juvenile Justice that are mentioned earlier in the submission are not available in the adult correctional system.

(2) Is Juvenile Justice NSW able to provide sufficient support, programs and services to parolees in the juvenile parole system?

It is the Committees' view that Juvenile Justice has very good programs for parolees. They could be improved but the Committees understand the general problem with resources in the criminal justice system.

Question 6.8: Breach and revocation of parole in the juvenile parole system

- (1) Should the 14 day waiting period before revocation review hearings be removed for young offenders in the juvenile parole system?**

The Committees' view is that the 14 day waiting period before revocation review hearings should be removed for young offenders in the juvenile parole system.

The Committees note paragraph 6.69 of the question paper, and further submit that if the purpose of the 14 day waiting period is to protect the young person's legal rights, including their right to be legally represented, then this can best be achieved by way of an adjournment.

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

No, the 12 month rule should not apply after parole revocation in the juvenile parole system. The Committees refer to their answer in question 6.6.

Question 6.9: Role of the Serious Young Offenders Review Panel

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

The Committees note the comments made in paragraphs 6.77 and 6.78 of the question paper and submit that the functions of SYORP should not be expanded.

Question 6.10: Principles applying to young offenders in the adult parole system

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

Yes.

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

Yes.

- (3) If yes to (2), what criteria should apply to young offenders in the adult parole system?**

The Committees refer to the principles mentioned in response to question 6.2. The Committees further submit that there should be separate legislation.

Question 6.11: Composition of SPA

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

Yes. It is the Committees' view that SPA needs members with expertise in working with young people. Health Care Professionals such as psychologists with expertise in adolescent development would be useful as would other professionals with skills in working with young people. The Committees submit that work in this area requires people with specialised skill sets relevant to the needs of children and young people. The Committees' further view is that there should be at least two people on the panel with such specialist expertise.

Question 6.12: In-custody and post-release support

- (1) What specific problems do young offenders in Corrective Services NSW custody have in accessing in-custody programs and preparing for parole?**
- (2) How can the post-release programs, accommodation and support provided to young offenders supervised by Community Corrections be improved?**

The Committees refer to paragraphs 6.86-6.90 of the question paper in relation to the specific problems young offenders have in this context. In particular, the Committees note the specific problems that young people have when they are homeless at the point of release on parole. If a young person does not have anywhere to live then parole becomes difficult to grant. The Committees also refer to their answers to questions 6.6 and 6.9. The large caseloads currently held by probation officers in the adult gaols are another reason why young people should not be placed in adult correctional centres when release on parole is potentially imminent. The lack of resources available for young offenders in the adult correctional system will be detrimental to young people as their cases will not be given the attention required.