



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Criminal:REad818082

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 Papers 4 and 5

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 Papers 4 and 5 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 Papers 4 and 5

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

Question Paper 4: Reintegration into the community and management on parole

Question 4.1: Case management of offenders in custody

How could case management of offenders in custody be improved to ensure that any issues that may impede successful reintegration on parole are identified and addressed?

It is the Committees' view that there should be case management for all offenders serving sentences in custody. The Committees also support streamlining the process of classification. The Committees further submit that while case management is important for offenders serving lengthy sentences, there should also be a focus on offenders who are serving sentences of less than 12 months, who require proper case management for reintegration.

Question 4.2: Role of the Serious Offenders Review Council

What changes, if any, should be made to the Serious Offenders Review Council's role in the custodial case management of offenders?

The Committees acknowledge that the Serious Offenders Review Council plays an important role, however it is not in a position to make any further comments.

Question 4.3: Custodial rehabilitation programs

(1) How could the process for selecting and evaluating the rehabilitation programs offered to offenders in custody be improved?

(2) How could offenders be given sufficient opportunity to participate in in-custody rehabilitation programs?

(1) The Committees' view is that one way the process for selecting and evaluating the rehabilitation programs offered to offenders in custody could be improved, would be to make these programs available in all centres.

(2) The Committees' view is that offenders' access to programs would be enhanced by having external agencies provide relevant programs to be administered by corrective services.

Question 4.4: Access to education and work programs in custody

- (1) What education and work programs would boost offenders' employability and improve their prospects of reintegration when released on parole?**
- (2) Are offenders given sufficient opportunities to access in-custody education and work programs in order to achieve these outcomes?**

- (1) The Committees' view is that offenders serving longer sentences need education and work programs that will increase their prospects of future employment. The Committees suggest that existing programs be evaluated to ensure that they are assisting offenders in this regard. More work is also required to ensure the programs are appropriate to prepare offenders for reintegration. The Committees further submit that training and education providers be consulted.
- (2) The Committees' view is that inadequate access to technology is a significant issue which prevents offenders from having sufficient opportunities to access in-custody education and work programs. Further, it is the Committees' view that if offenders are being released into a situation of homelessness, or the same environment the offender was in, (in addition to the stigma of having a criminal conviction); the level of employment an offender could achieve would be minimal.

Question 4.5: Short sentences and limited time post-sentencing

How could in-custody case management for offenders serving shorter sentences be improved to reduce reoffending and improve their prospects for reintegration on parole?

The Committees' view is that there is a need for more intensive case management for those serving short sentences. The Committees' further view is that the resources required would not be as great in comparison to the resources required for offenders serving longer sentences.

The Committees further submit that interviews need to take place quickly to improve case management for offenders serving short sentences. If an offender is in and out of custody, there is Throughcare available.

Question 4.6: Pre-release leave

How could pre-release leave programs be improved to:

- (1) prepare offenders sufficiently for life on parole; and**
- (2) ensure offenders can access pre-release leave prior to parole?**

The Committees' view is that the requirements for a suitable sponsor are too restrictive. The Committees' further view is that the involvement of other organisations should be considered.

Question 4.7: Transitional centres before release

- (1) How effective are transitional centres in preparing offenders for release on parole?**
- (2) How could more offenders benefit from them?**

Transitional centres are very important in preparing offenders for release on parole. The Committees' view is that there is a need for more centres like Biyani, which assists female offenders with drug and alcohol problems as well as other issues such as mental health issues.

These centres require more health care professionals, psychologists, as well as drug, alcohol and sexual assault professionals. They are very effective, but more are required and should be available to male offenders as well.

Question 4.8: Back-end home detention

Should the Corrective Services NSW proposal for a back-end home detention scheme, or a variant of it, be implemented?

Yes. The Committees support the implementation of a back-end home detention scheme.

Question 4.9: Day parole

- (1) How could a day parole scheme be of benefit in NSW?**
- (2) If a day parole scheme were introduced, what could such a scheme look like?**

- (1) It is the Committees' view that a day parole scheme will be of benefit in NSW if properly supervised.
- (2) Such a scheme should include appropriate access to education, allowing an offender to spend time with family as well as allowing the offender to attend to individual counselling and therapy needs.

Question 4.10: Re-entry courts

- (1) Should re-entry courts be introduced in NSW?**

The Committees' view is that re-entry courts should be introduced in NSW.

- (2) If re-entry courts were introduced, what form could they take and which offenders could be eligible to participate?**
- (3) Alternatively, could the State Parole Authority take on a re-entry role?**
- (4) If the State Parole Authority were to take on a re-entry role, which offenders could be eligible to participate?**

The Committees are not in a position to comment.

Question 4.11: Planning and preparing for release to parole

How could release preparation be changed or supplemented to ensure that all offenders are equipped with the information and life skills necessary to be ready for release to parole?

It is the Committees' view that the current case planning and preparation for release is inadequate.

Question 4.12: Conditions of parole

(1) How could the three standard conditions that apply to all parole orders be improved?

The Committees agree with the comments made in the question paper from 4.107 to 4.114, in particular the comments found in paragraph 4.114.

(2) Should the power of sentencing courts and SPA to impose additional conditions on parole orders be changed or improved?

It is the Committees' view that if an offender is given a short sentence (12 months or less), then the sentencing judge should be able to impose conditions. However, if the release date is a long way off, for example, up to three years, then it should be the SPA that is given the power to impose additional conditions.

Question 4.13: Intensity of parole supervision

(1) Are there any improvements that need to be made to the intensity of parole supervision in terms of levels of monitoring and surveillance?

The Committees' view is that the level of monitoring and surveillance needs to be adequately recorded.

(2) How could the intensity of parole supervision be changed to strike the right balance between:

(a) monitoring for breach; and

(b) directing resources towards support, intervention and referrals to services and programs?

It is the Committees' view that the parole supervisor should be more proactive in communicating with offenders to complete certain tasks to avoid breach.

Question 4.14: Duration of parole supervision

Should the duration of parole supervision in NSW be extended? If so, by how much?

The Committees' view is that the duration of parole supervision in NSW should be extended. The Committees' further view is that a parolee should be supervised for a longer period if in gaol for a significant period.

Question 4.15: Information sharing and compliance checking

- (1) How sufficient are:**
 - (a) current information sharing arrangements between Corrective Services NSW and other agencies (government and nongovernment) and**
 - (b) compliance checking activities undertaken by Community Corrections?**
- (2) What legal obstacles are blocking effective information sharing between Corrective Services and other agencies (government and non-government)?**

The Committees' view is that current information sharing arrangements are reasonably broad, and if widened may give rise to privacy concerns.

Question 4.16: Electronic monitoring of parolees

- (1) How appropriate is the current electronic monitoring of parolees?**
- (2) What are the arguments for or against increasing electronic monitoring of parolees?**

The Committees support the current electronic monitoring of parolees. The Committees' view is that the cost of increasing the current level of use may be a burden on all parties.

Question 4.17: Workload and expertise of Community Corrections officers

- (1) What improvements could be made to ensure parolees are supervised effectively?**

The Committees' view is that parolees often have ongoing complex needs so that for supervision to be effective there needs to be more people with expertise in the right area such as corrections officers having a social work background.

- (2) What are the arguments for and against Community Corrections implementing specialist case managers or specialist case management teams for certain categories of offenders?**

The Committees' view is that there will be some offenders that need both specialist case managers and teams for help.

- (3) If specialist case management were to be expanded, what categories of offenders should it apply to?**

The Committees' view is that the categories of offenders that would benefit from specialist case management would be sex offenders, people who have mental health issues and complex needs cases.

Question 4.18: Housing for parolees

What changes need to be made to ensure that all parolees have access to stable and suitable post-release accommodation, and that post release housing support programs are effective in reducing recidivism and promoting reintegration?

The Committees are aware that if a person who is in Department of Housing accommodation is in custody for three months or more, they lose their housing accommodation. If they seek community housing, a face to face interview is required. The Committees' view is that there are insufficient resources for this to occur as offenders are required to attend prison for an interview. The Committees are aware that offenders in Juvenile Justice centres are allowed escorted leave to go to the prison facility for a face to face interview. It is the Committees' experience that Corrective Services is not as flexible. It is the Committees' further view that, with increasing technology, assessments can be done by AVL.

The Committees agree with the comments made in 4.146 of the question paper, however are of the view that there still needs to be better case management in custody and abolition of the homelessness and three month rule.

Question 4.19: Programs for parolees

- (1) What level of access should parolees have to rehabilitation and other programs while on parole? Do parolees currently have that level of access?**
- (2) Are there any problems of continuity between custodial and community based programs?**
- (3) Can any improvements be made to the way the programs available to parolees in the community are selected or evaluated?**

In addition to noted problems in relation to resourcing which can lead to waiting lists, the Committees' view is that there can be difficulties with the availability of suitable or appropriate programs.

Question 4.20: Barriers to integrated case management

- (1) To what extent is Community Corrections case management able to achieve a throughcare approach?**
- (2) What are the barriers to integrated case management?**
- (3) What other services or supports do parolees need but are not able to access? What are the barriers to accessing these services and supports?**

The Committees' support the comments made in 4.156 of the question paper.

Question Paper 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?**

The Committees' view is that there should be a wide discretion for managing breaches of parole without reporting them to SPA.

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

It is the Committees' view that there should be low level sanctions. The Committees support the comments in 5.13 of the Question Paper and suggest further that the SPA require more than just warnings. There should be a warning by SPA but also an increase of suspension for those with a short period in custody rather than revoking parole. The Committees' further view is that there needs to be an alternative to simply revoking parole after 12 months.

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

The Committees are not in a position to comment.

Question 5.2: Response to non-reoffending breaches

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

Yes. The Committees' view is that the nature of the breach should be determined with a discretion to revoke parole for a short period of time.

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

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

The Committees support the comments made in paragraph 5.18 and 5.19 of the question paper.

Question 5.3: Revocation in response to reoffending

- (1) What changes should be made to improve the way SPA deals with parolees' reoffending?**
- (2) What provision, if any, should be made in the CAS Act to confine SPA's discretion not to revoke parole?**

The Committees' view is that the current regime is working well.

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

The Committees agree with the comments made in paragraph 5.31 of the Question Paper.

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?

The Committees' view is that provision should be made for offenders to be heard before a revocation decision is made and there should be an automatic right of review.

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?

The Committees' view is that SPA should either rescind revocation or reparole the offender.

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?

The Committees' view is that there needs to be a system of review with greater consistency.

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?

The Committees' view is that the SPA should be required to record its reasons in order to be transparent.

Question 5.9: Emergency suspensions

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

The Committees are not in a position to comment.

Question 5.10: SPA's power to hold an inquiry

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

The Committees' view is that s169 is important and should be used more often. It is the Committees' further view that even if a breach is admitted or beyond doubt, it should be used to decide whether to revoke parole or not.

Question 5.11: Information sharing

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

The Committees' view is that information should be shared between NSW agencies, taking into consideration the appropriate safeguards.

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?

The Committees are not in a position to comment.

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?

No. The Committees' view is that revocation is a sufficient sanction.

Question 5.14: Reconsideration after revocation of parole

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

It is the Committees' view that the 12 month rule should be abolished and note the comments made in the Question Paper between paragraphs 5.58-5.65. The Committees also note that there should be provisions to avoid offenders making frivolous and vexatious applications when applying for parole.

The Committees' further view is that the SPA should set a reconsideration date with a process for offenders to apply after a parole revocation in exceptional circumstances.

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?

The Committees refer to 5.74 of the paper and suggest further that this should apply to ICOs.