

LAW REFORM COMMISSION - PAROLE

Question Paper 1

Question 1.1: Retention and objectives of parole

(1) Should parole be retained?

Yes. Parole is an extremely important part of the criminal justice system. It is a means by which inmates may be subject to a phased release from prison while subject to supervision. If inmates are released at the end of their sentence without a period of parole, they will be subject to no conditions upon release and no supervision or guidance regarding integration.

Parole is a powerful motivation for inmates to behave themselves whilst in custody so that they have the benefit of parole. It is also considered to be a strong incentive to encourage inmates to complete programs to address their offending behaviour.

(2) If retained, what should be the objectives of the parole system in NSW?

There were a number of objectives identified that included the first four outlined in Question Paper 1, i.e. reducing reoffending, incentive for offenders to address their offending behaviour, reintegration and supervised release and risk management.

Further to this was the strong need to be transparent, fair and equitable in decision making for the benefit of both offenders and the community.

The parole system should provide the community protection from unacceptable risks offenders may present upon their release and provide confidence and reassurance about the relationship between the community and parolees. If parole were not to exist, there could be large social costs, i.e. actual and perceived fears of crime and the people who commit offences.

Parole should provide offenders with the opportunity to not only continue to address their offending behaviour but also to assist with their reintegration through the completion of both therapeutic and vocational programs. This should be with the assistance and support of families and community resources (both government and non-government).

Parole should not be used as a cost-cutting or prison population control mechanism.

(3) Should there be an explicit statement of the objectives or purposes of parole in the *Crimes (Administration of Sentences) Act 1999* (NSW)?

An explicit statement provides a clear, unambiguous statement to the reader about what the purposes and objects of parole are, irrespective of the reader.

Such a statement can assist in educating the community to better understand the role, function, purposes, objectives and principals of both parole and the Parole

Authority. A clear preamble would also assist in addressing misconceptions for offenders, the community and practitioners of law.

Question 1.2: Design of the parole system

(1) Should NSW have automatic parole, discretionary parole, or a mixed system?

A mixed system as we currently have, is considered appropriate.

(2) If a mixed system, how should offenders be allocated to either automatic or discretionary parole?

The current system of three years or less for automatic release appears to be appropriate given the lack of evidence to suggest otherwise. Comments of the LRC question paper at 1.71 are endorsed in relation to the three years of automatic parole being a result of “administrative convenience and the allocation of scarce resources”.

(3) Does there need to be a mechanism to ensure supervised reintegration support for offenders serving short sentences? What should such a mechanism be?

A significant number of those consulted believed that a period of 3 months supervision was too short for effective supervision and was highly resource intensive for Community Corrections.

Some felt that for those serving short sentences (with or without parole periods) there was the need for accommodation, employment and programs to assist with reintegration needs, to be developed by a “reintegration officer” in custody. This should be prepared at the beginning of the sentence and appropriately resourced and executed in the community. It is acknowledged that the development of such a system would be a long term cost saving measure with no immediate short term measures or outcomes attractive to government.

An idea was proposed that SPA could possibly take over consideration an offender's release on court based parole orders where there had been continued revocation as a result of re-offending (as opposed to supervision revocation), dependent on the nature of the index offence and the type of re-offending. This would mean the Authority would be determining eligibility for release, rather than the sentencing court.

There were no supporters of the UK's “supervision period” totalling 12 months, with comments that it would affect truth in sentencing in NSW.

Question 1.3: Difficulties for accumulated and aggregate sentences

What changes should be made to legislation for aggregate and accumulated approaches to sentencing to ensure consistent outcomes for parole?

If the total sentence being served is effectively greater than 3 years (whether accumulated or aggregated) it should be a matter for SPA to determine parole. This proposition is accordance with 1.88.

Question 1.4: SPA's power to take over decision making responsibility

(1) What safeguards should there be on automatic parole?

It was felt that the current system of practice was appropriate and did not require any change; however, the issue of revoking an order prior to release as a result of "suitable post release arrangements or accommodation" continues to be an issue of contention for the Authority.

Some of those consulted felt that if an address exists, no matter how dysfunctional or inappropriate the environment, an offender should be released as determined by the court. Others in the group felt this was totally inappropriate and an offender should not be released for fear of setting them up to fail on parole if accommodation was not "suitable". Comments were made about whose definition of "suitable accommodation" should be utilised and the need for a consistency in approach by all Community Corrections officers in determining accommodation post release for offenders. The issue of approving accommodation for offender is something that should be addressed by Community Corrections well before the earliest release date and not just before expected release. This should ensure a reduction in the number of offender's who have their order revoked prior to release.

(2) Should there be any changes to SPA's power to take over parole decision making for offenders with court based parole orders?

No.

It is important to clarify that SPA will not and should not consider revoking a parole order prior to release for failure to undertake programs in custody. SPA revokes parole orders in circumstances whereby an offender demonstrates through their behaviour that they are unable to adapt to normal lawful community life upon release.

Attention should also be drawn to the judgement of *Murray v NSW State Parole Authority [2008] NSWSC 962*.

Question 1.5: Supervision conditions on court based parole orders

Should there be any changes to the way supervision conditions are imposed on a court based parole order?

It is felt the current standard conditions of parole are appropriate and no changes are required.

Question Paper 2

Question 2.1: Membership of SPA

(1) Does the balance of members on SPA or SPA's divisions need to be changed in any way?

Mixed views were received from the group in relation to membership on SPA divisions, however, the majority view was that the current balance of membership appears appropriate and should remain being representative of the community at large (with the following attributes listed in question 2).

A comment was made that "from experience, the previous increase in numbers reduced the streamlining of the process and the current majority vote process should remain", however, it is noted that this comment does not address the possible impact this has on robust or appropriate decision making.

A minority view was that despite acknowledging the financial impact, an increase back to 4 community members is preferable to 2 for robust decision making. Part of this proposal was the idea of specialist members forming part of the community member profile and the balance of either 2 community/2 specialists or 1 community /3 specialist members for each division. It is suggested that these specialist members could come from the areas of psychology/psychiatry, victims and indigenous/CALD members. By having a pool of each of these specialist positions, it would ensure a representative from each specialist type could attend each meeting.

Upon this minority view being discussed, the majority stated that the expertise that could be provided by specialist members should be and is more appropriately canvassed in information provided to the Authority via report submission. The Authority has always had the option of requesting specialist reports. It was argued that the practice of requesting specialist reports (if considered of value in assisting parole decisions) should continue and would be a more cost effective and appropriate use of specialist expertise rather than appointment of specialist members.

(2) How can the selection and performance of SPA's community members be improved?

Improvement of the Selection Process

- All members should be required to undergo a merit selection process which includes a written application and an interview by a panel, convened by a judicial member, preferably the Chairperson.
- This merit selection process should require the applicant to demonstrate interest, capacity and expertise in the area of criminal justice. Specifically, potential members should:
 - demonstrate knowledge of the criminal justice system;
 - possess an ability to make balanced and reasonable assessments inclusive of consequential thinking;

- possess high level communication skills;
 - have an appreciation of differing multicultural issues
 - have sensitivity and understanding of victim needs and the impact of crime on all victims.
- The selection process needs to be transparent and appointment should not be a result of political/religious affiliations alone.
 - Terms of re-appointment should not be capped, as you do not necessarily want to be removing depth of expertise in parole decision making where members have demonstrated significant aptitude.
 - If seeking re-appointment, it would be appropriate to have a re-appointment process, inclusive of feedback regarding previous performance provided by the Judicial Member and Director/Secretary.

Improvement of Performance

- A structured orientation process should be developed that is thorough, explaining the role of the legislation, role of Community Corrections and the role, duty and obligations of members. Supplementing this orientation process should be a mentorship program that lasts some three to six months. This should be a requirement for all member categories, not just community members.
- It is acknowledged that the development of the orientation process and mentorship program requires significant funding, however, should result in the production of knowledgeable and well informed decision makers.
- Judicial Officer (and the mentor/s during first year of appointment) should be responsible for providing feedback to the members. In the case of Community Members, this could result in an increase or decrease in attendance at meetings.
- An 'informal interview' should be undertaken by the Chairperson on a regular basis to 'check in' with members. This should be utilised as an opportunity to provide two way feedback on issues of concern for either party and as a forum for raising areas required for further development and training, either individually or as an Authority.
- Quarterly meetings for judicial members to provide support for each other, ensure consistency in the approach used by the Authority in making decisions and to discuss policy/procedural practices.
- Regular professional development days for all members held at least twice a year to inform members about issues such as:
 - Legislation/Policy issues from the Secretariat
 - Issues of particular interest in parole decision making from colleagues or guest speakers
 - CSNSW staff

- Government or non-government service providers
- Parolees' experiences of the parole process during their period in custody for parole preparation. This could include their experience with SPA hearings if appropriate and the supervision process, with the aim to hear about successes and failures in the administration of parole and the possibility of improving the way the Authority operates.

(3) Should SPA's community members be representing the community at large or be representing specific areas of expertise?

Mixed views were held regarding this question. The majority of members felt it would be desirable that the community members had previous experience in the areas of law, criminal justice, human/social services or psychology/psychiatry, while the minority felt that community members should just represent the community, irrespective of their background, much like that of jury members.

Question 2.2: Membership of SORC

(1) How can the selection and performance of SORC's community members be improved?

As above.

(2) Should SORC's community members be representing the community at large or be representing specific areas of expertise?

As above.

Question Paper 3

Question 3.1: The public interest test

Should the current public interest test in s 135(1) of the CAS Act be retained, or does the Queensland test, or something similar, better capture the key focus of the parole decision?

It is considered that the current legislative provisions are considered to be sufficient. The broader issue of public interest has also been a factor in judicial decisions in both criminal and civil matters in NSW and is considered to be more appropriate than the Queensland test. The current public interest test has been used for a number of years and is widely understood by all legal practitioners.

It is also noted that the public interest test in s 135 allows for other measures to have the highest priority, not just the safety of the community as in the Queensland test.

Question 3.2: The matters that SPA must consider

Should any matters for consideration be added to or removed from the lists in s 135(2) and s 135A of the CAS Act?

Unanimously it was considered that nothing should be added or removed from the legislation in relation to parole consideration.

Question 3.3: Specific issues given weight by SPA

(1) Should any changes be made to the way SPA takes completion of in custody programs into account when making the parole decision? If so, how?

- Part of the group felt there should be no change to the way SPA takes completion of custody programs into account.
- Of concern to the other members is the appearance that CSNSW are reluctant to place offenders in programs in sufficient time for completion prior to the earliest release date (ERD).
- Consideration needs to be given to circumstances where an offender has applied for a program during an early part of their sentence but the program has been unable to be completed given space limitation or an offender's protections status (where verified that the protection status is appropriate and not being used as a means to avoid program participation).
- Other members believed that parole consideration should not be jeopardised in instances where programs are not considered to be therapeutic and can be completed in the community, eg. CALM, Getting SMART, Domestic Violence Program.
- It was acknowledged that there will continually be resource implications for programs facilitated through CSNSW (either in custody or the community) and this will be problematic for the purposes of determining parole consideration, especially in the case of therapeutic programs.

(2) Should any changes be made to the way SPA takes security classification into account when making the parole decision? If so, how?

SPA recognises that in most cases low level classification indicates acceptable behaviour and a satisfactory record of conduct in custody, particularly with regard to violence and substance abuse. As such, classification decisions need to be made in a timely manner to facilitate an offender's readiness for parole by the earliest release date.

Of concern is the regression of classification for sentenced offenders who receive further outstanding charges, those that spend a significant period of time on remand and 'E' classification offenders. These offenders have not progressed in classification in a timely manner which can affect program access.

Some members felt that SPA should have the ability to recommend CSNSW review an offender's classification rating for the purposes of program participation to assist in parole readiness.

(3) Should any changes be made to the way SPA takes homelessness or lack of suitable accommodation into account when making the parole decision? If so, how?

The majority view was that there does not appear to be the need to change the way SPA makes decisions about homelessness. It is acknowledged that homelessness does not equate to criminality, however, it is important to acknowledge that being homeless may not assist in reintegrating into normal lawful community life.

Perhaps the pertinent question that should be answered by both Community Corrections and the Parole Authority is, “*can the offender be adequately supervised?*”. If anything needs to be changed, it should be the timeliness of Community Corrections sourcing the appropriate accommodation to reduce the number of standovers or revocations prior to release. It is apparent that more appropriate housing/accommodation services need to be provided for offenders and be appropriately resourced and staffed.

(4) Are there any issues with the way that SPA makes decisions about risk?

Overwhelmingly there was a view that there were not any issues about how SPA made decisions in relation to risk.

It is acknowledged that SPA are not the experts on risk assessments and rely on the information provided to them by Community Corrections, Psychologists and Psychiatrists along with information provided through the judges sentencing remarks, criminal history etc.

Whilst SPA does not utilise a matrix for risk assessments the members do utilise a level of professional discretion and individuality when considering the risk level each offender presents. It should be highlighted that a number of risk assessments heavily rely on static factors. This may mean that for some offenders, after a certain period in their life, a particular assessed risk cannot be reduced, no matter what other interventions are provided. As such, professional discretion in these circumstances assist greatly in determining risk, for both risk assessment professionals and the Authority.

One proposal raised was that all high risk violent offenders (including sexually violent offenders) have a predictive risk assessment about behaviour in the community completed prior to parole consideration. This would assist in identifying specific supervision strategies to manage risk in the community and would be of benefit to both Community Corrections and the Parole Authority.

Question 3.4: Deportation and SPA’s parole decision making

Does there need to be any change to the way SPA takes likely deportation into account when making the parole decision?

SPA takes deportation into account in parole decision making as much as it is possibly able to do so. It is often the case that the Authority is not made aware of decisions to deport offenders or the possibility of a bridging visa being provided to an

offender. As an aside to this, it may be of assistance if there was an MOU or protocol for DIAC to identify and inform both NSW Police and CSNSW of those that are of interest and those to whom deportation is confirmed (including whether it is likely a bridging visa would be given).

The Authority overwhelmingly believes that regardless of what community an offender is being released to, consideration of parole should occur in the same manner. Alternatively, the measure of parole consideration should be somewhat higher for those offenders being removed from Australia given there is no parole supervision in an alternative jurisdiction.

Consideration should be given as to whether the Judge knew at the time of sentencing that the offender was of interest to DIAC and whether they came to Australia for the purpose of committing an offence or were a non-citizen at the time of the offence.

Another perspective proposed by several members in relation to deportation, was for the matter to be referred to the Court for redetermination of a fixed sentence, this would then remove the need for parole consideration by the Parole Authority and leave eligibility for release to the Court.

Question 3.5: SPA's caseload and resources

[Do any changes need to be made to SPA's administrative practices, workload or resources?](#)

Currently a considerable portion of the Parole Authority members' and Secretariat's workload is dealing with reports from Community Corrections requesting warnings for parolees. Whilst there is no legislative provision for warnings, the Authority established the use of warnings to act as a measure between no action and revocation.

There has been a significant increase in the number of warnings requested by Community Corrections and subsequently the warnings issued by the Authority as Community Corrections move towards a compliance ethos. It is argued by the Authority that warnings could be issued by Directors of Community Corrections, which would provide the same effect as the Parole Authority warning. This would result in the reduction of the Authority's workload (both members and the Secretariat), reduce the time Community Corrections spend preparing reports and result in a more consistent regional approach to case management.

Some members were of the belief that an external review which focussed on workload analysis and resourcing could assist in ensuring more equitable distribution of matters considered by the Authority, both on a day to day and week to week basis. One idea raised was the possibility of splitting divisions into consideration of parolee matters and inmate matters; the other being the consideration of parolee matters after review hearings, in the event that review hearings finished prior to 1pm.

In order to provide more specific reasons for the granting of parole, the form utilised as a template for refusal of parole could also be used for the granting of parole. This

would assist in focussing members readings, identifying the material facts and consideration of matters under s135 and subsequently assist in determining appropriate conditions when granting parole. In the event of State or Commissioner Submissions, it would be evident what matters the Authority took into account when making an order and may also be of use with media enquiries or subsequent appeals.

It was also felt that appropriate expenditure should be provided to the Authority:

- to provide the best of technology given the Authority's reliance on "paperless meetings";
- to provide for appropriate orientation, professional development and training of members as mentioned previously;
- to provide for a full-time media/communications officer to assist in media enquiries, education of the general public and maintenance of appropriate and up to date information on the SPA website, including SPA decisions.

Question 3.6: Planning for parole and assistance with parole readiness

[What changes \(if any\) are needed to improve parole planning and ensure that suitable offenders can demonstrate their readiness for parole?](#)

Overwhelmingly it is felt there is need for a holistic case plan to be developed within custody at the beginning of the sentence, which identifies what programs would assist in attaining parole and include programs to assist with reintegration. While it is acknowledged that this should be completed by CMTs in correctional centres, it is often not demonstrated when offenders become eligible for parole.

This case plan should be developed in consultation with the offender and be reviewed on a 6 monthly basis. Further, Community Corrections should have significant input into this case plan and the reviewing of the plan. It is imperative that the plan also be continued and modified during the sentence.

Question 3.7: Victim involvement and input into SPA decisions

[\(1\) Should victims' involvement in SPA's decisions be changed or enhanced in any way?](#)

It was considered that victims in NSW already have a fair representation within parole decisions given the existence of the Charter of Victims Rights and the Victims Register, providing victims with an invitation to furnish submissions and attend court. It was felt that modified document access under s193 could be extended to victims of non serious offenders as well.

Victims and the broader community need to be educated that SPA has no legislative provision to re- sentence or extend the sentence of the Court.

(2) Does the role, purpose or recommended content of victim submissions to SPA need to be changed or clarified?

It is not felt that the role, purpose or content of submissions needs to be changed or clarified. Victim submissions should not be used as a tool to deny parole, but utilised to further enhance the safety and the needs of the victims, whether primary or tertiary.

It would assist decision making at the Authority if victim submissions were provided at the earliest possible time and the Secretariat advised of the identity/location of all registered victims not just victims of serious offenders as is currently the case.

Question 3.8: Role of the Serious Offenders Review Council

(1) Should the separate parole decision making process for serious offenders be retained?

Yes – In most cases, the SORC provides a useful and up to date status as to the offender's current circumstances. SORC needs to have the continued authority to veto parole if in their experience/s the offender is not ready to be considered for parole. SORC play an important role in case managing offenders through the custodial system and act as a filtering process by ensuring that a number of significant factors have been met, prior to SPA considering parole.

(2) If yes, do any changes need to be made to the role played by the Serious Offenders Review Council in parole decisions for serious offenders?

SORC may want to consider meeting more regularly with offenders (six monthly) and having Community Corrections attend the meetings between SORC and the offenders in the centre. This will ensure that there is an understanding by Community Corrections of what SORC requires of the offender and will allow them to assist in driving this process.

Question 3.9: A different test for serious offenders

Should SPA apply a different test when making the parole decision for serious offenders? If yes, what should it be?

It is not considered appropriate that a separate test be provided for serious offenders than that provided to non-serious offenders.

Question 3.10: Security classification and leave for serious offenders

Are there any changes that can be made to improve the interaction between security classification, access to external leave and the parole decision for serious offenders?

A timely classification process is considered critical for serious offenders in order to allow for the opportunity to participate in external leave programs prior to an offender's earliest release date, if considered appropriate. Again this is why a review

process occurring every six months is considered more appropriate than once a year.

Unless there are exceptional circumstances that are not known to SORC, the Commissioner should approve recommendations about external leave and classification as made to him by the recommending body. If a case plan is developed by SORC, the offender can be hampered in the event the Commissioner refuses to allow the reduction of classification.

In the event that the Commissioner is privy to information that may impede the offender's progress to external leave programs, this should be provided to SORC. Given SORC's expertise, the Commissioner should only disregard their recommendation in exceptional circumstances.

Question 3.11: Submissions by the Commissioner and the State

Do any changes need to be made to the powers of the Commissioner and the State to make submissions about parole?

Any submissions to the Authority need to be made in a timely fashion.

It is difficult to reconcile how the Commissioner can make a submission against the release of an offender when CSNSW employees write reports to the Parole Authority recommending release. Further, two CSNSW representatives (appointed by the Commissioner) sit on both SORC and the Parole Authority and participate in the decision making process.

It is also difficult to reconcile that the Commissioner can argue against the release of an offender, citing reasons such as lack of external leave or program participation when the opportunity for the offender to participate in such things can often be determined by the Commissioner or the business unit operated under their authority.

There is, however, the advantage of having a contradictor. Commissioner's submissions could be provided by the contradictor who is employed within the Secretariat to review decisions about serious offenders, high risk offenders or public interest offenders and could then present issues of concern to the Authority. Again, the use of specific reasons for granting/proposing or intending to grant parole (like those used in the parole refusal form) may assist in reducing the issues of contradiction or concern.

It is considered that State Submissions should remain as is currently the practice.

Question 3.12: Parole and the HRO Act

What changes, if any, should be made to improve the interaction between parole decision making and the provisions of the *Crimes (High Risk Offenders) Act 2006* (NSW)?

Many supported the proposal in paragraph 3.103, bringing forward the application for a continuing order from 18 months prior to the earliest release date rather than 6

months prior to the earliest release date. This would assist Community Corrections' workload requirements rather than the Parole Authority.

In reality, the Parole Authority usually refuses parole if it is not appropriate for these offenders to be released. It is not the role of the Parole Authority to refer offenders to the Supreme Court for extended supervision or detention orders, nor should it be.

Question 3.13: The definition of “serious offender”

Should any change be made to the current definition of “serious offender”?

Given the ability for the Parole Authority to recommend to the Commissioner that specific offenders can be managed as serious offenders, it is not considered that major changes need to occur to the definition.

There was a minority view that voiced the offence of *manslaughter* should be added to the definition of a serious offender; given charge bargaining can occur prior to sentencing. It is however, difficult to envisage the practicalities of this from both a resources and case management perspective if those who had committed *manslaughter* were managed by SORC.

Question 3.14: Parole in exceptional circumstances

Are there any issues with SPA's power to grant parole in exceptional circumstances?

It is difficult to define what constitutes “*exceptional circumstances*”, however, this discretionary practice should remain as is, including the option to ask for the advice of the Commissioner when considered appropriate.

Question 3.15: Offender involvement and input into SPA decisions

(1) Should there be more scope for offender input and submissions to SPA at the first stage of the decision making process (ie the private meeting where a decision is taken or an initial intention formed)?

Although there are no statutory provisions for offenders to do so, offenders are given the opportunity to have some input into the SPA decision at the first stage of the decision making process. It is acknowledged however, that the onus is on the offender to provide this input in writing and is not done at the invitation of the Authority.

All offenders would know when their parole consideration date is impending given the interviews and preparations that take place from Community Corrections, along with the majority of offenders knowing their earliest release date.

To allow offenders to provide verbal submissions to the Authority would become inefficient, time consuming and unwieldy. It may also be irrelevant in circumstances where members have determined that parole should be granted and no further information is provided from an offender.

(2) Should any change be made to the availability of public review hearings after a decision is made to refuse parole?

It is suggested that the Authority has significantly improved in the area of reason provision when refusing an offender parole. On paperwork provided to offenders, they are advised what material was considered, what the critical issues were in refusing parole and advised why release to parole is not appropriate at the time of parole consideration. If not automatically provided with a review hearing, offenders' are always given the option of applying for parole and stating why they believe a review should be held.

It would be argued that offenders do not need to hear verbally from the Authority why they have been refused parole, as they can consult the documents in relation to parole refusal and then discuss these issues with their primary case managers, being both Community Corrections and the secondary case managers/advisors, Case Management Teams and legal representatives. In the circumstances of Serious Offenders, there is also the opportunity to raise these issues with SORC.

It could also be suggested that to hold review hearings for offenders a long way from obtaining parole, gives false hope to offenders and raises unnecessary stress and anxiety for victims.

(3) Is there currently sufficient assistance available to help offenders make meaningful applications for and submissions to review hearings, and to help offenders understand what happens at review hearings?

Offenders have access to the paperwork relied upon by the Authority in making their decision, legal practitioners, Community Corrections officers and Offender Services and Programs staff in custody that all contribute in allowing the offender to make meaningful applications and submissions. In the event of offenders with physical or cognitive disabilities, Statewide Disability Services are able to provide some assistance and interpreters are also available for those requiring assistance with English.

It is acknowledged that additional assistance may benefit offenders, particularly those with literacy, mental health or cognitive difficulties, however, it is suggested that the above services mentioned should be skilled enough to provide specific assistance to offenders in making meaningful submissions to the Authority.

It is acknowledged that time at review hearings may be limited, but it is important that the Authority members ensure that offenders understand the process as much as possible, with an introduction as to why the offenders are appearing before the Authority and the use of little technical language or jargon. The offender should not have to rely on their legal representative or Community Corrections to explain the process of review hearings or the decisions of the Authority after their matter.

(4) Are there any problems with offenders not being provided with the material which supports SPA's decisions?

The Parole Authority relies on CSNSW staff (primarily Community Corrections or the Correctional Centre Records staff) for delivering documents to offenders after decisions have been made. This is to ensure expediency in the delivery of material and a reduction in costs in sending or mailing such documents to offenders. While this may not be ideal, there are not the resources available for alternative methods of delivery, nor could an alternative be thought of.

In relation to s194 material, attempts are made on all occasions where appropriate to provide summaries of s194 material to allow for procedural fairness.

Question 3.16: Reasons for SPA's decisions

Should any changes be made to the manner or extent to which SPA provides reasons for its decisions?

As discussed elsewhere in this paper, consideration should also be given to the detailed and specific provision of reasons in granting offenders parole.

Consideration should also be given to informing and educating the community about SPA decision making, its role, function and responsibilities. This could be achieved through the publication on SPA's website of decisions and would have the additional advantage of demonstrating SPA's transparency in decision making. It is anticipated that this would require additional resources to manage this process.

Question 3.17: Appeal and judicial review of SPA's decisions

Should there be any changes to the mechanisms for appeal or judicial review of SPA's decisions, including the statutory avenue in s 155-156 of the CAS Act?

No, it is considered appropriate that matters are appealed to the Supreme Court and then returned to the Parole Authority.

Question 3.18: Reconsideration after refusal of parole

(1) Should the 12 month rule (as it applies to applications for parole after parole refusal) be changed in any way? If so, how?

The majority view was that no change should be made to the 12 month rule for parole consideration matters given the provisions of manifest injustice that are currently in place. A minority view was, however, that the Authority should have discretion to set a parole consideration date, while also maintaining the 12 month rule and manifest injustice provisions.

This could provide the Authority with the opportunity to set parole consideration dates for those offenders who may benefit from a period of parole supervision, however, would not again be considered for release to parole given their sentence, nor meet the manifest injustice criterion.

As an aside, when considering the 12 month rule for revocations, it is unanimously agreed that the 12 month rule be changed to allow the Authority to set a parole reconsideration date. This would have the advantage of ensuring that rescissions of revocation were reserved to circumstances where evidence provided at review hearings demonstrated that the revocation was not the most appropriate outcome. It would also have the additional advantage of ensuring members relied on and provided reasons under s135 when re-paroling offenders after revocation.

[\(2\) Are there any issues with the requirement to apply for parole reconsideration or the assistance that offenders receive to apply?](#)

There are not considered to be any issues for offenders applying for parole. The Secretariat has an administrative practice which safeguards against inmates not applying for parole each subsequent year after being refused parole at the expiry of their non-parole period. In the event that an anniversary application is not received, the SPA Secretariat makes contact with the relevant Community Corrections office to ascertain whether the offender intends to apply for parole or not and receives written notification of such.

Question 3.19: Drug Court as a parole decision maker

[Are there any issues with the Drug Court's operation as a parole decision maker?](#)

No, it is considered that the Drug Court operates appropriately as the parole decision maker for those on Compulsory Drug Court Orders.