



**New South Wales
Law Reform Commission**

**Parole
Question paper 6**

Parole for young offenders

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- 6.1 This Question Paper discusses parole for young offenders. It focuses on young offenders who are under 18 at the time of parole eligibility. We examine whether there should be a separate juvenile parole system in NSW and the extent to which a separate system should be different from the adult parole system. We also discuss which groups of offenders should be subject to a juvenile parole system and whether the adult parole system requires any special modifications for offenders who are under 18.

Parole for young offenders in NSW

- 6.2 In NSW, there is an adult parole system and a juvenile parole system. Currently, parole for young offenders can happen through the adult or the juvenile parole system. The parole system that applies depends on the type of facility in which the young offender is serving his or her sentence when the non-parole period expires. A young offender can be either an “inmate” in a correctional centre managed by

Corrective Services NSW or a “detainee” in a detention centre managed by Juvenile Justice NSW.¹

- 6.3 A young offender who is an inmate in a correctional centre at the expiry of the non-parole period will go through the **adult parole system**, with the State Parole Authority (SPA) as the parole decision maker. Young offenders in the adult parole system are prepared for parole by Corrective Services NSW and generally supervised on parole by Community Corrections. For a detailed overview and discussion of the adult parole system, see Question Papers 1-5.
- 6.4 A young offender who is a detainee in a detention centre when he or she becomes eligible for parole will go through the **juvenile parole system**, with the Children’s Court as the parole decision maker. Young offenders who are paroled through the juvenile parole system are prepared for parole by Juvenile Justice NSW and can be supervised on parole by either Juvenile Justice NSW or Community Corrections.

A separate juvenile parole system

Different treatment for young offenders in relation to parole

- 6.5 We outlined the historical development of separate juvenile justice measures in our 2005 report on sentencing for young offenders.² This development has culminated in NSW in a separate juvenile justice system where:
- there is an emphasis under the *Young Offenders Act 1997* (NSW) on diversion of young offenders away from traditional criminal processes
 - young offenders are generally dealt with by the Children’s Court rather than the adult courts
 - under the *Children (Criminal Proceedings) Act 1987* (NSW) (the CCP Act), different criminal procedure rules and sentencing options apply to young offenders, and
 - young offenders are generally managed in custody and the community by Juvenile Justice NSW, a specialist correctional agency separate from Corrective Services NSW.
- 6.6 Such a juvenile justice system recognises that young offenders are not “little adults”; they are different from adults and require different treatment. It reflects the principles in the *United Nations Convention on the Rights of the Child*, which Australia ratified in 1990, and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules). The Beijing Rules have been adopted by the United Nations Committee on the Rights of the Child as filling out the detail of obligations under the *United Nations Convention on the Rights of the Child*.³ The Beijing Rules state that “the young, owing to their early stage of human

1. See *Children (Detention Centres) Act 1987* (NSW) s 3.

2. NSW Law Reform Commission, *Young Offenders*, Report 104 (2005) ch 2.

3. M Wilkie and C Sidoti, *Sentencing Juvenile Offenders*, Human Rights Brief No 2 (Australian Human Rights Commission, 1999).

development, require particular care and assistance with regard to physical, mental and social development”.⁴

- 6.7 Current research confirms that adolescence is a period of cognitive development where a young person’s decision making, risk taking and impulse control may be significantly different from that of an adult.⁵ Due to their immaturity and reliance on peer networks, young people are more at risk of a range of problems linked to offending, including mental illness, alcohol and drug dependency and peer pressure.⁶ Crimes are disproportionately committed by young people. In 2011-12 in NSW, offending rates were second highest in the 15-19 age bracket at 3715.8 per 100 000 and peaked in the 20-24 age bracket at 3876.8 per 100 000. Offending rates across all age brackets were much lower at 1496.7 per 100 000.⁷ Young people are also disproportionately the victims of crime. In 2012 in NSW, victimisation rates for assault were highest in the 15-19 age bracket at 2050.5 per 100 000 compared to an overall victimisation rate of 943.0 per 100 000.⁸
- 6.8 Young offenders in custody are likely to have higher levels of need in several ways. The *2009 Young People in Custody Health Survey* found that 27% of young offenders in detention had been placed in out of home care before the age of 16.⁹ Overall, 78% of young people in custody were found to have hazardous or harmful patterns of alcohol consumption, 23% had previously received treatment for a drug or alcohol problem and 87% had at least one psychological disorder.¹⁰ The young detainees had an average of 3.3 past or present psychological disorders each.¹¹ Young people in detention are also more likely to have a cognitive impairment than adults in custody.¹²
- 6.9 If it is recognised that young people are different and generally need to be treated differently in the criminal justice context, such that there is a separate juvenile justice system, it seems logical that there should also be a separate parole system for offenders who are under 18. A separate parole system would cater for the particular characteristics and needs of such young people and ensure that parole decision making is appropriate to the age of the offender. A separate juvenile parole system might also facilitate parole preparation and supervision by a specialist juvenile correctional agency.

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4. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)*, GA Res 40/33, UN GAOR, 40th sess, 96th plen mtg, UN Doc A/RES/40/33 (29 November 1985) preamble.
 5. NSW Department of Education and Communities, “Closed for Construction – Adolescent Brain Development in the Middle Years” <http://www.curriculumsupport.education.nsw.gov.au/secondary/pdhpe/prolearn/reading/pr_013.htm>.
 6. K Richards, *What Makes Juvenile Offenders Different From Adult Offenders?* Trends & Issues in Crime and Criminal Justice No 409 (Australian Institute of Criminology, 2011) 4.
 7. Australian Bureau of Statistics, ABS 4519.0 *Recorded Crime – Offenders* (2012).
 8. Australian Bureau of Statistics, ABS 4510.0 *Recorded Crime – Victims, Australia* (2012).
 9. D Indig and others, *2009 Young People in Custody Health Survey: Full Report* (Justice Health and Juvenile Justice NSW, 2011) 32.
 10. D Indig and others, *2009 Young People in Custody Health Survey: Full Report* (Justice Health and Juvenile Justice NSW, 2011) 130, 142, 145.
 11. D Indig and others, *2009 Young People in Custody Health Survey: Full Report* (Justice Health and Juvenile Justice NSW, 2011) 144.
 12. K Richards, *What Makes Juvenile Offenders Different From Adult Offenders?* Trends & Issues in Crime and Criminal Justice No 409 (Australian Institute of Criminology, 2011) 4.

- 6.10 Australian jurisdictions vary in the extent to which they provide a separate parole system for juvenile offenders (see Annexure A). Victoria, WA, SA, Queensland and Tasmania have established juvenile parole systems which are separate from their main adult parole systems by enacting parole legislation specifically applicable to young offenders.¹³ In Victoria, WA, SA and Tasmania, young offenders can also be sentenced to imprisonment as adults and may fall within the adult parole system. In Queensland all young offenders up to the age of 16 years will, with some exceptions, fall within the juvenile parole system. The NT and the ACT do not have separate juvenile parole systems. Their adult parole systems apply to all offenders regardless of age.
- 6.11 Some might argue that there is no need to provide for special treatment of young offenders as part of parole, because there is already a system in place to ensure special treatment through criminal procedure and sentencing. Once the question of parole arises for a young offender, perhaps the focus should shift from the young offender's special needs towards community safety and the community's interest in reintegration and reduced reoffending. At the same time, Rule 28 of the Beijing Rules specifies that parole for juveniles "shall be used to the greatest possible extent, and shall be granted at the earliest possible time".¹⁴ The UN's *Standard Minimum Rules for the Treatment of Prisoners*, which apply to adults, contain no such stipulation.¹⁵ This difference implies that jurisdictions are expected to treat the parole of juveniles differently from the parole of adults.

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

Design of a separate juvenile parole system

Current NSW juvenile parole system

- 6.12 Although NSW already has a separate juvenile parole system, the legislative framework governing the system is the same as that for adults. Section 29(1) of the *Children (Detention Centres) Act 1987* (NSW) (the CDC Act) states that the relevant provisions of *Crimes (Administration of Sentences) Act 1999* (NSW) (the CAS Act) apply in the juvenile parole system, except:

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13. *Children, Youth and Families Act 2005* (Vic) pt 5.5; *Young Offenders Act 1994* (WA); *Young Offenders Act 1993* (SA); *Youth Justice Act 1992* (Qld); *Youth Justice Act 1997* (Tas).
 14. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)*, GA Res 40/33, UN GAOR, 40th sess, 96th plen mtg, UN Doc A/RES/40/33 (29 November 1985) r 28.
 15. Compare *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 3144, UN GAOR, UN DOC A/9425 (1973) r 60(2).

- references in the CAS Act to SPA are taken to be references to the Children's Court, so the Children's Court is the parole decision maker and has the same powers as SPA,¹⁶ and
 - the Director General of the Department of Attorney General & Justice (DAGJ) exercises the powers of the Commissioner for Corrective Services in making submissions about the parole of a young offender.¹⁷
- 6.13 As a result, the structure of the juvenile parole system in NSW is almost identical to that of the adult parole system. Young offenders who have been sentenced to a term of three years or less will have a parole order in place that was made by the sentencing court.¹⁸ The court based parole order will require their release on parole automatically at the expiry of the non-parole period.¹⁹ The offender will be released in accordance with the parole order unless it is revoked prior to release by the Children's Court.²⁰
- 6.14 Young offenders who have been sentenced to a term of more than three years who are subject to the juvenile parole system will be considered for parole by the Children's Court at the expiry of the non-parole period. Under the CAS Act, the Children's Court uses the same decision making process and criteria as SPA does for adults (see Question Paper 3 for more on SPA's decision making).
- 6.15 The Children's Court also has the power to deal with breaches of parole by young offenders paroled through the juvenile parole system, exercising the same powers of revocation and variation of parole orders as SPA exercises for offenders paroled through the adult parole system. The same rules and procedures apply to the Court's revocation decision making (see Question Paper 5).
- 6.16 In this section of the Question Paper, we ask whether the NSW juvenile parole system should be more clearly distinguished from the adult parole system. We examine this question in terms of four key features of the juvenile parole system: the decision maker; the principles that guide decisions; the parole decision making criteria; and the overall legislative framework.

Decision maker

- 6.17 One way to create a juvenile parole system appropriate for young offenders is to use a different decision maker from the parole authority that deals with adults. In NSW, this has been achieved by creating a parole jurisdiction for the Children's Court. Only specialist Children's Magistrates exercise the parole jurisdiction of the

16. *Children (Detention Centres) Act 1987* (NSW) s 29(1); *Children (Criminal Proceedings) Act 1987* (NSW) s 33C. All references to "parole authority" in Parts 6 and 7 of the *Crimes (Administration of Sentences) Act 1999* (NSW) are to be taken as references to the Children's Court: *Children (Detention Centres) Act 1987* (NSW) s 29(1)(b).

17. Part 6 of the *Crimes (Administration of Sentences) Act 1999* (NSW) applies to detainees with the Director General of the Department of Attorney General & Justice exercising the powers of the Commissioner for Corrective Services: *Children (Detention Centres) Act 1987* (NSW) s 29(1). The Commissioner's powers are under s 153, s 141A and s 160AA of the *Crimes (Administration of Sentences) Act 1999* (NSW).

18. Unless the sentence is imposed as a fixed term.

19. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 44-6, s 50.

20. *Crimes (Administration of Sentences) Act 1999* (NSW) s 130.

Children's Court.²¹ This ensures that the decision maker in the juvenile parole system has particular experience in dealing with offenders who are under 18. It also creates a measure of continuity between the sentencing and parole of young offenders, as most young offenders are sentenced by the Children's Court.²²

- 6.18 No stakeholders have raised any problems with the Children's Court acting as the parole decision maker in the juvenile parole system. However, it is worth noting that few young offenders who are subject to the juvenile parole system serve sentences of more than three years. For this reason, the majority of the parole decisions of the Children's Court are actually parole revocations in response to breach, rather than decisions to make an initial grant of parole. In consequence, when the Children's Court decides whether to grant or refuse parole to an offender serving more than three years, it does so isolated from the volume of decisions, and consequent expertise, of the adult parole authority (SPA).
- 6.19 Of the Australian jurisdictions that have separate juvenile parole systems, Victoria, WA and SA have a specialist juvenile parole board. In Queensland and Tasmania, the juvenile parole system is structured so that offenders subject to it are released automatically on parole (see Annexure A).

Principles guiding decision making

- 6.20 The sentencing decisions of the Children's Court must be made in accordance with the principles set out in s 6 of the CCP Act. The principles are:
- 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,
 - that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance,
 - that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption,
 - that it is desirable, wherever possible, to allow a child to reside in his or her own home,
 - that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind,
 - that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties,
 - that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions,
 - that, subject to the other principles described above, consideration should be given to the effect of any crime on the victim.

21. *Children (Detention Centres) Act 1987* (NSW) s 29(1).

22. Details of the circumstances in which young offenders who are under 18 can be sentenced in the adult courts are set out in Annexure B.

However, because the parole powers of the Children’s Court are found in the CAS Act rather than the CCP Act, these principles do not apply to its parole decision making function. Section 4 of the CDC Act, which governs the administration of detention centres, states that:

- (1) The objects of this Act are to ensure that:
 - (a) people on remand or subject to control take their places in the community as soon as possible as people who will observe the law,
 - (b) in the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved, and
 - (c) satisfactory relationships are preserved or developed between people on remand or subject to control and their families.
- (2) In the administration of this Act:
 - (a) the welfare and interests of people on remand or subject to control shall be given paramount consideration, and
 - (b) it shall be recognised that the punishment for an offence imposed by a court is the only punishment for that offence.

Again, these principles do not apply to the parole powers of the Children’s Court, despite their relevance to parole decisions.

- 6.21 In its preliminary submission, the NSW Bar Association suggested that principles similar to those in s 4 of the CDC Act and s 6 of the CCP Act should be inserted into the CAS Act so that they apply to parole decisions involving juveniles.²³ The Children’s Court also submitted that the principles in s 6 of the CCP Act should apply to the exercise of parole powers involving young offenders and that there should be an express principle that detention of a juvenile is to be a measure of last resort.²⁴ To achieve maximum consistency, the principles listed in the CDC Act and the CCP Act, as well as s 7 of the *Young Offenders Act 1997* (NSW), could be combined and rationalised so that the same principles applied to all decisions concerning young offenders, including all parole decision making.

Decision making criteria

- 6.22 When the Children’s Court is deciding whether to grant parole to a young offender, it must use the same criteria drawn from s 135 of the CAS Act as SPA uses for adults. Section 135(1) of the CAS Act stipulates that SPA “must not make a parole order for an offender unless it is satisfied on the balance of probabilities that the release of the offender is appropriate in the public interest”. In determining whether release is appropriate in the public interest, SPA must have regard to the 12 matters listed in s 135(2) of the CAS Act, which are:

- the need to protect the safety of the community
- the need to maintain public confidence in the administration of justice

23. NSW Bar Association, *Preliminary submission PPA4*, 2.

24. Children’s Court of NSW, *Submission PA3*, 1-2.

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- the nature and circumstances of the offence to which the offender's sentence relates
- any relevant comments made by the sentencing court
- the offender's criminal history
- the likelihood of the offender being able to adapt to normal lawful community life
- 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 Community Corrections
- any other report in relation to the granting of parole to the offender that has been prepared by or on behalf of the Serious Offenders Review Council (SORC), the Commissioner for Corrective Services or any other authority of the State
- if the Drug Court has refused to admit the offender to compulsory drug treatment detention because the offender may damage the compulsory drug treatment program or another offender's participation in it, the circumstances that led the Drug Court to that decision
- any guidelines that are in force, and
- any other matters SPA considers relevant.

The Children's Court must have regard to the same matters, although the pre-release report provided to the Court will be prepared by Juvenile Justice NSW rather than Community Corrections.

- 6.23 It may not be appropriate or desirable for the same criteria to govern parole decision making in both the juvenile and adult parole systems. The s 135 criteria could be amended to reflect the special circumstances of young offenders and the emphasis that should be placed on rehabilitation.²⁵ The Children's Court has noted that rehabilitation is the paramount purpose in sentencing juvenile offenders and submitted that the parole decision making criteria should emphasise that rehabilitation of young offenders can be the best way to ensure the safety of the community.²⁶

A different legislative framework?

- 6.24 The CAS Act has not been drafted with the juvenile parole system in mind and it is not well adapted to the operations of the Children's Court because it:
- uses definitions that do not readily apply to young offenders detained in Juvenile Justice NSW custody

25. Although note that the weight given to rehabilitation may be moderated if a young offender has conducted himself or herself in the way an adult might, or has committed an offence of considerable gravity: *R v Tran* [1999] NSWCCA 109 [9]-[10]; *R v AEM* [2002] NSWCCA 58 [96]-[98]; *R v Adamson* (2002) 132 A Crim R 511 [31]; *R v Voss* [2003] NSWCCA 182 [16].

26. Children's Court of NSW, *Submission PA3*, 3-4.

- contains provisions referring to SORC, which has no involvement in the management of detainees in detention centres, and
- requires complex decision making procedures that may not be suited to the Children's Court.

Cross-application of the CAS Act also makes the legislation underpinning the juvenile parole system difficult to follow and unnecessarily complicated.

- 6.25 An alternative would be for there to be separate legislative provision for the juvenile parole system outside the CAS Act. If the juvenile parole system had its own legislative framework, it could include decision making criteria appropriate to young offenders and also include a range of principles applicable to other decisions affecting young offenders in the criminal justice system.
- 6.26 However, if the method for determining the applicable parole system remains unchanged, there may be some benefit in the two systems being essentially the same and governed by the same legislation, albeit with different parole decision makers. Currently in NSW, young offenders can end up subject to either the adult or juvenile parole system or move between the two systems in complex ways. If the two systems are mostly the same, the risk of disparity of treatment for otherwise similar offenders is minimised.
- 6.27 On the other hand, the key purpose of a separate juvenile parole system is to ensure differential treatment for offenders who are under 18. If there are issues with otherwise similar offenders being treated differently because some are subject to the adult rather than the juvenile parole system, these issues could be resolved by redesigning the mechanisms through which young offenders become subject to either the juvenile or the adult parole system. Question 6.2 should be considered in the context of the next section of this Question Paper, which examines how the applicable parole system should be determined.

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?
- (2) What special principles (if any) should apply in the juvenile parole system?
- (3) Do the decision making criteria in s 135 need to be adapted to the juvenile parole system? If so, in what way?
- (4) Should there be a separate legislative framework for the juvenile parole system?

Who should be subject to a juvenile parole system?

- 6.28 As we outlined at the beginning of this Question Paper, the parole system that applies to an offender in NSW currently depends on the type of custody in which a young offender is held at the expiry of the non-parole period. The ways that a young offender can end up in either a detention centre managed by Juvenile Justice NSW or a correctional centre managed by Corrective Services NSW at the end of the

non-parole period are extremely complicated. This means that the pathways for a young offender into either the juvenile or adult parole system in NSW are also complicated.

Age and the current method of determining eligibility

- 6.29 Age is relevant to the type of custody in which an offender is held but it is far from the only factor at play. Offence type is also relevant, as it may influence whether a young offender is sentenced by the Children's Court under the CCP Act or sentenced at law by the adult courts. In particular, young offenders who have committed a serious children's indictable offence (defined later at 6.74) can only be dealt with at law by the adult courts. Annexure B summarises the effect that different types of sentencing can have on the facility in which a young offender is held. Decisions of the court as to which sentencing legislation and sentencing options (juvenile or adult) will apply can also affect where an offender is placed. If a young offender is sentenced by an adult court, the court can still in some circumstances direct that the offender serve part or all of the sentence as a detainee under Juvenile Justice NSW management. The law on these issues is outlined in detail in Annexure B.
- 6.30 Young offenders can also be administratively transferred during their sentence between the custody of Juvenile Justice NSW and Corrective Services NSW in certain circumstances. This means a young offender may end up in either type of facility at the expiry of the non-parole period, regardless of which facility he or she was directed to by the sentencing court. The law on transfers is outlined in Annexure C. If a young offender is transferred to a detention centre, their term of imprisonment is converted into a control order of the same term.²⁷ When a young offender is transferred to a correctional centre, their control order is converted into a term of imprisonment of the same term.²⁸
- 6.31 Young offenders are most commonly transferred between detention centres and Kariong Juvenile Correctional Centre. Kariong is a correctional centre specifically for young offenders managed by Corrective Services NSW. Corrective Services NSW took over the management of the centre from Juvenile Justice NSW in December 2004.²⁹ Juvenile Justice NSW transfers to Kariong any young offenders in detention centres who have committed serious children's indictable offences or present significant behaviour problems (subject to the restrictions outlined in Annexure C). However, as Kariong only accepts male offenders, there is a disparity between male and female offenders who fall into this category. No female offenders are transferred to Corrective Services NSW before the age of 18. Generally Juvenile Justice NSW transfers all detainees to Kariong or an adult correctional centre once they turn 18,³⁰ although young offenders who are vulnerable due to cognitive or mental health impairments or for other reasons may be held in detention centres past the age of 18.

27. *Children (Detention Centres) Act 1987* (NSW) s 10(4).

28. *Children (Detention Centres) Act 1987* (NSW) s 28(3).

29. NSW Ombudsman, *Kariong Juvenile Correctional Centre: Meeting the Challenges* (2011) 1.

30. Information provided by Juvenile Justice NSW (28 November 2013).

- 6.32 Overall, these complex pathways into and out of detention centres and correctional centres mean that not all offenders who are under 18 at the time of parole eligibility are subject to the juvenile parole system in NSW. If a separate juvenile parole system is needed because young people who are under 18 should be treated differently from adults, the current method of determining eligibility for the juvenile parole system might be problematic.

Practical problems with current method

- 6.33 Stakeholders have also raised other problems caused by determining eligibility for the juvenile parole system based on the type of custody in which an offender is held. Young offenders can be transferred between Juvenile Justice NSW and Corrective Services NSW custody until the day of their release on parole. This changes the parole system applicable to them, including the parole decision maker and the agency that will supervise them on release, seriously disrupting post-release planning for young offenders. For example, if an offender in a Juvenile Justice NSW detention centre is transferred at the last minute, the plans Juvenile Justice NSW officers have put in place for that offender's accommodation, treatment and supervision on parole will no longer apply because Community Corrections is now the agency responsible for supervising the offender.
- 6.34 Juvenile Justice NSW generally hands over the supervision of a parolee to Community Corrections once a parolee turns 18.³¹ This administrative arrangement is not accommodated by the split between the two systems. In these cases, the Children's Court will still be the decision maker on revocation if the young offender breaches parole, even though the offender is over 18, supervised by the adult correctional agency and any new offences must be dealt with in the adult courts. Similarly, in the case of a young offender paroled from Kariong under the adult parole system, any reoffending will be dealt with in the Children's Court if the offender is still under 18. The young offender can be settled into the programs and interventions under the new sentence imposed by the Children's Court but then be recalled to Corrective Services NSW custody because the supervising Community Corrections officer has commenced breach and revocation action with SPA.
- 6.35 There can also be difficulties when a young offender who is over 18 is paroled from a detention centre through the juvenile parole system. This can cause some confusion about whether Juvenile Justice NSW or Community Corrections is responsible for the offender's post-release arrangements and parole supervision.

Other ways of structuring the juvenile parole system

- 6.36 Instead of the current structure, eligibility for the juvenile parole system could be entirely based on the age of the offender when he or she reaches parole eligibility. Alternatively, the status quo could be retained with the proviso that any offender who is under 18 at the time of parole eligibility is subject to the juvenile parole system.³² A third method of determining the offenders eligible for the juvenile parole

31. Juvenile Justice NSW, "Working with the Community Offender Service, Corrective Services NSW", *Probation and Parole Procedures* (2009) (under review) [5.1.1].

32. Children's Court of NSW, *Submission PA3*, 6.

system would be for all offenders sentenced under the CCP Act – that is, sentenced by the Children’s Court or an adult court exercising the powers of the Children’s Court – to be paroled through the juvenile parole system. In its preliminary submission, the NSW Bar Association raised a fourth option, asking whether:

...juveniles sentenced to a control order or a sentence of imprisonment initially served in a juvenile detention centre should remain under the parole jurisdiction of the Children’s Court regardless of any administrative decision to transfer them to a correctional centre, and if so, to what age.³³

6.37 Table 6.1 sets out a range of potential alternative ways of structuring the juvenile parole system. Under each option, the table describes:

- the group of offenders who would be eligible for the juvenile parole system
- the way parole decision making would be split between the Children’s Court and SPA
- the way parole supervision would be split between Juvenile Justice NSW and Community Corrections, and
- the way breach and revocation decision making responsibility would be split between the Children’s Court and SPA.

Table 6.1: Other structures for the juvenile parole system

Option #	Definition of group subject to the juvenile parole system	Decision maker	Parole supervision	Breach and revocation
1A	Age based: all offenders who are under 18 at expiry of the non-parole period are subject to the juvenile parole system. All offenders who are 18 or over at the time of parole eligibility are subject to the adult parole system.	Children’s Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.	At Juvenile Justice NSW and Community Corrections discretion, but generally offenders are supervised by Juvenile Justice NSW while under 18 and by Community Corrections when 18 or over.	Children’s Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.
1B	As in Option 1A.	As in Option 1A.	As in Option 1A.	Age based: Children’s Court if offender under 18 at time of breach; SPA if the offender is 18 or over at the time of breach.
2A	Facility and age based: all offenders in juvenile detention centres at expiry of the non-parole period are subject to the juvenile parole system, as are all offenders who are under 18 at expiry of the non-parole period, regardless of the type of custody in which they are held. All other offenders subject to the adult parole system.	Children’s Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.	At Juvenile Justice NSW and Community Corrections discretion, but generally offenders are supervised by Juvenile Justice NSW while under 18 and by Community Corrections when 18 or over.	Children’s Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.
2B	As in Option 2A.	As in Option 2A.	As in Option 2A.	Age based: Children’s Court if offender under 18 at time of breach;

33. NSW Bar Association, *Preliminary Submission PPA4*, 2.

				SPA if the offender is 18 or over at the time of breach.
3	Sentencing legislation: all offenders sentenced as children (that is, to a control order by the Children's Court under the CCP Act or by an adult court exercising the powers of the Children's Court under the CCP Act) subject to the juvenile parole system. All offenders sentenced at law under the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) subject to the adult parole system.	Children's Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.	At Juvenile Justice NSW and Community Corrections discretion, but generally offenders are supervised by Juvenile Justice NSW while under 18 and by Community Corrections when 18 or over.	Children's Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.
4	Facility of entry into custody and age: all offenders sentenced to imprisonment or a control order and initially directed to juvenile detention, and are under 18 at expiry of the non-parole period, are subject to juvenile parole system. All other offenders subject to the adult parole system.	Children's Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.	At Juvenile Justice NSW and Community Corrections discretion, but generally offenders are supervised by Juvenile Justice NSW while under 18 and by Community Corrections when 18 or over.	Children's Court for offenders subject to the juvenile parole system; SPA for offenders subject to the adult parole system.

6.38 Table 6.2 evaluates the structures set out in Table 6.1 based on seven key issues.

Table 6.2: Evaluation of alternative structures for the juvenile parole system

Option	All offenders under 18 in the juvenile parole system and are treated differently to adults	All offenders 18 or over receive the same treatment as adults	Creates certainty – no last minute changes between systems	Discretion to keep offenders 18 or over with special vulnerability in juvenile parole system	Generally continuity between agency managing custodial institution and parole responsibility	Breach and revocation decision maker is age appropriate	Congruence between sentencing court's decisions and parole system
1A	✓	✓	✓	✗	✗	✗	✗
1B	✓	✓	✓	✗	✗	✓	✗
2A	✓	✗	✗	✓	✓	✗	✗
2B	✓	✗	✗	✓	✓	✓	✗
3	✗	✗	✓	✗	✗	✗	✓
4	✗	✓	✓	✗	✗	✗	✓

6.39 All of the options present a mixture of strengths and weaknesses. None is able to solve all the problems posed by the current method of determining the applicable parole system and some options create further problems.

6.40 Options 1A and 1B would ensure that all offenders who are under 18 at time of parole eligibility are treated differently from adults and considered by a decision maker (the Children's Court) with special youth expertise. These options would also

ensure that all offenders who are 18 and over at the time of parole eligibility receive the same treatment by being paroled through the adult parole system. Basing the applicable system entirely on age has the advantage that it is clear cut. All concerned would know from the parole eligibility date set at the time of sentence which of the two systems would apply.

- 6.41 However, an age limit would allow no discretion to include offenders aged 18 and over in the juvenile parole system based on cognitive or mental health impairments or other special need or vulnerability. Options 1A and 1B might also lead to discontinuity between the case management of a young offender in custody and their management in the community. For example, under these options, an offender who is managed by Corrective Services NSW while in custody at Kariiong would be paroled under the juvenile parole system and Juvenile Justice NSW would be responsible for supervision in the community. As we discussed in Question Paper 4, “throughcare” (that is, integrated case management between custody and the community) is an important mechanism to ensure that offenders receive the interventions and support they need.
- 6.42 Compared to Option 1A, Option 1B allows breach and revocation decisions to be age appropriate. Currently, if an offender turns 18 while on parole, supervision is usually transferred from Juvenile Justice NSW to Community Corrections. Under Option 1B, responsibility for breach and revocation would also be transferred from the Children’s Court to SPA after the offender turns 18. This would resolve the problem outlined earlier at 6.34, where young offenders who breach parole through reoffending may have the new offence dealt with in one system (for example, in an adult court, because the offender is over 18) while the breach of parole is dealt with in another system (for example, by the Children’s Court, because the offender was originally paroled through the juvenile parole system).
- 6.43 Like Options 1A and 1B, Options 2A and 2B would ensure that all offenders who are under 18 at the expiry of the non-parole period are subject to the juvenile parole system. Due to the Juvenile Justice NSW policy of transferring most offenders from detention centres to Corrective Services NSW when they turn 18, these options would also generally mean that offenders who are adults (that is, over 18 at the time of parole eligibility) would be subject to the adult parole system. The exception would be those offenders whom Juvenile Justice NSW has retained in a detention centre beyond the age of 18 due to some particular vulnerability. If it is appropriate to retain these offenders in the juvenile custodial environment, it is also likely to be appropriate that they remain subject to the juvenile parole system.
- 6.44 Options 2A and 2B would mostly ensure continuity of the agency responsible for custodial case management and community case management. However, they would still require Juvenile Justice NSW to work on post-release planning with offenders under 18 managed by Corrective Services NSW in Kariiong. The two agencies would need to work closely together to ensure continuity of case management, planning and support for these offenders. Like Option 1B, Option 2B would align the breach and revocation decision maker with the offender’s age and the court system that would deal with the offender for any reoffending.
- 6.45 However, Options 2A and 2B would not address some of the existing problems with the interface between the two parole systems. For example, late transfers of

offenders who are 18 and over from detention centres to correctional centres could still change at the last minute the parole system to which a young offender is subject.

- 6.46 Options 3 and 4 would allow greater continuity between sentencing and the applicable parole system. Under Option 3, all offenders sentenced as children to control orders under the CCP Act would be paroled through the juvenile parole system. The seriousness of the offence and also to some extent the decision of the sentencing court determines whether an offender is sentenced under the CCP Act or at law as an adult. A similar system currently governs parole for young offenders in WA, Queensland and Tasmania (see Annexure A). In WA, for example, all young offenders sentenced to detention are dealt with by a separate decision making body as part of a juvenile parole system, even if they are at some point transferred to an adult prison.³⁴ All young offenders sentenced to imprisonment (whether it is to be served in a juvenile detention centre or an adult prison) are dealt with under the adult parole system.³⁵
- 6.47 However, Option 3 may create further difficulties in practice because it completely severs the link between the type of facility in which an offender is held and the supervising parole agency, which in reality is an arm of the organisation that operates the facility. This option might also result in the applicable parole system being only distantly connected to the offender's age at the time of parole eligibility. Very young offenders can be sentenced at law, and offenders up to the age of 21 can be sentenced under the CCP Act if they were under 18 at the time of the offence.
- 6.48 Option 4 similarly links the applicable parole system to sentencing, by relying on the type of facility into which the sentencing court initially directed the offender. However, if the current transfer system remains in place, this option would also sever the link between the type of facility in which an offender is held and the supervising parole agency for some offenders, particularly those offenders transferred to Kariong. Like Option 3, Option 4 would not ensure that all offenders who are under 18 at the time of parole eligibility are dealt with in 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?
- (2) Are there any other ways of structuring the juvenile parole system that we should consider?

34. *Young Offenders Act 1994* (WA) s 132(1), s 178(5).

35. *Young Offenders Act 1994* (WA) s 118(5).

Practical operation of the current juvenile parole system

- 6.49 This section of the Question Paper moves beyond the design and structure of the juvenile parole system in NSW, examining some discrete issues that stakeholders have raised about the operation of the current system.

Parole decision making process

- 6.50 The CAS Act sets out different parole decision making processes depending on whether an offender is a “serious offender”. If an offender is not a serious offender, SPA makes the parole decision according to the criteria in s 135 and then notifies the offender. The offender may request that a public review hearing be held to reconsider the case, but a review hearing will only be held if SPA is satisfied that a hearing is warranted (see Figure 3.1 in Question Paper 3).³⁶
- 6.51 If the offender is a serious offender, SPA only forms an initial intention to grant or refuse parole according to the criteria in s 135. It must then notify the offender and any registered victim of the offender of its decision. If the initial intention is to grant parole to the offender, the victim may apply for a public hearing to review the initial intention to grant parole. The victim may also make written submissions as part of the application for a hearing. A review hearing must be held if the victim applies for one.³⁷ If the initial intention is to refuse parole, the serious offender may apply for a public review hearing and may make written submissions as part of the application but a review hearing will only be held if SPA is satisfied that a hearing is warranted (see Figure 3.2 in Question Paper 3).³⁸
- 6.52 Section 3 of the CAS Act specifies that serious offenders are those offenders serving life imprisonment; convicted of murder; serving a non-parole period of 12 years or more; declared a serious offender by the sentencing court, SPA, or the Commissioner for Corrective Services; or classified at AA (male offenders) or Category 5 (female offenders) at any time during their period in custody.³⁹ However, this definition does not apply comfortably to young offenders managed by Juvenile Justice NSW, because detainees are subject to a different classification system and are not managed by the Commissioner for Corrective Services or SPA. Young offenders being considered for parole through the juvenile parole system also cannot be serving non-parole periods of 12 years or more.
- 6.53 The CDC Act uses a different definition of “serious young offender”. Serious young offenders are those that have committed serious children’s indictable offences (qualifying offences are listed later at 6.74).⁴⁰ All young offenders who are serving sentences of more than three years and who are subject to the juvenile parole system will qualify as “serious young offenders”. However, this definition has no operation for the purposes of the CAS Act or the parole jurisdiction of the Children’s

36. *Crimes (Administration of Sentences) Act 1999* (NSW) s 139.

37. *Crimes (Administration of Sentences) Act 1999* (NSW) s 145.

38. *Crimes (Administration of Sentences) Act 1999* (NSW) s 146.

39. *Crimes (Administration of Sentences) Act 1999* (NSW) s 3; *Crimes (Administration of Sentences) Regulation 2008* (NSW) cl 22(3), 23(3).

40. *Children (Detention Centres) Act 1987* (NSW) s 37N.

Court. Unlike the situation in the adult parole system, SORC has no role in decision making for any serious young offenders being considered for parole by the Children's Court.⁴¹

- 6.54 In practice, the Children's Court uses its own more flexible decision making process, drawing no distinctions between serious offenders and other offenders. The Children's Magistrate will sometimes make an initial decision in chambers on the parole of the offender. In other cases, the decision will be made at a hearing. The Court contacts any registered victim of the offender and invites the victim to make submissions to the Children's Magistrate when the offender's parole is being considered. It may be more transparent for the applicable legislation to set out a decision making procedure appropriate to the parole jurisdiction of the Children's Court.
- 6.55 The Children's Court has also suggested that it may be beneficial for the Court to be able to use a different and less restrictive process for victim involvement.⁴² The Court would prefer a restorative justice conferencing procedure to allow victims to be heard in parole decision making in a less formal way. Such conferences could be supervised by Children's Registrars, who are trained mediators.

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

Assistance with parole readiness

- 6.56 In-custody case management of young offenders in detention centres is done through a case plan designed by Juvenile Justice NSW when the offender first enters custody.⁴³ The plan will include details of:
- the interventions and programs recommended for the young offender
 - the offender's health care needs
 - if the offender has a disability, strategies to mitigate any disadvantage, particularly disadvantages relating to participation in education or work
 - if the offender is Aboriginal or Torres Strait Islander, strategies to meet the offender's cultural needs, and
 - the pre-release and post-release assistance that is relevant to the young offender.⁴⁴

41. Information provided by the Children's Court of NSW (4 November 2013).

42. Children's Court of NSW, *Submission PA3*, 6.

43. *Children (Detention Centres) Regulation 2010* (NSW) cl 21; Juvenile Justice NSW, *Case Management Procedure* (2011).

The offender's needs and risk level will be assessed through the Youth Level of Service/Case Management Inventory–Australian Adaptation (YLS/CMI-AA) tool, which is an adapted version of the Level of Service Inventory–Revised (LSI-R) tool used by Corrective Services NSW for adults.⁴⁵ A Juvenile Justice worker who supervises offenders in the community will be involved in the preparation of the custodial case plan to ensure it includes a focus on community reintegration. This worker will also maintain regular contact with the young offender while he or she is in custody.⁴⁶

- 6.57 If the young offender is serving a sentence of more than three years and will be considered for parole by the Children's Court, Juvenile Justice NSW convenes a case conference several months before the expiry of the non-parole period to generate a report on the young offender's suitability for parole which will be provided to the Children's Court. The report includes information and input from the young offender's in-custody counsellors, teachers, Justice Health nurse, Youth Officer and other relevant Juvenile Justice NSW staff.⁴⁷
- 6.58 Some stakeholders are concerned that offenders in the adult parole system are not always fully informed during their time in custody about the matters they need to address in order to be granted parole. Stakeholders have raised issues with the quality and thoroughness of in-custody case management and its ability to prepare offenders for the transition to the community (see Question Papers 3 and 4).
- 6.59 Some of the same issues may arise for young offenders in the juvenile parole system. On the other hand, the much smaller number of offenders managed by Juvenile Justice NSW compared to Corrective Services NSW may mean that these offenders can receive the more intensive case management required by their age and maturity levels. Juvenile Justice workers who undertake community supervision of young offenders are involved with a young offender throughout their time in custody. This ongoing relationship could mean that young offenders in the juvenile parole system are better prepared for the expectations of a parole decision maker and for life in the community.

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?

Reconsideration after refusal of parole

- 6.60 If the Children's Court makes a final decision to refuse parole at the expiry of the non-parole period, the young offender must actually apply for parole if he or she wants to be reconsidered for parole in future. The offender must wait 12 months from being first refused parole before applying to have parole reconsidered for the first time, and may only reapply thereafter at 12 month intervals (the "12 month

44. *Children (Detention Centres) Regulation 2010* (NSW) cl 22.

45. Juvenile Justice NSW, *Case Management Procedure* (2011).

46. Juvenile Justice NSW, *Community Supervision and Casework Procedure* (2012).

47. Juvenile Justice NSW, *Parole Procedure* (2011).

rule”).⁴⁸ The 12 month rule also applies to limit re-release on parole for young offenders who have been returned to custody after parole revocation (see later at 6.70).

- 6.61 The 12 month rule was introduced into the CAS Act in 2005 because it was considered that early and repeated reconsideration of parole consumes the resources of SPA and Corrective Services NSW and “may also cause anguish for some victims”.⁴⁹ There was no explicit consideration given to how the 12 month rule might affect offenders in the juvenile parole system. Stakeholders have already expressed dissatisfaction with the way the 12 month rule applies to offenders refused parole in the adult parole system.⁵⁰ In particular, it means that offenders serving shorter sentences might have a single chance to be released on parole, as their sentences would expire within 12 months from initial parole consideration.
- 6.62 Few offenders in the juvenile parole system are likely to be adversely affected by the 12 month rule as it applies after initial refusal of parole by the Children’s Court, as most young offenders subject to the juvenile parole system will be serving sentences of three years or less and will be released automatically on a court based parole order. However, because young offenders are likely to be serving shorter sentences than adults, those few young offenders that the rule does affect may lose their chance to be released on parole.

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?

Parole supervision and programs

- 6.63 The *Children (Detention Centres) Regulation 2010* (NSW) specifies that a young offender paroled through the juvenile parole system will be supervised by either Juvenile Justice NSW or Community Corrections NSW, with the decision to be made by the Director General.⁵¹ There is no guidance in the Regulation about how this decision is made. In practice, Juvenile Justice NSW usually supervises young offenders paroled through the juvenile parole system at least until they turn 18. Juvenile Justice NSW may request Community Corrections to supervise older or more difficult offenders on its behalf.⁵² If Community Corrections is supervising a

48. *Crimes (Administration of Sentences) Act 1999* (NSW) s 137A, 143A.

49. See the second reading speech to the *Crimes (Administration of Sentences) Amendment (Parole) Act 2004* (NSW): NSW, *Parliamentary Debates*, Legislative Assembly, 27 October 2004, 12100.

50. Public Interest Advocacy Centre, *Submission PA1*, 15-16; Aboriginal Legal Service (NSW/ACT), *Submission PA2*, 11; Legal Aid NSW, *Submission PA4*, 23-24; Law Society of NSW, *Submission PA5*, 7; NSW Young Lawyers Criminal Law Committee, *Submission PA8*, 20; NSW Bar Association, *Submission PA11*, 10; Justice Action, *Submission PA13*, 8; NSW Bar Association, *Preliminary submission PPA4*, 1. And a submission to our now concluded sentencing reference: Legal Aid NSW, *Preliminary submission PSE18*, 8.

51. *Children (Detention Centres) Regulation 2010* (NSW) cl 90, cl 95(4)-(5).

52. Corrective Services NSW, *Community Corrections Policy and Procedures Manual* (2013) section D [5.2.1]-[5.2.2]; Juvenile Justice NSW, “Working with the Community Offender Service, Corrective Services NSW”, *Probation and Parole Procedures* (2009) (under review) [5.1.1].

young offender paroled through the juvenile parole system, the Children's Court remains the decision maker for issues of breach, variation and revocation.

6.64 Where Juvenile Justice NSW is supervising a young offender, its suite of community based programs and support will be available to the offender. These programs include:

- Sex Offender Program
- Violent Offender Program
- DthinaYuwali, an alcohol and other drug treatment program for young Aboriginal and Torres Strait Islander offenders
- other alcohol and other drug treatment programs
- Love BiTES, a domestic violence and sexual assault prevention program
- Cognitive Self Change Program, and
- Changing Habits and Reaching Targets (CHART) program.

Juvenile Justice NSW provides these programs both in detention centres and in the community.⁵³

6.65 The Joint Support Program is a collaborative partnership between Juvenile Justice NSW and non-government agencies to provide community based programs and support to young offenders who are assessed as requiring medium to high levels of intervention. About 95% of parolees fall into this category.⁵⁴ The services include:

- casework support
- crisis accommodation
- long term supported accommodation
- employment placement and support, and
- family intervention.⁵⁵

6.66 Under the Joint Support Program, Juvenile Justice NSW also provides an intensive Post Release Support Program to all young offenders transitioning from custody, including parolees, offenders released from remand without a custodial sentence and offenders released from a control order with no parole period. The aim of the program is to reduce reoffending by focusing on the economic, social and welfare needs of young offenders at this key time of transition.⁵⁶

6.67 Juvenile Justice NSW policy is that all parolees must have at least once weekly face to face contact with their supervising officer in the first three months of parole, and

53. NSW Department of Attorney General and Justice, *Annual Report 2011-12* (2012) 110-112.

54. Information provided by Juvenile Justice NSW (31 October 2013).

55. Juvenile Justice NSW, "The Joint Support Program" <http://www.djj.nsw.gov.au/joint_support_program.htm>.

56. C Cuneen, *Evaluation of the Post Release Support Program* (Juvenile Justice NSW, 2005).

at least one of these contacts per month must be a home visit. After the first three months, there must be monthly face to face contact alternating between home visits and the parolee reporting to a Juvenile Justice NSW office.⁵⁷ Offenders assessed as having high levels of risk and need may be supervised more intensively.⁵⁸ This level of contact is significantly higher than most of the supervision levels implemented by Corrective Services NSW for adults (see Question Paper 4).

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

Breach and revocation

- 6.68 Stakeholders have raised two specific difficulties with the current powers of the Children's Court in relation to breach and revocation under the CAS Act.
- 6.69 First, the CAS Act specifies that at least 14 days must elapse between a decision to revoke parole and the automatic review hearing held to reconsider the revocation decision.⁵⁹ This restriction may be intended to ensure that offenders have sufficient time to arrange legal representation and prepare for the review hearing. In the juvenile parole system, however, the restriction may be an impediment to prompt review of revocation decisions for young offenders.
- 6.70 The second main issue relating to breach and revocation raised by stakeholders in the juvenile parole system is the operation of the 12 month rule. If the Children's Court confirms a revocation decision at a review hearing, the 12 month rule means that the young offender must wait 12 months before applying to the Children's Court for re-release on parole and, if refused, may only reapply thereafter at 12 month intervals.⁶⁰ Given the likely sentence length being served by most young offenders who are subject to the juvenile parole system, application of the 12 month rule might often mean they have no chance of being re-paroled before their sentence expires.
- 6.71 As we noted earlier at 6.61, there does not seem to have been any explicit consideration of how the rule might apply to the Children's Court and young offenders. In practice, the Children's Court sometimes avoids the 12 month rule by choosing not to confirm revocation decisions. Instead, the Court adjourns the review proceedings until such a time as it considers it appropriate for the young offender to be re-paroled. At this point, the Court will rescind the original revocation and the young offender will be re-released on parole.
- 6.72 However, Juvenile Justice NSW has informed us that this method of avoiding the 12 month rule can have unintended adverse consequences for young offenders

57. Juvenile Justice NSW, *Schedule of Standards for Community Supervision (Revised)*.

58. Juvenile Justice NSW, *Community Supervision and Casework Procedure* (2012).

59. *Crimes (Administration of Sentences) Act 1999* (NSW) s 173(2).

60. *Crimes (Administration of Sentences) Act 1999* (NSW) s 3, s 137A, s 143A.

because of policies about access to pre-release external leave and other transitional programs.⁶¹ Juvenile Justice NSW calculates a young offender's eligibility for such pre-release programs by working backwards from the date that the offender will be released from custody. If an offender's revocation review hearing is continually adjourned, the offender has no confirmed release date and is not able to access these programs, although the offender may be in custody for many months before being re-released.

- 6.73 We discussed in Question Paper 5 the problems with the 12 month rule as it applies to adults in the adult parole system. The same issues are more acute when it comes to young offenders, particularly in light of Juvenile Justice NSW policies about access to pre-release programs. Instead of the 12 month rule, the Children's Court could set a reconsideration date at the time of revocation, with an additional provision allowing an offender to reapply for parole at an earlier date with leave of the Court.

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?
- (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?

Serious Young Offenders Review Panel

- 6.74 The Serious Young Offenders Review Panel (SYORP) is an independent body that provides advice and recommendations to the Director General of DAGJ on the classification of detainees who are "serious young offenders", and to the Minister for Justice or Chief Executive of Juvenile Justice NSW on any other matter relating to any detainee.⁶² The Minister or Chief Executive may refer an individual or class of detainees to SYORP for this purpose.⁶³ A serious young offender is an offender who was convicted of a serious children's indictable offence.⁶⁴ These offences include:

- homicide
- offences with a maximum penalty of 25 years imprisonment or more
- aggravated sexual assault⁶⁵ or assault with intent to have sexual intercourse
- a firearms offence punishable by 20 years or more, and
- any offence prescribed by the regulations.⁶⁶

61. Information provided by Juvenile Justice NSW (22 October 2013).

62. *Children (Detention Centres) Act 1987* (NSW) s 37P(1)(a)-(b).

63. *Children (Detention Centres) Act 1987* (NSW) s 37P(1)-(2).

64. *Children (Detention Centres) Act 1987* (NSW) s 37N.

65. Except where the only aggravating circumstance is that the victim was under 16 years of age.

- 6.75 SYORP was constituted under legislation in 2012,⁶⁷ prior to which it was an administrative body. The composition of SYORP has remained the same since this change,⁶⁸ and is not prescribed by the legislation aside from setting the number of members at three to six and establishing a magistrate as Chairperson.⁶⁹ Members are appointed by the Minister for Justice,⁷⁰ and currently include:
- a magistrate in office, acting magistrate or retired magistrate
 - an independent person with qualifications in psychology
 - an independent community person with expertise in dealing with youth generally
 - a member of the Aboriginal and Torres Strait Islander community
 - a delegate of the Assistant Director General (operations), as an ex-officio member, and
 - a victim of crime.⁷¹
- 6.76 In providing advice and making recommendations, SYORP must consider the following list of factors so far as they are relevant:
- the public interest (including the protection of the public)
 - the nature and circumstances of the offence
 - the reasons and recommendations of the sentencing court
 - the detainee's criminal history
 - the time the detainee has served in custody and the time he or she has left to serve
 - the detainee's conduct in custody
 - the detainee's commitment to address his or her offending behaviour (including willingness to participate in rehabilitation programs and the success or otherwise of his or her participation)
 - the detainee's classification history
 - the position of and consequences to any victim or the victim's family
 - any submissions made by any victim

66. *Children (Criminal Proceedings) Act 1987* (NSW) s 28. The regulations currently prescribe the inclusion of the offence of sexual assault by forced self-manipulation if the victim was under 10: *Children (Criminal Proceedings) Regulation 2011* (NSW) cl 32.

67. *Children (Detention Centres) Amendment (Serious Young Offenders Review Panel) Act 2012* (NSW).

68. See the second reading speech for the *Children (Detention Centres) Amendment (Serious Young Offenders Review Panel) Bill 2011*: NSW, *Parliamentary Debates*, Legislative Assembly, 14 March 2012, 9528.

69. *Children (Detention Centres) Act 1987* (NSW) s 37O(2).

70. *Children (Detention Centres) Act 1987* (NSW) s 37O(2).

71. Juvenile Justice, *Serious Young Offenders Review Panel*, http://www.djj.nsw.gov.au/cusser_syorp.htm.

- the need to maintain public confidence in the administration of justice
- the detainee's rehabilitation and re-entry into the community as a law-abiding citizen
- the availability of family, departmental and other support for the detainee
- any reports about the detainee available to SYORP, and
- any other matter prescribed by the regulations.⁷²

SYORP may also consider any other matter it considers relevant.⁷³

- 6.77 SYORP is somewhat analogous to SORC, which is an independent body in the adult system that advises SPA about parole for serious offenders and also advises the Commissioner for Corrective Services on the classification and placement of serious offenders (see Question Papers 2 and 3). By contrast, SYORP only has a role in case management matters for young offenders, and does not advise the Children's Court on young offenders' parole suitability.
- 6.78 It may be beneficial for SYORP to take on the function of advising the Children's Court about the parole of serious young offenders. However, unlike SORC, the members of SYORP do not interview serious young offenders face to face. As a result, the additional input of SYORP may add little to the material already available to the Children's Court from the report prepared by Juvenile Justice NSW. This report includes details of any relevant SYORP recommendations.

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?

Young offenders in the adult parole system

- 6.79 Because the adult parole system deals with young offenders who are under 18 in exactly the same way as it does other offenders, all the issues discussed in Question Papers 1-5 are relevant to young offenders in the adult parole system. In this section, we outline three additional areas that require particular consideration in relation to young offenders. These issues will remain relevant unless all offenders who are under 18 at the time of parole eligibility are made subject to the juvenile parole system.

Principles and decision making criteria

- 6.80 The NSW Bar Association suggested in its preliminary submission that principles similar to those in s 4 of the CDC Act and s 6 of the CCP Act should be inserted into the CAS Act and should apply to parole decisions involving children.⁷⁴ In Question

72. *Children (Detention Centres) Act 1987* (NSW) s 37Q.

73. *Children (Detention Centres) Act 1987* (NSW) s 37Q(2).

74. NSW Bar Association, *Preliminary Submission PPA4*, 2.

6.2, we asked whether such principles should apply to the exercise of parole powers in the juvenile parole system. A separate but related question is whether such principles should apply in the adult parole system to SPA's powers under the CAS Act in relation to young offenders who are under 18.

- 6.81 If a separate juvenile parole system is retained and the special principles relating to juveniles are applied to parole decisions of the Children's Court (see Question 6.2), making those principles also apply to SPA's decisions involving young offenders would create parity between the juvenile and adult parole systems for offenders of a similar age. On the other hand, rather than modifying the adult parole system for those under 18, it may be preferable to redesign the interface between the two systems so that all offenders under 18 are dealt with in the juvenile parole system.
- 6.82 Similar issues are relevant when considering any change to the decision making criteria that SPA must apply when determining the parole of an offender who is under 18. Section 135 of the CAS Act could be amended to require SPA to also have regard to the public interest in rehabilitation of young offenders. SPA could be additionally required to give this factor greater weight than some or all of the other factors listed in s 135, or there could be a presumption in favour of parole for young offenders. Another option would be to prescribe an entirely different set of decision making criteria for SPA to apply to young offenders instead of the current criteria in s 135. However, as we have already said, a more principled approach might be to create a juvenile parole system with its own legislative framework specially designed with offenders under 18 in mind, and to ensure that any offenders under 18 are dealt with in that juvenile parole system.

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?
- (2) Should SPA make parole decisions for young offenders who are under 18 according to different criteria from those that govern parole for adults?
- (3) If yes to (2), what criteria should apply to young offenders in the adult parole system?

Composition of SPA when dealing with young offenders

- 6.83 SPA has the following members:
- at least four judicial members
 - at least one police officer
 - at least one Community Corrections officer, and

- at least ten community members, one of whom must have an appreciation or understanding of the interests of victims of crime.⁷⁵

Judicial members may include judges or retired judges of a NSW court or federal court, and magistrates or retired magistrates. Judicial members may also be people qualified to be appointed as a judge of the Supreme Court.⁷⁶ In practice, meetings of SPA are conducted with a division of five members: one judicial member, one police officer, one Community Corrections officer and two community members.⁷⁷ The meeting is chaired by the attending judicial member (see Question Paper 2).⁷⁸

- 6.84 SPA is not currently required to include members with experience in dealing with young offenders. One stakeholder has suggested that SPA should include members with specific expertise and experience relating to young offenders such as a former Children's Magistrate, a youth worker, or a representative of Juvenile Justice NSW or the NSW Department of Family and Community Services.⁷⁹ SPA could sit with a composition that included such members when making decisions affecting young offenders.
- 6.85 If the interface between the adult and juvenile parole systems remains the same, such that some young offenders who are under 18 are dealt with by SPA, it may be beneficial for SPA to include members with such youth expertise. On the other hand, the juvenile parole system already includes a decision maker (the Children's Court) which has special expertise in dealing with offenders who are under 18. A better solution may be to ensure that all such offenders are dealt with in the juvenile parole system.

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?

In-custody and post-release support for young offenders

- 6.86 Young offenders in Corrective Services NSW correctional centres generally have access to the same system of in-custody and post-release programs and parole preparation as adults. Question Paper 4 discusses the in-custody and post-release support available to adults in detail.
- 6.87 In addition, Corrective Services NSW has developed in-custody programs specifically for male inmates aged between 18 and 24 to prepare this group for unescorted external leave programs, which in turn prepares them for parole and life in the community.⁸⁰ The main program, known as the Specialised Program for

75. *Crimes (Administration of Sentences) Act 1999* (NSW) s 183(2)-(2A).

76. *Crimes (Administration of Sentences) Act 1999* (NSW) s 3.

77. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 14, 14A.

78. *Crimes (Administration of Sentences) Act 1999* (NSW) sch 1 cl 1.

79. NSW Bar Association, *Preliminary Submission PPA4*, 2.

80. Corrective Services NSW, *Offender Classification and Case Management Policy and Procedures Manual* (2012) [26.11].

Young Adult Offenders, has complex eligibility criteria applicable to potential participants as they progress through different stages.⁸¹ Juvenile inmates under 18 are not eligible to participate. There is no equivalent of the Specialised Program for young female offenders. However, Corrective Services NSW delivers satellite programs in correctional centres holding young female adult offenders or young male adult offenders who are unable to access the Specialised Program. The duration of these satellite programs is between five and 10 days.⁸² In 2011-12, 662 young offenders participated in these programs in custody, which was a large increase on the previous year.⁸³

- 6.88 Beyond the Specialised Program and its satellite programs, young offenders in Corrective Services NSW custody are likely to experience the same difficulties as other offenders in accessing in-custody rehabilitation programs (see Question Paper 3). The Children’s Court has submitted that many young offenders have complex needs including problems with alcohol, drugs and mental illness as well as a history of educational, health, housing and family dysfunction.⁸⁴ Young offenders need to be able to access in-custody programs addressing these needs.
- 6.89 Once young offenders in the adult parole system are released on parole, they are supervised in the community by Community Corrections, which supervises all offenders paroled from Corrective Services NSW correctional centres. If the young offender is under 18, Community Corrections may request case management advice from Juvenile Justice NSW.⁸⁵ In “exceptional circumstances”, Community Corrections may request Juvenile Justice NSW to supervise such a parolee on its behalf.⁸⁶
- 6.90 There are problems with the availability of suitable accommodation and community programs for all parolees paroled through the adult parole system (as discussed in Question Papers 3 and 4). These problems may disproportionately affect young offenders. For example, some crisis accommodation, transient housing or supported group housing settings might not be suitable for young people.⁸⁷ There might also be fewer community based programs and services that are appropriate for young offenders. In addition, young parolees could need intensive support on parole that Community Corrections officers might not be able to provide due to their large caseloads (see Question Paper 4). The Children’s Court has submitted that there is a need for “increased resources, programs and accommodation options for young people on parole” and that the interface between in-custody and post-release support needs to improve:

81. Corrective Services NSW, *Offender Classification and Case Management Policy and Procedures Manual* (2012) [26.11.3]-[26.11.4].

82. Corrective Services NSW, *Offender Classification and Case Management Policy and Procedures Manual* (2012) [26.11.1].

83. NSW Department of Attorney General and Justice, *Annual Report 2011-12* (2012) 74.

84. Children’s Court of NSW, *Submission PA3*, 5.

85. Corrective Services NSW, *Community Corrections Policy and Procedures Manual* (2013) section D [5.3.2].

86. Corrective Services NSW, *Community Corrections Policy and Procedures Manual* (2013) section D [5.4.1].

87. J Glover and N Clewett, *No Fixed Abode: The Housing Struggle for Young People Leaving Custody in England* (Barnardos, 2011).

Even in situations where support services are organised post release, there is no seamless transfer between services provided in custody and services available post release. The reality is that a lack of appropriate supports after leaving detention is likely to catalyse problematic behaviours. There is a distinct need for programs that are locked in so that children and young people in detention can be seamlessly transferred from rehabilitation and support in custody to rehabilitation and support post release.⁸⁸

The problem with transition between custody and the community identified by the Children's Court is likely to exist for all offenders in the adult parole system (see Question Paper 4).

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?

88. Children's Court of NSW, *Submission PA3*, 5.

Annexure A: Juvenile parole systems in other Australian jurisdictions

	Is there a juvenile parole system separate to adult parole system?	Who is dealt with by juvenile parole system?	Who makes juvenile parole orders?	Are the criteria for making juvenile parole orders different to those for adult parole orders?	Do any offenders under 18 come within the adult parole system?
NSW	Yes	Children and young people who are detained in detention centres at the time of parole eligibility.	The sentencing court for sentences of three years or less. The Children's Court may release juveniles serving custodial sentences of over 3 years in detention centres on parole after the non-parole period expires, as SPA does with adults. The Children's Court can also revoke the court based parole orders of detainees serving three years or less before release.	No. A sentencing court that imposes a custodial sentence of up to 3 years on a juvenile must make a parole order. When the Children's Court deals with a juvenile's application for parole, it must consider the criteria applicable to releasing adults on parole in s 135 of the CAS Act.	Yes. A person detained in a correctional centre, including Kariiong juvenile correctional centre, comes under SPA's jurisdiction.
Vic	Yes	Children aged 10-14 who are sentenced to Youth Residential Orders Children and young people aged 15-20 who are sentenced to Youth Justice Orders, or transferred to a Youth Justice Centre from a prison.	Youth Residential Board may release children aged 10-14 on parole who are detained in Youth Residential Centres at any time. Youth Parole Board may release people aged 15-20 on parole who are detained in Youth Justice Centres at any time	No. The Adult Parole Board, the Youth Residential Board and Youth Parole Board are not required to consider any criteria when releasing an offender on parole.	Yes. A person detained in an adult prison, including a juvenile transferred from a Youth Justice Centre, comes under the Adult Parole Board's jurisdiction
SA	Yes	Children and young people who, at the time of eligibility for release, are <ul style="list-style-type: none"> ▪ serving sentences of detention in training centres ▪ serving prison sentences in training centres 	Training Centre Review Board (known as the Youth Parole Board when dealing with "recidivist young offenders") may: <ul style="list-style-type: none"> ▪ release a person serving a sentence of detention in a training centre after he or she serves two thirds of the sentence ▪ release a recidivist young offender serving a sentence of detention in a training centre after he or she serves four fifths of the sentence ▪ release a person serving a prison sentence in a training centre on parole 	It depends. The criteria in s 41A(2) <i>Young Offenders Act 1993</i> (SA) apply to release of most juveniles. The criteria in s 41A(3) <i>Young Offenders Act 1993</i> (SA) apply to release of "recidivist young offenders". The criteria in s 67 <i>Correctional Services Act 1982</i> (SA) apply to release on parole of people serving prison sentences of over 5 years in training centres. People serving prison sentences of 5 years or less are automatically paroled under s 66 <i>Correctional Services Act 1982</i> (SA).	Yes. A person detained in an adult prison, including any person transferred from a training centre, comes under the Parole Board's jurisdiction
WA	Yes	Children and young people who, at the time of eligibility for release, are serving sentences of detention in a	The Supervised Release Review Board may: <ul style="list-style-type: none"> ▪ release a child or young person serving up to 12 months detention on a 	The criteria in s 133(1) <i>Young Offenders Act 1994</i> (WA) apply to the release of a child or young person on a supervised release	Yes. A person serving a prison sentence comes under the Prisoners Review Board's

Parole Question Papers

	Is there a juvenile parole system separate to adult parole system?	Who is dealt with by juvenile parole system?	Who makes juvenile parole orders?	Are the criteria for making juvenile parole orders different to those for adult parole orders?	Do any offenders under 18 come within the adult parole system?
		detention centre or a prison	<p>supervised release order after 50% of the sentence has expired</p> <ul style="list-style-type: none"> ▪ release a child or young person serving over 12 months detention on a supervised release order after the minimum term set by the sentencing court has expired, and ▪ release a child or young person subject to a “special order” on a supervised release order after 12 months of the special order has expired. 	order.	jurisdiction.
Qld	Yes	<p>A child or young person sentenced to detention.</p> <p>Children and young people up to 16 may only be sentenced to detention. People aged 17 who commit an offence when under 17 may also be sentenced to detention in certain circumstances.</p>	<p>Children and young people are automatically released after serving minimum term in detention</p> <p>70% of the sentence must expire before automatic release, unless the minimum term is varied by a court to between 50-70% of the sentence</p>	No discretionary parole. Automatic release after serving minimum term	Yes. People over 16 who receive prison sentences come under the Parole Board’s jurisdiction.
Tas	Yes	Children and young people serving sentences of detention in detention centres or prisons.	Children and young people are automatically released after serving 50% or 3 months of a sentence of detention (whichever is longer).	No discretionary parole. Automatic release after serving minimum term	Yes. A person serving a prison sentence comes under the Parole Board’s jurisdiction.
NT	No separate parole system for juveniles	No separate parole system for children and young people	NT Parole Board	No. NT Parole Board has full discretion to release adults and juveniles on parole	Juvenile and adult offenders all come under the Parole Board’s jurisdiction.
ACT	No separate parole system for juveniles	No separate parole system for children and young people	ACT Parole Board	Yes, s 120(2) of <i>Crimes (Sentence Administration) Act 2005</i> (ACT) and the youth justice principles in s 94 <i>Children and Young People Act 2008</i> (ACT) apply to consideration of children and young people for release on parole.	Juvenile and adult offenders all come under the Parole Board’s jurisdiction

Annexure B: Pathways from the sentencing court into adult or juvenile custody

Jurisdiction of the Children's Court and decisions on jurisdiction

- 6.91 The Children's Court has jurisdiction to sentence young offenders for summary and indictable offences, excluding traffic offences and serious children's indictable offences (defined above at 6.74).⁸⁹ All offences in the Children's Court are dealt with summarily,⁹⁰ including indictable offences. However, the Children's Court may decide at any time that it is not appropriate for an indictable matter to be dealt with summarily and instead commit the young offender to trial or sentencing as an adult in the District or Supreme Courts.⁹¹ A young offender may make a similar election.⁹²
- 6.92 The Children's Court cannot impose a term of imprisonment but may impose a control order for a period of up to two years.⁹³ This means the young offender will enter custody as a detainee in a detention centre under the management of Juvenile Justice NSW.⁹⁴ However, if the offender is over 21 when the control order is imposed, it will convert to a term of imprisonment and the offender will go to a correctional centre under the management of Corrective Services NSW.⁹⁵

Powers of the District and Supreme Courts

- 6.93 A young offender who has been charged with a serious children's indictable offence must be dealt with at law and sentenced as an adult in the District or Supreme Courts.⁹⁶ The court may impose a sentence of imprisonment, which the young offender will generally serve as an inmate in a correctional centre under the management of Corrective Services NSW.
- 6.94 In sentencing a young offender who has been found guilty of an indictable offence (other than a serious children's indictable offence), the District or Supreme Courts may choose between:
- sentencing the young offender under the CCP Act as if the court was the Children's Court, or
 - sentencing the young offender as an adult.⁹⁷
- 6.95 In deciding which approach to take, the court must have regard to:

89. *Children (Criminal proceedings) Act 1987* (NSW) s 28.

90. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(1).

91. *Children (Criminal Proceedings) Act 1987* (NSW) s 31(2)-(5).

92. An election may only be made for indictable offences that can be prosecuted summarily without the consent of the accused: *Children (Criminal Proceedings) Act 1987* (NSW) s 31(2).

93. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(4), 33(1)(g).

94. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(g)(i).

95. *Children (Criminal Proceedings) Act 1987* (NSW) s 33(1)(g)(ii). This may occur in circumstances where an offender was under 21 when charged before the court (and therefore came under the jurisdiction of the Children's Court at that time) and turned 21 prior to sentencing.

96. *Children (Criminal Proceedings) Act 1987* (NSW) s 16-17.

97. *Children (Criminal Proceedings) Act 1987* (NSW) s 18.

- the seriousness of the indictable offence
- the nature of the indictable offence
- the age and maturity of the young offender at the time of the offence and at the time of sentencing
- the seriousness, nature and number of any prior offences, and
- other matters the court considers relevant.⁹⁸

If a young offender is charged with or found guilty of a serious children's indictable offence, the young offender must be dealt with in the District or Supreme Courts according to law.⁹⁹

Placement after serious children's indictable offences

- 6.96 **Under 18 at sentencing:** If the District or Supreme Court sentences a young offender who is under 18 to a term of imprisonment for a serious children's indictable offence, the court may direct that the young offender serve part or all of the sentence as a detainee in a detention centre.¹⁰⁰
- 6.97 **Over 18 but under 21 at sentencing:** If a young offender (who was under 18 at the time of the offence and under 21 at the time of being charged before the court) is sentenced to imprisonment for a serious children's indictable offence when the young offender is over 18 but still under 21, the court may only direct that part or all of the term be served in juvenile detention if:
- there are special circumstances, or
 - the non-parole period or the head sentence will expire within 6 months of the offender turning 18.¹⁰¹
- 6.98 "Special circumstances" include:
- the young offender is vulnerable due to illness or disability
 - there is need for and availability of certain programs in detention centres, or
 - imprisonment in a correctional centre poses an unacceptable risk of harm to the young offender.¹⁰²
- 6.99 If the young offender has previously served a period of imprisonment in a correctional centre (including Kariong juvenile correctional centre), the court can only order that part or all of the sentence be served in juvenile detention if there are special circumstances.¹⁰³

98. *Children (Criminal Proceedings) Act 1987* (NSW) s 18(1A).

99. *Children (Criminal Proceedings) Act 1987* (NSW) s 17.

100. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(3).

101. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(3)(a)-(c).

102. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(4).

103. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(1A).

- 6.100 **Over 21 at sentencing:** If a young offender (who was under 18 at the time of the offence and under 21 at the time of being charged before the court) is sentenced to imprisonment for a serious children's indictable offence when over 21, the court may only direct that part or all of the term be served in juvenile detention if:
- there are special circumstances (as defined at 6.98), and
 - either the non-parole period or the head sentence will expire within six months of the offender turning 21.¹⁰⁴

Placement after other indictable offences

- 6.101 **Under 18 at sentencing:** If the District or Supreme Courts sentence a young offender to imprisonment for an indictable offence (that is not a serious children's indictable offence), the court may direct that the sentence or part of the sentence be served as a detainee in a detention centre.¹⁰⁵
- 6.102 **Over 18 but under 21 at sentencing:** If the District or Supreme Courts sentence a young offender to imprisonment for an indictable offence (that is not a serious children's indictable offence), the court may direct that the sentence or part of the sentence be served as a detainee in a detention centre unless the young offender has previously served a period of imprisonment in a correctional centre (this would include Kariong juvenile correctional centre). If the young offender has previously served a period of imprisonment in a correctional centre, the court can only direct that they serve part or all of the period of imprisonment in a detention centre if there are special circumstances (as defined at 6.98).¹⁰⁶
- 6.103 **Over 21 at sentencing:** If the District or Supreme Courts sentence a young offender to imprisonment for an indictable offence (that is not a serious children's indictable offence) when the offender is over 21 at time of sentencing, the court may only direct that the sentence or part of the sentence be served as a detainee in a detention centre if the non-parole period or the head sentence will expire within six months of the offender turning 21.¹⁰⁷ If the young offender has previously served a period of imprisonment in a correctional centre (including Kariong), there must also be special circumstances before the court can direct that the offender serve the sentence or part of the sentence as a detainee.¹⁰⁸

104. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(2)-(3).

105. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(1).

106. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(1A), (4)

107. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(2).

108. *Children (Criminal Proceedings) Act 1987* (NSW) s 19(1A).

Annexure C: Transfers

- 6.104 A young offender may be transferred between a detention centre (managed by Juvenile Justice NSW) and a correctional centre (managed by Corrective Services NSW), or between a juvenile correctional centre and an adult correctional centre (both types are managed by Corrective Services). The only juvenile correctional centre in NSW is Kariong Juvenile Correctional Centre.

Transfer from a correctional centre to a detention centre

- 6.105 The Attorney General may order the transfer of any offender under 21 years old from a correctional centre to a detention centre.¹⁰⁹
- 6.106 The Commissioner of Corrective Services may, with the consent of the Director General of the Department of Attorney General & Justice (the Director General), order the transfer of an offender under 21 years old from a juvenile correctional centre (Kariong) to a detention centre.¹¹⁰ However, this may only be done if the offender had previously been transferred to Kariong from a detention centre.¹¹¹
- 6.107 If a young offender is transferred to a detention centre, the offender's term of imprisonment is converted into a control order of the same term.¹¹²

Transfer from a detention centre to a correctional centre

- 6.108 The Director General may order the transfer of a young offender aged 16 or over to a correctional centre, with the consent of the Commissioner of Corrective Services.¹¹³ There is no provision in the legislation authorising the transfer of young offenders aged under 16 from detention centre to a correctional centre.
- 6.109 If the young offender is over 16 and under 18, such a transfer can only be made if
- the offender had previously been transferred to the detention centre from a correctional centre
 - the offender was in a detention centre after being ordered to serve part or all of the sentence there by the District or Supreme Court, or
 - The Director General is satisfied that the offender's behaviour warrants the transfer.¹¹⁴

The only exception is if the offender had previously been transferred to a correctional centre from a detention centre in the same period of detention.¹¹⁵

109. *Children (Detention Centres) Act 1987* (NSW) s 10(1). The legislation specifies that the Minister administering the *Crimes (Administration of Sentences) Act 1999* (NSW) may order the transfer, but only with the consent of the Minister responsible for the *Children (Detention Centres) Act 1987* (NSW). Currently, the Acts are administered by the same person – the Attorney General.

110. *Children (Detention Centres) Act 1987* (NSW) s 10(2).

111. *Children (Detention Centres) Act 1987* (NSW) s 10(3).

112. *Children (Detention Centres) Act 1987* (NSW) s 10(4).

113. *Children (Detention Centres) Act 1987* (NSW) s 28(1).

114. *Children (Detention Centres) Act 1987* (NSW) s 28(2).

Offenders who are transferred to a correctional centre when they are under 18 may only be transferred to a juvenile correctional centre (Kariong).¹¹⁶

- 6.110 For offenders aged between 18 and 21, such transfer orders can only be made if:
- the Children’s Court has authorised such an order
 - the offender has been in a detention centre for at least 6 months and the Director General assesses that it would be “preferable” for the offender to be in a correctional centre
 - the offender has been in an adult correctional centre for a period totalling more than 4 weeks
 - the offender has applied to be transferred
 - the offender has been previously transferred from a correctional centre to a detention centre
 - the offender was sentenced by the District or Supreme Court and was directed to spend part or all of the sentence in a detention centre, or
 - the Director General is satisfied that the offender’s behaviour warrants the transfer.¹¹⁷

These limitations do not apply if the offender had previously been transferred to a correctional centre from a detention centre in the same period of detention or in any previous period of detention.¹¹⁸

- 6.111 There are no restrictions on the Director General’s power (with the consent of the Commissioner for Corrective Services) to transfer an offender who is over 21 from a detention centre to a correctional centre.¹¹⁹
- 6.112 If a young offender is transferred to a correctional centre, the offender’s control order is converted into a term of imprisonment of the same duration.¹²⁰

Transfer between juvenile and adult correctional centres

- 6.113 The Commissioner may order the transfer of any inmate under 21 from an adult correctional centre to a juvenile correctional centre (that is, Kariong Juvenile Correctional Centre) for any reason.¹²¹ As juvenile and adult correctional centres are all managed by Corrective Services NSW, SPA will remain the parole authority after any transfer.

115. *Children (Detention Centres) Act 1987* (NSW) s 28(2C).

116. *Children (Detention Centres) Act 1987* (NSW) s 28(2B).

117. *Children (Detention Centres) Act 1987* (NSW) s 28(2A).

118. *Children (Detention Centres) Act 1987* (NSW) s 28(2D).

119. *Children (Detention Centres) Act 1987* (NSW) s 3, s 28(1).

120. *Children (Detention Centres) Act 1987* (NSW) s 28(3).

121. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41C(1).

6.114 The Minister may order the transfer of an inmate from a juvenile correctional centre to an adult correctional centre.¹²² For an inmate 18 or above, the Commissioner must recommend the transfer.¹²³ For an inmate under 18, SORC must recommend the transfer.¹²⁴ To recommend the transfer, the Commissioner or SORC must be satisfied that:

- the inmate wants to transfer
- the inmate's behaviour warrants the transfer
- the transfer is in the inmate's best interest, or
- the association of the inmate with other inmates at the juvenile correctional centre constitutes a threat to another person's personal safety, the security of the centre, or good order and discipline within the centre.¹²⁵

6.115 In addition, SORC must conduct an inquiry and decide whether or not to recommend the transfer.¹²⁶ SORC may conduct a hearing as part of the inquiry, in which case notice must be given to the Commissioner and the inmate.¹²⁷ The inmate may choose to be present at the hearing, and may choose to be heard.¹²⁸ The Commissioner and the inmate may choose to be represented by a legal practitioner or other person during the inquiry,¹²⁹ and SORC must co-opt either a Children's Magistrate or experienced children's advocate as an extra member for the inquiry.¹³⁰

122. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41C(2).

123. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41C(2)(a).

124. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41C(2)(b).

125. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41C(3).

126. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41D(1).

127. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41D(3).

128. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41D(4).

129. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41D(5)-(6).

130. *Crimes (Administration of Sentences) Act 1999* (NSW) s 41D(7)-(8).



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