

Parole: Question Paper 6: Parole for young offenders

Submission from the Shopfront Youth Legal Centre

Introduction

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. Established in 1993 and based in Darlinghurst in inner-city Sydney, the Shopfront is a joint project of Mission Australia, the Salvation Army and the law firm Herbert Smith Freehills.

The Shopfront's main area of practice is criminal law. Two of our solicitors are accredited specialists in criminal law; one is also an accredited specialist in children's law. Our four solicitors appear almost daily for vulnerable young people in the Local, Children's, District and occasionally Supreme Courts.

The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to nearly all of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. Most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem.

Although the Shopfront is a youth legal service, and has expertise in children's matters, the majority of our clients are in fact young adults aged 18 to 25. We therefore have a good working knowledge of both the juvenile and adult criminal justice systems.

Question 6.1: Different treatment of juvenile offenders

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

Yes. There are distinct sentencing principles applying to juveniles, and it would be artificial and unjust if these principles were abandoned when it came to parole decisions.

It is well-established that children (and young adults who are being dealt with for offences committed as children) require different criminal interventions to adults because of their relative immaturity, the factors underlying their offending and their greater need for support to achieve rehabilitation.

This approach properly accords with our international obligations under the United Nations Convention on the Rights of the Child (CROC) and the Beijing Rules.

2. Should there be a separate juvenile parole system? If yes, why?

For the reasons outlined in our answer to the previous question, we believe there should be a separate juvenile parole system. It is important that parole decisions are made, and parole orders are supervised, by people with specialist expertise in dealing with young offenders.

Question 6.2: Features of the juvenile parole system in NSW

If a separate juvenile parole system is retained in NSW:

1. Who should be the decision-maker in the juvenile parole system?

The Children's Court should continue to be the decision-maker in the juvenile parole system. We believe the current system is working relatively well, that Children's Court Magistrates have the relevant expertise, and there is no need for change.

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

We agree in part with the preliminary submission of the Bar Association (referred to in paragraph 6.21 of your Question Paper), that is, that the principles of a juvenile parole system could be similar to those in s 4 of the *Children (Detention Centres) Act 1987* and s 6 of the *Children (Criminal Proceedings) Act 1987*. However, we believe a separate legislative framework is necessary.

Further, we agree that these principles, as well as s7 of the *Young Offenders Act 1997* (NSW), could be combined and rationalised. We note that there is a current review of the CCPA and the YOA by the Department of Attorney-General and Justice, which includes the principles governing that legislation. We believe that there should be consistency in the principles that apply to young offenders throughout the criminal justice process, including parole decision-making.

In addition, the principles could better reflect the principle that arrest, detention and imprisonment of children and young people is a measure of last resort and for the shortest appropriate period of time (Article 37(b) CROC).

Further, we agree with the view expressed by the Children's Court that "rehabilitation is the paramount purpose in sentencing juvenile offenders" and "the parole decision-making criteria should emphasise that the rehabilitation of young offenders can be the best way to ensure the safety of the community." (paragraph 6.23 of Question Paper).

3. Do the decision-making criteria in s135 need to be adapted to the juvenile parole system? If so, in what way?

In our view separate legislation is required. The decision-making criteria in s135 of the CAS Act have been drafted with the adult parole system in mind, and the overriding emphasis being on the "public interest". The special principles that apply to children and young people are not reflected in subsections (1) or (2) of s135, and we believe that amendments to the provision would not cure the adult approach to parole decision-making reflected in that provision.

We are of the view that, for the same reasons we have separate legislation in relation to criminal proceedings involving children, we require separate legislation in relation to parole proceedings and parole decision-making that involves children. A separate legislative framework would include principles and decision-making criteria more appropriate to children and young people, and should better reflect our international obligations.

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

Yes. Please refer to our answer to 6.2(3) above.

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?

Of the options presented in the Question Paper, we prefer option 2A. However we are also of the view that all persons in a Juvenile Correctional Centre (ie Kariong) should also be subject to the juvenile parole system.

Option 2A allows the juvenile parole system to include most young offenders, whether sentenced in the Children's Court or in adult courts, and those young people who were dealt with as children, who are over 18 years but have served their time in juvenile detention. Further, we believe that the juvenile parole system should apply if the person is detained in a Juvenile Correctional Centre.

We are also concerned about the significant impact that late transfers have on the "parole readiness" steps put in place for many young offenders. In particular, late transfers seriously

disrupt post-release planning because the parole system applicable to them changes at the last minute. This means that currently, in a situation where the young person was transferred at the last minute to a juvenile (or adult) correctional centre, the availability of the planning put in place by Juvenile Justice may be seriously disrupted. We believe that the ability to order late transfers should be curtailed to avoid disrupting post-release planning with Juvenile Justice. We are of the view that no late transfer orders should be able to be made within 3 months of a young offender becoming eligible for parole.

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

Please see our answer above to Question 6.3(1).

There is a problem with the current system, for children who are serving sentences of imprisonment imposed by superior courts. The relevant parole authority can either be the Children's Court or the State Parole Authority, depending on whether the young person was detained in a Juvenile Justice Centre or a Correctional Centre immediately prior to release. The problems have been highlighted in your Question Paper, particularly at paragraphs 6.42 to 6.45.

We do not believe that young offenders under 18 years who have been detained in adult or juvenile correctional centres should be dealt with by the State Parole Authority. It is our view that all young people should be subject to the parole jurisdiction of the Children's Court.

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?

We do not believe that the decision-making process in the CAS can be sufficiently adapted for use by the Children's Court. The current differences in parole decision-making and structure between the adult and juvenile parole systems are too significant.

The Children's Court parole decision-making process should be separate to the adult process because different principles apply. We believe that the juvenile parole system should remain flexible, inclusive and less formal than the adult process.

Of particular concern is that the SPA can currently make some decisions in the absence of the offender. It is our view that our international obligations require that we ensure the participation by children and young people at all stages of the criminal process, including parole hearings. We refer in particular to Article 12 of the Convention on the Rights of the Child, which provides that a child shall have the opportunity to be heard in all judicial and administrative proceedings affecting the child.

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

We believe that the current scope for victim participation in parole decision-making does not require change. Any registered victim is invited to make submissions to the Children's Court when the offender's parole is being considered (paragraph 6.54 of the Question Paper). It is our view that restorative justice processes at this late stage are unlikely to be beneficial for the victim or offender.

Question 6.5: Assistance with parole readiness

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

It is our experience that young offenders are generally better prepared for parole by Juvenile Justice than offenders are by Corrective Services. We believe that this presents a significant problem for those young people who are dealt with by the adult parole system. Although they have often committed more serious offences, and arguably need greater support as they are transitioned into the community, they do not have available to them access to similar supports, programs or advice as their counterparts in the juvenile parole system. We believe that these young people should be able to access the more intensive support and programs available through Juvenile Justice in order to prevent recidivism and focus adequately on rehabilitation.

Question 6.6: Reconsideration after refusal of parole

- 1. 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?**

Under no circumstances should the 12-month rule apply in the Children's Court, following either a decision to refuse parole or a decision to revoke parole.

As discussed in our submission on Question Paper 5, we also support abolition of the 12-month rule in relation to adults.

This rule has the potential to cause great injustice and, as pointed out in the Question Paper, may mean that an offender loses their chance to be granted parole at all. The offender will not be supported with a gradual transition to the community, which increases their risk of re-offending and is adverse to the interests of the community as well as the offender.

The purported justification for the 12-month rule has failed to properly take into account the negative impact on the welfare and rehabilitation of the offender. This is particularly important when dealing with children and young offenders, whether in juvenile detention or a correctional facility.

We believe that the relevant parole authority should have discretion to set a significantly earlier reconsideration date, and not be constrained by the 12-month rule. If there is a real concern with early and repeated parole applications, we suggest that this could perhaps be addressed by means of a provision similar to section 22A of the *Bail Act*.

See also our answer to question 6.8(2).

Question 6.7: Supervision of young offenders

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

Yes. We believe that all supervision should be by Juvenile Justice, which has the resources, specialist expertise and programs to work with young offenders.

The suite of post-release programs supervised by Juvenile Justice are outlined well in the Question Paper, and demonstrate an approach that focuses on the support and rehabilitation of the young offender.

We believe that those young offenders dealt with by Community Corrections should have access to the same programs that enhance their rehabilitation prospects. When dealing with young offenders and young adults there must be an adequate focus on programs that prevent recidivism, and therefore are in the interests of both the young person and the general community.

We believe that young people who are in correctional centres, or who are supervised in the community by Community Corrections, unfairly miss out on the support, programs and services provided by Juvenile Justice. This raises questions of equity, and our abidance to our international obligations. All young people should have access to these programs that promote their welfare and rehabilitation.

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

As mentioned in our answer to the previous question, we believe that Juvenile Justice is able to provide a relatively good level of support to parolees under its supervision.

Question 6.8: Breach and revocation 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?**

Yes. Young offenders should have access to prompt review and access to legal representation in the review process. If more time is required to address concerns that may have formed the basis of the decision to revoke parole, the court should have the discretion to adjourn the matter for a short period. We believe that immediate review will allow the young person to access legal advice and better prepare his or her case for parole if a short adjournment is required.

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

The 12-month rule should be abolished. See our answer to question 6.6.

In order to avoid the problem with access to pre-release programs identified at paragraph 6.72 of your Question Paper, we agree that the Children's Court should set a reconsideration date at the time of revocation, with additional provision allowing an offender to re-apply for parole at an earlier date with leave of the court.

Question 6.9: Role of the Serious Young Offenders Review Panel

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

We do not believe that the functions of the SYORP should be expanded to include a role in parole decision-making for serious young offenders. We are concerned that the SYORP does not meet and interview the young offender, and we do not believe that the SYORP would add to the material already provided by Juvenile Justice on the issue of parole readiness.

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?

Our primary position is that any offender under 18 years should be dealt with by a separate juvenile parole system that has its own legislative framework.

However, if the SPA continues to deal with some offenders who are under 18, then similar principles as those in s6 of the *Children (Criminal Proceedings) Act* and s4 of the *Children (Detention Centres) Act* should apply. Further, we agree that these principles, as well as s7 of the *Young Offenders Act 1997* (NSW), could be combined and rationalised, and apply to all decisions by the SPA that relate to young offenders. We refer to our comments in relation to Question 6.2.

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

Yes, for reasons set out elsewhere in this submission.

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

The same criteria as would apply in the juvenile parole system. We reiterate our position that there needs to be a separate legislative framework that applies to young offenders and parole, even if they are detained in adult correctional facilities. We also refer to our answer to Question 6.2.

Question 6.11: Composition of SPA

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

Yes. We are very concerned that currently the SPA is not required to include members with specialist youth expertise when dealing with young offenders. We believe that the best solution is to ensure that all young offenders are dealt with by a separate juvenile parole system.

However, if the SPA continues to determine parole matters in relation to young offenders, we believe that there should be a minimum of 2 persons with specialist youth expertise sitting on the SPA when it is dealing with a young offender. We would suggest a psychiatrist, psychologist or similar professional with expertise in adolescent development. We also suggest a member with experience in working with young people, for example a lawyer, social worker or youth worker.

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?

The fact that young offenders have access to the same in-custody programs as adults in adult correctional facilities is of great concern. As stated in the Question Paper at 6.6, the juvenile justice system has recognised that young offenders are not “little adults”, and require different treatment. To do otherwise is a breach of our international obligations under the United Nations Convention on the Rights of the Child and the Beijing Rules.

Of further great concern, is that these young offenders are not even eligible for the in-custody programs designed for the younger adult prison population aged between 18 to 24 years, which prepares them for parole and life in the community (para 6.87 of Question Paper). The alternative satellite programs of 5 to 10 days that young offenders can access in adult custody are simply inadequate. The large caseloads of Community Corrections further accentuates the problem for those young offenders with complex issues that require intensive case management support.

The issues canvassed in the Question Paper from paragraph 6.86, demonstrate clearly that the adult parole system does not cater for, or is unable to meet the needs of young offenders residing in adult correctional centres. The lack of youth-specific resources in adult correctional centres supports our view that the juvenile parole system is better resourced and equipped to deal with young offenders in a way that meets our international obligations.

2. How can the post-release programs, accommodation and support provided to young offenders supervised by Community Corrections be improved?

We believe that the support provided by Community Corrections cannot be improved in a way that will adequately meet young offenders' needs. Young offenders should not be supervised by Community Corrections; it is proper that they are supervised by Juvenile Justice and subject to the specialised juvenile parole system.

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