



The New South Wales Bar Association

13/53

14 August 2013

Ms Stephanie Button
New South Wales Law Reform Commission
DX 1227 SYDNEY

Dear Ms Button

Parole Scoping Paper

The New South Wales Bar Association is grateful for the opportunity to comment in relation to this reference.

It is submitted that one of the most important and significant matters for consideration is the '12 month' rule that is, the requirement in most cases for an inmate to wait 12 months before being reconsidered for release to parole following a refusal to grant, or decision to revoke, parole. There would seem to be little justification for an inflexible rule when the circumstances of individual cases are so varied and the rule can result in many inmates having little or no time under supervision.

The proposed terms of reference appear to be fairly comprehensive and appropriate. There are some further issues which ought to be considered under the heading 'Breach, Revocation and Reinstatement':

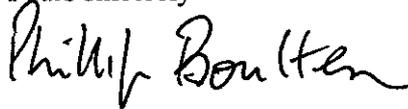
- Whether, or in what circumstances, it ought to be possible for a breach of parole to be based solely upon 'fresh charges' or 're-offending' before, or in the absence of, any plea of guilty or finding of guilt.
- The scope of the concept of 'failure to adapt to normal lawful community life'.
- Whether there ought to be any fetter on the State Parole Authority's power of 'revocation before release', pursuant to section 130 of the *Crimes (Administration of Sentences) Act 1999*, where an inmate is due for court-ordered parole and there has been no significant change of circumstances since the imposition of the sentence by the court.
- The frequency with which the State Parole Authority utilises the power under section 169(1) of the Act to conduct an enquiry into whether or not a breach has occurred and whether a review hearing under section 175(1) is the appropriate forum for deciding a contested breach.

The following should be considered under the heading 'Juveniles':

- The insertion of principles similar to those in section 6 of the *Children (Criminal Proceedings) Act 1987* and section 4 of the *Children (Detention Centres) Act 1987* into the *Crimes (Administration of Sentences) Act 1999* in relation to children who are being dealt with under the latter Act.
- Whether children who are 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, until what age?
- Whether or not the State Parole Authority, when dealing with children, ought to be constituted such that there are one or more members with specific experience concerning child offenders (for example, former Children's Court magistrate as judicial member, Juvenile Justice or FACS representative).

Should you or your officers require any further information, please do not hesitate to contact the Association's Executive Director, Philip Selth on 9232 4055 or at pselth@nswbar.asn.au.

Yours sincerely



Phillip Boulten SC
President