

Parole: Question Paper 5: Breach and revocation

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 adult and juvenile criminal justice systems.

Question 5.1: Exercise of discretion in reporting breaches and SPA's lower level responses

1. What level of discretion should Community Corrections have to manage breaches of parole (or certain types of breaches) without reporting them to SPA?

We believe that parole officers from Community Corrections should have discretion not to report breaches which are minor or for which the offender has provided a reasonable excuse.

It may be appropriate to require a parole officer to report any breach to their unit leader or manager, with the manager having discretion whether to report the breach to the SPA.

2. What formal framework could there be to filter breaches before they are reported to SPA?

See our answer to question 1 above.

3. What lower level responses should there be available to SPA? What lower level responses should be included in the CAS Act?

We believe that a formal warning is an appropriate response in many cases, and support we it being given legislative backing.

Other appropriate lower level responses could include sanctions of a type discussed in paragraph 5.18 of your Question Paper.

Question 5.2: Response to non-reoffending breaches

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

We believe there should be greater flexibility in the way the SPA deals with non-offending breaches.

Apart from warnings and sanctions, for which we expressed our support in our answer to Question 5.1, we also support the option proposed in Paragraph 5.19, of allowing the SPA to revoke the offender's parole for a short period.

Other alternatives could include imposing additional conditions on supervision, or imposing a period of home detention.

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

See answer to Question 1 above.

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

Yes, although trivial breaches should continue to be dealt with by way of warning.

We also believe that intermediate sanctions should be considered before revoking parole, even for a relatively short period.

Question 5.3: Revocation in response to reoffending

1. What changes should be made to improve the way SPA deals with parolees' reoffending?

We have serious concerns about the current practice of revoking parole based on alleged or "unconfirmed" re-offending.

We concede that it may sometimes be appropriate for parole to be revoked if bail has been refused for the fresh offence and if the prosecution case appears very strong. However, we have observed injustice in some cases where parole has been revoked even where the offender is on bail for the fresh charges and is ultimately found not guilty.

In our view, revocation on the grounds of unconfirmed re-offending should only occur where there is a serious and demonstrable risk to the community.

We would be strongly opposed to the adoption of a provision similar to the Victorian one outlined in Paragraph 5.24.

Leo, aged 20, was out on parole, having been sentenced for an aggravated break and enter offence committed when he was 18.

He had housing and a job and appeared to be functioning well until he was charged with an assault-type offence following an altercation with another young man who had made unwelcome advances towards his girlfriend. He was granted police bail.

A few weeks later, Leo was charged with resisting and intimidating police in the execution of their duty, and was again granted police bail.

Even though he was on bail and pleaded not guilty to both sets of offences, Leo's parole was revoked and he was returned to custody.

For the assault offence, he ultimately pleaded guilty and was sentenced to a section 9 bond. It is our view that this matter would not of itself have been sufficient to warrant the revocation of his parole.

Leo continued to defend the resist and intimidate police charges and was ultimately found not guilty of both. However, these proceedings dragged out over several months, during which time the SPA would not consider reversing the revocation. Leo ended up remaining in custody until the expiry of his head sentence, a period of almost 12 months.

2. What provision, if any, should be made in the CAS Act to confine SPA's discretion not to revoke parole?

We do not support the SPA's discretion being confined any further.

Question 5.4: Date of revocation and street time

1. What further restrictions should be included in the CAS Act on selecting the revocation date?

We believe that some reforms may be needed to address injustices caused by arbitrary selection of revocation dates. However, we have no specific proposals to offer.

2. What changes, if any, should be made to the operation of street time?

Again, we believe changes are needed to remove injustices that exist in the current system (including the example cited, where time in custody interstate is regarded as "street time"). However, we are not in a position to offer any specific suggestions.

Question 5.5: Review hearings after revocation

Should reviews of revocation decisions only be available if SPA considers that a hearing is warranted? If so, why?

We believe that a review hearing should *always* be conducted if requested by the prisoner/ parolee. Given that revocation decisions are usually made in the absence of the parolee, it is imperative that the parolee had the opportunity to be heard.

While it may be true that review hearings are resource-intensive, this does not justify restricting review rights when it comes to decisions affecting a person's liberty.

We also suggest that more widespread use of section 169 reviews (as discussed in the answer to Question 5.10), or similar procedures whereby the initial decision is made in the presence of the offender, may be a more effective use of resources than a two stage process involving an in-camera meeting followed by a review hearing.

Question 5.6: Rescinding revocation to allow completion of rehabilitation programs after fresh offending

What provisions should be made in the CAS Act in relation to how SPA's decision making should interact with rehabilitative dispositions in response to fresh offending?

We agree with the concerns expressed, and suggestions made, by the Aboriginal Legal Service.

As an alternative to rescinding revocation, the SPA could be given a discretion to re-release the offender on parole. This would necessitate the repeal of the 12-month rule (see our response to Question 5.14).

Question 5.7: Appeals and judicial review of SPA's revocation decisions

Should there be any changes to the mechanisms for appeal or judicial review of SPA's revocation decisions?

We have no practical experience of the appeals process following decisions of the SPA. No doubt this is a reflection of the fact that appeal rights are so limited.

Decisions made by the SPA have a significant impact on person's liberty, potentially for a long period of time. We therefore support a broader right of appeal, although we are not in a position to make detailed suggestions about how this should operate.

Question 5.8: Reasons for SPA's decisions

What changes could be made to the manner or extent to which SPA provides reasons for its decision in revocation matters?

In general we support the provision of reasons, in the interests of fairness and transparency. However, a requirement to provide overly detailed reasons could have resourcing implications and may lead to backlogs in the system.

Question 5.9: Emergency suspensions

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

We have no practical experience of the emergency suspension power and have no comments to offer.

Question 5.10: SPA's power to hold an inquiry

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

We strongly support the more widespread use of s169 enquiries, not only to establish whether a breach has occurred but to decide what, if any, action to take in response to the breach.

While it may be inappropriate in cases where the offender's whereabouts are unknown, or swift revocation action is necessary for public safety, we submit that the s169 process would be appropriate in a significant number of cases. It of course accords the parolee greater procedural fairness, by giving them a right to be heard without first having to spend several weeks in custody.

We do not support the current situation where the norm is for an offender's parole to be revoked in their absence, and for the offender to then be arrested on a warrant and to spend several weeks in custody before a review hearing.

As suggested in paragraph 5.49, it may be reasonable to give the SPA a discretion not to hold a review hearing in circumstances where the parolee has already had the opportunity to be heard at a s169 enquiry.

Simon, in his early twenties, was on parole following a sentence for drug-related offending. He had taken steps to deal with his substance abuse problems but continued to have a problem with cannabis dependence. His GP, with the support of his parole officer, was supervising him on a cannabis reduction program.

While Simon's parole officer was on leave, he was supervised by another officer who took a different view and submitted a breach report based on Simon's cannabis use. The breach report omitted to mention the fact that Simon was on a medically-supervised reduction regime with the concurrence of his former parole officer. On the strength of this report, the SPA revoked Simon's parole and issued a warrant.

Simon spent several weeks in custody, missing the birth of his first child, before the SPA ultimately rescinded the revocation at a review hearing.

Question 5.11: Information sharing

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

We have no specific comments to offer in response to this question, except to say that communication between the community and custodial branches of Corrective Services could be improved.

As discussed in our submission in response to Question Paper 4, we support more comprehensive case management and a "throughcare" approach.

Question 5.12: Role of the Serious Offenders Review Council

What role could SORC have when SPA decides to revoke or rescind parole for serious offenders?

We have no practical experience of the role of the SORC and no comments to offer in response to this question.

Question 5.13: Making breach of parole an offence

Should breach of parole be an offence in itself? If breach of parole were to be an offence, what should the maximum penalty be?

We are strongly opposed to making breach of parole an offence in itself. We do not believe that the creation of an additional offence will provide a meaningful deterrent to breaching parole.

As mentioned in Paragraph 5.57 of your Question Paper, “making the fact of breach an additional offence with its own penalty would be a form of “penalty stacking” and may not add much to the existing deterrent of return to custody due to revocation of parole”.

Question 5.14: Reconsideration after revocation of parole

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

We strongly support the abolition of the 12-month rule. We agree with the arguments against the 12-month rule, which have been set out coherently in your Question Paper.

Given that resourcing of the SPA was one of the main reasons for the introduction of the rule, it is particularly important to note the SPA’s view that “the 12-month rule is not necessary from its perspective to conserve resources”.

We support the alternative proposed in paragraph 5.65 of the Question Paper, for the SPA to set a reconsideration date at the time of revocation. This was the usual practice before the introduction of the 12-month rule and seems to afford sufficient flexibility without unnecessarily consuming resources.

Question 5.15: Breach processes for ICOs and home detention

What changes should be made to the breach and revocation processes for ICOs and home detention?

We agree with the NSWLRC’s recent recommendations outlined in Paragraph 5.72 of the Question Paper. We also agree with the concerns expressed by Legal Aid and other stakeholders, as outlined in Paragraphs 5.73 to 5.75. We believe that organisations such as Legal Aid (and in particular the Prisoners’ Legal Service) are in a better position than we are to make detailed suggestions about what changes should be implemented.

The Shopfront Youth Legal Centre January 2014

The Shopfront Youth Legal Centre
356 Victoria Street
Darlinghurst NSW 2010
Tel: 02 9322 4808
Fax: 02 9331 3287

www.theshopfront.org
shopfront@theshopfront.org