

Community consultation

EXECUTIVE SUMMARY

June 2011

SENTENCING
ADVISORY
COUNCIL



CONSULTATION PAPER

EXECUTIVE SUMMARY

What have we been asked to do?

The former Attorney-General and Minister for Industrial Relations, the Honourable Cameron Dick, issued Terms of Reference to the newly established Sentencing Advisory Council (the Council) on 20 December 2010 asking the Council to examine and report on:

- the offences that a minimum standard non-parole period (SNPP) should apply to, and
- the appropriate length of the minimum SNPP for each of those offences identified.

The Council was also asked to consider a range of related issues, including whether or not the NSW SNPP approach should be adopted in Queensland. The Terms of Reference are set out in full on the Council's website.

The Council must report to the Attorney-General by 30 September 2011.

This document has been prepared as a summary which is intended to be read in conjunction with the accompanying Consultation Paper, which sets out in full the issues to be raised during consultation, and the Council's Research Paper, *Sentencing of Serious Violent Offences and Sexual Offences in Queensland*. The Consultation Paper and the Research Paper are available on the Council's website (sentencingcouncil.qld.gov.au) or in hard copy by request.

What is a SNPP?

A SNPP is a legislated non-parole period – that is, it is the minimum length of time an offender should spend in prison if found guilty of an offence before being eligible to apply for release on parole.

In NSW, SNPPs have been in place since 2003. In that state, the scheme has led to an increase in the length of sentences for some serious violent offences and sexual offences and an increase in offenders pleading guilty overall for those offences included in the scheme (from 78% to 86%). A 2010 evaluation found the scheme has led to greater uniformity and consistency in sentences.

What is parole?

Parole is the conditional release of a prisoner after serving part of their sentence. The offender is then supervised in the community until the expiration of their sentence.

The 'non-parole period' is the time an offender serves in prison, before they are eligible to apply for release on parole.

When will an offender be released on parole?

Under the *Corrective Services Act 2006* (Qld), parole is the only form of early release available to all prisoners and it can be ordered by the court or by a parole board. While parole results in release from prison, it is not a release from serving the remainder of the sentence. Offenders remain under Queensland Corrective Services' supervision until the end of their sentence, and if they breach parole they can be returned to prison.

For many offenders parole is not automatic. An offender may be kept in prison beyond this period if a parole board considers it appropriate and, based on the Council's research, this is often the case.

What is happening in other states?

Possible changes to the NSW SNPP scheme have been referred to the NSW Sentencing Council. The Victorian Government has announced the introduction of baseline sentences (equivalent to a non-parole period) and referred the matter to the Victorian Sentencing Advisory Council. Neither Council will have finalised their reports before the Queensland Council is required to report back on the operation of SNPPs in Queensland.

The High Court of Australia is also considering some aspects of the NSW SNPP scheme after two appeals relating to the constitutional validity of the scheme and other aspects of its operation. The outcome of these applications may affect decisions made about how a Queensland scheme should work. The judgments of the High Court are not likely to be handed down until late 2011.

Purpose of this consultation

During the consultation period, the Council will explore relevant issues to enable it to present options to address the questions raised in the Terms of Reference. The Council will collect relevant feedback in the consultation period, which is 8 June to 22 July 2011. Following the consultation period, the Council will consider the information provided and then present a final report, informed by the Council's research and submissions and feedback received, to the Attorney-General outlining the Council's advice.

What is the aim of a SNPP scheme?

The Queensland Government has stated that the aim of a SNPP scheme in Queensland is to ensure sentences reflect community expectations and to provide consistency and transparency in sentencing decisions. SNPPs are also intended to provide additional guidance to courts in setting sentences. This includes giving appropriate consideration to the actual time an offender spends in prison before being eligible for parole. Courts are currently guided in setting sentences by legislation, sentencing principles from previous cases, actual sentences given in similar cases (comparative sentences) and sentencing principles and outcomes in appeal decisions handed down by the appellate courts.

Legislation enabling guideline judgments was introduced in Queensland in late 2010, enabling the Court of Appeal to publish a formal guideline judgment to guide the courts in sentencing.

How do SNPP schemes operate in other jurisdictions?

In addition to the NSW SNPP scheme, the Northern Territory and South Australia also have SNPPs or similar schemes in place. Each scheme applies to different offences, although most apply to more serious offences against the person such as murder, rape or sexual offences against children. Some schemes set the non-parole period as a fixed percentage of the full sentence, while others set a specific period of time for the non-parole period. Most schemes include various grounds on which a sentencing judge may depart from the scheme, that differ depending on the type of scheme. More information on these schemes can be found in Chapter 3 of the Consultation Paper.

Each scheme also has its own definition of a SNPP. For example, in NSW a SNPP is defined as the non-parole period for an offence in the 'middle of the range of objective seriousness'. This means a court must impose a SNPP if a case is assessed as being of mid-range seriousness. Only factors related to the offence itself can be considered in making this decision under this definition.

It is clear from feedback about some schemes, and appeal cases arising from them, that interpretation of SNPPs is not straightforward. There is discussion and debate, particularly among legal stakeholders, about the merits of such schemes and their proper operation. The Council appreciates the complexity of this issue and its implications, which are discussed in detail in the Consultation Paper

What are the options for structuring a SNPP scheme?

The Council has put forward for consultation two approaches to structuring a SNPP scheme:

- **Option 1** is a **defined term** scheme, where the length of time in years and months is specified in legislation as the minimum period that must be spent in prison if a person is found guilty of an offence.
- **Option 2** is a **standard percentage** scheme, which specifies a set percentage of the prison sentence that an offender found guilty must serve before being eligible for parole.

The advantages of option 1 (a defined term scheme) include more transparency in sentencing, as the legislation would clearly set out how long the offender must spend in custody. It would also provide clear guidance to the court in setting the non-parole period for an individual offence.

Disadvantages include difficulty in deciding the non-parole period that should apply to each offence, restricting the ability of courts to respond to individual circumstances, and requiring well-defined grounds for departure from the scheme. Specifying defined terms would also be likely to have a marked impact on the current approach to sentencing in Queensland, making the process more complex. Consequently, this option would be likely to increase the time taken by courts to set sentences.

The adoption of option 2 (a standard percentage scheme) may overcome the disadvantages of a defined term scheme, but would not provide the same level of guidance to courts on appropriate sentences (in years and months) in given cases.

How would each SNPP option work?

In considering the two options, the Council must make decisions about whether it will recommend that the scheme should apply to:

- offenders sentenced to life imprisonment or indefinite imprisonment terms
- offences that can be dealt with in the Magistrates Court rather than in the higher courts (matters that can be heard summarily), and

- offenders who are aged 17 years (based on the fact that the scheme will not apply to children, but taking into account that 17-year-old offenders are treated as adults in most cases for the purposes of sentencing in Queensland).

The Council also has to recommend how the scheme will apply in relation to current legislative requirements relating to parole, including court-ordered parole (currently, for some prison sentences of 3 years or less, the court can set the date on which the offender is eligible for parole, which therefore determines when they will be released).

A defined term scheme (option 1) will require legislative guidance to the courts on what type of offending the SNPP should apply to – for example, if a NSW-style definition was introduced, how serious an offence attracting an SNPP would have to be on the ‘range of objective seriousness’. Likewise, if the SNPP was defined in terms of the non-parole period for a ‘typical’ case, legislative guidance would be required on an appropriate non-parole period for a typical (or common) offence without mitigating or aggravating circumstances.

Both approaches, therefore, present some difficulties.

Deciding on what grounds a court should be allowed to set a higher or lower non-parole period than the SNPP is also likely to be challenging. For example, if the SNPP is defined as a non-parole period for an offence in the ‘middle of the range of objective seriousness’, any factor which brings the offence below this level of offending, as well as mitigating factors personal to the offender, would need to be recognised as possible grounds for departure. This may not be the case for a standard percentage scheme because it may not be necessary to define the exact length of a SNPP and what this represents.

The standard percentage scheme (option 2) may overcome some of these difficulties, and would be consistent with existing Queensland schemes that already provide forms of minimum non-parole periods set as a percentage of the full sentence, these are:

- a standard non-parole period of 50 per cent for offenders sentenced to imprisonment for more

than 3 years, or found guilty of a sexual offence, and who are not declared convicted of a serious violent offence, in circumstances where the court has not set a parole eligibility date, and

- a standard minimum period of 80 per cent of their sentence or 15 years (whichever is less) for offenders declared convicted of a serious violent offence under Part 9A of the *Penalties and Sentences Act 1992* (Qld).

Under a standard percentage scheme, the percentage that should apply would have to be decided. Possible options are to:

- strengthen the existing 50 per cent non-parole period for those offenders referred to above, to require a SNPP period of not less than 50 per cent of the total period of imprisonment
- create a new fixed percentage SNPP that accommodates the existing 50 and 80 per cent schemes, or
- set the percentage based on current average sentence lengths served (although this would have to account for the individual circumstances of the case).

SNPP options and Queensland's Serious Violent Offence provisions

As discussed earlier, offenders declared as having been convicted of committing a serious violent offence (SVO) are only eligible for parole after serving 80 per cent of their sentence, or 15 years (whichever is less). The court may also set a later parole date.

If a defined term scheme (option 1) was adopted in Queensland, and the SVO scheme under Part 9A remained in the same form, the court would have to:

- consider the SNPP for the SVO
- consider whether the offence warrants a longer (or shorter) non-parole period than the SNPP due to its relative seriousness and set the non-parole period accordingly
- make a declaration that the offender is being convicted of a SVO, and
- calculate the total sentence based on the non-parole period.

Alternatively, a defined term SNPP scheme could exclude offences that attract an SVO declaration, for example on the basis that these

offences are likely to result in significant terms of imprisonment regardless of the existence of a SNPP.

Adopting a standard percentage scheme (option 2) could work more effectively with the existing SVO provisions, should they be retained. For example, the scheme could be structured to allow sentencing courts to choose to either make a SVO declaration (resulting in a non-parole period of 80%), or to refrain from making such a declaration (resulting in the non-parole period being set by virtue of the SNPP percentage). How a standard percentage scheme (option 2) would work with SVO provisions is explored further in Chapter 4 of the Consultation Paper, and is a critical issue under the Terms of Reference.

What offences should be included in a SNPP scheme?

The following factors could be taken into account when deciding which offences should be included in a SNPP scheme:

- offences already defined by the Penalties and Sentences Act as 'serious violent offences' and 'sexual offences'
- offences included in SNPP-style schemes elsewhere
- the current maximum penalties for offences current sentencing practices
- community views on the seriousness of certain offences and whether current non-parole periods are appropriate
- current appeal rates
- information about the time offenders actually spend in custody
- the degree of case variability and sentence variability
- selecting offences where the guidance provided to courts (for example, by the maximum penalty, similar cases and appeal court decisions) could be enhanced, and
- selecting offences based on the potential of a SNPP to deter offending.

These factors are discussed in detail in Chapter 5 of the Consultation Paper.

Offences currently defined as ‘serious violent offences’ and ‘sexual offences’

Under the *Penalties and Sentences Act* in Queensland, there are 59 offences listed as ‘serious violent offences’ or ‘sexual offences’. Twenty-six of these can be dealt with in the Magistrates Court, although some only in specific circumstances.

A SNPP scheme could apply to the 59 offences already defined as a serious violent offence or a sexual offence. If this criterion was to be used to decide which offences should be included, each offence should be assessed to decide whether it should be categorised this way. It should also be noted that certain drug offences are included in the SVO list in the Act, and consideration needs to be given as to whether these offences should be included if the current list of serious violent offences in Schedule 1 of the *Penalties and Sentences Act* is adopted for the SNPP scheme.

Offences included in SNPP style schemes elsewhere

New South Wales

The offences initially included in the NSW SNPP scheme were:

- murder, conspiracy to murder and attempted murder
- wounding or grievous bodily harm with intent to do bodily harm or resist arrest
- certain assault offences involving injury to police officers
- certain sexual offences, including sexual intercourse with a child under 10 years
- certain robbery and break and enter offences
- car-jacking
- certain offences involving commercial quantities of prohibited drugs, including manufacture and production
- unauthorised possession or use of firearms, and
- intentionally causing a bushfire.

Over time, the offences that attract SNPPs in NSW have been expanded to include new offences and sub-categories.

South Australia

The South Australian scheme does not identify specific offences to which SNPPs apply, but the scheme applies to ‘serious offences against the person’ (defined as an offence other than murder resulting in the death of the victim or the victim

suffering total incapacity). The definition includes conspiracy to commit such an offence, or aiding, abetting, counselling or procuring such an offence. A person suffers total incapacity if he or she is permanently physically or mentally incapable of independent function.

Northern Territory

In the Northern Territory, the scheme applies to murder and certain sexual offences. The offence of murder carries a SNPP of 20 years, which can be increased to 25 years in certain cases. Fixed non-parole periods of 70 per cent of the total sentence apply to sexual offences involving sexual intercourse without consent where a prison sentence is imposed. Similar rules apply to sexual offences committed against children under 16 years. The court can also choose not to fix a non-parole period in such cases. If no non-parole period is set by the court, the offender must serve the whole of their sentence.

Current maximum penalties

Current maximum penalties that apply in Queensland could also be taken into consideration in applying a SNPP scheme, as a measure of seriousness of the offence. Chapter 4 of the Consultation Paper provides the maximum penalties for a selection of offences.

The following offences have a maximum penalty of life imprisonment:

- murder and attempted murder
- manslaughter
- rape
- maintaining a sexual relationship with a child
- carnal knowledge of children under 16
- sexual assault, where the offender is or pretends to be armed, or is in company, or the assault involves penetration by something other than a penis
- acts intended to cause grievous bodily harm and other malicious acts
- unlawful sodomy
- incest
- burglary in circumstances of aggravation, such as where the offence involves breaking into a dwelling, is committed at night, where the offender uses or threatens to use violence, or is or pretends to be armed, is in company or damages or threatens to damage any property

- robbery, where the offender is armed, or is in company, or wounds, or uses other personal violence, and
- attempted robbery, where the offender is armed and wounds, or uses personal violence.

Current sentencing practices

Current sentencing practices could also be used as a basis for selecting offences. Data on current sentencing practices for serious violent offences and sexual offences can be found in the research paper *Sentencing Serious Violent Offences and Sexual Offences in Queensland*, which can be obtained from the Council's website (www.sentencingcouncil.qld.gov.au).

The data show that the serious violent offences and sexual offences most likely to receive full-time imprisonment or a partially suspended sentence are:

- manslaughter (99%)
- acts intended to cause grievous bodily harm and other malicious acts (98%)
- attempted murder (96%)
- maintaining a sexual relationship with a child (98%), and
- rape (97%).

The serious offence categories that have the highest average length of imprisonment are:

- attempted murder (11.5 years)
- manslaughter (8 years)
- acts intended to cause grievous bodily harm and other malicious acts (6 years)
- rape (6.5 years)
- unlawful sodomy (6 years), and
- maintaining a sexual relationship with a child (6 years).

Community views on SNPPs

It is important to know how members of the community view the seriousness of certain offences and their thoughts on the appropriateness of non-parole periods. For example, particular conduct such as assaults on police officers, emergency workers, taxi drivers and community workers raise considerable community concern. There is no available data at present to measure community views in this regard.

Current appeal rates

Current appeal rates (the number of sentences appealed as a proportion of all cases heard by the courts) may show that some offences and sentence lengths are more likely to be appealed than others. However, appeal rates alone are unlikely to be a useful indicator of offences which should be subject to a SNPP scheme.

Time spent in custody past parole eligibility

Targeting offences that, on average, result in offenders spending a longer period of time in custody past their parole eligibility dates, could be another approach to selecting offences for a SNPP scheme, although there are a number of reasons why offenders might not be released at, or close to, their parole eligibility date.

Council research (published in *Sentencing of Serious Violent Offences and Sexual Offences in Queensland*) found that the offence categories with the longest non-parole periods were:

- attempted murder (4.6 years)
- manslaughter (3 years)
- rape (3 years), and
- unlawful sodomy (3 years).

The offence categories where the highest average time was served in custody were:

- attempted murder (6.1 years)
- unlawful sodomy (5.3 years)
- rape (4.3 years), and
- manslaughter (4.1 years).

These are offences where parole boards are reluctant to release prisoners at their eligibility date. This may indicate that a longer non-parole period is warranted.

Variability between cases and sentences

Selecting which offences to include in a SNPP scheme should also take into account case variability and sentence variability within the offence. An offence within which there is a wide variety of behaviour (and a wide variety of sentence outcomes) may not be suitable for a single SNPP. The issue could be solved by excluding this kind of offence from a SNPP, or the scheme could include several SNPPs for different types of behaviour within an offence category.

An approach that considers variability as a criterion for including offences in a SNPP scheme would need to consider issues like the scope of behaviour within particular offences and broader sentencing practices.

Using SNPPs to provide additional guidance to courts in sentencing

In Chapter 2 of the Consultation Paper, the Council discusses a number of different forms of guidance for courts in arriving at an appropriate sentence.

On an individual offence basis, arguments in favour of including a specific offence in a SNPP scheme might include that the level of guidance provided (for example, by the maximum penalty, sentencing guidelines set out in legislation, similar cases and appellate court decisions) could be enhanced.

Conversely, reasons for excluding an offence from the scope of a SNPP scheme might include that there is appropriate guidance for courts at first instance in sentencing offenders convicted of the offence and that there are good levels of consistency in sentencing, or that any significant variation in sentencing outcomes can be explained by the nature of the offence itself.

Capacity for deterrence

Another way of selecting offences to be included in a scheme might be on the basis of deterrence to potential offenders. In some Court of Appeal cases, general deterrence has been suggested to be most beneficial in relation to offences:

- that are prevalent
- where public safety is at risk
- that are hard to detect
- that involve a breach of trust, or
- where people in a vulnerable position need protection.

One of the arguments against selecting offences to be included in a scheme on this basis is that there is limited evidence that general or specific deterrence works in reducing offending.

Focusing on specific criminal conduct

Another approach to deciding what offences to include in a SNPP scheme is to single out specific

types of criminal conduct, such as ‘glassing’, rather than the specific offence or offences that would ordinarily capture that conduct. Glassing refers to an act of violence by a person that involves the use of glass and causes injury to a person. Glassing has been raised in the Terms of Reference as a specific behaviour to be considered by the Council for a SNPP.

Crime data collected by the QPS indicate that while the number of reported assault offences where glass was used as a weapon increased between 2005 and 2009, before decreasing in 2010, the rate per 100 000 Queenslanders has been relatively stable over that period.

This approach becomes complex, however, when specific criminal conduct falls within a range of different offences with different maximum penalties. For example, an incident involving a glassing may result in the offender being charged with unlawful wounding (7 years), assault occasioning bodily harm while armed (10 years) or grievous bodily harm (14 years).

Another example of specific criminal conduct that could be targeted under a SNPP scheme is sexual offending against children. There are a wide range of child sexual offences that carry different maximum penalties ranging from 5 years to life imprisonment, and these are dealt with in detail in the Consultation Paper.

How do these indicators apply to specific offences?

The Council has examined a number of specific offences in light of the considerations outlined above (for more details, see Chapter 6 of the Consultation Paper). The offences are those listed in the Terms of Reference. Arguments for and against inclusion of these offences in a SNPP scheme are summarised below.

Murder

The offence of murder has a mandatory penalty of life imprisonment. Murder already has a minimum non-parole period of either 15 or 20 years or a later date as set by the court, before a prisoner is eligible to apply for parole.

The NSW SNPP scheme excludes offenders sentenced to life imprisonment or for any other indeterminate period.

Manslaughter

Manslaughter has a maximum penalty of life imprisonment but, unlike murder, courts can sentence an offender convicted of manslaughter to a lesser term of imprisonment. The average prison sentence for manslaughter is 8 years, but there is a wide range of prison sentences imposed – from 1.5 years to 14 years. On average, offenders convicted of manslaughter serve about 1 year of imprisonment past their parole eligibility date (representing 55.2% of the average sentence length).

Manslaughter is an offence that may not be open to a single SNPP, because of the broad range of circumstances in which it can be committed.

Manslaughter is excluded from the NSW SNPP scheme due to the broad range of cases that fall into this offence. A 2004 review of the Northern Territory Criminal Code also recommended against including manslaughter in its SNPP scheme.

Other offences of serious violence against the person

Other than murder and manslaughter, there are several offences involving serious violence against the person, including:

- acts intended to cause grievous bodily harm and other malicious acts (maximum penalty, life imprisonment)
- assault occasioning bodily harm (maximum penalty, 7 years imprisonment)
- serious assault – the assault of specific groups of people such as police officers and corrective services officers (maximum penalty, 7 years imprisonment)
- grievous bodily harm (maximum penalty, 14 years imprisonment), and
- unlawful wounding (maximum penalty, 7 years imprisonment).

NSW has included some violent offences against the person in its SNPP scheme, such as wounding with intent to do bodily harm (which carries a SNPP of 7 years) and reckless wounding (which carries a SNPP of 3 years).

Information on sentence lengths in Queensland shows good consistency in the courts' approach to sentencing offenders where a period of imprisonment is set for these offences. There is also consistent guidance from the appellate courts on sentencing levels for offences involving serious violence against the person, and appropriate guidance for sentencing courts.

A final issue to consider in including specific serious violent offences in a SNPP scheme is the impact this may have on Aboriginal and Torres Strait Islander offenders. Data show these offenders are more likely than non-Aboriginal and Torres Strait Islander offenders to have an offence involving violence as their most serious offence. As a result, including these offences in a SNPP scheme would affect a higher proportion of Aboriginal and Torres Strait Islander offenders.

Rape

Rape also has a maximum penalty of life imprisonment.

The NSW SNPP scheme applies to the offence of sexual assault (sexual intercourse without consent), which is the NSW equivalent to the Queensland offence of rape. Sexual assault in NSW carries a SNPP of 7 years (or 10 years for the aggravated form and 15 years for aggravated sexual assault in company).

Under the Northern Territory scheme, offenders sentenced to imprisonment for sexual intercourse without consent must serve 70 per cent of their total sentence in prison before being eligible for parole.

In Queensland, from 2005–06 to 2009–10, 96.7 per cent of offenders found guilty of rape were sentenced to an immediate term of imprisonment. The average sentence length was 6.5 years, with sentences ranging from 8.4 months to 25 years. Offenders convicted of rape spend on average 4.3 years in prison; a year longer than the average non-parole period of 3 years. This means that on average, offenders are spending additional time in prison past their parole eligibility date.

In 2000 in Queensland, the offence of rape was expanded to include a wider range of behaviour (penetration by the offender of a vagina, vulva or anus of a victim by any body part or object,

and penetration of a victim's mouth by a penis). This may be one reason why rape appears to attract a higher level of sentence length variability than other offences, although the offence of rape already includes a wide range of offending behaviour. This greater level of sentence length variability may present an argument for including rape in a SNPP scheme, but may also be a reason to exclude rape from the scheme on the grounds that it would be difficult to assign a single SNPP appropriate for the offence.

Another approach to providing courts with additional guidance in sentencing for rape is that taken by the New Zealand Court of Appeal in the case of *R v AM* [2010] 2 NZLR 750, which has issued a sentencing guideline for rape identifying four bands within which offenders can be sentenced. One reason the NZ Court of Appeal chose to issue this guideline was a lack of clarity by NZ courts in applying a single starting point of 8 years imprisonment for a contested rape case.

This experience suggests that it may be difficult to adopt a defined term SNPP that assigns a single period of time to be served as a guiding point, as there is no 'typical' case of rape. Taking into account the broader definition of rape now in place in Queensland, this problem may be magnified.

Sexual offences against children

The Terms of Reference direct the Council to consider including the following child sexual offences in a SNPP scheme:

- *Maintaining a sexual relationship with a child*
This offence involves sexual conduct with a child such as sodomy, indecent treatment, carnal knowledge, incest, rape, attempted rape or sexual assault over an often extended period of time as part of a relationship. It carries a maximum penalty of life imprisonment.
- *Indecent treatment of children*
This involves a range of criminal conduct and carries a penalty of 14 years, or 20 years where the child is under 12 years.
- *Sodomy*
This offence relates to anal intercourse with a person under 18 years. It carries a maximum penalty of 14 years, or life imprisonment where the child is under 12 years.

- *Unlawful carnal knowledge*

This offence involves penetration of the vagina to any extent of a child aged under 16 years; consent is not a lawful defence. The maximum penalty for unlawful carnal knowledge is 14 years, or life imprisonment where the child is under 12 years.

In addition to the offences singled out for consideration in the Terms of Reference, there are a range of other contact and non-contact offences that are sexual offences against children.

The maximum penalties for these offences in Queensland indicate the seriousness with which they are regarded by Parliament, with a number of offences carrying a maximum penalty of life imprisonment.

The Council's research paper - *Sentencing of Serious Violent Offences and Sexual Offences in Queensland* - confirms that courts consider these serious offences by the severity of the sentences imposed. For example, the offence of maintaining a sexual relationship with a child and sodomy attracted an average sentence of 6 years (just under the average sentence for rape). Guilty plea rates for these offences tend to be quite high.

Information about sentence length variability shows relatively good consistency in sentence lengths for these offences although this varies by offence. The use of non-custodial orders also needs to be taken into consideration in some cases.

Appeal decisions of the Queensland Court of Appeal provide some guidance to courts on the appropriate sentencing range for some child sex offences, such as maintaining a sexual relationship with a child.

Added to this is the recent amendment to the *Penalties and Sentences Act* which requires a court to impose an actual term of imprisonment when sentencing an offender for a sexual offence against a child, unless there are exceptional circumstances.

The NSW scheme includes some child sexual offences but not others, and the NSW Sentencing Council has been asked by that State's Attorney-General to consider whether the SNPP scheme in NSW should be extended to include other sexual offences.

In the Northern Territory, a number of sexual offences against children carry a fixed non-parole period of at least 70 per cent of the sentence of imprisonment.

Other offences

Analysis of other offences that have been defined as serious violent offences and sexual offences under the *Penalties and Sentences Act* could be undertaken to explore whether they should be included in a SNPP scheme. These offences include:

- robbery and attempted robbery
- aggravated burglary
- sexual assault
- torture
- trafficking, supplying or producing dangerous drugs
- making, involving a child in making, distributing or possession of child exploitation material, and
- dangerous driving.

Possible impacts of a SNPP scheme in Queensland

The possible impact of a SNPP scheme in Queensland needs to be considered in light of the NSW experience, in particular:

- the ability of defendants charged with SNPP offences to be granted bail
- more work for the prosecution to determine if a matter including a SNPP offence should be heard summarily and therefore, the possibility of more matters being dealt with in the higher courts
- greater complexity in sentencing, with more time and work needed to prepare for sentencing hearings, for making submissions on sentence and for judges to draft their sentencing remarks
- court backlogs as a result of greater complexity, and an increase in appeals arising from errors in applying the scheme
- possible changes in sentencing patterns that may result in increased prisoner numbers and higher associated costs, as has occurred in NSW
- a likely increase in appeals, particularly initially while the scheme is being tested, as has also occurred in NSW
- raising the expectations of victims of crime and other lobby groups that such a scheme will reduce crime and make the community safer, leading to dissatisfaction if it fails to deliver these outcomes.

These issues are explored in more depth in Chapter 7 of the Consultation Paper.

Another issue related to implementation is whether the scheme should apply prospectively (that is, to offenders who commit an offence after the scheme's introduction), or to all offenders regardless of when the offence for which they are being sentenced was committed. The NSW SNPP scheme did not apply retrospectively and only applied to those listed offences after the commencement date of the scheme, while later amendments to the legislation applied the new SNPPs to offences 'whenever committed'.

The Council will need to consider whether to recommend the scheme should operate prospectively only, or retrospectively, and to consider whether a retrospective application would cause difficulties in Queensland, including in light of the fundamental legislative principles set out in the *Legislative Standards Act 1992* (Qld).

It is unlikely the full effects of a SNPP scheme will be known for some time. Ongoing monitoring and evaluation of any scheme introduced should be considered. This will require improved data collection and better linking of information between police, courts and corrections.

The role for a SNPP scheme in Queensland

Finally, it must be considered whether a SNPP scheme in Queensland will enhance current sentencing practices in this state. Current approaches to sentencing should be considered and questions asked about whether there are other legislative and non-legislative approaches that might enhance current practices operating with, or in place of, a SNPP scheme. The impact of a SNPP scheme in Queensland is considered in more depth in Chapter 8 of the Consultation Paper.

SUMMARY OF QUESTIONS

NOTE: These are a summarised version of questions contained in the Consultation Paper. For a full list of questions, please see the Consultation Paper.

- 1 What should be the main aim of a Queensland standard non-parole period (SNPP) scheme?
- 2 What type of SNPP scheme should be introduced in Queensland:
 - defined term scheme (SNPP that is a set number of years – for example, 4 years for sexual assault)
 - standard percentage scheme (SNPP that is a set proportion of the sentence set by the court – for example, 65%), or
 - other (please specify)?
- 3 How should SNPP levels be set and how should a SNPP be defined (for example, the non-parole period for an offence in the mid-range of objective seriousness)?
- 4 When should a court be permitted to set a longer or shorter non-parole period than the SNPP?
- 5 How should offences subject to SNPPs be selected for inclusion in a SNPP scheme?
- 6 What offences or type of conduct should SNPPs apply to?
- 7 Should a SNPP scheme apply to offenders declared as having been convicted of a serious violent offence (who have to serve a minimum of 80% of their sentence, or 15 years, whichever is less, before being eligible for parole) or should these schemes operate independently of each other?
- 8 Should young offenders be excluded from the operation of a SNPP scheme?
If so, how should a ‘young offender’ be defined?
- 9 Are there other ways to meet the aims of a SNPP scheme that should be considered?
If so, what options should be considered?
- 10 Are there any other issues you would like to raise that are relevant to the introduction of a SNPP scheme in Queensland?

CALL FOR SUBMISSIONS

The Sentencing Advisory Council invites submissions on the introduction of a standard non-parole period (SNPP) scheme in Queensland.

What is a submission?

A submission is a response representing an organisation's or an individual's opinion or view.

Things to consider when preparing your submission

Your submission should address the Terms of Reference set by the Attorney-General. The Council in most cases will not investigate matters outside the Terms of Reference.

You should include any facts that support your views, with details of where they come from.

How long should my submission be?

Try to keep the information you provide as succinct as possible and add supporting documents as appendixes. If it is a long submission, please include a short summary.

How will your submission and any personal information be used?

Your submission will be used as part of the Council's current reference to gauge the community's response to the issue of SNPPs and their introduction in Queensland. Information you provide will inform the Council in responding to the Terms of Reference.

Any personal information you provide or include in your submission will be collected by the Council for the purpose only of responding to the Terms of Reference issued under section 200(1) of the Penalties and Sentences Act 1992 (Qld).

Unless you indicate otherwise in your submission, your submission and the information in it may be directly quoted or referred to by the Council in its final report and other publications related to the review, and this may include your or your organisation's name. Submissions may also be provided to interested parties on request.

If you do not want your submission to be quoted or your name disclosed, please advise us at the time of providing your submission. If you intend your submission to be public and agree for it to be referred to but would like your or your organisation's name to remain confidential please let us know this also. Contact information is removed from all submissions before they are provided to other people. The Council may also remove any identifying information from a submission – for example, any information that discusses specific cases, personal circumstances or the experiences of individuals other than the author. Submissions that are made anonymously will not be published.

Submissions that contain offensive or defamatory comments, or that are primarily concerned with issues outside our Terms of Reference, will not be published or referred to in the Council's final report and may not be considered.

How do I make a submission?

Please title your email or written correspondence 'Submission Standard Non-Parole Periods'.

Online

Provide a submission using our online form.

Email us

sac@justice.qld.gov.au

Write to us

Sentencing Advisory Council
GPO Box 2360
Brisbane Qld 4001
Fax: 07 3405 9780

Talk to us

Phone 1300 461 577
TTY Service (FreeCall) 1800 810 586

Or visit us in person (by appointment)

Level 30, 400 George Street, Brisbane