



**Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill  
2010**

The object of the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010* is to introduce Intensive Correction Orders (ICOs) as a community-based sentencing option in New South Wales and to abolish periodic detention orders.

The Law Society's Criminal Law Committee (Committee) has reviewed the Bill and brings the following comments to your attention.

• The Committee's position

The Committee supports the retention of periodic detention as the penultimate step before full-time imprisonment. The Committee is therefore opposed to the proposed abolition of periodic detention which would remove an important component of the sentencing spectrum and inevitably lead to the use of full-time imprisonment in circumstances where it is not necessarily the most appropriate approach.

The Committee's strong preference is for periodic detention to be retained and for ICOs to be introduced as an additional sentencing option with appropriate eligibility criteria and importantly, proper resourcing. The resource requirements for ICOs are monumental. The success of ICOs is resource dependent which, in the current economic climate, is of grave concern to the Committee.

While it is commendable to introduce a sentencing option with a rehabilitative objective, ICOs should not be introduced at the expense of periodic detention.

If the Bill is to proceed, the Committee suggests the following amendments:

- Amend proposed section 7(1) in Schedule 1 to allow ICOs to be available for a maximum term of 3 years rather than the proposed 2 year term.
- Amend proposed section 7(2) in Schedule 1 to allow the Court to set a non-parole period when making an ICO.
- Delete proposed section 67(4) in Schedule 1 to allow Magistrates to order an ICO whether or not the offender has been assessed as suitable by a Corrective Services officer.
- Amend proposed section 90 in Schedule 2, and Division 1 of Part 7, so that the Court, rather than the Parole Authority, has the power to revoke an ICO.

Details of the Committee's position and the proposed amendments are set out below.

• Availability of rehabilitative programs and appropriate community service options

The success of ICOs is heavily dependent on proper resourcing so that the sentencing option operates as intended and is uniformly available across the State. ICOs require an enormous resource commitment as stressed by the Sentencing Council.

A limitation of periodic detention is its lack of availability throughout the State by reason of resource limitations and the resulting discriminatory impact among offenders who live in locations where they cannot have an order imposed upon them. The same problem is likely to arise with ICOs.

It is important that each Probation and Parole Service in NSW has responsibility for supervising ICOs to ensure that ICOs are uniformly available throughout the State. This is not clear in the Bill.

ICOs require the availability of rehabilitative programs and appropriate community service options that do not currently exist in many rural and remote areas (Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*, 30 March 2006, p71). Proposed clause 14(4)(b) in Schedule 4 provides that the assessment report must include an assessment of the availability of resources to address the factors by targeted interventions under an ICO. The lack of availability of suitable programs will reduce its value as a sentencing option.

- Sentence Length

Proposed section 7(1) in Schedule 1 provides that the maximum term of an ICO is 2 years. Periodic detention can currently extend for 3 years (s6(1) *Crimes (Sentencing Procedure) Act 1999*).

ICOs should not have a more limited application than periodic detention, especially if periodic detention is abolished. It is therefore the Committee's view that ICOs should be available for a maximum term of 3 years. This will make the sentence more widely available and permit orders to be of sufficient duration to enable effective rehabilitative or educational program delivery.

The Court should not be precluded from setting a non-parole period as proposed in section 7(2) of Schedule 1. If the ICO is breached and revoked the offender is required to serve the remainder of the term in full-time imprisonment or home detention without parole. Currently if periodic detention is revoked the sentence is served in full-time custody, but the offender is released at the end of the non-parole period. The Court should have the ability to set a non-parole period. During the non-parole period the offender would be subject to the ICO and the balance of the sentence would be served on parole. This sentence structure would ease the burden on Corrective Services officers especially in regard to offenders who have responded well to the order. Parole also provides a gradual transition towards independence for the offender.

- Suitability assessments

The Bill provides that the Court may only order a suitably assessed offender to serve the sentence by way of an ICO. This differs from periodic detention where the Court may make a periodic detention order whether or not the offender has been assessed as suitable to serve the sentence by way of periodic detention. Assessments will involve a level of subjectivity, and it is not appropriate for a Corrective Services officer to have a greater level of discretion in the sentencing outcome for an offender than a Magistrate. Magistrates should have the discretion to order an ICO whether or not the offender has been assessed as suitable. The Committee submits that proposed section 67(4) in Schedule 1 should be deleted.



- Breach

Proposed section 90 in Schedule 2 gives the Parole Authority the power to revoke an ICO pursuant to Division 1 of Part 7. The consequence of the revocation of an ICO is that the remainder of the term of the sentence is served in full-time custody or by way of home detention. The Committee is of the view that it should be the Court, and not the Parole Authority, that has the power to revoke an ICO.