



THE LAW SOCIETY
OF NEW SOUTH WALES

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9 January 2012

The Hon. Jerrold Cripps QC
Chairperson
NSW Sentencing Council
GPO Box 6
Sydney 2001

Dear Mr Cripps,

Intensive Correction Orders

Thank you for inviting the Law Society to comment on the operation and use of Intensive Correction Orders (ICOs).

The Law Society's Criminal Law Committee (Committee) would like to restate its strong preference for periodic detention to be reintroduced, with ICOs retained as an additional sentencing option sitting between periodic detention and community service orders. The abolition of periodic detention has removed an important component of the sentencing spectrum and has inevitably led to the use of full-time imprisonment in circumstances where it is not necessarily the most appropriate approach.

ICOs share many of the same advantages of periodic detention. As a sentencing option it enables the offender to maintain contact with family, friends and employment; it avoids the contaminatory effects of imprisonment; it is cheaper than full-time imprisonment, and it benefits the community by the performance of community work while retaining a strong element of punishment. Intensive case management with a rehabilitative focus would be beneficial for many offenders.

However, it is concerning that ICOs are not available across New South Wales especially in rural and remote areas. ICOs require the availability of rehabilitative programs and appropriate community service options that do not currently exist in many rural and remote areas.¹ The lack of availability of suitable programs reduces its value as a sentencing option. Committee members have reported that there is a lack of work to satisfy the compulsory work requirement under an ICO. If offenders are to maintain employment there also needs to be an expansion of the availability of work at weekends.

An ICO is only available for terms of imprisonment of not more than two years. It is the Committee's view that ICOs should be available for a maximum term of three years. This would make the sentence more widely available and permit orders to be of sufficient duration to enable effective rehabilitative or educational program delivery.

¹ Standing Committee on Law and Justice, *Community based sentencing options for rural and remote areas and disadvantaged populations*, 30 March 2006, p71

The Committee suggests that the legislation should be reviewed to allow the court to set a non-parole period when making an ICO. As an alternative to increasing the maximum period of an ICO to three years, eligibility for an ICO could be based on a non-parole period of two years or less.

The court may only order a suitably assessed offender to serve the sentence by way of an ICO². Assessments 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.

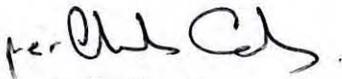
Committee members have reported that the current suitability assessments are problematic. People who would benefit most from an ICO are the least likely to be assessed as suitable. Offenders with mental illness, drug and alcohol problems, and unstable housing are often assessed as unsuitable, despite that fact that ICOs were "designed to reduce an offender's risk of re-offending through the provision of intensive rehabilitation and supervision in the community."³ Offenders have been required to fund and organise their own psychological reports before Corrective Services would assess them as eligible.

The availability of suitable programs and work, the maximum term of an ICO, and the suitability assessments are all areas that require immediate investigation and reform. The Committee suggests that it would then be worthwhile to conduct a further review in 6-12 months' time.

The Committee strongly supports ICOs as an alternative to full time imprisonment despite the issues raised above.

I trust these comments are of assistance.

Yours sincerely,



Justin Dowd
President

² Section 67(4) Crimes (Sentencing Procedure) Act 1999

³ The Hon J Hatzistergos MLC, Attorney General, Second Reading, *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010*, 22/6/10.