



THE LAW SOCIETY
OF NEW SOUTH WALES

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Direct Line: 9926 0216

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The Hon. John Hatzistergos, MLC
Attorney General for NSW
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General,

Intensive Corrections Orders

The Law Society's Criminal Law Committee (Committee) understands that the Government intends to introduce Intensive Corrections Orders (ICOs) by the end of the year, and that ICOs will replace periodic detention as a sentencing option.

The Committee made detailed submissions on the ICO consultation paper and legislative and operations models in November 2008. The Committee would appreciate the opportunity to comment on any relevant legislation before it is introduced into Parliament.

The Committee reiterates its position that at a minimum periodic detention should be retained until ICOs have been completely and successfully rolled-out across the State and independently evaluated.

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 which is of grave concern to the Committee.

A significant 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 but with more serious implications since it has been proposed that offenders assessed as unsuitable must be sentenced to imprisonment.

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). The lack of availability of suitable programs would reduce its value as a sentencing option.

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170 Phillip Street, Sydney NSW 2000, DX 362 Sydney
ACN 000 000 699 ABN 98 696 304 966

T +61 2 9926 0333 F +61 2 9231 5809
www.lawsociety.com.au



It is essential that the Government can demonstrate that the resources are in place and operational before ICOs are implemented. It would constitute a dereliction of elected responsibilities to introduce such major reforms without sufficient resources. The Committee suggests that ICOs should firstly be introduced into remote parts of NSW where periodic detention is scarcely available in order to fully test the availability of resources and supporting procedures.

The prison population in NSW is already at a critically high level. Twenty five years ago the prison population in NSW was approximately 3,100 inmates. The current full-time custody population in NSW is approximately 10,356 inmates. There is no statistical support for this enormous increase in the number of inmates in either recidivism rates or the incidence of criminal activity in the State.

Further, the fact that increasing the prison population has had a direct impact on the Indigenous community out of proportion to the impact on the rest of the community needs to be viewed with serious concern. The findings of the recently released Bureau of Crime Statistics and Research report *'Why are Indigenous imprisonment rates rising?'* are quite disturbing. The report shows that between 2001 and 2008 the adult Indigenous imprisonment rate rose by 37% in Australia and 48% in NSW. Over the same period the non-Indigenous rate of imprisonment in NSW rose by only 7%. The report found that with the possible exception of offences against justice procedures, the increase in imprisonment is not due to increased offending.

Areas with high Indigenous populations have the greatest need for ICOs. Unfortunately it is highly likely that ICOs will be unavailable in these areas due to a lack of resources. If ICOs are not properly resourced and implemented in rural and remote areas, it will leave a gap in sentencing options and there will be a real risk that more Indigenous offenders will be sentenced to full-time imprisonment.

I look forward to your response to the Committee's concerns about the implementation of ICOs.

Yours sincerely,


Joseph Catanzariti
President