

# Intensive Corrections Orders

*Moving Away From Custodial Sentencing for  
Better Outcomes*



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## *Moving Away From Custodial Sentencing for Better Outcomes*

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## Executive Summary

Intensive Corrections Orders (ICOs) exist as an effective alternative sentencing model that can work to address the growing issue of prison overcrowding in New South Wales. As a community based approach, ICOs allow offenders to serve their sentence within a community setting in an environment that fosters rehabilitation, working to improve recidivism rates while reducing the overall cost to government.

The ICOs may be subject to conditions including: requiring the offender to reside only at supervisory approved premises, subject to urine analysis, curfews and a minimum of 32 hours per month of community service.<sup>1</sup>

This report will examine the implementation of ICOs both within Australia and overseas, and the mechanisms of and approaches towards their implementation. Although not active in every state, ICOs have been in use in Australia for a number years and relevant data has now been made available that demonstrates their effectiveness in achieving rehabilitative sentencing outcomes, reducing rates of recidivism, and in allowing for a huge reduction in imprisonment costs.

## Introduction to Intensive Corrections Orders

Intensive Corrections Orders are a rehabilitative approach to sentencing that allows the offender to serve their imprisonment within a community setting rather than a correctional facility.

The key focus of ICOs is to facilitate rehabilitation and provide an alternative mechanism to traditional imprisonment, which is prohibitive of positive societal re-integration. ICOs aim to denunciate criminal behaviour and punish offenders without fully removing them from society, allowing them to develop the ability to participate in society as law-abiding citizens of their own accord.

Whilst the official title of the order differs between state jurisdictions, all variants impose a community-based order that involves conditions such as extended periods of community service, curfews and mandatory involvement in personal development and rehabilitation programs. Ultimately, these programs are designed to reduce an offender's risk of recidivism through the provision of intensive rehabilitation and encouragement of positive re-integration into the community, allowing the offender to remain in contact with family and employment.<sup>2</sup>

While ICOs do not involve incarceration, they do have retributive and deterrent functions. If issued with an ICO, offenders are subjected to restrictions on their movements and intensive

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<sup>1</sup> *Crimes (Administration of Sentences) Regulation 2008* (NSW).

<sup>2</sup> Hon. John Hatzistergos, *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010*, Second Reading Speech, 30 June 2010, accessed at <[http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/1d4800a7a88cc2abca256e9800121f01/1411439e02349760ca257727001c64bf/\\$FILE/LC%204810.pdf](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/1d4800a7a88cc2abca256e9800121f01/1411439e02349760ca257727001c64bf/$FILE/LC%204810.pdf)>.

supervision requirements in order to ensure the safety of victims and society at large. ICO's can be modified to suit different offenders and to reduce the possibility of re-offending by fostering the offender's restoration processes.<sup>3</sup>

## Benefits of Intensive Corrections Orders

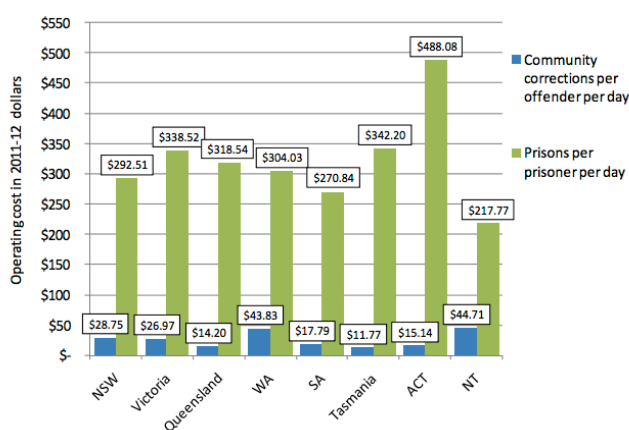
### Reducing Overcrowding

An increase in use of ICOs can help ease the current overcrowding crisis in the NSW prison system. The Bureau of Crime Statistics and Research's Quarterly Update in June 2015 revealed that the NSW adult prison population grew by 2.3% between April 2014 and June 2015, reaching a new record high in March 2015 of 11,624.<sup>4</sup> This brings the total increase over the last financial year to 12.2% (i.e. an additional 1,261 prisoners). The report further demonstrates that the increase is almost entirely attributable to the growth of prisoners on remand. Over the last 3 months, the remand population has risen by 4.6% (compared to the 1.3% increase in the sentenced prisoner population), with the adult remand population rising by nearly a third (32.7%) over the last financial year. ICOs are able to reduce the population burden on the system by providing an alternative to full-time imprisonment that is simultaneously rehabilitative- thereby reducing recidivism.

### Cost to Government

ICOs are also a more cost efficient sentencing model, with the operating costs of community based corrections a fraction of that in full time imprisonment,<sup>5</sup> while reducing the overall burden on the corrections system by reducing recidivism.

Operating costs of community corrections offender versus prisoner per person per day<sup>6</sup>



<sup>3</sup> Jane Lee, 'More offenders could get community correction orders', *Sydney Morning Herald* (online), <<http://www.smh.com.au/national/about-us/more-offenders-could-get-community-corrections-orders-20150102-12h7po.html>>.

<sup>4</sup> NSW Bureau of Crime Statistics and Research, *New South Wales Custody Statistics: Quarterly Update June 2015*, accessed at <<http://www.bocsar.nsw.gov.au/Documents/custody/Q22015Custodyreport.pdf>>.

<sup>5</sup> NSW Bureau of Crime Statistics and Research, *Sentencing Patterns and Statistics*, July 2013, New South Wales Law Reform Commission, accessed at <<http://www.lawreform.justice.nsw.gov.au/Documents/report%20139-a.pdf>>.

<sup>6</sup> Productivity Commission, *Report on Government Services (2013)*, Chapter 8. Prison costs per prisoner per day apply to both sentenced and unsentenced prisoners.

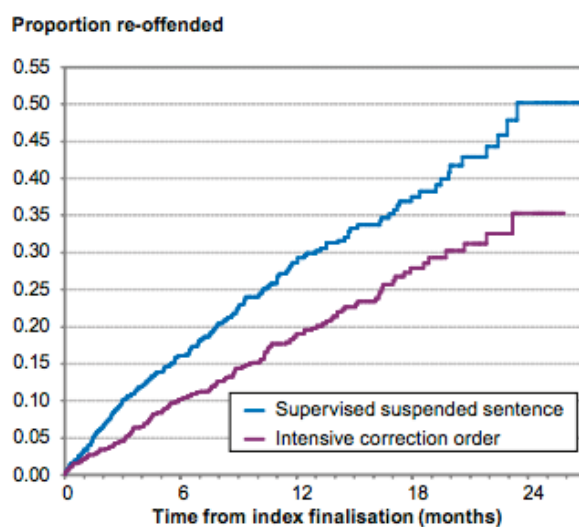
## Improving Rehabilitation & Reducing Recidivism

The benefits of ICOs for offenders are inarguable, as they enable them to preserve their wellbeing by maintaining relationships and employment for the duration of their order. Indeed, ICOs allow offenders to avoid many of the debilitating psychological and social effects associated with imprisonment, and improve their ability to change behaviour and reintegrate into society.

The implementation of ICOs in NSW has led to positive outcomes. More than 80% of individuals who undertake a community-based order successfully complete their requirements.<sup>7</sup> Further, matching the intensity of intervention with the offender's level of risk, criminogenic needs and their responsiveness to the treatment are considered to be far more effective in community-based settings than in prison environments.<sup>8</sup>

Moreover, ICOs have consistently achieved lower rates of recidivism compared to other approaches, including home detention and suspended sentences.<sup>9</sup> A report by the NSW Bureau of Crime Statistics and Research<sup>10</sup> found that an offender on an ICO has a **33% lower chance of re-offending** than an offender on periodic detention.<sup>11</sup>

Cumulative re-offending rates following a court finalisation for matched samples of offenders who received an ICO or were incarcerated as principal penalty (1/10/2010 – 30/09/2012)



## Issues for Implementation

When assessing the effectiveness of ICOs, it is also important to consider the effectiveness of an ICO's method of implementation.

<sup>7</sup> Jo Quigley, *Managing Offenders in the Community* (22 May 2012)

<<http://csa.intersearch.com.au/csajspui/bitstream/10627/416/1/Jo-Quigley.pdf>>.

<sup>8</sup> Clare Ringland and Don Weatherland, 'The Impact of Intensive Correction Orders on Re-offending' (2013) 1 *Crime and Justice Bulletin* 176.

<sup>9</sup> Clare Ringland, 'Intensive correction orders vs other penalties: offender profiles' (2012) 1 *Crime and Justice Bulletin* 163.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

## Contact from Community Services

The Washington State Institute for Public Policy has found that higher levels of face-to-face contact from community services result in a reduction of recidivism rates compared to treatment offering no contact.<sup>12</sup> Indeed, intense supervision addressing extreme criminogenic factors was associated with the best results in rehabilitating offenders, helping them manage issues such as drug and alcohol abuse and anger management.<sup>13</sup>

While intense supervision is beneficial for high-risk offenders, however, it can increase the recidivism rates of lower-risk offenders.<sup>14</sup> Risk factors for re-offending include antisocial attitudes, associates and personality, and a history of anti-social behaviour. If a low-risk offender with relatively pro-social associates and general behaviour is forced into a residential facility with high-risk offenders, their positive support systems are more likely to be damaged,<sup>15</sup> due to the influence of prison culture increasing the risk of reoffending upon release. It is clear then that the application of ICOs need to discriminate between offenders who will be most disadvantaged by full-time imprisonment such as low risk offenders.

NSW adopted ICOs as a form of sentencing in October 2010 under the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*. The Act places ICOs between community service orders and full-time imprisonment within the sentencing hierarchy.<sup>16</sup>

The amendment was a response to the recommendations published in the NSW Sentencing Council's report 'Review of Periodic Detention' on December 2007, which addressed the shortcomings of periodic detention.<sup>17</sup> Along with the introduction of an ICO, the amendment also abolished periodic detention provisions. Since this change, the courts have increasingly applied ICOs as a viable alternative to imprisonment.<sup>18</sup> In 2014/15, an average of 1,364 offenders were supervised each day under ICOs.<sup>19</sup> Each order costs, on average, \$23.83. In contrast, there were 11,011 offenders in full-time custody on average each day, with each offender costing the state \$181.60.<sup>20</sup> Such a difference highlights the cost effectiveness of ICOs.

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<sup>12</sup> Washington State Institute of Public Policy, *What Works in Community Supervision* (December 2011) <<http://www.wsipp.wa.gov/ReportFile/1094>>.

<sup>13</sup> Elizabeth K Drake, 'What works in community supervision: Interim report' (Document No. 11-12-120, Washington State Institute for Public Policy, 2011) <[http://www.wsipp.wa.gov/ReportFile/1094/Wsipp\\_What-Works-inCommunity-Supervision-Interim-Report\\_Full-Report.pdf](http://www.wsipp.wa.gov/ReportFile/1094/Wsipp_What-Works-inCommunity-Supervision-Interim-Report_Full-Report.pdf)>.

<sup>14</sup> Lowenkamp, Christopher and Latessa, Edward, 'Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders' (2004) 6 *Topics in Community Corrections*.

<sup>15</sup> *Ibid*.

<sup>16</sup> Justice NSW, *Intensive Corrections Order – Legislative and Operational Model*, <<http://www.justice.nsw.gov.au/justicepolicy/Documents/intensivecorrectionsordermodel.pdf>>.

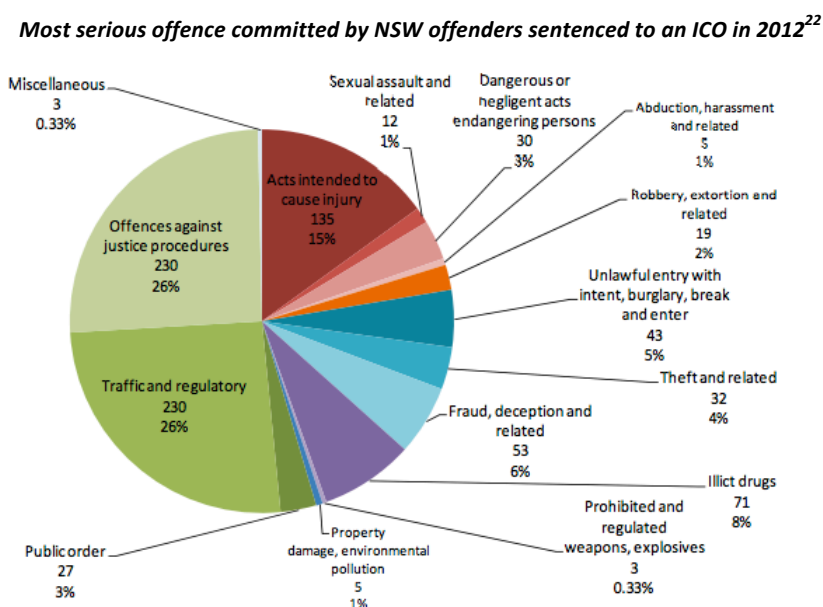
<sup>17</sup> NSW Sentencing Council, *Review of Periodic Detention* (2007).

<sup>18</sup> NSW Sentencing Council, above n 3.

<sup>19</sup> NSW Justice Corrective Services, *Community Corrections Factsheet 2* (2015) <<http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/fact-sheet-2-community-corrections-201015-1649-accessibility.pdf>>.

<sup>20</sup> NSW Justice Corrective Services, *Prisons Factsheet 1* (2015) <<http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/fact-sheet-1-prisons-201015-1643-accessible.pdf>>.

As the graph below demonstrates, ICOs have been used for a variety of offences with the majority for traffic and regulatory breaches and ‘offences against justice procedures’. The latter are offenders resented after a breach of another penalty (i.e. failure to pay a fine).<sup>21</sup>



## Intensive Corrections Orders In New South Wales

### ICO Requirements

In New South Wales, ICOs are implemented under a strict eligibility and suitability criteria as set out in Pt 5, Div 2 of the *Crimes (Sentencing Procedure) Act 1999* (NSW).<sup>23</sup> For the court to be able to issue an ICO, the following criteria are considered:

- The offender must be 18 years or over to be eligible<sup>24</sup>
- The court must be considering imprisonment for no longer than 2 years<sup>25</sup>
- The offender must be a ‘suitable person’ to serve the correction in the community<sup>26</sup>
- Potential risk factors of managing the offender in the community, and their propensity to commit a domestic violence offence
- Drug and alcohol dependency and the offender’s mental health status
- The availability of suitable resources and interventions to address the issues surrounding their offending
- An ICO will not be available if the offender committed a prescribed sexual offence where the victim of the sexual offence was under 16 years of age or the elements of the offence included sexual intercourse<sup>27</sup>

<sup>21</sup> Above n 20.

<sup>22</sup> NSW Bureau of Crime Statistics and Research, *Criminal Court Statistics (2012)*. The offences shown in the “homicide and related offences” category were all manslaughter/driving causing death offences.

<sup>23</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW).

<sup>24</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 67(1)(a).

<sup>25</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 7(1).

<sup>26</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 67(1)(b).

- It must ultimately be appropriate in all the circumstances that the offender serve the sentence by way of intensive correction in the community<sup>28</sup>
- The offender must sign an undertaking to comply with their obligations under the ICO.<sup>29</sup>

Once a court is satisfied that there are no other alternatives and that imprisonment is inappropriate, they will refer the offender for assessment the Department of Corrective Services. This assessment is then used to assist in ascertaining the suitability of the offender for an ICO. Matters that must be considered in the report closely align with the above points of consideration, including:

- The criminal record of the offender
- The estimated likelihood that they will re-offend
- Any potential risks associated with integrating the offender in the community
- The likelihood that the offender will commit a Domestic Violence offence
- Any drug and/or alcohol dependency of the offender
- Mental health status of the offender
- Whether the offender will have suitable residential accommodation<sup>30</sup>
- Availability of suitable resources and interventions to address the issues surrounding their offending.

## ICO Conditions

Intensive Correction Orders are subject to conditions imposed by the sentencing court.<sup>31</sup> There are 18 mandatory conditions contained in s175 *Crimes (Administration of Sentences) Regulation 2008 NSW*<sup>32</sup>, including:

- The offender is to be of good behaviour and not commit any offence
- The offender is to reside only at supervisory approved premises
- The offender is to undertake breath testing, urine analysis, or other medically approved test procedures for detecting drug or alcohol use
- Offender is to participate in a minimum of 32 hours community service work per month

The sentencing court has the discretion to impose any additional conditions they consider appropriate.<sup>33</sup> This may include curfews, total prohibition of alcohol, and orders for the offender to stay away from specific places.<sup>34</sup>

Operationally, ICOs are associated with four levels of supervision which the offender progresses through as they maintain compliance with the court's conditions.<sup>35</sup>

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<sup>27</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 66(1).

<sup>28</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 67(1)(c).

<sup>29</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 67(1)(d).

<sup>30</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 70(2); Clause 14(1) *Crimes (Sentencing Procedure) Regulation* (NSW) 2010.

<sup>31</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 81(1).

<sup>32</sup> *Crimes (Administration of Sentences) Regulation 2008* (NSW).

<sup>33</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW) s 81(4)(a).

<sup>34</sup> Clause 176 *Crimes (Administration of Sentences) Regulation 2008*.



Level 1	Level 2	Level 3	Level 4
Curfew	Discretionary curfew	No curfew	No curfew
Electronic monitoring	Discretionary electronic monitoring	No electronic monitoring	No electronic monitoring
Minimum face-to-face contact with CSNSW supervisor: <b>weekly.</b>	Minimum face-to-face contact with CSNSW supervisor: <b>fortnightly.</b>	Minimum face-to-face contact with CSNSW supervisor: <b>monthly.</b>	Minimum face-to-face contact with CSNSW supervisor: <b>six-weekly.</b>
Minimum of 32 hours per month of work supervised by CSNSW.			
Programs as directed by CSNSW.			
Drug testing.			
Alcohol testing on work and program sites – and home if non-consumption of alcohol is imposed by the Court as an additional condition.			

## Breaches of an ICO

The Commissioner of Corrective Service and the Parole Authority are responsible for dealing with any ICO breaches, rather than the courts.<sup>36</sup> In the event of a breach, the Commissioner may impose formal warnings, more stringent conditions or refer the breach to the Parole Authority who can impose home detention or revoke the ICO. Breaches are classified either as security breaches or operational breaches. Security breaches, such as breaking curfew or committing a criminal offence, will result in a recommendation for the removal of the ICO and consideration for full-time imprisonment or other sanction<sup>37</sup>. Operational breaches, such as absences from programs and failing substance tests, will be met with a report to the Management Committee, which may consider Departmental sanctions<sup>38</sup>.

## Intensive Corrections Orders in other Australian Jurisdictions

The availability of ICOs varies throughout Australia. Most states offer similar programs that are intended to operate between community-service procedures and actual imprisonment.

### Victoria

In Victoria, the Community Correction Order (CCO) was designed to replace the Intensive Corrections Order, as well as the Community-based Order and the Combined Custody and Treatment Order.<sup>39</sup> They are described as a 'flexible sentencing order served in the community'.<sup>40</sup>

<sup>35</sup> Judicial Commission of New South Wales, *Intensive Corrections Orders: 3-650 Supervision Levels*, October 2013, accessed at

<[http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/intensive\\_correction\\_orders.html#p3-650](http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/intensive_correction_orders.html#p3-650)>

<sup>36</sup> Justice NSW, *Intensive Corrections Order – Legislative and Operational Model*, accessed at

<<http://www.justice.nsw.gov.au/justicepolicy/Documents/intensivecorrectionsordermodel.pdf>>.

<sup>37</sup> Justice NSW, *Intensive Corrections Order*, s 39

<sup>38</sup> Justice NSW, *Intensive Corrections Order*, s 41

<sup>39</sup> 'Community Correction Orders: Monitoring Report', *Sentencing Advisory Council, Victoria*, February 2014: 23.

<sup>40</sup> 'Community Correction Order', *Sentencing Advisory Council, Victoria*, 11 May 2015, accessed online

<<https://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-options-for-adults/community-correction-order>>.

The court's power to order a Community Correction Order is provided in the *Sentencing Act 1991* (VIC), which was introduced following the abolition of suspended sentences.<sup>41</sup> The court may order a CCO if the offender has been convicted of an offence punishable by more than 5 penalty units, has received and had regard to any pre-sentence report, and the offender consents to the order.<sup>42</sup>

The Community Correction Order is considered to have broader application than the ICO as they can be implemented for longer/maximum durations in the higher courts, and also cover a wider range of offending behaviours. As a result, more conditions can be attached and the orders can be imposed for greater durations.

## Western Australia

The Western Australian alternative to the ICO is the Intensive Supervision Order (ISO).<sup>43</sup> An Intensive Supervision Order is similar to a community-based order but subject to more stringent conditions than an ICO.<sup>44</sup> Individuals placed under an Intensive Supervision Order have a conviction recorded against them, and if the offender commits another offence while the ISO is in force the offender may be sentenced again for the offence covered by the Intensive Supervision Order.<sup>45</sup>

A supervision condition is a mandatory requirement of an ISO, to ensure that the offender is regularly monitored and receives regular counselling<sup>46</sup>. It requires an offender to contact a Community Corrections Officer, or receive visits from a community corrections officer as the officer orders<sup>47</sup>.

All Intensive Supervision Orders may contain any combination of three primary requirements, subject to the court's discretion.<sup>48</sup>

- **Personal component:** assesses personal factors that may contribute to the criminal behaviour of the offender and their potential for recidivism. The offender is encouraged to recognise these factors, and take appropriate steps to remedy them through treatment or otherwise. The offender must obey the orders of the community corrections officer as to undergoing medical assessment and receiving treatment, attending specified programs, or living in a particular location to receive assessment and treatment.<sup>49</sup>

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<sup>41</sup> *Sentencing Act 1991* (VIC) s37.

<sup>42</sup> *Sentencing Act 1991* (VIC) s37.

<sup>43</sup> 'Intensive Supervision Order: Fact Sheet', *Government of Western Australia, Department of Corrective Services*, 2010, accessed online <[https://www.correctiveservices.wa.gov.au/\\_files/probation-parole/iso-fact-sheet.pdf](https://www.correctiveservices.wa.gov.au/_files/probation-parole/iso-fact-sheet.pdf)>; *Sentencing Act 1995* (WA), s69.

<sup>44</sup> 'Community Based Order: Fact Sheet', *Government of Western Australia, Department of Corrective Services*, 2010, accessed online <[http://www.correctiveservices.wa.gov.au/\\_files/probation-parole/cbo-fact-sheet.pdf](http://www.correctiveservices.wa.gov.au/_files/probation-parole/cbo-fact-sheet.pdf)>

<sup>45</sup> *Sentencing Act 1995* (WA) s69.

<sup>46</sup> 'Intensive Supervision Order: Fact Sheet', *Government of Western Australia, Department of Corrective Services*, 2010, accessed online <[https://www.correctiveservices.wa.gov.au/\\_files/probation-parole/iso-fact-sheet.pdf](https://www.correctiveservices.wa.gov.au/_files/probation-parole/iso-fact-sheet.pdf)>.

<sup>47</sup> *Sentencing Act 1995* (WA) s71.

<sup>48</sup> *Sentencing Act 1995* (WA) s72.

<sup>49</sup> Above n 38.

- **Community service component:** designed to punish or rehabilitate an offender by making them perform unpaid community work.<sup>50</sup> An offender may be ordered to perform between 40 and 240 hours of community service within the term of the ISO with a minimum requirement of 12 hours.
- **Curfew component:** restricts the movement of an offender.<sup>51</sup> They may be imposed for up to six months to limit their movements to a specific location in periods in which there is a high risk of recidivist behaviour.

If the order is successfully complied with, upon its lapse the offender will have a criminal record but will not have served a term of imprisonment<sup>52</sup>.

## Northern Territory

Under new legislation commenced in 2011, courts in the Northern Territory can impose Community-Based Orders and Community Custody Orders<sup>53</sup>. The Community Custody Order (CCO) features similar requirements to the ICO in NSW.

The court has discretion as to whether to impose further conditions on a Community Custody Order.<sup>54</sup> These conditions may require the offender to:

- Undertake a specified prescribed program, if the pre-sentence report so recommends
- Not consume or purchase alcohol or drugs (with the exception of prescribed items)
- Reside at a specific place, to wear an attached monitoring device, and to allow anything necessary to be placed there for the operation of that monitoring device

Violent offenders are excluded from consideration for CCOs.<sup>55</sup> In most jurisdictions offenders are excluded from community-based sentencing if they are not being convicted of a first time offence, but this is not the case in the Northern Territory.

First time and minor violent offenders are considered most suitable to community-based intensive intervention, according to a report by Priscilla Collins and Ruth Barson.<sup>56</sup> In their view, drawing the line at violent offenders increases recidivism, particularly as many Darwin rehab centres exclude violent offenders.<sup>57</sup> The Northern Territory has the highest recidivism rate in the country. In 2006/7 nearly half of the prisoners released were back in prison within two years.<sup>58</sup> Correctional orders have strong potential to reduce recidivism rates in

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<sup>50</sup> *Sentencing Act 1995* (WA) s74.

<sup>51</sup> *Sentencing Act 1995* (WA) s75.

<sup>52</sup> *Sentencing Act 1995* (WA) s75.

<sup>53</sup> *Sentencing Act 1995* (NT).

<sup>54</sup> *Sentencing Act 1995* (NT) s48F.

<sup>55</sup> Collins, Priscilla & Barson, Ruth, 'A 'New Era in Corrections' for the Northern Territory?', *Indigenous Law Bulletin*, 7, 2011: 1.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> The Productivity Commission, *Report on Government Services*, 'Justice Preface', 29 January 2010, p.11, accessed online <<http://www.pc.gov.au/research/ongoing/report-on-government-services/2010/2010/19-partc-preface.pdf>>.

violent offenders and it would be beneficial to apply these programs to these offenders on a case by case basis.

## South Australia

There is no provision for ICOs in South Australia despite the Attorney General's Department's recommendation that alternative sentencing options, including the ICO, be integrated with traditional approaches to imprisonment in the state.<sup>59</sup>

The court can, however, make general community service and supervision orders under the *Criminal Law (Sentencing) Act 1988 (SA)*.<sup>60</sup> Moreover, the *Correctional Services Act 1982*<sup>61</sup> s37A allows for a release on home detention, if an offender with a sentence under 12 months has served 50% of said sentence.<sup>62</sup> This mandatory imprisonment period may, however, limit prisoners' chances of rehabilitation and access to support networks.

## Queensland

ICOs are effectively implemented in Queensland,<sup>63</sup> and are governed by the *Penalties and Sentences Act 1992*.<sup>64</sup> However, the application of ICOs in Queensland is substantially more constrictive than its implementation in NSW. Unlike NSW, which applies multiple classes of ICOs, Queensland enforces a blanket approach that requires offenders to report to a parole officer bi-weekly, undergo drug or alcohol testing more frequently, in addition to the requirements found within the NSW legislation.<sup>65</sup> It also requires up to 12 hours community service per week, as opposed to NSW's 36 hours per month.

## Tasmania

Intensive correction orders are currently not available in Tasmania<sup>66</sup>. However, the court has the power to give community service orders under s4 *Sentencing Act 1997 (TAS)*.<sup>67</sup> Whilst undergoing considerable debate, the Tasmanian government has no clear position regarding the issue.

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<sup>59</sup> Above n 52, p.10.

<sup>60</sup> *Criminal Law (Sentencing) Act 1988 (SA)*.

<sup>61</sup> *Correctional Services Act 1982 (SA)*.

<sup>62</sup> *Correctional Services Act 1982 (SA)* s37A.

<sup>63</sup> Department of Community Safety, Queensland Corrective Services, *Intensive Correction Order*, accessed online <[http://www.correctiveservices.qld.gov.au/About\\_Us/The\\_Department/Probation\\_and\\_Parole/documents/factsheet\\_ICO.pdf](http://www.correctiveservices.qld.gov.au/About_Us/The_Department/Probation_and_Parole/documents/factsheet_ICO.pdf)>

<sup>64</sup> *Penalties and Sentences Act 1992 (QLD)* Part 6.

<sup>65</sup> *Penalties and Sentences Act 1992 (QLD)* s114.

<sup>66</sup> Legislative Council Select Committee, *Correctional Services and Sentencing in Tasmania*, Parliament of Tasmania, 1999, p.169, accessed online <<http://www.parliament.tas.gov.au/ctee/REPORTS/Correct.pdf>>.

<sup>67</sup> *Sentencing Act 1997 (TAS)*.

## Intensive Corrections Orders Overseas

Intensive Corrections Orders are not traditionally used in overseas jurisdictions. However, across the United States, Europe and New Zealand, variants of the ICO as an alternative to imprisonment are commonly employed.

### New Zealand

There are four streams of community-based sentences in New Zealand – community work, supervision, intensive supervision, and community detention. These were implemented by s 44 of the *Sentencing Act 2002* (NZL)<sup>68</sup> which modified the community sanctions and removed periodic detention from sentencing options.

Intensive supervision is most closely related to the NSW ICO. Courts are directed to consider the rehabilitative and reintegration needs of the offender in imposing a sentence of intensive supervision.<sup>69</sup> These orders can be imposed for a period between 6 months and two years.<sup>70</sup> The offender is subjected to standard conditions (mandatory reporting, supervision, etc.)<sup>71</sup>, as well as special conditions in circumstances where the court deems it necessary.<sup>72</sup>

In utilising community-based sentencing, courts must ensure that the offender is convicted of an offence punishable by imprisonment, or the enactment prescribing the offence expressly provides for home-detention or community-based sentences as a form of punishment. This aims to ease apprehension regarding the potential net-widening effect of increasing the number of persons under the control of corrective services.

Concerns have also been raised regarding the use of community-based sentencing as an alternative to fines and probations, as opposed to a substitute for imprisonment.<sup>73</sup>

From 2011/12, the reconviction rates within 12 months of release for community-based sentences was 26.8%, which is significantly lower than the 44.2% of offenders released from prison that are reconvicted,<sup>74</sup> pointing to the extension of the benefits to re-offending rates to the New Zealand experience.

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<sup>68</sup> *Sentencing Act 2002* (NZL) s44.

<sup>69</sup> *Sentencing Act 2002* (NZL) s54C.

<sup>70</sup> *Sentencing Act 2002* (NZL) s54B(2).

<sup>71</sup> *Sentencing Act 2002* (NZL) s54F.

<sup>72</sup> *Sentencing Act 2002* (NZL) s54I.

<sup>73</sup> Review of Community-based Sentences in New Zealand, 1999, *The Cost-effectiveness of Community-based Sentences*, New Zealand Ministry of Justice, 1999, accessed online

<<http://www.justice.govt.nz/publications/publications-archived/1999/review-of-community-based-sentences-in-new-zealand/the-cost-effectiveness-of-community-based-sentences#Net-widening>>.

<sup>74</sup> Officer of Auditor-General, *Department of Corrections: Managing Offenders to Reduce Reoffending*, December 2013, p.66-67, accessed online <<http://www.oag.govt.nz/2013/reducing-reoffending/docs/reducing-reoffending.pdf>>.

## United Kingdom

Custodial sentences in the United Kingdom are only available in circumstances where the court “is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine nor a community sentence can be justified for the offence.”<sup>75</sup>

An offender can be sentenced to a community order in the United Kingdom when he or she had previously been fined, or his or her offence is punishable with imprisonment.<sup>76</sup> A community order can be imposed for a period of up to three years, wherein all the requirements must have been complied with.<sup>77</sup>

Community sentences in the UK aim to punish offenders modifying their behaviour to prevent future crimes, and make amends to the victim of the crime or local community. The court has the discretion to impose one or more of 12 requirements that can include a combination of 300 hours of unpaid work, undertaking alcohol or drug treatment and abiding by a curfew.<sup>78</sup>

Re-offending statistics from 2010 demonstrate that 62.5% of persons released from a custodial sentence of less than 12 months re-offend within one year, whereas 56.2% of persons servicing a community service order re-offend within one year of receiving their order.<sup>79</sup>

## Challenges in Implementing Intensive Corrections Orders

### Lack of Services in Rural and Remote Areas

Despite the fact that ICOs have been an available alternative to full time imprisonment for the past five years, it still experiences limited use in courts today.<sup>80</sup> Moreover, there is a significantly lower availability of ICOs in rural and remote areas in NSW. This is largely caused by the insufficient number of probation officers in these areas to supervise detainees.<sup>81</sup>

### Lack of Rehabilitation Services

Furthermore, ICOs require appropriate community service and rehabilitative service programs and the limited availability of these programs in certain communities reduces the

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<sup>75</sup> *Criminal Justice Act 2003* (UK) s152(2).

<sup>76</sup> *Criminal Justice Act 2003* (UK) s150A(1).

<sup>77</sup> *Criminal Justice Act 2003* (UK) s177(2).

<sup>78</sup> *Criminal Justice Act 2003* (UK) s177(1).

<sup>79</sup> Ministry of Justice, *2013 Compendium of Re-offending Statistics and Analysis* (11 July 2013) pp.13-15, <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278133/compendium-reoffending-stats-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278133/compendium-reoffending-stats-2013.pdf)>.

<sup>80</sup> Standing Committee on Law and Justice, *Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations*, 30 March 2006, p.71.

<sup>81</sup> *Ibid.*

likelihood of ICO success.<sup>82</sup> This is especially the case for rural participants in ICOs where the availability of rehabilitation services is scarce.<sup>83</sup>

## Duty of Care

According to the Australian Institute of Criminology, a study conducted in Victoria demonstrates that ICO offenders are at a larger risk of death than individuals of the wider community and prisoners, predominantly between ages 25-44 and 45-54, largely attributed to drugs and alcohol<sup>84</sup>. This statistic exemplifies the need for regular supervision for offenders of this age who are given a punishment of an ICO.

Nonetheless, duties of care matters are multifaceted and for an ICO offender the duty of care is exceptional, rather than customary. The competence of community corrections systems need to become an efficient source of analysis and deterrence is controlled.<sup>85</sup>

## Meeting the Working Requirements

Currently, at all supervision levels, ISO participants are required to work 32 hours of community service a month. Offenders may experience difficulty in locating employment while completing this mandatory condition.

## Current Eligibility Requirements

Current eligibility requirements of an ICO can also be problematic as they prevent those most in need of such rehabilitative programs from being eligible.<sup>86</sup> Despite the fact that ICOs were introduced to 'reduce offenders' risk of re-offending through the provision of intensive rehabilitation and supervision in the community' offenders with mental illness, alcohol and drug problems and unstable housing are often assessed as 'unsuitable,' therefore denying them the right to ICO programs.<sup>87</sup> Such offenders often also require independent psychological reports before correction services would reassess them as eligible.<sup>88</sup>

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<sup>82</sup> Above n 81.

<sup>83</sup> Ibid.

<sup>84</sup> David Biles, Richard Harding and John Walker. 'The Deaths of Offenders Serving Community Correction Orders' (Trends and Issues in Crime and Criminal Justice No 107, Australian Institute of Criminology, 2016), 3

<sup>85</sup> Ibid.

<sup>86</sup> Ibid; Dowd, Justin, *Intensive Corrections Orders* (9 January 2012) The Law Society of New South Wales <<https://www.lawsociety.com.au/cs/groups/public/documents/internetpolicysubmissions/582675.pdf>>.

<sup>87</sup> The Hon J Hatzisgeros MLCL, Attorney General, Second Reading, *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010*, 22/6/10; Sentencing Advisory Council, *Community Correction Orders Monitoring Report*, *State Government of Victoria*, February 2014, 48.

[https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-](https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Community%20Correction%20Orders%20Monitoring%20Report_0.pdf)

[documents/Community%20Correction%20Orders%20Monitoring%20Report\\_0.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Community%20Correction%20Orders%20Monitoring%20Report_0.pdf); NSW Legislative Council, Standing Committee on Law and Justice, *Inquiry Into Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (January 2005), 10.

<[http://www.parliament.nsw.gov.au/prod/parliament/Committee.nsf/0/37d7f77aa6f81c7cca256ec300261458/\\$FILE/Discussion%20paper%20for%20web.pdf](http://www.parliament.nsw.gov.au/prod/parliament/Committee.nsf/0/37d7f77aa6f81c7cca256ec300261458/$FILE/Discussion%20paper%20for%20web.pdf)>.

<sup>88</sup> Dowd, Justin, *Intensive Corrections Orders* (9 January 2012) The Law Society of New South Wales.

<<https://www.lawsociety.com.au/cs/groups/public/documents/internetpolicysubmissions/582675.pdf>>.

For this reason, eligibility requirements are often termed 'exclusion criteria' due to the fact they render a large proportion of offenders ineligible.<sup>89</sup> Despite this, some positive facts may influence a decision to grant an ICO such as carer's responsibilities and parents with sole childcare responsibilities.<sup>90</sup>

## Maximum Term

There has also been concern regarding the maximum term of the ICO, and it has been suggested that it be moved from two to three years.<sup>91</sup> Increasing the maximum sentence will allow for greater chances of success in rehabilitative programs and enable more offenders to become eligible, further easing the burden on overcrowded prisons in NSW.<sup>92</sup>

Additionally, The Australian Law Reform Commission supports the continuation of implementation of ICOs as an alternative sentence to imprisonment ensuring the following:

- Corrections in NSW acclimatise to the ICO provision to certify equality of access for people with intellectual and cognitive disabilities;
- Permitting the court to try to resolve or negotiate complications with Corrections NSW if a Magistrate or Judge decides a client 'unsuitable';
- Medical, psychological or psychiatric treatment accessible within rehabilitative ICOs.<sup>93</sup>

## Net Widening

To be effective, ICOs should be restricted to the category of alternatives to imprisonment, rather than that of more severe sanctions for less serious offences as ICOs could cause a net widening effect as a result. The net widening effect occurs when a new sanction is introduced to reduce the use of a more severe sanction and, incidentally, reduces the use of even lesser sanctions, widening the net of people under control of the correctional system.

## Conclusion

The introduction of Intensive Correction Orders as a replacement for periodic detention orders has received a great degree of support, particularly from victims of crime

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<sup>89</sup> NSW Legislative Council, Standing Committee on Law and Justice, *Inquiry Into Community Based Sentencing Options for Rural and Remote Areas and Disadvantaged Populations* (January 2005) <[http://www.parliament.nsw.gov.au/prod/parliament/Committee.nsf/0/37d7f77aa6f81c7cca256ec300261458/\\$FILE/Discussion%20paper%20for%20web.pdf](http://www.parliament.nsw.gov.au/prod/parliament/Committee.nsf/0/37d7f77aa6f81c7cca256ec300261458/$FILE/Discussion%20paper%20for%20web.pdf)>.

<sup>90</sup> Ibid.

<sup>91</sup> NSW Law Reform Commission Sentencing Review-preliminary submission, submission by law society's criminal law committee to the NSW Law Reform Commission on 31 October. 2011; Harrison, Geoff, *Intensive Correction Orders* (2 January 2011), <[http://www.geoffharrison.com.au/law\\_articles/intensive-correction-orders](http://www.geoffharrison.com.au/law_articles/intensive-correction-orders)>.

<sup>92</sup> Harrison, Geoff, *Intensive Correction Orders* (2 January 2011), <[http://www.geoffharrison.com.au/law\\_articles/intensive-correction-orders](http://www.geoffharrison.com.au/law_articles/intensive-correction-orders)>.

<sup>93</sup> NSW Law Reform Commission, Sentencing Question papers 5-7, 28 August 2012, Pg. 9 accessed online <[http://www.piac.asn.au/sites/default/files/publications/extras/12.08.28\\_nsw\\_law\\_reform\\_commission\\_sentencing\\_question\\_papers\\_5-7.pdf](http://www.piac.asn.au/sites/default/files/publications/extras/12.08.28_nsw_law_reform_commission_sentencing_question_papers_5-7.pdf)>.



organisations.<sup>94</sup> This is primarily due to the fact that both the community and offenders considered periodic detentions ineffective.<sup>95</sup>

Periodic detention sentences were similar to ICOs, however sentences were served in the middle of the week or weekends only. Difficulties with the past program included a high percentage of breaches, higher rates of recidivism, and individuals who did abide by sentence terms received very little or no form of rehabilitation support or treatment.<sup>96</sup> Intensive Correctional Orders have therefore been viewed as more effective, in both the short term and long term, than periodic detention sentences.

Despite the issues associated with its initial implementation, it is unequivocally clear that Intensive Corrections Orders are a viable alternative to imprisonment that significantly and fundamentally benefits the offender, the criminal justice system and the community at large. Statistical data presented reflects the widespread use of ICOs as they essentially alleviate the overcrowding of prisons in NSW, but also lowers the costs of corrective services.

This proves the effectiveness of the law and the criminal justice system as it aims for a rehabilitative purpose of punishment rather than incarceration, reflecting the protection of individual rights and cost efficiency for the government and society.

The ICO sentencing process embraces the principles of justice reinvestment allowing resources to be placed into the community rather than detach the individual from society. Most importantly, it offers offenders the opportunity to rehabilitate themselves, alter their behaviour and assist in community duties.

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<sup>94</sup> Above n 93.

<sup>95</sup> *Criminal Justice Act 2003* (UK) s177(1); above n 78.

<sup>96</sup> Above n 78.