



An Intensive Corrections Order for NSW

Consultation Paper

October 2008

Submissions

The closing date for submissions is 12 November 2008.

All submissions should be marked to the attention of:
Intensive Corrections Order Consultation
Office of the Attorney General and Minister for Justice

Email: office@hatzistergos.minister.nsw.gov.au (Please include *ICO* in the subject line)
Postal address: GPO Box 5341, Sydney NSW 2001

If you have any enquiries please call:
AGD Penny Musgrave (02) 8061 9222, or
DCS Christopher Quilkey (02) 8346 1129

Introduction

- 1.1 The report by the NSW Sentencing Council (the Council), *Review of Periodic Detention* (December 2007), recommended the introduction of a Community Corrections Order in NSW. The NSW Government is currently in the process of considering whether to introduce such an order. The Department of Corrective Services (DCS) and the Attorney General's Department (AGD) have developed a legislative and policy model, which is attached.
- 1.2 It is intended to name the proposed community based order, the **Intensive Corrections Order (ICO)**.
- 1.3 The purpose of this paper is to explain some of the concepts outlined in the attached document.

The limitations of a Periodic Detention Order (PDO)

- 1.4 Periodic Detention has some significant limitations, including: its lack of availability throughout the State by reason of resource limitations and the resulting discriminatory impact among offenders who live in a location where they can receive it, as opposed to those who live in a location where they cannot have such an order imposed upon them; the under-utilisation of the current Periodic Detention Centres; and the absence of meaningful case management for periodic detainees. All of these issues give rise to significant concerns.
- 1.5 Concerns expressed to the Council about the limitations and inequalities of periodic detention included that:
 - periodic detention has not served its intended purposes (including acting as a deterrent to other possible law breakers, recognising economic benefits of offenders remaining in the workforce, and keeping families together);
 - it is not uniformly available across the State;
 - it is not achieving a deterrent or rehabilitative outcome;
 - its use as a sentencing option is decreasing; and
 - the facilities and staff required for its administration could be put to better use.
- 1.6 Accordingly, adopting an alternative sentencing option, that would take its place between a community service order and full-time imprisonment, is being considered. The ICO is this option.

Comparison between the proposed ICO and current PDO

Feature	Proposed ICO	Current PDO
Sentence Length	2 years maximum	3 years maximum <u>Note:</u> Most PDOs in 2006 were of 18 months or less in duration; only 6% of the population had a PDO of greater than 18 months.
Parole Period	None. This means that the offender will have to comply with all facets of the order for its total duration.	May have a non-parole period (NPP) set. This means that at the end of the NPP, the offender is released on parole and no longer needs to work 2 days per week.
Suitability of Offender	The Court may only order a suitably assessed offender to an ICO.	The Court may order any offender to a PDO whether or not the offender has been assessed as suitable for such.
Consequences if offender is unsuitable	The Court must impose imprisonment if an offender is assessed as unsuitable for an ICO.	Offender need not be sentenced to imprisonment if assessed as unsuitable for a PDO.
Community Work	Yes	Yes
Rehabilitative Programs	Yes	No
Application of conditions and obligations of the Order	7 days per week for duration of Order	2 days per week for duration of NPP; thereafter it is discretionary as to whether or not the offender is supervised.
Curfews	Initially mandatory, then discretionary	None
Offence Exclusions	Will exclude an offender who resides with a person who has an Apprehended Violence Order (AVO) against the offender, or who is a registered victim of the offender.	Cannot be made for an offender who has previously served imprisonment for more than 6 months by way of full-time detention in relation to any one sentence of imprisonment, whether in New South Wales or elsewhere.

Feature	Proposed ICO	Current PDO
	<p>Sex offences: It is proposed that the ICO would also not be available for the prescribed sex offences under s65B of the <i>Crimes (Sentencing Procedure) Act 1999</i> for which periodic detention cannot be given.</p> <p>Otherwise the nature of the offence will be considered in assessing the offender's suitability.</p>	<p>Sex offences: A PDO is not available for certain prescribed sex offences under s65B of the <i>Crimes (Sentencing Procedure) Act 1999</i>.</p>

- 1.7 The ICO has been designed to allow DCS the flexibility to deliver case management to offenders who are living in the community.
- 1.8 The needs of offenders vary greatly. For example, one offender might require treatment for a mental illness, anger management issues, drug dependency, or all three. Another offender might be illiterate or lack education and/or employment skills.
- 1.9 Case management is critical to reducing the likelihood of re-offending because it ensures that each offender's individual needs are identified and the programs and services can be tailored to the offender. This is an imperative in assisting to break the offender's criminal behaviour cycle.
- 1.10 Case management also allows DCS officers to cater to the individual offender's changing life circumstances. For example, if an offender has a latent mental illness which becomes apparent during the term of the order, DCS will be able refer the offender to appropriate community health facilities before it becomes a significant factor in his or her re-offending.
- 1.11 To this end, each offender will be supervised by a Probation and Parole (P&P) Officer who will monitor the offender's compliance with the order's conditions, as well as monitoring the offender's progress in the rehabilitative components of the order.

NSW State Plan

- 1.12 The Government's State Plan includes addressing people's rights, respect and responsibility issues. The Government aims to keep people safe through reduced rates of crime and reduced re-offending. The target is to reduce the proportion of offenders who re-offend within 24 months of being convicted by a court or having been dealt with at a conference by 10% by 2016.
- 1.13 To this end, the features of the proposed ICO are more comprehensive and specifically targeted towards offenders addressing the causes of their offending behaviour by participation in programs relevant to their needs.

Rationale of the sentencing process

- 1.14 The ICO model proposes that the offender be referred for assessment for an ICO *after* the court has decided to impose a sentence of imprisonment. This is the same as periodic detention and home detention.
- 1.15 The ICO proposal is consistent with local and international research which demonstrates that net-widening tends to occur when a new community based sentence is introduced.
- 1.16 Net-widening occurs when courts sentence offenders to a penalty higher in the sentencing hierarchy, than they would otherwise have done so, prior to the introduction of a new sentence.

Precluding the option of suspending the sentence

- 1.17 The ICO model proposes that the sentencing court can only order an ICO assessment if it decides that the sentence should not be suspended. *If* the offender is assessed as *unsuitable* for an ICO, the court *must* proceed to consider either home detention (if assessed as suitable) or full-time imprisonment.

A monthly target for community work

- 1.18 There are a number of proposed standard conditions to be attached to an ICO.
- 1.19 One of the proposed standard conditions is that the offender undertake a minimum of 32 hours per month of community work, plus additional hours of programs or work as required. The P&P Officer will give directions as to the type of programs the offender needs, and the timing of the delivery of programs.
- 1.20 The DCS policy will specify that the P&P Officer must aim to ensure the offender completes a minimum of 8 hours community work per week. However, the offender's residential location, or physical or mental disabilities, may prevent him or her from working each week or from performing 8 hours in any given week. Therefore, the standard condition is expressed as a monthly target of 32 hours.
- 1.21 There are many benefits of having a specific number of hours to be completed every month:
 - a. It ensures consistency in sentencing.
 - b. The monthly target allows DCS to forward plan community work placements.
 - c. It allows DCS to match program requirements to the offender's readiness, needs and his or her availability. For example, if the offender has drug dependency issues, DCS can deliver a short-term program at the beginning of the offender's sentence, and monitor the offender's progress throughout the term of the order. If the offender is illiterate, DCS may place the offender in a literacy program for the entire length of the order which requires attendance at a class once a week. If the offender is a single mother, whose availability to attend programs is dependent on the availability of child care or restricted by school hours, DCS may provide a program which can be delivered flexibly

around her availability. If the offender is unemployed and no immediate need to participate in a particular program, then DCS may direct the offender to perform more than 32 hours of work per week.

Other conditions of the order

- 1.22 The monitoring of an offenders' compliance with the conditions of the ICO will be undertaken by officers of DCS.
- 1.23 In addition to a requirement to perform community work and programs, all offenders will be required to adhere to any conditions attached to the ICO, including but not limited to those relating to: a curfew; drug and alcohol testing; and electronic monitoring.
- 1.24 Other conditions that the offender will be required to adhere to include prohibitions on certain behaviours, such as: not undertaking certain forms of occupation or employment; not associating with certain persons, or persons of a specified class; and not attending certain places or districts.
- 1.25 The court will be able to impose any other condition it considers necessary to reduce the likelihood of the offender re-offending, or that would assist the offender's compliance with the sentence.

Supporting policy and operational procedures

- 1.26 The Council stressed that in order for the ICO scheme to be adopted, the matters listed below had to be guaranteed:
 - a. the provision of transitional or similar centres where offenders on parole or subject to an ICO could reside, and participate in programs aimed at reducing their re-offending;
 - b. the capacity to provide for the supervision, electronic monitoring and surveillance of offenders subject to an ICO, on a State-wide basis;
 - c. the availability of sufficient programs and program providers, and of the specialist staff such as psychologists and counsellors who would deliver the programs, on a State-wide basis;
 - d. the availability of community centres or agencies able to accept offenders for community work, on a State-wide basis;
 - e. the provision of arrangements that would accommodate the need of offenders to travel to the places where they would be required to report in compliance with relevant work and program conditions;
 - f. the provision of stringent suitability assessments; and
 - g. an enlargement of the resources, and possibly the membership of the State Parole Authority, along with the provision of video link capabilities that would enable it to deal with offenders on a State-wide basis.

Availability across the State

1.27 It is proposed that the ICO will initially be available in metropolitan areas. It will eventually be rolled out to other areas of NSW, as indicated below. Although detailed roll-out plans would need to be developed, it is anticipated that the ICO could be rolled out across NSW within 100km of the towns and cities such as these, in the following phases:

- Phase 1 – at commencement of the new order: Sydney Metropolitan, Wollongong, Newcastle and Bathurst;
- Phase 2 – approximately 3 months from the commencement of the new order: Grafton, Wagga Wagga and Tamworth;
- Phase 3 – approximately 6 months from the commencement of the new order: Dubbo, Goulburn/Queanbeyan; and
- Phase 4 – approximately 9 months from the commencement of the new order: Broken Hill.

1.28 It is anticipated that approximately 12 months after the commencement of the order, the ICO will be rolled out to cover a 200km radius of each town and city specified above, which will cover the all major or more densely populated areas of NSW.

Residential facilities

1.29 The Department is introducing a new initiative, Community Offender Support Program Centres, or COSP Centres. COSP Centres are aimed at providing short-term accommodation for offenders who are unable to attain, or maintain, suitable accommodation and/or access to community support services. They will also provide crisis accommodation for offenders.

1.30 This initiative recognises that the lack of stable accommodation, and the inability to access suitable accommodation, is highly significant in influencing the likelihood of re-offending.

1.31 COSP Centres will be established progressively at existing DCS sites and some other locations state-wide.

1.32 During the assessment stage of the ICO, if an offender's accommodation is assessed as unsuitable, consideration will be given to the option of short term accommodation at a COSP Centre.

Supervision, electronic monitoring, surveillance

1.33 DCS would re-allocate the resources and technology needed to facilitate the extra supervision, electronic monitoring and surveillance required to implement the ICO.

Program delivery staff

- 1.34 DCS would also create new positions to facilitate the delivery of programs to ICO offenders.

Availability of work organisations

- 1.35 DCS is in the process of amalgamating the CSO and periodic detention community work agency registers into one register, which will be maintained centrally. The co-ordination of offenders to attend these worksites will also be managed centrally, and will include offenders sentenced to PDOs, CSOs and the proposed ICO.
- 1.36 Historically, the work sites of periodic detention and CSO have been managed separately, and if there has been a vacancy at a work site managed within the periodic detention scheme, and an offender available within the CSO scheme, the CSO offender would not be placed at the periodic detention work site.
- 1.37 The amalgamation of work sites will give DCS the flexibility to place offenders at any site where a commitment to a community agency has been made. It will also ensure that offenders on various community-based orders will be able to be placed at a wider range of work sites, depending on their individual circumstances.
- 1.38 The ICO model has also been created to accommodate offenders who may live in a rural or remote location. As the target is monthly rather than weekly, if the offender does not have a community work agency close to home, DCS may arrange to pick them up and take them to a work site for two days every fortnight.

Transport for offenders

- 1.39 DCS will ensure that there will be a sufficient number of buses to transport offenders to and from work sites, as appropriate.
- 1.40 As the proposed model is a case management approach, this will enable DCS to cater to the needs and circumstances of all offenders. For example, if an offender lives in a metropolitan area, DCS will facilitate the use of public transport, DCS buses or allow the offender to drive him- or herself, as appropriate.

Suitability assessments

- 1.41 As detailed in the model, the legislation will exclude an offender who resides with a person that has an AVO against the offender, or who is a victim of the offender. It is proposed that the legislation will also exclude persons charged with prescribed sex offences under s65B of the *Crimes (Sentencing Procedure) Act 1999*.
- 1.42 The legislation will also require an assessment to be conducted, and for the assessment to be approved by the Commissioner, or Commissioner's delegate.
- 1.43 The assessment criteria is outlined in the model, and the legislation will require these factors to be considered during assessment.

Resources for the State Parole Authority

- 1.44 If, under the ICO, the number of matters coming before the State Parole Authority rose dramatically beyond the number of offenders expected, additional resources may be required. A plan has been developed to cater for this eventuality.