

## Intensive Corrections Order (ICO) - Legislative and Operational Model

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### **Sentencing process**

1. The offender must be over 18 years of age at the time the offence was committed.
2. The sentencing judge determines that the imposition of a sentence of imprisonment is appropriate. Under existing sentencing principles and provisions of the *Crimes (Sentencing Procedure) Act 1999*, this determination may only be made once the court has considered that no penalty other than imprisonment is appropriate.
3. The sentencing judge forms the view that the length of the sentence is likely to be two years or under.
4. The sentencing judge determines that the sentence should not be suspended.
5. After the sentencing judge has considered the above pre-conditions, the offender may then be referred for an ICO assessment.
6. A Probation and Parole (P&P) Officer must conduct an ICO assessment to ascertain suitability, and that facilities and services are available. The assessment must be approved by the Commissioner, or Commissioner's delegate.

### **Supporting DCS operational procedures**

Approval of the assessment will be delegated to an Area Manager (AM), District Manager (DM) or Director, Community Offender Services (COS).

7. The ICO assessment will be undertaken on the basis of the following factors:
  - a) the offender must have suitable accommodation for the term of the order (the offender cannot reside with a person who has an AVO against the offender, or who is a victim of the offender);
  - b) a home visit to the offender's proposed accommodation has been undertaken and that any proposed co-residents have an understanding of the ICO scheme and agree to their address being proposed for the purposes of the offender serving a sentence of ICO and that those co-residents consent to the ICO assessment proceeding.
  - c) the offender's previous convictions (if any);
  - d) the risks associated with managing the offender in the community, including the offender's response to supervision on previous occasions;
  - e) substance abuse issues which would prevent the offender from being able to comply with all components of the order;
  - f) existing physical or mental health conditions which would preclude the offender from being able to comply with all components of the order;
  - g) the existence and extent of any self harm risk, including: the likely impact of the

ICO on that risk; the supports and treatment services necessary to appropriately manage the risk in the community; and the suitability of the offender, in view of the above, to be managed in the community rather than in a correctional centre.

h) the offender's willingness and ability to comply with the ICO; and

i) the public interest.

8. If assessed as suitable for an ICO, and the offender agrees in writing to comply with the conditions of the order, the court sentences the offender to a term of imprisonment that is to be served by way of an ICO.

9. The court will be precluded from setting a non-parole period for the sentence in order to allow for the continuous supervision of the offender throughout the term of the order.

10. The maximum permissible term for the ICO will be two years.

11. A P&P Officer must explain to the offender: the ICO's purpose and effect; the consequences of non-compliance; the circumstances that may result in the conditions of the order being varied; and the circumstances that may result in the order being revoked or suspended.

12. If assessed as unsuitable for an ICO, the court will proceed to sentence the offender to either full-time custody or home detention (subject to a suitability assessment).

### **Supporting DCS operational procedures**

A1. If an offender's accommodation is assessed as unsuitable, consideration will be given to the option of short-term accommodation at a Community Offender Support Program (COSP) Centre.<sup>1</sup>

A2. At the assessment stage, the P&P Officer will develop a case plan for each offender subject to an ICO, in accordance with Departmental guidelines. This is described in more detail below.

A3. The ICO will initially be available in metropolitan areas. 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 Metro, 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*

*Phase 4 – approximately 9 months from the commencement of the new order: Broken Hill*

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<sup>1</sup> See description of COSP Centres at Appendix 3

A4. It is anticipated that within 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 all the populated areas of NSW.

A5. The Corrective Services' Brush Farm Academy is developing a training package to ensure that P&P Officers are able to conduct assessments, and provide assessment reports. The training package will also address any other training needs required for implementation of the ICO.

### **Standard conditions of an ICO**

#### **13. The offender must:**

- a) Not commit another criminal offence.
- b) Report to a Community Offender Services Office within 24 hours, or the first business day, of the court issuing the ICO.
- c) Seek prior approval from his or her P&P Officer, for a change in residential address, unless the offender has a reasonable excuse for not being able to seek prior approval, in which case, the offender must report the change of address within 24 hours, if not in person, then by telephone.
- d) Not leave NSW without permission of the Commissioner or his or her delegate.
- e) Not leave Australia without the permission of the State Parole Authority (SPA).
- f) Comply with all reasonable and lawful directions of a P&P Officer, or Compliance and Monitoring Officer,<sup>2</sup> or the Commissioner (including delegate). These three people are hereafter referred to in point 13 as "a supervisor".
- g) Permit the supervisor, to visit the offender's place of residence at any time.
- h) Submit to searches of places or things under his or her immediate control, as directed by a supervisor.
- i) Not consume alcohol.
- j) Not use prohibited drugs, obtain drugs unlawfully or abuse drugs lawfully obtained.
- k) Submit to breath testing, urinalysis or other medically approved test procedures for detecting alcohol or drug use, as directed by a supervisor.
- l) Not possess or have in his or her control any firearm or other offensive weapon.
- m) Authorise his or her medical practitioner, therapist or counsellor to provide information about him or her, to a supervisor.
- n) Adhere to any curfew conditions imposed by a P&P Officer, or Commissioner

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<sup>2</sup> A Compliance and Monitoring Officer is constituted by section 235G of the *Crimes (Administration of Sentences) Act 1999*. Their role is explained further below in the section entitled 'Community Compliance Group'.

(including delegate).

- o) Undertake a minimum of 32 hours per month of community work, plus additional hours of programs or work, as directed by a P&P Officer, or Commissioner (including delegate).
- p) Submit to any surveillance and/or monitoring, including electronic monitoring, as directed by a supervisor (refer below for a description of electronic monitoring) and must comply with all instructions given by a supervisor in relation to the operation of monitoring systems.
- q) Not tamper with, damage, or disable monitoring equipment.
- r) Not undertake certain forms of occupation or employment as directed by a P&P Officer, or Commissioner (including delegate).
- s) Accept any direction of a supervisor in relation to the maintenance of or obtaining of employment.
- t) Not associate with certain persons, or persons of a specified class as directed by a P&P Officer, or Commissioner (including delegate).
- u) Not attend certain places or districts, as directed by a P&P Officer, or Commissioner (including delegate).

### **Supporting Operational Procedures**

A6. At assessment stage, the P&P Officer will determine an initial case management plan for the offender, which will include the number of hours to be completed each week, and the type of rehabilitative program that will benefit the offender most, in accordance with Department of Corrective Services (DCS) guidelines and policies (refer to levels of supervision in A10).

A7. Without impacting on the total minimum number of 32 hours per month of community work, the P&P Officer will have the flexibility to vary the hours of community work in accordance with the offender's individual circumstances.

A8. The offender will be supervised by a P&P Officer who will monitor the offender's compliance with punitive conditions, as well as monitoring the offender's progress in the rehabilitative components of the order. In accordance with DCS guidelines and policies, the P&P Officer will vary the parameters of those conditions if necessary, according to the offender's behaviour and needs.

A9. The P&P Officer will encourage the offender to seek or maintain appropriate employment, or will monitor the offender's compliance with Centrelink obligations.

A10. All ICO offenders will be placed at supervision level 1, 2 or 3, in accordance with DCS guidelines and policies.

***Level 1 – Curfew and electronic monitoring, a minimum of 8 consecutive hours per week of community work supervised by Departmental staff, plus programs, as appropriate.***

***Level 2 – Discretionary curfew and discretionary electronic monitoring, a minimum***

*of 8 consecutive hours per week of community work, either supervised by Departmental staff or community work organisation sponsors, with spot-checks conducted by Departmental staff, plus programs, as appropriate.*

***Level 3** – No curfew, no electronic monitoring, a minimum of 8 consecutive hours per week of community work supervised by community work organisation sponsors, with spot checks conducted by Departmental staff, plus programs, as appropriate.*

A11. The P&P Officer will recommend programs and the number of community work hours the offender should complete, based on these guidelines. These recommendations will be approved by an AM/DM or Director, COS. The types of matters that are to be taken into account by the P&P Officer when recommending the number of hours of programs include, but are not limited to:

- *whether the offender is on level 1, 2 or 3;*
- *the offender's program needs, taking into account the offence, the offender's criminogenic needs, and the offender's readiness for achieving a rehabilitative effect;*
- *the availability of programs; and*
- *the offender's employment status.*

A12. The distribution of work hours across a month may be influenced by local and/or temporal circumstances.

A13. For example, in a remote parts of NSW it may be difficult to find community work that: does not take jobs away from the local community; the offender is capable of doing; is for a not-for-profit organisation that can provide a supervisor; and is close to public transport (offenders will probably not have a licence and/or car). In these cases, DCS may arrange transport for the offender every fortnight to a location with appropriate community work, so that the offender may complete zero hours of community work in the first week, and 16 hours the second. Or, if the offender is unemployed and lives in an urban area, he or she may be required to perform more than the minimum number of hours.

A14. The number of work hours may increase above the minimum depending on the offender's employment status and family situation. For example, if the offender is single and unemployed, with no dependents, the number of work hours that he or she is directed to complete may be more than 32 hours per month.

### **Additional conditions**

14. The sentencing court may impose any other condition the court considers necessary to reduce the likelihood of the offender re-offending or that would assist the offender's compliance with the sentence.

### **ICO Management Committee<sup>3</sup>**

15. It is proposed that an amendment be made to the *Crimes (Administration of Sentences) Act 1999* to provide that the Commissioner may establish, and appoint the members of, an ICO Management Committee (the *Management Committee*).

<sup>3</sup> This is based on s206 of the CAS Act.

16. The Management Committee is to be constituted by a Chairperson (being one of the members of the Management Committee) and such number of officers of the Department as may be determined by the Commissioner. Notwithstanding, the legislation should provide for the Management Committee to be comprised of a minimum number of officers, and it is proposed that that number be five (5). There should be no upper limit to the size of the Management Committee (refer to point A17 below).

17. The legislation will also specify the quorum for a meeting of the Management Committee, which should be three appointed members.

18. The Chairperson of the Management Committee is to determine the procedure for the calling of meetings of the Management Committee and for the conduct of business at those meetings.

19. The Management Committee will have the function of providing advice and making recommendations to the Commissioner about the case management of an offender serving an ICO and subject to the Commissioner's decision, will have the legislative authority to impose, vary or revoke, Departmental sanctions upon offenders who do not comply with the conditions of their ICO.

20. It is proposed that there will be a statutory requirement for a record to be kept of the Management Committee's meetings and decisions made at those meetings, along with the determinations made by the Commissioner. A statement of the Management Committee's activities must be included, each year, in the Department's Annual Report.

21. The Management Committee will receive reports on offenders, and may recommend to the Commissioner:

- that a matter should be referred to the SPA with recommended action; or
- that a Departmental sanction should be imposed on an offender, or be varied or revoked, where the Management Committee is satisfied that the offender is wilfully not complying with the conditions of his or her ICO; or
- that no action is warranted in the circumstances.

22. The Management Committee may perform other functions as specified within the legislation.

23. The Commissioner may delegate any other functions to the Management Committee relating to the administration of the ICO scheme.

24. The Commissioner or SPA may refer matters back to the Management Committee for re-consideration, as deemed appropriate.

#### **Supporting DCS Operational Procedures**

A15. The flow chart attached (*Appendix A*) illustrates the framework within which decisions are to be made which administer the offender's ICO.

A16. The Management Committee will be formed to promote consistency in breach reports submitted and to ensure that matters are only referred to the State Parole Authority (SPA) for either variation, revocation, or suspension of an ICO as a last

resort. This will save time and resources for SPA. The SPA has expressed a preference for the existence of this committee. This Committee will also ensure that Departmental sanctions are applied consistently and fairly across NSW.

A17. It is anticipated that the Management Committee will be comprised of five members, namely: Executive Director, Community Offender Services (Chair); Executive Director, Legal Services; Executive Director, State-wide Administration of Sentences and Orders; Operations Manager, Community Corrections Group; and Director, Offender Services & Programs. Three members will be required for a quorum.

A18. In the interests of the efficient functioning of the Committee, the Commissioner may establish a list of officers of the Department eligible to be nominated as the deputy of an appointed member of the Management Committee (*eligible officers*).

A19. An appointed member may from time to time nominate an eligible officer to be the deputy of the appointed member.

A20. The nomination of a deputy of an appointed member may be revoked at any time by the Commissioner or the appointed member that nominated the deputy.

A21. The nomination of a deputy under this clause may be for a specified period or an indefinite period and, in respect of the period the nomination is in force, has effect according to its terms.

A22. At the frontline, the P&P Officer will be the case co-ordinator, by receiving and analysing reports from worksite supervisors, program managers and the Community Compliance Group (*Appendix B*).

A23. The P&P Officer will report to the District Manager/Area Manager (DM/AM) or Director, COS, who will have delegation to make decisions about absences, breach reports and revocation reports. The DM/AM or Director, COS, will check reports, and then decide whether to refer it to the Management Committee, or refer it back to the P&P Officer. If the report is of a third absence, the report must be referred to the Management Committee.

A24. After receiving a report from the DM/AM or Director, COS, the Management Committee will review each report and decide whether the matter should be referred back to the P&P Officer, up to the Commissioner, or up to the SPA. The Management Committee Chair will have the statutory authority, in the name of the Management Committee, to issue, vary and revoke Departmental sanctions upon offenders.

A25. The Community Compliance Group (CCG) will conduct random worksite and home visits to conduct drug testing, or check compliance with curfews. The CCG will have the ability to directly report security breaches to the Commissioner, who may then report the breach to the SPA and apply for revocation of the ICO. The CCG will subsequently provide the P&P Officer and the Management Committee with a copy of the breach report (see below for explanation of standard and security breaches).

## Variation, revocation and suspension

25. The offender must apply, in writing, for approval from the Commissioner (including delegate) for authorisation to be absent from work or program requirements, and reporting requirements.

26. The offender bears the onus of demonstrating that any unauthorised absence was reasonable in the circumstances.

27. In order to support an absence owing to illness, a medical certificate from a medical practitioner is required, which clearly indicates the nature of the illness or injury, and states the nature or extent of the illness or injury is such that the offender is unfit for program or work requirements.<sup>4</sup>

28. The hours missed by an authorised absence must be completed within the period of the ICO, unless the Commissioner grants an extension of the order as described below.

29. The offender may apply to the Management Committee for a review of a decision made by the Commissioner (including delegate) to not approve an absence from work or programs.

30. The offender may apply to the SPA for a review of a decision made by the Management Committee, where that Committee has confirmed the initial decision to not approve an absence.

31. The Commissioner (including delegate), or the offender may apply to the SPA for variation or cancellation of an ICO, if:

- a) there has been a material change in the offender's circumstances since the original sentence was imposed; or
- b) the offender is no longer able, or willing, to perform the ICO.

32. An ICO may be cancelled if it cannot continue to run through no fault of the offender (colloquially known as a 'no fault revocation'). The Commissioner may make any recommendation to the SPA, with respect to the offender, as the Commissioner sees fit and the SPA may make any orders, either on its own motion or on the recommendation of the Commissioner.<sup>5</sup>

33. The SPA, either on its own motion or on the application of the Commissioner to the SPA:

- (a) may make an order suspending an offender's ICO, and
- (b) if the offender is not then in custody, may issue a warrant for the offender's arrest.

34. The term of the ICO as originally imposed by the court, must not be extended (except by a court or the SPA), except where the Commissioner extends the ICO for *authorised and approved* or for *unauthorised and unapproved* absences of the offender. The Commissioner will have the discretion to extend the ICO for a period, or for a number of periods totalling no more than 90 days. Where the term, or all terms, of an extension, would result in the maximum period of an ICO (that is, 2 years) being exceeded, the

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<sup>4</sup> This replicates s87(5) of the *Crimes (Administration of Sentences) Act 1999* (CAS Act)

<sup>5</sup> This replicates section 163(1A)-(1B) of the CAS Act.



Commissioner must refer the matter to SPA for it to decide to whether to allow such an extension beyond the statutory limit of 2 years. Such an extension granted by the SPA must not exceed 90 days beyond the 2 years. If the total period of 2 years and 90 days is not sufficient for the offender to complete the ICO by undertaking the missed work and/or program hours, then the SPA must not extend the ICO and must instead impose either home detention or a period of full-time imprisonment in order for the offender to attend to the missed hours of work and/or programs. In special circumstances SPA may extend, on the application of an offender, an ICO by more than 90 days (including an ICO extended by the Commissioner) if it is satisfied it is in the interests of justice.

35. In regard to *unauthorised and unapproved* absences of an offender, this will amount to an operational breach and will therefore be dealt with in accordance with the provisions outlined below under the heading “Breach”. In relation to *unauthorised and unapproved* absences, the offender must make up the missed hours of work and/or programs in addition to any other sanction imposed.

36. The offender may apply to the SPA to review decisions of the Commissioner (including delegate), to extend the ICO for *authorised and approved* absences.

#### **Supporting DCS Operational Procedures**

A26. If the offender is absent from work or programs without having applied for authorisation to be absent, or without that authorisation having been pre-approved, such an absence will be considered ‘unauthorised’ until the offender has proved that it was reasonable for him or her not to seek prior approval, or until such time as approval is granted (even if the approval is retrospective to the period of absence).

A27. The Commissioner will only grant an extension of the ICO if the authorised absence occurs before the order ends and it is not possible for the work or program hours to be completed.

A28. It is proposed that Deputy Commissioners, Assistant Commissioners, the COS AM or DM or Director COS, will authorise absences as the Commissioner’s delegate, on the recommendation of the P&P Officer. If the offender disputes a decision, it will be reviewed by the Management Committee. In addition, if the offender is absent three times, the matter will be referred to the Management Committee for consideration.

A29. In the event of long-term illness or injury of the offender, DCS will explore other options such as performing community work from home.

#### **Breach**

37. There will be two types of mandated breaches of an ICO by an offender: security breaches and operational breaches.

38. The behaviour constituting security and operational breaches will be prescribed in the *Crimes (Administration of Sentences) Regulation 2008* (the Regulation).

39. Security breaches will include breaking curfew, tampering with an electronic monitoring device or being convicted of a criminal offence. Security breaches will result in a breach report to SPA with a recommendation for revocation of the ICO and serving the balance of the ICO term in full-time imprisonment or other sanction.

40. Operational breaches will include but not be limited to an offender: failing a drug or alcohol test; refusing to submit to a drug or alcohol test; failing to follow a lawful and reasonable direction; refusing to work at a site; poor attitude at programs; aggression towards others at work or programs; and unauthorised and unapproved absences from work or programs.

41. Operational breaches will be reported to the Management Committee which may consider a Departmental sanction (refer below), as determined by the Commissioner (including delegate), upon recommendation by the Management Committee

42. Alternatively, the Commissioner (including delegate), will have discretion to report any breach to the SPA, with a recommendation for revocation of the ICO. Where the Commissioner has reported directly a breach to the SPA and the SPA is yet to determine the matter, and where DCS detects a further operational breach *subsequent* to the Commissioner's report to the SPA, the Management Committee will not proceed to consider the further operational breach until the report to the SPA has been determined. Note: An operational breach may be of a minor nature.

43. Departmental sanctions will be prescribed in the Regulation.

44. The Commissioner (including delegate) will determine Departmental sanctions, upon the recommendation of the Management Committee. Sanctions may include: a warning; or a variation of any of the ICO's conditions, for example, increased reporting frequency for a set period; attendance at an additional program; return to full or part curfew for a set period (if curfew no longer applies); or electronic monitoring re-instated for a set period (if applicable).

45. Conduct resulting in a Departmental sanction will not instigate a breach report to SPA for revocation or other sanction.

46. All other breaches, including breaches of conditions that are not operational or security breaches (for example, leaving NSW without approval), will be dealt with by the SPA.

47. Breach proceedings will be instituted by the SPA on its own motion, or the Commissioner (including delegate) upon recommendation of the Management Committee.

48. SPA breach actions will include sanctions as determined by the SPA (as distinct from Departmental sanctions which will be prescribed in the Regulation and determined by the Commissioner upon recommendation of the Management Committee), or variation, or suspension, or revocation, of the ICO.

49. SPA sanctions may include but are not limited to: a formal warning, variation of the ICO, 7-days home detention, or revocation.

### **Revocation**

50. Revocation will result in the balance of the term of the ICO being served by home detention, or full-time imprisonment. Home detention will be limited to similar circumstances to those that currently apply where Periodic Detention is revoked, and only where the offender is assessed as suitable.

51. Once the ICO is revoked, it may be re-instated by the SPA provided that the offender

has, since that revocation, served at least 3 months of the offender's sentence by way of either home detention or full-time detention. Before making an order re-instating the ICO, the SPA must refer the offender to the P&P Officer for assessment as to the suitability of the offender for re-instatement of the ICO.<sup>6</sup>

52. Appeals against SPA decisions will be restricted to administrative law grounds.

#### **Other attributes of the ICO**

53. The ICO will be placed in the sentencing hierarchy between a community service order and full-time imprisonment.

54. The ICO will expire at the end of the term of the sentence, or when it is revoked.

#### **Federal periodic detention orders**

55. Liaison with the Commonwealth Attorney General's Department is occurring and it is anticipated that sentencing options available for state offenders, such as an ICO, will also be available for federal offenders. If periodic detention is abolished as a sentencing option for state offenders it will also no longer be available for federal offenders.

#### **Oversight of DCS staff**

56. For the ICO to work effectively, there is a need to ensure that DCS staff are effectively oversighted, by internal checks and controls.

#### **Supporting DCS Operational Procedures**

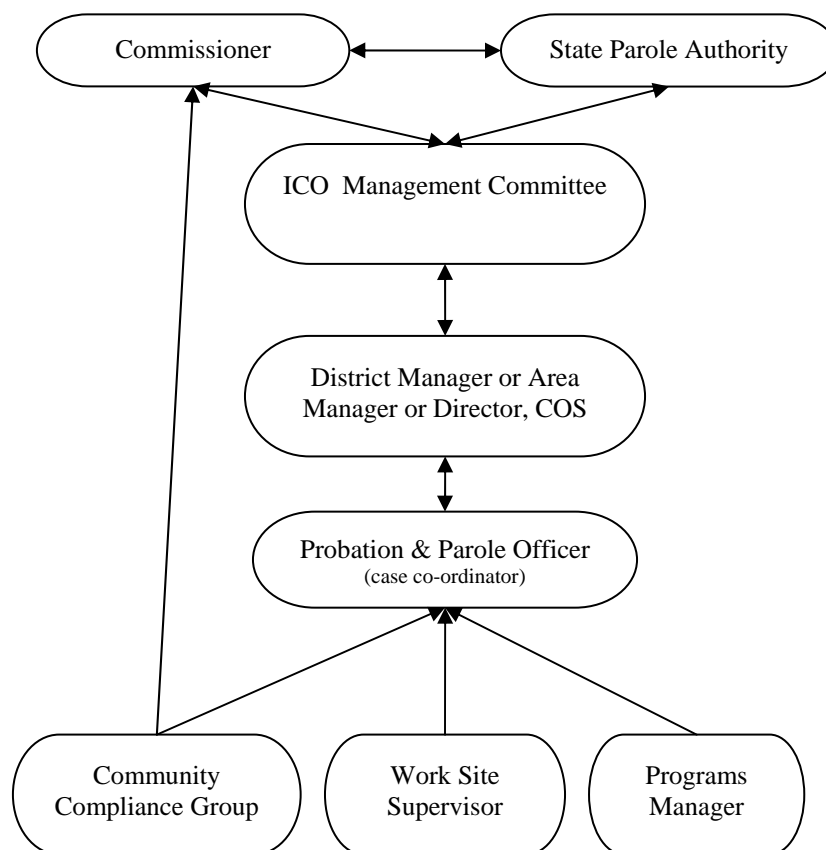
A30. DCS will build accountability mechanisms into the ICO policy and procedures documentation.

A31. DCS policies and procedures will be reviewed within two (2) years of the commencement of the ICO and the outcome of that review will be reported on in the Department's Annual Report.

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<sup>6</sup> This replicates section 164A, CAS Act

## Appendix A – Flow chart: The administration of the ICO



## Appendix B – What is the Community Compliance Group (CCG)?

The Community Compliance Group (CCG) is comprised of Compliance and Monitoring Officers, who are officers of the Department of Corrective Services. The CCG exists to monitor an offender's compliance with community based orders, and inmates on external leave orders, and assist in case management. It operates 24 hours a day, 7 days per week, every week of the year.

Compliance and Monitoring Officers have specific powers under section 235G of the Act. The CCG conducts compliance checks by: face-to-face communication with the offender; observing the offender without verbal interaction; telephone; and electronic monitoring. The CCG also conducts targeted and random drug and alcohol testing.

The CCG is currently situated in two Sydney locations: Blacktown and Campbelltown. It is proposed to expand the CCG state-wide with additional CCG units to be in place by March 2009.

The CCG Blacktown is responsible for the management of all offenders serving their sentence by way of home detention. This involves the initial assessment, case management and electronic monitoring of all offenders on this program.

The CCG Blacktown is also responsible for electronic monitoring and management in the community of some parolees, serious sex offenders on extended supervision orders,

inmates on external leave, and inmates on leave from the Compulsory Drug Treatment Correctional Centre.

The CCG Campbelltown are trained to manage high risk offenders, who may present particular difficulties when faced with breach action, including physical violence. In addition to monitoring compliance with conditions, the CCG Campbelltown also works with P&P to assist offenders to find employment, conduct checks on potential employers and sites, take offenders to interviews, and conduct ongoing compliance monitoring.

### **How does electronic monitoring work?**

Electronic monitoring works by fitting the offender with an Electronic Anklet Transmitter, which is water-proof and tamper-resistant. The anklet operates either by way of radio frequencies, which allows for monitoring in a fixed location; or by the Global Positioning System (GPS), which allows for monitoring of offenders across mobile sites.

GPS equipment can also be programed to create exclusion zones – that is, locations an offender has been ordered to stay away from. If an offender enters one of these zones, an alarm will sound which is transmitted through to the CCG.

## **Appendix C – What is a Community Offender Support Program (COSP) Centre?**

‘Community Offender Support Program Centres’, or COSP Centres, are a new DCS initiative, aimed at providing accommodation for offenders who are unable to attain, or maintain, suitable accommodation and/or access to community support services. A COSP Centre is designed to provide short-term accommodation of approximately 3 to 6 months.

A COSP Centre will also provide crisis accommodation.

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

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