



NEW SOUTH WALES
BAR ASSOCIATION

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Servants of All Yet of None

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Mr Joseph Waugh PSM
Sentencing Council
Sydney GPO Box 31
SYDNEY NSW 2001

Joseph

Dear ~~Mr~~ Waugh,

Statutory review of Intensive Corrections Orders

The New South Wales Bar Association welcomes the opportunity to make a submission on the review of intensive correction orders (ICOs).

Since their introduction in 2010 there was initially a rapid, and there remains a steady, increase in the imposition of ICOs by both the Local and District Courts. From the statistics collected by BOCSAR, the totals in each jurisdiction from 2010 to 2014 were:

ICOs	2010	2011	2012	2013	2014
Local Court	64	527	782	880	1103
District Court	6	93	116	152	180

An early report noted signs that ICOs may be more effective in reducing rates of re-offending than other alternatives. However, without a randomised study, it was impossible to draw firm conclusions.¹

¹ See 'The impact of intensive correction orders on re-offending', Clare Ringland and Don Weatherburn, *Crime and Justice Bulletin* Number 176, December 2013.

The Association supports the retention of this useful sentencing option and notes that it has been held to be available, as a punishment, to offenders who do not have specific rehabilitation needs (See *R v Pogson and Others* (2012) NSWLR 60; (2012) 218 A Crim R 396; [2012] NSWCCA 225).

The Association and a number of other stakeholders² have previously advocated for two changes to ICOs to allow further expansion of their availability and to further refine their imposition:

1. An increase in the maximum length of sentence which may be served by way of an ICO from two years to three years³; and
2. Giving the courts the power to set a non-parole period.

The reasons for these two changes have been set out in previous representations and are described in Chapter 9 of the NSW Law Reform Commission's Report 39 on Sentencing. A brief summary is set out below.

Increase in maximum length

The maximum length of a Periodic Detention Order, which ICOs replaced, was three years. Many offences are too serious for the imposition of a sentence of two years or less but could appropriately be served by way of an ICO. We note that the Sentencing Council had been concerned that most sentences of Periodic Detention had been for 18 months or less and therefore considered that ICOs would not need to be longer than two years. However, the take up of ICOs has been considerable. The most common offence for which ICOs are imposed in the District Court is Aggravate Break, Enter and Commit Serious Indictable Offence.

Please see attached the most recent information from JIRS concerning the length of ICOs imposed in the higher courts for this offence. It can be seen that the maximum period was imposed in 42% of cases and 87% were for periods of 18 months or more. The Association is of the view that if the maximum period were increased to three years, there would be a significant utilisation of this sentencing option by the District Court with sentences between two and three years.

Non parole period

Since an ICO is a sentence of imprisonment and, if revoked and not reinstated, will usually be served by way of full time imprisonment, it is appropriate for a sentencing court to provide for the minimum period to be served in custody before eligibility for parole. Otherwise, an unsuccessful recipient of an ICO may end up spending more time in custody than if he or she had been sentenced to full time custody in the first place.

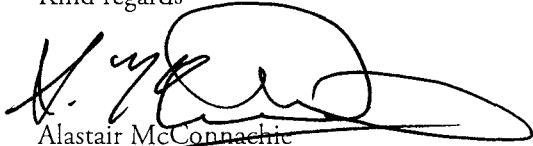
² In relation to the increase to three years, the following stakeholders made submissions to the Law Reform Commission: the Corrective Services NSW, Legal Aid NSW, the Shopfront Youth Legal Centre, the Law Society of NSW and the Public Defenders – see NSWLRC Report 39 at p210.

³ Note: there is no need to specify any difference in maximum length between the Local Court and the Higher Courts, since the jurisdictional limits of the Local Court on sentences of imprisonment will apply to the initial determination of the length of sentence before it is ordered to be served by way of ICO (See s7(1) *Crimes (Sentencing Procedure) Act 1999*).

In summary, the Association supports the retention of ICOs but strongly recommends an increase in maximum length to three years and the introduction of non-parole periods.

Should you or your officers have any questions, please do not hesitate to get in touch with the Association's Executive Director, Philip Selth on [REDACTED] or at [REDACTED].

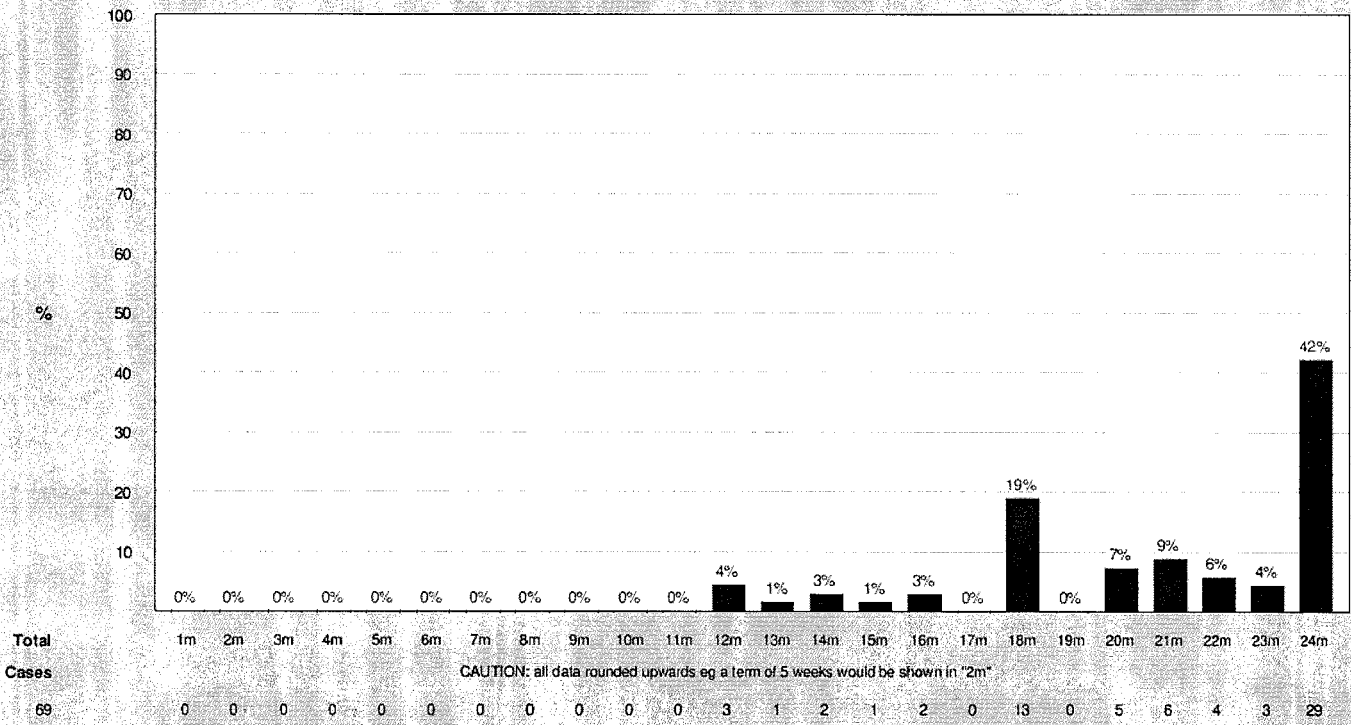
Kind regards

A handwritten signature in black ink, appearing to read 'A. McConnachie', with a large, sweeping flourish extending to the right.

Alastair McConnachie

Deputy Executive Director

Intensive Correction Order for the Principal Offence
All Offenders



Total Cases	1m	2m	3m	4m	5m	6m	7m	8m	9m	10m	11m	12m	13m	14m	15m	16m	17m	18m	19m	20m	21m	22m	23m	24m
69	0	0	0	0	0	0	0	0	0	0	0	3	1	2	1	2	0	13	0	5	6	4	3	29