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Dear Law Reform and Sentencing Council Secretary,

## **Submission: Intensive Correction Orders Statutory Review**

Justice Action would first like to apologise for the tardiness of this short response. We were only informed of this review by a third party. In the future Justice Action would like to be informed directly by the Sentencing Council.

Justice Action views Intensive Correction Orders (ICOs) as a key alternative to imprisonment. However, the current use is far too limited to achieve meaningful change in the justice system. Therefore, we offer recommendations to reduce the restrictions and limitations on ICOs and make them a viable alternative to imprisonment.

The NSW prison system is suffering from serious overcrowding.<sup>1</sup> In order to ease the burden on the justice system, the courts must be more inclined to utilise alternatives to imprisonment, particularly ICOs. The current provisions place cumbersome restrictions on issuing ICOs, consequently limiting them to only the most exceptional offenders.

ICOs play an essential role as an alternative to imprisonment. They balance the rehabilitative needs of the offender whilst maintaining the retributive and punishment purposes of sentencing. ICOs are by no means a light sanction – offenders are subjected to restrictions on their movement, intensive supervision requirements and a minimum of 32 hours community service work a month. The combination of conditions works to ensure the future safety of the victim(s) and society. What Offenders are not subjected to on ICOs, is the enduring negative psychological and social effects of imprisonment.

ICOs offer significant advantages over full-time imprisonment, namely: cost benefits to Corrective Services NSW, and allowing the offender to retain employment and maintain relationships with family whilst serving their sentence. With regards to costs, in 2011-12, the total net expenditure per NSW prisoner per day was \$292.51. In contrast, the total net operating expenditure per offender serving an ICOs was \$28.75.

The current eligibility requirements of ICOs are problematic as they inadvertently prevent those most in need of rehabilitative programs from being eligible. An unfortunate corollary of mental illness, and alcohol or drug addiction is the inability for a sufferer to complete day-to-

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<sup>1</sup> Adrian Raschella & Sarah Gerathy, *NSW prisons overcrowded, courts under pressure: report*, November 2015, accessed at <<http://www.abc.net.au/news/2015-11-24/nsw-prisons-overcrowded-courts-under-pressure-report/6969590>>.

day tasks. This may render them unable to perform community service work and consequently exclude a suffering offender from an ICO.

Justice Action echoes the recommendations provided by the NSW Law Reform Commission,<sup>2</sup> specifically:

- Reduce the number of offences that automatically exclude offenders from ICOs. The type of offence does not necessarily indicate the risk the offender poses;
- Extend the maximum allowable length of an ICO from two to three years, thereby broadening the scope of offenders that can be placed on ICOs;
- Enlarge the scope of the activities that can satisfy the work requirement of ICOs, including engaging in education courses, and work-ready programs;
- Ensure that ICOs are available across the as much of NSW as possible. Permit alternative forms of supervision & community work if the typical mechanisms are unavailable, and;
- Remove the barriers that prevent those with mental illness, and alcohol or drug addiction, being placed on an ICO.

Decreasing the use of imprisonment as a sentencing option must be paramount to the NSW Sentencing Council. The recommendations put forward in this preliminary submission are targeted to achieving this by increasing the circumstances where an ICO can substitute a sentence of imprisonment. This aligns with Justice Action's position on justice reinvestment which would allow financial resources be put into the community, rather than prisons.

We hope to have a more detailed submission to send in the New Year.

Kind Regards,

Andrew Lockie  
23<sup>rd</sup> December 2015

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<sup>2</sup> NSW Law Reform Commission, *Report 139: Sentencing*, July 2013, Chapter 9, accessed at <<http://www.lawreform.justice.nsw.gov.au/Documents/report%20139.pdf>>.