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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PAPER FOR TABLING

**INTENSIVE CORRECTION ORDERS REVIEW REPORT
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INTENSIVE CORRECTION ORDERS REVIEW REPORT

Justice and Community Safety
Directorate

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INTENSIVE CORRECTION ORDER REVIEW REPORT

EXECUTIVE SUMMARY

This is a report of the review of the intensive correction order (ICO) provisions found in Chapter 5 of the *Crimes (Sentence Administration) Act 2005* (the Sentence Administration Act). Section 81 of the Sentence Administration Act provides that the Minister must review the operation and effectiveness of this chapter after 3 years.

This report sets out:

- Terms of Reference for, and purpose of, the ICO Review
- the background to the creation of the ICO sentencing option
- key features of the ICO
- the process for the ICO Review
- the outcome of consultation with stakeholders –including suggestions for change
- next steps.

This review report sets out the information provided as feedback about the operation of the ICO, including suggestions for potential reforms. It will be used as the basis for further consultation with stakeholders to enhance consideration by the Government of reform in the future.

Stakeholder feedback on the ICO was provided by:

Civil Liberties Australia
Legal Aid Commission
Director of Public Prosecutions
Aboriginal Legal Services
ACT Corrective Services
Sentence Administration Board
Human Rights Commission, Victims of Crime Commissioner

Key issues identified by the stakeholder feedback to the operational model relate to:

- The timeliness of the ICO processes and its resourcing
- There is a need for clarification of the operation of provisions relating to eligibility/suitability of offenders for an ICO.
- The barriers to and complexity of sentencing opportunities when offenders generally maintain multiple sentences and sentence outcomes.

The general view was that the ICO is an effective sentencing option and some stakeholders considered it was likely to contribute to reducing re-offending which was also supported by data analysis of the cohort through the operational period of the ICO. Additionally, the order has met its strategic priority indicating a stabilising effect on the detainee population growth in the AMC.

Recommendation Summary

Several opportunities for reform to the ICO scheme have been identified by stakeholders. The proposals identified by stakeholders sometimes conflict with each other, and where this is the case further consideration of the options and or their impacts may be warranted before a final proposal is implemented. The opportunities identified which it is recommended be progressed are:

- Review current Pre Sentence Report (PSR) and Intensive Corrections Order Assessment Report (ICOAR) provisions in the *Crimes (Sentencing) Act 2005* (the Sentencing Act) to ensure that court information requirements are met in a timely and effective manner
- Consider the impact of potential aggregate/global sentencing legislative provisions within the ACT as is applied in NSW, Victoria and other jurisdictions.
- Amend the Sentencing Act to exclude certain serious offences from being amenable to an ICO and limit availability of ICOs to lower terms of imprisonment.

Revise the exclusionary restrictions listed under Section 46D of the Sentencing Act to ensure that target cohorts are not excluded unnecessarily.

- Optimise the effectiveness of community corrections supervision orders through alignment to the ACTCS Risk, Needs, Responsivity (RNR) Framework.
- ACTCS to employ identified Aboriginal and Torres Strait Islander Community Corrections Officers in Community Corrections.
- Enhance the processes under sections 60, 61, 62 and 64 of the Sentence Administration Act to minimise delays to SAB breach inquiries and outcomes.
- Clarify the application of sections 80 and 212A of the Sentence Administration Act in relation to calculation of the offender's sentence.

These proposals will form the basis of more detailed consultation with stakeholders to inform recommendations to the ACT Government for any changes to the ICO scheme, consistent with the underpinning objective to reduce recidivism.

REVIEW AND TERMS OF REFERENCE

Review

The *Crimes (Sentencing and Restorative Justice) Amendment Act 2016* amended the Sentence Administration Act and the Sentencing Act to introduce ICOs as a new sentencing option into the Territory's sentencing framework. The ICO provisions commenced on 2 March 2016. The operation and effectiveness of the ICO must be reported to the Legislative Assembly by 2 March 2020.

This review report sets out the information provided as feedback about the operation of the ICO justice reform, including suggestions for potential reforms. It will be used as the basis for further consultation with stakeholders to enhance consideration by the Government of reform in the future.

Legislation, Policy and Programs (LPP) on behalf of the Justice and Community Safety Directorate (JACS) led the review of the ICO and consulted with the criminal justice system stakeholders to seek their views on the implementation, use and effectiveness of ICOs. The following stakeholders were requested to provide relevant data:

- ACT Corrective Services (ACTCS)
- ACT Sentence Administration Board (SAB)

- ACT Courts and Tribunal (ACTCT)
- ACT Director of Public Prosecutions (DPP)
- ACT Policing (ACTP)
- Legal Aid ACT
- ACT Human Rights Commission (HRC)
- Victim Support ACT
- ACT Law Society
- ACT Bar Association
- Aboriginal and Torres Strait Islander Elected Body
- Aboriginal Legal Service ACT/NSW (ALS)
- Civil Liberties Australia (CLA).

For the purposes of this review, re-offending is defined as an occasion when an offender currently serving an ICO reoffends and is charged by Police and found guilty through the Courts, since the commencement of the ICO scheme and this report.

Terms of Reference

The purpose of the review is to understand the effectiveness of ICOs having regard to the objectives of this sentencing option, and the strategic impact of reducing the detained population at the AMC.

The terms of reference for this review are found in the Sentence Administration Act. Section 81 of the Act provides:

81 Review—ch 5

(1) The Minister must—

- (a) review the operation and effectiveness of this chapter at the end of its 3rd year of operation (2 March 2019); and
- (b) present a report of the review to the Legislative Assembly before the end of the chapter's 4th year of operation (2 March 2020).

BACKGROUND

Justice Reform Strategy

In response to an unprecedented rise in detainee numbers in 2013, the Minister for Corrective Services held roundtable discussions with a range of stakeholders. These roundtables as well as the recommendations and issues raised at the time as part of the Review of Community Corrections, Review of Parole and current Standing Committee on Justice and Community Safety Inquiry into Sentencing led to the Government announcing a broader Justice Reform Strategy

Through the 2014-15 Budget, the Government committed to recurrent funding of \$734,000 over two years (2014-15 and 2015-16 financial years) to progress the Justice Reform Strategy. This commitment explored options for short- and long-term reforms needed in this area. It also provided an opportunity to consider fundamental improvements to the justice system in the ACT, including measures that could be adopted to better address re-offending and ensure community safety.

The Justice Reform Strategy's initial focus was alternative sentencing options to Periodic Detention which was phased out of the ACT between 2014 and 2016. The ACT was the last jurisdiction in Australia to phase out the use of periodic detention as a sentencing option.

On 2 March 2016, in place of Periodic Detention, the ICO was created as a sentencing option in the ACT.

ICOs were introduced with a number of strategic aims including establishing an alternative sentencing option to full time imprisonment, to provide effective supervision and rehabilitation of offenders in the community and to reduce rates of re-offending and associated imprisonment.

OPERATION OF THE INTENSIVE CORRECTIONS ORDER

ICOs as part of ACT sentencing options for ACT Courts

Sentencing in criminal matters is an area of law and practice which needs to evolve and the ICO was created to ensure that the ACT's sentencing framework is modern and responsive.

The ICO was designed to be a stand-alone way of serving a sentence of imprisonment while remaining in the community. In the ACT's sentencing hierarchy, it sits just below a sentence of full-time imprisonment.

It is intended as a sentence of 'last resort' for offenders before full-time imprisonment. The sentence can fulfil a range of purposes of sentencing in circumstances where community safety and other sentencing considerations do not require the sentence to be served by way of full-time imprisonment.

The ICO is intended to be punitive while still allowing the courts to incorporate elements of rehabilitation. It allows offenders to remain in employment and maintain their community ties which are important to reduce the risk of future offending. It is flexible enough to allow the courts to tailor the order to suit the circumstances of the offence and the offender but still sufficiently structured to ensure every order places appropriate demands on an offender.

What are the restrictions on accessing an ICO?

ICOs are a sentencing option set out in section 11 of the Sentencing Act for adult offenders sentenced to a term of imprisonment for any offence – generally for not more than two years but, in certain circumstances for up to four years.

An ICO is not available to young offenders, given the different considerations that apply when sentencing children and younger people.¹

Under section 11(1) of the Sentencing Act, an ICO can only be made for an adult offender where a term of imprisonment has been imposed but no time has been served by the detainee. The sentence is served in the community. However, a court cannot impose an ICO in combination with a sentence of full-time imprisonment, a suspended sentence of imprisonment or a good behaviour order (Sentencing Act, s 29(1)(b)).

The prohibition against combining an ICO with a good behaviour order or suspended sentence reflects that an offender will be subject to an appropriate period of intensive supervision while subject to an ICO. Section 29 Sentencing Act is also intended to support the ICO as an effective stand-alone sentence, streamlining the management of offenders and making it easier to identify breaches.

Section 11(2) provides that when such a sentence of imprisonment of not more than two years is imposed, the sentencing court may order that the sentence be served by way of an intensive correction order.

However, Section 11(3) permits an intensive correction order to be made by the court, where a term of imprisonment of not more than four years has been imposed provided certain criteria are met, having regard to the level of harm caused to both the victim and community by the offence, whether the offender poses a risk to one or more people and the level of an offender's culpability.

The combined considerations of harm, risk and blameworthiness are intended to ensure that where a sentence of imprisonment of over two years is warranted, but does not exceed four years, an ICO is available as an alternative sentencing option.

¹ Hansard, 19 November 2015, week 13 p4216.

There are no exclusions on the type of offence which is eligible for an ICO. The policy intention behind this was that the sentencing court is best placed to weigh up the myriad of factors relevant to sentencing.²

The table below shows the type of offences being sentenced by way of an ICO.

Type of Offences by order count as at 10 November 2019

Offence Category Group	ICO Order Count
Assault (non-sexual)	38
Drug Offences	31
Fraud	22
Handling Stolen Goods	5
Justice Procedure Offences	9
Kidnapping & Abduction	11
Other Offences Against Good Order	4
Other Sex Offences	5
Other Theft	15
Property Damage Etc	7
Robbery Unarmed	7
Sexual Assault	15
Traffic Offences	28
Unlawful Entry Offences	8
Vehicle Theft	10
Weapons Offences	15
Total	230

230 is the count of offences associated with current open ICOs (not individuals, as one person can have multiple ICOs and each order can have multiple offences) and the associated offences with each order.

Assessment Legislation

Before a court can sentence by way of an ICO, it must:

- (a) consider any pre-sentence report (PSR);
- (b) be satisfied, having considered possible alternatives, that the only appropriate sentence is a term of imprisonment of no more than four years; and
- (c) consider an ICO assessment (ICOA)

– section 78, Sentencing Act.

Sections 46C and 46D of the Sentencing Act require that the ICOA address the suitability of an offender to serve their sentence by ICO, having regard to matters, including the offender's:

- degree of drug or alcohol dependence
- psychiatric or psychological condition
- medical condition
- criminal record and response to previous court orders
- employment and personal circumstances
- participation and degree of compliance in undertaking an ICOA
- living circumstances.

² Hansard, 19 November 2015, p 4216.

Assessment of suitability for an ICO

The assessment, known as an Intensive Corrections Order Assessment (ICOA) involves an intensive period of supervision of at least eight to ten weeks duration. The ICO is more stringent than community-based sentences such as a suspended sentence with a Good Behaviour Order. There are core and additional conditions placed on an offender, which include obligations to report to ACTCS, reside as directed, undertake alcohol and drug testing as directed and undertake rehabilitation programs as directed.

While the court is not bound by the ICOA, including any recommendation about suitability or otherwise of an offender for an ICO, the court must record the reasons for its decision to make or decline to make an ICO for the offender, where the court's decision is not consistent with the ICOA recommendation. The table below reflects the referral process for the ICOA and the corresponding orders made.

The table below shows number of persons referred and number of persons serving ICOs by year

Year	Persons Referred (a)	Persons serving ICOs (b)	Number of orders made (total number ICO)	Percentage of people serving orders (a) vs referrals (b)
1 April 2016 -31 December 2016	58	35	70	60%
1 January 2017 – 31 December 2017	112	70	102	63%
1 January 2018 – 31 December 2018	129	82	132	64%
1 January 2019 – 31 October 2019	117	83	137	71%
Sum*	416	270	441	65%
Total offenders for 2016-2019**	396	244		62%

*Sum of annual Persons. A person may be counted multiple times if they present multiple times for referrals or are served multiple ICO orders

** Count of Unique persons counted once in the entire period. Person counted at first presence.

The table below shows the outcome of ICOA Recommendations as at 30 October 2019

		Assessments	Recommended	Request Cancelled	Not Recommended	Of the 58% recommended - ICO Granted	Of the 41% not Recommended - ICO Granted
Total	#	436	253	5	178	233	28
	%		58%	1%	41%	92%	16%
Non-ATSI & unknown	#	354	209	4	141	194	22
	%		59%	1%	40%	93%	16%
ATSI	#	82	44	1	37	39	6
	%		54%	1%	45%	89%	16%

From the commencement of the ICOA process, 92% of the 58% who were recommended for an ICO were granted ICOs. Of the remaining 8%, offenders were granted a mix of Good Behaviour Orders, Custodial sentences and/or bail.

16% of offenders who were not recommended by the ICOA process were granted an ICO.

Demographic of ICO cohort.

ICOs have been accessed by both men and women, Aboriginal and Torres Strait Islanders and non-Aboriginal and Torres Strait Islanders – see the table below for a disaggregated view of the total number of offenders on an ICO as at 1 October 2019.

Offenders on an ICO as at 1 October 2019

	Female	Male	Total Persons
Non-Indigenous	8	79	87
Indigenous	1	13	14
Unknown		1	1
Total	9	93	102

Assessment Referrals and Granting of ICOs

Since its commencement the ICOA process of referral to granting of the ICO has maintained a consistent uptake of approximately 60% by ACT Courts, indicating the ICO has remained a useful sentencing option for judicial officers.

The total number of ICOs made by the Court for the same period was 441³. The total persons to receive an order was 244.

The difference between total orders and total persons reflects that a person can receive multiple ICOs in the same period. The table below provides the number of ICO offenders through the operational period of the order who have multiple sentencing outcomes and associated court orders.

³ 1 April 2016 – 31 October 2019

ICO Offenders with Multiple Outcomes and Associated Court Orders

Number of Offenders	Apr 2016 to 01 Oct 2019	Apr 2016 to 31 Oct 2019
Offender Numbers	235	244
with only 1 ICO	145	152
Total with >=2 orders	90	92
= 2 orders	45	47
= 3 orders	23	22
= 4 orders	6	7
= 5 orders	7	7
= 6 orders	4	4
= 7 orders	2	2
= 8 orders	1	1
= 9 orders	0	0
= 10 orders	2	2

FEEDBACK FROM STAKEHOLDERS AND RECOMMENDATIONS

ACT Courts and Tribunals

Feedback on ICO Breaches relevant to Courts

Recommendation:

Review PSR and ICOA provisions to ensure that court information requirements are met in a timely and effective manner

Stakeholder Feedback:

Feedback received referred to instances of PSR being requested by the Court taking approximately six weeks, followed by a request for an ICOA. The provision of both reports has significant resource implications.

Other feedback suggests that the process for the court to impose an ICO is complex and in some instances has caused delay in finalising matters. While a court has the power to order an ICO as soon as pleas of guilty have been entered, under the current model an ICO will typically only be ordered after a PSR has already been sought, some 6-8 weeks after pleas of guilty have been entered. The drafting of the ICOA report then takes up to a further 10 weeks. This can mean that an offender is not sentenced until four to five months after entering a plea.

One stakeholder suggested that this delay can lead to courts being less inclined to order an ICO assessment report.

Consideration could be given to an amendment in line with s 17D(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) to allow a sentencing Court to impose an ICO without the need for an ICOA where it already has sufficient information and evidence to determine the appropriate outcome; for example where it already has a full pre-sentence report.

Other comments:

The process for ordering an ICO remains complex and causes delay in finalising matters.

Recommendation:

- Consider the impact of potential aggregate/global sentencing legislative provisions within the ACT as is applied in NSW, Victoria and other jurisdictions.

Stakeholder Feedback:

A number of stakeholders raised a concern that section 80 of the Sentencing Act does not allow for combination sentences i.e. an ICO to be served concurrently or consecutively with a sentence of full-time imprisonment, suspended sentence of imprisonment, a sentence of default imprisonment or a good behaviour order, with some limited exceptions. This includes where an offender is under a simple good behaviour order or suspended sentence and the offender is convicted of an offence that was committed before the offence to which the good behaviour order or suspended sentence relates.

This means that offenders who come before the court with current suspended sentences or good behaviour orders and for whom an ICO may otherwise be an appropriate sentencing option, are precluded from being sentenced to an ICO.

Additionally, it is unclear whether offenders who have been remanded in custody for a lengthy period before sentence can have their time spent in custody considered.

One agency pointed to the statutory barriers in the Sentencing Act that provide no scope for combination sentences.⁴ They submitted that section 80 gives rise to a number of difficulties in the sentencing exercise, including:

1. The sentencing court's discretion is effectively fettered by the sentence imposed by a previous judicial officer;
2. Many offenders come before the court with current suspended sentences or good behaviour orders, meaning what may otherwise be an appropriate sentencing option (an ICO) is unavailable to them;
3. Offenders who have been remanded in custody for a lengthy period before sentence cannot effectively have their time spent in custody considered.

One submission considered there was some division on whether the court can backdate an ICO to consider pre-sentence custody.⁵ In *R v Slifkas*⁶, Mossop J backdated an ICO to take into account 286 days spent in custody. Comments received considered that the prohibition on combination sentences should be addressed as the inability to backdate an ICO causes difficulties.

Another submission noted the ACT Courts do not practice aggregate or global sentencing, whereby any existing court orders relating to prior offences, and current matters are resented as a new sentence outcome. Current practice within the ACT may mean that an offender carries multiple court orders concurrently.

Legislation in NSW, South Australia, Tasmania, Victoria and the Northern Territory permits aggregate sentences to be imposed for multiple offences. Aggregate sentences can also be imposed where an offender has multiple Commonwealth sentences.

The submission noted that aggregate sentencing removes some of the complexity when sentencing for multiple offences by setting a single commencement and expiration date for combined offences (irrespective of when the offence was committed or the finding of guilt was made), and may include setting aside the separate sentences that would have been imposed for each offence. This avoids the risk factors and laborious process associated with setting commencement and expiry dates across multiple offences. The aggregate sentence cannot exceed the total term of the separate offences. In NSW, an ICO can be made in an aggregate sentence under two years.

Other Comments:

The structure of an ICO means it only provides supervision by Corrective Services during the period of the order, and it cannot be made along with other orders that provide subsequent supervision.

Restrictions imposed where a Court makes an ICO was an area of concern. In one example, the inability to backdate an ICO meant that a longer sentence had to be imposed.⁷

⁴ See s29(1)(b) & s80(1) of the *Crimes (Sentencing) Act 2005*.

⁵ See *R v Ingram* [2016] ACTSC 199.

⁶ [2019] ACTSC 40.

⁷ *R v Ingram* [2016] ACTSC 199 at [13].

Recommendation:

Amend the Sentencing Act to exclude certain serious offences from being amenable to an ICO and limit availability of ICOs to lower terms of imprisonment.

Stakeholder Feedback:

There are no excluded offences in respect of which a sentence of an ICO is not available. A stakeholder submitted that an ICO is not appropriate for more serious offences, including sexual offending. Currently an ICO is available where a term of imprisonment of not more than four years is appropriate for the offender and is only available for a term of imprisonment of more than two years where an additional threshold test is met. It was noted that ICOs are regularly being used for very serious offences, including child sexual offending and 'king hit' assaults.

It was submitted that the ACT ICO could be amended to be in line with the NSW legislation, which precludes the availability of ICOs for certain offences.⁸

Recommendation:

Revise the exclusionary restrictions listed under Section 46D of the Sentencing Act to ensure that target cohorts are not excluded unnecessarily.

Stakeholder Feedback:

The suitability matters in section 46D of the Sentencing Act includes some matters that may mean offenders who would most benefit from intensive support are unsuitable for an ICO. Offenders with complex needs such as Aboriginal and Torres Strait Islanders may benefit from the intensive supervision of an ICO, which is ultimately aimed at addressing underlying criminogenic factors.

This issue is specifically relevant to drug dependence. The ACT legislation was modelled on the NSW legislation as it stood in 2016. NSW legislation and practice has now progressed to accommodate higher risk offenders who, when the legislation was originally enacted, would not have been eligible for an ICO.

The ICO assessment report process has been noted to contain strict suitability requirements which may inadvertently screen out the types of offenders to whom it was designed to apply.

Offenders with complex needs should not, as far as possible, be precluded from the benefits of an intensive period of supervision aimed at addressing underlying criminogenic factors.

Offending is often associated with drug use and addiction. The strict requirements of an ICO that there be no drug use often means that offenders with drug addictions are routinely assessed as not being suitable for an order.

⁸ The full list of offences excluded in NSW is found at s 67, *Crimes (Sentencing Procedure) Act 1999* (NSW).

ACT Corrective Services

Operational Model

Chapter 5 of the Sentence Administration Act sets out the requirements for a person sentenced to an ICO to serve their sentence, and the process to deal with, and consequences of, a breach of an offender's ICO obligations.

ICOs are subject to core conditions and may be subject to additional conditions.

Section 11(4) of the Sentencing Act requires an ICO to include a set of core conditions which apply to every order and which are listed in the Sentence Administration Act, section 42.

Core conditions of an ICO include:

- the offender must not commit an offence punishable by imprisonment and must disclose if they are charged with an offence
- the offender must report changes of circumstances and contact details, and must not leave the ACT or Australia without appropriate approval
- the offender must comply with directions, including as to where the offender resides, undertaking programs, reporting to, and visits from, corrections officers, and attending hearings of the SAB.

Section 11(5) of the Sentencing Act lists additional conditions the sentencing court can impose as part of an ICO. These include a community service condition, rehabilitation program condition, and conditions requiring compliance with a reparation order or non-association of place restriction order. Any conditions should be capable of being reasonably complied with within the term of the ICO.

Under section 11 (6) a curfew condition may be also included.

ACT Corrective Services - Community Corrections

Supervision

Offenders on an ICOs are supervised in the community by Community Corrections Officers (CCOs)

The principles that govern intervention that CCOs apply is the Risk, Need, Responsivity (RNR) framework. The Risk principles in the RNR framework outline that intervention should be targeted to those offenders of higher risk as they are at the greatest risk of re-offending. Coupled with this is the concept that providing treatment for low risk offenders may perversely increase their risk of reoffending.⁹

Individualised case management plans are developed by the CCO in consultation with the offender, to address factors that contributed to the offending behaviour. Throughout the ICO, the offender will be subject to a high level of supervision reflecting their assessed level of risk and the period they have successfully served.

ICOs include several core conditions as outlined in the Act. Some of these include undergoing regular drug and alcohol testing; submitting to regular home visits; reporting changes in address and contact details; maintaining regular contact with a CCO; residing at an authorised address; and remaining in the ACT unless permission to travel is granted. The offender must not re-offend while on the ICO.

Additional conditions such as community service work, rehabilitation programs and curfews may be imposed depending on individual circumstances.

⁹ Andrews, D.A. & Bonta, J. *The Psychology of Criminal Conduct* (Routledge Taylor and Francis Group, 6th ed, 2017) 180.

Additional ICO conditions

The judiciary may impose one or more additional conditions that can be reasonably complied with in the term of the order. These conditions range from community service work, rehabilitation programs and any non-association or place restrictions order.

Over the prescribed period:

- 13.4% of offenders with ICOs had a Community Service Work condition placed on them. Hours ordered have ranged from as low as 40 hours to up to 300 hours with a total of approximately 4500 hours since May 2016.
- 12.6% of offenders were subject to a curfew condition on the ICO.
- 15.9% of offenders were subject of a rehabilitation condition ranging from mental health treatment, drug and alcohol programs, counselling, domestic violence programs, adult sex offender programs, financial management etc.

In addition to these, offenders were also ordered to not consume alcohol, drive a motor vehicle, not associate with certain parties, adhere to family violence orders, just to name a few.

Home visits

Home visits to ICO offenders is a critical component of building and effective relationship with the offender and ensuring the safety of people living with the offender (including any children).

These home and field visits form a major component of the intensity of the supervision ICO offenders are subjected to. While primarily aimed at therapeutic and rehabilitative goals, such as ensuring the offender is engaged in pro-social activities and avoiding activities likely to increase the risk of re-offending, these visits also contribute to ensuring that any risks to community safety can be identified and adequately addressed. Depending on the level of risk and the period of successful service of the order, ICO offenders will be visited at least once per week through to a bi-monthly basis.

Alcohol and other drug testing

ICOs restrict the offender to a blood alcohol level of less than 0.02, however the court may order the offender not to consume alcohol, in which case the blood alcohol limit is 0.00. Furthermore, the offender must not use or obtain a recreational/unprescribed drug.

Depending on the level of risk and the period of successful service of the order, ICO offenders will be AOD tested as often as twice per week.

Offenders provide on-site urine and oral fluid samples for AOD testing, this replaced previous off-site testing (pathology based) arrangements and to complemented onsite breath analysis arrangements.

Processes for AOD testing are complex and subject to evidence thresholds as test outcomes may generate breach of the ICO conditions. CCOs direct an offender to submit to AOD testing must undertake initial and refresher training. The testing process including the handling and storage, chain of custody and test kits must conform to national standards to ensure test results meet very high forensic benchmarks.

Community Safety and the offender risk

CCO measure the risk of the offender committing further offences while on the ICO via the Level of Service Inventory Revised, a risk tool used in the Correctional jurisdiction. This tool measures the level of stability of an offender, using indicators including as living arrangements, employment, education, family relationships and drug use.

The following table provides for the type of risk measured for the ICO offenders on 1 October 2019:

LSIR	ICO Offender count
1.Low	35
2.Low/Medium	28
3.Medium	26
4.Medium/High	11
5.High	2

The data indicates that offenders on the ICO are low, low/medium and medium likelihood of reoffending. Although offences types (see page 7) may be more serious in nature, the risk of reoffending in the community is low to medium.

Feedback from Stakeholders and Recommendations – ICO Operational Model in ACT Corrective Service

Recommendation:

Optimise the effectiveness of community corrections supervision orders through alignment to the ACTCS Risk, Needs, Responsivity (RNR) Framework.

Stakeholder Feedback:

It is essential to supervise detainees in accordance with their perceived risk. ACTCS employs the Risk Needs Responsivity to determine the perceived risk and applies *minimum* supervision standards in accordance with the risk.

There is a need to enhance alignment between minimum supervision levels and the Risk Needs Responsivity (RNR) Framework to ensure that supervision levels are optimized in reducing risk.

Recommendation:

ACTCS to employ identified Aboriginal and Torres Strait Islander Community Corrections Officers in Community Corrections.

Stakeholder Feedback:

There is a need for more culturally appropriate supervision of Aboriginal and Torres Strait Islander offenders on ICOs to better facilitate the response of Aboriginal and Torres Strait Islander offenders to supervision. Stakeholders have identified gaps in cultural competency and engagement strategies.

Have indigenous probation and parole officers supervising orders for Aboriginal and Torres Strait Islander offenders or alternatively have suitable indigenous community members involved in the supervision process.

Anecdotally, Aboriginal and Torres Strait Islander offenders have responded reasonably well to the introduction of ICOs and there probably has been some influence on re-offending. Where further offending occurs for some clients, the ICO is at least successfully completed before this occurs.

Programs to reduce rates of incarceration, especially for Indigenous people are strongly supported. Alternatives to jail are far preferable, both in human rights and economic terms. However, the provision of employment and accommodation was are considered critical in the ICO being successful.

Sentence Administration Board

The ICO is supported by robust consequences in the event an offender does not adhere to the requirements of the order.

If a new offence is committed during the term of the order, a court is required to activate the remaining term of imprisonment either in full or in part unless it is not in the interests of justice to do so.

If one or more of the other conditions of the order are breached, then the Sentence Administration Board (SAB) is authorised to conduct a hearing of the matter.

The SAB is provided with a power to respond to breaches, by imposing a short period of full-time imprisonment as well as other more traditional consequences, such as cancellation of the order.

Sentence Administration Board Breaches

According to the 2018-19 Sentence Administration Board Annual Report there has been a 33.1% increase in ICO matters before the Board primarily breach inquiries. Many of the breach matters resulted in a formal warning (55.8%), which is a reduction from the previous year (59.7%). The table below shows the outcomes of alleged breaches reported to the SAB from 02 March 2016 to 02 March 2019.

	2016-17 includes one person from 2/3/16-30/6/16	2017-18	2018-19 (to 2/3/2019)	Total
Intensive Corrections Order breach reports received (see note 1)	78	134	50	261
Number of hearings held in relation to ICO breaches (see note 2)	79	139	87	304
No. of individuals that breached (see note 3)	30	48	40	118
<p>1. A breach report may contain one or more allegations of failure to comply with the conditions of an ICO.</p> <p>2. The Board may hold several hearings before finalising a single breach outcome.</p> <p>3. Some offenders receive more than one outcome per breach report; some had multiple breach reports with a single outcome.</p>				

What happens if an offender does not meet their ICO obligations?

An offender's compliance with an ICO is supervised by community corrections officers (CCO). If a CCO believes an offender has breached any of the conditions of the ICO, this must be reported to the SAB - (s 59 Sentence Administration Act).

If a police officer believes an offender has breached any of the conditions of the ICO the police officer may arrest the offender without a warrant and as soon as practicable bring the offender before the SAB, or if the SAB is not sitting, before a magistrate (who must adjourn the matter until the offender can be brought before the SAB) – (s 60 Sentence Administration Act).

An offender can also be brought before the SAB based on a warrant issued by a magistrate, for the arrest of the offender, in response to an information that there are reasonable grounds for suspecting the offender has breached or will breach any of the offender's ICO obligations – (s61 Sentence Administration Act).

The SAB has a statutory role of supervising sentences imposed by courts on offenders if a non-parole period has been set by the Court. This includes deciding whether parole should be granted, management of offenders and deciding on breaches of parole. When ICOs were introduced the SAB's supervisory powers were extended to include ICOs.

The SAB can hold an inquiry to decide whether an offender has breached any of the offender's ICO obligations (s 62 – Sentence Administration Act).

If, after conducting an inquiry the SAB is satisfied that the offender has breached any of their ICO obligations, actions the SAB can take are (one or more of the following):

- give the offender a warning
- suspend the ICO for either 3 or 7 days (depending on whether the offender admits the breach) to be served as imprisonment;
- cancel the ICO (with the result the remainder of the sentence will be served as full-time imprisonment)
- refer the offender to a court for discharge of the ICO (if it is unlikely the offender will be able to serve the remainder of the ICO, e.g. due to health or other circumstances).

In relation to certain breaches (e.g. the offender is convicted of a further offence carrying a sentence of imprisonment) the SAB must cancel the ICO.

The table below shows the outcomes of SAB Breaches for the operating period of the ICO order:

Date	Formal Warning	3 Day Suspension	7 Day Suspension	Cancellation 1	Adjourned 2	Remitted	Rescheduled	NFA	Not Proved	Combined total
02/03/2016-30/06/2016	0	0	1	0	0	0	0	0	0	1
01/07/2016-30/06/2017	38	7	12	4	14	0	0	1	0	76
01/07/2017-30/06/2018	80	18	5	6	18	0	0	6	1	134
01/07/2018-02/03/2019	48	6	0	8	21	1	1	1	1	87
Total	166	31	18	18	53	1	1	8	2	298

1. The relatively low rates of cancellation may be attributed to the effectiveness of increased supervision

2. The Board may adjourn a breach hearing several times in order to obtain further information before finalising a breach matter.

Sentence Administration Board Hearings

If the CCO believes on reasonable grounds that the offender has breached the ICO, they are required to report the breach to the Sentence Administration Board (SAB) as soon as practicable. It is the responsibility of the SAB to determine whether the breach has occurred. In most cases this happens within one week of the alleged breach. Any offender who breaches an ICO is subject to clear, proportionate consequences. This may involve a warning notice, or a short period in custody, typically 3-7 days. Alternately, the SAB may cancel the ICO, meaning the offender must serve the remaining period in full-time imprisonment. The offender may apply to the SAB to be release on the ICO after they have served 30 days.

In addition, s 60 of the Sentence Administration Act allows a police officer to arrest an offender without warrant on the belief, based on reasonable ground, that an offender has breached this usually occurs for breach of curfew. The police officer must soon practicable bring an offender before the Board if the Board is not sitting a magistrate. The magistrate must then adjourn the matter until the offender can be brought before the Board. Section 61 allows for a judge or magistrate to issue a warrant based on information under oath that there are reasonable grounds for suspecting that the offender has breached.

Section 62 Sentence Administration Act provides that the Board must conduct an inquiry if they receive a report from a correction officer of a breach or if an offender is arrested under section 60 or 61. However, before a Board starts an inquiry under section 62 in relation to an offender the Director-General must give written notice of an inquiry to the offender and the Director of Prosecutions. An offender is invited to make submission and the Director-General must as soon as practicable tell the Board of the fact that notice has been given.

This process places extensive time delay in the Board's ability to hear the breach and goes against the principle of swift, short, sharp sanctions. In addition, Community Corrections are not always made aware of breach matters adjourned by the Court in order to facilitate the timely issuing of a notice.

Feedback on ICO Breaches in ACT Sentence Administration Board

Recommendation:

Enhance the processes under sections 60, 61, 62 and 64 of the Sentence Administration Act to minimise delays to SAB breach inquiries and outcomes.

Stakeholder Feedback:

Existing processes to deal with breaches before the SAB can conduct an enquiry into an alleged breach, in particular notice requirements under section 62 of the Sentence Administration Act, can result in delay in the Board's ability to hear breaches, which is not consistent with principles of swift, short, sharp sanctions.

Stakeholders identified the need to have regard to the numbers of breaches coming before the Board, the statutory timeframes in the Act, and the significant associated work-load increase. The number of ICO breach hearings in 2016-17 was 78, increasing to 139 in 2017-18.

One stakeholder suggested that enabling Community Corrections Officers to manage breaches relating to the provision of a positive urinalysis result through case management policy and removing mandated reporting from section 42(1)(f) of the Sentence Administration Act may minimise delays and assist in the offender's rehabilitation in the community.

In relation to the Board's power to sanction an offender for a breach of an intensive corrections order concerns were expressed with regards to the application of s 64 of the Sentence Administration Act by the Board. There have been instances where the Board has proven a breach and the matter has been adjourned to determine a sanction to be applied by the Board. Whilst there is no legislative impediment to this occurring it goes against the underpinning philosophy of the ICO which is swift, short, sharp sanctions. A delay in communication of a decision with regards to a sanction places additional stress on an offender and potential impacts on community safety.

Recommendation:

Clarify the application of sections 80 and 212A of the Sentence Administration Act in relation to calculation of the offender's sentence.

Stakeholder Feedback:

There is a need to clarify the effect of sections 80 and 212A of the Sentence Administration Act on the term of an offender's sentence, where the SAB finds a breach proven. Section 80(2) Sentence Administration Act provides that any period for which a warrant is outstanding, and the offender is not in custody (i.e. on the run), does not count as a part of the offender's term of imprisonment to be

served by way of ICO.

Sections 80 and 212A of the Sentence Administration Act do not appear to have the effect of automatically extending the term of an offender's sentence or the term of the sentence that the offender must serve by way of ICO.

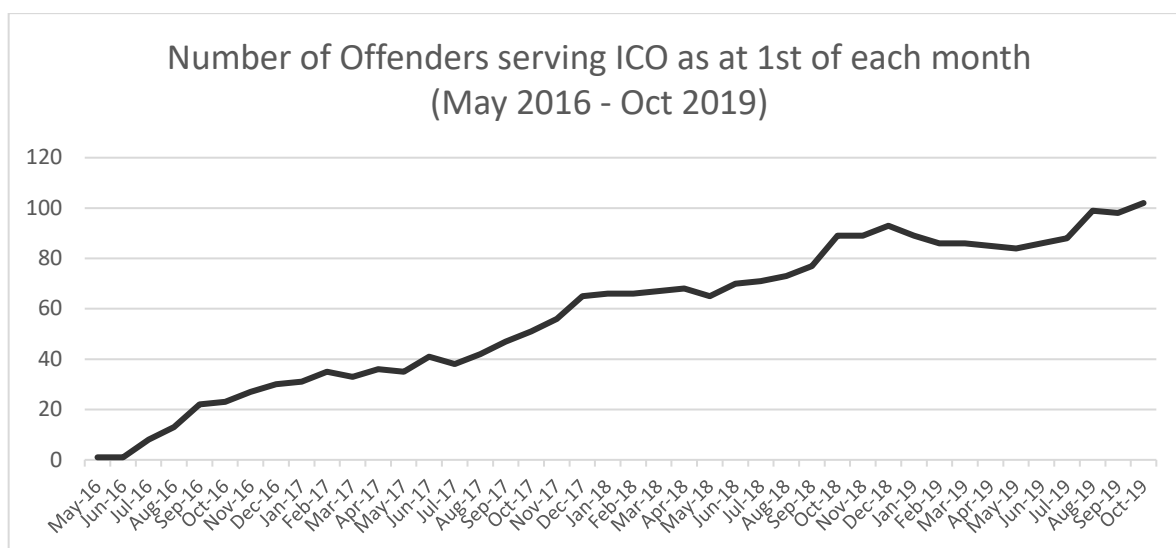
EFFECTIVENESS OF THE INTENSIVE CORRECTIONS ORDER

Since the implementation of this sentencing option the number of offenders serving an ICO have increased steadily. On 1 October 2019 there were 102 offenders serving an ICO, Table 1 provides a disaggregated view of the total number of offenders.

Number of offenders on an ICO as at 1 October 2019

	Female	Male	Total Persons
Non-Indigenous	8	79	87
ATSI	1	13	14
Unknown		1	1
Total	9	93	102

The total number of offenders serving an ICO at the first of each month is provided in the graph below. However, it should be noted that the unique number of offenders on an ICO from April 2016 to October 2019 was 235 whilst the total number of ICOs from May 2016 to October 2019 was 429. This reflects multiple orders provided to single offenders.

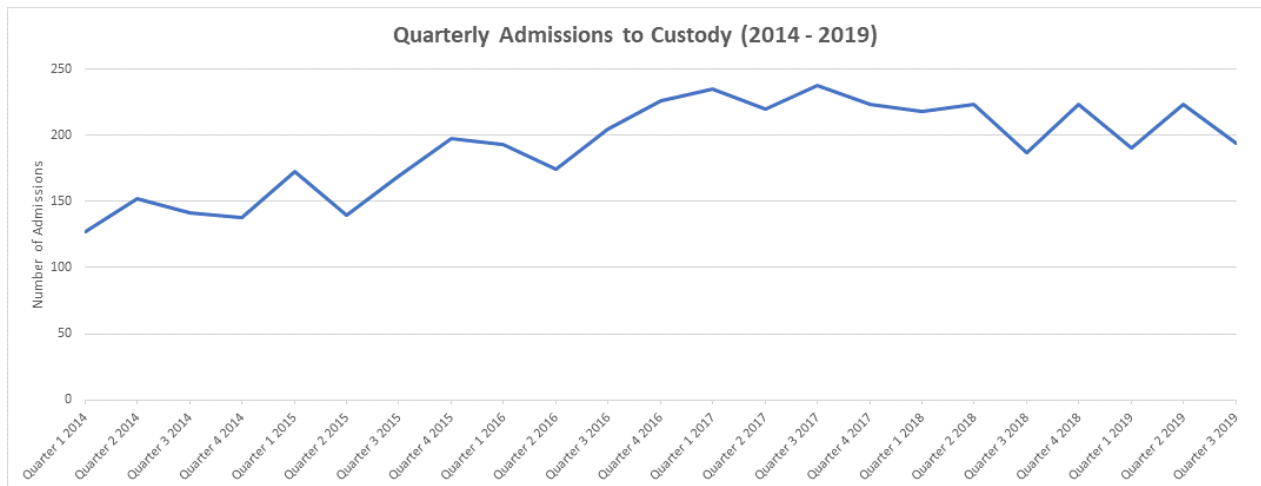


Impact of the ICO on detainee numbers

It was intended that the ICO would have a positive effect in reducing the number of detainees in the AMC. Since the establishment of the ICOs, admissions to the AMC have remained stable, refer to the graph below.

With the increasing ACT population and an increased rate of finalisation of matters through ACT courts after the implementation of ICOs, the stabilisation of admissions to the AMC reflects that ICOs have

contributed to a deflection from imprisonment. When looking at admissions to the AMC over the past five years, we see that the growth rate in the period before ICOs took full effect in the ACT judicial system (between quarter 1 2014 and quarter 4 2016) was on average 5.4% quarter on quarter, whereas the growth rate for admissions at the AMC between quarter 4 2016 and quarter 3 2019 was on average –7.8% quarter on quarter.



Although the detainee projections for the AMC continue to show an upward trend despite the existence of the ICO, it is primarily because the model uses a point in time reference and variable indicators to project AMC population growth. When examining the actual AMC population counts, there have been significant declines in average detainee population growth rates from 2015-16. The actual 30 June detainee population decreased from 493 in 2018 to 471 as at 30 June 2019. This perhaps indicates a stabilisation of the detainee population and will impact on projection outcomes in the 2020 detainee population forecast. As at 1 October 2019, the AMC detainee population was 454, further substantiating a stabilisation in population.

It is important to note that commencement of the *Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Act 2019* and the introduction of the Drug and Alcohol Sentencing List (DASL) in the Supreme Court may further impact the stabilisation of the ACT detainee population.

The effects of the ICO on re-offending

The indicative data suggests that the ICO has a relatively low re-offending rate with only 6% of offenders returning to custody in the ACT on either new offences or on remand and 24.7% returning on a community corrections order or another ICO. 3.7% of offenders are currently on a supervised bail order.

Of the offenders that completed their ICO, 61.5% did not return to ACTCS. However, there may be a small proportion of the 61.5% that have been or are currently before the court on further offences.

CONCLUSION

The ICO review process involved consultation with key stakeholders who were asked to provide comment and statistical data relating to the ICO – listed on Page 3 of this report.

Stakeholders responded providing feedback about the operation of the ICO, including suggestions for potential reforms that have been included in the recommendations. A small number of comments received were beyond the scope of the review and whilst considered, were not included in the report.

The general view was that the ICO is an effective sentencing option and some stakeholders considered it was likely to contribute to reducing re-offending, the data also supports this. Data provided indicates that 62% of offenders referred for assessment were sentenced to an ICO.

The responses received from stakeholders noted two main opportunities to improve the ICO scheme; the timeliness of the ICO processes and its resourcing, and the need for clarification of the operation of provisions. The provisions relate to eligibility, suitability and the complexity involved with offenders carrying multiple court sentences and orders including the ability to credit time served on remand.



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