



New South Wales

Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 No 48

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New South Wales

Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 No 48

Act No 48, 2010

An Act to amend the *Crimes (Sentencing Procedure) Act 1999*, the *Crimes (Administration of Sentences) Act 1999* and other laws to provide for sentences of imprisonment by way of intensive community correction and to repeal provisions for periodic detention. [Assented to 28 June 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 3 Interpretation

Omit the definition of *full-time detention* from section 3 (1).

Insert instead:

full-time detention means imprisonment that is required to be served otherwise than under an intensive correction order or by way of home detention.

[2] Section 3 (1), definition of “home detention order”

Omit “section 7 (1)”. Insert instead “section 6”.

[3] Section 3 (1)

Insert in alphabetical order:

intensive correction has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

intensive correction order means an order referred to in section 7.

[4] Section 3 (1), definitions of “periodic detention”, “periodic detention centre” and “periodic detention order”

Omit the definitions.

[5] Section 5 Penalties of imprisonment

Omit “a periodic detention order” from section 5 (5).

Insert instead “an intensive correction order”.

[6] Section 6 Periodic detention

Omit the section.

[7] Section 7 Home detention

Re-number section 7 as section 6.

[8] Section 7

Insert as section 7:

7 Intensive correction orders

- (1) A court that has sentenced an offender to imprisonment for not more than 2 years may make an intensive correction order

directing that the sentence be served by way of intensive correction in the community.

(2) If a court makes an intensive correction order directing that a sentence be served by way of intensive correction in the community, the court is not to set a non-parole period for the sentence.

(3) This section is subject to the provisions of Part 5.

[9] Section 25 Local Court not to impose certain penalties if offender is absent

Omit section 25 (1) (b). Insert instead:

(b) an intensive correction order,

[10] Section 31 Definitions

Omit “a periodic detention order” from paragraph (b) of the definition of *impose a penalty*.

Insert instead “an intensive correction order”.

[11] Section 43 Court may reopen proceedings to correct sentencing errors

Omit “a periodic detention order” from paragraph (b) of the definition of *impose a penalty* in section 43 (6).

Insert instead “an intensive correction order”.

[12] Section 47 Commencement of sentence

Omit “section 70” from section 47 (1) (a).

Insert instead “section 71”.

[13] Section 51 Conditions on parole orders

Omit section 51 (1B).

[14] Section 62 Warrant of commitment

Omit “a periodic detention order” from section 62 (4) wherever occurring.

Insert instead “an intensive correction order”.

[15] Section 63 Offenders to be photographed and fingerprinted

Omit “periodic detention order” from section 63 (2).

Insert instead “intensive correction order”.

[16] **Part 5**

Omit the Part. Insert instead:

Part 5 Sentencing procedures for intensive correction orders

Division 1 Preliminary

64 Application

This Part applies in circumstances in which a court is considering, or has made, an intensive correction order.

65 Definitions

In this Part:

assessment report means a report prepared under section 70.

offender's obligations under an intensive correction order means the obligations that the offender has under section 82 of the *Crimes (Administration of Sentences) Act 1999* as a consequence of the making of the order.

Division 2 Restrictions on power to make intensive correction orders

66 Intensive correction not available for certain sexual offences

- (1) An intensive correction order may not be made in respect of a sentence of imprisonment for a prescribed sexual offence.
- (2) In this section, *prescribed sexual offence* means:
 - (a) an offence under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, being:
 - (i) an offence the victim of which is a person under the age of 16 years, or
 - (ii) an offence the victim of which is a person of any age and the elements of which include sexual intercourse (as defined by section 61H of that Act), or
 - (b) an offence that includes the commission of, or an intention to commit, an offence referred to in paragraph (a), or
 - (c) an offence that, at the time it was committed, was a prescribed sexual offence within the meaning of this definition, or

- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a), (b) or (c).

67 Suitability of offender for intensive correction order

- (1) An intensive correction order may not be made with respect to an offender's sentence of imprisonment unless the court is satisfied:
 - (a) that the offender is of or above the age of 18 years, and
 - (b) that the offender is a suitable person to serve the sentence by way of intensive correction in the community, and
 - (c) that it is appropriate in all of the circumstances that the sentence be served by way of intensive correction in the community, and
 - (d) that the offender has signed an undertaking to comply with the offender's obligations under the intensive correction order.
- (2) In deciding whether or not to make an intensive correction order, the court is to have regard to:
 - (a) the contents of the assessment report on the offender (prepared under section 70), and
 - (b) such evidence from the Commissioner of Corrective Services as the court considers necessary for the purpose of deciding whether to make such an order.
- (3) A court may, for any reason it considers sufficient, decline to make an intensive correction order despite the contents of the assessment report.
- (4) A court may make an intensive correction order with respect to an offender's sentence of imprisonment only if the assessment report states that, in the opinion of the person making the assessment, the offender is a suitable person to serve the sentence by way of intensive correction in the community.
- (5) If a court declines to make an intensive correction order with respect to an offender's sentence of imprisonment despite an assessment report that states that the offender is a suitable person to serve the sentence by way of intensive correction in the community, the court must indicate to the offender, and make a record of, its reasons for doing so.
- (6) A sentence of imprisonment is not invalidated by a failure to comply with subsection (5).

68 Concurrent and consecutive sentences

- (1) An intensive correction order may not be made in respect of a sentence of imprisonment (a *new sentence*) to be served concurrently or consecutively (or partly concurrently and partly consecutively) with any other sentence of imprisonment the subject of an intensive correction order (an *existing sentence*) if the date on which the new sentence will end is more than 2 years after the date on which it was imposed.
- (2) Any period for which an existing sentence has been extended under this or any other Act is to be disregarded for the purposes of this section.
- (3) This section does not limit the operation of section 58.

Division 3 Assessment reports

69 Referral of offender for assessment

- (1) Before imposing a sentence of imprisonment on an offender, the court may refer the offender for assessment as to the suitability of the offender for intensive correction in the community.
- (2) A court is not to refer an offender for such an assessment unless satisfied, having considered all the alternatives, that no sentence other than imprisonment is appropriate and that the sentence is likely to be for a period of no more than 2 years.

70 Assessment of suitability

- (1) When an offender is referred for assessment, the Commissioner of Corrective Services is to investigate and report to the court on the matters referred to in section 67 (1) and such other matters as the regulations may require.
- (2) An offender's assessment report:
 - (a) must take into account, and specifically address, the matters prescribed by the regulations, and
 - (b) may indicate the nature of any conditions that it would be appropriate for the court to impose on an intensive correction order if such an order is made.
- (3) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

Division 4 Miscellaneous

71 Commencement of sentence

- (1) Having made an intensive correction order in relation to a sentence of imprisonment, a court is to fix the date of commencement of the sentence so that the date of commencement is no later than 21 days after the date on which the order was made.
- (2) Subsection (1) does not apply to a sentence of imprisonment that is to be served consecutively (or partly concurrently and partly consecutively) with some other sentence of imprisonment the subject of an intensive correction order.
- (3) An intensive correction order is not invalidated merely because it specifies a date of commencement of the sentence of imprisonment that does not comply with the requirements of this section.

72 Explanation of intensive correction order to offender

- (1) Having made an intensive correction order in relation to an offender's sentence of imprisonment, a court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
 - (a) the offender's obligations under the intensive correction order, and
 - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) An intensive correction order is not invalidated by a failure to comply with this section.

73 Preparation and service of written notice of intensive correction order

- (1) As soon as practicable after making an intensive correction order, a court must cause written notice of the order to be given to the offender and to the Commissioner of Corrective Services.
- (2) The notice must include such information about the intensive correction order as may be prescribed by the regulations.
- (3) An intensive correction order is not invalidated by a failure to comply with this section.

73A Review of ICO provisions

- (1) The Sentencing Council is to conduct a review of the provisions of this Part and Part 3 of the *Crimes (Administration of Sentences) Act 1999* and of any regulations made for the purposes of those provisions in order to ascertain whether any of those provisions (or any other provisions of any other Act or regulations) should be amended.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this section and a report on the outcome of the review is to be provided to the Minister and to the Minister administering Part 3 of the *Crimes (Administration of Sentences) Act 1999* within 12 months after the end of that 5 years.
- (3) The Minister is to cause a copy of the report to be tabled in each House of Parliament as soon as practicable after the report is received by the Minister.

[17] Section 80 Referral of offender for assessment

Omit section 80 (1A). Insert instead:

- (1A) Despite subsection (1), an offender who has been referred for assessment under section 69 (for intensive correction) is not to be referred for assessment under this section (for home detention) in relation to the same sentence of imprisonment unless the court has decided not to make an intensive correction order with respect to that sentence.

[18] Section 99 Consequences of revocation of good behaviour bond

Omit “periodic detention” from section 99 (2).

Insert instead “an intensive correction order”.

[19] Section 99 (3)

Omit the subsection. Insert instead:

- (3) An order made under subsection (2) is taken to be a home detention order made under section 6 or an intensive correction order made under section 7, as the case requires.

[20] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 (but only to the extent that it amends this Act or an Act amended by Schedule 5 to that Act)

[21] **Schedule 2, Part 20**

Insert after Part 19 of Schedule 2:

**Part 20 Provisions consequent on enactment of
Crimes (Sentencing Legislation)
Amendment (Intensive Correction Orders)
Act 2010**

61 Savings for periodic detention orders

- (1) The repeal of section 6 (Periodic detention) does not affect the continuity of operation of a periodic detention order made before the repeal of that section. Such an order continues in force despite the repeal of that section, subject to this Act and the *Crimes (Administration of Sentences) Act 1999*.
- (2) This Act and each amended Act (and the regulations under this Act and each amended Act) continue to apply to and in respect of the following as if the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* had not been enacted:
 - (a) a periodic detention order made before the repeal of section 6,
 - (b) a person subject to such an order,
 - (c) the revocation of such an order and the reinstatement of such an order.
- (3) In this clause, *amended Act* means an Act amended by Schedule 5 to the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*.

Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

[1] Section 3 Interpretation

Omit the definition of *correctional centre* from section 3 (1).

Insert instead:

correctional centre means:

- (a) any premises declared to be a correctional centre by a proclamation in force under section 225, including any juvenile correctional centre declared under section 225A, and
- (b) any police station or court cell complex in which an offender is held in custody in accordance with this or any other Act.

[2] Section 3 (1), definition of “detention period”

Omit the definition.

[3] Section 3 (1), definition of “full-time detention”

Omit “, but does not include periodic detention”.

[4] Section 3 (1), definition of “general manager”

Omit the definition. Insert instead:

general manager, in relation to a correctional centre, means the general manager of the correctional centre and includes any person who is for the time being in charge of the correctional centre.

[5] Section 3 (1), definition of “home detention order”

Omit the definition. Insert instead:

home detention order means an order in force under section 6 of the *Crimes (Sentencing Procedure) Act 1999* or under section 165A of this Act.

[6] Section 3 (1)

Insert in alphabetical order:

ICO Management Committee means the Intensive Correction Orders Management Committee established under section 92.

intensive correction means intensive correction in the community pursuant to an intensive correction order.

intensive correction order means an order in force under section 7 of the *Crimes (Sentencing Procedure) Act 1999* or section 89 of the *Fines Act 1996*.

[7] Section 3 (1), definitions of “periodic detention”, “periodic detention centre” and “periodic detention order”

Omit the definitions.

[8] Section 40 Certain unlawful absences not to affect length of sentence

Omit “a periodic detention order” from section 40 (1) (c).

Insert instead “an intensive correction order”.

[9] Part 3

Omit the Part. Insert instead:

Part 3 Imprisonment by way of intensive correction in the community

Introductory note. This Part applies to those offenders who have been sentenced to imprisonment by way of intensive correction in the community. It deals with the following matters:

- (a) the general obligations of offenders (Division 1),
- (b) permission for non-compliance with work or reporting requirements (Division 2),
- (c) breaches of intensive correction orders (Division 3),
- (d) other miscellaneous matters (Division 4).

Division 1 Preliminary

80 Definition

In this Part:

offender means a person in respect of whom an intensive correction order is in force.

81 Conditions governing intensive correction orders

- (1) An intensive correction order is subject to any conditions imposed by the sentencing court under this section.
- (2) The sentencing court must at the time of sentence impose on an intensive correction order the conditions prescribed by the regulations as the mandatory conditions of an intensive correction order.

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- (3) The sentencing court may at the time of sentence, or subsequently on the application of the Commissioner or the offender:
 - (a) impose additional conditions on an intensive correction order, or
 - (b) vary or revoke any additional conditions imposed by it on an intensive correction order.
 - (4) The *additional conditions* that a court can impose are limited to:
 - (a) conditions prescribed by the regulations as additional conditions that can be imposed by the sentencing court, and
 - (b) such other conditions as the court considers necessary or desirable for reducing the likelihood of the offender re-offending.
 - (5) The court may refuse to entertain an application by the offender under this section if the court is satisfied that the application is frivolous or vexatious.
 - (6) The court may, at its discretion, deal with an application under this section with or without the parties being present and in open court or in the absence of the public.
 - (7) Before imposing an additional condition under subsection (4) (b), a court is to consider whether the condition will create a need for additional resources and must not impose the condition unless satisfied that any such additional resources that will be needed are or will be made available.
 - (8) This section does not permit the sentencing court to impose any additional conditions, or vary any additional conditions imposed by it, so as to be inconsistent with any of the conditions prescribed by the regulations as the mandatory conditions of an intensive correction order.

82 Obligations of offender

The obligations of an offender while serving a sentence pursuant to an intensive correction order are:

- (a) to comply with such requirements of this Part and the regulations as apply to the offender, and
- (b) to comply with the requirements of any conditions to which the offender's intensive correction order is subject.

83 Duration of intensive correction order

Unless sooner revoked, an offender's intensive correction order expires at the end of the term of the sentence to which it relates.

Division 2 Permission for non-compliance with work or reporting requirements

84 Definition

In this Division:

work or reporting requirement means a requirement imposed by or under a condition of an intensive correction order that the offender is to:

- (a) undertake work or engage in an activity or program, or
- (b) attend at, report to or remain at a place.

85 Permission for non-compliance with work, reporting and other requirements

- (1) The Commissioner may, on application made by or on behalf of an offender, grant permission for the offender to not comply with a work or reporting requirement.
- (2) The Commissioner may grant such a permission:
 - (a) for health reasons, or
 - (b) on compassionate grounds, or
 - (c) for any other reason the Commissioner thinks fit.
- (3) An application for permission in respect of a requirement must be made before the time the requirement is due to be complied with.
- (4) A permission under this section may be granted either before or after the requirement to which it relates is due to be complied with.
- (5) A permission that is granted before the requirement to which it relates is due to be complied with may be granted subject to such conditions as the Commissioner may determine.
- (6) An offender who is unable to comply with a requirement:
 - (a) must cause a telephone call advising of the offender's inability to comply to be made, to such telephone number as the Commissioner may from time to time determine, before the time at which the requirement is due to be complied with, and

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- (b) must, in support of the offender's application for permission under subsection (1), cause a document setting out the reasons for the offender's inability to comply with the requirement to be given to the Commissioner within 7 days after the date on which the offender is due to comply with the requirement.
- (7) If the reasons for the offender's inability to comply with a requirement include illness or injury, a certificate from a medical practitioner is to be given to the Commissioner in support of the offender's application for permission under subsection (1) (in addition to the document referred to in subsection (6) (b)):
- (a) indicating the nature of the illness or injury, and
- (b) stating that the nature or extent of the illness or injury is such as to justify the offender's inability to comply with the requirement.
- (8) The Commissioner may exempt an offender from compliance with subsection (3) or (6) (a) in a particular case if the Commissioner is satisfied that the exceptional circumstances of the case justify the exemption.

86 Direction to make up for work etc avoided

- (1) If the Commissioner grants an offender permission to not comply with a work or reporting requirement, the Commissioner may give such directions to the offender as the Commissioner determines to be necessary to ensure that the offender will undertake work or engage in an activity or program to the extent necessary to make up for the work, activity or program avoided as a result of the permission granted.
- (2) The offender's intensive correction order is subject to a condition that the offender must comply with a direction of the Commissioner under this section.
- (3) The sentencing court may, on the application of the Commissioner, extend the offender's intensive correction order by such period as the court considers necessary and appropriate for ensuring that the offender complies with a direction of the Commissioner under this section.
- (4) In determining an application to extend an offender's intensive correction order under this section, the sentencing court is to give consideration to the following:
- (a) any hardship likely to be experienced by the offender if the order is extended,

- (b) the likelihood of the offender's intensive correction order being revoked if the order is not extended, and any hardship likely to be experienced by the offender as a result,
 - (c) such other matters as the court considers relevant.
- (5) An intensive correction order cannot be extended under this section if the term of the sentence to which the order relates has ended.
 - (6) The power of the sentencing court to extend an intensive correction order under this section is limited to one extension of no more than 6 months.
 - (7) If an intensive correction order is extended under this section, the term of the sentence to which the order relates is, by this section, extended by the same period.

87 Review of Commissioner's decision

- (1) An offender who is aggrieved by a decision of the Commissioner to refuse permission for the offender to not comply with a work or reporting requirement may apply to the ICO Management Committee for a review of the matter.
- (2) The ICO Management Committee is to review the matter and may make recommendations to the Commissioner on the matter. The Commissioner is not bound by the ICO Management Committee's recommendations.
- (3) If the Commissioner does not grant the permission following the ICO Management Committee's review of the matter, the offender may apply to the Parole Authority for the permission concerned. The Parole Authority may direct that the permission be granted and the Commissioner is to comply with any such direction.
- (4) The matter is only to be reviewed by the Parole Authority if the Parole Authority is satisfied that the application for review is not frivolous or vexatious.

Division 3 Breach of intensive correction order

88 Definition

In this Division:

breach of an intensive correction order means a failure by an offender to comply with any of his or her obligations under an intensive correction order.

89 Commissioner powers to deal with breach of ICO

- (1) If the Commissioner is satisfied that an offender has breached an intensive correction order, the Commissioner can decide to impose a sanction on the offender under this section or can decide to take no action in respect of the breach.
- (2) The Commissioner can impose either or both of the following sanctions on the offender:
 - (a) a formal warning,
 - (b) a more stringent application of the conditions of the intensive correction order in accordance with the terms of those conditions (for example, further restrictions on association with other persons).
- (3) As an alternative or in addition to imposing a sanction on the offender, the Commissioner can decide to refer the breach to the Parole Authority because of the serious nature of the breach.
- (4) In deciding whether and what action should be taken in respect of an offender's breach of an intensive correction order, the Commissioner may have regard to any action previously taken in respect of the breach or any previous breach of the order by the offender.

90 Parole Authority powers to deal with breach

- (1) The Parole Authority may, on its own motion or on the application of the Commissioner, deal with an offender's breach of an intensive correction order by:
 - (a) imposing any sanction that the Commissioner could impose under section 89, or
 - (b) imposing a period of up to 7 days' home detention on the offender by imposing as a condition of the offender's intensive correction order a requirement that the offender remain at his or her place of residence for the period of home detention, or
 - (c) revoking the intensive correction order pursuant to Division 1 of Part 7.
- (2) In deciding whether and what action should be taken in respect of an offender's breach of an intensive correction order, the Parole Authority may have regard to any action previously taken (by the Parole Authority or by the Commissioner) in respect of the breach or any previous breach of the order by the offender.

91 Interim suspension of ICO

- (1) On the application of the Commissioner, a judicial member of the Parole Authority:
 - (a) may make an order suspending an offender's intensive correction order, and
 - (b) if the offender is not then in custody, may issue a warrant for the offender's arrest.
- (2) An application under subsection (1) may be made in person or by telephone, electronic mail or facsimile transmission.
- (3) Action under subsection (1) may be taken in relation to an offender's intensive correction order only if the judicial member is satisfied:
 - (a) that the Commissioner has reasonable grounds for believing that:
 - (i) the offender has failed to comply with the offender's obligations under the intensive correction order, or
 - (ii) there is a serious and immediate risk that the offender will leave New South Wales in contravention of the conditions of the intensive correction order, or
 - (iii) there is a serious and immediate risk that the offender will harm another person, or
 - (iv) there is a serious and immediate risk that the offender will commit an offence, and
 - (b) that, because of the urgency of the circumstances, there is insufficient time for a meeting of the Parole Authority to be convened to deal with the matter.
- (4) If an application under this section is made otherwise than in person, the judicial member may furnish the applicant with a suspension order or arrest warrant:
 - (a) by sending a copy of the order or warrant to the applicant by electronic mail or facsimile transmission, or
 - (b) by dictating the terms of the order or warrant to the applicant by telephone.
- (5) A document:
 - (a) that contains:
 - (i) a copy of a suspension order or arrest warrant that the judicial member has sent by electronic mail or facsimile transmission, or

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- (ii) the terms of a suspension order or arrest warrant that the judicial member has dictated by telephone, and
 - (b) that bears a notation:
 - (i) as to the identity of the judicial member, and
 - (ii) as to the time at which the copy was sent or the terms dictated,
- has the same effect as the original suspension order or arrest warrant.
- (6) A suspension order may be revoked by any judicial member of the Parole Authority or by the Commissioner.
 - (7) Unless sooner revoked, a suspension order ceases to have effect at the end of 28 days after it is made or, if the offender is not in custody when it is made, at the end of 28 days after the offender is taken into custody.
 - (8) While a suspension order is in force, the intensive correction order to which it relates does not have effect.
 - (9) An arrest warrant is sufficient authority for a police officer to arrest the offender named in the warrant, to convey the offender to the correctional centre specified in the warrant and to deliver the offender into the custody of the general manager of that correctional centre.

Division 4 Miscellaneous

92 ICO Management Committee

- (1) The Commissioner is to establish a committee to be called the Intensive Correction Orders Management Committee (the *ICO Management Committee*).
- (2) The ICO Management Committee is to consist of such number of members (not less than 5) as the Commissioner determines from time to time.
- (3) The members of the ICO Management Committee are to be officers of Corrective Services NSW appointed by the Commissioner. Of the members, one is (in and by the member's instrument of appointment or a subsequent instrument executed by the Commissioner) to be appointed as Chairperson of the ICO Management Committee.

- (4) The ICO Management Committee has the following functions:
- (a) to provide advice and make recommendations to the Commissioner in connection with the case management of offenders who are subject to intensive correction orders,
 - (b) such other functions with respect to offenders who are subject to intensive correction orders as the Commissioner may direct from time to time,
 - (c) such other functions as may be conferred on the ICO Management Committee by or under this Act.

Note. Schedule 3 provides for the procedure of the ICO Management Committee.

- (5) The ICO Management Committee is to provide the Commissioner with an annual report in writing of its activities and that report is to form part of the next annual report of the Department of Justice and Attorney General prepared for the purposes of the *Annual Reports (Departments) Act 1985*.

93 Regulations

The regulations may make provision for or with respect to the following matters:

- (a) the mandatory conditions to be imposed on an intensive correction order by a sentencing court and the additional conditions that may be imposed by a sentencing court,
- (b) the manner in which an offender's failure to comply with the offender's obligations under an intensive correction order may be dealt with,
- (c) the service of notices on an offender,
- (d) the management, administration and supervision of intensive correction orders,
- (e) the procedures to be followed by an offender when applying for permission to not comply with a work or reporting requirement under section 85, and the circumstances under which such a permission may be granted,
- (f) the procedures to be followed by an offender who has been granted permission not to comply with a work or reporting requirement under section 85,
- (g) the procedures to be followed by an offender when applying for a review under section 87 of a decision of the Commissioner,

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- (h) the circumstances in which an offender may be tested for drugs or alcohol (including random and periodic testing), the use of a non-invasive sample provided by, or taken from, an offender for the purposes of a test for drugs or alcohol and the type and nature of the tests to be used,
 - (i) the circumstances under which an offender may be required to submit to a medical examination by a medical officer,
 - (j) the day-to-day routine of offenders, including the performance of work or engagement in an activity or intervention, or attendance at, or reporting to, or remaining at a place,
 - (k) the use of electronic monitoring devices in relation to offenders,
 - (l) the procedure to be followed when an offender reports to carry out work,
 - (m) the performance of work by an offender,
 - (n) the functions of officers of Corrective Services NSW under and in connection with this Part,
 - (o) the form of any warrants issued for the purposes of this Part.

[10] Section 118 Definitions

Omit “a periodic detention order” from the definitions of *community service work* and *offender* wherever occurring.

Insert instead “an intensive correction order”.

[11] Section 125 Application of Part

Omit section 125 (b).

[12] Part 7 Revocation and reinstatement by Parole Authority of certain orders

Omit “periodic detention orders” from paragraph (a) of the introductory note to the Part.

Insert instead “intensive correction orders”.

[13] Part 7, Division 1

Omit the Division. Insert instead:

Division 1 Intensive correction orders

162 Conduct of inquiry into suspected breach of obligations

- (1) If the Parole Authority has reason to suspect that an offender has failed to comply with the offender's obligations under an intensive correction order, the Parole Authority may, whether or not the order has expired, conduct an inquiry into the matter.
- (2) The offender to whom the intensive correction order relates may make submissions to the Parole Authority in relation to the matters under inquiry.

163 Revocation of intensive correction order

- (1) The Parole Authority may, on its own initiative or on the recommendation of the Commissioner, make an order (a *revocation order*) revoking an intensive correction order:
 - (a) if it is satisfied that the offender has failed to comply with the offender's obligations under the order, or
 - (b) if it is satisfied that the offender is unable to comply with the offender's obligations under the order as a result of a material change in the offender's circumstances, or
 - (c) if the offender fails to appear before the Parole Authority when called on to do so under section 180, or
 - (d) if the offender has applied for the order to be revoked.
- (2) The Parole Authority may revoke an offender's intensive correction order on the recommendation of the Commissioner if it is satisfied that health reasons or compassionate grounds exist that justify its revocation.
- (3) If an intensive correction order is revoked under subsection (2), the Parole Authority may, on the application of the Commissioner, make such of the orders sought by the Commissioner in relation to the offender as it considers appropriate.
- (4) The Parole Authority must revoke an intensive correction order that it has reinstated under section 168A (1A) if, at any time during the remainder of the term of the sentence to which the order relates, the offender is sentenced to a term of imprisonment

by way of full-time detention that is to be served consecutively (or partly consecutively) with the sentence to which the order relates.

- (5) A revocation order may be made:
 - (a) whether or not the offender has been called on to appear before the Parole Authority, and
 - (b) whether or not the Parole Authority has held an inquiry.
- (6) A revocation order must state the reason for which it is made.

164 Effect of revocation order

- (1) A revocation order takes effect, or is taken to have taken effect, on the date on which it is made or on such earlier date as the Parole Authority thinks fit.
- (2) The earliest date on which the revocation order may take effect is the date of the first occasion on which it appears to the Parole Authority that the offender failed to comply with the offender's obligations under the intensive correction order.
- (3) If an offender is not taken into custody until after the day on which the revocation order takes effect, the term of the offender's sentence is, by this subsection, extended by the number of days the person was at large after the order took effect.

165 Parole Authority may reinstate revoked intensive correction order

- (1) If an offender's intensive correction order has been revoked under this Division or under section 179, the Parole Authority:
 - (a) on the application of the offender, and
 - (b) subject to Part 5 of the *Crimes (Sentencing Procedure) Act 1999*,may make an order reinstating the offender's intensive correction order in respect of the remaining balance of the offender's sentence.
- (2) Such an application:
 - (a) may not be made until the offender has, since the intensive correction order was revoked, served at least 1 month of the offender's sentence by way of full-time detention, and
 - (b) must state what the offender has done, or is doing, to ensure that the offender will not fail to comply with the offender's obligations under the intensive correction order in the event that it is reinstated.

- (3) Before making an order reinstating an offender's intensive correction order, the Parole Authority must refer the offender to the Commissioner for assessment as to the suitability of the offender for intensive correction in the community.
- (4) Part 5 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of the Parole Authority and the offender in relation to the making of an intensive correction order under this section in the same way as it applies to and in respect of a court and an offender in relation to the making of an intensive correction order under that Act.
- (5) The Parole Authority may not make an order under subsection (1) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.

165A Parole Authority may order home detention

- (1) This section applies if the Parole Authority revokes an intensive correction order and, at the time that the revocation order takes effect, the remainder of the term of the sentence to which the intensive correction order relates is 18 months or less.
- (2) The Parole Authority may make an order directing that the remainder of the term of the sentence is to be served by way of home detention.
- (3) However, the Parole Authority may not make an order under subsection (2) if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.
- (4) Subject to subsection (5), Part 6 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of the Parole Authority and the offender in relation to the making of a home detention order under this section in the same way as it applies to and in respect of a court and an offender in relation to the making of a home detention order under that Act.
- (5) The reference of an offender for assessment in relation to the making of a home detention order under this section is to be made after, and not before, the intensive correction order referred to in subsection (1) is revoked.

165B Release of offender pending assessment for home detention

- (1) On referring an offender for assessment in relation to the making of a home detention order under section 165A, the Parole Authority may make an order (a *temporary release order*) releasing the offender from custody or permitting the offender to

remain at large, subject to such supervision as is prescribed by the regulations, pending the Parole Authority's decision as to whether or not to make the home detention order.

- (2) An offender's temporary release order:
 - (a) may be revoked by the Parole Authority at any time, and
 - (b) must be revoked by the Parole Authority when it makes its decision as to whether or not to make a home detention order under section 165A in respect of the offender.
- (3) The sentence to be served by the offender in respect of whom a temporary release order is made is, by this section, extended:
 - (a) by the period for which the offender is absent from custody pursuant to the order, and
 - (b) in the case of an offender for whom a warrant is issued under section 181 (1A), by the period between the issue of the warrant and the offender being taken into custody under the warrant.

165C Conditions of home detention as to non-association and place restriction

- (1) The conditions to which a home detention order under section 165A is subject may include either or both of the following:
 - (a) provisions prohibiting or restricting the offender from associating with a specified person,
 - (b) provisions prohibiting or restricting the offender from frequenting or visiting a specified place or district.
- (2) A condition referred to in subsection (1) (a) or (b) is suspended while the offender is in lawful custody.
- (3) An offender does not contravene a prohibition or restriction as to his or her association with a specified person:
 - (a) if the offender does so in compliance with an order of a court, or
 - (b) if, having associated with the person unintentionally, the offender immediately terminates the association.
- (4) An offender does not contravene a requirement not to frequent or visit a specified place or district if the offender does so in compliance with an order of a court.
- (5) In this section, *associate with* means:
 - (a) to be in company with, or

(b) to communicate with by any means (including post, facsimile, telephone and email).

[14] Section 167 Revocation of home detention order

Omit “section 165” from section 167 (6) (a). Insert instead “section 165A”.

[15] Section 168A Parole Authority may reinstate revoked home detention order or prior revoked intensive correction order

Omit “section 165” from section 168A (1A). Insert instead “section 165A”.

[16] Section 168A (1A) and (3)

Omit “a periodic detention order” wherever occurring.

Insert instead “an intensive correction order”.

[17] Section 168A (1A)

Omit “revoked periodic detention order”.

Insert instead “revoked intensive correction order”.

[18] Section 168A (2)

Omit “periodic detention”. Insert instead “intensive correction”.

[19] Section 173 Notice of revocation

Omit “periodic detention order” wherever occurring.

Insert instead “intensive correction order”.

[20] Section 174 Review of revocation

Omit “periodic detention order” wherever occurring.

Insert instead “intensive correction order”.

[21] Section 175 Decision after review

Omit “periodic detention order” from section 175 (1) (a).

Insert instead “intensive correction order”.

[22] Section 175 (1A) (a)

Omit the paragraph.

[23] Section 175 (1A) (b)

Omit the paragraph. Insert instead:

- (b) an intensive correction order that it has revoked under section 163 (4), or

[24] Section 175 (2)

Omit the subsection.

[25] Section 175 (3)–(5)

Omit “periodic detention order” wherever occurring.

Insert instead “intensive correction order”.

[26] Section 175A Review not available in certain circumstances

Omit “periodic detention order”. Insert instead “intensive correction order”.

[27] Section 176 Application to Supreme Court by offender

Omit “a periodic detention order” from section 176 (1) (a).

Insert instead “an intensive correction order”.

[28] Section 176 (1) (b)

Omit “periodic detention order”. Insert instead “intensive correction order”.

[29] Section 179 Consequential revocation of other orders

Omit “periodic detention” from section 179 (1) wherever occurring.

Insert instead “intensive correction”.

[30] Section 179 (2)–(4)

Omit “a periodic detention order” wherever occurring.

Insert instead “an intensive correction order”.

[31] Section 179 (4)

Omit “Section 165”. Insert instead “Section 165A”.

[32] Section 179B

Insert after section 179A:

179B Revocation of consecutive intensive correction orders

- (1) When the Parole Authority revokes an offender’s intensive correction order under this Part, the Parole Authority must at the

same time make an order revoking any other intensive correction order to which the offender is subject at that time (including any order that is yet to come into force).

- (2) No appeal lies against a revocation of an intensive correction order under this section.

[33] Section 181 Warrants committing offenders to correctional centres

Omit “a periodic detention order” from section 181 (1) (a).

Insert instead “an intensive correction order”.

[34] Section 181 (1) (b)

Omit the paragraph. Insert instead:

- (b) decides not to make a home detention order under section 165A with respect to an offender the subject of a temporary release order under section 165B,

[35] Section 181 (1A)

Omit the subsection. Insert instead:

- (1A) If the Parole Authority revokes a temporary release order under section 165B, it may issue a warrant committing the offender to a correctional centre pending the Parole Authority’s decision as to whether or not to make a home detention order under section 165A.

[36] Section 181 (3) (b)

Omit “section 165”. Insert instead “section 165A”.

[37] Section 182 Functions may be exercised after order has expired

Omit “a periodic detention order”.

Insert instead “an intensive correction order”.

[38] Section 185 Functions of Parole Authority

Omit “periodic detention orders” from section 185 (1) (b).

Insert instead “intensive correction orders”.

[39] Section 193C Parole Authority decisions

Omit “a periodic detention order” wherever occurring in section 193C (1).

Insert instead “an intensive correction order”.

[40] Part 11 Administration

Omit paragraph (a) of the introductory note to the Part. Insert instead:

- (a) the establishment of correctional complexes, correctional centres and juvenile correctional centres (Division 1),

[41] Part 11, Division 1, heading

Omit the heading. Insert instead:

Division 1 Correctional complexes and correctional centres

[42] Section 226 Periodic detention centres

Omit the section.

[43] Section 227 Visiting Magistrates

Omit “each correctional complex, correctional centre and periodic detention centre” from section 227 (1).

Insert instead “each correctional complex and correctional centre”.

[44] Section 227 (3)

Omit “correctional complex, correctional centre or periodic detention centre”.

Insert instead “correctional complex or correctional centre”.

[45] Section 228 Official Visitors

Omit “or periodic detention centre” from section 228 (3) (b).

[46] Section 228 (4)

Omit “correctional complexes, correctional centres and periodic detention centres”.

Insert instead “correctional complexes and correctional centres”.

[47] Section 228 (4)

Omit “correctional complex, correctional centre and periodic detention centre”.

Insert instead “correctional complex and correctional centre”.

[48] Section 228 (5)

Omit “correctional complex, correctional centre or periodic detention centre”.

Insert instead “correctional complex or correctional centre”.

- [49] Section 229 Powers of Judges and Magistrates to visit and examine**
Omit “correctional complex, correctional centre or periodic detention centre”.
Insert instead “correctional complex or correctional centre”.
- [50] Section 230 Special inquiries**
Omit “correctional complex, correctional centre or periodic detention centre”
wherever occurring.
Insert instead “correctional complex or correctional centre”.
- [51] Section 232 The Commissioner**
Omit “, periodic detention centres” from section 232 (1) (a).
- [52] Section 233 General managers of correctional centres**
Omit section 233 (1) (a). Insert instead:
(a) has the care, direction, control and management of the
correctional centre, and
- [53] Section 235 Functions of correctional officers**
Omit “correctional complexes, correctional centres and periodic detention
centres” from section 235 (2).
Insert instead “correctional complexes and correctional centres”.
- [54] Section 235D Functions of periodic detention field officers**
Omit the section.
- [55] Section 235F Common work sites**
Omit the section.
- [56] Section 235G Functions of Departmental compliance and monitoring
officers**
Insert after section 235G (2) (f):
(f1) functions associated with the administration of an
intensive correction order under Part 3,
- [57] Section 236B CEO, Justice Health, to have access to correctional
centres, offenders and medical records**
Omit “(including a periodic detention centre)”.

[58] Section 249 Definitions

Omit paragraph (g) of the definition of *person in custody* in section 249 (1).

Insert instead:

- (g) during any period after an intensive correction order is made in relation to the person and before an intensive correction notice is served on the person, or

[59] Section 254 Extension of sentence following unlawful absence from custody

Omit “a periodic detention order” from section 254 (2) (a).

Insert instead “an intensive correction order”.

[60] Section 255 Effect of extension of sentence

Omit section 255 (3) (b).

[61] Section 255A Approvals for the purposes of the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth

Omit “101” from the note to subsection (3). Insert instead “93”.

[62] Section 259 Service of notices

Omit “a periodic detention order” from section 259 (1).

Insert instead “an intensive correction order”.

[63] Section 260 Evidentiary certificates

Omit “or periodic detention centre” from section 260 (a).

[64] Section 260

Omit “periodic detention order” wherever occurring.

Insert instead “intensive correction order”.

[65] Section 261 Address of warrant

Omit section 261 (2).

[66] **Schedule 3**

Insert after Schedule 2:

**Schedule 3 Intensive Correction Orders
Management Committee**

(Section 92)

1 Definitions

In this Schedule:

Chairperson means the Chairperson of the ICO Management Committee.

member means a member of the ICO Management Committee.

2 Deputies of members

- (1) The Commissioner may establish a list of officers of Corrective Services NSW eligible to be nominated as the deputy of a member.
- (2) A member may from time to time nominate an eligible officer to be the deputy of the member.
- (3) The nomination of a deputy of a member under this clause may be revoked at any time by the Commissioner or the member that nominated the deputy.
- (4) 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.
- (5) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.

3 General procedure

- (1) Meetings of the ICO Management Committee are to be held at such times and places as are fixed by the Chairperson.
- (2) The procedure for the convening of meetings of the ICO Management Committee and for the conduct of business at those meetings is to be as determined by the Chairperson.

- (3) The ICO Management Committee may, if it thinks fit, hold a meeting at which some members participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

4 Quorum

The quorum for a meeting of the ICO Management Committee is a majority of its members for the time being.

5 Presiding member

The Chairperson is to preside at a meeting of the ICO Management Committee.

6 Decisions

- (1) A decision supported by a majority of the votes cast at a meeting of the ICO Management Committee at which a quorum is present is the decision of the ICO Management Committee.
- (2) In the case of an equality of votes, the Chairperson is to have the casting vote.

7 Record of proceedings

The Chairperson is to cause a record to be made of the proceedings at a meeting of the ICO Management Committee.

[67] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 (but only to the extent that it amends this Act)

[68] Schedule 5, Part 17

Insert after Part 16 of Schedule 5:

**Part 17 Provisions consequent on enactment of
Crimes (Sentencing Legislation)
Amendment (Intensive Correction Orders)
Act 2010**

108 Savings for periodic detention

- (1) This Act (and the regulations under this Act) continue to apply to and in respect of the following as if the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* had not been enacted:
 - (a) a periodic detention order made before the repeal of section 6 (Periodic detention) of the *Crimes (Sentencing Procedure) Act 1999*,
 - (b) a person subject to such an order,
 - (c) the revocation or reinstatement of such an order,
 - (d) a correctional centre that was a periodic detention centre immediately before the repeal of section 6 of the *Crimes (Sentencing Procedure) Act 1999*.
- (2) Section 226 (Periodic detention centres) continues to apply (despite its repeal) for the purposes of the application of this Act and the regulations under this Act pursuant to this clause.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Regulation 2005

Part 3

Omit the Part. Insert instead:

Part 3 Sentencing procedures for intensive correction orders

12 Intensive correction orders: section 7

- (1) An intensive correction order is to be in the approved form.
- (2) A copy of the order must be given to the offender, and a further copy is to be sent to the Commissioner of Corrective Services.

13 Undertakings to comply with intensive correction order: section 67

An undertaking referred to in section 67 (1) (d) of the Act is to be in the approved form.

14 Assessment reports: section 70

- (1) An offender's assessment report must take into account, and specifically address, the following matters:
 - (a) any criminal record of the offender, and the likelihood that the offender will re-offend,
 - (b) any risks associated with managing the offender in the community (taking into account the offender's response to supervision in the community on previous occasions),
 - (c) the likelihood that the offender will commit a domestic violence offence,
 - (d) whether the offender will have suitable residential accommodation for the duration of an intensive correction order,
 - (e) whether any circumstances of the offender's residence, employment, study or other activities would inhibit effective implementation of an intensive correction order,
 - (f) whether the persons with whom it is likely the offender would reside, or continue or resume a relationship, understand the requirements of an intensive correction order and are prepared to live in conformity with them, so far as may be necessary,

- (g) whether the making of an intensive correction order would place at risk of harm any person who would be living with or in the vicinity of the offender,
 - (h) any dependency of the offender on alcohol or drugs, or other substance abuse, that would affect the offender's ability to comply with the offender's obligations under an intensive correction order,
 - (i) any physical or mental health conditions of the offender that would affect the offender's ability to comply with the offender's obligations under an intensive correction order,
 - (j) the existence and extent of any self-harm risk, including the likely impact of an intensive correction order on that risk, and the availability in the community of the support and treatment services necessary to manage the risk.
- (2) If a child under the age of 18 years would be living with an offender serving a sentence of imprisonment by way of intensive correction, the assessment report must take into account, and specifically address, the effect on the child of that fact.
- (3) If it appears to the officer preparing the assessment report that the offender is homeless:
- (a) all reasonable efforts must be made by the Commissioner of Corrective Services, in consultation with the offender, to find suitable accommodation for the offender, and
 - (b) the report is not to be finalised until those efforts have been made.
- (4) An offender's assessment report must also include an assessment of:
- (a) factors associated with his or her offending that would be able to be addressed by targeted interventions under an intensive correction order, and
 - (b) the availability of resources to address those factors by targeted interventions under an intensive correction order, and
 - (c) any issues relevant to the administration of an intensive correction order in respect of the offender that may be relevant to the court's determination of an appropriate date to be fixed for the commencement of the sentence.

15 Notice of intensive correction order: section 73

A notice referred to in section 73 (1) of the Act is to be in the approved form.

Schedule 4 Amendment of Crimes (Administration of Sentences) Regulation 2008

[1] Chapter 3

Omit the Chapter. Insert instead:

Chapter 3 Intensive correction

174 Supervisor for offenders

In this Chapter:

offender means an offender who is the subject of an intensive correction order.

supervisor, in relation to an offender, means each of the following persons:

- (a) an officer of Corrective Services NSW for the time being assigned by the Commissioner to administer the offender's intensive correction order,
- (b) a compliance and monitoring officer who has functions associated with the administration of the offender's intensive correction order,
- (c) the Commissioner.

175 Mandatory conditions for intensive correction orders

The following are the mandatory conditions of an intensive correction order to be imposed by a court under section 81 of the Act:

- (a) a condition that requires the offender to be of good behaviour and not commit any offence,
- (b) a condition that requires the offender to report, on the date fixed as the date of commencement of the sentence or on such later date as may be advised by the Commissioner, to such local office of Corrective Services NSW or other location as may be advised by the Commissioner,
- (c) a condition that requires the offender to reside only at premises approved by a supervisor,
- (d) a condition that prohibits the offender leaving or remaining out of New South Wales without the permission of the Commissioner,

- (e) a condition that prohibits the offender leaving or remaining out of Australia without the permission of the Parole Authority,
- (f) a condition that requires the offender to receive visits by a supervisor at the offender's home at any time for any purpose connected with the administration of the order,
- (g) a condition that requires the offender to authorise his or her medical practitioner, therapist or counsellor to provide to a supervisor information about the offender that is relevant to the administration of the order,
- (h) a condition that requires the offender to submit to searches of places or things under his or her immediate control, as directed by a supervisor,
- (i) a condition that prohibits the offender using prohibited drugs, obtaining drugs unlawfully or abusing drugs lawfully obtained,
- (j) a condition that requires the offender to submit to breath testing, urinalysis or other medically approved test procedures for detecting alcohol or drug use, as directed by a supervisor,
- (k) a condition that prohibits the offender possessing or having in his or her control any firearm or other offensive weapon,
- (l) a condition that requires the offender to submit to such surveillance or monitoring (including electronic surveillance or monitoring) as a supervisor may direct, and comply with all instructions given by a supervisor in relation to the operation of surveillance or monitoring systems,
- (m) a condition that prohibits the offender tampering with, damaging or disabling surveillance or monitoring equipment,
- (n) a condition that requires the offender to comply with any direction given by a supervisor that requires the offender to remain at a specified place during specified hours or that otherwise restricts the movements of the offender during specified hours,
- (o) a condition that requires the offender to undertake a minimum of 32 hours of community service work per month, as directed by a supervisor from time to time,
- (p) a condition that requires the offender to engage in activities to address the factors associated with his or her offending as identified in the offender's assessment report

or that become apparent during the term of the order, as directed by a supervisor from time to time,

- (q) a condition that requires the offender to comply with all reasonable directions of a supervisor.

176 Additional conditions that may be imposed by sentencing court

The following are the additional conditions that may be imposed on an intensive correction order by the sentencing court under section 81 of the Act:

- (a) a condition that requires the offender to accept any direction of a supervisor in relation to the maintenance of or obtaining of employment,
- (b) a condition that requires the offender to authorise contact between any employer of the offender and a supervisor,
- (c) a condition that requires the offender to comply with any direction of a supervisor as to the kinds of occupation or employment in which the offender may or may not engage,
- (d) a condition that requires the offender to comply with any direction of a supervisor that the offender not associate with specified persons or persons of a specified description,
- (e) a condition that prohibits the offender consuming alcohol,
- (f) a condition that requires the offender to comply with any direction of a supervisor that the offender must not go to specified places or districts or places or districts of a specified kind.

Note. Section 81 of the Act provides that the sentencing court may also impose any other condition that the court considers necessary or desirable for reducing the likelihood of the offender re-offending.

177 Information to be recorded in relation to offenders

- (1) As soon as practicable after an offender becomes subject to an intensive correction order, there must be recorded in relation to the offender:
 - (a) such of the information referred to in Schedule 1 as is relevant to the offender, and
 - (b) such other information as the Commissioner considers appropriate to be recorded.

- (2) An offender must not furnish any information for the purposes of this clause knowing it to be false or misleading in a material particular.

Maximum penalty: 5 penalty units.

178 Preparation and adoption of case plans

- (1) The Commissioner may require a case plan to be prepared in relation to any offender or class of offenders, and may adopt any case plan so prepared.
- (2) A case plan is to be prepared in accordance with such guidelines as may be established from time to time by the Commissioner.
- (3) Subject to subclause (4), any decision under this Chapter that is made in relation to an offender for whom a case plan has been adopted under this clause is to be made in accordance with that plan.
- (4) Nothing in this clause authorises any such decision to limit any conditions that apply to an offender's intensive correction order.

[2] Clause 226 Parole orders

Omit “, or the general manager responsible for the periodic detention centre,” from clause 226 (2).

[3] Clause 227 Parole orders to be explained to offenders

Omit “or periodic detention centre” from clause 227 (1).

[4] Clause 232 Revocation of parole orders before release

Omit “, or the general manager responsible for the periodic detention centre,” from clause 232 (2).

[5] Clause 233 Circumstances constituting manifest injustice

Omit “periodic detention order” from clause 233 (3).

Insert instead “intensive correction order”.

[6] Clause 234 Notice of initial intention to refuse release on parole

Omit “, or the general manager responsible for the periodic detention centre,” from clause 234 (1).

[7] Clause 235 Decision on review of parole refusal

Omit “, or the general manager responsible for the periodic detention centre,” from clause 235 (1).

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- [8] **Clause 242 Supervision during home detention assessment**
Omit “section 165AA (1)” wherever occurring.
Insert instead “section 165B (1)”.
- [9] **Clause 244 Revocation of order and review of revocation**
Omit “a periodic detention order” from clause 244 (1).
Insert instead “an intensive correction order”.
- [10] **Clause 244 (4) (a)**
Omit “, or the general manager responsible for the periodic detention centre,”.
- [11] **Clause 246 Notice of revocation of order**
Omit “a periodic detention order,” from clause 246 (1).
Insert instead “an intensive correction order”.
- [12] **Clause 252 Declaration about associations with inmates**
Omit “periodic detainee” from clause 252 (6).
Insert instead “intensive correction offender”.
- [13] **Schedule 3 Offences against periodic detention discipline**
Omit the Schedule.
- [14] **Schedule 4 Forms**
Omit “periodic detention order” from Form 2 wherever occurring.
Insert instead “intensive correction order”.
- [15] **Dictionary**
Omit paragraph (a) of the definition of *attendance site*.
- [16] **Dictionary**
Insert in alphabetical order:
intensive correction offender has the same meaning as *offender*
has in Part 3 of the Act.
- [17] **Dictionary**
Omit the definitions of *offence against discipline* and *periodic detainee*.

Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders)
Act 2010 No 48

Schedule 4 Amendment of Crimes (Administration of Sentences) Regulation 2008

[18] Dictionary

Omit paragraph (a) of the definition of *supervisor*. Insert instead:

- (a) in relation to an intensive correction offender, a supervisor under clause 174, and

[19] Dictionary

Omit paragraph (a) of the definition of *work site*.

Schedule 5 Amendment of other Acts

5.1 Child Protection (Offenders Registration) Act 2000 No 42

[1] Section 3 Definitions

Omit “a periodic detention order” from paragraph (a) (i) of the definition of *existing controlled person* in section 3 (1).

Insert instead “an intensive correction order”.

[2] Section 3 (1)

Insert in alphabetical order:

intensive correction order means an order referred to in section 7 of the *Crimes (Sentencing Procedure) Act 1999*.

[3] Section 3 (1), definition of “periodic detention order”

Omit the definition.

[4] Section 5 Notices to be given when registrable person commences supervised sentence for registrable offence

Omit “a periodic detention order” from section 5 (3) (a).

Insert instead “an intensive correction order”.

5.2 Children (Detention Centres) Act 1987 No 57

Section 24 Persons subject to control may be granted leave, discharged etc

Omit “periodic detention” from section 24 (1) (c).

Insert instead “an intensive correction order”.

5.3 Civil Liability Act 2002 No 22

Section 26A Definitions

Omit “periodic detention” from paragraph (b) of the definition of *offender in custody* or *offender* in section 26A (1).

Insert instead “intensive correction in the community”.

5.4 Crimes Act 1900 No 40

Section 310H Application of Part

Omit “a periodic detention order” from section 310H (a).

Insert instead “an intensive correction order”.

5.5 Crimes (Appeal and Review) Act 2001 No 120

[1] Section 3 Definitions

Omit “a periodic detention order” from paragraph (a) (i) of the definition of *sentence* in section 3 (1).

Insert instead “an intensive correction order”.

[2] Section 63 Stay of execution of sentence pending determination of appeal

Omit “a periodic detention order” from section 63 (5).

Insert instead “an intensive correction order”.

5.6 Crimes (Interstate Transfer of Community Based Sentences) Act 2004 No 72

[1] Section 7 What is a “community based sentence”?

Omit section 7 (1) (a) (i)–(iii). Insert instead:

- (i) a home detention order under section 6 of the *Crimes (Sentencing Procedure) Act 1999* and the sentence of imprisonment in relation to which the order is made,
- (ii) an intensive correction order under section 7 of the *Crimes (Sentencing Procedure) Act 1999* and the sentence of imprisonment in relation to which the order is made,
- (iii) a home detention order under section 165A of the *Crimes (Administration of Sentences) Act 1999* and the remainder of the term of the sentence in relation to which the order is made,

[2] Section 7 (2) (a)–(c)

Omit the paragraphs. Insert instead:

- (a) a home detention order under section 6 of the *Crimes (Sentencing Procedure) Act 1999* and the sentence of imprisonment in relation to which the order is made,

- (b) an intensive correction order under section 7 of the *Crimes (Sentencing Procedure) Act 1999* and the sentence of imprisonment in relation to which the order is made,
- (c) a home detention order under section 165A of the *Crimes (Administration of Sentences) Act 1999* and the remainder of the term of the sentence in relation to which the order is made,

5.7 Crimes (Serious Sex Offenders) Act 2006 No 7

Section 6 Application for extended supervision order

Omit “full-time, periodic or home detention” from section 6 (1) (a).

Insert instead “full-time detention, intensive correction in the community or home detention”.

5.8 Criminal Appeal Act 1912 No 16

Section 2 Definitions

Omit “a periodic detention order” from paragraph (a) (i) of the definition of *Sentence* in section 2 (1).

Insert instead “an intensive correction order”.

5.9 Criminal Records Act 1991 No 8

Section 7 Which convictions are capable of becoming spent?

Omit “by way of periodic detention” from the definition of *prison sentence* in section 7 (4).

Insert instead “the subject of an intensive correction order”.

5.10 Fines Act 1996 No 99

[1] Section 58 Summary of enforcement procedure

Omit “The fine defaulter may apply to serve that period of imprisonment by way of periodic detention (see Division 6).” from section 58 (1) (e).

[2] Section 84 Suspension of orders during imprisonment or detention

Omit “, but not if the fine defaulter is serving a sentence of periodic detention” from section 84 (2).

[3] Sections 89–89B

Omit the sections. Insert instead:

89 Intensive correction order

- (1) A fine defaulter who is committed to a correctional centre by warrant under this Division may apply to the Commissioner of Corrective Services for an order that the fine defaulter's period of imprisonment be served under an intensive correction order. An application may be made in anticipation of the issue of a warrant.
- (2) The Commissioner of Corrective Services may, on an application under this section, order that the fine defaulter serve the period of imprisonment under a warrant under this Division as imprisonment under an intensive correction order.
- (3) A fine defaulter is not eligible to serve a period of imprisonment under an intensive correction order:
 - (a) if the period of imprisonment is less than the minimum period determined in the guidelines under section 120 as appropriate to be served under an intensive correction order, or
 - (b) if the fine defaulter is remanded to or imprisoned in a correctional centre (including as a periodic detainee), or
 - (c) if the fine payable by the fine defaulter is for an offence committed while serving a period of imprisonment under an intensive correction order, or
 - (d) if an earlier intensive correction order (whether under this Act or the *Crimes (Sentencing Procedure) Act 1999*) has been revoked because the fine defaulter has failed to serve a sentence of imprisonment in accordance with the requirements of the order, or
 - (e) in any other circumstances prescribed by the regulations.
- (4) On making an order under this section, the warrant committing the fine defaulter to a correctional centre is subject to the terms of the order.
- (5) The decision whether or not to grant an application under this section is at the discretion of the Commissioner of Corrective Services, and no appeal lies against a decision not to grant an application in a particular case.
- (6) The Commissioner of Corrective Services is to serve notice on the State Debt Recovery Office of the making or revocation of an order under this section.

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- (7) The State Debt Recovery Office may replace the original warrant in respect of which the order was made with a fresh warrant in connection with the outstanding fine at the time.
 - (8) Subject to this section:
 - (a) Division 1 of Part 5, section 67 and Divisions 3 and 4 (other than sections 72 and 73) of Part 5 of the *Crimes (Sentencing Procedure) Act 1999*, and
 - (b) Parts 3 and 7 of the *Crimes (Administration of Sentences) Act 1999*, and regulations made under those Parts,apply to an intensive correction order under this Division in the same way as they apply to an intensive correction order under section 7 of the *Crimes (Sentencing Procedure) Act 1999*.
 - (9) In the application of those provisions to an intensive correction order under this section, a reference in those provisions to a court is taken to be a reference to the Commissioner of Corrective Services.
 - (10) The functions of the State Parole Authority under Part 7 of the *Crimes (Administration of Sentences) Act 1999* with respect to the revocation of intensive correction orders are, in relation to an intensive correction order under this Division, to be exercised by the Commissioner of Corrective Services.

89A Service and notice of intensive correction order

- (1) As soon as practicable after making an intensive correction order under this Division, the Commissioner of Corrective Services must cause a copy of the order and written notice of the order to be served on the fine defaulter and the State Debt Recovery Office.
- (2) The notice must be in the form prescribed by the regulations and must include the following information:
 - (a) the office of Corrective Services NSW to which the fine defaulter must report,
 - (b) the date on which, and the time at which, the fine defaulter is first to report to that office of Corrective Services NSW.
- (3) Two copies of the notice must be served on the fine defaulter.
- (4) The fine defaulter must sign 2 copies of the notice in the presence of the person by whom it was served. Of the copies:
 - (a) one is to be kept by the fine defaulter, and
 - (b) one is to be served by that person on, and kept by, the Commissioner of Corrective Services.

- (5) An order under section 89 is not invalidated by a failure to comply with this section or section 89B.

89B Provisions relating to service

- (1) The intensive correction order and notice may be served on the fine defaulter only in accordance with the directions of the Commissioner of Corrective Services.
- (2) The order and 2 copies of the notice are to be served personally on the fine defaulter by the Sheriff or the Sheriff's officers or by a court bailiff authorised by the Sheriff.
- (3) The person who serves an intensive correction order under this Division is required to explain the order to the fine defaulter on whom it is served.
- (4) The explanation is to be given in a language likely to be understood by the fine defaulter and is to include information as to the following matters:
 - (a) the requirements to be complied with by the fine defaulter under the order,
 - (b) the consequences that may follow if the fine defaulter fails to comply with those requirements,
 - (c) the fact that the order may be satisfied by payment of such part of the fine as has not been satisfied by the period of imprisonment served under the order.

[4] Section 90 Calculation of period of imprisonment under warrant

Omit section 90 (2).

[5] Section 91 Satisfaction of fine by imprisonment

Omit "or twice that amount for each detention period served by way of periodic detention, as the case requires" from section 91 (2).

[6] Section 93 Terms under warrants to be served consecutively

Omit section 93 (2).

[7] Section 94 Terms under warrants to be served concurrently with other non-fine default imprisonment

Omit section 94 (2).

[8] Section 120 Guidelines on exercise of functions under this Act

Omit "by way of periodic detention" from section 120 (1) (d).

Insert instead "under an intensive correction order".

[9] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 (to the extent that it amends this Act)

[10] Schedule 3, Part 7

Insert after Part 6 of Schedule 3:

**Part 7 Provisions consequent on enactment of
Crimes (Sentencing Legislation)
Amendment (Intensive Correction Orders)
Act 2010**

23 Savings for periodic detention orders

- (1) This Act (and the regulations under this Act) as in force immediately before the enactment of the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* continue to apply to and in respect of:
 - (a) a periodic detention order made under Division 6 of Part 4 and in force immediately before the substitution of section 89 by that Act,
 - (b) a periodic detention order made under Division 6 of Part 4 after the substitution of section 89 by that Act and pursuant to subclause (2).
- (2) An application by a fine defaulter under section 89 that is pending immediately before the substitution of that section by the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010* is to be dealt with and determined as if that Act had not been enacted.
- (3) A reference in a section of this Act to any provision of the *Crimes (Sentencing Procedure) Act 1999* or the *Crimes (Administration of Sentences) Act 1999* is, for the purposes of the continued application of that section under subclause (1), to be read as a reference to the provision as in force immediately before the commencement of any amendment of the provision by the *Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010*.

5.11 Local Government Act 1993 No 30

Section 275 Who is disqualified from holding civic office?

Omit “whether or not by way of periodic detention” from section 275 (1) (c).

Insert instead “including a sentence the subject of an intensive correction order”.

5.12 Summary Offences Act 1988 No 25

[1] Section 27A Definitions

Omit “, and includes an offender who is detained in a periodic detention centre” from the definition of *inmate*.

[2] Section 27A, definition of “place of detention”

Omit “, periodic detention centre”.

[Agreement in principle speech made in Legislative Assembly on 10 June 2010
Second reading speech made in Legislative Council on 22 June 2010]

BY AUTHORITY