Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to introduce intensive correction orders as a community-based sentencing option in New South Wales and to abolish periodic detention orders. The Bill is based on recommendations contained in the New South Wales Sentencing Council's report Review of Periodic Detention published in December 2007.

The Bill amends the Crimes (Sentencing Procedure) Act 1999, the Crimes (Administration of Sentences) Act 1999, the Crimes (Sentencing Procedure) Regulation 2005 and the Crimes (Administration of Sentences) Regulation 2008 and makes consequential amendments to other Acts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Sentencing procedures for intensive correction orders

Schedule 1 [16] repeals Part 5 of the Crimes (Sentencing Procedure) Act 1999 which sets out the sentencing procedures for periodic detention and inserts a new Part 5 that establishes procedures for intensive correction orders. Schedule 1 [6] abolishes the power of a court to make periodic detention orders and Schedule 1 [8] gives a court that has sentenced an offender to imprisonment for less than 2 years the power to make an intensive correction order. If the court makes such an order, the court is not to set a non-parole period for the sentence.

Under proposed Part 5, an intensive correction order can be made only if the court is satisfied that:

(a) the offender is of or above the age of 18 years, and

(b) the offender is a suitable person to serve the sentence by way of intensive correction in the community, and

(c) it is appropriate in all the circumstances, and

(d) the offender has signed an undertaking to comply with the offender's obligations under the intensive correction order.

Before imposing a sentence of imprisonment on an offender, the court may refer the offender to the Commissioner of Corrective Services (the Commissioner) for assessment as to the suitability of the offender for an intensive correction order. A court is not to make such a referral unless it is satisfied that no sentence other than imprisonment is appropriate and that the sentence is likely to be 2 years or less. When deciding whether or not to make an intensive correction order, the court must consider the assessment report of the offender and any evidence from the Commissioner that the court considers necessary. An order can be made only if the assessment report states that the offender is a suitable person to serve the sentence by way of an intensive correction order. If a court declines to make an order, despite an assessment report that states that the offender is suitable, the court must give reasons to the offender. Intensive correction orders will not be available for offenders sentenced to imprisonment for certain sexual offences. When making an intensive correction order, a court must specify a date no later than 21 days after the order was made on which the order will commence and must explain to the offender his or her obligations under the order and the consequences of non-compliance.

The Sentencing Council is to conduct a review of the new provisions relating to

intensive correction orders in the Crimes (Sentencing Procedure) Act 1999 and the Crimes (Administration of Sentences) Act 1999 (and any related regulations made under those Acts) after 5 years and the review is to be tabled in Parliament.

Schedule 1 [17] provides that an offender who has been referred for an assessment for an intensive correction order is not to be referred for assessment 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.
Consequential amendments and savings provisions
Schedule 1 [9] provides that the Local Court cannot make an intensive correction order with respect to an offender who is not present at court. Schedule 1 [5] provides that Part 4 of the Crimes (Sentencing Procedure) Act 1999 (Sentencing procedures for imprisonment) applies to intensive correction orders, as was the case for periodic detention orders. Schedule 1 [14] provides that the provision in Part 4 that requires a court that has sentenced an offender to imprisonment to issue a warrant for the committal of the offender to a correctional centre does not apply to an offender who is sentenced to an intensive correction order (in the same way as it did not apply to an offender sentenced to periodic detention). Schedule 1 [15] enables a court to revoke an intensive correction order if an offender fails to have his or her photograph and fingerprints taken after the offender has been sentenced by the court (as was the case for periodic detention orders).
Schedule 1 [18] gives power to a court that is revoking a good behaviour bond imposed as part of a suspended sentence to order that the offender serve the remainder of the sentence under an intensive correction order (rather than in periodic detention as is currently the case). Schedule 1 [19] makes a consequential amendment.
Schedule 1 [4] omits definitions related to periodic detention and Schedule 1 [3] inserts definitions related to intensive correction orders. Schedule 1 [1] and [10]–[13] remove redundant references to periodic detention. Schedule 1 [7] renumbers a section and Schedule 1 [2] corrects a corresponding cross-reference.
Schedule 1 [20] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
Schedule 1 [21] inserts a savings provision which ensures existing periodic detention orders remain in force and continue to operate once the proposed Act has commenced.
Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999 No 93
Imprisonment by way of intensive correction in the community
Schedule 2 [9] repeals Part 3 of the Crimes (Administration of Sentences) Act 1999 (the CAS Act) which applied to those offenders who had been sentenced to imprisonment by way of periodic detention and included provisions relating to the general obligations of offenders, the administration of periodic detention orders and offences relating to periodic detention. Proposed Part 3 applies to those offenders who have been sentenced to imprisonment by way of intensive correction in the

community. Proposed Division 1 of Part 3 sets out the conditions governing intensive correction orders, which include conditions prescribed by the regulations (see Schedule 4 [1]) and additional conditions imposed by the court. An offender who is subject to an intensive correction order must comply with all requirements under proposed Part 3 and the regulations and with any conditions imposed on the order.

Permission for non-compliance with work or reporting requirements

Proposed Division 2 of Part 3 provides that an offender who is subject to a requirement to work or to report may apply to the Commissioner for permission to not comply with that requirement, before the time the requirement is due to be complied with. The Commissioner may grant such a permission for health reasons, compassionate grounds or for any reason the Commissioner thinks fit. The Commissioner may order the offender to make up for any work, activity or program that the offender was given permission to avoid and may apply to the sentencing court to extend the period of the offender's intensive correction order for that purpose. The court may extend the offender's order for as long as the court considers necessary and appropriate (for a maximum period of 6 months).

If the Commissioner refuses to grant an offender permission to not comply with a work or reporting requirement, the offender may apply to the Intensive Correction Orders Management Committee (ICO Management Committee) for a review of the matter. The Commissioner is not bound by a recommendation of the ICO Management Committee and if the Commissioner does not grant permission to the offender after the review, the offender may apply to the Parole Authority, who may direct that the Commissioner grant permission.

Breach of intensive correction orders

Under proposed Division 3 of Part 3, if an offender breaches an intensive correction order, the Commissioner may impose a sanction (that is, a formal warning or a more stringent application of the conditions of the order) or take no action. The Commissioner may also decide to refer the breach to the Parole Authority because of the serious nature of the breach. The Parole Authority may impose a sanction (that is, a formal warning or a more stringent application of the conditions of the order) on an offender who has breached his or her order, may impose a period of up to 7 days of home detention or may revoke the order.

If the Commissioner believes that an offender has breached his or her order or that there is a serious and immediate risk that the offender will leave New South Wales, harm another person or commit an offence, the Commissioner may apply urgently to the Parole Authority for an interim suspension of an offender's intensive correction order. A judicial member of the Parole Authority may suspend the order (during which time the order has no effect) and may issue a warrant for the offender's arrest. An interim suspension order in respect of an offender who is in custody lasts for 28 days. If the offender is not in custody when the suspension order is made, the order ends 28 days after the offender is taken into custody.

Revocation and reinstatement of intensive correction orders by Parole Authority

Schedule 2 [13] repeals provisions relating to revocation and reinstatement of periodic detention orders by the Parole Authority and provides instead for the functions of the Parole Authority in relation to intensive correction orders. Under proposed Division 1 of Part 7, the Parole Authority may conduct an inquiry if it has reason to suspect an offender has failed to comply with the offender's obligation under an intensive correction order. The Parole Authority may revoke an intensive correction order if it is satisfied that the offender has failed to comply with any obligations, is unable to comply as a result of a material change in the offender's circumstances, if the offender fails to appear before the Parole Authority when called on to do so or if the offender has applied for the order to be revoked. The Parole Authority may also revoke an intensive correction order on the recommendation of the Commissioner if health reasons or compassionate grounds justify its revocation. An offender who has had his or her intensive correction order revoked may apply to

the Parole Authority to have the order reinstated once the offender has served 1 month of full-time imprisonment.

The Parole Authority may make an order directing that an offender who has had his or her intensive correction order revoked serve the remainder of the sentence by way of home detention instead of full-time imprisonment and may make an order releasing the offender from custody while an assessment for home detention is carried out and before deciding whether or not the offender is suitable for home detention. If the Parole Authority decides to make a home detention order, it may include in the order conditions that prohibit or restrict the offender from associating with a specified person or visiting a specified place.

Schedule 2 [32] provides that when the Parole Authority revokes an intensive correction order, it must also revoke any other intensive correction order to which the offender is subject (including any order that is yet to come into force).

Schedule 2 [12], [14]–[31] and [33]–[39] make amendments resulting from the abolition of periodic detention and the Parole Authority's new functions in relation to the administration of intensive correction orders, including in connection with post-revocation procedures, applications to the Supreme Court for review of Parole Authority decisions and miscellaneous matters.

ICO Management Committee

Under proposed section 92 (as inserted by Schedule 2 [9]), the Commissioner is to establish a committee called the Intensive Correction Orders Management Committee, that will consist of not less than 5 members, being officers of Corrective Services NSW appointed by the Commissioner. The functions of the ICO Management Committee include providing advice and recommendations in connection with the case management of offenders and other functions as directed by the Commissioner or otherwise conferred on the ICO Management Committee under the CAS Act. Schedule 2 [66] sets out the ICO Management Committee's procedures.

Regulations

Proposed section 93 (as inserted by Schedule 2 [9]) is a power to make regulations for or with respect to various matters, including:

(a) the mandatory conditions to be imposed on an intensive correction order by a sentencing court and the additional conditions that may be imposed,

(b) the manner in which an offender's failure to comply with an intensive correction order may be dealt with,

(c) the management, administration and supervision of intensive correction orders,

(d) drug and alcohol testing and medical examinations of offenders,

(e) the day-to-day routine of offenders, including the performance of work or engagement in an activity or intervention,

(f) the functions of officers of Corrective Services NSW in relation to offenders.

Consequential amendments and savings provisions

Schedule 2 [56] provides that a compliance and monitoring officer (who may be a correctional officer, a probation and parole officer or any member of staff of Corrective Services NSW) may exercise functions associated with the administration of an intensive correction order. Schedule 2 [58] provides that the provisions of Part 13 of the CAS Act that relate to the transport of offenders and custody of offenders while in transit apply to an offender who has been sentenced to an intensive correction order but who has not yet been served with notice of the order (as they did to a person who was sentenced to periodic detention). Schedule 2 [8], [10], [59] and [61]–[63] replace references to periodic detention orders with references to intensive

correction orders in provisions relating to community service work, unlawful absences from custody, the service of notices under the Act and evidentiary certificates.

Schedule 2 [40]–[55] contain amendments resulting from the abolition of periodic detention centres. Schedule 2 [1], [3], [4], [7], [11], [57], [60] and [65] omit redundant references to periodic detention centres, periodic detention, periodic detention orders and periodic detainees. Schedule 2 [2] omits the definition of detention period which was used in relation to periodic detention and Schedule 2 [6] inserts definitions relevant to intensive correction orders. Schedule 2 [5] updates a cross-reference to the Crimes (Sentencing Procedure) Act 1999.

Schedule 2 [67] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 2 [68] inserts a savings provision that provides that a periodic detention order that is in force at the time the amendments commence will remain in force and continue to operate after the amendments commence in the same way as it did before the amendments.

Schedule 3 Amendment of Crimes (Sentencing Procedure) Regulation 2005

Schedule 3 repeals Part 3 of the Crimes (Sentencing Procedure) Regulation 2005 that related to sentencing procedures for periodic detention orders and inserts a new Part 3 that contains provisions relating to sentencing procedures for intensive correction orders. The new Part sets out the matters that must be addressed in an assessment report of an offender, including the likelihood that the offender will re-offend, risks to the community if the offender is in the community, proposed living arrangements for the offender, the offender's drug and alcohol issues, the offender's physical and mental health and the availability of resources to address the offender's offending behaviour. In addition, an officer preparing a report about an offender who is homeless is required to make all reasonable efforts to find suitable accommodation for the offender. If a child under 18 years would be living with the offender, the assessment report must address the effect on the child. The proposed Part also provides that intensive correction orders and offender undertakings must be in the approved form.

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

Schedule 4 [1] omits Chapter 3 of the Crimes (Administration of Sentences) Regulation 2008 which dealt with administration procedures, periodic detention centre and work site routines, leaves of absence and other matters in relation to periodic detention. Proposed new Chapter 3 provides for the administration of intensive correction orders, and sets out the mandatory conditions for intensive correction orders, including requirements that the offender do as follows:

(a) be of good behaviour and not commit any offences,

(b) reside at approved premises,

(c) not leave the State or Australia without permission,

(d) receive visits by a supervisor at the offender's home,

(e) authorise his or her medical practitioner, therapist or counsellor to provide information about the offender to a supervisor,

(f) not use prohibited drugs, obtain drugs unlawfully or abuse drugs lawfully obtained,

(g) submit to breath testing, urinalysis or other alcohol and drug testing,

(h) not possess or have in his or her control any firearm or other offensive weapon,

(i) submit to surveillance or monitoring (including electronic surveillance or

monitoring) and not tamper with, damage or disable surveillance or monitoring equipment,
Explanatory note page 8
Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010
Explanatory note
(j) undertake at least 32 hours of community service work each month,
(k) engage in activities to address his or her offending behaviour.
Schedule 4 [2]–[7] and [10] omit redundant references to periodic detention centres and periodic detention orders in provisions relating to parole. Schedule 4 [9], [11], [12] and [14] replace references to periodic detention orders and periodic detainees with references to intensive correction orders and intensive correction offenders in provisions relating to parole. Schedule 4 [13] omits a Schedule that contains offences against periodic detention discipline. Schedule 4 [15]–[19] are consequential amendments to terms used in the Dictionary to the Regulation.
Schedule 4 [8] updates a cross-reference.
Schedule 5 Amendment of other Acts
Amendment of Fines Act 1996 No 99
Schedule 5.10 amends the Fines Act 1996 to repeal provisions that allow a fine defaulter who is committed to a correctional centre after having failed to comply with a community service order to serve a period of imprisonment by way of periodic detention. Schedule 5.10 [3] instead provides that such a person will be able to apply to the Commissioner for an order that he or she may serve the period of imprisonment under an intensive correction order. The eligibility criteria and requirements for service and notice of the orders are similar to the provisions that applied for periodic detention.
Schedule 5.10 [1], [2] and [4]–[8] are consequential amendments that remove provisions relating to imprisonment by way of periodic detention.
Schedule 5.10 [9] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.
Schedule 5.10 [10] contains a savings provision which provides that existing provisions in the Fines Act 1996 relating to periodic detention will continue to operate in respect of existing periodic detention orders and any pending applications by a fine defaulter to serve the period of imprisonment by way of periodic detention are to be dealt with under the existing provisions, as if the proposed Act had not been enacted.
Amendment of other Acts
Schedule 5.1–5.9, 5.11 and 5.12 amend various other Acts as a consequence of the abolition of periodic detention as a sentencing option and the introduction of intensive correction orders.