Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.38 a.m.]: I move:

> That this bill be now agreed to in principle.

The Government is pleased to introduce the Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Bill 2010. The bill introduces a new sentencing option—the intensive correction order—designed to reduce an offender's risk of reoffending through the provision of intensive rehabilitation and supervision in the community. It also abolishes the sentence of periodic detention, giving effect to recommendations from the New South Wales Sentencing Council and calls from victims of crime representatives. Essentially, an intensive correction order is a sentence of imprisonment of up to two years that is ordered to be served in the community, where offenders can be subject to a range of stringent conditions, including 24-hour monitoring, regular community work and a combination of tailored educational, rehabilitative and other related activities.

The innovative new order is based on a model recommended by the New South Wales Sentencing Council directed at addressing some of the documented shortcomings of periodic detention. The new order will be available statewide and offer offenders the opportunity to turn their lives around through addressing the identified factors associated with their offending. At the same time, the community will be safeguarded through the intensive monitoring and supervision of offenders. The New South Wales Sentencing Council will report annually on the use of the new orders and will review their operation after five years. In addition, the New South Wales Bureau of Crime Statistics and Research will be asked to measure the effectiveness of the order in reducing reoffending. While it is not intended to be a direct replacement of periodic detention, the power of the courts to make periodic detention orders will cease upon the commencement of the new intensive correction order.

In its report on periodic detention, the Sentencing Council highlighted the reasons why retaining periodic detention and introducing the new intensive correction order would not be appropriate. Among these reasons was the potential for the large degree of resources needed to support the intensive correction order to be diluted, thereby weakening its value, along with the risk that the problems identified with periodic detention may simply be perpetuated if the existing resources directed towards that sentencing option were not put to better use. While the Government agrees with the Sentencing Council's conclusions on this issue and therefore will be repealing the provisions relating to periodic detention, it also wishes to ensure that existing offenders subject to these orders are not disadvantaged in any way when the new orders come into effect. The bill therefore includes transitional provisions allowing periodic detainees to continue to serve out their sentence after the power to make new periodic detention orders has come to an end.

Before I turn to the details of the bill, I would like to provide an overview of its background, including information about the detailed consultation that has occurred as part of its development. On 4 June 2007, the Attorney General asked the New South Wales Sentencing Council to undertake a review of periodic detention. In making this reference, the Attorney General said the following—I quote from the Australian Associated Press newswire of 4 June 2007:

> Periodic detention is a scheme that is nearly 40 years old and it is appropriate to review it at this time.

The shadow Attorney General, Mr Greg Smith, was also quoted in the same article as saying—again I quote from the Australian Associated Press newswire of 4 June 2007:

> Periodic detention is a soft option for criminals whose crime obviously warrants imprisonment.

At the time, former Supreme Court Justice and Chief Judge at Common Law, the Hon. James Wood, AO, QC, chaired the Sentencing Council. The council also included the following representatives: former Supreme Court Justice, the Hon. John Dunford, QC, who remains deputy chair of the council; Howard Brown from the Victims of Crime Assistance League; Martha Jabour from the Homicide Victims Support Group; Ken Marslew from the Enough is Enough Anti-Violence Movement; Assistant Commissioner Catherine Burn from the New South Wales Police Force; Commissioner of Corrective Services, Ron Woodham; the Director of Public Prosecutions, Mr Nicholas Cowdery, QC; and Senior Public Defender, Mr Mark Ierace, SC.

As part of its review, the Sentencing Council was asked to look at a number of issues, including the extent to which periodic detention is used, its advantages and disadvantages, and whether there are better alternatives to periodic detention orders. The council received submissions from 26 organisations and individuals, including members of the judiciary, groups such as the Law Society of New South Wales, various government agencies, local councils and representatives of victims of crime. The council also issued 260 community consultation letters addressed to a range of other smaller community organisations, receiving a further 72 responses. Consultation meetings and conversations were also held with local and overseas academics, think tanks and representatives from a range of New South Wales and Commonwealth government agencies.

The council delivered its report in December 2007, recommending the abolition of periodic detention and its replacement with a new community-based order. In making this recommendation, the council highlighted a number of problems with periodic detention. The most significant of these was the fact that it is not uniformly available throughout the State, which ultimately undermines consistency in sentencing and unfairly discriminates against offenders in certain parts of the State. While the council considered that this could potentially be remedied by making periodic detention available in every area of the State, it noted the fact that expansion would carry "very substantial capital costs and ongoing expenditure for facilities which, in some areas, would be likely to be underutilised". The council therefore recommended its replacement by a community-based order, which could be more easily, and therefore more realistically, made available on a statewide basis.

The council also found that current facilities are underutilised and noted the significant downward trend in the making of periodic detention orders by the courts, from 1,891 commencements in 1999-2000 to 1,184 in 2004-05. I understand that this situation has not improved, with the latest available statistics from the New South Wales Bureau of Crime Statistics and Research revealing that only 1,137 orders were made in 2008. The council also found that just under one-third of periodic detainees fail to complete their orders, with indigenous detainees four times more likely to have unsuccessful outcomes. The council found that case management does not exist in any meaningful way for periodic detainees, and drew attention to several submissions that had questioned the rehabilitative value of periodic detention, noting that 39 per cent of all offenders sentenced to periodic detention had another proven offence within the following two years, with this rate increasing to 55 per cent of Aboriginal offenders.

In highlighting these deficiencies, the council noted that periodic detention provided no case management or therapeutic or rehabilitative support for offenders. It found that the introduction of a community-based order would have the benefit of enabling offenders to participate in rehabilitative or educational programs. The council further noted that several submissions had highlighted the negative impact of periodic detention in relation to employment and family duties, with suggestions that alternative community-based sanctions could have less of an impact in terms of dislocation. The council also noted the reasons why retaining periodic detention and introducing a new community-based order would not be appropriate. Among these reasons was the potential for the resources needed to support the new order to be diluted, thereby weakening its value, along with the risk that the problems identified with periodic detention may simply be perpetuated if the existing resources directed towards that sentencing option were not put to better use.

In light of the Sentencing Council's key recommendation to introduce a new community-based sentence, the Government went out to public consultation with a possible model for the new order, which was based closely on that suggested by the Sentencing Council, to be called an intensive correction order. Submissions were again received from a large number of different organisations and individuals, including members of the judiciary, legal representatives including the Law Society of New South Wales and the New South Wales Bar Association, government agencies, and community legal centres. The stakeholder response to the public consultation was, on the whole, supportive of the new sentencing option. Many of the concerns expressed have been addressed in the bill. For example, previous proposals to allow the commissioner to extend the term of the sentence, and to prevent the court from suspending the sentence if an offender is found unsuitable for an intensive correction order, have been discarded.

The role of the court in the intensive correction order sentencing process has also been strengthened as a result of the consultation process; it being responsible for imposing the mandatory and additional conditions, varying or revoking any additional conditions, and determining whether to extend the term of the order to account for work or reporting requirements missed. The court has also been given greater discretion in relation to the range of conditions that may be imposed as "additional conditions" of the order, where previously the consultation model had proposed predominantly mandatory conditions in this regard.
In finalising the bill, the Government circulated a copy of it and invited further comment from all those organisations that had made submissions on the consultation model, as well as key agency stakeholders, such as the Office of the Director of Public Prosecutions, Legal Aid, and the courts. The bill was also circulated to victims of crime representatives, the Sentencing Council, and the now former chair of the Sentencing Council, the Hon. James Wood AO, QC. A briefing session was also held with the Attorney General and the Minister for Corrective Services, with all the above organisations invited. Those in attendance included representatives from the Law Society of New South Wales, the New South Wales Bar Association, the Wesley Community Legal Centre and victims of crime representatives.

In providing feedback on the legislation, stakeholders have again expressed their strong support for the introduction of the intensive correction order. In particular, I would like to place on record the strong endorsement the bill has received from the Victims of Crime Assistance League, the Enough is Enough Anti-Violence Movement, and the Homicide Victims Support Group. I will turn to the comments that these organisations have made in relation to the bill in a moment.

I would like to place on record also the endorsement the bill has received from the Hon. Justice James Wood, who, as I outlined earlier, was chair of the New South Wales Sentencing Council when the review of periodic detention was undertaken. The Government also received further comment on the legislation from the Law

Society of New South Wales, which raised some concerns with the proposed legislation and suggested some changes. The Government considered these changes in detail and, in doing so, sought the further advice of Mr Wood, as many of the issues raised had been looked at by the Sentencing Council in conducting its initial review of periodic detention.

The Law Society is an important organisation, and one whose views the Government respects. We often seek the advice of the Law Society on a range of different proposals, and a tremendous amount of legislation that goes through this place benefits from its input. I therefore think it is important to place on the record the issues that the Law Society has raised in relation to this bill, and to detail the consideration the Government has given them. It is also important to note that the Government has outlined and further detailed this consideration in a written response it has provided to the Law Society.

The Law Society's foremost concern relates to the proposed repeal of periodic detention. I understand the Law Society is of the view that the proposed abolition of periodic detention would remove an important component of the sentencing spectrum and lead to an increase in the use of full-time imprisonment. It is worth noting that the Law Society also raised this issue in its submission on the intensive correction orders consultation paper. The Government first considered the society's arguments at that time, but decided to maintain its support for repealing periodic detention in light of the findings and recommendations of the Sentencing Council, which I outlined earlier.

In light of the Law Society's further comments on the bill, the Government once again sought the views of the Hon. Justice James Wood, QC, who confirmed his support for the Sentencing Council's original findings and recommendations. Once again, these included the fact that periodic detention is not available on a statewide basis, that making it so would incur significant costs and require the construction of facilities that would be likely to be underused and, finally, that periodic detention orders are often breached, fail to rehabilitate offenders and are becoming increasingly unpopular with the courts. Indeed, in public comments made to the media today, Mr Wood has reiterated these points, saying:

> The Council was concerned that periodic detention is not available as a sentencing option in all parts of the state.
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> Further expansion to address this would incur very substantial costs and ongoing expenditure for facilities, which, in some areas, would probably be underutilised.

The Government has also had to consider the fact that a number of other organisations are strongly in favour of abolishing periodic detention. These include, most notably, victims of crime representatives such as Howard Brown of the Victims of Crime Assistance League, Ken Marslew of the Enough is Enough Anti-Violence Movement, and Martha Jabour from the Homicide Victims Support Group. I would like to place on record what each of these organisations has said today in their comments to the media. Howard Brown has said:

> There's a good reason why no other state in Australia has weekend detention.
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> Because about a third breach their conditions and those who do comply receive absolutely no rehabilitative support or treatment whatsoever.
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> Even courts are turning away from it—nearly half the number of orders are being made compared to ten years ago.

Ken Marslew has said:

> This is about getting fair dinkum with repeat criminal offenders.
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> Weekend detention is simply failing to rehabilitate them—39 per cent of those placed on orders re-offend within two years.

And Martha Jabour has said:

> By enabling offenders to be monitored 24 hours, 7 days a week, and by requiring them to address the causes of their offending behaviour, these [Intensive Correction] Orders will be much more effective in protecting the community both in the short and long term.

In consideration of Mr Wood's advice, further input from victims of crime, and our own consideration of the competing arguments for and against retaining periodic detention, the Government has decided to proceed with the abolition of periodic detention. The Law Society also expressed concern surrounding the proposed maximum term of the intensive correction orders, and has suggested that it be increased from two to three years. The maximum cap of two years and the restriction on the court setting a non-parole period were both recommended by the Sentencing Council. The Government therefore again sought Mr Wood's views on these issues, and he has confirmed that he continues to support the council's original recommendations and findings.

The Sentencing Council recommended the cap on the basis of statistics confirming that there are very few

offenders currently sentenced to periodic detention for periods of between two and three years. The council's report noted that only 6 per cent of the periodic detention population has a sentence length greater than 18 months and 82 per cent of periodic detention orders are for 12 months or less. Furthermore, requiring an offender to remain under intensive supervision for periods of up to three years may increase the potential for breaches during the last portion of the sentence. In this regard, I note that periodic detention orders contain a non-parole period, and intensive correction orders do not. This means that offenders under an intensive correction order remain subject to supervision for the entire length of the order.

In light of these considerations, the Government has decided to maintain its support for keeping the maximum term of the intensive correction order at two years. The Law Society has also suggested allowing the court to set a non-parole period for an intensive correction order. Once again, the Government sought Mr Wood's views on this issue, who again confirmed his support for the recommendations of the Sentencing Council. The restriction on the court setting a non-parole period for an intensive correction order was an essential feature of the model recommended by the Sentencing Council, on the basis that the offender should be subject to the supervision and conditions of the order for its full term. This will ensure that the rehabilitative focus of the order is maintained from beginning to end.

Some concern has been raised about the potential for an offender to be required to serve the remainder of their sentence in custody should their order be revoked. However, the Government considers that any concern in this regard is tempered by the fact that offenders will have the opportunity to apply for a reinstatement of their intensive correction order after serving one month in custody. This throws the onus onto offenders to demonstrate to the Parole Authority what steps they have taken to ensure that they will not fail to comply with the obligations of the order in the event that it is reinstated. It is also worth emphasising that suitable offenders will be able to serve the remainder of their sentence by way of home detention as a result of an intensive correction order being revoked.

The Law Society also sought to vest the power to revoke an intensive correction order in the court rather than the Parole Authority. Once again, the proposal to vest the revocation function in the Parole Authority is in harmony with the model recommended by the Sentencing Council. Accordingly, the Government again sought the views of Mr Wood on this issue, who has again re-affirmed his support for the Sentencing Council model. In making this recommendation, the Sentencing Council found that reservation to the Parole Authority of the primary responsibility for breaches would have two clear advantages. The first was that it would permit an expeditious response to a breach, thereby strengthening the deterrent effect of the sanctions that would underlie such orders. The second was that it would permit greater consistency in the determination of breach proceedings.

> **ACTING-SPEAKER (Ms Diane Beamer):** Order! There is far too much audible conversation. Members who wish to conduct private conversations should do so outside the Chamber.

Mr BARRY COLLIER: The council's report also noted that vesting the revocation function in the Parole Authority is consistent with the manner in which home detention and periodic detention is currently administered. It is considered the most efficient means of administering the intensive correction order, while retaining procedural fairness considerations and review avenues for offenders. As noted above, the existing power of the Parole Authority to reinstate a revoked periodic detention order has also been applied to the intensive correction order. It is expected that revocation and attendant functions can be dealt with more expeditiously by the Parole Authority. This was certainly the experience in relation to periodic detention orders, following the Periodic Detention of Prisoners Amendment Act 1998, which moved the function of periodic detention revocation from the court to the then Parole Board.

The Law Society expressed concern about the restriction on the court's ability to make an intensive correction order in the event that an offender is not assessed as suitable for the order. The rationale for it is that Corrective Services New South Wales, as the agency administering the order, is best placed to advise which offenders it is able to supervise adequately in the community and the particular risks associated with the offender. This not only includes the risk the offender might pose to community safety, but also the risk to his or her own safety through the danger of self-harm. Other perhaps less drastic risks include the danger that an unsuitable offender might not be capable of meeting the requirements of an order, making it likely that they would end up breaching the order. If a court were empowered simply to ignore this advice, this could place both the community and the individual offender at considerable risk, as well as compromise levels of compliance and thereby expose the offender to breach action. The Government has therefore decided to maintain its support for the existing provision.

The Law Society also sought assurance from the Government that the proposed intensive correction order [ICO] will be properly resourced so that it operates as intended and is uniformly available across the State. I would like to place on the record the Government's assurances in this respect, because it is no doubt an issue that is of interest to all members in considering this bill. The Cabinet Standing Committee on the Budget has approved the Corrective Services costings and funding plan for the implementation of the intensive correction order, which it noted may amount to $14.5 million during 2010-11. These funds will provide adequate resourcing for the initially

projected 750 to 850 offenders on an intensive correction order. This figure has been arrived at on the basis of current numbers of offenders serving periodic detention orders.

The bill requires a court to first determine that it will sentence a person to imprisonment and then to seek a suitability assessment to assist the sentencing court in determining whether or not the sentence of imprisonment is to be served by way of an intensive correction order. If the courts begin to sentence more offenders to an intensive correction order than the current number of offenders sentenced to a periodic detention order, then this would mean that more offenders are being diverted from full-time imprisonment.