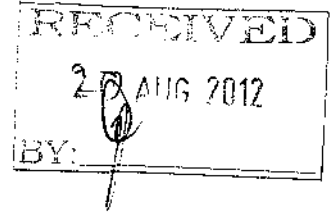




Commonwealth Director of Public Prosecutions



17 August 2012

Your Reference:

Our Reference:

Chris Murphy

E-mail:

New South Wales
Law Reform Commission
DX 1227 Sydney

Sentencing Question Paper 6 – Question 6.3

The Commission has in relation to ICOs asked whether intensive correction orders are operating as an effective alternative to imprisonment.

The imposition of an ICO allows an offender to serve their sentence by way of intensive correction in the community rather than by way of full time custody. This option is provided for by s 7 of the Crimes (Sentencing Procedure) Act 1999 (NSW) which is picked up as a sentencing option in Commonwealth matters by s 20AB of the Crimes Act 1914 (Cth).

For an offender to be eligible for an ICO the circumstances of their matter must be such that they would otherwise be sentenced to imprisonment.

As noted in the Paper there are four levels of ICO supervision (1 – 4) with reducing levels of supervision and conditions. In the case of levels 3 & 4 the supervision and conditions imposed on an offender may, depending on the offender's circumstances, be only marginally more onerous than that which would arise from the imposition of a community service order.

This Office prosecutes a number of persons each year who could be broadly described as 'white collar offenders'. Such offenders often have no rehabilitation issues.

SYDNEY OFFICE

Level 7, Civic Tower, 66-68 Goulburn Street, Sydney NSW 2000
Locked Bag A4020, Sydney South NSW 1235
Telephone 02 9321 1100 Facsimile 02 9264 8241 DX 11497 Sydney Downtown

It can be anticipated that in the case of white collar offenders who do not have any rehabilitation issues, the progression to level 3 and then 4 could be rapid. This could have the effect, in practical terms, of the offender simply serving a community service order.

The use of ICOs in such cases highlights the concern that an ICO could be seen as an ersatz term of imprisonment where there is no real 'intensive correction'. Such a perception therefore has the potential to undermine the public confidence in the criminal justice system and re-enliven the issue of 'truth in sentencing'.

It is suggested that the legislation should ensure that where a person is sentenced to serve a term of imprisonment by way of an ICO that the requirements of the order are, and are seen to be, intensive correction and thus a genuine alternative to imprisonment.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'C. Murphy', written over a vertical line.

C. Murphy
Acting Assistant Deputy Director