

**The new sentencing legislation: Intensive Correction Orders (ICO),
Community Correction Orders (CCO); Conditional Release Orders (CRO)**

<u>Overview</u>	ICO	CCO	CRO
<i>General</i>			
Is it a sentence of imprisonment?	Yes	No	No
Is a conviction recorded?	Yes	Yes	Discretion
Is a future start date possible?	Yes ¹	No	No
Is a fine in addition possible?	Yes	Yes	No
Breaches & condition variations dealt with by:	SPA ²	Court	Court
<i>Maximum length</i>			
Single offence	2 y	3 y	2 y
Aggregate or accumulated total	3 y	n/a	n/a
<i>Preconditions / Exclusions / Requirements</i>			
Prerequisite: sentenced to imprisonment	Yes	No	No
At least one additional condition required	Yes ³	No	No
Offenders under 18 y.o. excluded	Yes ⁴	No	No
Particular offences excluded	Yes	No	No
Must live in NSW or approved jurisdiction	Yes	Depends ⁵	Depends ⁵
Restrictions for domestic violence offences	Yes	No ⁶	No ⁶
Report required:			
for making a general order	Usually ⁷	No	No
for Home Detention	Yes ⁸	n/a	n/a
for Community Service Work	Yes	Yes	n/a
<i>Additional conditions available</i>			
Supervision	(Standard)	Yes ⁵	Yes ⁵
Home Detention (only if suitable)	Yes	No	No
Electronic Monitoring	Yes	No	No
Curfew	Yes	Yes (12/24hr)	No
Community Service Work (only if suitable)	Yes ⁹ (750hrs)	Yes ⁹ (500hrs)	No
Alcohol/Drug Abstention	Yes	Yes	Yes
Non-association	Yes	Yes	Yes
Place restriction	Yes	Yes	Yes
Program/treatment	Yes	Yes	Yes

¹ But only if accumulated upon another sentence being served by ICO (s71) – and subject to the overall length limit of 3 years.

² The State Parole Authority

³ At least one additional condition must be imposed, unless there is a finding of exceptional circumstances (s73A(1) and (1A)).

⁴ s7(3): “an offender who is under the age of 18 years”. This probably means age at time of sentence not offence but it is not clear.

⁵ Supervision is subject to the offender living in NSW or an approved jurisdiction. For Community Service Work on a CCO see note 9.

⁶ While there are no restrictions as such, the court must generally impose supervision (s4A) and must consider the safety of the victim before making an order (s4B(3)).

⁷ General rule (s17D(1)): a court must not make an ICO without an assessment report. Exception (s17D(1A)): if satisfied that it has sufficient information to justify making an ICO without a report.

⁸ The Home Detention assessment must be ordered after the term of the sentence of imprisonment has been set.

⁹ Community Service Work is subject to the offender living in NSW or an approved jurisdiction or satisfying the court that they are willing and able to travel to NSW to undertake the work. Offenders who were under 18 at the time of the offence and under 21 at the time of sentence cannot get CSW on a CCO (s8(2)). However, it seems there is no such restriction on CSW on an ICO for such an offender.

Navigating the legislation			
	ICO	CCO	CRO
Crimes (Sentencing Procedure) Act 1999			
Power to impose	7; 66	8	9
Maximum term	68	85	95
Procedures and restrictions generally	64-73B	84-91	94-100
Restrictions for particular offences	67	-	-
Standard Conditions (mandatory)	73	88	98
Additional Conditions (optional statutory)	73A	89	99
Further Conditions (optional tailored to offender)	73B	90	99A
Court varying conditions after sentence	-	89-91	99-100
Discretion not to proceed to conviction	-	-	9(2); 10(1)(b)
Reports and when they are required	17B-17D		
What happens with multiple orders	17E-17H		
Domestic Violence Offenders	4A, 4B		
Conversion of existing sentences	Schedule 2, Part 29, Clauses 71-78		
Crimes (Administration of Sentences) Act 1999			
SPA varying conditions after sentence	81	-	-
Breach proceedings	162-164A	107C-D	108C-D

What happens to existing sentences from commencement (24 September 2018)	
Existing Sentence	Converts to
ICO	→ new ICO
HDO	→ ICO with Home Detention condition
CSO	→ CCO with Community Service Work condition
s9 bond	→ CCO
s10(1)(b) bond	→ CRO
s12 bond (suspended sentence)	# Stands, but if revoked → new ICO or gaol

Act and Regulations

Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017 - <https://www.legislation.nsw.gov.au/#/view/act/2017/53>

Crimes (Sentencing Procedure) Regulation 2017

Crimes (Sentencing Procedure) Amendment (Community-based Orders and Other Matters) Regulation 2018

Crimes (Administration of Sentences) Regulation 2014

Crimes (Administration of Sentences) Amendment (Community-based Orders and Other Matters) Regulation 2018

Helpful cases and references

R v Pogson (2012) 82 NSWLR 60

Boulton v The Queen; Clements v The Queen; Fitzgerald v The Queen (2014) 46 VR 308

DPP (NSW) v Jones [2017] NSWCCA 164

New South Wales Law Reform Commission, *Sentencing*, Report 139 (2013).

Clare Ringland and Don Weatherburn, 'The impact of intensive correction orders on re-offending' (2013) 176 *Crime and Justice Bulletin* 1.

Joanna JJ Wang and Suzanne Poynton, 'Intensive correction orders versus short prison sentence: A comparison of re-offending' (2017) 207 *Crime and Justice Bulletin* 1.

Further information:

Legal Aid NSW training days: <https://learning.legalaid.nsw.gov.au/> (register to get access)

Public Defenders: <http://www.publicdefenders.nsw.gov.au/>

Legal Aid NSW: <https://www.legalaid.nsw.gov.au/for-lawyers/>

Department of Justice: <https://www.justice.nsw.gov.au/Pages/Reforms/Sentencing.aspx>

Chapter 5 of *Sentence* (4th Edition) by Odgers SC

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