



COMMUNITY INSTRUCTION	COVID-19 – Discretion: Managing Non-Compliance with Community Based Order conditions
COMMUNITY INSTRUCTION NO.	C13
SCOPE	Community Operations

PURPOSE

To provide instructions to Community Corrections staff on the temporary adjustments and considerations which allow Community Corrections Officers (CCOs) to apply discretion when managing non-compliance during the COVID-19 pandemic, in place of the legislative requirement to report all alleged breaches to the Court or Sentence Administration Board (SAB).

This temporary measure applies to the management of Good Behaviour Orders (GBO), Intensive Correction Orders (ICO) and Parole Orders (PO).

Rights under the Human Rights Act 2004 (ACT) have been considered and to the extent that this instruction may limit a human right, those limitations are necessary, reasonable and proportionate to the aim of ensuring the timely and appropriate management of non-compliance during the public health emergency.

CCOs must consider human rights under the Human Rights Act 2004 (ACT) when making a decision under this procedure.

PROCEDURES

1. Scope of discretion when managing non-compliance

- 1.1. Non-compliance to which this Community Instruction applies includes where an offender fails to attend/comply with a:
 - a. scheduled appointment
 - b. reasonable direction
 - c. program/treatment
 - d. community service work
 - e. Illicit substance testing or a positive result.
- 1.2. A CCO may take one of the following actions in relation to non-compliance under section 1.1:
 - a. record the alleged non-compliance and take no further action
 - b. give the offender a formal warning, noting that further non-compliance may result in a breach report to the Court or the SAB
 - c. report the non-compliance as an alleged breach to the Court or SAB.
- 1.3. Non-compliance that does not fall within the scope of section 1.1 is to be managed in accordance with the current Breach Policy.

2. Responding to non-compliance

- 2.1. Understanding why an offender has been non-compliant is critical in ensuring the response is effective at preventing further non-compliance. Understanding non-compliance will assist in case management to:
 - a. re-engage the offender
 - b. review and mitigate criminogenic factors that have led to an escalation in risk
 - c. build offender responsibility and motivation to comply with the requirements of the order
 - d. address specific responsibility issues relating to non-compliance
 - e. remind the offender of the consequences of repeated non-compliance.
- 2.2. Following any instance of alleged non-compliance, the CCO must attempt to contact the offender within 48 hours or two (2) business days to establish the reason for non-compliance.
- 2.3. Where phone contact has been unsuccessful, the CCO will send a letter to the offender directing them to report for supervision with this Service, noting a date and time within a one (1) week timeframe.

3. Considerations and approval of applying discretion

- 3.1. A CCO must exercise professional discretion to determine the nature of the non-compliance, and the appropriate course of action under section 1.2. This must include consideration of:
 - a. the offender's order type and risk level
 - b. the nature and circumstances of the offence
 - c. the personal circumstances of the offender
 - d. the offender's history of compliance with the order
 - e. the likelihood that any victim of the offender, and the victim's family, will be subject to violence or harassment by the offender
 - f. previous actions taken in relation to any prior non-compliance under the order.
- 3.2. Following these considerations and once a course of action has been determined, the CCO must seek approval for their recommendation from their Team Leader (TL).

4. Administration of discretion

- 4.1. If the agreed response is to take no further action, the CCO must case note their decision including any considerations listed in section 2.1 in the offender management system using case note category "Discretion: Take No Further Action". The CCO must advise the offender of this decision at the next appointment.
- 4.2. If the agreed response is to provide the offender with a formal warning the CCO must:
 - a. complete the [C13.F1 COVID-19 Notification of Formal Warning 2021](#)
 - b. ensure the TL has authorised the [C13.F1 COVID-19 Notification of Formal Warning 2021](#)
 - c. case note their decision including any considerations listed in section 2.1 on the offender management database using case note type "Discretion: Formal Warning".


- d. provide a copy of the completed C13.F1 COVID-19 Notification of Formal Warning 2021 to the offender.
- e. ensure the offender completes the acknowledgment receipt in the C13.F1 COVID-19 Notification of Formal Warning 2021.
- f. upload the signed C13.F1: Notification of Formal Warning Template 2021 in the offender management database.

5. Notification of discretionary action to the Sentence Administration Board

5.1. Where an offender is subject to an ICO or a PO and has been issued with a C13.F1: COVID 19 Notification of Formal Warning 2021, a copy of the signed document must be emailed to sab_secretariat@act.gov.au.

RELATED DOCUMENTS AND FORMS

- C13.F1: Notification of Formal Warning Template 2021
- Breach Policy
- Human Rights Act 2004 (ACT)



Bruno Aloisi
A/g Assistant Commissioner
Community Operations
ACT Corrective Services

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Document details

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Compliance:	This operating procedure reflects the requirements of the <i>Corrections Management (Policy Framework) Policy 2020</i>

Version Control			
Version no.	Date	Description	Author
V1	May-20	First Issued	T Graham
V2	Nov-20	Second issued	T Goodman
V3	Sep-21	Third Issued	M Steen