

Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020

Notifiable instrument NI2020–611

made under the

Crimes (Sentence Administration) Act 2005, s 322AA (Guidelines for corrections officer's actions for certain breaches—COVID-19 emergency)

1 Name of instrument

This instrument is the *Crimes (Sentence Administration) COVID-19 Emergency Guidelines 2020*.

2 Commencement

This instrument commences on the day after its notification day.

3 Guidelines

I make the attached COVID-19 – Discretion: Managing Non-Compliance with Community Based Order Conditions as the guidelines in relation to the operation of sections 59A, 102A and 143A of the *Crimes (Sentence Administration) Act 2005*.



Jon Peach
Delegate of the
Director-General
17 September 2020



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 staff on the temporary adjustments and considerations which will allow Community Corrections Officer's 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 supervision condition of a Good Behaviour Order (GBO), an Intensive Corrections Order (ICO) and Parole Order (PO).

Rights under the *Human Rights Act 2004 (ACT)* have been considered and to the extent that this policy 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.

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

PROCEDURES

1. Understanding non-compliance

1.1. Non-compliance to which this instruction applies includes where an offender:

- failed to attend scheduled appointment
- is determined to have used drugs where the use is reducing or shows a decrease in risk of harm.
- demonstrated a pattern of cancelling, rescheduling or an accumulation of absences to avoid completing the requirements of the order
- demonstrated threatening or abusive behaviour towards Community Corrections staff, or any other behaviour that is considered unacceptable.

1.2. A CCO may take one of the following actions in relation to non-compliance under section 1.1:

- record the alleged non-compliance and take no further action
- give the offender a formal warning that further non-compliance may result in a breach report to the Court or the SAB.
- report the non-compliance as a breach to the Court or SAB.

1.3. Professional discretion, in conjunction with consultation with a Team Leader (TL), must be exercised in order 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 nature and circumstances of the offence;
 - b. the personal circumstances of the offender;
 - c. the offender's history of compliance with the order;
 - d. the offender's history of conduct under the order and the likelihood that any victim of the offender, and the victim's family, will be subject to violence or harassment by the offender
 - e. the court's sentencing decision to protect the community from the offender and to promote the rehabilitation of the offender; and
 - f. actions taken in relation to any prior non-compliance under this procedure.
- 1.4. Where a CCO and their TL have reasonable grounds to believe an offender has been non-compliant under section 1.1, this must be supported with the relevant evidence (C13.F1: COVID 19 Application of Discretion Template).
- 1.5. Non-compliance that does not fall within the scope of section 1.1, is to be managed in accordance with the current breach policies.

2. Responding to non-compliance

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

3. Applying discretion

- 3.1. Where an offender has been non-compliant with the requirements of their order, the CCO must discuss the matter with their TL and provide reasonable grounds to support their belief that the offender has been non-compliant (C13.F3: Formal Warning Approval Template). Evidence may include:
- a written direction and evidence to support non-compliance
 - case notes to evidence a verbal direction and evidence to support non-compliance
 - case notes to evidence instances of behaviour inconsistent with offender responsibilities
 - records from service providers evidencing offender non-compliance.
- 3.2. In consultation with the relevant TL, the CCO will determine the appropriate course of action, which may include:

- record the act of non-compliance by completing a C13.F1: COVID 19 Application of Discretion Template and take no further action; or
 - record the act of non-compliance by completing a C13.F1: COVID 19 Application of Discretion Template and provide the offender with a formal warning, noting any further non-compliance will result in allegations of breach being referred to the sentencing court or the Board
- 3.3. Once the course of action has been determined, the CCO must contact the offender to discuss the following:
- the alleged non-compliance and to confirm that action will be in response to it
 - the action proposed to be taken
 - that the offender may request the Court or SAB deal with the non-compliance
 - that the offender may make an oral or written submission within 7 days in relation to the alleged non-compliance and the proposed action.
- 3.4. The CCO must case note any discussions under section 3.3 and ensure that any written submission received is stored on the offender's electronic record system.
- 3.5. Where phone contact has been unsuccessful, the CCO will send a letter by registered mail to the offender directing them to report for supervision with this Service, noting a date and time within a one-week timeframe.
- 3.6. If the offender requests that the non-compliance is referred to the Court or SAB, the CCO must prepare a formal breach notification in accordance with the Breach Policy.

4. Completing the C13.F1: COVID-19 Application of Discretion Template 2020

- 4.1. The C13.F1: COVID 19 Application of Discretion Template must be:
- Factual
 - Objective
 - Succinct.
- 4.2. The template should consider any submission provided by the offender in relation to the alleged non-compliance.
- 4.3. Where a formal warning is being issued, the C13.F1: COVID 19 Application of Discretion Template require the signature/support of the Director, Community Corrections or the Senior Director, Community Corrections (in the Director's absence).

5. Notification to the offender

- 5.1. Upon approval of the C13.F1: COVID 19 Application of Discretion Template, the CCO must schedule an appointment with the offender within 48 hours, or two business days.
- 5.2. The CCO must advise the offender of their non-compliance and the outcome and provide them with a copy of the completed C13.F1: COVID 19 Application of Discretion Template.
- 5.3. Where a formal warning is being issued, the CCO must provide the offender a copy of the C13.F1: COVID 19 Application of Discretion Template and the C13.F2: COVID 19 Notification of Formal Warning.
- 5.4. The offender must acknowledge the C13.F2: COVID 19 Notification of Formal Warning by signing the Acknowledgement Form for the CCO to retain on record. Where the offender

refuses to sign the Acknowledgement Form, this will be taken as a breach of their order and formal notification to the Court or the SAB will be made in accordance with the Breach Policy.

5.5. The CCO will advise the offender that a copy of the following will be provided the SAB for their information:

- C13.F3: Formal Warning Approval Template
- C13.F2: COVID 19 Notification of Formal Warning
- acknowledgement signed by the offender.

5.6. The CCO will advise the offender further non-compliance with a condition on their Order may result in formal breach notification to the Court or SAB.

6. Notification of discretionary action to the Sentence Administration Board

6.1. Where an offender subject to an ICO or a Parole Order and has been issued with a C13.F2: COVID 19 Notification of Formal Warning, the SAB must be notified.

6.2. The CCO will provide the SAB with a copy of the following:

- C13.F3: Formal Warning Approval Template
- C13.F2: COVID 19 Notification of Formal Warning; and
- a copy of the Acknowledgement Form signed by the offender.

RELATED DOCUMENTS AND FORMS

- C13.F1: COVID 19 Application of Discretion Template
- C13.F2: COVID 19 Notification of Formal Warning
- C13.F3: Formal Warning Approval Template
- Breach Policy

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15 September 2020

Document details

Criteria	Details
Document title:	COVID-19 Discretion: Managing Non-Compliance with Conditions Community Instruction 2020
Document owner/approver:	Assistant Commissioner Community Operations, ACT Corrective Services

Criteria	Details
Date effective:	The day after the approval date
Review date:	3 years after the approval date
Responsible Officer:	Senior Director, Community Operations
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