

**IN THE MATTER OF THE ROYAL COMMISSION  
INTO FAMILY VIOLENCE**

**ATTACHMENT JMS-8 TO STATEMENT OF JANICE MARGARET SHUARD**

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This is the attachment marked '**JMS-8**' produced and shown to **JANICE MARGARET SHUARD** at the time of signing her Statement on 27 July 2015.

Before me: ...



**An Australian Legal Practitioner within  
the meaning of the Legal Profession Uniform Law (Victoria)**

Attachment JMS-8

## Deputy Commissioner's Instruction – Community Correctional Services

# Non-Compliance Management – Court Orders

### PURPOSE

<b>Section</b>	10. Management of Court Orders		
<b>DCI number</b>	10.3	<b>Current Issue Date</b>	1 April 2015
<b>Legislation and Policy</b>	<i>Corrections Act 1986</i> <i>Corrections Regulations 2009</i> <i>Sentencing Regulations 2011</i> <i>Privacy and Data Protection Act 2014</i>		
<b>Standard</b>	N/A		
<b>Attachments</b>			
<b>CCS Forms</b>	Compliance Meeting Form, CCS Forms Non Compliance Template EJS CMRM Form, CCS Forms		

To ensure that offenders are managed in a manner that demonstrates the benefits of compliance and the consequences of non-compliance.

To ensure non-compliance interventions are applied promptly and fairly, allowing for individual needs and in a manner that encourages positive behaviour change by offenders.

### KEY REQUIREMENTS

In general, investigation of all non-compliance is to commence within five working days of notification and resolved within three weeks of the instance of non-compliance. Wherever possible, investigation should commence on the day of detection/notification of non-compliance.

Where there is a significant escalation of risk to the community through the offender's non-compliance, or in the case of:

- Priority 1 offenders
- Offenders on CCOs with restrictive conditions, including electronically monitored offenders
- Sex Offenders
- Major and High Profile offenders

all non-compliance incidents are to be followed up on the same day as the scheduled appointment or indiscretion is reported.

### CONTEXT

CCS is committed to maintaining the integrity of Court Orders and ensuring that the intention of the sentencing court is balanced with the management of complex individuals.

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# 1 INSTRUCTION

## 1.1 Definition of 'non-compliance'

'Non-compliance' within this Deputy Commissioner's Instruction (DCI) includes:

- Non attendance at scheduled appointments;
- Failure to comply with a specific direction from the Court (e.g. exclusion from a specific area, a direction to reside at or not to reside at a specific address, and non-association with a specified person or class of persons);
- Failure to comply with the terms of an Order;
- A pattern of appointments cancelled, rescheduled or the accumulation of several absences which could be considered as avoidance of order requirements;
- Failure to participate or engage in programs or community work;
- Exhibiting unacceptable (e.g. violent, threatening, abusive) behaviour.

*For information specific to monitoring and enforcement of an offender's Bond condition, refer to Deputy Commissioner's Instruction 10.6 - Bonds*

## 1.2 Non Compliance Key Requirements

- Investigation of non-compliance is to commence within 5 working days of the case manager (CM) receiving non-compliance notification, and is to be resolved within three weeks of the non-compliance incident.
- Where the risk to the community or the offender is potentially increased by non-compliance or in the case of Priority 1 offenders, CCOs with restrictive conditions (including electronically monitored offenders), SOs, Major offenders and High Profile offenders investigation is required to commence on the same day as the non-compliance notification is received.
- *Refer to the Practice Guidelines for administrative processes in the management of non-compliance*

## 1.3 Permission to Continue – Contravention Action

All offenders must be advised that while contravention action is being initiated, the Order remains in force until the contravention has been finalised through the Courts. All offenders are to be given the option to continue with their Order pending the resolution of contravention and encouraged to participate in ongoing treatment.

The option to remain engaged in the Order is important to ensure that offenders are able to maintain treatment engagement, program gains and connections to service providers facilitated by CCS.

In the case where an offender determines to continue engagement with their Order and treatment, limited non-compliance steps may still be utilised to support the offender in treatment, consideration may be given to the use of a further compliance plan or CMRM. These options are to be determined, in consultation between the case manager and a Senior Officer.

Where an offender determines to cease engagement with CCS and service providers due to contravention, this is to be noted to the Court.

There are circumstances where an offender will not be given the opportunity to continue on their Order:

- Offenders who present as a management problem, for example, an offender presenting with disruptive and aggressive behaviour.
- Offenders who threaten or who have threatened staff.

#### 1.4 Compliance Management and Intervention Options

While every incident of non-compliance requires investigation and discussion with the offender, not every incident requires an intervention step.

- Activating an intervention step should be considered when:
  - the frequency of absences is putting at risk the offender's capacity to complete the order requirements within the set timeframes;
  - two or more consecutive absences from the same program area have occurred, compromising the integrity or effectiveness of that program or service;
  - it is unlikely, based on the offender's attitude and /or motivation, that he or she will successfully complete the Order;
  - the intent and integrity of the Court's Order, and the credibility of CCS are potentially compromised by the offender's conduct (particularly where there are no counterbalancing gains being made by the offender on the Order);
  - where changes in the offender's presentation or actions indicate a likelihood of further non-compliance or increasing risk;
  - where changes in the offender's environment are thought likely to lead to further non-compliance or increasing risk;
  - where a Priority 1, High Profile or Major Offender has accrued three or more unacceptable absences.

Where a CM identifies the above, the case is to be referred to a Senior Officer for further discussion.

#### Intervention Options:

Various intervention steps are available in response to an offender's non-compliance with a Court Order. **Refer to Practice Guidelines for relevant administrative processes.**

- Compliance Meeting
- Case Management Review Meeting
- Senior Officer Caution – Operations Manager or delegate
- Administrative Review Hearing
- Contravention of Court Order

The use of every intervention step in the management of escalating non-compliance is not required. The selection of appropriate steps is to be based on the case's individual circumstances, and should represent an individualised response to the offender's presentation and non-compliance.

Likewise, intervention steps are not required to be used in the same sequence but are applied with the primary purpose of re-engagement with the offender. Best practice case management is to ensure all possible options to re-engage the offender have been considered.

When determining the application of intervention steps the following factors should be considered by the Senior Officer and the CM:

- The offender's progress and response to Order, including completion and/or part completion of order requirements, engagement with CCS and services, progress in addressing offence-specific risks, and progress against case plan.
- Length of Order, circumstances of offender, and individualised case management response, including responsiveness issues.
- The nature, frequency and severity of the non-compliance (e.g. Was the non-compliance an isolated incident? Was it part of an escalating sequence of events? Have there been changes to compliance history?)
- Risk to the community and appropriate response.
- An assessment as to which intervention step would best support a prompt re-engagement of the offender and likely successful completion of Order requirements.
- Factors contributing to the non-compliance incident (e.g. Has the non-compliance been triggered by factors that may contribute to further offending and/or detrimentally impact the offender's ability to maintain compliance with the Order requirements –such as drug relapse and/or increased alcohol use, loss of employment, accommodation or relationship breakdown).

When making a decision regarding the most appropriate intervention step, CMs are to document the rationale for the chosen intervention

## 1.5 Managing Non-Compliance with Restrictive Conditions

- The CM is likely to become aware of non-compliance with restrictive conditions only through notification from the Electronic Monitoring Centre (if an offender is subject to Electronic Monitoring), Victoria Police, other agencies, or via self-report to family members.
- Investigation of non-compliance with a restrictive condition is to occur on the day notification is received.
- The CM is to attempt to contact the offender by phone or SMS to schedule an appointment to investigate/deem absences. In the event that contact is unable to be established, the matter is to be referred to an Operations Manager/General Manager for determination of a course of action, which may include a home visit, risk assessment, compliance intervention and /or case management strategies.
- Non-compliance related to restrictive conditions may only be deemed acceptable due to an event outside of the control of the offender, and where it is supported by appropriate documentation (e.g. in the case of a medical emergency).
- Deeming of acceptable non-compliance outside of the above-mentioned circumstances may occur in consultation between an Operations Manager/General Manager and the CM. The decision, and the rationale for it, are to be clearly documented.

## 1.6 Management of Medical Certificates

- Medical certificates provided by an offender and signed by a Medical Practitioner (on the day of or prior to an absence) confirming the offender's inability to participate in a program on specific dates are to be deemed acceptable. Wording of medical documents may vary between Medical Practitioners.
- In the case of serious injury and / or illness where the medical certificate is post dated, consideration should be given to deem the absence acceptable.
- In the event that it is believed an offender may have falsified a medical certificate, the matter is to be referred to a Senior Officer.
- In the event that an offender produces a number of sequential medical certificates, which hinders or may hinder the completion of Court Order requirements, the Case Manager is to refer to a Senior Officer to review course of action.

*Senior Officers (only) may consider contact with a Medical Practitioner where it is deemed necessary to assist in the ongoing case management of an offender.*

## 1.7 Management of Non-Compliance with Specific Offender Groups

When managing offenders from a specific offender group, for example, Intellectually Disabled or from a CALD community, consideration is to be given to the following:

- Restrictions that may occur due to intellectual capacity, language and cultural differences and the offender's ability to comprehend the requirements or conditions of his or her Order.
- Case management strategies, developed in consultation with a Senior Officer, DHHS Support Worker, community representative, SOATS or the DJR Diversity Issues Unit, to assist the offender.
- For male Aboriginal offenders where contravention proceedings are likely to be actioned, the case manager and Senior Officer are to discuss the option of referral to Wulgunggo Ngalu Learning Place as an opportunity to manage the non-compliance issues. This is relevant for contravention of conditions and also alleged further offences while the offender is on bail.

## 1.8 Rescheduled Appointments and Late Attendances

- Where an offender has contacted CCS prior to an appointment and rescheduled or notified of late attendance, non-compliance should not be recorded. The appointment is to be rescheduled to occur within the next five working days.
- For High Profile and Major Offenders, an appointment is required to be scheduled within the next 48 hours wherever practicable.
- Patterns of rescheduled appointments should be referred to a Senior Officer for further consultation and case management strategies.

## 1.9 Lawful Instructions

A lawful instruction may only be given where it relates to the ensuring compliance with a particular term or condition of the Order or a relevant regulation under the Corrections Regulations 2009 or Sentencing Regulations 2011.

Where possible, such directions should be given in writing to assist in substantiating any future allegations of failing to comply with the lawful instruction.

A lawful instruction has a legislative basis and is therefore enforceable. Any contravention must be discussed with a Senior Officer regarding further action.

Rod Wise  
**Deputy Commissioner, Operations**



**Information below this point is administrative supporting detail only and not subject to the Deputy Commissioner's review or approval.**

<b>Acronyms</b>	
AOD	Alcohol and Other Drug
ARH	Administrative Review Hearing
ATE	Authority to Exchange
CALD	Culturally and Linguistically Diverse
CCO	Community Correction Order
CCS	Community Correctional Services
CCV	Civic Compliance Victoria
CM	Case Manager
CMRM	Case Management Review Committee
DHHS	Department of Health & Human Services
DJR	Department of Justice & Regulation
GM	General Manager
OBP	Offender Behaviour Program
OM	Operations Manager
SCCO	Senior Community Corrections Officer
SIDO	System Integrity and Development Officer
SOATS	Sex Offender Assessment Treatment Service
VACRO	Victorian Association for the Care and Resettlement of Offenders

<b>Definitions</b>	

<b>Associated Deputy Commissioner's Instructions</b>	

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<b>Version Control</b>			
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## 2 Practice Guidelines

### 2.1 Acceptable and Unacceptable Non-Compliance

#### 2.1.1 Acceptable

Acceptable non-compliance usually involves, but is not restricted to, circumstances related to employment, education, health, and carer responsibilities. Where an offender fails to attend a scheduled appointment, staff are to be satisfied that the non-attendance is supported by documentation.

Documentation can be verification in writing, for example, from an employer, educational facility or medical practitioner or through verbal confirmation from an employer or educational facility. An ATE is to be signed by the offender prior to verbal confirmation being sought.

Verbal confirmation is not to be sought from a Medical Practitioner in place of a medical certificate except in the event of a medical emergency to ascertain the welfare of an offender. This is to be actioned only by a Senior Officer.

Consideration should be given to official appointments, scheduled by other organisations, for example, Centrelink, Department of Health & Human Services or employment agencies, and the resultant impact on compliance.

Non-compliance related to **restrictive conditions** can only be deemed acceptable in the event of a medical emergency or natural disaster. Case Managers wanting to deem non-compliance acceptable for other reasons other than these are to consult with an OM/GM with the decision signed and documented.

#### 2.1.2 Unacceptable

Unacceptable non-compliance is when an offender fails to provide a reasonable explanation or fails to provide the necessary documentation at the next scheduled appointment or within *five* working days after the non-compliance event.

#### 2.1.3 Excused

The function of excusing an attendance is to only be utilised for community work or programs for instances outside of the offender's control, for example, cancellation of community work or program facilitator unavailability.

### 2.2 Compliance Management Steps

The Non-Compliance Framework provides case managers, in consultation with a Senior Officer, a range of intervention steps based on the assessment of an individualised response to the offender's presentation and non-compliance. Not all intervention steps are required to be utilised and which step to utilise to address non-compliance is to be determined by that which is best from a case management perspective.

For example, a recidivist offender with a history of prior non-compliance may benefit from an early referral to an ARH panel to address emerging non-compliance issues. Escalating non-compliance may result in a subsequent referral to ARH or a compliance meeting with the case manager when it becomes evident that strategies to maintain compliance require further discussion.

A female offender with complex environmental circumstances, coupled with escalating non-compliance, may require intervention through a CMRM attended by community and/or Government organisations to develop a framework to manage multiple appointments and environmental factors.

### 2.2.1 Compliance Meeting

A compliance meeting is initiated by the case manager, in consultation with a Senior Officer and is scheduled by the case manager with the offender. Senior Officers are not mandated to attend compliance meetings but it is preferred that Senior Officers contribute to strategy development in addressing barriers and motivation regarding compliance.

The meeting should focus on the strengths of the offender; progress made and is to be solution-focused.

The Case Manager is to assist the offender to identify and explore issues contributing to their non-compliance and strategies that will support motivation and improved compliance.

Case Managers are required to complete the Compliance Meeting Template, CCS forms.

### 2.2.2 Case Management Review Meeting

Case Management Review Meetings are initiated by the Case Manager in consultation with a Senior Officer. A CMRM may be considered as a compliance management step where a multi-disciplinary discussion regarding an offender's compliance is required and this will assist the case manager to implement new strategies.

A CMRM, for example, may consider response to Order, intervention strategies, consideration of supervision/ reporting regime and other specific issues impacting on compliance.

Composition of a CMRM may vary in response to the identified non compliance, needs and risk of the offender and should be determined in consultation between the case manager and Senior Officer.

Composition may include but is not limited to;

- CCS internal CMRM with case manager, SCCO and other Senior Officer
- CCS internal CMRM with the above and OBP
- CCS facilitated CMRM with case manager, SCCO and other support workers, e.g. VACRO, AOD counsellor, DHHS worker, community support person.

The meeting should focus on the strengths and capabilities of the offender; progress made and is solution focused. The meeting is also an opportunity to identify the escalation of non-compliance and provide a forum for a holistic and strength-based approach to the re-engagement of the offender.

Offender attendance should be determined on a case-by-case basis with the benefit of attendance discussed prior to the meeting between agencies. For example, an offender with an intellectual disability may benefit from a post-CMRM meeting with only the Case Manager and disability support person in attendance to discuss the outcome and strategies to support compliance.

It is important, that the recommendations and strategies of the CMRM, where appropriate, are discussed with the offender and are translated into a strength-based approach to assist with the re-engagement of the offender.

The CMRM template on CCS forms has been designed to support discussions centred on dynamic risk factors and case management strategies. This form is to be utilised for the purpose of CMRM.

### 2.2.3 Administrative Review Hearings

#### **To be read in conjunction with the Community Correctional Services Administrative Review Hearing Guidelines**

The *Sentencing Amendment (Community Correction Reform) Act 2011* provided CCS with additional powers to address low-level non-compliance.

Whilst the primary purpose of the hearing is to act as a motivational tool aimed at improving compliance and consideration of case management strategies, the legislation provides the Secretary (delegated to VPS 6 level and above) with the power to impose penalties for non-compliance that include a fine, additional community work or a curfew extension.

The ARH is chaired by an Executive Director, Regional Director or Regional General Manager.

**Note:** The powers available to the Secretary do not apply to a Commonwealth CCO. This does not preclude an offender subject to a Commonwealth CCO from being referred to an ARH but the Chair will not exercise legislative powers.

#### **Who can be referred to an ARH hearing?**

All offenders subject to a Community Correction Order may be referred to an ARH. The ARH panel is only to be utilised for non compliance to conditions. Where an offender has committed alleged further offences, the matter is to be progressed through the contravention process.

#### **Does the offender have to attend an ARH?**

Yes, the offender must attend as directed. Refusal or failure to attend is to be referred to a Senior Officer

#### **The offender cannot attend on scheduled date for a legitimate reason?**

The Case Manager is to consider rescheduling and consult with the SIDO for an appropriate date or consider the option of proceeding in the absence of the offender. In the case of proceeding in the absence of an offender, this option is to be discussed with the offender and the offender offered the opportunity to make a submission in writing to the Panel. Appropriate supports are to be in place, in cases, where literacy or cognitive concerns may impact an offender completing a submission.

#### **Who can attend an ARH?**

The ARH panel is not a Court; therefore legal representation of an offender is not required. The offender may request a family member, community support person or representative of a community service agency attend. To ensure that the Panel is aware of who will be in attendance, this information is to be provided to the SIDO prior to the meeting date by the case manager.

#### **What if an offender disputes the reported non-compliance?**

Only deemed, unacceptable incidents of non-compliance, signed by the offender, can be presented to an ARH panel. If an offender disputes the content of the report prior to an ARH, the matter is to be referred to a Senior Officer for further investigation.

#### **Offender has further incidents of non-compliance after referral to ARH?**

A further incident of non compliance incurred post referral to an ARH does not preclude an offender from attending the ARH. The decision to continue with the ARH hearing is to be determined between the case manager and Senior Officer based on assessment of the individual case and most appropriate response to reengage the offender within the non-compliance framework.

Where an offender has further non-compliance prior to the ARH and will attend the panel the following is to occur:

- The case manager will notify the SIDO via email prior to day of hearing
- Advise the offender the additional non compliance will be included in the hearing. The absence must be deemed as unacceptable and signed by the offender.
- ARH Summary will be verbally amended at the time of hearing and noted in the ARH outcome.

To ensure fair process the offender must be advised of the inclusion of the new non-compliance.

#### **Can an offender be referred to an ARH on more than one occasion?**

Yes, the effectiveness of a subsequent referral is based on the individualised assessment of the offenders' presentation, progress and non compliance. The decision to refer an offender to a subsequent ARH is to be discussed between the case manager and Senior Officer.

Occasions may also arise where the Chair of the panel gives direction for the offender to be scheduled for a subsequent attendance at an ARH to discuss progress on Order or a direction may be given that an offender is to be directed to attend a subsequent ARH if further non compliance incidents occur.

#### **What is the process if an offender applies for an internal review of their CV Infringement Notice**

An offender has the right to an internal review in the same way as any other fine under the *Infringements Act 2006* (ss 21-27) where:

- They believe there has been a mistake of law, or
- Identify where special or exceptional circumstances apply, or
- The conduct for which the infringement notice was served should be excused

An application for internal review must be submitted in writing to Civic Compliance Victoria (CCV) by the offender or their delegate on the specified template, which is available at [www.fines.vic.gov.au](http://www.fines.vic.gov.au).

Following notification by CCV, CV Operations Division will:

- Process the application in EJS which will generate a notification to the respective case manager and location Senior Officers. Any uncompleted administrative procedures are to be placed on hold at this point, for example, forwarding a copy of the infringement notice to CCV if not already completed.
- CV Operations will collate all information related to the ARH hearing and process the outcome of the review through an Internal Review Outcome Report with notification to the respective case manager and location Senior Officers.
- CV Operations will forward a copy of the Internal Review Outcome Report to the relevant CCS location.

#### **2.2.4 Senior Officer Caution**

A Senior Officer caution is to be conducted by an Operations Manager or delegate.

The primary purpose of a Senior Officer Caution is to indicate to the offender that their non-compliance is escalating and provide an opportunity for the offender to reengage and improve their compliance.

A Senior Officer Caution may also be conducted to address an offender's unacceptable behaviour and presentation at a CCS program.

Although a Senior Officers Caution is often utilised prior to the commencement of formal contravention proceedings, it may be considered at any stage throughout the Order. For

example, a Caution may be useful for a young offender whose behaviours are inappropriate on a work team and requires intervention from a Senior Officer.

The consequence of continued non-compliance and/or unacceptable behaviour should be considered, on an individual basis, within the compliance framework.

The Caution is to be documented on CCS Senior Officer Caution form, signed by the offender and placed on the offender's file.

#### 2.2.5 Contravention of Court Order

Refer to Deputy Commissioner Instruction 10.4 Contravention of Court Orders and Deputy Commissioner Instruction 10.5 Court Applications.

#### 2.2.6 Administrative Process for the management of non-compliance

Investigation of non-compliance is to commence within five working days and resolved within three weeks of notification.

Where the risk to the community or offender is potentially increased by the non-compliance, in the case of:

- Priority 1 offenders
- CCOs with restrictive conditions, including electronically monitored offenders, SOs and variants
- Major and High Profile offenders

Instances of non-compliance are to be followed up on the same day as the scheduled appointment or indiscretion is reported.

CMs are to undertake the following within five working days of receipt of notification of non-compliance:

- Details of the non-compliance are to be entered into EJS, including the generation of a non-compliance report and face sheet updated.
- Contact is to be made with the offender to schedule an appointment to discuss non-compliance. Where possible, the scheduled appointment is to be within five working days from receipt of the non-compliance notification.
- Alternatively, discussion regarding a non-compliance event can occur via phone, where possible, within five working days.
- Where contact cannot be made with the offender, a letter is to be forwarded advising of a scheduled appointment. The appointment is to be scheduled within **ten working days** of the receipt of the non-compliance notification.
- Non compliance is to be deemed acceptable or non acceptable with evidence of the determination and action documented on the non compliance report.
- Offenders are to be advised whether the non compliance is acceptable or unacceptable. The offender is only required to sign the non compliance document when the outcome is unacceptable.