

Managing Non-Compliance and Breach Policy

Essential Summary

Youth Justice NSW (YJSNW) aims to assist young people to satisfy the conditions of their court orders and bail agreements. When young people are non-compliant with these conditions or reoffend, YJSNW plays a role informing the court or police where necessary.

This policy relates to:

- Area Managers
- Assistant Managers (Community)
- Youth Justice Caseworkers (Community)

The key objectives of the policy are to:

- outline the risk-based approach to adopt when making decisions on non-compliance and re-offending
- highlight the need for staff to ensure that young people understand the conditions of their order and to provide support responsive to young people's needs
- clarify clear warning and breach processes
- promote consistent communication with court and police regarding non-compliance and breach.

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1 Scope

This policy applies to all YJNSW caseworkers, assistant managers and area managers. This policy and its associated procedure are intended for use in conjunction with other relevant operational policies and procedures.

2 Purpose

This policy focuses on YJNSW commitment to support young people to meet the requirements of their court order or bail agreement as part of the case management process. The policy provides employees with an understanding of how to manage and respond to a young person's non-compliance and reoffending.

3 Definitions

Non-compliance means when young people on bail or community-based orders fail to act in accordance with the requirements as stated on the order.

Breach action means the process taken to inform the police/court of ongoing or escalating non-compliance and/or any reoffending that has occurred during the term of the order.

Revocation means the cancellation of the order by the court. YJNSW can apply to the court to have a young person's order revoked if there is adequate information or evidence to justify the request or if the young person has been found guilty or entered a guilty plea to a new charge that breaches the order.

4 Warning or breach considerations

YJNSW caseworkers must consider and respond to the full range of issues contributing to a young person's non-compliance. The 'warning or breach considerations' have been developed to guide YJNSW caseworkers and assistant managers to determine whether to commence a warning process, a breach process or a request to revoke. The 'warning or breach considerations' are:

- the accuracy of the breach based on further enquiries and reliability of sources
- the young person's YLS/CMI-AA level [REDACTED]
- any issues or circumstances that may be affecting the young person's non-compliance, e.g. cognitive impairment, lack of parental support, the level of functioning/maturity, homelessness, communication difficulties
- the young person's attitude and behaviour towards the conditions of the order
- the young person's engagement with other aspects of the order such as specific programs, conditions or case plans
- any supports/strategies that could be introduced to assist the young person to comply
- the type and severity of the offence(s) related to the order

- the risk of safety to the community
- the time served in the community if on parole
- how long the young person has been on the order
- whether the whereabouts of the young person is unknown

Also consider for non-compliance:

- the type and frequency of non-compliance
- response to any previous warning processes
- how many work hours have been completed and are outstanding for community service orders and community clean up orders

Also consider for reoffending (where the young person has entered a guilty plea or been found guilty):

- The court should always be notified when a young person has reoffended (where the young person has entered a guilty plea or been found guilty)

If the Caseworker and Assistant Manager determine that the court should be informed of the breach or breaches, staff are to follow breach process (6). If it is determined that notification to the Court is not yet warranted, the warning process (5) is to be followed.

4.1 Additional information

There is a variety of reasons why a young person may be non-compliant including cultural reasons, cognitive disability or brain injury, substance misuse issues, intellectual disability, communication difficulties etc. There may also be external factors that are affecting their capacity to comply, such as family issues, transport or a change in circumstances.

The Caseworker must consider and address the reasons behind the young person's non-compliance on a case by case basis including making sure the young person understands and is able to remember their order or conditions. When a reason can be identified for non-compliance, appropriate assistance, support and intervention should be provided to the young person to address the issue and prevent further non-compliance before commencing a warning process, or, in some circumstances, initiating breach or revocation action.

5 Warning Process

If the 'warning or breach considerations' determine that the risk presented does not warrant court notification, the warning process should be followed. The aim of the warning process is to allow time for the young person's non-compliance to be addressed by the Caseworker and the young person. The process allows the Caseworker to identify changes in supervision practice or support options and implement these with the young person. A change to the young person's conditions may also be considered.

5.1 Ongoing role clarification

The Caseworker can check through ongoing role clarification that the young person understands their order, that any reasons for the non-compliance are validated and any support processes or

changes are implemented. The Caseworker should also encourage the young person to seek clarification about their conditions.

5.2 Verbal warning

The verbal warning is the first step in the warning process. It should be delivered when there is no valid reason for the young person's non-compliance and the non-compliance has continued following any attempts by the Caseworker to assist the young person to meet their conditions.

The Caseworker should consider the young person's individual circumstances when determining if the verbal warning should be delivered via telephone or face-to-face. In some circumstances a home visit may be required.

5.3 Warning letter

This *Warning Letter* is the second step in the warning process and should be delivered if non-compliance has continued following the verbal warning process. Potential communication difficulties have been considered in the development of the letter template, which includes clear instructions and avoids jargon. The letter should explain in plain, simple language why the young person was non-compliant, i.e. what the young person was supposed to do and why the Caseworker considers they did not do it. The Caseworker should make all attempts to explain the contents of the *Warning Letter* to the young person and/or their parent/carer.

5.4 Home visit

The home visit is the third step in the warning process and should be conducted if non-compliance has continued following the previous warning process steps. It can be conducted as part of the home visit process for supervision, as per the risk/need schedule of standards. The home visit should include, if possible, a discussion of the young person's non-compliance and possible changes or supports that could be implemented to assist the young person. The Caseworker should also check that the young person understands the conditions of the order and should encourage the young person and/or their parent/carer to seek clarification. The Caseworker should also bring the *Warning Letter* to explain to the young person and/or their parent/carer if this has not yet occurred. Usual precautions should be taken with regard to a home visit.

5.5 Management meeting

The management meeting should be used at any point in the warning process. The management meeting should be led by the Assistant Manager and the young person and their parent/carer should be invited to the meeting. The management meeting should include discussion of the reasons for the non-compliance, support strategies that could be implemented and the consequences of continued non-compliance.

5.6 Final warning letter

The *Final Warning Letter* is the final step in the warning process and should be completed only if the young person's non-compliance has continued throughout the warning process and despite concerted effort to address the reasons for non-compliance. This letter should be written in plain English and outline the commencement of the breach process if the young person does not immediately comply. The Caseworker should make all attempts to explain the contents of the *Final Warning Letter* to the young person and/or their parent/carer.

6 Breach and Revocation Processes

The breach or revocation process should be commenced as soon as the Caseworker and Assistant Manager have determined, using the 'warning or breach consideration', that the risk factors surrounding the young person's non-compliance or reoffending justify breach action.

The breach process can also be commenced if the risk factors increase during the warning process, or if the non-compliance continues following completion of the warning process.

If possible, a young person must be made aware that the non-compliance has been referred to the court/police for further action to be considered and if a determination is made (no action taken, warrant issued, court attendance notice issued), this information should also be relayed to the young person.

Where a warrant has been issued the young person should be notified that supervision has been suspended. In the situation where no warrant has been issued, the caseworker should continue to assist the young person to become compliant and meet the conditions of their order before the next court appearance.

6.1 Notifying the court

All breach notification and revocation reports are forwarded to the court, except for parole, breach of bail conditions and 24 (1) (c) orders. Parole breach reports must be forwarded to the YJNSW Business Support Team [REDACTED] who after review, with the Solicitor Advocate, will forward to the Children's Court parole authority for the parole hearing.

Breach of bail reports are sent to police while the revocation of 24 (1) (c) orders are sent to the Executive Breach reports for parole are sent to the Children's Court parole authority and breach of bail reports are sent to police. With Executive Director approval, YJNSW can order the revocation of 24 (1) (c) order. Refer to *Section 24(1) (c) Conditional Discharge Procedure*.

In circumstances where the breach is in relation to a good behaviour bond, suspended sentence, probation, community clean up order (CCUO) or community service order (CSO) imposed by the District Court sitting as the Children's Court, the breach reports should be sent to the nearest Children's Court.

All reports should provide sufficient evidence to justify breach action and demonstrate that the conditions of the order were previously explained to the young person.

While YJNSW does not administer section 14 orders under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, and there is no requirement to retain direct contact or supervision, YJNSW does have a legislated role to report breaches of section 14 orders to the court.

6.2 Considerations for YJNSW bail supervision

When young people on supervised bail are in breach of their bail condition, employees should consider whether a variation to bail conditions would address the non-compliance. In this instance caseworkers can advise young people to attend court as soon as possible and speak with a duty solicitor. YJNSW can provide a support letter on *YJNSW Letterhead* for the young person to present to the court outlining the reasons why YJNSW considers it appropriate that a variation application is listed.

If a variation to bail conditions would not address the non-compliance, YJNSW must notify the local police in writing using the *Breach of Bail Report*. The police will then decide whether to proceed with a breach of bail action. Note that this is for young people with supervised bail only.

6.3 Considerations for community clean up orders

YJNSW can apply to the court to revoke a CCUO when young people:

- fail to commence work within the 3 months of the order commencing
- fail to report for work for a period of 3 months during the order
- fail to comply with the requirements of the order
- are not capable of performing the work
- are not suitable to be engaged in the work or,
- it is within the interest of justice (in the interests of the young person and the community)

When applying to revoke a CCUO, YJNSW should provide information to the court advising of the attempts made to engage the young person in completing their CCUO, any warning processes followed, how many hours have been completed and how many hours are outstanding. When considering an application for the revocation of a CCUO the court can either revoke or vary the order. There is no right of appeal against the court's decision for CCUO as per section 9N of the *Graffiti Control Act 2008*.

6.4 Considerations for community service orders

Young people who are unable to complete their community service work hours prior to the CSO expiry date can apply to have their CSO period extended if it's in the interests of justice. A submission can be made to the Area Manager outlining the young person's details, circumstances resulting in the request for extension, the proposed new plan to complete the outstanding hours including the estimated additional time required and a recommendation for or against the extension of the order.

Young people failing to comply with their CSO without reasonable excuse, for trivial reasons or for other reasons identified within the interests of justice can apply to increase the hours of their CSO. A submission can be made to the Executive Director outlining the young person's details, circumstances regarding the failure to comply, details of the placement and proposed plan to complete the hours as well as a recommendation for or against an increase in hours. The submission requires endorsement by all line managers and can be initiated at any time during the order however, cannot exceed the required number of hours specified by more than 10 hours.

YJNSW can also apply to the court to revoke a CSO in the following circumstances:

- The young person's circumstances have significantly changed since the order was made and it is in the interest of justice to revoke the order (e.g. a serious change in the health of the young person or the young person is relocating interstate restricting the completion of hours in the time specified).
- The young person has failed without reasonable excuse to comply with the CSO by regularly failing to attend work or programs as directed or in a satisfactory manner or without informing YJNSW of absences or failing to present evidence of absence (e.g. a medical certificate) when requested. Failure to comply with the CSO can also include failing to comply with any reasonable direction given by a YJCW or placement supervisor, failing to notify YJNSW of a change of address or not fulfilling other requirements under the regulations.

- A young person has been sentenced to a control order on other offences. When considering whether to apply to revoke a CSO in this circumstance, the young person's response to their CSO, duration of the control order and their prospects for completing the CSO should be taken into account. In situations where young people are bail refused it could be more appropriate to complete a submission requesting for approval to extend the CSO.

When considering an application for the revocation of a CSO the court can:

- revoke the order, or
- revoke the order and resentence the young person on the original matter
- issue a court attendance notice to hear the matter (or in exceptional circumstances request a warrant for example if the young person's whereabouts are unknown), or
- take no further action.

6.5 Considerations for parole

Breach reports for parole orders must be sent to the YJNSW Business Team at [REDACTED] who will forward to the Children's Court parole authority. YJNSW should only make a recommendation to the Children's Court parole authority for a parole order to be revoked if there are risks to the safety of the community or to the young person or any other circumstances under section 66 of the Children (Detention Centres) Act 1987.

6.6 Legislation for breach and revocation processes

There are five key pieces of legislation that relate to the breach and revocation process:

- Breaches of bail are dealt with under the *Bail Act 2013*.
- Breaches of good behaviour bonds, probation orders and suspended sentences are dealt with under the *Children (Criminal Proceedings) Act 1987*.
- Revocation of Community Service Orders is dealt with under the *Children (Community Services Orders) Act 1987*.
- Revocation of Community Clean Up Orders is dealt with under the *Graffiti Control Act 2008*.
- Breaches and revocation of Parole is managed under the *Children (Detention Centres) Act 1987*.
- Revocation of 24 (1)(c) is managed under the *Children (Detention Centres) Act 1987*.
- Section 14 orders are managed under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

7 References

Legislation

Children (Criminal Proceedings) Act 1987

Children (Detention Centres) Act 1987

Children (Detention Centres) Regulation 2015

Bail Act 2013

Children (Community Service Orders) Act 1987

Graffiti Control Act 2008

Mental Health and Cognitive Impairment Forensic Provisions Act 2020

Policy

Parole Policy

Case Management Policy

Procedure

Managing Non-Compliance and Breach Procedure

Bail Supervision Procedure

Community Service Order Procedure

Community Clean up Order Procedure

Section 24 (1) (c) Conditional Discharge Procedure

Court Report Procedure

Parole Procedure

Case Management Procedure

Resource

Court Report Writing Manual

Reports

Breach of Bail Report

Notification of Breach of Alleged Breach/Application to Revoke Report

Update Report for Parole Review Hearing (CIMS)

Protocol

Bail protocol between the Children's Court of NSW and YJNSW

8 Document Information

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9 Document History

Version	Date	Reason for Amendment
05	22/11/2021	Updated references to reflect changes to the <i>Court Report Writing Manual</i> and amended parole breach report templates and practices
04	10/05/2020	Updated references to Mental Health (Forensic Provisions) Act 1990 to Mental Health and Cognitive Impairment Forensic Provisions Act 2020 to section 14 of the Mental Health and Cognitive Impairment Forensic Provisions Act 2020. Updated references of Juvenile Justice to Youth Justice.
03	23/04/2018	Minor changes to policy made due to renaming and updating of breach report templates in CIMS
02	26/02/2018	Policy updated into new policy template due to legislative changes regarding parole
