



**Australian Government**



## **Targeted Compliance Framework: Work Refusal and Unemployment Failures Guidelines**

**V 1.3**

### **Disclaimer**

This document is not a stand-alone document and does not contain the entirety of Disability Employment Services Providers' obligations. It should be read in conjunction with the Disability Employment Services Grant Agreement and any relevant guidelines or reference material issued by the Department of Social Services under or in connection with the Disability Employment Services Grant Agreement.

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## Work Refusal and Unemployment Failures Guidelines

### Document change history

Version	Effective Date	End Date	Change and location
1.0	1 Jul 2018	7 Jan 2019	Original version of document
1.1	8 Jan 2019	30 Jun 2019	Reworked Work Refusal section for better clarity (p6-7) Revised timeframe for contacting a Participant after an Unemployment failure to 10 days (p7)
1.2	1 Jul 2019		Minor wording changes Correction that the 10/20 business days for lodgement of a Work Refusal/Unemployment Failure Report is since the incident date, rather than provider becoming aware Correction that valid reasons for Unemployment failures apply to both voluntary acts and misconduct, and close the report rather than sending it to Services Australia
1.3	9 March 2020		Replace references of Department of Human Services with Services Australia

### Background

In the 2017–18 Budget the Australian Government announced the introduction of the Targeted Compliance Framework (TCF), commencing from 1 July 2018. The framework is designed to ensure only those job seekers who are persistently and wilfully non-compliant incur financial penalties while providing protections for the most vulnerable. It is designed to encourage job seekers to engage with their employment services provider (Provider), take personal responsibility for managing and meeting their Mutual Obligation Requirements, and actively look for work.

Where job seekers gain paid employment, they must take all steps possible to remain in the workforce and reduce their reliance and need for an Income Support Payment. There are financial consequences for work- and unemployment-related non-compliance. These penalties reinforce the principle that Income Support Payments for unemployed people should only be available to those who are genuine in their efforts to move into paid work.

These Guidelines apply to DES participants with Mutual Obligation Requirements, who are subject to the TCF.

### Disability Employment Services Grant Agreement clauses:

Section 3C – Control of Information

Section 3D – Records management

Section 5G – Job Plans

Section 5H – Targeted Compliance Framework and activities

Annexure A - Definitions

### Reference documents relevant to this guideline:

Learning Centre website

Targeted Compliance Framework: Work Refusal and Unemployment Failures Guidelines  
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Targeted Compliance Framework: Mutual Obligation Failures Guidelines  
Job Plan and Setting Mutual Obligation Requirements Guidelines  
Disability Support Pension Recipients (Compulsory Requirements) Guidelines  
Period of Service Guidelines  
Programme Review, Programme Summary and Exits Guidelines  
Social Security Act 1991  
Guide to Social Security Law

**Explanatory Note:**

All capitalised terms have the same meaning as in Disability Employment Services Grant Agreement. In this document, “must” means that compliance is mandatory and “should” means that compliance represents best practice.

## Work Refusal and Unemployment Failures Guidelines

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### 1. What is a Work Refusal Failure or Unemployment Failure?

A Work Refusal Failure is committed when a DES Participant with Mutual Obligation Requirements refuses or fails to accept an offer of suitable employment.

An Unemployment Failure is committed when a Participant becomes unemployed as a direct or indirect result of a voluntary act (unless Services Australia is satisfied that the voluntary act was reasonable) or as a result of their misconduct as an employee.

#### Identifying Work Refusal Failures

When a Provider becomes aware that a Participant has apparently committed a Work Refusal Failure (i.e., the Participant has not accepted an offer of employment), the Provider must consider whether a Work Refusal Failure has been committed.

To consider whether a Work Refusal Failure has been committed, the Provider must consider if the Participant refused or failed to accept an offer of employment, and whether that employment was suitable for the Participant — for example:

- The Participant was reasonably able to commute to the workplace within appropriate travel timeframes (60 minutes one-way for Principal Carer Parents and Participants with a Partial Capacity to Work, or 90 minutes one-way for all other Participants).
- The employment type, pay and conditions were appropriate and met standards required under law.
- The Participant had the required capacity for the type of employment.
- The Participant would be financially better off (as per the financial suitability test) in taking up this employment.

If the Provider considers that a Work Refusal Failure has been committed without a valid reason, the Provider must create a Work Refusal Failure Report in the Department's IT System. For further information on this process, refer to the [Reporting a Work Refusal Failure](#) section in this document.

#### Identifying apparent Unemployment Failures

When a Provider becomes aware that a Participant has become unemployed, the Provider must consider whether an apparent Unemployment Failure has been committed.

To consider whether an apparent Unemployment Failure has been committed, the Provider must consider if the Participant became unemployed:

- as a direct or indirect result of a voluntary act of the Participant; or
- as a result of the Participant's misconduct as an employee.

If the Provider considers that the Participant became unemployed for one of these reasons without a valid reason, the Provider must create an Unemployment Failure Report in the Department's IT System.

For further information on this process, refer to the [Provider reports an apparent Unemployment Failure](#) section in this document.

## **2. Reporting a Work Refusal Failure**

As noted previously, a Work Refusal Failure is committed when a Participant refuses or fails to accept an offer of suitable employment.

The Work Refusal Failure Report must be created and finalised within 10 business days of the incident date. If the Provider does not become aware of a Work Refusal Failure until after 10 business days have passed since the incident date, the Work Refusal Failure cannot be reported to Services Australia.

The incident date is the date that the Participant refused to accept an offer of work (e.g. if a Participant was offered a job at an interview and failed to accept that offer, the incident date is the date of the interview).

If the Participant failed to commence a suitable job, the incident date is the date the Participant was due to start.

### **Contacting the Participant and creating a Work Refusal Failure Report**

If the Provider becomes aware that a Participant has failed to accept or commence a suitable job, they must attempt to contact the Participant on the day they become aware of the apparent failure to discuss the non-compliance with the Participant.

#### **Contact Successful**

If the Provider is successful in contacting the Participant, they must discuss the reason for the non-compliance with the Participant. After discussing the non-compliance with the Participant, the Provider may consider that no Work Refusal Failure has been committed. This could be because the Participant did not in fact fail to accept or commence the employment (e.g. the employer withdrew the employment offer), or because the Participant demonstrated that the employment was not 'suitable' for the Participant. Where the Participant has a Valid Reason, then they have not committed a Work Refusal Failure and no further action from the Provider is required.

Where the Participant gives a reason for the non-compliance which the Provider does not consider a Valid Reason, the Provider must create a Work Refusal Failure report in the Department's IT system and record why the reason offered by the Participant was not accepted. The Provider must inform the Participant that they need to contact Services Australia to discuss the failure and that Services Australia will determine if they have a Reasonable Excuse.

#### **Contact Not Successful**

If the Provider is unable to contact the Participant, they must create a Work Refusal Failure report and indicate in the report that they were unable to contact the Participant about the non-compliance. This will automatically send a message to Services Australia to conduct a validity check on the report and if valid, the Participant's income support payment will be suspended and the Participant will be notified to make contact with their Provider to discuss their Work Refusal failure.

Participants are notified of the payment suspension either by automatic SMS or email, both of which advise the Participant to contact their Provider to discuss the non-compliance in order for payment suspension to be lifted. If the Participant's mobile or email details do not exist in the system, the Provider must generate, print and mail a notification letter to the Participant.

Making contact with their Provider to discuss the non-compliance (or suspected non-compliance) is the Participant's Re-engagement Requirement. The Participant's payment suspension will be lifted

after they make contact with their Provider and the Provider records whether accepted or not accepted that the Participant had a Valid Reason or an Invalid Reason for their non-compliance. If the Participant fails to meet their Re-engagement Requirement within four weeks, their payment will be cancelled by Services Australia.

If the Participant does make contact, the Provider must discuss the non-compliance assess if the Participant had a Valid Reason for the failure. If the Provider considers the Participant had a Valid Reason the Provider must record the reason in the Department's IT system and this will update and close the report, ending the need for Services Australia to investigate.

If the Participant has an Invalid Reason, the Provider must record the Invalid Reason in the Department's IT system. This will automatically send a report to Services Australia for investigation. Providers must inform the Participant to contact Services Australia to discuss the failure, and Services Australia will determine if the Participant had a Reasonable Excuse under the Social Security Law. If Services Australia determines that the Participant did not have a Reasonable Excuse for the Work Refusal Failure, Services Australia will cancel the Participant's income support payment.



**Documentary evidence:** Evidence that the Provider must link or upload to the Work Refusal Failure report in the Department's IT Systems may include notification of employment offer, a record of a discussion with the Participant that has been recorded in the Department's IT Systems, or details of the job/employer and dates.

See [Targeted Compliance Framework: Mutual Obligation Failures Guidelines](#) for further information on Mutual Obligation Failures.

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### 3. Reporting an apparent Unemployment Failure

As noted previously, an Unemployment Failure is committed when a Participant voluntarily becomes unemployed (unless Services Australia is satisfied that the voluntary act was reasonable) or becomes unemployed due to misconduct.

The Unemployment Failure Report must be created and finalised within 20 business days of the incident date. If the Provider does not become aware of an Unemployment Failure until after 20 business days have passed since the incident date, the Unemployment Failure cannot be reported to Services Australia.

The incident date is the first full day a Participant is unemployed (e.g. if a Participant were dismissed due to misconduct, the incident date would be the day after they were dismissed).

#### Contacting the Participant

The Provider must attempt to contact the Participant on the same Business Day on which the Provider becomes aware that the Participant has apparently become unemployed as:

- a direct or indirect result of a voluntary act of the Participant; or
- a result of the Participant's misconduct as an employee.

If Providers are unable to make contact with the Participant on the same Business Day via phone to discuss the failure, Providers must schedule a Provider Appointment with the Participant (if there is not already an upcoming appointment scheduled to occur within 10 Business Days of the day the Provider became aware of the apparent Unemployment Failure). At that Appointment, the Provider

must discuss the circumstances of the Participant's dismissal from the employment or why the Participant left the employment.

An Unemployment Failure Report cannot be submitted to Services Australia until the Provider has discussed the apparent failure directly with the Participant. If the Participant fails to attend the Appointment, this will result in a Mutual Obligation Failure and suspend the Participant's Income Support Payment. To restore their payment, Participants must attend another Provider Appointment, at which stage their Provider may discuss the apparent Unemployment Failure with them. If the Participant fails to meet this Re-engagement Requirement within four weeks, their payment will be cancelled by Services Australia.

### **Discussing the apparent Unemployment Failure with the Participant**

Providers must discuss the apparent Unemployment Failure when in contact with the Participant and consider if the Participant became unemployed:

- as a direct or indirect result of a voluntary act of the Participant; or
- as a result of the Participant misconduct as an employee.

If the Provider considers that the Participant became unemployed for one of these reasons, the Provider must create the apparent Unemployment Failure Report in the Department's IT Systems. Creation of an Unemployment Failure Report will not result in suspension of the Participant's payment.

When creating the Unemployment Failure Report, Providers must include information regarding the circumstances of the apparent Unemployment Failure including:

- details of how the Provider became aware of the apparent Unemployment Failure
- any comments from the employer
- the reason given by the Participant for their unemployment
- confirmation of any relocation assistance given to the Participant to help them take up that employment.

The Provider must also assess if the Participant had a Valid Reason for the voluntary act.



**Documentary Evidence:** Evidence that the Provider must link or upload to the Unemployment Failure report in the Department's IT Systems may include notification of unemployment, a record of a discussion with the Participant that has been recorded in the Department's IT Systems or evidence from a Transition to Work Provider, details of the job/employer and/or details of the incident, including dates, the parties involved and what occurred.

### **Participant has a Valid Reason**

After discussing the apparent non-compliance with the Participant, the Provider may consider that the Participant had a Valid Reason for becoming unemployed.

The Provider must record the Valid Reason they accepted in the Department's IT Systems to update the Unemployment Failure Report. This must be done by close of business on the day of the contact with the Participant.

Recording a valid reason will automatically close the Unemployment Failure Report and cancel the need for Services Australia investigation.

### **Unemployment relates to misconduct or voluntary act related unemployment**

After discussing the apparent non-compliance with the Participant, if the Provider assess that:

- the Participant's unemployment was a result of misconduct; or
- the Participant's unemployment was the result of a voluntary act but the Participant did not have a Valid Reason for the voluntary act;

the Provider must record their reasons in the Department's IT Systems in order to update and submit the Unemployment failure report in the Department's IT Systems by close of business on the day of contact.

Once the Provider submits the report, Services Australia will investigate the information entered into the Unemployment Failure Report. The Provider must advise the Participant on the day of contact that they have referred the matter to Services Australia.

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## **4. Investigation of Work Refusal Failures and Unemployment Failures by Services Australia**

Once Services Australia receives a Work Refusal or Unemployment Failure Report, they will investigate the circumstances of the failure with the Participant and determine compliance action in accordance with Social Security Law.

### **Participant's payment is cancelled**

If, at the conclusion of the investigation, Services Australia determines that the Participant has committed a Work Refusal Failure without a Reasonable Excuse or committed an Unemployment Failure, Services Australia will cancel the Participant's payment and the Participant will be subject to a four-week payment preclusion period.

For an Unemployment Failure, if a Participant received Relocation Assistance to take up the employment, they will instead face a six-week preclusion period. This preclusion period cannot be waived.

### **Participant's payment is not cancelled**

If, at the conclusion of the investigation, Services Australia determines that:

- the failure did not occur (this includes where the Participant's unemployment was the result of a voluntary act, but Services Australia is satisfied that the voluntary act was reasonable); or
- the Participant has a Reasonable Excuse for a Work Refusal Failure,

then Services Australia will reject the Work Refusal or Unemployment Failure Report. The Participant will not have their payment cancelled and will not serve a preclusion period.

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## Summary of Required Documentary Evidence



Depending on the failure that has occurred, in addition to the evidence recorded in the Department's IT Systems, evidence could include:

- notification of an Employment Offer
- the format of the notification (i.e. SMS, email or letter)
- a record of a discussion with a Participant where it has been recorded in the 'Comments' screen in the Department's IT Systems
- details of the job/employer and/or details of the incident, including dates, the parties involved and what occurred

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**Attachment A - Process for creating and submitting Work Refusal and Unemployment Failure Reports**

Diagram illustrating the processes to create and submit Work Refusal Reports and Unemployment Failure Reports.

