



Australian Government



Targeted Compliance Framework: Work Refusal and Unemployment Failures Guidelines

V 1.0

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 July 2018		Original version of document

Background

In the 2017–18 Budget the Australian Government announced the introduction of the Targeted Compliance Framework (TCF), to commence 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 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

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 the Department of Human Services (DHS) 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, the Provider must report a Work Refusal Failure in the Department's IT Systems and assess if there is a Valid Reason for the Work Refusal Failure. Further information on this process is provided below ('Provider reports a Work Refusal Failure').

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, the Provider must report the apparent Unemployment Failure in the Department's IT Systems.

If the apparent Unemployment Failure relates to a voluntary act, the Provider must also assess if there is a Valid Reason as specified below ('Provider Reports an apparent Unemployment Failure').

Further information on this process refer to [Provider reports an apparent Unemployment Failure](#) section in this Guideline.

2. Provider reports 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 Provider must create a Work Refusal Failure Report in the Department's IT Systems within 10 Business Days of becoming aware of the apparent Work Refusal Failure—only where the Provider considers there is sufficient evidence to demonstrate that a Work Refusal Failure has been committed.

Contacting the Participant and creating a Work Refusal Failure Report

The Provider must attempt to contact the Participant on the day they become aware of an apparent failure so they can discuss with the Participant the circumstances and whether the Participant has a Valid Reason.

If the Provider has not been successful in making contact with the Participant, the Provider must still create a Work Refusal Failure Report if the Provider considers that there is sufficient evidence to demonstrate that a Work Refusal Failure has been committed. Creating a Work Refusal Failure Report will result in suspension of the Participant's payment and will assist in making contact with the Participant to discuss a possible Valid Reason.

If the Provider considers that there is insufficient evidence to demonstrate that a Work Refusal Failure has been committed without having first made contact with the Participant, the Provider should not create a Work Refusal Failure Report. Instead, the Provider should give the Participant a notice under subsection 63(2) requiring them to contact the Provider to discuss the suspected non-compliance. If the Participant does not contact the Provider, this will be a Mutual Obligation Failure and the Participant's payment will be suspended on that basis.

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 and will result in their payment suspension being lifted. If the Participant fails to meet their Re-engagement Requirement within four weeks, their payment will be cancelled by DHS.



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.

Discussing the Work Refusal Failure with the Participant

Once in contact with the Participant, the Provider must discuss the non-compliance (or apparent non-compliance) and decide if the Participant has a Valid Reason for failing to accept or commence suitable employment.

After discussing apparent 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 withdraw the employment offer), or because the Participant's reasons for failing to accept or commence the employment demonstrate that the employment was not 'suitable' for the Participant.

If, after discussing the circumstances with the Participant, the Provider considers that a Work Refusal Failure has been committed, the Provider must then consider if the Participant has a Valid Reason for the Work Refusal Failure.

See [Targeted Compliance Framework Reference Guide](#) for further information on Valid Reasons.

Participant has a Valid Reason

After discussing the non-compliance with the Participant, the Provider may assess that the Participant had a Valid Reason for refusing or failing to accept an offer of suitable employment. The Provider's assessment of Valid Reason will assist DHS to determine whether the Participant had a Reasonable Excuse for the Work Refusal Failure under the Social Security Law.

The Provider must record the Valid Reason they have accepted in the Department's IT Systems to update the Work Refusal Failure Report. This must be done by close of business on the day of the contact with the Participant. This action will submit the Work Refusal Failure Report for determination of Reasonable Excuse.

Participant does not have a Valid Reason

If, after discussing the non-compliance with the Participant, the Provider assesses that the Participant did not have a Valid Reason for a Work Refusal Failure, the Provider must record the reason the Participant gave that was not accepted in the Department's IT Systems in order to update and submit the Work Refusal Failure Report.

Once the Provider submits the report, information entered into the Work Refusal Failure Report will assist DHS to determine if the Participant had a Reasonable Excuse for the Work Refusal Failure under the Social Security Law. The Provider must advise the Participant on the day of contact that they have referred the matter to DHS. If DHS determines that the Participant did not have a Reasonable Excuse for the Work Refusal Failure, DHS will cancel the Participant's payment.

3. Provider reports an apparent Unemployment Failure

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

The Provider must create an Unemployment Failure Report in the Department's IT Systems within 20 Business Days of becoming aware of the apparent Unemployment Failure.

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 20 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 DHS 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 DHS.

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.

If the unemployment was a direct or indirect result of a voluntary act of the Participant, 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 for voluntary act related unemployment

After discussing the apparent non-compliance with the Participant, the Provider may consider that the Participant's unemployment was a result of the Participant's voluntary act but also that the Participant had a Valid Reason. In this context, 'Valid Reason' means that the Participant's voluntary act was reasonable. Unlike Mutual Obligation Failures and Work Refusal Failures, Providers do not assess the Valid Reason for apparent Unemployment Failures.

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.

This will automatically submit the Unemployment Failure Report to DHS to decide if an Unemployment Failure was committed.

The Provider's assessment of Valid Reason will assist DHS's determination of whether the voluntary act was reasonable. If DHS is satisfied that the Participant's voluntary act was reasonable, then no Unemployment Failure has been committed.

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, DHS 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 DHS.

4. Investigation of Work Refusal Failures and Unemployment Failures by DHS

Once DHS 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, DHS determines that the Participant has committed a Work Refusal Failure without a Reasonable Excuse or committed an Unemployment Failure, DHS 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, DHS determines that:

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

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

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

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.

