



Australian Government
Department of Social Services

Formal Performance Assessment - Industry Information Paper

DISABILITY EMPLOYMENT SERVICES



GENERAL INFORMATION AND INDICATIVE TIMELINE

December 2021	Release of this industry information paper.
Mid-February 2022	Release of December 2021 Star Ratings to DES provider CEOs. Notification of in-scope services.
Late-February 2022 midnight AEDT	Closing date and time for mitigating circumstances submissions – ten (10) business days following formal notification of in-scope services.
Late February to March 2022	Assessment of in-scope services, including mitigating circumstances submissions.
End-March 2022	Providers with in-scope services notified of assessment outcomes: no action taken, further assessment required, or termination of service.
End-August 2022	Providers with in-scope services requiring further assessment notified of assessment outcomes: no action taken, or termination of service.

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INTRODUCTION

Disability Employment Services (DES) providers operate under the DES Grant Agreement 2018-2023. In accordance with the terms of the Grant Agreement, the Department of Social Services (the Department) will undertake a formal performance assessment (clause 155.6) for both the DES – Disability Management Service (DES-DMS) and DES – Employment Support Service (DES-ESS) sub-programs.

This industry information paper is intended to assist DES providers to better understand the processes and timelines of the formal performance assessment process. It is also intended to help ensure DES providers are aware of, and able to meet, relevant timeframes, particularly in relation to mitigating circumstances submissions.

OVERVIEW

The purpose of the formal performance assessment is to ensure participants continue to access a highly effective and efficient service for the remainder of the Grant Agreement. Delivery of effective program services is a key factor in enabling job seekers with disability to take up appropriate employment opportunities.

DES provider performance will be considered at the service level. A DES service is the combination, for each provider, of DES sub-program (i.e. DES-DMS or DES-ESS) and specialisation (i.e. generalist or any applicable specialist service), operating in an Employment Services Area (ESA). For example, a provider would have three services in an ESA if they deliver a generalist DES-DMS, a generalist DES-ESS and a specialist DES-ESS service in that ESA. Each of the provider's services in an ESA will be considered separately for the purposes of the formal performance assessment.

The formal performance assessment will determine a Performance Rating for each DES service. As defined in the Grant Agreement, a provider's Performance Rating is a measure of its performance against Key Performance Indicators 1 (Efficiency) and 2 (Effectiveness). The Performance Rating for each service will be determined by its performance in the DES Star Ratings, which measure relative performance against KPI1 and KPI2.

The Performance Rating for each DES service under the formal performance assessment will be the *highest* Star Rating the service achieved across the March 2021, June 2021, September 2021 and December 2021 Star Ratings.

As set out at clause 156.1 of the Grant Agreement, a service is 'in scope' for possible action under the formal performance assessment if its Performance Rating is within the two lowest ratings bands (1 Star or 2 Stars). No action will be taken in relation to services with a Performance Rating of 3 Stars or higher ('out of scope').

For each in-scope service, the Department will determine that one of the following applies:

- No action will be taken;
- Further assessment required, based on March 2022 Star Ratings; or
- Discontinuation of service.

This determination will be based on:

- the performance of the service against KPI1 and KPI2, including proximity of the service to 3 Stars, and trending performance;
- any mitigating circumstances, including those identified by the provider; and
- a range of formal performance assessment principles.

The Department will exercise its discretion to discontinue services reasonably and in good faith as set out in the Agreement. The Department intends to discontinue services only where it considers, based on available information, that the service cannot reasonably deliver an acceptable service to participants.

Where a service is discontinued, the participants attached to that service will choose an alternative service.

DEFINING IN-SCOPE SERVICES

As set out in the DES Grant Agreement, the scope of the formal performance assessment will be defined by each service's performance against KPI1 and KPI2. The Department confirmed to providers in December 2020 that the DES Star Ratings would be used to determine which services are in scope against these KPIs. During 2021, the Department has worked with providers to ensure the Star Ratings include relevant factors such as the impact of bushfires and COVID-19.

The Department will use each service's highest performance across the four Star Ratings quarters of March 2021, June 2021, September 2021 and December 2021 to limit the scope of potential action to those services with sustained low performance.

A service that achieved a Star Rating in at least one of the Star Ratings periods will be in scope if the Performance Rating (highest Star Rating achieved) is 1 or 2 Stars.

A DES service will be out of scope if it:

- achieved 3 Stars or higher in one or more of the March 2021, June 2021, September 2021 or December 2021;
or
- did not achieve a Star Rating across all of the March 2021 to December 2021 Star Ratings

The Department may undertake discussions to identify performance improvement options for an out of scope service, but will not discontinue any such service.

Identifying in-scope services

It is anticipated the CEOs of all DES providers will receive their organisation's December 2021 Star Ratings by mid-February 2022. This information is the final part of the Star Ratings determining Performance Ratings, which along with the March 2021, June 2021 and September 2021 Star Ratings, will allow providers to determine whether any of their DES services are subject to potential discontinuation.

For clarity, following release of the December 2021 Star Ratings, the Department will formally notify each provider of any of the provider's services that are in scope for review, based on the scope set out in this paper.

MITIGATING CIRCUMSTANCES

Performance against KPI1 and KPI2 are important factors in whether action is required in relation to any service, but the Department will also consider other relevant factors affecting performance. Where the Department considers low performance was caused by mitigating circumstances, the Department may determine that no action should be taken in relation to the service, or may consider further assessment of the service's performance in the March 2022 Star Ratings is required.

Mitigating circumstances may be identified through:

- mitigating circumstances submissions lodged by providers; and/or
- information held by the Department.

Provider submissions

Providers with an in-scope service may make submissions for consideration by the Department regarding any mitigating circumstances that they consider negatively impacted on the service's performance in the 2021 Star Ratings rolling performance periods.

Submissions must be made on the 'Mitigating Circumstances Proforma' issued by the Department. The proforma is available separately as Attachment A to this paper.

Mitigating circumstances submissions will be accepted until ten (10) business days after the formal notification of in-scope services.

Providers can detail any conditions they believe are relevant mitigating circumstances. The Department will, at its own discretion, determine whether the circumstances detailed should be accepted as mitigating circumstances. Further guidance on which circumstances may be accepted by the Department is provided below.

If the Department accepts a provider's mitigating circumstances submission for an in-scope service, the Department may take no action to discontinue the service as described later in this paper (see 'Results of Assessment Process'). Providers will be notified of the results of a mitigating circumstances submission, and whether or not the DES service has been exempted, when receiving the outcomes of their in-scope services. See the 'Mitigating Circumstance Submissions' section of this paper for further information.

Other mitigating circumstances

In addition to any circumstances identified by providers, the Department will consider other information held by the Department which may form mitigating circumstances to a service's low performance. DES providers are not required to provide any further information or input in relation to these matters, unless requested to do so by the Department.

UNDERTAKING THE ASSESSMENT

When determining what action to take in relation to in-scope services, the assessment will consider the performance of each service against KPI1 and KPI2, as well as any mitigating circumstances, against a number of formal assessment principles.

Formal performance assessment principles

The formal performance assessment principles are based on the Commonwealth Grants Rules and Guidelines (issued under the *Public Governance, Performance and Accountability Act 2013* (Cth)), and Parts II and III of the *Disability Services Act 1986* (Cth).

The formal performance assessment principles that will be followed include:

- providers achieve employment outcomes for participants;
- participants and employers have access to high performing DES providers;
- DES geographic coverage ensures participants can access providers' sites in each ESA;
- DES services meet the needs of specific participant groups and local labour markets;
- DES services deliver, where appropriate, participant choice and a diversity of providers, including through a mix of small, medium and large organisations; and
- delivery arrangements in each ESA appropriately manage risks for the Australian Government.

Based on the formal assessment principles, the Department may determine different actions in relation to similarly performing in-scope services, to ensure participants and employers have access to the best service delivery outcomes.

Assessment processes

The assessment process consists of multiple stages.

Departmental staff ('assessors') based in State and Territory Offices with appropriate expertise, training and regional knowledge of a provider's DES service will be involved in all stages of the formal performance assessment process.

The assessors will consider all valid submissions regarding mitigating circumstances, review all services that are in scope and make recommendations to a Departmental Performance Assessment Committee (the Committee) regarding appropriate action.

The Committee will oversee the entire formal performance assessment process. The Committee will review each of the recommendations made by assessors and will accept or reject them before making final recommendations to the Delegate.

The Delegate will consider the recommendations and make all final decisions on whether or not to apply remedies, including discontinuation of services.

A probity adviser will be appointed for the formal performance assessment process. The probity adviser will observe, monitor and advise on issues of probity.

RESULTS OF ASSESSMENT PROCESS

Following the assessment process, the Department will write to providers outlining the decisions made regarding the assessment of in-scope services.

Providers will be notified that each of their in-scope services falls into one of three categories:

1. No action taken

The Department may advise that no action will be taken to a service where the Department accepted that mitigating circumstances reasonably explained the low performance of a service that was in scope.

The Department may enter into further discussions with the provider about activities it could take to further improve performance.

2. Further assessment required, based on March 2022 Star Ratings

The Department may advise that a service remains in scope following consideration of mitigating circumstances, but may allow additional time to determine whether the performance of the service is improving sufficiently. In this case, the Department will review the performance of the service in the March 2022 Star Ratings.

After considering the March 2022 Star Ratings, the Department will either determine that no action will be taken in relation to the service or will discontinue the service.

The Department will adopt realistic expectations regarding the level of change possible within one Star Ratings quarter.

3. Discontinuation of Service

The Department may, at its discretion, notify a provider to discontinue a DES service following the formal performance assessment under clause 156.1 of the Grant Agreement.

The Department will not discontinue a service unless it determines the service cannot reasonably continue based on the formal performance assessment principles.

MITIGATING CIRCUMSTANCES SUBMISSIONS

The Department will not discontinue a service where it accepts that mitigating circumstances satisfactorily explain a service's low performance rating. Providers with services in scope for assessment may make submissions regarding any mitigating circumstances that have impacted on their performance during the relevant performance period. A separate submission should be lodged for each in-scope service the provider considers to have been affected by mitigating circumstances. The decision about whether to accept mitigating circumstances identified in a provider submission is at the discretion of the Department and is final.

Note: Providers are not required to automatically lodge submissions – they should only do so if they believe that relevant mitigating circumstances apply.

What mitigating circumstances will the Department accept?

Providers may list any circumstances they consider mitigate the service being in scope for assessment.

For the purposes of the formal performance assessment process, the Department would be more likely to accept circumstances that occurred outside the provider's control and would not have been taken into account as part of Star Ratings calculations.

Failure to provide, or inability to secure, adequate resources to deliver DES services effectively will not be considered a mitigating circumstance.

Examples of mitigating circumstances may include (but are not limited to) events confined to the organisation and that impacted a provider's operational capacity, but which were outside the control of the provider. This can include natural disasters (i.e. bush fires and floods), where the provider considers the services of other providers in the ESA were not also affected by the same disaster.

When making a mitigating circumstances submission, the Department will give greater consideration to circumstances that had a unique negative impact on, and were directly related to, the service's capacity to deliver employment outcomes to participants, and that this was the reason for the below average Performance Rating. Circumstances with a broader impact, which could have affected other providers in the ESA, will generally not be considered to be mitigating circumstances.

Similarly, as the Performance Rating is based on the service's highest Star Rating across four performance periods, circumstances that affected only one performance quarter may be given less weight than those that mitigated against sustained low performance.

Circumstances that would not normally be accepted by the Department as mitigating against low performance include:

- situations that are internal to a provider's organisation, such as a change of management or a turnover of staff within the organisation;
- situations that could have affected all providers in the ESA or neighbouring ESAs;
- circumstances that are incorporated in the Star Ratings model, such as changes in local labour market conditions or participant characteristics. For details on the Star Ratings methodology, please refer to the DES Star Ratings Methodology Advice on the Provider Portal.

Example One

Situation:

A fire at the provider's premises destroyed the building and all assets. An extended period elapsed before the provider was able to source alternative premises and new equipment. Following the provider's acquisition of new premises, it took some time before the organisation was operational. The displacement of participants over this extended period potentially affected the provider's performance.

Mitigating circumstances submission:

In the above scenario, the fire may be unique to the provider and may have had a negative impact on its capacity to deliver services for an extended period. However, the provider would still have to demonstrate that this was the reason for its low Star Rating. For example, the submission may need to include information that confirms the length of time the provider took to re-establish itself in new premises, and to become operational, was reasonable. It should also indicate the various circumstances that occurred from the time of the fire until it was again operational and how these issues negatively affected its performance.

In assessing any submission, the Department may take a range of issues into account. These may include (but are not limited to):

- the Star Ratings the provider had achieved over previous performance periods and whether or not these had been trending up or down;
- the extent to which the provider's Star Rating and Star Percentage changed over the period in question;
- the difficulty (or ease) of acquiring new premises;
- the length of time the provider was affected by the circumstances; and
- whether or not there were other options available to the provider to deliver employment outcomes, for instance, whether or not participants could have been serviced from other sites or outreach locations within the ESA as an interim measure.

The Department may also take into account any other relevant information which is available, or which it acquires through its own enquiries.

Example Two

Situation:

The major employer in a regional centre closes with a significant negative effect on employment in the area.

Mitigating circumstances submission

In the absence of any other relevant circumstances, this is likely to be considered to be a situation that would have affected all providers in a region or ESA, and as such, is unlikely to be accepted as the reason for a lower Star Rating in the relevant period.

Minimum requirements for a mitigating circumstances submission

To make a mitigating circumstances submission(s), the minimum requirements set out as follows must be satisfied:

- providers must make a submission using the Mitigating Circumstances Proforma ('the proforma'), which is available separately as Attachment A of this paper;
- a separate submission must be made for each DES service for which mitigating circumstances are being claimed;
- each submission must not exceed a maximum of 10,000 characters (including spaces);
- completed submission(s) must be returned to the DES Communications mailbox (DESCommunications@dss.gov.au); and
- each submission must be received by midnight AEDT, ten (10) business days from the day the Department has formally notified the provider of in-scope services. The exact date for lodgement of mitigating circumstances submissions will be included in the formal notification.

Mitigating circumstances proforma

In completing the proforma, providers must answer all questions. Attachments or additional information, including graphs or tables, submitted outside of the proforma **will not be** considered.

Timing

Providers should consider preparing submissions in advance using the proforma where:

- a DES service is likely to be in scope, and
- there are mitigating circumstances which may have impacted on their Star Ratings, and
- they will have difficulty meeting the timeframe for making mitigating circumstances submissions.

A confirmation of receipt email will be sent from the DES Communications mailbox to providers submitting mitigating circumstances proformas. It is recommended that providers save this auto-reply email as evidence of receipt by the Department.

Please note the timeframe for lodging mitigating circumstances submissions. Please also note that any mitigating circumstances submissions provided after the closing date and time may not be considered.

Virus Checking

When emailing submissions, all providers warrant that they have taken reasonable steps to ensure that the mitigating circumstances proforma is free from computer viruses, worms or other disabling features that may affect computing environments. The Department retains the right to not consider any documents found to contain viruses, worms or other disabling features.

Multiple Submissions

Providers that submit multiple mitigating circumstances responses for the same in-scope service in the same ESA, prior to the closing date and time, must notify the DES Communications mailbox (DESCommunications@dss.gov.au) in writing and advise which submission is the final and completed version.

In doing so, providers must provide their legal name, trading name, DES sub-program (i.e. DMS or ESS), ESA, Specialisation and the time and date of the new, and any previous submissions.

Where a provider fails to provide such notification to the Department through the DES Communications mailbox, the Department will consider the last received submission in the timeframe available for submissions.

Department seeking further information

The Department may seek clarification or further information from providers, including to correct errors or omissions.

Exclusion of mitigating circumstances submissions

All mitigating circumstances submissions will initially be assessed to ensure they meet the minimum requirements as set out above.

Where a submission does not meet the minimum requirements, including where the submission is incomplete, late or has been provided in an incorrect format (for example, is not on the mitigating circumstances proforma), the submission may be excluded from further consideration.

QUESTIONS & ANSWERS

A set of Questions and Answers is available to supplement the Formal Performance Assessment - Industry Information Paper. These will be emailed to DES Providers in mid-December 2021.

FURTHER INFORMATION

Queries and requests for further information should be put in writing and sent to the DES Communications mailbox: DESCommunications@dss.gov.au clearly labelled as relating to the formal performance assessment process.