

Workforce Australia: Module 5 Persistent Non-Compliance



MODULE 5

☰ Introduction

CHAPTER 5A

☰ Failures in the Penalty Zone

📄 Quiz 1 - Multiple choice

☰ Chapter conclusion

CHAPTER 5B

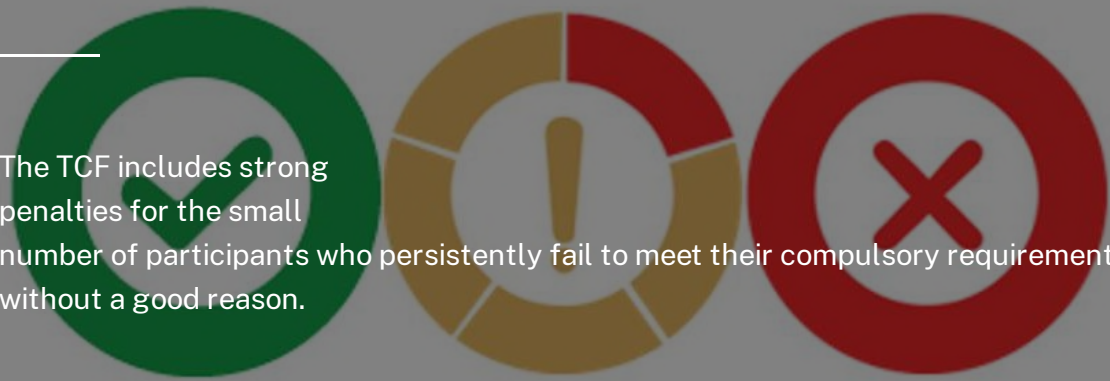
☰ Return to services following a payment preclusion period

☰ Chapter Conclusion

CONCLUSION

☰ Module conclusion

Introduction



The TCF includes strong penalties for the small number of participants who persistently fail to meet their compulsory requirements without a good reason.



Most participants do the right thing and will not face these penalties.

Penalties are a deterrent for wilfully and persistently non-compliant participants, reinforcing the principle that income support payments should only be available to those who are genuine in their efforts to move into paid work.

CONTINUE

Failures in the Penalty Zone



At the end of this chapter you will be able to:

- 1 Understand how to report non-compliance in the Penalty Zone
- 2 Recognise which failure types the participant can accept a penalty for
- 3 Describe how penalties are applied for continued non-compliance in the Penalty Zone

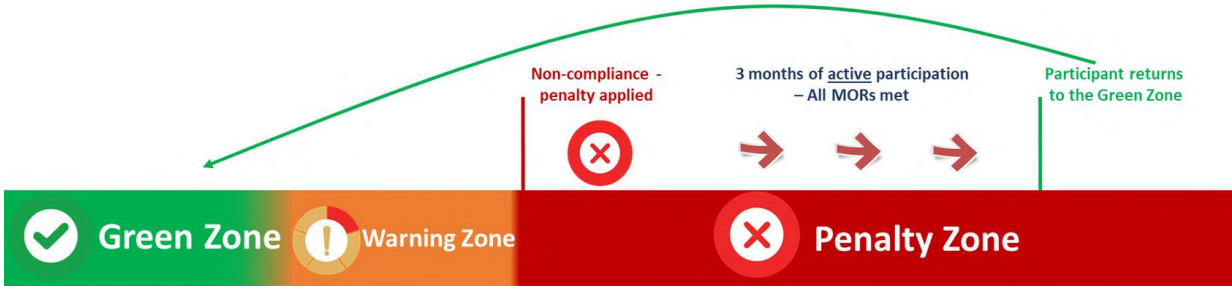


Time in the Penalty Zone

As you know, participants in the **Penalty Zone** must actively participate and successfully meet all their requirements for 3 months before they are returned to the **Green Zone**.

‘Active participation’ means the participant is engaged in employment services and is expected to meet requirements.


The IT system will automatically return the participant to the **Green Zone** when they have been actively participating for 3 months AND they haven’t had a penalty applied in those 3 months.



Did you know?

There are circumstances that affect a participant's period of 'active participation', including when they're granted an exemption by Services Australia, waiting for an Employment Services Assessment (ESAt) to be completed, serving a payment preclusion period, or when they exit employment services.

In these circumstances, the 3 month clock is paused by the IT system, and then continues to count down when the participant is required to actively participate again.



How do you report non-compliance for participants in the Penalty Zone?

Reporting non-compliance in the IT system is the same for all zones. The only difference is what the IT system does behind the scenes.

Each time non-compliance is reported for a participant in the **Penalty Zone**, a draft **Non-Compliance Report** is created by the IT system, instead of a demerit.

- **If you record that you accept the participant's reason as a Valid Reason**, the IT system will finalise the Non-Compliance Report and end the need for a Services Australia investigation.
- **If you record that you DO NOT accept the reason the participant gave you**, the IT system will automatically send the Non-Compliance Report to the Services Australia IT system so that Services Australia can investigate the non-compliance. While you are still in contact with the participant you must:
 1. **Advise them that they need to discuss the non-compliance with Services Australia** when they are next due to report for their fortnightly income support payment.
 2. **Set the participant's re-engagement requirement** - If the IT system has not automatically set it. Their payment will remain on hold until they meet their re-engagement requirement.

If a participant in the Penalty Zone has outstanding non-compliance on their record, they can't report to Services Australia to get their payment until they discuss any outstanding non-compliance with you first.

The Services Australia IT system will advise them that they need to contact you.

 **Did you know?**

When a person is in the Penalty Zone, they have been found to be 'persistently non-compliant'.

Financial penalties for Mutual Obligation Failures can only be applied to persistently non-compliant participants.

This is a technical term, but it means Services Australia already knows that a participant in the Penalty Zone has, in fact, been persistently non-compliant before they determine a penalty should be applied.

Services Australia investigation of a Non-Compliance Report

Depending on the type of non-compliance, participants in the Penalty Zone may have the option to:

- accept a penalty without discussing it with Services Australia if they know they do not have a Reasonable Excuse for not meeting the requirement,

or

- request an investigation be conducted by a Services Australia Participation Solutions Team (PST) officer if they think they have a Reasonable Excuse.

However, for some failures in the Penalty Zone, Services Australia **must** investigate before a penalty will be applied.

Let's take a closer look....

Participant can choose to accept the penalty OR request an investigation

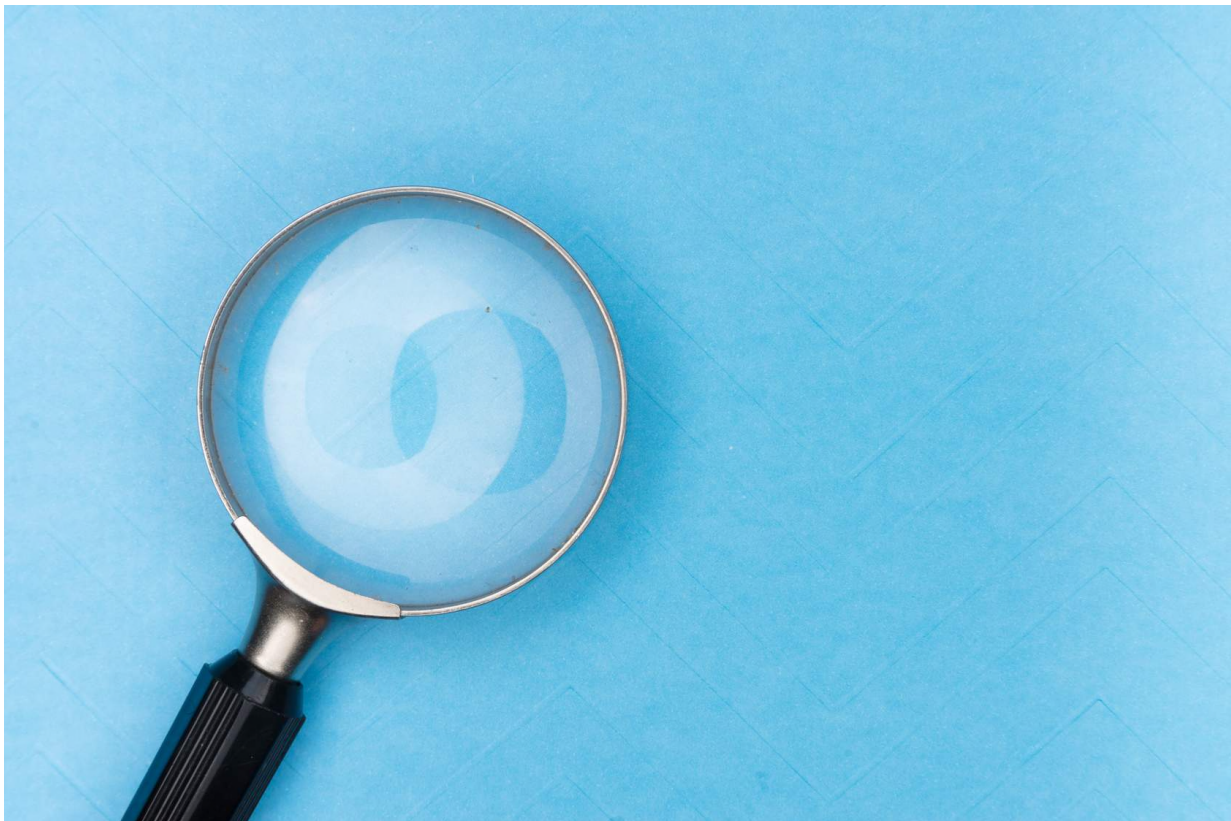
Non-compliance must be investigated by Services Australia prior to a penalty being applied

Participant can choose to accept the penalty OR request an investigation

- Non-attendance at a Compulsory Appointment
- Non-attendance at a Job Interview
- Non-attendance at a Mandatory Activity

Non-compliance must be investigated by Services Australia prior to a penalty being applied

- Misconduct at a Compulsory Appointment
- Misconduct at a Job Interview
- Misconduct at a Mandatory Activity
- Failure to meet their Points Based Requirement, including minimum Job Applications
- Failure to agree to a Job Plan
- Failure to act on a Job Referral task
- Any potential 3rd failure in the Penalty Zone which could result in a preclusion period



To investigate a Mutual Obligation Failure,

Services Australia will discuss the non-compliance with the participant.

They will review the details of the Non-Compliance Report, including the

reason that you did not accept and any other information you recorded.

The IT system automatically includes with the report the supporting evidence required

under social security law to uphold a penalty determination, including the Job Plan requirement and the formal Notification that was issued to the participant for the requirement they failed to meet.





Services Australia make Reasonable Excuse determinations under social security law.

They use the same principles that you used when assessing if the participant had a Valid Reason for not meeting a requirement.

Based on the discussion, Services Australia will then determine if the participant:

- **does not have a Reasonable Excuse** – a failure will be applied and the participant will incur a penalty.
- **has a Reasonable Excuse** – Services Australia will reject the Non-Compliance Report and the participant will not incur a penalty.

Penalties in the Penalty Zone

Participants in this zone face increasing penalties for continued non-compliance:

1st applied failure

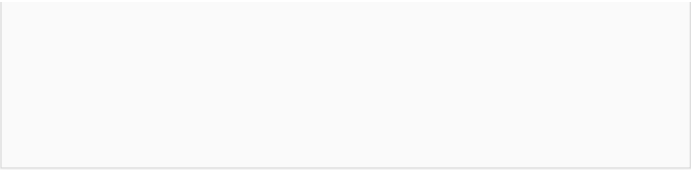
1 week loss of payment
(50% reduction of their fortnightly payment)

2nd applied failure

2 weeks' loss of payment
(100% reduction of their fortnightly payment)

3rd applied failure

Cancellation of their payment and a 4-week
preclusion period, which cannot be waived



During a preclusion period, the participant is prevented from re-applying for payment.

After the preclusion period, the participant must re-apply for payment to again receive services from you and will return to the start of the Penalty Zone.

Multiple non-compliance events in the Penalty Zone

There may be times where a participant in the Penalty Zone commits multiple failures in a short period for which Services Australia applies penalties.

However, Services Australia doesn't continue to apply failures once the participant has had a 100% reduction in their fortnightly payment. If Services Australia has already applied 2 failures in that fortnight, any remaining Non-Compliance Reports for that fortnight will not be investigated.

[Click to continue to the Quiz](#)

Quiz 1 - Multiple choice

There are 6 questions. When you obtain 100% please click the continue button.

Question

01/06

Participants who move into the Penalty Zone following a Capability Assessment will move back to the Green Zone when:

- They have successfully met all their requirements for 3 months of active participation
- They appeal the decision with Services Australia
- They have been granted a 3 month Exemption by Services Australia

Question

02/06

Select all the additional steps you take in the IT system to report non-compliance in the Penalty Zone

- Record that I have spoken to Services Australia about the participant's persistent non-compliance
- Record my confirmation that the participant is "persistently non-compliant"
- There are no additional steps in the IT system
- Record the participant has 5 confirmed demerits on their record
- Record whether the participant can accept this failure

Question

03/06

True or False?

A participant in the Penalty Zone failed to attend an appointment with you. Because this is their 2nd failure in the Penalty Zone, they can accept the failure without investigation by Services Australia.

True

False

Question

04/06

True or False?

A participant in the Penalty Zone failed to attend an appointment with you.

Because this is their 3rd failure in the Penalty Zone, they need to ask Services Australia to investigate the penalty.

True

False

Question

05/06

Your participant in the Penalty Zone failed to attend their activity, failed to attend an appointment with you and failed to meet their Points Target.

When you speak to them about the 3 requirements they didn't meet, you don't accept their reason for any of them.

Services Australia finds they have no Reasonable Excuse for any of the 3 failures.

What penalty or penalties apply to the participant?

- 50% reduction in payment for the fortnight
- 100% reduction in payment for the fortnight
- 100% reduction in payment this fortnight, and 50% reduction in payment in the next fortnight
- A 4-week preclusion period

Question

06/06

Before submitting a Non-Compliance Report for participants in the Penalty Zone, providers must:

- Discuss the non-compliance with the participant first, then assess and record that they didn't have a Valid Reason
- Attempt to speak to the participant about their reasons for non-compliance
- Speak to Services Australia about a participant's non-compliance

Chapter conclusion



Now you understand how non-compliance in the Penalty Zone works.

In the next chapter, you will learn about participants **returning to services following a preclusion period.**

CONTINUE

Return to services following a payment preclusion period

At the end of this chapter you will be able to:

1. Describe when participants must serve a preclusion period
2. Understand where in the TCF the participant will return to following a preclusion period

As you have learnt, there are times when a participant will serve a preclusion period, meaning they are not eligible to receive income support.

Preclusion periods occur:

- Following an applied Work Refusal Failure
- Following an applied Unemployment Failure
- Following Services Australia's confirmation of a 3rd failure in the Penalty Zone

After a participant serves a preclusion period, they need to re-apply through Services Australia to reclaim income support payments.

At the time the participant






re-applies, Services Australia will book an initial appointment for the participant with a provider.

Services Australia will notify them of the requirement to participate in the initial appointment and agree to a Job Plan.

When participants return to employment services, what compliance zone do they return to?

The zone the participant returns to after the preclusion period depends on what zone the participant was in immediately prior to serving it.

Let's take a look...

Zone the participant was in prior to the preclusion period	Reason for the preclusion period	When they return to employment services	
Green Zone 	Work Refusal Failure or Unemployment Failure	Participant remains in the Green Zone	
Warning Zone 	Work Refusal Failure or Unemployment Failure	Participant remains in the Warning Zone Confirmed demerits on the participant's record will be put 'on hold' while they are serving the preclusion period as they are not 'actively participating' in employment services. Therefore, their demerits will not expire	
Penalty Zone 	Work Refusal Failure or Unemployment Failure Third failure	Participant remains in the Penalty Zone Any time served for the preclusion period does not count towards the 3 months of active participation required to be returned to the Green Zone	Should the participant incur a further failure after serving the preclusion period, it will be the next penalty in the series (50% of payment for the 1st failure, 100% of payment for the 2nd failure, or payment cancellation and 4-week preclusion period for the 3rd failure) Should the participant incur a further failure after serving the preclusion period, it will be considered a 1st failure in the Penalty Zone = 50% loss of payment The 3-month period to return to the Green Zone after fully meeting all requirements starts again

Click to enlarge

Outstanding Capability Reviews


If the participant is in the **Warning Zone** and had an outstanding requirement for a capability review when they return to employment services, AND the outstanding requirement is a:

A Capability Interview....

Then you must conduct the Capability Interview at the initial appointment

A Capability Assessment....

The you must advise the participant at the initial appointment to contact Services Australia so that the Capability Assessment can be undertaken

 If either of these capability reviews are required, the participant will not accrue any further demerits until they have been conducted.

Further Servicing

As you would at all appointments, you should take the opportunity to remind the participant of the importance of meeting their requirements and of telling you beforehand when they can't meet them. You should remind them of the consequences of non-compliance in the Penalty Zone under the TCF.

[I understand \(Click to continue\)](#)

Chapter Conclusion



Now you understand about preclusion periods and what to do when participants return to services.

CONTINUE

Module conclusion



Please navigate to the next

Module – Serious Failures.

Exit the module

To confirm you have completed the module, click the Close button.

CLOSE