



Australian Government

Guideline:

New Employment Services Trial (NEST) Capability Interview

The Capability Interview is a key component of the Targeted Compliance Framework (TCF). Capability Interviews provide additional protection for vulnerable Participants. The purpose of the Capability Interview is to determine whether a Participant's Job Plan is suitable for the Participant. A Job Plan will be suitable for a Participant if the Mutual Obligation Requirements specified in their Job Plan are appropriate to the Participant's circumstances and the Participant is capable of meeting them.

The Capability Interview provides an additional opportunity for Trial Providers to actively engage with their Participants to identify any undisclosed issues and help them to meet their Mutual Obligation Requirements. This includes reviewing the Participant's Mutual Obligation Requirements set out in their Job Plan to ensure they are appropriate for the Participant's level of capability and individual circumstances, as well as giving consideration to services or support that may be appropriate to assist the Participant to meet their Mutual Obligation Requirements and move towards an employment outcome.

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Nil

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The following information has been updated throughout the document:

- Deed Clause numbers have been removed from body of the text and appear at the bottom of each section.
- Deed Clause numbers and links updated.

A full document history is available on the Provider Portal.

Related documents and references

[New Employment Services Trial \(NEST\) Assessments Guideline](#)

[New Employment Services Trial \(NEST\) Job Plan and Mutual Obligation Requirements Guideline](#)

[New Employment Services Trial \(NEST\) Targeted Compliance Framework: Mutual Obligation Failures Guideline](#)

[New Employment Services Trial \(NEST\) Work Refusal Failures and Unemployment Failures Guideline](#)

[New Employment Services Trial \(NEST\) Capability Assessment Guideline](#)

[New Employment Services Trial \(NEST\) Points Based Activation System Guideline](#)

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1. The purpose of a Capability Interview

The Capability Interview provides additional protection (safeguard) for vulnerable Participants. The purpose of the Capability Interview is to determine whether a Participant's Job Plan is suitable for the Participant. A Job Plan will be suitable for a Participant if the Mutual Obligation Requirements specified in their Job Plan are appropriate to the Participant's circumstances and the Participant is capable of meeting them.

The outcome of the Capability Interview will determine whether the Participant continues in the Warning Zone or whether they are returned to the Green Zone with their Demerits reset to zero. The Department's IT Systems will determine the outcome of the Capability Interview based on the information that the Trial Provider records in the Department's IT Systems in relation to the Capability Interview. For more information on what the Trial Provider must record in the Department's IT Systems regarding Capability Interviews, see the sections of this Guideline below headed [Preparing to conduct a Capability Interview](#) and [Conducting the Capability Interview](#).

It is intended that the Participant will:

- return to the Green Zone with their Demerits reset to zero if the outcome of the Capability Interview is that their Job Plan is not suitable (i.e. the Mutual Obligation Requirements specified in their Job Plan are not appropriate to the Participant's circumstances or the Participant is not capable of meeting them); or
- continue in the Warning Zone if the outcome of the Capability Interview is that the Job Plan is suitable for the Participant (i.e. the Mutual Obligation Requirements specified in their Job Plan are appropriate to the Participant's circumstances and the Participant is capable of meeting them).

(Deed references: clauses 128.7, 128.8 and 128.9)

2. When a Capability Interview is triggered

Trial Providers have a Deed obligation to conduct a Capability Interview when the Department's IT Systems specify that the Participant's Reconnection Requirement is a Capability Interview (the timing of when this occurs is discussed below). Note that the Department's IT Systems refer to a Reconnection Requirement as a 'reengagement requirement'.

In broad terms, the Department's IT Systems will specify that the Participant's Reconnection Requirement is a Capability Interview when the Participant has, in 6 active months (discussed below), incurred three Demerits or a Demerit for a 'fast-track' Mutual Obligation Failure. A fast-track Mutual Obligation Failure is one of the following:

- acting at a Job Interview in a manner that could result in an offer of employment not being made to the Participant;
- failing to attend a Job Interview; or
- failing to act on a Job Referral.

Note that, if a Participant has less than three Demerits when they incur a Demerit for a fast-track Mutual Obligation Failure, the Department's IT Systems will automatically increase the number of Demerits to three.

A factor that influences whether a Trial Provider must conduct a Capability Interview in the circumstances described above is the outcome of any Capability Interview or Capability Assessment that has been conducted in relation to the Participant in the last 60 days. Subject to certain requirements, if the outcome is that the Participant's Job Plan is suitable, then a further Capability Interview is not required.

The term '6 active months' generally means 182 days, but prolonged for the time the Participant is in a penalty period or has an Exemption (up to a maximum of 12 months).

When the Department's IT Systems specify that the Participant's Reconnection Requirement is a Capability Interview:

- a Capability Interview is said to be 'triggered'; and
- the Department's IT Systems will identify that the Capability Interview is 'outstanding'.

The Department's IT Systems will identify that a Capability Interview is 'outstanding' until it is finalised. The Capability Interview will be finalised when the Trial Provider selects 'submit' in the Department's IT Systems after completing the pre-interview check and recording all the relevant information during the Capability Interview (as discussed in this Guideline below in the sections headed [Preparing to conduct a Capability Interview](#) and [Conducting the Capability Interview](#)).

When a Participant incurs a Demerit that triggers a Capability Interview, their Income Support Payment may be suspended until the Participant participates in the Capability Interview and the Capability Interview is finalised. Exceptions to this are discussed below under the heading [Circumstances where a Capability Interview cannot be delivered within two Business Days](#).

Where the Department's IT Systems identify that a Capability Interview is 'outstanding' (as referred to above), the Participant will not be able to accrue any further Demerits until they attend a Capability Interview and that Capability Interview is finalised.

(Deed Reference: clause 128.7).

Capability Interviews resulted as 'No Longer Required', but are still 'outstanding'

In some circumstances, where the Department's IT Systems identify that a Capability Interview is 'outstanding', the Capability Interview will be shown to be 'No Longer Required'. This will happen where, after the Capability Interview is triggered, but before it is finalised, the Participant:

- transfers from the Trial Provider to another provider, but remains in Digital Services or Enhanced Services; or
- relocates to an area outside the Employment Regions covered by the Trial; or
- is granted an Exemption.

Even though the Capability Interview is shown as 'No longer Required', there is still an obligation to conduct the Capability Interview as follows:

- when the Participant transfers to a new Trial Provider, the new Trial Provider must conduct the Capability Interview; and
- when the Participant returns to servicing after an Exemption, the Trial Provider must conduct the Capability Interview.

In these cases, the Participant must participate in a Capability Interview before their new Job Plan can be negotiated with them. The Department's IT Systems will continue to identify that the Capability Interview is 'outstanding' until the Capability Interview is finalised.

The timeframe within which the 'No longer Required' Capability Interview must be conducted is discussed below under the heading [When the Participant is transferred to another Provider or they are returning to service after an Exemption](#).

3. Scheduling a Capability Interview

As discussed above, the Department's IT Systems will identify when a Participant's Reconnection Requirement is a Capability Interview. Trial Providers' main obligations regarding when they must schedule a date and time for a Reconnection Requirement (e.g. a Capability Interview) are set out in the Deed.

When scheduling a Capability Interview in the Participant's Electronic Calendar, the Trial Provider must be in direct contact with the Participant. This is to ensure that the Participant received formal notification of the Capability Interview within a reasonable timeframe.

As for any other Reconnection Requirement a Participant must attend, when a Trial Provider is scheduling the Capability Interview, the Trial Provider must schedule it to occur within two Business Days after the Participant incurs the relevant Demerit, as specified in the Deed. This usual timeframe is referred to in this Guideline as the 'standard two Business Days timeframe'.

Where Demerits are incurred automatically, such as for Job Plan failures, Job Search failures and Points Based failures, the standard two Business Days timeframe commences from the day the Participant contacts the Trial Provider to schedule the Capability Interview following payment suspension.

Trial Providers must ensure that the scheduled Capability Interview is of sufficient length to allow for a thorough review of the Participant's personal circumstances and a detailed discussion. The recommended time for a Capability Interview is between 30 and 60 minutes.

When scheduling the Capability Interview, the Trial Provider must ensure the Participant understands: the purpose of the Capability Interview; the reason they must participate in a Capability Interview (either because they accrued three Demerits or because they committed a fast-track Mutual Obligation Failure); and the serious potential consequences of continued Mutual Obligation Failures.

(Deed references: clauses 128)

4. Circumstances where a Capability Interview does not need to be delivered face to face

Trial Providers must conduct Capability Interviews face to face, except in allowable circumstances. The circumstances that are 'allowable circumstances' are referred to below as [Allowable Circumstances](#).

(Deed Reference: clause 128.9)

Allowable Circumstances

Allowable Circumstances are limited to circumstances that:

- are beyond the Participant or Trial Provider's control; and
 - prevent the Capability Interview from being delivered face to face, including where any one or more of the following apply to the Participant:
 - they reside in an area affected by:
 - extreme weather conditions;
 - a natural disaster; and/or
 - public transport strikes;
 - they are participating in full-time Education (including training), and this participation restricts their availability to participate in the Capability Interview face to face;
 - they are Employed and their hours restrict their availability to participate in a Capability Interview; and/or
 - a medical condition prohibits them from attending the Capability Interview face-to-face
- or, the Trial Provider operates
- an outreach/Part-time site and is not delivering services in the next 2 business days

If Allowable Circumstances prevent the Capability Interview from being delivered face to face, the Trial Provider may conduct the Capability Interview via telephone or videoconference so that it is delivered within the standard two Business Days timeframe.

When scheduling the Capability Interview to be delivered via telephone or videoconference, the Trial Provider must record the Allowable Circumstance in the Department's IT Systems.

5. Circumstances where a Capability Interview cannot be delivered within two Business Days

Participant is unable to reengage within the next two Business Days

When scheduling the Capability Interview, if the Participant advises of an Acceptable Reason occurring over the next two Business Days that would prevent them from attending the Capability Interview, the Trial Provider will select the reason from a prescribed list of "unable to reengage within two Business Days" reasons in the department's IT system.

The list of Acceptable Reasons for a Participant to be unable to reengage within two Business Days includes:

- Caring/family duties that were unexpected
- Cultural business over next two days
- Fulltime Activity/Training impacts attendance
- Housing instability/emergency
- Legal Requirement
- Local issue/natural disaster
- Major personal crisis
- Medical/health issue over next two days
- Travel/Transport – exceptional issue
- Working over next two days

Recording “unable to reengage within two Business Days” will lift the Participant’s payment suspension, and the Trial Provider must then schedule the Capability Interview to occur within the next 14 Business Days after the standard two Business Days timeframe and formally notify the Participant.

Participant has an Acceptable Reason

Following the scheduling of the Capability Interview to occur within two Business Days, a Participant may later notify the Trial Provider that they are no longer able to attend the scheduled Capability Interview.

As for any other scheduled requirement, Trial Providers must then assess whether the Participant’s reason for not being able to attend the scheduled Capability Interview is an Acceptable Reason.

For the purposes of the above, the Trial Provider must decide that a Participant has an Acceptable Reason for being unable to attend the scheduled Capability Interview if:

- the Participant notified the Trial Provider, before the scheduled Capability Interview, that the Participant is unable to attend the Capability Interview; and
- the Trial Provider is satisfied that the Participant has an Acceptable Reason for being unable to attend the scheduled Capability Interview.

A Trial Provider must decide that the Participant has an Acceptable Reason if, and only if, they are satisfied that the reason the Participant provides:

- would directly prevent the Participant from attending the scheduled Capability Interview;
- would be considered to be reasonable by a member of the general public; and
- aligns with the Participant’s personal circumstances as known by the Trial Provider.

If the Trial Provider decides that a Participant has an Acceptable Reason for being unable to attend the scheduled Capability Interview, the Trial Provider records this reason from a list of prescribed reasons from a drop down menu in the Department’s IT Systems. In selecting a reason option from the drop-down menu, the Trial Provider must select the option that is most similar to the Participant’s Acceptable Reason as they described it to the Trial Provider. This will lift the

Participant's payment suspension, but the requirement to attend the Capability Interview will still be outstanding on the Participant's record.

The Department's IT Systems will then prompt the Trial Provider to reschedule the Capability Interview within 14 Business Days.

The Trial Provider must not use the options in the drop-down menu to prompt or elicit responses from the Participant when recording "unable to reengage within two Business Days" or an Acceptable Reason. A full list of the reasons that appear in the drop-down menu can be found at [Attachment A](#).

If the Participant does not have Acceptable Reason

If the Trial Provider assesses that the reason is not an Acceptable Reason as discussed above, the Trial Provider must then tell the Participant why their reason is not an Acceptable Reason, inform them that they are still expected to attend the Capability Interview and remind them that their Income Support Payment suspension will not be lifted until they do so.

When part-time or outreach services prevent delivery of the Capability Interview within two Business Days

If:

- the Trial Provider determines that the Capability Interview must be conducted face to face (e.g. because it is unsuitable to deliver the Capability Interview via telephone or videoconference); and
- part-time or outreach services prevent the Trial Provider from delivering the Capability Interview face to face within the standard two Business Days timeframe,

the Trial Provider records 'reengagement not required' in the Department's IT Systems for the reason 'outreach/part time site impacts reengagement'. This will lift the Participant's Income Support Payment suspension, but the requirement to attend the Capability Interview will still be outstanding on the Participant's record.

The Trial Provider must then manually schedule the Capability Interview in the Participant's Electronic Calendar to occur within the next 14 business days.

When the Participant is transferred to another Provider or they are returning to service after an Exemption

A Trial Provider does not need to conduct the Capability Interview within the standard two Business Days timeframe where, after the Capability Interview is triggered, but before it is finalised, the Participant:

- transfers from the Trial Provider to another provider, but remains in Digital Services or Enhanced Services;
- relocates to an area outside the Employment Regions covered by the Trial; or
- is granted an Exemption.

When the Participant transfers to a new Provider, the new Provider must conduct the Capability Interview at the Participant's Initial Interview.

When the Participant returns to servicing after an Exemption, the Trial Provider must conduct the Capability Interview within 14 Business Days after the Participant returns.

Reporting Work Refusal Failures and Unemployment Failures before the Capability Interview is finalised

Trial Providers must still create Work Refusal Failure reports or Unemployment Failure reports in accordance with their Deed obligations, regardless of whether the Participant still has an outstanding Capability Interview in the Department's IT Systems.

(Deed references: clauses 129 and 130)

For more information, see the [New Employment Services Trial \(NEST\) Work Refusal Failures and Unemployment Failures Guideline](#).

If a Participant fails to attend their Capability Interview

As noted above, a Capability Interview is a type of Reconnection Requirement. See the [New Employment Services Trial \(NEST\) Targeted Compliance Framework: Mutual Obligation Failures Guideline](#) for more information on the steps Trial Providers must take when a Participant fails to meet a Reconnection Requirement.

6. Preparing to conduct a Capability Interview

Prior to the Capability Interview, the Trial Provider must complete a pre-interview check in the Department's IT Systems. The Trial Provider must prepare for completing the pre-interview check by reviewing the following:

- the Participant's current Job Seeker Classification Instrument (JSCI)—to familiarise themselves with the Participant's personal circumstances;
- the Capability Management Tool (CMT)—for information on the barriers that may be affecting the Participant's ability to meet their Mutual Obligation Requirements;
- the Job Seeker Personal Summary—to familiarise themselves with the Participant's basic information history and current circumstances;
- the requirements in the Participant's current Job Plan—to determine whether the Participant's Mutual Obligation Requirements:
 - are up to date and appropriate based on the Participant's personal circumstances;
 - include an appropriate level of Job Search, where applicable; or
 - include an appropriately tailored Points Requirement, where applicable;
 - do not conflict with each other; and
 - do not add up to excessive hours.

In determining these things, the Trial Provider must consider the relevant requirements in the [New Employment Services Trial Job Plan and Mutual Obligation Requirements Guideline](#) and the [Points Based Activation System Guideline](#).

The Trial Provider must be well prepared and have all relevant information to hand both prior to conducting the Capability Interview and during the Capability Interview itself.

Pre-interview check

As noted above, the Trial Provider must conduct the Capability Interview pre-interview check prior to the Capability Interview. The Trial Provider can access the pre-interview check in the Department's IT Systems by selecting the relevant Capability Interview listed on the Targeted Compliance Framework/History screen.

The pre-interview check is composed of a set of questions aimed at determining whether the Participant's Job Plan is suitable (i.e. the Mutual Obligation Requirements specified in their Job Plan are appropriate to the Participant's circumstances and the Participant is capable of meeting them).

The questions in the pre-interview check focus only on the compulsory Mutual Obligation Requirements in the Participant's Job Plan. Trial Providers must not consider voluntary requirements as part of this check.

The Trial Provider must answer the pre-interview check questions accurately.

When answering the pre-interview check questions, Trial Providers must only use the information that had been recorded in the Department's IT Systems at the time the Job Plan was negotiated. Trial Providers must not use information that has been recorded since.

For more information regarding the pre-interview check, see [Attachment B](#).

7. Conducting the Capability Interview

Delivery by a different staff member

While it is not a requirement, it is strongly recommended that the staff member who delivers the Capability Interview is someone other than the staff member who negotiated the Participant's current Job Plan. This is because the Participant may disclose new information to another staff member that they had not disclosed to the usual staff member.

Site resourcing may restrict this practice—some Trial Provider sites may have very limited staffing. In this situation, it is permissible for the same staff member who negotiated the last Job Plan to also conduct the Capability Interview.

Getting Started

The Trial Provider must first advise the Participant that the Capability Interview is being undertaken due to their Mutual Obligation Failure(s). The Trial Provider must explain the purpose and potential outcomes of the Capability Interview, including:

- that the Participant's Job Plan may require re-negotiating;
- that the Participant will either return to the Green Zone or continue in the Warning Zone, depending on the outcome of the Capability Interview; and
- the financial consequences for the Participant if they continue to commit Mutual Obligation Failures.

The focus of the Capability Interview is to:

- ensure that the Participant understands their Mutual Obligation Requirements and the consequences of not meeting them;
- ensure the Participant's Mutual Obligation Requirements set out in their Job Plan are appropriate for their circumstances; and
- identify any undisclosed barriers preventing the Participant from meeting their Mutual Obligation Requirements.

The Trial Provider must ensure the Participant understands that their Trial Provider is seeking to better understand why they have not been meeting their Mutual Obligation Requirements.

(Deed Reference: clause 128.8)

Trial Providers must advise Participants that:

- it is important they disclose any personal circumstances that may be affecting their ability to comply with their Mutual Obligation Requirements (so the Trial Provider can set Mutual Obligation Requirements appropriately);
- if needed, the Participant will be provided with assistance to help them meet their Mutual Obligation Requirements, or their Mutual Obligation Requirements may be adjusted;
- the Participant may require and receive different services as a result of the Capability Interview;
- they may be referred to Services Australia for an Employment Services Assessment (ESAt); and
- if they continue to commit Mutual Obligation Failures without a Valid Reason, this will result in increasingly serious consequences, including loss of their Income Support Payment.

The Trial Provider must ask the Participant if they have any concerns or questions before starting the Capability Interview, and they should address these where possible.

Capability Interview discussion

During the Capability Interview, the Trial Provider must discuss the following with the Participant:

- the Participant's understanding of their Mutual Obligation Requirements and what they must do to meet them. This may require a detailed discussion to ascertain the Participant's level of understanding of what they must do to avoid Demerits and Income Support Payment suspension, reduction and/or cancellation;
- the reasons behind the Participant's recent Mutual Obligation Failure(s) and any factors that may be affecting the Participant's capacity to meet their Mutual Obligation Requirements;
- whether alternative Mutual Obligation Requirements may be more appropriate for the Participant;
- any undisclosed barriers that might be preventing the Participant from meeting their Mutual Obligation Requirements;
- any support or assistance the Participant identifies that might better help them meet their Mutual Obligation Requirements;

- if applicable, the quality of their Job Search efforts or Job Search Related Tasks;
- if applicable, what the Participant will do to increase their chances of finding Employment;
- if applicable, the Participant's attempts to find and keep suitable Employment, including their long-term employment goals; and
- anything else of relevance to the Participant's capability to meet their Mutual Obligation Requirements.

Trial Providers should note that the Capability Interview is not an opportunity to review the circumstances under which each Demerit was accrued or to review the decision-making process for each Demerit decision.

During the Capability Interview discussion with the Participant, the Trial Provider must accurately answer all the Capability Interview questions that can be accessed on the Targeted Compliance Framework/History screen in the Department's IT Systems. The Trial Provider must also accurately record additional information relating to those questions where they are prompted to do so by the Department's IT Systems.

(Deed references: clause 128.8)

Re-running the Job Seeker Classification Instrument (JSCI)

During each Capability Interview, the Trial Provider must:

- review the Participant's JSCI assessment; and
- if the JSCI does not accurately reflect the current circumstances of the Participant as disclosed during the Capability Interview, update the Participant's JSCI.

See the [New Employment Services Trial \(NEST\) Assessments Guideline–Job Seeker Classification Instrument \(JSCI\) and Employment Services Assessment \(ESAt\)](#) for more information on how to conduct/update a JSCI.

Referring the Participant for an Employment Services Assessment after re-running the JSCI

An Employment Services Assessment (ESAt) determines whether a Participant in Enhanced Services should receive services in other programs such as Disability Employment Services (DES).

After the Trial Provider conducts the JSCI, the Department's IT Systems may show that the result of the JSCI is a referral to Services Australia for an ESAt. Alternatively, the Trial Provider should refer Participants who they consider may need an ESAt to Services Australia. Trial Providers must comply with the [New Employment Services Trial \(NEST\) Assessments Guideline](#) when referring Participants to Services Australia for an ESAt.

Services Australia will notify the Trial Provider of the outcome of the ESAt via a Noticeboard message in the Department's IT Systems, and they will upload any newly disclosed vulnerabilities and barriers into the CMT for the Trial Provider to action. See below section [Using the Capability Management Tool](#) for further information.

Where the JSCI results in an ESAt being required and a referral to Services Australia is made within the Capability Interview, the Capability Interview will be finalised once the ESAt appointment is booked. The outcome of the Capability Interview will be 'newly disclosed information' (meaning the Participant's Job Plan is not suitable), and the Participant will return to the Green Zone with their Demerits reset to zero.

While awaiting the outcome of an ESAt, Participants are still required to meet their Mutual Obligation Requirements, but they cannot accrue further Demerits for Mutual Obligation Failures.

Using the Capability Management Tool

Trial Providers have an obligation to use the CMT during the Capability Interview. Trial Providers can access the CMT in the Department's IT Systems. The CMT is used to record, review and manage information on Participants' personal circumstances that may be affecting their capacity to meet their Mutual Obligation Requirements. The CMT consolidates information collected from the Capability Interview discussion, the most recent JSCI, and any past ESAts or Capability Assessments.

Based on the discussion with the Participant during the Capability Interview, Trial Providers must use the CMT to accurately record information regarding all identified barriers or vulnerabilities affecting the Participant's ability to meet their Mutual Obligation Requirements.

8. (Deed references: clause 128.8(c))Actioning outcomes from a Capability Interview

As noted above, the Department's IT Systems will determine the outcome of the Capability Interview based on the information that the Trial Provider records in the Department's IT Systems in relation to the Capability Interview. The possible outcomes are as follows:

- the Participant's Job Plan is suitable for the Participant, which is referred to in the Department's IT Systems as 'Deemed capable of meeting their Job Plan requirements'; or
- the Participant's Job Plan is not suitable for the Participant, which is referred to in the Department's IT Systems as one of the following, depending on the reason that the Job Plan is not suitable:
 - 'Errors in the Job Plan—Requires Update';
 - 'Not capable of meeting their Job Plan requirements due to their circumstances/capacity'; or
 - 'Newly disclosed information'.

Each of these outcomes is discussed in further detail below.

Once the Department's IT Systems have determined the outcome of the Capability Interview, the Trial Provider must explain this outcome to the Participant and ensure they understand what it means and what will happen next.

The Participant's Job Plan is not suitable

If the outcome of the Capability Interview is that the Participant's Job Plan is not suitable for the Participant:

- the Participant is returned to the Green Zone with their Demerits reset to zero; and
- the Trial Provider must negotiate and update the Job Plan so that it is suitable for the Participant in accordance with the [New Employment Services Trial \(NEST\) Job Plan and Mutual Obligation Requirements Guideline](#) and the [Points Based Activation System Guideline](#), except in the circumstances described below under the headings, [Outcome: 'Newly disclosed information'–newly disclosed personal circumstances](#) and [Outcome: 'Newly disclosed information'–The Participant's stream or program eligibility has changed](#). Trial Providers are strongly encouraged to negotiate and update the Job Plan as part of the Capability Interview once the outcome has been determined by the Department's IT Systems. If it is not updated as part of the Capability Interview, the Trial Provider must negotiate and update the Job Plan within the 10 Business Days following the finalisation of the Capability Interview.

(Deed References: clause 97.5)

Until the Job Plan is updated and agreed by the Participant, they cannot accrue further Demerits.

Outcome: 'Errors in the Job Plan–Requires Update'

If the Trial Provider records in the Department's IT Systems that the Job Plan has errors during the Capability Interview, the outcome of the Capability Interview will be that the Participant's Job Plan is not suitable for the Participant. A Job Plan contains errors if it includes items that are inappropriate for the Participant.

For example: the inclusion of Work for the Dole for a Participant who is under 18 years of age is not legally permitted, and therefore would constitute an error in the Job Plan.

Trial Provider action

- Advise the Participant that there are errors in their Job Plan, which means that the Job Plan is not suitable for the Participant.
- Advise the Participant that their Demerits will be reset to zero and they will return to the Green Zone.
- In consultation with the Participant, update the Job Plan to address the identified errors in accordance with the [New Employment Services Trial \(NEST\) Job Plan and Mutual Obligation Requirements Guideline](#) and [New Employment Services Trial \(NEST\) Points Based Activation Guideline](#).

Outcome: 'Not capable of meeting their Job Plan requirements due to their circumstances/capacity'

If the Trial Provider records in the Department's IT Systems that the Participant's personal circumstances prevent them from successfully meeting the Mutual Obligation Requirements set out in the Job Plan during the Capability Interview, the outcome of the Capability Interview will be that the Participant's Job Plan is not suitable for the Participant.

For example: a parent with caring responsibilities may not be a principal carer but may not have the capacity to attend requirements outside of school hours on certain days.

Trial Provider action

- Advise the Participant that their personal circumstances have made their current Job Plan not suitable for them.
- Advise the Participant that their Demerits will be reset to zero and they will return to the Green Zone.
- In consultation with the Participant, update the Job Plan so that it is suitable in accordance with the [New Employment Services Trial \(NEST\) Job Plan and Mutual Obligation Requirements Guideline](#) and the [New Employment Services Trial \(NEST\) Points Based Activation Guideline](#).

Outcome: 'Newly disclosed information'—newly disclosed personal circumstances

The Trial Provider may assess that the Participant would have been capable of meeting their Mutual Obligation Requirements, however, the Participant has disclosed new information about their personal circumstances that was previously unknown to the Trial Provider, and these circumstances affected the Participant's ability to meet their Mutual Obligation Requirements at the time they accrued Demerits.

Circumstances are considered to be newly disclosed if they are not already recorded in the Department's IT Systems.

For example: the Participant has disclosed that they have been a victim of family violence or are homeless.

This is not a review of whether the Participant should have accrued Demerits in relation to Mutual Obligation Failures—instead, the newly disclosed information informs the assessment of the Participant's overall capability at the time they accrued Demerits.

Because the Participant would normally be capable of meeting their Mutual Obligation Requirements, their Job Plan does not necessarily require updating.

Trial Provider action

- Advise the Participant that newly disclosed information would have affected their ability to meet Mutual Obligation Requirements at the time of Demerit accrual.
- Advise the Participant that their Demerits will be reset to zero and they will return to the Green Zone.
- Consider whether the Job Plan requires updating. If so, negotiate and update the Job Plan so that it is suitable in accordance with the [New Employment Services Trial \(NEST\) Job Plan and Mutual Obligation Requirements Guideline](#) and [New Employment Services Trial \(NEST\) Points Based Activation Guideline](#).

Outcome: 'Newly disclosed information'—The Participant's stream or program eligibility has changed

If a Participant is placed into another servicing stream as a result of running the JSCI or as a result of the finalisation of an ESA, the outcome of the Capability Interview will be that the Participant's Job Plan is not suitable for the Participant.

Trial Provider action

- Advise the Participant that their stream or program eligibility has changed as a result of running the JSCI or as a result of the finalisation of an ESAt.
- Advise the Participant that their Demerits will be reset to zero and they will return to the Green Zone.
- In consultation with the Participant, update the Job Plan so that it is suitable in accordance with the [New Employment Services Trial \(NEST\) Job Plan and Mutual Obligation Requirements Guideline](#) and [New Employment Services Trial \(NEST\) Points Based Activation Guideline](#).

(Deed references: clauses 97.5(e), 128.8)

The outcome of the Capability Interview is that the Participant's Job Plan is suitable for the Participant

If the outcome of the Capability Interview is that the Participant's Job Plan is suitable for the Participant, they are determined to be capable of meeting requirements and will continue in the Warning Zone with three Demerits once the Capability Interview is finalised.

Because the Job Plan is suitable for the Participant, it does not need to be updated.

Trial Provider action

- Advise the Participant that their Job Plan has been assessed as being suitable for them.
- Advise the Participant that the next time they commit a Mutual Obligation Failure without a Valid Reason, this may result in a Capability Assessment with Services Australia.
- Ensure the Participant understands the Mutual Obligation Requirements in their Job Plan and the consequences of non-compliance.

Ramifications of further non-compliance

See the [New Employment Services Trial \(NEST\) Targeted Compliance Framework: Mutual Obligation Failure Guidelines](#) (under the heading 'The Penalty Zone') for more information on the consequences for the Participant if they continue to accrue Demerits after they remain in the Warning Zone following a Capability Interview.

Summary of required Documentary Evidence



Documentary Evidence: In addition to the evidence recorded in the Department's IT Systems, evidence supporting the outcome of the Capability Interview could include:

- prior notification of the requirement to attend, Job Referral, referral to a Job Interview or notification of an Employment Offer;
- prior notification of details provided to a Participant in relation to attending an Activity or Appointment with a Trial Provider or third party;
- the type of Notification received (i.e. SMS, email or letter);
- fully or partially completed Job Searches or Job Search Related Tasks provided in hard copy form;
- 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; or
- details of the incident, including dates, the parties involved and what occurred.

Attachment A—‘Unable to Reengage Within 2 Business Days’ reason options

‘Unable to Reengage within 2 Business Days’

- Caring/family duties that were unexpected impacts attendance
 - Cultural business over next two business days impacts attendance
 - Full-Time Activity/Training impacts attendance
 - Housing instability/emergency impacts attendance
 - Legal requirements impact attendance
 - Local issue/natural disaster impacts attendance
 - Major personal crisis affecting job seeker impacts attendance
 - Medical/health issue over next two days impacts attendance
 - Travel/transport—exceptional issue impacts attendance
 - Working over next two business days
-

Attachment B—Pre-interview check questions

NOTE: When assessing whether the activity hours and types of activities in a Participant's Job Plan are appropriate, Trial Providers must follow the [New Employment Services Trial \(NEST\) Job Plan and Mutual Obligation Requirements Guideline](#) or the [New Employment Services Trial \(NEST\) Points Based Activation Guideline](#).

Pre-Interview Job Plan Check questions

How many hours of activity participation per fortnight have been set?

This is the total hours recorded for compulsory activities. The codes in the Participant's Job Plan may indicate the hours per week/fortnight, or the hours may be outlined in the Free Text Job Plan code. Note: the activity participation hours entered into a Job Plan for PATH Internships indicate weekly hours, not fortnightly hours.

Note: the activity participation hours entered into a Job Plan for PATH Internships indicate weekly hours, not fortnightly hours.

Are the number of activity hours appropriate and in line with the Participant's requirement level?

Refer to the Activity Requirements table beneath these questions. This shows the number of hours of compulsory activity participation considered above Participant expectations based on the Participant's age and level of requirements.

**Are the Participant's activities appropriate based on their personal circumstances?
Select all that apply.**

The Participant has been set requirements that are appropriate for their personal circumstances and capacity.

For example:

- A Participant with low literacy/numeracy is not asked to complete training or education that is well beyond their capacity.
 - A Participant with chronic back pain is not asked to attend an activity that requires them to stand all day.
-

The Participant's requirements are scheduled at an appropriate time as per their calendar.

For example:

- A Principal Carer Parent is not asked to attend requirements outside of school hours when they have not indicated that either this is appropriate for them or that they have childcare arrangements in place.
-

The Participant is reasonably able to get there (the Participant has transport available).

For example:

- A Participant who does not have a car is not asked to attend a requirement where there is infrequent or non-existent public transport.
-

Are there any requirements in the Job Plan that have an end date in the past (expired) or that are no longer appropriate?

For example:

- None of the codes in a Participant's Job Plan have end dates that have lapsed.
-

Pre-Interview Job Plan Check questions

- Requirements that are no longer appropriate are removed—such as self-employment for a Participant who is no longer self-employed.

Note: Job Search Requirement questions will only appear for participants with JS09 or JS11 in the Job Plan

Is the number of Job Search efforts appropriate to the individual? Select all that apply.

- Appropriate based on stream/program
- Appropriate based on local labour market
- Appropriate based on personal circumstances/barriers of Participant

This includes reviewing the number of Job Search efforts required and the overall validity of the requirement for the Participant. This looks at the Participant's local labour market, stream/program, and personal circumstances. It also looks at other Mutual Obligation Requirements a Participant is meeting which may reduce their required efforts.

For example:

- A Participant who lives in a remote seasonal or tourist area—i.e. an area with a weak labour market—is not required to apply for a number of jobs that significantly exceeds local labour market thresholds.
- A Participant whose literacy levels are low is required to submit an appropriate number of Job Search efforts while they are receiving other supports to increase their literacy levels.

Note: Points Requirement questions will only appear for participants with PA09 in the Job Plan

Is the Points target appropriate to the individual? Select all that apply.

- Appropriate based on stream/program
- Appropriate based on local labour market
- Appropriate based on personal circumstances/barriers of Participant

This includes reviewing the Points target in the Reporting Periods screen and the overall validity of the requirement for the Participant. This looks at the Participant's local labour market, stream/program, and personal circumstances. It also looks at other Mutual Obligation Requirements a Participant is meeting which may reduce their Points Target.

For example:

- A Participant who lives in a remote seasonal labour or tourist area—i.e. an area with a weak labour market—is not required to meet a Points Target that significantly exceeds local labour market thresholds.

A Participant whose literacy levels are low is required to meet an appropriate Points Target while they are receiving other supports to increase their literacy levels.

Activity requirement hours

The following table can be used as reference when reviewing the Job Plan.

Total compulsory activity participation hours should not exceed...

| Age group | Full-time requirements | Part-time requirements |
|-------------|------------------------|------------------------|
| Under 30 | 75hr | 61hr |
| 30–49 | 75hr | 61hr |
| 50–59 | 61hr | 51hr |
| 60 and over | 41hr | 41hr |

All capitalised terms in this guideline have the same meaning as defined in the New Employment Services Trial Deed 2019–2022 (the Deed).

All references to:

- ‘Participant’ are references to a ‘Participant (Mutual Obligation)’; and
- ‘Job Plan’ are references to a ‘Job Plan’ for the purposes of the Deed

This Guideline is not a stand-alone document and does not contain the entirety of Trial Providers’ obligations. It must be read in conjunction with the Deed and any relevant Guidelines or reference material issued by Department of Education, Skills and Employment under or in connection with the Deed.