



## TCF Penalty Zone Bug Status Reporting

Presented by: s 22(1) , First Assistant Secretary and Workforce Australia for Individuals

### Overview

- Status update on implementing back payment arrangements where financial penalties under the Targeted Compliance Framework (TCF) were applied outside the 13-week window.

### Key points

#### *Status Update*

- The department is working with Services Australia to progress back payment arrangements for those participants impacted by having incorrect Financial Penalties applied due to departmental IT system issues.
- As at 10 January 2024, 87 participants have been paid for 1st and 2nd Financial Penalties that were incorrectly applied. These 87 all fell within the 13-week window for back payment that currently exists within the Services Australia system. The total arrears paid to date is \$78,688.
- Services Australia has indicated payments to the remaining 722 impacted clients with a 1<sup>st</sup> or 2<sup>nd</sup> Financial Penalty only will commence by the end of January 2024. Ahead of this, operational processes, scripts and training of existing Services Australia customer service staff are being finalised to enable the remediation payments to be undertaken. Services Australia has indicated that this timeframe is attributable to the need to allocate frontline staff from other duties and train these staff in the required processes to calculate and make the remediation payments.
- The method of payment for those with a 3<sup>rd</sup> Financial Penalty, either through Compensation for Detriment due to Deficient Administration (CDDA) or Act of Grace (AoG) is still to be determined. Progress towards determining the method of payment for the 3<sup>rd</sup> Financial Penalty is detailed further below.
- A communication and stakeholder engagement strategy is being finalised which ensures:
  - Relevant Ministers are briefed (SA, DEWR, DSS).
  - Standard talking points and scripts are developed for SA and DEWR.
  - Media holding lines are agreed and provided to SA and DSS media teams.

**DEWR will seek Ministerial agreement on the proposed Communications Strategy including media talking points.**

- External briefings with ACOSS, other peaks. A draft letter to peak advocacy organisations (ACOSS and EJA) has been prepared. **DEWR will seek Ministerial agreement before any briefing of external stakeholders occurs, noting back payments may occur prior to this.**
- Improved clarity about the AoG or CDDA options and processes. Supplementary legal advice sought on for payment of the 3<sup>rd</sup> Financial Penalty. Briefing is prepared outlining the options.

### Risk / Sensitives

- Extended timeframes due to lack of sufficient resources to make payments –
  - Due to limitations in the availability of appropriately trained staff in Services Australia and the complexity involved in determining amounts to be paid, there is a danger that remediation payments of the 1<sup>st</sup> and 2<sup>nd</sup> Financial Penalties may take longer than anticipated.
  - Depending on the avenue for payment for the 3<sup>rd</sup> Financial Penalty and whether DEWR or Services Australia make payment, this will be a resource intensive and lengthy process.

### Background

- The department identified a defect in the Employment IT system supporting the TCF in August 2023 which affected participants' duration in the Penalty Zone. This impacted the payments of an estimated 1161 individuals and resulted in applying 1615 financial penalties that are not consistent with policy or legislation.
- Concurrently, the impacted participants have been identified and have been grouped into cohorts for payment.
  - For the 1st and 2nd Financial Penalty (50 per cent and 100 per cent respectively of the participants fortnightly payment), the back payment can be made through the social security system with support from Services Australia. There are **722 individual participants** who fall into this group.
  - Actual amounts to be repaid are being calculated by Services Australia.
  - For the 3rd Financial Penalty (cancelled off payment with a 4 week preclusion period) payment will require an AoG or CDDA payment. There are **356 individual participants** who fall into this group.
  - As a participant's payment is cancelled for the 3rd Financial Penalty and for the purposes of Social Security law, they are not in receipt of an Income Support Payment, Services Australia have advised calculating each participant's actual back pay amounts in this cohort is more complex and may take several months to finalise.

s 22(1)

## TCF Penalty Zone bug update

### Current progress to commencing remediation payments

#### Key Points

1. Services Australia has indicated that remediation payments will commence for those with a 1<sup>st</sup> or 2<sup>nd</sup> financial penalty on **29 January 2024**.

Next Steps	Current Progress
Letter to Services Australia formally requesting payment to commence	<ul style="list-style-type: none"> <li>• Letter sent to Services Australia on 17/01/2024.</li> </ul>
Services Australia to finalise internal requirement to progress with payment.	<ul style="list-style-type: none"> <li>• Services Australia are finalising operational processes, comms scripting/letters and training existing Services Australia customer service staff in the required processes to undertake the remediation payments.</li> <li>• Services Australia has indicated that remediation payments will commence for those with a 1<sup>st</sup> or 2<sup>nd</sup> financial penalty on <b>29 January 2024</b>.</li> </ul>
Other Portfolio Ministers are briefed (SA,DSS)	<ul style="list-style-type: none"> <li>• DEWR has reviewed and returned the DSS Brief relating to impacted DES participants (18/01/2024).</li> <li>• DEWR has reviewed and returned the Services Australia Brief (18/01/2024).</li> </ul>
Improved clarity about the AoG/CDDA option and process	<ul style="list-style-type: none"> <li>• DEWR is currently working to finalise a minute outlining options for payment of the 3<sup>rd</sup> Financial Penalty through either an Act of Grace (AoG) or Compensation for Detriment due to Deficient Administration.</li> </ul>
Media/Communications Strategy and Talking Points	<ul style="list-style-type: none"> <li>• The Communications Strategy and TPs were provided to the Minister's Office on 19 January 2024.</li> <li>• Draft script settled for the National Customer Service Line in anticipation of possible calls relating to the issue and the remediation payment process.</li> </ul>
External briefings (ACOSS, other peaks, etc)	<ul style="list-style-type: none"> <li>• Bilateral calls with ACOSS and EJA occurred on 23 January 2024.</li> </ul>



## New TCF Penalty Zone IT Issue

Presented by: s 22(1) , First Assistant Secretary, Workforce Australia for Individuals

### Overview

- New Penalty Zone IT Defect – Financial Penalties incorrectly applied after a person has left the TCF Penalty Zone.

### Key points

- A small number of clients (73 individuals) have had financial penalties incorrectly applied due to an IT system defect arising from a corrective fix released in October 2023 to resolve the previous Penalty Zone TCF bug defect.
- This new defect occurs when a client, who has received 5 previous demerits, has been found capable in a Capability Assessment by Services Australia and has entered the TCF Penalty Zone. The defect occurs when one or more of the client's previous demerits are removed and the client moves out of the Penalty Zone but the IT system is still requiring Services Australia to investigate a non-compliance event which may result in a financial penalty. The correct workflow should be to close the outstanding non-compliance without investigation by Services Australia.
- As part of the regular assurance activities conducted by the Compliance Team, this issue was identified on 14 February 2024 and progressed for investigation by the Digital Solutions Division. This defect has been raised as a Priority One/Severe defect.
- The department can confirm:
  - **73 distinct clients** were impacted by the defect.
  - **99 financial penalties** were applied in total.
    - 2 clients had received a 3<sup>rd</sup> financial penalty and payment cancellation.
    - 1 client served the preclusion period and has since reclaimed.
  - The full quantum of payments withheld is yet to be calculated.

### Remediation Process:

- The fix for this defect is scheduled to be released on **24 April 2024**.
- Services Australia have been engaged and affected client details will be sent to Services Australia to be included in the remediation that is currently underway as a result of the previous Penalty Zone defect.

### Risk / Sensitives

- The proposed remediation process for these newly affected clients will extend the current remediation process for the initial Penalty Zone IT Issue.

## Background

- This new issue arose as an unintended consequence from the IT system fix following the previous Penalty Zone IT Issue identified in August 2023. This previous issue incorrectly extended the time a person spent in the TCF Penalty Zone, resulting in incorrectly applied financial penalties.
- Remediation payments to clients for this initial issue are still ongoing. Updated numbers for those who have received payment is attached.
- The 3 categories of financial penalty are:
  - 1<sup>st</sup> financial penalty – 50 per cent of their regular fortnightly payment
  - 2<sup>nd</sup> financial penalty – 100 per cent of their regular fortnightly payment
  - 3<sup>rd</sup> financial penalty – Their payment is cancelled, they must serve a 4 week payment preclusion period and reapply for payment.
- Ongoing assurance is in place to check all demerits for each client who is found capable in a Capability Assessment and has entered the Penalty Zone. These checks normally occur within 2 – 3 days of the Capability Assessment being conducted, and the result entered into the client's record.

Penalty Zone IT Issue – Resolution processes

Current	Current - Ongoing	Next Steps				Evaluation and Learnings
<p>Decision – Remediation Process via CDDA</p>	<p>Calculation of amounts to be remediated</p>	<p>Formal approval for payment under CDDA</p>	<p>Communications to impacted people</p>	<p>Remediation payment to affected people</p>	<p>Assessment and payment of Additional Detriment</p>	<p>Evaluation and Learnings</p>
			<p>Concurrently with</p>			
<ul style="list-style-type: none"> <li>The Secretary has agreed that remediation will be progressed through Compensation for Detriment caused by Deficient Administration (CDDA) as the preferred approach.</li> <li>A letter from the DEWR Secretary to the Services Australia CEO requesting that Services Australia make CDDA payments on DEWR’s behalf is being progressed from clearance and sending. Feedback from Program Advice and Corporate Law has been incorporated into the draft.</li> <li>The department is working with Services Australia to be able to progress payments to those affected people as soon as possible.</li> </ul>	<ul style="list-style-type: none"> <li>Services Australia has commenced calculations for those with incorrectly applied 3<sup>rd</sup> Financial Penalties.</li> <li>Once the calculations are finalised, they will be forwarded to progress to formal approval for remediation payments to be made under the CDDA scheme.</li> </ul>	<ul style="list-style-type: none"> <li>Under <i>D22-050, Instrument of Authorisation, Scheme for Compensation for Detriment caused by Deficient Administration</i> a decision is required for each payment made under the CDDA Scheme.</li> <li>A Brief to the Secretary will be prepared detailing the amounts to be remediated for each person requesting a collective decision to agree to payment via CDDA.</li> </ul>	<ul style="list-style-type: none"> <li>A letter has been drafted to affected clients detailing the reason the payment is being and the amount to be remediated.</li> <li>The letter will include information on reviews of decisions via the Commonwealth Ombudsman.</li> <li>As DEWR will be the CDDA authorising entity, contact details for the NCSL will be included as point of contact if affected people have questions relating to the payment. Scripts have been developed for the NCSL in advance of the payment process commencing.</li> </ul>	<ul style="list-style-type: none"> <li>Services Australia will attempt to contact affected people by making 2 outbound calls and sending a letter to their last known address.</li> <li>Where the call is not answered, a letter is sent and payment made to the bank account records in the Services Australia system.</li> <li>This mirrors the current process being followed by Services Australia for 1<sup>st</sup> and 2<sup>nd</sup> financial payments.</li> </ul>	<ul style="list-style-type: none"> <li>Advice from Services Australia and DSS is that generally, information regarding claims for additional compensations is not specifically included in communications to affected participants.</li> <li>Where claims for additional compensation are received, they will be assessed and a decision made as to whether payment is warranted.</li> <li>Criteria for assessing additional detriment will include only amounts where the loss or detriment is directly linked to the decision to withhold payment and is quantifiable.</li> <li>As an example: where a person incurred defaults, interest or additional costs on bill payments or finance agreements with regular payments being made through Centrepay, the Services Australia linked direct deduction scheme.</li> <li>Information relating to requests for a review (via the Commonwealth Ombudsman) will be included in all participant communications.</li> </ul>	<ul style="list-style-type: none"> <li>The department will conduct an analysis evaluating the process of rectification for this matter.</li> <li>This evaluation will cover:                             <ul style="list-style-type: none"> <li>the misinterpretation of IT Business Rules and policy that led to the defect initially,</li> <li>the identification of the defect,</li> <li>the steps in rectifying the system error</li> <li>the second IT defect that resulted from a coding error in the initial fix</li> <li>Communications with other departments and agencies</li> <li>The decision making processes for approving remediation</li> <li>The payment processes</li> <li>Client communications and feedback</li> </ul> </li> <li>The findings of this evaluation will be presented as a report detailing learnings to inform any future processes where erroneous system processes or human error have led to direct detriment to people.</li> </ul>



**To** Minister for Employment and Workplace Relations  
**Subject** Targeted Compliance Framework - Penalty Zone

**Sent to the MO** 8 September 2023

**Action date** Please action by **15 September 2023**, to allow mitigation actions to reduce the risk of future inappropriate penalties.

**Recommendations** - That you:

- |  |   |
|--|---|
| 1) <b>note</b> the issue of multiple bugs affecting individuals' payment, including incorrect application of penalties.  | <b>noted / please discuss</b>               |
| 2) <b>agree</b> the recommended mitigation arrangement be introduced so participants spend a maximum of 91 days in the Penalty Zone of the Targeted Compliance Framework to ensure sufficient confidence in penalty application until such time as identified bugs can be addressed. | <b>agreed / not agreed / please discuss</b> |
| 3) <b>agree</b> all participants affected by identified bugs be back-paid ( <u>if possible</u> ) to ensure equity, even where some of those penalties may have been consistent with legislation.   | <b>agreed / not agreed / please discuss</b> |
| 4) <b>note</b> that the Department of Employment and Workplace Relations will provide further briefing on total impact of all IT-related issues and back-payment, once known.  | <b>noted / please discuss</b>               |

Signature:

\_\_\_\_\_

\_\_\_/\_\_\_2024

#### MO Comments

#### Executive summary

- The department has identified a bug in the Employment IT system supporting the Targeted Compliance Framework (TCF), which affects participants' duration in the Penalty Zone. This has impacted an estimated 1268 individuals' payment by applying 3484 penalties that are not consistent with policy or legislation. A second bug has also been identified which has resulted in inappropriate penalties, the impact of which is still being investigated. The department has urgently implemented IT changes, addressing these two bugs. The operation of these bugs is outlined in the Background section.
- An additional 55 bugs are also being investigated to determine if they have implications for the TCF, which may affect payments. The initial analysis suggests the majority of these bugs will not have significant impact on penalties. The number of participants impacted by all bugs is still under investigation.

MB23-000271

3. The department is conducting a forensic examination of the IT rules around the TCF to identify any other problems.
4. Your agreement is sought to a mitigation option to further reduce the risk of inappropriate penalties while the IT issues are resolved.
5. The department is also investigating options for back-payment for those affected by inappropriate penalties.

### Key points

6. The initial bug affecting payment dates back to the commencement of the TCF in July 2018 and was initially identified by IT areas in April 2020. The second bug identified that impacts payments arose following policy changes made in December 2020 and was identified in June 2021. Due to COVID contingency arrangements the impact of the issues were incorrectly assessed at that time as not severe and not impacting people - and not progressed for fixing or revisited.
7. Program assurance activities in July 2023 subsequently uncovered inappropriate penalties being applied due to these bugs. These bugs affect income support payments due to individuals spending extended time in the Penalty Zone, and subsequently incurring inappropriate penalties. IT fixes were deployed to fix known bugs impacting job seeker payments on 10 August and 6 September 2023. However, additional issues have been identified which require further investigation.
8. Of the 3,484 inappropriate penalties so far identified due to the first bug:
  - a. 1533 were a 50% loss of one fortnightly payment
  - b. 1245 were a 100% loss of one fortnightly payment, and
  - c. 706 resulted in payment cancellation and a 4 week non-payment period
9. The financial impact of these penalties varies significantly depending on the payments and supplements a person is receiving as well as their age and circumstances. Payment values (and therefore penalty values) also may reduce if the person, their partner or in some cases their parents are reporting income. Total impact is still being investigated.
10. However, for a single recipient aged 22-54 without children, not renting and without income, the value of the penalties as at 6 September 2023 would be:
  - a. \$346.55 for a 50% loss of one fortnightly payment,
  - b. \$693.10 for a 100% loss of one fortnightly payment, and
  - c. \$1386.20 for a payment cancellation and 4 week non-payment period, noting that the financial impact could increase if the person did not re-claim payment as soon as they were able.
11. To ensure individuals are not adversely impacted while the department continues to investigate and fix the known bugs, and conducts a forensic examination of the IT rules around the TCF, your agreement is sought on proposed mitigation measure to be deployed in the IT system to either:
  - a. Remove all participants from the Penalty Zone **after 91 days**, regardless of if other reasons exist that validly extend their duration in the Penalty Zone (**recommended**).
  - b. Remove all participants from the Penalty Zone, and block entry to the Penalty Zone.
12. **Option A** is recommended as it ensures the maximum time an individual spends in the Penalty Zone is 91 days, and will ensure no participant's duration in the Penalty Zone is inappropriately extended by the IT system. **Option A** will essentially replace the manual process that is currently in place and will reduce the risk of not identifying affected individuals.



MB23-000271

13. Implementing **Option B** is not recommended at this time as it is likely disproportionate to the current known issues. It would remove a key element of the TCF, which is necessary to encourage engagement with employment services.
- a. Experience with ParentsNext (as well as existing evidence) shows removal of compliance consequences dramatically reduces engagement with requirements. Such a reduction in engagement is highly likely to reduce employment outcomes for individuals and have significant implications on providers (both in terms of payments (viability) and interactions with the performance framework).
14. **Option A** also has lower resource implications due to simpler changes to IT business rules and running of overnight processes to identify and shift participants out of the Penalty Zone.
15. The mitigation measure would be in place until the department has sufficient confidence inappropriate penalties will not apply due to bugs in the IT system. Due to the number of identified bugs, this may be several months.

Issues of back-payment for those already affected by bugs.

16. Where individuals have been affected by the application of incorrect penalties in the 13 weeks before notice of the determination was given, back-payment of entitlement within this period is straightforward and has occurred for 83 participants consistent with usual assurance processes.
17. s 42(1)

- a. This circumstance is relevant for 2,777 of the 3,484 inappropriate penalties identified so far due to the initial bug (where the person experienced a 50 or 100% reduction in a fortnightly payment due to a first or second penalty in the Penalty Zone).

18. s 42(1)

- a. Potentially, an alternative method of back-pay is act of grace payments (authorised by the Minister for Finance), which may provide avenue for payment in this circumstance. The department will consult with the Department of Finance on this.

Interaction of multiple issues on back-pay

19. In addition, a further issue has been identified where the business rules for the Penalty Zone calculation are incorrectly shortening the period in some circumstances. Of the 3484 inappropriate penalties applied due to the initially identified bug, around half of applied penalties are in circumstances where they would have been considered correct if the Penalty Zone calculation period had been built consistent with the policy.
20. However, as individuals who were not affected by the initially identified bug benefited from the incorrect shortening of the Penalty Zone, it is proposed to disregard this issue when providing back-pay. That is, it is proposed that where a person has experienced a penalty caused by a bug that incorrectly extends the Penalty Zone, they be back-paid regardless of if they are also affected by other IT issues. This will ensure that (after back-payment) all participants will be treated equally.
21. The incorrect shortening of the Penalty Zone time is caused by IT rules not including time where a person has served a penalty period in the Penalty Zone period calculation (either 1, 2, or 4 weeks – depending on the penalty type).

22. The department will separately brief you on proposed resolutions for the incorrect calculation of the Penalty Zone.

s 47E(d)

### Key risks and mitigation

24.s 47E(d)

It is highly likely stakeholders such as the Australian Council of Social Service (ACOSS) will react negatively to inappropriate penalties having been applied. ACOSS are already advocating for end of all payment suspensions, this issue is likely to amplify those calls.

25. There may be some stakeholder criticism of exiting all participants from the Penalty Zone after 91 days on the basis that it does not align with the original policy intent of requiring individuals to be compliant for 3 months. This may be seen by some as being lenient on persistently and deliberately non-compliant job seekers.

### Budget impact, financial considerations

26. Back-pay of incorrect penalties would be made by Services Australia.
27. There will likely be significant resourcing required for Digital Services Division and Workforce Australia for Individuals Division to fully investigate the bugs and devise and implement solutions, which will be found from internal resources.

### Background

28. After accruing five demerits and being twice assessed as able but unwilling to meet requirements, job seekers enter the Penalty Zone. Further failures to meet requirements without reasonable excuse result in financial penalties of 1, 2 or 4 weeks. Those who refuse or voluntarily leave suitable work have their payment cancelled and are unable to be paid again for 4 weeks (6 weeks if they have received 'relocation assistance').
29. While the Penalty Zone is not set out in legislation, after a number of mutual obligation failures that result in a demerit specified in a legislative instrument made by the Minister (Attachment A), a person is considered to have 'persistently committed mutual obligation failures', in which case a penalty may apply. s 47E(d)
30. Whether a 1, 2 or 4 week penalty applies to those who have 'persistently committed mutual obligation failures' is dictated by the same legislative instrument, but the penalty values themselves are specified in the *Social Security (Administration) Act 1999*.
31. Penalty values are defined based on a person's 'participation payment' in the affected period. If a supplement is part of a person's participation payment, then it is affected by penalties. This means that for most individuals where Rent Assistance is paid as part of their payment, it is affected by penalties. However, those receiving Family Tax Benefit (parents) usually receive Rent Assistance as part of that payment instead, and so this is unaffected by TCF penalties.
32. The bugs identified that incorrectly extend the Penalty Zone do so when:
- A person has a failure in the Penalty Zone that is subsequently reversed because the person has a reasonable excuse for the failure (this bug is outlined at Attachment B).
  - Where Services Australia rejects a penalty, the Department of Employment and Workplace Relations system does not always accept this outcome.

33. Also identified are system rules which are incorrectly extending the Penalty Zone, these incorrect extensions include:

- a. time spent pending an Employment Services Assessment; and
- b. 5 days to allow any outstanding penalties to be investigated.

### **Communications and media strategy**

34. The department will consult with your office on a communications strategy s 42(1)

### **Stakeholder consultation**

35. Prepared in combination with Workforce Australia for Individuals Division and Employment Policy and Analytics Division. Digital Services Division and Legal and Assurance Division consulted, as well as Services Australia.

### **Attachments**

Attachment A Copy of the Social Security (Administration) (Non-Compliance) Determination 2018 (No. 1)

Attachment B Diagram of bug extending duration in the Penalty Zone

### **Clearance**

Primary Contact Officer: s 22(1)  
Targeted Employment Policy  
| Emp & W | Employment Policy and Analytics

Director Mutual obligation and compliance  
policy  
Ph: s 22(1)  
Mobile: s 22(1)

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Clearance Officer: s 22(1)  
| Emp & W | Workforce Australia for Individuals  
s 22(1)

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s 22(1)  
| Emp & W | Employment Policy and Analytics  
s 22(1)

s 22(1)



Australian Government

Department of Employment and Workplace Relations

MS24-000913

Standard Brief

**To** Minister for Employment and Workplace Relations

**Action Required** For Decision

s 47E(d)

**Timing** Please action by **5 November 2024** to allow mitigation options to be pursued.

### Recommendations

1. s 42(1)

**Noted / Please discuss**

2. s 47E(d)

**Noted / Please discuss**

3. s 42(1)

**Noted / Please discuss**

4. s 47E(d)

*Agree to DEWR publicly communicating decision to cease automatic payment cancellations, as discussed with my office.* **Agreed / Not Agreed / Please discuss**

5. That you **note** the Secretary, as the decisionmaker under s42AF of the Act, has paused the cancellation of payments under the Targeted Compliance Framework and asked the department for options to review decisions taken under s 42AF(2)(d) since its amendment in April 2022.

**Noted / Please discuss**

6. That you **note** the Secretary has also instructed the department to commission an external assurance process to ensure that the IT systems are giving effect to the Targeted Compliance Framework as intended and in line with the requirements under social security law.

*Pls discuss further with my office.* **Noted / Please discuss**

Minister Watt

*[Signature]*

Date: 18/11/2024

Comments:

*(Following recent verbal discussions)*

s 22(1)

Clearing Officer:	Natalie James	Secretary	Mob: s 22(1)
Contact Officer:	Tania Rishniw	Deputy Secretary	Mob: s 22(1)
	Tim Ffrench	General Counsel	Mob: s 22(1)

**Executive summary:**

1. s 47E(d)
  - a. s 42(1)
  - b. s 47E(d)

2. s 47E(d)

**Key Points:**

s 42(1)

4. Approximately 500 payment cancellation decisions and 5,800 payment reductions occur annually under the TCF (as opposed to payments being cancelled as a result of people getting a job/going into education and moving off payments). s 47E(d)

5. s 42(1)

s 47E(d)

6. s 47C(1)

s 22(1)

MS24-000913

a. s 47C(1)

b. s 47C(1)

c. s 47C(1)

d. s 47C(1)

7. The decision to cease cancellations has not yet been publicly communicated. To provide appropriate transparency, address the impacts of potentially invalid decisions, and consider any broader legal and financial risks, a proposed way forward is outlined below.

8. s 22(1)

9. s 22(1)

10. s 22(1)

### **System issues in operationalisation of the compliance framework**

11. At the same time, there are issues that are routinely identified as part of the operationalisation of the TCF. These generally arise where the IT system does not give effect to the intended operation of the legal and policy requirements. The department undertakes routine assurance processed to check that the compliance system is operating as it was intended and that policy and legal requirements are being operationalised in the IT system effectively.

12. s 47E(d)

13. s 47E(d)

s 22(1)

**MS24-000913**

s 47E(d)

14. s 42(1)

15. s 47E(d)

16. Large and complex social services systems that rely on IT systems to operationalise their administration will always have these types of issues arise. The TCF is very complex, integrated with other social services systems and major reform would require significant IT resources and legislative change.

17. However, given this is the third major IT bug identified in the operationalisation of the TCF over the past 24 months, the Secretary has asked the department to commission an external assurance process to test that the system is operating as intended and in line with the legislation. This will map and verify the operation of the current TCF system to provide a greater level of assurance to the Secretary and to government.

### **Summary of options and recommendations on the way forward**

18.s 47E(d)

19. s 47E(d)

20. Recent IT bugs that were identified by the department and resulted in some people being wrongly penalised, were reviewed and affected individuals were compensated through a mix of payments via the income support system and CDDA.

21. s 42(1)

a. s 42(1)

s 22(1)

**MS24-000913**

i. s 42(1)

b. s 42(1)

i. s 42(1)

c. s 42(1)

i. s 42(1)

d. s 42(1)

i. s 42(1)



s 22(1)

MS24-000913

s 42(1)

e. s 42(1)

22. s 47C(1)

23. The Secretary has also instructed that the department take the following steps urgently:

a. **Independent assurance of operational systems:** as outlined above, to provide greater assurance that the systems are operating as intended, the department will urgently commission an external review of the guidance and IT systems that apply current settings and ensure appropriate monitoring is in place to address key risks. This could include an option to re-develop IT business rules and workflow to better support mutual obligations.

b. s 47E(d)

s 47E(d)

s 42(1)

s 47E(d)

24. s 47E(d)

a. The department recommends that you and the Secretary agree an approach to publicly communicate the following ahead of the release of Workforce Australia data on 15 November:

- i. the potential issue identified with automated decisions taken to cancel people's payments under the Act;
- ii. the action taken by the department to pause cancellations under the TCF since 4 July;

s 22(1)

**MS24-000913**

- iii. the process to review decisions taken to cancel payments under the TCF from April 2022 to July 2024, and how affected individuals will be contacted; and
- iv. the process that will be undertaken to provide assurance that the system is operating in line with legal requirements and operational policy.

25. If agreed, you will be provided with suggested talking points separately. s 47E(d)

26. s 47E(d)

Any public communication should focus on the current issues identified and action taken to address it.

27. s 47E(d)

**Public Sensitivities:**

28. s 47E(d)

29. s 47E(d)

**Consultation:**

30. s 42(1)

**Legal advice / Legislative impacts:**

31. s 42(1)

32. s 42(1)

**Financial impacts:**

33. IT changes would likely require significant government investment. Pausing mutual obligations for an extended period, s 47C(1) and/or public statements creating potential exposure to legal class actions all carry significant financial implications. These options would need to be properly costed with relevant departments if they were to be pursued.

**Stakeholder Implications:**

34. Once any announcement is made, the Department will quickly identify and communicate with individuals affected by cancellations between April 2022 and July 2024.

**Attachments:**

**A:** s 42(1)

**B:** s 47E(d)

**C:** s 47E(d)

## Penalty Zone IT Issue

### Remediation Payment Progress

- For the initial Penalty Zone IT defect, **909** participants have received remediation payments related to **1115** incorrectly applied financial penalties totalling approximately **\$573,000** (as at 27/05/2024). These figures also include remediation payments for participants affected by the second IT defect.
  - The average amount repaid per client to date is approximately **\$630**.
- The Secretary has agreed to the recommended payment process of Compensation for Detriment caused by Deficient Administration for the **465** clients with a 3<sup>rd</sup> financial penalty (**EC24-001895**). The department is working with Services Australia to progress payment calculations.
- In May 2024 a third defect was identified that has resulted in financial penalties being incorrectly applied. The department is currently working to identify impacted participants. Initial analysis has identified a possible **150** applied financial penalties that may have resulted from this defect.
  - Any required back-payment for penalties applied due to this defect will be included in the current remediation process.

### Numbers Impacted by the first PZ IT Issue

- In total, **1274** individuals and resulted in applying **1615** financial penalties that are not consistent with policy or legislation. A breakdown of the type of penalty applied:

Penalty Type	Financial Penalties Applied
1 <sup>st</sup> Financial Penalty – 50% of their regular fortnightly payment	427
2 <sup>nd</sup> Financial Penalty – 100% of their regular fortnightly payment	714
3 <sup>rd</sup> Financial Penalty – Cancelled off payment for a 4 week period, must reapply for payment	474

**NOTE:** individuals can receive multiple Financial Penalties and multiples of each penalty type where repeated non-compliance places the client in the Penalty Zone on multiple occasions

### Remediation Payments

- DEWR does not have access to rates of payment to individual clients, this information is held by Services Australia.
- The amount to be back-paid will differ for each individual. Financial Penalties are applied against the total amount a client receives, based on their Allowance Type (JobSeeker, Youth Allowance or Parenting Payment) and including any allowances or supplements that they may be eligible for, such as:
  - Rent Assistance
  - Energy Supplement
  - Pharmaceutical Allowance
  - Telephone Allowance
  - Carer's Allowance
- For a single participant aged 22-54 on the base rate of JobSeeker Payment without other supplements, the value of the penalties as at 31 August 2023 would be:
  - \$346.55 for a 1<sup>st</sup> Financial Penalty - a 50% loss of 1 fortnightly payment

## Penalty Zone IT Issue

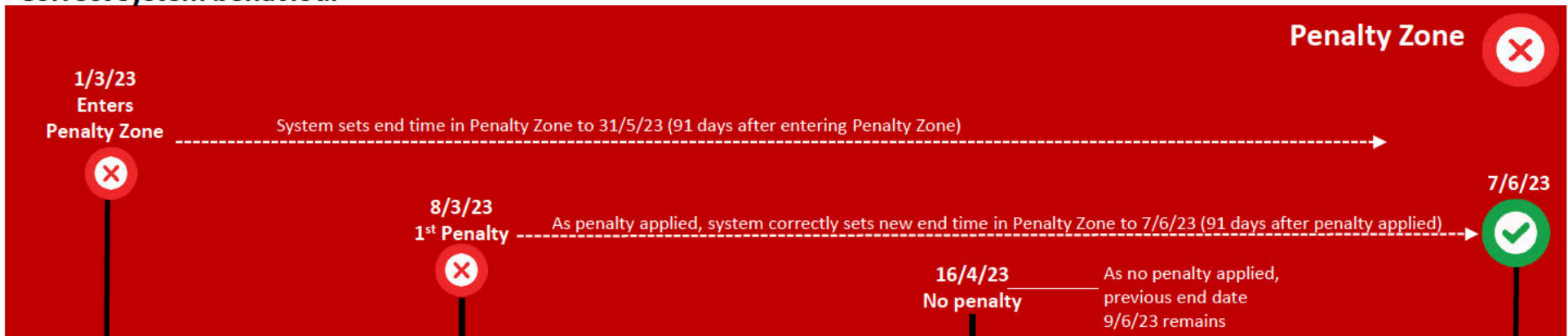
- \$693.10 for a 2<sup>nd</sup> Financial Penalty - 100% loss of 1 fortnightly payment
- \$1386.20 for a 3<sup>rd</sup> Financial Penalty - payment cancellation and 4 week non-payment period.

### Background

- The department identified a system error in August 2023 that resulted in some clients who are in the Targeted Compliance Framework (TCF) Penalty Zone to have additional Financial Penalties incorrectly applied.
- Clients who are in the Penalty Zone have been persistently non-complaint and accrued 5 demerits and have had two assessments to determine their capacity to meet their Mutual Obligation Requirements.
- Action was taken immediately once the issue was identified to ensure no one else was impacted and an interim manual correction process was put in place.
- In February 2024 a second IT defect was identified that led to **73** participants receiving **99** incorrectly applied financial penalties. The defect arose from incomplete coding during the IT fix for the first Penalty Zone IT issue and was identified through ongoing program assurance activities. The affected participants are being remediated through the current process with Services Australia.

# Penalty Zone – time in zone bug

## Correct system behaviour



1/3/23

Capability Assessment – outcome is ‘capable’ – moves to Penalty Zone

8/3/23

Did not meet PBAS target. Non-compliance investigated – NO Valid Reason. 1<sup>st</sup> penalty applied (loss of 50% of fortnightly payment)

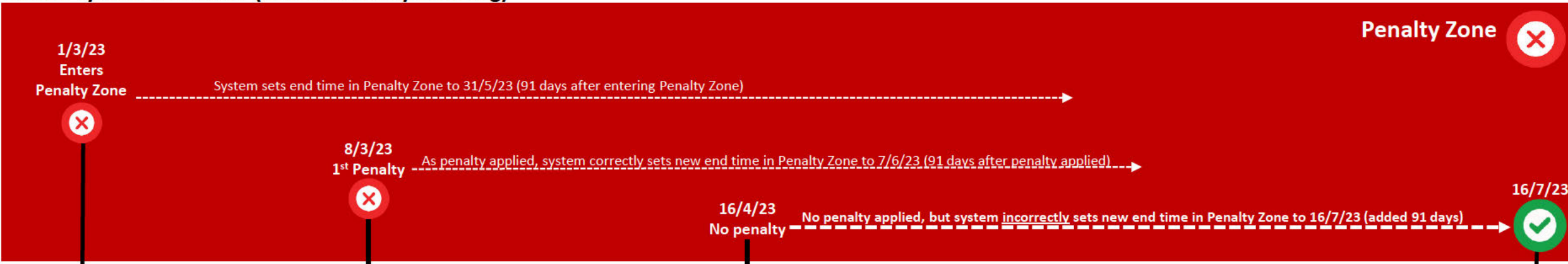
16/4/23

Did not attend a Provider Appointment. Non-Compliance investigated – had Valid Reason, so no penalty applied

7/6/23

Returns to Green Zone

## Actual system behaviour (as a result of system bug)



1/3/23

Capability Assessment – outcome is ‘capable’ – moves to Penalty Zone

8/3/23

Did not meet PBAS target. Non-compliance investigated – NO Valid Reason. 1<sup>st</sup> penalty applied (loss of 50% of fortnightly payment)

16/4/23

Did not attend a Provider Appointment. Non-Compliance investigated – had Valid Reason, so no penalty applied

16/7/23

Returns to Green Zone

Documents 9 and 10 at pages 23-36 deleted pursuant to sections 42(1), 47C(1) and 47E(d) of the Freedom of Information Act 1982

## Penalty Zone IT Defects

### DEFECT IDENTIFICATION AND STEPS TO RECTIFY

- The department identified critical IT issues in August 2023 that extended a participant's time in the Penalty Zone of the Targeted Compliance Framework (TCF) which caused some participants to incorrectly have financial penalties applied.
- Ongoing program assurance identified **2 additional defects** in early 2024.
- The issues have now been rectified and back payments are currently underway
- These system issues were identified through regular program assurance activities. Assurance activities have been increased to ensure any issues are identified more quickly and resolved in a timely manner.
- All affected participants were moved back to the Green Zone the department and Services Australia are working together to finalise back-payments for those who incorrectly received financial penalties.
- The department has added an additional fail-safe measure of moving participants out of the Penalty Zone after 91 days (previous maximum was 365 days) to ensure no participants will receive incorrect financial penalties due to these IT issues.
- The department worked as quickly as it could to solve the problem. The department identified all impacted individuals and have worked with Services Australia to remove incorrect penalties and finalise back payments.

### NUMBERS IMPACTED

- **1,165** participants were impacted by the first defect.
- A second defect was identified in February 2024 that resulted from a coding erroring the fix for the first defect leading to **73** participants receiving **99** incorrectly applied financial penalties.
- A third defect was identified in May 2024 with **88** participants receiving **159** incorrectly applied financial penalties.
- In total, **1326** people were impacted by the defects.

### DEWR ASSURANCE ACTIVITIES

- The department closely monitors the application of the TCF to ensure it is applied appropriately and correctly.
- Every participant who enters the Penalty Zone has had their requirements reviewed and been found capable at a Capability Interview and a Capability Assessment.
- The department also does a complete review of every participant's compliance history when they enter the Penalty Zone to ensure that any demerits were appropriately and correctly applied.



## REMEDATION PAYMENT PROCESS

- Participants with an incorrectly applied 1<sup>st</sup> or 2<sup>nd</sup> financial penalty were back paid through existing processes by Services Australia.
- Participants who received a 3<sup>rd</sup> Financial Penalty could not be back paid through this process, the department has used the Compensation for Detriment caused By Defective Administration (CDDA) scheme as a means to facilitate payments to these people. As this is a complex process, these payments have taken some time to finalise. The department has worked closely with Services Australia to make these payments as quickly as possible.

## REMEDATION PAYMENTS

- All customers who are currently on payment or have current contact details have been repaid.

### *First and second financial penalties*

- **1,070** participants have received remediation payments related to **1115** incorrectly applied 1<sup>st</sup> and 2<sup>nd</sup> financial penalties totalling approximately **\$665,636**.

### *Third financial penalties*

- For the CDDA payments being made to those with an incorrectly applied 3<sup>rd</sup> financial penalty, **441** participants have received payment totalling **\$567,891** (as at 11/09/2024).
- There are **41** participants who are not contactable and payment cannot be made. Services Australia has made 6 contact attempts to each remaining participant using contact details on file.
- Services Australia has identified 10 participants who are now deceased and has advised that, based on their existing process for compensation payments, no payment can be made to the estate of these people.
- **NOTE** due to the timing of identification of the 3<sup>rd</sup> defect, a small number of people who had received payment in the early stage of the remediation process and were also impacted by the 1<sup>st</sup> or 2<sup>nd</sup> defect received an additional remediation payment. Due to this additional payment, the number of remediation payments made exceeds the number of people impacted.

### *CDDA Payments:*

- The department is using the Compensation for Detriment caused by Defective Administration (CDDA) scheme to facilitate payment for the **482** clients with a 3<sup>rd</sup> financial penalty. The department is working with Services Australia to progress these payments.
- The compensation payment amounts varies significantly for each participant:
  - The highest amount to be compensated is **\$3029**

- The lowest amount to be compensated is **\$572**
- The average amount to be compensated is **\$1286**
- The total amount to be compensated to affected participants via CDDA is approximately **\$620,000**.

s 47E(d)

## **APOLOGY AND COMPLAINTS**

- The department has included an apology to affected participants in the letter sent to them advising them of their remediation payment:
  - *The department apologises for the impact this may have had on you. If you have any questions or concerns regarding this, please call the Department of Employment and Workplace Relations' National Customer Service Line on 1800 805 260.*
- The letter to participants also includes contact details for the Commonwealth Ombudsman as the escalation point if the participant wishes to make a complaint.

## **HOW LONG HAS THIS PROBLEM EXISTED?**

- The department believes this affected participants dating back to the start of the TCF which begun in 2018. It was not picked up at the time, and with pauses of mutual obligation requirements due to bushfires, COVID and floods and the transition to Workforce Australia, an uninterrupted period was needed for the defect to become evident in departmental data.

## **WHAT ARE THE VALUES OF THE PENALTIES?**

- For a single participant aged 22-54 on the base rate of JobSeeker Payment without other supplements, the value of the penalties would be approximately:
  - \$346.55 for a 50 per cent loss of 1 fortnightly payment
  - \$693.10 for a 100 per cent loss of 1 fortnightly payment
  - \$1386.20 for a payment cancellation and 4 week non-payment period.

**NOTE:** individual payment amounts vary significantly depending on age, dependant children and other factors.

## NUMBERS IMPACTED

- Numbers by IT Defect:

Defect	Numbers of participants Impacted
1 <sup>st</sup> defect (PZ Time incorrectly extended)	1165
2 <sup>nd</sup> IT Defect ( Participant not exited from PZ after demerit removal)	73
3 <sup>rd</sup> IT Defect (Incorrectly enter the PZ after 5 <sup>th</sup> demerit removal following CA)	88
<b>Total Affected participants</b>	<b>1326</b>

- A breakdown of the number of incorrectly applied financial penalties by type of penalty applied:

Penalty Type	Financial Penalties Applied
1 <sup>st</sup> Financial Penalty – 50% of their regular fortnightly payment	521
2 <sup>nd</sup> Financial Penalty – 100% of their regular fortnightly payment	757
3 <sup>rd</sup> Financial Penalty – Cancelled off payment for a 4 week period, must reapply for payment	482
<b>Total Incorrectly Applied Financial Penalties</b>	<b>1760</b>

NOTE: due to the way the defects manifest in the department's IT system, there are applied financial penalties that technically were caused by the more than one defect. The tale above is a distinct count of affected applied penalties.

## BACKGROUND

### The Bugs

Bug	Numbers Impacted	Fixed
<p><b>BUG 1 (found July 2023)</b>  <i>The system was incorrectly extending the period of time a participant remained in the penalty zone.</i></p> <p>The DEWR IT system was incorrectly resetting the 91 day Time in the Penalty Zone clock when a Rejected outcome was received from Services Australia. The 91 days should only retrigger from Applied outcomes.</p> <p>As a result, participants have incurred an additional financial penalty when they shouldn't have.</p> <p>Note: Participants usually spend 3 months (91 days) in the Penalty Zone. If they don't incur any future non-compliance events participants are returned to the 'green zone'. For each confirmed financial penalty this 3 month period is recalculated.</p> <p>This system fault has existed in the system since the TCF was implemented 1 July 2018.</p>	1165	A fix was released 10 August 2023.
<p><b>BUG 2 (found Feb 2024)</b>  <i>The system failed to exit a participant from the Penalty Zone following the removal of one or more of the contributing demerits</i></p> <p>When a participant accrues 5 demerits, they must have participate in a Capability Assessment and if found capable, will enter the Penalty Zone. If one or more of these demerits is later revoked, they participant should be removed from the Penalty Zone. This issue saw some participants remain in the Penalty Zone following the removal of contributing demerits.</p> <p>The issue resulted from a coding error in the fix to the first issue</p>	73	A fix was released in April 2024.
<p><b>BUG 3 (Found May 2024)</b>            Similar to Bug 2.</p> <p>If one or more of the 5 contributing demerits is still in Resolution Time at the time of the CA and that demerit is subsequently removed, the participant incorrectly moves into the Penalty Zone with only 4 applied demerits and may receive applied financial penalties.</p> <p>This Bug has existed since 2020</p>	88	A fix was released in June 2024.

Locked Bag 7834 Canberra BC, ACT 2610



Your reference: [REDACTED] Q888 /  
Telephone: 132 850  
Call charges may apply.



Australian Government  
Services Australia



[REDACTED]

12 April 2024

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear [REDACTED]

We recently tried to contact you to let you know we are going to pay \$[REDACTED] into your nominated bank account.

This is because you received a penalty for not meeting your participation requirements on [REDACTED] and [REDACTED].

These penalties were incorrect and due to an error in the Department of Employment and Workplace Relations computer system.

We apologise for any inconvenience this error has caused. For more information about the error, call the Department of Employment and Workplace Relations on 1800 805 260.

This is an information notice given under social security law.

**More information**

For more information, go to [servicesaustralia.gov.au](http://servicesaustralia.gov.au) or call us on the number shown at the top of this letter.

Yours sincerely

Service Centre  
Manager  
Services Australia

**If you do not understand or agree with a decision we have made**

- You can contact us and we will explain the decision. We may be able to resolve your concerns without a formal review.
- You can apply for a formal review of the decision. We can change the decision if it is wrong. This review is free.

It is important to apply for a formal review **within 13 weeks** of being notified about the decision. You can still apply after this time. However if we change the decision, it may only take effect from the date you applied for the formal review.

Go to [servicesaustralia.gov.au/reviewsandappeals](https://servicesaustralia.gov.au/reviewsandappeals) for more information.

If you do not agree with the outcome of the formal review, you can apply to the Administrative Appeals Tribunal (AAT). The AAT is an independent body, which can review a range of decisions made by Services Australia. The AAT can only review a decision that we have reviewed. For more information about applying to the AAT, please go to [aat.gov.au](https://aat.gov.au)

**To make a complaint or give us feedback**

We aim to resolve your concerns as quickly as possible. If you want to make a complaint or give us feedback you can:

- call our feedback and complaints line on **1800 132 468**
- go to [servicesaustralia.gov.au/feedback](https://servicesaustralia.gov.au/feedback) for other options.

If this does not resolve your concerns, you can make a complaint to the Commonwealth Ombudsman at [ombudsman.gov.au](https://ombudsman.gov.au) using the online complaints form. If you are unable to complete the form, you can call them on 1300 362 072.

s 22(1)



**Australian Government**  
**Department of Employment  
and Workplace Relations**



**Australian Government**  
**Services Australia**

Our reference: [reference]

[Customer's Name]  
[Customer's Address]  
[Customer's SUBURB STATE Postcode]

Dear [Title] [Customer's Family Name]

### **Repayment of incorrectly applied penalties**

The Department of Employment and Workplace Relations recently undertook a review of financial penalties applied to individuals who received support through employment services. This was because it identified an issue with its IT system which resulted in the incorrect application of financial penalties for some participants. On review, we have identified you as someone who was impacted. We have determined that the financial penalty relating to <failure reason> on <failure date> should not have been applied.

As a result, you will receive a payment under the Scheme for Compensation for Detriment caused by Defective Administration of \$<Amount> to make up for the money you would have been entitled to.

Arrangements are being made for this payment to be deposited into the bank account that your regular payments are paid into. Usually, payments are processed and will appear in your bank account within two to three weeks.

The Department apologises for the impact this may have had on you.

If you have any questions or concerns about the above, you may contact the Department of Employment and Workplace Relations' National Customer Service Line on 1800 805 260.

Should you have any concerns you may also contact the Commonwealth Ombudsman's Office on 1300 362 072 or by visiting <https://www.ombudsman.gov.au/contact-us>.

Yours sincerely

<Services Australia team>

<Date>

## WORKFORCE AUSTRALIA – TARGETED COMPLIANCE FRAMEWORK

### HEADLINE

- IT issues have adversely impacted participants who are not meeting their mutual obligation requirements by applying incorrect additional financial penalties.

### KEY ISSUES

- A number of critical IT issues were identified by my department that caused some participants to incorrectly have additional financial penalties applied under the Targeted Compliance Framework.
- Approximately 1,200 participants were impacted across the 4 identified issues (see background for details). All affected participants who were in the Penalty Zone were moved back to the Green Zone and Services Australia commenced back-payment for those who had incorrectly applied Financial Penalties.
- Three issues have been fixed. The fourth issue is still under investigation but there will be no ongoing adverse impacts on participants with the implementation of the temporary 91 day limit on time in the Penalty Zone.
- To date, 83 participants have received back payment totalling **\$54,166.57**. Work is underway to progress back payment to the remainder of the impacted participants.
- For a single participant aged 22-54 on the base rate of JobSeeker Payment that is without dependent children and not receiving rental assistance or other supplements, the value of the penalties as at 6 September 2023 would be:
  - \$346.55 for a 50 per cent loss of 1 fortnightly payment
  - \$693.10 for a 100 per cent loss of 1 fortnightly payment
  - \$1386.20 for a payment cancellation and 4 week non-payment period.
- My department closely monitors the application of the Targeted Compliance Framework to ensure it is applied appropriately and correctly. These system issues were identified through program assurance activities.
- Assurance activities have been increased to ensure any issues are identified more quickly and resolved in a timely manner.



**Minister for Employment and Workplace Relations****QTB No: QB23-000088**

Last Updated by Department: 31 October 2023

Last Updated by Adviser: XX Month YYYY

**BACKGROUND**

- Compulsory mutual obligation requirements have consequences for non-compliance.
- In Workforce Australia and the Disability Employment Service, these consequences are applied through the Targeted Compliance Framework which is designed to target only at those who persistently and deliberately do not comply with their requirements without a valid reason.
- The Targeted Compliance Framework is comprised of three zones, the Green, Warning and Penalty zone.
- A participant will generally only be subject to a financial penalty for failing to meet requirements after their sixth instance of non-compliance, and only after they have been assessed twice – once by their provider and once by Services Australia, to ensure their compulsory requirements are appropriate and achievable based on their personal circumstances.
- In the Penalty Zone there are three levels of financial penalties that can apply: for the first financial penalty a participant loses half their regular fortnightly payment; for their second penalty they lose their full fortnightly payment and for their third penalty, their payment is cancelled and they must re-apply for payment following a 4 week preclusion period.
- The IT issues extended some participants' time in the Penalty Zone of the Targeted Compliance Framework beyond the three active month period defined in the Social Security (Administration) (Non-Compliance) Determination 2018 (No.1) which meant that additional financial penalties have been applied when the job seeker should not have been subject to financial penalties.
- To ensure individuals are not adversely impacted while the department continues to investigate other known IT issues, it was agreed (MB23-000271 refers) on 11 September 2023 to place a temporary 91 day limit on the length of time a participant may spend in the Penalty Zone. This temporary fix was implemented on 25 October 2023.
- The four fixed issues are below

Issue	Detail
<b>Issue 1</b> (Bug 434049).	<p>The system was incorrectly extending the period of time a participant remained in the penalty zone. As a result, participants may have incurred an additional financial penalty when they shouldn't have. Note: Participants usually spend 3 months (91 days) in the Penalty Zone. If they don't incur any future non-compliance events participants are returned to the 'green zone'. For each confirmed financial penalty this 3 month period is recalculated.</p> <p>This system fault has existed in the system since the TCF was implemented 1 July 2018.</p> <p>A fix was released 10 August 2023.</p>

**Contact Officer:** s 22(1) , **First Assistant Secretary**

**Minister for Employment and Workplace Relations****QTB No: QB23-000088**

Last Updated by Department: 31 October 2023

Last Updated by Adviser: XX Month YYYY

<b>Issue 2</b>	<p>The system is not applying the penalty investigation outcomes sent by Services Australia to non-compliance events (penalties) that have occurred while the participant is in the TCF Penalty Zone. This results in the participant remaining in the penalty zone for longer than they should.</p> <p>A fix was released 6 September 2023.</p>
<b>Issue 3</b>	<p>The system is not receiving an error transaction from Services Australia's system which means the penalty investigation remains outstanding. This results in the participant remaining in the penalty zone for longer than they should.</p> <p>No system fix release date has been set</p>
<b>Issue 4</b>	<p>The system is automatically finalised both unemployment failures and work refusal failures records prior to them being investigated by Services Australia. The records remain under investigation in our IT system. This results in the participant remaining in the penalty zone for longer than they should.</p> <p>A fix was released 11 October 2023.</p>

**Question Time Brief - Employment and Workplace Relations**

QB24-000033

Last Updated by Department: 5 August 2024

Last Updated by Adviser: XX Month YYYY

**ERROR IN APPLICATION OF PENALTIES TO JOB SEEKERS IN THE  
“PENALTY ZONE”****HEADLINE**

- Defects in the department’s IT system led to incorrectly applied financial penalties for some participants, meaning they missed out on their regular payments, or in some cases, had their payments cancelled.

**TALKING POINTS**

- In August 2023, the Department of Employment and Workplace Relations identified a system error that resulted in some people on income support incorrectly being penalised and missing out on payments.
- My department took immediate action to fix the error so no one else was affected.
- Approximately **1,300** people have been impacted over the past five years.
- As soon as my department informed the former Minister of this system failure, he instructed them to start repaying people.
- The department has since stepped-up system checks and assurance activities and identified another two defects that led to incorrect penalties being applied.
- The department is closely monitoring the IT system to identify any issues, and when defects are found, they rectify them promptly to minimise any impact on participants.
- These system errors date back to 2018 and the start of the Coalition’s Targeted Compliance Framework.
- To date, **1,100** participants have received back payment totalling approximately **\$900,000**.
  - The average amount back paid is **\$818**.
  - All those who can be paid under existing provisions in Social Security law have now been paid.
  - The remaining participants are being compensated through payments made via the Scheme for Compensation for Detriment caused by Defective Administration.

**Question Time Brief - Employment and Workplace Relations**

QB24-000033

Last Updated by Department: 5 August 2024

Last Updated by Adviser: XX Month YYYY

- The department and Services Australia are working together to ensure all entitlements are restored.
- These system issues were identified through ongoing program assurance activities conducted by the department.
- Assurance activities have been increased to ensure any issues are identified more quickly and resolved in a timely manner.

**KEY FACTS & STATS**

- Compulsory mutual obligation requirements have consequences for non-compliance.
- In Workforce Australia and the Disability Employment Service, these consequences are applied through the Targeted Compliance Framework which is designed to target only those who persistently and deliberately do not comply with their requirements without a valid reason.

**IF ASKED***Question*

- Is the Department confident it has now found all of those affected by these IT defects?

*Response*

- The department is confident it has identified all the people affected by these defects. The department has also increased its assurance activities on the Targeted Compliance Framework so that if any future issues are identified, they can be resolved quickly.

*Question*

- Is the department reviewing the Workforce Australia IT system to ensure that it is functioning correctly?

*Response*

- Properly functioning IT infrastructure is essential to the functioning of Workforce Australia. The department continually monitors and investigates the functioning of the IT system, and where issues are identified, fixes them as quickly as possible and remedies any impact on participant's payments.

**Question Time Brief - Employment and Workplace Relations**

QB24-000033

Last Updated by Department: 5 August 2024

Last Updated by Adviser: XX Month YYYY

- The department is also currently undertaking an end-to-end review of the IT system supporting the Targeted Compliance Framework.
- More broadly, the Australian Government announced funding towards critical improvements to the Workforce Australia IT system in the 2024-25 Federal Budget. There were also strengthened protections for people potentially facing financial penalties and payment suspensions under the Targeted Compliance Framework, announced as part of the Strengthening the Integrity of Employment Services Budget measure.

**Media**

- The media articles at [Attachment A](#) and [Attachment B](#), from the Saturday Paper in July 2024 and the Guardian in January 2024, detail the history of the IT defect, the status of repayments and some public responses.

**Question Time Brief - Employment and Workplace Relations**

QB24-000033

Last Updated by Department: 5 August 2024

Last Updated by Adviser: XX Month YYYY

**BACKGROUND**

- The Targeted Compliance Framework is comprised of three zones, the Green, Warning and Penalty zone.
- Financial Penalties can apply to participants who have been persistently non-compliant and have progressed into the Penalty Zone. A participant will generally only be subject to a financial penalty for failing to meet requirements after their sixth instance of non-compliance, and only after they have been assessed twice – once by their provider and once by Services Australia, to ensure their compulsory requirements are appropriate and achievable based on their personal circumstances.
- In the Penalty Zone there are three levels of financial penalties that can apply: for the first financial penalty a participant loses half their regular fortnightly payment; for their second penalty they lose their full fortnightly payment and for their third penalty, their payment is cancelled, and they must re-apply for payment following a 4-week preclusion period.
- The IT issues extended some participants' time in the Penalty Zone of the Targeted Compliance Framework beyond the three active month period defined in the Social Security (Administration) (Non-Compliance) Determination 2018 (No.1) which meant that additional financial penalties have been applied when the job seeker should not have been subject to financial penalties.

**Stakeholder Engagement**

- The Department of Employment and Workplace Relations (DEWR) has met with the Australian Council of Social Service and Economic Justice Australia to discuss this IT defect.
- On 19 July, the Economic Justice Australia published a paper, titled “The big little Targeted Compliance Framework system glitch you never heard of”. The paper is critical of DEWR not continually reviewing the IT system to ensure that all IT related processes are consistent with Social Security Law and policy.
- The paper also raises concerns regarding automated decision-making processes and the apparent lack of information transfer between Services Australia and DEWR regarding complaints about payment suspensions and financial penalties.

# IT Issues in the Penalty Zone

## Key points

- The department has identified two critical IT issues that have caused some participants who are in the Targeted Compliance Framework (TCF) Penalty Zone to have additional Financial Penalties incorrectly applied.
- The two identified IT issues have extended some participants' time in the TCF Penalty Zone beyond the three active month period defined in the *Social Security (Administration) (Non-Compliance) Determination 2018 (No.1)*. This resulted in additional Financial Penalties being applied when the participant should not have been subject to them.
- Analysis of the two identified IT issues found approximately 1268 participants have been financially impacted since 2018. All impacted participants who were still in the Penalty Zone were moved back to the Green Zone. All others who were impacted had previously left the Penalty Zone through the existing TCF workflows. Services Australia has commenced back-payment for incorrectly applied Financial Penalties.
- The financial impact of these penalties varies significantly depending on the payments and supplements a person is receiving, as well as their age and circumstances. Payment values (and therefore penalty values) also may reduce if the person, their partner or in some cases their parents are reporting income. Total impact is still being investigated.
- The two identified IT issues were fixed on 10 August 2023 and 6 September 2023 respectively.
- The department is investigating several other IT issues affecting the application of the TCF, including participants in the Penalty Zone.

## Key Issues

- For the 1268 identified impacted participants, there were 3,484 inappropriate financial penalties applied. Some participants, due to repeated non-compliance, had multiple periods in the Penalty Zone, and accrue more than one first and second Financial Penalties:
  - 1533 inappropriate financial penalties – resulting in a 50 per cent loss of 1 fortnightly payment (first Financial Penalty)
  - 1245 inappropriate financial penalties – resulting in a 100 per cent loss of 1 fortnightly payment (second Financial Penalty)
  - 706 instances of participants having their payment cancelled, a 4 week non-payment period applied and being required to reapply for payment (third Financial Penalty).
- Participants may accrue multiple first, second and third Financial Penalties. This occurs when a participant returns to payment following their 4 week preclusion period for the 3rd financial penalty, they return to the start of the Penalty Zone, any further non-compliance results in a new financial penalty being applied. Participants who have had a 3rd Financial Penalty and 4 week preclusion period are moved out of the Penalty Zone after they reach 91 days with no further non-compliance or reach the maximum time in the Penalty Zone which is 365 days.

- Where individuals have been affected by the application of incorrect penalties in the 13 weeks before the error was identified and resolved, back-payment is straightforward and has occurred for 83 participants consistent with usual assurance processes.
- s 42(1)
  
- Next steps require the department to work through the processes involved to apply an Act of Grace. Payment will be made once this has been sought and approved by the Minister for Finance.
- For a single recipient aged 22-54 on the base rate of JobSeeker Payment that is without dependent children and not receiving rental assistance or other supplements, the value of the penalties as at 6 September 2023 would be:
  - \$346.55 for a 50 per cent loss of 1 fortnightly payment
  - \$693.10 for a 100 per cent loss of 1 fortnightly payment
  - \$1386.20 for a payment cancellation and 4 week non-payment period, noting that the financial impact could increase if the person did not re-claim payment as soon as they were able.
- In regard to the amounts back-paid for the initial 83 identified participants within the 13 week window, the total arrears paid to date is \$54,166.57. The average amounts for each penalty type are:
  - 1st financial penalty – \$527.57 (44 Financial Penalties at 50% of the participants regular fortnightly payment)
  - 2nd financial penalty – \$699.66 (37 applied Financial Penalties at 100% of the participants regular fortnightly payment)
  - 3rd financial penalty – \$1,177.61 (5 payment cancellations overturned and back-paid).
- To ensure individuals are not adversely impacted while the department continues to investigate other IT issues, the department is working on implementing an agreed temporary 91 day limit on the length of time a participant may spend in the Penalty Zone.



s 22(1)

MS24-000682



Australian Government  
Department of Employment  
and Workplace Relations

To **Minister for Employment and Workplace Relations**

CC N/A

s 47E(d)

Sent to the MO 12 September 2024

Priority Routine/High Complexity

Action date Please review by 30 September 2024.

Recommendations - That you:

s 42(1)

s 47E(d)

Signature:

3/11 2024

**MO Comments**

I also note the various discussions between me, my office + Department to resolve these issues since receiving this brief.

**Executive summary**

s 47E(d)

s 42(1)

s 22(1)

s 22(1)

3. Policy responsibility of this framework sits with the Minister for Employment and Workplace Relations. Decisions are made under s.42AF of the Admin Act by the Secretary.
- a. In practice, decisions are delegated to a range of people in the employment services system – provider staff, APS staff in this department, other departments (with respect to Community Development Program and Disability Employment Services) and Services Australia.

s 42(1)

- b. This was communicated verbally to the previous minister and his Chief of Staff on 5 July 2024.

s 42(1)

- a. Note that there are currently around 1.8 million suspensions per year, s 47E(d) (noting changes announced in the 2024–25 Budget that take effect in October 2024 and March 2025 will significantly reduce the number of suspensions).
- b. Approximately 5,800 payment reductions occur annually and around 500 payment cancellation decisions.
8. Further information about the compliance framework is at **Attachment B**.
9. The Secretary or her delegates are the main decision-makers under the parts of the social security law for which you are responsible. For an overview of responsibilities see **Attachment C**.

### Background

10. To improve the administration of the law, the previous government enacted the *Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Act 2022* (the SPROM Act) which, among other things, amended s42AF to introduce a discretion for relevant actions (the section as previously drafted required that the Secretary ‘must’ take relevant actions). Similar changes were made to some other compliance provisions. The SPROM Act received Royal Assent on 1 April 2022 and the amendments took effect 7 days later.

### Communications and media strategy

s 47E(d)

### Stakeholder consultation

s 42(1)

13. A number of stakeholders (including Australian Council of Social Services and Economic Justice Australia) have called for removal of mutual obligations, raising concerns about payment suspensions, s 47E(d) and the impact on vulnerable people on income support.

## s 22(1)

**Attachments**

s 42(1)

<u>Attachment B</u>	Mutual obligations and compliance contextual information + Glossary
<u>Attachment C</u>	Mutual obligations and compliance – Division of responsibilities and delegations
<u>Attachment D</u>	Key context and background
s 47E(d)	s 47E(d)

**Clearance**

Primary Contact Officer: Tania Rishniw  
Employment and Workforce

Deputy Secretary  
Mobile: s 22(1)

Clearance Officer: Natalie James  
Department of Employment and Workplace Relations

Secretary  
Ph: s 22(1)

Document 18 at pages 57-93 deleted pursuant to section 42(1) of the Freedom of Information Act 1982



## *Mutual obligation requirements and the compliance framework*

### Overview of mutual obligations

Most people who receive unemployment benefits are required to meet mutual obligation requirements in return for their taxpayer-funded payments. Requirements may include actively looking for work, attending provider appointments, participating in activities that increase the likelihood of their finding work, and being prepared to accept any offer of suitable employment.

Mutual obligation requirements are designed to ensure that people receiving participation payments are actively looking for work and are participating in activities that will help them into employment.

Certain requirements around mutual obligations are established in the *Social Security (Administration) Act 1999* (the Admin Act), with detail contained in a number of legislative instruments and guidelines. Some of these are made by the Minister for Employment and Workplace Relations, and some are made by the Secretary of the Department of Employment and Workplace Relations.

### Key aspects of mutual obligation requirements in Workforce Australia

The key aspects of mutual obligation requirements are:

- Enter into an 'employment pathway plan' (see section 40A of the Admin Act), which requires a person to declare that they will comply with mutual obligation requirements.
- Attend appointments as scheduled and formally notified by providers for those in provider services.
- Engage in activities, usually including job search, catalogued and weighted in a 'points based activation system' (PBAS).
  - The default is 100 points, generally including a mandatory 4 job searches a month, noting the system is designed to allow tailoring both to enable a lower number of points to be met based on personal circumstances or labour market factors and flexibility in the nature of the activities that make up the points.
  - This requirement applies to those in Workforce Australia provider services and the digital service.
- In provider services, participate in a mandatory activity (for a minimum of 8 weeks, with the default activity being work for the dole) at:
  - 6 months in service (if the person has not previously sufficiently participated in approved activities), or
  - 3 months in service (if referred from online services after 12 months registration),
- In online services, participate in a mandatory activity (for a minimum of 8 weeks, with the default activity being Employability Skills Training – a program which helps people aged 15 years and over to develop the skills that employers want, explore career options, and build job search, workplace and industry specific skills) at 4 months in service (if the person has not previously sufficiently participated in approved activities).

### Overview of the Targeted Compliance Framework (TCF)

- Some failures to comply with mutual obligations are labelled in the TCF as a 'mutual obligation failure' (see section 42AC of the Admin Act). When a participant commits a mutual obligation failure, the TCF is used to get the participant back on track with meeting their requirements (section 42AF of the Admin Act outlines the compliance action the Secretary, or her delegates, may take).
  - A mutual obligation failure may be, for example, a failure to attend a scheduled appointment or not engaging in and reporting enough activities to make up the required number of PBAS points.
  - Where there is a mutual obligation failure, current policy is that compliance action will occur unless the participant 'reconnects' or provides a valid reason for not meeting their requirements within 2 business days (this is referred to as 'resolution time'). The recently announced 2024-25 Budget measures increase resolution time from 2 business days to 5 business days in October 2024.
    - Reconnection is achieved by rectifying the failure (for example, by attending an appointment for the one missed, or through 'making up' the deficit in points, through conducting job search activities, depending on the original failure).
    - The consequences can range from suspension of the participant's payment until 'reconnection' through to cancellation of their payment.
    - Where the participant provides a reason for the failure, the provider assesses whether the excuse provided is 'valid'. This has an impact on whether a 'demerit' is recorded.
      - An accumulation of demerits over a set time period can result in the more serious consequences being applied (partial or full forfeiture of payment or cancellation of payment).
      - These more serious consequences only happen after the person has been found to have 'persistently committed mutual obligation failures'.
  - To facilitate this system, certain decisions are delegated to providers and staff in the digital services centre, as well as Services Australia.
- Once a person with the delegation forms the view that a mutual obligation failure has occurred, without a valid reason and a separate delegate considers no reasonable excuse they record this in the system. This then results in an automated application of reduction or cancellation.

### Key data

- Payment suspensions currently occur at a rate of around 1.8 million per annum, of which, around 1.3 million are substantially automated. Changes were announced in the 2024-25 Budget that would significantly reduce the number of suspensions (by around 55 per cent, depending on behavioural changes). Changes will take effect in October 2024 and March 2025.
- For the period 1 April 2024 to 30 June 2024, there were approximately 2,500 financial penalties applied.
- Since April 2022, there have been approximately 1,000 cancellations.

### Further detail: Targeted Compliance Framework and zones

- As a condition of receiving most unemployment payments, participants must meet their mutual obligation requirements (such as meeting their points target and/or minimum job search requirement each month, attending compulsory provider appointments or mandatory activities).
- Failure to meet these requirements may result in the participant having compliance action applied under the Targeted Compliance Framework (TCF).
- Under the TCF demerits, temporary payment suspensions with back-pay, and, in some circumstances, lasting payment reductions or cancellations are applied.
- The Targeted Compliance Framework comprises of three zones:
  - the **Green Zone**, where participants are meeting all of their requirements,
  - the **Warning Zone**, where participants have 1 to 5 demerits, and
  - the **Penalty Zone**, where participants have 5 demerits in the previous 6 months and been found capable of meeting their requirements.
- Participants in the **Penalty Zone are subject to loss or cancellation of payment as a Financial Penalty** for further instances of non-compliance.

#### ***Payment suspensions and demerits***

- A payment suspension is a **temporary hold** on a person's payment until they re-engage with their requirements.
- If a person has a valid reason for not meeting their requirements, or re-engages within two business days, their payment is not suspended. Note this resolution period will extend to 5 days from October 2024.
- There is generally no financial loss or delay to a payment as a result of a payment suspension. This is because suspensions are usually resolved before a person's payment day.
- If payment is delayed, full payment is restored and the participant will be back-paid any missed payment:
  - when they give a reasonable excuse for not meeting their requirement or
  - when they meet their reengagement requirement

However, if the person does not re-engage within 28 days (two full payment periods) their payment is cancelled.

- A demerit will be applied if a participant does not meet a mutual obligation requirement and did not have a valid reason for meeting that requirement.

#### ***TCF Safeguards – the Warning Zone***

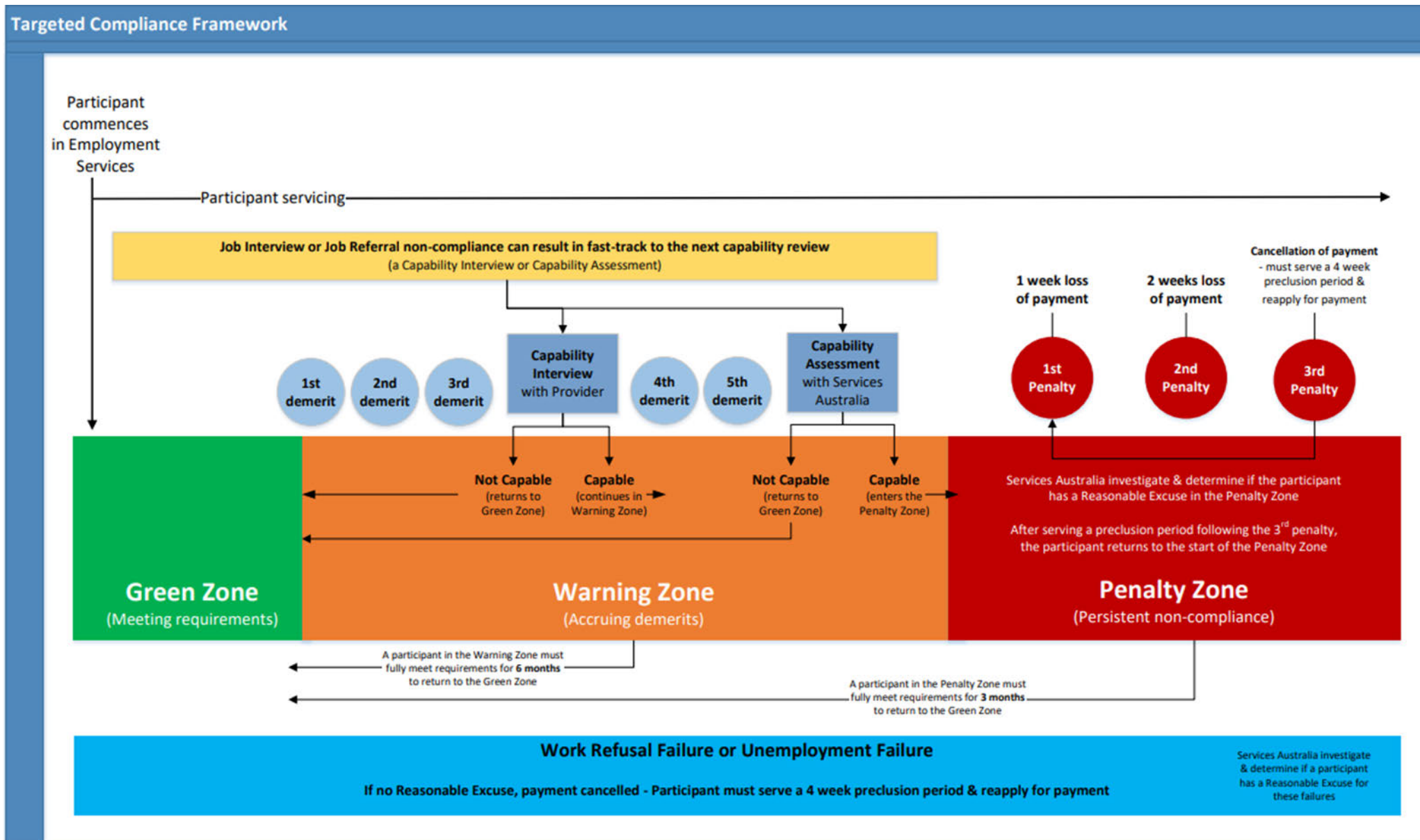
- There are safeguards in the TCF, including:
  - If participants miss a requirement, they have 2 business days ('resolution time') to contact their provider, or for online participants the Digital Services Contact Centre, to resolve the non-compliance before their payment is suspended. The resolution time is being extended to 5 business days from October 2024.
    - For example, if a participant were to miss a compulsory provider appointment 11am on a Thursday without having previously notified their provider and given a reasonable excuse for not attending, the provider attempts to contact the participant at 11:30am to discuss the reason for them not attending.
    - If the provider cannot contact the participant, they must enter a result of 'Did Not Attend – Invalid' in the department's IT system by close of business on the day the requirement was missed.

- As this provider attempted and failed to contact the participant at 11:30am, they would generally enter the result at this time. Once the 'Did Not Attend – Invalid' result is entered, the IT system will generate and send the participant a notification stating they must contact their provider in the next two business days ('resolution time') to avoid having their payment being put on hold.
  - If the participant fails to contact their provider to either give a valid reason for not attending or to arrange a reengagement appointment within the two business days (for this example, Thursday afternoon, Friday and Monday morning), their payment will be put on hold at approximately 11:30am on Monday.
  - Their payment will remain on hold until they contact their provider and either give a valid reason for not attending or attend a reengagement appointment.
- There are two reviews of a participant's capacity to meet their requirements:
  - the capability interview after three demerits and
  - the capability assessment after 5 demerits
- This is designed to ensure that only those who persistently and deliberately fail to meet their requirements are at risk of potential financial penalties for not meeting their requirements and reduction or loss of payment.
- The department undertakes a range of program assurance activities to monitor key aspects of the TCF, including:
  - ongoing monitoring of payment suspensions,
  - reviewing, and removing applied demerits where these have been applied in error and
  - reviewing samples of applied financial penalties to ensure that these have been applied correctly.

### **Financial penalties – *the Penalty Zone***

- A participant will generally only be subject to a financial penalty for failing to meet requirements after:
  - Generally their sixth instance of non-compliance, and
  - only after they have been assessed –
    - once by their provider and
    - once by Services Australiato ensure that their compulsory requirements are appropriate and achievable based on their personal circumstances.
- The first penalty is one week loss of payment, the second is two weeks loss of payment and the third is cancellation of payment, where a person must serve a 4-week preclusion period and reapply for payment. Services Australia both applies these penalties and investigates for reasonable excuse (although until March 2025, participants can elect to not have Services Australia's investigation take place by identifying that they have no reasonable excuse for the failure).
- The department is currently manually exiting participants from the Penalty Zone and moving them to the Green zone after the application of a second financial penalty (100% payment reduction). This process prevents cancellation from being applied.





## ***Glossary of key Targeted Compliance Framework terms***

### **Valid reason**

If a participant has a valid reason for missing a requirement, they do not need to re-engage and do not get a demerit.

### **Resolution time**

If a participant misses a requirement, they currently have 2 business days to contact their provider to discuss and, if required, address the failure to avoid having their payment suspended.

### **Suspending payment**

This is a hold put on the participant's income support payment after 2 business days until they meet their re-engagement requirement or provide a valid reason. When they meet their re-engagement requirement, the hold on their payment stops. Payment suspension does not mean their payment is stopped or cancelled. However, they are prevented from receiving their next payment whilst non-compliance is outstanding. When the non-compliance is resolved they are back paid in full. If they fail to resolve the non-compliance within 28 days (2 payment reporting periods), Services Australia commences their payment cancellation review.

### **Applying demerits**

These are applied when a participant doesn't meet a requirement and doesn't have a valid reason. Applying demerits means the participant moves further through the TCF (Green, Warning and Penalty Zones). These zones do not exist in legislation but rather are used as an administrative tool to communicate the operation of the TCF to job seekers. Each demerit has a lifespan of 6 months. This means the demerit expires 6 months after it is applied, and the IT system removes it from the participant's record.

### **Financial penalties (also known as payment reductions)**

Under the TCF, participants have protections in place before a financial penalty is applied. This ensures only those participants who are persistently non-compliant incur financial penalties for failing to meet their requirements. Most participants do meet their requirements and very few incur financial penalties.

### **Capability reviews**

These are review points that take place after a certain number of demerits are applied. Capability reviews provide an opportunity for a discussion with the participant about circumstances that may impact their ability to meet requirements and to ensure they are capable of meeting the requirements that have been set for them.

### **Unemployment and work refusal failures**

There are serious penalties if a participant fails to accept or commence a suitable job, if they are dismissed from a job due to misconduct, or if they voluntarily leave a suitable job. Providers report these failures via the department's IT system to Services Australia for them to make the assessment on whether to apply the penalty or they are identified during payment claim. All financial penalty decisions are made by Services Australia. A provider can never take income support off a participant.

## Attachment C - Mutual obligations and compliance - Division of responsibilities and delegations

### Division of Responsibilities

The Minister for Employment and Workplace Relations is responsible for broad policy and legislation relating to mutual obligations and compliance across all employment services, as well as how these policies are implemented in services within your responsibilities (Workforce Australia).

The Employment Secretary is empowered under the terms of the Social Security Act and Administration Act to exercise a range of powers and functions. These are delegated to a range of delegated decision-makers (see Table).

Other ministers are responsible for specific implementation within their employment services:

- The Community Development Program (CDP) services those in remote Australia, and is the responsibility of the Minister for Indigenous Australians
- Disability Employment Services (DES) is the responsibility of the Minister for Social Services

### Mutual obligation requirements (MORs)

- Core eligibility requirement for unemployment payments.
- People who receive unemployment payments must take steps to find suitable work and support themselves through paid employment.
- MORs vary depending on personal circumstances and employment service. Those who do not comply with their mutual obligation requirements may be subject to compliance consequences.

### Delegations

Social Security ( <i>Administration</i> ) Act 1999  Delegated Powers	Delegated to		
	Providers/ DSCC	Services Australia	DEWR
Enter into Employment Pathway Plan	Yes	Yes	Yes
Consider Employment Pathway Plan matters	Yes	Yes	Yes
Notify person of requirements	Yes	Yes	Yes
Suspend payment for non-compliance	Yes	Yes	Yes
Set Reconnection Requirement	Yes	Yes	Yes
Determine Reasonable Excuse		Yes	Yes
Grant exemption from Mutual Obligation Requirements		Yes	Yes
Pause Mutual Obligation Requirements			Yes

### Responsibilities of other Portfolios

- The Minister for Social Services and the Department of Social Security are responsible for policy on payment eligibility and values.
- Services Australia is responsible for the assessment of eligibility, payment of income support, and the assessment and application of financial penalties.

### Targeted Compliance Framework (TCF)

- The compliance approach for mutual obligations in Workforce Australia and Disability Employment Services.

### Job Seeker Compliance Framework (JSCF)

- Division 3A of the *Social Security (Administration) Act 1999*.
- Applies to those in Community Development Program (CDP).
- Characterised by a system of lower-level penalties for non-compliance and provider discretion.
- Workforce Australia participants are generally required to participate in mandatory activities to help them build skills and work-like behaviour. However, since May 2021, all activities for CDP participants (eg: Work for the Dole) are voluntary.

*Refusing/leaving suitable work without reasonable excuse results in a 4-week non-payment period. All penalties determined and applied by Services Australia's system.*

**Key Context and Background - Automation of social security decisions**

1. As Minister for Employment and Workplace Relations, under the Administrative Arrangements Order you are responsible for the parts of the social security law that relate to mutual obligations and compliance action for mutual obligation failures. Most of that law is in the Admin Act, and the remainder in the Social Security Act 1991 and legislative instruments made under those Acts. Guidance material, such as the publicly available Social Security Guide, helps give effect to the complex array of provisions in the primary legislation and instruments. A glossary and contextual information on the mutual obligations and compliance framework is provided at **Attachment B**.
2. The decisions are operationalised through delegation of powers by the Employment Secretary to staff engaged by employment services providers, departmental staff and Services Australia.
3. s 47E(d)

s 42(1)

4. s 42(1)

***Mutual obligations and compliance framework***

5. Most people who receive unemployment benefits are required to meet mutual obligation requirements including entering into a job plan and may include attendance at provider appointments and mandatory job search in return for their payments. When a person does not comply with their requirements, the Admin Act outlines the compliance action the Secretary, or her delegates may take. In policy, this compliance framework is known as the Targeted Compliance Framework (TCF). The TCF is used to help get the person back on track with meeting their requirements. **Attachment B** provides further detail on mutual obligation requirements and the TCF.
6. The most common type of compliance action used is suspension of payment, and for those who are persistently not meeting obligations, reduction (by either 50% or 100% of a fortnightly instalment) or cancellation of the person's payment. In determining whether a person has not met their requirements or whether action may be taken, there may be a need to consider whether there is a reasonable excuse for the not meeting the obligation.
7. The circumstances in which a person has persistently committed mutual obligation failures are set out in a legislative instrument. The instrument provides for this to be determined by reference to the number of demerits that are recorded in the department's IT system against the person. To assist in conceptualising how people move through the compliance framework, the department created a concept of traffic light zones.
8. When a person commences in employment services they start in the "Green Zone" and remain there while they are meeting their requirements.
9. If a person does not meet their requirements, they may be subject to a payment suspension and then moved into the yellow "Warning Zone".
10. If a person has persistent non-compliance, they are moved into the red "Penalty Zone". Once in the "Penalty Zone", a person may be subject to compliance action for failing to meet requirements after their sixth instance of non-compliance. The first compliance action is one week reduction of payment, the second is two weeks reduction of payments and the third is cancellation of payment and a preclusion period, where the person cannot reapply to Services Australia for their payment for 4 weeks.
11. s 42(1)

s 22(1)

s 42(1)

**Key risks and mitigation**

21. s 42(1) . However, the department has already initiated a process to cease cancellation of payments to mitigate this risk while options are explored to reduce the risk of invalid decisions. Prior to the decision to cease cancellation decisions, a relatively small number of people had their payment cancelled.

22. s 42(1)

. The recently announced 2024-25 budget measures increase resolution time from 2 to 5 business days in October 2024.

23. s 47E(d)

. These future reforms will consider the approach to mutual obligation requirements and compliance more broadly and how in future they can be tailored for individual circumstances. It will focus more on an individual's active engagement on their pathway to work over compliance.

s 22(1)

**Legislative change**

s 42(1)

**Process changes**

s 42(1)

26. Government agreement to options is likely to be needed. Funding would be required to implement some proposed changes. Consideration of existing IT prioritisation processes would need to occur, with timing around previously agreed measures likely to be affected.

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Documents 22-38 at pages 104-254 deleted pursuant to sections 42(1) and 47C(1) of the Freedom of Information Act 1982

s 22(1)

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**From:** s 22(1)  
**Sent:** Sunday, 3 November 2024 7:23 PM  
**To:** s 22(1)  
**Cc:** s 22(1)  
**Subject:** s 47E(d) s 22(1)

**Importance:** High

s 22(1)

Hi s 22(1)

s 47E(d)

s 47E(d)

Tania Rishniw



**(pronouns she/her)**

Deputy Secretary | Employment and Workforce Group  
Australian Government Department of Employment and Workplace Relations  
s 22(1)  
[dewr.gov.au](http://dewr.gov.au)

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The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to their community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s 22(1)

s 22(1)

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**From:** s 22(1)  
**Sent:** Tuesday, 5 November 2024 7:09 PM  
**To:** s 22(1)  
**Subject:** Fw: Suggested wording s 22(1)

s 22(1)

Please file on Lex

s 22(1)

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**From:** s 22(1)  
**Sent:** Tuesday, November 5, 2024 3:59:59 PM  
**To:** s 22(1)  
**Cc:** s 22(1)  
**Subject:** FW: Suggested wording s 22(1)

s 22(1)

FYI

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s 22(1)

**From:** s 22(1)  
**Sent:** Tuesday, 5 November 2024 6:58 PM  
**To:** s 22(1)  
**Cc:** s 22(1)  
**Subject:** RE: Suggested wording s 22(1)  
**Importance:** High

Dear all

s 42(1)

s 42(1)

---

Tim

**Tim Ffrench**

General Counsel  
First Assistant Secretary  
Legal and Assurance Division  
Australian Government Department of Employment and Workplace Relations  
s 22(1)

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**From:** s 22(1)

**Sent:** Tuesday, 5 November 2024 6:23 PM  
s 22(1)

**Subject:** Re: Suggested wording s 22(1)

s 22(1)

s 42(1)

s 22(1)

---

**From:** s 22(1)

**Sent:** Tuesday, November 5, 2024 6:18:29 PM  
s 22(1)

**Subject:** Suggested wording s 22(1)

s 22(1)

Hi s 22(1)

Suggest the following wording to strengthen the statement and be factually correct.

In July 2024, we [or say: 'the department'] became concerned that these payment cancellations may be invalid.

s 42(1)

T

**Tania Rishniw**  
**(pronouns she/her)**

Deputy Secretary | Employment and Workforce Group  
Australian Government Department of Employment and Workplace Relations  
s 22(1)  
[dewr.gov.au](http://dewr.gov.au)

---

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to their community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s 22(1)

**From:** s 22(1)  
**To:** s 22(1)  
**Cc:** s 22(1)  
**Subject:** s 42(1)

**Date:** Thursday, 29 August 2024 10:10:00 AM  
**Attachments:** s 42(1)

**Importance:** High

---

s 22(1)

Hi s 22(1)

As discussed this morning, please find attached:

- s 42(1)
- 
- 
- 

Kind regards

S

s 22(1)

s 22(1)

**From:** s 22(1)  
s 22(1)  
**Subject:** Draft TPs - cancellations  
**Date:** Friday, 1 November 2024 8:29:00 PM  
**Attachments:** [Draft TPs 1 November 7.53pm.docx](#)  
[image001.jpg](#)  
**Importance:** High

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His 22(1) and s 22(1)

**s 47E(d)**

These have been cleared with the Secretary, have been reviewed by our legal team, and have had input from potentially affected agencies.

**s 47E(d)**

Tania

**Tania Rishniw**  
**(pronouns she/her)**

Deputy Secretary | Employment and Workforce Group  
Australian Government Department of Employment and Workplace Relations

**s 22(1)**

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The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

**DRAFT TALKING POINTS****TARGETED COMPLIANCE FRAMEWORK**

- The department regularly tests its systems and processes to ensure that we act in accordance with legislation and policy.
  - In doing so we identified an issue with the Targeted Compliance Framework that suggested some decisions were not being made correctly.
  - s 47E(d)
- 
- Since then we have started work on a new way of making these decisions to ensure that they are robust and in accordance with law and policy.
  - To aid us in that work that we will commission an independent external assurance process to check that Targeted Compliance Framework processes and system rules are working as they should.
  - We will also undertake a process of review to make sure that the impacted cancellation decisions that were made correctly applied the law and policy. Where this is not the case we will fix those decisions.
  - s 47E(d)

**If asked:*****When did you find out about the issue?***

- The issue became clear in July 2024 at which point my department acted immediately to pause these cancellations.
- They will remain paused until a new process that ensures decisions are robust and in accordance with law and policy can be stood up.

***What steps did the department take to pause cancellations?***

- The department has put in place a process to ensure people who may be at risk of accruing what is known as a 3<sup>rd</sup> financial penalty do not have their payment cancelled.

***Why are you only telling people now?***

- Once this issue was identified, we needed to fully understand the extent of the issue and impact.
- We stopped cancellations to make sure people didn't continue to be impacted while we could look at how to resolve it.
- The department is also working to identify and contact any people who were directly affected.

***How can you be sure the compliance framework and automated decisions that affect individuals aren't harming people?***

- The department continues to test systems and processes under the relevant parts of the social security legislation to make sure they are operating as intended.
- As has been shown by the action to pause certain cancellations, the department and Government takes these issues seriously.
- To build on this work, I have asked my department to commission an independent external assurance process to examine the



alignment of the Targeted Compliance Framework processes and system rules.

***What are you doing about those people who had payments cancelled over this period?***

- The issue dates back to April 2022 and the changes to the social security law introduced at that time.
- While the cancellation decisions may have been appropriate in the circumstances, we will establish a process to reconsider cancellations that were made from April 2022 to July 2024
- This appears to have affected just over 1000 people and we will provide further information about our action to address this issue.
- Impacted participants do not need to do anything, my department will contact those affected.
- However if people are concerned this impacted them and want to talk to someone they can call the National Customer Service Line (NCSL) number is 1800 805 260

***Are all mutual obligations switched off?***

- No. Mutual obligations continue to apply to relevant income support payments under social security law.
- Where a person does not meet their mutual obligation requirements, they are continuing to be notified and where appropriate a suspension applied.
- Other compliance arrangements continue to apply.
- s 47E(d)
  
- This generally affects around 500 people a year under current arrangements.

***What does this mean for the people who might be affected?***

- For anyone who might be facing financial penalties and needs to reconnect with employment services, I encourage you to contact your employment services provider.
- The pause of certain payment cancellations should assure people that the department and the government takes its responsibilities seriously and acts quickly to address issues that may be inappropriately penalising people.

***Should the Government abandon mutual obligations and the compliance system that enforces them completely?***

- There Government believes there is a role for well targeted and designed mutual obligations, where tasks and activities asked of people should genuinely help people find work.
- In response to the Select Committee on Workforce Australia Employment Services findings that elements of the current mutual obligation system are too punitive and not well-targeted, the Government announced a range of Budget measures to better target mutual obligations and compliance.
  - The first of these measures, providing more time for people to re-engage if they don't meet a requirement, commenced from 28 October. Further changes to better recognise individual circumstances for mutual obligation requirements, and further reduce the impact of compliance will occur in January, March and April 2025.

***How can you be sure the system is operating fairly and effectively?***

- I have asked my department to commission an independent external assurance process to ensure that the system is aligned end to end, this will build on extensive work already undertaken by the department.
- While the Government has announced initial changes in the 2024-25 Budget to address the more urgent concerns with mutual obligation and compliance settings, the Government acknowledges further work is required.
- Employment services reform will examine how to ensure that mutual obligation requirements support people into employment fairly and effectively, without being overly punitive and put the people accessing services at the centre of our reforms.

***Doesn't this show the system is too complex and unfair?***

- The government's reformed employment services system will ensure that mutual obligations are clear and fair, and that they are appropriately tailored to individuals' circumstances.

## **Background on Penalties under the Targeted Compliance Framework**

- Under the Targeted Compliance Framework, specific penalties are applied where a person, having had their requirements and personal circumstances formally reviewed by a person twice, continue to not consistently meet their mutual obligation requirements. This includes things like attending appointments with their provider, engaging in activities linked to employment and undertaking job search.
- There are three levels of financial penalties that can apply:
  - 1st Financial Penalty a participant loses half their regular fortnightly payment;
  - 2nd Financial Penalty they lose their full fortnightly payment; and
  - 3rd Financial Penalty their payment is cancelled and they must re-apply for payment following a 4-week preclusion period.

s 22(1)

**Subject:** RE: Draft TPs - cancellations s 22(1)  
**Date:** Friday, 1 November 2024 9:31:00 PM  
**Attachments:** [Draft TPs 1 November 9.30pm.docx](#)  
[image001.jpg](#)

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Sorry – the team has corrected a small technical issue.  
Please use this version. The changes in highlight.

T

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s 22(1)

**Sent:** Friday, 1 November 2024 8:35 PM  
s 22(1)

**Subject:** RE: Draft TPs - cancellations s 22(1)

s 22(1)

Thanks s 22(1) we will review.

s 47E(d)

s 22(1)

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s 22(1)

**From:** s 22(1)

**Sent:** Friday, 1 November 2024 8:30 PM  
s 22(1)

**Subject:** Draft TPs - cancellations s 22(1)

**Importance:** High

s 22(1)

Hi s 22(1) and s 22(1)

s 47E(d)

These have been cleared with the Secretary, have been reviewed by our legal team, and have had input from potentially affected agencies.

s 47E(d)

Tania

**Tania Rishniw**

**(pronouns she/her)**

Deputy Secretary | Employment and Workforce Group

Australian Government Department of Employment and Workplace Relations

s 22(1)

[dewr.gov.au](http://dewr.gov.au)

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The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s 22(1)

s 22(1)

**DRAFT TALKING POINTS****TARGETED COMPLIANCE FRAMEWORK**

- The department regularly tests its systems and processes to ensure that we act in accordance with legislation and policy.
- In doing so we identified an issue with the Targeted Compliance Framework that suggested some decisions were not being made correctly.
- s 47E(d)

- Since then we have started work on a new way of making these decisions to ensure that they are robust and in accordance with law and policy.
- To aid us in that work that we will commission an independent external assurance process to check that Targeted Compliance Framework processes and system rules are working as they should.
- We will also undertake a process of review to make sure that the impacted cancellation decisions that were made correctly applied the law and policy. Where this is not the case we will fix those decisions.

- s 47E(d)
- [Redacted content]

**If asked:*****When did you find out about the issue?***

- The issue became clear in July 2024 at which point my department acted immediately to pause these cancellations.
- They will remain paused until a new process that ensures decisions are robust and in accordance with law and policy can be stood up.

***What steps did the department take to pause cancellations?***

- The department has put in place a process to ensure people who may be at risk of accruing what is known as a 3<sup>rd</sup> financial penalty do not have their payment cancelled.

***Why are you only telling people now?***

- Once this issue was identified, we needed to fully understand the extent of the issue and impact.
- We stopped cancellations to make sure people didn't continue to be impacted while we could look at how to resolve it.
- The department is also working to identify and contact any people who were directly affected.

***How can you be sure the compliance framework and automated decisions that affect individuals aren't harming people?***

- The department continues to test systems and processes under the relevant parts of the social security legislation to make sure they are operating as intended.
- As has been shown by the action to pause certain cancellations, the department and Government takes these issues seriously.
- To build on this work, I have asked my department to commission an independent external assurance process to examine the

alignment of the Targeted Compliance Framework processes and system rules.

***What are you doing about those people who had payments cancelled over this period?***

- The issue dates back to April 2022 and the changes to the social security law introduced at that time.
- While the cancellation decisions may have been appropriate in the circumstances, we will establish a process to reconsider cancellations that were made from April 2022 to July 2024
- This appears to have affected just over 1000 people and we will provide further information about our action to address this issue.
- Impacted participants do not need to do anything, my department will contact those affected.
- However if people are concerned this impacted them and want to talk to someone they can call the National Customer Service Line (NCSL) number is 1800 805 260

***Are all mutual obligations switched off?***

- No. Mutual obligations continue to apply to relevant income support payments under social security law.
- Where a person does not meet their mutual obligation requirements, they are continuing to be notified and where appropriate a suspension applied.
- Other compliance arrangements continue to apply.
- s 47E(d)
  
- This generally affects around 500 people a year under current arrangements.



***What does this mean for the people who might be affected?***

- For anyone who might be facing financial penalties and needs to reconnect with employment services, I encourage you to contact your employment services provider.
- The pause of certain payment cancellations should assure people that the department and the government takes its responsibilities seriously and acts quickly to address issues that may be inappropriately penalising people.

***Should the Government abandon mutual obligations and the compliance system that enforces them completely?***

- There Government believes there is a role for well targeted and designed mutual obligations, where tasks and activities asked of people should genuinely help people find work.
- In response to the Select Committee on Workforce Australia Employment Services findings that elements of the current mutual obligation system are too punitive and not well-targeted, the Government announced a range of Budget measures to better target mutual obligations and compliance.
  - The first of these measures, providing more time for people to re-engage if they don't meet a requirement, commenced from 28 October. Further changes to better recognise individual circumstances for mutual obligation requirements, and further reduce the impact of compliance will occur in January, March and April 2025.

***How can you be sure the system is operating fairly and effectively?***

s 22(1)

- I have asked my department to commission an independent external assurance process to ensure that the system is aligned end to end, this will build on extensive work already undertaken by the department.
- While the Government has announced initial changes in the 2024-25 Budget to address the more urgent concerns with mutual obligation and compliance settings, the Government acknowledges further work is required.
- Employment services reform will examine how to ensure that mutual obligation requirements support people into employment fairly and effectively, without being overly punitive and put the people accessing services at the centre of our reforms.

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  - 2nd Financial Penalty they lose their full fortnightly payment; and
  - 3rd Financial Penalty their payment is cancelled and they must re-apply for payment following a 4-week preclusion period.

**From:** s 22(1)  
**To:** s 22(1)  
**Subject:** RE: Automation in TCF - Urgent input sought s 22(1)  
**Date:** Saturday, 2 November 2024 2:59:00 PM  
**Attachments:** [Issues arising from the automation of TCF 2 November \(DEWR comments\) .docx](#)

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Hi s 22(1)

Attached our comments on the notes.

- We have focused on factual corrections
- Addressed s 22(1) comments
- Included DEWR views on the key questions posed.

Let me know what else you need or if you would like to discuss.

T  
s 22(1)

**From:** s 22(1)  
**To:** s 22(1)  
**Subject:** RE: Automation in TCF - Urgent input sought s 22(1)  
**Date:** Sunday, 3 November 2024 10:37:00 AM  
**Attachments:** [Issues arising from the automation of TCF 2 November Rev 1.docx](#)

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Thanks s 22(1)

two minor suggestions in tracked changes attached.

T  
s 22(1)

**From:** s 22(1)  
**Sent:** Saturday, 2 November 2024 2:59 PM  
**To:** s 22(1)

**Subject:** RE: Automation in TCF - Urgent input sought s 22(1)  
s 22(1)

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T  
s 22(1)

s 22(1)

**From:** s 22(1)  
**To:** s 22(1)  
**Cc:** s 22(1)  
**Subject:** RE: Draft statement s 22(1)  
**Date:** Monday, 4 November 2024 3:53:00 PM  
**Attachments:** [Draft Min statement TCF issues 4 November 3.50pm.docx](#)  
[image001.png](#)  
**Importance:** High

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Hi s 22(1)

Attached a draft statement that tries to capture the narrative, without conflating or confusing the issues.

Secretary is yet to review this version, but in light of timing sending the draft now.

Let me know if and when you want to discuss.

t  
s 22(1)

**DRAFT statement****SYSTEM ASSURANCE IN THE TARGETED COMPLIANCE FRAMEWORK**

The Australian Government is committed to having well designed and targeted mutual obligations requirements for people who are looking for work, balanced by having a fair compliance system where people are not penalised unfairly.

In 2023, the Department of Employment and Workplace Relations commenced an end-to-end review of the business processes and systems supporting the Targeted Compliance Framework. More than 350 business rules have been examined. The focus has been on ensuring business rules are processes that operate in accordance with legislation and policy.

Where potential inconsistencies have been identified, action is taken immediately to stop any continued impact and to remediate people who are affected.

For example, an issue was identified in July 2023 which resulted in financial penalties applying incorrectly. These issues were corrected, and some 1300 affected individuals have been repaid. Other issues with system defects are immediately investigated if and when they are identified.

The department continues to review the way in which the complex rules have been operationalised to make sure the compliance system is operating as intended and the system is applying the law and policy correctly.

In July 2024, it became clear that there may be an issue with how final penalties for people who consistently haven't met their mutual obligations were being applied.

The department acted immediately to stop the cancellation of payments under the Targeted Compliance Framework. Cancellations were halted in July 2024 while further inquiries are underway. Around 500 people each year have their payments cancelled. The extent of the potential impact is still being investigated and people who may have been impacted will be contacted.

To provide greater assurance, I have asked the department to commission an independent external assurance review to check that the processes and system rules are working as intended and any issues are addressed quickly.

While this work is underway, the cancellation of payments for people who would otherwise be facing their third penalty have been stopped. They will remain stopped until a new process can be stood up that ensures decisions are robust and operating effectively. Mutual obligations and other compliance will continue to apply.

While the Government has announced initial changes in the 2024-25 Budget to address the more urgent concerns with mutual obligation and compliance settings, further work is required. The Government's reformed employment services system will ensure that mutual obligations are clear and fair, and that they are appropriately tailored to individuals' circumstances.