

I thank the Committee for the opportunity to make an opening statement.

I would like to advise the Committee about a range of matters that have arisen with respect to this department's administration of mutual obligations under the social security law, and the compliance framework which helps ensure that people meet those obligations.

The concept of mutual obligations for people who receive social security benefits because they are unemployed has been legislated in Australia since unemployment payments were introduced in 1945<sup>1</sup>. The policy behind this is to ensure people are actively looking for work and are participating in activities that will help them into employment.

The mutual obligation requirements set out activities that a person does to demonstrate their willingness to actively seek and to accept and undertake suitable paid work<sup>2</sup>.

The current mutual obligation requirements are established by the *Social Security (Administration) Act 1999*. (the Act). The requirements are underpinned by a compliance framework which establishes consequences if the requirements are not met by a participant.

### *The Targeted Compliance Framework*

The current approach to compliance, the Targeted Compliance Framework (the Framework) was introduced in 2018 – after Parliament passed the

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<sup>1</sup> *Unemployment and Sickness Benefits Act 1944* s15(c)(iii)

<sup>2</sup> *Social Security (Administration) Act 1999* (the Admin Act) - ss40G, 40H, 40J, 40K

Framework into legislation. It is contained in Division 3AA of Part 3 of the Act and has applied since July 2018. It is supplemented by an instrument made by the former Minister under section 42AR, the *Social Security (Administration) (Non-Compliance) Determination 2018 (No. 1)* (the Non-Compliance Determination).

Participants in Workforce Australia and Disability Employment Services are subject to the Framework.

The administration of the Framework is carried out by the Secretary of Employment. Various decisions and functions have been delegated to, officers of my department and Services Australia and persons engaged by employment service providers. With respect to the Disability Employment Services program, some functions are delegated to Disability Employment Service providers.

### Suspensions

Under subsection 42AF(1), if a person commits a mutual obligation failure, their payment may be suspended or put on hold.

The Framework provides 5 business days<sup>3</sup> for a participant to provide a valid reason for not meeting their requirement, which my department refers to as 'resolution time'. A person's payment is not impacted within the

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<sup>3</sup> 24-25 Budget measure – *Strengthening the Integrity of Employment Services* – increased the resolution time (2 days to 5 days) for people to re-engage.

resolution time, and, if they meet their ‘reconnection requirement’ within this period, it will not be impacted at all<sup>4</sup>.

When a person has their payment suspended for a mutual obligation failure, section 42AM of the Act requires they are notified of a reconnection requirement and the effect of not complying with it.

A suspension remains in place until the person has met the reconnection requirements unless their payment is reinstated earlier under section 42AL. For example, section 42AL enables their payment to be reinstated earlier if they have a valid reason for the initial failure or are sick and cannot comply with a reconnection requirement.

If the person meets their reconnection requirement their payment is restored. In 90% of cases this occurs before the person’s social security payment is due to be paid.

### *Persistent mutual obligation failures*

The Framework provides for specific consequences where the Secretary is satisfied that a person has persistently committed mutual obligation failures without a reasonable excuse<sup>5</sup>.

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<sup>4</sup> Workforce Australia Guidelines, page 187.

<sup>5</sup> Admin Act, Section 42AF(2).

In such a case, I or my delegates may determine that an instalment of a person's payment is reduced (by half or in its entirety), or that the person's payment is cancelled<sup>6</sup>.

Relevant to the Secretary's decision making in this respect is the Non - Compliance Determination.

The Non-Compliance Determination sets out a process, generally, where if a participant fails to comply with their mutual obligation without a valid reason, a 'demerit' is recorded<sup>7</sup>.

If a sufficient number of demerits accumulate within a certain period of time, it becomes a trigger for reduction in payment or cancellation of payment.

#### *How the Targeted Compliance Framework is implemented*

The Framework is administratively managed by reference to a series of 'zones'. The details are set out in policy and guidelines<sup>8</sup>, particularly the Social Security Guide and Workforce Australia Guidelines.

If a person accrues a demerit, the person enters the Warning Zone.

Where a person accrues three demerits in 6 months, a person's service provider or the Digital Services Contact Centre, will conduct a capability

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<sup>6</sup> Admin Act, Sections 42AN and 42AP.

<sup>7</sup> Section 4(2) of the *Social Security (Administration) (Non-Compliance) Determination 2018 (No. 1)* (the Non-Compliance Determination), Workforce Australia Guidelines (Chapter 12.26).

<sup>8</sup> Social Security Guide 3.11.13.

interview<sup>9</sup>. This interview assesses the suitability of a person's requirements and identify the causes of non-compliance.

If the view is formed that a person's requirements are not suitable they will have their requirements changed to better reflect their circumstances and they will be returned to the Green Zone, with no demerits.

If the capability interview determines a person's obligations are appropriate, and they accrue another 2 demerits within the 6-month period, Services Australia will conduct a capability assessment<sup>10</sup>.

The Non-Compliance Determination provides that a person cannot be found to have persistently failed to meet their obligations unless this assessment has taken place.

This capability assessment seeks to identify any previously undisclosed issues affecting their ability to meet their obligations and will again consider the appropriateness of their obligations. If Services Australia finds that the person has issues preventing them from meeting their requirements, or that their requirements are inappropriate, the person will be returned to the Green Zone.

Where Services Australia finds that a person's requirements are appropriate, after their fifth demerit, they enter the Penalty Zone<sup>11</sup>. Once in the Penalty Zone if they meet their requirements for 3 months, they return

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<sup>9</sup> Workforce Australia Guidelines, s. 5(4)(b) of the Non-Compliance Determination.

<sup>10</sup> Non-compliance Determination, Social Security Guide.

<sup>11</sup> Administrative, mirrors concept in the Non-Compliance Determination.

to the Green Zone. If a person fails to meet their obligations without a reasonable excuse, then reductions in payment will be applied under the Non-Compliance Determination.

*Responsibility for administering the Targeted Compliance Framework*

I am responsible for the general administration of the social security law as it relates to mutual obligations and compliance under section 7 of the Act and the current Administrative Arrangements Orders.

My role, and that of public servants in my department is to ensure that the systems we administer are operating within the law as enacted by Parliament.

*IT systems assurance*

The Framework is administered through a large and complex IT system. The department undertakes a regular program of assurance on the IT system to make sure it is administering the Framework correctly.

This program of assurance validates whether the IT platform delivers the policy intent and legislative requirements of employment services, and whether decisions are made fairly and consistently in line with legal requirements.

The program identified a number of IT defects occurring in the system that impacted on payments for individuals – three separate incidences occurred.

The first of these impacted on participants from July 2018 to August 2023.

The impact of this was that some people lost half or all of their usual fortnightly payment when they should not have, or had their payment cancelled and had to reapply after a 4-week preclusion period, when they should not have been.

We subsequently identified 2 further system failures, both of which resulted in a person incorrectly remaining in the penalty zone when a previous demerit has been removed. These failures were identified in February and May 2024.

Across these three incidents, 1,326 jobseekers were impacted and approximately 1,280 jobseekers were repaid – I will table a document which outlines each IT incidence, the mitigation and fix for each instance and the number of jobseekers impacted.

When the impact of each of these failures were identified, I decided in May 2024 to repay all jobseekers that were impacted. The department also took swift action to prevent them affecting anyone else's payments and then fixed the system.

The department remediated this through the Compensation for Detriment caused by Defective Administration Scheme or, where it was possible, through the social security system.

In total approximately 1,280 jobseekers were repaid \$1,233,527.

### Legal Review

In addition to assurance of the IT system, the department has been systematically reviewing the way decisions were made under legislation.

This systematic review is important especially in light of lessons from Robodebt. We are looking closely at the decisions that impact on participants' payments, that is, suspensions, payment reductions and cancellations, as well as related processes, to ensure they are lawful. We are also ensuring we fully understand what automation is occurring in the system and what impact this is having on people.

While the Act envisages that computer programs might be used for some social security law decisions – see section 6A of the Act - we considered it was important to review these types of decisions and assure ourselves that the decision making was appropriate and lawful.

In July 2024, it became clear that decisions to cancel people's payments due to persistent mutual obligation failures may not have been validly made under subsection 42AF(2)(d).

This means that 985 decisions under the Framework to cancel 964 people's payments made between 8 April 2022 and 4 July 2024 may not have been validly made.

Opening Statement  
Secretary, Department of Employment and Workplace Relations  
2024-25 Additional Estimates  
26 February 2025

On reaching this conclusion, we decided to immediately cease these cancellations, and they remain ceased.

I decided to pause cancellations in line with my responsibility for the general administration of the social security law as it relates to mutual obligations and compliance under section 7 of the Act and the current Administrative Arrangements Orders.

In taking this decision, I also considered my obligations under section 12 of the *Public Service Act 1999* to uphold and promote the APS Values and APS Employment Principles, which include acting with integrity.

Cancellations were paused on 4 July 2024 and will remain paused until we can be sure the system is operating correctly.

I made a subsequent decision to review all payment cancellation decisions which may not have been validly made during this timeframe.

The department has been engaging with representative groups about the approach to this review. We will provide further information once the approach is settled.

The Commonwealth Ombudsman, Iain Anderson, also announced on 4 February 2025, that he is examining the Framework.

The Ombudsman will consider if cancellation decisions are being made and implemented in a manner that is lawful, fair and reasonable.

The department welcomes the investigation, is committed to supporting this work and is fully cooperating with the investigation.

*Integrity of the Targeted Compliance Framework*

We now have a number of examples where the system is not operating in alignment with the legislative framework and associated policies. This is a Framework that can lead to decisions which have a profound impact on people's experience of the employment services system and critically, their social security payment.

It is a serious and pressing concern to me that we take steps to ensure the integrity of the Framework.

The Government has commissioned an independent assurance review examining the IT system operating the Framework against operational policy, business rules and IT to ensure that the system is operating as intended.

To date, the department has provided 120 documents and access to the IT code to the Assurer. This is to support a robust and thorough examination of the operations of the system. The review is ongoing at this time.

I have had a briefing with the independent assurance review team, and I anticipate the review will identify matters which the Government should act on to ensure the integrity and accountability of this system.

I have also instructed my department to undertake a legal review to examine whether decisions in this area are being properly made and whether decision making processes are aligned with the relevant legislation. The review commenced in November 2024 and is being undertaken by internal and external lawyers and is being assisted by advice from the Australian Government Solicitor.

Decisions which have the most impact on peoples' rights or which affect the most people are currently being prioritised for the legal review.

At all times, my department's highest priority is ensuring that participants' payments are not affected except in accordance with the legislation.

I want to reassure the Committee that, if following the completion of these processes I remain concerned about the application of the Framework I will take the necessary actions to ensure my department's compliance with legislation.

If I have reasonable concerns that the Framework is not operating in accordance with the law, I have a duty to change the relevant processes and systems so that I am satisfied of the lawfulness of decisions being made under it. If there are constraints on me limiting my capacity to make such changes, I can pause impacted decisions pending remediation occurring. This remediation could be by process or system changes, or legislative amendment.

Opening Statement  
Secretary, Department of Employment and Workplace Relations  
2024-25 Additional Estimates  
26 February 2025

The assurance and review processes which are underway will enable me to make relevant decisions.

Opening Statement  
Secretary, Department of Employment and Workplace Relations  
2024-25 Additional Estimates  
26 February 2025

**IT Defect Summary**

Issue	Detail	Immediate steps to mitigate	Numbers impacted
<b>Penalty Zone IT defects</b>			
<b>Issue 1</b>	<p>Two system defects were 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.</p> <p>These system fault has existed in the system since the TCF was implemented 1 July 2018.</p> <p>Impact identified through program assurance activities in July 2023. Issue incorrectly characterised in 2020 as mutual obligations were paused due to COVID.</p> <p>A fix was released 10 August 2023.</p>	<p>All current affected participants (at date of identification) were immediately moved back to the green zone.</p> <p>An additional safeguard of a 91 day hard exit was implemented. Previously it was 91 days plus additional days for further penalties, investigations, exemptions etc.</p>	<b>1165</b>
<b>Issue 2</b>	<p>Participant not exited from penalty zone after a contributing demerit was removed.</p> <p>This issue unintentionally created in the IT fix to the first issues</p> <p>Identified through program assurance activities in February 2024.</p> <p>A fix was released in April 2024.</p>	<p>All current affected participants (at date of identification) were immediately moved back to the green zone.</p>	<b>73</b>
<b>Issue 3</b>	<p>A participant incorrectly enters the penalty zone after the 5<sup>th</sup> demerit is removal whilst there is a pending Capability Assessment.</p> <p>This system fault has existed since the TCF was implemented 1 July 2018.</p> <p>Identified through Compliance Team/IT analysis of IT business rules and system functionality in May 2024.</p> <p>A fix was released on 26 June 2024</p>		<b>88</b>

Opening Statement  
Secretary, Department of Employment and Workplace Relations  
2024-25 Additional Estimates  
26 February 2025