

Antipoverty Centre response to Digital Protections Framework and 40Y guidelines

The Antipoverty Centre did not support the Digital Protections Framework when it was first proposed in 2021, and our view on the potential effectiveness of such a mechanism in a compulsory system has not changed. The new version of this framework is nothing more than window dressing, as was its progenitor. There is no version of a “protections framework” that can be compatible with people’s rights in a system that by its design denies the right to social security to those who are not deemed sufficiently obedient by government or those it empowers to make decisions on its behalf.

Having read the materials made available through the DEWR Consultation Hub it seems that the so-called Digital Protections Framework is only a list of basic principles that the secretary will merely “promote”, but they are not bound to enforce. In its current form, the framework describes policy approaches that DEWR has assured us and other advocates it already has in place, and has claimed to have in place for many years. Despite this, the intensive use of unfair requirements and penalties has been unabated. It is hard to see how putting the same ideas into a legislative instrument will change this.

The determination and instrument open for consultation will have no material benefit for people forced into employment services who have compulsory activity requirements. We have formed the view that the development of this determination is only being undertaken because it is legislatively required and DEWR has been subject to scrutiny from the Commonwealth Ombudsman, and that what has been put out for consultation is simply the bare minimum the department could be bothered scraping together.

There are several specific issues we have provided comment on below. We note that we have not had access to background materials DEWR committed to provide at the meeting of the Targeted Compliance Framework Stakeholder Reference Group of 15 September 2026 to assist in preparing our feedback. For example, it is not possible to comment on the annual reporting on the use of technological processes in decisions as we have not been provided with information about what this reporting might entail above and beyond current publicly released reports.

Natural justice

There are well-documented issues in employment services, particularly under the Targeted Compliance Framework, arising from the delegation of penalty decisions to outsourced welfare compliance organisations. Due to the coercive nature of participation in employment services, people forced to use them may have an antagonistic relationship with a decision maker that can obstruct procedural fairness. Even where a person may have a comparatively positive relationship with a decision maker, the effect of significant power imbalances can prevent a person from knowing or asserting their rights. This is compounded by the lack of financial, time and other resources available to people trying to survive in poverty to pursue justice when faced with unfair treatment. It is simply easier to comply with unlawful requirements.

Given that suspension notices are issued at an extremely high rate in Workforce Australia Services, there is a correlation between the number of demerits issued and the role of human decision makers. Currently directives are sometimes made by DEWR to outsourced employment services when issues arise, however it has not led to a reduction or ending of practices that breach existing rules and protections.

The vast majority of decisions made by outsourced employment services are not reviewed in a fair or sound way, nor are the thoughts or actions that lead to a decision recorded clearly or with proper evidence by the decision maker in DEWR's IT systems. Without the introduction of direct human oversight of all provider-issued payment suspension notices by DEWR or Services Australia, little meaningful progress will be made to improve welfare recipients' access to natural justice in relation to these penalties.

Reasonable opportunity

Technically this is a principle already set in administrative processes, however associating the policy decision to increase the reengagement period from 2 to 5 business days before a person's payment suspension comes into full effect does not mean they have been afforded a reasonable opportunity. There is no meaningful difference in the impact on a person's life or the steps they must take to reinstate their payment whether a payment suspension comes into effect 0, 2 or 5 days after a caseworker marks someone as having failed to meet a requirement. The problem is that the process of imposing a penalty is frictionless for the worker and immediately places a substantial burden on the individual being penalised, regardless of whether the penalty was fair or lawful.

We know there are many reasons that people are unable to meet reengagement requirements even when they continue to need social security, and may be having unfair or unlawful requirements placed on them. We also know that when a person does reengage within 5 days there is still no fair, independent and accessible process for a wrongly applied demerit to be challenged and removed.

In addition, individual caseworkers do not have the ability to fairly implement decisions on behalf of the Secretary if they do not fully understand the system. We know from conversations we have directly with workers that many are unaware of the rules, sometimes due to a lack of knowledge and sometimes because management actively misrepresents the rules or creates internal policy that contradicts them.

The principle of procedural fairness may apply once a person is referred for a Capability Assessment or in some cases at the stage when someone is facing a payment cancellation that is overseen by Services Australia. However, the individual demerits that have led to the point where someone is required to undergo a Capability Assessment, or on the verge of having their payment cancelled, are not adequately scrutinised as a part of this process.

Ongoing contact centre issues

A core issue that persists is people are unable to contact the National Customer Service Line/ Digital Services Contact Centre and are experiencing substantially long wait times to speak with someone. This has been acknowledged in parliament and in the 26/27 FY budget.

Despite more funding and apparently attempts to address contact centre issues, people are still reporting exceptionally long wait times and that they're unable to speak with a representative who can help them. This creates barriers for people in online services from reengaging and for people in all programs being able to challenge any potentially unfair decisions.

Promote

We note that most of the determination relies heavily on "promotion" by the Secretary. This is currently the case and despite this, outsourced employment services seemingly do as they please with very few consequences.

A core issue with the operation of employment services is that there is a massive disconnect between the rules made at a departmental level and the implementation of the rules at the street level, and there is little to no regulation of contracted organisations.

We believe that the heavy usage of “promote”, and the fact that it is explicitly stated to have its dictionary meaning, further cements the distant and largely unregulated nature of the relationship between the Secretary and outsourced employment services.

Given that the Digital Protections Framework is intended to highlight human, privacy and administrative rights for people with compulsory activities, the role of the Secretary should be to enforce the rules made by his department and apply heavy penalties to organisations who breach them, not just “promote” certain practices.

Accessibility of technological processes

This has been mentioned in the explanatory statement and it is unclear what exactly is meant by ‘accessibility’.

With the digitisation of employment services and further push for more automation and digital communication, people will have no choice but to have compulsory requirements that cannot be fully met in person. In recent years DEWR has shut down an email inbox that people were able to use to submit their job search evidence, which further limited ways to demonstrate compliance.

Prohibitively low social security payments limit access to necessary technology, such as smart phones that support recent operating systems and the ability to reliably pay for a connection to the internet. This not only inhibits day-to-day life, but also makes it harder to comply with compulsory obligations.

It is unclear how the secretary can “promote” accessibility when there are external barriers such as low payments, a lack of access to technology and other barriers.

The answer cannot be forcing people into Workforce Australia Services as some people may not need this and are better able to seek suitable employment independently.

Disability

Section 8 has heavily featured the notion of giving disabled people the choice within employment services in how they receive support, however there is very little in the way of options made available for people in Inclusive Employment Australia, or the hundreds of thousands of disabled people in Workforce Australia.

Currently people are unable to secure phone appointments they are supposed to be entitled to, and are forced to pay for taxis to attend appointments from their meagre payments. Nor are people able to secure online appointments, something very common in workplaces for training, interviews and even day-to-day operations.

Again, we find it very hard to see how the wording of this determination is actually bolstering the rights for disabled people or anyone in employment services.

Conclusion

The Digital Protections Framework and accompanying 40Y guidelines do not appear to provide any new or enforceable protections for anyone with compulsory activity requirements. What is being offered is merely a re-statement of current approaches and processes for establishing, overseeing and ending a job plan for people in employment services.

The growth and reliance of AI in the privatised employment services sector is a key issue that is largely ignored and could have been addressed through this process, however the department seems to see the Secretary's role as promoting its weak rules rather than improving the lives of unemployed people.

There was little detail to explain how the Digital Protections Framework will operate in practice, and because there has never been a clear explanation given as to why it should exist from any party, it appears the Department of Employment and Workplace Relations has just created a determination outlining standard administrative rules.

Given the substantial issues facing people in employment services, namely being forced to live on low social security payments with very few job opportunities for long-term unemployed people, there is much more substantive work that must be done promote human rights. It is clear from the materials published for consultation that there is no intention of advancing people's rights, which is the predictable outcome of a system and department whose role is to limit those rights.