

12 August 2022

Andrew Wright  
Director, Mutual Obligation and Compliance Policy  
Department of Employment and Workplace Relations  
Via email: [Andrew.Wright@dese.gov.au](mailto:Andrew.Wright@dese.gov.au)

Dear Mr Wright

**Draft Social Security (Digital Protections Framework for Employment Services Programs) Determination 2022**

Anglicare Australia welcomes the opportunity to provide input into the Draft Social Security (Digital Protections Framework for Employment Services Programs) Determination 2022 (the Framework). The Draft Framework is a welcome additional safeguard for income support recipients. It is disappointing that the consultation for this important reform has been by invitation-only. Once the Framework is established, we believe that a regular, and open, review of its operation will be essential to ensure it is functioning as intended and remains fit-for-purpose.

Technological processes operate in every part of our social security system. Government departments and agencies as well as external organisations such as Workforce Australia and Disability Employment Service providers use these systems to collect and store information about income support recipients. In recent years, income support recipients have begun to self-manage their payment applications, updating of personal details, and providing evidence of participation in mutual obligation activities. They do this via websites and apps.

Automated decision making is used for a variety of purposes, from managing the initial Job Seeker Classification Index (JSCI) to the Targeted Compliance Framework. The recent introduction of Workforce Australia, which includes an online only cohort of participants, will further expand the use of automated decision making.

These technological processes have been developed without the input of the people who they are designed to help, namely job seekers and other people that require income support payments because they are unable to participate in paid work. Their operation, too, remains opaque. The algorithm for the JSCI, for example, has never been made public, despite the tool having been in operation for two decades.

Navigating online systems can be a challenge for all of us. For income support recipients, though, the stakes are high. Having difficulty with an online form can be the difference between accessing a payment or not, failing to report something, or running afoul of a compliance system. In 2021 Anglicare Australia surveyed over 600 income support recipients and conducted detailed interviews with a further 27 people. A particular concern reported by the study participants was difficulties using online services, and their fear of the consequences of making a mistake.<sup>i</sup> The research also showed that systems were often difficult to use and could be prone to error without human oversight. As a result, Anglicare Australia member agencies spend large amounts of time and resources supporting people to engage with these systems.

Research conducted by Anglicare Australia in 2018 found that staff from three organisations, Anglicare Tasmania, Anglicare WA, and Anglicare Southern Queensland, devoted 6.6 full time equivalent staff positions to helping people with Centrelink issues, and provided over \$400,000 of support each year to people who had difficulties with Centrelink, for example helping buy food or pay rent if their payment had been suspended.<sup>ii</sup>

A Digital Protections Framework for income support recipients has the potential to ensure that their human rights are protected and upheld, and that technological processes are accessible. It will only achieve this aim, however, if the Framework itself establishes enduring processes to ensure such protections are provided, and that these processes are reported on and reviewed regularly.

Our submission makes detailed comments and recommendations on Schedule 1 of the Draft Framework. These are presented in the order in which they appear in the Schedule. We then offer more general comments and recommendations.

## **(1) General principles**

### *(1)(c)*

Anglicare Australia welcomes the inclusion of (1)(c), which states that technological processes must include safeguards and mechanisms for review, however we believe it lacks specificity and should be strengthened. The adequacy and applicability of the Framework itself, as well as the functionality and fit-for-purpose of technological processes should be regularly reviewed. (1)(c) should be added to, or a new clause inserted, that provides more detail about monitoring and review of this Framework. It should state the following:

1. How often the Framework should be reviewed. We suggest reviews are conducted once every two years, and completed within six months.
2. That reviews of the Framework will be an open process, with public submissions.
3. That the reviews will be published within a specified timeframe following presentation to the Minister.
4. That the reviews will consider
  - a. Accuracy and consistency of decision making by or facilitated by technological processes; and
  - b. Participant confidence and experiences of technological processes.

## **(2) Natural justice**

The drafting of this section relates to individuals, however it may be that whole groups of people are denied procedural fairness because of the way that a technological process is configured. As well as being able to contest an individual decision, people and organisations, including welfare rights community legal centres, should be able to contest a particular decision-making path, algorithm, or piece of coding that is used by an online employment system. This section should be amended to state that participants or their advocates can seek a review of a particular decision-making process, not just an individual decision. It should also be amended to state that anybody who raises an issue or a complaint is notified of the action taken and the outcome.

*(2)(a)*

Section (2)(a) should be amended to note that, as well as providing information about the types of circumstances in which a decision is made or facilitated by the use of a technological process, participants should be provided with information about *how* a decision is made, for example whether it is automated or whether it is ultimately made by a delegate based on information obtained through a technological process. Decisions should be explained using accessible language that explains what the decision is and how it was reached. This will help participants themselves, as well as other parties, such as advocates or tribunal members, in the event that a decision is contested.

*(2)(c)*

A new clause should be inserted between the existing (2)(c) and (2)(d) that specifies that real time information about automated decisions should be provided to participants that use online employment systems (OES), such as Workforce Australia websites and apps, the Targeted Compliance Framework app and so on. This should inform users when an automated decision will be made, and what the consequences of this decision will be. The Australian Tax Office includes such real time contextual information to assist people who are lodging their tax returns online, and this would provide a useful template for technological processes administered by the Department.

*(2)(e)*

Clause (2)(e) should be amended to note that, as well as advising what avenues are available to request a review of a decision, participants should be provided with contact details of organisations that can assist them with a review, for example the relevant welfare rights community legal centre.

**(3) Transparency and freedom from bias**

This section should be amended, or a new clause inserted, that specifies that the decision-making paths of automated decision-making systems and other technological processes that inform decisions made by delegates be made publicly available. At the very least, participants should be allowed to request an audit trail of decision-making paths that relate to them.

*(3)(c)*

Subsection (3)(c) should be amended to note that technological processes should be tested by income support recipients themselves.

Subsection (3)(c) should be amended, or a new subsection inserted, that acknowledges that decisions made through a technological process may not always be able to take into account whether or not a participant fully understands the consequences of the information they are providing or what they are agreeing to. For example, it may be that a standard 100 point allocation is not appropriate for a person because of where they live or because of a disability, but this may not be appropriately reflected in a machine-made decision. People should be able to, and be given assistance to, appeal any decision made through a technological process with a delegate.

**(4) Privacy**

The Regulation Impact Statement published by the then Department of Education, Skills, and Employment for the New Employment Services Model did not mention privacy at all. Anglicare Australia welcomes the inclusion of a privacy section in this Framework.

This section should be amended to specify that participants must not be forced to sign a privacy waiver in relation to their use of technological processes.

A new subsection should be inserted which specifies that participants must be allowed to request an audit trail of decision-making paths that relate to them, and be given an opportunity to download and share this information, for example with a friend, advocate, or solicitor.

The Framework should require the Department to publish all Privacy Impact Assessments that are conducted as part of the Department's obligations under the Privacy Act 1988.

### **(5) Accessibility of technological processes**

A new clause should be inserted into this section that specifies that there should be user testing of online employment systems to ensure they are simple and intuitive to use. Such testing should be carried out when systems are being developed and whenever significant changes are made, as well as for ongoing refinement. Testing must include the organisations that support people to engage with employment services.

#### *(5)(b) and (c)*

Anglicare Australia welcomes (5)(b) and (c), which specify that participants must have the option of managing their employment pathway with a delegate, however (5)(c) should be amended to include the words "appropriate and accessible" with regard to other options.

#### *(5)(f)*

(5)(f)(i) should be amended to make it clear that participants must be able to access technological processes from any internet connected device, rather than just from their own phone or tablet. It is also important that they be accessible from old devices without requiring the most recent operating systems.

### **Final comments**

While this Framework is a useful step, it is important to note that the new system has been created in a way that will continue to allow the Secretary and providers to issue rigid penalties, such as payment suspensions and cancellations, without review. It does not provide any new recourse, punishment, or penalty for providers who continually abuse this power or issue incorrect penalties carelessly. This is a major concern to Anglicare Australia. Of 744,884 participants in the system in 2020-21, 581,866 had their payments suspended by their provider. More than one in five people who had their payments suspended were found not to be at fault. This is likely to be a conservative number, as there is limited public information for jobseekers on how to challenge a breach.

There is widespread evidence of system errors that penalise people who have not done anything wrong. Many are unfairly enduring a loss of income as a result of flawed systems by their providers. Some have reported being breached for missing appointments that had not even happened yet. Others were breached after providers refused to reschedule appointments that clashed with training, job interviews, or even casual work. The system routinely punishes people without due process, yet it has endless tolerance for mistake-prone providers. Those who bear the brunt of the system's errors cannot afford to be breached, with the JobSeeker payment already well below the poverty line.

Put simply, breaching someone does not help them gain a job. Yet over the last two decades successive Governments have subjected people to more and more rigid and arbitrary punishments. At the same time, increasingly large amounts of money have been paid to employment service providers. This is a failing strategy, with the rate of long-term unemployment continuing to grow.

Anglicare Australia notes that the updated structure of payments all but invites abuse of the system. If there are no consequences for repeatedly and carelessly issuing incorrect breaches, this Framework cannot offer meaningful safeguard or meaningfully deliver on its principles.

We would welcome the opportunity to expand on the comments raised in this submission. Please do not hesitate to be in touch if you would like to discuss the issues raised in greater detail.

Yours sincerely



Kasy Chambers  
Executive Director

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<sup>i</sup> Anglicare Australia (2021) [Asking Those Who Know](#).

<sup>ii</sup> Anglicare Australia (2018) [Paying the Price of Welfare Reform](#).