



Implementation of job capacity assessments for the purposes of Welfare to Work initiatives

EXAMINATION OF ADMINISTRATION OF CURRENT WORK
CAPACITY ASSESSMENT MECHANISMS

June 2008

Report by the Commonwealth Ombudsman,
Prof. John McMillan, under the *Ombudsman Act 1976*

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PART 1—INTRODUCTION

1.1 The 2005–06 Federal Budget incorporated changes to Australia’s welfare system, to make it more sustainable and to encourage increased workforce participation for those with the capacity to work. These changes became known as the ‘Welfare to Work’ initiatives. They included, among other things, a new work capacity assessment framework referred to as job capacity assessment (JCA). This framework was implemented from 1 July 2006.

1.2 Since that time the Ombudsman’s office has received 140 complaints. Ten of these complaints involving aspects of the JCA process were referred to the Department of Human Services (DHS) because they related directly to the administration of JCAs. Although the issues raised in these complaints varied, the Ombudsman’s office identified some common themes:

- the assessment and interview process
- the decision making process, including
 - o the qualifications of JCA assessors
 - o consistency of outcomes
 - o the breadth of discretion exercised by JCA assessors
 - o the consideration of medical evidence
- administrative issues and the level of accountability demonstrated by assessment providers.

1.3 This report highlights problems that have been identified through case studies of complaints investigated by the Ombudsman’s office. The report discusses current JCA practice and procedures, and their impact on customers.

Background

History

1.4 Centrelink has long had processes for assessing the medical and other conditions of its customers. Prior to 1 July 2006, people with a disability, illness, injury or other barrier to employment, who claimed or received social security income support payments from Centrelink, were required to undergo a range of assessments.

1.5 At that time, under the ‘Better Assessment and Early Intervention’ measure, Centrelink used a streaming process to ensure that a professional who had relevant qualifications and experience assessed customers with a specific barrier to employment.

1.6 There were four specific types of assessments that Centrelink could stream people to:

- medical assessments—conducted by a medical practitioner or by a nurse with oversight by a medical practitioner¹
- psychological assessments—conducted by a Centrelink psychologist

¹ Where nurses were involved, they completed the examination and a medical practitioner provided an impairment rating and work capacity assessment.

- work capacity assessments—typically conducted by an occupational therapist, physical therapist or similar practitioner
- Centrelink Disability Officer assessments.

The framework

1.7 JCAs were created to replace the various assessments that were conducted for Centrelink purposes prior to 1 July 2006. The revised framework stemmed from the expectation that a single assessment pathway would streamline the assessment process.²

1.8 It was envisaged that JCAs would provide a holistic assessment of a person's circumstances and abilities, which would then be used to determine their current and/or future work capacity.³ These assessments would be used to inform decisions made by Centrelink and Providers of Australian Government Employment Services (PAGES) relating to:

- qualification for social security income support payments
- activity test requirements
- activity test exemptions
- eligibility for employment assistance
- employment support requirements
- the level of assistance required from PAGES for a person.

1.9 People required to undergo a JCA would include those who:

- lodge a new claim for disability support pension (DSP) with Centrelink and do not qualify under 'manifest' provisions⁴
- have their ongoing qualification for DSP reviewed periodically by Centrelink
- seek an exemption from the activity test due to temporary incapacity
- directly register with a PAGES and disclose possible barriers to employment
- advise their PAGES or Centrelink they have a medical condition or disability that will impact on their ability to work and/or employment assistance requirements
- complete a program of assistance, but require their work capacity and/or appropriate further intervention determined
- approach Centrelink to claim activity tested payments and have barriers to employment flagged by the Job Seeker Classification Instrument (JSCI) that need to be assessed to determine the most appropriate service.

1.10 Each assessment is conducted by a JCA assessor in the relevant local Employment Servicing Area. Although JCA providers were required to have a multi-disciplinary team, assessments were not allocated according to the customer's condition or the assessor's field of expertise. As a result, the DHS undertook to

² See: *Job Capacity Assessment Service Provider Guidelines, version 2.1—May 2007*.

³ Ibid.

⁴ A manifest grant can occur when a person is clearly medically qualified for DSP, based on the available medical evidence, and no additional medical assessment is required for Centrelink to decide their medical qualification for DSP.

provide all JCA assessors with relevant training in assessment procedures that directly relate to social security law.

Tender process for providers

1.11 DHS was responsible for the tendering process to select the JCA providers. It was expected that government providers would conduct the majority of JCAs with the rest being conducted by private sector organisations. The lodgement of tenders concluded on 15 December 2005.

1.12 In May 2006, DHS finalised the JCA tender process, establishing 18 providers, including Centrelink, CRS Australia, Health Services Australia (HSA) and 15 non-government organisations. Across these, professional qualifications held by the JCA assessors include:

- registered and unregistered psychologists
- physiotherapists
- occupational therapists
- rehabilitation consultants
- speech pathologists
- registered nurses
- medical practitioners
- audiologists
- exercise physiologists
- social workers.

1.13 The JCA assessors were required to have a range of skills and experience in conducting interview-based assessments, and assessing the impact of medical conditions and disabilities on a person's ability to work.

Outcomes

1.14 Since 1 July 2006 the majority of JCAs (approximately 80%) have been conducted by Centrelink, CRS Australia and HSA, with non-government providers conducting the remaining 20%. This ratio of distribution is expected to continue until the current DHS/JCA provider contracts expire at the end of June 2008.

1.15 DHS has advised that between 1 July 2006 and 13 July 2007 it made 468,403 referrals to JCAs. The reasons for these referrals varied and are outlined in the table below.

Referral reason	Percentage
JSCI identified barriers to work	33%
Newstart and youth allowance incapacity exemption request	22%
DSP claim or review	26%
Change of circumstances	13%
PAGES direct register referral	2%
Other (voluntary referrals, sickness allowance)	4%

1.16 Of these referrals, some 378,353 JCAs have been conducted. In percentage terms, 35.2% were completed by registered psychologists, 11.5% by social workers, 9.7% by occupational therapists, 7.2% by rehabilitation consultants, 4.5% by registered nurses, 2.3% by physiotherapists, 2.2% by exercise physiologists, 1.1% by medical practitioners, 0.2% by speech pathologists, and 26.1% by others.⁵

1.17 Of the referrals⁶ made after the JCAs were completed:

- 37.8% were to the Job Network
- 20.9% to Vocational Rehabilitation Services
- 17.3% to the Disability Employment Network
- 20.8% to Personal Support Programs (PSP)
- 2.1% to Job Placement, Employment and Training
- 1.1% to other programs (business services, complementary programs etc).

Policy and administration

1.18 Although the qualification criteria for payment types such as DSP and Newstart allowance (NSA) are contained within the *Social Security Act 1991*, the JCA is not a legislated program.

1.19 Policy guidelines for the administration of JCAs are provided in the *Job Capacity Assessment Service Provider Guidelines*. The guidelines were prepared by DHS, drawing on the income support and employment services policy of the Department of Education, Employment and Workplace Relations (DEEWR) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

1.20 The JCA program is administered by DHS. However, DEEWR determines all policy settings that relate to its income support and employment programs and FaHCSIA determines policy settings for its programs.

1.21 The technology on which JCA referrals and reports are based relies heavily on DEEWR's EA3000 Smartclient system (the DEEWR system). Centrelink's system also directly accesses the DEEWR system for information about JCA assessments and other Welfare to Work related information.

⁵ *Others* consists mostly of unregistered and intern psychologists, but also includes unregistered nurses, osteopaths, radiation therapists etc.

⁶ These referrals only reflect referrals made to PAGES and do not specify payment outcomes.

PART 2—THE JCA PROCESS

2.1 Although there are a number of different circumstances in which a JCA may be required, the majority of complaints to the Ombudsman's office on the topic involved claims or reviews of DSP payments. Consequently this report focuses on the role of JCAs as it relates to DSP claims and reviews.

2.2 Customers claiming DSP are required to submit a 'Medical Report—Disability Support Pension' (DSP medical report) to Centrelink.⁷ The DSP medical report is generally completed by the customer's general practitioner (GP) or treating specialist. When the DSP medical report is submitted a JCA appointment is booked for the customer, which usually involves a face-to-face interview. Centrelink forwards all the supplied medical information to the JCA provider and advises the JCA assessor if historical medical information is held on the customer's record. The JCA assessor is responsible for collecting that information and preparing for the interview.⁸

2.3 At the appointment the JCA assessor asks the customer a series of questions relating to the impact of their medical condition(s) on their ability to work, giving them an opportunity to provide self-reported evidence. The JCA assessor then decides whether each of the customer's medical conditions fit the social security definition of a permanent or temporary disability.⁹ The JCA assessor also quantifies the customer's current and future work capacity, measured in the number of hours they consider the customer is able to work per week.

2.4 If the JCA assessor indicates that the customer's medical condition is permanent, then a 'work related impairment assessment' is conducted using the Tables for the Assessment of Work Related Impairment for Disability Support Pension (the impairment tables), which yield a numerical points rating. If a JCA assessor rates a customer's work capacity as being less than 15 hours per week, and their impairment level as 20 points or more, the assessor must then consider if the person has a 'continuing inability to work' (CITW).¹⁰ Centrelink takes the JCA report and other qualification criteria into account in deciding whether or not to grant DSP. The DSP JCA process is set out in a flow chart at Attachment A.

2.5 Where the JCA assessor indicates the customer's condition is temporary, their work capacity is greater than 15 hours per week, or their impairment level is less than 20 points, subject to Centrelink's acceptance of the JCA report, the customer will not qualify for DSP and would generally be granted an activity-tested payment such as NSA.

⁷ Previously called a *Treating Doctor's Report*.

⁸ The JCA assessor might also collect additional medical evidence at interview, such as other medical reports provided by the customer. The assessor might also contact the treating doctor to discuss the report and suspend the assessment if they need to refer the customer for a specialist report/assessment.

⁹ The term permanent is defined in Schedule 1B of the *Social Security Act 1991*. For a medical condition to be permanent for DSP purposes, the condition must be a fully documented, diagnosed condition, that has been fully treated and stabilised, and is expected to continue for more than two years.

¹⁰ For the purposes of DSP, a CITW is defined in s 94(2) of the *Social Security Act 1991* and means an inability to work independently of a program of support or be trained for such work within the next two years because of a disability. This assessment is made on the basis of the impact of the person's disability without regard to the training or work opportunities available in the person's local area.

2.6 JCAs will also be used where a customer claims activity-tested payments from Centrelink and certain barriers to employment are identified. These JCAs do not provide for an assessment of impairment, and Centrelink cannot grant DSP based on one of these assessments.

2.7 Most JCAs result in a recommended referral to a PAGES. These may be mandatory referrals depending on whether the person is granted an activity-tested payment.

PART 3—ISSUES

3.1 Based on investigations conducted by the Ombudsman's office since 1 July 2006, a number of common complaint themes involving JCAs have been identified. These have been categorised as follows:

- interviews
 - o interview type
 - o interview conduct
- decision making
 - o qualifications
 - o consistency
 - o discretion
 - o consultation with treating doctors
 - o DSP medical reports completed by customers' treating doctors
 - o independent specialists opinions
- administrative issues
 - o record keeping
 - o system problems.

Interviews

3.2 The JCA guidelines issued by DHS that draw on DEEWR and now FaHCSIA policies describe, in a general way, how a JCA interview should proceed. They are not, however, prescriptive procedural instructions and do not dictate the precise format or structure of a particular interview.

Interview type

3.3 JCA guidelines emphasise that a face-to-face interview is the preferred type of assessment. This enables discussion of all information and documentation with the customer as well as active engagement with them. However, the guidelines also recognise that there are instances where a face-to face interview will not be possible or appropriate.

3.4 JCA guidelines allow for a telephone or videoconference assessment to be used in circumstances where a customer is geographically disadvantaged or their medical condition prevents them from attending an interview in person. The guidelines make it clear that telephone or videoconference assessments should not be used merely because a face-to-face interview is inconvenient. That said, the final decision whether to undertake a telephone or videoconference assessment is made by JCA assessors on a case-by-case basis.

3.5 Similarly, the JCA guidelines allow for a paper or file assessment in limited circumstances. Examples include where the customer is temporarily overseas, has a geographical disadvantage or medical condition that makes it difficult to conduct a face-to-face or telephone assessment, or where the customer has a history of aggressive behaviour. Live JCA interviews can be terminated if the customer expresses a wish to do so. Centrelink decides when a file assessment may be used, not JCA assessors. The *Telephone versus face-to-face* case study illustrates where

the use of a telephone interview as opposed to face-to-face interview for a JCA can lead to poor outcomes.

CASE STUDY: Telephone versus face-to-face

Ms A was scheduled for a JCA relating to her NSA payment on 27 February 2007. Ms A was unable to attend a face-to-face JCA interview because she was hospitalised and receiving pain medication related to her medical condition. The JCA assessor decided to conduct the assessment by telephone. As Ms A had been in hospital for some time, she did not have a chance to submit any medical evidence prior to the assessment.

When she was telephoned for the JCA interview, the purpose of the call was explained to Ms A and she advised the JCA assessor that she was in no state to participate at that time. However, the assessment proceeded. In complaining to the Ombudsman, Ms A stated she felt unprepared for the JCA and was not able to accurately demonstrate the severity of her conditions over the phone. She said that as a consequence, all her medical conditions were rated as temporary and Centrelink did not exempt her from the activity test.

Ms A then claimed DSP and Centrelink subsequently referred her back to a JCA assessor for re-assessment. This time, she attended a face-to-face JCA and provided all required medical evidence to substantiate her claim and was granted DSP. Ms A complained to this office because she felt the original assessment should not have been conducted given her circumstances at the time.

DHS conceded the JCA should not have continued by phone after Ms A had raised her concerns. DHS made a formal apology to Ms A.

3.6 The conduct of the JCA assessor in this case was consistent with the guidelines, which indicate that a phone assessment is usually appropriate where the customer is hospitalised. However, the case also illustrated how a phone assessment can result in a poorer quality outcome than a face-to-face interview. Ideally the JCA assessor should have terminated the JCA as requested and postponed it at least until Ms A's medical evidence had been submitted. Had the JCA assessor postponed the interview so that it could take place under different circumstances and after Ms A had had the opportunity to submit further medical evidence, the outcome may have been different. The process would have been more objective and fairer to Ms A, and probably would have prevented the need for, and costs associated with, an appeal.

Interview conduct

3.7 JCA assessors are not provided with any specific instructions relating to the techniques that should be applied to build rapport with customers during assessment interviews.

3.8 A JCA code of practice has been developed, which generally explains the standards of behaviour and service that must be displayed by JCA assessors. However, the code of practice is not sufficiently specific to provide guidance on the type of questioning techniques that should be used in assessing certain customers.

CASE STUDY: Method of questioning

Ms B and her husband attended a JCA interview as part of her DSP claim assessment on 14 July 2006. She was suffering from an aggressive form of cancer.

The cancer had been diagnosed recently, which probably contributed to Ms B's emotionally fragile state at the time of interview. Ms B complained to the Ombudsman about the demeanour of the JCA assessor. It was alleged that questions had been asked insensitively and the JCA assessor had relayed stories about her own family members who had suffered and died from a similar illness. It was also alleged that when Ms B became upset about this during the interview, the JCA assessor referred to her as possibly the most difficult customer she had ever assessed.

When questioned about the incident, the JCA assessor admitted telling personal stories about her relatives' experiences with cancer, but did not consider the discussion was insensitive and/or confrontational.

Notwithstanding the difficulty with corroborating the allegations made, DHS agreed that the JCA assessor's method of questioning in this instance could have been inappropriate and made a formal apology to Ms B.

3.9 JCA assessors are expected to have skills and experience in conducting interview assessments of customers. This example illustrates an instance where the conduct of a JCA assessor, either intentionally or unintentionally, impacted negatively on a customer. The Ombudsman's office acknowledges that JCA providers cannot have complete control of the actions of individual JCA assessors. More emphasis could nevertheless be placed on appropriate rapport-building techniques so that all JCA assessors are able to apply these techniques consistently and minimise the possibility of causing distress to their customers.

RECOMMENDATION 1

That DHS revise the JCA guidelines to ensure emphasis is given to the need to conduct interviews in a manner that is sensitive to the circumstances of the customer and builds rapport in a manner that fully engages their participation.

Decision making

Qualifications

3.10 The qualifications of JCA assessors engaged in conducting JCA assessments cover a broad range of qualifications and disciplines. DHS assured this office that all JCA assessors, regardless of their qualifications and professional backgrounds, have received the same training in assessment procedures. The Ombudsman's office has nevertheless received complaints which indicate the qualifications of a JCA assessor can have a bearing on the outcome of a particular assessment. The *Relevant knowledge* case study provides one instance.

CASE STUDY: Relevant knowledge

Mr C's claim for DSP was supported by a DSP medical report, which described a chronic lumbosacral spine condition that prevented him from working. The doctor reported that Mr C had difficulty sitting, standing and walking for long periods, as well as limited ability to bend, pull and push.

Centrelink referred Mr C to a JCA assessor who assessed his condition as 'temporary' and his DSP claim was refused. The JCA was conducted by an unregistered psychologist.

Mr C complained to the Ombudsman's office that the JCA assessor was not qualified to assess his condition, as the assessor did not have relevant knowledge of his medical condition. Mr C felt this was a significant factor in Centrelink's decision to refuse DSP.

After investigating Mr C's complaint, the Ombudsman's office formed the view that the JCA assessor did not appear to have a complete understanding of Mr C's medical condition, on the basis that there were inconsistencies between the information presented in the DSP medical report and the JCA report that were not acknowledged or explained.

3.11 The Ombudsman's view is that a JCA assessor's particular qualifications or area of specialty will inform their opinions on a particular matter. For example, a registered psychologist conducting an assessment of a customer with advanced lung disease may lack detailed knowledge of the condition compared to a JCA assessor with a physiological background or qualifications, such as a medical practitioner or registered nurse. Similarly a psychologist or social worker may be better able to accurately assess a customer's psychological condition than would a physiotherapist. In general terms, it seems JCA assessors are likely to draw more accurate and meaningful conclusions about medical matters where they are assessing conditions that fall within their particular area of expertise.

3.12 The Ombudsman appreciates that it will not always be possible to precisely align a customer's medical condition with the JCA assessor's medical qualifications and expertise. However, there would appear to be some benefit in attempting to do so wherever possible. It would reduce the potential for inaccurate assessments and facilitate greater customer acceptance of assessments. In turn, this might reduce the number of disputes about assessments and/or the need for repeat assessments.

Consistency

3.13 JCA assessors do not have decision-making powers under the social security law. They make recommendations to Centrelink and PAGES and provide information that informs the decisions made by those bodies. Problems may arise where differences in the skills and qualifications of JCA assessors affect the consistency and/or objectivity of the recommendations made. The *Different conclusions* case study illustrates how a customer was affected by inconsistent assessments.

CASE STUDY: *Different conclusions*

Ms D attended two JCA appointments in relation to her DSP claim, one for the original decision and the other for a review. Ms D supplied medical evidence that indicated she suffered from bi-polar affective disorder. Ms D complained to the Ombudsman's office that the first JCA assessor had rated her psychiatric condition as permanent while the second had considered it was temporary.

The Ombudsman office's investigation confirmed that the first JCA assessor, an intern psychologist, had assessed Ms D's psychiatric condition as permanent and rated her level of impairment at 30 points. That JCA assessor concluded that Ms D was experiencing an exacerbation of her condition at the time, but did not have a continuing inability to work. A referral to a PSP was recommended and, based on the JCA, Centrelink rejected Ms D's DSP claim.

After Ms D appealed the DSP decision, a new JCA was scheduled. The new JCA assessor, a social worker, concluded, contrary to the original JCA and DSP medical report, that Ms D's psychiatric condition was temporary. Again Ms D's DSP claim was rejected—this time on the basis that her medical condition was only 'temporary'.

3.14 Although the ultimate outcome of each of these JCAs was that Ms D was found not to satisfy the DSP medical criteria, there was a lack of consistency with the two JCA assessors reaching different conclusions based on the same set of circumstances. This inconsistency may be attributable to the different qualifications and expertise of the two JCA assessors. Where there is a possibility that different JCA assessors will arrive at different conclusions about a person's work capacity, the system becomes unfair. Person A and Person B might have exactly the same condition and circumstances when claiming DSP, but will be assessed differently by different JCA assessors.

RECOMMENDATION 2

Wherever possible, DHS should consider adjusting its allocation processes to align a customer's primary medical condition with the JCA assessor's area of specialisation.

Discretion

3.15 In the Ombudsman's view, the inconsistencies that arise between assessments are likely to be the result of the level of discretion that is afforded to JCA assessors. A number of cases examined by this office have demonstrated that JCA assessors have the ability to override medical evidence in favour of their own opinions. The complaints received by the Ombudsman's office suggest that JCA assessors are too readily disregarding other medical evidence.

CASE STUDY: *Disregarding medical opinion*

Ms D, whose circumstances are set out in the *Different conclusions* case study, sought review of the decision to reject her claim for DSP. She supplied a new DSP medical report in support of her application. This DSP medical report explained that Ms D's condition was expected to continue for more than 24 months and that the impact of it would remain unchanged.

At assessment, the JCA assessor decided that Ms D was only experiencing an exacerbation of her psychiatric condition and predicted that it would improve, despite medical evidence suggesting the contrary. The JCA report did not provide an explanation for the JCA assessor disregarding the doctor's opinions in favour of their own.

As a result of this assessment, Ms D's DSP claim was rejected.

3.16 Where a JCA assessor lacks professional qualifications relating to the condition that is being assessed, the Ombudsman's view is that special reasons must exist for the JCA assessor to disregard supporting medical evidence in favour of his or her own opinion. This seems to be a common theme in the complaints received by the Ombudsman's office. JCA assessors appear to have little regard to the customer's views on their condition, and often give little weight to supporting medical evidence.

3.17 The Ombudsman is aware that training material made available to JCA providers by DHS states that where a JCA assessor overrides medical evidence in favour of their own opinions, they must justify their opinions in the assessment summary of the JCA report. In the investigations conducted by this office, this seldom happened. The consequences of this can include customers not being granted the appropriate payment and being required to undertake activities that could exacerbate their medical conditions.

3.18 Although the Ombudsman understands that the legislative power to decide a claim resides with Centrelink, in practice the JCA report has significant weight for decision makers. The JCA assessor's recommendation is generally accepted as an accurate account of the impact of a person's medical condition and their work capacity. This is problematic in cases where Centrelink officers lack the medical expertise to know whether or not a recommendation is incorrect or inaccurate. This has the potential to undermine the JCA process and any subsequent Centrelink decisions based on assessments that are perceived to be inaccurate or ill founded.

RECOMMENDATION 3

That the 'assessment summary' section of the JCA report include an appropriate level of detail to justify the JCA assessor's recommendation. Where a JCA assessor has formed a view that is contrary to the medical evidence provided, the specific aspects of the disputed medical issue should be stated and reasons for disregarding the medical report should be provided.

Consultation with treating doctors

3.19 The JCA guidelines published by DHS provide for JCA assessors to make contact with the customer's treating doctor if the assessor considers the information in the DSP medical report is unclear, or the assessor is unable to make a reasonable conclusion based on the level of information provided. Based on complaints investigated by the Ombudsman's office, JCA assessors seem reluctant or unwilling to discuss a customer's medical condition with the customer's treating doctor. This can deprive a JCA assessor of relevant information, lead to a JCA assessor having an incomplete understanding of the nature and implications of a particular condition, and facilitate the drawing of inaccurate conclusions about a person's ability to work.

3.20 Investigations conducted of such cases have noted inaccuracies in the JCA assessor's recommendation, because the assessor lacked relevant information and/or misunderstood the impact the medical condition had on the customer. The *Seeking relevant information* case study is an illustration of one such case.

CASE STUDY: Seeking relevant information

Mr E was diagnosed with an aggressive cancer and lodged a claim with Centrelink for DSP. His application was supported by a DSP medical report completed by his oncologist on 27 May 2007, reporting that he was 'uncertain' if Mr E's condition was terminal. The oncologist also reported that the condition was expected to continue in its current form for three to 24 months.

On 25 July 2007 Mr E attended a JCA appointment and indicated that four weeks before the interview the surgical procedure to remove the tumour had been unsuccessful. The JCA assessor did not contact the oncologist for an updated diagnosis, and reported that Mr E's medical condition was temporary, as he had not completed all treatment options (chemotherapy). On the basis of this recommendation, Centrelink rejected Mr E's DSP claim.

On review, a new DSP medical report was submitted, which clarified that Mr E was terminally ill, and he was granted DSP on manifest grounds.

After examining Mr E's complaint, the Ombudsman's office formed the view that consultation with the treating doctor (oncologist) by the initial JCA assessor would probably have identified that Mr E's illness was terminal. This would arguably have led to Mr E's DSP being granted sooner, and allowed him access to income support and health services he needed at that time.

3.21 Having regard to the information readily available to JCA assessors, it is possible that a lack of relevant information can stem, at least in part, from the format of the DSP medical report itself. The form is largely made up of check boxes, which limits the ability of treating doctors to make comments or provide additional information. In other cases, notes were provided that were illegible or unhelpful in determining the impact of a condition, and the JCA assessor did not contact the treating doctor to seek additional information or clarification. Other issues may arise where a JCA assessor misunderstands information provided in the DSP medical report and forms an incorrect opinion based on their understanding of a condition.

RECOMMENDATION 4

That JCA assessors be encouraged to consult with treating doctors if it appears that a lack of information may affect their understanding of a customer's documented medical condition or its impact. This includes where a JCA assessor has little knowledge of the condition, is unable to decipher a treating doctor's handwriting or where medical information raised by the customer is not recorded in the DSP medical report.

DSP medical reports

3.22 As mentioned earlier, the pro forma DSP medical report does not seem to facilitate the provision of complete and meaningful opinion from an appropriately qualified practitioner on a patient's medical condition. The format of information collected in the DSP medical report seems to be inconsistent with the level of information that is required to accurately assess the appropriate impairment rating under the impairment tables. There also appears to be insufficient instruction or guidance for treating doctors to assist with completing the form. Based on the examination of the DSP medical report by the Ombudsman's office, it was difficult at times to work out what kind of response a particular question sought.

3.23 An example is question 3(H), which asks the treating doctor to provide details of how a person's condition affects their ability to function. Two lines are provided for a response and there is no explanation of what information is required or how it should be presented. In the case of Mr C (page 10), the treating doctor made some general comments about the lumbosacral spine condition affecting his ability to stand, sit and walk for long periods. Assessment of such a condition under the impairment tables requires a more specific opinion about the level of functionality—for example, pain experienced when standing for longer than 15 minutes or sitting for more than 30 minutes may attract a rating of 20 impairment points.

3.24 The DSP medical report does not provide any guidance on the level of detail useful for the purposes of the assessment, or advise that where it is not given, the default position of the JCA assessor is that the condition does not significantly impact on the customer's ability to function. The key issue is that treating doctors do not generally know how their responses on the DSP medical report will be applied. This appears to disadvantage some customers and leads to inconsistent assessments because all of the relevant information required by JCA assessors was not collected in the DSP medical report.

RECOMMENDATION 5

That the DSP medical report format be revised to align it with the information required to assess customers under the impairment tables. This should be done in consultation with JCA assessors to obtain their views on what types of changes would improve the quality of JCAs.

Independent specialist opinions

3.25 JCA assessors are able to purchase independent specialist reports by referring the customer for assessment by a relevant specialist. This would generally occur where the JCA assessor is unable to establish the permanency or diagnosis of a condition for DSP purposes, or for a referral to a PAGES. The guidelines stipulate that specialist assessments should be used as a last resort, after attempts to examine all available evidence and contact with the treating doctor or other health professionals have been fruitless.

3.26 Initially DHS informed the Ombudsman's office that specialist assessments have been purchased in approximately 2% of all JCAs. However, in response to the draft of this report DHS advised that usage had increased to approximately 5%. As this is an important resource for supporting JCA assessors, the Ombudsman's office considers the JCA guidelines should actively encourage or support their use. That is, by referring to them as a last resort, the current guidelines appear to discourage JCA providers from purchasing specialist reports.

3.27 The process of purchasing specialist assessments also entails additional administrative costs for JCA assessors. JCA providers pay for the assessments out of their own funding pool and apply to DHS for reimbursement. In addition, the availability of specialist appointments and the time taken to receive complete reports would have an adverse impact on the timeliness standards in relation to the provision of a final JCA report to Centrelink.

3.28 It is probable that this combination of factors has contributed to an apparent under-utilisation of specialist assessments for JCAs. This has the potential to contribute to poor assessments for want of better information.

RECOMMENDATION 6

That JCA guidelines—including timeliness standards—be amended to encourage the appropriate use of referrals for specialist opinions where the available medical information requires clarification.

Administrative issues

Record keeping failures

3.29 Good record keeping is a basic principle of good public administration. Investigations of complaints to this office suggested that often the only permanent records of the interactions between customers and JCA assessors are the JCA reports submitted on the DEEWR system. Although this is the only location where interview details may be recorded, the assessment summary often did not contain sufficient information about what occurred during the interview. In other instances, the assessment summary did not appear to provide sufficient information to justify the opinions of the JCA assessor or provide a formal record of any deliberations or consultations with other JCA assessors. This can be problematic, particularly if assessments need to be revisited.

3.30 In investigating Ms B's complaint (page 9) about the behaviour of the JCA assessor, this office requested all records relating to the JCA interview, including the JCA report, file notes and any other contemporaneous notes that might have been recorded. The DHS response indicated the only record of the conversations that took place in the JCA interview was included in the assessment summary of the JCA report. In Ms B's case there was no record of the events in contention.

3.31 Based on the investigations conducted by the Ombudsman's office, the lack of adequate records of relevant interactions was consistent across JCAs. This meant that DHS, JCA providers and review authorities lacked adequate reference sources when complaints or disputes arose. The Ombudsman considers that this has the potential to give rise to perceptions that the JCA process lacks accountability and transparency.

RECOMMENDATION 7

That DHS require JCA assessors to record and retain proper file notes of all contacts made as part of the assessment process, such as interviews, and discussions with treating doctors, other specialists and Centrelink.

Amending records

3.32 A related problem arose about the non-retention of original JCA reports that have been subject to amendment, as illustrated in the *Original report* case study.

CASE STUDY: Original report

Mr F attended a JCA interview in relation to his DSP claim. The assessment report submitted to Centrelink contained inconsistent information. As a result Centrelink was unable to make a decision about which payment type Mr F should be granted. One part of the report referred to Mr F's condition being permanent whereas another part of the report categorised his condition as temporary.

Centrelink sent the report back to the JCA provider for clarification. The report was amended to reflect that Mr F's condition was temporary; it was sent back to Centrelink and his DSP claim was rejected. Mr F disagreed with the decision and made a freedom of information request to retrieve the original JCA report to strengthen his argument.

Mr F was informed that the original JCA report no longer existed as it was amended to become the final report. DHS confirmed to the Ombudsman's office that this is normal practice as a JCA report is considered a working document until it has been accepted by Centrelink.

3.33 Where records of original JCA reports are not retained or are overwritten, this could hinder the provision of documents under the *Freedom of Information Act 1982* (FOI Act). Centrelink has advised that some of its offices print hard copies of JCA reports and retain them on file. However, the Ombudsman understands that this is not a formal or standard process, and is not applied across the entire agency.

3.34 The retention of such documents is an important aspect of good administrative practice. It helps ensure JCA assessment processes are transparent and that agencies are able to meet accountability obligations. The *Status of reports* case study illustrates how poor record-keeping policies can be problematic. The current management of JCA-related records could also have adverse consequences for other accountability processes.

CASE STUDY: *Status of reports*

As part of the investigation into Mr E's complaint (see also *Seeking relevant information* case study), the Ombudsman's office requested a copy of the JCA report from DHS. DHS advised that it was not able to release a copy of the report, as its status was only submitted not finalised. This meant that the report had been submitted to Centrelink but no claim decision had yet been made.

DHS clarified there was a possibility that Centrelink might reject the report and that it may be amended by the JCA before it could be finalised. The JCA report was described as a working document and while in this status it could not be released to the Ombudsman's office. DHS advised that the same policy applied when releasing reports under FOI.

Following discussions at a senior level about the Ombudsman's authority to access documentation, the report was released to this office in its then current form.

3.35 The Ombudsman has significant doubts about whether the record-keeping procedures currently adopted by JCA providers would enable them to adequately discharge a number of statutory obligations that might arise under legislation such as the *Archives Act 1983*, the *Administrative Decisions (Judicial Review) Act 1977* and the *Ombudsman Act 1976*.

3.36 The Ombudsman considers that inadequate or insufficient record-keeping policies are likely to lead to complaints and diminish the ability of accountability mechanisms to facilitate appropriate and effective remedial action.

RECOMMENDATION 8

That copies of all JCA reports submitted to Centrelink are kept in a format that is readily retrievable.

System problems

3.37 Since the implementation of JCAs from 1 July 2006, several complaints have been received by the Ombudsman's office about delays in obtaining JCA appointments or having to reschedule interviews.

CASE STUDY: Incorrect computer code

Ms D, referred to in the *Different conclusions* case study, attended her initial JCA interview in relation to her DSP claim on 31 January 2007. At the assessment interview it was discovered that Centrelink had incorrectly coded the reason for referral as change in circumstances rather than a new DSP claim.

The JCA computer system does not allow for an impairment assessment to be conducted if the reason for referral is change of circumstances. However, an impairment assessment is required to grant a DSP.

The JCA assessor was not able to change the referral reason, and therefore opted to abandon the JCA and referred Ms D back to Centrelink to schedule a new JCA appointment with the correct referral reason.

3.38 The Ombudsman understands that JCA assessors cannot be held accountable for errors made by Centrelink. However, this does not negate the fact that a JCA assessor's inability to amend a simple error on the system creates a significant problem—particularly delays and inconvenience for customers—as well as the additional costs associated with the time wasted by the JCA assessor.

3.39 In the *Incorrect computer code* case study it was inefficient for the JCA assessor to have to abandon an assessment—when the customer had been waiting some time for an appointment—simply because the referral reason was incorrect and could not be readily rectified. The Ombudsman considers it would be prudent for the JCA assessor to be able to change the referral reason when they discover there has been a simple clerical or administrative error made with the referral.

RECOMMENDATION 9

That JCA assessors be given a process, or the authority, to alter the reason for referral for a JCA when at interview it becomes apparent that the referral reason is incorrect.

Management information

3.40 In the course of preparing this report the Ombudsman's office sought data from DHS about the qualifications and locations of JCA assessors employed by each JCA provider. The Ombudsman acknowledges that DHS went to considerable effort to acquire this data—part of which involved it manually collecting and collating the information. The Ombudsman considers that the difficulty in DHS being able to

access such vital information would make monitoring of the program difficult and inefficient.

RECOMMENDATION 10

That DHS examine the cost effectiveness of developing a management information system that facilitates the monitoring of the JCA program's performance and outcomes.

PART 4—SUMMARY

4.1 Centrelink customers are required to undergo a JCA if they claim or are in receipt of DSP and subject to a medical review. Customers will also undergo JCAs where they claim or receive activity-tested payments and have become ill or have barriers to work.

4.2 Both government and non-government providers and JCA assessors conduct JCAs and their qualifications vary. JCA assessors perform a number of functions including:

- identifying if a customer's medical condition is permanent for social security purposes
- cataloguing a customer's impairment assessment based on their permanent medical condition
- rating a customer's current and future work capacity
- identifying barriers to employment and support requirements
- making a recommended referral to a PAGES where appropriate.

4.3 In the course of its investigations the Ombudsman's office identified a number of issues relating to JCAs, which have contributed to the volume of complaints received. The main issues are summarised below:

- the appropriate use of different types of assessments—face-to-face, phone and file
- the JCA assessor's conduct during an assessment interview
- the compatibility of a JCA assessor's qualifications with the medical conditions they assess
- the consistency of decision making
- the level of discretion afforded to JCA assessors
- the lack of consultation between JCA assessors and treating doctors
- the usefulness of DSP medical reports for JCAs
- the low usage of specialist opinions
- record-keeping policies and accountability
- administrative system problems
- the lack of management information to enable proper monitoring of the program.

4.4 After considering these issues, the Ombudsman made ten recommendations for improvement and change to the existing JCA process. The Ombudsman considers that, if implemented, the recommendations will improve the JCA process and the overall quality of reports. Consequently this will improve Centrelink's capacity to make informed decisions about income support payments and make appropriate referrals to PAGES.

PART 5—RECOMMENDATIONS AND AGENCY RESPONSES

5.1 DHS, DEEWR, Centrelink and FaHCSIA were invited to comment on an initial draft of this report. All agencies were responsive, providing comments within the agreed timeframe. There was broad agreement with the recommendations and report across all agencies, subject to a consultative process involving stakeholders in further development of the program and the necessary resources to implement those policies.

5.2 DHS is currently coordinating a separate review of the JCA program and has commented that the report reinforces many of the issues raised in response to the review. A number of technical details were also provided by agencies and have been incorporated to improve the quality and accuracy of the report.

5.3 Some recommendations have been revised to take account of agency responses. Specific agency responses, where relevant, have been set out under each of the recommendations below.

RECOMMENDATION 1

That DHS revise the JCA guidelines to ensure emphasis is given to the need to conduct interviews in a manner that is sensitive to the circumstances of the customer and builds rapport in a manner that fully engages their participation.

5.4 The draft report recommended that ‘DHS trains all JCA assessors in rapport building techniques’. This was modified to take account of the following comments made by DHS.

DHS response

While the Department supports improved training for assessors, it considers that as assessors are all allied health professionals they will be familiar with rapport building techniques as part of their academic training. The Department was concerned that to require assessors to undergo additional training in rapport building because of a few isolated complaints would be both unnecessary and insensitive to their professionalism.

RECOMMENDATION 2

Wherever possible, DHS should consider adjusting its allocation processes to align a customer’s primary medical condition with the JCA assessor’s area of specialisation.

5.5 DHS and FaHCSIA agreed in principle to the recommendation and provided the following comments.

DHS response

DHS has identified some practical limitations to this recommendation including that many clients’ primary condition is not their main barrier to work and that a streaming process could significantly delay referrals to appropriate supports and services as well as income support decisions due to a lack of assessors with specific qualifications. DHS has alternatively suggested working with stakeholders to improve current arrangements so that people see the right combination of assessors and the assessor has time to obtain all the information about a person’s medical condition.

FaHCSIA response

Streaming in the manner suggested would be complex and the majority of clients experience multiple medical conditions. Where undiagnosed illness is suspected and medical evidence/diagnosis to determine the primary medical condition is not yet known, FaHCSIA would see merit in streaming these cases to an assessor with psychological qualifications.

However, we recognise that aligning primary medical condition to availability of specialist assessors contravenes the existing contract with Job Capacity Assessment providers. JCA tenders were awarded to providers able to offer a multi-disciplinary approach, with access to team members with different specialisations to service any applicants. The JCA review found the JCA model is sound and that the allied health professional qualifications of JCAs are appropriate. As indicated at recommendation four, assessors are also encouraged to consult with treating doctors and other assessors with a broad range of backgrounds. Additionally, the existing system does not enable referrers to see or select assessors' qualifications for streaming.

There may be significant cost in moving to a streaming model.

RECOMMENDATION 3

That the 'assessment summary' section of the JCA report include an appropriate level of detail to justify the JCA assessor's recommendation. Where a JCA assessor has formed a view that is contrary to the medical evidence provided, the specific aspects of the disputed medical issue should be stated and reasons for disregarding the medical report provided.

5.6 Supported by agencies.

DHS response

DHS comments that it already complies with this practice and it will be working with JCA assessors to reinforce this policy.

FaHCSIA response

FaHCSIA support the recommendation that an appropriate level of detail is required to justify recommendations and notes that the appeal process would benefit from better documentation. FaHCSIA understands that DHS has form redesign underway and believes the reshape supports this recommendation in that it will enable thorough justification throughout the form, rather than free text in the assessment summary section.

In the meantime, and in addition to form changes, the assessment summary section (which is a free text field that enables the assessors to summarise any relevant information) is suitable for including justification for any view formed that is contrary to medical evidence used.

More intensive and regular training of JCA assessors and improved quality control could also contribute to improvement in justification of recommended impairment rating, work capacity and referral to services.

RECOMMENDATION 4

That JCA assessors be encouraged to consult with treating doctors if it appears that a lack of information may affect their understanding of a customer's documented medical condition or its impact. This includes where a JCA assessor has little knowledge of the condition, is unable to decipher a treating doctor's handwriting or where medical information raised by the customer is not recorded in the DSP medical report.

5.7 Supported by agencies.

DHS response

DHS comments that it already complies with this practice and it will be working with JCA assessors to reinforce this policy.

FaHCSIA response

FaHCSIA agrees with this recommendation and is supportive of seeing this messaging strengthened. The assessors are encouraged to consult with treating doctors (refer service provider guidelines) as well as fellow assessors in their own organisation with other specialties.

RECOMMENDATION 5

That the DSP medical report format be revised to align it with the information required to assess customers under the impairment tables. This should be done in consultation with JCA assessors to obtain their views on what types of changes would improve the quality of JCAs.

5.8 FaHCSIA would be responsible for implementing this recommendation and has made the following comments.

FaHCSIA response

The form was redesigned in September 2007.

The form has been designed to draw out the information required for DSP. Its purpose is to be generic for all customers with a range of impairments, without being overly long, or excessive in cost.

Content for 22 tables could not be included without considerably increasing the size and complexity of a form, which already has a history with the medical community as being too long.

FaHCSIA would foresee sensitivity of remuneration issues for doctors if it were to be amended in the proposed manner.

Ombudsman comment

5.9 Although the Ombudsman is aware of the constraints outlined above, it is still considered there is room to improve the medical report to deliver an assessment that is more tailored to the customer's specific medical conditions. While the Ombudsman agrees that a lengthy form would defeat the purpose, exploration of solutions through the use of computer technology might provide a longer term, more effective outcome for treating doctors and assessors.

RECOMMENDATION 6

That JCA guidelines—including timeliness standards—be amended to encourage the appropriate use of referrals for specialist opinions where the available medical information requires clarification.

5.10 DHS agreed with this recommendation, noting that it will be undertaking further work with JCA providers and Centrelink to improve the use of specialist assessments, particularly for people with undiagnosed conditions. DHS also advises that it will look at tensions between timeliness standards and specialist assessments in terms of system changes.

5.11 FaHCSIA's response, outlined below, has commented on the impact that implementing this recommendation could have on the independent review processes available to customers.

FaHCSIA response

FaHCSIA understands that there has been a significant increase in 2007–08 in the utilisation of specialist assessments.

An increase in the use of specialist assessments in cases that are subject to review after the Authorised Review Officer (at the Social Security Appeals Tribunal and Administrative Appeals Tribunal) may prevent cases reaching the Tribunals.

5.12 The Ombudsman's office has confirmed with FaHCSIA that in considering whether to appeal Tribunal decisions, they sometimes refer the customer for a specialist assessment, which results in the payment being granted and the appeal conceded. The Ombudsman's office notes that earlier resolution through referral to a specialist at the JCA level would be a better outcome for the customer and provide significant cost savings from a whole of government perspective.

RECOMMENDATION 7

That DHS require JCA assessors to record and retain proper file notes of all contacts made as part of the assessment process, such as interviews, and discussions with treating doctors, other specialists and Centrelink.

5.13 DHS disagreed with this recommendation commenting that providers are contractually required not to retain any records other than JCA report.

5.14 However FaHCSIA supports the recommendation, noting that it is a contract issue for DHS.

Ombudsman comment

5.15 The Ombudsman considers that keeping proper records is an essential element of good administration and suggests that DHS explores revising the contracts, and/or identifying an alternative method of retaining file notes, such as within the file which holds the customer's medical history and documents.

RECOMMENDATION 8

That copies of all JCA reports submitted to Centrelink are kept in a format that is readily retrievable.

5.16 Although this recommendation is a reflection of the need to maintain transparency in the decision-making process, according to the responses provided by DHS, FaHCSIA and Centrelink, the inability to implement the recommendation appears to rely on system and contractual limitations. The impact for each agency is set out in the comments provided below.

DHS response

DHS advises that holding multiple draft versions of a report is likely to cause confusion for customers, Centrelink and PAGES. There are also resource implications for likely system changes.

FaHCSIA response

On one level this recommendation serves to improve transparency for program administrators, customers and appeals, however FaHCSIA understands the issue is more complex for Centrelink as the decision makers and for DHS. Additionally, FaHCSIA notes potential high costs and system issues with system changes (retaining over-written information), or contract issues (if assessors are required to print off hard copies) to support this.

Centrelink response

The business rules that determine the Job Capacity Assessment process are owned by DHS and until Centrelink accepts a submitted Job Capacity Assessment report the report has no bearing on the customer's income support payment and is considered to be in draft.

Centrelink will liaise with DHS to consider how this recommendation could be achieved. In the meantime Centrelink will reinforce with its Job Capacity assessors the need to follow current DHS guidelines and ensure that inappropriate discussions with customers, regarding draft Job Capacity Assessment reports that may impact income support decisions, do not occur.

Ombudsman comment

5.17 Having given careful consideration to the limitations and arguments presented by the agencies, the Ombudsman has concluded that the issue is of sufficient importance to warrant being retained in the report. As outlined in Part 3 of this report, proper record keeping is a statutory obligation under several Acts of Parliament that were introduced to ensure agencies are accountable for their actions and the decisions made are transparent.

5.18 The Ombudsman also suggests that there may be unexpected gains for agencies in implementing this recommendation because it would provide them with the means to monitor the quality of original decisions, identify inefficient processes and how to address them, as well as identify the cause of any processing delays.

RECOMMENDATION 9

That JCA assessors be given a process, or the authority, to alter the reason for referral for a JCA when at interview it becomes apparent that the referral reason is incorrect.

5.19 Agency responses indicate that this recommendation would only apply in limited circumstances. It is also apparent that agencies have identified situations where current processes do not allow any flexibility, and have engaged in discussions to identify possible ways of addressing those issues. These are outlined in the responses below.

DHS response

DHS notes that this situation would only arise where an assessment needs to be changed to include an impairment assessment. It is currently considering whether assessors should be able to conduct an impairment assessment for anyone where their work capacity has been assessed as less than 15 hours per week. This issue will be discussed further with DEEWR and FaHCSIA.

FaHCSIA response

Although the recommendation appears sensible, there would need to be rationalisation of potentially prohibitive costs regarding system changes for a potentially small number of cases.

Centrelink is currently responsible for providing the customer's referral reason to a JCA.

There will be issues about whether an assessor would be able to make the decision and consideration given to social security law (an issue regarding whether a person is taken to have made a claim for payment for example could arise).

Other complicating issues are that the payment system for assessments is linked to the referral reason (different fees apply to different assessments based on the reason referred); and that for DSP there needs to be assurance that the DSP medical report element is activated. This is to enable the rating of impairment at the pending JCA.

DHS and Centrelink could expand on the issues for recommendation 9.

Centrelink response

Centrelink notes that the only time that the reason for referral would need to be altered would be when a DSP assessment is required, due to the need for impairment ratings for these assessments.

When a customer is assessed as having a work capacity of less than 15 hours per week, consideration could be given to changing the referral reason to one that attracts an impairment rating. This would allow a customer who subsequently applied for DSP within two years to be granted without the need to undergo a further assessment unless their circumstances had significantly changed. One of the issues that would need to be worked through is the lack of appropriate medical evidence, which the customer may not have readily available.

There is currently provision for Centrelink to change a referral reason if necessary, however this requires overnight processing to occur. In cases where it is appropriate, assessors can contact Centrelink to discuss the reasons why a change is required, and arrange for the referral reason to be altered.

Centrelink will liaise with DHS to consider how this recommendation could be achieved.

RECOMMENDATION 10

That DHS examine the cost effectiveness of developing a management information system that facilitates the monitoring of the JCA program's performance and outcomes.

DHS response

DHS advises that it currently uses DEEWR's EA3000 case management system to monitor the JCA programme. The Department is currently in discussions with DEEWR on the cost effectiveness of expanding the system to allow for extraction of information that could improve JCA programme monitoring.

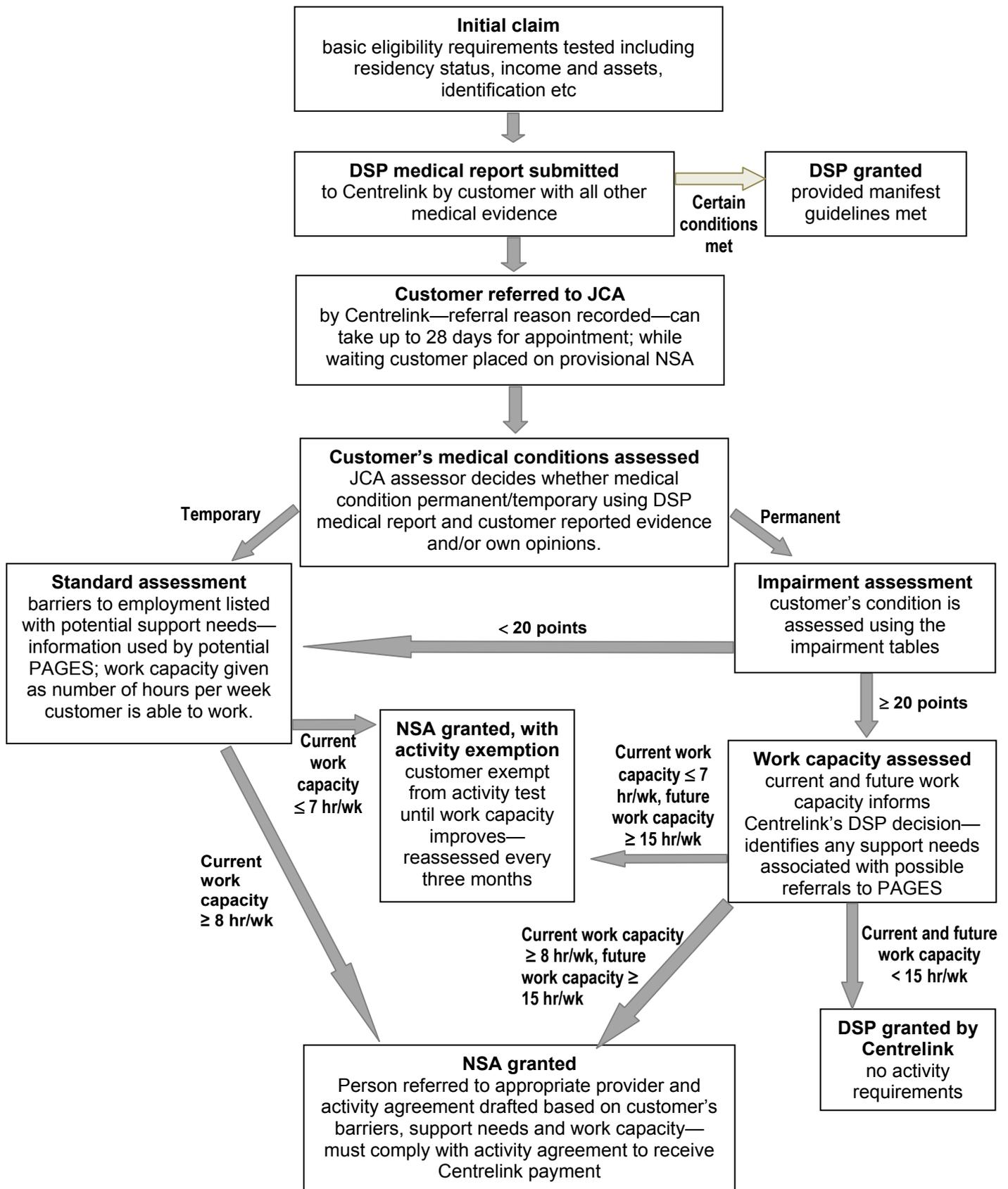
FaHCSIA response

In principle, FaHCSIA agrees with the importance of management information for monitoring the program, however the criticism in the report appears to be based on an isolated experience of retrieving a specific type of data.

5.20 As outlined in the DHS response above, it acknowledges that the basic management information sought in relation to preparing this report was not readily extracted from the DEEWR system. The data sought related to the distribution of job capacity assessor's qualifications across JCA providers, as well as the location of those assessors. Although, as FaHCSIA has suggested, the Ombudsman's request was for a specific type of data, this information would appear to be essential for monitoring whether JCA providers comply with their contracts in terms of having multi-disciplinary teams that would enable them to cover the complete range of medical conditions their assessors would encounter.

ATTACHMENT A

Disability Support Pension Job Capacity Assessment process



ACRONYMS AND ABBREVIATIONS

CITW	continuing inability to work
DEEWR	Department of Education, Employment and Workplace Relations
DHS	Department of Human Services
DSP	Disability Support Pension
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FOI	freedom of information
GP	general practitioner
HSA	Health Services Australia
JCA	job capacity assessment
JCSI	Job Seeker Classification Instrument
NSA	Newstart allowance
PAGES	Provider of Australian Government Employment Services
PSP	Personal Support Programs