



**Social Security
Appeals Tribunal**

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Senator the Honourable Joe Ludwig
Minister for Human Services
Parliament House
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Dear Minister

I refer to your letter of 12 February seeking views on a range of matters relating to Job Capacity Assessments (JCAs).

Background

As you would be aware the Social Security Appeals Tribunal considers JCAs in the context of appeal cases, particularly where the applicant is not happy with a decision which denies them income support payments. In that context it might be suggested that the Tribunal is exposed to a somewhat 'biased' selection of JCAs. On the other hand the Tribunal deals on an annual basis with many thousands of appeal cases and hence its Members see quite a large number of such assessments, for example, the SSAT deals with over 2000 Disability Support Pension appeals each year.

When Comprehensive Work Capacity Assessments, the fore-runner to JCAs, were introduced, the Tribunal received a number of visits from senior officers within DHS, occasionally together with a representative from a JCA provider (eg. Advanced Personnel Management), where the basic intent and approach of the new assessment system was explained. At that time the Tribunal indicated that its focus was on the quality of any such report, to the extent that it would legitimately inform the decision making process in regard to each individual appeal case. In the context of DSP for example, this requires a determination under sub-sections 94(1) and 94(2) of the Social Security Act 1991, which determine eligibility and define the phrase "continuing inability to work".

Issues (General)

At the time of those earlier meetings, the point was made to DHS staff, and since to DEEWR staff, that in the consideration of an appeal case, the Tribunal is not charged, for example, to determine whether it would be beneficial for the applicant to commence or resume full-time or part-time work, rather, whether, on the relevant evidence, a person has a continuing inability to work because of a physical, intellectual or psychiatric impairment.

There are instances identified on appeal where the JCA assessor appears to treat the assessment as quite divorced from any consideration of 'impairment'. This suggests that assessors might not understand that part of the role they are performing is to provide information/evidence to which a decision-maker can have regard in determining eligibility or ineligibility for income support.

From the Tribunal's perspective the overall administration of the programmes of which the JCA assessment can be a part, seems somewhat fractured. Responsibility for DSP policy now resides in FaHCSIA; DEEWR remains responsible for the policy for the Newstart and other working age payments; the delegates making the substantive income support decisions reside in Centrelink, with JCA contractual issues and training of JCA assessors being the responsibility of DHS and the assessments themselves being performed by the JCA service providers outside of those government agencies. This complicated matrix does not, in the Tribunal's view, assist in the provision of sound, relevant and probative evidence by way of JCAs.

When an SSAT panel considers a JCA assessment as inadequate or inconclusive for whatever reason (see below under specific issues) the Tribunal is in a dilemma whether to (i) set aside the decision on the grounds that there is insufficient evidence upon which to base a decision, for example, a DSP cancellation decision, (ii) adjourn the matter and make its own independent enquiries as to matters pertaining to eligibility or (iii) remit the matter to Centrelink with a request/direction to seek further evidence. In the last two scenarios, the Tribunal is very conscious of the time delay inherent in either action. This in turn both impinges on the Tribunal meeting its statutory objective of being, among other things, "informal and quick", and subjects the individual applicant to further delay and understandable concern about the ultimate outcome of their appeal case.

Issues: Specific

I sought input from the State offices of the SSAT in relation to your letter. In the time available I received a number of responses, which is indicative of the interest of the members in JCAs.

There are a number of recurring issues identified by members in their responses, which are briefly summarised as follows:

- The JCA report is frequently completed by a health professional who does not appear to have the skills or qualifications to make a proper assessment relevant to the particular impairment(s).
- The qualifications of the JCA assessors are not indicated.
- JCA reports are confused in that a condition might be identified as permanent in the report but also state that it is not fully investigated, treated and stabilised.
- Treating doctors' reports could be more comprehensive and hence of much greater assistance in informing JCAs.
- JCA assessors should consider, and clearly indicate they have done so, any relevant available medical evidence.

I have attached the list of issues identified by members for the sake of completeness.

Thank you for the opportunity to make submissions to you on this matter. If you wish to seek any further information from the Tribunal in relation to this response, or more generally on the matters raised, please feel free to do so.

Yours sincerely



L M Blacklow
Executive Director

Member status	State office	Issues raised
Part-time medical member	NSW/ACT	<ul style="list-style-type: none"> • Medical evidence often very scant – reports of correspondence between treating Doctor and specialist often lacking (<i>suggestion: Treating Doctor's Report - Guide to Part C could ask for correspondence to the treating doctor from medical specialist/s</i>) • Practice of calling conditions permanent and then saying the condition is not able to be rated because it is not fully treated or stabilised • Reluctance to obtain reports from a suitably qualified health professional for assessment of range of movement of spine
Part-time medical member	NSW/ACT	<ul style="list-style-type: none"> • Inappropriate use of skills i.e. JCA's often considering condition for which they have no formal qualifications • Generally form a different opinion on the issue of capacity to work than that of treating Doctor – seems flawed as JCA's often done in a cursory fashion compared to treating Doctor who may have been treating person for years. • Temporary/permanent assessments seem flawed (e.g. seems to be a knee jerk reaction that anyone with a back problem who has not had physiotherapy will automatically have that condition regarded as temporary, irrespective of whether physio will make any difference) • Suitable or possible work often completely inappropriate • Computerised nature of the JCA forms
Part time medical member	NSW/ACT	<ul style="list-style-type: none"> • Clinically inappropriate assessors • Failure to record essential findings when examining spinal complaints (particularly range of movement) • Lack of quality control re physical and psychiatric limitations (<i>suggestion : an experienced GP or occupational physician should sign off all assessments – could be locally contracted</i>) • On review of ODM – as a minimum, clinical psychologist should assess psychiatric reconsiderations – all other reviews should be undertaken by experienced GP or occupational physician
Part time member	NSW/ACT	<ul style="list-style-type: none"> • JCA's doing range of movement assessments or psychiatric assessments when not adequately qualified (<i>suggestion: for customers with multiple conditions – multiple assessors or panels of assessors</i>) • Work capacity appears to have been given very little thought, time and explanation • Some assessors list their qualifications and others write "other". This makes it difficult to assess the evidence. • Referral on to another program/s – seems non-existent • (<i>suggestion – additional space in report for permanent conditions – currently only space for two and other conditions get relegated to the section for conditions that have little functional capacity or impact on ability to work</i>)

Part-time member	NSW/ACT	<ul style="list-style-type: none"> • JCA's qualifications described as "other" • Making assessments which are outside of their area of expertise • Reluctance to regard condition as permanent • Apparent reluctance to contact a GP or specialist to discuss the report
Full-time member	NSW/ACT	<ul style="list-style-type: none"> • Quality generally low • internal inconsistencies • No physical examination • Reports by persons who are not qualified to conduct review • Listing qualifications as 'other' • Little understanding of application of tables – justification often absent • Applicants question the ability and qualifications of JCA's to conduct assessments
Full-time member	NSW/ACT	<ul style="list-style-type: none"> • Inadequate/inappropriate professional qualifications • Need range of movement assessments for spinal conditions • Describe conditions as permanent but assign no points because not fully diagnosed, treated and stabilised • Reports poorly laid out and difficult to read • Often little or no reasoning to support conclusion about work capacity
Full-time member	NSW/ACT	<ul style="list-style-type: none"> • Qualifications should better match the impairments of the customer (reduces evidentiary value of the report) • Better training in use of impairment tables • Confusion about 'permanent' and 'temporary' • Use of pro-forma – repetitive and not flexible enough to provide meaningful information
Full-time member	NSW/ACT	<ul style="list-style-type: none"> • Must identify qualifications – 'other' is not sufficient • Need training in permanent/temporary • JCA form is poorly set out – difficult to read – space for only two significant conditions • Physical assessments not performed but ratings assigned under table 5 – unless table 5 (Schedule 1B of the Act) is amended the assessors must conduct a formal assessment
Summary from QLD members (including part time medical members)	QLD	<ul style="list-style-type: none"> • JCA's inadequately qualified for particular assessments • JCA's do not conduct an examination and therefore it is not possible for them to give an impairment rating. Medical reports rarely provide this information. Impairment tables were written in relation to cases where applicants underwent an examination – since this is no longer the case, the appropriateness of the use of the tables by JCA's needs to be considered. • Conditions identified as permanent but then conclusion that the condition is not fully investigated, treated and stabilised. • Some qualifications questionable (e.g. human movement, speech pathology, human resource practitioners) (<i>suggestion: state workers compensation jurisdictions have already gone down the path of accrediting and identifying base level qualifications for occupational assessment and rehabilitation. Medical practitioners are not necessarily best at assessing job capacity.</i>)

		<p>Professionals who have worked in occupational rehabilitation can provide this assessment. Rehabilitation providers in workers compensation already have systems in place and internally refer particular types of clients to particular staff.</p> <ul style="list-style-type: none"> • Inaccuracies and inadequate/incorrect diagnoses • As assessments are based on the Treating Doctor's report – would be good to get more information in these reports relevant to the impairment tables (e.g. range of movement).
Full-time member	SATAS	<ul style="list-style-type: none"> • Treating Doctor's report should allow doctor to conduct a range of movement test • Lack of expertise for specific assessments
Full-time member	SATAS	<ul style="list-style-type: none"> • The only medical evidence before the JCA is a standard Treating Doctor's Report. This report asks limited and relatively superficial questions, and therefore provides very little basis on which to either assess the person's work ability, or apply the Impairment Tables. • The JCA then makes a medical assessment for which they are not necessarily (and often are not) qualified. • This process does not provide satisfactory evidence to the agency or any review body for decisions about the person.
Part-time medical member	VIC	<ul style="list-style-type: none"> • Standard generally low because qualifications are frequently inappropriate for the conditions being assessed (most applicants have several medical conditions) • Evaluation of temporary/permanent frequently lacks full understanding of the natural history, treatment options and expected outcomes • No physical examination • JCA's invariably unable to discern and address clinical ambiguity, exaggeration and deception • <i>(suggestion: medical assessment by an occupational physician (Health Services Australia) provided greater value for Centrelink and the SSAT)</i>
Part-time medical member	VIC	<ul style="list-style-type: none"> • Rarely physically examined even where application is based on physical impairments • Schedule 1B of the Act requires that ratings be assigned after a 'comprehensive history and examination' • JCA's do not have appropriate qualifications and clinical experience to properly fulfil the legislative requirements including interpretation of diverse medical reports and correct application of ratings • Documentation provided by JCA's often limited – particularly difficult where the conclusions are at variance with treating Doctor's comments
Full-time member	VIC	<ul style="list-style-type: none"> • Concern with qualifications of the assessors to deal with range of conditions • Quality of information not very useful and not enough detail in respect of a person's capacity to work • Forms difficult to read and lots of repetition
Full time member	VIC	<ul style="list-style-type: none"> • Reports deficient or undertaken by inappropriately qualified person

Part-time member	VIC	<ul style="list-style-type: none"> • Inappropriate/inadequate qualifications • No qualifications specified • Applicants express a lack of confidence in assessments • treating Doctor reports limited – useful to have wider assessment from the treating Doctor • JCA reports for long-term unemployed and breach cases also variable (e.g. person did not attend assessment yet assessed as having no barriers to work) • From recent breach cases -persons with some sort of mental illness or personality disorder who are not under treatment (and therefore have no evidence from Doctor) are 'slipping through the cracks' despite Social Work and JCA assessments
Summary from WA members	WA	<ul style="list-style-type: none"> • Partial capacity to work is difficult to assess particularly where the JCA report has been done by a health professional who does not appear to have skills or qualifications to properly assess the person being assessed or reviewed • Assessments often cursory and the assumption is that the person is able to work (<i>suggestion: would be helpful if people could be streamed to health professionals with expertise in the particular disability</i>) • General quality of reports • Identification of appropriate support programs and service providers with specific job seeking opportunities. For example, Condition Management Program (as in UK) as well as job seeking opportunities may be necessary and should be part of the JCA