

15. The Pre-Employment Stage

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Summary

15.1 In this Inquiry, the ALRC is considering what improvements could be made to the Commonwealth employment law framework—beginning with the pre-employment stage. This chapter examines ways in which Job Services Australia (JSA)—the national employment services system—Disability Employment Services (DES) and the Indigenous Employment Program (IEP) systems do, or could, respond to the needs of job seekers experiencing family violence. In particular, this chapter considers:

- JSA—including tender arrangements, information sharing processes and protocols and screening for family violence;
- JSA and DES provider responses to disclosure of family violence by job seekers;

- Job Seeker Classification Instrument (JSCI)—conduct and content of JSCIs;
- Employment Services Assessment (ESAt) and Job Capacity Assessment (JCA)—referral to, and conduct of, ESAts and JCAs and the impact of family violence;
- education and training; and
- employment services for specific groups of job seekers, including Indigenous peoples, job seekers from culturally and linguistically diverse (CALD) backgrounds, job seekers with disability and those in rural and remote areas.

15.2 Through examining ways in which these systems can effectively identify family violence and address barriers to work faced by those experiencing family violence, the aim is to secure access for victims of family violence to the financial and emotional benefits of employment, to protect their safety.

15.3 In particular, the ALRC proposes that those who wish to tender to become employment service providers must demonstrate an understanding of family violence and its impact on job seekers. The ALRC also proposes that the JSCI should include a new category of information in relation to family violence. With the enhanced disclosure of family violence that might result, the ALRC also considers what information-sharing processes and protocols, as well as privacy safeguards, are appropriate. Other proposals in this chapter concern JSA and DES provider responses to the disclosure of family violence, the conduct of ESAts and JCAs, and education and training for a range of people involved in the pre-employment stage.

Family violence and pre-employment

15.4 In considering the safety of job seekers who are victims of family violence, the ALRC refers both to actual safety from harm (for example, through ensuring a job seeker is not required to attend the same employment services provider as the perpetrator, or through placement in a safe working environment) but also to the financial security and independence ultimately derived from paid employment.

15.5 The impact of family violence on the pre-employment system is significant in a number of respects.

15.6 In many cases family violence may constitute a significant barrier to employment for individual job seekers. Family violence may affect all aspects of a job seeker's life including, for example, physical and mental health, living circumstances, and caring responsibilities as well as ability to attend work regularly or punctually. As a result, in order to assist job seekers to find (and retain) employment, the system must consider the barriers to work that family violence may impose and respond appropriately or, where necessary, refer the job seeker to a more appropriate system.¹

¹ The interaction between the pre-employment system and social security system is discussed in more detail below. See also, Chs 5–8.

15.7 The primary focus of the pre-employment system and of employment services providers is to ensure a job seeker possesses the necessary skills to find employment (and if they do not, to assist them to obtain those skills) and ultimately, to find employment opportunities for the job seeker. However, without early disclosure of family violence or identification of, and appropriate responses to, the family violence-related barriers faced by individual job seekers, ensuring the system achieves these purposes becomes increasingly difficult.

Interaction with social security

15.8 Employment service structures such as JSA and DES are the ‘foundation stone of social inclusion policies’.² Without these systems, many people in Australia would be required to rely on income support where they are unable to obtain employment independently. As a result, the other key component of the pre-employment system, aside from JSA, DES and IEP, is social security.

15.9 Engagement with employment services is triggered by receipt of certain social security payments, discussed in Chapter 7. In brief, to qualify for the relevant social security payments, a person must satisfy an activity test or participation requirements. Job seekers receiving Newstart Allowance, Youth Allowance and Special Benefit, have an obligation to meet an activity test.³

15.10 Job seekers who are receiving Parenting Payment do not have to comply with an activity test, although they are required to comply with an Employment Pathway Plan (EPP) or other special requirements and are also subject to ‘participation requirements’.

15.11 The content of an activity test or participation requirement varies for different payments.⁴ If a job seeker is required to register with a JSA or DES provider, then remaining connected with the provider forms part of the job seeker’s requirement to look for work.⁵ Failure to attend is considered a ‘connection failure’;⁶ this and a range of other compliance issues are discussed in Chapter 7 (including the role of JSA and DES providers in compliance).

15.12 Activity tests and participation requirements are contained in an EPP.⁷ An EPP must meet, and be tailored to, the needs of individual job seekers and not place unreasonable demands on them, having regard to their personal circumstances.⁸ An

2 Australian Council of Social Service, *Submission to Minister for Employment Participation on the Future of Job Services Australia* (2011) 3.

3 An activity test is designed to ensure that unemployed people receiving income support payments are actively looking for work and/or doing everything that they can to become ready for work in the future: Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.1.A.40]

4 Ibid, [3.2.8]; [3.2.9]; [3.2.9.210] (Suitable Activity—Principal Carer).

5 Ibid, [3.2.9.20] (Job Search Overview);

6 Ibid, [3.2.9.40] (Job Search—Setting Job Search Requirements—Job Seekers with part-time Requirements).

7 Ibid, [3.2.9.20] (Job Search Overview); [3.5.1.160] (When are EPPs Required? (PP)).

8 Ibid, [3.2.8.30] (What is an Employment Pathway Plan?).

ESAt or JCA, discussed in further detail below, are in part used to determine a person's capacity to work.

15.13 While noting the interaction between the pre-employment and social security systems is important—as engagement with the social security system is often a precursor to engagement with the pre-employment system—overall, the focus of this chapter is on the processes aimed at finding employment for those job seekers who are required to register and engage with JSA and DES providers. The remaining social security-related issues are discussed in Chapters 5–8.

Overview of the pre-employment system

15.14 Employment service structures, such as JSA, DES and IEP play a central role in 'the Australian Government's labour force participation, productivity and social inclusion policies'.⁹ JSA, introduced in 2009 is the Australian Government's national employment services system. The introduction of JSA was prompted by significant concern about the way in which the previous Job Network system was operating, and its suitability to the Australian economic environment.¹⁰ In part, the purpose of introducing JSA was an attempt to shift the job services system away from focusing on maintaining the labour market engagement of job seekers towards more individualised assistance for those facing substantial barriers to work.¹¹

15.15 JSA delivery is provided by approximately 115 contracted employment service providers known as JSA providers.¹² The role of providers is to assist individual job seekers to gain sustainable employment including, where necessary, connecting job seekers to skills development and training opportunities in order to assist them to obtain employment. Providers can also provide a range of services, such as advising job seekers on job search methods or career options, assisting in the preparation of cover letters and resumes, arranging work experience, or referring the job seeker to appropriate support services.

15.16 Importantly, the focus of the JSA system as a whole is on a job seeker's capacity and readiness to work, as distinct from the focus of the social security system, as discussed in Chapter 5.

15.17 In March 2010, a system of specialist providers—referred to collectively as DES—replaced the former Disability Employment Network and Vocational Rehabilitation Services to provide employment services for job seekers with disability. DES comprises approximately 220 providers.¹³

9 Department of Education, Employment and Workplace Relations, *Job Services Australia Industry Information Paper* (2011), 1.

10 *Ibid.*

11 Australian Council of Social Service, *Submission to Minister for Employment Participation on the Future of Job Services Australia* (2011), 3.

12 J Disney, A Buduls and P Grant, *Impacts of the new Job Seeker Compliance Framework: Report of the Independent Review* (2010), 11. See below for further discussion of tender and contract arrangements. JSA providers operate in geographical areas known as Employment Service Areas.

13 *Ibid.*, 11.

15.18 Further, integrated Indigenous employment services are available through the JSA network, in conjunction with the IEP and, in areas with poor labour markets, Community Development Employment Projects.

Process

15.19 Once a job seeker registers for activity or participation tested income support, Centrelink, or in some cases a JSA provider, administers a questionnaire called the JSCI to evaluate a job seeker's barriers to work. Based on the results of the JSCI, job seekers are classified as being in one of four 'streams': the least disadvantaged job seekers are categorised as Stream 1, while increasingly more disadvantaged applicants are placed in Stream 2, Stream 3 or Stream 4, respectively.

15.20 The stream into which a job seeker experiencing family violence is placed affects how much and what type of assistance he or she will receive. For example, a job seeker in Stream 1 may receive assistance to access job search facilities; revise his or her curriculum vitae or access training. In Streams 2–4, job seekers receive more intensive services.

15.21 In some cases, where the results of the JSCI indicate 'significant barriers to work', job seekers will be referred to one of two additional assessments, either an ESA or JCA.

15.22 Referral by Centrelink is the key way in which job seekers connect with JSA providers. Upon referral, job seekers are able to choose the JSA provider to which they are allocated, or where they do not choose a preferred provider, are allocated a provider depending on factors such as geographical location and the availability of appointments. However, in some cases job seekers will register directly with a JSA provider. The DES system operates somewhat differently, as job seekers are usually referred to a DES provider following a JCA.

15.23 Once registered with a provider, the job seeker and provider work cooperatively with Centrelink to negotiate an EPP. Negotiation and revision of EPPs, including the capture and assessment of the circumstance of job seekers experiencing family violence are discussed in the context of social security in Chapter 7.

15.24 Once a job seeker is placed in a particular stream the role of providers is to assist individual job seekers to gain sustainable employment including, where necessary, connecting job seekers to skills development and training opportunities in order to assist them to obtain employment. Depending on the stream into which the job seeker is placed, providers may also be required to provide other services. This is particularly so in the case of DES providers.

15.25 Where a job seeker has been receiving participation payments for 12 months, they are re-assessed in a Stream Services Review, to determine whether the job seeker is still placed in the most appropriate stream or whether they should be transferred to

the ‘work experience phase’.¹⁴ Additional mechanisms for re-assessment include referral to an ESA or JCA or, in the context of a JSCI, through a Change in Circumstances Reassessment.

Job Services Australia—Employment Services Deeds and the tender process

15.26 JSA and DES delivery is provided by contracted employment service providers. JSA and DES providers are currently contracted under Employment Services Deeds. ‘Different versions of the Deed were prepared to reflect the different combination of services’.¹⁵

15.27 The current Deeds for JSA expire on 30 June 2012, however the Deed provides the Government with the ability to extend them. As part of the 2011–12 Budget, and then in June 2011, the Government announced that:

The procurement methodology for Job Services Australia 2012 – 2015 [and Disability Employment Services 2012 – 2015] will be a mix of contract extensions, business reallocation, and open tender processes available to existing providers and prospective new providers. This mix is designed to maintain the stability of the current model, while ensuring the highest quality employment services for job seekers.¹⁶

15.28 In June 2011, the Government released two Industry Information Papers containing information regarding the purchasing arrangements for JSA and DES from 1 July 2012. The Government also indicated it will release a second DES Industry Information Paper in October 2011 with further information on the tender, an Exposure Draft of a Request for Tender in February 2012 and a final Request for Tender in May 2012.¹⁷

ALRC’s views

15.29 Concerns have been raised about the structure and operation of the JSA system. In particular, there was concern about the way in which DEEWR monitors provider performance and outcomes as well as the fee structure—to the extent that it provides financial incentives to place certain job seekers. These systemic issues extend beyond the scope of the Terms of Reference for this Inquiry.

15.30 However, to the extent that the ALRC can consider ways in which JSA and DES providers could be required to account for the needs of job seekers experiencing family violence, the ALRC considers that the upcoming Business Review and tender

14 An activity test or participation requirement may include a range of things, including a specific work experience activity requirement, an approved program of work for unemployment payment (Work for the Dole).

15 Department of Education, Employment and Workplace Relations, *Employment Procurement Services* <www.deewr.gov.au/employment/employmentservicesprocurement> at 20 June 2011.

16 Department of Education, Employment and Workplace Relations, *Job Services Australia Industry Information Paper* (2011).

17 *Ibid*; Department of Education, Employment and Workplace Relations, *Disability Employment Services Industry Information Paper* (2011).

processes may provide avenues through which the Government could require providers to consider and address family violence-related issues in this area.

15.31 The ALRC welcomes stakeholder comment on whether the Government should include a requirement that JSA and DES providers demonstrate an understanding of, and systems and policies to address, the needs of job seekers experiencing family violence in requests for tender and contracts for employment services, and if so how.

Question 15–1 In what ways, if any, should the Australian Government include a requirement in requests for tender and contracts for employment services that JSA and DES providers demonstrate an understanding of, and systems and policies to address, the needs of job seekers experiencing family violence?

Information sharing and privacy

15.32 The ALRC is directed by the Terms of Reference to consider whether the extent of sharing of information across Commonwealth, state and territory agencies is appropriate to protect the safety of those experiencing family violence.¹⁸

15.33 The primary focus of this chapter is the Commonwealth jurisdiction, including agencies such as DEEWR, Centrelink, the Department of Human Services (DHS), and JSA, DES and IEP providers. Information sharing between each of these agencies and providers is vital to ensuring the JSA and DES systems effectively identify and respond to family violence where it may affect a job seeker's capacity for work, or their barriers to employment. The sharing of information is also central to ensuring steps taken in a pre-employment context are based on all the relevant information and that information is shared appropriately to ensure, as far as possible, the safety of job seekers experiencing family violence.

15.34 In many cases, Centrelink is the first point of contact for a job seeker. A job seeker may not differentiate between various government agencies, or between Centrelink and their JSA or DES provider, and may assume that family violence has been disclosed, and there is no need to inform another person or agency.

15.35 In light of this, information sharing between these agencies is linked to broader information-sharing issues and questions raised in Chapter 4. For example, the ALRC makes a range of proposals with respect to:

- the placement of a safety concern flag on a customer's file when safety concerns are raised; and
- inter-agency information sharing protocols.¹⁹

18 The full Terms of Reference are set out at the front of this Discussion Paper and are available on the ALRC's website at <www.alrc.gov.au>.

19 See Ch 4.

15.36 In the context of the pre-employment system, job seekers may disclose family violence to Centrelink staff, JSA, DES and IEP provider staff, or to an ESAt or JCA assessor, in a range of circumstances, including:

- in the course of a JSCI, ESAt or JCA;
- in the course of developing an EPP;
- to seek particular assistance, or by way of explanation for certain work preferences; or
- because of safety concerns.

15.37 The ALRC understands that there are information-sharing protocols and arrangements already in place between some of these agencies and providers and that, in addition, some information-sharing systems under the Human Services portfolio are being integrated as part of the Service Delivery Reform.²⁰

15.38 The Employment Services Deed also contains information on the control of personal and protected information and specifies that providers must carry out and discharge the obligations contained under the *Privacy Act*, as if they were an agency.²¹

15.39 However, in considering the sharing of personal information about job seekers between agencies and providers, there is a need to ensure information is shared where it will assist the job seeker and that privacy concerns associated with the sharing of information are addressed. For example, where sensitive personal information, such as family violence, is disclosed, this may raise issues of consent.

15.40 General privacy issues arising from disclosure that may arise in the context of the pre-employment phase are dealt with in Chapter 14. However, to the extent that privacy issues arise specifically with respect to information sharing arrangements, they will be discussed separately in this chapter.

Submissions and consultations

15.41 In *Family Violence—Employment and Superannuation Law*, ALRC Issues Paper 36 (2011) (Employment Law Issues Paper), the ALRC did not ask a specific question with respect to information sharing between Centrelink, DEEWR, JSA, DES or IEP providers, or ESAt or JCA assessors. However, in two other Issues Papers, the ALRC asked whether information about family violence should be shared between government agencies such as Centrelink and the CSA.²² Accordingly, it is consistent with the approach taken throughout this Inquiry, and as a precursor to other proposals made in relation to the JSA system, to consider the issue in the pre-employment context.

20 See fuller discussion in Ch 4.

21 See, eg, Department of Education, Employment and Workplace Relations, *Employment Services Deed 2009-2012: SS NEIS* (2009) cl 5C; Department of Education, Employment and Workplace Relations, *Disability Employment Services Deed 2010-2012* (2010) cl 3C.

22 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 14; Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law*, ALRC Issues Paper 39 (2011), Question 5.

15.42 In response to the other Issues Papers, stakeholders suggested that information sharing could be improved between agency officers and different services agencies, to avoid the need to re-disclose family violence and to allow agencies to share information. However, stakeholders emphasised that any information sharing should only be done with express and informed consent. In suggesting information sharing, stakeholders emphasised the need for the protection of information and compliance with obligations under the *Privacy Act*.²³

15.43 For example, in submissions and consultations in response to the Employment Law Issues Paper, stakeholders expressed particular concern about ensuring the confidentiality of job seeker information. Stakeholders submitted that in their experience,

[t]here have been reports of instances where perpetrators have rung JSPs and successfully obtained personal information by tricks such as ‘my sister Judith has an appointment there today and asked me to pick her up when she finished but I forgot the time she told me and I don’t have her mobile number, can you tell me when her appointment is or give me her phone number so I can call her?’²⁴

15.44 Similar to the ‘safety concern flag’ proposed by the ALRC in Chapter 4, WEAVE suggested the introduction of:

A high privacy flag on personal information held about the victim which is only accessible to a case worker with personal responsibility for the client and a clear understanding that there is a safety risk for the person if information is accessible to others.²⁵

ALRC’s views

15.45 A balance must be struck between ensuring information is shared where it will assist the job seeker and avoiding job seekers having to re-disclose family violence, with privacy concerns associated with the sharing of personal information. Inter-agency protocols already exist between some of these key agencies and bodies. Some information sharing matters are also already dealt with in the Employment Services Deed.

15.46 In order to inform the direction of reforms in this area, the ALRC seeks stakeholder feedback on the sharing of information between Centrelink, DEEWR, DHS and JSA, DES and IEP providers. In particular, the ALRC is interested in stakeholder comment on:

- how is, or how would, personal information about individual job seekers be shared between Centrelink, DEEWR, JSA/DES/IEP providers and DHS; and

23 See Ch 4.

24 WEAVE, *Submission CFV 14*, 5 April 2011.

25 Ibid. This was also suggested by other stakeholders in the context of Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011) and Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law*, ALRC Issues Paper 39 (2011).

- how the existence of a Centrelink Deny Access Facility—which restricts access to the file—or any other similar safety measure, such as a ‘safety concern flag’, may affect what job seeker information DEEWR and JSA and DES providers can access.²⁶

15.47 While the ALRC is seeking further information on how information is shared between these agencies and providers in practice, and how any new arrangements may operate, the ALRC considers that it is appropriate to make two key proposals in this area.

15.48 First, information sharing between each of these agencies and providers is vital to ensuring the JSA and DES systems effectively identify and respond to family violence where it may affect a job seeker’s capacity for work, or amounts to a barrier to employment. The sharing of information is also central to ensuring steps taken in a pre-employment context are based on all the relevant information and that information is shared appropriately to ensure the safety of job seekers experiencing family violence.

15.49 The ALRC does not intend to specify the exact content or type of the information-sharing arrangements that should exist. However, the ALRC has formed the view that it is necessary and appropriate for Centrelink, DEEWR, JSA, DES, IEP providers and ESAt and assessors—through DHS—to consider issues arising with respect to the personal information of individual job seekers who have disclosed family violence in the context of their information-sharing arrangements and to make any changes that may be necessary or appropriate. The ALRC also notes that the information-sharing arrangements between DEEWR, Centrelink, DHS, FaHCSIA, the Family Assistance Office and the Child Support Agency, referred to in Chapter 4, will have a bearing on the arrangements made or developed in this context.

15.50 Secondly, in sharing information between these agencies and providers, there is a need to ensure the confidentiality of that information and adherence to obligations under the *Privacy Act 1988* (Cth) as well as any associated requirements under Employment Services Deeds. In particular, the ALRC emphasises the need to consider the privacy issues arising from the sharing of any ‘safety concern flag’ and to ensure that issues of a job seeker’s consent are considered. As a result, the ALRC proposes that, in developing or reviewing information sharing arrangements to allow the sharing of information between Centrelink, DEEWR, JSA, DES and IEP providers and ESAt and JCA assessors (through DHS), appropriate privacy safeguards are in place.

26 The Denied Access Facility is discussed in more detail in Ch 8 and appears to be similar to the Restricted Access Customer System (RACS) discussed in Ch 10.

Question 15–2 How is personal information about individual job seekers shared between Centrelink, DEEWR, the Department of Human Services, and JSA, DES and IEP providers?

Question 15–3 How does, or would, the existence of a Centrelink ‘Deny Access Facility’, or other similar safety measures, such as a ‘safety concern flag’, affect what information about job seekers DEEWR and JSA and DES providers can access?

Proposal 15–1 Centrelink, DEEWR, JSA, DES and IEP providers, and ESAt and JCA assessors (through the Department of Human Services) should consider issues, including appropriate privacy safeguards, with respect to the personal information of individual job seekers who have disclosed family violence in the context of their information-sharing arrangements.

Providers—processes and responses

15.51 There are approximately 115 JSA providers.²⁷ JSA and DES providers include a range of for-profit and not-for-profit organisations of differing sizes that operate in geographical ESAs. This section of the chapter outlines how improvements could be made to the processes and responses of providers that would enhance the safety of victims of family violence. These include:

- the process of allocation to a JSA provider;
- screening for family violence by JSA and DES providers; and
- JSA and DES provider responses to disclosure of family violence—including: referral to Centrelink social workers as well as systems and programs to assist job seekers experiencing family violence.

Allocation

15.52 Each JSA provider is contracted to provide, and ‘guaranteed a specified percentage of the referrals of job seekers in [a particular] area to JSA providers’.²⁸ This is known as a ‘business share’. Upon referral, job seekers are usually able to choose the JSA provider to which they are allocated. In some cases, however, where the JSA provider has already achieved ‘its upper tolerance of business share’, the job seeker will be requested to choose another preferred JSA provider.²⁹ Where a job seeker does not choose a preferred provider, they will be allocated a provider, depending on factors such as geographical location and the availability of appointments.

27 J Disney, A Buduls and P Grant, *Impacts of the new Job Seeker Compliance Framework: Report of the Independent Review* (2010), 11. See below for further discussion of tender and contract arrangements.

28 *Ibid.*, 11.

29 Department of Education, Employment and Workplace Relations, *Request for Tender for Employment Services 2009–2012* (2008) 12.

15.53 Job seekers usually remain with the same JSA provider whilst looking for work, however the ALRC understands that in some circumstances they may change JSA provider. For example, if the job seeker changes address and cannot access the provider's office, or requests to change provider in circumstances where the job seeker:

- is unable to maintain a reasonable and constructive servicing relationship with the provider;
- requests a change in provider and both new and old providers agree to the change; or
- can demonstrate they would receive better services from another provider that could enhance their employment prospects.³⁰

15.54 Stakeholders suggested that there may be a need to ensure that a victim of family violence can change JSA or DES providers where the perpetrator of family violence attends the same provider.³¹ For example, WEAVE submitted that in its experience, 'victims have gone to [providers] and found their perpetrator in the same seminar'.³²

15.55 The ALRC acknowledges that in some areas, for example rural areas, it may be difficult to change providers where there is limited access to provider services. However, in light of the safety concerns that may arise where a job seeker experiencing family violence is required to attend the same provider as the person using family violence, to the extent that this is not already possible, the ALRC considers that in such circumstances the victim should be entitled to change JSA or DES providers upon request.

Proposal 15–2 The current circumstances in which a job seeker can change JSA or DES providers should be extended to circumstances where a job seeker who is experiencing family violence is registered with the same JSA or DES provider as the person using family violence.

Screening for family violence

15.56 Screening is the first step in a risk assessment process that involves the systemic application of a series of questions to 'identify individuals at sufficient risk of violence to benefit from further investigation and/or direct preventative action'.³³ Screening is primarily a safety precaution. To be effective, however, screening must be followed by a positive and appropriate response.³⁴

30 Ibid, [2.4.3].

31 ADFVC, *Submission CFV 26*, 11 April 2011; WEAVE, *Submission CFV 14*, 5 April 2011.

32 WEAVE, *Submission CFV 14*, 5 April 2011.

33 Australian Institute of Social Relations, *Screening, Risk Assessment and Safety Planning* (2010).

34 See Ch 4.

15.57 In light of the barriers to disclosure of family violence discussed in Chapters 4 and 14, there may be a need to screen for family violence in the context of the pre-employment system. In most cases, job seekers will be connected to the JSA or DES system by way of referral from Centrelink. The screening processes and procedures Centrelink has in place with respect to family violence are discussed in Chapter 4. However, the ALRC has heard that, in some cases, a job seeker may disclose family violence to a JSA or DES provider, without having necessarily previously disclosed family violence.

15.58 Disclosure of family violence may occur at a number of stages of the JSA or DES provider service delivery, including formulation of the EPP (in which case, Centrelink is usually directly involved); the administration of the JSCI (which is dealt with below); or in the general course of the JSA or DES provider assisting the job seeker to obtain relevant education or training in preparation for employment, or in facilitating the person's finding of employment. The ALRC is therefore interested in stakeholder feedback as to whether JSA and DES providers should conduct screening for family violence more broadly and routinely.

15.59 The strengths and limitations of screening are discussed in Chapter 4. In pre-employment, the primary benefits of screening for family violence include that it may:

- improve identification of job seekers experiencing violence;
- assist JSA and DES providers to provide more appropriate and tailored employment services; and
- foster interagency collaboration, for example between DEEWR, Centrelink, DHS, and JSA and DES providers.

15.60 If JSA and DES providers should screen for family violence, several key issues arise in considering screening in this context, including: what to screen for; how such screening should occur, including the manner and environment in which to conduct screening; and when to conduct screening.

15.61 If screening were introduced, JSA and DES provider staff would need regular and consistent training to ensure that screening is conducted appropriately and that, if family violence is disclosed in the course of a JSCI (whether in the context of screening, or in response to any new family violence category of information), they respond sensitively and appropriately.

What to screen for

15.62 In response to the Social Security and Child Support and Family Assistance Issues Papers, stakeholders generally considered that screening should enquire about: the presence of violence;³⁵ the safety of both the individual and any children involved;³⁶ non-physical as well as physical abuse;³⁷ the general indicators of violence

35 Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011; Sole Parents' Union, *Submission CFV 63*, 27 April 2011.

36 Sole Parents' Union, *Submission CFV 63*, 27 April 2011.

37 ADFVC, *Submission CFV 71*, 11 May 2011.

(for example, controlling behaviour regarding finances); and a number of vulnerability indicators—including homelessness, disability, illiteracy and mental illness—because often these indicators occur in combination.³⁸

How should screening occur?

15.63 In considering how screening should occur in a pre-employment context, it is important to distinguish discussion of general screening processes from questions asked in the context of any new category of information included under the JSCI for the purposes of determining a job seeker’s barriers to employment.

15.64 There are a number of ways screening could occur: provision of information to allow for self-disclosure; direct questioning through a series of questions about family violence; or both. Another approach may involve a two-stage process in which general information is provided and, where fear of violence is identified, a more detailed screening process is conducted.³⁹

15.65 Provision of information in order to facilitate self-disclosure, for example through application forms, correspondence or telephone prompts, could potentially include information about:

- family violence;
- processes for disclosure;
- what impact disclosure of family violence may have in the pre-employment system (for example, referral to Centrelink and potential access to specialised services or targeted job placement programs); and
- the availability of resources and support.

15.66 Direct and routine questioning of job seekers by JSA or DES providers could involve questions about whether the job seeker has any current concerns for their own safety or the safety of members of their household.

15.67 The manner and environment in which screening for family violence occurs is also important. For example, consideration may need to be given to explaining why screening is occurring, how the information will be used and the information protections available as well as screening in a private environment.

When should screening occur?

15.68 Screening could occur at a number of points in the pre-employment context (in addition to where conducted by Centrelink). For example, JSA or DES providers could screen for family violence on first contact or initial assessment, and/or more routinely. This issue is discussed in more detail in the social security and child support and family assistance systems in Chapters 4, 5, and 9–11.

38 Commonwealth Ombudsman, *Submission CFV 54*, 21 April 2011.

39 For a fuller discussion of how screening could occur in the context of the social security and child support and family assistance systems, see Ch 4.

Submissions and consultations

15.69 A large number of submissions received in response to the Child Support and Family Assistance Issues Paper and the Social Security Issues Paper recognised the importance of screening processes in those contexts.⁴⁰ Many suggested that agencies have an obligation to seek information from customers about circumstances which may affect their capacity to engage, or their entitlement to payments or services.⁴¹

15.70 In the context of the JSA system, WEAVE submitted that:

Job Services Providers like to argue that domestic violence cases have been screened out so they don't need to do anything ... When a client discloses family violence and they have not seen a Centrelink social worker the JSP should refer the client back to Centrelink ... JSPs also need to inquire on intake if there are any threats to the person's safety or other in their household. If the person discloses current or recent violence they should be given full information about all Centrelink supports and exemptions available to them so they can make an informed decision about their next steps.⁴²

15.71 A range of other stakeholders supported the introduction of screening for family violence in the context of the pre-employment system.⁴³ For example, the ADFVC recommended 'the introduction of standard questions for raising family violence issues with clients. These questions could be similar in structure to those currently adopted by the New South Wales Health Routine Screening for Domestic Violence Program'.⁴⁴

ALRC's views

15.72 Providers play a primary role in assisting job seekers to gain sustainable employment, and, where necessary, connecting them to skills development and training opportunities, as well as provision of a range of other services.

15.73 In ensuring that the JSA and DES systems are effective in assisting job seekers, all circumstances and barriers that may affect a job seeker's ability to work are relevant and need to be considered. While there are difficulties with introducing screening for family violence by JSA or DES provider staff, to the extent that screening for family violence facilitates consideration of the impact of family violence on a job seeker, and ultimately assists the job seeker to gain or retain employment, the ALRC considers it would be a positive development. However, the ALRC would be interested in stakeholder comment on what the focus of any screening by JSA or DES provider staff should be, for example: physical safety, the presence of violence, other indicators potentially affecting a job seeker such as homelessness, or all of these.

15.74 Determining the most effective way for JSA and DES providers to identify family violence issues is a difficult issue. As a result, the ALRC welcomes stakeholder feedback about the most appropriate way in which to conduct screening, including

40 Chapter 4.

41 See, eg, Commonwealth Ombudsman, *Submission CFV 62*, 27 April 2011.

42 WEAVE, *Submission CFV 14*, 5 April 2011.

43 Ibid; M Winter, *Submission CFV 12*, 5 April 2011.

44 ADFVC, *Submission CFV 26*, 11 April 2011.

how, in what manner and environment and when. The ALRC considers that it may be appropriate for JSA and DES providers to screen for family violence at the first contact with a job seeker and, thereafter, routinely, but welcomes stakeholder feedback concerning the points at which JSA and DES providers should screen for family violence. Any screening for family violence should also take into consideration a job seeker's cultural and linguistic background as well as the person's capacity to understand, for example, in circumstances involving job seekers with a cognitive disability.

15.75 Finally, the introduction of screening for family violence by JSA and DES provider staff would involve a new process. If introduced, the ALRC considers that it is important that regular and consistent training is provided to staff who conduct screening and that monitoring and evaluation are built into the screening process to ensure that screening increases the disclosure of family violence, and that it is positively assisting job seekers experiencing family violence. Monitoring and evaluation should also be conducted routinely and the outcomes made publicly available.

Question 15–4 Should JSA and DES providers routinely screen for family violence? If so:

- what should the focus of screening be;
- how, and in what manner and environment, should such screening be conducted; and
- when should such screening be conducted?

Referral to Centrelink

15.76 For screening for family violence to be effective, it must be followed by a positive and appropriate response. In particular, there must be a 'clear signal' to victims that they will receive assistance and support following disclosure of family violence.⁴⁵

15.77 In light of the procedures and mechanisms already in place within the social security system, in the context of the JSA and DES systems the current response is referral back to Centrelink and, in particular, to a Centrelink social worker. A range of existing DEEWR material provided to JSA and DES providers includes information about the appropriate response where a job seeker discloses 'domestic violence, family grief or trauma':

If a job seeker discloses domestic violence, family grief or trauma, the job seeker should be immediately referred to a Centrelink social worker. The Social Worker will assess the job seeker's eligibility for a participation activity exemption and refer the job seeker to other appropriate services for immediate assistance. If the information is

⁴⁵ WEAVE, *Submission CFV 14*, 5 April 2011.

being disclosed while the JSCI is being conducted, the JSA provider should complete and submit the JSCI.⁴⁶

15.78 Referral allows job seekers to have their eligibility for exemptions from activity and participation requirements considered and facilitates connections to support services.

15.79 The ALRC is interested in stakeholder feedback on whether, in practice, job seekers are referred to a Centrelink social worker. The ALRC is interested in reforms to ensure this occurs in practice. For example, it may be beneficial to include the referral requirement in additional material.

Question 15–5 Under the *Job Seeker Classification Instrument Guidelines* if a job seeker discloses family violence, the job seeker should immediately be referred to a Centrelink social worker. What reforms, if any, are necessary to ensure this occurs in practice?

Systems or programs for job seekers experiencing family violence

15.80 Where victims of family violence disclose family violence in the pre-employment context, ideally this will trigger a number of responses: at the outset, they will be referred to a Centrelink social worker.⁴⁷ If the proposals in relation to the JSCI later in the chapter are adopted, it may also affect the stream placement of the job seeker.

15.81 There are a number of other system responses to disclosures of family violence, including potential access by providers to funds under the Employment Pathway Fund (EPF), which is a flexible pool of funds available to providers to purchase a broad range of assistance to help job seekers access training and support to find and retain a job.⁴⁸

15.82 In addition, there is also a need to ensure ongoing support for job seekers experiencing family violence throughout the job search process. However, as far as the ALRC is aware, JSA and DES providers do not currently have formal systems or programs in place within the stream system to account for the particular needs of job seekers experiencing family violence.

15.83 However, the ALRC understands that some JSA providers, on an informal basis, have measures in place to assist job seekers experiencing family violence to gain and retain employment. For example, through finding a job seeker work that will avoid

46 See, eg, Department of Education, Employment and Workplace Relations, *Job Seeker Classification Instrument Guidelines, Version 1.6* (2011), 11; Department of Education, Employment and Workplace Relations, *Conducting the Job Seeker Classification Instrument Job Aid* (2011).

47 Disclosure of family violence also triggers social security responses, including the tailoring of EPPs, discussed in Ch 7.

48 Department of Education, Employment and Workplace Relations, *Job Services Australia: Stream Services* <www.deewr.gov.au/Employment/JSA/EmploymentServices/Pages/streamServices.aspx> at 4 July 2011.

having contact with external clients in order to avoid any risk posed by the perpetrator attending the workplace. In its submission the ADFVC suggested the development of a targeted job placement program that

screens prospective employers who might be more supportive of employees who are victims of violence, and likely to provide flexible hours and other measures to enable workforce participation.⁴⁹

ALRC's views

15.84 The development of specific systems or programs could ensure that where job seekers are either not eligible for activity or participation exemptions, or make the choice to work, they are provided with additional tailored pre-employment support. In addition, such moves may address stakeholder concerns that, under the current system, 'there is no clear signal to victims that they will receive any help by disclosing violence'.⁵⁰

15.85 In *Family Violence—A National Legal Response*, the ALRC and the New South Wales Law Reform Commission (the Commissions) favoured the specialisation of key individuals and institutions that deal with family violence.⁵¹ The ALRC's preliminary view in this Inquiry is that the safety of job seekers experiencing family violence may be improved through the introduction of specialist systems and programs by JSA and DES providers. The ALRC envisages that JSA and DES providers could introduce a range of initiatives, such as:

- a targeted job placement program that screens employers for understanding or support of issues arising from family violence, relevant workplace policies and clauses, and provision of access to flexible working arrangements or leave; or
- making arrangements to ensure a job seeker can work in a position that will not require them to work alone, or have contact with external clients, in order to avoid any risk posed by the perpetrator attending the workplace.

15.86 Involvement in any such systems or programs would need to be on an opt-in basis, to ensure the job seeker has a right to choose whether or not their experiences of family violence should affect the employment services he or she is receiving. Any system or program would also need to provide ongoing support to the job seeker while they are experiencing family violence. Further, any such system or program would need to be introduced in the context of Proposal 4–9, which provides for a case management response to disclosures of family violence by, amongst others, Centrelink and DEEWR, and would need to work with any specialist team developed in response to the discussion in Chapter 4.

49 ADFVC, *Submission CFV 26*, 11 April 2011.

50 WEAVE, *Submission CFV 14*, 5 April 2011.

51 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), Ch 32.

Proposal 15–3 JSA and DES providers should introduce specialist systems and programs for job seekers experiencing family violence—for example, a targeted job placement program.

Job Seeker Classification Instrument

15.87 The JSCI questionnaire is used to determine a job seeker’s relative level of disadvantage in the labour market and, therefore, the likely difficulty of obtaining employment.⁵² In the course of the JSCI, job seekers are assigned points according to their answers to specific questions which, in turn, indicate factors that correlate with disadvantage in the labour market. The total score is designed to reflect how disadvantaged a job seeker is in the labour market: a higher score should reflect a greater level of disadvantage.

15.88 For example, a job seeker is assigned two points for having poor English proficiency, three points for living in temporary accommodation, four points for being unemployed, and up to twelve points for being on income support for over two years or living in certain remote Indigenous locations.⁵³ Job seekers are classified as Stream 1 if they have fewer than 19 points; Stream 2 if they have 20–28 points; and Stream 3 if they have more than 29 points. Entry to Stream 4 is based on an ESAt or JCA, as discussed later in this chapter. DEEWR considers that this process is ‘essential to ensuring that, in line with Government policy, resources are preferentially directed to those who are most in need’.⁵⁴

15.89 Where a JSCI has been administered but a job seeker’s individual circumstances have changed or the job seeker discloses new or additional information, such that their original JSCI, or the result of their last Stream Services Review, is affected a Change of Circumstances Reassessment (COCR) may be conducted.⁵⁵ COCR is the term for the process used to determine employment services eligibility.⁵⁶ In conducting a

52 The JSCI was first introduced in 1998 and was revised by DEEWR in 2008–09. The review looked at ‘the effectiveness, appropriateness and efficiency of the JSCI’ with the goal of ‘improving labour market participation and [providing] early intervention for disadvantaged job seekers’: Department of Education, Employment and Workplace Relations, *Review of the Job Seeker Classification Instrument* (2009), app C. The review relied on consultations, qualitative research, cognitive testing of questions, and econometric analysis: Department of Education, Employment and Workplace Relations, *Review of the Job Seeker Classification Instrument* (2009), 5.

53 Department of Education, Employment and Workplace Relations, *Description of JSCI Factors and Points*, 3, 5, 8, 11–12.

54 Department of Education, Employment and Workplace Relations, *Correspondence*, 15 June 2011.

55 COCRs may be conducted by a JSA provider at any time during the servicing of job seekers in Streams 1 to 3 in such circumstances. JSA providers refer job seekers in Stream 4 requiring a COCR for an ESAt. Similarly, for DES, COCRs are undertaken through an ESAt. Centrelink can refer all job seekers for a COCR where they identify further assessment is required: Department of Education, Employment and Workplace Relations, *Conducting a Change of Circumstance Reassessment Using the Job Seeker Classification Instrument Job Aid* (2011); Department of Education, Employment and Workplace Relations, *Correspondence* 26 July 2011.

56 Department of Education, Employment and Workplace Relations, *Correspondence* 26 July 2011.

COCR, a JSA provider may ask the job seeker all the JSCI questions again, or only those questions that relate to the change in circumstances or disclosed information.⁵⁷

15.90 In response to the Employment Law Issues Paper stakeholders expressed a range of broad concerns about the JSCI, in particular indicating that it does not encourage job seekers to disclose sensitive information, such as family violence. In addition, two key aspects of the JSCI emerged as of central relevance to job seekers experiencing family violence:

- the administration of the JSCI, which may prevent job seekers from feeling comfortable enough to disclose family violence; and
- the content of the JSCI, which, even where family violence is disclosed, may inadequately recognise the extent to which experience of family violence is a barrier to employment.

15.91 A related issue is referral to the ESAt and JCA, which is discussed in further detail later in the chapter.

15.92 DEEWR advised the ALRC that it plans to re-estimate the JSCI ‘through detailed econometric analysis’ in 2011–12 using labour market and job seeker outcomes data. This may involve ‘refinement to the weights for the 18 factors, or adjustment of the JSCI score band widths that allocate job seekers to different service streams’. DEEWR also advised the ALRC that ‘appropriate refinement of the ‘triggers’ that identify job seekers who may require referral for JCAs could also occur as an outcome of this research’.⁵⁸

Administration of the JSCI

15.93 Ordinarily, the JSCI questionnaire is administered by Centrelink, often at first contact when a job seeker registers for activity tested income support. JSA or DES providers or JCA/ESAt assessors may also administer the JSCI in certain circumstances.⁵⁹ The JSCI may be administered in person, or by telephone interview.

15.94 The JSCI Guidelines provide that a JSCI:

must be conducted in a private setting. It must also be conducted face-to-face, unless there are Exceptional Circumstances. For an initial JSCI, all questions must be asked in full. Interpreter services should be used where appropriate ... A job seeker can be

57 Department of Education, Employment and Workplace Relations, *Job Seeker Classification Instrument Guidelines, Version 1.6* (2011), 11, 12.

58 Department of Education, Employment and Workplace Relations, *Correspondence*, 15 June 2011.

59 JSA and DES providers administer the JSCI where a job seeker directly registers with the provider (for DES providers only in cases of non-activity tested job seekers); where the job seeker does not have an active JSCI and require commencement; and where they require a Change of Circumstances Reassessment (for JSA providers only for job seekers in streams 1–3) or do not have a Centrelink Customer Reference Number (for JSA providers only for job seekers in streams 1–3). JCA/ESAt assessors may administer a JSCI where a job seeker discloses new or different information during the JCA/ESAt or the job seeker has a recommended referral to streams 1–3 but does not have a JSCI: Department of Education, Employment and Workplace Relations, *Job Seeker Classification Instrument Guidelines, Version 1.6* (2011).

accompanied by a nominee, including a family member, advocate, social worker or counsellor for support when the JSCI is conducted.⁶⁰

15.95 Several organisations have expressed concern that the way in which the JSCI is administered impedes the identification of sensitive issues, like family violence. Criticisms have related to:

- conduct of the JSCI over the phone, in public areas within Centrelink or in the presence of partners;
- the JSCI being premised on self-disclosure and barriers to disclosure; and
- difficulties updating the JSCI.⁶¹

15.96 The revised JSCI includes wording and sequencing changes designed to highlight the importance of full disclosure and make job seekers more comfortable disclosing sensitive information. To compensate for nondisclosure, the revised JSCI allocates job seekers one point for not answering certain voluntary questions and one point for having received a Centrelink Crisis Payment in the previous six months.⁶²

15.97 These revisions may address some of the concerns raised in the 2008–09 review. Other concerns—such as the increasing use of phones to conduct interviews—were recognised by DEEWR, but not addressed in the revised form of the JSCI.⁶³ The ALRC asked for stakeholder comment about whether the reforms have encouraged greater disclosure of information about family violence.

Submissions and consultations

15.98 Stakeholders expressed a range of concerns about the administration of the JSCI.⁶⁴ There were concerns about the conduct of the JSCI by telephone, which may lead to non-disclosure of family violence. This was also noted in the 2010 Report of the Independent Review into the Impacts of the New Job Seeker Compliance Framework, which commented that submissions to the Review ‘point to the barriers of understanding, communication and trust which are likely to affect a telephone

60 Ibid, 9.

61 Advanced Personnel Management, *Submission to the Review of the Job Seeker Classification Instrument* (2008); AMES Research and Policy, *Submission to the Review of the Job Seeker Classification Instrument* (2008); BoysTown, *Submission to the Review of the Job Seeker Classification Instrument* (2008); Jobs Australia, *Submission to the Review of the Job Seeker Classification Instrument* (2008); National Employment Services Association, *Submission to the Review of the Job Seeker Classification Instrument* (2008); Sarina Russo Job Access (Australia), *Submission to the Review of the Job Seeker Classification Instrument* (2008).

62 Department of Education, Employment and Workplace Relations, *Review of the Job Seeker Classification Instrument* (2009), 13.

63 Ibid, 8.

64 WEAVE, *Submission CFV 14*, 5 April 2011; M Winter, *Submission CFV 12*, 5 April 2011; ADFVC, *Submission CFV 26*, 11 April 2011. This concern was also expressed in Australian Council of Social Service, *Submission to Minister for Employment Participation on the Future of Job Services Australia* (2011).

interview'.⁶⁵ This may have a particular impact on job seekers from non-English speaking backgrounds.

15.99 Stakeholders also emphasised that it was inappropriate for the JSCI to be conducted in a public place, or in the presence of a job seeker's partner. For example, the ADFVC recommended that

any discussions about family violence issues be conducted in a private space wherever possible to encourage disclosure, protect client confidentiality and minimise the possibility that the perpetrator of the violence is in the vicinity of the client when the above questions are posed.⁶⁶

15.100 WEAVE submitted that, in administering the JSCI,

staff routinely skip questions bundling several questions into one generic question such as 'Is there anything else you'd like to tell us about, are there any other issues that impact on your ability to undertake employment?' For many women, these questions are not sufficiently specific for them to disclose the existence of domestic violence and they will routinely answer no, having no understanding that such issues could be considered.⁶⁷

15.101 However, DEEWR advised that:

The conduct of interviews by telephone is essential to ensuring the cost-effective deliver of Centrelink business and providing job seekers with convenience and speed of access to benefits and services. Around 65 per cent of First Contact Service Offers, which incorporate the initial administration of the JSCI, are conducted by telephone interview.⁶⁸

15.102 DEEWR also emphasised that the result of independent testing by the Social Research Centre in 2007 and 2008 was that:

no significant difference was found in the consistency of Centrelink JSCIs irrespective of whether the JSCI was conducted face to face or by telephone. For Centrelink job seekers were allocated to the same service Stream between 90 to 94 per cent of occasions.⁶⁹

15.103 Many stakeholders also emphasised the need for training of Centrelink staff administering the JSCI, however this issue is considered and dealt with in Chapter 7.

ALRC's views

15.104 The ALRC is of the view that the administration of JSCI questionnaires over the phone may discourage job seekers from sharing sensitive information and that, where the JSCI is administered in person, this should not occur in a public area or in the presence of the job seeker's partner.

65 J Disney, A Buduls and P Grant, *Impacts of the new Job Seeker Compliance Framework: Report of the Independent Review* (2010) 23.

66 ADFVC, *Submission CFV 26*, 11 April 2011.

67 WEAVE, *Submission CFV 14*, 5 April 2011.

68 Department of Education, Employment and Workplace Relations, *Correspondence*, 15 June 2011.

69 *Ibid.*

15.105 The ALRC notes the testing highlighted by DEEWR, but this testing does not take account of the fact that administering the JSCI over the telephone may act as an additional barrier to disclosure of sensitive information.

15.106 While the administration of the JSCI by telephone is in part to enable cost-effective service delivery, the ALRC notes the apparent inconsistency between the *JSCI Guidelines*, which provide for the conduct of JSCIs in person unless there are 'Exceptional Circumstances', and the apparently high number of JSCIs administered over the phone.

15.107 The ALRC is of the view that, in some circumstances it may be appropriate to administer the JSCI over the telephone, for example where this will protect the safety of job seekers by ensuring they do not have to attend a Centrelink or JSA provider office, or in rural and remote areas.

15.108 However, the ALRC considers that, where possible, interviews should be conducted in person and solely with the job seeker, unless the job seeker requests the presence of another person—for example, a support person, case manager, interpreter or similar. The ALRC is of the view this may go some way to limit barriers to disclosure of family violence presented by administering the JSCI over the telephone, including those faced by CALD job seekers in particular, or which may arise as a result of the presence of a perpetrator or other family member.

Proposal 15–4 As far as possible, or at the request of the job seeker, all Job Seeker Classification Instrument interviews should be conducted in:

- (a) person;
- (b) private; and
- (c) the presence of only the interviewer and the job seeker.

Content of the JSCI

15.109 The JSCI assesses 18 categories of information, or factors. Information about each of the factors is gathered from a number of sources including the job seekers record, a ESAt/JCA report (where available) and direct questioning of job seekers. The current factors include:

- age and gender;
- recency of work experience;
- vocational qualifications;
- Indigenous status;
- access to transport;
- disability/medical conditions;

- living circumstances;
- phone contactability;
- proximity to a labour market; and
- personal characteristics.⁷⁰

15.110 Information about family violence is not collected as a separate category of information. However, as family violence may have an impact on any number of categories—for example on a job seeker’s living circumstances or access to transport—some of these existing factors may indirectly account for their experiences of family violence. In addition, family violence may be discussed as one aspect of a job seeker’s ‘personal characteristics’.

15.111 In the Employment Law Issues Paper, the ALRC asked a number of general questions about the operation of the JSCI in practice, in particular in relation to:

- how often applicants are asked about family violence;
- how questions about family violence are asked or phrased;
- how much discretion the JSCI administrator has in raising (or avoiding) the subject of family violence; and
- the practical effect of disclosing family violence in the JSCI interview.

Living circumstances category

15.112 Under the living circumstances category, job seekers are asked whether they have been living in secure accommodation for the last 12 months or longer; whether they are staying in emergency or temporary accommodation; how often they have moved in the past year; and whether they live alone and/or have care-giving responsibilities.⁷¹ The current focus of the question relating to ‘living circumstances’ for the purposes of the JSCI is on secure accommodation for a 12 month period, defined as a ‘reasonably fixed, regular and adequate place to stay’.⁷²

15.113 However, the ALRC considers that there may be scope to expand this definition of secure accommodation to consider the impacts of family violence under this category. The ALRC invites stakeholder comment on whether DEEWR should amend the category of ‘living circumstances’, or the definitions relating to the category, under the JSCI to ensure it incorporates consideration of safety or other concerns arising from the job seeker’s experience of family violence.

70 Department of Education, Employment and Workplace Relations, *Description of JSCI Factors and Points*, 1.

71 Department of Education, Employment and Workplace Relations, *Explanation of the Job Seeker Classification Instrument Questions Advice, Version 1.8* (2011), 16.

72 *Ibid*, 16.

Personal characteristics category

15.114 The personal characteristics category is intended to capture any other personal factor or characteristic that may affect the job seeker's ability to obtain or retain employment. The current question is 'are there any other factors which you think might affect your ability to work, obtain work or look for work that haven't already been discussed?' The question is voluntary and job seekers can choose not to answer, however administrators are told that they should encourage job seekers to 'fully disclose their circumstances to ensure they receive the most appropriate services'.⁷³

15.115 The *Explanation of the JSCI Questions Advice* emphasises that factors recorded in response to this category must be relevant to the question and not to other questions in the JSCI and that, as a result, it may be necessary to review and change previous responses. It also notes that conditions such as depression or anxiety or other 'disability, health or medical issues', should be recorded under the work capacity category if they are expected to last three months or more.⁷⁴

15.116 The ALRC notes stakeholder concerns that a single 'catch-all' question at the end of the JSCI may not be appropriate or encourage disclosure of family violence.⁷⁵ The ALRC also considers that the advice provided to those administering the JSCI in its current format may lead to the inclusion of family violence in respect of one factor under the JSCI where in reality it impacts on a number of factors. The ALRC is also concerned that it may contribute to the 'medicalisation' of family violence highlighted by stakeholders, that is the tendency to focus on isolated medical aspects of the job seekers' circumstances rather than consider family violence and its impact in a more holistic manner.⁷⁶ However, the ALRC is unsure in practice how often job seekers disclose family violence in response to this question and would like stakeholder feedback on its operation.

15.117 The ALRC considers that either amending the existing question or including an additional question, could ensure that JSCI incorporates consideration of family violence in assessing job seekers' personal characteristics but would welcome stakeholder feedback on this issue.

Question 15–6 The Job Seeker Classification Instrument includes a number of factors, or categories, including 'living circumstances' and 'personal characteristics'. Should DEEWR amend those categories to ensure the Job Seeker Classification Instrument incorporates consideration of safety or other concerns arising from the job seeker's experience of family violence?

73 Ibid, 22.

74 Ibid, 22, 23.

75 See, eg. WEAVE, *Submission CFV 14*, 5 April 2011.

76 See, eg. Ibid; M Winter, *Submission CFV 12*, 5 April 2011.

New category for family violence

15.118 Rather than relying on disclosure of family violence in the context of the ‘living circumstances’ or ‘personal characteristics’ categories, another possible approach to ensuring that the JSCI captures information about family violence, for the purposes of determining a job seeker’s barriers to work, may be to add a new category of family violence.

15.119 Where family violence is disclosed, ideally there should be automatic referral of the job seeker to a Centrelink social worker. However, the *JSCI Guidelines* provide that, where family violence is disclosed while the JSCI is being conducted, the JSA provider should complete and submit the JSCI. As a result, in addition to the need for the JSCI to consider all potentially significant barriers to work, this also underlines the importance of the JSCI being designed to consider family violence.

Submissions and consultations

15.120 Stakeholders expressed strong views about the need for the JSCI to consider family violence.⁷⁷ For example, the ADFVC expressed concern about the how information about family violence is sought in the JSCI and recommended the ‘introduction of standard questions for raising family violence issues with clients’.⁷⁸

15.121 WEAVE suggested that the JSCI ‘should directly inquire with regard to family violence victimisation’ and should include an assessment of the circumstances of the people for whom the job seeker has caring responsibilities.⁷⁹

15.122 A number of stakeholders outlined a range of information that should be considered under any new category relating to family violence, in particular: ‘ongoing trauma, the cost of child care and the need to attend appointments related to the abuse’.⁸⁰ The ADFVC suggested ‘these issues need to be given adequate weight in the assessment to ensure its accuracy’, emphasising that the result of its research indicated:

A considerable number of the women in the [ADFVC] study stated that they were unable to work because they were experiencing ongoing physical and mental health trauma from the abuse ... Women and workers spoken with in the study expressed a need for healing time for victims prior to taking up paid employment ... Some women also referred to their children not being emotionally ready to be left on their own or in child care (including older children who might access after school care), due to their own trauma from the abuse. These caring responsibilities prevented women from working ... A large number of [women] who were not working stated outright that childcare costs would equal or exceed any earnings gained from their employment ... Finally, women spoke of being required to attend multiple appointments associated with the abuse, such as: doctors and other health appointments for them and their

77 ADFVC, *Submission CFV 26*, 11 April 2011; WEAVE, *Submission CFV 14*, 5 April 2011; M Winter, *Submission CFV 12*, 5 April 2011.

78 ADFVC, *Submission CFV 26*, 11 April 2011.

79 WEAVE, *Submission CFV 14*, 5 April 2011.

80 ADFVC, *Submission CFV 26*, 11 April 2011.

children, appointments with police and lawyers, domestic violence services, accommodation services and court appointments.⁸¹

ALRC's views

15.123 The ALRC proposes that a new family violence category should be included in the JSCI. Ensuring that the JSCI captures all relevant information which may affect a job seeker's disadvantage in the labour market and barriers to work is important in order to ensure they are placed in an appropriate employment services stream and provided with the necessary support to gain and retain employment. To the extent that the JSCI is not currently designed in a way that elicits information about family violence, the ALRC considers it may be beneficial to add a new category.

15.124 The ALRC would like further input from stakeholders on the information that should be considered under the proposed category, for example: safety concerns; caring responsibilities for children, particularly those who have experienced or witnessed family violence; and the impact of family violence on a jobseeker's housing, transport and health.

15.125 However, the ALRC recognises that a key difficulty underlying any proposal to include a new category is the need to recognise the impact of family violence without necessarily resulting in the categorisation of job seekers into higher streams. While this may involve the provision of necessary services or support, the ALRC has some concern about this effectively resulting in job seekers experiencing family violence being placed into the 'too hard' basket and not being provided the necessary support or being a priority in terms of achieving employment outcomes.⁸² While the ALRC considers that the question of weight/score attached to the new category should be left to DEEWR to consider in the context of the overall JSCI, the ALRC welcomes stakeholder comment on how to address this potential unintended consequence associated with the introduction of a new family violence category.

15.126 The ALRC notes that the introduction of a family violence category under the JSCI may affect the circumstances and manner in which a COCR should be conducted.

Proposal 15-5 DEEWR should amend the Job Seeker Classification Instrument to include 'family violence' as a new and separate category of information.

81 Ibid. See also R Braaf and I Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (2011).

82 This concern is linked in part to concerns expressed in relation to the JSA fee structure, however as outlined earlier in this chapter, the ALRC considers examination of this issue in any more detail extends beyond the scope of the Terms of Reference.

Employment Services Assessments and Job Capacity Assessments

15.127 On 1 July 2011, new arrangements were introduced with respect to the JCA program, with the introduction of Employment Services Assessments (ESAt). A job seeker is referred to an ESAt or JCA where the results of the JSCI indicate ‘significant barriers to work’ and there is a potential need for intensive assistance.

15.128 Both an ESAt and a JCA can determine eligibility for employment services through a JSA or DES provider.⁸³ An ESAt is a streamlined assessment that focuses on identifying the type of employment service or other assistance that can best help a job seeker to prepare for, obtain or retain employment. A JCA involves the use of Impairment Tables and determines the impact of any medical conditions or disabilities a job seeker has on ability to work and whether the job seeker can benefit from employment assistance.⁸⁴

15.129 An ESAt or JCA may be used for the purposes of employment services, or by Centrelink to inform decisions regarding income support payments and participation requirements.

15.130 JCAs were previously conducted by a range of private health and allied health professionals, such as registered psychologists or rehabilitation counsellors employed by Centrelink, CRS Australia, HSA Group and 15 non-government providers.⁸⁵ However, as of 1 July 2011, JCAs and the newly introduced ESAts will be conducted by health and allied health professionals ‘employed by a single Government Provider under the DHS portfolio’.⁸⁶

Employment Services Assessments

15.131 An ESAt is designed to recommend the most appropriate employment service assistance based on an assessment of a job seeker’s barriers to finding and maintaining employment and work capacity.⁸⁷

15.132 There are two types of ESAt, both of which involve an assessment of the job seeker’s circumstances to determine the most appropriate service:

- Medical Condition ESAt—which also determines a job seeker’s work capacity, where one or more medical conditions are identified. ESAts are similar to the previous standard JCA for potentially highly disadvantaged job seekers with disability, injury or illness. In a Medical Condition ESAt the assessor must rely on the available medical evidence.

83 Department of Education, Employment and Workplace Relations, *Correspondence* 26 July 2011.

84 Ibid. Centrelink, *Information about assessment services fact sheet* (2011).

85 Department of Human Services, *Job Capacity Assessment Review: Summary Paper* (2008), 5, 33.

86 Department of Education, Employment and Workplace Relations, *Employment Services Assessment* <<http://www.deewr.gov.au/Employment/Programs/Pages/ESAt.aspx>> at 14 July 2011.

87 Work capacity is determined in bandwidths of a certain number of hours per week.

- Non-Medical Condition ESAt—where no medical condition is identified. A non-medical condition ESAt is normally less complex than an ESAt for a job seeker with disability, injury or illness, and will be streamlined to meet the individual's needs.

Job Capacity Assessments

15.133 From 1 July 2011, JCAs are now largely used for Disability Support Pension claims and reviews and are not primarily employment services driven.⁸⁸ JCAs are not diagnostic in nature. The JCA assessor must rely on medical evidence available to assess the impacts of any medical condition or disability on the capacity of a job seeker to work and whether the job seeker can benefit from employment assistance.⁸⁹

Issues arising

15.134 In the Employment Law Issues Paper, the ALRC asked what, if any, improvements to the JCA referral process would provide better support to jobseekers experiencing family violence. In response, stakeholders criticised the way JCAs are conducted arguing, amongst other things, that there is a need for JCAs to better capture the needs of victims of family violence without treating only the medical manifestations of family violence.

15.135 In light of submissions, this section of the chapter considers:

- whether a 'significant barrier to work' under the JSCI should automatically trigger referral to an ESAt or JCA;
- ESAt and JCA assessors;
- ways in which an ESAt or JCA can consider the impact of family violence; and
- what recommendations an ESAt or JCA assessor can make in relation to stream placement or referral to DES to account for the needs of a job seeker experiencing family violence.

Referral to an ESAt or JCA

15.136 A job seeker may be referred for an ESAt or JCA in a number of circumstances. The focus of this chapter is on circumstances triggering referral and in particular, whether family violence should trigger an automatic referral.⁹⁰

15.137 Primarily, a job seeker will be referred to an ESAt or JCA where the JSCI indicates significant barriers to work. In this case, in addition to serving a stream placement role, the JSCI is intended to identify job seekers 'who have barriers that are so serious or complex that they may require additional assessment which, when appropriate to their needs, will result in referral to specialist employment services'.⁹¹

88 Department of Education, Employment and Workplace Relations, *Correspondence* 26 July 2011.

89 Department of Education, Employment and Workplace Relations, *Correspondence*, 15 June 2011.

90 Referral in other circumstances is discussed in Ch 7.

91 Department of Education, Employment and Workplace Relations, *Correspondence*, 15 June 2011.

15.138 Centrelink has primary responsibility for identifying and actioning referrals for an ESAt or JCA for job seekers in Streams 1–3.⁹² However, a JSA provider may decide to refer a job seeker for an ESAt using the factors referred to in the *Referral for an ESAt Guidelines*.

15.139 A job seeker’s disclosure of family violence may be—but apparently is not always—considered a significant barrier to work, automatically leading to a JCA.⁹³ Some stakeholders suggested that family violence should automatically constitute a significant barrier to work and therefore result in referral to a JCA.⁹⁴ Other stakeholders suggested that the JCA is ‘inadequate’ in dealing with job seekers who are experiencing family violence.⁹⁵

15.140 Overall however, there is a need to balance the desire to ensure job seekers experiencing family violence receive appropriate support, which could potentially be provided through an ESAt or JCA, with the effect of ‘tagging’ all job seekers experiencing family violence as having significant barriers to work.

15.141 Other stakeholders commented more broadly about the purpose of referral to a JCA, suggesting it should ‘form part of an informed consultation with the victim about their options’.⁹⁶

ESAt and JCA assessors

15.142 ESAts and JCAs will be conducted by health and allied health professionals, even in the case of a Non-Medical ESAt. In 2010, the report of the Independent Review commented that, in submissions, providers expressed concerns that JCAs ‘are not necessarily conducted by a person with significant expertise in the key issues which need to be examined’. However, the report recognised that upcoming reforms (which have now been introduced) may address some of these problems.⁹⁷

15.143 In submissions to this Inquiry, stakeholders expressed concerns about JCA assessors, in particular with respect to their lack of knowledge or understanding of family violence, and their tendency to focus on isolated medical aspects of the job seekers’ circumstances rather than conduct the JCA in a more holistic manner.⁹⁸ In consultations, some stakeholders suggested that job seekers who disclose family violence should be referred to JCA (and by extension ESAt) assessors with specialist expertise or experience in family violence.

92 Where a JSA provider wants to refer a job seeker in streams 1–3 for an ESAt they must complete a request for ESAt form for approval by DEEWR to proceed.

93 Department of Education, Employment and Workplace Relations, *Description of JSCI Factors and Points*, 13.

94 See, eg, WEAVE, *Submission CFV 14*, 5 April 2011.

95 M Winter, *Submission CFV 12*, 5 April 2011.

96 WEAVE, *Submission CFV 14*, 5 April 2011.

97 J Disney, A Buduls and P Grant, *Impacts of the new Job Seeker Compliance Framework: Report of the Independent Review* (2010), 24.

98 See, eg, M Winter, *Submission CFV 12*, 5 April 2011.

ESAts, JCAs and family violence

15.144 In identifying the most appropriate type of employment service or other assistance, or in determining the impact of any medical condition or disability on ability to work, the ESAt and JCA play a crucial role in the JSA and DES systems.

15.145 In response to the Employment Law Issues Paper, stakeholders expressed a range of concerns about the adequacy of JCAs (as ESAts were introduced following the release of the Issues Paper), in taking into account, or responding to, family violence. Concerns centred on the reliance of the JCA on medical verification which ‘medicalises’ family violence under the JCA system.⁹⁹

15.146 For example, WEAVE highlighted that, in their experience, the usual process for a victim of family violence is that:

physical and mental illnesses arising from violence are recognised and the victim is treated as a medical case with referrals for a Job Capacity Assessment focusing on their health concerns. The process of leaving a violent [partner] who may be continuing to threaten, stalk, harass and abuse becomes reduced to an issue of the victim needing anti-depressants and anti-anxiety medications so they can jobsearch.¹⁰⁰

15.147 Similarly, Myjenta Winter submitted that, on the basis of research she had conducted for her PhD:

the Job Capacity Assessment was inadequate in dealing with person that had experienced and were affected by violence. The job capacity assessment assesses a job seekers capacity to work. The assessment relies on medical verification, which in the case of domestic violence, apart from physical injuries, manifest in mental health conditions, such as posttraumatic stress disorder which is difficult to diagnose as it is often masked by depression and anxiety ... The job capacity assessment mainly assesses medical conditions and takes in account social issues such as drug and alcohol problems, but domestic violence has less significance.¹⁰¹

15.148 A range of other concerns were expressed in consultations, including the appropriateness of a JCA in circumstances of family violence, given the often fluctuating impact of family violence on a job seeker’s ability to work.

ESAt and JCA outcomes

15.149 There are a range of outcomes available as a result of an ESAt or JCA. For example, a job seeker may be referred to a specialist DES provider, to Stream 4, or (where they do not require referral to a specialist service) to JSA and allocated to services Streams 1, 2 or 3, as determined by their JSCI score.

15.150 The focus of this chapter is on these stream placement and DES outcomes. However, there are also a range of other outcomes, including recommendations about tailoring EPPs, the use of the EPF or access to services, which are considered in Chapter 7.

99 Medicalises was a term used in the submission from WEAVE, *Submission CFV 14*, 5 April 2011.

100 Ibid.

101 M Winter, *Submission CFV 12*, 5 April 2011.

ALRC's views

15.151 The ALRC would be interested in stakeholder feedback about whether disclosure of family violence should automatically constitute a significant barrier to work and therefore result in referral to an ESAt or JCA, or whether there are other, more appropriate, ways to ensure job seekers receive the necessary support, for example as outlined earlier in this chapter in relation to JSA provider responses.

15.152 The ALRC considers the introduction of a Medical ESAt and a Non-Medical ESAt may be a positive development. On face value it appears that it may address some of the 'medicalisation' of family violence concerns raised by stakeholders in this Inquiry. However, given the ESAt system was introduced on 1 July 2011, the ALRC is unable to predict exactly how it will operate in practice.

15.153 With respect to concerns expressed about the expertise of assessors in understanding family violence and its impact on job seekers, the ALRC considers that referral of job seekers who disclose family violence to ESAt or JCA assessors with particular speciality or experience in family violence may address some of the concerns raised by stakeholders. However, such a move may require additional resources, increase delays and present difficulties in terms of access to those assessors, particularly in rural and remote areas. Education and training of all assessors, as proposed below, may assist in this respect.

15.154 The ALRC welcomes stakeholder feedback on the capacity of the ESAt and JCA to consider the impact of family violence on a job seeker's readiness to work. In particular, the ALRC would be interested in hearing whether the new ESAt will address some of the concerns addressed in submissions to this Inquiry, and if not, what changes could ensure that ESAts and JCAs capture, assess and address the circumstances of job seekers experiencing family violence.

15.155 Further, the ALRC would be interested in comment on whether, in practice, recommendations made by ESAt or JCA assessors account for the needs and experiences of job seeker's experiencing family violence, to the extent that they relate to stream placement or referral to DES.

Question 15-7 A job seeker is referred to an ESAt or JCA where the results of the Job Seeker Classification Instrument indicate 'significant barriers to work'. Should the disclosure of family violence by a job seeker automatically constitute a 'significant barrier to work' and lead to referral for an ESAt or JCA?

Question 15-8 Where a job seeker has disclosed family violence, should there be streaming of job seekers to ESAt and JCA assessors with specific qualifications or expertise with respect to family violence, where possible?

Question 15-9 When conducting an ESAt or JCA, how do assessors consider the impact of family violence on a job seeker's readiness to work? What changes, if any, could ensure that ESAts and JCAs capture and assess the circumstances of job seekers experiencing family violence?

Question 15–10 In practice, to what extent can, or do, recommendations made by ESAt or JCA assessors in relation to stream placement or referral to DES account for the needs and experiences of job seekers experiencing family violence?

Training and education

15.156 A central theme that has emerged in the course of this Inquiry, including in the pre-employment context, is the need for effective education and training of individuals working in the JSA system—including DEEWR, Centrelink, JSA, DES and IEP providers and ESAt and JCA assessors. A proper appreciation and understanding of the nature, features and dynamics of family violence, and its potential impact on a job seeker’s ability to gain and retain employment, is fundamental to ensuring that the system is able to respond to the needs of job seekers experiencing family violence and, ultimately, can improve their safety.

15.157 Accordingly, this section of the chapter outlines the need for education and training of JSA, DES and IEP provider staff as well as ESAt and JCA assessors in relation to:

- the nature, features and dynamics of family violence; and
- the potential effect of family violence on work capacity and barriers to employment arising from family violence.

15.158 Training and education of Centrelink staff, including in relation to the administration of the JSCI, is discussed in Chapter 7.

Submissions and consultations

15.159 A number of stakeholders emphasised the need for education and training for JSA providers. For example, WEAVE suggested the providers should be required to participate in such training

as part of their accreditation process so they can deal with the issue of family violence professionally. Such accreditation should be displayed so that clients know that the JSP staff has been trained in responding to family violence. This would increase client’s confidence to disclose.¹⁰²

15.160 Similarly, Northern Rivers Community Legal Centre recommended training for JSA provider staff to ‘recognise signs that an individual may be or have been a victim of family violence and may be reluctant to disclose this’ and in relation to ‘appropriate response strategies to victims so the job service agency does not compound the impact on the victim of family violence’.¹⁰³

102 WEAVE, *Submission CFV 14*, 5 April 2011.

103 Northern Rivers Community Legal Centre, *Submission CFV 08*, 28 March 2011.

15.161 Stakeholders also expressed the view that JCA assessors should have compulsory training in relation to family violence.¹⁰⁴

ALRC's views

15.162 The need for education and training of JSA, DES and IEP provider staff is vital to ensuring that the current system and, if modified in line with the proposals in this chapter, any new system, is able to respond to and protect job seekers experiencing family violence.

15.163 In the report, *Family Violence—A National Legal Response*, the Commissions considered that education on the nature, features and dynamics of family violence better enables those in the system to assist victims. To this end, the Commissions recommended that the Australian, state and territory governments, and educational, professional and service delivery bodies should ensure regular and consistent education and training for participants in the family law, family violence, and child protection systems, in relation to the nature and dynamics of family violence, including its impact on victims, in particular those from high risk or vulnerable groups.¹⁰⁵

15.164 Similarly, the ALRC considers it is necessary and appropriate to propose that participants in the JSA and DES systems, in particular JSA, DES and IEP provider staff receive similar training, with a particular focus on the potential effect family violence may have on work capacity and barriers to employment.

15.165 The ALRC considers that a proper understanding of the nature, features and dynamics of family violence and its impact on victims, in particular those from high risk and vulnerable groups, and its potential impact on work capacity and barriers to employment, will better enable JSA, DES and IEP provider staff to support and assist job seekers.

15.166 As a result, the ALRC has formed the view that DEEWR should work with providers to ensure that all staff working for JSA, DES and IEP providers receive regular and consistent training in relation to:

- the nature, features and dynamics of family violence, and its impact on victims, in particular those from high risk and vulnerable groups;
- recognition of the impact of family violence on particular job seekers such as: Indigenous peoples; those from culturally and linguistically diverse backgrounds; those from lesbian, gay, bisexual, trans and intersex communities; children and young people; older persons, and people with disability;
- the potential impact of family violence on a job seeker's capacity to work and barriers to employment;

104 See, eg, WEAVE, *Submission CFV 14*, 5 April 2011; M Winter, *Submission CFV 12*, 5 April 2011.

105 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), Rec 31–1.

- appropriate referral processes; and
- the availability of support services.

15.167 Prior to 1 July 2011, the ALRC is aware that JCA assessors were required to complete online modules in order to be certified to conduct JCAs. However, in light of the nature of changes to the conduct of ESAts and JCAs, the ALRC is not aware how training and education will be conducted under the new system. The ALRC considers that, where it is not already envisaged, DHS should ensure regular and consistent training for all ESAt and JCA assessors in relation to:

- the nature, features and dynamics of family violence;
- its impact on capacity to work and barriers to work faced by job seekers experiencing family violence; and
- the availability of support services.

Proposal 15–6 DEEWR and the Department of Human Services should require that all JSA, DES and IEP provider staff and ESAt and JCA assessors receive regular and consistent training in relation to:

- (a) the nature, features and dynamics of family violence, including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is under-reported; and it has a detrimental impact on children;
- (b) recognition of the impact of family violence on particular job seekers such as:
 - Indigenous people;
 - those from culturally and linguistically diverse backgrounds;
 - those from lesbian, gay, bisexual, trans and intersex communities;
 - children and young people;
 - older persons; and
 - people with disability
- (c) the potential impact of family violence on a job seeker's capacity to work and barriers to employment;
- (d) appropriate referral processes; and
- (e) the availability of support services.

Specific job seeker groups

Indigenous job seekers

15.168 In the *Family Violence Report*, the ALRC documented the particular impact of family violence on Indigenous peoples and their communities.¹⁰⁶ This chapter has highlighted the wide-ranging impacts of family violence on work capacity and in imposing additional barriers to employment. In many cases, the additional issues which arise from being an Indigenous victim of family violence exacerbate these impacts, which further disadvantage Indigenous job seekers.

15.169 In recognition of the gap between Indigenous and non-Indigenous Australians with respect to economic participation and employment, and as a key element in meeting one of the Government's 'Close the Gap' targets in relation to economic participation—halving the employment gap between Indigenous and non-Indigenous Australians within a decade¹⁰⁷—in December 2008, the Government announced reforms to the provision of Indigenous employment services.

15.170 Integrated Indigenous employment services are available through the JSA network, in conjunction with the IEP, and, in areas with poor labour markets, Community Development Employment Projects. Where appropriate, Indigenous job seekers are able to receive parallel servicing through JSA providers and the IEP, and in remote areas, the CDEP.¹⁰⁸

15.171 The current IEP model, which began on 1 July 2009, is the largest provider of employment services for Indigenous people. The objective of the IEP is to increase Indigenous employment outcomes and participation in economic activities. Under the IEP, support is available for a range of activities which may increase economic opportunities and participation for Indigenous people. The IEP provides Indigenous job seekers with a range of assistance, largely through specific IEP projects, including (relevantly) in relation to pre-employment and employment training and mentoring support and support for Indigenous job seekers and workplaces.

15.172 The IEP operates through procurement of services by DEEWR from two panels (an Employment Panel and an Economic Development and Business Support Panel) or directly with groups to assist employers, Indigenous people and their communities. The two panels are a group of organisations from which DEEWR may procure IEP services. The Panels operate under a Deed of Standing Offer—for the period 2009–2012—and individual projects/services are then provided under a Contract/Official Order. The Deed of Standing Offer, Contract/Official Order and Guidelines for Panel Members for the contract for services purchased by DEEWR.

106 Ibid.

107 Department of Families, Housing, Community Services and Indigenous Affairs, *Closing the Gap Targets* <<http://www.fahcsia.gov.au/sa/indigenous/progserv/ctg/Pages/targets.aspx>> at 24 July 2011.

108 The focus of this chapter is on employment services. As a result, initiatives and services such as the Community Support Service, the Australian Employment Covenant and the role played by Indigenous Business Australia are not discussed.

ALRC's views

15.173 To the extent that the ALRC can consider ways in which IEP projects provided through the panel arrangements could be revised to ensure they account for the needs of Indigenous job seekers experiencing family violence, the ALRC considers that the tender process in 2012 may provide an avenue through which the Government could consider this issue.

15.174 The ALRC welcomes stakeholder comment on whether the Government should include a requirement that IEP projects/services or panel providers demonstrate an understanding of and systems/policies to address the needs of Indigenous job seekers experiencing family violence in requests for tender and contracts for employment services, and if so how.

15.175 The focus of the ALRC in this area is on the pre-employment services and support provided to Indigenous job seekers through JSA, IEP and CDEP. A number of questions and proposals throughout this chapter refer specifically to Indigenous people or to the IEP. However, the ALRC welcomes stakeholder comment on the effectiveness of these systems to respond to the need of Indigenous job seekers who are experiencing family violence. The ALRC would also be interested in feedback on what changes, if any, could be made to the JSA, DES IEP or CDEP systems to assist Indigenous job seekers who are experiencing family violence.

Question 15–11 In what ways, if any, should the Australian Government include a requirement in requests for tender and contracts for employment services that IEP projects and services, or panel providers, demonstrate an understanding of, and systems and policies to address, the needs of Indigenous job seekers experiencing family violence?

Question 15–12 In what ways, if any, should the JSA, DES, IEP or CDEP systems be reformed to assist Indigenous job seekers who are experiencing family violence?

CALD job seekers

15.176 In some cases, job seekers from CALD communities may face additional barriers to employment that require different, or additional, support from JSA or DES providers. As outlined in Chapters 1, 4 and 14, people from CALD communities may face additional barriers to disclosure of family violence.

15.177 Where relevant throughout the chapter the ALRC has noted the particular impact administration or processes may have on job seekers from CALD communities. However, the ALRC would be interested in specific stakeholder comments on the effectiveness of the JSA and DES systems in responding to the needs of job seekers from CALD communities and on what changes if any, could be made to the JSA or DES systems to assist job seekers from CALD communities who are experiencing family violence.

Question 15–13 In what ways, if any, should the JSA or DES systems be reformed to assist job seekers from culturally and linguistically diverse communities who are experiencing family violence?

Job seekers with disability

15.178 On 1 March 2010, the Government introduced the new DES system. Eligibility for DES is largely determined by the outcome of the ESAt or JCA,¹⁰⁹ however DES is uncapped.

15.179 In some cases, a job seeker with a disability may register directly with DES. However, in these circumstances, where a potential DES participant does not have a valid ESAt or JCA or fall within a limited category of exceptions, the DES provider will refer the job seeker to an ESAt or JCA assessor to have their eligibility for DES assessed.

15.180 Otherwise, a job seeker may be referred to the DES provider network if they:

- have a disability which is permanent or likely to be permanent;
- have a reduced capacity for communication, learning or mobility;
- require support for more than six months after placement in employment; or
- require specialist assistance to build their work capacity.¹¹⁰

15.181 There are two separate programs within DES:

Disability Management Service is for job seekers with disability, injury or health condition who require the assistance of a Disability Employment Service but are not expected to need long-term support in the workplace.

Employment Support Service is for job seekers with permanent disability and with an assessed need for more long-term, regular support in the workplace.¹¹¹

15.182 Where a job seeker under the DES system discloses family violence, the same procedures that apply under the JSA system apply—that is, they are immediately referred to a Centrelink social worker.¹¹²

15.183 Where relevant throughout the chapter, the ALRC has noted the particular impact administration or processes may have on people with a disability, and included

109 Except where the job seeker is a Special Class Client or Eligible School Leaver or registers as a Job In Jeopardy: Department of Education, Employment and Workplace Relations, *Disability Employment Services: Referral for Job Capacity Assessment Guidelines*, 23 March 2010 (2010). The ALRC is advised that DEEWR is currently revising these Guidelines in light of the changes from 1 July 2011: Department of Education, Employment and Workplace Relations, *Correspondence* 26 July 2011.

110 J Disney, A Buduls and P Grant, *Impacts of the new Job Seeker Compliance Framework: Report of the Independent Review* (2010), 13.

111 Disability Employment Services, *Fact Sheet: DES: Flexible, Tailored Employment Assistance* (2011).

112 See earlier in the chapter and Department of Education, Employment and Workplace Relations, *Disability Employment Services: Referral for Job Capacity Assessment Guidelines*, 23 March 2010 (2010).

reference to the DES. However, in some cases the ALRC requires further information about the structure and operation of the DES. In addition, the ALRC would be interested in specific stakeholder comments on the effectiveness of the JSA and DES systems in responding to the needs of job seekers with a disability and on what changes if any, could be made to the JSA or DES systems to assist job seekers with a disability who are experiencing family violence.

Question 15–14 In what ways, if any, should the JSA or DES systems be reformed to assist job seekers with disability who are experiencing family violence?

Job seekers in rural and remote areas

15.184 In 2010, the Independent Review commented that:

A number of employment service providers and welfare organisations have emphasised a range of special difficulties which can arise when trying to provide employment services for job seekers in remote locations.¹¹³

15.185 In addition, stakeholders in this Inquiry have highlighted that JSA and DES services in remote locations are less effective than non-remote services, due to the often limited labour markets, irregular servicing and the level of job seeker disadvantage.

15.186 In June 2011, the Government agreed to review the way services are delivered in remote locations and will commence consultations on possible new approaches for the delivery of remote services shortly.¹¹⁴ On 16 August the Government released a Discussion Paper and are conducting consultation forums on the future of remote participation and employment services.

15.187 The ALRC welcomes stakeholder feedback on ways in which employment services delivered in rural and remote locations do, or could be appropriately reformed to ensure the safety of job seekers experiencing family violence.

Question 15–15 In the context of the Australian Government review of new approaches for the delivery of rural and remote employment services, in what ways, if any, could any new approach incorporate measures to protect the safety of job seekers experiencing family violence?

113 J Disney, A Buduls and P Grant, *Impacts of the new Job Seeker Compliance Framework: Report of the Independent Review* (2010), 71.

114 Department of Education, Employment and Workplace Relations, *Job Services Australia Industry Information Paper* (2011).

