



Medico-legal fee benchmarking analysis

SIRA NSW

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Dear David

Medico-legal fee benchmarking analysis

We present our benchmarking analysis of medico-legal fees in the New South Wales workers compensation and compulsory third party schemes, as set by the State Insurance Regulatory Authority (SIRA).

This benchmarking analysis includes:

- Desktop review of medico-legal fee structures and levels in other jurisdictions
- Consultation with nine other accident compensation schemes
- Consultation with practitioners, medico-legal firms and insurers on medico-legal assessments for workers compensation, compulsory third party schemes and other insurances.

Based on our benchmarking and feedback from stakeholders, we present options for SIRA to consider as part of its broader consideration of medico-legal fees.

Please do not hesitate to call if you have any questions.

Yours sincerely



Ash Evans



James Vincent



Meg Stockwell

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Overview

1 Executive summary

Medico-legal services are non-treating services provided by healthcare professionals for the purpose of giving an expert opinion about an injured person. The role of medico-legal services in the NSW workers compensation (WC) and compulsory third party (CTP) schemes is to help determine injury causation, capacity for employment, appropriate treatment and the degree of permanent impairment.

SIRA plays several roles in regulating medico-legal services provided in the WC and CTP schemes, including setting maximum fees, establishing guidelines and publishing lists of medico-legal practitioners who provide some of these types of services. The approach to regulation varies between schemes in some cases, for example in WC maximum fees are set in annual fee schedules that are comparatively easy to change from year to year, while in CTP maximum fee structures are set out in regulations that are harder to change.

SIRA have asked Taylor Fry to conduct a benchmarking analysis of medico-legal fees in the workers compensation and CTP schemes in Australia. Additionally, we consulted with stakeholders to identify options for improving medico-legal services provision in the schemes.

Fee structure

The strict capping of fees is comparable to other jurisdictions and acceptable to practitioners, although practitioners prefer uncapped fees. However, the absence of an allowance for reading time is atypical amongst jurisdictions. This was the most common issue raised by practitioners because they bear the risk of long assessments in NSW WC and CTP.

- ➔ SIRA may consider additional fees based on page thresholds or capped per page rates to compensate practitioners for additional work. This structure has worked for other schemes and is likely to improve the attractiveness of NSW WC/CTP medico-legal work to practitioners.

The absence of complexity stratification in the NSW CTP scheme is atypical amongst jurisdictions and viewed unfavourably by practitioners.

- ➔ SIRA may consider allowing for complexity in the CTP scheme. Before allowing for complexity, SIRA may review causes of the preponderance of complex reports in NSW WC.

Fee level

The level of fees is comparable to other jurisdictions when the reading time is less than 1.5 hours and, in NSW WC, when it is a complex report. However, the level of fees is below many other jurisdictions when the reading time is greater than 1.5 hours.

The level of fees is materially lower than what practitioners achieve through alternative activities, such as private practice and medico-legal assessments in public liability.

- ➔ We do not anticipate SIRA has an appetite to set fees to be comparable to private practice or some other alternative activities, as this will increase fees materially in many cases. However, SIRA may consider increasing average fees incrementally and observe practitioner behaviour in response. Any increase in fees may be targeted if SIRA adopts other options – such as by allowing for additional reading time, complexity stratification in NSW CTP and other opportunities.

Other opportunities

Through consultation, we have identified some other opportunities for SIRA to address stakeholder concerns, such as:

- Reviewing the cancellation window (for NSW WC and CTP) and booking processes (for NSW WC)
- Aligning and/or improving approval and training processes between NSW WC and NSW CTP

- Improving direction and simplifying medico-legal processes.

Some of these options may require working with other stakeholders – for example, changes to the booking process would require working with icare.

Reliances and limitations

We present benchmarking analysis, stakeholder feedback and options relying on the accuracy of observations from other parties. SIRA should review our analysis and options within the context of its objectives, internal expertise, and the affordability of any changes.

2 Options

We have developed 12 options for SIRA based on our benchmarking and consultations. SIRA should keep in mind that many stakeholders stand to benefit financially from action based on the feedback they provide.

These **options are not recommendations** as we do not consider information outside of the benchmarking and feedback from stakeholders. SIRA should consider these following options within the context described in Section 5, its internal expertise and the affordability of any changes.

It is not within our scope to measure the cost implications of any options. **We recommend SIRA assess the aggregate cost impact of options pursued.**

These options are not mutually exclusive.

1. Allow for additional reading time

The absence of an allowance for additional reading time is atypical amongst jurisdictions and was the most common issue raised by practitioners.

SIRA may consider additional fees based on pages or page thresholds to compensate practitioners for additional work. On balance, we propose this option over a time-based compensation to incentivise practitioner efficiency. However, we acknowledge page-based compensation disadvantages practitioners less familiar with the medico-legal process.

Greater guidance, training or monitoring of referrers may reduce page count, improve practitioner experience and reduce costs.

2. Review guidelines that may contribute to preponderance of complex reports in NSW WC

We received feedback that one driver of the large number of complex reports is the conditions in the *Workers Compensation Guidelines*¹ that limit multiple IMEs from being requested within a six-month period. Specifically, referrers may send a large number of questions to the independent examiner to ensure information is readily available in case it becomes relevant to the case in future. The guidelines allow for exceptions to the six-month restriction in a number of circumstances, and it is possible these exceptions are not well understood by all referrers. SIRA may seek to verify this feedback and its impact through case reviews, further discussions with insurers and/or additional data analysis.

If the six-month restriction described above, and/or its interpretation, is found to be an issue, SIRA may consider:

- Clarifying the guidelines with referrers to prevent misinterpretation
- Altering the language in the guidelines
- Removing the six-month restriction from the guidelines.

Other possible explanations for the preponderance of complex reports include:

- Inconsistent use of the complexity classification, which was raised as a potential issue by icare. In discussions, SIRA noted that past data analysis has also identified concern with the number of IMEs rated complex.
- The introduction of icare's Medical Support Panel (MSP). The MSP can address both simple and complex matters and aims to provide expertise and medical causation recommendations in order to assist in improved outcomes and more efficient claim management. . Data shared with us by

¹ <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/guidelines/workers-compensation-guidelines>

SIRA suggests that the MSP may be one factor impacting the high level of complexity in NSW, but it is not large enough to be the *only* factor.

Noting the challenges icare raised regarding consistency of complexity ratings, it is possible that reports are being over-classified as complex to provide a higher, more attractive fee to practitioners. To the extent that this is the case, the option to increase funding for reading time may moderate the preponderance of complex reports. Some operational options (Option 10 and 11) may moderate the preponderance of complex reports as well.

3. Allow for complexity in the NSW CTP scheme

The absence of complexity stratification is atypical amongst jurisdictions and was a common reason why practitioners refused or intend to refuse NSW CTP medico-legal work.

SIRA may consider greater alignment to the NSW WC scheme complexity scale to appeal to practitioners and their understanding of the schemes, although alignment beyond allowing for complexity was not considered a major concern. Any alignment should consider the practical reality of NSW WC complexity stratification and how this may be refined (Option 2) and that CTP cases reportedly tend to be more complex on average.

4. Increase in medico-legal fees

Conditioned on a strict capping structure, the overall fee rates are comparable to other schemes for complex reports with low reading time. On average, however, an increase in medico-legal fees is likely warranted. Practitioner feedback is consistent and the opportunity cost for practitioners is high. The NSW rates are low compared to other jurisdictions for cases requiring material reading time.

We do not anticipate that SIRA considers raising fees to be comparable to private practice or some other alternative activities is feasible, as this will increase fees materially in many cases. SIRA may consider increasing fees incrementally and observe practitioner behaviour in response.

Any increase in fees may be targeted if SIRA pursues other options. For example, an increase in the average fees can be partly or wholly achieved through fee structure changes such as reading time and/or complexity (Options 1, 2 and 3).

Some jurisdictions have had success incentivising the use of joint medical examinations (JMEs) through higher fees, particularly in CTP. SIRA may consider reviewing the obstacles to JMEs currently in NSW CTP if it sees value in prioritising their use. It may also be beneficial to investigate whether other schemes hold data on improvements to outcomes resulting from using JMEs (e.g. fewer disputes, shorter claim duration). Increased fees for JMEs would increase the average fees for practitioners under the existing fee schedule.

5. Index fees

SIRA should continue indexing fees to remain consistent with other jurisdictions and stakeholder expectations. In the current volatile inflationary environment, SIRA may wish to keep some discretion in how inflation is applied to the fee schedule.

6. Reduce the frequency of cancellations

While the compensation for cancellations seems reasonable compared to other jurisdictions, the frequency of cancellation in the NSW schemes make it a pain point for practitioners.

SIRA may consider working with icare to review the operational processes that result in cancellation, including the booking of multiple IMEs for the same assessment. This may involve reviewing whether multiple bookings are always needed, and/or encouraging insurers to cancel appointments earlier and more consistently.

7. Review fees for reports without examination and supplementary reports, and for appearance as a witness

Fees for reports without examination are relatively high in NSW CTP compared to other jurisdictions. Fees for supplementary reports are relatively high in NSW WC compared to other jurisdictions.

Fees for appearance as witness are not common among schemes and are rarely used by practitioners.

SIRA may consider whether these fees are excessive relative to the headline fees.

8. Compensate practitioners for the additional examination time required when an interpreter is present in NSW CTP

Practitioners see the absence of examination loadings for the use of interpreters in NSW CTP medico-legal examinations as an issue. It is inconsistent with NSW WC and other schemes.

SIRA may consider allowing fee variations for the use of interpreters to acknowledge the cost of additional examination time and improve the accessibility of the scheme for non-English speakers.

9. Review travel loadings and processes

SIRA's current level of compensation for travel had mixed reviews from practitioners. Comparing travel loadings between schemes is difficult due to the wide variation in fee structures, although it appears NSW travel loadings are lower than those in other schemes. While some schemes offer more generous travel allowances, almost all schemes still reported difficulties attracting practitioners to regional areas.

To improve the attractiveness of regional assessments to practitioners, SIRA may consider the addition of a regional loading, and/or increasing their use of medico-legal providers that are able to perform medico-legal and other work in a single trip (noting this practice was identified as helpful in some other schemes).

10. Align and/or improve practitioner requirements between NSW WC and NSW CTP

Further harmonisation, where feasible, of the NSW WC and NSW CTP practitioner requirements (outlined in the *Workers Compensation Guidelines*¹ and *Motor Accident Guidelines*²) may increase the pool of available practitioners in both schemes. However, few stakeholders felt able to comment on whether harmonisation would provide a material benefit.

11. Consider the introduction of IME/HPA training processes between NSW WC and NSW CTP

SIRA may also consider whether establishing introductory training for independent medical examiners and HPAs will improve the efficiency and quality of reports produced by medico-legal practitioners. The introduction of a higher fee for practitioners who complete this training could help to mitigate any concerns around implementing more involved training requirements, as well as addressing concerns about fee levels and the quality of reports. An added benefit would include the ability for SIRA to compile a list of examiners through training registration and completion.

12. Improve direction and simplify medico-legal processes

Practitioners noted the burden of dealing with unruly referrals and other stakeholders noted the burden of dealing with unruly or inaccurate medico-legal reports.

In the NSW WC scheme, there were some efforts to mitigate this issue through requiring referrals to include 'an index of all documents provided with the documentation organised accordingly'. However, discussions with SIRA suggest compliance with this requirement was not monitored, and this requirement does not appear in the current *Workers Compensation Guidelines*¹.

² <https://www.sira.nsw.gov.au/resources-library/motor-accident-resources/publications/for-professionals/motor-accident-guidelines>

Other schemes mitigate these frustrations through stricter reporting templates and/or independent peer reviews by the regulator. These schemes still allow some flexibility for case specific questions to avoid practitioners missing important information in reports.

These approaches may be suitable for SIRA, although an independent peer review function would require additional resourcing.

Along with improving consistency, greater direction and review may also moderate the preponderance of complex reports in NSW WC.

3 Specific items requested by SIRA

Our scope of services documents provided propose that “the scope of the procurement would determine best-practice fee structures, and fee-setting and indexation methods for consideration” including the items in Table 3.1. For convenience, we provide hyperlinks to the sections where these items are addressed. However, we advise reading the document in full for context rather than navigating immediately to the relevant section.

Table 3.1 – Items from scope of services documents

Item description	Report reference
Whether the available fees are flat fees or a range with a maximum amount for medical examinations and reports, and to appear as a witness.	6.2.1 Fee capping 7.4 Other ancillary fees
The methodology and other considerations used to determine fee amounts.	6.4 Benchmarking fee indexation
Whether fees/invoices are a total figure or broken down into hourly rates linked to time spent on pre-reading, examination and report writing.	6.2.2 Fee structure
Whether volume of information sent to examiners is considered, and whether there are any practices or directions in place as to what information and how much information should be sent to examiners.	6.2.3 Allowances for reading time 8.3.1 Quality and consistency of reports
Whether there are different fees for physical and psychological assessments for children compared with adults, and what those differences are.	7.1.1 Psychiatrists
Whether there are differing fees for varying levels of injury complexity or method of assessment (i.e., desktop, videoconference or face-to-face examination).	6.2.4 Stratification by complexity 8.4 Mode of delivery
How different fee structures consider specific types of examinations (e.g., do neuropsychological assessments for traumatic brain injury have a higher maximum fee? Do fees differ based upon examiner discipline? Are there different fees for physical and psychological assessments? Are any types of assessments considered highly specialised and not have a maximum fee? How are use of interpreters paid for?)	7.1 Fees by practice area 7.4 Other ancillary fees
Whether the maximum fees are different based on whether the assessor conducts a joint examination or an independent examination.	6.2.1 Fee capping
Whether fees are subject to indexation or other regular review, and the approaches to, and frequency of, indexation and review of fees.	6.4 Benchmarking fee indexation
Whether fees are mandatory through legislation/regulation, or discretion can be applied.	6.2.1 Fee capping

Item description	Report reference
The methods in which independent medical examiners are engaged (e.g. contracts, etc.).	8.2.1 Practitioner engagement 8.2.2 Use of medico-legal firms
Government requirements, including approval/authorisation process for health practitioners to conduct medico-legal examinations, compliance requirements with adhering to fee structures, and consequences for non-adherence.	8.1 Practitioner requirements and training
Whether there are allowances for rural and regional assessments, differences in travel reimbursements and cross-border allowances (if any)	7.4 Other ancillary fees

B

Benchmarking

4 Introduction

Inside this section, we discuss:

- *4.1 Medico-legal services* (p 11)
 - *4.2 Assessment demand* (p 14)
 - *4.3 Scope of our benchmarking analysis* (p 15)
 - *4.4 Schemes selected for benchmarking* (p 17)
 - *4.5 Beyond benchmarking* (p 17)
 - *4.6 Options* (p 19).
-

4.1 Medico-legal services

Medico-legal services are defined by the State Insurance Regulatory Authority (SIRA) as non-treating services provided by healthcare professionals for the purpose of giving an expert opinion about an injured person. The role of medico-legal assessments differs between the NSW workers compensation (WC) and compulsory third party (CTP) schemes. Broadly, the role of medico-legal services is to:

- Help determine an injured person's degree of permanent impairment and impairment of earning capacity resulting from an injury
- Help determine causality of the injury
- Help to manage claims in relation to treatment and care, and capacity for employment
- Determine whether an injury is a 'threshold' or 'non-threshold' injury (in the CTP scheme).

Medico-legal services may involve health practitioners providing reports and assessments in relation to disputes or potential disputes, and giving evidence in court and dispute resolution proceedings. We outline the main terms relating to these services below, with a glossary provided in Appendix A.

[SIRA's role in regulating medico-legal services](#)

SIRA plays several roles in regulating medico-legal services provided to the WC and CTP schemes, including setting maximum fees, establishing guidelines and publishing lists of medico-legal practitioners who provide some types of services. The approach to regulation varies between SIRA's schemes in some cases, for example:

- In WC maximum fees are set in annual fee schedules that are comparatively easy to change from year to year, while in CTP maximum fee structures are set out in regulations that are harder to change
- In WC a list of practitioners is only published for impairment assessments, and not other types of assessments. SIRA states that it does not appoint, approve or endorse the practitioners on this list. In CTP SIRA formally authorises practitioners to give evidence based on its eligibility criteria.

[Medico-legal providers](#)

Medico-legal services are primarily performed by specialist medical doctors ('specialists'). When we use this term in the report, we also include consultant physicians. In some cases, General Practitioners (GPs) can provide medico-legal services, but this is an infrequent practice in NSW and other jurisdictions. In the NSW CTP scheme, allied health practitioners are also able to provide medico-legal services. We do not consider GP or allied health practitioner fees in this report.

Providers of medico-legal services, who are eligible to conduct assessments in the NSW WC or CTP scheme, can be engaged in two main ways:

- Directly, through the office of the health practitioner being engaged
- Indirectly, through organisations who source and contract out multiple health practitioners - we refer to these as 'medico-legal firms' throughout this report.

Medico-legal assessments and assessors

There are two main types of medico-legal assessments used in NSW and other jurisdictions:

- **Independent medical examinations (IMEs)**, defined by SIRA as 'an independent opinion regarding [the claimant's] injury and treatment to assist with decisions about ... rehabilitation, recovery at/return to work and ... entitlements or compensation'³.

These are conducted by independent medical examiners, who are registered medical practitioners that provide impartial medical assessments and have qualifications relevant to the injury being assessed. This terminology is consistent across jurisdictions with the exception of the NSW CTP scheme, where the equivalent examiners are known as health practitioners authorised to give evidence (HPAs).

Some jurisdictions also conduct joint medical examinations (JMEs) using independent medical examiners or HPAs that have been jointly agreed to by the insurer and the claimant.

Collectively, we refer to these as 'non-impairment assessments' throughout the report.

- **Permanent impairment (PI) assessments**, defined by SIRA as assessments 'used to measure how much permanent change has happened to the [claimant's] body because of their injury'⁴.

These are conducted by permanent impairment (PI) assessors, who are independent medical examiners or HPAs that have undertaken permanent impairment training. PI assessors must be registered medical practitioners recognised as a specialist with qualifications, training and experience relevant to the specific body system or systems being assessed. Joint permanent impairment assessments can also be arranged.

In some jurisdictions, PI assessors are instead known as Independent Impairment Assessors (IIAs) or Approved Medical Specialists (AMSS). We refer to assessments conducted by these assessors as 'permanent impairment assessments' throughout the report.

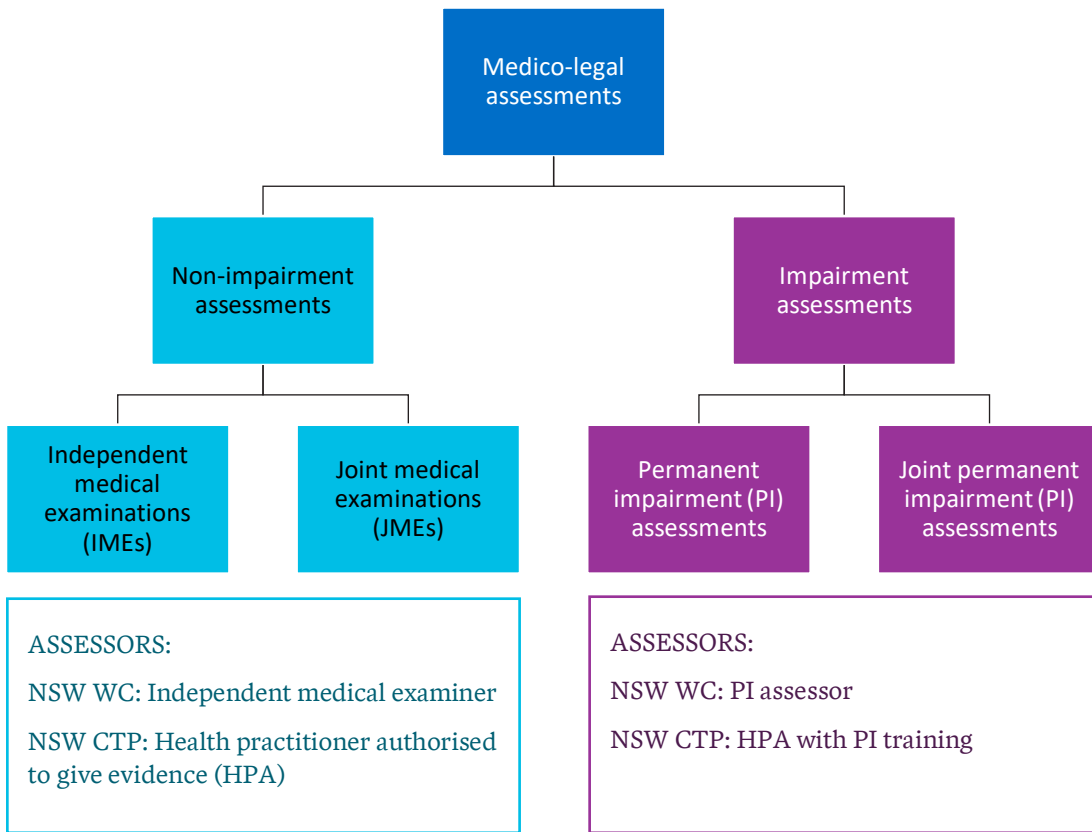
To simplify our language, throughout this report we use the term 'independent medical examinations' and 'independent medical examiners' to refer to all types of medico-legal assessments and assessors. Where we mean to only comment on impairment, non-impairment, individual or joint assessments, we state this clearly.

For clarity, Figure 4.1 shows the link between types of medico-legal assessments (coloured boxes) and their relevant assessors (coloured text).

³ <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/independent-medical-examinations>

⁴ https://www.sira.nsw.gov.au/for-service-providers/A-Z-of-service-providers/permanent-impairment-assessors#Workers_compensation

Figure 4.1 – Types of NSW medico-legal assessments and their relevant assessors



Medico-legal fees

In respect of workers compensation:

- Under s 339(1) of the *Workplace Injury Management and Workers Compensation Act 1998*, SIRA has the power by order published in the Gazette, to fix maximum fees for the provision by health service providers of:
 - a. any report for use in connection with a claim for compensation or work injury damages, and
 - b. appearance as a witness in proceedings before the Commission or a court in connection with a claim for compensation or work injury damages.
- SIRA has made the *Workplace Injury Management and Workers Compensation (Medical Examination and Reports Fees) Order 2023*.
- The Independent Review Officer (IRO) is created under Schedule 5 to the *Personal Injury Commission Act 2020*. The IRO's powers and functions include managing and administering the Independent Legal Assistance and Review Service (ILARS) including providing funding for legal and associated costs under ILARS and the issuing of guidelines (ILARS Guidelines) including for and with respect to the allocation of amounts of funding for legal and associated costs. The current ILARS Guidelines adopt SIRA's rates for medico-legal services.

In respect of motor accidents:

- SIRA does not set maximum fees recoverable by health practitioners for medico-legal services.
- Section 8.4 of the *Motor Accident Injuries Act 2017* (MAI Act) provides for the regulations to make provisions for and with respect to the fixing of maximum fees for:
 - a. the provision of medical reports used in court proceedings
 - b. the provision of medical reports used in the assessment of claims under Division 7.6, in a medical assessment by a medical assessor under Division 7.5, or in a merit review under Division 7.4, and

- c. for appearance as witness in court proceeding, in proceedings in the Commission or before a medical assessor or merit reviewer in connection with a claim.

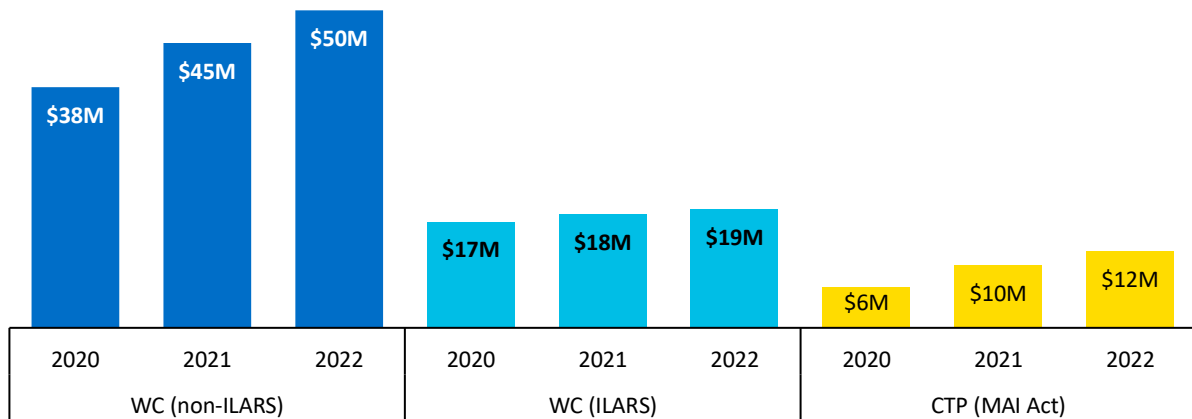
The corresponding provision under the *Motor Accidents Compensation Act (1999)* is section 150.

- The Regulation made under each of the Acts is made by the Governor in Council, not SIRA:
 - The relevant provisions in the *Motor Accident Injuries Regulation 2017* (MAI Regulation) are set out Part 6 including clause 19, 20, 27 and 28 and Schedule 2 to the Regulation.
 - The relevant provisions in the *Motor Accidents Compensation Regulation 2020* (MAC Regulation) are Part 2, Division 3 and Schedule 2 to the Regulation.
 - Noting clause 20(c) of the MAI Regulation (and cl 4(c) of the MAC Regulation), fees for reports from health practitioners (other than medical practitioners) are not regulated – a broad reference to “Schedule 2” representing the ‘fee schedule’ in this report does not take into account the fees that are unregulated.

4.2 Assessment demand

Medico-legal costs have been growing for NSW WC, NSW CTP and the IRO. Figure 4.2 shows the total expenditure on medico-legal examinations and reports by calendar year. The non-ILARS data excludes ancillary fees such as supplementary reports, interpreter fees and travel fee, while the ILARS data includes supplementary reports. For the ILARS data, we have taken the average of the relevant financial years to determine approximate calendar year figures.

Figure 4.2 – Total expenditure on medico-legal examinations and reports in workers compensation (non-ILARS and ILARS) and CTP (MAI Act), excluding ancillary fees



Discussions with SIRA and stakeholders suggest:

- **NSW WC**

Overall growth in workers compensation was driven by:

- A maturing of the scheme since the *Workers Compensation Legislation Amendment Act (2012)* and *Workers Compensation Legislation Amendment Act (2018)* came into effect
- Increased incidence of primary and secondary psychological injuries
- Likely increased use of permanent impairment assessments
- COVID-19.

One possible contributor (not the only factor), is the introduction of the Medical Support Panel (MSP). Whilst the MSP definition of ‘standard’ vs. ‘complex’ may differ to that of SIRA’s gazetted fee structure, data shared by SIRA shows 60% of MSP claims are for standard file reviews and recommendations that take less than 1 hour. However, the MSP data does not show whether all matters managed through the MSP would have otherwise required an IME. Additionally, the MSP is smaller in scale than the IME sector, with almost 2,000 claims managed through the MSP compared to 26,000 through IMEs.

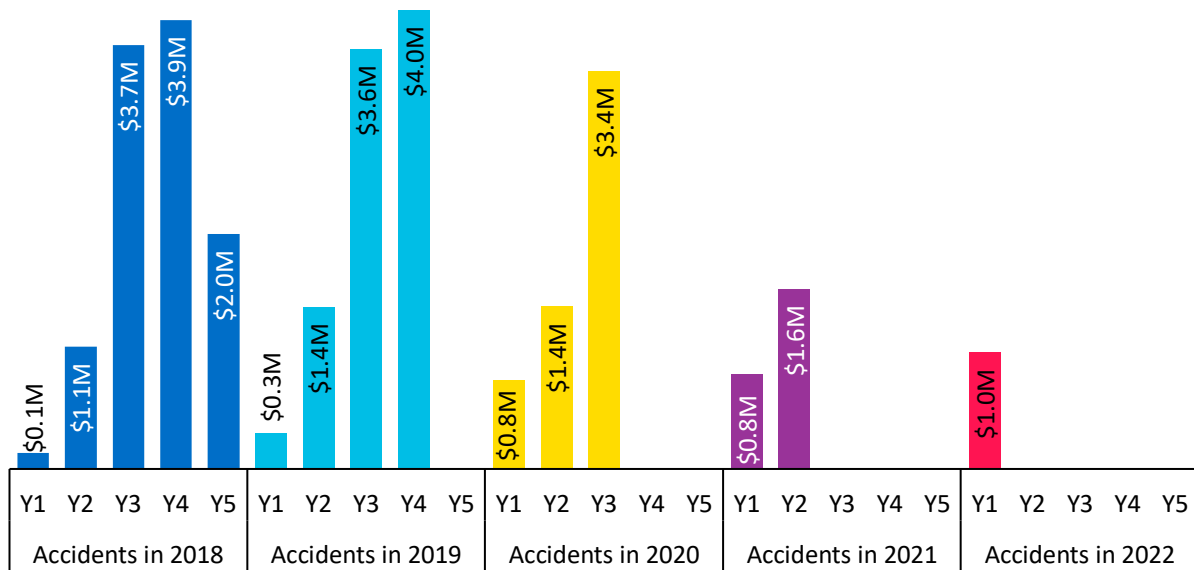
In addition to the drivers above, the IRO argued part of the growth in ILARS costs was also attributed to icare’s claims management increasingly leading claimants to seek their own legal representation or medical reports.

■ **NSW CTP**

Growth is a function of claims development, as the recent scheme was only implemented for accidents occurring after 2017. Accidents that occurred in 2018 are still incurring material medico-legal costs so we expect further growth in the total CTP expenditure, although this will likely stabilise as the scheme matures in the coming few years.

Figure 4.3 demonstrates this development by showing the total expenditure on medico-legal services each year since the year of accident. We exclude the same ancillary fees as in Figure 4.2

Figure 4.3 – Total CTP expenditure on medico-legal examinations and reports by year of accident, excluding ancillary fees



We observe medico-legal costs are highest in the third and fourth year from accident. The consistent peak for each year since accident over time suggests the overall growth in medico-legal fees in NSW CTP is primarily due to the scheme maturing. This was corroborated by an insurer in NSW CTP, noting the drivers of growth are claims reaching the timeframe to make an application for common law and claims reaching the timeframe to transition to lifetime care or CTP care.

4.3 Scope of our benchmarking analysis

SIRA have asked Taylor Fry to conduct a benchmarking analysis of medico-legal fees in the workers compensation and compulsory third party schemes in Australia. This benchmarking analysis aims to help SIRA understand and compare fee structures to ensure these reflect best practice and provide for effective services and sustainability of the schemes. This benchmarking analysis is an input to SIRA’s:

- Understanding of medico-legal fees across Australia and common practices in fee setting
- Understanding of competitive pressures faced by practitioners in the NSW schemes
- Consideration of whether maximum fees are set too low in NSW schemes
- Consideration of fee variation
- Concerns over practitioner quality and variety
- Consideration of complexity in the CTP scheme
- Consideration of greater alignment between medico-legal fees in workers compensation and CTP.

For ease of reading through this report, we highlight discussion of the **alignment of NSW WC and CTP** scheme medico-legal fees in these green boxes.

Table 4.1 describes our benchmarking approach in this report.

Table 4.1 – Benchmarking approach

Overall level of fees	<p>We look at:</p> <ul style="list-style-type: none"> ▪ Differences in fee rates for similar medico-legal activities across different schemes ▪ The approach used to adjust fee rates for the impacts of inflation and wage increases.
Fee structure	<p>We look at:</p> <ul style="list-style-type: none"> ▪ Inclusions and exclusions for funding medico-legal services ▪ Caps and limits on the frequency of IME services ▪ The impact of complexity on professional fees ▪ Mode of delivery (e.g. in person, teleconference) ▪ Whether there are caps and limits on fee rates ▪ Exceptions for ‘highly specialised’ services that fall outside the limits ▪ Regional loadings and travel allowances.
Operations	<p>We look at:</p> <ul style="list-style-type: none"> ▪ The approval/authorisation process for the health professional to be allowed to provide medico-legal services under the scheme ▪ Ongoing requirements for training in order to maintain that approval ▪ The process by which IMEs are typically engaged ▪ The complexity of reports which IMEs are required to complete, including guidelines, questions and systems ▪ When and how health professionals are engaged in the dispute process ▪ Invoicing processes. <p>The focus will be understanding the extent to which any of these factors are enablers or barriers to practitioners doing medico-legal work in NSW or other jurisdictions.</p>

4.4 Schemes selected for benchmarking

Our benchmarking was thorough but not exhaustive. In consultation with SIRA, we selected the following organisations for desktop review and interviews of schemes:

- WorkSafe Victoria
- The Transport Accident Commission (TAC), Victoria
- WorkCover Queensland
- The Motor Accident Insurance Commission (MAIC), Queensland
- ReturnToWork South Australia (RTWSA)
- The CTP Insurance Regulator (CTPIR), South Australia
- WorkCover WA
- The Insurance Commission of Western Australia (ICWA)
- Comcare.

Appendix B and Appendix C detail our consultations with these schemes.

We did not consult on Tasmanian, NT or ACT schemes. These schemes do not publish their rates, which suggests it is more likely they use negotiated (uncapped) rates.

In comparing schemes, we note that:

- Fees can be capped or negotiated
- Eight jurisdictions use capped fees
 - In two of these schemes, VIC WC and VIC CTP, there are circumstances where fees over the maximum rates published are approved for particular assessments.
- In addition to comparing with published rates, we discuss:
 - Rates obtainable through other areas of medico-legal practices and private practice
 - Feedback on experience with negotiated rates.

For ease of reading through this report, we highlight **discussion** of experience tangential to scheme benchmarking in these yellow boxes.

4.5 Beyond benchmarking

While our initial scope was to benchmark other schemes, our analysis and consultations revealed weaknesses in direct comparisons to other jurisdictions for workers compensation and CTP insurance. The largest reasons for these differences are:

- **Scheme design differences** affect the role of medico-legal services in a claimant's journey
- **Scheme processes** affect the attractiveness and administrative burden of medico-legal services
- **Market capacity and practitioner costs** affect the acceptable pricing of medico-legal services
- **Alternative work for practitioners** affects the willingness of practitioners to provide medico-legal services at a rate consistent with SIRA's fee schedule.

We expanded our scope to provide context that helps SIRA weigh these differences when comparing schemes. To provide this context to the benchmarking exercise, we interviewed other stakeholders in SIRA's medico-legal process or comparable services. This encompassed discussions with:

- Five health practitioners:
 - Dr. Richard Sekel (occupational medical practitioner) – an occupational medical practitioner for the medico-legal firm IMMEX and the current chairman of the Education Committee of the Australian Medico-legal College, who is listed as a PI assessor on the SIRA website for NSW WC
 - Dr. Ron Muratore (sports and exercise medicine specialist) – an occupational practitioner for the medico-legal firm IMMEX and a past president of Sports Medicine Australia, who is listed as a PI assessor on the SIRA website for NSW WC and authorised as a HPA for NSW CTP
 - Prof. Ian Cameron (rehabilitation physician) – a consultant physician in rehabilitation medicine and the Chair in Rehabilitation Medicine at the University of Sydney, who is listed as a PI assessor on the SIRA website for NSW WC and authorised as a HPA for NSW CTP
 - Dr. David Wilcox (general surgeon) – a member of the Australian Medico-legal College, who is listed as a PI assessor on the SIRA website for NSW WC and authorised as a HPA for NSW CTP
 - One psychiatrist – a forensic psychiatrist in both metro and regional areas of NSW, PI assessor for NSW WC and authorised as a HPA for NSW CTP (identity not disclosed for confidentiality reasons).
- Three medico-legal firms:
 - Medicins Legale – an Australian owned medico-legal firm that has offered independent medical assessments for more than 10 years
 - IMMEX – a specialised occupational medical practice who provide injury management, medical opinions, health assessments and education, to ensure the best possible return-to-work and return-to-life outcomes in the shortest possible timeframe.
 - A large national medico-legal firm that provides access to independent and evidence-based expert medical, allied health and non-medical opinions (identity not disclosed for confidentiality reasons)
- Five additional stakeholders:
 - Independent Review Office (IRO) – the independent statutory authority that manages the provision of legal assistance for injured workers in the NSW WC scheme
 - icare – the nominal insurer for the NSW WC scheme
 - Health and Injury Management (HIM) group – a group of insurers for the NSW CTP scheme, including Allianz, EML, IAG, icare, Suncorp, QBE and Youi.
 - Australian Medical Association (AMA) NSW branch – the NSW branch of the peak professional body for doctors in Australia
 - One of Australia’s largest public liability insurers (identity not disclosed for confidentiality)

Appendix B and Appendix C detail our consultations with these stakeholders.

We also contacted several branches of the National Disability Insurance Agency, including the Administrative Appeals Tribunal branch and the Technical Advisory Branch. They advised that they fund minimal services provided by medical specialists and did not see benefit in any further consultation.

For ease of reading through this report, we highlight **stakeholder feedback** in these blue boxes

4.6 Options

We have developed options for SIRA based on our benchmarking and consultations. We present relevant benchmarking and feedback so different options may be derived by SIRA. Specifically, SIRA should keep in mind that many stakeholders stand to benefit financially from action based on the feedback they provide.

These **options are *not* recommendations** as we do not analyse information outside of the benchmarking and feedback from stakeholders. SIRA should consider the options within the context described in Section 5, its internal expertise and the affordability of any changes. While we describe the alternative demands faced by practitioners, we have not investigated:

- The portion of alternative demands that are transitory (e.g. COVID backlogs, NDIS rollout) versus persistent (e.g. workforce shortages, increased public liability cases)
- The attractiveness of alternative demands versus NSW WC and NSW CTP medico-legal services, other than by fees.

It is not within our scope to measure the cost implications of any options. **We recommend SIRA assess the aggregate cost impact of options pursued.**

For ease of reading through this report, we highlight **options** in these grey boxes.

5 Context

Inside this section, we provide context necessary to interpret and weigh the benchmarking analysis. We include most context here for accessibility and repeat later where pertinent to a specific aspect of benchmarking.

Scheme design

When comparing NSW schemes to other schemes, SIRA should consider how the demand for and complexity of medico-legal assessments differs depending on scheme design. For example:

- Schemes with **strict thresholds** that determine access to material benefit types are likely to provoke greater contest and thus a greater volume of permanent impairment assessments. Both NSW WC and CTP schemes have meaningful thresholds for access to some benefits. In contrast, QLD CTP and Comcare have relatively few thresholds that determine access to material benefit types.
- The **interpretation and application of thresholds** in schemes may affect demand for medico-legal assessments, such as the Summerfield decision⁵ and subsequent reforms⁶ affecting SA WC, and complexity of assessments with multiple injuries where uplifts are permitted, such as in SA CTP⁷.
- The complexity of permanent impairment assessments may be affected by the **scale on which impairment is assessed**, such as Whole Person Impairment (WPI) or Injury Scale Value (ISV):
 - WPI is the methodology for expressing the degree of permanent impairment of a person, based on the American Medical Association's (AMAs) guides to the evaluation of permanent impairment.
 - For WC, AMA-5 is the version of this guide used to create Australia's national guidelines. It is used in the NSW WC scheme and in every other jurisdiction except for Victoria and Tasmania (these states use AMA-4 instead).
 - For CTP, NSW and VIC utilise AMA-4, while NT utilises AMA-6.
 - ISV is a measure of injury severity based on available medical evidence and the impact of injuries on a person by assigning a value between 0 and 100 for an injury. ISV is used by the QLD CTP and SA CTP schemes.

Scheme processes

When comparing NSW schemes to others, SIRA should consider how processes may differ between schemes. The practitioners we spoke with emphasised several operational difficulties in NSW. We highlight the following process feedback from our stakeholder engagement:

- Most medico-legal reports requested in NSW WC are rated 'complex' as they cover a large number of topics, with relatively few rated 'standard' or 'moderately complex'. One driver of this appears to be conditions in the *Workers Compensation Guidelines*¹ that limit multiple IMEs from being requested within a six-month period – specifically, referrers may send a large number of questions to the independent examiner to ensure information is readily available in case it becomes relevant to the case in future. The guidelines allow for exceptions to the six-month restriction in a number of circumstances, and it is possible these exceptions are not well understood by all referrers.

⁵ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/2021/183.html>

⁶ https://www.rtsa.com/_data/assets/pdf_file/0007/180916/Changes-to-the-Return-to-Work-scheme-timeline-and-FAQs.pdf

⁷ <https://www.legislation.sa.gov.au/lz?path=%2FC%2FR%2FCivil%20Liability%20Regulations%202013>

- Practitioners may endure **high cancellations** due to the practice of icare claims service providers booking multiple practitioners for the same examination in NSW WC.
- The **quality of reports** may be worsened by the absence of IME-specific training (apart from those IMEs wishing to undertake permanent impairment assessments) for newly authorised (CTP) or listed (WC) practitioners and no peer review process.

Market capacity and experience

When comparing NSW schemes to other schemes, SIRA should consider pressures beyond fees that may affect the availability and quality of IMEs and PI assessors. These pressures may affect all schemes benchmarked, whereas some may be particularly acute in NSW. We highlight the feedback on market capacity:

- Backlogs following the COVID-19** pandemic may have limited the availability of some specialities for medico-legal examinations, especially for specialists whose practice of non-urgent and some semi-urgent elective surgeries were suspended through 2020 and 2021⁸.
- A commitment by the Commonwealth government to eliminate the **Department of Veteran Affairs** (DVA) claims backlog by March 2024.
- There is a **low availability of specialists**, including psychiatrists, in areas where there have been many resignations and not enough younger practitioners to replace them. Young practitioners may be deterred from medico-legal work due to additional training requirements (noting that, in NSW, these only apply to PI assessments) and comparatively lower fees.
- The **quality of referrals** is cited as a growing issue by stakeholders, causing longer medico-legal assessments and uncompensated cost to the practitioners. The hypothesised causes being:
 - Insufficient direction or structure provided to the referrer.
 - Inexperienced or overstretched case managers.
 - A desire from case managers to not appear to introduce bias by limiting information excessively (noting that this likely does not explain all practitioner concerns, as practitioners noted some information provided is irrelevant or duplicative).

Undirected, inexperienced or inattentive case managers are less likely to curate the information provided to examiners for efficient review or provide appropriate questions for the practitioner to answer, resulting in an increased reading burden for practitioners and less accurate reports.

Alternative work for practitioners

Related to market capacity, practitioners have competing demands on their time. If the practitioners would have been otherwise engaged were it not for NSW WC and CTP medico-legal work, the foregone fees from alternative work are the ‘opportunity cost’ of doing medico-legal work for NSW WC and CTP.

The potential competing demands identified through our consultations include:

- Other insurance work, including public liability, medical indemnity and life insurances
- Work for government agencies such as the Department of Veteran Affairs
- Other medical work, including treatment in the practitioner’s private practice.

The demand for practitioners outside of NSW WC and CTP has grown:

⁸ https://www.bhi.nsw.gov.au/_data/assets/pdf_file/0006/837933/BHI_Healthcare_In_Focus_2022.pdf

- Public liability cases, settlements and premiums are increasing⁹, suggesting a growth in the demand for medico-legal work in this area
- Private practice delays during the COVID-19 pandemic created excess demand in subsequent years.

As we discuss in benchmarking, these competing demands deliver higher fees to practitioners so, in most cases, are prioritised by practitioners.

Some medical specialities may be disproportionately affected. Specifically, some stakeholders comment that the availability of psychiatrists may be affected by growth in child abuse cases in NSW following the Royal Commission into Institutional Responses to Child Sexual Abuse¹⁰.

⁹ <https://www.apra.gov.au/sites/default/files/2023-05/NCPD%20Analysis%20-%20Review%20of%20claims%20trends%20and%20affordability%20of%20public%20liability%20and%20professional%20indemnity%20insurance%20in%20Australia%20-%20May%202023.pdf>

¹⁰ <https://www.childabuseroyalcommission.gov.au/>

6 Headline fees

Inside this section, we discuss:

- 6.1 SIRA's fee structure (p 23)
- 6.2 Benchmarking fee structure (p 24)
- 6.3 Benchmarking fee rates (p 33)
- 6.4 Benchmarking fee indexation (p 39)
- 6.5 Summary and options (p 39).

We include our analysis of reading time and complexity stratification in this section as these are fundamental components of NSW and/or other schemes.

6.1 SIRA's fee structure

SIRA sets medico-legal fees separately for NSW WC and CTP. The IRO adopts SIRA's NSW WC rates for medico-legal services.

SIRA sets fees that are:

- **Strictly capped** – Providers are not entitled to charge higher than the maximum fee rates set by SIRA
- **Indexed** – Each year, aside from occasions where the rates are frozen (as they were for workers compensation in 2021 on the back of the healthcare review), the maximum amounts for medico-legal fees are inflated. For NSW WC, a mix of the consumer price index (CPI) and the wage price index (WPI) is currently used, while for NSW CTP, only CPI is used.
- **Stratified by complexity for NSW WC** – Report complexity is determined by the scope of the examination.
- **Stratified by examiner arrangement for NSW CTP** – Report fees are determined by whether the examiner was arranged independently (IME) or jointly agreed to by the insurer and the claimant (JME).

In this section we consider reports that require an examination for benchmarking purposes. We note that fees are lower if an examination is not required, and consider this in Section 7, along with other fee variations.

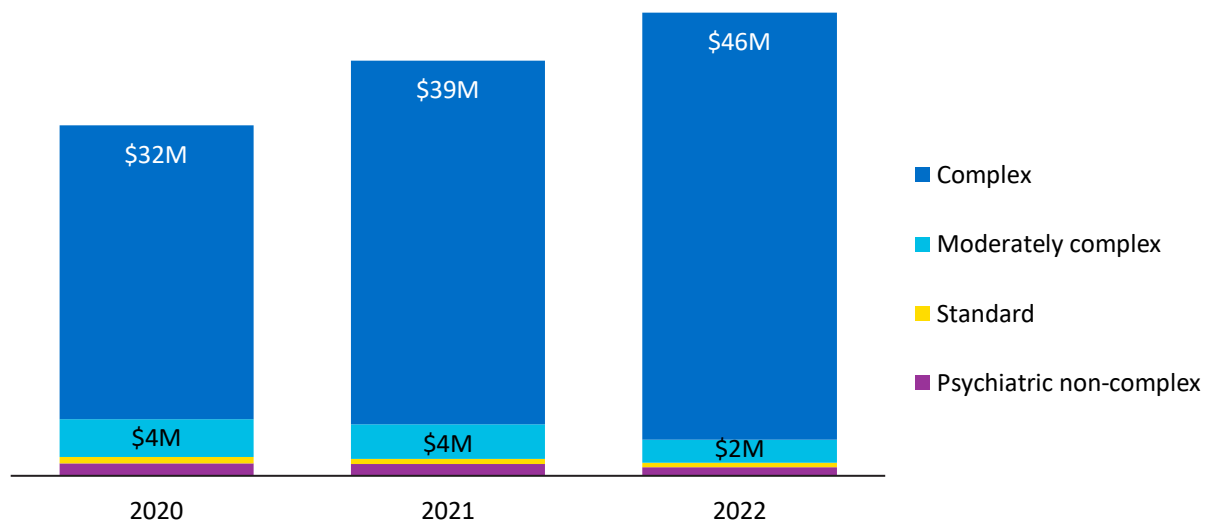
Table 6.1 shows the 2023 headline fees and funding arrangements for reading time. Rates are for specialists excluding psychiatrists, noting psychiatrists attract higher fees in some instances (see Section 7.1). All fees are exclusive of GST.

Table 6.1 – 2023 headline fees for medico-legal reports with examinations, performed by specialists (excl. psychiatrists)

	NSW Workers Compensation and ILARS	NSW CTP
Examination and report fees	Standard report: \$858.30 Moderately complex report: \$1,286.50 Complex report: \$1,706.70	IME: \$1,800.00 JME: \$2,476.00
Additional reading time allowances	Nil	Nil

Figure 6.1 compares the aggregate cost of psychiatric non-complex, standard, moderately complex and complex (including both psychiatric and non-psychiatric) reports for workers compensation. We do not label the cost of psychiatric non-complex or standard reports as these each total to less than or equal to \$1 million in each year.

Figure 6.1 – Medico-legal service costs by report type for workers compensation



Most reports – and all the recent growth in reports – for workers compensation are for complex reports. For our headline comparison, we benchmark against the complex reports. Complexity is an important differentiator for headline fees, however, so we disseminate it separately.

In the CTP scheme, it was found that around 97% of the yearly insurer requested reports were for IMEs, with the rest being for JMEs.

Neither the WC nor CTP scheme make additional allowances for reading time. That is, the headline fees shown in Table 6.1 are inclusive of all reading time allowances.

6.2 Benchmarking fee structure

6.2.1 Fee capping

Practices for setting fees vary widely across workers compensation and CTP schemes. We considered workers compensation and CTP schemes in NSW, Victoria, Queensland, SA, WA and Comcare.

Like SIRA, WorkSafe Victoria, WorkCover Queensland and ReturnToWork South Australia publish fee schedules with:

- Maximum allowable fees for examination and report rates
- Fee rates (e.g. per hour, per page) for some ancillary services

WorkCover WA use maximum allowable fees for both the examination/report rates and ancillary fees. Capping of fees is also present for VIC CTP, where independent medical examinations are subject to contractual hard caps. Whilst these schemes imply capped fees with maximum amounts, some of these are strictly enforced while others allow discretion to be applied in certain cases. In VIC CTP for example, fee pressure exists in relation to joint medical examinations as contracts do not apply and requests for higher than schedule fees are considered on a case-by-case basis. This proves to be an administrative burden.

Other schemes, such as QLD CTP, WA CTP and Comcare (WC) negotiate their rates and do not have scheme-wide fee schedules for medical practitioners conducting medico-legal services.

Table 6.2 summarises the three main approaches identified in our review, and which scheme uses each.

Table 6.2 – Fee capping

Capping approach	Description of approach	Schemes that use this approach
Strict capping	Published caps on fees, with providers not entitled to charge higher than the maximum fee	<ul style="list-style-type: none"> ▪ NSW WC ▪ NSW CTP ▪ QLD WC ▪ SA WC ▪ SA CTP
Selective capping	Published caps for some types of medico-legal reports, but either higher fees allowed by discretion, or no caps for others	<ul style="list-style-type: none"> ▪ VIC WC ▪ VIC CTP ▪ WA WC
Negotiated fees	Fees are negotiated case by case with each provider, either for individual contracts or as part of a tender process	<ul style="list-style-type: none"> ▪ QLD CTP ▪ WA CTP ▪ Comcare (WC)

We found that:

- Most **workers compensation** schemes have scheduled capping of fees in place. The exceptions to this are:
 - **Comcare**, which works with a small number of medico-legal firms via service level agreements
 - **WA WC**, which does not publish any rates for non-impairment assessments (fees for these services are negotiated between the insurer and the practitioner)
 - **VIC WC**, which in some circumstances exceeds its published rates for permanent impairment assessments, due to challenges currently being observed with the fee caps in this space.
- Experience for **CTP** is mixed, with some schemes capping all fees, some capping a proportion of fees, and some having no caps.
 - Selective capping is present for **VIC CTP**, where independent medical examinations are subject to hard caps while joint medical examinations typically exceed the maximum published rates
 - Negotiated fees are used in both **QLD CTP** and **WA CTP**.

Within the scope of our review, we did not consult with Tasmanian, NT or ACT schemes. These schemes do not publish their rates, which suggests these are more likely to use negotiated rates.

Practitioner feedback on fee capping

Most practitioners we consulted suggested the fees were inadequate. However, no practitioner objected to the intent of capping fees. AMA advised that billing at a negotiated rate based on hours worked is their preferred approach for complex matters.

From discussions with practitioners and medico-legal firms, we inferred that schemes with negotiated rates are likely to have higher fees.

Discussion: Joint medical examinations

The Victorian CTP scheme has fee schedules/ guides which allows examiners to bill within a fee range. When arranging JMEs, both parties are to agree to the timing of the examination, the choice of examiner, the material to be provided to the practitioner and the joint letter of instruction (each party currently provides an individual letter of instruction and documents to be asked of the expert, which is provided to the other party). Examinations are initiated through an application by the plaintiff's lawyer but must be approved and paid for by the TAC, which assesses them using specific criteria. If agreement cannot be reached, the parties may proceed to organise their own independent medical examinations.

The purpose of arranging JMEs is to:

- Improve client experience by reducing the number of medical examinations clients need to attend. This can help to minimise the stress and trauma for the injured person and be less disruptive to their treatment and recovery.
- Decrease delays and disputations associated with claims. This can improve the claims experience for both the clients and practitioners involved.

TAC publishes the same fees for IMEs and JMEs, however as mentioned, fee pressures currently exist in relation to joint medical examinations and requests for higher fees are considered on a case-by-case basis. Some examples of where examiners request higher fees include extra reading time where large volumes of paperwork are provided for the examiner to review and for extremely complex matters, including assessments involved multiple claims. These additional costs are not always evident until the report has been completed and the invoice has been subsequently received which causes some difficulty in managing above schedule fees. Joint medical examinations equate to approximately two thirds of all VIC CTP medico-legal assessments conducted each year.

In the SA CTP scheme, the CTP regulator has published guidelines. The guidelines suggest that JME are the default, with IMEs being used if these cannot be arranged. Single medical examinations are frequently used and are subject to the same fee restrictions as independent medical examinations.

Similarly, the medico-legal guidelines outlined by the Motor Accident Insurance Commission for the QLD CTP scheme outline that “where possible, both parties should consider a joint medico-legal assessment”, suggesting that they are preferable to independent medical examinations. The QLD CTP scheme allows one party to nominate a particular medico-legal examiner and the other party to agree to or propose an alternative examiner.

Though NSW CTP also allows JMEs – and at a higher fee rate than IMEs – these have lower prevalence than the above schemes. The NSW Health Injury Management group expressed difficulty agreeing to terms for JMEs, resulting in IMEs being more commonly used. More frequent use of joint medical examinations, however, could address some practitioner concerns about the overall level of fees.

6.2.2 Fee structure

The structure of examination and report fees varies between jurisdictions. Some apply combined or integrated rates, while others separate each item out into its own rate:

- **Examination and report fees** – NSW WC, NSW CTP, VIC WC, VIC CTP and WA WC use a combined fee covering both examination and report¹¹, while QLD WC and SA WC/CTP have separate fees for examinations and reports.
- **Loadings for interpreters** – NSW WC, WA WC and SA WC/CTP have alternative examination and report rates which have an uplift built into the rate for the additional time it takes to complete an examination when an interpreter is required. QLD WC have a separate interpreter loading which can

¹¹ NSW WC and CTP have a combined fee for examination + report, however they also have a separate (lower) fee for a report that does not require an examination. See Section 7.

be added on top of their examination and report fees (see Section 7.4). NSW CTP, VIC WC and VIC CTP do not have examination loadings for interpreters.

- **Allowances for reading time** – Some schemes have an additional reading time allowance, while others (like NSW WC and CTP) have an assumed reading allowance integrated into their examination and report fees (see Section 6.2.3).
- **Allowances for complexity** – Some schemes (like NSW WC) have different examination and report rates for different complexities, while others have additional loadings which can be added on top of their examination and report rates (see Section 6.2.40).

These fees, along with other ancillary fees for each scheme, are outlined in Appendix D.

6.2.3 Allowances for reading time

Practices vary widely in allowing for reading time. Table 6.3 summarises the range of practices for schemes with full or partial capping of fees.

Table 6.3 – Allowance for reading time

Reading time approach	Schemes that use this approach
No additional reading time	<ul style="list-style-type: none"> ▪ NSW WC ▪ NSW CTP ▪ WA WC impairment assessments ▪ VIC WC impairment assessments, noting fee caps are regularly exceeded and this may be due to extensive reading requirements in some cases
Negotiation in or above fee range	<ul style="list-style-type: none"> ▪ VIC CTP, within fee range for IMEs and negotiated above the fee range on a case-by-case basis for JMEs (where the request is considered reasonable)
Explicit additional reading time allowance	<ul style="list-style-type: none"> ▪ VIC WC non-impairment assessments ▪ QLD WC ▪ SA WC ▪ SA CTP ▪ Comcare

Outside of NSW, most schemes have some form of allowance for reading time. However, the approach to this allowance varies by scheme:

- **QLD WC** has billing of reading time per hour after the first 30 minutes of reading time
- **SA WC and CTP** has billing per page after a set number of pages
- **VIC WC** has a flat loading when pages of material exceed different thresholds (beginning after 20 pages) for non-impairment assessments only
- **VIC CTP** permits fees to vary within or above a range (depending on assessment type) by negotiation, which is driven in part by reading time.
- **Comcare** permits additional fees after a certain number of pages.

Stakeholder feedback on reading time

The most consistent feedback from practitioners we consulted was strong advocacy for an explicit allowance for reading time. They argued that the current fee structure makes completion of cases with extensive reading material difficult. Additionally, the two practitioners that indicated an increasing unwillingness to perform medico-legal assessments in the NSW schemes both expressed clear dissatisfaction with the lack of compensation for reading time.

Multiple CTP insurers also identified that most practitioners are refusing to complete medico-legal assessments within the current fee structure if reading material exceeds 200-300 pages. They advise this is impacting their ability to source a review of all relevant reading material.

A medico-legal firm noted that while the NSW WC scheme doesn't formally provide a reading fee, in some cases (such as where significant medical evidence is required and the provider demands additional fees for reading), a practice occurs where the claims service providers, insurers or lawyers charge the equivalent of the "file review and report" item (\$643.10) as a substitute amount. However, this practice is in contravention of the maximum fee schedule for NSW WC.

Alignment of additional reading time for WC and CTP schemes

NSW WC and CTP are currently aligned on reading time *in theory*, with neither scheme providing additional allowances. However, the use of an equivalent amount to the "file review and report" item (\$643.10) by some claims service providers in NSW WC when there is significant extra reading involved (in contravention of the fee schedule), may mean NSW WC and CTP are not always aligned on reading time *in practice*.

Discussion: Case manager impact

In our consultations, practitioners emphasised the role of case managers' referrals, particularly regarding reading time. These referrals affect the willingness of practitioners to accept cases and the quality of their assessments. Case managers are often responsible for sending medical files and reports for specialists to read and review ahead of examinations. The quality of medical reports and data that is curated for a medico-legal assessment varies widely. Specifically, practitioners commented that referrals often:

- Contain information that is not relevant
- Omit information that is relevant
- Are unorganised, with no logical order
- Contain duplicate material.

This sentiment was echoed throughout our stakeholder engagement, and many practitioners stated that they often receive an overload of medical files (upwards of 1000 pages in some cases), with information often provided that is not relevant or duplicated. SIRA's *Workers Compensation Guidelines*¹ for the evaluation of permanent impairment outline that "all available relevant medical information" must be taken into account, making it a requirement for examiners to read every page of material that they are provided.

One practitioner noted that these issues are exacerbated by the high turnover of case managers. Referral staff with little training and experience are less likely to curate the information provided to examiners efficiently and accurately, resulting in an increased reading burden for practitioners. It is possible that there is also a desire from case managers to not appear to introduce bias by limiting information excessively.

Some practitioners try to avoid excessive reading material by saying they will only accept cases with material under a certain limit (typically 200-300 pages) without negotiating additional fees. This was also noted in our discussions with CTP insurers (see ‘stakeholder feedback on reading time’ box above).

Rather than entering negotiations, most case managers in this instance try to cut down the material that they pass on to practitioners, only providing what they deem as relevant. However, we note that:

- The HIM group raised the negative effects of this approach, as those selecting the relevant material are not medically trained specialists, which can result in them missing vital information
- One regulator¹² similarly emphasised the need for referral staff to be familiar with claims and have enough experience to accurately determine which information needs to be passed onto practitioners
- WorkCover Queensland highlighted the importance of the referral not seeming overly selective to avoid the appearance of misleading through omission.

6.2.4 Stratification by complexity

Depending on the jurisdiction, fees may be stratified by:

- Explicit complexity stratification
- Whether the assessment considers impairment matters or non-impairment matters (e.g. treatment, causation).

We discuss these together because assessments that consider impairment are likely to be more complex in NSW WC. There is no complexity stratification in NSW CTP.

The complexity in NSW WC – standard report, moderately complex report or complex report – is based on criteria set out in the fees order, including:

- **The number of topics considered in the report**, from causation, capacity for work, treatment and impairment assessment
- **The complexity of impairment assessment**, including whether it relates to multiple injuries and/or body systems.

Standard reports must only cover one topic, while complex reports can cover all four. Appendix E outlines the criteria in more detail. The complexity level is set by the insurer in the referral and the provider is to contact the referrer if there is any disagreement.

Overall, we find that:

- **NSW CTP is the only scheme that does not consider complexity in any way in its fee structure.**

Other schemes account for complexity, to at least some extent, either explicitly through fee options or loadings, or by differentiating fees between impairment and non-impairment assessments.

- **Approaches to allowing for complexity vary significantly between schemes** and there is not one ‘common practice’ approach for NSW schemes to align with.

NSW WC’s complexity fee structure is unique in that it considers whether the report covers impairment matters and/or non-impairment matters. Other jurisdictions generally have separate fee schedules for impairment and non-impairment assessments, rather than handling these through the complexity rating.

Table 6.4 compares arrangements used to account for complexity in the eight schemes with full or selective capping of fees.

¹² Anonymity requested for publication of report

Table 6.4 – Stratification of complexity in fee structure

	NSW WC	NSW CTP	VIC CTP	VIC WC	QLD WC	SA WC	SA CTP	WA WC
Explicit complexity – all assessments	✓		* ^(a)	* ^(c)				
Explicit complexity – impairment assessments only						✓		✓
Schedule considers whether report covers either impairment or non-impairment	✓		* ^(a,b)	✓	✓	✓	✓	✓
Schedule considers whether report covers both impairment and non-impairment	✓		* ^(a)	✓	✓ ^(d)		✓	N ^(e)

Legend: ✓ Implemented in scheme N By negotiation * Implemented very differently to other schemes.

Notes:

- (a) VIC CTP allows fees to vary within the published range for IMEs and JMEs, and on a case-by-case basis may negotiate a fee above the fee range for JMEs, allowing for differences in complexity.
- (b) TAC publish separate fee schedules for impairment and non-impairment insurer-initiated assessments. However, the fees are the same in both schedules.
- (c) WorkSafe Victoria publish additional fees for 130-week work capacity assessments (for non-impairment assessments) and dual-purpose referral loadings (for impairment assessments).
- (d) QLD WC providers are able to charge the impairment fee (which is higher than non-impairment) for reports covering multiple topics. However, there is no additional loading available beyond this.
- (e) All non-impairment reports are paid on negotiated rates. It is likely practitioners would request additional funding for reports considering both impairment and non-impairment matters during fee negotiation.

Comparing fee arrangements in detail, we find:

- **Explicit complexity ratings** – NSW WC is the only scheme with an explicit complexity rating that covers all assessments. Other schemes with explicit allowances for complexity have implemented them as follows:
 - In SA WC/CTP and WA WC there are explicit complexity ratings, but these apply to impairment assessments only.
 - In VIC CTP, complexity is considered during the fee negotiation process. Rates are negotiated within a range for insurer-initiated assessments. For joint medical examinations there is a published range of fees, with fees exceeding this range approved on a case-by-case basis.
 - In VIC WC, WorkSafe Victoria allows for complexity in some scenarios – it has a higher examination and report fee for 130-week work capacity assessments, which are seen as more complex. It also has a ‘dual-purpose referral loading’ – this is ostensibly used for assessments covering both impairment and non-impairment matters.
- **Reports covering either impairment or non-impairment matters** – NSW WC is unique, in that whether an assessment covers impairment is factored into its complexity rating. All other workers compensation schemes have separate fee schedules for impairment and non-impairment assessments.
- **Reports covering both impairment and non-impairment matters** – Pricing arrangements for reports covering both impairment and non-impairment vary markedly. In NSW WC, this is factored into the complexity rating. For other schemes:

- In VIC WC, there is a ‘dual-purpose loading’ applied to assessments covering both impairment and non-impairment matters
- In QLD WC, reports covering both impairment and non-impairment use the rate for impairment assessments, which is higher than the rate for non-impairment assessments
- In VIC CTP, fees are negotiated within a given range, allowing practitioners to request a higher fee if more questions are asked by the insurer about impairment and/or non-impairment matters
- In WA WC, fees are negotiated for non-impairment assessments, allowing practitioners to be compensated for non-impairment matters considered alongside an impairment assessment
- In SA WC, it is rare for a single report to cover both impairment and non-impairment matters and there are no separate pricing arrangements for this
- In SA CTP, both impairment and non-impairment questions are all answered in a single (templated) report which is prescribed by the Minister.

Stakeholder feedback on predominance of complex medico-legal reports

All stakeholders we spoke with were aware of the predominance of complex medico-legal reports in the NSW WC scheme. Two potential drivers of this include:

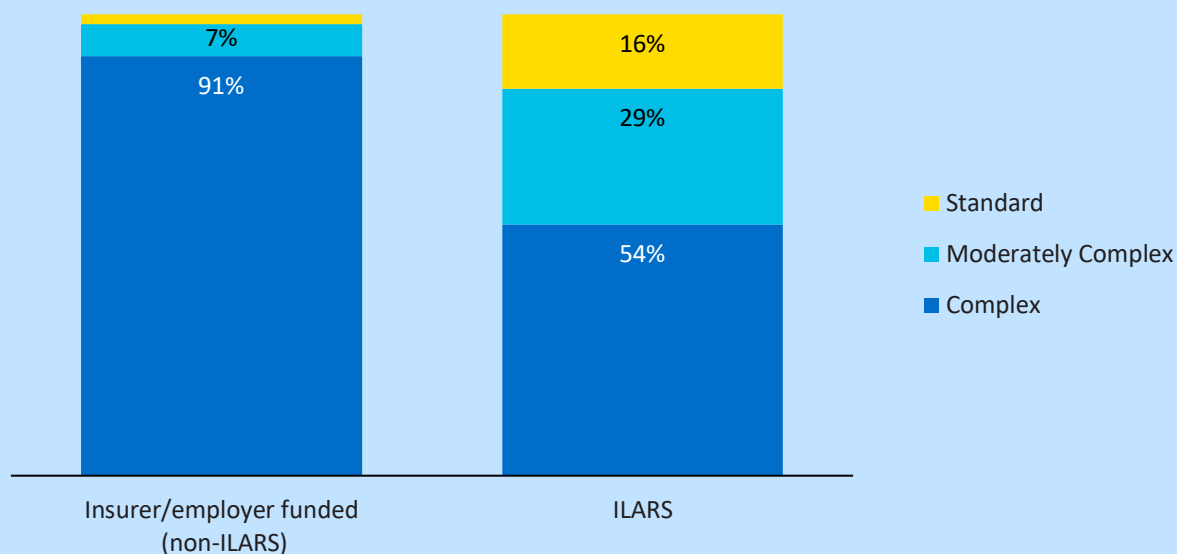
- **Inconsistent complexity ratings** – as informed by targeted reviews, icare believe that the complexity classification is not always consistently set by the insurer in their referrals. One practitioner similarly identified that too many reports are falsely marked as complex while another noted that many practitioners refuse to take on lower complexity cases because they believe the same amount of work is involved for a lesser fee.
- **The Medical Support Panel** – the introduction of the Medical Support Panel may have contributed to a reduced need for standard IMEs. This is because in theory, basic medical advice questions can be answered more quickly and efficiently through the MSP. A review of SIRA data shows:
 - 60% of MSP claims since 2019 were for standard file reviews and recommendations that took less than 1 hour to complete. Whilst the MSP definition of ‘standard’ vs. ‘complex’ may differ to that of SIRA’s gazetted fee structure, this may support the view that MSP is utilised for the management of simpler claims, however it is not clear from the data whether an IME would have been required in all cases in the absence of the MSP.
 - Approximately 2,000 claims were assessed through the MSP in 2022, compared to 26,000 that were assessed through IMEs¹³.

Given this, it is possible that the MSP is one contributor to the high proportion of complex claims observed in the data, however it is not large enough to be the only contributor. It is also important to note that the MSP may increase the proportion of claims that are rated complex, but should not result in a higher number of complex cases overall.

These hypotheses may be supported by the distinct experience in the NSW WC scheme between the insurer/employer-funded and ILARS-funded claims. ILARS defines the complexity of their reports by matching the reports disbursement to the closest SIRA fees order for the relevant year. In both cases, the level of complexity is determined by the insurer or lawyer at the time of referral, with the practitioner able to decline the referral or have a discussion with the referrer if they disagree. Figure 6.2 shows the proportion of medico-legal reports by complexity for non-ILARS versus ILARS cases in the NSW WC scheme.

¹³ This includes standard, moderately complex and complex reports. Claims for cancellations and other ancillary items are excluded.

Figure 6.2 – Proportion of NSW WC reports with each complexity rating, 2021-22



The insurer/employer funded cases have a significantly higher proportion of assessments rated complex than the ILARS cases:

- 91% of insurer/employer funded medico-legal reports are complex
- 54% of ILARS medico-legal reports are complex.

The proportion of insurer/employer funded cases that are rated complex has also increased over time since the introduction of the MSP in 2017 (as seen in Figure 6.1), potentially supporting the argument that MSP is one driver of the high proportion of complex claims. Verification of this view may be possible through a comparison of changes in the proportion of complex cases each year over a larger time period. A 2015 compliance review on the workers compensation scheme found that a high proportion of independent medical examiners were charging all services at the complex rate at that time.

Discussion: Guidelines on volume of assessments

We received feedback from practitioners and medico-legal firms that one driver of the large number of complex reports are the conditions in the *Workers Compensation Guidelines*¹ that limit multiple IMEs from being requested within a six-month period. Specifically, referrers may send a large number of questions to the independent examiner to ensure information is readily available in case it becomes relevant to the case in future. The guidelines allow for exceptions to the six-month restriction in a number of circumstances, and it is not clear if these are well understood by referrers.

These exceptions include:

- If the worker’s injury has significantly changed or resolved
- If there is a material change or need for a material change in the manner or type of treatment
- If the worker makes a claim for permanent impairment or work injury damages
- If the worker receives a request for additional medical information for consideration in the case
- If the last IME was unable to be completed
- If it has been at least six months since the last IME required
- If the referrer can provide significant reasoning for the need for a referral in a short timeframe.

SIRA may seek to verify this feedback and its impact through case reviews, further discussions with insurers and/or additional data analysis. While we received this feedback from several stakeholders, it is possible that there are other important drivers at play not as evident to practitioners, such as the time saved by referrers by simply requesting everything rather than tailoring the referral.

Importantly, we note that none of the practitioners and medico-legal firms we spoke to were advocating for a higher volume of assessments of injured parties – they were only observing the dynamic between frequency caps and complexity.

Outside of NSW, many schemes do not have strict caps on the frequency of medico-legal assessments. However, there are some comparable requirements in the Victorian CTP scheme – JME requests may not be authorised if a medico-legal report has been obtained from the same discipline within a previous 12-month period.

The NSW CTP scheme does not differentiate in fees by complexity or by impairment/non-impairment assessments.

Stakeholder feedback on the absence of a complexity tier system for NSW CTP medico-legal report fees

All stakeholder groups we spoke with raised this as an issue in the current CTP rating structure.

- CTP insurers generally argued that the fee structure could be improved by having different payments relating to the complexity of assessments. Some perceived the current structure as a ‘pain point’ since it was first introduced.
- Most practitioners who worked with CTP schemes suggested that varying fees by complexity would be beneficial in ensuring fees were reflective of the time required to complete the assessment. This was due to CTP claims being perceived as variable and often involving multiple body parts and/or both physical and psychological injuries. One practitioner suggested that complex CTP medico-legal reports should account for severity of injury and not just number of injuries, given severe injuries in CTP can be complex to assess.

This feedback is consistent with the feedback received by SIRA, where the lack of complexity reflected in the CTP fee structure has resulted in health practitioners determining that they are not being adequately compensated for lengthier examinations and reports. SIRA noted it has been told that some practitioners have already left their scheme, and two of the practitioners we consulted with suggested they are also likely to refuse work in the NSW schemes if issues with the fees and policies are not changed. The HIM group of CTP insurers suggested that it was common to receive complaints about fees from providers and emphasised that sourcing medico-legal professionals is becoming harder.

6.3 Benchmarking fee rates

Eight schemes in Australia cap medico-legal fees. To benchmark fee rates of schemes with capped fees, we look at headline rates (examination, report and reading time fees), and then complexity stratification. To align headline rates between schemes, we consider:

- The maximum fees in each scheme for independent (non-joint) medico-legal assessments, using high complexity fees or loadings where relevant
- The average of the maximum fees where rates that contain reading time differ between impairment and non-impairment assessments
- The average of maximum fees for specialists and consultant physicians where rates differ.

We do not include other ancillary fees. We caution against using the comparison of fees without the context on scheme design, rules, guides and processes that follows.

6.3.1 Headline fees and reading time

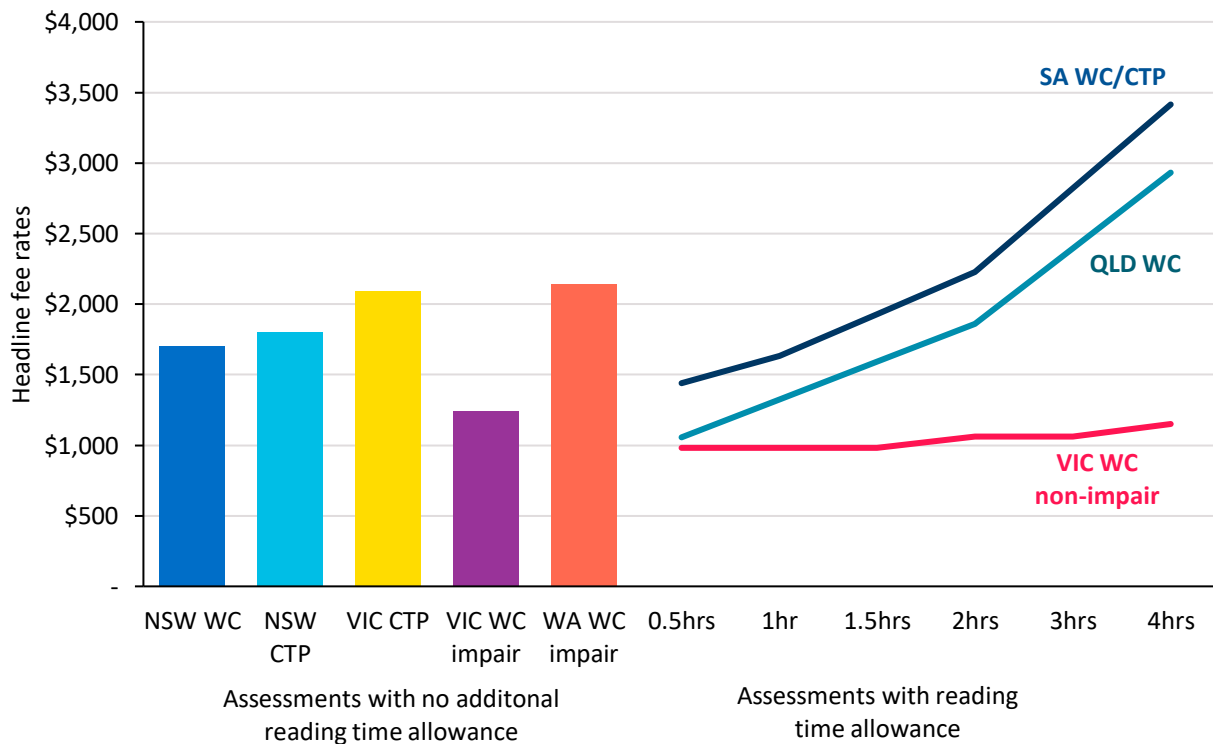
Figure 6.3 compares the headline fee rates for capped fee schemes, with estimated fees for schemes with explicit additional reading time allowances shown to the right. Where schemes do not cap all fees, we compare with the capped components of fees only. A material share of fees are uncapped in three out of the six schemes considered. To make this comparison, we assume:

- The independent complex insurer-initiated assessment is the appropriate NSW WC fee rate
- The maximum of the published fee range is the appropriate VIC CTP fee rate
- The first examination and report rate + dual purpose referral loading is the appropriate VIC WC impairment rate, and the work capacity examination and report rate + reading time fees are the appropriate VIC WC non-impairment rates
- Frequency of impairment versus non-impairment assessments in the QLD WC and SA WC/CTP schemes is similar (we have assumed an average of these rates as appropriate)
- Reading takes approximately one page per minute based on feedback from schemes and practitioners, noting this average is likely to differ by specialist type and experience.

Discussion: Reading volume and time

Our conversations with practitioners revealed that it is common to receive at least 100 pages of reading material, with many practitioners refusing to accept cases with more than 200-300 pages. We discussed the average time it would take each practitioner to read 100 pages of documentation with a mix of highly relevant (e.g. prior medical reports) and somewhat relevant (e.g. hospital records, which may only have a few lines of relevant data that needs to be read) information. On average practitioners suggested 100 pages of reading would take 1-2 hours, leading us to adopt an assumption of 1.5 hours of reading time (around one page per minute) for our comparisons. Discussions with WorkCover Queensland, who pay for reading time with an hourly rate, suggest this assumption is broadly reasonable.

Figure 6.3 – Comparison of 2023 headline fees for schemes



In NSW, complex workers compensation reports and CTP reports have similar headline fees. Comparing these to other schemes, we observe:

- The NSW schemes have median fees for assessments requiring up to 1.5 hours of reading time, with:
 - VIC CTP and WA WC impairment assessments higher
 - VIC WC and QLD WC lower
 - SA WC/CTP similar on average¹⁴.
- The NSW schemes have relatively low fees for assessments requiring more than 1.5 hours of reading time, with:
 - VIC CTP, WA WC impairment assessments, QLD WC and SA WC/CTP higher
 - VIC WC lower, although the VIC WC scheme allows fees to be charged in excess of capped rates for some assessment types.

Fees for schemes with fully negotiated rates are unknown, but we infer these are higher than the fees for schemes with some capped rates shown in Figure 6.3.

Schemes' self-assessment of the adequacy of fees was mixed. VIC CTP and WA WC, among the schemes with relatively high fees, viewed their fees as adequate. VIC WC, which appears to have lower fees, says it received 'mixed views' from service providers on the adequacy of its fees. All schemes with negotiated rates shown considered their rates adequate.

Of schemes with additional allowances for reading time, their self-assessments of the allowances' appropriateness varied:

- **WorkCover Queensland viewed their reading time allowances as largely appropriate.**

Reading time makes up only a small share of total medico-legal costs, and claims staff can 'use common sense' to avoid sending excessive volumes of material to practitioners. One important driver of this may be Workcover Queensland's direct role in managing claims, which affords it some control over the volume of material sent to providers.

- **By contrast, the ReturnToWork SA and the CTP Insurance Regulator have found reading time is heavily used in South Australia.**

High volumes of material are often sent to practitioners to inform the assessment which equates to reading time being billed. RTWSA, which has uncapped reading fees, advised that reading time comprises approximately 40% of their medico-legal expenditure, and that this is growing. RTWSA also mentioned that they believe practitioners sometimes bolster reading time to make up for other lower fees.

- **Victoria workers compensation non-impairment has an alternative approach to reading time.** Under its funding model, a flat fee for reading time exceeding certain thresholds exists, rather than a per page or per hour allowance as in the other jurisdictions. These fees are minimal compared to the other schemes with additional allowances.

Discussion: Alternative work for practitioners

Public liability is a type of insurance that protects businesses against claims made against them for negligence and third-party injury or death. A detailed, forensic medical report is important in the defence of a public liability claim, thus independent medical examinations are regularly required.

Public and product liability insurance products in Australia have seen significant growth in premium in recent years:

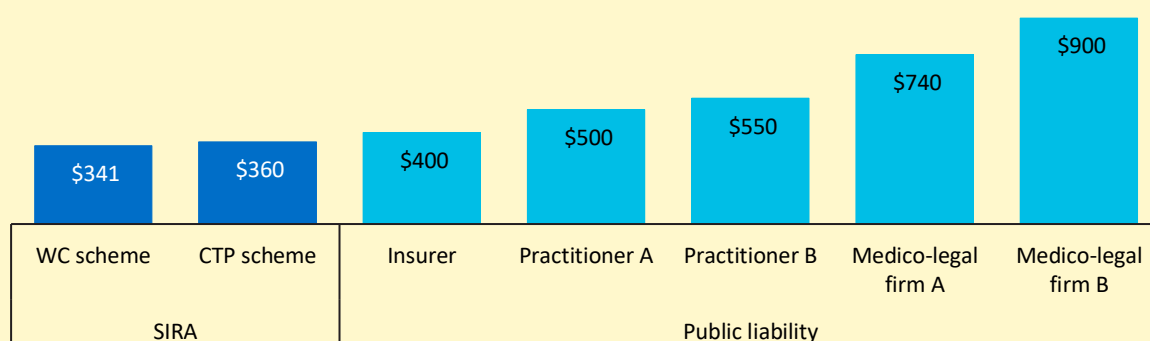
¹⁴ ReturnToWork SA increased their fees following this analysis: <https://www.rtwsa.com/service-providers/provider-registration-and-payments/fee-schedules>

- Public and products liability finalised claims costs have stepped up by approximately 30%, from an average of \$720M a year in 2009-2013 to \$940M in 2014-2021.
- The step up in cost in 2014 was mainly driven by a 50% increase in large claims costs. APRA defines a large public liability claim as one that costs over \$500,000¹⁵.

This growth would contribute to an increase in the medico-legal assessments for public liability, which when coupled with attractive fees, is likely to attract practitioners away from other types of medico-legal work. Rather than a published maximum fee, the **fees for medico-legal assessments in public liability are typically negotiated** as a flat rate or an hourly rate before the assessment is conducted.

Figure 6.4 shows the implied average hourly rates for complex specialist independent medical examinations under SIRA's capped fees versus comparable rates for public liability claims reported to us in discussions with stakeholders. We calculate SIRA's hourly fee rates assuming the average complex independent medical (non-psychiatric) examination takes 5 hours, which we derived from ranges of time provided by practitioners and medico-legal firms.

Figure 6.4 –2023 average hourly rates of specialist medical examinations for NSW WC/CTP schemes versus public liability claims



We observe that SIRA's capped rates for both the WC and CTP scheme are:

- Lower than all hourly rates reported for medico-legal work in public liability claims
- Less than half of the public liability rate reported by 2 of the 5 stakeholders.

The public liability insurer feedback in Figure 6.4 was based on fees from a nascent medico-legal firm panel arrangement. The insurer indicated that fees vary widely across the panel.

A critical difference between NSW WC and CTP and public liability outside of the average fee rates is who bears the risk in assessment length (including reading time and reporting). In public liability, the insurer bears this risk – short assessments are less expensive and long assessments are more expensive. In NSW WC and CTP, the practitioner bears this risk – short assessments are comparatively overcompensated, and long assessments are comparatively undercompensated. This risk may be more acute for more time-consuming services, such as psychiatry, where the implied hourly rate for NSW WC and CTP may be lower.

Additionally, we compare fees to other competitors although, from our consultations, we infer that these are relatively minor competitors for obtaining medical practitioners for medico-legal work:

- Medical indemnity claims** (\$480-\$2,000/hour) – Medical indemnity claims arise when a medical professional fails to take reasonable care to prevent injury to a patient. These claims can be complex and involve extensive investigations and medical assessments to establish liability and quantify

¹⁵ <https://www.insurancenews.com.au/local/worsening-claims-trends-drive-up-pi-public-liability-premiums#:~:text=Public%20and%20products%20liability%20finalised,increase%20in%20large%20claim%20costs.>

damages. Although they have significantly higher fees than NSW WC and CTP schemes, many practitioners resist this work so fees may not be directly comparable.

- **DVA claims** (\$460-\$1,840/hour) – DVA cases arise when an individual has a war-caused or defence-caused injury or disease. Claims generally involve assessment of incapacity and impairment from these disabilities and the effect on the person’s lifestyle. While this may result in some competition with NSW, WorkCover Queensland noted that DVA tend to have onerous processes which mean that providers who go there tend to stay there and receive most of the DVA’s work (rather than doing work for multiple schemes at the same time).
- **Life insurance** (\$600-\$1,200/hour) – Life insurance cases may involve independent medical examinations to obtain impartial assessments of a person’s health status and injuries. These are seen as more lucrative options by some practitioners as the fees are negotiated rather than capped. However, they were not mentioned as a source of competition by many stakeholders.

In addition to the above fees, one medico-legal firm noted the top medical specialists in NSW have expected rates of around \$1000/hour for additional fees (such as reading time, supplementary reports, file reviews and cancellations) across all non-gazetted areas of demand (including public liability and medical indemnity work).

Alignment on fees for WC and CTP

Fee levels differ between NSW WC and NSW CTP. The NSW CTP fee rates are slightly higher, although this is before ancillary fees are added.

No stakeholder had a strong opinion on whether fees should be aligned for the same report. This is understandable because the dominant feedback was regarding the inadequacy of both fee schedules, so whether these scheduled aligned was moot from their perspective.

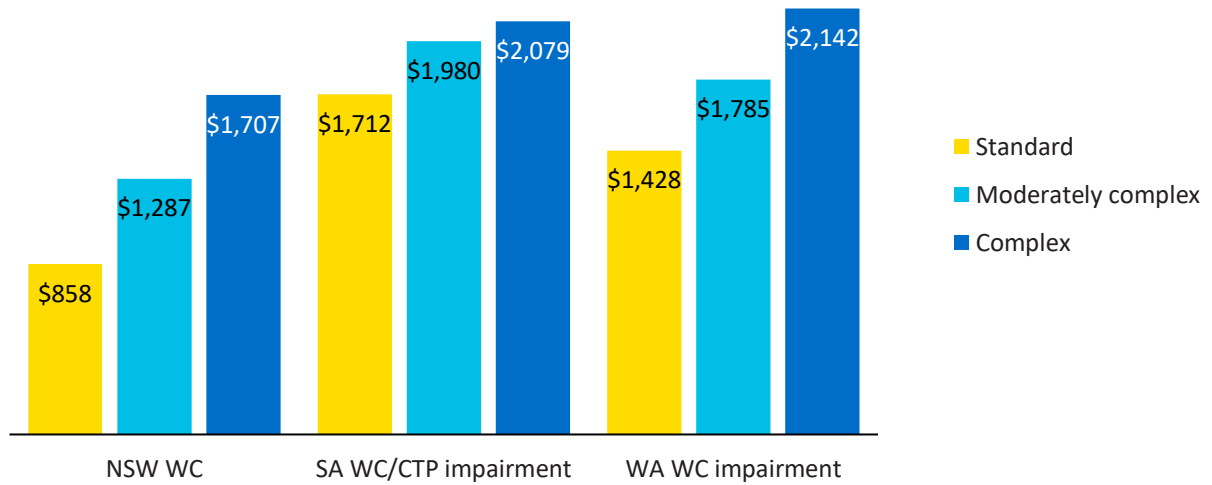
However, one practitioner explained that CTP cases tended to be more complex than WC cases. This complexity is driven by motor vehicle accidents tending to involve multiple body systems and forensic analysis of pre-accident considerations when determining liability. Alignment of WC and CTP may still account for this through complexity.

6.3.2 Stratification by complexity

Variation of fees by level of complexity differs substantially between jurisdictions, making comparison of fee schedules between schemes difficult.

Figure 6.5 compares the complexity arrangements in NSW WC to the two jurisdictions with the most comparable funding arrangements: SA WC/CTP and WA WC. These jurisdictions use a three-point scale to stratify complexity similar to NSW, although unlike NSW WC, their stratification only applies to impairment assessments. We assume 1.5 hours of reading time for the purposes of comparison (equating to approximately 100 pages of reading).

Figure 6.5 – Comparison of 2023 fees by complexity assuming 1.5 hours reading time

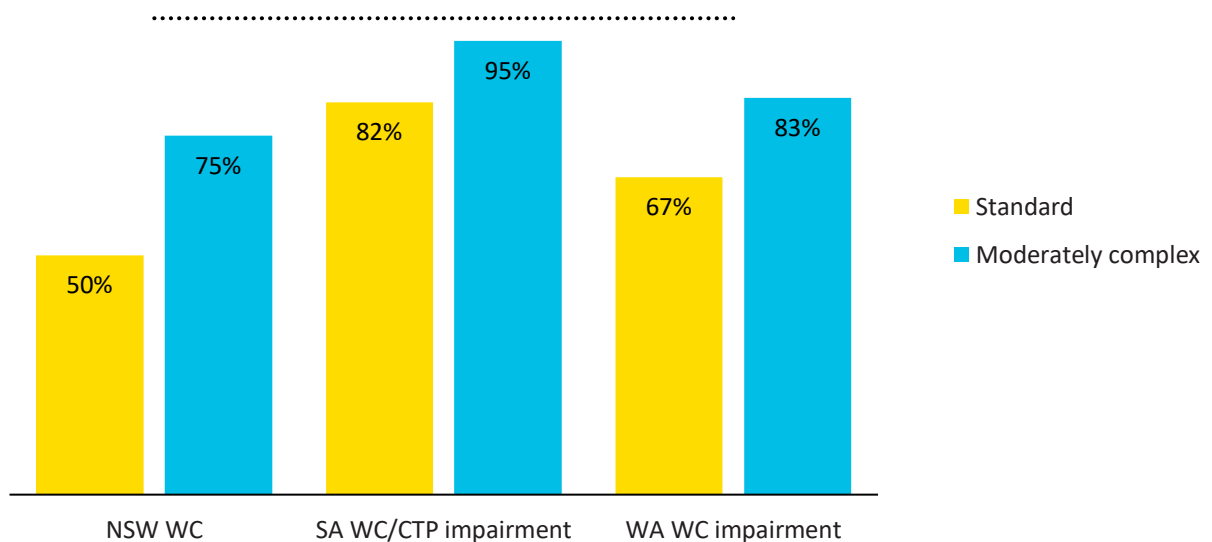


SIRA’s rates are lower at all complexities. The complex report rates are the closest, although these are likely to diverge if reading time exceeds 1.5 hours for complex reports.

SA is higher than NSW in this chart, but was similar in Figure 6.3. This is because in this chart we are comparing to impairment assessments in SA only, while in the previous chart we took the average of impairment and non-impairment assessments (as the pricing for NSW covers both).

Figure 6.6 compares the fee for standard and moderately complex reports as a proportion of the fee for complex reports.

Figure 6.6 – Comparison of 2023 fees assuming 1.5 hours reading time as a proportion of complex report fees



The NSW WC rate for:

- A standard report is 50% of the complex rate, compared to 67% in WA WC and 82% in SA WC/CTP
- A moderately complex report is 75% of the rate for complex reports, compared to 83% in WA WC and 95% in SA WC/CTP.

6.4 Benchmarking fee indexation

As noted in Section 6.1, SIRA use CPI to index fees for CTP and a combination of WPI and CPI for WC.

All other schemes have a mechanism for inflating fees:

- Similar to SIRA, TAC and one other regulator¹⁶ consider inflation measures based on data from the Australian Bureau of Statistics. Both other regulators use a slightly different combination of measures to the NSW schemes: CPI and AWE.
- In contrast to SIRA, ReturnToWork SA, TAC, WorkCover Queensland and WorkCover WA, consider broader measures such as AMA fee schedules, Medicare data and DVA/NDIS indexes.

Whilst all schemes review their fees annually, there are some differences in their approaches:

- **Timing** – The timing of the indexation review varies by scheme, with TAC and ReturnToWork SA indexing fees on 1 July each year, WorkCover WA rates taking effect from 1 November each year, and WorkCover Queensland publishing their new rates on 1 December each year. The timing also differs between the NSW schemes, with the workers compensation rates historically taking effect on 1 January (1 February in 2023) and the CTP rates taking effect on 1 October each year.
- **Application** – Some schemes, such as WorkCover WA, have a specific index applied only to medical and allied health provider costs in the scheme, while others, such as TAC, apply the same indexation rates to these providers as they do to any other medical reimbursements.
- **Determination** – WorkCover WA applies annual increases that are determined through application of a composite index. The weightings underpinning this index were set in 2002, and though they have been reviewed at least 3 times since then, they have remained consistent. Conversely, WorkCover Queensland conduct nationwide comparisons each year to determine how Queensland's fees compare to other jurisdictions, the NDIS and the DVA. They create an appropriate index using a balance of multiple indexes, with the goal of keeping fees balanced, sustainable and competitive. They also noted that their fees are either kept the same or increased each year, but never decreased.

Discussion: Further considerations with indexing

There is not an 'accepted' way to index fees. A composite approach may be warranted as:

- Broader inflation measures such as CPI and AWE may diverge from the inflation observed by practitioners providing the medico-legal assessments
- Inflation measures tied directly to practitioners providing the medico-legal assessments, such as the AMA fee schedule, may be seen as circular.

A composite approach can reduce volatility of individual indices. For example, WorkCover WA use a composite index of 60% WA wage price index, 30% AMA medical fees index and 10% WA CPI. In the current volatile inflationary environment, SIRA may wish to keep some discretion in how inflation is applied to the fee schedule.

6.5 Summary and options

We summarise:

- On the **structure of headline fees**:
 - The strict capping of fees is comparable to other jurisdictions and acceptable to practitioners, although practitioners prefer uncapped fees

¹⁶ Anonymity requested for publication of report

- The absence of an allowance for reading time is atypical amongst jurisdictions and viewed unfavourably by practitioners
- The absence of complexity stratification in the NSW CTP scheme is atypical amongst jurisdictions and viewed unfavourably by practitioners.
- On the **level of headlines fees**:
 - The level of fees is comparable to other jurisdictions when the reading time is less than 1.5 hours and, in NSW WC, when it is a complex report
 - The level of fees is below many other jurisdictions when the reading time is greater than 1.5 hours
 - The level of fees is materially lower than practitioners achieve through alternative activities, such as private practice and medico-legal work in public liability, medical indemnity and child abuse cases.

Options for SIRA on headline fees

We have developed the following options based on our consultations and analysis. SIRA should consider these options within the context described in Section 5, its internal expertise and the affordability of any changes. While we describe the opportunity cost faced by practitioners by accepting this medico-legal work over alternative activities, we have not investigated:

1. The portion of alternative activities that are transitory (e.g. COVID backlogs, NDIS rollout) versus persistent (e.g. workforce shortages, increased public liability and medical indemnity cases)
2. The attractiveness of alternative demands versus NSW WC and NSW CTP medico-legal services, other than by fees.

It is not within our scope to measure the cost implications of any options. **We recommend SIRA assess the aggregate cost impact of options pursued.**

We develop options under the assumption that SIRA prefers a strict cap on fees.

These options are not mutually exclusive.

1. Allow for additional reading time

The absence of an allowance for additional reading time is atypical amongst jurisdictions and was the most common issue raised by practitioners.

SIRA may consider additional fees based on pages or page thresholds to compensate practitioners for additional work. On balance, we propose this option over a time-based compensation to incentivise practitioner efficiency. However, we acknowledge page-based compensation disadvantages practitioners less familiar with the medico-legal process.

Greater guidance, training or monitoring of referrers may reduce page count, improve practitioner experience and reduce costs.

2. Review guidelines that may contribute to preponderance of complex reports in NSW WC

We received feedback that one driver of the large number of complex reports is the conditions in the *Workers Compensation Guidelines*¹ that limit multiple IMEs from being requested within a six-month period. Specifically, referrers may send a large number of questions to the independent examiner to ensure information is readily available in case it becomes relevant to the case in future. The guidelines allow for exceptions to the six-month restriction in a number of circumstances, and it is possible these exceptions are not well understood by all referrers. SIRA may seek to verify this feedback and its impact through case reviews, further discussions with insurers and/or additional data analysis.

If the six-month restriction described above, and/or its interpretation, is found to be an issue, SIRA may consider:

- Clarifying the guidelines with referrers to prevent misinterpretation
- Altering the language in the guidelines
- Removing the six-month restriction from the guidelines.

Other possible explanations for the preponderance of complex reports include:

- Inconsistent use of the complexity classification, which was raised as a potential issue by icare. Discussions with SIRA also suggest there has been concern about the proportion of cases rated complex dating back to 2013-14, although it is not clear if the drivers were the same as the current experience, or if it was as pronounced in 2013-14 as it is now.
- The introduction of icare's Medical Support Panel (MSP). The MSP can address both simple and complex matters and aims to provide expertise and medical causation recommendations in order to assist in improved outcomes and more efficient claim management. . Data shared with

us by SIRA suggests that the MSP may be one factor impacting the high level of complexity in NSW, but it is not large enough to be the *only* factor.

Noting the challenges icare raised regarding consistency of complexity ratings, it is possible that reports are being over-classified as complex to provide a higher, more attractive fee to practitioners. To the extent that this is the case, the option to increase funding for reading time may moderate the preponderance of complex reports. Some operational options (Option 10 and 11) may moderate the preponderance of complex reports as well.

3. Allow for tiers of complexity of reports in the NSW CTP scheme

The absence of complexity stratification is atypical amongst jurisdictions and was a common reason why practitioners refused or intend to refuse NSW CTP medico-legal work.

SIRA may consider greater alignment to the NSW WC scheme complexity scale to appeal to practitioners and their understanding of the schemes, although alignment beyond allowing for complexity was not considered a major concern. Any alignment should consider the practical reality of NSW WC complexity stratification and how this may be refined (Option 2) and that CTP cases reportedly tend to be more complex on average.

4. Increase in medico-legal fees

Conditioned on a strict capping structure, the overall fee rates are comparable to other schemes for complex reports with low reading time. On average, however, an increase in medico-legal fees is likely warranted. Practitioner feedback is consistent and the opportunity cost for practitioners is high. The NSW rates are low compared to most other jurisdictions for cases requiring material reading time.

We do not anticipate that SIRA considers raising fees to be comparable to private practice or some other alternative activities is feasible, as this will increase fees materially in many cases. SIRA may consider increasing fees incrementally and observe practitioner behaviour in response.

Any increase in fees may be targeted if SIRA pursues other options. For example, an increase in the average fees can be partly or wholly achieved through fee structure changes such as reading time and/or complexity (Options 1, 2 and 3).

Some jurisdictions have had success incentivising the use of joint medical examinations (JMEs) through higher fees, particularly in CTP. SIRA may consider reviewing the obstacles to JMEs currently in NSW CTP if it sees value in prioritising their use. It may also be beneficial to investigate whether other schemes hold data on improvements to outcomes resulting from using JMEs (e.g. fewer disputes, shorter claim duration). Increased fees for JMEs would increase the average fees for practitioners under the existing fee schedule.

5. Index fees

SIRA should continue indexing fees to remain consistent with other jurisdictions and stakeholder expectations. In the current volatile inflationary environment, SIRA may wish to keep some discretion in how inflation is applied to the fee schedule.

7 Fee variation

Inside this section, we discuss:

- 7.1 Fees by practice area (p 43)
 - 7.2 Cancellation and non-attendance fees (p 49)
 - 7.3 Examination and report structure (p 51)
 - 7.4 Other ancillary fees (p 53)
 - 7.5 Summary and options (p 56).
-

7.1 Fees by practice area

Across jurisdictions, rates for medico-legal assessments often vary according to the type of health practitioner undertaking the assessment. We benchmark fee variation for:

- Psychiatrists
- Other specific specialities.

We do not benchmark fees for examinations performed by GPs. The NSW fee schedules for both CTP and workers compensation include separate rates for examinations performed by GPs. However:

- In the workers compensation scheme, GPs are only permitted to provide commentary on disputes
- In the CTP scheme, GPs are permitted to perform impairment assessments but do so only rarely.

Also, we do not benchmark fees for treating practitioners. While both NSW schemes allow examinations to be completed by treating practitioners, it is uncommon and other schemes are similarly reticent except in special circumstances.

7.1.1 Psychiatrists

SIRA structure and experience

In practice, psychiatry does not attract higher fees in either the NSW workers compensation or NSW CTP fee schedules:

- While the **NSW workers compensation** fee schedule specifies a higher psychiatric rate for standard reports, the preponderance of complex reports (93%) means that fee rates for psychiatric assessments are the same as fee rates for most other assessments
- The **NSW CTP** fee schedule does not contain any alternative fees for psychiatrists.

Access to psychiatrists has been reported by SIRA as a growing issue both generally and in the CTP scheme. Access to child psychiatrists is particularly challenging in the CTP scheme.

icare emphasised that the increased demand for psychiatrists, both clinically and in the medico-legal space, reflects growing mental health awareness and reduced stigma around mental health claims in recent years. Among other factors, such as COVID-19, this has caused insurers to experience extensive delays of approximately 3-12 months when booking psychiatric medico-legal appointments.

Stakeholder feedback on fees for psychiatrists in NSW

The psychiatrist that we consulted with reported that the complexity level of psychiatric medico-legal assessments is almost always high and that the fees and guidelines in the NSW WC and CTP schemes do not reflect the associated effort required to complete them.

This stakeholder mentioned that some psychiatrists will refuse to take on cases that will be classified as “non-complex psychiatric” as they often end up doing the same amount of work as required for a complex case, but for a lesser fee.

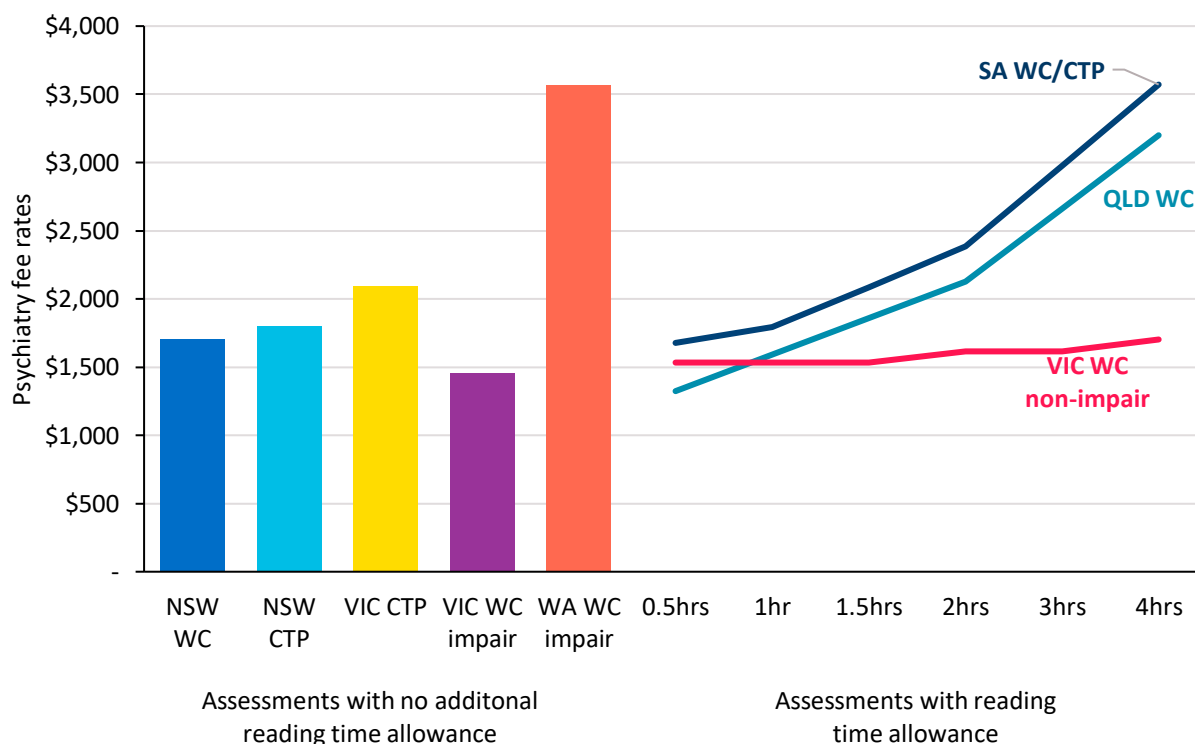
This feedback is not distinct from other feedback from practitioners, so does not necessarily advocate for differentiated psychiatric fees, simply higher fees in general.

Benchmarking

Unlike the NSW schemes, most other schemes provide a higher rate for examinations performed by psychiatrists. Figure 7.1 displays the maximum headline fees (examination + report + reading time) for complex psychiatric cases in each scheme. These rates have been derived in a similar way to Figure 6.3:

- The dual-purpose referral loading and work capacity examination and report rates have been applied to the VIC WC rates
- An average of the impairment and non-impairment rates has been taken for the SA WC/CTP and QLD WC schemes
- A reading time assumption of one page per minute has been used.

Figure 7.1 – Comparison of 2023 psychiatric fees for schemes



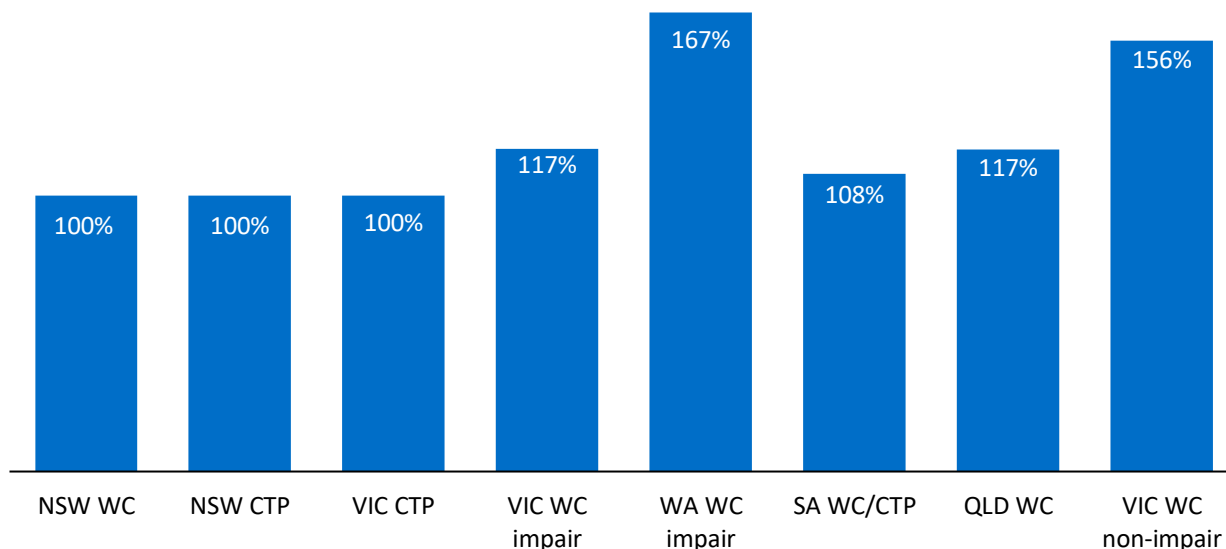
The NSW WC and NSW CTP rates are similar to the rates for most schemes when little to no reading time is taken into account. However, they are considerably different from the maximum rates for:

- WA WC, which has a much higher examination and report rate
- QLD WC and SA WC/CTP, which have much higher reading time allowances.

About two-thirds of VIC CTP’s examinations are JMEs rather than IMEs. JME fees in VIC CTP that exceed the maximum are reviewed and negotiated on a case-by-case basis.

Figure 7.2 compares the fee for complex psychiatric reports as a proportion of the fee for non-psychiatric complex reports, with 1.5 hours of reading time.

Figure 7.2 – Comparison of 2023 psychiatric fees as a proportion of non-psychiatric fees



We observe that:

- Psychiatric rates are the same as non-psychiatric rates for NSW WC, NSW CTP and VIC CTP assessments, noting the prevalence of JMEs in VIC CTP
- Psychiatric rates are moderately (<25%) higher than non-psychiatric rates for VIC WC impairment, SA WC/CTP and QLD WC assessments
- Psychiatric rates are significantly (>50%) higher than non-psychiatric rates for WA WC impairment and VIC WC non-impairment assessments.

When interpreting the comparison of psychiatric fees, the experience of each scheme in accessing and booking psychiatrists for medico-legal work must also be considered alongside their fees. Table 7.1 summarises the fee differentiation and access feedback from each scheme.

Table 7.1 – Psychiatric fees and access

Specialist	NSW CTP	NSW WC	VIC CTP	VIC WC	QLD WC	SA both	WA WC
Differentiated psychiatric fees		*(a)		✓	✓	✓	✓
Difficulty accessing psychiatrists	✓	✓	✓	✓	✓(b)	✓(c)	

Legend: ✓ Implemented in scheme * Implemented very differently to other schemes.

Notes:

- Although there are separate line items for psychiatrists, they are equal to the general specialist rates for complex assessments. The vast majority of assessments are complex.
- Regionally only.
- Impairment assessments only.

All schemes aside from WA reported some level of difficulty accessing psychiatrists. In some schemes, this was only limited to regional areas or impairment assessments, but most schemes reported consistent

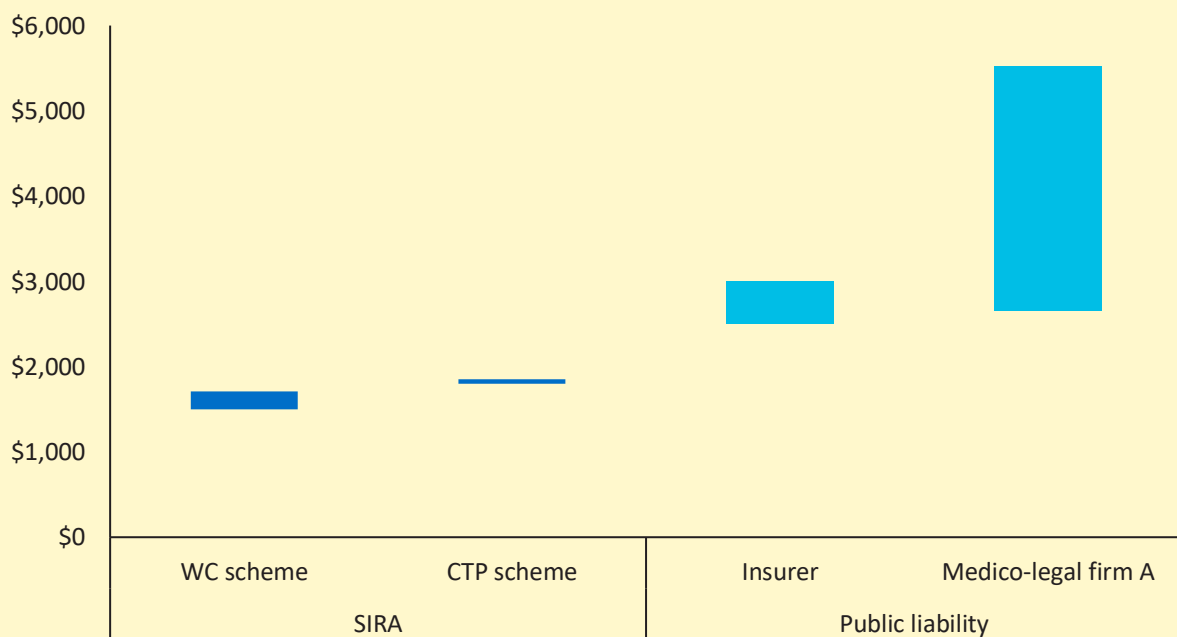
delays in bookings or more general access issues for psychiatrists. One of the drivers behind these issues is the opportunity cost of alternative work for psychiatrists, particularly in areas such as public liability.

Discussion: Alternative work for psychiatrists

Timely access to a psychiatrist was a common issue across schemes, but it was particularly acute in NSW. The psychiatrist to whom we spoke supported this claim, mentioning that public liability, medical negligence and income protection claims are more highly sought by psychiatrists compared to WC and CTP work, due to their higher fees.

Figure 7.3 shows the fee ranges for complex psychiatric independent medical examinations under SIRA’s capped fees versus comparable rates for public liability claims reported to us in discussions with stakeholders.

Figure 7.3 – 2023 psychiatric medical examinations fee ranges for NSW WC/CTP schemes versus public liability claims



We observe that SIRA’s capped rates for both the WC and CTP scheme are lower than the fee ranges reported by both stakeholders for psychiatric medical examinations in public liability claims.

Another area raised as an alternative area of work that may be contributing to the low number of psychiatrists willing to perform medico-legal work in the NSW schemes was private practice:

- MAIC shared that they found that many psychiatrists have moved into treating as there is a lot of demand in this area. RTWSA also identified high demand in the treating space for psychiatrists.
- The psychiatrist we interviewed emphasised that they obtain higher fees in private practice and that one of the causes for this disparity is likely the lack of compensation for the time it takes practitioners to prepare for medico-legal work (i.e. the time it takes to read large amounts of material for independent medical examinations compared to brief case notes for private patient consultations).

Stakeholders also shared their opinions on other potential drivers behind these access issues.

Discussion: Other drivers behind low availability of psychiatrists

- **Supply of practitioners** – There is a low availability of specialists, including psychiatrists, in areas where there have been many resignations and not enough younger practitioners to replace them. One practitioner hypothesised that young practitioners are deterred from this space due to low fees and higher running costs, the issues of which are exacerbated by the high levels of HECS debt and indemnity insurance costs faced by many of them. We were unable to corroborate this hypothesis.
- **Demand for mental health services** – There has been an increase in the number of psychological injury claims over recent years (a 225% increase was reported by the IRO between 2015-16 to 2021-22), resulting in a larger number of psychiatric examinations being required.

The psychiatrist we spoke to recognised a large number of recent claims for bullying in the workers compensation scheme. They suggested better definition of bullying in the workplace would reduce the number of these claims they receive.

We discuss demand due to child abuse medico-legal work below.

Discussion: Child abuse

Child abuse claims also require forensically oriented medical assessments to assess historical and institutional abuse. These include sexual abuse, emotional abuse, physical abuse, institutional abuse, neglect and other secondary conditions arising from abuse. This is particularly relevant to the shortage of psychiatrists seen in NSW WC and CTP, as they are the main medical specialists used for examinations in this area.

A catalyst for growth in institutional abuse claims which require complex psychiatric assessment was the *Civil Liability Amendment (Child Abuse) Act 2021 (NSW)*. We have verified that most child abuse claims are tested in the NSW jurisdiction, so this poses a unique challenge for SIRA among schemes.

The cost of medical assessments for institutional abuse claims was reported by one medico-legal firm as ranging from \$6,500 to \$8,000. This high cost is a function of uncapped fees and the intensive nature of these assessments. The intensity of these assessments means the impact of abuse claims on the availability of psychiatric medico-legal practitioners is disproportionate to the number of cases.

Discussion: Child psychiatry

The NSW IRO mentioned that child psychiatrists are a challenge to engage and that legal schemes provide better incentives to work than the NSW CTP scheme.

Discussions with CTP schemes highlighted child psychiatry as an area facing access difficulties in not only NSW, but also QLD and WA. Comments from stakeholders echoed feedback SIRA has received from practitioners, that child psychiatrists feel they are not being adequately compensated for their time and that fees in areas such as private practice are much more generous. One of them noted that the reduced availability of child psychiatrists in general may be driving up their costs and expectations. Some stakeholders suggested that the NDIS may be a contributor to this reduced availability, as high fees are reportedly available for non-medico-legal work such as the diagnosis of psychosocial disabilities (disabilities that may arise from a mental health issue).

Across all CTP schemes examined, no differences in fees (including headline fees or additional loadings) were defined for either physical or psychological assessments for children. One scheme noted that they try not to put young children through the process where possible, instead examining them once they are legal adults.

7.1.2 Other specific specialists

SIRA structure and experience

The NSW workers compensation fees order includes an alternative item number for Ear, Nose and Throat (ENT) specialists, however these rates are equal to the ‘simple’ reports for other specialists. The NSW CTP fee schedule does not include any alternative specialist rates, although it does allow allied health practitioners to practice as HPAs.

Benchmarking

Table 7.2 shows where rates vary for specific specialists by jurisdiction. It excludes:

- Allied health professionals, which are used by NSW CTP, VIC WC, VIC CTP and the NDIS, as they require a lower qualification than medical specialists and GPs
- Psychiatrists, as these are covered in Section 7.1.1.

Table 7.2 – Differential fees for specific specialists

Specialist	NSW CTP	NSW WC	VIC CTP	VIC WC	QLD WC	SA both	WA WC
ENT specialist		* ^(a)		✓		* ^(a,b)	* ^(a,c)
Consultant physicians					✓	* ^(a,c)	
Neurosurgeons				✓ ^(b)			
Pain management specialists				✓ ^(b)			

Legend: ✓ Implemented in scheme * Implemented very differently to other schemes.

Notes:

- (a) Although there are separate line items for these specialists, they are equal to the general specialist rates
- (b) Independent medical examinations only
- (c) Impairment assessments only.

There is no consistent use of these fee variations across the schemes examined.

Discussion: Difficulties in accessing specialists

Most schemes reported difficulty accessing some professions, particularly in low supply specialties. Insurers mentioned shortages in areas including, but not limited to:

- Psychiatry (and particularly, child psychiatry)
- Neurosurgery
- Neurology
- Nephrology
- Radiology
- Pharmacology
- Urology
- Rehabilitation medicine
- Oral surgery
- Plastic surgery
- Gynaecology
- Dermatology.

icare also highlighted their difficulty in accessing immune specialists, infectious disease specialists and PI assessors for industrial deafness claims.

One insurer and a medico-legal firm we spoke with advocated providing increased fees to certain specialties, such as child psychiatrists, where shortages are apparent.

However, from our discussions with schemes, it was difficult to assess the extent to which fees drives these shortages – most schemes noted that fees were just one factor and access challenges were in many cases driven by gaps in specialist availability. This was corroborated by the AMA.

7.2 Cancellation and non-attendance fees

Every scheme includes some level of allowance for cancellation or non-attendance of medico-legal assessments.

SIRA structure and experience

The NSW schemes offer cancellation fees:

- The **NSW WC scheme** provides a flat fee for cancellations that occur within 2 working days' notice or less, or where a worker or interpreter fails to attend the scheduled appointment (or is unreasonably late).
- The **NSW CTP scheme** offers 'not more than 50%' of the relevant amount in the fee schedule if an appearance or medical report is no longer required.

Stakeholder feedback on cancellation fees and periods

The majority of the practitioners interviewed by Taylor Fry were of the view that the cancellation fees for the NSW schemes are inadequate and often leave practitioners at a loss, with one suggesting they should be adjusted to account for around two hours of lost time.

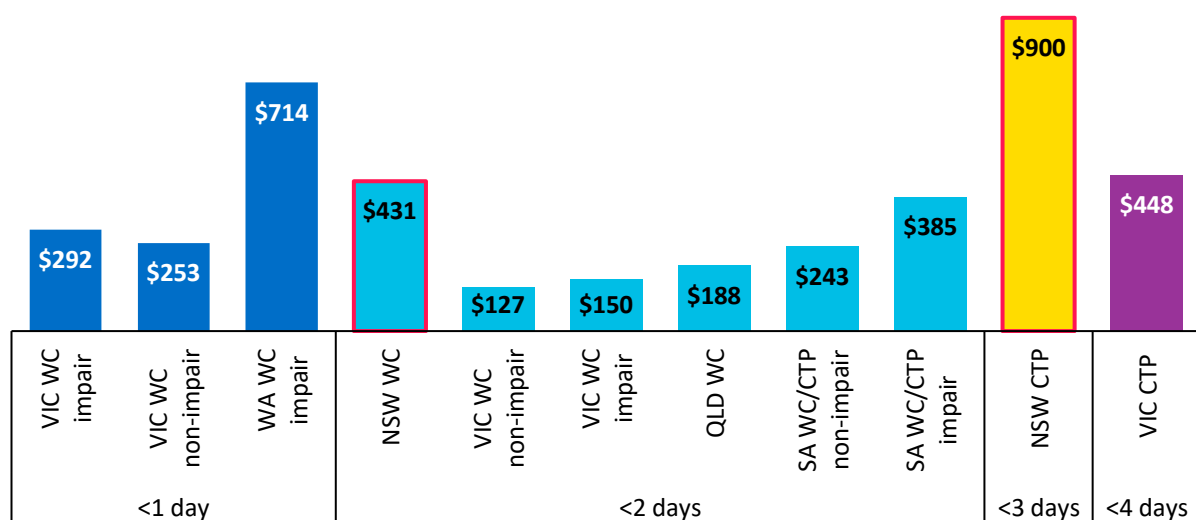
Three of the five practitioners also raised specific concerns with the WC cancellation policies regarding the icare requirement of booking three practitioners and having two of the appointments cancelled, with two practitioners emphasising that the cancellation period for workers compensation should be extended.

A medico-legal firm shared these views, and also mentioned they believe the cancellation fee does not compensate the doctor for the time they have lost from pre-reading and blocking out time for the assessment.

Benchmarking

The cancellation and non-attendance fees across jurisdictions vary in cost across schemes, as demonstrated in Figure 7.4.

Figure 7.4 – 2023 cancellation and non-attendance fees for specialists by cancellation period



The NSW WC rates are higher than most schemes and the maximum amount payable in NSW CTP is higher than all other schemes.

Most complaints about cancellations from practitioners, however, were regarding:

- The narrow cancellation period, being two days for NSW WC and three days for NSW CTP
- The frequency of cancellations both in general and outside of the cancellation periods, suggesting an operational issue rather than a fee level issue.

One practitioner said they would not continue work in the NSW workers compensation scheme in the future if the cancellation policy issues are not addressed.

Discussion: Issues around the booking and cancellation process in NSW WC

For workers compensation, the practitioners interviewed emphasised a particular issue with the icare process requiring the offering of three IMEs to the claimant, which results in three practitioners being booked and subsequently cancelled in many cases. Some case managers reportedly arrange appointments with multiple firms, resulting in instances where up to nine bookings are made and eight are subsequently cancelled. It is unknown whether this is a requirement of any other insurers in NSW.

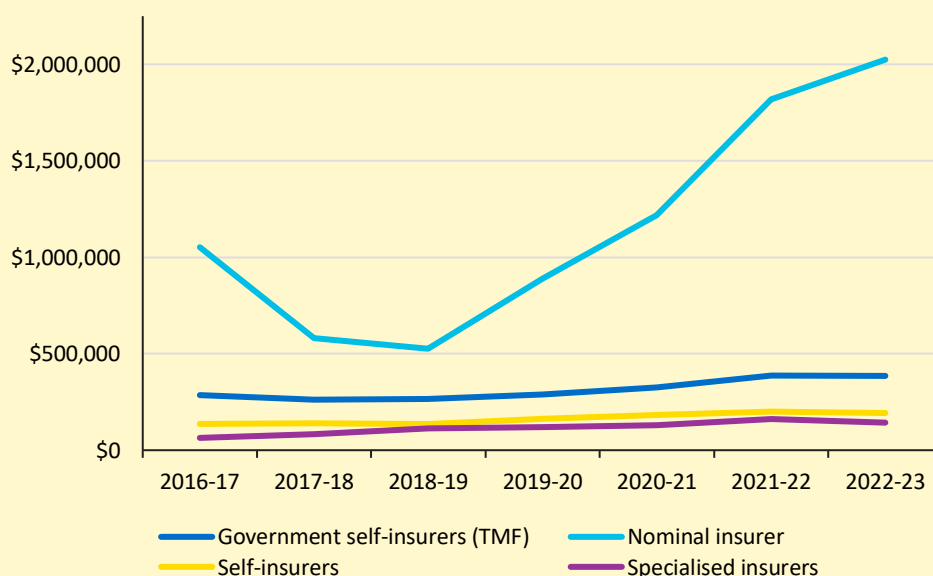
One practitioner who works in both the NSW WC and CTP schemes emphasised that the majority of their appointments are cancelled 1-2 weeks before the scheduled time, though it is possible that this is not typical and a larger survey would be required to establish this. The practitioner highlighted the negative implications of cancellations 1-2 weeks before the scheduled appointment as:

- The practitioner is not entitled to the cancellation fee, as it is outside of the cancellation period
- Multiple weeks of notice is required to notify claimants of upcoming appointments, which makes it very difficult for the practitioner to fill the holes in their schedules.

These points are relevant for both schemes, although cancellations are likely more frequent with the WC scheme due to the booking process noted above. This dissatisfaction with the current cancellation processes in the NSW schemes was echoed by the majority of the practitioners we spoke to, who suggested that the either the cancellation periods should be extended or the booking policies changed.

It is not possible to fully corroborate anecdotal practitioner feedback with claims data, given that cancellations occurring more than 2 days in advance attract no compensation and hence are not recorded. However, claims data does show that cancellations within 2 days of the appointment have risen in recent years for NSW WC, particularly for the nominal insurer icare (Figure 7.5). It is possible that this reflects referrers obtaining multiple quotes and then cancelling some of them within 2 days of the appointment, however other interpretations are possible.

Figure 7.5 – NSW WC cancellation costs by type of insurer (2016-17 to 2022-23)



7.3 Examination and report structure

Across schemes, the examination and report structure for medico-legal assessments can lead to variation in rates. In addition to whether an assessment is individual or joint, and impairment or non-impairment related (discussed in Section 6), the rates can vary for:

- Reports without examination
- Supplementary reports.

7.3.1 Reports without examinations

SIRA structure and experience

In the **NSW CTP scheme**, the cost of a medico-legal report if an examination is not required, is 25% less than the specialist rate for independent medical examinations and 18% less for joint medical examinations.

In the **NSW workers compensation scheme**, the equivalent fee ('file review and report') is much lower, at 62% less than the high complexity examination and report rate. Data from SIRA's workers compensation claims (excluding ILARS) shows that this item covered 7% of the reports completed in 2022.

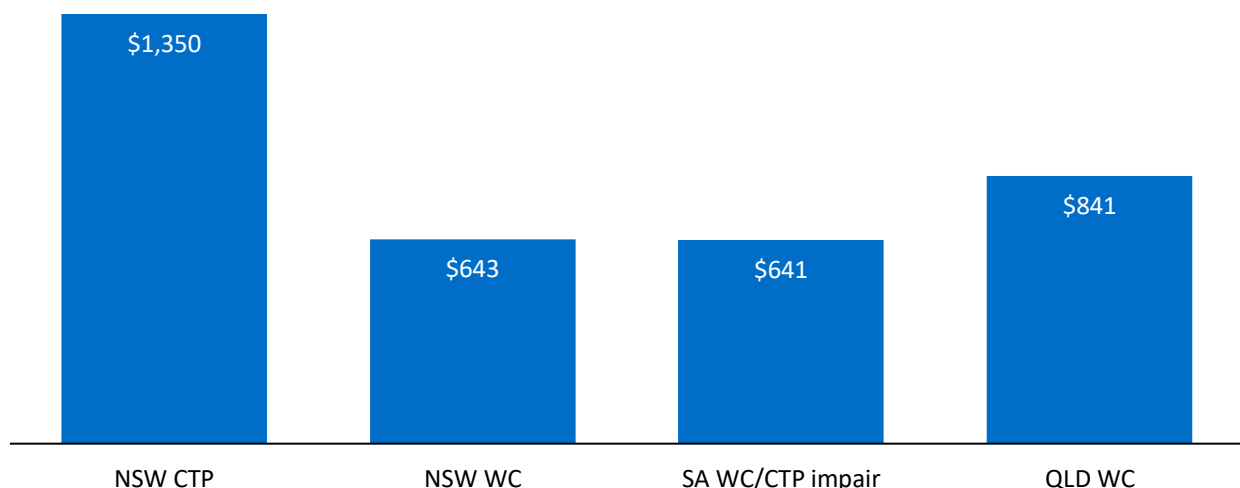
Discussion: Utilisation of reports without examinations

One of the practitioners we interviewed suggested that reports without examination were used for about 5% of their cases. Although viewed as an inferior approach to reports with an examination, they advised that it can be useful for cases where somebody has died or where the person is too injured for a physical evaluation. No views were provided about the adequacy of this fee in the NSW WC or CTP schemes.

Benchmarking

Aside from the NSW schemes, the only other schemes to provide specific rates for reports without examinations are the SA WC/CTP schemes (for impairment assessments only) and the QLD WC scheme. Figure 7.6 compares the maximum specialist rates for medico-legal reports without examinations.

Figure 7.6 – 2023 maximum specialist rates for medico-legal reports without examinations



The NSW WC rate is similar to these jurisdictions, while the NSW CTP rate is above them.

7.3.2 Supplementary reports

SIRA structure and experience

In the NSW WC scheme, there is an additional rate for supplementary reports. Data provided by SIRA shows that this accounted for approximately 17% of specialist reports for workers compensation claims (excluding ILARS) in 2022.

This option is not reflected in the NSW CTP fee schedule.

We distinguish supplementary reports from report clarifications, as the latter are not strictly funded in the NSW WC or NSW CTP schemes. However, we understand there have been instances noted when undertaking file reviews where clarifications have been funded, perhaps due to confusion around the definitions of these items.

Discussion: Supplementary reports versus report clarifications

The NSW WC fee schedule defines supplementary reports as those where “*additional information is provided for review and/or requested, or additional questions are posed*”. It states that this fee “*does not apply where the referring party is required to seek clarification because a previous report was ambiguous and/or did not answer questions previously posed*”. This definition suggests that supplementary reports involve the development of an additional or extended report with further material, while report clarifications allow for edits to existing questions or reports (which should not be funded).

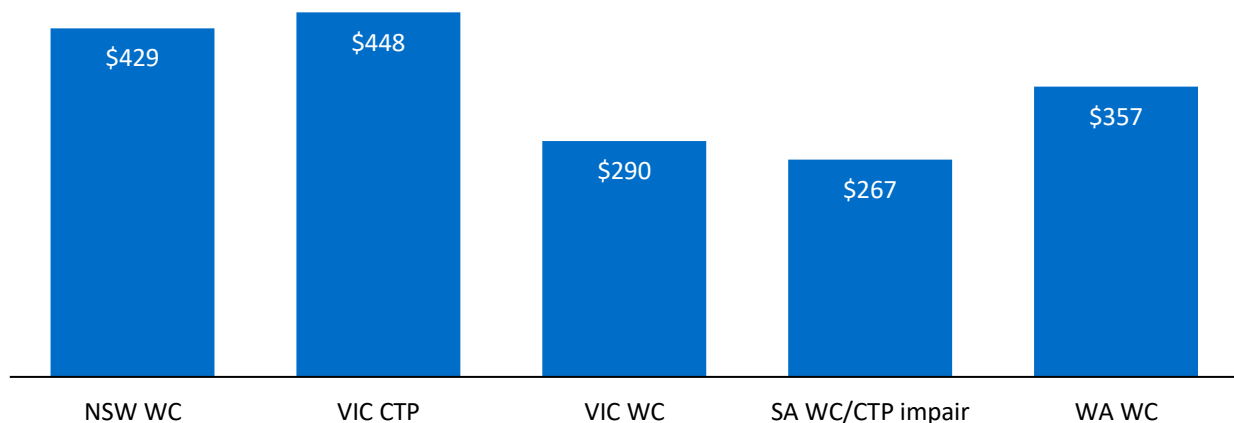
icare noted that as part of their quality process program, they are currently reviewing whether the services defined by these terms are being utilised accurately in consideration of the definitions (i.e. not classifying reports required as supplementary when they should be amended and vice versa).

AMA mentioned that supplementary reports are not always simple and that some practitioners believe the fee is not adequate for the amount of work required.

Benchmarking

All other schemes examined, except QLD WC, include rates for supplementary reports. Figure 7.7 compares the maximum specialist rates for medico-legal supplementary reports. The maximum rates used for VIC WC are those for neurosurgeon specialists, who have higher rates than other typical specialists.

Figure 7.7 – 2023 maximum specialist rates for medico-legal supplementary reports



The NSW WC rate for supplementary reports is broadly in line with the highest rates of these schemes.

7.4 Other ancillary fees

There are other ancillary fees used within schemes to increase the rates for medico-legal assessments.

SIRA structure and experience

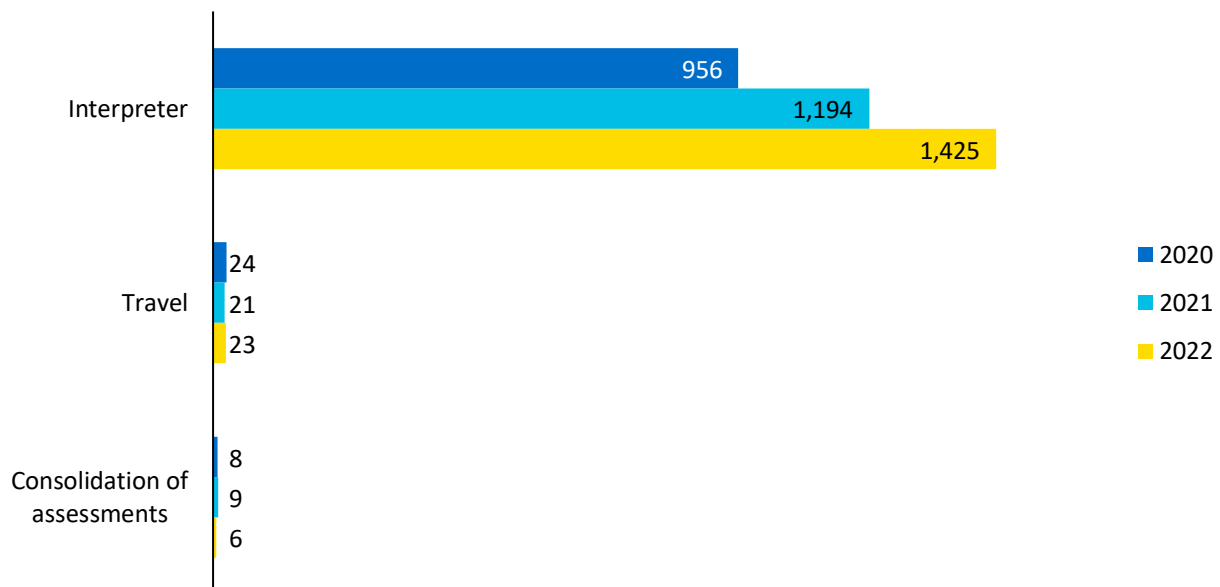
The NSW WC fee schedule contains additional ancillary fees for:

- Increases in examination and report fees with the use of an interpreter
- Travel allowances (for use of private motor vehicles and flying)
- Consolidation of assessments from different medical specialists
- Charges for the copying of medical reports.

The NSW WC fee schedule does not specify rates for witness appearances.

Figure 7.8 shows ancillary fees usage. We do not show *copying of medical records* because it was not used.

Figure 7.8 – Ancillary fee usage (count of WC claims excluding ILARS) by year



Interpreters are the biggest driver of ancillary fees (excluding cancellations, discussed in Section 7.2). Travel fees were low over 2020-2022 but activity in these years would have been impacted by the introduction of videoconferencing that arose due to the emergence of COVID-19 and the associated lockdowns. Thus, the data is likely not representative of the true demand of travel fees. There were very few claims associated with other ancillary fees.

SIRA's CTP fee schedule includes additional fees for the following:

- Appearance as a witness – these vary according to whether the evidence is classified as expert or non-expert and are structured as per hour fees with caps
- Travel allowances (for use of private motor vehicle) and accommodation expenses associated with an appearance as a witness
- Charges for the copying of medical reports.

While it is the most-used ancillary service in the NSW WC scheme, the NSW CTP fee schedule does not specify rates for interpreters.

Alignment of ancillary fees for WC and CTP schemes

NSW WC and CTP schemes allow for different ancillary fees. The most notable differences are the fee for examinations requiring interpreters in WC and fee for appearance as a witness in CTP.

For the NSW CTP scheme, feedback from practitioners has suggested that the lack of a fee for the use of interpreters is an issue, as they can considerably increase the time taken to complete a consultation. Practitioners endorse alignment with the NSW WC scheme.

There were not consistent messages on alignment of other ancillary fees:

- Travel fees for both NSW schemes had mixed reviews from practitioners, with one saying they were adequate, two noting that they should be higher and two not having an opinion.
- The additional appearance as witness fees for the NSW CTP scheme were noted as being rarely used.

Benchmarking

Table 7.3 shows the presence of each ancillary fee within the fee schedules of various schemes.

Table 7.3 – Ancillary fees by scheme

Ancillary fee	NSW CTP	NSW WC	VIC CTP	VIC WC	QLD WC	SA both	WA WC
Appearance as a witness	✓					✓ ^(a)	
Copying of medical records	✓	✓			✓	✓	
Use of interpreter		✓	* ^(b)		✓	✓ ^(c)	✓
Travel allowances or regional loadings	✓	✓		✓	✓	✓	
Consolidation of assessments		✓					✓
Audio-visual viewing				✓			

Legend: ✓ Implemented in scheme * Implemented very differently to other schemes.

Notes:

- The RTWSA schedule defines an ancillary fee for “attendance at a dispute resolution” and notes that court attendances can be charged under this item
- TAC publish a range of fees. Discussion with TAC staff suggests that complexity, reading time and use of interpreters are taken into account when selecting an appropriate fee within the range
- This applies to impairment assessments only.

The fees that are used in the least number of schemes include appearance as a witness, consolidation of assessments, audio-visual viewing and the copying of medical records. Fees for the use of an interpreter and travel allowances are defined within most schemes – we discuss these below.

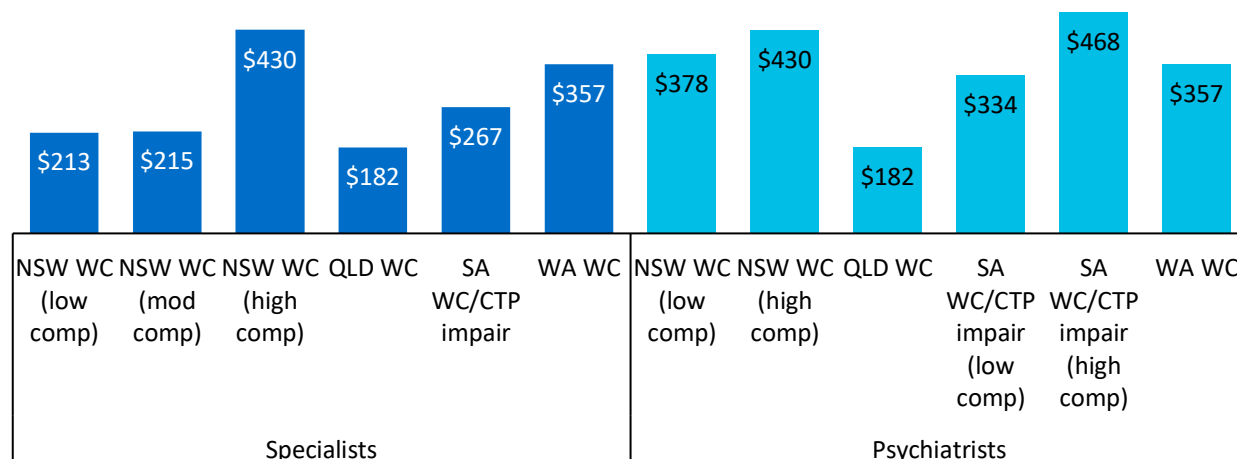
Examination loadings for interpreters are allowed for within every scheme except for NSW CTP, VIC WC and VIC CTP:

- The NSW WC rates are based on a percentage of their headline fees
- The QLD WC rates include a flat fee that does not vary by complexity or type of practitioner
- The WA WC rates vary by complexity, however when rounded to the nearest dollar, are equivalent to a flat fee
- The SA WC and SA CTP fees for impairment assessments use a mix of these methods, with a flat fee for specialists and a percentage increase for psychiatrists.

Whilst the fees for the interpreter themselves are billed separately, these loadings compensate the examiners for the additional time imposition of using an interpreter during an examination.

Figure 7.9 summarises these interpreter loadings.

Figure 7.9 – 2023 maximum medico-legal examination loadings for use of interpreters by scheme and type of practitioner



The NSW WC scheme has amongst the highest interpreter loadings for psychiatric cases and high complexity specialist cases.

Travel fees for providers to perform examinations in regional areas are also defined within most schemes. Table 7.4 benchmarks provider travel fees in five main categories – private motor vehicle allowances, air travel allowances, general travel allowances, regional loadings and accommodation/meal expenses.

Table 7.4 – 2023 travel allowance comparison

Travel allowance	Schemes with allowances	Schemes without allowances
Private motor vehicle allowance	<ul style="list-style-type: none"> NSW WC: \$0.72/km NSW CTP – witness appearance: \$0.66/km QLD WC: \$0.78/km SA WC/CTP (>50km): \$0.78/km (ATO rate) 	VIC WC, VIC CTP, WA WC
Air travel allowance	<ul style="list-style-type: none"> NSW WC: \$21.80ph + airfare SA WC/CTP: economy airfare 	NSW CTP, VIC WC, VIC CTP, QLD WC, WA WC
General travel allowance	<ul style="list-style-type: none"> VIC WC – specialists: \$506.21ph VIC WC – psychiatrists: \$493.35ph QLD WC: \$275.00ph 	NSW WC, NSW CTP, VIC CTP, SA WC/CTP, WA WC
Regional loading	<ul style="list-style-type: none"> QLD WC: 10% loading SA WC/CTP (>100km): \$156.30 	NSW WC, NSW CTP, VIC WC, VIC CTP, WA WC
Accommodation/meal expenses	<ul style="list-style-type: none"> NSW CTP – witness appearance: reasonable costs SA WC/CTP: \$331.10 	NSW WC, VIC WC, VIC CTP, QLD WC, WA WC

It is difficult to compare travel allowances between schemes, due to the wide variation in types of travel allowances. The rates in Table 7.4 suggest that the NSW schemes are below market compared to other schemes that provide allowances:

- NSW CTP provides a low private motor vehicle allowance and ‘reasonable costs’ for expenses associated with a witness appearance
- NSW WC provides a slightly higher private motor vehicle allowance and an air travel allowance
- Both QLD WC and SA WC/CTP provide higher private motor vehicles allowances than NSW and supplement these rates with general travel allowances and/or regional loadings
- VIC WC provide the highest general travel allowance of all schemes.

Discussion: Strategies for attracting practitioners to regional areas

Whilst travel fees are often available, almost all schemes reported difficulties attracting practitioners to perform medico-legal work in regional and remote areas, especially for hard to fill specialties. There have been three main responses to this across schemes.

- **Request claimants travel to metro areas** – Rather than paying for the practitioner to travel to regional or remote areas, many schemes request the claimant travel to metro areas for their examinations and conduct videoconference appointments when this is not possible. However, this can place more stress on the claimant.
- **Increase fees to incentivise practitioners to travel** – On top of their base travel fees, two schemes have implemented additional travel fees for regional areas:
 - WorkCover Queensland offer a 10% loading on total costs for areas outside of Brisbane and the Gold Coast. They reported that this loading has worked quite well for them in targeting the challenges of attracting practitioners to regional areas.
 - RTWSA provide additional flat fees to examiners who travel further than 100km from Adelaide to conduct assessments. These fees do not apply to psychiatrists, however, as unlike physical impairment assessments, psychiatric appointments can be conducted via videoconference.

One medico-legal firm warned that providing additional fees for funding travel time could become a slippery slope, as some examiners could take advantage of them.

- **Utilise medico-legal firms to arrange shared regional visits** – Some schemes use their relationships with medico-legal firms to improve access to examinations in regional areas, as the firms have a wide pool of doctors and can arrange visits to regional areas involving multiple appointments at one time. These visits can include both medico-legal assessments and other types of appointments, meaning that both the benefits (access to specialists in regional areas) and drawbacks (travel fees) can be shared between the associated parties. This also reduces the administrative burden on the law firms who would otherwise have to make these travel arrangements, as well as being more financially worthwhile to the specialists who are able to see more patients at once.

7.5 Summary and options

We summarise:

- On **practice areas**:
 - Differentiation in fees by practice area was similar to most schemes, but distinct from VIC WC
 - Many jurisdictions reported low availability of psychiatrists
 - All jurisdictions reported difficulty accessing specialists such as neurosurgery, neurology and rarely used specialists
 - Psychiatrists reported fee inadequacy, although this was consistent with the feedback on general headline fees reported by all practitioners.
- On **cancellations**:

- Cancellations are consistent with or higher than other jurisdictions
- Practitioners are concerned with the compensation for cancellations, but this may be due to the prevalence of cancellation outside of the compensation window.
- On **other ancillary fees**:
 - There is little consistency across jurisdictions for ancillary fees
 - Practitioners reported that fees for appearance as a witness are rarely used
 - Practitioners see the absence of examination loadings for interpreters in NSW CTP as an issue
 - Travel fees are used widely across schemes.
- On **examination and report structure**:
 - NSW CTP has relatively high rates for medico-legal reports without examination
 - NSW WC has relatively high rates for supplementary reports, although icare is currently reviewing whether the services defined by these terms are being used accurately in consideration of the definitions.

Options for SIRA on fee variation

We have developed the following options based on our consultations and analysis. SIRA should consider these following options within the context described in Section 5, its internal expertise and the affordability of any changes.

These options are not mutually exclusive.

6. Reduce the frequency of cancellations

While the compensation for cancellations seems reasonable compared to other jurisdictions, the frequency of cancellation in the NSW schemes make it a pain point for practitioners.

SIRA may consider working with icare to review the operational processes that result in cancellation, including the booking of multiple IMEs for the same assessment. This may involve reviewing whether multiple bookings are always needed, and/or encouraging insurers to cancel appointments earlier and more consistently.

7. Review fees for reports without examination and supplementary reports, and for appearance as a witness

Fees for reports without examination are relatively high in NSW CTP compared to other jurisdictions. Fees for supplementary reports are relatively high in NSW WC compared to other jurisdictions.

Fees for appearance as witness are not common among schemes and are rarely used by practitioners.

SIRA may consider whether these fees are excessive relative to the headline fees.

8. Compensate practitioners for the additional examination time required when an interpreter is present in NSW CTP

Practitioners see the absence of examination loadings for the use of interpreters in NSW CTP medico-legal examinations as an issue. It is inconsistent with NSW WC and other schemes.

SIRA may consider allowing fee variations for the use of interpreters in examinations to acknowledge the higher cost of additional examination time and improve the accessibility of the scheme for non-English speakers.

9. Review travel loadings and processes

SIRA's current level of compensation for travel had mixed reviews from practitioners. Comparing travel loadings between schemes is difficult due to the wide variation in fee structures, although it appears NSW travel loadings are lower than those in other schemes. While some schemes offer more generous travel allowances, almost all schemes still reported difficulties attracting practitioners to regional areas.

To improve the attractiveness of regional assessments to practitioners, SIRA may consider the addition of a regional loading, and/or increasing their use of medico-legal providers that are able to perform medico-legal and other work in a single trip (noting this practice was identified as helpful in some other schemes).

8 Operational factors

Inside this section, we discuss:

- 8.1 *Practitioner requirements and training* (p 59)
- 8.2 *Practitioner engagement and dispute process* (p 62)
- 8.3 *Quality assurance process* (p 65)
- 8.4 *Mode of delivery* (p 68)
- 8.5 *Timeliness* (p 69)
- 8.6 *Summary and options* (p 71).

Our focus will be understanding the extent to which any of these factors are an enabler or a barrier to health professionals undertaking medico-legal work in NSW or other jurisdictions.

Note: in this section our discussion of NSW workers compensation focuses on insurer-initiated assessments and excludes ILARS, unless stated otherwise.

8.1 Practitioner requirements and training

The process to determine which health professionals can provide medico-legal services varies by jurisdiction and scheme. We benchmark:

- The requirements for independent medical examiners, HPAs and PI assessors to provide medico-legal services ('practitioner requirements')
- The standard **term of appointment** of these approvals, which apply to HPAs in NSW
- The initial and ongoing **training requirements** for health professionals to continue providing services.

8.1.1 Practitioner requirements and authorisation

SIRA structure and experience

The requirements and authorisation processes for determining the eligibility of practitioners to perform medico-legal assessments differs between the NSW WC and CTP schemes.

In the NSW WC scheme, independent medical examiners must meet the requirements set out in the *Workers Compensation Guidelines*¹, while permanent impairment assessors must be listed as a 'trained assessor of permanent impairment' on SIRA's website. There is no formal authorisation process for these practitioners.

In the NSW CTP scheme, practitioners must be authorised as a 'health practitioner authorised to give evidence' (HPA) on SIRA's website. The requirements for this authorisation are set out in SIRA's *Motor Accident Guidelines*².

These schemes share some common requirements:

- Practitioners are required to be AHPRA registered and have knowledge of the relevant area of treatment
- If there is a question of causation or treatment, the practitioner is to be in 'current' or 'recent' clinical practice

- If there is a question of impairment, the permanent impairment assessor is to have successfully completed the relevant authority’s training requirements in permanent impairment evaluation (see Section 8.1.3).

To be authorised as a HPA for the NSW CTP scheme, practitioners must also have at least five years of full-time equivalent relevant clinical experience or two years of full-time equivalent relevant clinical experience in addition to an advanced qualification and must complete an application.

Benchmarking

Table 8.1 summarises the main practitioner requirements by scheme.

Table 8.1 – Practitioner requirements by scheme

Practitioner requirement	NSW WC	NSW CTP	VIC WC	VIC CTP	QLD WC	QLD CTP	SA both	WA WC
AHPRA registration	✓	✓	✓	✓	✓	✓	✓	✓
Current or recent clinical practice	✓ ^(a)	✓ ^(a)	✓ ^(c)	✓ ^(c)	✓ ^(c)	✓	✓ ^(f,g)	✓
Clinical experience requirements (five years)		✓ ^(c)	✓ ^(d)	✓	✓ ^(e)		✓ ^(f)	

Legend: ✓ Implemented in scheme

Notes:

- If the referral includes a question of causation or treatment
- For NSW CTP, the requirement is five years clinical experience, or two years plus an advanced qualification recognised by the relevant professional body
- A minimum of eight hours a week of direct clinical care experience required
- Independent medical examiners only
- For QLD WC, this is a post-fellowship requirement
- Impairment assessors only
- The practitioner must be in active clinical or medico-legal practice and/or have experience in the assessment of whole person impairment for the RTWSA scheme.

The requirements for AHPRA registration and current or recent clinical practice are common across all schemes. The five-year clinical experience requirement is present in all non-NSW schemes aside from QLD CTP and WA WC. Workcover QLD mentioned they are considering reducing this requirement to three years.

AMA emphasised the need for a more formalised process for accreditation, stating that an important factor that impacts quality of reports is *recency* and *relevance* of practice.

8.1.2 Term of appointment

SIRA structure and experience

In NSW, the appointment term for practitioners eligible to perform medico-legal services varies between the workers compensation and CTP schemes. Practitioners participating in the workers compensation scheme do not have a specified term of appointment, whereas appointment as a health practitioner authorised to give evidence in the CTP scheme is three years (with an optional extension at SIRA’s discretion).

Benchmarking

Appointed term length is consistent amongst some other schemes, with WorkCover Queensland and RTWSA both having initial three-year term lengths. WorkCover Queensland also offers two one-year extension options.

WorkCover WA, TAC and one other regulator¹⁷ do not currently place any restrictions on term length for impairment assessors. An exception to this for one regulator is hearing loss impairment assessors, who are approved by the Minister every three years.

8.1.3 Training requirements

SIRA structure and experience

In addition to the practitioner requirements outlined in Table 8.1:

- Practitioners looking to perform permanent impairment assessments must successfully complete SIRA’s impairment guideline training for the relevant body system/s being assessed. For NSW WC, they must be listed as a trained PI assessor on SIRA’s website, while for NSW CTP, their permanent impairment modules must be noted on the list of HPAs.
- HPAs in the NSW CTP scheme must complete SIRA’s specified CPD requirements.

Benchmarking

Table 8.2 shows the training requirements by scheme.

Table 8.2 – Training requirements by scheme

Training requirement ^(a)	NSW WC	NSW CTP	VIC WC	VIC CTP	QLD WC	QLD CTP	SA both	WA WC
Assessment tool/guideline training (e.g. AMA-5) for impairment assessors	✓	✓	✓	✓ ^(b)	✓ ^(c)	✓	✓ ^(d)	✓
Non-AHPRA CPD requirements		✓						
Induction training modules for IMEs			✓	✓	✓			

Legend: ✓ Implemented in scheme

Notes:

- One regulator’s¹⁸ impairment assessors must complete a core induction module prior to their specialty modules
- TAC independent medical examiners are subject to an induction process. Joint medical examiners are not subject to the onboarding process currently, within potential benefits of an induction program being currently considered.
- WorkCover Queensland practitioners have three months to complete the certification from the date of application
- SA impairment assessors must complete competency assessments in addition to SA Guidelines training.

The NSW CTP scheme is the only jurisdiction that stipulates CPD requirements in addition to the AHPRA requirements. However, practitioners did not identify this requirement as burdensome, and an insurer mentioned they support the CPD requirement and do not find it creates any challenges.

Similar to NSW CTP and WC, all schemes require training for impairment assessors in the relevant body systems being assessed (e.g. spine, upper extremity). Some schemes also require introductory training modules for independent medical examiners that cover scheme-specific information.

¹⁷ Anonymity requested for publication of report

¹⁸ Anonymity requested for publication of report

Practitioner feedback on IME-specific training

Some practitioners gave feedback that the current IME training requirements (in NSW and other jurisdictions) are not sufficient in preparing practitioners with the skills required to produce high quality IME reports.

Specially, these practitioners expressed that experience may limit participation and that the current training processes do not ensure providers are equipped with the additional skills required for IME reports. Some of these skills include understanding the ethics of medico-legal work, methods of report writing, effective reviewing of documentation, determining causation and developing an impartial view.

It was generally hypothesised by these practitioners that the inadequacy of training led to lower quality reports being delivered in some cases, for example, reports that do not provide adequate evidence to substantiate the conclusions drawn. It is difficult to establish how prevalent this is without performing a larger survey of practitioners, as the views held by practitioners and firms varied.

8.2 Practitioner engagement and dispute process

The way in which practitioners are engaged can affect their experience with operational processes and their willingness to undertake medico-legal work. Across schemes, we compare:

- Who can **engage** health practitioners for medico-legal work
- The use of **medico-legal firms** for contracting practitioners
- The process for **disputes** when the results of an assessment are appealed.

8.2.1 Practitioner engagement

SIRA structure and experience

In NSW, a medico-legal examiner can be engaged by the insurer or by the claimant in both the WC and CTP schemes.

For workers compensation claims, if the claimant wishes to engage an independent medical examiner or PI assessor, they must either fund the report themselves or go through the IRO to obtain ILARS funding.

In the CTP scheme, HPAs can be authorised to give evidence via three methods:

- An agreement between the parties for the health practitioner to conduct a joint medical assessment
- Appointment by the insurer to its list of HPAs to give evidence
- Appointment by the insurer for a specific purpose and duration on application by a claimant or insurer.

Benchmarking

Table 8.3 summarises the engagement sources by scheme.

Table 8.3 – Engagement sources by scheme

Who can engage the practitioner	NSW WC	NSW CTP	VIC WC	VIC CTP	QLD WC	QLD CTP	SA WC	SA CTP	WA WC
The insurer / case manager	✓	✓ ^(b)	✓	✓	✓	✓	✓	✓	✓
The claimant	* ^(a)	✓ ^(b)		✓ ^(c)		✓		✓	✓

Legend: ✓ Implemented in scheme * Implemented very differently to other schemes N/A Not applicable to scheme.

Notes:

- In the NSW WC scheme, claimants who wish to arrange their own examiner and obtain ILARS funding must go through the IRO.
- Under certain conditions (Health Practitioners Authorised to Give Evidence (HPAs) need to meet SIRA’s authorisation conditions).
- On the rare occasions where the client has requested a joint examination which is jointly agreed to by TAC and the client (rather than between TAC and the client’s representatives).

All other schemes interviewed allow the insurer or case manager to engage the examiner, while only some allow the claimant to engage them.

8.2.2 Use of medico-legal firms

SIRA structure and experience

In the NSW WC scheme, medico-legal firms are used in some cases for contracting medico-legal examiners.

icare lists a number of firms on an open panel (‘open’ meaning workers and employers are still able to choose a provider that is not listed on the panel) including:

- CBD Medico-Legal Consultants
- eReports
- Medicins Legale
- Medico Legal Specialists
- MedicoLegal Assessments Group
- Medilaw NSW_ACT
- MEDirect
- mlcoa
- MSBC
- Nordwake.

The IRO has its own list of approved medical report providers (approved lawyers can choose a provider from this list or they can contact doctors directly) including:

- Assess Medical Group
- Clinical Evaluations
- eReports
- Hunter Medicolegal
- IMO
- Injurycare
- MedicoLegal Assessments Group
- MedAssess Australia
- MEDirect
- Med-Law
- MSBC
- Pinnacle Healthcare
- Prudence Consulting
- Reports2U
- Sinergy Medical Reports
- Unified Healthcare Group.

Like any other examiners, practitioners from these firms are required to adhere to the relevant guidelines and practitioner requirements to conduct independent medical examinations and permanent impairment assessments.

Benchmarking

All schemes reportedly use third-party medico-legal firms to contract practitioners for medico-legal assessments, either directly or indirectly. The extent to which these firms are used varies by jurisdiction:

- icare advised that approximately 85% of services are contracted through medico-legal firms
- Queensland's MAIC estimate medico-legal firms are used around 80% of the time
- Comcare source practitioners through medico-legal firms on their panel.

TAC and WorkCover Queensland allow the use of medico-legal firms under the condition that the practitioners must be approved as practitioners on their panel as sole practitioners, first and foremost. Both schemes noted that they contract with the practitioner directly, and it is at the discretion of the practitioner if they wish to work or be booked through a third-party.

Discussion: Benefits and drawbacks of using medico-legal firms

Throughout consultation with jurisdictions, practitioners and one medico-legal firm, multiple benefits associated with the use of medico-legal firms were reported. These include:

- **Quality assurance** – medico-legal firms can provide quality assurance checks on the output of reports produced, ensuring a uniformity of quality across their practice
- **Reduced administrative burden** – medico-legal firms aim to reduce the administrative burden on practitioners by being responsible for items such as invoicing, helping with training requirements, and sourcing practitioners in regional and remote areas
- **Information security and compliance** – medico-legal firms support the doctor to receive, store and transmit sensitive health data through a maintained secure IT platform.

Despite these benefits, however, some stakeholders raised concerns about medico-legal firms taking a large portion of the fees involved in these assessments, further reducing the remuneration for the practitioners involved. Our comparison in Figure 6.4 showed negotiated rates for public liability claims quoted by medico-legal firms were higher than those quoted by practitioners directly.

8.2.3 Dispute process

The establishment of the Personal Injury Commission (PIC) and Independent Review Office (IRO) resulted in changes to the handling of NSW WC and CTP dispute matters from 1 March 2021. All claim disputes previously managed by SIRA's Dispute Resolution Services (DRS) or CTP Assist are now managed by the PIC tribunal. Disputes regarding the degree of permanent impairment are referred to a medical assessor for further assessment as part of the dispute process.

Where documentation for other jurisdictions was available, we found they generally have separate processes for WC and CTP disputes. Typically, disputes are referred to a conciliation service or separate commission, with an ability to involve a medical support panel where required. Some schemes include formal hearings (Workcover QLD) or the courts (MAIC) in their dispute resolution procedure.

Practitioner feedback on dispute process

Through our discussions with practitioners, the dispute **process** was not raised as a significant reason for practitioners choosing not to provide medico-legal services. While the risk of disputes can deter some practitioners from providing medico-legal services, this was mostly seen as the nature of the work, rather than a fault of the current process in NSW.

8.3 Quality assurance process

In this section we compare two key aspects of report quality between schemes:

- Schemes' feedback on the quality and consistency of reports
- The quality assurance measures in place to identify and remediate low quality reports.

8.3.1 Quality and consistency of reports

SIRA structure and experience

icare and the CTP HIM group identified that quality of reports could be improved in some cases.

icare noted that there are '*some concerns around how adequately questions have been addressed*' in the reports received, and that work is underway to better quantify this (discussed in Section 8.3.2). They also noted that currently the number of reports requiring an amendment due to incomplete or incorrect information is low.

The CTP HIM group flagged that the quality of reporting appears to have deteriorated in recent years. This is based on review processes insurers have in place to detect low quality reports and return them.

CTP insurers identified a number of areas where report quality could be improved:

- Report length
 - There have been decreases in average report length (now around 4-6 pages, including 1.5 pages of administrative content)
 - There have been increases in the number of reports requiring clarification or further assessment.
- Report accuracy and thoroughness
 - Lack of reference and discussion of supporting documents
 - Inadequate explanation of reasoning
 - Missing acknowledgement of previous health concerns/issues in claimant.

Neither the NSW WC nor CTP scheme provide medical specialists with a formal report template to guide their report structure. SIRA does have a recommendation that they use for permanent impairment processes in the NSW WC scheme but note that most providers tend to have their own templates and processes in place.

Stakeholder feedback on drivers behind low quality reports

For the NSW WC and CTP schemes, a practitioner hypothesised that the occurrence of low-quality reports may stem from a lack of compensation for reviewing documentation. Most doctors are not willing to read over 200-300 pages of documentation for NSW assessments because of the current fee structures, which can restrict the amount of potentially relevant information the practitioner accesses in preparation for the report. Outside of this feedback, we do not have any reason to assume practitioners are not meeting their obligation to read all material.

One of the medico-legal firms also stated that for the average case, the quality of the report is directly proportional to the quality of the questions asked in the referral. The lack of formal referral and report templates for the NSW schemes may be a contributing factor to the number of low-quality reports received. Another driver may be the inexperience and time constraints of case managers in areas where a high turnover is experienced, which can result in poor quality referrals (in regard to the number and type of questions asked) and large amounts of unordered or duplicate material sent to the practitioners for review (discussed in Section 6.2.3).

Benchmarking

Many other schemes raised similar concerns about the quality of reports in their jurisdiction:

- **One regulator**¹⁹ identified that while their impairment assessment reports are usually of high quality, they experience many report quality issues from IMEs (with around 25% of reports still being quite poor). They suggested one of the main causes of this is low quality referrals.

This regulator also advised us of two ombudsman reports they received in recent years to do with lack of evidence between different findings for similar medico-legal cases, although they emphasised that these were more isolated issues than systemic ones.

- **TAC** reported that the length and quality of their reports was inconsistent, with some practitioners producing unnecessarily lengthy reports. They raised a similar concern to one other regulator²⁰, highlighting that the quality of the instruction letters and relevance of material being provided to the examiner impacts the overall quality of reports being provided.
- **RTWSA** noted that approximately 80% of their PI reports are compliant with the impairment guidelines, suggesting that around 20% are of insufficient quality (with some of these being due to simple calculation errors).
- **ICWA** suggested that the quality of their medical assessment reports vary as a result of the questions asked of the independent medical examiner, with some specialists being frustrated that they are not being asked the right questions.

This is different to WorkCover Queensland, South Australian CTP Regulator and Comcare, all which believe that the quality of the reports produced by examiners are of high quality overall.

Discussion: Factors affecting the quality of reports

There are multiple factors that have been raised by stakeholders as potential drivers of variation in report quality:

- **Fee structure** – Practitioners perceiving the fee structure as inadequate compensation for the time it would take them to produce a comprehensive report. This can lead to short and inaccurate reports that result in insurers requesting further clarification from the practitioner.
- **Guidelines** – A lack of limits in the guidelines for the scheme. Guidelines that allow for an unlimited number of questions, or an unlimited amount of reading material or body parts associated with a single case, can lead to an excessive amount of material for the practitioner to review and report on in one assessment.
- **Experience** – The experience of the practitioner in IME settings and the training (or lack thereof) that they receive. Multiple practitioners emphasised the need for generalised training for independent medical examiners due to the additional skills required beyond their clinical expertise (e.g. forensic thinking, report writing techniques, determination of causation, etc).
- **Poor quality referrals** – Referrals and report templates that include less targeted questions (are too relaxed) or too many questions (are too detailed). This can result in reports that exclude important information or are not specific enough to the case.

While it is difficult to benchmark schemes on these factors, one medico-legal firm noted that the NSW WC and CTP schemes have more rigid requirements than other schemes but fewer prescriptive guidelines on referrals and reports.

¹⁹ Anonymity requested for publication of report

²⁰ Anonymity requested for publication of report

Most schemes provide report templates for medico-legal assessments with varying levels of detail. TAC and one other regulator²¹ are unique in that their reporting guidelines are quite strict, featuring explicit questions that must be answered (or reasons provided for why they can't be answered) and a separate template for psychiatric assessments. WorkCover Queensland and RTWSA provide templates as well.

Discussion: Use of report templates

The use of report templates within guidelines that outline the minimum requirements of a medical assessment report may help to ensure that a uniform level of detail is applied, regardless of the questions asked. The SA CTP Regulator shared that the prescribed template for reports results in more consistency amongst report authors (practitioners) and controls for the risk of excess documentation in the report that isn't relevant for the purpose of the assessment.

However, it was identified in NSW that different providers have their own templates, which could reduce the benefit for SIRA to provide this guidance themselves. Additionally, one medico-legal firm raised the concern that when referrals have a long list of generic questions instead of a shorter list of questions appropriate to specific claim circumstances, it can have more negative effects than positive.

8.3.2 Quality measures

SIRA structure and experience

From discussions with SIRA, icare and CTP insurers, there does not seem to be a consistent quality assurance process in place for either the NSW WC or CTP scheme. This could be a potential driver for icare's concerns about how adequately medico-legal examination questions are being asked and addressed, and the increasing number of lower quality reports recently seen by NSW CTP insurers.

icare noted that:

- They have a small assurance project currently taking place that involves a random sample of a small subset of reports from across the whole business, which they are looking to expand in the future.
- Contracts with medico-legal firms can serve as a quality assurance measure, as the onus is on them for these cases.
- They can request amendments to most reports if requirements are not met or there is incorrect information. However, as recently observed by SIRA, this can lead to unjustified payments for supplementary reports (clarifications being incorrectly charged).

Some of the CTP insurers from the HIM group noted that:

- Case managers review the report and send this to an injury management specialist or technical specialist for further review and recommendations where required
- Quality is considered against a range of parameters such as whether the pre-existing history was considered, if the impairment assessment is accurate in methodology and whether attention has been paid to the clinical information available
- However, there is no centralised data available or sampling conducted to understand the quality of reports across the CTP scheme as a whole.

Benchmarking

One of the main types of measures used by other schemes to increase high quality reports is a formal quality assurance process. The frequency of this varies by scheme:

²¹ Anonymity requested for publication of report

- Comcare requires all IME reports to be reviewed by allied health professionals in the Injury Management Team, and then discussed with the Claims Delegate.
- The SA CTP Insurance Regulator sources a sample of reports from the CTP insurers and has these reviewed by contracted medical experts (currently occupational physicians and psychiatrists).
- One regulator²² has all impairment reports reviewed and analysed by an impairments benefits specialist to ensure adherence to the AMA Guides and legislation. It is too resource intensive to review all IME reports, however, when possible, they are peer reviewed by a specialist of the same discipline. This regulator also reviews 10% of all reports every year through their quality assurance program (this includes a review of the referral, report and feedback provided).
- WorkCover Queensland have an internal review process to ensure that their impairment reports are compliant and have the ability to escalate providers who provide non-compliant reviews.

The processes for reviewing quality are broadly similar to those described by the NSW insurers, noting that more detailed data consolidating the experience across insurers is available in some schemes.

Discussion: Use of quality assurance measures

Discussions with Comcare highlighted the importance of having a strong review process in place, as it allows revision to reports to be requested if there is not a clear link between evidence and practitioner opinion. For claims where medico-legal firms engage the practitioner, related reports may be reviewed using the provider's quality assurance team, regardless of whether the scheme has their own review processes in place. However, many schemes choose to conduct their own peer review of reports.

8.4 Mode of delivery

The mode of delivery used to conduct independent medical assessments appears to have changed since the introduction of COVID-19 and associated restrictions, with increased use of videoconferencing. We discuss the initial and ongoing use of videoconferencing across schemes in two main areas:

- Psychiatric assessments
- Physical impairment assessments.

8.4.1 Use of videoconference for psychiatric assessments

Videoconferencing was used for psychiatric assessments during the lockdown period of COVID-19. The schemes and practitioners we spoke to were supportive of the use of videoconference for psychiatric assessments where appropriate, particularly where:

- There is a limited supply of local psychiatrists to complete the examinations
- There are accessibility issues for patients in rural and remote areas.

The psychiatrist we interviewed also emphasised the positives of videoconferencing for psychiatric patients – they are generally happier that they do not have to travel long distances and feel more comfortable and less agitated in their home environment.

8.4.2 Use of videoconference for physical impairment assessments

Like for psychiatric assessments, many physical impairment assessments completed during the height of COVID-19 had to be conducted via videoconference rather than face-to-face. To support this setup, many schemes adopted a “supported review” approach for these assessments where a supporting practitioner

²² Anonymity requested for publication of report

(for example, an allied health professional such as a physiotherapist) was in the room with the patient helping to physically move the body at the doctor's instruction, while the specialist attended virtually.

Though the supported review approach is still used on occasion in many schemes, such as where a patient is very remote and is otherwise unable to access an assessment, most are trying to transition away from this approach. TAC, ReturnToWork SA expressed the view that delivering physical assessments via videoconference may have a detrimental impact on report quality. The SA CTP Regulator informed this option is not approved in the South Australian Motor Accident Injury Accreditation Scheme.

Practitioner feedback on the appropriateness of videoconference for physical assessments

We consulted with multiple practitioners to determine their views on the appropriateness of videoconferencing for conducting physical impairment assessments. They suggested that:

- The biggest difficulty with videoconferencing is clinical appropriateness. For certain specialties, it can be inappropriate to consult via videoconference due to lack of resources or equipment and the nature of the injury.
- What happens in the room during an assessment is important. Although an allied health professional can be utilised for a supported review, the results will not be as accurate or efficient as the doctor performing the necessary actions themselves. There are also often significant resources involved in arranging the supporting practitioner to be there.
- Although videoconference appointments can be useful for overseas and other remote patients, they are more appropriate for secondary consultations (as opposed to initial consultations).

8.5 Timeliness

We had discussions with schemes and practitioners on the timeliness of three processes within each scheme:

- The time between booking the appointment and the appointment occurring
- The time between the appointment occurring and the delivery of the report
- Invoicing and billing.

8.5.1 Time to book appointments

One of the main sources of delay in the process of engaging a medical practitioner for medico-legal work identified in our consultations, was the time it takes to secure appointments with specialists. This issue was seen as universal, with both NSW and many other schemes mentioning this source of delay. Data from TAC suggests that this is a worsening problem, with average wait times for directly arranged IMEs within the scheme increasing from 80 days in 2021-22 to 102 in 2023-24.

This issue was also emphasised by stakeholders as particularly prominent in areas with a shortage of providers (e.g. neurosurgeons). icare and one CTP insurer reported that in these areas, practitioners are often booked out 3-12 months in advance, resulting in significantly longer turnaround times. TAC noted that IMEs with neurosurgeons, paediatricians and ENTs have wait times of approximately 6 months, due to the inability to recruit sufficient examiners within these disciplines.

Mitigation of delays vary across the other schemes:

- WorkSafe Victoria, like NSW CTP, have the ability to use allied health professionals for independent medical examinations. They are able to use psychologists in addition to psychiatrists and WorkSafe Victoria have a separate fee schedule for doing so.
- RTWSA and MAIC both occasionally utilise interstate doctors to increase their pool of available specialists, particularly for psychiatric appointments which can be conducted virtually without the doctor needing to travel. SIRA also has practitioners who reside in other jurisdictions on their list of PI

assessors for workers compensation, who are able to undertake independent medical examinations when necessary (more commonly where the injured person lives interstate).

- The SA CTP Insurance Regulator stated that if a specialist independent medical examiner isn't available in a certain area, they may rely on the treating doctor's report in this instance instead (although this does not occur very often).
- The NSW IRO mentioned that in some instances where there are very few doctors for specialties that are not used very often and/or have less practitioners willing to perform IME work (e.g. nephrologists, neurosurgeons) and all of those doctors refuse to provide services as prescribed in the Fee Order, IRO may agree to a higher amount to be charged to an approved lawyer by the doctor. Note: this comment does not apply to insurer claims – insurers and self-insurers do not have the ability to choose to pay over the specified fee.

8.5.2 Time to deliver reports

Schemes set timeframes for report delivery in one of two ways:

- **Through an expected timeframe:** The expected timeframe for the delivery of reports in the NSW WC scheme is within ten working days (applies to all medical reports). This is consistent with RTWSA, WorkCover Queensland and TAC. Similarly, WorkSafe Victoria expects 90% of reports to be returned within ten days.
- **As agreed with a third party:** The timeframe for the delivery of reports in the NSW CTP scheme is as agreed with the third party. This is similar to that of MAIC and WorkCover WA where there are no set timeframes for report delivery.

Within all schemes, if the practitioner is sourced through a medico-legal firm, they will instead be subject to the firm's timeframe restrictions, which are also generally ten business days.

Further to this, the fee structures for VIC WC and QLD WC contain incentives for completing reports within a specified timeframe. Positive feedback was reported around both of these incentives:

- WorkCover Queensland reported that their increased fee for delivering an independent medical report within ten business days has been very successful, with over 90% of reports meeting this timeframe
- One regulator²³ reported that their additional loading for urgent examinations and reports (delivered within two business days) has been used for approximately 1/3 of examinations and has been useful from a timeliness point of view.

²³ Anonymity requested for publication of report

Stakeholder feedback on timeliness of report delivery

Data from TAC shows that report delivery within expected timeframes is not always achieved in practice, with current wait times for the delivery of reports averaging around 53 days for IME reports and 37 days for JME reports. These figures, however, vary significantly by discipline and individual examiner.

Feedback from CTP insurers suggests that delays in the delivery of reports were rare and usually attributed to independent medical examiners being overloaded with work due to the shortage of practitioners, rather than a lack of incentivisation. There was also concern raised that incentivising a quicker delivery of reports would result in reports being rushed and therefore compromising report quality. Thus, a balance is required to promote the delivery of quality reports in a timely manner.

8.5.3 Time to invoice medico-legal services

For NSW WC, invoices are expected within 30 days of the service being provided. This timeframe varies between schemes. RTWSA expects invoices within 6 weeks, WorkCover Queensland within 20 business days, TAC within 2 years and one regulator²⁴ receives invoices when the completed IME report is provided. Discussions with practitioners found that invoicing is not a source of complaint for providers and is not a likely cause of deterring providers from medico-legal work.

8.6 Summary and options

We summarise:

- On **practitioner requirements and training process:**
 - The NSW schemes have similar practitioner requirements and training processes to other jurisdictions, except for the absence of a requirement for five years of clinical experience in NSW WC
 - No material issues were raised by stakeholders.
- On **practitioner engagement and disputes:**
 - Engagement with and preference for medico-legal firms differed by jurisdiction
 - No material issues were raised by stakeholders on practitioner engagement and disputes.
- On **quality assurance processes:**
 - icare and the CTP HIM group identified that the quality of reports could be improved in some areas, with HIM noticing a recent decline in report quality
 - Stakeholders identified compensation, a lack of training, and poor quality referrals as potential reasons for quality issues
 - Other jurisdictions use report templates and review mechanisms to improve the quality of reports.
- On **mode of delivery:**
 - Videoconferencing is used in many jurisdictions for psychological injuries, but less frequently used for physical injuries or disease
 - No material issues were raised by stakeholders.
- On **timeliness:**
 - All jurisdictions reported long delays in booking appointments with some practitioners

²⁴ Anonymity requested for publication of report

- Some jurisdictions incentivise the prompt delivery of reports.

Options for SIRA on operational processes

We have developed the following options based on our consultations and analysis. SIRA should consider these following options within the context described in Section 5, its internal expertise and the affordability of any changes.

While not strictly part of a fee benchmarking exercise, these options may help SIRA improve the attractiveness of the scheme to some practitioners and thus moderate the compensation requested by practitioners.

These options are not mutually exclusive.

10. Align and/or improve practitioner requirements between NSW WC and NSW CTP

Further harmonisation, where feasible, of the NSW WC and NSW CTP practitioner requirements (outlined in the *Workers Compensation Guidelines*¹ and *Motor Accident Guidelines*²) may increase the pool of available practitioners in both schemes. However, few stakeholders felt able to comment on whether harmonisation would provide a material benefit.

11. Consider the introduction of IME/HPA training processes for NSW WC and NSW CTP

SIRA may also consider whether establishing introductory training for independent medical examiners and HPAs will improve the efficiency and quality of reports produced by new medico-legal practitioners. The introduction of a higher fee for practitioners who complete this training could help to mitigate any concerns around implementing more onerous training requirements, as well as addressing concerns about fee levels and the quality of reports. An added benefit would include the ability for SIRA to compile a list of examiners through training registration and completion. We understand that SIRA has recently made changes to authorisation processes for new practitioners in CTP and it may be desirable to let these play out before making any further changes.

12. Improve direction and simplify medico-legal processes

Practitioners noted the burden of dealing with unruly referrals and other stakeholders noted the burden of dealing with unruly or inaccurate medico-legal reports.

In the NSW WC scheme, there were some efforts to mitigate this issue through requiring referrals to include ‘*an index of all documents provided with the documentation organised accordingly*’. However, discussions with SIRA suggest compliance with this requirement was not monitored, and this requirement no longer appears in the current *Workers Compensation Guidelines*¹.

Other schemes mitigate these frustrations through stricter reporting templates and/or independent peer reviews by the regulator. These schemes still allow some flexibility for case specific questions to avoid practitioners missing important information in reports.

These approaches may be suitable for SIRA, although an independent peer review function would require additional resourcing.

Along with improving consistency, greater direction and review may also moderate the preponderance of complex reports in NSW WC.

9 Reliances and limitations

Inside this section, we provide conditions on how SIRA can interpret, use and distribute the advice in this report.

Reliance on stakeholder observations

In preparing this report, Taylor Fry has relied on information and observations from other parties in good faith. It has not been Taylor Fry's function to audit or verify the accuracy of the data in detail. Where feasible, we have cross-referenced information or observations through our desktop research, but we have been unable to verify all information and observations provided by stakeholders. SIRA should allow for the potential for inaccuracy in the observations provided by stakeholders through conversations when considering its response. The options provided in this report are sensitive to inaccuracies and these may alter if material inaccuracies are discovered.

Options

The options we present are *not* recommendations as we do not consider information outside of the benchmarking and feedback from stakeholders. SIRA should consider these following options within the context described in Section 5, its internal expertise and the affordability of any changes.

In our opinion, the options presented in this report are reasonable, given the information collected in this project. However, it should be recognised that other parties may draw different options from the same information, and we may draw different options if presented new information. SIRA should overlay its own expertise in interpreting the analysis and options presented.

Limitations on use

Detailed judgments about the methodology, analyses and options presented in this report should be made only after considering the report and appendices in their entirety. Sections of the report could be misinterpreted if they were considered in isolation.

This report has been prepared for the specific purpose of assisting SIRA review fees for medico-legal assessments in NSW WC and CTP. No reliance should be placed on this report for any other purpose without first confirming with us that such a purpose is appropriate. Taylor Fry specifically disclaims any responsibility or liability to any party which might claim to suffer any loss as a direct or indirect consequence.

This report is intended for SIRA's internal use and should not be shared with other parties without prior written approval by Taylor Fry.



Appendices

Appendix A Glossary of terms

Table A.1 – Glossary of terms

Term	Definition/ alternate term.
Approved medical specialist (AMS)	Refer to <i>Permanent Impairment Assessor</i> .
Compulsory Third Party (CTP) scheme	The compulsory third party (CTP) insurance scheme covers the cost of third-party compensation claims (including treatment costs or lost earnings) for anyone injured in a motor vehicle accident.
Headline fees	Headline fees is the term used by Taylor Fry throughout this report to benchmark fees associated with examination, report and reading time, across schemes.
Health practitioners	An individual who practices a health profession (e.g. medical practitioners, nurses, midwives, dentists) and who is registered under the Health Practitioner Regulation National Law.
Health practitioner authorised to give evidence (HPA)	Health practitioner authorised to give evidence in NSW CTP court and other dispute resolution proceedings for the purposes of section 7.52 of the <i>Motor Accident Injuries Act 2017</i> .
Independent impairment assessor (IIA)	Refer to <i>Permanent impairment assessor</i> .
Independent Legal Assistance and Review Service (ILARS)	ILARS provides access to free, independent legal advice for injured workers in circumstances where there is a disagreement with insurers regarding entitlements. ILARS is managed by the Independent Review Office (IRO).
Independent medical examination (IME)	An assessment conducted by an appropriately qualified and experienced medical practitioner to help resolve an issue in injury or claims management.
Independent medical examiner	Registered medical practitioners who provide impartial medical assessments in the NSW workers compensation system. This terminology is also used by other jurisdictions to define the practitioners who undertake an <i>independent medical examination</i> .
Independent Review Office (IRO)	The independent statutory office that manages complaints from workers with a work-related injury/illness or people injured in a motor accident. IRO also manages the Independent Legal Assistance and Review Service (ILARS).
Joint medical examination (JME)	A joint medical or other health-related assessment is one assessment conducted by a health practitioner who has been jointly instructed by both parties to provide a report about the extent of a person's injuries to assist in making decisions about a damages claim.

Term	Definition/ alternate term.
Medical assessor	A medical assessor is a decision-maker appointed by the President of the <i>Personal Injury Commission</i> under the Personal Injury Commission Act 2020.
Medical Practitioner or practitioner	A person registered in the medical profession under the Health Practitioner Regulation National Law (NSW) No 86a, or equivalent Health Practitioner National Law in their jurisdiction with the Australian Health Practitioner Regulation Agency.
Medical Specialist or specialist	A Medical Practitioner recognised as a Specialist in accordance with the Health Insurance Regulations 2018 (Cth), Part 2, Division 4, who is remunerated at specialist rates under Medicare.
Medico-legal assessments	Referring to an assessment conducted by a medico-legal examiner. Medico-legal assessments consist of either <i>independent/joint medical examinations</i> or <i>permanent impairment assessments</i> .
Medico-legal fees	The maximum fees for health practitioners providing medico-legal services.
Medico-legal firm	Connecting independent medical consultants from across a broad range of specialties, with insurers and injured persons to resolve claims about injury or claims management.
Motor Accident Injuries Act (MAI Act) 2017	Refers to the 2017 Act to establish a new scheme of compulsory third-party insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of motor accidents; and for other purposes.
Non-impairment assessment	Refers to independent medical examinations or joint medical examinations that do not consider impairment-related matters in their assessment.
Non-treating medical practitioner	Non-treating services provided by healthcare professionals for the purpose of giving an expert opinion about an injured person.
Permanent impairment (PI) assessor	<p>A registered health practitioner with qualifications, training and experience relevant to the body system being assessed. The assessor has successfully completed requisite training in using the Guidelines for the evaluation of permanent impairment for each body system they intend on assessing.</p> <p>PI assessors are also known as <i>Independent Impairment Assessors (IIAs)</i> or <i>Approved Medical Specialists (AMSS)</i> in other jurisdictions.</p>
Personal Injury Commission (PIC)	The Personal Injury Commission (PIC) is a single, independent tribunal for injured people claiming against the workers compensation and compulsory third party (CTP) insurance schemes. The PIC replaced the former Workers Compensation

Term	Definition/ alternate term.
	Commission (WCC) and SIRA's Dispute Resolution Service (DRS) from 1 March 2021.
PI assessment	An assessment of the degree of permanent impairment of a worker as a result of an injury is undertaken by a <i>Permanent impairment assessor</i> applying diagnostic criteria and evaluation processes. The result is expressed as a percentage of whole person impairment.
The Schedule/ Fee schedules	Refers to the Schedule of maximum fees for medico-legal services in the NSW CTP and workers compensation schemes, and similar schedules in other jurisdictions.
Workers compensation (WC) scheme	The workers compensation scheme provides support to people injured at work, including assistance with recovering and returning to work wherever possible.
Workers Compensation Acts	Refers to the <i>Workers Compensation Act (1987)</i> and the <i>Workplace Injury Management and Workers Compensation Act 1998</i> .

Appendix B Engagement

We engaged with staff from the following organisations to perform our benchmarking.

Table B.1 – Schemes consulted

Organisation	Jurisdiction	Scheme	Consultation date
SIRA	NSW	WC/CTP	May 1, 2023
WorkSafe Victoria	VIC	WC	April 20, 2023
Transport Accident Commission	VIC	CTP	April 13, 2023
WorkCover Queensland	QLD	WC	April 19, 2023
The Motor Accident Insurance Commission	QLD	CTP	May 10, 2023
ReturnToWork South Australia	SA	WC	April 20, 2023 May 1, 2023
The CTP Insurance Regulator	SA	CTP	28 April, 2023
WorkCover Western Australia	WA	WC	May 10, 2023
The Insurance Commission of Western Australia	WA	CTP	May 8, 2023
Comcare	National	WC	May 3, 2023

Table B.2 – Medico-legal firms consulted

Medico-legal firm	Consultation date
Medicins Legale	May 2, 2023
A large national medico-legal firm – identity not disclosed for confidentiality reasons	June 14, 2023
IMMEX	June 19, 2023

Table B.3 – Other stakeholders consulted

Stakeholder	Jurisdiction	Consultation date
Independent Review Office (IRO)	NSW	May 5, 2023
icare	NSW	May 19, 2023
Health Injury Management (HIM) group	NSW	April 13, 2023
Australian Medical Association (AMA)	National	May 5, 2023
A large public liability insurer – identity not disclosed for confidentiality reasons	National	June 14, 2023

We consulted with the following medical practitioners to support our benchmarking.

Table B.4 – Practitioners consulted

Practitioner	Speciality	Consultation date	Workers compensation scheme	CTP scheme
Dr Richard Sekel	Occupational Medical Practitioner	April 24, 2023	*	✓
Dr Ron Muratore	Sports and Exercise Medicine specialist	April 28, 2023	✓	✓
Prof Ian Cameron	Rehabilitation physician	April 28, 2023	*	✓
Dr David Wilcox	General Surgeon and Trauma specialist	May 1, 2023	✓	✓
Psychiatrist – identity not disclosed for confidentiality reasons	Forensic Psychiatrist	May 10, 2023	✓	✓

Legend: ✓ Currently works in scheme * Has previously worked in scheme.

Appendix C Consultation questions

Scheme and stakeholder consultations were open conversations. However, we shared selections of the following questions in advance and typically covered them in the interviews. Additional follow-up questions were asked via email where required.

Key questions asked to schemes and other relevant stakeholders

1. What is your view of the adequacy of medico-legal fees in [State]?
 - By geography (regional vs metro)
 - By professional (e.g. specialists, neurosurgeons)
2. Do you have any views on how fees at [scheme] compare to similar services funded in other jurisdictions or elsewhere (e.g. DVA, NDIS)?
3. Are providers able to charge more than the maximum fees shown in [scheme's] fees schedule? Is this common practice?
4. What is [scheme's] fee review process, in terms of both timing and methodology (e.g. adjusting for inflation each year)?
5. Some jurisdictions pay a higher fee if a report is delivered within a set timeframe (e.g. 10 days). Do you perceive delays between examination and report to be significant in [State]?
6. Have you found differentiated fees between impairment and other IME assessments appropriate?/ Does [scheme] use a fee schedule for other independent assessments (non-impairment)?
7. Has [scheme] found the following other inclusions in its fee schedule useful and appropriate?
 - Allowance for short vs long IME reports
 - Reading time
 - Travel time
 - Allowance for complexity in impairment reports
8. Do GPs perform IMEs or Impairment assessments?
9. Does [scheme] experience difficulty accessing a suitable amount of medico-legal services? Does your experience vary:
 - By geography (regional vs metro)
 - By professional (e.g. psychiatrists)
10. Do you perceive the quality of reports to be sufficiently high?
11. Do you have any visibility of how long it takes health practitioners to complete a report on average? Do you have visibility of how many hours examiners take to complete reports on average?
12. Are there long delays when accessing medico-legal services? If there are delays, what are the causes? For example:
 - Process for engaging a medico-legal professional
 - Approval/authorisation process and training requirements
 - Onerous dispute and invoicing processes discouraging practitioners from providing services
13. Do you have any views on how availability in [State] compares to other jurisdictions?
14. Does [scheme] make use of telehealth for IMEs and impairment assessments?
15. Does [scheme] engage practitioners directly, through a panel or through medico-legal providers?

Key questions asked to practitioners and other relevant stakeholders

1. What is your view of the adequacy of medico-legal fees for workers compensation, CTP and ILARS? If you see the fees as inadequate, do you have a view on what an adequate fee would be for an average IME?
2. Do you feel you can obtain higher fees for the same amount of work from:
 - Private practice
 - Other national schemes: DVA, Comcare, NDIS
 - Other states' CTP/workers compensation schemes
 - Other insurance schemes – life insurance, public liability
3. Do you feel that the existing fee structure allows sufficient time to produce a high quality report?
4. Do you feel that the existing fee structure provides adequate funding for: reading time, cancellations?
 - To what extent does the extra funding for complexity of report in Workers Compensation allow for this already?
5. Do any elements of the process in workers compensation, CTP or ILARS affect your willingness to work with these schemes (e.g. overly onerous/bureaucratic processes)?
 - Approval/authorisation process
 - Training requirements
 - Onerous dispute and invoicing processes
6. Are there any other factors you see that limit the supply of medico-legal services to NSW CTP and workers compensation schemes?
7. Are you able to give an approximate idea of how long it takes to prepare an Independent Medical Examination report on average?
8. If you currently work with the NSW CTP, Workers Compensation and ILARS schemes, do you anticipate you will continue to do so in the future?
9. Do you provide medico-legal services for NSW patients outside of the Sydney/metro area? Would additional funding for travel time make it more likely that you would?
10. Do you believe telehealth is a useful tool for completing independent medical examinations?
11. Would you see value in harmonising rates between NSW CTP and Workers Compensation? Do you find assessments in each scheme are different and should attract different levels of funding? (*for practitioners who work with both schemes*)

Additional questions asked regarding alternative activities

1. Has there been a rise in public liability, medical indemnity, child abuse cases?
2. Do these competing insurances affect the availability of engaging IMEs in the CTP and workers compensation space?
3. Are there medico-legal practitioner shortages in the areas of public liability, medical indemnity or child abuse claims?
 - If so, what is causing this shortage?
 - Is there a fee structure for IMEs outside of NSW workers compensation and CTP schemes?
4. What does remuneration look like for IMEs in public liability, medical indemnity or child abuse claims, including whether it is wholly based on time spent, negotiated upfront or some other arrangement?

Appendix D Fees by jurisdiction

The following fees were extracted from the relevant fee schedules for each scheme and used to calculate figures throughout this report.

Table D.1 – NSW WC 2022-23 specialist rates for medico-legal services (to the nearest \$, excluding GST)

Item	Professional	WC maximum fee (effective 1 Feb 2023) ¹
Examination and report – standard / non-complex report	IME – Specialist/ENT	\$858
	IME – Psychiatrist	\$1,502
Examination conducted with interpreter and report – standard / non-complex report	IME – Specialist/ENT	\$1,072
	IME – Psychiatrist	\$1,880
Examination and report – moderately complex report	IME – Specialist	\$1,287
Examination conducted with interpreter and report – moderately complex report	IME – Specialist	\$1,502
Examination and report - complex report	IME – Specialist / psychiatrist	\$1,708
Examination conducted with interpreter and report – complex report	IME – Specialist / psychiatrist	\$2,137
File review and report	IME	\$643
Supplementary report	IME	\$429
<=2 days cancellation	IME	\$431
Private motor vehicle allowance	IME	\$0.72/km
Air travel allowance	IME	\$21.80 per hour +airfare
Copying of medical reports	IME	\$39.30 for <= 33 pages + \$1.40pp after 33 pages
Consolidation of assessments	IME	\$215

Sources:

(1) https://www.sira.nsw.gov.au/_data/assets/pdf_file/0003/1122672/Medical-examinations-and-reports-fees-order-effective-1-February-2023.pdf

Table D.2 – NSW CTP 2022-23 specialist rates for medico-legal services (to the nearest \$, excluding GST)

Item	Professional	CTP maximum fee (effective 1 Oct 2022) ¹
Report, if an examination of the patient is required	HPA – treating specialist	\$1,800
	HPA – non-treating specialist	\$1,800
	Joint HPA – non-treating specialist	\$2,476
Report, if an examination of the patient is not required	HPA – treating specialist	\$1,350
	HPA – non-treating specialist	\$1,350
	Joint HPA – non-treating specialist	\$2,026
Cancellation	HPA / Joint HPA	Not more than 50% of the relevant fee amount
Appearance as witness	HPA / Joint HPA	\$1,350 for first 1.5 hours, \$506 every hour thereafter (maximum \$3,848)
Private motor vehicle allowance	HPA / Joint HPA	\$0.66/km (for witness appearance)
Accommodation/meal expenses	HPA / Joint HPA	Reasonable costs (for witness appearance)
Copying of medical reports	HPA / Joint HPA	\$1 per page

Sources:

(1) <https://www.sira.nsw.gov.au/resources-library/motor-accident-resources/publications/for-professionals/legal-costs-in-claims-for-ctp-statutory-benefits/accordion5/medico-legal-services>

Table D.3 – VIC WC 2022-23 specialist rates for medico-legal services (to the nearest \$, excluding GST)

Item	Professional	WC maximum fee (effective 1 Jul 2022) ¹⁻⁴
First examination and report	IME – specialist	\$670
	IME – neurosurgeon / pain management specialist	\$1,529
	IME – psychiatrist	\$1,214
	IIA – specialist	\$845

Item	Professional	WC maximum fee (effective 1 Jul 2022)¹⁻⁴
	IIA – psychiatrist	\$1,056
Work capacity examination and report	IME - specialist	\$929
	IME – psychiatrist	\$1,480
Dual purpose referral loading	IIA	\$398
Supplementary report	IME - specialist	\$190
	IME – neurosurgeon/ pain management specialist	\$290
	IME – psychiatrist	\$394
	IIA - specialist	\$181
	IIA – psychiatrist	\$301
Urgent examination and report	IME – specialist	\$58
Reading time	IME	\$53 for >20 pages \$133 for 100-201 pages \$222 for >200 pages
<=1 day cancellation / non-attendance	IME - specialist	\$254
	IME – neurosurgeon/ pain management specialist	\$290
	IME – psychiatrist	\$411
	IIA - specialist	\$292
	IIA - psychiatrist	\$252
<=2 days cancellation	IME - specialist	\$126
	IME - psychiatrist	\$206
	IIA - specialist	\$150
	IIA – psychiatrist	\$126
General travel allowance	IME/IIA – Specialist	\$506ph
	IME/IIA – Psychiatrist	\$493ph
Audiovisual viewing	IME/IIA – Specialist	\$253
	IME/IIA – Psychiatrist	\$308

Sources:

- (1) <https://www.worksafe.vic.gov.au/independent-medical-examinations-medical-practitioners-fee-schedule>
- (2) <https://www.worksafe.vic.gov.au/independent-medical-examinations-neurosurgeon-specialist-fee-schedule>
- (3) <https://www.worksafe.vic.gov.au/independent-medical-examinations-pain-management-specialist-fee-schedule>
- (4) <https://www.worksafe.vic.gov.au/independent-impairment-assessments-fee-schedule>

Table D.4 – VIC CTP 2022-23 specialist rates for medico-legal services (to the nearest \$, excluding GST)

Item	Professional	CTP maximum fee range (effective 1 Jul 2022) ¹⁻³
Examination and report	IME/IIA	\$1,434 - \$2,095
	JME/JIA	\$1,434 - \$2,095 although this is routinely exceeded
Supplementary report	IME/IIA	\$448
	JME/Joint IIA	Reasonable costs
<=1 day cancellation / non-attendance	IME/IIA	\$448
	JME/Joint IIA	Reasonable costs
<=4 days cancellation	IME/IIA	\$448

Sources:

- (1) <https://www.tac.vic.gov.au/providers/invoicing-and-fees/fee-schedule/independent-reports?tab=2>
- (2) <https://www.tac.vic.gov.au/providers/invoicing-and-fees/fee-schedule/impairment-exam-and-reports?tab=2>
- (3) <https://www.tac.vic.gov.au/providers/invoicing-and-fees/fee-schedule/joint-medical-examination-and-reports?tab=2>

Table D.5 – QLD WC 2022-23 specialist rates for medico-legal services (to the nearest \$, excluding GST)

Item	Professional	WC maximum fee (effective 1 Dec 2022) ¹
Consultations associated with a report	IME / PI assessor – Specialist	Initial: \$197 Subsequent: \$105
	IME / PI assessor – Consultant physician	Initial: \$373 Subsequent: \$172
	IME / PI assessor – Psychiatrist	45-75 mins: \$467 >75 mins: \$553
Report	IME	<=10 working days: \$701 >10 working days: \$351
	PI assessor	<=10 working days: \$841 >10 working days: \$420

Item	Professional	WC maximum fee (effective 1 Dec 2022) ¹
Reading time	IME / PI assessor	After 30 mins: \$536ph
Interpreter	IME / PI assessor	\$182
<=2 days cancellation	IME / PI assessor – Specialist	\$188
	IME / PI assessor – Consultant physician	\$355
	IME / PI assessor – Psychiatrist	\$445
Vehicle cost	IME / PI assessor	\$0.78/km
Travelling time per hour	IME / PI assessor	\$275ph
Patient records	IME / PI assessor	\$70 + \$0.32 per page

Sources:

(1) https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0022/107905/Specialist-Supplementary-Services-Table-of-Costs-1-December-2022.pdf

Table D.6 – SA 2022-23 specialist rates for medico-legal services (to the nearest \$, excluding GST)

Item	Professional	WC/CTP maximum fee (effective 1 Jul 2022) ¹⁻³
Consultation, medical review for preparation of a report	IME – specialist / consultant physician	\$243
	IME - psychiatrist	\$347
Medical report	IME – specialist / consultant physician	<=72 hours: \$134 <=10 working days: \$641
	IME - psychiatrist	<= 10 business days: \$798
Medical report clarification	IME – specialist / consultant physician	\$112
Standard report	PI assessor – specialist / ENT	\$1,069
	PI assessor - psychiatrist	\$1,336
Standard report with interpreter	PI assessor – specialist / ENT	\$1,336
	PI assessor - psychiatrist	\$1,670
Moderately complex report	PI assessor – specialist	\$1,336

Item	Professional	WC/CTP maximum fee (effective 1 Jul 2022)¹⁻³
Moderately complex report with interpreter	PI assessor - specialist	\$1,604
Complex report	PI assessor - specialist	\$1,693
	PI assessor - psychiatrist	\$1,870
Complex report with interpreter	PI assessor - specialist	\$1,960
	PI assessor - psychiatrist	\$2,338
Supplementary report	PI assessor – specialist / psychiatrist	\$267
Reading time	IME – specialist / consultant physician	\$125 (up to 12 pages) + \$9.90 per page thereafter
	IME – psychiatrist	\$163 (up to 12 pages) + \$9.90 per page thereafter
	PI assessor – specialist / psychiatrist	Standard or moderately complex report: \$9.90 per page after 25 pages Complex report: \$9.90 per page after 51 pages
<=2 days cancellation	IME – specialist / consultant physician	\$243
	IME - psychiatrist	\$347
	PI assessor - specialist	\$385
Private motor vehicle allowance	IME – specialist / consultant physician / PI assessor	\$0.78/km after 50km (ATO rate)
Air travel allowance	IME – specialist / consultant physician / PI assessor	Economy airfare
Regional loading	IME – specialist / consultant physician / PI assessor	\$156 (for >100km)
Accommodation/meal expenses	IME – specialist / consultant physician / PI assors	\$331

Sources:

- (1) https://www.rtwsa.com/_data/assets/pdf_file/0010/99424/medical-1b-fee-schedule-2022.pdf
- (2) https://www.rtwsa.com/_data/assets/pdf_file/0011/99425/permanent-impairment-services-fee-schedule-2022.pdf
- (3) <https://www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/Deductions-for-motor-vehicle-expenses/Cents-per-kilometre-method/>

Table D.7 – WA WC 2022-23 specialist rates for medico-legal services (to the nearest \$, excluding GST)

Item	Professional	WC maximum fee (effective 1 Nov 2022)¹
Examination and provision of report – straightforward assessment	AMS – Specialist	\$1,428
	AMS – ENT	\$1,428
	AMS – Psychiatrist	\$2,142
Examination and provision of report – straightforward assessment, with interpreter	AMS – Specialist	\$1,785
	AMS – ENT	\$1,785
	AMS – Psychiatrist	\$2,399
Examination and provision of report – moderately complex assessment	AMS – Specialist	\$1,785
Examination and provision of report – moderately complex assessment, with interpreter	AMS – Specialist	\$2,142
	AMS – Psychiatrist	\$3,570
Examination and provision of report – complex assessment	AMS – Specialist	\$2,499
	AMS – Psychiatrist	\$3,927
Supplementary report	AMS	\$357
<=1 day cancellation / non-attendance	AMS	\$714
Consolidation of assessments	AMS	\$714

Source:

(1) <https://www.workcover.wa.gov.au/wp-content/uploads/2022/11/AMS-2022.pdf>

Appendix E NSW workers compensation complexity rating

Table E.1 – NSW WC complexity rating criteria

Complexity rating	Criteria
Standard report	Report relates solely to a single event or injury, and involves only one topic out of the following list: <ul style="list-style-type: none"> ▪ Causation ▪ Capacity for work ▪ Treatment ▪ Simple permanent impairment assessment of one body system
Moderately complex report	Report relates solely to a single event or injury, and involves two topics from the list above or Report requires simple permanent impairment assessment of two body systems or more than one injury to a single body system.
Complex report	Report involves three or more topics from the list above or A complex permanent impairment assessment or An impairment assessment of multiple injuries of more than one body system.



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