

INQUIRY INTO 2022 REVIEW OF THE WORKERS COMPENSATION SCHEME

Organisation: Australian Rehabilitation Providers Association

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ARPA NSW submission to the 2022 Review of the Workers Compensation scheme



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Developed by the ARPA NSW Council

Contents

1. Introduction	3
2. Who is ARPA?	3
3. What is a workplace rehabilitation provider (WRP)?	3
4. WRP return on investment	4
5. Early intervention is the key	5
6. The role of WRPs in improving mental health	7
7. Promoting best practice in workplace rehabilitation	8
8. WRP assistance to arrest rising medical costs	10
9. Non-accredited providers operating in the NSW scheme	10
10. Delivery of services by Provisional Psychologists	12
11. WRP service fees consistency	12
Recommendation 1: Early & mandatory referral to workplace rehabilitation	13
Recommendation 2: Mental health injury claims to be referred to WRPs ASAP	13
Recommendation 3: The definition of workplace rehabilitation is expanded	13
Recommendation 4: Non-accredited providers are banned from the NSW scheme	14
Recommendation 5: Provision of services by Provisional Psychologists	14
Recommendation 6: WRP service rates are gazetted by SIRA	14

1. Introduction

As is well reported, in recent years trends show a major decline in return to work (RTW) performance in the NSW Workers Compensation Scheme and as is well understood, poor RTW rates not only cost the employer in premiums, but the community and NSW economy. The impact for workers with injuries extending to long term work absence includes a profound and negative effect on their health, relationships, financial position and can exacerbate underlying mental health conditions.

With this in mind, the NSW Council of the Australian Rehabilitation Providers Association (ARPA NSW) appreciates the opportunity to contribute to the 2022 Review of the Workers Compensation Scheme.

ARPA NSW submitted a detailed response to the 2020 Review and although there have been improvements in the scheme since that time, significant issues still remain. For this submission we have noted that the review will be focussing on the increase in psychological claims and although this will be the primary focus of our submission, we have raised a number of other issues that we would like to draw your attention to.

2. Who is ARPA?

ARPA is the industry voice for the Australian workplace rehabilitation industry, representing the majority of independent workplace rehabilitation provider (WRP) organisations in Australia (ARPA currently has well over **60 NSW member organisations, representing over 1,000 individuals working as workplace rehabilitation consultants in the NSW scheme**).

With strong industry and government links and affiliations, ARPA is dedicated to promoting and protecting the professional interests of our member organisations and through them, the sustainability of a purpose driven, socially impactful industry.

ARPA, its members, and the workplace rehabilitation consultants they employ are committed to facilitating the personal, social, occupational and economic independence of individuals with injuries or disabilities. In fulfilling this commitment, rehabilitation consultants work with individuals, employers, insurers, and other medical and health professionals, in a variety of service delivery systems, in order to achieve the best possible outcomes for their clients, including those who may be suffering from a mental health illness or episode in the workplace.

3. What is a workplace rehabilitation provider (WRP)?

People with injuries need varying degrees of medical and treatment care. Some very little and others with more complex presentations, much more. Those same people with injuries who require more medical and treatment support, are those that have historically been referred to WRPs. Amongst other services, WRPs ensure medical assessment and treatment services are coordinated, goal driven, evidence-based and timely, therefore ensuring care and spend is effective.

By working closely with employers, WRPs additionally ensure that workers with injuries RTW in duties that are safe, medically, psychologically and functionally appropriate, and that are ultimately sustainable for the long term.

A WRP is comprised of tertiary qualified health professionals that specialise in the complex needs of workers and employers to achieve timely and sustainable RTW outcomes following injury or illness, be it either a physical or psychology injury or illness. Like treating health professionals, they are independent of other stakeholders and strive for a safe and sustainable RTW for workers with an injury, in consultation with their treating medical practitioners. WRPs can be relied on to provide expert opinion and solutions to resolving workplace injury, illness and disease and to manage the relationship between the worker and their employer where attempts to RTW has broken down.

The Health Benefits of Good Work (HBGW) is an initiative from the Australasian Faculty of Occupational and Environmental Medicine (AFOEM) of The Royal Australasian College of Physicians (RACP). This initiative is based on compelling Australasian and international evidence that good work is beneficial to people's health and wellbeing and that long term work absence, work disability and unemployment generally have a negative impact on health and wellbeing and a WRP can be instrumental in bringing the concepts and principles of HBGW to life across Australian workplaces and in the healthcare field.

Every workplace insurance policy in NSW includes the right to an accredited WRP. These services are vital in helping a worker (and their employer) safely stay and recover at work, or transition back to work after an injury, accident, illness or disease.

All WRPs in NSW are aligned to the HWCA Principles of Practice for Workplace Rehabilitation Providers, which is designed to ensure minimum standards are consistently met in the delivery of services to workers and employers. WRPs are assessed and audited against the framework and approval principles by the State Insurance Regulatory Authority (SIRA).

In addition, workplace rehabilitation consultants are each required to maintain their own registration with their relevant allied health professional authorities. This includes mandatory professional development to accrue CPD points which would include courses to access updated research and guidelines.

ARPA NSW believes that this framework and the regulatory oversight accompanying the framework, ensures that all providers of workplace rehabilitation services in NSW provide consistently high quality and evidence-based services.

4. WRP return on investment

ARPA believes that workplace rehabilitation is an invaluable service that, when engaged promptly, yields a significant return on investment (ROI) for workers, employers, insurers and the broader Australian economy. This belief is supported by countless studies and empirical research, as well as more recently by NSW actuarial analysis.

Up until recently, no Australian workers' compensation regulator has published independent research on the ROI of providing workplace rehabilitation services. However, in 2021 the NSW State Insurance Regulatory Authority (SIRA) commissioned EY to undertake a comprehensive research study¹ to investigate the impact of receiving WRP services on RTW rates for claimants on weekly benefit. The high-level results show that:

- for claims between 6 months and 24 months time lost, the appointment of a WRP improves the RTW outcome
- the timely appointment of a WRP (within the first 8 weeks) can improve RTW rates by 3% to 5%
- appointing a WRP early in the claims process can result in total claims costs savings of between 4% and 9%.

With claims costs for NSW approximately \$3.7 billion per year, if the appointment of a WRP occurs early in the claims process this could lead to a \$330 million saving for the NSW workers' compensation scheme.

Apart from the recent SIRA / EY research, there are many studies that have provided insight into the value of workplace rehabilitation services:

- the return on investment for every \$1 invested in early intervention is \$7²
- international evidence has shown that expenditure on work reintegration and rehabilitation provides a ROI for employers of 3.76³
- Swisse RE found that for every \$1 spent on rehabilitation services on life insurance claims, insurers saved between \$24–\$39 on income protection claims costs⁴
- PWC in 2014 produced a Return on Investment Analysis: Creating a Mentally Healthy Workplace which identified the positive financial benefits of good workplace rehabilitation.⁵

Further details about the ROI for engaging a WRP visit:

<https://www.arpa.org.au/documents/item/658>

5. Early intervention is the key

Early intervention means starting to plan the worker's RTW as early as possible once a worker has experienced an injury. Commencing return to work planning and offering support immediately to a worker drastically improves their ability to recover quickly and safely and sustainably return to their job.

¹ https://www.sira.nsw.gov.au/data/assets/pdf_file/0008/1017188/EY-Impact-of-Workplace-Rehabilitation-Providers-analysis-of-claims-data.pdf

² Early workplace intervention for employees with musculoskeletal-related absenteeism: a prospective controlled intervention study. *Journal of Occupational & Environmental Medicine* 2003;45(5):499-506

³ The Return on Work Reintegration, International Social Security Association (ISSA)

⁴ Rehabilitation Watch 2014

⁵ 2018 Occupational Rehabilitation Review Recommendations Report, Synthesis of research findings and recommendations arising from ISCRR Project 211: Occupational Rehabilitation Review, Daniel Pejic / Frances Taylor / Sunita Bayyavarapu / Dr Len Forgan

As stated in the Royal Australasian College of Physicians' Health Benefits of Good Work position statement⁶, if a person is off work after an injury:

- after just 20 days, the probability that they will ever RTW reduces to just 70%
- at 45 days off work, that chance is reduced to 50%
- at 70 days it's just 35%.

Furthermore, recent research undertaken by SIRA shows that the timely engagement of workplace rehabilitation providers improves return to work outcomes by up to 5% for physical injuries and 20% for psychological injuries.

Therefore, ARPA believes that early referral to a WRP for specialist early RTW intervention services is one of the most critical factors in supporting an injured worker in achieving a successful RTW outcome.

ARPA believes that a critical factor impacting RTW rates has universally been the number of days taken from the time of significant or high-risk injury presentation, to a referral being made to the WRP (delay to referral) in NSW.

Although the number of referrals to workplace rehabilitation has improved over the last year (should we say what this relates to, i.e. post-covid etc) significant improvements are still required in this area.

Although the Nominal Insurer (icare) has made some improvements to the number and process of referring to workplace rehabilitation over the last few years, issues persist, particularly in early referral. ARPA believes that objective criteria should be applied to remove any subjective decision making in respect of access to WR intervention. The employer and the worker are entitled to and need the quality health support that only comes from an accredited WRP.

While it was well accepted that early intervention was critical to improving scheme outcomes, other areas have taken priority and opportunity has been missed to have a greater influence in scheme RTW rates. Initiatives from the nominal insurer to improve early referral to WRP did not gain traction and had little to no effect. For example, WRP's were advised to prepare for a significant early intervention initiative in mid 2021 which included a detailed program of service delivery. The program was launched however it would appear that only 20 or so claims were referred under this initiative throughout the scheme. Requests for these files to be identified by adding a simple check box to the existing referral documentation could not be accommodated. We recommend this review explore this early intervention initiative and seek answers as to why this occurred.

ARPA believes that the key factors that need to be addressed for workers with injuries and illnesses to receive high quality care include:

- assessment and management of worker risk factors for long term chronicity, including psychosocial risks
- identification and confirmation of worker return to work goals
- coordination of worker recovery and RTW timeframes (especially with difficult RTW programs, aiming to RTW to the same employer rather than having a worker displaced)
- coordination and accountability of treatment provider outcomes

⁶ <https://www.racp.edu.au/docs/default-source/advocacy-library/realising-the-health-benefits-of-work.pdf>

- alignment of treatment outcomes to work capacity
- accountability on the efficacy of treatment and medical intervention
- engagement with employers and identification of suitable duties
- workplace relationship management and return to work facilitation
- worker and employer support for claims and scheme navigation.

More consistent use of workplace rehabilitation for those who need it, coupled with early referral, will significantly enhance the quality and efficacy of medical and treatment provision within the NSW workers compensation scheme. This ensures NSW workers with injuries and illness receive the best and most effective care and recover at, or return to, work sooner.

6. The role of WRPs in improving mental health

In regards to the rising prevalence of mental health claims, ARPA NSW believes that targeted intervention from an independent 3rd party (such as WRPs) with appropriate knowledge in the workplace to facilitate the support mechanism and the relationship between the worker and their employer has proven benefits for the employer and also for the worker. The most significant drivers of prolonged work absence are psychosocial factors and therefore psychosocially targeted assistance to support the employer and in turn the worker through a workplace-based intervention will produce the greatest results.

WRPs are experts at negotiating the complex landscape of injury recovery for people who have mental health issues, their employers, insurers and the schemes under which they operate. Exceptional outcomes are achieved by working in partnership with all parties to prioritise the key elements of an individual's recovery and integrating these with the workplace. Work is a central tenant to good health and WRPs play a key role in ensuring people and workplace benefit from safe, timely and sustainable injury recovery.

In reviewing elements that contribute to an individual's mental health injury, WRPs work closely with employers to ensure their potential for other workplace harm is mitigated, their risk of injuring others in their workplace eliminated or reduced and the health of the workforce improved. This enables improved workplace safety, improved productivity and reduced financial burden. Additionally, WRPs have a purpose beyond insurances and working for compensation schemes. At the core of workers with a mental health injury or illness are families and the broader social networks who are impacted by events that resulted in psychological injuries and illnesses. WRPs engage and liaise with all relevant stakeholders, mediating and negotiating a safe and sustainable return to work.

While returning to work may not always be easy for those with a mental health issue, supporting a worker to stay at work in some capacity provides the best chance of a positive outcome. It's also better for the workplace. This is the key function of the WRP – ensuring both a commercial and social return on investment.

Because they are independent, WRPs offer a fair and impartial assessment of the worker with a mental health issue and the RTW situation, which provides better outcomes for all parties to the case, including the worker, their employer, the insurer and the schemes in which all parties function.

WRPs operate under strict professional codes of practice, with significant state and federal oversight. WRPs therefore have exceptional standards for quality, confidentiality and continually strive for best-practice and continuous improvement in how they approach the treatment of those under their care. Furthermore, all WRP staff must hold a recognised allied health qualification and continue to undertake approved professional development activities and WRP staff are supervised by more experienced practitioners with over 5 years' experience.

WRPs have been instrumental, particularly during the COVID-19 pandemic, in prevention of workers compensation claims for mental health conditions through working collaboratively with employers to support their employees at work, rather than away from work. This assists the scheme overall to manage employee wellbeing in the early stages of an incident, thereby reducing claim volume overall.

In the last 2 years there has been significant demand, and a corresponding paucity of, psychological treatment services. WRPs, particularly Provisional Psychologists, Rehabilitation Counsellors and Occupational Therapists with mental health experience, have been instrumental in being able to assist in supporting workers with their psychosocial barriers whilst availability of psychological treatment is secured.

7. Promoting best practice in workplace rehabilitation

The HWCA Principles Based Framework for WRP has evolved positively from the previous framework and has attempted to address some of the concerns that we have outlined in our response. This framework should be considered with our response. Particular areas that are positive are the need to build capability in professionals and the widening of the scope of services (though this needs to go further).

Medical and treatment providers have consistently demonstrated a lack of contemporary knowledge of the mechanisms operating within personal injury schemes. That is not to impart blame, but merely underscores the fact that workers compensation and personal injury components of caseloads for health professionals and doctors is a smaller component over their overall workload profile. Without the oversight, support, review and collaboration with accredited WRPs, medical and treatment providers' quality and evidence base is severely eroded.

More consistent use of WR for those who need it, coupled with early referral, will significantly enhance the quality and efficacy of medical and treatment provision within the NSW Workers Compensation scheme. This ensures NSW workers with injuries and illness receive the best and most effective care and recover at, or return to, work sooner.

Furthermore, ARPA NSW strongly recommends that Scheme Agents should provide services within their primary expertise of claims management only. Over the last few years there has been a clear attempt to bring services in-house that are not within the remit or expertise of the Scheme Agent, but the role of the WRP, and are conflicted. This includes:

- recover at work services, including return to work planning, return to work plan development & management
- job seeking services & monitoring
- treating doctor / treater case conferencing
- mobile case management.

There are a number of issues with this trend:

- independence and objectivity are compromised
- the inherent conflict of interest jeopardises the validity of Scheme Agent claims decisions which would have precedent setting and reverberating impacts across the scheme
- there is no oversight by SIRA on these services
- services are being provided by a non-accredited WR provider and, in many cases, by non-allied health qualified or experienced personnel
- this has been undertaken to seek more revenue for the Scheme Agent, rather than acting in the best interests of the injured person and employer.

To ensure best practice in workplace rehabilitation in NSW, ARPA NSW recommends:

- allowing an automatic approval and funding for employer or treating doctor directed rehabilitation referrals in recognition of the employer's commitment to facilitating recovery at work
- mandating early referral for workplace rehabilitation at 2 weeks (where the worker is likely to be off work for greater than 4 weeks)
- directing scheme agents to immediately approve referrals from employers, workers or treating doctors
- ensuring that training manuals, information and support available to agents and their team of case managers accurately represents early intervention and the benefits of same
- training case managers on the effective use of workplace rehabilitation services, in particular on the benefits of early referral to workplace rehabilitation
- non-accredited providers of workplace rehabilitation should be banned from providing them or are subject to the same level of oversight that WR providers are. No WRP can be owned, fully or partially, or operated by a Scheme Agent (this has been the case in the past).

We have included the ISCCR report on the value and effectiveness of workplace rehabilitation that was released in 2018. While centred in Victoria we note that the consistency of the conclusions with our submission that identifies:

- WR intervention has a significant positive impact on claim outcomes
- early referral improves the effectiveness of WR intervention and claim outcomes
- service delivery model design can have positive but also unintended negative consequences.

8. WRP assistance to arrest rising medical costs

ARPA NSW believes that investment in workplace rehabilitation also has a mitigating benefit against medical treatment costs. The savings generated by reducing investment in WR have been eclipsed by the increase in medical treatment costs, with the compounding factor of deteriorating RTW rates.

Suggestions that the increase in medical spend over the last few years has been driven by higher case complexity or surgical rates is out of step with comparative experience outside of the managed fund. A reduction in avoidable medical costs is a facilitatory by-product of good WR intervention which only further enhances the value of investment in these services. WR reduces medical and treatment costs by:

- coordinating treatment to aligned goals
- ensuring treatment is medically and functionally beneficial (i.e. treatment providers are held accountable to outcomes of intervention rather than ceaselessly being provided additional treatment sessions without results)
- ensuring communication is clearly directed to recovery at work and gains in functional and psychological tolerances
- engaging treatment and medical providers in the worker's return to work plan
- ensuring appointments are scheduled and attended at appropriate milestones to ensure worker assessment and progression through recovery.

9. Non-accredited providers operating in the NSW scheme

Although not strictly an issue related to psychological claims, there has been an emergence of non-accredited providers of various guises providing services within the scheme. This includes social prescribing agencies who have been allowed by the Nominal Insurer to provide programs to workers with an injury to help get them 'work ready'.

There is no transparency on the skills, qualifications, care or capability of these organisations or their staff to work with workers who are vulnerable due to injury or illness.

There is no accountability to the scheme funders (employers), no measures of RTW outcomes nor is there any recognition that the scheme already possesses the qualified skills, accreditation and expertise to get workers with an injury job ready through evidence-based, best practice approaches (via WRPs). In addition, these service providers may not be equipped to deal with the vulnerable and psychologically impacted worker who requires trained and experienced personnel to ensure they are providing best practice treatment. Furthermore, WRP have a known network of appropriate service providers who are fluent in workers compensation and rehabilitation, allowing workers to benefit from this expertise (as do employers and insurers).

Many of these social prescribing programs are selected based on clever marketing campaigns rather than evidence-based decision-making. Further, they target a very small portion of claimants, typically long-term job-detached, with measures of success not including RTW, yet include subjective, non-validated questionnaires measuring feelings and emotions.

At the same time, there is an alarming trend from the Nominal Insurer to engage other service providers to perform workplace rehabilitation services, including using recruitment agencies for job seeking. Programs that include costs of over \$5,000 per person for getting a worker job ready through non-accredited, non-accountable, social prescription service providers.

ARPA NSW believes that this is inappropriate and should cease immediately, as:

- they are non-accredited as a workplace provider, yet providing workplace rehabilitation services
- there are serious concerns regarding conflicts of interest and governance, including marketing and relationship building activities
- they lack experience, mandated qualifications and an understanding of working with workers with injuries and the impact of disability, injury/illness
- there is a lack of appropriate support tailored to the needs of those workers with injuries
- there is a lack of understanding of the Health Benefits of Good Work
- there is no oversight by SIRA, including what and how services are delivered
- there is no accountability on their outcomes, value or methods of service delivery – that exposes the scheme and workers to wasted funds, at risk behaviours and unqualified personnel delivering services
- this represents an early erosion of the structure that is evidence based and has been shown to work
- we have already seen the impact of declining RTW rates as similar concept projects have been trialled under a culture of wanting to discover the next big thing, rather than actually administer the scheme in the way in which it was designed and has been shown to work effectively.

Whilst WRPs are:

- accredited and meet strict approval criteria (including the mandatory requirement to employ registered allied health professionals for delivery of services)
- required to provide a very strict and defined set of services as per SIRA approval framework
- required to meet auditing requirements to maintain approval
- have a national track record of results with those workers that need the greatest level of support
- are cost controlled and outcome measured, including work that is durable
- new entrants without accreditation are not.

In addition, due to the lack of qualifications and years of experience, such non-accredited providers are able to offer lower hourly rates, making a comparison of costs between these providers and WRPs incompatible.

The Nominal Insurer should stop funding service providers of this nature and engage WRPs for such services, as the technical experts in the field of supporting workers with injuries.

10. Delivery of services by Provisional Psychologists

In the delivery of psychological workplace rehabilitation services, specific qualifications are set for those who can undertake workplace assessments, functional assessments and vocational assessments. Specifically, WRP staff qualifications indicate that allied health professionals must be fully registered (unconditional) psychologists in order to deliver such assessments.

This precludes Provisional Psychologists (whom are undertaking specialist supervision as part of their provisional registration) from undertaking particular components of work of which they hold appropriate tertiary qualifications in the field of psychology to undertake.

ARPA hold concerns that Provisional Psychologists will be lost to alternate industries (for example NDIS) where they can undertake a greater scope of psychology work. ARPA is also of the opinion this will hinder retention and recruitment of General Psychologists within the industry. Recruiting Provisional Psychologists provides a pathway for General Psychologists (once registered) to remain in the industry.

11. WRP service fees consistency

In the delivery of workplace rehabilitation services, the fee schedule / hourly rates as set by some insurers has not increased with inflation (and subsequent wage increases) which has placed a significant strain on the industry and the rate paid between insurers can at times be markedly different for exactly the same service.

Further, constraints have been placed on workplace rehabilitation providers by way of Service Level Agreements (SLA's) where the "real time" to complete a task is far more than the insurer is willing to fund. This further impacts on the quality of the service delivery and the retention of team members who feel more rewarded in other personal injury jurisdictions.

As a result, many qualified providers of psychological workplace rehabilitation providers choose to not deliver workplace rehabilitation services in NSW, instead focussing on Life Insurance, CTP, Lifetime Care or the NDIS where hourly rates are proportionally higher and service time is chargeable (i.e. the team member is paid for the service they deliver in real time). Further, experienced team members are exiting the industry to seek alternate (similar) works where they are valued for their experience and expertise.

Recommendation 1: Early & mandatory referral to workplace rehabilitation

ARPA NSW recommends that the Nominal Insurer mandate referral to workplace rehabilitation for workers not anticipated to RTW within four weeks.

Early referral will minimise delay to support; delays of RTW and the associated wages recorded on the claim. Further, it will significantly improve the employer's experience and the worker's experience by allowing the worker to RTW earlier, stay engaged with work and recover at work. The impact of delays can also contribute to a breakdown in the relationship between the worker and the employer and the heightened development of secondary psychosocial factors that directly impact on an individual's recovery timeframes.

Ensuring that workers with an injury are able to get earlier referral to an independent WRP will help address this significant increase for employers and help achieve scheme sustainability.

Recommendation 2: Mental health injury claims to be referred to WRPs ASAP

With the increasing prevalence of reported mental health injury, and the increased acknowledgement of underlying mental health, industrial relations, and litigious factors hindering a successful RTW from physical injury, this cohort is growing and becoming more complex every day.

Targeted intervention from an independent 3rd party (such as WRPs) with appropriate knowledge in the workplace to facilitate the support mechanism and the relationship between the worker and their employer, has proven benefits for the employer and also for the worker with a mental health issue.

The most significant drivers of prolonged work absence are psychosocial factors and therefore psychosocially targeted assistance to support the employer and in turn the worker through a workplace-based intervention will produce the greatest results.

ARPA NSW recommends that it is imperative that these cohorts should be referred for workplace rehabilitation services as soon as practicable.

Recommendation 3: The definition of workplace rehabilitation is expanded

Old school thinking is still applied to many schemes by not allowing WRPs to expand interventions into psychosocial interventions that would follow the biopsychosocial approach. Support should be given for widening the definition of what constitutes workplace rehabilitation and this made available universally both in compensable and public funded healthcare.

ARPA NSW also recommends that WRPs staff who are allied health professionals to use their clinical judgement and expertise, which will help move the NSW workers compensation system from being a heavily driven process scheme.

Recommendation 4: Non-accredited providers are banned from the NSW scheme

ARPA NSW recommends that all non-accredited providers who are providing workplace rehabilitation or similar services are explicitly banned from providing these services in the NSW workers compensation scheme and penalties are able to be applied by SIRA for non-compliance.

Recommendation 5: Provision of services by Provisional Psychologists

ARPA NSW strongly suggests reconsideration of Provisional Psychologists capability to undertake functional assessments, vocational assessments and workplace assessments from a psychological stand point. ARPA recommends that a supervised pathway developed and executed by the WRP will provide adequate training and support to enable the Provisional Psychologist to deliver services to the required standard.

Recommendation 6: WRP service rates are gazetted by SIRA

ARPA NSW recommends that WRP service rates are gazetted by SIRA, bringing WRP services into line with all other allied health services, thus ensuring consistency across services and that rates are able to be adjusted frequently according to market conditions.