

Professional Practice Guidelines for Industrial Psycho-legal work

JULY 2022

Compiled by a work group of the Society for Industrial and Organisational
Psychology of South Africa (SIOPSA): Psycho-legal Interest Group

Authors:

Name	Area of practice
Natasha Gerber	SIOPSA Psycho-legal Interest Group Chair // Industrial Psychologist
JP Venter	Industrial Psychologist
Tryphina Maitin	Industrial Psychologist
Cornel Schoombee	Industrial Psychologist

Contributors:

Name	Area of practice
Tshepo Tsiu	Industrial Psychologist
Dean Berndt	Actuarial Expert
Fran Gwetsa	Admitted Attorney
Danie Weideman	Admitted Attorney

Note: Contributors / authors received no direct financial support for their work

This document is intended for research and for the furtherance of the profession. The content of the document (either in part, or in its entirety) must not be reproduced and used for gain.

Table of Contents

I.	INTRODUCTION.....	5
i.	The role of the Industrial Psychologist (IOP) in addressing psycho-legal questions.....	5
ii.	Need for Professional Practice Guidelines for Industrial Psycho-legal work.....	6
II.	STATEMENT OF PURPOSE	8
III.	USERS	9
IV.	DEFINITION OF TERMS	9
V.	COMPATIBILITY	12
VI.	PRACTICE GUIDELINE DEVELOPMENT PROCESS.....	12
VII.	EXCLUSION OF LIABILITY AND INDEMNITY	13
VIII.	HOLISTIC PERSPECTIVE.....	13
A.	ETHICS.....	14
1.	Professional Ethics	14
1.1.	Competence	14
1.2.	Continuous Professional Development	14
1.3.	Informed Consent	14
1.4.	Resolving conflict with fellow professionals	15
2.	Psycho-legal ethics.....	15
2.1.	Objectivity	15
2.2.	Neutrality.....	16
2.3.	Provision of Service.....	16
2.4.	Multiple Relationships.....	17
2.5.	Fees	17
2.6.	Access to / release of information.....	17
B.	ASSESSMENT AND EVALUATION	19
3.	Preparation.....	19
3.1.	Prepare for consultation.....	19
3.2.	Obtain Claimant's Declaration and Consent.....	19
4.	Conduct Interview: obtain good quality information	20
4.1.	Personal details.....	20
4.2.	Biographical details.....	20
4.3.	Family / background information	21

4.4.	Personal, social & occupational goals: pre-incident	21
4.5.	Personal social & occupational goals: post-incident	21
4.6.	Pre-existing / unrelated factors	21
4.7.	Work record: Pre-incident	22
4.8.	Work record: post-incident	23
4.9.	Employers' contact information.....	23
4.10.	Special considerations for specific categories of Claimants	24
4.11.	Obtain Objective Information.....	24
4.12.	Collateral enquiries.....	25
5.	Psychometrics.....	27
5.1.	Determine need for psychometric tests.....	27
5.2.	Determine instrument(s)	27
5.3.	Administer tests	28
C.	REPORT	29
6.	Overview	29
6.1.	Records	29
6.2.	Introduction / Preface	29
6.3.	Postulations.....	30
6.4.	Pre-incident Scenario.....	31
6.5.	Post-incident Scenario.....	39
6.6.	Quantification Summary	44
6.7.	Ethical considerations in the compilation of an IOP report	45
D.	JOINT MINUTES.....	47
7.	Background and rationale of joint minutes	47
7.1.	Practice manual: Gauteng Local Division of the High Court:.....	47
7.2.	Rationale.....	47
7.3.	Parties to the joint minute.....	48
8.	Process.....	49
8.1.	Instruction	49
8.2.	IOP Meeting	49
8.3.	Principles.....	49
8.4.	Establish and motivate pre-incident and post-incident scenarios separately:....	50

8.6. Signing off	51
E. EXPERT WITNESS TESTIMONY	52
9. Background and context	52
9.1. Rules of expert testimony	52
10. Practical aspects of being an expert witness	53
10.1. Preparation	53
11. Testify.....	54
11.1. General (Kaliski 2006)	54
11.2. Specific factors for consideration.....	55
11.3. Practical aspects	56
12. Ethical considerations in expert testimony	57
12.1. Impartiality and honesty	57
12.2. Objectivity and Neutrality.....	57
Annexure A: Case law which highlights problems in Industrial Psychology Psycho-legal reports.....	59
Annexure B: Career Ceiling Analysis	60
Annexure C: Education Statistics.....	62
Annexure D: Organisational level considerations	64
Annexure E: Distribution of Incumbents for a Consultant Remuneration Survey	65
Annexure F: Example of a quantification table	67
References.....	69

I. INTRODUCTION

The Constitution of the Republic of South Africa (1996), the supreme law of the land, provides that everyone has the right to a fair hearing or trial, including the right of being able to adduce and challenge evidence. A fair trial consists of objective, non-partisan, and unbiased expert evidence for justice to be rendered. (Grobler, 2020).

The escalation of the medico-legal / psycho-legal industry has resulted in a specialised branch of law and (amongst others) allied health care. A new variety of practitioners, consisting of legal representatives and allied medical health care providers, has evolved which requires the acquiring of particular skills and knowledge in both disciplines. Health professionals / allied health care professionals are required to assist the Courts in deciding whether or not certain *sequelae*, suffered by individuals, resulted from injuries sustained during a motor vehicle incident / medical negligence / personal injury incident, for purposes of holding the defendant liable to compensate such individuals (Judge C.J. Claassen 2019).

Currently, psycho-legal assessments allow psychologists to assist the Courts on a wide spectrum of psychological, cognitive, and behavioural issues as expert witnesses (Marais 2018) by applying psychological knowledge / the science of psychology to the legal field (Slabbert 2016) so as to address a psycho-legal question and form an expert opinion that will assist the Courts and legal process, and promote Court efficiency (Grobler 2020). The aforementioned is encapsulated in the definition of forensic psychology in the Specialty Guidelines for Forensic Psychology of the *American Psychological Association* in that “*forensic psychology refers to professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters*” (American Psychological Association 2013).

i. The role of the Industrial Psychologist (IOP) in addressing psycho-legal questions

Industrial Psychology is an evolving discipline owing to ongoing scientific research in the field due to the changing nature of the workplace and need for ever expanding knowledge in order to apply behavioural expertise to various organisational contexts; and the field of Industrial Psychology has long extended past the mere world of work. To this extent, in South Africa, a large number of IOPs work in private practice and a fairly large portion of the forensic work conducted during the past 20 years relates to Road Accident Fund claims (Slabbert 2016).

IOPs provide behavioural expertise, as applied to the working context, to legal professionals in civil actions; and it is considered that forensic industrial psychology denotes the interdisciplinary and inter-professional relationship between industrial psychology and the law (Van Lill 2013). Specifically, the role of the IOP is delineated as the expert that makes a final assessment regarding the Claimant's ability to work and earning potential in the process of assessment by providing parameters by which other medico-legal opinion, and / or psycho-legal opinion, and / or other factual information can be quantified in order to provide an informed opinion on the residual earnings potential, and where applicable, loss of earnings and / or earnings potential. According to Koch (2022): "...as the law stands at the moment, compensation for loss of earning capacity is directed at likely earnings, not possible potential earnings."

Slabbert (2016) considers that although the aforementioned would seem straightforward, it involves not only the interpretation of expert medical reports from outside the discipline and realm of industrial psychology, but often also a subjective [however, well-reasoned] interpretation and assessment of an individual's work ability. Finally, this all needs to be translated into various financial scenarios for affected individuals, based on a case-by-case assessment.

ii. Need for Professional Practice Guidelines for Industrial Psycho-legal work

Despite psychologists being governed by the Health Professions Council of South Africa (HPCSA), the HPCSA's Scope of Practice of Psychologists does not adequately define forensic aspects of Industrial Psychologists' work and their scope of practice (Slabbert 2016); and when the Act and the laws referring to psychological medico-legal actions are investigated, it becomes very difficult to find a clear-cut guide pertaining to best practice (Marais 2018).

Marais (2018) reports that psychologists receive minimal formal training in the area of psycho-legal work, and therefore are not sufficiently knowledgeable in the specific requirements of expert testimony. Therefore, a lack of clear designation, formalisation, and regulation within the South African psycho-legal context has had, and continues to have, negative consequences. Even more concerning is the notion that expert witness consultation within the legal system is probably the most public work of psychologists and therefore the most likely to bring psychology into disrepute or show its worth to society.

The limited South African legal and literary sources that set out the requirements and / or practical application for psycho-legal reports (specifically, the forensic report written by the IOP), which could be used as the basis for expert witness evidence is expressed by Grobler (2020), Marais (2018), Slabbert (2016), and Van Lill (2013).

Whilst an expert witness should be objective, independent, and unbiased, providing an opinion that is logical and based on scientific knowledge within their area of training and expertise; the current lack of requirements and / or professional practice guidelines for psycho-legal reports leaves the opportunity for inferior reporting practices causing inferior expert opinions and evidence, particularly seen in the psycho-legal reports written for Court (Marais 2018). Such inadequate levels of performance are demonstrated by complaints with the Professional Board of Psychology (PBP) and disciplinary proceedings by the HPCSA against psychologists who perform psycho-legal work, including accusations of biased reports, misrepresentation of facts, unsubstantiated inferences, reports containing aspersions / slanders regarding the psychological state of a party who was not evaluated by the psychologist, or making assumptions about a person that has not been interviewed by the psychologist, mental health professionals that testify beyond their expertise, etc. (Grobler 2020 and Marais 2018).

Of concern is that, in 2018, the Professional Board of Psychology confirmed that the most complaints received concern psycho-legal work. The problems raised in the disciplinary proceedings from 2014 until 2019 coincided with the problems revealed in the case law. Both investigations revealed that bias remains the biggest thorn in the side of psycho-legal work. Both investigations further also revealed the following problems: psycho-legal reports that were vague, incomplete or contained unsubstantiated allegations; psycho-legal reports that were compiled without interviewing all of the parties involved; psycho-legal reports and / or testimony that failed to indicate the limitations or potential bias in the findings; and mental health professionals who acted as both treating clinician and forensic expert (Grobler 2020).

In addition to the above, whilst judges echoed the sentiment that expert evidence of mental health professionals plays a valuable role in assisting the Courts and other triers of facts to ensure that justice is done on numerous occasions, various repeating problems or challenges emerged when mental health professionals acted as expert witnesses. A review of case law (see Annexure A) highlights a number of problems with the forensic report written by the Industrial Psychologist, which coincides with the problems raised in the HPCSA disciplinary proceedings from 2014 until 2019 as outlined above, and such problems can generally be divided into two categories, namely unethical behaviour, and inadequate level of performance in evaluations and testimony (Grobler 2020)

The landscape is changing for the practice of professional psychology, within a climate of increasing accountability (American Psychological Association, 2015); and the damage caused by unethical or inaccurate expert testimony can devastate both the mental health professions and the legal system, discredit the mental health professions with the Courts, and does a disservice to the professions (Grobler 2020).

The aforementioned discussions clearly demonstrate that complexities have arisen in IOPs' psycho-legal activities, for which insufficient theory and guidance on good practice exist.

It then follows that Professional Practice Guidelines for Industrial Psycho-legal work are necessitated by the extent of the inadequacies of the industrial psycho-legal reports presented before the Courts, and the realisation (by the profession itself) that steps need to be taken in order to improve the quality of reports. Weissman & Debow (in Weiner 2003) argue that the uniqueness of psycho-legal work calls for similarly unique professional guidelines, separate and apart from those in other areas of psychological practice.

The purpose of the guidelines would be to protect the reputation and credibility of the field of industrial psychology and the profession itself; whilst hopefully advancing the robustness of the sciences and practices of industrial psychology (Van Lill 2013). In addition, the guidelines will serve to provide members of the profession with the tools required to objectively assist the Courts to determine the residual earnings potential and, where applicable, the nature and extent of loss of income suffered by an individual.

II. STATEMENT OF PURPOSE

- i. The guidelines were compiled with the aim to educate and facilitate competence as an expert witness, and with specific focus on (1) relevant facts that evidence will be evidence of fact and admissible as such; (2) abstract or general knowledge concerning their discipline that is necessary to enable a Court to understand the issues arising in the litigation; and (3) evidence concerning own inferences and opinions on the issues in the case and the grounds for drawing those inferences and expressing those conclusions (AM and another v MEC Health).
- ii. Recommend specific professional behaviour and / or conduct for IOPs to promote a high level of professional practice in the psycho-legal field (specifically, the forensic report written by the IOP) so as to protect the reputation and credibility of the field of industrial psychology and the profession itself.
- iii. Highlighting / emphasising specific ethical considerations (as contained in regulatory body documentation and legislation) applicable to industrial psycho-legal work, including but not limited to confidentiality and informed consent, duty to third parties (dual agency), disclosures of payment and neutrality, access to records, limits to opinions, etc.
- iv. Serve as recommendations / considerations for stakeholders – such as Industrial Psychologists, Professional Board for Psychology, the legal profession, and universities – as it relates to professional guidance and training for industrial psycho-legal activities.

III. USERS

- i. Industrial Psychologists (IOPs) working in the psycho-legal environment – to provide members of the profession with the tools required to objectively assist the Courts to determine the residual earnings potential and, where applicable, the nature and extent of loss of income suffered by an individual.

IV. DEFINITION OF TERMS

- i. Balance of probabilities (i.e., standard of proof in civil matters): The Court must be satisfied that, based on the evidence available, the occurrence of an event was more likely than not.
- ii. Claimant (sometimes referred to as the plaintiff): In this guideline, the claimant is the person whose work capacity is purported to have been affected – most often by injury but also by negligent acts. The party who instructs and is liable for the fees of the Industrial Psychologist (IOP) is referred to as the Instructing Party.
- iii. Contingencies: Contingencies refer to events that may happen with some level of probability and could affect earnings or the need for support in the past and / or the future [i.e., there is no clear and / or quantifiable deviation in earnings projections, and the risk is therefore incorporated by applying contingencies to the earnings projection(s)]. The determination of contingencies is a process of estimation rather than an objective calculation. IOP's often provide a number of factors which they have assessed to be a likely hinderance to the Claimant's past and / or future earning potential. Such would suggest that based on those factors (which vary from case to case), there is a likelihood of the claimant having had unrelated impact on premorbid earnings potential, and / or a likelihood of suffering a loss of income in the future.
- iv. Direct Loss: There is a clear, quantifiable difference between the projected uninjured earnings and the injured earnings (i.e., if the claimant is off work without pay or needs to retire early without any compensation as a result of the incident).
- v. Earnings Inflation refers to the rate of growth in earnings, typically accepted by Actuaries within this field as being at a rate of 1% above the Consumer Price Index (CPI).
- vi. Formal Sector: Businesses that are registered in any way; and includes government, parastatals, registered non-governmental organisations, and private businesses that are registered for either income tax or VAT. The formal sector includes the "corporate sector", and IOP's would find it beneficial to rather segment the formal sector (Micro, Small, Medium, Large, Corporate) instead of comparing the formal sector to corporate employment (Beelders 2019).

- vii. Forensic psychology refers to professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialised knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters" (American Psychological Association, 2013).
- viii. Future loss of earnings refers to the difference in pre-incident / uninjured and post-incident / injured earnings from the date of settlement onwards (i.e., until the date at which the claimant would have retired). This is linked to the loss of earning potential including potential, motivation, and ability to adapt in order to progress in their careers (Slabbert 2016).
- ix. General Paterson Model: The Paterson Model, a job grading system, classifies jobs into categories based on the nature of the job / skills needed (such as task complexity, responsibilities, accountability) and the type of decision-making applicable to the job. The earnings are not considered when classifying a job.
- x. Guaranteed Package vs Total Earnings: The guaranteed package includes basic salary, fringe benefits, and / or employer contributions; but might exclude non-guaranteed earnings like overtime, commission, and performance-based bonuses; which should be included when factoring Total Earnings.
- xi. Guidelines: Statements that suggest or recommend specific professional behaviour, endeavour, or conduct for psychologists (American Psychological Association 2015), specifically for IOPs working in the psycho-legal field. They aim to facilitate the continued systematic development of the profession and to promote a high level of professional practice by psychologists; however, guidelines are not intended to take precedence over the professional judgments of psychologists that are based on the scientific and professional knowledge of the field [i.e., flexibility] (American Psychological Association 2015).
- xii. Indirect Loss: There is no clear deviation between the pre-incident / uninjured and post-incident / injured earnings projections and the loss is therefore attained by applying contingencies to the earnings projection(s).
- xiii. Informal sector: Enterprises comprising of those that produce at least some output for the market, less than a specified size in terms of the number of persons engaged and / or not registered under specific forms of national legislation, laws, or regulations established by national legislative bodies (Beelders 2019).
- xiv. Loss of earnings is defined as the loss of income a person sustains because of an occurrence (Slabbert 2016), and consists of the past- and future loss of earnings.

- xv. Loss of work capacity refers to a person's inability to continue with the work that they are trained to do (Slabbert 2016). It may also refer to a reduction in work function / partial loss of capacity, which may exclude or limit an individual from performing certain jobs and / or perform employment, albeit with some loss of productivity or quality.
- xvi. Lower and upper quartile: Earnings data is indicated by the lower quartile, median and upper quartile. The lower quartile represents the 25th percentile, meaning that 25% of the participants that are categorised in the relevant remuneration survey level earn less than the aforementioned indicator. The upper quartile represents the 75th percentile, meaning that 25% of the participants that are categorised in the relevant remuneration survey level earn more than the aforementioned indicator (note: the lower- and upper quartiles do not represent the minimum and maximum earnings).
- xvii. Medico-legal questions (which relate to medicine and law) can be defined as legal questions informed by medical opinion. Questions pertaining to mental illness or mental disorders, mental capacity, or any other aspects of the human mind are often referred to as medico-legal questions. Although it can be a medico-legal question, it is not considered to be the most apt terminology for the study given that not all experts of the human mind are physicians (Grobler 2020).
- xviii. Monetary terms refer to the period in which a salary was paid and / or earnings model was published and / or the date collateral information is obtained from an employer. This is important to the Actuary as it gives an indication of the time value of money associated with the relevant earnings in question.
- xix. Nominal increases refer to the full increase in earnings over a period, inclusive of earnings inflation. For example, if a person's salary increases from R100 to R115 over a year, the nominal increase is 15%. If earnings inflation over the period was 6%, this is deemed to form part of the 15% increase.
- xx. Past loss of earnings refers to the difference in pre-incident / uninjured and post-incident / injured earnings from the date of the accident until the date of settlement.
- xxi. Possible vs Probable: A "probability" is a chance greater than 50% (i.e., likely to occur) and a "possibility" is a chance of less than 50% (i.e., unlikely to occur) (Koch Consulting Actuaries Newsletter, 2018). The Court's view is that Claimants' losses should be based on the most likely progressions. It is therefore crucial that IOPs are clearly identifying the most probable earnings and progressions and understand the impact of phrases that imply a postulation is unlikely (e.g., might, unlikely, best case scenario, may, possibly, should they).
- xxii. Pre-incident: preceding the incident in question (up to the date of the incident). The term pre-morbid / uninjured is also frequently used.

- xxiii. Pre-incident / uninjured / but for the incident scenario: Opinion pertaining to an individual's career- and earning had the incident or traumatic event not occurred.
- xxiv. Post-incident / injured / now that the incident occurred scenario: Factual information (past) and opinion (future) pertaining to an individual's career- and earning now that the incident or traumatic event has occurred.
- xxv. Psycho-legal is preferred by many South African experts in mental health. Although psycho-legal can create the impression that it deals with the specific discipline of psychology, the term is much more comprehensive. Psycho- is an ancient Greek word which means "of or relating to the mind or psyche" and when combined with legal, it indicates an aspect relating to both the law and the human mind or psyche (Grobler 2020).
- xxvi. Real increases refer to the increase over a period, after an adjustment has been made for earnings inflation. Extending on the Nominal increases example above (xix), it follows that the real increase is approximately 9% which is the excess of the nominal increase over inflation.

V. COMPATIBILITY

- i. In the process of making decisions regarding their professional behaviour in the psycho-legal environment, IOPs must consider these Guidelines in addition to the *Health Professions Act No. 56 of 1974* (as amended) and specifically the *Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act, 1974*, published under Government Notice R717 in Government Gazette 29079 of 4 August 2006 (as amended) and particularly Annexure 12: Rules of Conduct Pertaining Specifically to the Profession of Psychology, which define the parameters of the profession of psychology in South Africa.
- ii. Users of these guidelines are requested to note that no other action taken by the profession or guidelines can supersede the provisions of any applicable legislation.

VI. PRACTICE GUIDELINE DEVELOPMENT PROCESS

- i. A working group of the SIOPSA Psycho-Legal Interest group has developed proposed professional practice guidelines to provide practical guidance and education in a particular practice area (IOPs engaged in psycho-legal work).
- ii. The working group capitalised on the collective experience and knowledge of IOPs within the psycho-legal field, as well as legal- and quantum experts to provide salient input as to the key focus areas in providing the Courts and end users of the IOP report with fair, informed, and defensible inferences / conclusions.

- iii. The aforementioned was supported by comprehensive literature evaluation to ensure that proposed guidelines represent the scientific and professional knowledge of the field, and to avoid any concerns pertaining to advocacy.
- iv. IOPs experienced in the psycho-legal field developed the draft professional practice guidelines for presentation at the SIOPSA Annual Conference (2022) to invite peer review of the guidelines.

VII. EXCLUSION OF LIABILITY AND INDEMNITY

These guidelines are not intended to take precedence over professional judgments based on the scientific and professional knowledge of the field, therefore:

- i. SIOPSA, its members, executive committee, as well as the authors of- and contributors to these guidelines are indemnified against all claims, losses, demands, actions, damages, and causes of action whatsoever arising directly or indirectly from the use of these guidelines.
- ii. SIOPSA, its members, executive committee, as well as the authors of- and contributors are released and indemnified from all costs, losses, expenses, damages (direct, indirect, consequential or otherwise), claims, suits, causes of action, or any other liability or responsibility whatsoever, including attorney's fees and related costs, arising directly or indirectly from the use of these guidelines.

VIII. HOLISTIC PERSPECTIVE

- i. The IOP writing psycho-legal reports must adopt a holistic approach, considering all available information as whole, rather than trying to break it down into its individual parts.
- ii. A holistic view does not consider the person as a sum of parts but rather a complex ensemble requiring interpretation for forensic application purposes.
- iii. Utilising only part(s) of available information is inadequate when used in isolation, and it is critical that opinions on career- and earnings potential, the use of specific remuneration sources, etc. are informed by all available information (including, but not limited to documentary evidence, scientific- and professional knowledge of the field).
- iv. Similarly, the contents of these guidelines are intended to outline the importance of the whole and the interdependence of its parts; and as such, no part of this guideline should be used in isolation.

A. ETHICS

1. Professional Ethics

1.1. Competence

- 1.1.1. A practitioner shall perform a professional act / service for which they are adequately educated, trained and sufficiently experienced.
- 1.1.2. When determining one's competence to provide such a service, practitioners may consider a variety of factors, including the relative complexity and specialised nature of the service, relevant training and / or experience, preparation and study they are able to devote to the matter, and the opportunity for consultation with a professional of established competence in the subject matter in question.
- 1.1.3. Practitioners adequately and accurately inform all recipients of their service about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications as well as how they were obtained.

1.2. Continuous Professional Development

- 1.2.1. Practitioners planning to provide psycho-legal services are encouraged to undertake relevant education, training, supervision, consultation, and / or study.
- 1.2.2. Practitioners make ongoing efforts to develop and maintain their competencies.

1.3. Informed Consent

- 1.3.1. Practitioners strive to inform service recipients about the nature and parameters of the services provided. Practitioners inform Claimants about the nature and purpose of the examination. Such information may include purpose, nature, anticipated use of the information, access to the information, limitations on privacy, confidentiality and privilege including who is authorised to release and / or access the information contained in the records, and voluntary or involuntary nature of participation including potential consequences of participation and / or non-participation.
- 1.3.2. Practitioners shall document that the claimant has been informed of the nature and purpose of the assessment with corresponding consent, permission, or assent.

- 1.3.3. For examinees who lack the capacity to provide consent, the practitioner provides an appropriate explanation, seek the examinee's assent (an expression of approval) and obtain appropriate permission from legally authorised persons.
 - 1.3.4. In cases where such examinees have been adjudicated as lacking such capacity, the practitioner strives to take reasonable steps to protect their rights and welfare. The practitioner may consider suspending the proposed service or notifying the examinee's Instructing Party (e.g., attorney, etc.).
- 1.4. Resolving conflict with fellow professionals
- 1.4.1. When an apparent or potential ethical violation has caused, or is likely to cause substantial harm, a practitioner will strive to bring it to the attention of the offending individual if that attempt does not violate any rights and / or privileges that may be involved. If this does not result in a satisfactory resolution, the practitioner may have to take further action appropriate to the situation including making a report to third parties to the perceived ethical violation and / or relevant bodies. A practitioner may consider consulting with the Instructing Party before attempting to resolve a perceived ethical violation with another professional.

2. Psycho-legal ethics

2.1. Objectivity

- 2.1.1. Practitioners strive for honesty and truthfulness in the science and practice of psycho-legal work.
- 2.1.2. Practitioners refrain from taking on a professional role when personal, scientific, professional, legal, financial, and other interests or relationships could reasonably be expected to impair their impartiality, competence, or effectiveness, or expose others, with whom a professional relationship exists, to harm.
- 2.1.3. Practitioners recognise that their own cultures, attitudes, values, beliefs, opinions, or biases may affect their ability to practice in a competent and impartial manner. Therefore, practitioners take steps to correct or limit such effects, decline participation in the matter, or limit their participation in a matter that is consistent with their professional obligations.

2.2. Neutrality

- 2.2.1. Practitioners recognise the adversarial nature of the South African legal system and strive to treat all participants, weigh all data, options, and rival hypotheses with impartiality.
- 2.2.2. Practitioners recognise the overriding principle that the IOP is an officer of the Court. Whilst the expert is called by a particular party (i.e., plaintiff or defendant), the expert is not a representative of a specific legal line of argument; and is not absolved from providing the Court with an objective and unbiased opinion, based on their expertise.
- 2.2.3. Practitioners resist partisan pressures to provide services that might be misleading and / or inaccurate.
- 2.2.4. Practitioners identify, make known, and address real or apparent conflicts of interest in an attempt to maintain the public confidence and trust. When a conflict of interest is deemed manageable, services are provided and documented in such a way as to manage the conflict, maintain accountability, and preserve the trust of relevant other parties.

2.3. Provision of Service

- 2.3.1. Practitioners are encouraged to seek explicit agreements that define the scope of work, time frames, and compensation for their services. In the event that the Instructing Party breaches the contract or acts in a way that would require the practitioner to violate ethical, legal, and / or professional obligations, the practitioner may terminate the relationship.
- 2.3.2. Practitioners may exercise professional discretion in determining the extent and means by which services are provided and agreements fulfilled.
- 2.3.3. Practitioners strive to act with reasonable diligence and promptness in providing agreed-upon and reasonably anticipated services. Practitioners are, however, not bound to provide services not reasonably anticipated when retained. Practitioners seek to manage their workloads so that services can be provided effectively, competently, and timeously. However, acting with reasonable promptness does not require the practitioner to accede to demands for a service not reasonably anticipated at the time the service was requested, nor does it require the practitioner to provide services if the Instructing Party has not acted in a manner consistent with existing agreements. Practitioners accept that service timeframes can be influenced by legal processes (i.e., joint judicial meeting dates, trial dates, etc.) which may require acceptance / accommodation of the Instructing Party's requests; however, time constraints do not absolve the practitioner from ethical and professional responsibilities.

2.4. Multiple Relationships

- 2.4.1. A multiple relationship occurs when a practitioner is in a professional relationship with a person and at the same time or at a subsequent time, in a different role with the same person.
- 2.4.2. Practitioners strive to recognise the potential conflict of interest and threats to objectivity inherent in multiple relationships.
- 2.4.3. Practitioners seek to minimise any detrimental effects by avoiding involvement in such matters whenever feasible, limiting their assistance in a manner consistent with professional obligations.

2.5. Fees

- 2.5.1. When determining fees, practitioners may consider factors such as their experience in providing the service, time and labour required, complexity / difficulty of the legal questions involved, skill required to perform the service, fee customarily charged for similar services, the likelihood that acceptances of the particular employment will preclude other employment, nature and length of the professional relationship with the Instructing Party, the Instructing Party's ability to pay for the service, and any other relevant requirements.
- 2.5.2. Practitioners are encouraged to make clear the likely cost of their services whenever it is feasible and make appropriate provisions in those cases in which the cost of services is greater than anticipated, or the Instructing Party's ability to pay for the services changes in some way.
- 2.5.3. Because of a threat to impartiality, practitioners avoid providing professional services on the basis of contingent fees (e.g., a percentage of the award made or the settlement amount). Letters of protection, financial guarantees, and other security of payment of fees are not considered contingent fees unless payment is dependent on the outcome of the matter.

2.6. Access to / release of information

- 2.6.1. Practitioners should recognise the importance of complying with properly noticed and served subpoenas or Court orders directing release of information unless there is a legally valid reason to offer an objection. When in doubt about an appropriate response or course of action, practitioners may seek the assistance of the Instructing Party, retain and seek legal advice from their own attorney, or formally notify the drafter of the subpoena or order of their uncertainty.

- 2.6.2. Practitioners may charge a reasonable fee for the costs associated with storage, reproduction, review, and provision of records.
- 2.6.3. In acquiring collateral and third-party information, practitioners strive to access information or records from collateral sources with the written (and revocable) consent of the claimant or Instructing Party or when otherwise authorised by law or a Court order.

DRAFT

B. ASSESSMENT AND EVALUATION

3. Preparation

3.1. Prepare for consultation

3.1.1. Familiarise oneself with all personal information available on the Claimant ("Claimant" as defined in paragraph IV):

- Peruse Claimant's date of birth, age at time of incident, education history, and family background.

3.1.2. Familiarise oneself with all employment information of the Claimant:

- Peruse Claimant's employment history pre- and post-incident (i.e., position, income type, and income level).
- Note career gaps and probe for clarity.

3.1.3. Familiarise oneself with all medical expert reports (when and if available):

- Note the types of medical experts.
- Peruse incident details; injuries sustained, diagnosis, post-treatment prognosis, unrelated factors, etc.
- Note any inconsistencies, concerns and problems (to be verified during later stages).
- It is advised to pre-populate the IOP interview guide / questionnaire / form.

3.2. Obtain Claimant's Declaration and Consent

The IOP's *Claimant Declaration and Consent Form / Informed Consent Form* should contain the following:

3.2.1. Acknowledge truthful information to be rendered by Claimant.

3.2.2. Claimant's consent for IOP's employment enquiries that are deemed of value to the psycho-legal evaluation.

3.2.3. Claimant's consent to partake in psychometric assessment, if applicable.

3.2.4. Claimant's consent to the IOP using, processing, and storing the Claimant's personal information as per POPI Act requirements.

- Although POPI requirements indicate safe record keeping for a period of 5 (five) years; IOP's are advised to adhere to HPCSA requirements with regards to record keeping (Booklet 9) – records should be kept for at least six (6) years from when file became dormant; records for minors should be kept until the minor reaches the age of 21 (twenty-one); and in the case of mental illness, records should be kept for a lifetime.

3.2.5. Acknowledge limited confidentiality of information and report.

- Explain to the Claimant the legal teams' access to information, and that the information is in the public domain when the matter goes to Court.

3.2.6. Practical aspects:

- Explain the declaration and consent to the Claimant;
- Obtain Claimant's signature. If the Claimant is unable to sign, note same and sign on behalf of (note who signed i.e., parent, guardian, care-giver, or IOP self);
- Note any amendments to the Declaration & Consent document.

4. Conduct Interview: obtain good quality information

4.1. Personal details

- 4.1.1. For identification purposes obtain Claimant's names, identity document, ID number, and contact details (mobile phone number, office phone number, and e-mail address).
- 4.1.2. Obtain names and contact details of next of kin or someone contactable should the claimant prove difficult to reach. This information may be important for cross-verification of facts.

4.2. Biographical details

- 4.2.1. Obtain information on the Claimant's education (grades repeated / failed, interruption of education, etc.), social factors, dependants, home environment (amenities), and transport dependence (self / public).

4.3. Family / background information

- 4.3.1. Obtain information on the Claimant's parents (education, employment) and siblings (age, education, employment).
- 4.3.2. For minor / youth Claimants: in addition to those noted above, obtain extended family information (education and employment of primary caregivers, paternal & maternal uncles / aunts and even cousins).

4.4. Personal, social & occupational goals: pre-incident

Inquire about Claimant's:

- 4.4.1. Plans regarding future social changes (marriage, relocation, emigration, etc.).
- 4.4.2. Plans (and progress) regarding future education and training.
- 4.4.3. Plans regarding future work goals / ideals.
- 4.4.4. Steps / actions already taken at the time of the incident with regards to the above.

4.5. Personal social & occupational goals: post-incident

Inquire about Claimant's:

- 4.5.1. Plans regarding future social changes (marriage, relocation, emigration, etc.).
- 4.5.2. Plans regarding future education and training.
- 4.5.3. Plans regarding future work goals / ideals.
- 4.5.4. Steps / actions taken with regards to the above since the incident.

4.6. Pre-existing / unrelated factors

Note the following (nature, date, and any residual symptomology; but without evaluation or comment on the impact):

- 4.6.1. Other incidents (probe as to whether a claim was instituted and the details thereof);
- 4.6.2. Incident(s) on duty;

- 4.6.3. Operations / surgery;
- 4.6.4. Injuries and / or periods of hospitalisation;
- 4.6.5. Conditions i.e., asthma, diabetes, high blood pressure;
- 4.6.6. TB, HIV+, and others;
- 4.6.7. Psychological treatment;
- 4.6.8. Trauma (family loss, divorce, assault, sexual assault, etc.);
- 4.6.9. Substance use / abuse;
- 4.6.10. Criminal charges, incarceration, and / or criminal record.

4.7. Work record: Pre-incident

Obtain the following information:

- 4.7.1. A chronological indication of all employment and unemployment situations in the time leading up to the time of incident.
- 4.7.2. Employer / company details.
- 4.7.3. Period / dates.
- 4.7.4. Position & role (brief job description).
- 4.7.5. Nature of employment (temporary / seasonal / contract / permanent / piece-job).
- 4.7.6. Frequency and / or continuity of employment (specifically with employment other than permanent / full-time equivalent).
- 4.7.7. Earnings (remember to ask about earnings up to- and as at the time of the incident if claimant remains in same role post-incident).
- 4.7.8. Reason for termination (obtain detailed information to ascertain any trends).

It is advised that the last 2 or 3 employment situations be verified at a later stage - refer *collateral enquiries* (paragraph 4.12).

4.8. Work record: post-incident

Obtain the following information:

- 4.8.1. A chronological indication of all employment and unemployment situations from time of incident to date.
- 4.8.2. Obtain information on performance post-incident, sick leave records, reasonable accommodations offered, perceived promotional prospects and conditions thereof, and potential future income.
- 4.8.3. Changes (if any) in role, job duties, employment environment, and earnings as well as reason(s) for the changes.
- 4.8.4. Employer / company details.
- 4.8.5. Period / dates.
- 4.8.6. Position & role (brief job description).
- 4.8.7. Nature of employment (temporary / seasonal / contract / agency / permanent).
- 4.8.8. Frequency and / or continuity of employment (specifically with employment other than permanent / full-time equivalent).
- 4.8.9. Earnings.
- 4.8.10. Reason for employment termination (obtain detailed information to ascertain factors influencing termination) and employment termination documents, where applicable.

It is advised that all of the post-incident employment situations be verified at a later stage - refer *collateral enquiries* (paragraph 4.12).

4.9. Employers' contact information

Obtain the following:

- 4.9.1. Company name (check spelling).
- 4.9.2. Manager / direct line of report name and contact number.
- 4.9.3. Human Resources (HR) officer name and contact number.
- 4.9.4. Labour Broker / Agency name and number.

4.10. Special considerations for specific categories of Claimants

- 4.10.1. Minor Claimant (age <18 years) or Youth Claimant (age <25 years): Obtain more details regarding family background (include the extended family).
- 4.10.2. Unemployed Claimant: Ensure the unemployment status (is the Claimant self-employed e.g., street vendor or engaging in piece-job employment, or unemployed).
- 4.10.3. Self-employed Claimant: Obtain details about activities, profit (not turnover), and lifestyle factors.
- 4.10.4. Formally employed Claimant: Obtain details about positions and roles, earnings, type of employment, progress, and reasons for termination.
- 4.10.5. Employed Claimant with side-line business: Obtain details about activities of side-line business, profit (not turn-over), and time spent.

4.11. Obtain Objective Information

Objective information increases the validity of information, and accuracy of the quantification. It also provides verification of reported employment, progress, and earnings. Ensure the following objective information is obtained for the following types of Claimants:

4.11.1. Minor / Youth Claimant:

- School / academic records (at least 2 years preceding the incident up to current);
- Refer or defer to Educational Psychologist's report regarding such information.

4.11.2. Employed Claimant:

- IRP5 tax certificates (at least 2 tax years prior to incident up to current);
- Salary advices (at least 6 months prior to and 6 months after the incident, as well as 3 to 6 most recent salary advices);

4.11.3. Leave records (at least 1 year prior to incident up to current).

4.11.4. Self-employed Claimant:

- IRP tax certificates (at least 2 tax years prior to incident up to current);
- Financial Statements of the business (at least 2 tax years prior to incident up to current);
- If none of the above documents are obtainable: Bank statements (at least 1 year prior to incident up to current); invoice records; receipt books etc. In such a scenario, it may be prudent to obtain very detailed and specific information pertaining to sales, cost of sales, other overhead expenses at various times (i.e., per day / per week / month-end, etc.) to obtain a representative indication of likely net profit (personal earnings).
- More complex business operations may require financial expert opinion to provide insight as to the long-term profitability and viability of the entity. Enquire from the Instructing Party whether such financial expert opinion is available and / or will be made available. If available, integrate the same into the IOP report as a source of information.

4.12. Collateral enquiries

4.12.1. Ensure the quality of Source

- Do not enquire with only the references given by Claimant (consider bias).
- It is preferable to contact the Claimant's manager instead of their supervisor; however, keep mind that it is important to obtain information from a person who has had / has regular contact with the Claimant (e.g., direct line of report, division manager, etc.)
- Dependent on the type of employment, information on performance could be obtained from the supervisor (if supervisor observes day-to-day performance of work tasks). However, such information should preferably supplement information from a manager.
- Contact HR Officer / manager.

4.12.2. Deal with Referee's resistance

- Submit the signed Claimant Declaration and Consent to the referee.
- Explain IOP's role (neutrality and objectivity).
- Explain the purpose of enquiry (it is a private matter, not a workplace issue).

4.12.3. Conduct interview

Establish the Claimant's:

- Period of service;
- Position & role;
- Performance pre-incident;
- Likely progress pre- incident (including earnings);
- Performance post-incident;
- Likely progress post-incident (including earnings);
- Accommodations (if any);
- Risk of job loss / early retirement / medical boarding;
- Reason(s) for employment termination;
- Obtain / request further / more information as per specific need.

Establish Employer's:

- Annual increases;
- Retirement age policy.

Apply IOP professional training and skills:

- E.g., establish rapport, question techniques, observation of verbal and non-verbal cues, active listening, re-phrasing, note malingering / faking good / faking bad, etc.

4.12.4. Objective information (if not already obtained from Claimant):

- IRP5 tax certificates (at least 2 tax years prior to incident up to current);
- Salary advices (at least 6 months prior to and 6 months after the incident, as well as 3 to 6 most recent salary advices);
- Leave records (at least 1 year prior to incident up to current).
- Other (when applicable): commission structure, discipline notes, retrenchment letter, etc.
- Request outstanding objective information – if response from the Referee, inform Instructing Party and request assistance.

5. Psychometrics

5.1. Determine need for psychometric tests

5.1.1. Consider the other expert assessment results available:

- Defer to such relevant experts' (i.e., Clinical Psychologist, Educational Psychologist, etc.) findings / conclusions;
- Note that Psychiatrists do not necessarily (or generally) perform comprehensive psychometric assessments (mostly they obtain verbal reports from the Claimant and may use fairly short forms of assessments and / or screening tools) – not to be confused with Psychologists' comprehensive psychometric assessments and results. (A Psychiatrist is a medically trained doctor who specialised in Psychiatry – often confused with a Clinical Psychologist).

5.1.2. Consider the value add to the IOP's own evaluation - do not test if psychometric test results are not going to be used.

5.1.3. Consider the strengths and limitations of employing traditional assessment procedures in forensic / psycho-legal examinations. Use assessment techniques, methods, and procedures that are appropriate in answering the legal question. These may include interviews, tests, instruments etc. (Example: An IOP might, for instance, add a career interest evaluation that is not usually conducted by other Psychologists).

5.1.4. Consider the Claimant's literacy and language proficiency – avoid skewed results (test bias) due to language barriers and resultant excessive assistance required by the claimant to complete the assessment(s).

5.1.5. Consider the Claimant's scholastic / occupational information – pre-incident and post-incident progress / performance is important. A full record can weigh more than the results of a single test.

5.2. Determine instrument(s)

5.2.1. Decide on the instrumentation as per IOP professional training and standards.

5.2.2. Ensure appropriateness of the test in terms of age, level of education, culture and language.

5.3. Administer tests

- 5.3.1. As per IOP professional training and standards regarding administering tests, scoring, norms, results, interpretation, and integration.

DRAFT

C. REPORT

6. Overview

In general, expert reports need to address the relevant expert issues in a clear, concise, and reliable way with all paragraphs numbered to ease referencing. An evidence-based, well-reasoned report with logical flow may translate into credibility. However, many expert reports are simply too long owing to unnecessary repetition of the factual basis at the expense of the analysis and opinion of the expert. Repetition is costly and is unhelpful to the legal parties and the Court (Eyre 2015). It may therefore be best to avoid lengthy generic sections in a report, unless such is pertinent to the specific matter.

The *Gauteng Practices Manual of the High Court* specifically requests expert reports to be brief. However, as the IOP report must be comprehensive enough to stand alone and be capable of facing scrutiny in a legal setting and may therefore be at cross-purposes with some requirements as above, brevity can be attained via summaries such as executive summaries and / or quantification summaries (Office of the Judge President 5 July 2019, The Judiciary of the Republic of South Africa 2018).

6.1. Records

- 6.1.1. Date of assessment and date of report: As the report is a legal document it should be clearly dated.
- 6.1.2. Claimant Details: Provide full names, date of birth, and identity or passport number or other identification number. Provide notes regarding discrepancies or issues in names or identification particulars.
- 6.1.3. Instructing Party name & file reference. Provide the name of the Instructing Party and their reference numbers as far as they are available.
- 6.1.4. IOP name & HPCSA number, and IOP / IOP practice file reference. Provide the name(s), qualifications and registration details of the expert(s) involved in signing off the report.

6.2. Introduction / Preface

- 6.2.1. Purpose of the report:
 - Written for [instructing entity e.g., attorney name] to express an opinion on past and future loss of income (if any) and to be quantified by an Actuary (R. Koch 2013);

- Nature of purported earnings loss to be assessed, e.g., motor vehicle incident / alleged negligence / alleged police brutality / alleged unlawful arrest, etc. as applicable;
- Statements regarding the Claimant's earning capacity are based on information regarding their childhood, family background, educational level, knowledge, and skill set, employment history (if applicable), vocational plans, as well as other relevant circumstances (i.e., contextual circumstances);
- Unless indicated differently, postulations in this report are probable or likely (M T v Road Accident Fund; H M v Road Accident Fund 2020);
- Unless indicated differently, information provided is as provided by the claimant on the date of assessment / evaluation.

6.2.2. Documentation Received: Note expert reports received and all other documentation (e.g., letter of instruction, hospital records, identification document, etc.).

6.2.3. Employment documents received & generated (e.g., Workplace / Employer Certificates, salary advices, employer payroll analysis, IRP5's, employment contracts and -confirmation letters, performance contracts and performance evaluations, as well as emails and other correspondence with and / or from employers).

6.2.4. Collateral sources' (employers) names and positions:

- Provide the names of supervisors, managers, and human resource officials consulted as well as the date(s) of consultation;
- Company contact details publicly available should be supplied;
- Private emails and cell phone numbers should be withheld with a note that they are available on request.

6.2.5. Right to amend: Should new or additional information become available, the IOP reserves the right to address the same in an addendum report and amend the report / conclusions / recommendations (if indicated).

6.3. Postulations

6.3.1. A postulation is an opinion pertaining to an individual's career- and earning potential both before and after an injury or traumatic event (Gerber & Talmud, 2022) – refer paragraph 6.4 and 6.5 below.

6.3.2. Postulations should be based on factual information and various sources of data / documentation / evidence.

6.3.3. Characteristics of postulations (Gerber & Talmud, 2022):

- Realistic: Probable, not possible;
- Robust, and based on a clear and coherent rationale;
- Objective and unbiased;
- Every case and individual is unique – there is no “recipe” or template or “one-size-fits-most”. Thus, each matter should be approached on its own merits;
- There may be similarities across cases, however, invest the effort and time to provide robust, responsible, fair, reasonable, logical, and appropriate postulations.

6.4. Pre-incident Scenario

6.4.1. Consider biographical factors, i.e., education and academic history, familial educational- and occupational background, age, socio-economic factors, etc.

- Especially for younger Claimants, a holistic evaluation is important, as education is an important consideration in determining likely future earnings;
- For Claimants who had not completed their education prior to the incident / traumatic event, it is especially important to consider their pre-incident academic performance up to the incident. Educational Psychologist (EP) opinion is important – especially for prediction of likely educational outcome in the absence of the injury;
- The IOP should also make a holistic evaluation of not only the education of the Claimant (more so in matters involving minors), but also the education of the family members such as parents, siblings, and cousins to provide insight as to inferred chances / probability for achieving a specific level.

6.4.2. Consider pre-incident work record:

- Employment sector (as defined in section IV);
- Nature of employment (e.g., full-time, part time, contract, permanent, piece-job, seasonal work, etc.);

- Industry / sector (e.g., retail vs mining sector – earnings are generally lower in retail than they are in mining);
- Earnings history (market related, basic, minimum wage);
- The pre-injury work record is very important as the basis of the future career performance of the Claimant. Therefore, if possible, corroborative information / collateral enquiry is crucial.

6.4.3. Acknowledge pre-incident educational- and career aspirations:

- Aspirations must be realistically evaluated and can provide insight as to motivation of individual; and may be supported or refuted by other documentation / factual information / collateral sources at hand.

6.4.4. Consider collateral feedback:

- Collateral information is important to validate, supplement, and support the Claimant's version of job history as well as promotional prospects;
- Positive job performance feedback and promotional prospects can be considered to predict pre-incident progress. (Also see 6.3.2 *supra*);
- All collateral information should be critically evaluated. Judge Sutherland was very critical about Industrial Psychologists who were uncritical of supervisor opinions (*Ntombela v Road Accident Fund 2018*)
- Employer feedback that Claimant, for instance, did not resign but was dismissed for unauthorised possession of company property, may potentially adversely impact on their employment- and career progression prospects.

6.4.5. Consider psychometric results (own and / or other experts):

- Especially for younger people of ages 20 to 35 there often are no other experts who do psychometric tests if there was no brain injury. IOPs should then consider doing appropriate tests such as aptitude and job interest as there may be a lack of job and career progress to form a basis for future career prediction.
- Such results are arguably the same as it would have been but for the injury.
- At times, IOPs can then pick up anomalous results and can alert the Instructing Party that a Neuropsychological evaluation is indicated.

6.4.6. Consider unrelated / pre-existing factors (as per own and other experts' information):

- Take non-incident related factors into account in the "but for the incident" scenario, even if the event occurs following the incident. E.g., business closure, dismissal, or retrenchment due to non-incident-related reasons,

resignation for reasons not related to the incident (better prospects), promotion(s), etc.;

- Consider pre-existing and / or unrelated health- or performance factors that could have influenced the pre-incident progression. Either consider in the postulation (quantification) if possible, the application of pre-incident contingency (non-quantifiable), or both. However, beware of “double counting” (i.e., use factors as risks if you have already used it to support reduced earnings);
- An important aspect of unrelated / pre-existing factors is that the IOP must indicate that the legal teams / the Court can (should) consider application of pre-incident contingency deductions. This remains the prerogative of the legal teams / Court, and the IOP does not need to indicate the extent of such deduction.

6.4.7. Earnings analysis and benchmarking (i.e., selecting the most relevant source(s) / earnings sources):

- In IOP reports, the rationale that underlies the assessment of the Claimant's likely pre-incident career and earnings potential is not simply to calculate costs; but to provide the Court with insight as to why the scenario indicated is reasonable and probable – and places the Claimant back in the position they would have been in “but for” the incident;
- Critically consider and / or evaluate documentary information pertaining to earnings (i.e., verifiable earnings from Human resources / Employment Certificates / actual pay advices / IRP5s, financial statements, affidavits, lifestyle audit etc.);

When interpreting collateral information and / or documentary proof of earnings, IOPs should (1) take into account employer contributions / fringe benefits to ascertain guaranteed earnings (as defined in section IV), if applicable; and (2) variable, additional earnings (e.g., overtime, commission, etc.) by using the average of more than one (preferably consecutive) pay periods (i.e., week, fortnight or month) to ascertain Total Earnings (as defined in section IV), if applicable;

- Summarise earnings history in the same money terms to determine highest and lowest point of income;
- Actual earnings are good indicators for a person in mid-career and within a stable employment situation – such earnings are probably the best indicator of their earnings potential and may render reliance on a remuneration survey superfluous;

- Where the use of remuneration surveys / other remuneration sources is indicated (non-government sector), various sources are available to IOPs – including consultant surveys, StatsSA / StatsSA derived sources, prescribed minimum wages, Bargaining Council agreements, etc.;
- Use a reputable remuneration source relevant to the specific case – all remuneration sources have arguments for and against (i.e., pros and cons) – the user must be comfortable with the methodology, validity, and reliability of the survey(s) selected; and be able to defend the use of such survey(s), if necessary;
- In addition to the above, in selecting the most applicable / relevant data source – or combination of sources – IOPs should carefully consider the sample size and representativity of the source against the backdrop of the South African labour market / labour market dynamics:

The StatsSA Quarterly Labour Force Survey indicates that the formal sector accounts for the largest part of the employment share. Furthermore, in the formal sector, by far the largest group of employers is the so-called Small Medium and Micro Enterprises (SMME) labour market as defined by The Small Enterprise Agency (SEDA) (Small Enterprise Development Agency 2022).

As the bulk of South African earners are employed by SMME's (i.e., formal sector), it is advisable to use multiple sources of data to make comparisons, as not all individual employees in the formal sector necessarily earn on par with consultant surveys (whether basic salary or total package earnings) – they may earn in line with minimum wages or specific prescribed wages.

IOPs solely and consistently relying on a single / specific remuneration source without carefully considering the Claimant's background, occupational history and profile and the implication of the same on expert earnings assumptions may: (1) overestimate earnings potential when utilising consultant surveys only (whether basic salary or guaranteed earnings); or (2) underestimate earnings potential when using minimum prescribed wages or StatsSA information only – the latter derived from respondents reported earnings (and they would usually just report what they receive in cash).

By way of illustration, an analysis of various actual loss of earnings claims by the Actuarial Damages Committee is included as **Annexure B: Career Ceiling Analysis**.

In general, Claimants with better qualifications, with stable occupational backgrounds, and who previously worked in larger organisations tend to earn according to consultant surveys; whilst those with lesser educational attainment, tenuous occupational backgrounds, and / or employment histories only within smaller companies that do not necessarily use formal job grading principles to inform earnings tend to earn according to StatsSA / minimum wages / Bargaining Councils, etc. earnings (Vente 2020);

- Where / when indicated (see above), it is important to evaluate roles using formal job grading principles (i.e., analyse / describe the Claimant's job and role) to infer a likely organisational level (e.g., Paterson, Peromnes, Hayes, etc.) and to understand what the market pays for a role and / or benchmark the Claimant's earnings level.

Note – the use of actual earnings to determine at what Paterson level a person is / was, is not an acceptable practice. In addition, job titles may also be misleading in terms of actual level of work;

- Even in the informal sector one needs to assess the level of skill (i.e., unskilled and semi-skilled);
- For individuals employed in the government sector defined remuneration scale – e.g., NAPTOSA, SAPS, SANDF/SAAF, OSD and Non-OSD), the IOP must research and understand notch increases, grade- and post progression policies (i.e., progression cycles and progression limits);
- Earnings sources, or a combination thereof, should be selected depending on the background, work record, and profile of the Claimant (also see section VIII).

6.4.8. Consider employment trends and statistics / labour market dynamics:

- Available, reputable sources may support most probable and realistic postulations such as research by Statistics South Africa (including but not limited to the Quarterly Labour Force Survey, General Household Survey, etc.), Department of Higher Education and / or other research articles outlining throughput and dropout rates, Occupations in High Demand, etc. (also refer **Annexure C: Education Statistics**);
- Understand the current labour market conditions and / or trends (using reputable sources) and the impact of the same on likely employment of various categories of employees – and clearly note the same (e.g., an increase in unemployment, results in an influx in the informal sector which in turn may adversely impact earnings; individuals practising occupations in high demand have an increased chance to earn at higher levels, etc.);

- Either consider in the postulation (quantification), the application of pre-incident contingency (non-quantifiable), or both. However, beware of “double counting” (i.e., using factors as risks if you have already used it to support reduced earnings).

6.4.9. Consider industry information and expert indications regarding likely retirement age:

- If available, IOPs should make use of factual information when predicting retirement, and where possible, avoid using a generic “rule of thumb” such as 60 to 65 years for all Claimants.
- The specific profile and circumstances of the Claimant should be considered [i.e., Government employees retirement ages may differ dependent on the nature of their roles (e.g., uniformed officers vs administrative personnel) and branch of government (e.g., provincial / local authorities)];
- Where applicable and / or appropriate, use formal surveys such as the well-known “Benchmark Surveys”, Bargaining Council agreements or specific pension / provident fund rules. Note that these surveys pertain only to those with formal and / or prescribed retirement benefits;
- Whilst Statistics South Africa deem the labour force to be people from 15 to 64; self-employed individuals may retire closer to 70 (dependent on the nature of employment and / or availability of assistance for heavier physical tasks). Farmers, in general, are a well-known older group – implying that many would be over 65 years old. It is therefore important to carefully consider each matter based on its merits;
- In some instances, professionally qualified individuals (i.e., engineers) or individuals with scarce skills / working in occupations with high demand may continue working (and earning) after retirement; albeit (in most instances) with less benefits and / or as part-time contractors to their old workplaces working only when required. Consider each matter on merit;
- Qualifying individuals will be eligible for a Government Older Persons Grant from the age of 60 years. Individuals who earn substantially more than the Government Older Persons Grant may not qualify or may elect to carry on working; whilst individuals who are not able to retire comfortably despite a Government Older Persons Grant may equally elect to carry on working. As above, consider each matter on merit.

6.4.10. Consider actual post-incident work record:

- If the post-incident work record is deemed as virtually the same as it would have been irrespective the incident in question, indicate / describe such situation and integrate as pre-incident scenario (the same scenario to be integrated later in the report as post-incident scenario). Consider non-incident-related factors as noted in paragraph 6.4.6).
- If pre-incident would have differed, make a detailed prediction of what probably would have occurred in the absence of the incident, and as noted below.

6.4.11. Use the above to support reported level of income and to make fair and realistic pre-incident / but for the incident postulations.

6.4.12. Integrate and postulate likely / probable pre-incident scenario:

As indicated in paragraph 6.2.1, the IOP must consider that their opinion will be used by an Actuary. To be able to make a pre-incident calculation of earnings stream, the Actuary requires specificity as far as reasonably possible, including:

- Remuneration survey / scale recommended for use and reasons therefore;

The use of a “legacy table” (often cited as originating from the former PE Corporate Services) indicating educational attainment (NQF levels) and the expected Paterson level on entry and at career plateau, have been criticised by legal representatives and Actuaries alike. In response to PE Corporate Services being referenced in expert reports, a general letter to practitioners was sent on 4 March 2020 (by M Trollip, CEO of PE Corporate Services) with the following excerpts: *“Various NQF qualification levels are correlated with suggested Paterson job grade ‘entry’ and ‘ultimate’ levels and the correlation attributed to P E Corporate Services. In this regard we bring to your attention that we have never attempted to correlate NQF levels with Paterson grades and believe that the attempt to do so on a statistically valid basis is both difficult and potentially misleading”.*

Where the use of formal grading systems is indicated to benchmark earnings (also refer paragraph 6.4.7), it is prudent to holistically consider a number of factors (i.e., job complexity, accountability, responsibility, decision-making, etc.) along with likely educational attainment to facilitate progress to such level. A table delineating the aforementioned and likely work levels is included as **Annexure D: Organisational level considerations**. Note that this table is purely intended for contextualisation purposes and should not be used in isolation;

- Time frame to enter the labour market and earnings at entry point (i.e., for a minor); or
- Earnings at the time of the incident;
- Career ceiling and earnings at career ceiling:

Remember: An individual (1) can progress to roles with higher levels of complexity (i.e., promotions to higher levels); or (2) work in the same role and compete for higher paying income; or (3) may have already reached career- and earnings ceiling.

Remember the corporate pyramid – the higher the progress in the organisational hierarchy, the fewer positions are realistically available. Refer **Annexure E: Distribution of Incumbents for a Consultant Remuneration Survey**;

- Thus, the IOP should only predict promotions they deem probable, and not all possible promotions. Collateral employer information is important to motivate and support such promotions / progress; however, the IOP should guard against bias and carefully consider pre-incident occupational history to support and / or inform the IOP expert's opinion on probability for progression;
- The median (or 50th percentile) represents the mid-point of a data set (the method of categorising earnings in 4 quartiles is used to exclude outliers that fall below Q1 and above Q3 that will distort the average earnings). Thus, earnings at the median (or 50th percentile) is the most reasonable indication of earnings in a specific data set;
- Where all earners within a certain job / category (i.e., Paterson or Unskilled & Semi-skilled) are lumped together in a single data set structured as lower quartile, median, and upper quartile; age, experience, and skill may potentially be an indicator of earnings within the data set;
- Age / age range at career ceiling;
- Predicted progress to career ceiling, i.e., straight line, more progress points (such as promotions to higher levels – consider roles / range of roles relevant to that person's career) or inflationary increases (in the event of no further progression) to define the progress line;
- Consider and describe factors regarding pre-incident contingency deductions (also see paragraph 6.4.6). The IOP must provide an expert opinion on likely and salient effects of pre-existing / unrelated factors on a Claimant's pre-incident career- and earnings prospects (e.g., if pre-existing / unrelated learning problems were identified by other experts, such problems could possibly slow down career progress and cause a later or lower ceiling);

- Retirement age;
- At all times, the IOP report must adhere to the standard of providing a probable or likely scenario (i.e., a scenario with a probability of more than 50% / most likely / most probable) based on all information at hand (M T v Road Accident Fund; H M v Road Accident Fund 2020). If an IOP is less than 50% certain about a scenario or about aspects of a scenario, they should clearly say so. In such cases, it may be helpful to then predict more than one scenario. However, the IOP should not use more than one scenario as a standard method to cover uncertainties as (1) that causes a lot of additional calculations, and (2) the Courts tend to prefer one scenario as the most likely one. Where more than one scenario is used, indicate which is the most probable scenario and which is a possible / optimistic scenario and indicate reasons therefor (also refer paragraph 6.3.3).

6.5. Post-incident Scenario

- 6.5.1. Consideration as per paragraph 6.4.1 and 6.4.2 would provide an indication of type of employment the claimant would have been predisposed to.
- 6.5.2. Consider actual post-incident work record (see paragraph 6.4.10).
- 6.5.3. Consider available expert opinion (i.e., other medico-legal / psycho-legal reports) and the likely impact on the Claimant considering type / level of work:
 - Severity of head injury and the effects thereof (if any);
 - Cognitive difficulties (if no head injury, can be due to reactive, rather than organic, factors);
 - Psychological / emotional difficulties;
 - Physical and functional limitations;
 - The IOP is completely dependent on the evaluation of other experts. Therefore, a comprehensive analysis and summary of their opinions are required – preferably with some direct verbatim quotations / extracts. Ensure that the paragraph number (from the expert's report) is included in the quotation, if not numbered provide the page number, if no numbering, IOP can indicate the same. (Office of the Judge President 5 July 2019);
 - Such summary of expert opinions should be clearly separate from the IOP's analysis and opinion; and should contain only information relevant to the IOP report (also see paragraph 6 - overview).

- 6.5.4. Consider prognosis and whether the Claimant has received the recommended treatment.
- 6.5.5. Consider and integrate collateral feedback (post-incident) – also refer paragraph 4.12 and 6.4.4:
- i.e., Medical and Occupational Therapist's opinions are that the Claimant is unable to perform medium and heavy physical work post-incident. This was practically demonstrated at the workplace when noting that the employer made significant accommodations at work by transferring the Claimant from his job as underground mine worker to surface workshop assistant; or
 - The Claimant's injuries are expected to improve over time (medical opinion), as is demonstrated by employer feedback that Claimant performed so well after the incident that he was promoted a year after the incident, with no incident related impact noticeable.
- 6.5.6. Consider psychometric results (own and other experts) – also see paragraph 5 and 6.4.5:
- The IOP should interpret psychometric test results in terms of their implications on the career and earnings of the Claimant;
 - Other experts may not always relate the results in a way that clarifies the effect on a job situation. It is the role and responsibility of the IOP to do this (i.e., consider the impact of mild cognitive fall-out on a skilled worker vs an unskilled worker). It may mean obtaining additional clarification from the other expert;
 - Considered that test results may be somewhat different after treatment. For instance, it is well-known that depression would negatively influence cognitive performance. Therefore, carefully consider the relevant Psychologist's opinion regarding prognosis.
- 6.5.7. Consider unrelated / pre-existing factors (as per own and other experts' information) – refer paragraph 6.4.6:
- Current problems of the Claimant may be indicated for integration with pre-existing / unrelated factors in the description of a post-incident scenario; however, beware of "double counting" (i.e., use factors as risks if you have already used it to support reduced earnings).
- 6.5.8. Earnings analysis and benchmarking (i.e., selecting the most relevant source(s) earnings sources) – see paragraph 6.4.7.

6.5.9. Consider time out of the labour market (i.e., a long period of absence and the likely effects thereof in jobs where skill / content / knowledge required is continuously evolving).

6.5.10. Consider employment trends and statistics / labour market dynamics – refer paragraph 6.4.8 – and describe the impact of any incident-related *sequelae* / limitations on career- and earnings potential and / or employability and / or competitiveness against the backdrop of the same.

6.5.11. Consider industry information and expert indications regarding likely retirement age – also refer paragraph 6.4.9:

- Early retirement will lead to a loss of earnings by way of earlier exit from the open labour market;
- Regarding post-injury retirement, other expert opinion, especially medical predictions, is very important. In the event that earlier retirement is indicated (i.e., 5 years earlier), obtain clarification from relevant expert as to assumed pre-incident retirement age if not indicated;
- Even when there is no indication from other experts regarding retirement, the IOP should evaluate all factors influencing retirement. For instance, lower post-incident earnings and / or degenerative changes (if reasonably attributable to incident-related *sequelae*) may render the Claimant prone to consider a Government Older Person's Grant (i.e., "state pension");
- Retirement is not only about physical health, but also a psychological decision (i.e., motivation and personal circumstances). Subject to relevant expert opinion, psychological difficulties may render the Claimant prone to consider earlier retirement more readily;
- Where there is no clear likely and quantifiable effect on retirement, it may still be a factor to acknowledge (if indicated by information at hand) in contingencies to be considered.

6.5.12. Use all of the above to support reported level of income and to make fair and realistic post-incident postulations, ensuring consistency ("golden thread") with statements and / or postulation in report.

6.5.13. Integrate and postulate likely / probable post-incident scenario:

As indicated in 6.2.1, the IOP must consider that their opinion (supported by information at hand) will be used by an Actuary. To be able to make a post-incident calculation of loss of earnings stream, the Actuary requires specificity as far as reasonably possible, including:

- Remuneration sources recommended for use and reasons therefor (also see paragraph 6.4.7 and 6.4.12);

Post-incident, the Claimant may fall into a completely different sector. For instance, pre-injury they may have been a likely candidate for formal sector and / or guaranteed package earnings; however, after the injury the Claimant may realistically only be expected to be employed in the informal sector.

As suggested for the pre-incident scenario, a holistic evaluation of the whole post injury profile should be made before selecting the applicable earnings source;

- Time frame to enter the labour market and / or earnings at entry or re-entry point; or
- Career ceiling and earnings at career ceiling (post-incident):

In some instances, career- and earnings potential is unaffected post-incident.

Extent of loss of work capacity is informed by (amongst others) the reliance on either physical- or cognitive capacity to continue with work that they are trained to do.

Address the legal question as to whether the Claimant can still progress in line with the pre-incident scenario, but with associated risk factors? (i.e., non-quantifiable loss of income – application of contingencies); or

The Claimant will not progress in line with the pre-incident scenario (quantifiable loss of income) – i.e., reduced capacity; still progress, but to a lower level compared to pre-incident or with a delay; or practically / functionally unemployable;

- Age / age range at career ceiling;
- Predicted progress to career ceiling;
- Consider and describe factors regarding post-incident contingency deductions:

IOPs should list the factors that should be considered in allocating contingencies and indicate the likely / anticipated effects of the same (i.e., longer periods of unemployment, slower than expected career growth, etc.).

The IOP must provide an expert opinion on likely and salient effects of the injury and resultant limitations on work capacity and / or earnings capacity (as noted above). IOPs should indicate clearly where contingencies should be applied to aspects that cannot be quantified; however, beware of “double counting” (i.e., use factors as risks if you have already used it support reduced earnings).

Avoid specifically naming contingencies, i.e., a “slightly higher than normal contingency“. Contingencies are the prerogative of the legal parties and the Court, and the IOP is best advised to use the term “*appropriate contingency deductions*”.

The legal parties or even the Court may place some pressure on the IOP regarding the size of the contingency, but this should be resisted. Contingencies are based on legal arguments and case law and should rather be left to the legal experts;

- Critically evaluate the use of the following terms (against the backdrop of IOP expertise) in other expert reports – as all have an impact on actuarial calculations:

Accommodations: Typically, reasonable in nature – i.e., ergonomic chair, alteration in posture, etc.

Sympathetic employment: Individual would not be able to enforce right to such payment if unable to perform the duties of the role for which remunerated (i.e., remuneration exceeds value of services and places undue financial burden on employer). This has an implication on quantum / actuarial calculations as payments out of generosity or benevolence are typically disregarded when quantifying damages.

Sheltered employment: Specific entities providing employment for disabled people and / or where people with disabilities receive services and training to develop work-related skills and behaviours, usually with exemptions from labour standards (e.g., minimum wage). The demand far exceeds supply; and typically, participation / employment in a sheltered / protected employment environment is regarded to be of a therapeutic nature and does not provide a viable income;

- Retirement age;
- At all times the IOP report must adhere to the standard of providing a probable or likely scenario (i.e., a scenario with a probability of more than 50% / most likely / most probable) based on all information at hand ((M T v Road Accident Fund; H M v Road Accident Fund 2020)) (also refer paragraph 6.4.7);

- It is important that the IOP should be factual and not over- or underestimate the effect the injury;
- Recommended future treatment and estimated improvement or worsening should also be considered;
- The role of the IOP is to put the Claimant in the same financial position they would have been had the incident not occurred.

6.6. Quantification Summary

6.6.1. Nature of the loss (if any):

- The IOP should clearly indicate if there was indeed a loss of earnings or earnings capacity;
- Utilising expert opinion at hand, the IOP should be clear as to the impact of limitations / fall-out as a result of the incident on ability and / or behaviour to perform employment relevant to educational background and occupational experience (if any);
- Loss may be indirect only and not quantifiable. If this is the case, it should be stated clearly; and in the case of indirect loss only, the loss may only be in terms of contingency deductions (also see paragraph 6.5.13).

6.6.2. IOPs may consider the use of a quantification table (summary) to aid the Actuary in the quantification of the claim. The quantification table may consist of:

- Basis of the claim;
- Career history (optional);
- Uninjured / pre-incident income (probable scenarios not possible / potential):

List all foreseeable earnings milestones;

Actuaries require more than just a vague reference to an earnings source and points on such an earnings source. E.g., Paterson C2 with a table of figures supplied with it are not enough. The IOP should indicate clearly how they suggest the Paterson related source should be used (e.g., basic salary vs total package).

The ideal is to provide such figures as probable, not possible. However, at times the IOP might not be able to provide probable figures. If that is the case, the IOP may indicate that they are somewhat uncertain regarding the figures at such a point. The IOP can then indicate contingencies will have to be applied to that point.

It is not acceptable that the IOP would indicate that a decision is “hard” and then make no quantified prediction at all. The IOP has the most information regarding the career and earnings of the person.

Employer contributions / fringe benefits must be interpreted in terms of their monetary value and not just vague references to them (also see paragraph 6.4.7);

- Injured / post-incident income – as above;
- Notes on contingencies uninjured / pre-incident and injured / post-incident), including case-specific factors to consider (industry / role, medical conditions, scope for accommodation, etc.);
- Refer **Annexure F: Example of a quantification table**.

6.7. Ethical considerations in the compilation of an IOP report

- 6.7.1. A psycho-legal report is written for the benefit of the Courts and is about the subject rather than for the subject.
- 6.7.2. In compiling a report, practitioners provide the Courts with scientific and professional practice information unique to the profession of Industrial Psychology, which is outside the experience, and knowledge of the legal team and others.
- 6.7.3. Practitioners compile reports that are clear, evidence-driven, grammatically sound, and focused on the referral / legal question(s).
- 6.7.4. A report must be written in a manner that anticipates critical analysis, disagreement, verbal confrontation, and / or cross-examination.
- 6.7.5. In compiling a psycho-legal report, practitioners consider who requested the report, who might read the report and what information the report should provide. The report should address the legal / referral question completely, without addressing any peripheral issues.
- 6.7.6. Practitioners disclose all sources of information obtained in the course of their professional services and identify the source of each piece of information that was considered and relied upon in formulating a particular opinion and / or conclusion.
- 6.7.7. Practitioners represent alternative hypotheses/ perspectives including data, studies, or evidence on both sides of the legal question in an accurate, fair, and professional manner, and weigh and present all views, facts, and opinions impartially.

- 6.7.8. Practitioners provide opinions that are sufficiently based upon scientific foundation, reliable, and valid principles and methods that have been applied appropriately to the facts of the case. Practitioners make known the status and limitations of these principles and methods.
- 6.7.9. Practitioners stay within the registered scope of psychological practice and the recognised scope of their registered category.
- 6.7.10. Practitioners do not present their opinions as statements of facts but as a reasonable conclusion to the available facts and results determined in the psycho-legal assessment.
- 6.7.11. Practitioners do not, by commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion.
- 6.7.12. Practitioners do not amend their opinions at the behest of the paying party.

DRAFT

D. JOINT MINUTES

7. Background and rationale of joint minutes

7.1. Practice manual: Gauteng Local Division of the High Court:

- 7.1.1. 6.5.5: *“In all trials in which the parties have opposing expert witnesses, such opposing expert witnesses must meet and reduce their agreements and disagreements to writing in joint expert minutes, signed by them....”*
- 7.1.2. 6.15.9.9.2 *“Joint minutes must identify exactly what is agreed and what is not agreed, with reasons stated why agreement cannot be achieved, especially as to whether the disagreement relates to a fact clinically observed or interpretation of facts.”*

7.2. Rationale

- 7.2.1. Joint minutes produced by expert witnesses are central to many litigious matters. Medico-legal matters are no exception, especially considering the loss of earnings and income at stake. They detail the basis upon which experts agree (and disagree), and in doing so, they narrow the issues in dispute, which in turn limits the evidence that is required to be led at trial.
- 7.2.2. The use of joint minutes is actively encouraged by the Courts because such agreement can reduce the scope of any hearing. It should be remembered that medico-legal cases tend to be substantial on the Court roll. Recently there has been increased pressure from Courts not to proceed further without experts' joint minutes being finalised before substantive hearings.
- 7.2.3. The objective of joint minutes between experts (read IOPs) is to limit the issues in dispute / to narrow down the issues so as to assist the parties in settling a matter and curtail unnecessary Court proceedings. The parties will therefore be in a position to settle where there is agreement; and Court action and litigation (for purposes of adjudication) will therefore focus on of areas where there is disagreement. An attitude of co-operation, instead of an adversarial approach, between professionals is therefore important.

7.3. Parties to the joint minute

- 7.3.1. Joint minutes are not to be delegated to individuals (1) not duly registered as and practicing as Industrial Psychologist in line with guidelines of the HPCSA; and / or (2) IOPs who have not assessed the Claimant and written the report.
- 7.3.2. When read together, Chapter 1, 2 and 7 of the HPCSA's Rules of Conduct pertaining specifically to the Profession of Psychology (Annexure 12) is indicative of IOPs engaging with individuals trained in the same competence area for an honest and candid conversation between parties.
- 7.3.3. If requested to engage in a joint minute with a party not duly registered as an Industrial Psychologist with the HPCSA, demand written acceptance by both legal teams to proceed. However, the following should be duly considered:
- The two experts that compile the report will be of equal standing. In other words, a Psychologist will compile a joint minute with another Psychologist. The reason for this lies in the fact that an expert who states a particular opinion, must be able to be challenged by an expert with the same knowledge and skill, as they are both adequately trained and experienced in that specific field (Medical Law SA n.d.);
 - Should the practitioners not be of equal footing, the issues cannot be narrowed, which defeats the purpose of a joint minute. This would introduce another level of complexity. Thus, it is recommended that Joint Minutes be undertaken by healthcare professionals / allied healthcare professionals who are registered in the same professional category at the HPCSA (Medical Law SA n.d.);
 - On the basis of the aforementioned and considering paragraph 7.3.2 above; it then follows that engaging in a joint minute with a party not duly registered as an Industrial Psychologist with the HPCSA, is advised against.
- 7.3.4. However, in the event that acceptance of a Joint Minute between an IOP and a party not duly registered is provided; the IOP is advised to consider the reason for referral in the instruction letter (i.e., Industrial Psychologists report vs a remuneration report) to inform the basis of the comparative report. In such case and acknowledging that a party not duly registered may not have the same frame of reference as an IOP (also see paragraph 7.3.2 and 7.3.3 above) – it may be advisable to engage in a comparative remuneration / earnings report rather than a Joint Minute.

8. Process

8.1. Instruction

- 8.1.1. In most cases the Plaintiff IOP will be the first to received instructions for a joint minute.
- 8.1.2. Ensure that both IOPs have clear instructions to proceed with joint minutes.

8.2. IOP Meeting

- 8.2.1. Physical / virtual / telephonic / electronic meeting to discuss (1) the approach; (2) salient points pertaining to the pre- and post-incident scenarios; and (3) ensuring IOPs have same info basis (expert reports, IRP5's / pay advices).

8.3. Principles

- 8.3.1. Joint minutes should be understandable and straight to the point. They should also be brief and in short, numbered paragraph format.
- 8.3.2. The numbering of paragraphs is therefore of utmost importance. IOPs should endeavour not to cut and paste their entire original IOP report, but rather provide a summary of key points.
- 8.3.3. All other expert joint minutes (e.g., from medical- and other allied health experts) must be shared and duly considered (note: if other expert joint minutes and / or report(s) are provided by party to the joint minute, check with the Instructing Party whether such has been formally filed as per legal procedure).
- 8.3.4. Joint minutes have to be clear in terms of the IOPs' agreements and disagreements, and reasons for disagreement.
- 8.3.5. Joint minutes are to be written in such a way that they are understandable and clear, with subsequent decreased chances for experts to be called to testify in Court.
- 8.3.6. There is a duty for experts to provide honest and substantiated expert views on matters that relate to their field of expertise. Both parties have to share documents / information / contact details at their disposal in order to try and narrow differences as much as possible:
 - Indicate information basis for the respective IOPs;

- Indicate clear reference to the IOPs' respective previous reports / addenda;
- List additional / new information received i.e., expert reports, IRP5's etc.

8.3.7. Be willing to concede if justified:

- Making a justified concession is not a sign of weakness – but not making a justified concession is a sign of inflexibility, bias and subjectivity;
- It is justified to concede when: new expert reports / addenda become available; updated remuneration figures are applicable; information not previously known becomes available (verify if possible); new Claimant events / developments since the IOP's report; error in the IOP report (i.e., incorrect remuneration scales, wrong approach);
- It is not justified to concede to avoid conflict, when being pressured into it (by the Instructing Party), or to avoid being called to Court to testify.

8.3.8. It is unethical for a practitioner to circulate a copy of the joint minute to the instructing Party for input before the joint minute has been finalised.

8.4. Establish and motivate pre-incident and post-incident scenarios separately:

8.5.1. The same principles apply to that of writing an IOP report (see paragraph 6.4 and 6.5).

8.5.2. Describe aspects of agreement.

8.5.3. Describe aspects of differences and motivate / provide reasons for disagreement.

8.5.4. Ideally a new integrated quantification table / agreement should be drawn up.

8.5.5. Although a single integrated quantification table / agreement is ideal, due to disagreements there may still be differences on some items.

8.5.6. Differences can be clarified via separate lines identified by initials on the quantification table.

8.6. Signing off

- 8.6.1. The joint minutes are to be signed (initials of both IOPs on each page, and full signature on last page). If not signed by both IOPs, the document will not be accepted and legally filed.
- 8.6.2. Ensure no changes after signature – keep hard copy on file, and only send the PDF format document.

DRAFT

E. EXPERT WITNESS TESTIMONY

9. Background and context

9.1. Rules of expert testimony

- 9.1.1. The role of a Court expert witness is to provide independent assistance to the Court by way of objective, unbiased opinion in relation to matters within their expertise. An expert witness should state the facts or assumptions upon which their opinion is based.
- 9.1.2. Courts expect practitioners who present themselves as expert witnesses to demonstrate that they are, in fact, specialists in the relevant field of expertise. In order to do this, experts are required to indicate to the Court that they have been trained in a particular discipline or have gained experience in that particular discipline and the specific field they are expressing opinions on (Kaliski 2006).
- 9.1.3. Expert testimony is presented in legal proceedings when a judge or jury needs assistance evaluating a material fact in Court proceedings; and the Court must consider the scientific trustworthiness of the evidence.
- 9.1.4. The Courts have ruled that testimony is deemed to be of assistance or helpful only if it has the capacity to add to the knowledge of judges and assist in their deliberations (Kaliski 2006).
- 9.1.5. Expert witnesses may not express an opinion on the question which the Court has ultimately to decide – the so-called ultimate issue rule.
- 9.1.6. The basis rule provides that experts must state the facts or reasons upon which their opinions are based (*S v Gouws* 1967 (4) SA 527 (E)).
- 9.1.7. Preparation and honesty are therefore key to being a credible expert witness.
- 9.1.8. A Court expert witness is also referred to as a friend to / officer of the Court. It is therefore important for the expert to remember that they are not representing a partisan interest but are assisting the Court without taking any sides, regardless of who is instructing / referring / paying the witness.
- 9.1.9. Adhere to areas within one's profession and training, and do not guess. Defer to relevant experts where necessary.

10. Practical aspects of being an expert witness

In contrast to other witnesses, expert witnesses cannot, as a rule, be compelled to evaluate people and testify about their findings. Where an expert agrees to assist, such involvement will be on the basis of a contract – preferably in writing – and such a contract must at least state the referral question, the specific task(s) expected of the expert, and arrangement in respect of payment, if any (Kaliski 2006).

10.1. Preparation

Experts have a responsibility to make sure that the facts they use are accurate. To be able to explain how and why they reached their opinions, experts must keep accurate records of the data collection process (i.e., document(s) perused, dates, start and finish times of assessments and the location where they took place, parties present, details of observations and findings made, opinions formed, details of communication with other people, etc.)

10.1.1. Experts are expected to prepare themselves to testify and are paid for the time spent doing this, such preparation may include reviewing relevant documents - including, but not limited to all reports at hand and all expert joint minutes. As necessary, experts may also have to review relevant literature.

- It is important to consider all reports that have been furnished to you as an expert. Disregarding some reports will be seen as taking sides and pursuing an agenda. Know who said what, who agrees with whom, and who differs with whom;
- When many expert reports are available, make your own summary table so as not to get confused;
- It is important to consider all other expert joint minutes that have been furnished to you as an expert. Know who said what, agreements and disagreements / differences between each set of experts;
- Prepare a list of findings by expert joint minutes in terms of own IOP opinion on Claimant's employability and loss of earnings – apply to substantiate own report or own IOP joint minutes.

10.1.2. Pre-trial consultations with the legal representatives are a vital aspect of experts' preparation. During these consultations the experts' reports should be critically examined to identify their strengths and weaknesses and to decide how they will be dealt with during the case. Legal representatives should tell experts what questions (but not the answers) they will ask and what questions they may be asked during cross-examination (Kaliski 2006).

11. Testify

11.1. General (Kaliski 2006)

- 11.1.1. The expert must enquire from the lawyer whether to sit in Court or wait outside.
- 11.1.2. Upon stepping into the witness box, witnesses will be asked to take the oath or affirm that their testimony will be the truth.
- 11.1.3. The expert must prove that they are qualified as an expert. During this stage, witnesses will be asked to give an overview of their relevant qualifications and experience. This will be to establish credibility as a witness. Evaluating a potential expert based on credentials and experience is only half the work. The IOP may also be asked about their qualifications, registration and how long they have been practicing psycho-legal work. This is done to ascertain whether they hold special expertise that others do not have.
- 11.1.4. The legal representative calling a witness will lead their testimony in what is called evidence in chief. During this stage the attorney / advocate tries to present the facts and opinions that support the Claimant's case to the Court.
- 11.1.5. Experts are allowed to take their reports into the witness box. The report itself is not the expert witness' evidence; the evidence is that is given orally from the witness box.
- 11.1.6. At the conclusion of the evidence in chief, the opposing party or their attorney / advocate can cross-examine the expert. Cross-examiners will usually examine the expert's qualifications, experience, and competence to establish whether they are, in fact, qualified to testify as an expert. They will then move on to probe the objectivity and credibility of the witness as such and the relevance and scientific credibility of the evidence. Experts under cross-examination should always appreciate that there is a difference between defending their opinions and the case of the person calling them as a witness.
- 11.1.7. Courts understand, and welcome, concessions appropriately made. For example, such as when experts realise that their opinions have failed to consider certain facts because they were unaware of them or if they had made a mistake. However, Courts dislike concessions made by experts who make concessions because they find it easier to defend a neutral position.
- 11.1.8. At the completion of cross-examination, the legal representative who had called the expert is entitled to re-examine the expert. This allows the legal representative an opportunity to ask questions about matters that arose

during cross-examination, but that had not been canvassed during the evidence in chief.

11.1.9. A witness who has been stood down must remain in Court because the judge may want to recall him or her. Witnesses should not leave the Court until the completion of the case, or until they have been excused by the Court.

11.2. Specific factors for consideration

11.2.1. The expert witness is ethically and legally obligated to tell the truth – refer to the Oath that the IOP took in Court (if applicable), which is binding on the conscience. Transcripts of depositions and Courtroom testimony are public records and subject to independent peer reviews. The expert witness should be aware that failure to provide truthful testimony exposes the expert witness to criminal prosecution for perjury, civil suits for negligence, and revocation or suspension of their professional license. Short answer is - answer the questions directly (do not talk too much).

11.2.2. During their testimony, experts must be able to substantiate their opinions with reference to the facts of the case and their findings:

- It is important to review all the relevant medico-legal information in the case and testify to its content fairly, honestly, and in a balanced manner;
- Experts can rely on such reports and notes as they would, in the normal course of their professional activities, rely on in forming opinions. However, in doing so, experts must not act as mere conduits, but must make an independent professional judgement regarding the reliability of the information provided in these reports or notes (Kaliski 2006);
- Experts may rely on the general body of knowledge that constitutes their field, including the scientific literature in the relevant field, provided that the expert has determined that the literature is trustworthy and has personal experience in the field to estimate the plausibility of the views expressed in such a source (Kaliski 2006);
- The witness may be called upon to draw an inference or an opinion based on the facts of the case. In doing so, the IOP should apply the same standards of fairness and honesty.

11.2.3. Be prepared to state the basis of the testimony or opinion and whether it is based on personal experience, specific clinical references, evidence-based guidelines, or a generally accepted opinion in the IOP expert area. Be prepared to discuss important alternative methods and views, or to motivate IOP previously stated opinion.

11.2.4. Concede mistakes readily if they become apparent. It is better to apologise to the Court for making a mistake than to try and justify wrong or incomplete decisions or courses of action. The IOP must be willing to adapt their opinion to integrate relevant facts and reasonable conclusions as they become apparent during the trial (also see paragraph 11.1).

11.2.5. Compensation of the IOP witness should be reasonable and commensurate with the time and effort given to preparing for testimony and the actual time spent at Court. It is unethical for an expert witness to link compensation to the outcome of a case. The Road Accident Fund (RAF) and State Attorney have tariffs to be used.

11.2.6. Particularly when an expert is addressing a complex subject such as psycho-legal and any financial loss a Claimant has suffered as a result of injuries, the Court may have difficulty understanding the technicalities associated with their explanation and rely instead on credibility.

11.3. Practical aspects

11.3.1. The person to address in Court is the Judge. The advocates (called "Council") ask the questions, but the IOP witness answers / addresses the Judge directly. Address the Judge as "My Lord" (male judge), or "My Lady" (female judge).

11.3.2. The "manager" of the trial proceedings is the IOP's legal team Advocate. The IOP witness is part of the Advocate's legal team in Court, and should receive and consider instructions or advice, but only insofar as they are ethical and not impeding on the IOP's objectivity and expertise.

11.3.3. Occasionally the "opposing" Advocate will have a hostile and aggressive attitude toward the IOP witness. Tactics could include wrongful or slanted reference to the IOP's previously stated opinion, comments about the IOP's "biased" report, and even personal attacks on the IOP's credibility and professionalism. Do not respond / react or get into a debate with the Advocate.

11.3.4. When giving evidence, the expert must try to appear confident without being arrogant or condescending and avoid getting angry.

11.3.5. Address the judge, speak slowly, clearly, and audibly, and keep to the point.

11.3.6. It is important that the expert clearly identify the sources of facts – and must be prepared to have most of their facts tested by the cross-examination of the source.

11.3.7.If the expert witness wants their evidence to be seriously considered, dress appropriately.

11.3.8.The IOP must make sure that they know and follow Court etiquette and be Courteous to everybody in Court.

11.3.9.It is always important to be on time – legal teams and Court staff are usually prepared to give experts an indication of when they should tentatively be at Court.

12. Ethical considerations in expert testimony

12.1. Impartiality and honesty

12.1.1.As a friend to / officer of the Court, experts must endeavour to be impartial and honest.

- As it is lawyers' ethical duty to present their clients' cases in the most positive way, it is almost inevitable that the information that they give to the expert will be specifically selected and presented in order to strengthen a particular viewpoint. This requires experts to examine information received from instructing Parties critically, and to make sure that such material does not colour their own observations and findings.

12.1.2.Remember the competency rule, which stipulates that practitioners should only provide services in areas in which they have adequate training, knowledge, skill, and experience. In the case of practitioners working as experts, this means that they must be specialists in the field they testify about.

12.1.3.Practitioners understand that their role is marked by a relationship of trust between the expert and the Court, and they first act in the interest of the Court, putting all other obligations second.

12.1.4.Practitioners must make it clear when a particular question or issue falls outside their scope of expertise.

12.1.5.Practitioners must document and prepare to make available, subject to Court order or the rules of evidence, all data that form the basis for their evidence.

12.2. Objectivity and Neutrality

12.2.1.IOPs possess specific training and registrations that other people do not possess. Nevertheless, it is the Judge, and not the expert, that is the ultimate

fact finder. It is therefore central to the role of expert witnesses, and to their ethical obligations, that they give a clear account of their conclusions and reasoning to reach an informed and independent judgment as to how far expert evidence can be relied upon.

12.2.2. As noted in paragraph 11.1, great reliance is normally placed upon cross-examination and the ability to ensure that experts are held accountable for their methods and inconsistencies to be identified.

12.2.3. There is compelling social psychological evidence that it is impossible for any person to be totally impartial. For experts there are a number of factors inherent in the situation that not only contribute to the perception that they are partisan but may, in fact, make it difficult for them to remain truly impartial. It is therefore important that persons who take on the role of expert witness should be aware of these factors and should take steps to ensure that they remain as objective as possible despite of them (Kaliski 2006).

- It is therefore wise for experts to try to remain distant from the legal representatives that engage their services without appearing to be rude;
- To counteract bias, or at least the perception of bias, from developing, avoid becoming overly reliant on instructions from one group. Take work from other types of litigants and law firms – this may even necessitate sometimes offering services at a reduced rate, or free of charge to those other litigants;
- A dangerous form of bias is of a type that is internal, that is when experts allow their own ideology, morality or pet theories to influence their opinions (Kaliski 2006);

12.2.4. Practitioners present evidence that is seen to be an independent product of an expert, uninfluenced as to form and content by the exigencies of litigation, to the Courts.

12.2.5. Practitioners provide expert testimony, state the facts or assumptions upon which their opinions are based. They do not ignore or omit to consider material facts which could detract from their concluded opinion.

Annexure A: Case law which highlights problems in Industrial Psychology Psycho-legal reports

AM and another v MEC Health, Western Cape (1258/2018) [2020] ZASCA 89 (31 July 2020)

Bvuma v Road Incident Fund (2010/17220) [2012] ZAGPJHC 258 (14 December 2012)

Donough v Road Incident Fund (8962/06) [2010] ZAGPJHC 100

Du Plessis v Road Incident Fund (87933/2016) [2018] ZAGPPHC 104 (9 March 2018)

Government (27428/10) [2016] ZAWCHC 180 (7 September 2016)

Hlalele Obo Hlalele v Road Incident Fund (41304/2013) [2015] ZAGPJHC 54 (26 March 2015):

Kunene v Road Incident Fund (07/8693) [2011] ZAGPJHC 194 (8 December 2011)

Lazarus v Rand Steam Laundries (1946) (Pty) Ltd 1952 (3) SA 49 (T)

M v Road Incident Fund (12780/15) [2017] ZAGPJHC 65

M.D. Taylor v Road Incident Fund (37986/2018) ZAGPJHC (16 November 2020)

Mlotshwa v Road Incident Fund (9269/2014) [2017] ZAGPPHC 109 (29 March 2017)

Ndlovu v RAF 2014 (1) SA 415 GSJ

Ndlovu v Road Incident Fund (39302/10) [2013] ZAGPJHC 201; 2014 (1) SA 415 (GSJ)

Ngwane Road Incident Fund (RAF273/15) [2017] ZANWHC 82 (17 October 2017)

Nonyane v Road Incident Fund (3126/2016) [2017] ZAGPPHC 706 (10 November 2017)

Ntombela v Road Incident Fund (209709/2016) [2018] ZAGPJHC 41 (19 March 2018)

RAF vs Kerridge 2019 (2) SA 233 SCA

Schneider NO & Others v AA & Another, 2010 (5) SA 203 (WCC)

Stock vs Stock 1981 (3) SA 1280 (A)

Annexure B: Career Ceiling Analysis

Courtesy of the Actuarial Damages Committee [sub-committee of the Actuarial Society of South Africa (ASSA), made up of Actuaries specialising in 3rd party and damages claims]

An analysis was performed on various actual loss of earnings claims, where the data was split into two sets, generically named as follows:

- **“Student” data set:** Consists of individuals that were either pre-school, at school or completing tertiary studies at the time of the accident. The highest level of education was therefore not yet achieved at the date of the incident and by definition no employment history was available.
- **“Post-student” data set:** Consists of individuals whose highest educational outcome was known at the time of the accident (e.g., dropped out of school, Grade 12, Degree, etc.). Depending on the age of the individual, a limited to more extensive employment history may be available.

For all the claims an Industrial Psychologist (IOP) was appointed. In respect of the pre-incident scenario, the ultimate career ceiling postulated by the IOP was captured. For ease of comparison, all values were adjusted to current (2022) terms.

Postulations in respect of the first data set were typically based purely on opinion and generalised career models, as very limited information is available. Postulations in respect of the second data set were based on more concrete information, as educational and employment outcomes were generally available although opinion and general models were sometimes also used. Both the data sets could theoretically be sub-divided further to provide more homogenous groupings. The aim of the analysis is, however, to establish if some rudimentary conclusions can be drawn based on the two broad groupings.

A summary of the two data sets is as follows:

	Student data set	Post-student data set
Number of IP's represented	47	77
Number of earnings postulations	87	189
Average age at date of accident	13.0	36.1
Average career ceiling (2022 terms)	R659 455	R266 071

The above results indicate that the average career ceiling for the Student data set is around 2.5 times higher than for the Post-student data set. This seems unusual as one would expect the underlying population from which the two data sets are drawn to be similar. In addition, one would not expect the educational outcomes and career opportunities for the Student data set (younger individuals) to be that much improved relative to the Post-student data set (older individuals).

The analysis was further refined to include only IOPs that were present in both data sets. A summary of the resulting two data sets is as follows:

	Student data set	Post-student data set
Number of IOP's represented	37	37
Number of earnings postulations	72	117
Average age at date of accident	13.2	35.2
Average career ceiling (2022 terms)	R597 626	R274 760

The above results imply that the average career ceiling for the Student data set is around 2.2 times higher than for the Post-student data set. The averages for the refined analysis are not significantly different from the broader analysis, hence subsequent comments are based on the broader analysis.

A further breakdown of the distribution of the observed career ceilings for the two data sets are as follows:

Range	Student data set	Post-student data set
Less than R100 000	4.6%	41.2%
Between R100 000 & R250 000	13.8%	31.2%
Between R250 000 & R500 000	23.0%	13.8%
Between R500 000 & R1 000 000	36.8%	10.1%
Above R1 000 000	21.8%	3.7%
Total	100.0%	100.0%

From the above table it can be seen that for the Student data set, the majority of observations (58.6%) lie above R500 000. In contrast, for the Post-student data set, the majority of observations (86.2%) lie below R500 000. A stark difference is apparent at the lowest level (below R100 000) where only 4.6% of the observations lie for the Student data set, but 41.2% lie for the Post-student data set.

Annexure C: Education Statistics

Courtesy of the Actuarial Damages Committee [sub-committee of the Actuarial Society of South Africa (ASSA), made up of Actuaries specialising in 3rd party and damages claims]

The Department of Higher Education and Training publishes various documents regarding higher education.

In this section some statistics are highlighted from *the Post-School Education and Training Monitor (March 2021)*. This section only provides an example of the statistics that experts should take into account when postulating an earnings progression. Independent research is therefore encouraged.

The table below indicates the highest level of education attained by various proportions of the population. In addition, the table shows the unemployment rate associated with each level of education. The statistics are based on data for 2020 and the population aged 25-64 years:

Highest level of education attained	Number in population ('000)	% of population	Unemployment rate
No schooling	639	2.2%	24.1%
Less than primary schooling	2 031	7.0%	27.5%
Primary schooling	1 156	4.0%	32.9%
Secondary schooling (less than Grade 12)	11 119	38.5%	34.7%
Secondary schooling (Grade 12 or equivalent)	9 281	32.1%	27.2%
Certificate	991	3.4%	22.8%
Diploma	1 737	6.0%	15.6%
Degree	1 730	6.0%	8.3%
Other	224	0.8%	23.5%
Total / Average	28 908	100.0%	27.5%

The table below indicates the percentage of students that complete a 3-year degree as well as the duration to completion, per year of intake. The statistics are for both contact and distance learning (refer to the relevant publication for statistics that distinguish between the two types of learning):

Duration to completion								
Intake year	3 years	4 years	5 years	6 years	7 years	8 years	9 years	10 years
2009	18.8%	35.1%	46.0%	52.0%	55.7%	58.1%	59.7%	60.9%
2010	21.5%	39.0%	50.3%	55.8%	59.2%	61.3%	62.7%	
2011	20.9%	38.0%	48.9%	54.4%	57.5%	59.7%		
2012	22.9%	40.5%	51.7%	57.2%	60.5%			
2013	26.6%	46.2%	57.6%	63.4%				
2014	28.1%	47.8%	59.6%		Data not yet available			
2015	28.6%	49.1%						
2016	29.9%							

The table indicates the following, that are of interest:

- The percentage of students that complete a degree in the minimum period of 3 years has improved from 2009 to 2016. It is however still less than a third of students that accomplish this feat.
- Around 50% of students take at least 4 years to complete a 3-year degree. The remainder take longer or do not complete the degree.
- Some students are able to complete a degree over an extended period of time. After 6 years it is, however, only a small percentage of students that are successful in this regard (typically a further 1%-3% of students per additional year of study).

The data for the later intake years are not yet fully developed. If one however projects the development for the 2016 intake, using prior years as guidance, it looks as follows:

Intake year	3 years	4 years	5 years	6 years	7 years	8 years	9 years	10 years
2016 (projected)	29.9%	50.4%	61.7%	67.3%	70.7%	72.9%	74.4%	75.6%

Annexure D: Organisational level considerations

Paterson	Type work	Nature and Decisions	Likely Education Prerequisite	Examples
A1	Primary	Unskilled / basic skills. Prescribed defined decisions. Low variety.	None / some schooling / NQF1-3	Labourer, Worker, Cleaner, Tea Maker Security Guard, Packer
A2				
A3				
B1	Operational	Semi-skilled. Automatic / operative decisions. Limited discretion.	Gr 12 / NQF4	Junior / entry level. Operator, Driver, Clerk, Shop assistant, Bookkeeper Receptionist, Fireman, Crane Driver, Apprentice, Cashier
B2				
B3				
B4				
B5				
B4	Snr / Supervisory		+ NQF 5 certificate / occupational cert. + Experience.	Senior / supervisory. Snr Salesperson, Clerk, Secretary,
B5				Customer Services Consultant, Supervisor telesales, sales consultant, PA, Jnr artisan
C1	Advanced operational. Specialist / Expert	Skilled technical. Jnr management. Process / system. Routine decisions. Knowledge understanding.	National Diploma NQF6 Degree NQF7 Artisan qualifications	Artisan, Sales rep, Jnr Accountant, HR Assistant, Canteen Supervisor.
C2				Programmer, Safety Officer, Assistant Foreman, Artisan
C3				Accountant, Artisan supervisor, Senior buyer, Engineer technician, Production foreman, HR officer
C4				Area manager, Foreman, Site Foreman/Supervisor, Chemist, Geologist
C5				Jnr manager Chief Safety Officer, Production Superintendent
D1	Tactical management. Specialist manager.	Middle management. Professional. Interpretive decisions. Interpret plans program Action plans programs	Degree NQF7 Post-degree NQF8-9 Professional registration. Extensive experience	Manager / HoD, Financial Analyst, Industrial Relations Manager, Transport Manager, Engineer
D2				Legal Officer, Quality Control Manager, Project Manager
D3				Medical Doctor, Production Manager, Senior Scientist, CA
D4				Financial Manager, Logistics Manager, Marketing Manager, Civil Engineer
D5				Group Manager, Senior Actuary, Chief Chemist
E1	Senior manager. Chief specialist.	Senior management. Programming decisions. Long-term plans programs.		General manager, Business Area Manager, Business Unit EXCO, Group or National Expert.
E2				Business Unit Manager, General Manager of Major Corporate Function
E3				Subsidiary Director

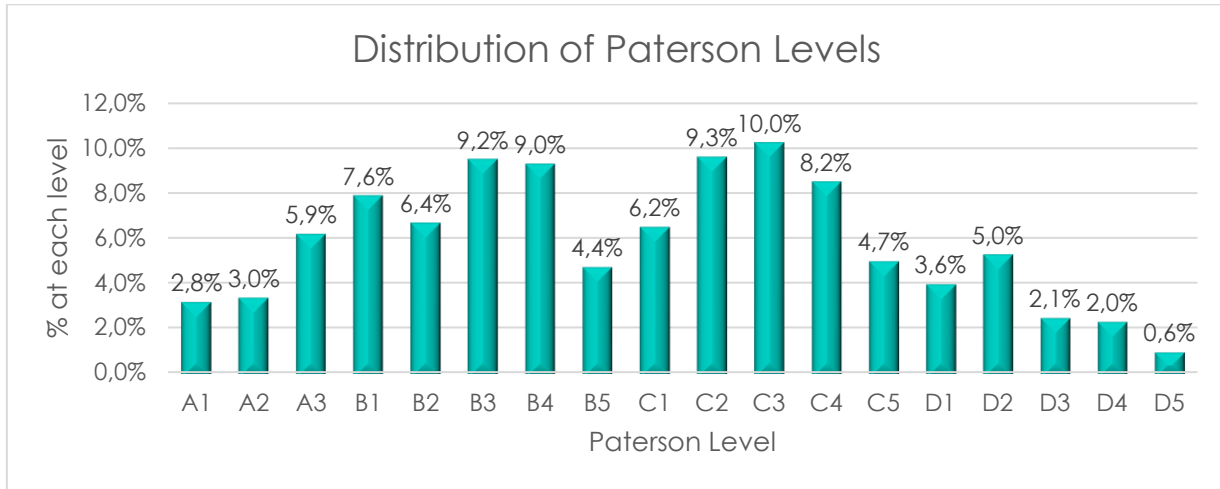
Annexure E: Distribution of Incumbents for a Consultant Remuneration Survey

The analysis in this section is based on a 2021 presentation by Deloitte Remuneration Services regarding their Remuneration Survey. The analysis below specifically considers the distribution of the survey incumbents across the various Paterson levels.

The table below and the subsequent graph, shows the number of incumbents at each level and provides a view of the distribution across levels:

Paterson Level	Number of incumbents	% at each level
A1	4 548	2.8%
A2	4 862	3.0%
A3	9 399	5.9%
B1	12 116	7.6%
B2	10 183	6.4%
B3	14 701	9.2%
B4	14 373	9.0%
B5	7 018	4.4%
C1	9 892	6.2%
C2	14 865	9.3%
C3	15 894	10.0%
C4	13 118	8.2%
C5	7 457	4.7%
D1	5 800	3.6%
D2	7 926	5.0%
D3	3 394	2.1%
D4	3 136	2.0%
D5	987	0.6%
Total	159 669	100.0%

A graphical presentation is as follows:



The table and graph above indicate that there are significantly less positions / opportunities at some levels than others.

A simplified view can be obtained by combining the A, B, C and D levels. The resulting table showing the distribution across the grouped levels is as follows:

Paterson Level	Number of incumbents	% at each level
A	18 809	11.8%
B	58 391	36.6%
C	61 226	38.3%
D	21 243	13.3%
Total	159 669	100.0%

Annexure F: Example of a quantification table

(Courtesy of Munro Forensic Actuaries – available on [The Earnings Assistant](#))

1. Basis of the claim

The information provided indicates that the Claimant's loss of earnings (if any) is based on the following:

- Lower earnings since the incident; even though they are being accommodated (partial loss)
- Loss of fringe benefits (provident and 13th cheque) since the incident
- Not envisaged to reach the pre-incident earnings ceiling
- Early retirement of between 5 and 15 years anticipated by Orthopaedic Surgeon (10 years suggested)

2. Career history (Optional inclusion)

Date (age)	Amount	Frequency	Terms	Increases	Comment	Benefits/CTC
01 Jun 2013 (28.3)	5 000	per month	Jun 2014	earnings inflation	Earnings verified by employer	ER Prov: 13.5%, EE Prov: 10%, Overtime: 10%, Allowance: R 500, 13th Chq; CTC: R 7 092
21 Jun 2014 (29.3)	7 000	per month	Jan 2015	earnings inflation	As per payslip	ER Prov: 13.5%, EE Prov: 10%, 13th Chq; CTC: R 8 258
01 Feb 2015 (29.9)	140 000	per year	Apr 2015	earnings inflation	As per payslip	ER Prov: 13.5%, EE Prov: 10%, 13th Chq; CTC: R 170 567

*Earning as above at time of incident

3. Injured income

Date (age)	Amount	Frequency	Terms	Increases	Comment	Benefits/CTC
13 Apr 2015 (30.1)	10 000	per month	Apr 2022	earnings inflation	Accommodated since incident; ceiling reached	CTC: R 10 000

* Retires at 55

4. Uninjured income

Date (age)	Amount	Frequency	Terms	Increases	Comment	Benefits/CTC
13 Apr 2015 (30.1)	140 000	per year	Apr 2015	straight line	From incident	ER Prov: 13.5%, EE Prov: 10%, 13th Chq; CTC: R 170 567
25 Mar 2030 (45)	332 000	per year	Jul 2022	earnings inflation	Paterson B4 (total, median)	CTC: R 332 000

* Retires at 65

5. Notes on contingencies

5.1. Uninjured Contingency factors

- Long history with the company before the incident (regular promotions achieved)
- Pre-existing heart condition (according to medical experts)
- General earnings survey data used for Claimant's earnings ceiling

5.2. Injured Contingency factors

- Future degeneration is anticipated, which will limit his ability to perform tasks
- Limited skill set should he be forced to revert to sedentary work
- High unemployment rates and over-saturation of semi-skilled workers in his area
- Future earlier retirement is expected between ages 50-60 (midpoint has been suggested above)

References

- Algorithm Consultants & Actuaries. 2018. "Industrial Psychologists: A Profession in Trouble?" 12 May.
- American Psychological Association. 2015. "Professional Practice Guidelines: Guidance for Developers and Users." *American Psychologist* 70 (9): 823-831.
- American Psychological Association. 2013. "Specialty Guidelines for Forensic Psychology." *American Psychologist* 7-19.
- Beelders, J. 2019. *Beyond soothsaying and fortune telling: The earnings experts' guide to loss of earnings report*. White Paper, Analytico.
- Eyre, G. and Alexander, L. 2015. *Writing medico-legal reports in civil claims: An essential guide*. London: Professional Solutions Publications.
- Gerber, N. and Talmud, T. 2022. "Postulations (Class 5)." *SIOPSA Psycho-legal Interest Group: Foundational Classes*.
- Grobler, C. 2020. *A regulatory framework for psycho-legal assessments in South Africa (Doctoral thesis)*. University of Pretoria.
- Judge C.J. Claassen. 2019. "South African law applicable to personal injury litigation." *SAMLA Foundations of Medico-Lego Practice course notes*.
- Kaliski, S.Z (ed). 2006. *Psycholegal Assessment in South Africa*. Oxford University Press.
- Koch, J.R. 2022. *The Quantum Yearbook*. Van Zyl, Rudd & Associates.
- Koch, R.J. 2013. "Quantum Yearbook Workshop."
- M T v Road Accident Fund; H M v Road Accident Fund*. 2020. 37986/2018 (South Gauteng High Court, 16 November).
- Marais, C.A. 2018. *Judging Psycholegal Reporting in Civil Court Proceedings in the Eastern Cape (Mini-dissertation)*. Rhodes University.
- Medical Law SA. n.d. *Joint Minute Article*. Accessed July 11, 2022. <http://www.medicallawsa.co.za/joint-minute-article/>.
- Ntombela v Road Accident Fund*. 2018. 209709/2016 (South Gauteng High Court, 19 March).
- Office of the Judge President. 5 July 2019. "Judge President's Practice Directive 2 of 2019."
- Schneider NO and Others v AA and Another*. 2010. 8675/09 (Western Cape High Court, 8 January).
- Schoombee, C. 2020. "Actual Pay vs Paterson Job Grades." April.

- Slabbert, E. 2016. *Medical-legal forensic reporting by Industrial Psychologists: A qualitative enquiry into required skills an knowledge (mini-dissertation)*. North-West University.
- Small Enterprise Development Agency. 2022. "SMEE Quarterly Update: 3rd Quarter 2021."
- Statistics South Africa. 2017. "Education Series Volume III: Educational Enrolment and Achievement, 2016."
- The Judiciary of the Republic of South Africa. 2018. "Revised Practice Manual for the Gauteng Local Division of the High Court."
- Van Lill, X. 2013. *The Psychologist-Lawyer dynamic in Industrial Psychologists' psycho-legal activities (mini-dissertation)*. University of Johannesburg.
- Venter, J.P. 2020. "SA Earnings Information: No Silver Bullet." *Society for Industrial and Organisational Psychology of South Africa 2020 Annual Conference*.
- Weiner, A.M. Goldstein & I.B. 2003. *Handbook of Psychology*. New Jersey: Johan Ailey & Sons.

DRAFT