

icare and Workers' Compensation Independent Review - Submission by Insurance and Care NSW

April 2021

EXECUTIVE SUMMARY

1. Insurance and Care NSW (**icare**) is grateful for the opportunity to make submissions to this important review of its operations, the NSW workers compensation system and the *State Insurance and Care Governance Act 2015* (the **SICG Act**).
2. It is clear from the SICG Act that icare is a different type of government organisation set up for a specific purpose. It was established following attempts by successive Governments to strengthen the NSW workers compensation system, and to drive better outcomes through a single insurance and care provider and separate regulator for the State's insurance and care schemes.
3. On 1 September 2015, icare embarked upon an ambitious transformation, eager to improve and enhance the insurance and care schemes entrusted to it. icare attracted experienced talent from the broader insurance market and harnessed the energy of staff committed to its ethos of "*commercial mind, social heart*", a spirit its Board of directors has also endeavoured to embody in its governance and decision-making.
4. Since icare's inception, it has made significant achievements across a balanced set of outcomes. In particular, icare has:
 - a. delivered close to \$1 billion in operating and claims-related expense savings including \$313 million in actuarial valuation releases corresponding to reductions in future claim liabilities;
 - b. transformed the experience of injured workers and care participants as reflected in continued and steady improvement in Net Promoter Score (**NPS**) results across workers, participants and employers;
 - c. increased accountability, transparency and capability through establishing foundational governance infrastructure not previously present;
 - d. increased performance oversight and ability to respond to the changing environment; and
 - e. increased accessibility and timeliness to support decisions to injured workers, care participants, employers, builders and brokers.
5. icare acknowledges that there have been challenges with its execution of its ambitious transformation agenda. In particular, in the process of unwinding from its predecessor organisations and seeking to make impactful change for its customers, icare has not always applied the appropriate rigour to its procurement processes, had difficulty forming a constructive relationship with the regulator, and its reform agenda and change implementation has contributed to a decline in return to work (**RTW**) rates in the Workers Compensation Nominal Insurer's (the **Nominal Insurer**) workers compensation scheme.
6. icare appreciates that these issues have led to considerable regulatory, Parliamentary and media scrutiny and takes responsibility for addressing and resolving these matters. Many of these issues have also been the subject of both internal and external review, including scrutiny of various procurement and probity matters by the Independent Commission Against Corruption (**ICAC**). icare promptly investigates any allegation or complaint of wrongdoing, fraud or corruption, and proactively notifies ICAC as required under section 11 of the *Independent Commission Against Corruption Act 1994*. icare has also fully co-operated with all relevant reviews and requests for information in a transparent manner, and ICAC has not taken further action nor has it instituted its own separate investigation or inquiry into any matter relating to icare (although there are certain active matters that ICAC is currently considering).

7. The actions icare has taken to address and resolve these matters include the following:
 - a. icare has implemented a number of improvements to its claim services model for the Nominal Insurer's workers compensation scheme in order to address the issues identified in Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme published in December 2019 (the **Dore Review report**), and has seen a steady improvement in RTW performance since mid-2019 (until a recent deterioration relating to COVID-19). icare has also agreed and progressed an action plan with the State Insurance Regulatory Authority (**SIRA**) for the purposes of improving the performance of the Nominal Insurer and the health of the workers compensation scheme more broadly (**SIRA 21-Point Action Plan**);
 - b. icare's Board has established a Governance Committee to review and provide advice to the Board on best practice governance and regulatory engagement. The work of the Governance Committee is expected to fortify icare's governance and accountability frameworks to ensure that past discrepancies in the timely reporting of issues to the Board are not repeated;
 - c. icare is in the course of revisiting its procurement practices across the entire organisation, as well as its travel, gifts and benefits, and conflicts of interest policies and procedures, in order to implement changes to improve those practices and minimise the risks of non-compliance and inconsistency going forward. This includes undertaking a remediation program to address past contract disclosure omissions, and establishing an Executive Steering Committee to oversee a comprehensive program of ongoing compliance for procurement; and
 - d. taking on board the recommendations of the Dore Review report, icare and SIRA have since implemented several actions to refine their respective roles and responsibilities and improve the level of constructive engagement between them. icare has recently received positive feedback from SIRA regarding the level of communication, transparency and engagement between the agencies.
8. icare believes that it is still progressing to fully achieve the outcomes it was set up to achieve and has demonstrated its effectiveness in achieving many of them. icare considers that the structural reforms enshrined in the SICG Act have demonstrated their potential to achieving their intended policy objectives, while acknowledging that further work is needed from both icare and SIRA to deliver on this promise.
9. Where there is room for improvement, icare is committed to making the necessary organisational changes to address relevant concerns, and indeed has already developed and implemented an effective program of activity to start addressing these.
10. icare looks forward to working with the Independent Reviewer to further improve icare's operations and enable it to continue to deliver the benefits it was established to achieve.

Overview of submissions

11. icare has taken the following approach to this submission.

Background

12. Here, we set out the history of the icare schemes and a brief history of workers compensation reform in NSW, to provide context for our submission and the broader review.
13. Understanding the background of icare's establishment, and the problems with the insurance and care schemes that it was designed to solve, is important to contextualising the achievements made and challenges encountered by icare to date. It also reinforces the potential for icare to continue to evolve and improve by making appropriate changes to address relevant concerns.

Term of reference 1: organisational review of icare

14. The organisational review of icare touches on several elements of the icare ecosystem that have received recent Parliamentary and media scrutiny.
15. In this section, icare sets out the relevant legislative and factual background for each of these elements, followed by a comprehensive overview of its approach to these areas. Where issues of concern are identified, the steps icare has taken or is taking to address them are described, reflecting icare's action-oriented mindset.
16. Overall, this section illustrates:
 - a. the claims operating models for both the Nominal Insurer and Treasury Managed Fund (TMF) workers compensation schemes, including the improvements made to the claim services models and incentive structures for scheme agents, as well as other initiatives, to improve RTW performance and better support injured workers;
 - b. icare's progress on the delivery of the recommendations of the Dore Review report, including its progress on actioning the SIRA 21-Point Action Plan, as described in paragraph [7]a above;
 - c. the progress made by icare on realising the benefits that it was established to achieve, in the form of both financial savings and customer experience outcomes;
 - d. the efforts that icare has made to embed a positive workplace culture in line with its ethos of "*commercial mind, social heart*", including its performance to date and the additional steps it has taken recently to improve its culture;
 - e. the governance processes that icare has in place across the organisation to ensure consistent performance and compliance as well as appropriate accountability to the Board, and icare's efforts to improve its governance processes, including the establishment of the Governance Committee referred to in paragraph [7]b above;
 - f. icare's approach to executive remuneration, which seeks to strike a balance between attracting strong, capable staff who have the necessary expertise to manage an organisation equivalent in size to an ASX 20 company, but are motivated by icare's vision and purpose as a social insurer;
 - g. the governance and accountability framework established by icare's Board so that it is able to properly fulfil its statutory responsibilities for the overall superintendence of the organisation, and its efforts to improve that framework, including the establishment of the Governance Committee referred to in paragraph [7]b above;
 - h. the procurement processes that icare has in place to ensure consistent compliance with its procurement and contract disclosure obligations as a NSW Government agency, and the work it is undertaking to improve those practices and minimise the risks of non-compliance and inconsistency going forward, as described in paragraph [7]c above;
 - i. the policies and procedures that icare has in place to manage probity, including in relation to travel, gifts and benefits and conflicts of interests, and the recent improvements to those policies and procedures that are being made to address issues that have emerged from the uncovering of past discrepancies; and
 - j. icare's relationship with SIRA, and the actions both agencies have taken to clarify their respective roles and responsibilities and improve the level of constructive engagement between them, as described in paragraph [7]d above.

Term of reference 2: the Nominal Insurer and Treasury Managed Fund (TMF) workers compensation schemes

17. In this section, we set out:
- a. the policy objectives of the workers compensation schemes, and the progress made on delivering on those objectives;
 - b. the differences between the Nominal Insurer and TMF schemes, including with respect to their financial sustainability, the recent performance of both schemes in this regard, and the legislative, regulatory and other matters impacting on the success of the schemes and their financial sustainability; and
 - c. the legislative and regulatory structure of the schemes, including the opportunities for further improvement in order to achieve better financial and customer outcomes and the policy objectives of both schemes.

Term of reference 3: review required by section 32 of the SICG Act

18. In this section, we explain the policy objectives for the SICG Act and the extent to which it has proven capable of delivering on those policy objectives. Having regard to the legislative history of the SICG Act, icare considers that the policy objectives of the SICG Act can be best described as:
- a. creating greater transparency and accountability by separating regulatory and operational functions;
 - b. consolidating functions to generate operational efficiencies and enable economies of scale; and
 - c. establishing less adversarial, customer-centric organisations, leading to better return to work and quality of life outcomes.

BACKGROUND

Insurance and Care NSW

1. Insurance and Care NSW (**icare**) was constituted on 1 September 2015 by the *State Insurance and Care Governance Act 2015* (the **SICG Act**). Having regard to the legislative history of the SICG Act, including problems encountered in previous iterations of the schemes, icare considers that the policy objectives of the SICG Act can be best described as:
 - a. creating greater transparency and accountability by separating regulatory and operational functions;
 - b. consolidating functions to generate operational efficiencies and enable economies of scale; and
 - c. establishing less adversarial, customer-centric organisations, leading to better return to work and quality of life outcomes.
2. Section 10 of the SICG Act sets out icare's functions:
 - a. to act for the Workers Compensation Nominal Insurer (the **Nominal Insurer**), which is established under section 154A(1) of the *Workers Compensation Act 1987* (the **1987 Act**) and provides workers compensation insurance for employers in New South Wales in respect of injuries suffered by workers in the course of their employment (including insurance under the uninsured liabilities insurance scheme pursuant to Division 6 of Part 4 of the 1987 Act);
 - b. to provide services (including staff and facilities) for the following authorities:
 - i. the Workers Compensation (Dust Diseases) Authority constituted under the *Workers' Compensation (Dust Diseases) Act 1942*, which provides compensation for workers who suffer death or disablement as a result of certain dust diseases;
 - ii. the Lifetime Care and Support Authority of New South Wales (the **Lifetime Care and Support Authority**) constituted under the *Motor Accidents (Lifetime Care and Support) Act 2006*, which provides a scheme for the lifetime care and support of persons catastrophically injured in motor accidents and pays statutory benefits for treatment and care for claimants who continue to be entitled to such benefits under the *Motor Accident Injuries Act 2017* five years after the date of the relevant accident;¹
 - iii. the Sporting Injuries Compensation Authority constituted under the *Sporting Injuries Insurance Act 1978*, which provides a scheme for the payment of benefits in respect of deaths and injuries suffered by persons participating in certain sporting activities;
 - iv. the NSW Self Insurance Corporation (**SICorp**) constituted under the *NSW Self Insurance Corporation Act 2004* (the **SICorp Act**), which operates various Government managed fund schemes including the Treasury Managed Fund (**TMF**), as well as other insurance funds including the Home Building Compensation Fund (**HBCF**), Construction Risks Insurance Fund (**CRIF**) and Bush Fire Fighters Compensation Fund²; and
 - v. the Building Insurers' Guarantee Corporation (**BIG Corp**) constituted under Part 6A of the *Home Building Act 1989* in order to indemnify consumers of insured residential builders affected by the financial collapse of **HIH** Casualty and General Insurance Limited (**HIH**) and **FAI** General Insurance Company Limited (**FAI**);

¹Section 3.2(3) of the *Motor Accidents Injuries Act 2017*

²Under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*

- c. to enter into agreements or arrangements with any person or body for the purposes of providing services of any kind or for the purposes of exercising the functions of the Nominal Insurer;
- d. to monitor the performance of the insurance or compensation schemes in respect of which it provides services; and
- e. such other functions as are conferred or imposed on it by or under the SICG Act or any other Act.

History

WorkCover and the Nominal Insurer

- 3. A more detailed history of workers compensation in NSW is set out in icare's submissions in response to Term of Reference 2(a).
- 4. Workers compensation schemes across the world have traditionally been complex and difficult to manage, requiring a balance between the fair and equitable treatment of workers, the commercial interests of their employers and overall scheme financial sustainability.
- 5. The NSW workers compensation scheme is no exception and has been the subject of considerable and ongoing reform since its inception in 1910.
- 6. The first and arguably most significant reform of the NSW workers compensation scheme occurred in 1987, as the enactment of the 1987 Act ended private underwriting of workers compensation insurance policies and moved to the public underwriting of the scheme.
- 7. In 1998, the *Workplace Injury Management and Workers Compensation Act 1998* (the **1998 Act**) was enacted to supplement the 1987 Act and provide additional detail regarding injury management and return to work.
- 8. Shortly thereafter, in 1989, the WorkCover Authority of New South Wales (**WorkCover**) was established as a NSW government agency under the 1987 Act. WorkCover effectively integrated the State's schemes for injury prevention, rehabilitation and compensation into a single body, with the intention to promote and improve worker health and safety.
- 9. In 2001, the (then) Government announced a process of reform of the workers compensation system in NSW, aimed at addressing on-going issues regarding the scheme's financial sustainability and to build a system that was "*fair, affordable and efficient*"³. The (then) Assistant Treasurer noted that numerous previous attempts to address financial issues within the scheme "*demonstrate that there are no overnight quick fixes, no silver bullet*"⁴ and that the reforms proposed substantial changes to the entire scheme to balance "*long and short-term social and economic policy objectives*".⁵

³Second reading speech of the *Workers Compensation Amendment (Insurance Reforms) Act 2003*

⁴Legislative Council: Hansard (8 June 2000), available online at:
<https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1820781676-57523>

⁵Legislative Council: Hansard (8 June 2000), available online at:
<https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1820781676-57523>

10. In 2003, as part of this process of reform and following a review of the workers compensation scheme by McKinsey & Company,⁶ the Nominal Insurer was established by amendment to the 1987 Act (which commenced in 2005) and appointed the insurer for the NSW workers compensation scheme, replacing six managed fund insurers with separate trust funds.⁷ The purpose of this was to:
 - a. introduce greater competition by allowing specialist businesses to tender for funds investment, claims management, premium assessment and collection and related activities (including recoveries and fraud);
 - b. increase transparency and accountability through contracted scheme agents; and
 - c. restore financial stability to the scheme.⁸
11. The Nominal Insurer was (and continues to be) responsible for issuing workers compensation policies, managing claims and contracting scheme agents to exercise its powers on its behalf, subject to the terms of any relevant contract, as well as providing an uninsured liabilities scheme.⁹ WorkCover exercised the powers of, and acted on behalf of, the Nominal Insurer.
12. Importantly, the Nominal Insurer:
 - a. is a legal entity;
 - b. may take proceedings and be proceeded against in the name of the Workers Compensation Nominal Insurer;
 - c. is not and does not represent the State of NSW or any authority of the State; and
 - d. is taken to be a licenced insurer as if it were the holder of a licence in force under the 1987 Act.
13. The relevant Parliamentary Secretary at the time described the arrangement as being “*consistent with the long standing position of Government that the workers compensation funds are the responsibility of the employers of NSW ... neither the State, the Nominal Insurer, WorkCover or any authority of the State will have any interest in the [Workers Compensation Insurance Fund]¹⁰ and are neither liable to meet any deficit in the Fund nor entitled to any surplus in the Fund*”.¹¹
14. By 2012, the Nominal Insurer workers compensation scheme was operating at a deficit of \$4.1 billion. It was described by a NSW Workers Compensation Scheme Issues Paper as “*a broken system that does not produce good outcomes for injured workers*”.¹² The paper recommended that, to reform the scheme, the most effective workers compensation measures from around Australia should be adopted, benefits calculations should be simplified, and workers’ entitlements should be made more transparent and easier for workers and employers to understand. Further, workers whose injuries were less serious should be given greater incentives and support to return to work, while more seriously injured workers should receive improved weekly benefits and lump sum compensation entitlements.
15. In response, the (then) Government introduced significant reforms, which were described by the (then) Treasurer as a fundamental shift towards meeting the needs of the most seriously injured workers while strongly incentivising return to work for those who have the capacity to do so.¹³
16. Specifically, the 2012 reforms restricted entitlements to weekly and some categories of lump sum compensation, introduced tougher return to work obligations on both employers and workers, limited the scope of injuries captured by the scheme and tightened the criteria to access medical treatment.

⁶Partnerships for Recovery: caring for injured workers and restoring financial stability to workers compensation in NSW dated 8 September 2003

⁷Workers Compensation Amendment (Insurance Reform) Act 2003; Second reading speech of the Workers Compensation Amendment (Insurance Reforms) Act 2003

⁸Second reading speech of the Workers Compensation Amendment (Insurance Reforms) Act 2003

⁹See Part 7, Division 1A of the 1987 Act

¹⁰The Workers Compensation Insurance Fund established under section 154D of the 1987 Act

¹¹Second reading speech of the Workers Compensation Amendment (Insurance Reforms) Act 2003

¹²Page 4 <http://dev.injuredworkerssupport.org.au/wp-content/uploads/2012/04/WorkCover-NSW-Workers-Compensation-Issues-Paper-1.pdf>

¹³Second reading speech of the Workers Compensation Legislation Amendment Bill 2012

17. Throughout this time and until 1 September 2015, WorkCover played a multi-faceted role. It was both responsible for the regulation, implementation and enforcement of the workers compensation scheme, as well as acting for the Nominal Insurer. It also performed work health and safety regulatory functions under the relevant work health and safety legislation.

Lifetime Care and Support Authority of New South Wales and the Motor Accidents Authority of New South Wales

18. The Motor Accidents Authority of New South Wales (the **Motor Accidents Authority**) was constituted in 1989, in order to administer the motor accidents scheme and act for the Nominal Defendant in accidents involving uninsured vehicles. It performed various functions, mostly of a regulatory nature.
19. In 2006, the Lifetime Care and Support Authority was constituted to supplement the work of the Motor Accidents Authority. The Lifetime Care and Support Authority was responsible for providing the Lifetime Care and Support Scheme, being a scheme for the lifetime care and support of persons catastrophically injured in motor accidents, regardless of fault. The two agencies worked closely together, sharing offices and facilities.
20. The Lifetime Care and Support Scheme is funded by a levy on the Compulsory Third Party (CTP) insurance paid by motor vehicle users. The Lifetime Care and Support Authority was not subject to any regulation.

Workers' Compensation (Dust Diseases) Board

21. The Workers' Compensation (Dust Diseases) Board (now known as the Workers' Compensation (Dust Diseases) Authority)¹⁴ was established for the purposes of providing compensation for workers who suffer death or disablement as a result of certain dust diseases.
22. The Workers' Compensation (Dust Diseases) Fund is funded by a dust diseases levy on the workers compensation insurance paid by employers in the NSW workers compensation scheme.

Compensation Authorities Staff Division and Safety, Return to Work and Support

23. From 2009, these authorities began to be 'grouped' together for staffing and governance purposes:
 - a. in 2009, the (then) Offices of WorkCover and the Motor Accidents Authority ceased to be Divisions of the Government Service and were amalgamated into the Compensation Authorities Staff Division (CASD);¹⁵

¹⁴Change introduced on 1 September 2015 under the State Insurance and Care Governance Bill 2015

¹⁵CASD was established under sections 36 and 37 of the *Public Sector Employment and Management (Departmental Amalgamations) Order 2009* made under section 66 and Chapter 4 of the *Public Sector Employment and Management Act 2002*

- b. the 2012 reforms to the workers compensation system described in paragraph 29 above abolished CASD and established the Safety, Return to Work and Support Board (the **SRWS Board**) under the *Safety, Return to Work and Support Board Act 2012*. Amongst other things, the SRWS Board was responsible for:
- i. determining the general policies and strategic direction of, and overseeing the performance of, WorkCover, the Motor Accidents Authority and the Lifetime Care and Support Authority; and
 - ii. determining investment policies for the investment of various funds administered by those authorities¹⁶ as well as the Workers' Compensation (Dust Diseases) Fund and the Sporting Injuries Fund.¹⁷
24. In practice, from 2012, WorkCover, the Motor Accidents Authority, the Lifetime Care and Support Authority and the Workers' Compensation (Dust Diseases) Board were grouped in the organisation known as 'Safety, Return to Work and Support' (**SRWS**).
25. While SRWS consolidated the governance structures of these authorities under the SRWS Board and a Chief Executive appointed by the relevant Minister, each authority continued to be separately located and performed their day-to-day functions as separate entities, except the Lifetime Care and Support Authority and Motor Accidents Authority, which were located together.¹⁸ Their staff were employed in the NSW Public Service.

NSW Self Insurance Corporation and the Treasury Managed Fund

26. SICorp was constituted in 2004 by the SICorp Act, responsible for operating various Government managed fund schemes,¹⁹ including the TMF, as well as the HBCF²⁰ (as it is now known) and the CRIF.²¹ Section 8(1)(d) of the SICorp Act provides that one of the functions of SICorp with respect to Government managed fund schemes is "*to act for the State, an authority of the State or an eligible State official in dealing with claims under a Government managed fund scheme*".
27. SICorp is a continuation of the NSW Insurance Ministerial Corporation, which was constituted by the *Government Insurance Office (Privatisation) Act 1991*. It was subject to limited regulation by WorkCover (in respect of workers compensation) and NSW Fair Trading (in respect of home building compensation insurance, formerly home warranty insurance).
28. The SICorp Act establishes the Self Insurance Fund,²² the largest component of which is the TMF. The Self Insurance Fund is effectively an umbrella Special Deposit Account and investment entity to support contingent liabilities arising from Government managed fund schemes including the TMF. The TMF investment strategy is executed by the NSW Treasury Corporation (**TCorp**).

¹⁶Including the Workers Compensation Insurance Fund established under section 154D of the 1987 Act, the Insurers' Guarantee Fund established under section 227 of the 1987 Act and the Terrorism Re-insurance Fund established under section 239AE of the 1987 Act

¹⁷Sections 6 and 7 of the *Safety, Return to Work and Support Board Act 2012*

¹⁸For completeness, we note that prior to the establishment of the SRWS Board, the Compensation Authorities Staff Division (**CASD**) was established under the *Public Sector Employment and Management (Departmental Amalgamations) Order 2009* made under section 66 and Chapter 4 of the *Public Sector Employment and Management Act 2002*. At that time, CASD covered staff of WorkCover and the Motor Accidents Authority.

¹⁹Section 8(1)(a) of the SICorp Act

²⁰Division 2 of Part 4 of the SICorp Act

²¹Division 3 of Part 4 of the SICorp Act

²²Section 11 of the SICorp Act

29. The TMF is the self-insurance scheme created by the NSW Government to insure NSW Government agencies and Government related businesses for all insurable risks. The TMF is Australia's largest public-sector managed fund, insuring the State's people, agencies and assets. It seeks to deliver on the Government's responsibility to keep the people and property of the State safe. The TMF and NSW Government are protected by the reinsurance it purchases each year.
30. The TMF was set up in 1989 by the NSW Government to replace traditional insurance arrangements. It was established to curb escalating insurance costs, guarantee certainty for Government agencies and to create transparency of risk.
31. The TMF provides coverage for all insurable Government risks, including but not limited to motor, property, liability, infrastructure and workers compensation. This includes NSW schools, hospitals, public venues, and iconic structures like the Sydney Harbour Bridge and the Opera House. Claims are funded by deposit contributions and managed by selected service providers.

Building Insurers' Guarantee Corporation

32. BIG Corp was specifically constituted under Part 6A of the *Home Building Act 1989* in order to indemnify consumers of insured residential builders affected by the financial collapse of HIH and FAI
33. In 2011, SICorp and BIG Corp were administratively grouped together as BIG Corp and provided home warranty insurance, as did SICorp, through HBCF. The two agencies were part of the same business unit within NSW Treasury under the Deputy Secretary for Budget & Financial Management, with staff employed in the NSW Public Service and supplied by NSW Treasury. These staff were shared across both organisations and physically located together.

2015 insurance reforms

34. In 2015, NSW Treasury led a Strategic Insurance Review of the State's insurance schemes described above. The review found there was room for improvement in the following areas:
 - a. operational efficiencies and performance, leading to diseconomies of scale and the disaggregation of expertise;
 - b. capability gaps relating to the management of insurance schemes, including in relation to the management of scheme volatility, customer service and providers; and
 - c. perceived conflict of interest issues between regulation and operation.
35. Indeed, in the Legislative Council's Standing Committee on Law and Justice's (**the Standing Committee**) 2014 Review of the exercise of the functions of the WorkCover Authority of NSW (**the 2014 Review**), the Standing Committee raised concerns regarding the potential conflicts of interest between WorkCover's roles as both the Nominal Insurer and as the regulator of the workers compensation scheme, which meant that WorkCover both regulated and competed with non-government self and specialised insurers.

36. On 1 September 2015, three discrete agencies were established under the SICG Act:
- icare, a single insurance and care service provider, with the functions described in paragraph 2 above;²³
 - the State Insurance and Regulatory Authority (**SIRA**), a new independent insurance regulator; and
 - SafeWork NSW, an independent workplace safety regulator, responsible for performing the work health and safety functions previously performed by WorkCover.
37. These changes are illustrated in the following figure:

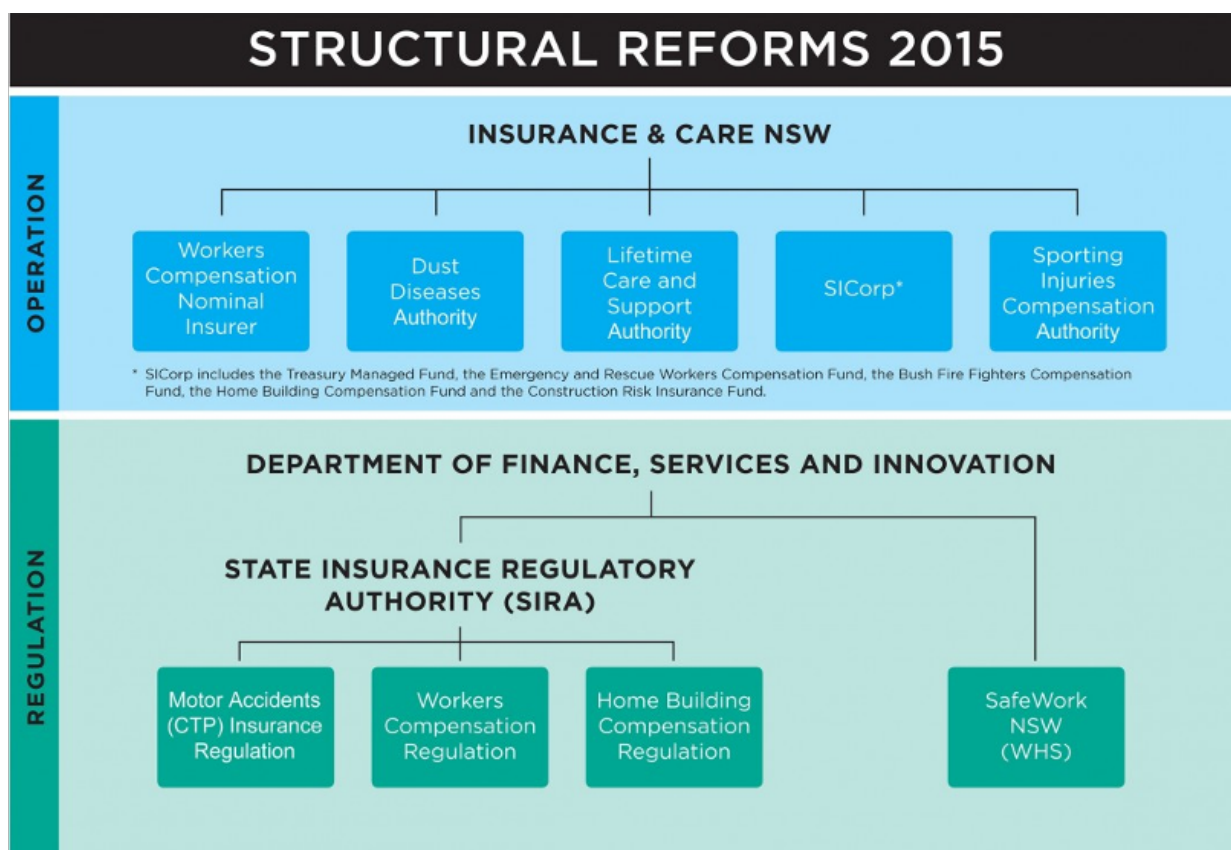


Figure 1: Structural Reforms 2015

²³Various additional changes were made on 1 September 2015, including for example, the constitution of the Sporting Injuries Compensation Authority under the *Sporting Injuries Insurance Act 1978*, which did not previously exist; the transfer of rights and responsibilities under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* from WorkCover to SICorp; and the replacement of the Workers' Compensation (Dust Diseases) Board with the Dust Diseases Authority under the *Workers' Compensation (Dust Diseases) Act 1942* and the establishment of a separate Dust Diseases Board under section 5AC of that Act to make certain payments from the Workers' Compensation (Dust Diseases) Fund under section 6(2A) of that Act

38. In his Second Reading speech introducing the SLCG Act and cognate bills,²⁴ the Minister for Finance and Services (as he then was) explained that the reforms were *“an overhaul of the governance of State insurance and care schemes and the way in which those schemes are serviced in New South Wales [and will] create a clear statutory and operational separation between the functions of providing government insurance services and the regulation of those services.”*
39. In addition, he explained, *“the new structure will be far more transparent and accountable and, most importantly, lead to better outcomes for injured workers. The new organisations will be more customer-centric, streamlined and efficient, building economies of scale and focussing on clear objectives”*.
40. It is within this context that icare has developed into the organisation it is today. From the beginning, icare adopted a *“commercial mind, social heart”* ethos and has endeavoured to give effect to the Government’s vision.

²⁴Second Reading Speech, Workers Compensation Amendment Bill 2015 and cognate bills
<https://www.parliament.nsw.gov.au/bill/files/316/2R%20Workers%20Compensation%20and%20cognate.pdf>

TERM OF REFERENCE 1(a): CLAIM OPERATIONS, INCLUDING CLAIMS MANAGEMENT, THE CLAIMS AGENT MODEL AND INCENTIVE STRUCTURES, RETURN TO WORK PERFORMANCE, AND THE SERVICE PROVIDED TO INJURED WORKERS

Summary

1. Insurance and Care NSW (**icare**) acts for the Workers Compensation Nominal Insurer (**Nominal Insurer**) and provides services to the NSW Self Insurance Corporation (**SICorp**), which operates the Treasury Managed Fund (**TMF**). Committed to accountability, icare supports open and transparent reviews of the NSW workers compensation system.
2. The establishment of icare was intended to significantly improve the experience and outcomes for injured workers lacking in the pre-2015 scheme model, while delivering on the other objectives of transparency and efficiency. Net Promoter Score (**NPS**) results tell us that strong progress has been made towards this goal. While there have been improvements in return to work (**RTW**) outcomes for longer term claims, the extensive change agenda has, in part, contributed to a deterioration in front-end return to work outcomes. These are now recovering to a similar performance to that of the wider scheme.
3. In the first 16 months following the introduction of the new claims service model in 2018, there were a number of challenges to implementation and integration, including those brought on by the transition to a new centralised claims system. This was due to a combination of an over-extension of both icare and EML's organisational capacities, resources and claims manager capabilities, teething problems with the new technology platform, and a belief that the new operating model would create efficiencies that have not yet been realised.
4. icare has initiated changes (and plans to imminently commence further changes) to address areas needing support and improvement, particularly in the area of "*case management fundamentals*". This has included introducing a single case manager for a larger cohort of claims, effective operationalisation of claims segmentation and allocation, effective medical decision-making and cost containment (within icare's control) and more effective application of provisional liability determinations.
5. Changes underway since 2019 to contractual agreements with claims management providers across both the Nominal Insurer and TMF schemes will help incentivise change. icare is also working closely with its claims management providers to develop system-wide workforce capability.
6. It is important to note that the requirement that icare provide compulsory workers compensation insurance in the absence of self (or specialised) insurance and act as the insurer on risk for uninsured liabilities presents specific challenges. As a result, the operations of the Nominal Insurer involve a level of scale and diversity which is unique among workers compensation insurers. While the Nominal Insurer does not dispute its legal obligations, in these circumstances, absolute compliance with the terms of the workers compensation legislation, regulations, guidelines and manuals requires ongoing vigilance, particularly during a period of transformational system change.
7. It is also worth noting that icare's ability to improve performance is substantially supported by the structural changes icare made to the Nominal Insurer and TMF claims service models implemented between 2017 and 2020, including changing governance structures and oversight, centralisation of escalated complaints and a centralised claims system.
8. The design of the Nominal Insurer and TMF claims service models was informed by icare's objectives to balance customer experience and sound outcomes. icare has taken great care to learn from mistakes of the past, particularly in relation to its claims service providers' contractual structures and incentive models. icare has also focused on clarifying decision pathways and decision rights to ensure appropriate responsibility and accountability for behaviours.

9. icare looks forward to continuing to work with SIRA, icare's claim management providers, employers and injured workers in fully addressing current customer needs and is focused on delivering the benefits to the NSW workers compensation and insurance schemes it was established to achieve.

Nominal Insurer claims service model

Workers compensation operating models – background

10. The workers compensation system in NSW has undergone significant structural, operational and legislative changes since legislative amendments were first introduced in 2012. Many aspects of those legislative amendments remained undetermined for many years thereafter, due to a series of legislative challenges brought by injured workers. In 2015 and 2018, further legislative changes were introduced; the former sought to wind back some of the more restrictive 2012 amendments, and the latter sought to amend dispute resolution pathways as well as to clarify the interpretation of the determination of pre-injury average weekly earnings (**PIAWE**). This context underscores the complexity of the NSW workers compensation system, even for those who have practiced in this space for years.²⁵
11. Since its creation in 2015, icare's goal was to build a more effective and efficient operating model, identifying similarities in the compensation schemes in NSW for which icare provided services and capitalising on economies of scale to realise benefits to the whole industry.
12. For the Nominal Insurer workers compensation scheme, in particular, icare acknowledges that it has not always achieved the standards icare aspires to or the expectations of our customers and stakeholders. icare remains focused on remediating ongoing operational issues that have been identified during the transformation period and implementing programs for continuous improvement in consultation with SIRA, our customers and delivery partners.

Claims management before icare

13. In the past, employers and their insurers have managed claims in an adversarial fashion where pressure has been placed on the injured worker to either forgo the lodgement of a claim, decline ongoing entitlements to compensation or expedite RTW. The primary objective of these actions has been to minimise claims costs and the resultant impact on the employer's premium.²⁶
14. When icare was established, there was a lack of consistency in service delivery, processes, systems and training across the five scheme agents in the NSW workers compensation Nominal Insurer scheme. This duplication resulted in inflated costs to the scheme, as well as inconsistency in treatment of injured workers.²⁷ Claims were also subject to influence from external stakeholders in varying degrees, which, again, contributed to inconsistent treatment and outcomes for injured workers.

²⁵Standing Committee on Law and Justice, *First review of the workers compensation scheme* dated 9 March 2017.

Available online at:

<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2414/Report - First review of the workers compensation scheme.pdf> at paragraphs [8.86]-[8.99]

²⁶Standing Committee on Law and Justice, *First review of the workers compensation scheme* dated 9 March 2017.

Available online at:

<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2414/Report - First review of the workers compensation scheme.pdf> at paragraphs [8.86]-[8.99]

²⁷Standing Committee on Law and Justice, *First review of the workers compensation scheme* dated 9 March 2017.

Available online at:

<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2414/Report - First review of the workers compensation scheme.pdf> at paragraphs [8.32]-[8.34]

15. The costs of duplication extended to delivering legislative updates to five separate technology systems, paying multiple system maintenance costs, and being charged management overheads by every scheme agent. Ultimately, these costs had to be passed on to employers through premiums in order to maintain scheme sustainability.

Changes to claims management since icare's establishment

16. In 2016, icare had a vision to *"change the way people think about insurance and care by providing world class service to people, business and communities"*. icare intended to extrapolate this vision across all of icare's functions and aimed to deliver best-in-class insurance and compensation services to NSW workers and road users.
17. The approach icare took in the delivery of this model to the NSW workers compensation scheme drew upon the following strategic objectives:
 - a. a customer-centric approach that would move icare's claims management from an adversarial model to an empowered model;
 - b. icare would take accountability for the ongoing scheme result, which would be sustainable; and
 - c. always having regard to the icare's proposition that *"as the industry leaders in workers compensation insurance, icare can protect and support you by offering simple and affordable insurance, injury protection and return to work solutions"*.
18. The delivery of these strategic objectives through a dedicated provider model for front end and tail claims, and the introduction of a single information technology platform across the NSW workers compensation scheme, provided an opportunity to realise a predictable, repeatable, high quality customer service framework which could then be reliably delivered, with efficiencies and economies of scale, to the entire NSW workers compensation system (including the TMF scheme and icare's other relevant compensation schemes, although with different configurations to reflect each scheme's specific needs).
19. In comparison to pre-2015, this model delivered immediate changes for the customer, including the ability to lodge claims online, which increased the proportion of injured workers lodging claims from approximately 5 per cent of all claims to around 15 per cent of all claims. Extended contact hours (7am to 7pm) for the claims teams also provided additional support for injured workers.
20. While this model was ambitious, and there were challenges in execution, it has been pursued with determination and more recently a willingness to listen to stakeholders and learn from emerging experiences.
21. In 2016, icare embarked on scheme-wide changes to deliver on the Government's intent of the 2015 reforms and to improve customer experience for employers and workers.
22. From March 2016, icare sought feedback via 25,000 customers surveys and consultation with focus groups, and obtained advice from external experts, all of which informed the proposed design of a new Nominal Insurer claims service model.
23. In March 2017, in preparation for the upcoming expiry of scheme agent contracts on 31 December 2017, icare consolidated five scheme agents to three, with EML selected as the main scheme agent for new claims, GIO selected to manage run off and tail claims and Allianz engaged to pilot on the Authorised Provider model (as set out in further detail from paragraph [121] below).
24. In April 2017, as the first cohort of existing claims became subject to the time limits on compensation introduced by the legislative amendments in 2012 and were required to be transitioned off the workers compensation system, icare implemented the Community Support Service and the Workers Assistance Program to support workers who required additional social support, such as access to financial counselling or referral to community services. The success of this service resulted in it being extended as a permanent part of the claims service model.

Nominal Insurer's new claims service model

25. In January 2018, once the 2015 scheme agent contracts expired, icare introduced an improved Nominal Insurer workers compensation claims service model that was intended to make the claims process simpler, more transparent, more effective and deliver fairer and more consistent outcomes to injured workers. The model recognises the need for fast, efficient service for most claims, while also ensuring that claims at risk of prolonged time loss, or with more complex circumstances, receive the support they need.
26. The new claims service model's design presented to the Board in April 2016 sought to ensure that every injured worker was contacted as a priority in the lodgement process, and was intended to operate within the following principles:
 - a. resources allocated according to need;
 - b. straight-through processing where possible;
 - c. empathetic customer service which empowers customers;
 - d. service partners as an extension of icare; and
 - e. focus on return to work and life.
27. The new claims service model has achieved a number of customer service improvements for employers and injured workers, as confirmed by feedback received from employers and injured workers, as well as financial savings in the form of reduced operating and claims-related expenses (as detailed further in icare's submissions in response to Term of Reference 1(c)).
28. In launching its new claims service model, icare publicly declared its intent to move towards a less adversarial approach to claims management, while still giving effect to the intention of the workers compensation legislation.
29. The less adversarial claims model seeks to promote recovery at work in accordance with the Australian and New Zealand Consensus Statement on the Health Benefits of Good Work (**Health Benefits of Good Work**), of which icare is a signatory.²⁸ icare's new claims service model specifically focuses on the health benefits of early return to and recovery at work. To this end, icare has published a number of guidelines and guidance materials to assist service providers, workers and employers understand the importance of rehabilitation and functional recovery at work.²⁹
30. The Nominal Insurer's new claims service model was designed to deliver greater efficiencies to the management of workers compensation claims. The introduction of a new claims technology platform was also intended to permit self-service and automation of processing for less complex claims and to allow case managers to focus on claims where a delay in return to work was anticipated, and where the involvement of case managers would likely be more critical. The new claims service model was also intended to deliver consistent experiences for all injured workers, which in turn would result in more positive claims experiences.
31. Every employer or worker (or their representative) who lodges a claim online or by telephone initially has the claim move through a process to determine the level of risk associated with the claim, particularly any risk of delayed return to work.

²⁸Australian and New Zealand Consensus Statement on the Health Benefits of Work, (2011) The Australasian Faculty of Occupational & Environmental Medicine & The Royal Australasian College of Physicians. The Health Benefits of Good Work: (a) promotes the ideals of good work as a therapeutic intervention; (b) explains that most common health conditions will not be 'cured' by treatment; and (c) clarifies that not returning to work may lead to depression, isolation and poorer health, including greater risks of chronic disease and mental health issues.

²⁹See, for example, icare's resources for employers (<https://www.icare.nsw.gov.au/employers/forms-and-resources#tab-tab-3394ac8a-b88d-4473-80d0-4112f3f12aa6>) and workers (<https://www.icare.nsw.gov.au/injured-or-ill-people/forms-and-resources#tab-tab-73dad229-5b9a-4cdf-81ca-893bab6a701e>)

32. Based on the risk profile of the claim (which can be updated and escalated at any stage of the claim), the claim is allocated to one of the following service segments:
- a. Severe injuries requiring lifetime care and support are referred immediately to the **Care** segment;
 - b. Lower complexity claims get allocated to the **Guide** segment, where an injured worker is referred on contact to a member of the Guide team. The Guide team manages approximately 11 per cent of open claims in the Nominal Insurer scheme (~30 per cent of all claims). Similar 'fast track' models have been employed by scheme agents since 2012; and
 - c. Higher complexity claims go to one of two segments with dedicated case managers:
 - iii. **Specialised:** claims for people with psychological injury, medically complex injuries and fatalities have a ratio of 35 cases to one caseworker; or
 - iv. **Support:** more complex injuries requiring more time off work or complex treatment including surgery or other biopsychosocial factors, or employers who are unable to support suitable duties, are allocated a dedicated case manager. Each case manager has a maximum caseload of 65 cases, with a blend of injured workers with time lost and others who have returned to work but still require medical treatment.

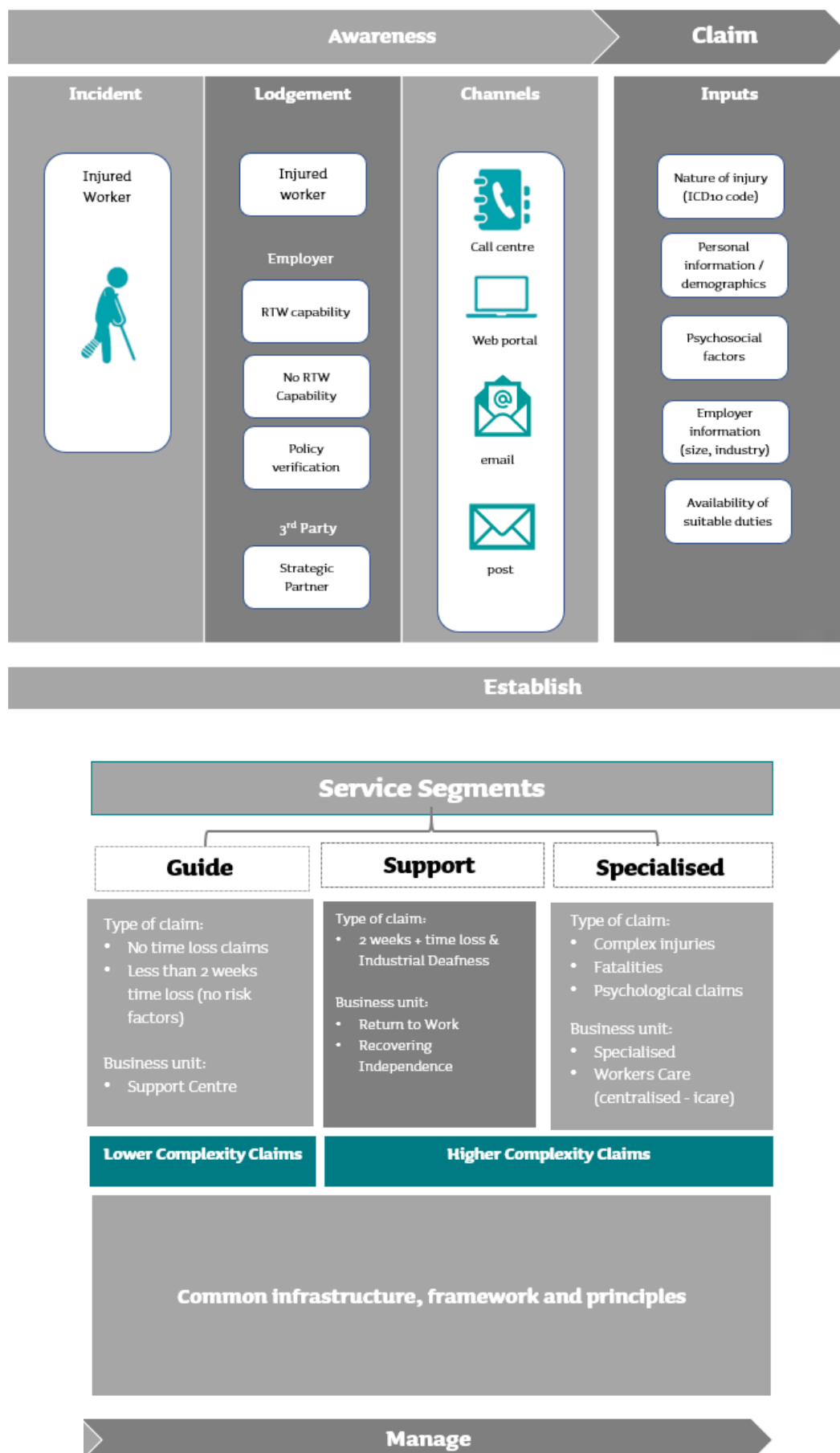


Figure 1: Illustration of new claims service model segments

33. Currently, claims anticipated to result in less than two weeks incapacity and no other risk factors are managed in the Guide segment. The number of claims in the segment translate to a 'caseload' of 70-90 claims, reflecting the low complexity, high volume of these claims. The Guide Support Centre has a pool of resources whereby the workload, across the team, equates to:
 - a. ~12 FTE taking claim lodgements;
 - b. ~30 FTE to cover span of hours (7am-7pm) and general enquiry claims calls; and
 - c. ~110 FTE managing claims.
34. This mix is adjusted monthly to address workload and customer needs.
35. The Guide segment has three objectives:
 - a. to educate injured workers on injury pathways and health literacy, empowering the worker to take control of their own recovery, in line with the Health Benefits at Work ideology;
 - b. remove low complex, low risk claims to allow case managers to focus on recovery strategies for more complex claims; and
 - c. providing immediate service for low-complexity claims through the team-based approach, with share resources and capability. The rate of resolution following the first call is 80 per cent in this segment (the highest of the segments).
36. The Guide Support Centre (the **Support Centre**) provides all customers an entry point for customer service and general queries, including claim lodgements and provider invoice queries.

Selection of EML as claims management provider

37. In 2016, icare's development of the new claims management model was underpinned by icare taking 'ownership' over the customer experience, principally by introducing a single IT claims platform (launched in 2019 for new claims and progressively rolling out for existing claims) and creating a uniform claims experience for all injured workers and employers.
38. The selection process for new claims management providers was conducted against this backdrop. icare was seeking value for cost while maximising the ability to deliver quickly on customer experience objectives and transition to the new claims management model.
39. EML was selected to partner with icare to deliver the new claims management model as the primary provider for new claims, and icare believed that it had both the capability and capacity to deliver.
40. GIO was selected to partner with icare to manage the tail claims portfolio and commenced 2018 with a portfolio of approximately 25,000 claims.
41. In July 2018, icare established a proof of concept of the Authorised Provider model with Allianz.
42. With the benefit of hindsight and experience, icare acknowledges that the single provider captive model for front end claims has not delivered the anticipated outcomes and that opportunities for improvement must be demonstrated to strengthen the performance of the scheme and rebuild the trust and confidence of stakeholders. Since Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme (**Dore Review report**) was published in December 2019, icare has introduced a number of improvements to address the concerns raised therein and to deliver on the recommendations set out in the Dore Review report.

43. The actions that icare has taken to achieve this are detailed from paragraph [79] below.

TMF claims service model

Overview of TMF scheme

44. A detailed overview of the TMF and SICorp's role in relation to it generally is set out in the Background to these submissions.
45. The TMF covers approximately 340,000 public sector workers that are supported in their recovery and RTW if they sustain a workplace injury. The TMF receives on average 15,500 new workers compensation claims per year.
46. NSW is one of only two States in Australia where workers compensation cover and general lines cover are combined into a singular self-insurance cover. The cover also extends to State volunteers and employed emergency workers.
47. Key objectives of the TMF are:³⁰
- a. to ensure cost effective risk transfer and pricing for agencies;
 - b. to deliver effective claims management for injured workers and agencies; and
 - c. to provide injury prevention and risk mitigation support to NSW Government agencies pursuant to section 11(2)(d) of the *NSW Self Insurance Corporation Act 2004* (the **SICorp Act**).
48. Distinct from the Nominal Insurer, the TMF is an insurance scheme where the employer – each NSW Government agency – plays an active role in the management of risks and any claims. Government agencies are taken to be self-insured³¹ and work closely with their appointed claims manager and icare in the support and management of claims across all product lines. In practice, day to day oversight of claims management manifests in those agencies with scheme level performance and portfolio oversight provided by icare.
49. There are approximately 200 Government agencies covered by the TMF. The top 11 agencies (by contribution size) account for over 90 per cent of TMF workers compensation claims. Due to their size, both in contribution dollars and the number of claims they generate each year, these agencies have dedicated RTW and workers compensation resources that are actively involved in claims management activities and work closely with their appointed claims management providers.
50. Prior to 1 January 2020, when the current TMF Workers Compensation Claims management contracts commenced, TMF claims were managed under contracts awarded by SICorp. These contracts commenced in 2010 and were extended twice over this period. Claims portfolios were prescribed by SICorp at the commencement of the contracts and were allocated to specific claims management providers (Allianz, EML and QBE).
51. In 2010, claims management providers responded to a tender issued by SICorp that required them to articulate the unique Service Model they would implement to manage the claims that formed part of their portfolio of claims. Each claims management provider delivered a bespoke Service Model that resulted in an inconsistent claims experience for injured workers and agencies.

TMF workers compensation claims service model

52. In 2018, icare sought to update the TMF workers compensation scheme model. Over an 18-month period, icare ran diagnostics with NSW Government agencies; conducting interviews, workshops and validation sessions. Showcases were presented and NSW Government agencies were invited to survey and feedback on the proposed model. The new claims service model was developed collaboratively.

³⁰See also NSW Self Insurance Principles, endorsed by the ALC, paragraph 304

³¹Section 211B(1) of the 1987 Act

53. In November 2019, an open Request for Proposal (**RFP**) process was conducted seeking workers compensation claims managers that could deliver the new TMF claims service model. The minimum requirements sought for prospective providers included:
 - a. significant experience (+5 years) managing workers compensation claims;
 - b. history of working with Government agencies; and
 - c. an operational claims information technology platform.
54. The successful respondents were Allianz, EML, GIO and QBE. New contracts commenced on 1 January 2020 for Allianz, QBE, and EML. New entrant GIO is scheduled to commence managing claims following the deployment of icare's new claims technology platform.
55. The new claims management provider contracts seek to bring greater consistency to NSW Government agencies and their workers. Drawing on the learnings from the EML SPA in the Nominal Insurer scheme, the new TMF contracts prescribe the Service Model and Operating Model that each claims management provider is required to deliver. These contracts also detail a Decision Rights Framework which clearly articulates the accountability for decision making with respect to certain claim-related matters.
56. The new TMF claims management provider contracts and claims service model have been designed to provide NSW Government agencies with a choice of one of four claims management providers to partner with to manage their claims. However, this functionality is dependent upon the deployment of icare's claims technology platform.
57. The Nominal Insurer transition to a new technology platform led to a negative impact on the performance of the Nominal insurer scheme as a result of moving large portfolio claims between legacy systems and providers. icare is seeking to avoid such impacts on the TMF workers compensation scheme by migrating claims onto icare's technology platform first (which will minimise disruption and prevent multiple data variables changing simultaneously). Once claims are migrated onto the platform, each NSW Government agency can choose their claims management provider. Managing claims using one unified data platform decreases the risk of data corruption and service disruption when regularly moving claims between legacy systems.
58. icare intends to introduce the centralised claims system into the TMF and is currently assessing the viability of implementation. The introduction of this platform into the TMF will enable NSW Government agencies to:
 - a. assess the potential of claims self-management models;
 - b. change claims agents without the need for manual file migration, which increases the risk of deteriorating RTW outcomes during the migration period;
 - c. conduct real time reporting on RTW outcomes and case management; and
 - d. encourage market competition and potentially new entrants as claims management providers who do not currently have a claims management system could potentially demonstrate capability to manage claims.
59. The legislative reforms introduced to the workers compensation system in 2012 created a different entitlement structure for claimants in the TMF scheme, exempting emergency services workers from the legislative reforms. The development of the centralised claims system for the Nominal Insurer was designed to manage claims for workers who were not exempt from the 2012 legislative reforms. The centralised claims system therefore requires customisation for the TMF scheme in order to ensure entitlements are paid correctly to both exempt and non-exempt workers. This customisation work is scheduled for the 2021/22 financial year.

60. The TMF claims service model is based on Scheme Principles that are consistent with high quality customer service expectations and proactive injury management, including:
- a) *Facilitating an empowered model;*
 - b) *promoting recovery at work and the health benefits of returning to work;*
 - c) *straight-through processing, where possible;*
 - d) *resources attending to claims in need;*
 - e) *empowered customers; and*
 - f) *empathetic customer services.*
61. The TMF claims service model is underpinned by the following core principles:
- a. the health benefits of good work;
 - b. decision making is to be principle based, evidence based, free from preference or prejudice, not hiding behind legislation or focused on process, and made close to the customer; and
 - c. ensuring a financially sustainable scheme.
62. The TMF claims service model has been specifically designed to meet the needs of public sector workers injured at work and their Government agency employers. The segmentation of claims into two streams, Lower Complexity Claims and Higher Complexity Claims, is based on feedback from agencies during the consultation process. The two streams are designed to most effectively allocate and manage claims based on risk and ensure the right resources are allocated based on skill. Both segments have a dedicated case manager allocated to the claim.
63. Claims are segmented as follows:

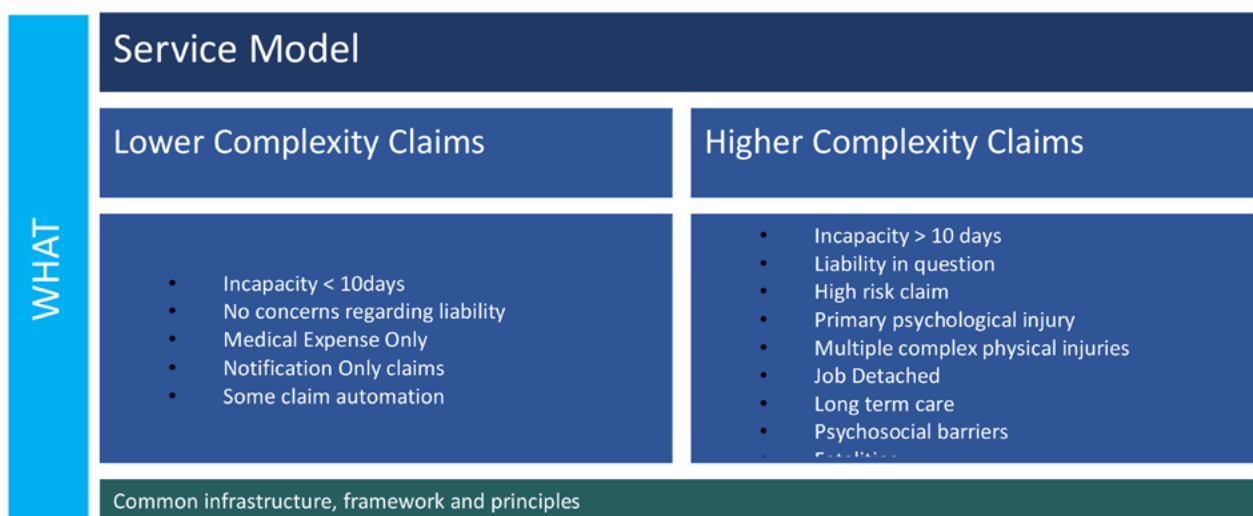


Figure 2: TMF Claims Service Model

64. The TMF operating model (distinct from the service model) was designed in consultation with agencies to meet their needs. This model consists of two approaches, the comprehensive approach and tailored approach:

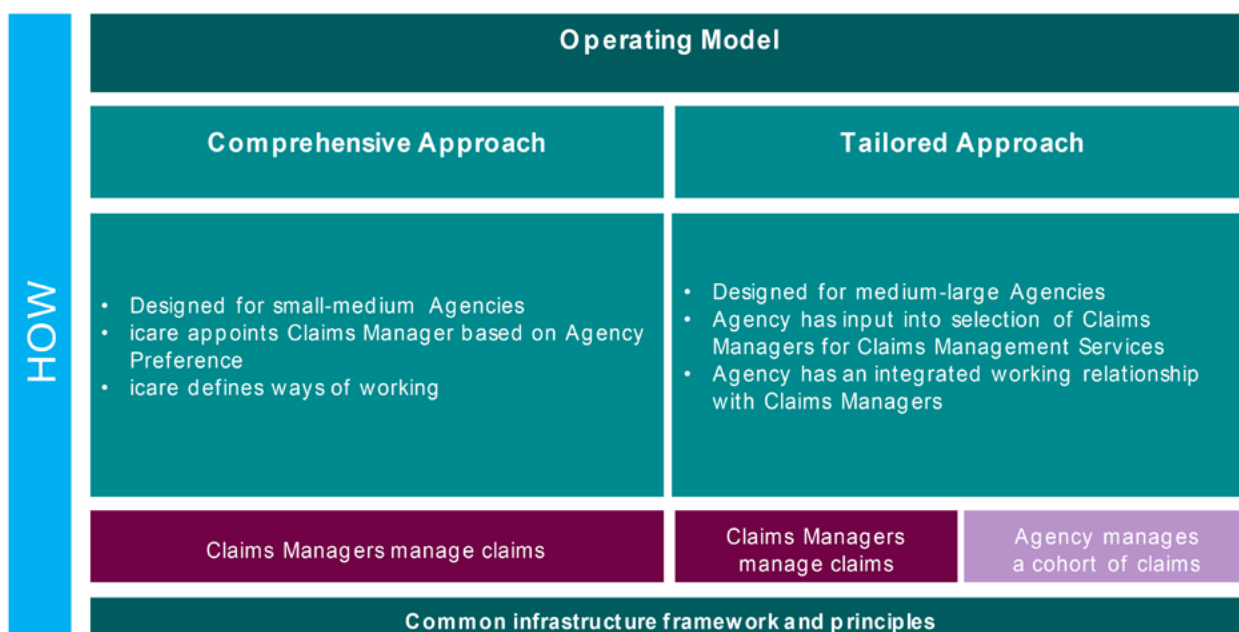


Figure 3: TMF Claims Operating Model

65. The 'comprehensive approach' to delivering claims management is targeted at small to medium sized agencies that either report fewer claims per year or do not have dedicated workers compensation claims or RTW resources. For these agencies, icare takes a lead role in appointing a claims management provider based on agency preference, defines ways of working between the claims management provider and the agency, and the claims management provider manages all claims on behalf of the agency.
66. The 'tailored approach' was designed for medium to large agencies where the agency has input into the selection of a claims management provider and develops an integrated working relationship with their chosen provider. In addition, the tailored approach provides for agencies who have the desire and capability to potentially self-manage specific cohorts of claims.
67. A key focus of the TMF claims service model is to ensure a consistent service experience for injured workers and agencies across NSW Government.
68. The following were introduced as part of the claims service model (applicable to both the Comprehensive Approach and the Tailored Approach) to ensure consistent service experience for injured workers and agencies:
- Claims Management* involved the introduction of the following:
 - events-based claims strategy aligned to an injured worker's needs, as opposed to a timeline approach;
 - increased expectations on quality of Injury Management Plans for complex claims; and
 - How Are You Going (**HUG**) philosophy introduced to improve rapport between case managers and injured workers.

- b. *Decision Rights Framework* involved the introduction of:
 - i. a “Responsible, Accountable, Consulted and Informed” (**RACI**) approach to decisions on selected claims processes to ensure the existence of clear escalation paths between icare and claims management providers; and
 - ii. escalation of complaints and disputes in the Decision Rights framework.
- c. *Customer Empowerment* involved the introduction of expectations on claims managers to:
 - i. achieve first call resolution to enquiries made on claims by injured workers or other relevant stakeholders; and
 - ii. work in collaboration with icare to deliver a client service function to agencies.
- d. *Risk profiling*: the introduction of Low Complexity Claims and High Complexity Claims (as outlined above) with dedicated Case Managers; and
- e. *Oversight*: the engagement of icare TMF technical manager whom have access to claims management providers' systems in order to review any claims that are escalated or require specific intervention.

Performance management and remuneration under the TMF scheme

- 69. TMF claims management provider remuneration model, and similarly the Authorised Provider model for the Nominal Insurer, is comprised of three elements:
 - a. the Annual Base Fee;
 - b. the Annual Outcome Fee; and
 - c. a System Fee.
- 70. The Annual Base Fee is an agreed amount between icare and the claims management provider based on their individual portfolio. An element of the Annual Base Fee is an ‘at-risk’ payment, designed so that the remuneration would not cover 100 per cent of the claims management provider’s operating costs and ensuring providers are incentivised to perform. The Annual Base Fee is a more flexible remuneration measure which can include certain key performance indicators introduced via a Performance Management Register with elements that can be adapted based on the changing needs and performance of the portfolio.
- 71. The Annual Outcome Fee is the incentive paid to a claims management provider and is focused on the priority performance areas of the scheme, including RTW rates, Customer Experience (Worker and Agency), Expense Control (medical costs containment) and Lump Sums (tied to work injury damages settlements).
- 72. The System Fee is a fixed fee negotiated individually with each claims management provider.

73. The relationship between these three aspects of claims manager remuneration is demonstrated below:

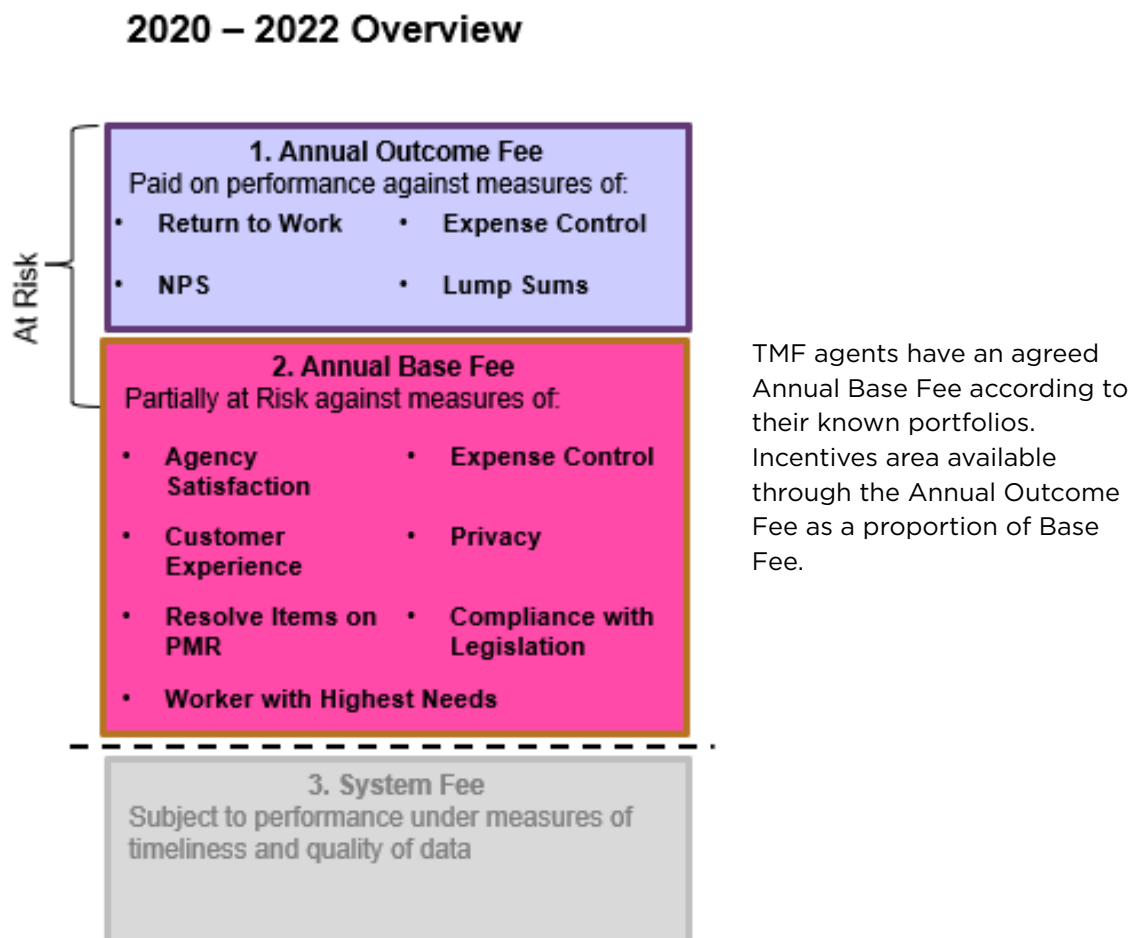


Figure 4: TMF Claims Management Provider Remuneration Incentives

74. The initial focus of the remuneration model under the new claims management provider model is to focus on and address the recent deteriorations in performance in the TMF RTW rate, particularly at 26 weeks post-injury.
75. The remuneration model also focuses on medical cost containment through the expense control metric and seeks to address a key area of financial deterioration due to the increased medical costs across the scheme.
76. The remuneration model formally recognises the volume and caps the impact of psychological injury claims to alleviate future negotiation around the external dynamics affecting RTW performance and increase the accountability of claims management providers on their performance.
77. Key performance indicators and targets have also been set for the claims management providers to increase resources and maintain engagement of staff. Relative performance is considered to reward the better performing claims managers and claims management providers.

78. In addition to the above, there are a number of metrics that determine the claims management provider's access to an Annual Outcome Fee:
- a. *Return to Work*
 - i. RTW fees to be paid based on a combination of 'off benefits' and 'work status' performance at 6 months and 18 months post injury.
 - ii. The 'off benefits' component is aligned to the actuarial measurement whilst the 'work status' component recognises superior outcomes on partial return to work and documented return to employment.
 - iii. A cap on the contribution of psychological injury claims will be applied, beyond which a standardisation will occur.
 - b. *Expense Control*
 - i. Expense Control Fees are paid for maintaining claim costs for weekly and medical expenses below expected from the valuation. All experience is cumulative from 1 January 2020 over the three years of the contract.
 - ii. Other payment types (for example, rehabilitation and investigations) are not included in the measure, allowing for more flexibility in strategies and approach.
 - c. *Work injury damages (WID)*
 - i. Similar to Expense Control, WID performance is based on the comparison of actual against expected payments taken from the relevant actuarial valuation. Experience is cumulative from 1 January 2020 over the three years of the contract.
 - d. *Customer Experience Measure (CXM)*
 - i. CXM performance is assessed using the Customer Experience result for each 6-month period based on a survey by Injured Workers on the claims management provider.
 - ii. A cap on the contribution of psychological injury claims will be applied, beyond which a standardisation will occur.
 - e. *Performance assessment includes service standards and outcome measures linked to remuneration*
 - i. Performance will be assessed through four mechanisms:
 - 1. *Reviews and Audits*: compliance elements conducted throughout the contract period and related to a Quality Assurance Framework (which includes internal and external compliance audits). Underperformance may result in items being added to the Performance Management Register.
 - 2. *Key Performance Indicators*: described in the KPI Register and flexible throughout the contract. There is no direct remuneration impact for non-compliance; however, underperformance may result in items being added to the Performance Management Register.
 - 3. *Service Standards*: anticipated to be updated annually to address emerging focus areas. Underperformance impacts entitlement to the Annual Base Fee.
 - 4. *Outcome Measures*: determines entitlement to the Annual Outcome Fee.

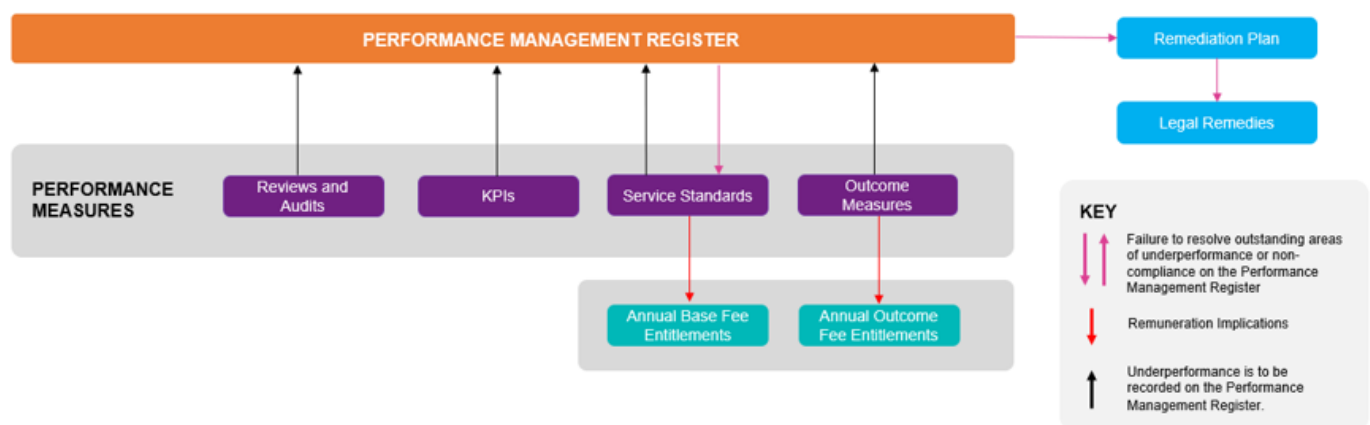


Figure 5: TMF performance measures

Nominal Insurer claims service model improvements since 2019

Response to Dore Review findings

79. The Dore Review report highlighted a number of key stakeholder submissions relating to claims management in the Nominal Insurer workers compensation scheme³², including:
 - a. concerns around the **design** of the new claims service model, particularly claims management decision-making, lack of assigned case managers, automatic “triage” and icare’s decision to move to a single claims provider for new claims;
 - b. **implementation** of changes, including issues with staff resourcing, retention and skill levels, lack of RTW management, reporting issues and deficiencies in supporting processes and IT infrastructure; and
 - c. issues around the **governance** of the new claims model, including stakeholder confusion over roles and responsibilities of icare and scheme agents.
80. icare has sought to listen to and respond to the concerns of stakeholders over the last year, and has implemented a number of changes to the Nominal Insurer claims service model, including:
 - a. adjusting the Guide segment risk settings and introducing case managers earlier in the claims timeline and for claims with a greater range of risk factors;
 - b. improving EML’s performance, both through collaboration with EML and by amending the EML service and remuneration agreements, and building capability of EML claims staff; and
 - c. revising the Decision Rights Framework to help govern the new claims service model in a transparent and more accountable fashion.
81. The Dore Review report also raised concerns regarding the negative impact on RTW outcomes that had resulted following the introduction of the new claims service model.

³²Dore Review report [4.3.1]

82. EY, in its examination of the claims service model under the Dore Review, found:³³
- a. the RTW outcomes of the 2018 claims cohort were impacted by the inaccuracies of the 'triage' model, combined with the design of the claims service model segments;
 - b. EML case managers had a lack of personal injury case management experience and under-resourced staffing levels resulting in high caseloads; and
 - c. a lack of effective governance to identify and rectify problems identified.
83. The Dore Review report also found that it was *"especially unhelpful that the EML contractual arrangement is weighted disproportionately to control of corporate expenses and minimally to RTW (1 per cent)"*.³⁴
84. In addition, the Dore Review report identified the risks involved with establishing, testing and operating one claims technology system and the *"teething problems"* that eventuated as a result.³⁵
85. A number of findings were made in relation to these identified risks (see Findings 9 to 11).
86. Since 2019, both icare and EML have taken significant steps to improve the issues identified by the Dore Review report, as also detailed further below. Following these steps, icare's view is that the risks identified in the Dore Review report have been sufficiently addressed, and that the Nominal Insurer is well-positioned to continue delivering benefits to the workers compensation scheme using the current claims services model.

Overview of changes

87. As set out in paragraph [7.2.4] of the Dore Review report, at the time of the Dore Review, the Guide segment was performing below expectations assessed against customer experience and operational performance. Since then, both icare and EML have focused their efforts towards stabilisation of operations at EML. This has been undertaken through a combination of business-as-usual oversight and support by icare, as well as targeted projects to drive operational efficiency and effectiveness.
88. Following a comprehensive review of the Nominal Insurer's claims service model by icare, in partnership with EML, considerable work was undertaken over the last 18 months to improve the design of the Nominal Insurer claims service model and to stabilise operations within EML, using a continuous improvement approach. Further details as to the work undertaken to improve EML's performance, as well as the introduction of the Authorised Provider model to provide greater employer choice, are included from paragraph [109] below.
89. In May 2019, icare introduced an improvement plan for the Nominal Insurer scheme, Project Pathway, which help drive improvements in claims service and delivery. More information on the impact of icare's implementation of its improvement plan is provided in the John Trowbridge Review report.
90. Additional changes implemented in this timeframe include:
- a. from July 2019, reducing the claims allocated to the Guide service segment to claims with predicted time loss of up to 2 weeks only (reduced from 4 weeks). This change was based on an analysis of results and re-allocation rates, as well as feedback from customers (directly and via NPS);
 - b. each step in the claims service model has been assessed and refined to help deliver a more effective claims service, including defining 'better practice' and coaching claims management providers in how to best implement it;
 - c. implementing better initial engagement strategies (for example, using SMS) to uplift the contact with customers by 50 per cent at initial contact and promoting stronger engagement for RTW recovery;

³³Dore Review Report [7.2.4]

³⁴Dore Review Report [7.2.6]

³⁵Dore Review Report [7.3.3]

- d. introducing a post-call survey to collect feedback, permitting claims management providers to act immediately on areas of key customer concern; and
 - e. streamlining claims processes, including updating the 'Decision Rights Framework', to clarify where icare should be involved in certain aspects of claims decision making, and reducing claim activity backlog to zero. Further details on the updated Decision Rights Framework are included from paragraph [100] below.
91. As well as enhancing the risk allocation business process (including increasing claims specialist involvement), improvements to the underlying predictive analytics modelling have been made to help ensure greater accuracy in the recognition of risk factors associated with claims. The changes were developed by icare's Data & Analytics team, and reviewed by icare's Actuarial team and external actuary, Taylor Fry. These changes support a team of claims specialists, supported by enhanced risk settings, to properly assign claims into each respective segment in the claims service model and check assignments with regard to the complexities of each individual claim. There is always a human overlay in the allocation process to ensure each claim is properly aligned to the correct claims segment. This ensures that early case manager intervention is provided, where required.³⁶
92. Frontline staff agree with the proposed allocated segment 80 per cent of the time. The 20 per cent of claims where staff override the recommended segment is associated with the risk analysis indicating a higher risk of complexity, further demonstrating the low risk tolerance of the modelling from its introduction in August 2019.
93. Claims are only ever segmented 'up' to a higher service segment within the new model. If a claim is found to be lower risk, or the risk lowers over the course of the claim, it will remain with a dedicated case manager. This approach is currently under review.
94. The following improvements have also been introduced since 2019:
- a. upskilling claims specialists, including:
 - i. requiring proactive reviews, including undertaking a claims 'check-in' activity and utilising the 'outside ODG report'³⁷ exception; and
 - ii. for large employers, running data analysis on employer claim trends (for example, multiple injuries occurring from similar mechanism at the workplace), in liaison with the employer's Client Service Manager and account management team;
 - b. shifting from an individual task/transactional view of claims management to strategic, whole-of-claims approach;
 - c. collaborative development of a Standard Operating Procedure tool, which includes claims management practices, such as claim 'check-ins', to promote proactive customer contact and claims strategy; and
 - d. facilitating operating rhythms, portfolio accountabilities and training on how icare and EML can leverage reporting tools to collectively and effectively target risk claim cohorts.

³⁶Further details of icare's approach to segmentation are included in icare's response to the Dore Review report at Tab D, section 1.2, and icare's response to the First Quarterly Claim File Review of the Nominal Insurer at pp 2-3

³⁷See paragraph [164]a below for an explanation of the Official Disability Guidelines (ODG) framework

95. These changes have led to improvements in the Guide segment, including:
- an NPS uplift from April 2018 to August 2020 of 39 points to +41 (for injured worker customers) and 68 points to +23 (for employer customers). In addition, from May to September 2019, the NPS specifically for the Support Centre saw a substantial uplift;
 - improved quality assurance results from March 2019 to September 2020; and
 - reduction in the actual volumes and average age of a claim in the Guide segment from 10,367 claims (averaging 94 days) in November 2019 to 3,333 claims (averaging 70 days) in August 2020.³⁸

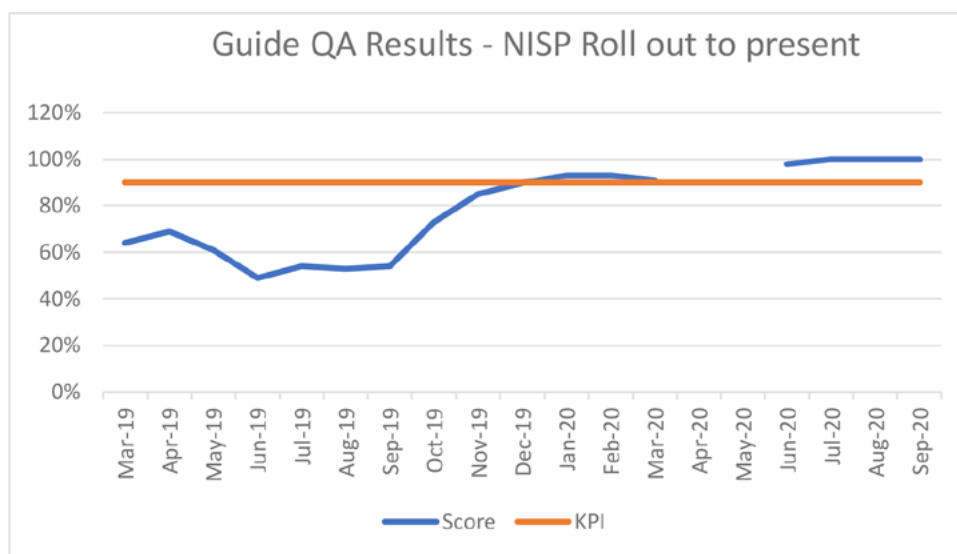


Figure 6: Guide Segment Quality Assurance Results (Source: icare/EML KPI Report)

96. More recently, a commitment has been made to SIRA to implement changes to the Guide service segment aligned with point 5 of SIRA's 21-point Action Plan. The intent is to ensure that any claim with more than seven days' continuous time loss is allocated to a dedicated case manager unless there is clear documentation on the claim file that the injured worker will return to pre-injury duties imminently. icare has also committed to allocating medical-only claims (with no ongoing time loss) to a dedicated case manager where treatment has extended beyond expectations for the injury.
97. In addition, in response to the Dore Review report findings in relation to the use of provisional liability,³⁹ icare has improved its processes to ensure the more effective application of provisional liability determinations, while at the same time ensuring that the use of provisional liability remains consistent with the intent of the legislation. icare's interventions have focussed on ensuring that the right information is gathered and considered in determining initial and subsequent liability for any claim. Initiatives have included:
- roll out of portfolio reviews that address timeliness and quality of RTW management, injury management and liability decision, informed by effective case strategies;
 - quality assurance reviews on the approach taken on liability decisions both for timeliness, consideration of information and use of appropriate liability status with feedback and coaching provided to claims service providers on findings;

³⁸Age of claim includes run-off claims; for example, physiotherapy to ensure pre-injury duties status. Variance to ODG is less than 3 per cent across the segment portfolio.

³⁹Dore Review report [7.4.8]

- c. changes to icare's decision-making framework to facilitate quicker decisions by enabling case managers (rather than icare) to make referral to legal providers in the first 13 weeks of a claim;
 - d. ongoing discussions with SIRA regarding the appropriate use of provisional liability and outright liability in accordance with the Standards of Practice and Guidelines;
 - e. management of psychological injury claims aligned to the SafeWork Australia Best Practice for Psychological Injuries Guide; and
 - f. supporting claims service providers in the determination of liability in psychological injury claims and the use of section 11A based on the legislation and relevant case law.
98. Finally, icare has continued to focus on improving customer service outcomes for both employers and injured workers using the claims service model. In response to the Dore Review report findings in relation to the lack of employer engagement,⁴⁰ icare engaged Righthandturn Pty Ltd in October 2019 as a Customer Advocate to meet with stakeholders and customers that provided written submissions to the Dore Review, in order to gain further insights on their experience as a customer interacting with icare and identify opportunities for icare to enhance its customer service delivery. The Customer Advocate issued a report on 18 December 2019 with a number of recommendations that icare has since acted on, as detailed in icare's response to the Customer Advocate report dated 25 February 2020. A copy of icare's responses are annexed at **1A-1**.
99. A broad review of the icare claims service model and operating model is planned to commence in November 2020.

Updated Decision Rights Framework

100. As part of the Nominal Insurer's new claims service model, a small number of claims decisions are escalated to an icare team for consultation, management or final endorsement of the decision. These decision processes are contained in a 'Decision Rights Framework' agreed between icare and its claims service providers.
101. icare has received feedback from customers and claims service providers that, at times, this approach has led to duplication of work, lack of efficiency and confusion around accountabilities. These comments were reflected in the public's submissions to the Dore Review.
102. An initial review of the Decision Rights Framework was undertaken in July 2019 and the framework was simplified. As an example, Work Capacity Decisions were returned to the claims service provider for management.
103. A second, phased review of the Decision Rights Framework is currently underway. This commenced in July 2020 through discussions with EML and other claims service providers. Phase 1 and Phase 2 changes to the Framework have been agreed and implemented. Phase 1 involved removing the requirement to inform icare of certain decisions where there were other methods for icare to achieve oversight (for example, through reporting or claims system data). Phase 2 of the Framework review devolved accountability for pre-litigation legal referrals and whole person assessments back to the claims service providers.
104. The review of the Decision Rights Framework in relation to the Medical Support Panel⁴¹ (**MSP**) is in the final stages of completion, with changes to Decision Rights and ways of working in the MSP to be implemented in the last quarter of 2020. Changes will be implemented across the Nominal Insurer scheme.

⁴⁰Dore Review report [10.1.2]

⁴¹The Medical Support Panel was introduced by icare in 2016 to review and advise on claims treatment requests to avoid independent medical examinations

105. icare's involvement in litigation management has also recently been reviewed with a decision taken to reduce icare's involvement in direct management of most litigated matters. It is anticipated that responsibility for the management of the majority of litigated matters will be transitioned to the claims service providers by the end of 2020, with oversight from icare and support from the appointed legal panel provider. icare will retain oversight and accountability for litigation performance and management outcomes via expectation setting, training, reporting and quality assurance activities. icare will continue to be involved directly in the management of Significant Legal Matters (as defined in the Scheme Agent Deed) which have a high financial or reputational impact, or involve complex questions of law that may give rise to significant legislative or constitutional issues.
106. A Monitoring and Controls Framework is being rolled out alongside changes to the Decision Rights Framework. Claims service providers will report on legal referrals and litigation on a weekly basis, and matters will be subject to monthly quality assurance reviews undertaken by Litigation Specialists within icare. This monitoring and assurance will focus on appropriateness of referral, sound decision-making and quality of litigation management, as well as ensuring compliance with timeframes. Areas for improvement will be escalated to contractual governance forums with Performance Improvement Plans entered into as required in cases of under-performance. Escalation pathways to icare are available to customers (workers, employers and third-party providers) through the icare's Complaints and Disputes Framework.
107. In addition to the new claims service model, the Nominal Insurer has continued to implement several strategies to improve overall scheme performance, with operational effectiveness and efficiencies achieved by:
- a. improving the effectiveness of case allocation, ensuring all claimants who require a dedicated case manager are allocated one (and are currently implementing an approach, discussed with SIRA, in response to SIRA's 21-point Action Plan);
 - b. implementing over 341 claims system enhancements to improve data quality and support effective case management decisions, and reviewing over 43,000 files for data quality;
 - c. conducting over 17,000 individual reviews of claims lodged since 1 January 2018. This has contributed to more proactive case management which has resulted in an improvement of 3 percentage points in the 13-week WSC RTW rate since September 2019; and
 - d. the average time to answer a claim call has been consistently below 30 seconds for the last six months and changes made to inbound call systems have helped customers connect quicker with their key contacts.
108. To assist in the implementation of the new claims service model, the Nominal Insurer also redesigned and published the Workplace Rehabilitation Handbook, which contained instructions and guidance for claims providers on numerous matters, including:
- a. the process for referring workers for rehabilitation services;
 - b. return to work programs;
 - c. non-occupational rehabilitation services;
 - d. SIRA vocational programs, such as work trial programs, training programs and the JobCover placement program; and
 - e. return to work assistance benefits, such as new employment assistance and education or training assistance.

Improvements in EML performance

109. Since the inception of the new claims service model for the Nominal Insurer scheme, customer feedback has identified lower than expected responsiveness by EML case managers. Challenges in the operationalisation of the claims service model and inadequate staffing levels have contributed to these experiences. The Dore Review report identified the following challenges in the operationalisation of the claims service model:⁴²
- a. a lack of investigation of liability causation issues;
 - b. an overall lack of coordination of all service providers by the case manager;
 - c. a passive approach to injury management and RTW strategies;
 - d. a general lack of enquiry on the part of the case manager due to either capacity, capability or both; and
 - e. case manager turnover.
110. icare has been working to build the capability and competency of claims management staff within the scheme. Uplifting capability will take time; however, early indications have already seen improvements in key areas.
111. When the single provider claims model for front end claims was introduced in the Nominal Insurer scheme in 2018, it was expected that the capability required to operate the new model would be fulfilled by experienced workers compensation staff moving to EML from other agents. This assumption did not transpire and migration of experienced staff to EML has been lower than expected.
112. icare has attributed this to:
- a. *Competition in the labour market:* the introduction of amendments to the Compulsory Third Party (CTP) legislation in 2017 increased demand for experienced personal injury claims staff across the insurance industry. As a result, claims management providers chose to deploy former workers compensation staff into CTP or other lines of their operations including TMF portfolios. Accordingly, the employee value proposition offered by EML is attractive to some but not all case managers;
 - b. *Labour market perception:* early operational instability has resulted in a market perception (evidenced by public submissions to the Dore Review) that the new claims service model provides a poor working environment (including high caseloads) with suboptimal outcomes. There is no evidence of similar rates of turnover in Allianz, GIO or QBE (for the Nominal Insurer) or the TMF portfolios.
 - c. *Staff capability requirements:* icare wanted to ensure that case managers not only had technical capability but also customer service skills. For this reason, not all existing EML staff were offered roles in the new claims service model operation. In addition to this shortfall, some staff initially employed by EML in the new claims service model have since moved to other parts of EML.
 - d. *Under resourcing:* in 2018, the forecast claims volumes were based on historical data which was not a good predictor of workload (due to the introduction of additional notification obligations from July 2017) and underestimated the resource level required as there was less automation than originally anticipated in the new claims service model. EML also under-forecasted staff attrition and the staff training required. Because initial resource levels were low, more staff decided to leave the organisation, resulting in high staff turnover.
 - e. *High caseloads:* EML has reported that the caseloads for the 12 months from June 2019 to June 2020 were close to target for all case managers. However, they also reported that the “operational caseload” (an EML term calculated as total number of claims divided by case managers with more than three months’ employment at EML) was much higher.

⁴²See e.g. paragraphs [7.4.1] and [7.4.7] of the Dore Review report

113. As at June 2020, EML reported an annualised staff turnover rate of 32 per cent against a target of 30 per cent for its Nominal Insurer claims service staff. In addition, EML has flagged its intention to adopt a higher level of experience and case manager maturity and has acknowledged that competency levels of staff have yet to reach satisfactory stability. EML has had difficulty in recruiting and retaining experienced staff, meaning a workforce with a lower average experience level than expected has supported the claims service model since its creation.
114. icare is working with EML to understand and address the staff attraction and retention issues through tactics designed to lift staff capability and performance and improve organisational culture.
115. There is a continued focus on recruiting quality staff and supporting existing staff through training, workshops, simplified processes and ways of working, improved governance frameworks and clear objectives linked to EML's performance incentives.
116. Significant work has also been undertaken to improve operational performance at EML.
117. As well as ongoing business-as-usual oversight and portfolio reviews by icare staff, project discipline was introduced to remediate performance and introduce stronger operational controls, oversight and more effective and efficient ways of working. These projects delivered the following:
- a. clearly defined expectation of portfolio management and a move away from reactive to proactive claims management;
 - b. delivery of a reporting suite to measure and monitor the portfolio performance;
 - c. team leader and additional operational reporting enabling review and tracking of team performance;
 - d. leadership training rolled out to 300 leaders within EML;
 - e. issue of a post-call survey to measure first call resolution and customer satisfaction to inform coaching and capability uplift in frontline staff;
 - f. introduction of the GROW⁴³ coaching framework;
 - g. implementation of a balanced scorecard within EML's Nominal Insurer operations;
 - h. embedding operating rhythms and governance structures focusing on key performance indicators (for example, compliance, work capacity decisions, people metrics, RTW metrics) for frontline EML teams;
 - i. establishing call guides and templates to support staff; and
 - j. establishing an escalation process within Guide when treatment exceeded recommended guidelines.
118. Recent portfolio reviews resulted in 6,000 claim files being independently reviewed by icare or EML staff. Of these claims reviewed, 1,400 workers were successfully rehabilitated and able to return to work.⁴⁴

⁴³This framework for coaching was developed in the 1980s by Sir John Whitmore and his colleagues at Performance Consultants International. He wrote the book *Coaching for Performance* that has been widely used for decades. Seeking to find a more effective way to lead in business, GROW was developed to create stronger leaders. The approach has helped improve performance across the globe. GROW is an acronym that is laid out as follows: G – Goal (aspirations) / R – Reality (current obstacles or situations) / O – Options (strengths, resources) / W – Way Forward (accountability and personal actions) (What, When, by Whom and the WILL to do it).

⁴⁴Those claims had a date of injury from July 2019 to March 2020 and included those workers who had capacity, but were not working or we had not received confirmation they had returned to pre-injury duties

119. Through regular governance forums, icare continues to provide ongoing oversight to ensure EML and other claims service providers in Nominal Insurer workers compensation scheme are aligned with icare's expectations. Key performance indicators, measures and minimum standard compliance measures are tracked by icare and reported on regularly.
120. EML's improved performance has been reflected in NPS results, both for workers and employers, and in improved RTW rates, as shown in the figures below. Further improvements are required, however, to return the Nominal Insurer scheme back to 2017 levels (noting that considerable operational benefits and savings have already been achieved since that time through the introduction of the new claim services model).

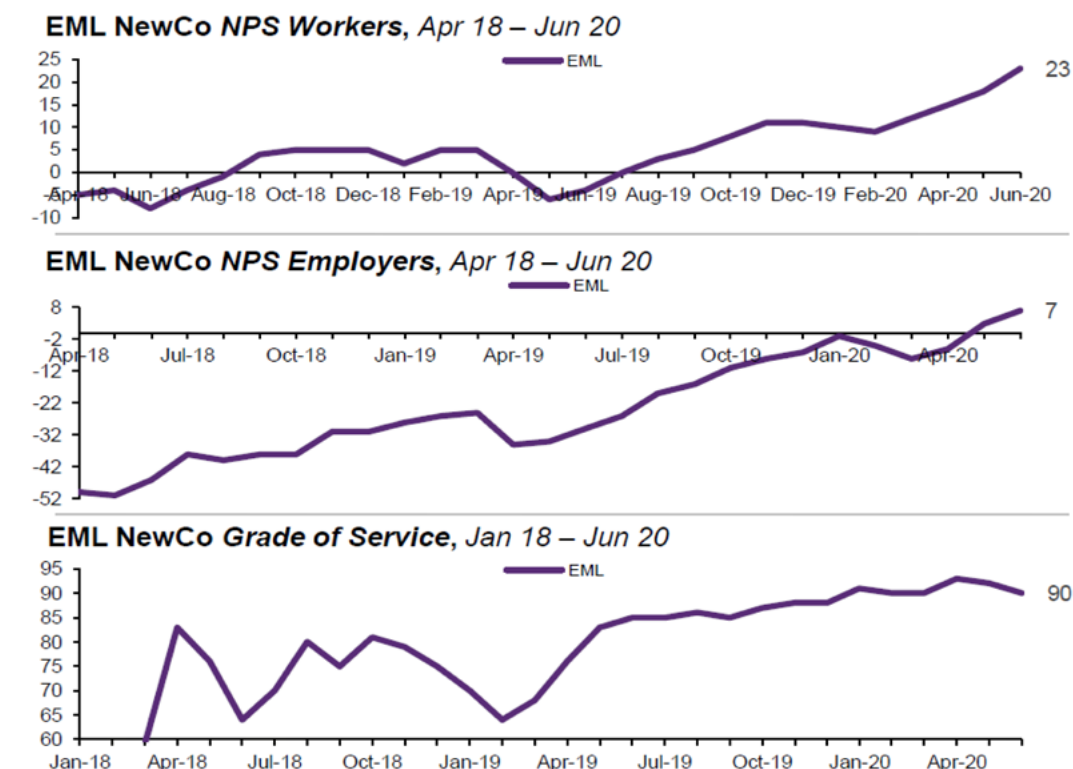


Figure 7: NPS Results for EML (New Claims)⁴⁵

⁴⁵PI Operational Report and CX team, Attachment 3 of EML Contract Board Paper, October 2020 (Item 3.1.3 Oct Board EML Performance Fact Base)

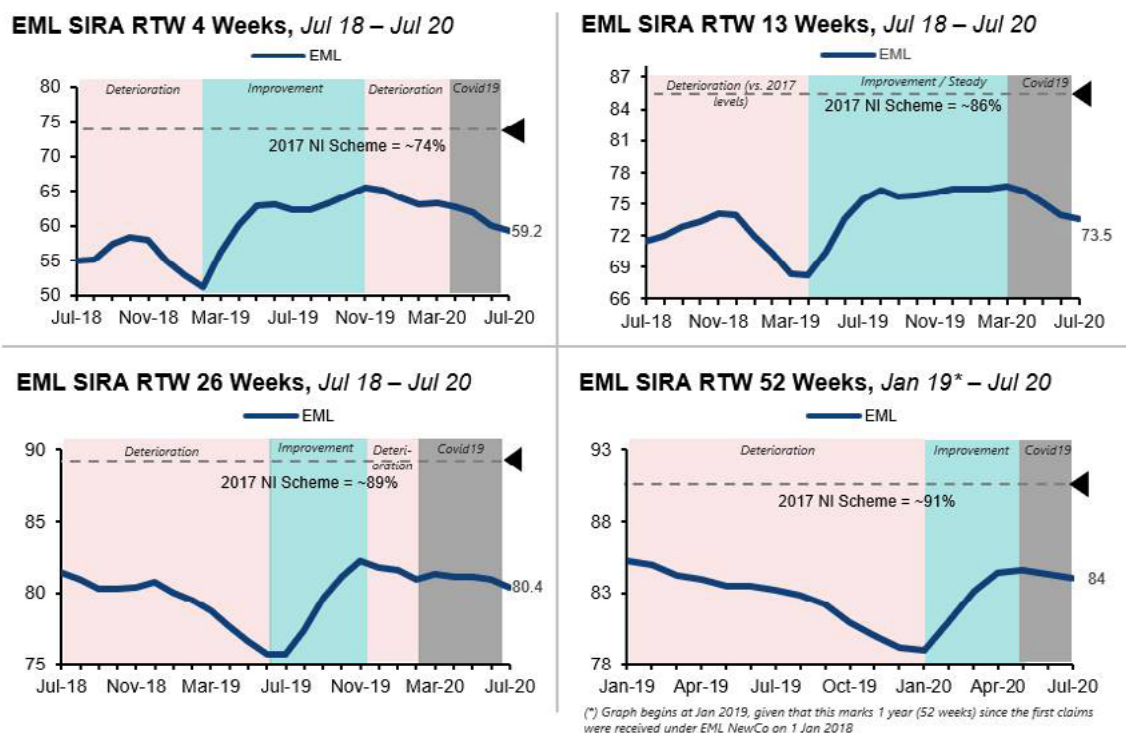


Figure 8: RTW Outcomes – SIRA RTW Metric⁴⁶

Introduction of Authorised Provider model

121. The original intent of the Nominal Insurer's claims service model was to reduce the number of service providers, which was to be achieved by moving to one provider (EML) for new claims whilst retaining GIO as a claims service provider to manage run-off and existing tail claims. Allianz was retained to pilot the Authorised Provider model (see paragraph [123] below).
122. Prior to the launch of the new service model with EML on 1 January 2018, icare consulted with and obtained feedback from large employers who were concerned about moving their portfolio to a new claims service provider and had a desire to maintain existing relationships with their current claims service provider. This led to certain large employers being 'exempt' from moving their new claims to EML. These 144 employers continued to lodge new claims with their pre-existing claims service provider (either GIO or Allianz).
123. Discussions commenced with Allianz to begin a Proof of Concept of the Authorised Provider model (**AP model**) from July 2018. A pilot AP model was offered from January 2019. This model was intended to provide choice of provider for large employers whilst introducing consistency across the scheme through transition to the core features of the new claims service model. A key tenet of the AP model was to ensure delivery was controlled and consistent in order to avoid the re-introduction of the poor behaviours and incentives in the pre-2018 competitive workers compensation model that had led to adversarial interactions with injured workers. The launch of the AP model also specifically addresses the concerns raised in the Dore Review report regarding the reliance on a single agent model (see finding 10).⁴⁷

⁴⁶Based on SIRA RTW metric (work status) using 3-month rolling average using date entered on insurers system (DEIS) for reporting month, as sourced from PI Insights Team

⁴⁷Dore Review report [7.4]

124. Following a successful pilot, a decision was made to continue with the AP model and expand the model to include a further two Authorised Providers (GIO and QBE). The AP Model, as an ongoing offering, formally commenced as an ongoing offering from 1 January 2020 with large employers able to nominate their preference of provider (between GIO or Allianz as Authorised Providers, or EML as the default provider). The first claims from those employers who elected to use the AP model claims management providers were not lodged until 1 February 2020. QBE commenced operations as an Authorised Provider in May 2020.
125. To date, 300 employers or employer groups have elected to choose an Authorised Provider. This represents approximately 12 per cent of newly lodged claims in the Nominal Insurer claims portfolio.
126. The Authorised Providers are now all operating on the centralised claim system for newly lodged claims, bringing further consistency to the customer experience across the Nominal Insurer scheme as well as providing icare with greater oversight and control through direct access to the claims system and real-time access to data. icare intends to migrate all claims onto the centralised claims system by the end of 2021.

Changes to EML and scheme agent contract design and incentive structures

127. The EML Service Provider Agreement (**SPA**) contains a number of Scheme Principles, which are intended to be a statement of a mutual intention between the Nominal Insurer and EML. These include:
 - a) *to promote recovery at work and the health benefits of returning to work;*
 - b) *to provide a proactive, tailored and intensive Long Tail Claims management approach that effectively identifies and mitigates Return to Work barriers and risks;*
 - c) *to support injured Workers to recover and regain their financial independence;*
 - d) *to reduce complexities and make it simple for injured Workers, Employers and service providers to navigate the systems and processes related to making claims;*
 - e) *to strongly discourage payments, treatments and services that do not contribute to recovery and Return to Work; and*
 - f) *to manage Claims in a manner that does not detract in any way from the economic viability of the Workers Compensation Insurance Fund.*
128. The Scheme Principles, together with a strong governance and performance management framework, were designed to set the tone for a shared strategic approach that would facilitate improved outcomes for injured workers and employers in NSW.
129. In practice, the Scheme Principles have not been fully met and there are contractual, systemic and relationship elements which have all contributed to this. While there is no doubt that underperformance has affected the scheme's performance and contributed to below benchmark RTW outcomes, icare is learning from this experience and endeavouring to build a better model going forward that increases its confidence in claims management performance. The recent contracts between icare and QBE, Allianz and GIO as Authorised Providers include:
 - a. simplified governance structures;
 - b. different remuneration constructs; and
 - c. same service expectations, decision accountabilities and expectation to use the centralised system/processes.

130. The EML SPA currently has a 'cost plus' remuneration model. icare designed this model to address the findings of the NSW Legislative Council's Standing Committee on Law and Justice in its First Review of the Workers Compensation Scheme and the Committee's criticism of the perverse remuneration incentives at the time placing unacceptable pressure on injured workers. However, the 'cost plus' model has driven unintended behaviours. For example, resources were modelled based on caseloads and workloads. A 'cost plus' model meant there were disincentives to drive efficiencies or to close claims.
131. In order to preserve the partnership and in acknowledgment of icare's concurrent accountability for the ongoing scheme result, icare has chosen not to use contractual levers to penalise poor performance, and instead adopted a constructive approach to improve outcomes.
132. The initial term of the EML SPA is due to expire on 31 December 2020. icare recently decided to exercise its option to extend the EML SPA for a further 12-month term and is currently negotiating with EML the terms of this extension.
133. The 12-month extension is designed to provide the time necessary for icare to further refine the claims model including industry consultation and undertake a competitive market engagement for future claims management provider arrangements.
134. In seeking to extend the EML SPA, icare considered it critical, on balance, to ensure the stability of the NSW workers compensation scheme. A major change to the scheme, at this point, would result in an immediate and significant negative impact on the stability of operations (similarly to the instability in the Nominal Insurer scheme when icare moved from five scheme agents to three).
135. A new remuneration model for EML, as well as changes to governance and the decision rights framework, currently has in-principle agreement. This remuneration model responds to recommendations from SIRA in the SIRA 21-point Action Plan to include appropriate RTW incentives in the EML SPA contract while still seeking to avoid the perverse remuneration incentives identified by the NSW Legislative Council's Standing Committee on Law and Justice.
136. Additionally, extending the EML SPA permits EML to continue its current progress in maturing its claims management operations, including the education and experience profile of claims managers, will ultimately assist the scheme. It is noted that, generally, it takes approximately two to three years to train and develop a fully capable claims manager. Currently, claims managers have, on average, approximately one year of experience only.
137. In the EML SPA extension negotiations, EML has also agreed in principle to exit provisions which would enable icare or another provider to make offers of employment to EML's personnel and use its best endeavours to facilitate the orderly and effective transition of such personnel. This would apply to any new providers engaged following the Request for Proposal for claims management providers for the Nominal Insurer scheme which is due to be released in 2021 (noting the EML SPA extension will expire on 1 January 2022). This will help preserve capability in the Nominal Insurer scheme.
138. Acknowledging past performance challenges, icare has confidence in EML's capacity to be an effective partner and is optimistic about the potential for performance improvement during the 12-month extension period. Key contractual terms, agreed to in principle between icare and EML, contribute to this belief:
 - a. *Remuneration model:* move from a 'cost plus' model to a reasonable cost model with risk/reward, more closely aligned with elements of the TMF and AP contracts. This includes capped outcome fees that balance motivation between RTW and customer experience to drive improved outcomes.
 - b. *Relationship reset:* there has been a refresh of the key personnel managing the relationship across various levels. EML has also acknowledged past issues with the 'cost plus' mindset and poor outcomes delivered therein. icare has acknowledged some issues have been driven by over-governance and an overly-directive management approach, now rectified through a review of the Decision Rights Framework, and also by under-resourcing, which has contributed to operational instability.

- c. *Cultural shift*: both parties have agreed to shift prevailing attitudes and the relationship mindset towards a target culture of 'trust but verify', whereby icare will endeavour to reduce hands-on operational involvement, enabling greater autonomy for EML.
 - d. *Critical pain points are being addressed*: decisions are imminent between the parties in relation to amending decision rights, resourcing processes and reducing caseloads, as well as enabling pathways to uplift EML workforce capability and capacity.
 - e. *There has been improvement in EML performance across all key performance indicators, including customer service*: as a result of operational improvement initiatives, icare is seeing early indicators of improvement. Prior to the onset of the COVID-19 pandemic, EML had shown demonstrable improvement:
 - i. In the 9 months to February 2020, there was an improvement in RTW metrics of 4 percentage points, 1.5 percentage points and 0.4 percentage points respectively across the 13, 26- and 52-week durations.⁴⁸
 - ii. EML has maintained stability in compliance metrics. In the 9 months to September 2020, there was an improvement of 5.1 percentage points, 20.5 percentage points, and 15.8 percentage points respectively across compliance with initial contact made, subsequent liability determination, and initial weekly payment made (although icare is still examining the quality of these payments made). These key performance indicators have been included in the contract exercising icare's option to extend the EML SPA.
139. Under the EML SPA contract extension (currently in the final stages of negotiation), icare and EML have agreed to:
- a. EML accepting a lower margin in order to redirect \$10 million worth of resources into claims management improvements. Funded via a Project Service Order, the allocation will be quarantined for capability building of frontline staff; and
 - b. an EML Member Benefit co-investment of \$10 million to be made to accelerate the delivery of performance outcomes and capability, to be spent either before or within the Extension Period.
140. This significant investment will accelerate achievement of the necessary levels of capability in the workers compensation scheme and enhance performance improvements.
141. The combined \$20 million investment will be targeted at reducing caseloads, improving staff retention, enabling mobile case management, and specialist and technical coaching resources. EML has produced high-level plans which provide a directional view of investment allocation to drive improved performance, and EML and icare continue to collaborate to ensure the investment is targeted appropriately.
142. In addition, icare is continuing to strengthen the relationship with EML, focusing on increasing transparency of information between EML and icare and joint problem solving. icare is also working with EML on improving the capability of its workforce and reducing turnover, as recommended by the Dore Review report.
143. icare and EML have agreed that the quality and quantity of appropriately capable resources is important for the success of the performance of the claims portfolio. Turnover of case managers remains a challenge for EML and icare to address, as evidenced by the EML Monthly Operational Report dated August 2020. Workforce capability remains a shared priority for EML and icare in the 2020/21 financial year.
144. icare will continue to build on these early indicators to create a stronger NSW workers compensation model. icare will be issuing a Request for Proposal for claims management providers for the Nominal Insurer scheme, due to be released in 2021, which will utilise learnings from icare's experiences since 2018.

⁴⁸Note some of this improvement may be due to process changes around increases in timely payments to comply with section 267 of the 1998 Act. These payments provide a more accurate reflection of any lost time, which has a corresponding impact on the methodology of calculating RTW.

Return to Work performance

Nominal Insurer

145. The Dore Review report raised concerns with both the Nominal Insurer's deteriorating return to work (**RTW**) rates and questioned icare's decision to utilise a different RTW measure than that of SIRA.⁴⁹
146. icare acknowledges that the change in the claims service model, as well as the transition in claims technology platforms, negatively impacted the workers compensation scheme's RTW rate. icare has taken steps to ensure improvement in the RTW outcomes in the scheme including moving to reporting metrics that are consistent with SIRA's metrics (as detailed further below) and building in additional incentives for RTW performance in scheme agent contracts (as detailed further above).
147. icare however notes that there have been a number of external factors outside of icare's control that have also contributed to more recent deteriorations in the RTW rate, including the COVID-19 pandemic, as also explained below. Nevertheless, icare remains confident that the current claims services model, with the operational changes that have been made in light of the Dore Review's recommendations, has put the Nominal Insurer in a position to be able to continue to improve RTW outcomes for injured workers in spite of these challenges.

Return to Work metrics

148. RTW is a key measure of the performance for workers compensation and can be measured using several different metrics:
 - a. icare has largely used a payment-based and financially focused RTW methodology, which has existed for more than a decade in NSW;
 - b. in 2018, SIRA introduced a work status code (**WSC**) based RTW metric to measure the partial or full return to work of an injured worker; and
 - c. the Fit for Work (**FFW**) measure is based on weekly payments made per the actuarial claims valuation. This measure provides an early indication of potential valuation movements for the weekly payment type and therefore the financial performance of the Scheme.
149. It is emphasised that each metric has a different focus and no one metric will suit all situations. Other jurisdictions use different metrics that reflect their own unique circumstances.
150. To address known limitations in each metric and to enable an aligned and consistent measure of customer outcomes and financial sustainability, icare has migrated to two metrics. icare now reports on the WSC RTW metric, as utilised by SIRA, to measure RTW and worker outcomes and the FFW measure to provide an indicator of the financial performance of RTW. icare has ceased using the payment-based RTW measure as the headline measure. However, in addition to the WSC and FFW measure, icare will continue to track, monitor and publish payment-based metrics until there is a full transition to the new measures as this metric is used in claims service provider remuneration calculations.
151. The FFW rate is used as the primary return to work performance measure for the TMF workers compensation scheme. It is noted that, for both the Nominal Insurer scheme and the TMF scheme, the FFW measure will be shifting to a continuance measure, as used in Victoria, from November 2020.
152. In icare's Nominal Insurer Business Plan, icare has proposed to include the FFW rate (and continuance metric, from November 2020) as a key financial performance measure for the Nominal Insurer from the 2020/21 financial year.

⁴⁹Dore Review report [5.5] and [5.9]

153. icare has also undertaken to track and monitor three separate RTW outcome measures as part of icare's Enterprise Performance Scorecard, as provided in the table below. As recommended by the Dore Review report, this demonstrates the importance icare places on both the customer and financial outcomes linked to return to work strategies:

Measure	Applicable Scheme Outcome	Metric	Metric	Metric Calculation Basis
1.	Nominal Insurer	Customer focus	26-Week WSC RTW Rate	SIRA's measure based on WSC (noting some adjustments below)
2.	Nominal Insurer	Financial focus	26-Week Continuance Rates	Proportion of claims staying on weekly benefits to total reported number of claims that received a weekly benefit.
3.	Treasury Managed Fund (TMF)			

154. This is subject to the following adjustments:
- SIRA's calculation includes a 12-month rolling average component. icare's calculation will be based on monthly actuals instead of a 12 month-rolling average;
 - transition of the claims management provider contracts to WSC and continuance rate RTW metrics. This is expected to take one to two years to fully integrate; and
 - recommendations by actuarial and workers compensation expert John Trowbridge, including the use of monthly actuals and using the injury date as the starting date to count RTW time periods. SIRA has advised that it is seeking to establish system-wide KPIs based on these recommendations, in addition to KPIs for icare. SIRA has requested that icare report on these metrics to SIRA.
155. icare has progressed its replication of the WSC based RTW measure, noting that changes in metric reporting will affect thousands of historic data points. icare will continue to further develop its reporting tools aligned to the measure to enable the shift.

Return to Work performance in Nominal Insurer scheme

156. There has been a decline in RTW rates since 2017 across all insurers in the NSW workers compensation system, with the least decline in the TMF portfolio. RTW rates for the TMF and Nominal Insurer schemes have declined from a high of 90.1 per cent and 89.7 per cent respectively in mid-2017 to 86.9 per cent and 82.4 per cent respectively in July 2020 (see Figures 9 and 10 below).
157. In the same timeframe, self-insurer and specialised insurer RTW performance also deteriorated at similar rates, with self-insurer RTW rates declining from 89.6 per cent to 81.6 per cent and specialised insurer RTW rates declining from 91 per cent to 85.1 per cent. As shown in Figure 9 below, as at September 2020, RTW rates for the Nominal Insurer scheme are now above self-insurer RTW rates and comparable to specialised insurer RTW rates, while RTW rates for the TMF scheme remain above both self-insurer and specialised insurer RTW rates.

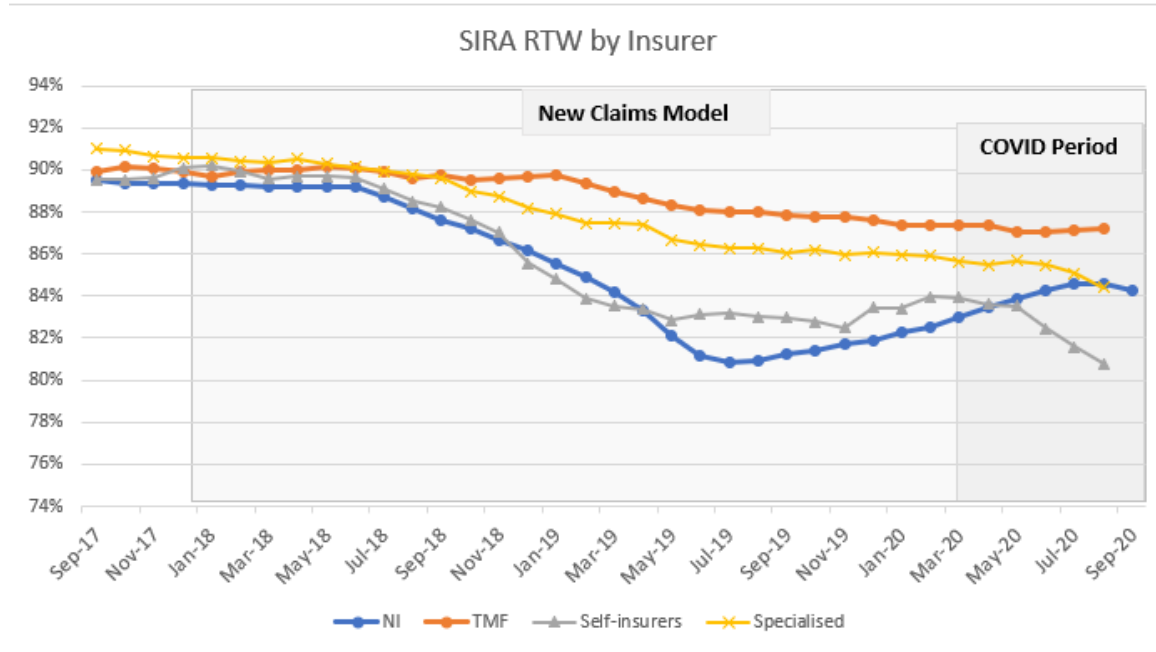


Figure 9: 12 month rolling average for 26-week RTW measure⁵⁰

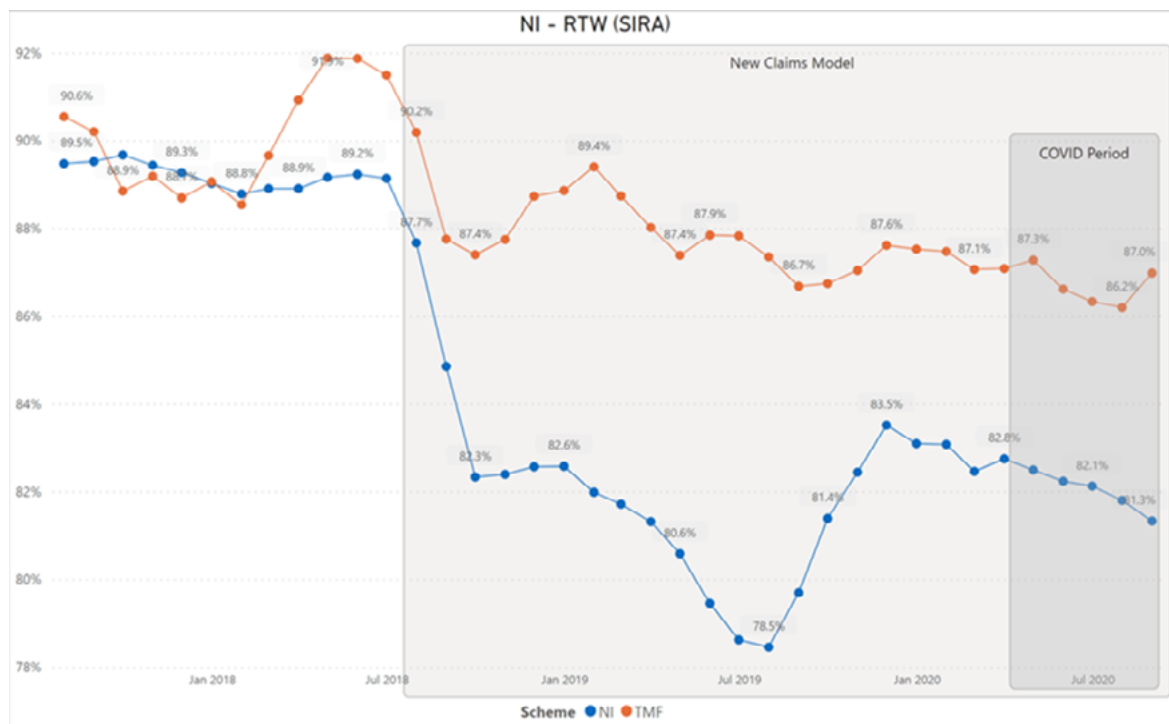


Figure 10: 3 month rolling average for 26-week RTW measure (variant of SIRA RTW metric)
(Source: Corporate Data Repository (SIRA Database for Workers Insurance) (CDR))

⁵⁰This figure uses a combination of data from SIRA (for TMF and self- and specialised-insurers) and the CDR (for Nominal Insurer) as the September results are not available yet on the SIRA website. Impacts on the 26-week RTW measure necessarily take 26 weeks to emerge.

158. There are a range of factors that have driven a general decline in RTW across all workers compensation schemes. These include:
- a. changes in employment conditions, such as increased gig economy work, flexible working environments, and a shift to a more contingent workforce, making access to suitable duties more complex;
 - b. changes in economic conditions and its impact on suitable duties and hiring practices;
 - c. changes in the legislation over time;
 - d. behavioural changes by participants in the ecosystem (e.g. some doctors have stated a reluctance to certify someone fit for work if they believe there is no work available);
 - e. changes to the claims mix, in particular the increase in psychological injury claims, which have longer recovery periods and typically have longer periods of time off work; and
 - f. COVID-19 pandemic restrictions and the lack of suitable duties available to employees as a result of the pandemic.
159. The Nominal Insurer scheme experienced a significantly greater rate of decline in RTW rates than the TMF scheme due to a number of operational challenges in 2018 and 2019, as discussed below. This has culminated into return to work outcomes that are considered unacceptable by the regulator, with an overall decline of 7.3 per cent from 2017 to now.
160. In addition to the general drivers listed above, the two primary contributors to the decline in the Nominal Insurer scheme were:
- a. a significant drop in claims performance in the period between November 2017 to February 2018 due to the movement and transition of claims between claims management providers; and
 - b. a prolonged period of operational instability within EML between January 2018 and June 2019, exacerbated in February 2019 for three months when the Nominal Insurer single information technology platform went live.
161. In early 2019, icare introduced an information technology platform to enable the use of a centralised claims system, intended ultimately to be used by all claims management providers. Since commencing lodging new claims on this system, the transparency and control enabled by the centralised claims system has been a significant contributor to the improvement in RTW performance through enabling icare to provide more targeted support and direction.
162. One of the early indicators of success and improvement has been improvements in payments of weekly compensation within a month of injury. Ensuring benefit payments within seven days of injury is both a legislative requirement under the workers compensation legislation⁵¹ and a proxy for operational rigour and early intervention, and therefore a lead indicator for RTW outcomes.⁵² Figure 11 highlights:
- a. for claims made in 2018 and the first half of 2019, the proportion of claims where weekly benefit payments commenced in the month of injury was, on average, significantly lower than that in 2016 and 2017, indicating deteriorating performance or under-performance of the management of claims and correlating with lower RTW figures; and
 - b. for claims made in the second half of 2019, there is significant improvement in the proportion of claims where weekly benefit payments commenced in the month of injury, comparable to and better than the 2016 and 2017 rates.

⁵¹Section 267 of the 1998 Act

⁵²If a claims manager has spoken to a worker end employer within the first seven days of the claim being made and made a provisional liability decision, this operational stability and the commencement of RTW planning is indicated

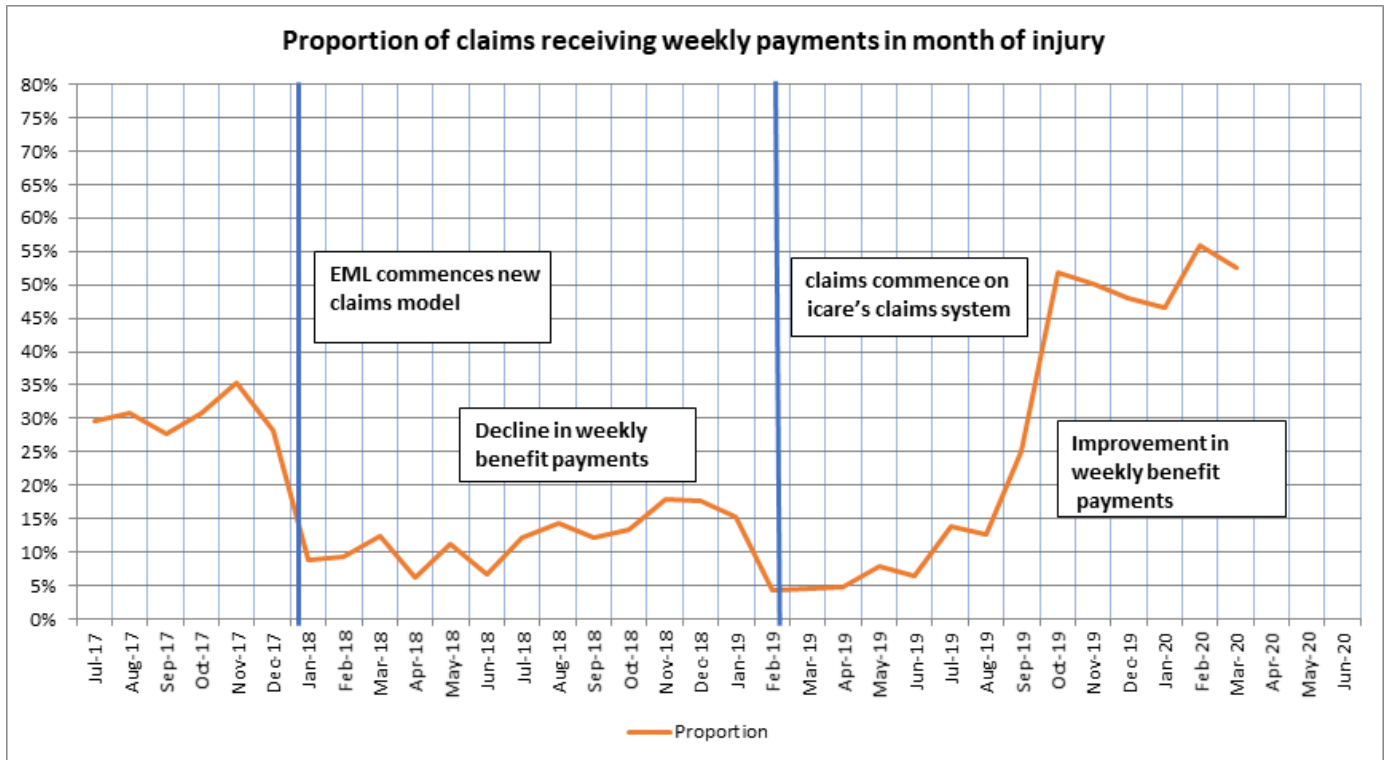


Figure 11: Proportion of claims receiving weekly payments in month of injury – 2017 to 2020⁵³

163. In May 2019, icare introduced an improvement plan for the Nominal Insurer scheme, Project Pathway, which coincided with the increased stability that was emerging in EML's operational framework. More information on the impact of icare's implementation of its improvement plan is provided in the John Trowbridge Review report. As detailed further above, icare has also sought to build in additional incentives for RTW performance in scheme agent contracts.
164. To further improve RTW rates, icare has undertaken the following actions:
- Accident Month Reviews*: commenced portfolio reviews across all segments to provide coaching to uplift EML capability. This included targeting claims that had treatment or work absence in excess of the Official Disability Guidelines;⁵⁴
 - Work Capacity Strategies*: joint icare and EML coaching for case managers on RTW strategies to support the building of work capacity and appropriate decision-making;
 - Treatment Approval Process Review*: the development of an early intervention program to identify claims requiring workplace rehabilitation and to promote early referral;
 - Liability Decision Making Process*: commenced exception reporting on delayed liability decisions, distributed weekly to EML, with a remediation response required within 7 days; and
 - Project Pathway*: a focused uplift in operational capability through process and workflow improvements, introducing Key Responsibility Area reporting to effectively manage performance and enable knowledge retention.

⁵³John Trowbridge's RTW work – 'Monthly KPIs for NI Operational Performance – Proposals for the icare and SIRA boards' dated 24 August 2020

⁵⁴The Official Disability Guidelines (ODG) is a decision support tool that sets expectations of recovery, return to work and recommended treatment options for workers compensation injuries. The tool uses a combination of evidence-based medical literature and claims data analytics to provide recommendations.

165. In addition, icare has focused its uplift efforts on a number of areas to promote performance, including building case manager capability, initial and timely contact with an injured worker, improving liability decision-making, ensuring appropriate treatment at the right time, and ongoing medical management coaching strategies, including medical case management reviews and higher utilisation of rehabilitation providers.
166. Vocational placement strategies have also been introduced for claims that exceed 26 weeks of incapacity (or where the worker is no longer employed by the employer where they were injured) that focus on alternative work arrangements and increasing the injured worker's capacity for other forms of work.
167. icare monitors the performance of the portfolio to drive improvement, including by:
- conducting reviews and detailed tracking of the utilisation of data and analytics to identify trends and opportunities for improvement;
 - strategic coaching, support and tools for case management staff, based on development gaps identified in reviews; and
 - establishing a consistent governance rhythm with providers in the scheme.
168. The 12-month RTW rate for the Nominal Insurer scheme has steadily improved from a low point in July 2019 (until a recent deterioration relating to COVID-19). The improvement can be attributed to data corrections over this period addressing an artificially low result, along with improvements in process and case management practices.
169. icare is targeting an improvement in the 26-week RTW rate that is in line with the RTW performance of the scheme in accident year 2017 (89 per cent) by the end of accident year 2021/22, as outlined in the Nominal Insurer Business Plan (the latest version of which was provided to SIRA on 30 September 2020). That is, for the injuries that occurred at the end of 2021/22, the target RTW is 89 per cent. However, it would take 26 weeks for these injuries to be measured for the 26 week RTW and as such results would only be apparent by the middle of the 2022/23 reporting year.
170. It is important to note that the movement in the rate over this period will not be linear and will be significantly affected by the immediate and latent impacts of the COVID-19 pandemic. It is therefore difficult for icare to set interim targets for the intervening financial years. icare is working closely with SIRA to finalise targets by November 2020. Preliminary proposed targets are as follows:

	June 2020 NI RTW Baseline	Current 2021 NI RTW Targets*
4 Weeks RTW	TBC	TBC (monitored only)
13 Weeks RTW	77 per cent	TBC
26 Week RTW	82 per cent	89 per cent by FY22/23
26 Week Continuance Rates (lower is better)	57.3 per cent	54.7 per cent

171. As the 13-week RTW metric is an early indicator of the 26-week RTW metric performance, the 13-week RTW rates and targets will also be monitored and reported on. Improvements in the 13-week RTW metric (both WSC and payments-based measures) are included as an incentive measure in the EML SPA 12-month extension remuneration agreement (agreed in principle), effective from 1 January 2021.

172. Historically, the initial RTW metric of 4-weeks has been not tracked by claims management providers due to volatility. There is significant variation in the result from month to month and it is difficult to determine actual trends requiring attention using the 4-week metric. In addition, setting targets for the 4-week metric has the potential to promote perverse behaviours such as driving workers back to work too quickly. At the request of SIRA, icare will commence monitoring of the 4-week RTW rate as it may assist with the early identification of timely initial contact and decision-making issues.

Treasury Managed Fund

Return to Work performance in TMF scheme

173. There has been a decline in RTW rates since 2017 across all insurers in the NSW workers compensation system, including in the TMF scheme portfolio.
174. As at July 2020, RTW performance at 26 weeks was 86.91 per cent for the TMF scheme. The system average⁵⁵ was 77.94 per cent.
175. The SIRA RTW metric measures performance at the TMF portfolio level by claims management provider. As at July 2020, the RTW rates at 26 weeks for the TMF claims management providers were:
- a. Allianz: 90.82 per cent;
 - b. EML: 82.37 per cent; and
 - c. QBE: 86.5 per cent.
176. The RTW performance of each claims management provider's portfolio is reflective of the risk profile associated with their claims.
177. The TMF portfolio is divided into two primary categories, Emergency (**EMER**) and Non-Emergency (**NEMER**). The EMER portfolio includes all first responders (for example, NSW Police, Fire & Rescue and Ambulance NSW) who were exempt from the 2012 legislative reforms. The EMER portfolio historically has a greater proportion of psychological injury claims which negatively impacts RTW outcomes.
178. EML manages the largest NSW Government agency in the EMER portfolio (NSW Police) and their RTW performance is significantly impacted due to prevalence of psychological injury claims.
179. The Fit for Work (**FFW**) rate has historically been used as the primary return to work performance measure for the TMF workers compensation scheme. The FFW result directly relates the TMF scheme valuation with actual scheme experience.
180. FFW results are volatile due to the smaller number of claims reported quarterly. Over the past seven years, results have ranged from 34.4 per cent to 44.3 per cent. While FFW results are marginally under target, they have remained within this historic range and predominately between 38 and 40 per cent.
181. The 26 Week FFW rate as at September 2020 was 34.4 per cent. This result is largely driven by an assumption that total weekly claims would be lower due to COVID-19 which has not materialised. This FFW rate is likely to be re-stated to be higher when the claim volume assumption is adjusted at the next valuation.
182. From November 2020, the continuance metric will be used to measure RTW outcomes in the TMF scheme.

⁵⁵System average includes all schemes, namely the NI, self-insurers, specialised insurers and government self-insurers (Source: SIRA TMF data books provided by SIRA to icare)

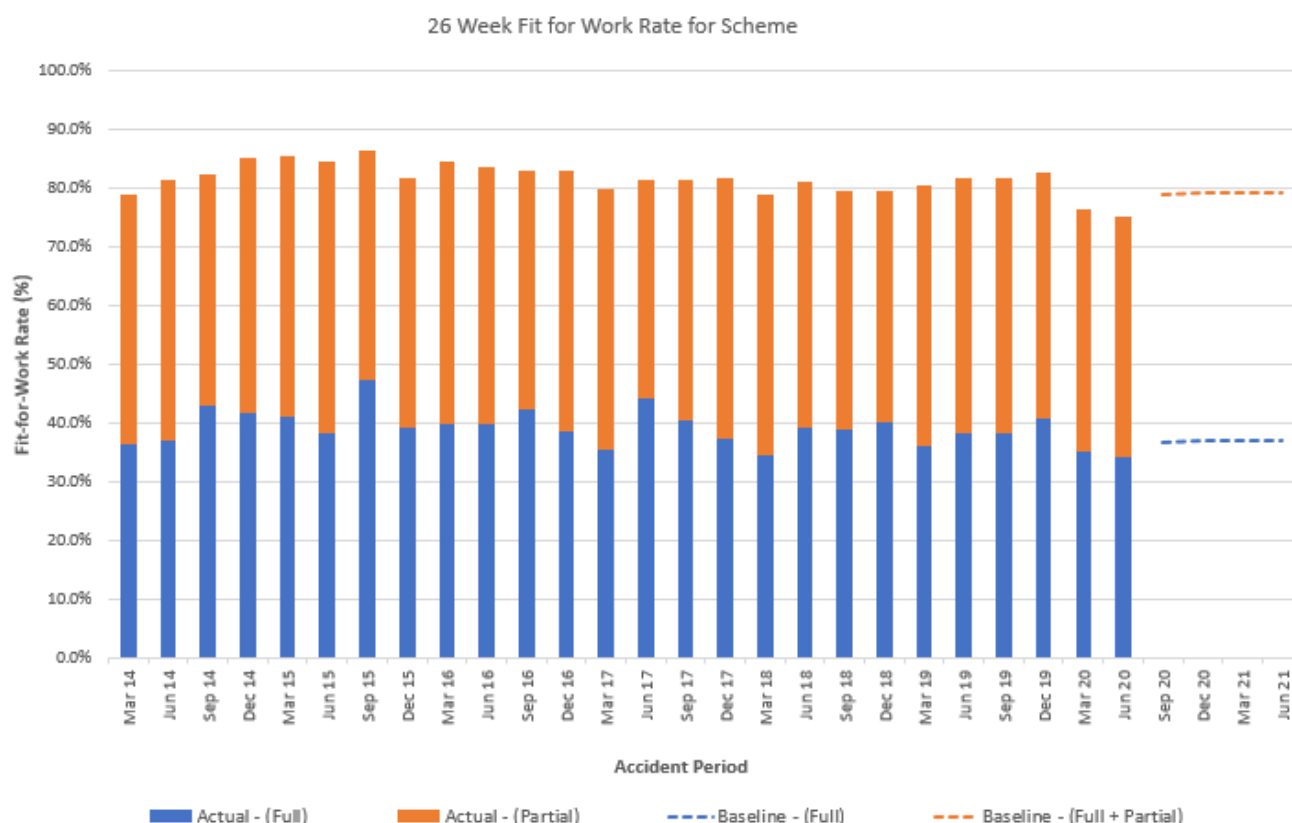


Figure 12: 26-week Fit For Work Rate for TMF Scheme (Source: icare internal monthly actuarial monitoring)

183. The percentage of new claims as psychological injury claims has significantly increased. In October 2016, the average number of psychological injury claims as a percentage of all new claims was 14 per cent (average for the year); the current rolling 12-month average is 18 per cent as at February 2020, with a peak of 21 per cent of new claims received in December 2019.

Data quality and reporting improvements

Nominal Insurer

184. Data issues have historically had a significant impact on measured RTW rates and has contributed to the lack of agreement on measurements and approaches taken by icare and SIRA. icare has now adopted SIRA's reporting metrics, and anticipates that data collection, use and diagnostics will be more reliable as a result.
185. The Dore Review report raised concerns with icare's data quality, which impacted on operations and reporting. In particular:
- icare utilises data on a snapshot basis and therefore does not incorporate any data corrections over time. SIRA's reporting reflects adjustments to claims data up to the date the model is run;
 - icare's data reporting commenced in 2018, and there is no baseline on the RTW rate prior to the new operating model being implemented; and
 - analysis is limited to variations within the framework of the new operating model.
186. icare has now undertaken to use SIRA's reporting measures, which reflect adjustments to claims data up to the date the model is run.

187. Figure 13 illustrates data relating to weekly payments since 2012, which provides some context to the historical data quality issues discussed below. From 2012 to 2017, the percentage of claims receiving a weekly payment within a month of injury stayed at approximately 35 per cent. This figure dropped to approximately 10 per cent in 2018.

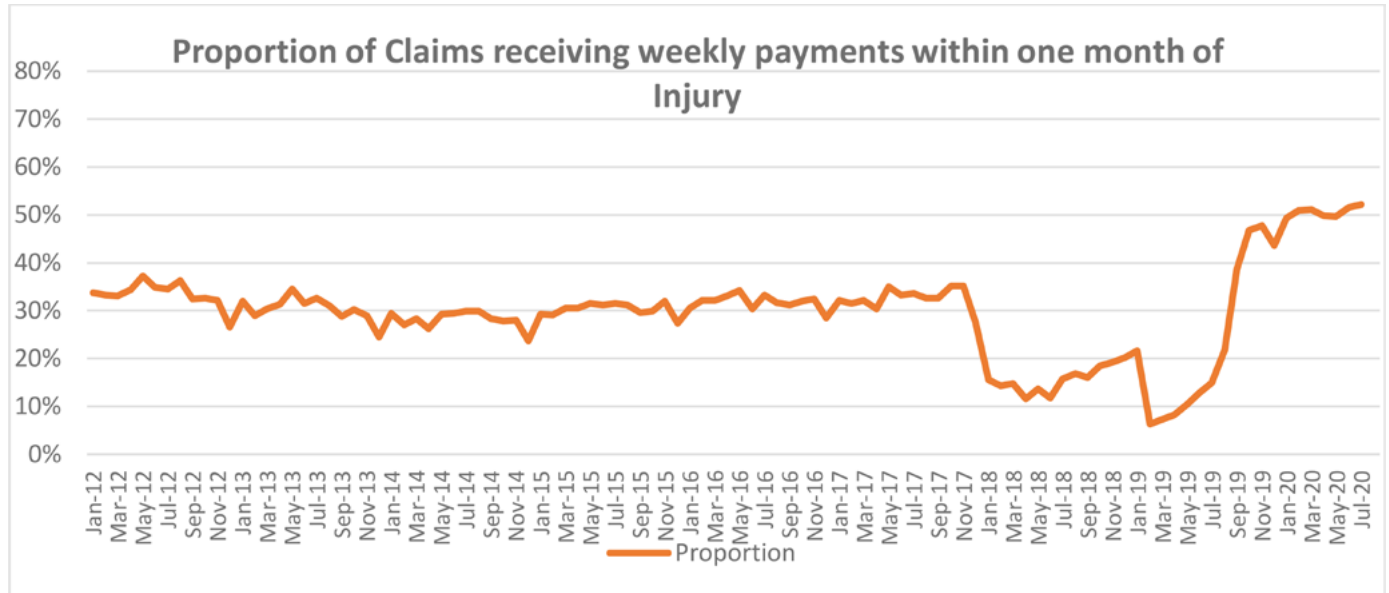


Figure 13: Proportion of claims receiving weekly payments within one month of injury (Source: CDR)

188. For claims made in the second half of 2019, there is significant increase in the percentage of claims where weekly benefit payments commenced in the month of injury, comparable to and better than the average rates in 2016 and 2017. This increase was due to an increase in the number of claims receiving small reimbursements that had not typically been paid in the past.
189. Results before mid-2017 are not comparable to recent results due to historic data quality issues with the WorkCover Authority of NSW (as it then was) (**WorkCover**). WorkCover's data storage was inadequate, and this resulted in difficulties in separating data when the *State Insurance and Care Governance Act 2015* commenced.
190. In particular:
- Prior to 2015, there were historical difficulties in collecting information from and consistency between the five scheme agents. These difficulties – which included inaccurate and inconsistent completion of WSC fields by scheme agents – was a key factor in icare's decision to introduce a single IT platform for use by icare and its claims providers.
 - Historical WSC data was overwritten. This was corrected in 2015. It is noted that WSC data was not a mandatory field prior to 2015.
 - There was an improvement in RTW metric accuracy from the end of 2014 to the first quarter of 2015 as data accuracy improved, driven by an amendment to the scheme agent deed which penalised the scheme agents for poor quality data. WSC data recording improved, which in turn improved the accuracy of the RTW metric.
191. In 2019 and 2020, icare identified and remediated data quality issues through the Nominal Insurer claims system platform. Remediation included addressing the key fields that drive the SIRA RTW measure (for example, "Date Ceased"). This has resulted in a more accurate representation of the RTW results.

192. However, the relevant 2018 data has not also been remediated, therefore creating an artificially low RTW result. icare does not plan to remediate 2018 data in the EML claims management system (**EMICS**) as icare, on balance, considers there to be more value in focusing case managers on current RTW efforts for injured workers.
193. In line with item 2 of SIRA's 21-point Action Plan, icare has also established a program of work to resolve outstanding data quality and reporting issues.
194. In consultation with SIRA, icare commenced the SIRA Submission Improvement Project (**SSIP**), focused on addressing fatal data errors (critical errors with value attached). Proactive and reactive dashboards were established as part of this project to enable icare to monitor the data on a daily basis and to manage data quality.⁵⁶ icare has successfully met its Timeliness of Submission key performance indicator (requiring data to be submitted to SIRA within 6 business days at the conclusion of each month), along with less than 1 per cent margin on critical errors, from April 2020.
195. Following the Dore Review, 62 data quality and reporting issues were identified in both claims and policy data in the Guidewire Claims Centre platform. icare has remediated and closed all but five remaining data quality issues. icare is working closely with SIRA to finalise the outstanding issues.
196. More recently, icare has been liaising with SIRA to ensure the same RTW metrics are utilised by both icare (and its claims management providers) and SIRA. Processes have been established to report on data and metrics regularly. icare is in the process of building a SIRA RTW dashboard, which will also record other key performance indicators to proactively manage and track RTW figures.
197. icare has also established a data modernisation program which seeks to improve data accuracy, collection and storage, and has refreshed a number of internal processes to ensure proactive reporting of data. Through these updates, icare has self-identified and remediated data quality errors, which will assist in further enhancing data integrity and completeness.
198. icare continues to work with SIRA on remediating data quality and reporting issues, with a focus, for the remainder of 2020, on resolving fatal and suspect errors volumes. In addition, icare and SIRA are currently collaborating on related programs, such as the data modernisation program, to help uplift the use of technology and enable automation in data reporting.

Treasury Managed Fund

199. In the TMF scheme, icare provides access to an online reporting tool to all NSW Government agencies and is currently accessed by over 750 individual users from NSW Government agencies. This reporting tool utilises the Qlik Sense application and provides agencies with full transparency and access to their claims data, allowing them to review their portfolio monthly and generate reports to suit the needs of their agency.
200. icare has also developed a worker's compensation performance and risk profile report, which is provided to 53 agencies quarterly, and will be accessible by all agencies via Qlik Sense from December 2020. This report allows agencies to easily identify areas of performance that need to be improved and identify areas of risk within their workforce based on injury type, claim frequency and RTW duration.
201. In addition, the largest 11 NSW Government agencies all receive quarterly actuarial reporting on their performance via an Agency Performance Adjustment report. These agencies have an experience-adjusted contribution, and the reports enable the agencies to clearly track the financial and claims trends that drive future contribution, and how they are tracking towards their experience adjustment. This gives the agencies oversight on their workers compensation performance and informs decisions on strategies to mitigate risks identified.

⁵⁶icare is compliant with the KPI around Error Type = "Fatal Errors – Critical with \$". icare makes monthly data quality submissions to SIRA where Fatal Errors [\$ and no\$] and Suspect Errors are reported and must be rectified within one month / by the next submission. icare is not yet fully compliant with these KPIs. Resolution of Fatal Errors is a top priority.

Services provided to injured workers

202. One of the key objectives of the workers compensation legislation is to provide for the prompt treatment of injuries, the effective and proactive management of injuries and the necessary medical and vocational rehabilitation following injuries, in order to assist injured workers and to promote their return to work as soon as possible.⁵⁷
203. In line with the principles of the new Nominal Insurer and TMF claims service model, and in accordance with the principles of Health Benefits of Good Work, RTW means helping injured workers with their recovery and staying at, or getting back to, work as early as possible, having regard to their workplace injury. Supporting a worker to recover at work after an injury is considered an important part of their treatment and rehabilitation.
204. In 2012, the NSW Government introduced time limits on the payment of compensation by an insurer to an injured worker under the workers compensation legislation.⁵⁸ The intent of these amendments was to ensure that the workers compensation system remained financially sustainable and that workers with less severe injuries would be encouraged to return to and recover at work.
205. As part of icare's obligation to manage the ongoing liabilities of both the Nominal Insurer and TMF schemes, icare works with claims management providers to ensure that the tail claims portfolio (claims older than 52 weeks) is reviewed appropriately and that the legislation is being applied according to its intent. icare expects that workers are supported throughout the lifecycle of their claim, including when they are transitioned out of the scheme as a result of the application of sections 39 and 59A of the *Workers Compensation Act 1987 (1987 Act)*.
206. In interpreting the workers compensation legislation, icare and its claims management providers must consider the context and purposes of the statute, including a consideration of the legislative history and extrinsic material,⁵⁹ and are required to apply the legislation as it was intended. The 2012 amendments to the workers compensation legislation were intended to limit the compensation payable to injured workers. icare strives to be consistent in that application and to ensure adequate support for workers whose benefits are ceasing.
207. To this end, icare's claims management training modules focus on:
- a. good case management practices leading towards positive return to work outcomes and robust work capacity decisions;
 - b. providing information to injured workers, including the availability of supportive resources; and
 - c. communicating with icare's customers and continuously educating stakeholders on the lifecycle of a claim.
208. The changes introduced by section 39 of the 1987 Act commenced in October 2012, and a number of workers who transitioned into the new legislative scheme were deemed to have an entitlement to weekly compensation for the full 260 weeks (i.e. until late 2017), unless ongoing entitlement criteria was met. Thereafter, these workers had an entitlement to medical benefits for two or five years, which ceased from late 2019.
209. In November 2015, icare commenced planning a transition program in consultation with claims management provider representatives in the Nominal Insurer scheme. Called the **Workers Assistance Program**, it included a training program for all claims management provider staff in the Nominal Insurer scheme, to assist with the transition. The Workers Assistance Program was then rolled out to TMF injured workers transitioning off the scheme.

⁵⁷Section 3 of the 1998 Act

⁵⁸Sections 38, 39 and 59A of the 1987 Act

⁵⁹This approach is reflected in both the common law of statutory interpretation and in Part 5 of the *Statutory Interpretation Act 1987 (NSW)*

210. In creating the Workers Assistance Program, icare's objectives were to ensure that:
- workers were provided all reasonable opportunities to gain employment;
 - there was consistent service delivery across all Scheme Agents;
 - the customer experience was positive;
 - the number of complaints were minimised; and
 - additional harm to injured workers would be prevented.
211. To support those transitioning workers, icare developed:
- consistent case management practices, including notification to customers and contact protocols;
 - alternative service models, including the Community Support Service (detailed below) and the Advisory Assistance Service to help workers with additional advice on their questions;
 - standardised letters;
 - timeline cards and additional communication tools; and
 - checklists, including "questions to ask my doctor" and a toolkit for accessing free and low-cost services.
212. To support injured workers in the transition off workers compensation benefits, icare:
- created a Community Support Service through a partnership with St Vincent de Paul Society, Uniting and Interact People Solutions to help people link in with the community and transition to the other services available. The model focuses on:
 - connecting workers to both local and federal government services while coaching and building motivation and resilience;
 - increasing social participation, independence and return to health; and
 - supporting them to achieve a range of goals and helping them to access education and return to employment.

Uptake of the service far exceeded icare's expectations and it received positive feedback from workers with a broad range of success stories, encouraging icare to continue offering this service through a partnership with Uniting;
 - works with Centrelink to ensure people can use their workers compensation exit letters to commence their Centrelink applications, avoiding delays in accessing payments;
 - openly communicates with injured workers via proactive phone calls, tailored letters, information packs supplied to their doctors and a digital video to help them understand the section 39 changes; and
 - works closely with service providers to ensure they act with transparency and adeptness to enable a smooth transition for affected workers.
213. 4,524 workers were impacted by the application of section 39 of the 1987 Act from September 2017 through to July 2020, with 2,271 workers exiting the Nominal Insurer and TMF schemes in late 2017.
214. In the Nominal Insurer scheme, icare recently undertook a program of portfolio reviews which identified claims with a 'not working' status for additional case review. The purpose of the review program was to support case management staff in managing claims and ensure that all effective case management strategies are in place to support injured workers with their recovery and return to work.
215. From 11 February to 11 June 2020, EML and icare have conducted 63,109 routine reviews across 17,511 claims. The reviews examined potential recovery avenues, injury management strategies and legislative gateways and end dates, depending on levels of impairment.

216. Of those no longer receiving weekly benefits to date:
- 80 per cent had returned to work;
 - 15 per cent may exit the scheme as a result of a work capacity decision; and
 - 5 per cent have exited for other reasons (e.g. retirement, liability decision, section 38).
217. Around 1,500 claims in this cohort have had a delay in an outcome due to factors such as availability of treatment or surgery, availability of suitable duties and changes in capacity. Further details on the support provided to injured workers as a result of this portfolio review have been included in icare's submissions in response to Term of Reference 2(a).
218. Details of other services provided to injured workers, including the Workers Care program, have been included in icare's submissions in response to Term of Reference 2(a).

Services provided to NSW Government agencies

219. In connection with the TMF scheme, Risk Education Express (**REX**) is offered by icare to support NSW Government agencies build capabilities to protect the people, assets and services of NSW. REX has a diverse curriculum of programs, on-demand resources and a peer connect community focused on mental health.
220. The programs provide NSW Government agencies with both technical and behavioural development opportunities aligned to insurable risk to aid prevention of harm, manage and mitigate workplace risks, facilitate work health, safety and well-being, and aid recovery through best practice in agency claims management and RTW co-ordination.
221. Programs (with the majority available with both face-to-face and virtual delivery options) include the following:

Technical	Behavioural
- WHS Risk Management in Practice - Return to Work in Practice - Work Capacity Decisions - Motivational Interactions for Return to Work - Managing Psych Claims - Managing VT - Managing PTSD - Managing Complex Mental Illness	- Mental Health First Aid - Maintaining a Healthy Mindset - Mindfulness - Building Self-Care Strategies - Leading with Purpose & Compassion - Constructive Conversations - Creating Mentally Healthy Workforces - Leading for Psychological Safety - Inclusive Leadership

222. icare also provides support to NSW Government agencies in their focus on both physical and psycho-social injury prevention through the provision of specialist workplace risk consulting services and education resource development. icare's Injury Prevention team works with NSW Government agencies to understand their needs and provide agencies with advice and support to achieve their strategic safety and wellbeing goals.

223. icare's injury prevention capability includes:
- research and insights;
 - strategy review and development;
 - due diligence;
 - risk profiling;
 - culture surveys
 - WHS diagnostics; and
 - psycho-social risk management.
224. An example of an initiative undertaken by the Injury Prevention team with NSW Government agencies is the 'wearable technology' study that is helping prevent musculoskeletal injuries in NSW Health. The wearable technology pilot is a research study into wearable technologies and their potential to assist with the prevention of work-related musculoskeletal disorders (**MSDs**).
225. MSDs due to body stressing injuries, such as muscular stress while lifting, carrying, or putting down objects, continue to be one of the most common injuries among NSW workers. The study aims to evaluate if wearable technology can add to a more holistic approach and help workplaces transform how they prevent work-related MSDs.
226. In addition, the TMF has an Agency Advisory Council which meets quarterly and has senior executive representation from NSW Government agencies. The role of the Council is, relevantly, to:
- serve as consultative forum through which agencies can provide feedback to Insurance for NSW and its strategic service providers on issues pertaining to self-insurance and construction risk insurance;
 - facilitate greater participation by agencies in processes affecting the operation of the self-insurance fund;
 - review and make recommendations on issues affecting agency performance;
 - review and foster best practice across agencies; and
 - provide agencies with a forum in which concerns can be raised and information disseminated on issues impacting agencies.

227. Further examples of support provided to NSW Government agencies are set out in Table 1.

Table 1: Examples of support provided to agencies

Service	Agency	Description	Completed
Mental health	NSW Police	Produced fact sheets that could be accessed by the workforce at the start of the pandemic on the topics of: welfare considerations for remote working; working from home welfare checks.	Yes
	Opera House	Presentation to leadership team on strategies for mentally healthy workplaces	Yes
	NSW Pathology Health	A tailored webinar was developed to support the corporate health and safety team to educate managers in identifying and managing psychosocial risks.	Yes
	Rural Fire Service (RFS)	Discovery meeting to understand how icare can support the RFS in developing mental health tools/ resources. The aim is for these tools / resources to be used operationally to foster a supportive culture, and to prevent and support poor mental health. Plan to reconnect in late 2020 following a review by an external party.	No
	NSW Police	NSW Police shared their Mental Health Strategy with icare. Following discussion, a number of areas were identified where icare could contribute to the strategy – in particular with the development and roll out of training. The Injury Prevention team are waiting on confirmation of start date to commence planning for this work.	No
COVID-19	IfNSW Agencies	Webinar hosted by Griffith University on Respect & Resilience during COVID. This session looked specifically at strategies to manager customer aggression.	Yes
	IfNSW Agencies	COVID-19: Understanding workers compensation claims and managing risk in a COVID19 environment	Yes

Service	Agency	Description	Completed
Risk	Department of Education	Development of a risk profile for the Agency post bushfires in late 2019 / early 2020. On site attendance at 3 schools from 6/2/20 to 8/2/20 for qualitative research of risk factors. Multiple collaboration meetings regarding risk profile approach/content. icare recommended risk profile provided to DoE 10/2/20.	Yes
	Department of Communities and Justice	Development and rollout of the Connect and Care Program which aims to reduce the incidence and intensity of complex workplace injuries and aid recovery by building the capabilities of line managers to support vulnerable and injured workers.	Current
	Agency Advisory Council	Quantitative and qualitative research investigating the effectiveness of interventions in the following risk areas: fatigue; occupational violence; people management and Return to Work. The outcome of this research will provide insights with regards to what areas require further investment and focus and what successes can be shared across NSW Govt Agencies.	Current
	NSW Pathology Health	Discussed delivery of a training session for senior leaders on their obligation to exercise due diligence for work health & safety.	No
	Department of Education	icare completed a review of the Departments WHS management system & data as it related to occupational violence. A draft strategy on this risk area was developed and presented in Feb 2020. We are currently awaiting the appointment of a project resource at DoE to regain momentum.	No
Wellbeing	IfNSW Agencies	Development of factsheets on: the importance of sleep, shift workers and fatigue management. In addition to this a fatigue hazard identification checklist was developed, a workplace poster detailing key facts on the above topics & a workers take home guide was also developed.	Yes
	IfNSW Agencies	Several wellbeing virtual classroom sessions have been developed and delivered to Agencies. The 1.5 hour sessions are on: Creating a Growth Mindset, Self Care Strategies and Mindfulness.	Yes
	IfNSW Agencies	icare is seeking feedback from Health & Wellbeing practitioners across Agencies with regards to their desire to participate in a quarterly Communities of Practice. The aim would be to share ideas and brainstorm challenges as a collective NSW Govt group.	Current.
	NSW Art Gallery	Development of and delivery of a virtual classroom session on the Importance of Social Connection	Current

Service	Agency	Description	Completed
Culture	Mid North Coast Local Health District	Mid North Coast LHD have just launched their 2nd icare culture survey. At the completion of the first culture survey the icare Injury Prevention team ran a workshop with the LHD's Safety and Wellbeing team and an Action Plan was developed with the goal of positively impacting culture at the LHD.	Current
	South West Sydney Local Health District	South West Sydney LHD has expressed interest in the icare culture survey. The LHD is currently seeking internal approvals for this.	No
	TAFE NSW	Discovery meeting to discuss the icare culture survey.	No
	Sydney Water	Discovery meeting to discuss the icare culture survey.	No

Other claims management support

Section 38 transitions

228. Section 38 of the 1987 Act provides that a worker has no entitlement to weekly payments after 130 weeks of payments unless:
- the insurer has made an assessment that the worker has current work capacity and the worker is either working 15 hours or more a week, earning at least \$176 per week and has been assessed by the insurer as indefinitely incapable of undertaking further employment to increase their earnings; or
 - the insurer has made an assessment that the worker has no current work capacity and this is likely to continue indefinitely; or
 - the insurer has determined that the worker is a worker with high needs (more than 20 per cent permanent impairment).
229. In September 2019, icare consulted with SIRA about the implications of the Court of Appeal decision in *Hee v State Transit Authority of NSW* [2019] NSWCA 175, where it appeared that the practical effect of the decision is that an entitlement to weekly compensation is available to an injured worker who has resumed full pre-injury duties and is earning pre-injury wages. This included clarifying, in writing, the relationship between this decision and earlier advice from SIRA in February 2017 that icare and its agents must act in accordance with SIRA fact sheets.
230. Once clarified, icare wrote to all claims management providers in the Nominal Insurer scheme regarding workers entitlements under section 38 of the 1987 Act:
- advising that workers with highest needs (whole person impairment greater than 30 per cent) may be entitled to the full special provision amount under section 38A of the 1987 Act in addition to any earnings where there was an entitlement to an amount of weekly compensation determined in accordance with sections 36, 37 and 38 of the 1987 Act; and
 - requesting that all claims management providers review all weekly compensation payments made from 17 September 2017 to workers with highest needs. The purpose of this request was to determine whether an entitlement to compensation existed (full special transitional amount) as result of the Court of Appeal decision, calculate the back payment and pay the entitlement as soon as possible.

231. Separately a gap was identified in the tail portfolio case practices of GIO. Case managers were providing effective support to workers who had received up to 130 weeks of weekly benefits, but this support subsided and did not recommence until they had received 200 weeks of weekly benefits, when the claims were approaching a review of entitlements under section 39 of the 1987 Act. icare has worked with GIO regarding the appropriate application of section 38 of the 1987 Act.
232. In May and June 2020, icare worked closely with EML and GIO to proactively identify claims where the claimant had between 130 and 200 weeks' absence from work and had some capacity for work. The purpose of the review was to ensure that all aspects of section 38 of the 1987 Act had been addressed and the necessary support had been provided to the worker. Additional strategies for the case manager to implement on specific claim files were also identified to help support the worker. icare's data analysis identified approximately 450 claims that met the review criteria, and additional support has been provided to those injured workers.
233. icare has also required claims management providers in the Nominal Insurer scheme to provide reporting on claims within this cohort in order to more closely monitor the support being provided, as well as a report on progress made by providers on supporting injured workers' work capacity and opportunities for return to work.
234. icare acknowledges that its communications surrounding the review of the tail portfolio with EML and GIO was unclear and could have been interpreted that icare was seeking to expedite the cessation of workers benefits. That was genuinely not icare's intent. icare has re-engaged with all claims management providers to outline expectations for supporting workers subject to the limitations of section 38 of the 1987 Act and has sought to ensure that all workers with highest needs are supported with recovery strategies and entitlements are paid in a timely manner.

Underpayment of injured workers

2019 PIAWE review

235. In 2019, icare initiated a review of a sample of claim files in the Nominal Insurer scheme to understand whether Pre-Injury Average Weekly Earnings (**PIAWE**) had been determined correctly by claims service providers since the new method of calculating entitlements was introduced in 2012.
236. The 2019 review assessed 3,037 files with weekly benefit entitlements for a period of greater than four weeks and for which weekly compensation had been paid between 2013 and 2018 (representing approximately 1.4 per cent of all Nominal Insurer claim files). The review was intended to establish whether initial PIAWE determinations by claims service providers had been made correctly. This review did not assess specifically whether the incorrect initial PIAWE calculation resulted in incorrect payments to injured workers after accounting for down the line adjustments (see below).
237. The 2019 Review reassessed the initial PIAWE (noting that there could be multiple PIAWE determinations performed over the life of a claim) using solely the available case file records and documentation. The results of the 2019 Review indicated:
 - a. 777 (approximately 26 per cent) of files reviewed were potentially incorrect, with both over and underpayment of weekly benefits to injured workers. The number of over-calculations identified was roughly equivalent to the number of under-calculations (396 over compared with 380 under, 1 still to be determined);
 - b. 786 (approximately 26 per cent) of files reviewed appeared to have the correct PIAWE; and
 - c. 1,471 (approximately 48 per cent) files had insufficient information to support the initial PIAWE calculation, such as incomplete PIAWE forms or missing payslips, and no additional information to improve the calculation in the file. This did not necessarily mean that the calculation was incorrect, but rather that without further information, no improvement to the initial PIAWE calculation would be possible.

238. icare self-reported the results of the 2019 Review to SIRA on 5 March 2020.
239. Based on icare's review of the files, roughly 40 per cent of the errors related to injuries that occurred prior to the establishment of icare on 1 September 2015.

PIAWE determination complexities

240. In October 2012, reforms introduced by the *Workers Compensation Legislation Amendment Act 2012* inserted detailed provisions for the determination of PIAWE into the *Workers Compensation Act 1987* as the way to determine the amount of any loss of income for injured workers as a result of a workplace injury.
241. It has been industry consensus that PIAWE determinations were complex due to the challenges of interpreting and applying the relevant statutory provisions (including requirements relating to the date of injury, particular classes of workers and non-monetary benefits), as well as the significant amount of detailed information to be provided by employers and workers covering, amongst other things, salary, overtime, bonuses, pecuniary and non-pecuniary benefits, leave (paid and unpaid), salary sacrifice arrangements, earnings from multiple jobs, and changes to salary or role.
242. In addition, pursuant to the legislation, insurers must assess all the required information and commence provisional weekly payments within seven days of being notified of the injury. As a result, initial payments are often made based on incomplete information. In some cases, additional information is provided by employers or injured workers and the PIAWE is then redetermined and payments adjusted.
243. Due to the complexities in the approach, PIAWE has been the subject of several legislative amendments since its inception.
244. In September 2019, the NSW Government published the *Workers Compensation Amendment (Pre-injury Average Weekly Earnings) Regulation 2019*, changing the way an injured worker's PIAWE is calculated. These changes came into effect on 21 October 2019 and were intended to reduce the complexity in the 2012 legislation.
245. Given the complexity of the PIAWE determination process, the legislative reforms allowed for an agreement between the worker and employer on the basis for which earnings could be calculated and used to assess weekly compensation. The intention of the amendments was to allow for the prompt commencement of weekly payments, with full determinations still required when agreement is not documented between the worker and employer within five days.
246. icare subsequently embarked on a rigorous training regime with claims service providers in the lead up to these changes coming into effect, including webinars for employers so they could better understand the changes and the impact on PIAWE calculations those amendments would have.
247. icare ran consultations with subject matter experts, facilitated four training readiness sessions, ensured 199 icare staff completed three PIAWE eLearning modules and hosted 11 consolidation workshops. More than 1,100 staff across six claims management providers (both Nominal Insurer and TMF) were trained. Three claims provider "train-the-trainer sessions" were held. icare hosted 94 agent consolidation workshops and trained 68 PIAWE "champions" across the scheme.
248. icare co-hosted a webinar with SIRA for more than 300 representatives from NSW Government agencies, employers and brokers, and provided them with unlimited access to our PIAWE eLearning modules.
249. For the TMF workers compensation scheme, icare complemented the online training with 11 face-to-face sessions for Government agency payroll teams. These sessions were co-delivered by claims managers, technical staff and icare technical managers, and key stakeholders were provided with access to a suite of PIAWE resources (also located on the icare website).

2020 PIAWE Review and Remediation Program

250. In order to further explore the initial findings from the 2019 Review, icare established the PIAWE Review and Remediation Program in early 2020 (the **Remediation Program**).
251. The Remediation Program is focused on claims that commenced payments of weekly benefits between 1 October 2012 and 20 October 2019. It does not cover claims where weekly benefits commenced from 21 October 2019 onwards, when PIAWE changes were implemented under the 2018 Amendment Act.
252. For completeness, icare notes there have been a significant number of claims that commenced weekly benefits during the relevant period of 1 October 2012 and 20 October 2019, with approximately 240,000 claims meeting this criteria within the Nominal Insurer and approximately 50,000 workers compensation claims for non-emergency services workers meeting the criteria and covered by the TMF.
253. The initial step in the Remediation Program was a more comprehensive review of 100 Nominal Insurer claims that were initially reviewed in 2019 Review and were considered to have an incorrect initial PIAWE determination. Full file reviews were conducted looking at the PIAWE and the actual payments made to injured workers. In some more complex cases, icare obtained legal advice from Counsel on the correct interpretation of the legislation. The purpose of this was to:
- create a consistent review approach; and
 - establish whether there were any actual incorrect payments to workers.
254. This review of 100 files is now complete. Following the use of a consistent methodology for identifying relevant earnings data on claims files, it was established that a significant portion of the files had deficient information to support revised PIAWE determinations. The detailed findings are as follows:
- for 58 of the 100 files, it was not possible to accurately ascertain whether the PIAWE was incorrect or obtain a more accurate PIAWE as no additional information could be obtained from the file to fill the gaps in the information applied to deliver the initial PIAWE estimate;
 - 22 injured workers appeared to have a weekly compensation underpayment as a result of an incorrect PIAWE determination but only 18 were able to be compensated as a result of settlements paid, maximum benefits being paid or external reviews having been conducted on the other 4 files;
 - the level of weekly underpayment across the 18 injured workers ranged from \$1 per week to \$358 per week with an average of \$94 per week; and
 - the incorrect PIAWE determination led to a weekly compensation overpayment for 13 injured workers.

255. The Remediation Program is currently reviewing the 1,000 largest valued Nominal Insurer claims from 2012 to 2018, as well as 500 TMF claims.
- a. Reviews of 856 Nominal Insurer claims have been completed, with reviews of 143 paper-based files deferred to a later date.
 - b. There were 18 claims with an underpayment that could be remediated, and the remediation contact management process has commenced.
 - c. There were 16 claims with an overpayment, of which 14 are for open claims and may require downgrading of their PIAWE depending on their status.
 - d. Following a review of 500 TMF claims using claims management provider data, it was established that most Government Agencies do not provide all earnings data to their claims management providers.
 - e. Reviews of 47 initial PIAWE determinations using data provided by seven of the larger Government Agencies who perform the determinations themselves, and pay workers directly, identified that 40 were incorrect and, further, all of these claims had over- or under-payments to workers.
 - f. A further review of 50 claims from smaller Government Agencies who do provide data to claims managers is currently in progress.
256. Based on the findings from both the 2019 Review and Remediation Program, it is currently estimated that fewer than 5 per cent of injured workers eligible for weekly benefits between 1 October 2012 and 20 October 2019 in the Nominal Insurer's portfolio will have a quantifiable underpayment. The fact that the majority of claims (around 80 per cent) have a total or partial incapacity period less than 5 weeks means that the monetary impacts of any miscalculation of PIAWE will limit the remediation payments.
257. Subsequent phases of the Remediation Program have been designed and are progressing through the approval process. They will encompass the remaining claims managed by the Nominal Insurer. An approach for potentially impacted injured workers in the TMF scheme will be developed in collaboration with SIRA, NSW Treasury and the NSW Government agencies involved.

TERM OF REFERENCE 1(b): DELIVERY OF THE DORE REVIEW RECOMMENDATIONS

Summary

1. Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme was published in December 2019 (**the Dore Review report**). It was a compliance and performance review of the Workers Compensation Nominal Insurer (**Nominal Insurer**) directed by the State Insurance Regulatory Authority (**SIRA**) following a deterioration in the performance of the Nominal Insurer's return-to-work (**RTW**) rates. Extensive consultation, data collection and analysis of both icare and SIRA's submissions and external actuarial reports was undertaken.
2. The Dore Review report was a point-in-time evaluation of the Nominal Insurer's performance during a significant period of transition when icare was making changes to service, operating and governance models.
3. Insurance and Care NSW (**icare**) proactively engaged in the Review and has committed significant resources to addressing the findings and recommendations of the Dore Review report. icare's Board and senior management have been focussed on addressing the findings and implementing the recommendations since its publication.
4. Following the Dore Review, SIRA and icare agreed to a 21-point Action Plan. icare has completed the implementation of six of the recommendations in SIRA's 21-point Action Plan, with the remaining five of icare's accountable recommendations in progress. icare is also contributing where necessary to the ten items relevant to SIRA.

History of the Dore Review

5. In February 2019, the Chief Executive of SIRA commissioned the compliance and performance review of the Nominal Insurer, pursuant to her powers under sections 23 and 24 of the *State Insurance and Care Governance Act 2015* (**SICG Act**) and sections 22 and 23 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (**1998 Act**).
6. The Chief Executive of SIRA appointed Ms Janet Dore to conduct the review and to produce a report regarding her findings. The terms of reference of review were as follows:
 - a. assess Nominal Insurer compliance with Market Practice and Premium Guidelines (**MPPG**) and identify any unintended consequences, risks and priorities for improvement in SIRA regulation of the premiums of the Nominal Insurer;
 - b. identify the benefits and risks to the performance of the NSW workers compensation system arising from icare's implementation changes to the Nominal Insurer operating model and supporting digital platforms; and
 - c. assess the Nominal Insurer's performance in relation to RTW outcomes, claims management (including guidance, support and services for workers, employers and health service providers), customer experience and data quality and reporting.
7. EY was engaged by SIRA to support Ms Dore to conduct the review. An EY Actuarial review team was responsible for undertaking a three-part Compliance and Performance Review of the Nominal Insurer on areas of claims management, premiums and policies and expenses to support the Review.
8. The terms of reference required Ms Dore to issue a draft report to icare for comment and feedback.
9. Both the executive management and the Board of icare took an active role in the feedback, engagement and management of the Dore Review process, including meeting with Ms Dore on a number of occasions.

10. Both icare's Board and management (including at an executive level) constructively engaged with the Dore Review process. icare established an internal project office to ensure appropriate levels of support were provided to the response team and to Ms Dore as a matter of priority. The project office reported to a Steering Committee, chaired by the Group Executive, Organisational Development and Delivery.
11. The icare Board was provided with electronic copies of the draft Dore Review report, including three actuarial reports produced by EY, for comment in October 2019. icare Management and the icare Board reviewed the draft report and provided extensive and detailed feedback to Ms Dore. A detailed response to the draft report, endorsed by the icare Board, was provided by icare in December 2019. A copy of icare's response is annexed at **1B-1**.
12. The Dore Review report was published on 13 December 2019. At the time of publication, icare had commenced a number of initiatives to address the known issues arising from the public submissions and SIRA guidance during the course of the Dore Review.
13. icare agrees with the findings of the Dore Review. While, at the time of the Dore Review report, there was no evidence that the poor RTW performance had impacted on the scheme's financial performance, icare acknowledges that since that time there has been some adverse financial impact attributed to the decline in RTW for the 2018 accident year. However, as explained elsewhere in this submission and icare's response to the Dore Review report, other external factors beyond icare's control were the main drivers in the decline in the Nominal Insurer scheme funding ratio, and the Nominal Insurer's RTW performance has since showed signs of improvement, including as a result of further changes to the claims service model implemented after the Dore Review.
14. Following the publication of the Dore Review report, SIRA prepared an action plan for the purposes of providing a foundation for fact-based and steady improvement in the compliance and performance of the Nominal Insurer, including based on the findings of the Dore Review. icare agreed it would implement this plan for the purposes of improving the performance of the Nominal Insurer and the health of the workers compensation scheme more broadly (**SIRA 21-point Action Plan**).
15. The SIRA 21-point Action Plan included recommendations for both icare and SIRA to implement.
16. icare continues to work closely with SIRA to operationalise the recommendations of the Dore Review report, as detailed below.

Update on progress – Dore Review recommendations

17. The following table sets out, in summary, icare's progress against the findings of the Dore Review report since 2019. Further details on each finding is contained in icare's submissions in response to Term of Reference 1(a).

	Finding	Position	Comments
1	SIRA should regularly review definitions where it requires reporting of data in consultation with all stakeholders.	Accepted (SIRA responsibility)	SIRA requires frequent access to data held by icare and its scheme agents to perform its regulatory functions. There have been challenges in aligning data collection methodologies between SIRA and icare, particularly in relation to RTW data. icare and SIRA have made a significant investment in ensuring that data methodologies are agreed between both agencies since 2018 in order to improve data access and reliability of reporting of vital scheme metrics. In 2018, SIRA launched a new data-based metric based on the work status code (WSC) included for each workers compensation claim.
			icare has now adopted the SIRA WSC RTW measure for public reporting on performance and for operational performance targets. In the process of introducing WSC metrics as the primary indicator for RTW, icare has commenced a large-scale remediation of historical data and has addressed the process of recording this metric to ensure WSC data is accurately and consistently captured. icare expects this work to be complete in November 2020.
2	Regular meetings between Board chairs, CE and CEO of SIRA and icare should be continued on an open and constructive basis to promote understanding between, and professional relations with, the two organisations in meeting their respective responsibilities.	Accepted Also see SIRA 21-point Action Plan item 8 and item 20	The interim icare Chief Executive and SIRA Chief Executive are now holding regular open and constructive meetings. The new Board Chair of icare and the SIRA Board Chair have also held an open and constructive introductory meeting. In addition to the progress icare is making against SIRA's 21-point Action Plan, icare has taken the actions described below to improve the level of constructive engagement between the agencies. <i>Formal committees between the agencies</i> 1. Recognising the opportunity to mature the relationship in 2019, icare and SIRA executives agreed to formally establish several new forums, by terms of reference, to improve the exchange of information, address known and emerging concerns and promote efficiency by minimising duplication or unnecessary activity. The specific monthly forums that commenced were: c. Executive Committee meetings between icare executives and SIRA executives commenced in 2018; d. Joint Premium and Prudential Oversight Committee (JPPOC) commenced in 2019; and e. Joint Claims Assurance Committee (JCAC) commenced in 2019.

Finding	Position	Comments
		<i>Direct Chief Executive involvement</i> - The Chief Executives have scheduled fortnightly meetings which also include SIRA's Executive Director, Workers Compensation and icare's Head of Regulatory Affairs. The purpose of these meetings is to discuss current issues and to assist with each agency understanding their respective positions. This is supplemented by informal discussions between the two Chief Executives as required. - icare and SIRA have committed to building and cementing a positive relationship between icare's Head of Regulatory Affairs and SIRA's Executive Director, Workers Compensation who communicate frequently. - icare's interim Chief Executive has also initiated meetings with system stakeholders and members of SIRA's tripartite forum with union and employer representatives, as well as initiating his own multilateral forum with these and other stakeholders. <i>Opportunities to collaborate and partner</i> - icare has taken the following opportunities to more proactively collaborate with SIRA: - invited SIRA to attend meetings with EML to ensure alignment and clarity regarding expectations of EML; - initiated a fortnightly meeting with NSW Treasury and SIRA regarding PIAWE; - initiated meetings between icare's Chief Risk Officer and SIRA regarding any concerns raised or updates regarding the status of the independent Culture, Governance and Accountability review being conducted by PricewaterhouseCoopers; and - encouraged management to initiate meetings with SIRA to discuss, clarify and address issues, and regular updates are provided by Group Executives on concerns SIRA has raised. - icare and SIRA have also initiated projects that reflect their new, constructive relationship, including a joint project between SIRA's policy director and icare subject matter experts to examine the workers compensation legislation and how it is operationalised from injury through to dispute, in order to identify behaviours that impede good customer outcomes.

	Finding	Position	Comments
3	SIRA should continue its review of governance and capabilities within the emerging contemporary approach to regulation.	Accepted (SIRA responsibility)	N/A
4	Priority should be given to a training program for GPs by icare.	icare agrees in principle, noting that SIRA has accepted that it will take action on this finding.	icare is supportive of a training program for GPs. However, icare notes that while the Nominal Insurer is the largest provider within the NSW workers compensation system (issuing 74 per cent of total premiums and managing 65 per cent of total active claims), it is not the only one. For this reason, icare considers that this activity, across the whole workers compensation system, properly sits within SIRA's remit rather than icare's. icare and SIRA have established six weekly meetings between icare's Medical Office and SIRA's Health, Policy, Prevention & Supervision team. The focus of these meetings has been on healthcare reform in NSW workers compensation and CTP. icare already has an existing GP engagement and education program in place through its Medical Office and has been proactive in providing GPs with informal education, support and advice as part of our health engagement strategy. icare has provided SIRA with feedback and key learnings from its GP engagement activities within the NSW workers compensation scheme to help inform a regulatory engagement approach with peak medical associations.
5	SIRA should continue its monitoring focus on capital adequacy in liaison with NSW Treasury officials.	Accepted (SIRA responsibility)	N/A

	Finding	Position	Comments
6	icare should provide SIRA sufficient regular information to assure the regulator that premiums are calculated in compliance with the legislative requirements.	Accepted Also see SIRA 21-point Action Plan item 21	icare continues to prioritise the provision of regular information to SIRA through the JPPOC, the JCAC and through regular meetings with management. Through the JPPOC, for example, different elements of the Nominal Insurer pricing model were reviewed and tested over the six months from July 2019 to December 2019. JPPOC made 13 recommendations, all of which were included by icare in the 2020/21 premium filing submitted to SIRA in December 2019. SIRA confirmed the non-rejection of this filing in April 2020.
7	icare should provide internal audit planning and risk mitigation actions to SIRA on a regular basis.	Accepted	Regular updates are provided as part of the oversight meetings outlined in item 2 above.
8	Regular meetings between senior executives should be utilised to agree on and monitor mitigation plans so that formal penalties can be understood as last resort measures in accord with the spirit of the Premier's memorandum on inter-agency disputes.	Accepted Also see SIRA 21-point Action Plan item 8	The oversight meetings referred to above include monitoring of a financial sustainability plan for the Nominal Insurer. Documents related to this plan have been provided.

	Finding	Position	Comments
9	icare should ensure its agreements with agents and service providers give adequate weighting to the primary goal of RTW.	Accepted	icare has modified scheme agent contracts for Authorised Providers to a risk and reward structure, with remuneration at risk for failing to meet compliance and minimum service standards, and incentives to achieve RTW (currently measured through a payments-based metric). The TMF claims management provider contracts were similarly designed when they were renewed for 2020. The contract with GIO to manage tail claims (across both Nominal Insurer and TMF schemes) has also adopted this remuneration structure, with the focus on measurement of outcomes at a claim level with incentives to achieve a positive return to work. icare is in the process of negotiating a contract extension with EML to implement a similar risk and reward-based approach subject to performance and compliance measures based on both payments-and outcomes-based metrics. This contract extension is expected to be executed in November 2020. In 2021, icare will be working with the claims management providers to refine performance metrics to include the SIRA outcomes-based metric.
10	icare should review its internal governance of the claims management model to ensure adequacy of intended outcomes. In particular it should consider allocating files to other agents with expertise to reduce the load on EML and provide time for skills and experience to improve.	Accepted Also see SIRA 21-point Action Plan item 6 and item 7	icare's key focus over the last year has been on improving its internal governance of the claims management model. This has included improving compliance rates and clarifying the Decision Rights Framework. In late 2019, after consultation with the industry, icare launched the Authorised Provider model enabling eligible employers (those with a Base Tariff Premium of >\$500k) to choose one of three authorised providers in addition to the core provider EML. As employers implement their choice at policy renewal, participation rates in the model has been changing over time. To date, 300 employers or employer groups have elected to choose an Authorised Provider. This represents approximately 12 per cent of newly lodged claims in the Nominal Insurer claims portfolio. Following claims migration, these providers will also manage the older claims for those customers. In October 2020 the icare Board endorsed a strategy which will see icare issue a Request for Proposal in 2021, which a view to exploring the use of multiple claims management providers.

	Finding	Position	Comments
11	icare should address the staff turnover at EML as a matter of priority to ensure case management services are improved.	Accepted Also see SIRA 21-point Action Plan item 6, item 7 and item 15	icare is working with EML to understand and address the staff attraction and retention issues through tactics designed to lift staff capability and performance and improve organisational culture. There is a continued focus on recruiting quality staff and supporting existing staff through training, workshops, simplified processes and ways of working, improved governance frameworks and clear objectives linked to EML's performance incentives.
12	The legislative powers available to SIRA should be reviewed and strengthened to enable proper oversight of the NI.	As it is a matter for the legislature, icare does not consider it appropriate to take a position on this recommendation. However, icare observes that SIRA already has extensive powers in relation to the NI and other insurers.	The Nominal Insurer is taken to be the holder of an unconditional licence because, unlike self and specialised insurers, the Nominal Insurer occupies a statutory role as insurer on risk for uninsured liabilities in the NSW workers compensation system. It cannot reject proposals for workers compensation insurance, administers schemes for injured workers whose employer was uninsured, and has extensive public accountability in relation to the management of its income and liabilities, including being subject to the scrutiny of the NSW Auditor General and the NSW Parliament. The Nominal Insurer self-reports various issues as they arise and voluntarily submits additional information to SIRA over and above the regular schedule of meetings and reviews undertaken.
13	SIRA should build on its governance work since the Hayne Royal Commission and take up the challenge to operate as a best in class modern regulator.	Accepted (SIRA responsibility)	N/A

Update on progress – SIRA 21-point Action Plan

18. An update on the status of icare's response to the SIRA 21-point Action Plan as at 8 October 2020 is annexed at **1B-2**.
19. Since the publication of SIRA's 21-point Action Plan, icare has successfully implemented six items, and five items are currently in progress. Of the remaining ten items that are the accountability of SIRA, icare is actively contributing where appropriate. SIRA published an update on icare's progress against SIRA's 21-point Action Plan to the Legislative Council's Standing Committee on Law and Justice on 3 August 2020.
20. The icare Board's Audit and Risk Committee have continued to monitor icare's progress against the SIRA 21-point Action Plan. Substantial progress against the SIRA 21-point Action Plan has been made by icare, noting some actions were delayed by the COVID-19 pandemic. These have been proactively reported to SIRA and the icare Board.
21. The icare Board established a Governance Committee on 13 August 2020 to establish, review and take advice on best practice governance and regulatory engagement in the spirit of continuous improvement and in light of the emerging issues in icare's external environment and changing stakeholder expectations. The Governance Committee is tasked with considering the operation and effectiveness of icare's governance processes in light of those emerging issues.
22. The Governance Committee will continue to review and provide advice on icare's approach to specific issues, including icare's current Culture, Governance and Accountability Review in response to SIRA's 21-point Action Plan.
23. Prior to the publication of the Dore Review report, icare and SIRA executives proactively agreed to establish new consultative forums, formalised by terms of reference, to improve the exchange of information, address known and emerging concerns and promote efficiency by minimising duplication or unnecessary activity. The specific monthly forums that commenced in mid-2019 were the Joint Premium and Prudential Oversight Committee (**JPPOC**), Joint Claims Assurance Committee (**JCAC**), and Executive Committee meetings between icare executives and SIRA executives. Recently, icare has sought to ensure all information is provided to SIRA in a comprehensive, transparent fashion, seeking to address and resolve SIRA's concerns directly.
24. In particular, one positive outcome of this increased consultation is that the JPPOC has provided a successful forum to review and recommend changes to address the issues identified in the Dore Review report regarding icare's approach to premium calculations.⁶⁰
25. Similarly, the JCAC has helped provide transparency over claims performance and data remediation activities and has further refined the new claims service model through robust discussion, particularly in relation to case management and operational practices.

⁶⁰Dore Review report [6.2]

TERM OF REFERENCE 1(c): REALISATION OF BENEFITS ICARE WAS ESTABLISHED TO ACHIEVE

Summary

1. Having regard to the legislative history of the *State Insurance and Care Governance Act 2015* (the **SICG Act**), Insurance and Care NSW (**icare**) considers that the policy objectives of the SICG Act can be best described as:
 - a. creating greater transparency and accountability by separating regulatory and operational functions;
 - b. consolidating functions to generate operational efficiencies and enable economies of scale; and
 - c. establishing less adversarial, customer-centric organisations, leading to better return to work and quality of life outcomes.
2. Since its creation in 2015, icare's goal has been to build a more effective and efficient operating model, leveraging similarities in the insurance and care schemes to which it provides services to realise benefits across the State. In particular, when icare was established, there was a lack of consistency in service delivery, processes, systems and training across the five scheme agents in Workers Compensation Nominal Insurer's (the **Nominal Insurer**) workers compensation scheme. This duplication resulted in inflated costs to the scheme, as well as inconsistency in support for employers and treatment of injured workers.
3. icare has focussed on delivering financial benefits to the State through savings in the form of reduced operating and claims-related expenses, lower premiums for employers and reduction in future claim liabilities (including through improved return to work (**RTW**) outcomes), as well as improving the customer experience.
4. Taking a balanced scorecard approach, icare has realised the following significant operational benefits and savings and customer service improvements:
 - a. icare has realised \$683 million in claims and operating efficiencies since its inception to 30 June 2020, with its methodology for calculating these benefits having been assessed and confirmed by Ernst & Young (**EY**);
 - b. icare has released \$313 million of actuarial reserves since its inception to 30 June 2020, which corresponds to a reduction in expected future claims costs. Following initial decline in front-end RTW rates, there have been signs of significant improvement in RTW performance (until a recent deterioration relating to COVID-19). However, icare considers the schemes are now well-positioned to contribute to further reductions in future claim liabilities by enabling the provision of more targeted support and direction to injured workers, and more effective management of medical costs;
 - c. icare has also reduced NSW employer premiums by \$1.586 billion since its inception to 30 June 2020 through the Employer Safety Incentive (**ESI**) and Scheme Performance Adjustment (**SPA**) programs; and
 - d. all five of icare's key schemes have experienced improved customer Net Promoter Scores (**NPS**) since January 2017.
5. icare is committed to continuing to build on this progress towards better customer outcomes and experience, making the necessary changes to enable it to continue to deliver the benefits it was established to achieve.

Background

6. As icare operates multiple insurance schemes with individual complexities, a number of extensive and multifactorial metrics could be used to measure and track the extent to which it has realised the benefits it was established to achieve.
7. icare has agreed five key metrics with NSW Treasury as a consistent way to measure icare's realisation of benefits. icare has been providing NSW Treasury with regular reporting on these metrics since the 2016/17 financial year.
8. The five metrics are:
 - a. operating expense savings;
 - b. savings for claims-related operating expenses;
 - c. savings through lower premiums;
 - d. reduction in future claim liabilities (via actuarial claims releases); and
 - e. customer NPS.
9. For the purposes of this submission, icare has focussed on its performance against these metrics as a measure of its realisation of the benefits it was established to achieve. However, as part of ordinary business, icare also tracks its performance against numerous other metrics. For example, icare's enterprise performance scorecard tracks change delivery, employee NPS, prevention initiatives, risk and compliance, RTW rate (Nominal Insurer workers compensation scheme) and fit for work rate (Nominal Insurer and Treasury Managed Fund (TMF) workers compensation schemes). icare also reports on and tracks key financial metrics through monthly finance reporting, including funding ratio, net result and investment returns for each scheme.

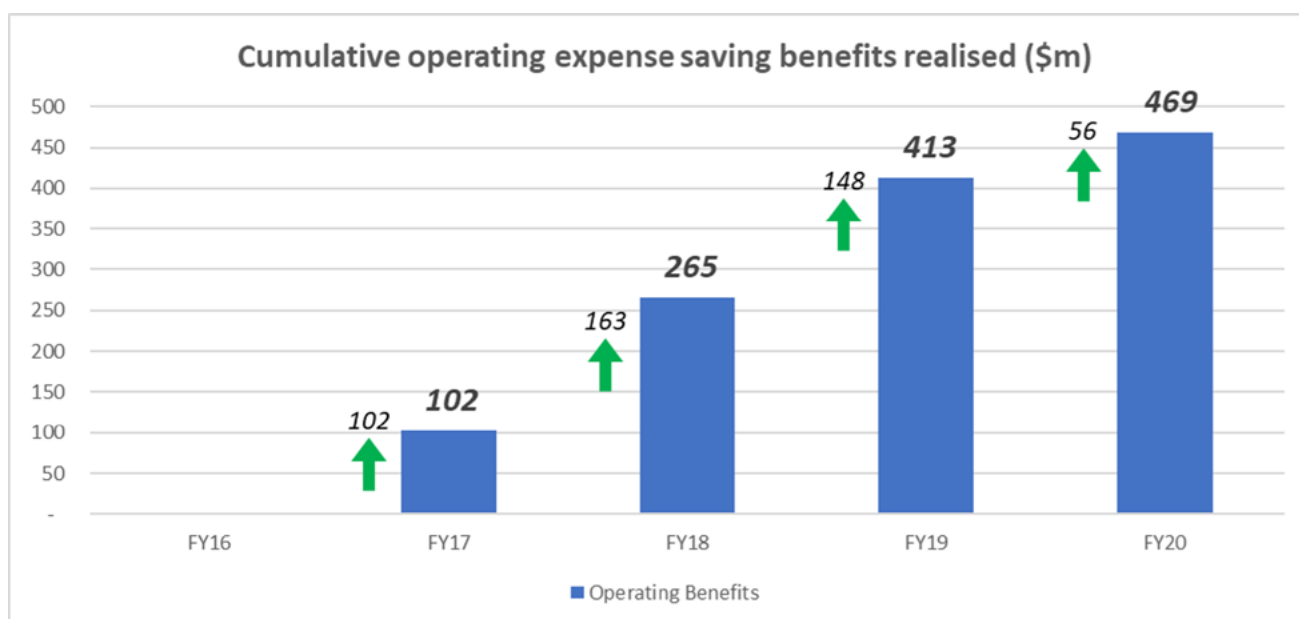
Performance against metrics

10. As at 30 June 2020, icare has delivered the results described below against its financial and customer metrics.

Operating expense savings

11. icare realised \$56 million in operating expenses savings in the 2019/20 financial year, with a cumulative total of \$469 million in savings since icare's inception (Figure 1).

Figure 1: Cumulative operating expense savings 30 June 2017 – 30 June 2020

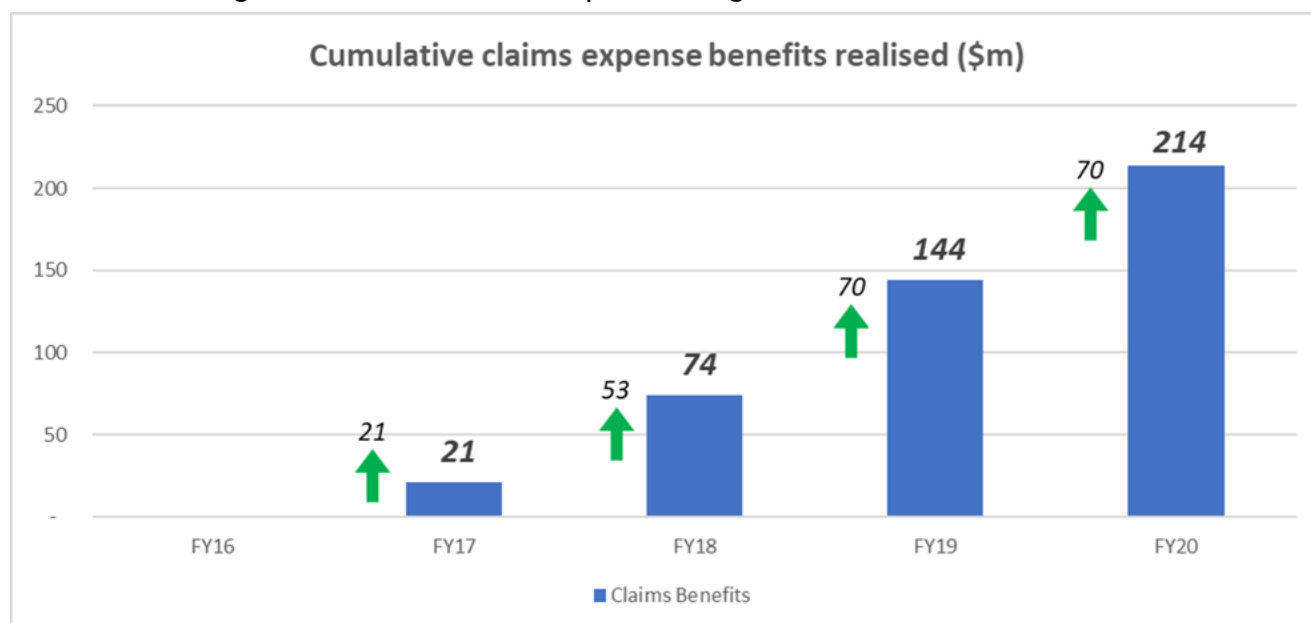


12. Operating expenses savings been calculated by comparing icare's operating expenses in its first year to those expended in its subsequent years (with adjustments for inflation). As Figure 1 above demonstrates, icare has realised operating expense savings benefits each year.
13. icare attributes these savings to improvements to insurance operating models and internal organisational structures, as well as from the centralisation and rationalisation of supporting functions and improvements in portals and systems. In particular, in relation to the Nominal Insurer scheme, in addition to operational efficiencies arising from the use of its more centralised claims service model, the Nominal Insurer has implemented several strategies to improve operational effectiveness and efficiencies (as detailed further in icare's submissions in response to Term of Reference 1(a)).

Savings for claims-related expenses

14. icare realised \$70 million in savings for claims-related expenses in the 2019/20 financial year, with a cumulative total of \$214 million in savings since icare's inception (Figure 2).

Figure 2: Cumulative claims expense savings 30 June 2017 – 30 June 2020



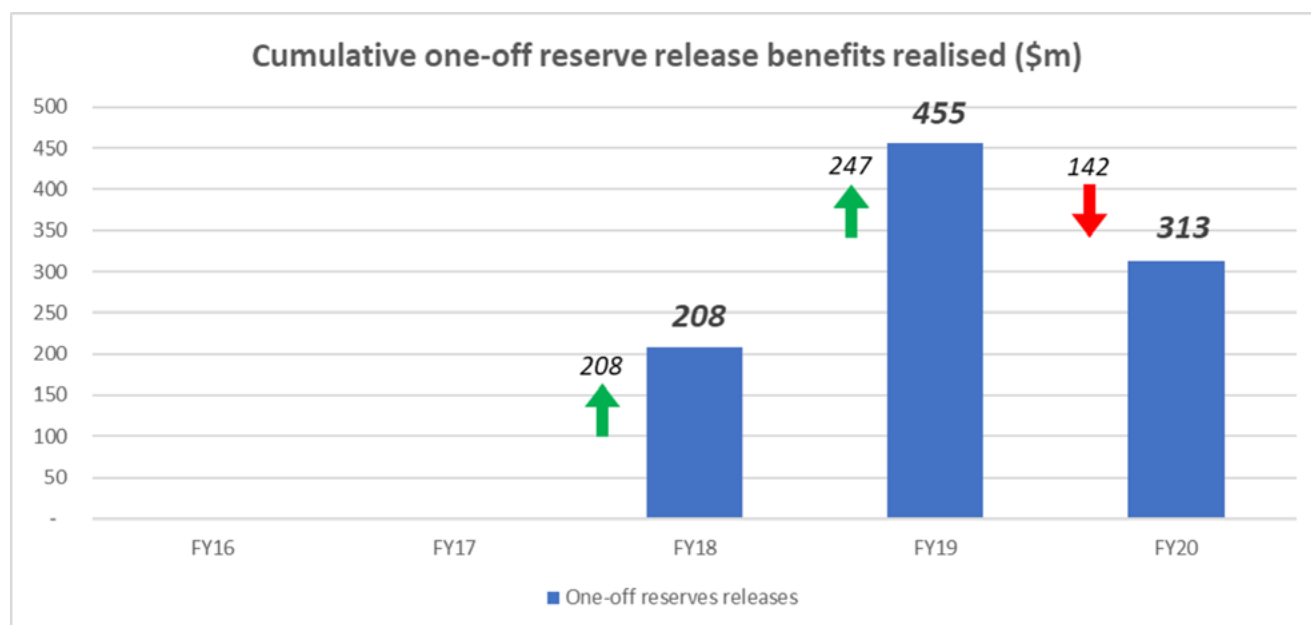
15. The claims-related expense savings detailed above have been realised through numerous icare initiatives to provide greater consistency and clarity of expectations across all icare's key workers compensation scheme service providers. Historically, contracts for claims-related services were managed by scheme agents with different terms, service expectations and levels of performance. icare has centralised the management of these contractual arrangements in-house to enable increased oversight and to negotiate consistent terms, including through the use of its more centralised claims service models (as detailed further in icare's submissions in response to Term of Reference 1(a)). In addition, icare has supplemented its contractual arrangements with additional in-house initiatives to increase supplier performance and reduce costs.

16. Specifically, icare has:
- renegotiated the contracts for hearing aids, which has resulted in a significant reduction in the average unit price from a baseline of \$2,400 to a maximum of \$1,750 and an overall saving of \$21 million since the 2016/17 financial year;
 - undertaken work with key Occupational Rehabilitation stakeholders to further understand best practice for rehabilitation services and incorporated those standards into all service provider contracts, as well as renegotiated consistent pricing, which has resulted in significant contractual savings of \$68 million since the 2017-18 financial year;
 - renegotiated lower standardised fees for investigator contracts, incorporated standard practice through the introduction of a surveillance code of conduct and increased icare's control of surveillance service spend by bringing the approval function in-house, resulting in a \$29 million saving since the 2017/18 financial year;
 - reduced medico-legal expenses through the implementation of the Medical Support Panel, which enables icare to more efficiently assess and approve medical treatment in-house with only matters needing additional investigation being referred to specialist providers, resulting in a \$31 million saving since the 2017/18 financial year, as well as faster decisions for customers;
 - reduced legal services expenses through the establishment of an in-house team responsible for managing the engagement of legal service providers for claims, resulting in a \$59 million saving since the 2016/17 financial year; and
 - introduced a reduced provider fee regime for medical imaging service providers, resulting in a \$6 million saving since the 2018/19 financial year.
17. As the above savings are realised on an ongoing basis, icare expects the savings to continue in future financial years.

Reduction in future claims liabilities

18. As a result of various actions that icare has taken, its actuaries have been able to reflect on scheme valuations and release \$313 million of actuarial reserves since inception (Figure 3).

Figure 3: Cumulative one-off reserve releases 30 June 2018 – 30 June 2020⁶¹



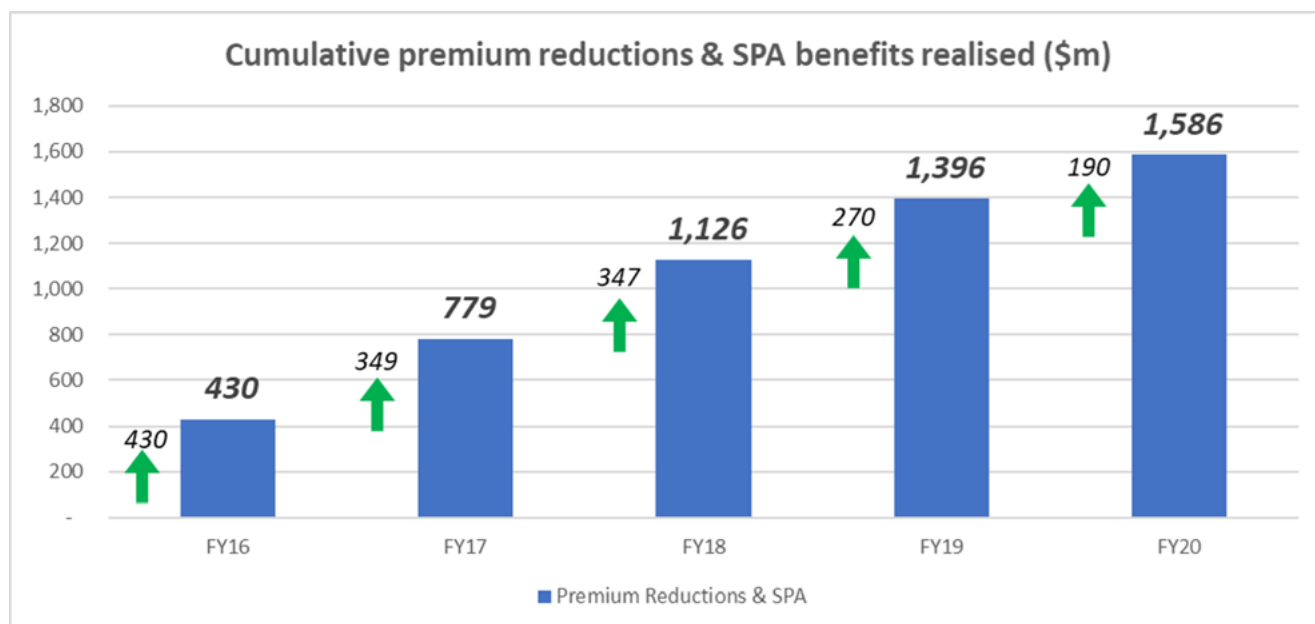
⁶¹The \$208 million in actuarial reserve releases identified for the 2017/2018 financial year is the cumulative total of reserve releases for the 2015/16 to 2017/18 financial years. The data was collated at the time that icare commenced reporting on reserve releases to the NSW Treasury.

19. Actuarial reserves relate to expected future claims costs. The release of reserves follows an actuarial assessment that claims costs are expected to reduce in future.
20. icare's release of \$313 million in actuarial reserves since icare's inception is largely the result of lower weekly benefit costs for workers compensation claims aged over five years (i.e. claims with whole person impairment (**WPI**) higher than 20 per cent). Actuarial reserve releases have also followed improvements in WPI data, which has allowed for better actuarial modelling and reduced uncertainty.
21. icare has achieved lower weekly benefit costs through an increased focus on claims management, including through improvements following the rollout of the new claims service models. In addition, several further initiatives have contributed to these improvements, for example:
 - a. increased staff training, awareness activities and cohort reviews focused on reviewing worker capacity and ensuring that workers are receiving the correct benefits;
 - b. collaborative reviews between icare and scheme agents to proactively seek opportunities to improve recovery and RTW;
 - c. increased focus on recovery, RTW and work capacity decision making for claims with WPI between 21 to 30 per cent;
 - d. increased focus on vocational retraining and workplace modification to assist workers to seek new employment; and
 - e. supporting work trials that provide employers and workers opportunities for a worker to upgrade their capacity.
22. These claims management initiatives are discussed in more detail in icare's submissions in response to Term of Reference 1(a).
23. The releases in actuarial reserves have been achieved notwithstanding some deterioration in the front-end RTW rates, as detailed in icare's submissions in response to Terms of Reference 1(a) and 2(b). The \$142 million drop in actuarial reserves releases for the 2019/20 financial year followed a decline in RTW performance driven by a combination of operational challenges associated with transformation within the Nominal Insurer's scheme and external factors outside of icare's control. These factors are discussed in greater detail in icare's submissions in response to Terms of Reference 1(a) and 2(b).
24. However, there have been signs of significant improvement in RTW performance (until a recent deterioration relating to COVID-19), including as a result of a number of changes to the claims service model implemented following Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme published in December 2019 (the **Dore Review report**), as well as a number of additional steps to improve RTW rates, as detailed further in icare's submissions in response to Terms of Reference 1(a) and 2(a). These changes include actions taken to improve the performance of one of icare's scheme agents, EML, and build in more contractual incentives to drive improved RTW performance by scheme agents. icare also strongly believes that the improvements it has made to both the Nominal Insurer and TMF workers compensation schemes' claims service models will contribute to earlier RTW outcomes by enabling the provision of more targeted support and direction to injured workers going forward.
25. As a result, icare considers these schemes are now on track to realise the potential of the claims service model improvements to contribute to reductions in future claim liabilities through earlier RTW outcomes.
26. icare aims to release an additional \$700 million (approximately) in actuarial reserves over the next four years as the positive impacts of claims management strategies continue to be realised, particularly with regards to improved RTW rates.

Savings through lower premiums

27. icare achieved \$190 million in premium savings for NSW employers in the 2019/20 financial year, with a cumulative total of \$1.586 billion in premium savings since inception (Figure 4). At 1.4 per cent of wages, the Nominal Insurer's premium is the cheapest across the workers compensation system in NSW, below the national average, and lower than historical premiums.

Figure 4: Cumulative premium reductions 30 June 2016 – 30 June 2020



28. icare has achieved the premium savings through the ESI and SPA programs, which were introduced at the commencement of the 2015/16 financial year following significant Government changes to the NSW workers compensation premium model. The approach for both the ESI and SPA is detailed in the Nominal Insurer's workers compensation premium filing, which is submitted to and approved by SIRA as required by the Workers Compensation Market Practice and Premium Guidelines.⁶² In particular:
- the ESI aims to reward businesses that create safer, healthier workplaces in NSW. Premium incentives of up to 10 per cent per annum (now 7.5 per cent)⁶³ are available for employers who report incidents early, introduce safety initiatives and support injured workers returning to work. This provides an opportunity for employers to invest the savings in workplace safety; and
 - Experience-rated employers (i.e. employers with annual premiums of greater than \$30,000) whose claims performance is better than the broader scheme are eligible to receive a SPA at the end of the relevant policy year. The exact amount of the SPA is dependent on individual employer performance and the scheme's overall financial performance. Since inception, icare has offered eligible employers a SPA of up to 20 per cent. In the two most recent financial years, no SPA has been offered due to the scheme's declining funding ratio (the reasons for which are discussed further in icare's submissions in response to Term of Reference 2(b)).
29. While premium savings are not a financial benefit to icare, as a social insurer, icare takes a holistic approach to quantifying benefits and considers premium reductions a net benefit to the State and the businesses that are its customers.

⁶²As required by section 168 of the *Workers Compensation Act 1987*. A copy of the most recent Workers Compensation Market Practice and Premium Guidelines is available online at: https://www.sira.nsw.gov.au/_data/assets/pdf_file/0004/828481/Workers-Compensation-Market-Practice-and-Premium-Guidelines-27-May-2020.pdf

⁶³The ESI was reduced in icare's 2019-20 premium filing to offset rising medical costs and due to a reduction in the safety benefits to employers initially gained from the ESI

Customer NPS

30. NPS is a measure of advocacy and provides a view of customer sentiment and experience. It measures how likely a customer would be to recommend an organisation to another person on a scale from 1 to 10. Individual customer NPS results are collated monthly and the proportion of detractors (those who give a score of between 0 and 6) is deducted from the proportion of promoters (those who give a score of 9 or 10) to translate into a result from -100 to +100. The higher the rating, the more likely the customer is to recommend an organisation to others. The surveys also include questions on specific drivers of NPS such as timeliness, accessibility and quality of information.
31. icare has achieved improvements in its customer NPS across all five of its key schemes since January 2017, as outlined in the table below:

Scheme	NPS at Jan 2017	NPS at June 2020	Change
Workers Compensation Nominal Insurer (injured workers and employers)	+4	+23	+19
NSW Self-Insurance Corporation (injured workers and applicable Government agencies)	-25	+18	+43
Workers Compensation (Dust Diseases) Authority (participants and carers)	+25	+51	+26
The Home Builders Compensation Fund (builders and homeowners)	+4	+5	+1
Lifetime Care and Support Authority of New South Wales (participants and carers)	+38	+55	+17

External validation of operating and claims-related expense savings

32. icare acknowledges that there are many approaches to measuring financial performance. icare engaged EY in April 2020 to undertake an independent review of icare's benefits calculation methodologies to confirm their clerical accuracy and consistency.
33. EY's review focused on recalculating icare's:
- overall baseline operating expenses; and
 - baseline spend and actual spend for the 2018/19 financial year on claims-related expense savings (including hearing aids, legal, medicolegal, investigators and occupational rehabilitation services).
34. Overall, EY's findings were substantially similar to icare's, as reported above. Minor discrepancies were generally caused by EY having access to additional data not available at the time of icare's calculations.

Continuous improvement

35. As part of EY's review, EY also made seven observations that could help icare to further bolster its approach to the calculation of benefits realisation. icare is addressing these observations through the following actions:
- a. icare has engaged with NSW Treasury for the purposes of assessing icare's benefits realisation approach against NSW Treasury's Benefits Realisation Management Framework and applying a continuous improvement approach to its reporting;
 - b. further refining the icare benefits realisation framework;
 - c. taking a more holistic approach and engaging the wider business to identify and track benefits realised; and
 - d. linking benefits to icare's strategic objectives.
36. icare has also continued to focus on improving customer service outcomes for both injured workers and employers using the claims service model across both the Nominal Insurer and TMF schemes. icare engaged Righthandturn Pty Ltd in October 2019 as a Customer Advocate to meet with stakeholders and customers that provided written submissions to the Dore Review, in order to gain further insights on their experience as a customer interacting with icare and identify opportunities for icare to enhance its customer service delivery. The Customer Advocate issued a report on 18 December 2019 with a number of recommendations that icare has since acted on. Further detail has been included in icare's submissions in response to Term of Reference 1(a).

TERM OF REFERENCE 1(d): CULTURE

Summary

1. Since its inception, Insurance and Care NSW (**icare**) has been committed to its ethos of “*commercial mind, social heart*”. This is the common thread that runs from the Board through to frontline staff and is what has drawn them to work for the organisation.
2. From establishment, icare has built a customer-centric and empathetic culture, through initiatives including:
 - a. establishing a panel of expert advisors to advise on culture, leadership and employee safety matters;
 - b. developing and striving to practice meaningful organisational values driven by input from employees;
 - c. developing and implementing action plans such as the Multicultural Inclusion Action Plan and Disability Inclusion Action Plan;
 - d. creating and implementing wellbeing procedures, training and support for people in business units who serve vulnerable customers;
 - e. carrying out regular sentiment and engagement surveys of icare employees to seek their feedback;
 - f. establishing a comprehensive Employee Assistance Program which includes counselling, manager-assist, financial and wellbeing coaching sessions for employees; and
 - g. establishing resources to focus on learning and professional development in key skills for icare’s employees.
3. icare and its management acknowledge that workplace culture is continually evolving, and that, notwithstanding the implementation of initiatives to foster a positive working environment, the isolated actions of individual employees may not always be consistent with the culture that icare has sought to promote. Nevertheless, icare takes all allegations of employee mistreatment and misconduct seriously and has procedures in place to ensure that all allegations are properly investigated, and that appropriate action is taken to remedy any issues found to have arisen.
4. This approach was also followed in relation to the alleged treatment of a whistle-blower, Chris McCann, which has received considerable media and Parliamentary attention this year. icare considers that certain emails Mr McCann received were disgraceful and thoroughly investigated their source at the time, including with external assistance. icare also commissioned an external investigation of Mr McCann’s workplace grievances. icare deeply regrets any mistreatment that Mr McCann experienced, but does not believe that Mr McCann was mistreated because of any public interest disclosures he made, which were also investigated thoroughly and finalised without any requirement of confidentiality. icare also provided Mr McCann with extensive mental health support during his employment.
5. icare does not believe that such allegations are reflective of the organisation’s overall workplace culture, and they are not consistent with the feedback received from the majority of icare’s employees over the last four years. icare has received strong results in its Employee Net Promoter Score (**eNPS**) surveys and the NSW Public Sector People Matters Employment Survey (**PMES**) each year since 2016. icare’s eNPS results have been consistently between +20 and +47 (further explanation regarding the NPS measure is provided in icare’s submissions in response to Term of Reference 1(c)). icare’s PMES results have been consistently between 70 per cent to 80 per cent, compared to the broader public sector, which received results of between 65 per cent to 66per cent in the same period. icare’s 2018 and 2019 PMES results also revealed low levels of reports of unacceptable conduct amongst icare’s employees.

6. icare's eNPS results dropped substantially in the most recent survey in August 2020, which was undertaken in the period immediately following the resignation of John Nagle as Chief Executive. To demonstrate its commitment to addressing the concerns raised by its people in this survey, icare's Group Executives conducted a series of open forum Question and Answer forums for all employees and moderated a series of Listening Sessions to understand employee concerns at a deeper level.
7. In its 21-Point Action Plan, SIRA recommended that icare commission a review into the culture, governance and accountability of the icare team and agents managing the Nominal Insurer. icare has engaged an independent external adviser, PricewaterhouseCoopers (**PwC**) to carry out a broader review of its culture, governance and accountability.

icare's efforts to build a positive workplace culture

8. Since 2015, icare has gone through a process of significant change to try and establish the best working model to deliver its services.
9. For some of icare's people, this change has included the transition from NSW Public Service employment to employment consistent with sections 4 and 14 of the SICG Act, which establish icare as a NSW government sector agency where the Public Service employment rules under Part 4 of the GSE Act no longer apply.
10. icare has taken the following actions to build a positive workplace culture:
 - a. *Seeking expert advice:* Conscious of the allegations and inquiry into bullying at one of icare's predecessor organisations, the WorkCover Authority of New South Wales, icare established a panel of expert advisors to advise on culture, leadership and employee safety matters. The panel met three times a year on average between 19 July 2016 and 27 February 2019 and consisted of independent experts in the workplace health and safety, legal and human resources fields.
 - b. *Developing meaningful values:* icare's culture is founded on the values of integrity, courage, accountability, respect and empathy. These were created by icare employees in 2016 in a series of working sessions in Gosford and Sydney. They are introduced to each new employee during icare's induction program and are reinforced throughout the year across all communication channels, including the intranet, physical 'thank-you' cards, team meetings and the annual employee recognition program. The icare values also form part of each employee's performance agreement.
 - c. *Creating an inclusive workplace:* icare has in place both a Multicultural Inclusion Action Plan and Disability Inclusion Action Plan, both of which are subject to review in 2020. Over the last four years, celebrations of Wear it Purple Day, Mardi Gras (including participation in the parade), NAIDOC week, International Day of People with Disability and particular multicultural celebrations occur online and across our offices to create a welcoming and inclusive environment where staff can be themselves.

- d. *Supporting wellbeing*: This is of core importance to icare, given the work our staff do with vulnerable customers. Specifically:
 - iv. each business unit has procedures, training and support to prevent compassion fatigue, vicarious trauma and threats of harm as a result of serving customers who have experienced serious injury or trauma;
 - v. icare has facilitated the training of a community of Mental Health First Aid practitioners to create the Mental Health Peer Support Network across icare that can provide support for any employee experiencing mental health, domestic violence or drug and alcohol issues;
 - vi. icare operates a comprehensive Employee Assistance Program which includes counselling, manager-assist, financial and wellbeing coaching sessions for employees; and
 - vii. icare participates in RUOK Day and the NSW Government 'Get Healthy at Work' checks program, provides mental health and resilience training and free annual flu vaccinations and sponsors STEPtember participants.
- e. *Focus on continuous learning*: Resources have been established to provide learning and professional development in key skills to our people. Notably, over 300 staff have been trained in Human Centred Design, in order to effectively listen to and collaborate with customers in designing icare's service models and processes.

Seeking and addressing employee feedback

- 11. In order to assess workplace culture, icare carries out (on average) three annual surveys which are completed anonymously by employees via an online platform: eNPS, which is a sentiment survey and PMES, which is an engagement survey. While each survey measures different matters, both surveys are used to 'listen' to employee feedback on a regular basis.
- 12. Recently, icare has also conducted various 'Listening Sessions' to obtain a deeper understanding of employee feedback.

eNPS surveys and results

- 13. The first of icare's employee surveys is the eNPS, which is a metric used to gauge employee sentiment about their employment experience. The eNPS is calculated by subtracting the percentage of detractors from the percentage of promoters and also captures individual commentary. icare holds the survey on a bi-annual basis. The survey results are used by senior leaders to gain valuable feedback from their people and is leveraged to implement changes to make icare a better place to work.
- 14. The results of icare's eNPS surveys completed since April 2016 suggest that, as a workplace, icare is performing well. icare has scored consistently between +20 and +47 over all eNPS surveys conducted. Employee comments from the eNPS indicate strong positive feedback regarding:
 - a. engagement with icare's mission;
 - b. the teams employees work within; and
 - c. the work performed by employees, namely that it is interesting and purposeful.
- 15. icare has had a high participation rate in the eNPS surveys, with over 70 per cent of icare employees participating in the survey in 2019 to 2020.
- 16. A copy of icare's eNPS results from April 2016 to August 2020 is annexed at **1D-1**.
- 17. icare acknowledges that its score has dropped substantially in the most recent survey in August 2020, which was undertaken in the period immediately following Mr Nagle's resignation. The feedback received indicates this is a response to the intense media and Parliamentary scrutiny icare has been under, as well as the impacts of the COVID-19 pandemic.

18. icare is disappointed with this result and has been working to address the concerns of our people through the following actions:
 - a. icare Group Executives conducted a series of open forum Question and Answer forums for all employees and moderated a series of Listening Sessions to understand employee concerns at a deeper level; and
 - b. leaders across icare used their functional or team eNPS results to conduct team-based action planning.

PMES surveys and results

19. The second survey carried out by icare is the annual PMES, which provides an opportunity for almost 400,000 NSW public sector employees, including those employed by icare, to have a say about their workplace. The survey is a detailed deep dive into broad employee engagement categories including culture and individual experiences. The Public Service Commission coordinates the survey in collaboration with all public sector departments and agencies.
20. The PMES has been run four times between June 2016 and June 2019 (consistent with NSW Government timing). icare's score year-on-year has been between 70 per cent and 80 per cent, above the broader public sector result, which was between 65 per cent to 66 per cent in the same period.
21. icare's 2019 PMES results show a high response rate and engagement levels, with 74 per cent of icare's employees responding to the survey. Our three highest scoring questions related to:
 - a. notifying risks (92 per cent agree);
 - b. striving to achieve customer satisfaction (90 per cent agree); and
 - c. the organisation respecting individual differences (89 per cent agree).
22. Our three lowest scoring questions related to:
 - a. change being managed well (42 per cent agree);
 - b. performance criteria being clear (48 per cent); and
 - c. good co-operation between teams (48 per cent).
23. icare's 2019 PMES survey results are annexed at **1D-2**. The 2020 survey is currently underway.
24. PMES feedback is actioned at team level, with leadership teams and employees planning actions based on business unit results. The issues identified in icare's 2019 PMES survey results overlap with issues identified in icare's Listening Sessions, and have been the subject of various initiatives designed to address them (as detailed below).

Listening Sessions

25. icare conducted a 'listening tour' in 2019, led by its now Interim Chief Executive, Don Ferguson, and has recently commenced a second round of Listening Sessions. Focus groups are run with employees, leading to detailed insights and identification of key challenges within the organisation. In 2019, the issues raised included:
 - a. lack of role clarity;
 - b. inconsistent prioritisation of work;
 - c. system outages; and
 - d. work inefficiencies, for example, an excess of meetings.

26. After the 2019 Listening Sessions, icare implemented a number of initiatives to address these concerns, including requiring people leaders to have conversations around role clarity with team members as part of performance objective settings, and distributing an icare-wide prioritisation of key initiatives and the clear ranking of priority projects.
27. In 2020, the second round of Listening Sessions raised the following issues:
 - a. the importance of keeping icare's commitment to our purpose and customers;
 - b. rebuilding trust and transparency;
 - c. ensuring greater leader accountability, compliance and consistency; and
 - d. continuing to collaborate across icare.
28. The feedback raised by employees in the most recent Listening Sessions indicated:
 - a. a strong connection to icare's purposes, its customers and work colleagues; and
 - b. there were concerns relating to icare's relationship with SIRA and scheme agents, as well as its transparency, and accountability.
29. icare is implementing a number of actions to address the concerns raised in the latest round of Listening Sessions, including reviews of existing policies and implementation. People leader forums are also being conducted in order to prompt open and regular feedback from employees concerning issues raised, and to provide support for employees through a variety of listening channels.

Treatment of whistle-blowers

30. icare has robust procedures in place to ensure that whistle-blowers are able to freely raise concerns, will not suffer any adverse consequences for raising such concerns and are provided with the necessary support.
31. Consistent with all NSW government sector agencies, there are various avenues open to icare staff to make public interest disclosures (**PIDs**). The *Public Interest Disclosures Act 1994 (PID Act)* sets out the process by which individuals working in the NSW Government sector, including individuals who are engaged as contractors, can disclose corrupt conduct, maladministration of a serious nature, serious and substantial waste, and government information contraventions under the *Government Information (Public Access) Act 2009* (a **PID report**).
32. A PID report can be made in writing or verbally and can be made anonymously. Within icare, a report can be made to the Chief Executive, the Disclosure Coordinator, or to one of five nominated disclosure officers.⁶⁴ icare encourages its employees and stakeholders to raise concerns they may have in relation to the operation of icare or conduct of any relevant party. icare has numerous policies to encourage and support employees to report wrongdoing, including but not limited to:
 - a. Report Wrongdoing Policy;
 - b. Reporting Wrongdoing Policy Fact Sheet;
 - c. Code of Conduct and Ethics Policy;
 - d. Fraud and Corruption Control Policy;
 - e. Gifts and Benefits Policy;
 - f. Privacy Policy;
 - g. Procurement Policy;
 - h. Records Management Policy;
 - i. Managing Misconduct Policy;

⁶⁴In accordance with the Fraud and Corruption Control Framework and the Report Wrongdoing Policy.

- j. Discrimination, Harassment and Bullying Policy;
 - k. Grievance Handling Policy; and
 - l. Support person guide.
33. icare is currently in the process of developing a dedicated (outsourced) hotline for the reporting of disclosures.
34. icare employees (including those employed under a contract for service) may also raise general complaints (non-PIDs) and employment-related grievances in accordance with the above policies:
- a. PIDs and general complaints are managed in accordance with icare's policy framework by the Internal Audit and Legal teams; and
 - b. employment-related grievances are managed in accordance with icare's policy framework by the Human Resources and Legal teams.
35. All complaints are investigated with regard to the general principles of natural justice and procedural fairness. However, icare acknowledges that there are no feedback loops upon the completion of investigations. icare intends to implement a system for feedback following an investigation to help inform future behaviours, better policy and ensure lessons are learned and followed. icare commits to ensuring that, going forward, these processes are examined closely, and preventative actions are carried out against future occurrences.
36. The identity of one whistle-blower, Chris McCann, has been recently disclosed in the media and Parliament. His alleged treatment by icare has received considerable media and Parliamentary attention.
37. The media reports relating to Mr McCann have not acknowledged that several separate complaints from Mr McCann were being responded to by icare concurrently, and that a significant portion of his alleged mistreatment was unrelated to his PID. icare's response to these complaints, both publicly and within this document, are limited by undertakings made by icare to Mr McCann.
38. In response to Mr McCann's PID, icare took the matters raised by Mr McCann seriously. It took several actions to investigate and address the allegations, including but not limited to:
- a. reviewing the circumstances of each of the significant contracts raised by Mr McCann;
 - b. investigating allegations of procurement irregularities;
 - c. strengthening icare's procurement processes, including the development of a new Procurement Policy and guidelines and delivery of procurement training, which are detailed in icare's submissions in response to Term of Reference 1(h);
 - d. undertaking a physical site security assessment at 321 Kent Street, which included a site visit and security assessment by the NSW Police; and
 - e. reporting instances of credit card fraud to Westpac and the NSW Audit Office (noting Westpac reimbursed icare in respect of all fraudulent transactions and no loss was suffered by icare).
39. As distinct from his PID, Mr McCann and icare engaged in discussions to resolve issues relating to his employment. These issues included allegations of bullying and adverse treatment by his people leader, including on the basis of a disclosed medical condition, as well as anonymous and threatening emails and letters.

40. In response, icare acted consistently with the policies outlined above in paragraph [32], and all complaints raised were promptly and thoroughly investigated:
- a. in relation to the allegations of bullying and adverse treatment by Mr McCann's people leader, icare commissioned an investigation by WorkDynamic Australia, an experienced external workforce investigator. Mr McCann declined to take part in the investigation, which concluded that the allegations made were either not substantiated or that there was insufficient evidence available to substantiate the allegations; and
 - b. in response to the anonymous emails (two emails) and letter (one letter), Mr McCann declined icare's offer to initiate an external investigation into the matter. Notwithstanding this, despite exhaustive internal attempts to identify the source of the communications, icare sought advice from McGrath Nicol as to the forensic options available to it to investigate the author of the email and letter. Maddocks Lawyers also sent a request for information relating to the Gmail address from which the emails to Mr McCann were sent to Google Australia Pty Ltd (**Google Australia**) on behalf of icare. In response, Google Australia explained that Gmail is owned and operated by Google LLC, which is based in the United States of America, and that Google LLC would only disclose subscriber data upon receipt of a valid court order/subpoena.
41. Mr McCann was also provided with extensive support, including:
- a. access to and use of icare's Employee Assistance Program;
 - b. access to additional psychological support funded by icare, including a stay at an in-house mental health facility, coordinated by icare's Wellbeing and Safety Manager at the time (a registered psychologist);
 - c. ongoing check-ins, meetings and follow-ups by icare's Chief People Officer, General Manager, People Engagement, and Wellbeing and Safety Manager;
 - d. approval of extended sick leave and paid special leave (in excess of 12 weeks); and
 - e. extensive co-operation and support through the workers compensation process for a period of approximately 12 months.
42. Mr McCann and icare engaged in discussions to resolve issues relating to Mr McCann's employment, as distinct from his PID. Both Mr McCann and icare were legally represented in those discussions and attended a mediation. Following the mediation, Mr McCann and icare executed a deed that included standard obligations on both Mr McCann and icare to maintain the confidentiality of the deed, the mediation and the settlement discussions. Mr McCann's employment with icare ceased on 31 August 2018.
43. Mr McCann's PID was dealt with separately in accordance with the requirements of the PID Act and finalised in October 2018, after the execution of the deed. There were no non-disclosure or confidentiality obligations on Mr McCann in relation to these matters and no agreement or deed entered in respect of them.

Culture, governance and accountability review

44. icare acknowledges that there is scope to more broadly review feedback and develop organisation-wide steps to address concerns and matters related to icare culture.
45. In response to Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme published in December 2019, SIRA developed a series of recommendations concerning the Nominal Insurer (**SIRA 21-point Action Plan**). Item 9 of the SIRA 21-point Action Plan contains a recommendation that icare commission an independent review into the culture, governance and accountability of the icare team and scheme agents managing the Nominal Insurer.
46. The icare Board made the decision to broaden the scope of the review from the Nominal Insurer to the whole of icare and its relevant authorities, and an amendment to the request for tender was made accordingly.
47. icare has engaged PwC to undertake an independent review of icare's culture, governance and accountability. This review will use similar methodologies to the self-assessment reviews conducted in the financial services sector following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. icare expects PwC to provide their initial findings in December 2020, and a final report in February 2021.
48. icare is committed to taking the necessary action to further improve its culture in response to any recommendations from PwC or the Independent Reviewer.

TERM OF REFERENCE 1(e): GOVERNANCE

Summary

1. Insurance and Care NSW (**icare**) has established a governance model based on a Board made up of diverse and skilled Directors, supported by a similarly diverse management team. At a high level, icare's governance structure is set out in Figure 1 below:



Figure 1: icare's governance structure

2. icare is responsible to the relevant Minister, currently the Treasurer of NSW (the **Treasurer**). The Treasurer is empowered to give written directions to the icare Board if the Treasurer is satisfied that it is necessary to do so in the public interest, which must be complied with. The icare Board is also required to provide up-to-date information to the Treasurer.
3. To date, the icare Board has not received any directions from the Treasurer. The responsibilities to inform the Treasurer are delegated in part to the Chief Executive and staff of icare. Similar to other heads of agencies, icare periodically meets with the Treasurer's office to provide business updates.
4. The icare Board has ultimate responsibility for decisions concerning icare's activities. As the body with ultimate decision-making responsibility, the Board has established a number of governance frameworks to ensure there is appropriate accountability within icare to the Board. Board governance is covered extensively in icare's submissions in respect of Term of Reference 1(g).
5. icare's broader organisational governance is managed and operationalised through extensive structures, policies and frameworks that apply across every level of icare's business. Many of these are foundational governance infrastructure and processes that did not exist in icare's predecessors, such as internal audit and risk management functions.
6. In an effort to further improve its governance processes, the Board has this year also established a Governance Committee to review and provide advice to the Board on best practice governance and regulatory engagement, including to manage progress of icare's ongoing Culture, Governance and Accountability Review, which is being conducted independently by PricewaterhouseCoopers. The work of the Governance Committee is expected to ensure that past discrepancies with delays in reporting of issues to the Board are not repeated, so that the Board is able to properly fulfil its responsibilities for the overall superintendence of the organisation.

Ministerial oversight

Legislative background

7. The minister responsible for icare under the *State Insurance and Care Governance Act 2015* (the **SICG Act**) is the Treasurer. The SICG Act expressly defines the roles and responsibilities of the icare Board as it pertains to the Treasurer.⁶⁵
8. Section 6 and Schedule 1 of the SICG Act provide for the appointment of directors to the icare Board. All icare Board appointments have been made in accordance with the SICG Act.
9. Non-executive Board directors are appointed by the Treasurer, having regard to persons who, in the opinion of the Treasurer, have skills and experience relevant to the administration of State insurance and care schemes and who will assist icare in exercising its functions.⁶⁶
10. Under the SICG Act, the icare Board has the following functions:
 - a. to make all decisions relating to icare's functions;⁶⁷
 - b. to give the Treasurer any information relating to the activities of icare that the Treasurer requests;⁶⁸ and
 - c. to keep the Treasurer informed of the general conduct of icare's activities and of any significant development in icare's activities.⁶⁹
11. Like other NSW Government agencies, icare is not described as being subject to the 'control and direction' of the Minister.⁷⁰ Instead, section 7 of the SICG Act gives the Treasurer the power to give written direction in relation to icare if the Treasurer is satisfied that it is necessary to do so in the public interest. Before any direction is issued, the Treasurer must:
 - a. consult with the icare Board; and
 - b. request the Board to advise the Treasurer whether, in the Board's opinion, complying with the direction would not be in icare's best interests.
12. The Board must comply with any direction given. The Treasurer is required to cause a notice to be published setting out the reasons for the direction within one month after the direction is given.

icare's interaction with the Treasurer

13. To date, the Board has not received a direction from the Treasurer.
14. The icare Board has statutory responsibilities (delegated in part to icare staff under section 14 of the SICG Act) to ensure it provides up-to-date information to the Treasurer and, in accordance with these obligations, communicates with the Treasurer's office to keep the Treasurer informed of developments in icare's activities.
15. The Chief Executive of icare, the Board Chair and others meet with the Treasurer's Office periodically to provide business updates. icare understands that this frequency of attendance at the Treasurer's Office is consistent with the practice of other heads of NSW Public Financial Corporations (**PFCs**) or State-Owned Corporations (**SOCs**).

⁶⁵Section 6 of the SICG Act

⁶⁶Section 5(3) of the SICG Act

⁶⁷Section 6(1) of the SICG Act

⁶⁸Section 6(3)(a) of the SICG Act

⁶⁹Section 6(3)(b) of the SICG Act

⁷⁰However, we note that the NSW Self Insurance Corporation (under section 4(3) of the *NSW Self Insurance Corporation Act 2004*), the Building Insurers' Guarantee Corporation (under section 103Q(3) of the *Home Building Act 1989*) and the Sporting Injuries Compensation Authority (under section 7A of the *Sporting Injuries Insurance Act 1978*) are all expressed to be "subject to the control and direction of the Minister"

16. Pursuant to regulation 35 of the *Government Sector Employment Regulation 2014* (NSW) (**GSE Regulation**), icare also seconded staff to the Treasurer's Office. Since September 2015, icare has seconded 10 staff members to the Treasurer's Office. Recently, in response to a review conducted by NSW Treasury, icare has adopted stronger governance and documentation procedures concerning secondments generally to ensure it complies with the recommendations in NSW Treasury's review and the requirements set out by the NSW Department of Premier and Cabinet (**DPC**) for Departmental Liaison Officers assigned from agencies to Ministerial Offices.⁷¹ Going forward, all secondments will be approved by the Group Executive, People and Workplace. icare is finalising a formal Secondment Policy which will be approved by the People and Remuneration Committee of the Board (the **PRC**) to ensure icare secondments continue to comply with its obligations under the *GSE Regulation*, the *Government Sector Employment Act 2013* and various Government policies.
17. For the avoidance of doubt, icare is not accountable to NSW Treasury. The role NSW Treasury plays in monitoring and managing performance of icare reflects the role it plays in relation to SOCs. Amongst other things, it:
- a. sets the Commercial Policy Framework, which includes policies and guidelines applicable to PFCs (being icare and the NSW Treasury Corporation) and SOCs;
 - b. negotiates annual Statements of Business Intent and business plans, and monitors performance against the relevant targets set; and
 - c. assesses major investment proposals.
18. Although icare is not accountable to NSW Treasury, icare is a NSW Government agency.⁷² As a consequence, icare is bound by various NSW Government directions, policies and guidelines, as well as specific legislation which regulates the activities of government agencies. For example:
- a. *DPC*: icare is bound by certain memoranda and circulars issued by DPC;
 - b. *Independent Commission Against Corruption*: icare is a public authority and its staff public officials for the purposes of the *Independent Commission Against Corruption Act 1988*; and
 - c. *NSW Procurement Board*: as set out in further detail in icare's submissions in response to Terms of Reference 1(h), icare's procurement activity is governed by Part 11 of the *Public Works and Procurement Act 1912* including the NSW Procurement Policy Framework which has been issued by the NSW Procurement Board.⁷³

Organisational governance

19. icare's submissions in response to Term of Reference 1(g) deal with the effectiveness and accountability of icare's Board in detail. icare's organisational governance extends beyond the governance structures in place for the Board and its Committees, and the following submissions address these broader organisational governance structures.

⁷¹<https://arp.nsw.gov.au/c2016-03-department-liaison-officers-dlos>

⁷²Section 4(2) of the SICG Act

⁷³Although, as set further in icare's submissions in response to Term of Reference 1(h), the Nominal Insurer is not bound by this Act or the framework issued by the NSW Procurement Board

20. icare's broader organisational governance is managed and operationalised through various structures, policies and frameworks that apply across every level of icare's business. icare's governance framework includes the following:
- a. operation and accountability of senior executives within icare, namely the Group Executive Team (GET) and senior leaders;
 - b. the delegation of various functions to various employees within icare;
 - c. the implementation of frameworks which govern various aspects of icare's operations, including:
 - i. the Project Management Handbook, which governs project management within icare;
 - ii. the Risk Management Framework, which sets out how icare identifies, manages and reports risks;
 - iii. the introduction of a Policy Governance Framework, which will establish a set of rules and principles around the development, implementation and management of corporate documents such as frameworks, policies and procedures; and
 - iv. policies which regulate employee conduct, such as the Code of Conduct and Ethics Policy and the Performance Management Policy; and
 - d. the implementation of programs to enshrine a culture of transparency and accountability within icare.
21. Many of these governance structures were implemented with input from external third parties (such as the Australian Institute of Company Directors, Boston Consulting Group and McKinsey and Company), having regard to the best practice for governance of similar sized private companies and government agencies.

Operation and accountability of icare's GET and senior leaders

22. icare's Chief Executive is employed by the Board, and is responsible for day to day management of icare's activities in accordance with the general policies and specific directions of icare's Board.⁷⁴
23. The Chief Executive is assisted by a number of Group Executives of diverse experience and background. The Chief Executive and Group Executives (i.e. the GET) meet at least weekly for the purpose of jointly managing the business affairs of icare, decision-making and management of business risks, and discussing any issues that have arisen across icare's various business areas. The GET currently comprises 12 positions, which are organised and aligned with the different service line functions across icare's business:
- a. Chief Executive and Managing Director;
 - b. Group Executive, Prevention and Underwriting;
 - c. Group Executive, Personal Injury;
 - d. Group Executive, Care;
 - e. Group Executive, Organisational Performance;
 - f. Group Executive, Digital and Technology;
 - g. Group Executive, Strategy and Governance;
 - h. Group Executive, People and Workplace;
 - i. Group Executive, Customer and Community;
 - j. Group Executive, Operations and Pandemic Recovery (a temporary role created on 1 July 2020);
 - k. Chief Risk Officer; and
 - l. General Counsel.

⁷⁴Section 8 of the SICG Act

24. As the leaders of the respective parts of icare's business, the GET consists of skilled and experienced leaders who have extensive insurance, care and public sector experience.
25. The GET are appointed by the Chief Executive, in consultation with the Group Executive, People and Workplace and the General Manager Remuneration and Reward, as well as the the PRC. The number of roles of which comprise the GET may change from time to time depending on the changing needs of icare's business. The GET report directly to the Chief Executive.
26. The GET meets on a weekly basis, for the purpose of raising issues that have arisen across icare's various business areas with the Chief Executive which are then communicated from the Chief Executive to the Board (and vice versa). The GET is provided with papers by the relevant parts of the business ahead of these meetings and action schedules are tracked and monitored. The GET also conducts monthly deep dives into various key areas of icare's business, such as Risk, Finance, Projects, People and Customer. The purpose of these deep dives is to deliberate and make decisions at a 'whole-of-enterprise' level across these key functions. The regularity with which the GET meets can change as required, depending whether there are specific issues or matters for discussion and/or resolution.
27. Below the GET, there is a senior leadership team (known as the **SLT**), which is comprised of each GET member's direct reports. SLT members are drawn from a diverse set of backgrounds and skill sets, representative of the breadth of activities required to deliver the services provided by icare. SLT members are leaders who oversee the teams that deliver customer and internal services in line with the strategy and direction approved by the Board, and as contained in icare's policies and guidelines. The SLT also attend weekly meetings for the purposes of keeping apprised of key developments across each of icare's service lines and in turn, are responsible for distributing information across the broader icare business.
28. icare has undertaken a number of actions to enshrine a culture of transparency and accountability within its leaders. In early 2019, icare conducted a leadership culture survey. The results of this survey are annexed at **1E-1** and **1E-2**. Following the survey, members of the GET attended a two-day workshop to discuss the results and focus on improving leadership behaviour. Members of the SLT also attended two separate workshops with the same goal. As a result of these workshops, the annual assessment of talent review that takes place for senior leaders to determine their potential to progress within icare now includes an assessment of these leadership behaviours.
29. Between 2017 and 2019 icare has run several leadership programs to develop appropriate leadership behaviours with over 300 frontline leaders, middle management and senior leaders. These programs focussed on developing behaviour which promotes leadership and which rewards accountability and courage.
30. Since October 2016, over 100 leaders have participated in (independently run) 360-degree feedback surveys to assess their behaviour against these targets and support their development. Senior leaders' performance is rated against these values.

Delegations within icare

31. Section 13(1) of the SICG Act empowers the Board to delegate any of its functions to the Chief Executive, a director of the Board, a member of a committee established by the Board or an icare staff member.
32. Section 13(2) of the SICG Act empowers each of the Chief Executive, a director of the Board, a member of a committee established by the Board or an icare staff member to sub-delegate any delegated functions if they are authorised by icare's Board to do so.

33. Given the Board's task is the overall superintendence of the organisation, and not its day-to-day management, a number of functions have been delegated to various office holders within icare. For example, the Board has delegated particular aspects of operational, financial and people decision making to the Chief Executive. The Chief Executive has, pursuant to the delegation provided by icare's Board, delegated those aspects of operational, financial and people decision making to the GET, senior leaders and staff.
34. The Board has also issued a number of other instruments of delegation for the purposes of performing its various functions. For example, the Board has:
- delegated to its Customer, Innovation and Technology Committee (**CITC**) the function of approving certain major contracts, namely those contracts valued over \$15 million but not more than \$30 million;
 - delegated to its Foundation Committee the function of approving certain commitments of expenditure over \$5 million;
 - through an instrument of delegation, imposed a requirement on the Chief Executive to obtain the endorsement of the PRC when hiring or making decisions regarding the remuneration of senior executives;⁷⁵ and
 - delegated to the Chair of the Board the function of approving expenditures for administrative matters up to \$100,000.
35. The manner through which delegations and sub-delegations flow as set out in paragraphs [33]-[34] is illustrated in Figure 2 below.

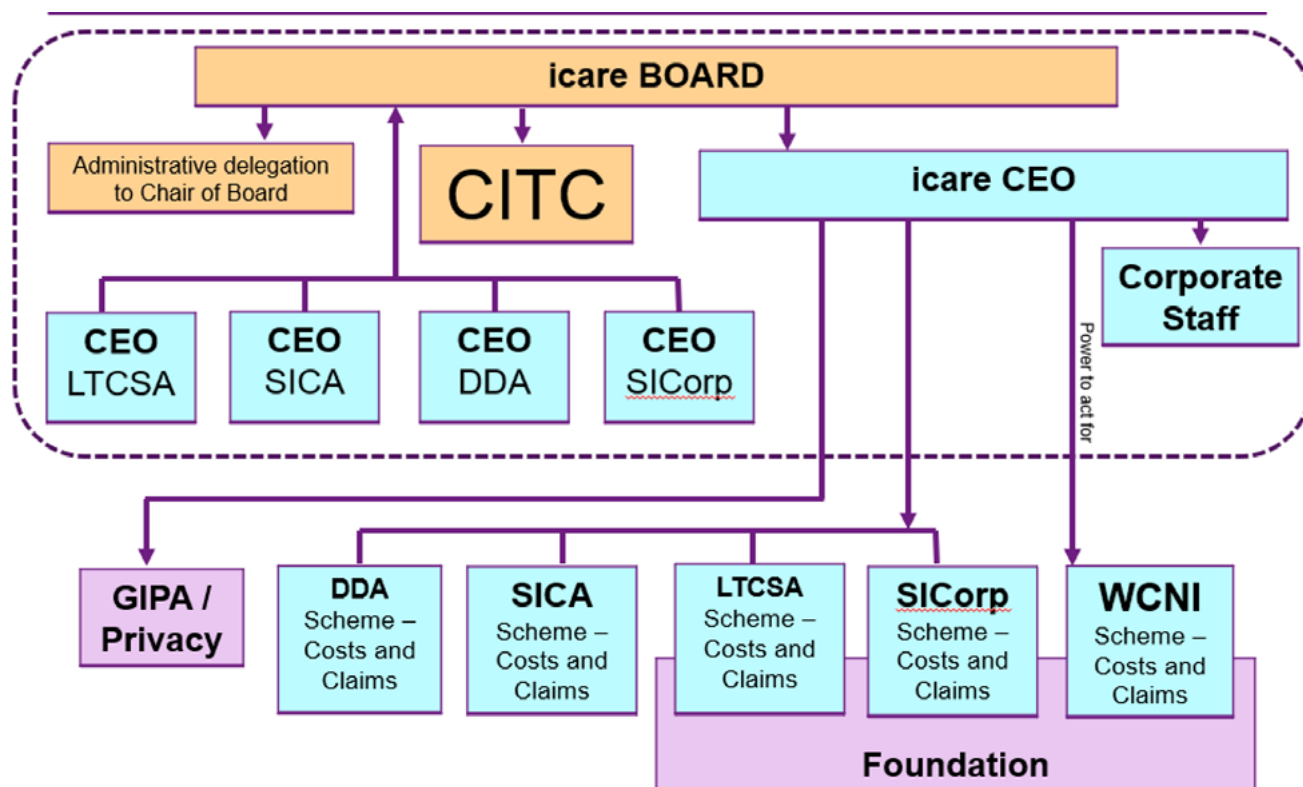


Figure 2: icare's delegations structure

⁷⁵This arrangement is set out in further detail in icare's submissions in response to Term of Reference 1(f)

36. The above figure also explains the relationship between icare's Board and the Chief Executives of the following schemes:
- a. the Lifetime Care and Support Scheme;⁷⁶
 - b. the Sporting Injuries Insurance Scheme;⁷⁷
 - c. the Dust Disease Scheme;⁷⁸ and
 - d. the schemes administered by Self Insurance Corporation.⁷⁹
37. Pursuant to the enabling legislation for each of these schemes,⁸⁰ the Chief Executive has delegated various functions to icare's Board, who in turn has delegated those functions to icare's Chief Executive, and consequently staff employed by icare. Through this arrangement, icare staff perform various functions for the Chief Executives of these schemes.
38. As set out in more detail in icare's submissions in response to Term of Reference 1(g), the delegations in place are reviewed and approved annually by the Board. Each Committee also conducts an annual review of any delegations made.
39. icare is in the process of developing an overarching framework to standardise all delegations and sub-delegations made under the SICC Act. Training is also provided to all delegates so they understand their relevant rights and obligations.

icare's governance framework

40. icare has implemented a number of policies and frameworks which govern the day-to-day operations of its business. These include governance frameworks which:
- a. standardise the way icare manages and delivers projects;
 - b. set the minimum standards for managing risk for all activities carried out by icare's business;
 - c. establish a set of rules and principles around the development, implementation and management of corporate documents such as frameworks, policies and procedures; and
 - d. implement policies which regulate employee conduct.
41. Details of each of these policies and frameworks are set out below.

Project governance

42. The Project Management Handbook (the **Handbook**) has been developed to standardise the way icare delivers projects. The Handbook is a 'how to' guide for delivering any icare project, regardless of size, and provides project managers and other staff members a roadmap of the phases a project is required to complete. In addition, it provides information on various governance requirements, as well as tips on how staff can monitor and control projects effectively. A key focus of the Handbook is to provide staff with the appropriate tools to manage project budgets effectively.
43. Having a standardised approach assists icare to deliver effectiveness, efficiency, consistency and discipline, improving outcomes for icare and its customers.

⁷⁶Established under the *Motor Accidents (Lifetime Care and Support) Act 2006*

⁷⁷Established under the *Sporting Injuries Insurance Act 1978*

⁷⁸Established under the *Workers' Compensation (Dust Diseases) Act 1942*

⁷⁹Established under the *NSW Self Insurance Corporation Act 2004*

⁸⁰Section 9 of the *NSW Self Insurance Corporation Act 2004*; section 5AB of the *Workers' Compensation (Dust Diseases) Act 1942*; section 41 of the *Motor Accidents (Lifetime Care and Support) Act 2006*; section 10 of the *Sporting Injuries Insurance Act 1978*

44. The Handbook provides that for each project:
- there is a project team, which includes the team responsible for delivering the project, both at a business and management level, and a representative from the business area which will receive the benefits of the project;
 - there is a project steering committee, which is the decision-making body within the project governance structure that consists of top managers and decision makers who provide, review and monitor project outcomes and policy guidance to the project team and other stakeholders; and
 - the GET oversees and manages each project from a strategic and risk management perspective, and delegates specific control of individual projects to the project steering committee.
45. The Handbook sets out the expectations, responsibilities and reporting lines across icare's organisational structure throughout the seven phases of a project (set out in the diagram below).
46. The Handbook prescribes various 'stage gates', which are specified points in time during the various phases of the project's lifecycle at which the project team should evaluate the project, ensure appropriate authorisations have been obtained and provide any necessary reports on the status of the project to the appropriate forums within icare's business. At each 'stage gate', either the Project Steering Committee or the GET is required to make 'go', 'no-go' or 'modify' decisions relating to the project.
47. Figure 3 below sets out how icare's 'stage gates' apply across the various phases of a project's lifecycle:

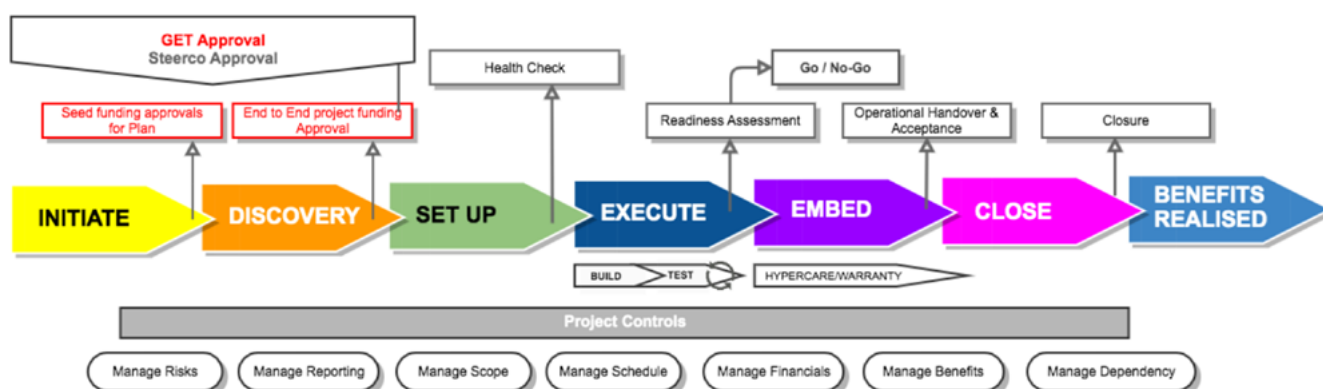


Figure 3: Project lifecycle, including stage gates

48. By standardising and clearly setting out the processes, obligations and reporting lines at each stage of a project, the Handbook aims to:
- avoid misaligned projects which do not meet icare's strategic objectives;
 - control the volume of projects being undertaken by icare at any given time;
 - control and manage the scope and costs of projects;
 - improve project quality and outcomes for icare and its customers; and
 - increase icare's visibility over each project's status (and in particular the visibility of the Chief Executive and the Board), ensuring all projects can receive timely corrective action from senior management (if necessary).

49. For projects which exceed certain monetary thresholds, icare is subject to additional Government oversight at various stages during the project's lifecycle pursuant to the NSW Government's *TPP 17-01 Gateway Policy*. Under this Policy, icare is required to register projects with the following NSW Government agencies:⁸¹
- for infrastructure projects between \$10 million and \$100 million in total costs, with Infrastructure NSW;
 - for information and communication technology projects between \$10 million and \$20 million in total costs, with the Department of Customer Service; and
 - for major projects which are recurring and exceed a total cost of \$100 million over the first four years or \$50 million in any one year, with NSW Treasury.
50. The above agencies are "Gateway Coordination Agencies" responsible for designing and preparing risk-based frameworks for the assessment of projects and programs and for conducting independent reviews of projects throughout their lifecycle (called "**Gateway reviews**"). The object of carrying out independent reviews is not to approve or endorse the project, but to complement icare's project delivery process and to prevent failure.
51. Following a Gateway review, the independent review team prepare a report and recommendations which are provided to the Gateway Coordination Agency. The Gateway Coordination Agency then provides icare with an opportunity to review and respond to the report and recommendations, with the final report being provided to NSW Treasury.

Risk Management Framework

52. icare has a Risk Management Framework that sets minimum standards for managing risk in order to deliver better outcomes for the businesses, people and communities of NSW.
53. The Risk Management Framework aligns with *AS/NZS ISO 31000:2018 Risk Management – Principles and guidelines* and *NSW Treasury Policy Paper TPP15-03 Internal Audit and Risk Management Policy for the Public Sector*.
54. The Risk Management Framework defines the foundations and organisational arrangements for identifying, assessing, monitoring, reviewing and managing risk throughout the organisation. Figure 4 below sets out the key components of the Framework:

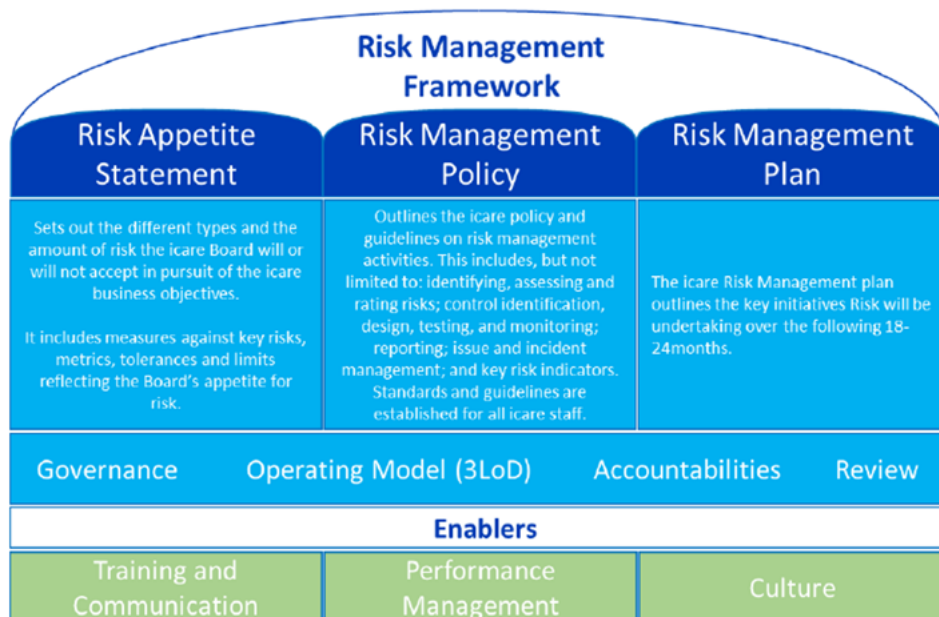


Figure 4: Key components of Risk Management Framework

⁸¹As set out in section 2.2 of TPP18-05 Major Projects Policy for Government Businesses.

55. Apart from defining the key policies and guidelines that comprise icare's approach to risk management, the Risk Management Framework also sets out icare's operating model for managing risk. icare has adopted a three Lines of Defence (**3LoD**) approach to managing risk, with accountability for risk management aligned with the business activities which generate and manage the risk. The 3LoD operating model is set out in Figure 5 below:



Figure 5: 3LoD operating model

56. The Risk Management Framework prescribes the roles of each of the 3LoD for managing risk within icare.
57. The Risk Management Framework also sets out the process by which risk management is operationalised across icare, via the following activities:
- the development and periodic review of risk profiles;
 - risk assessment and management for material projects and change initiatives;
 - assessment and testing the effectiveness of key controls;
 - incident and issues identification, action planning and reporting;
 - ongoing risk awareness activities and training;
 - assurance activities conducted across the 3LoD, i.e. by the Assurance & Quality, Risk and Compliance, and Internal Audit teams; and
 - reporting to GET and the Board's Audit and Risk Committee (**ARC**).
58. icare uses the RSA Archer Integrated Risk Management system (referred to as "**GENIE**") to record risks, controls, action plans, issues and incidents.
59. Finally, the Risk Management Framework sets out how risk matters are reported through various channels within icare. Risk reporting is provided to the Group Executives and senior management, Chief Executive, the ARC and the Board (as detailed further in icare's submissions in respect of Term of Reference 1(g)). The Risk Management Framework has been designed to ensure that risk management issues are elevated to the Chief Executive and the Board as required and in a timely manner.
60. To ensure all icare staff remain aware and up to date with icare's Risk Management Framework, and the policies and guidelines which form part of that framework, all icare staff are required to undergo online compliance training. This compliance training is mandatory and is completed by all new icare staff as part of the induction training and annually, with records of completion retained for all staff.

Policy Governance Framework

61. icare's Governance Committee is currently considering a Policy Governance Framework, which will be presented to the Board for approval in November 2020.
62. The intention of the Policy Governance Framework is to establish a governance structure for corporate documents and sets out the document management lifecycle of corporate documents to support predictable outcomes, manage risk and improve icare's operational performance.
63. The framework sets out a set of rules and principles in respect of the development, implementation and management of corporate documents such as frameworks, policies and procedures. The framework will increase consistency and ensure appropriate governance is established and maintained across icare.

Performance Management Policy

64. icare has a Performance Management Policy, which governs how icare manages performance of all icare staff to ensure their conduct meets the standards reasonably expected, and any underperformance is appropriately identified and managed.
65. The Performance Management Policy outlines icare's expectations that all staff will conduct themselves in an ethical and responsible manner in line with icare's values: integrity, courage, accountability, respect and empathy. The policy emphasises that these values are at the core of all of icare's activities.
66. The Policy provides that all staff are responsible for:
 - a. participating in planning and review processes regarding employee performance;
 - b. engaging in two-way feedback with each employee's people leader;
 - c. documenting informal and formal performance conversations; and
 - d. completing mandatory training, aimed at improving and maintaining performance.
67. The Performance Management Policy also imposes additional obligation on leaders within icare:
 - a. ensuring all team members understand their role and responsibilities, including the performance standards and expectations for each role;
 - b. participating in and creating an environment which supports real time conversation regarding performance;
 - c. recognising and addressing any areas of underperformance as soon as they are identified; and
 - d. managing underperformance of team members in an appropriate manner, such as ensuring any actions agreed to rectify underperformance are captured in writing, ensuring appropriate confidentiality regarding any underperformance matters, and ensuring team members are aware of their rights and have access to support during any actions undertaken to manage underperformance.

68. The Performance Management Policy notes there are a number of consequences of underperformance, including:
- a. resolution of the areas identified for improvement and return to work as usual;
 - b. issuing written warnings;
 - c. the requirement to attend additional training;
 - d. placement into a different role;
 - e. reduction of remuneration, including recommendations that the employee not be paid any annual performance payments (**APPs**);
 - f. reduction of the employee's classification or grade of role; or
 - g. termination of employment (after giving the employee an opportunity to resign).

Code of Conduct and Ethics Policy

69. icare has a number of policies which regulate the conduct of all icare personnel, including the Board, the Chief Executive and the GET. One of icare's core policies is the Code of Conduct and Ethics Policy.
70. The Code of Conduct and Ethics policy sets out guiding principles to support all icare staff in making decisions and choices. The Code sets out various principles relating to:
- a. managing work and business risk, which contains guiding principles concerning conflicts of interests, information security, gifts and benefits, bribery and corruption, and risk management;
 - b. managing customer experience, which contains guiding principles concerning how icare aims to support its customers and receive and action customer feedback; and
 - c. managing icare personnel and their experience, which contains guiding principles concerning discrimination, harassment and bullying, fairness and equity, managing misconduct and grievances, performance management, work health and safety and incident management and reporting.
71. The Code of Conduct and Ethics Policy notes that the guiding principles set out in that policy are supported by a number of other policies (which are listed for staff to refer to). For example, icare's Conflict of Interest Factsheet provides further information for employees regarding conflicts of interest and how they can comply with guiding principles in the Code of Conduct by detailing:
- a. what constitutes a conflict of interest; and
 - b. how employees should manage and declare any conflicts of interest.
72. Failing to comply with this policy can have numerous consequences, namely:
- a. the person not being recommended for any flexible component of their remuneration, such as APPs or long term performance payments;⁸²
 - b. disciplinary action; and
 - c. if appropriate, dismissal or removal.
73. By implementing policies such as the Code of Conduct and Ethics Policy, icare not only manages the conduct of its personnel, but incentivises personnel to act in accordance with the standards set out in these policies. These policies are also supported by tailored, specific and mandatory training modules.

⁸²For e.g. in accordance with the Executive Remuneration Policy. Further details of this policy are set out in icare's submissions in response to Term of Reference 1(f).

TERM OF REFERENCE 1(f): EXECUTIVE REMUNERATION

Summary

1. Under the *State Insurance Care Governance Act 2015* (the **SICG Act**), Insurance and Care NSW (**icare**) was intended to be a different type of government organisation established for a specific purpose. icare's remuneration model was built to support this objective.
2. The remuneration of icare's Chief Executive and Group Executive Team (**GET**) is similar to comparable government organisations and is lower than those offered in equivalent private sector organisations. icare acknowledges that the remuneration of its Chief Executive and GET is at the higher end of the NSW Government spectrum and note that this reflects the need to attract appropriate personnel who typically have backgrounds in the private sector.
3. As one of only two NSW Public Finance Corporations⁸³ and with \$38 billion in assets under management, icare has a unique status in NSW Government. This extends to its employment arrangements, which are not subject to the same requirements as the NSW Public Service. Offering remuneration packages that sit between those offered in the private sector and the Public Service is emblematic of its "*commercial mind, social heart*" ethos, and in particular seeks to appeal to strong, capable candidates who are motivated by icare's vision and purpose, rather than simply financial gain.
4. In the absence of the statutory framework that applies to the NSW Public Service, icare makes all executive remuneration decisions in accordance with its Executive Remuneration Policy, which has been set by the Board. This policy is subject to regular, independent review⁸⁴ to ensure it meets best practice ASX listed market standards. icare also has regard to the NSW Treasury *TPP 17-11 Commercial Policy: CEO Appointment Guidelines for Government Businesses* (**Treasury Guideline**) when making remuneration decisions for the Chief Executive and GET more broadly.
5. In the interests of transparency and beyond its statutory reporting obligations, icare has recently expanded the information it publicly discloses in respect of the remuneration paid to the GET.⁸⁵ icare appreciates the public interest in the disclosure of this information and has committed to publishing it, as well as the remuneration of non-executive directors, in its upcoming 2019/20 financial year annual report in addition to its statutory reporting obligations. icare is committed to improving the transparency and accountability of its remuneration practices and will continue to use the Treasury Guideline and ASX listed market standards, as well as the *NSW Public Sector Wages Policy 2011* (the **NSW Public Sector Wages Policy**) and other guidance, as benchmarks for executive remuneration.

⁸³The other Public Financial Corporation is the NSW Treasury Corporation

⁸⁴In 2019 this independent review was conducted by EY

⁸⁵icare has disclosed this information on its public website, in response to an Order for Papers made under Standing Order 52 on 5 August 2020 and at the Standing Committee on Law and Justice's public hearing on 24 August 2020 as part of the 2020 Review of the Workers Compensation Scheme

Employment arrangements upon the establishment of icare

Legislative framework

6. Relevant provisions relating to icare's employment arrangements are set out in Division 2, Part 2 of the SICG Act, including the following:
 - a. icare is authorised to employ such staff as it requires to exercise its functions;⁸⁶
 - b. the provisions of the *Government Sector Employment Act 2013* (the **GSE Act**) relating to the employment of Public Service employees do not apply to the staff employed by icare;⁸⁷ and
 - c. icare may fix the salary, wages and conditions of employment of staff in so far as they are not fixed by or under any other law.⁸⁸
7. Section 16 of the SICG Act governs the employment of icare's senior executives. All senior executive positions held by the GET are employed under a written contract signed by the Group Executive and the Chief Executive of icare.⁸⁹
8. Provisions relating to the employment of the Chief Executive of icare are set out in section 8 and Schedule 2 of the SICG Act. Clause 2 of Schedule 2 provides that the icare Board is to fix the conditions of employment of the Chief Executive, including their remuneration.
9. While the *Government Sector Employment (Senior Executive Bands) Determination 2014 (the Senior Executive Bands Determination)* applies to Public Service senior executives, it does not extend to senior executives at icare.

Context

10. icare has \$38 billion in assets under management, the equivalent to that of an ASX top 20 company.
11. icare has been designated by NSW Treasury as a Public Financial Corporation (**PFC**). As a PFC, icare has a unique status in NSW Government, which extends to the employment arrangements outlined in the provisions described above.⁹⁰
12. The intent of these provisions was to ensure that icare could attract and retain specialised industry expertise and skills from the broader insurance market, having regard to the size of its assets and liabilities. They reflect provisions applicable to the NSW Treasury Corporation, the other PFC, under the *Treasury Corporation Act 1983*.
13. For the avoidance of doubt, these provisions did not apply to the entities under the oversight of the Safety, Return to Work and Support Board, the NSW Self Insurance Corporation or the Building Insurers' Guarantee Corporation, whose employees were all employed in the NSW Public Service. This is because, as part of the 2015 structural reforms, icare was set up as a different type of organisation for a different purpose, which extended to its employment, executive and governance structure. Many of the positions icare was seeking to fill did not have an equivalent in these predecessor organisations, for example, its Chief Risk Officer, Chief Actuary and (then) Chief Strategy and Transformation Officer.

⁸⁶Section 14 of the SICG Act

⁸⁷Section 14 of the SICG Act

⁸⁸Section 15(1) of the SICG Act

⁸⁹Section 16(2) of the SICG Act

⁹⁰See Division 2, Part 2 of the SICG Act

14. As icare has carried out its obligations to transform into a modern insurance organisation under the SICG Act since 1 September 2015, its business has significantly grown, requiring the employment of new, senior roles, many of which were not necessary or relevant at any of its predecessor organisations, for example, with specialist expertise in digital and technology and large-scale transformation. As icare brought certain workers compensation functions that were previously performed by scheme agents and claims managers in-house, it also required specialist underwriting and claims operations skills.

Governance framework

15. As provided above, icare's Chief Executive and GET are not subject to the Senior Executive Bands Determination. While reporting in the annual report is required to refer to equivalent bands in the Senior Executive Bands Determination, the bands have no other application at icare.
16. The Treasury Guideline relates to the appointment of chief executive officers (**CEOs**) and managing directors of Government businesses where the GSE Act does not apply. The Treasury Guideline reflects private sector best practice and the relevant employment principles that apply in the public sector. It recognises that Government businesses should apply CEO remuneration practices in a manner consistent with community expectations about such businesses.
17. icare uses the Treasury Guideline with respect to Chief Executive remuneration and more broadly with regard to its remuneration practices for the GET. This includes the establishment of the Board's People and Remuneration Committee (**PRC**), which considers independent external benchmarking when setting the remuneration of the Chief Executive. This approach is also applied to all executive remuneration and reflects ASX listed standards.
18. Determinations of the Statutory and Other Offices Remuneration Tribunal (**SOORT**) are used to determine the aggregate increase in remuneration that is applied to icare's senior executives, notwithstanding they do not apply by law.⁹¹ The Wages Policy Taskforce, convened jointly by the Department of Premier and Cabinet and NSW Treasury, receives and approves any increases in fixed remuneration. The approval icare receives from the Wages Policy Taskforce to increase the remuneration of senior executives is conditional upon icare applying the same percentage increase and operative date as determined by SOORT.
19. icare has developed an Executive Remuneration Policy, which is endorsed by the PRC for approval by the Board. icare makes all executive remuneration decisions in accordance with the Executive Remuneration Policy. This Policy is approved by the Board and is reviewed at least every three years by an independent external adviser to ensure it reflects best practice in the ASX listed environment. The Policy may be updated more regularly due to legislative, framework or regulatory changes.
20. The most recent review of the Executive Remuneration Policy was conducted in August 2019 by the PRC, with independent advice from EY, and was approved by the Board. This review included fixed remuneration, annual performance payments (**APP**) and long-term performance payments (**LTTP**). Having made amendments following this review, icare is confident its Executive Remuneration Policy reflects applicable market best practice.
21. Under the Executive Remuneration Policy:
- a. fixed remuneration is reviewed annually against market benchmarks, however no adjustment to remuneration is guaranteed and any increase is in accordance with the SOORT determination and the overall performance of the individual;

⁹¹Under the *Statutory and Other Offices Remuneration Act 1975*, the determinations of the SOORT only apply to the "senior executives" defined in section 24M of that Act and the public offices set out in Schedules 1, 2 and 3, none of which extend to any staff of icare

- b. the Chief Risk Officer is responsible, in consultation with the Chief Executive and the Chief Human Resources Officer, for the assessment of performance against risk and compliance measures which are linked to variable remuneration outcomes for senior executives, noting this requirement was introduced in the updated 2019 review of this policy;
- c. the PRC is responsible for reviewing the remuneration and performance assessment processes and results for the Chief Executive and GET in line with the strategic business performance and reporting those results to the Board; and
- d. the PRC recommends to the Board for approval the remuneration and performance assessment processes for the Chief Executive.

Fixed executive remuneration

- 22. The fixed remuneration of the Chief Executive of icare is set by the icare Board, as required by clause 2 of Schedule 2 of the SICG Act. The fixed remuneration of the GET is set by the PRC. Increases in fixed remuneration are approved in accordance with the Executive Remuneration Policy using independent market benchmarks.
- 23. Notwithstanding that the provisions of the GSE Act relating to the employment of NSW Public Service employees do not apply to icare employees, icare complies with the NSW Public Sector Wages Policy and works closely with the Public Sector Industrial Relations and the Public Service Commission to ensure that decisions on remuneration or conditions of employment are consistent with the guidance of the Wages Policy Taskforce.
- 24. Each year, total fixed remuneration increases are in accordance with the SOORT determination and do not exceed 2.5 per cent of the increase of the previous year, which complies with the NSW Public Sector Wages Policy. There was no increase for the 2019/20 financial year.
- 25. Fixed remuneration is set by benchmarking against equivalent roles in relevant industry salary surveys. icare targets fixed remuneration to market median. A range of 15 per cent either side of the median is used to account for skills and experience of each individual and internal relativities within icare. icare generally relies on market remuneration data from the Aon General Insurance Industry and General Industry Remuneration Report (Australia), which is supplemented by additional benchmarking data for specialist roles.⁹² Independent market benchmarking for the Chief Executive and GET is also undertaken.

Annual performance payments (APPs)

- 26. icare provides senior executives with the opportunity to achieve an APP in recognition of superior performance.
- 27. Under the Executive Remuneration Policy, the payment of any APP for the Chief Executive must be endorsed by the PRC for approval by the Board and payments of any APPs for the GET must be approved by the PRC. At the end of each financial year, the PRC determines whether an APP will be made for performance in that year.
- 28. An employee's performance is measured at the end of each financial year against their performance objectives and adherence to icare's values of integrity, courage, accountability, respect and empathy.
- 29. To ensure consistency in the evaluation of performance, objectives are set at an enterprise, functional and individual level at the beginning of each financial year. Enterprise objectives are approved by the Board, functional objectives by the Chief Executive and individual objectives by the employee's people leader.

⁹²For example, the Aon Corporate IT Remuneration Report (Australia) for information technology roles and the Mercer Actuarial Remuneration Review for actuaries

30. icare takes a balanced scorecard approach to enterprise objectives and key performance indicators, which cover a range of matters including the performance of its many schemes and functions, financial sustainability, employee engagement, customer satisfaction, collaboration and risk management.
31. The PRC also considers external market conditions and public expectations. In 2019, a number of senior executives, including the Chief Executive, had a significant remuneration consequence applied to their APP as a result of the failure to adequately manage a conflict of interest matter. For the financial year ending 30 June 2020, the PRC determined not to make any APPs in recognition of the impact of COVID-19, reflecting the approach taken by other public and private organisations.

Long-term performance payments

32. From time to time, icare has provided an opportunity for certain Group Executives to participate in a long-term incentive scheme. This scheme was established on the basis that:
 - a. it is common practice in private sector organisations for Group Executives to be rewarded for the long-term strategic performance of the business;
 - b. long-term incentives provide an important retention function to ensure continuity of leadership over long-term transformation periods; and
 - c. the Treasury Guidelines provide for circumstances where LTPPs may be set up for CEOs.
33. icare's long-term incentive plans have objectives that must be met over a three-year period before payment is made. The LTPP is also subject to the participants meeting minimum risk management and behaviour expectations. Under the Executive Remuneration Policy, the payment of any LTPP for the Chief Executive must be endorsed by the PRC for approval by the Board and payments of any LTPPs for the GET must be approved by the PRC.
34. In 2019, the Board reduced the LTPP of the Chief Executive as a result of the failure to adequately manage a conflict of interest.
35. Currently, there are no LTPPs in place.

Executive remuneration paid by icare

36. Just under two-thirds of icare's current senior leadership team have backgrounds in the private insurance sector.
37. In order to stay viable in the insurance market and attract appropriate personnel, icare offers competitive remuneration packages within its budget and Executive Remuneration Policy.
38. While these remuneration packages are at the higher end of the NSW Government spectrum, they are lower than those offered in the private sector at equivalent organisations. Senior employees previously employed in private organisations usually join icare at lower variable remuneration compared to market. By offering remuneration packages that sit between the private sector and NSW Public Service, icare seeks to appeal to strong, capable candidates who are motivated by icare's vision and purpose, rather than simply financial gain.
39. icare's remuneration is also broadly in line with other State and Federal entities established by statute that are not part of the Public Service, including the Australian Broadcasting Corporation, the University of Sydney and the University of New South Wales. By way of comparison, details of publicly disclosed remuneration for these entities is annexed at **1F-1**. While the inclusion of variable components for executive remuneration is not typical in the NSW Public Service, it is not unusual in similar Government organisations.

40. The table below expresses the fixed remuneration and potential APP (see further below) achievable for the Chief Executive and each Group Executive role against the market median as at 30 June 2020

Role	Fixed remuneration comparison to market median	Potential achievable APP (% of fixed remuneration)	Fixed + APP Comparison to market median
Chief Executive Officer	81%	50%	52%
Group Executive Care	101%	40%	90%
Group Executive Personal Injury Claims	106%	40%	94%
Group Executive Customer & Community	105%	30%	99%
Group Executive People & Workplace	108%	30%	83%
Group Executive Digital & Technology	101%	40%	75%
Group Executive Organisational Performance	103%	40%	58%
Group Executive Prevention & Underwriting	115%	40%	102%
Group Executive Service Delivery	129%	40%	115%
Group Executive Operations & Pandemic Recovery	105%	40%	66%
Group Executive Strategy & Governance	111%	40%	99%

41. As demonstrated by this table, icare's APPs are appropriately set below the bonus levels available in the private sector. The feedback icare has received is that senior employees are attracted by icare's vision and purpose and its "*commercial mind, social heart*" ethos. This is another factor that ensures icare's employee costs are lower than comparable private sector organisations.
42. In terms of bonuses paid:
- APPs*: Based on icare's performance in each of the 2016/17, 2017/18, 2018/19 and 2019/20 financial years:
 - in 2016/17, 90.5 per cent of the total potential APP pool available for the GET was paid and the Chief Executive received 100 per cent, which equates to payment of 92.8 per cent of the APP available for both GET and the Chief Executive;
 - in 2017/18, 81.5 per cent of the total potential APP pool available for the GET was paid and the Chief Executive received 92 per cent;
 - in 2018/19, only 62.3 per cent of the total potential APP pool available for the GET was paid, with no APP being paid to the Chief Executive; and
 - in 2019/20, no APPs were paid. Like many public and private sector organisations, this was in recognition of the impact of COVID-19 on icare's financial position, as well as community expectations in relation to remunerating executives when many Australian families are struggling.
 - LTTs*: In 2019, icare made its first LTTs with respect to the three-year period encompassing the 2016/17, 2017/18 and 2018/19 financial years. These payments were made to three Group Executives who had been employed in Group Executive (or equivalent) roles at icare since 2015 or 2016. For the 2019/20 financial year, no LTTs were made as icare did not meet the required performance targets.

43. icare has recently engaged an independent adviser, PricewaterhouseCoopers (**PwC**), to undertake a review of its executive remuneration. PwC's review will involve a benchmarking exercise of all icare's Group Executive roles against ASX 300 listed insurance companies, Government business enterprises and/or Government owned corporations and other ASX 200 listed companies.
44. PwC's first step was to undertake independent market remuneration benchmarking for the role of Chief Executive as part of the recruitment process for this role. PwC's draft report in this regard provides a comparison of marked fixed and variable remuneration for similar roles across the private and public sector. A copy of this draft report is annexed at **1F-2**.
45. The complete review is due to be finalised in late November 2020.

Reporting of executive remuneration

46. icare is a statutory body for the purposes of the *Annual Reports (Statutory Bodies) Act 1984*.⁹³ In accordance with clause 12(1) of the *Annual Report (Statutory Bodies) Regulation 2015*, icare must publish aggregated information about senior executives in its annual report.
47. Having regard to the media and parliamentary scrutiny of icare's executive remuneration, in the upcoming 2019/20 Annual Report, icare has disclosed the remuneration paid to the Chief Executive and GET as though it were part of the private sector. icare's disclosure is annexed at **1F-3**.
48. icare is committed to improving the transparency and accountability of its remuneration practices and will continue to use the Treasury Guidelines and ASX listed market standards as benchmarks for executive remuneration.
49. In the interests of transparency, on 24 August 2020, icare published the remuneration of the Chief Executive and GET on its public website.⁹⁴

⁹³Under section 3 of the *Annual Reports (Statutory Bodies) Act 1984*, a statutory body means a person, group of persons or body to which Division 3 of Part 3 of the *Public Finance and Audit Act 1983* applies. icare is prescribed in Schedule 2 of the Public Finance and Audit Act 1983 as a statutory body to which Division 3 of Part 3 of that Act applies.

⁹⁴<https://www.icare.nsw.gov.au/news-and-stories/fact-file>

TERM OF REFERENCE 1(g): BOARD EFFECTIVENESS AND ACCOUNTABILITY

Summary

1. Insurance and Care NSW's (**icare**) experienced Board of directors (the **Board**) and six Board Committees oversee the management and strategic investment of over \$38 billion in assets across the insurance and compensation schemes administered by icare.
2. Board members are appointed by the Treasurer in accordance with section 5 of the *State Insurance and Care Governance Act 2015* (the **SICG Act**) and Schedule 1 to the SICG Act.
3. Since 1 September 2015, the Board has established extensive governance and accountability frameworks lacking in icare's predecessors, which have become increasingly important as icare has embarked on an ambitious transformation agenda and experienced increasing external scrutiny.
4. The Board recognises that there are ongoing opportunities to improve its oversight. It acknowledges that in icare's formative years, its governance and accountability frameworks were not sufficiently robust to ensure that serious issues and instances of non-compliance requiring the Board's attention were elevated to the Board in a timely manner. The Board has continually reviewed and improved its approach to governance and is committed to addressing relevant historical issues and strengthening the corporate governance and organisational maturity of icare.
5. In August 2020, the Board established a Governance Committee to review and provide advice to the Board on best practice governance and regulatory engagement and to assist with considering emerging issues in icare's external environment and changing stakeholder expectations. The Governance Committee has finalised the engagement of Promontory Australia as an independent corporate governance expert to advise the Committee on corporate governance matters. It is also continuing to manage progress of icare's ongoing Culture, Governance and Accountability Review.
6. Recent improvements that have been made to the Board's governance and accountability frameworks, together with the continued work of the Governance Committee to further strengthen those frameworks, including by reference to the public sector environment in which icare operates, are expected to ensure that the lapses in the reporting of issues requiring the Board's oversight that occurred in the past are not repeated. icare welcomes any recommendations from the Independent Reviewer in this regard and will work with the Independent Reviewer to implement the necessary changes to ensure that the Board is able to properly fulfil its statutory responsibilities for the overall superintendence of the organisation going forward.

Background

7. The SICG Act established icare and brought together the Workers Compensation Nominal Insurer (the **Nominal Insurer**) and other relevant authorities. Prior to the SICG Act, the Nominal Insurer and those authorities were governed with varying degrees of structure and oversight, as described further in paragraphs [32]-[33] below.
8. In his Second Reading speech introducing the State Insurance and Care Governance Bill 2015, the Minister for Finance, Services and Property (as he then was) described icare as an "*independent statutory corporation with a board and chief executive*".
9. Section 5 of the SICG Act establishes the icare Board, appointed by the relevant Minister (currently the Treasurer), and sets requirements for its composition.

10. Importantly, section 6 of the SICG Act provides that all decisions relating to icare's functions are to be made by or under the authority of the Board and that any act, matter or thing done in the name of, or on behalf of, icare by or under the authority of the Board is taken to have been done by icare. Specifically, section 6(3) of the SICG Act provides that the Board has the following functions:
 - a. to give the Minister any information relating to the activities of icare that the Minister requests;
 - b. to keep the Minister informed of the general conduct of icare's activities and of any significant developments in icare's activities;
 - c. to determine general policies for icare and to give directions to the Chief Executive of icare in relation to icare's activities; and
 - d. such other functions as are conferred or imposed on it by or under this or any other Act or law.
11. Section 9 of the SICG Act empowers the Board to establish committees to give advice and assistance to the Board in connection with any particular matter or function. Section 13 of the SICG Act empowers the Board to delegate its functions to the Chief Executive, a director of the Board or a member of icare's staff.

Overview of the Board and its processes

12. icare is a complex organisation with a diverse range of operations and stakeholders. The Board oversees the management and strategic investment of more than \$38 billion in assets.
13. Given the size and complexity of icare's business, as well as the nature of the services it provides, it is essential that icare has appropriate governance structures to provide the necessary level of oversight and strategic direction over assets and schemes it administers. The creation of a governing Board, and various committees which assist and advise the Board, enables a group of persons with specialist expertise to oversee icare's operations.
14. To that end, sections 5(1) and (2) of the SICG Act provide that icare's Board is to be made up of up to 8 non-executive directors, who together have skills and experience relevant to the administration of State insurance and care schemes. By way of illustration, the current Board has extensive, proven Board governance experience, with skills drawn from government, financial services, insurance, healthcare and technology. It should also be noted that the Treasurer is currently in the process of appointing two directors to replace those who have recently retired from the Board.
15. The Board appreciates its task is the overall superintendence of the organisation, and not its day-to-day management.⁹⁵ The responsibilities of the Board are set out in clause 4 (Roles and Responsibilities) of the Board Charter.

Committees

16. The Board has established the following committees for the purposes of providing it with advice and assistance in exercising its functions under the SICG Act:
 - a. the Audit and Risk Committee (**ARC**), which assists the Board in fulfilling its corporate governance and oversight responsibilities by assessing the effectiveness of icare's risk management framework, compliance framework and internal and external audit functions, including overseeing icare's financial reporting;
 - b. the People and Remuneration Committee (**PRC**), which assists and advises the Board on remuneration and other Human Resources policies and practices, including work health and safety. The PRC monitors the development and implementation of icare's culture strategy, succession planning and performance and talent management;

⁹⁵KM Hayne 2019, *Final Report Royal Commission in to Misconduct in the Banking, Superannuation and Financial Services Industry Volume 1*, February, Commonwealth of Australia p400

- c. the Customer, Innovation and Technology Committee (**CITC**), which assists the Board to fulfil its governance and oversight responsibilities in relation to icare's customer experience strategies, information technology strategy, information systems and related data management risks and controls. The CITC reviews, evaluates and approves icare's major technology plans and strategies, in support of its overall business strategy;
 - d. the Investment and Asset Committee (**IAC**), which assists the Board in setting the investment strategy and objectives of the relevant insurance scheme funds and liaises with NSW Treasury in relation to the setting of the Treasury Managed Fund's (**TMF**) investment objectives. The IAC also provides oversight of the investments of the funds and monitors both investment performance and the performance of investment service providers;
 - e. Foundation Committee, which assists the Board to oversee the investment and funding of innovative prevention and intervention programs that aim to improve quality of life, social inclusion and optimal recovery for people who have been injured at work or on the roads in NSW. The Foundation Committee's contribution assists the broader NSW community and delivers in part icare's societal value strategy; and
 - f. Governance Committee, which considers, reviews and takes advice on best practice governance and regulatory engagement in light of emerging issues in the external environment and changing stakeholder expectations relevant to icare. The Governance Committee also considers the operation and effectiveness of icare's governance processes having regard to those emerging issues and provides advice to the Board on best practice internal and external governance (having regard to relevant public sector frameworks and policies) and stakeholder engagement.
17. The specific roles and responsibilities of each of the above Committees is set out in their respective Charters.
18. At each Board meeting, the Chair of each Committee that met in that month provides a detailed verbal report on the matters considered and approved by the respective Chair's Committee. This ensures the Board has transparency over each Committee's activities and the opportunity to provide input, or request clarification or that further work be undertaken by the relevant Committee. These verbal reports are minuted at each Board meeting.
19. The respective members and Chairs of some Committees are required to undergo certain training or attain certain qualifications to ensure they possess appropriate skills and qualifications prior to their appointment as a member or Chair of a particular Committee. For example, pursuant to *TPP15-03 Internal Audit and Risk Management Policy for the NSW Public Sector* members and Chairs of the ARC are required to apply and be appointed to a prequalified panel. All ARC members are prequalified as both members and Chairs for NSW Government Audit and Risk Committees.

Governance frameworks

20. Since its inception in 2015, the Board has established extensive governance frameworks across icare, including:
- a. instruments of delegation under section 13 of the SICG Act to delegate functions to Committees of the Board and authorised persons within icare;

- b. Board and Board Committee charters, updated annually:
 - i. Board Charter;
 - ii. ARC Charter;
 - iii. PRC Charter;
 - iv. CITC Charter;
 - v. IAC Charter;
 - vi. Foundation Committee Charter; and
 - vii. Governance Committee Terms of Reference (noting that this Committee was formed on 13 August 2020);
- c. a clear Board forward plan (the “**Governance Calendar**”) which provides a basis for agenda setting throughout the year. Agendas are structured to include key governance items such as:
 - i. disclosing and managing any conflicts of interest;
 - ii. approving minutes of previous meetings as the formal record of the meeting;
 - iii. tracking any actions requested by the Board of management; and
 - iv. clarifying where items are required for approval and where items are for discussion by the Board;
- d. independent reviews of the Board’s effectiveness every three years, complemented by annual self-assessments;
- e. Board workshops on key matters (such as risk appetite or finance) as required and an annual Board strategy day;
- f. for the ARC, ensuring that the NSW Audit Office attends each meeting to allow full transparency of key risk and audit matters is provided to our external auditors;
- g. Risk Appetite Statements, which are reviewed annually;
- h. a Risk Management Framework (discussed in icare’s submissions in respect to Term of Reference 1(e)); and
- i. reviewing and approving key policies, such as the Procurement Policy and Outsourcing Policy, as well as undertaking annual reviews of policies based on management recommendations.

Governance calendars

- 21. At the commencement of each calendar year, the Board prepares a comprehensive Governance Calendar for the Board and its Committees, identifying anticipated critical events, projects and proposals for the year. This forward plan is constructed with regard to the governance responsibilities set out in the Board and Committee Charters and include annual, bi-annual or otherwise regular items reported to the Board. However, it is flexible to accommodate changes or additional items that may arise in relation to specific matters over the course of the year.

22. For example, during meetings held in 2020, the Board:
- monitored the financial performance of icare's schemes (including holding out of session meetings in light of the COVID-19 economic environment);
 - reviewed and approved icare's budget, forward estimates and half-year review for submission to NSW Treasury;
 - approved icare's investment strategy;
 - considered and approved icare's strategic business plans for the 2020/21 financial year and beyond, including the Nominal Insurer Business Plan;
 - reviewed and approved icare's Risk Appetite Statement, Risk Management Strategy (including Risk Matrix) and Reinsurance Management Strategy for the 2020/21 financial year;
 - considered monthly reports from the Chief Executive regarding icare's activities;
 - considered bi-monthly reports from the Chief Risk Officer on key risk matters and issues;
 - considered management's response to Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme (the **Dore Review report**) and SIRA's 21-point Action Plan prepared in response to the Dore Review report;
 - reviewed and approved delegations and Charters for the Board and all Committees;
 - considered bi-annual and annual survey results regarding icare's organisational culture; and
 - discussed the outcomes of an external evaluation of the Board's performance carried out by Challis & Company.
23. A copy of the 2020 Board Governance Calendar was circulated at the commencement of the year. While the actual agenda ultimately varied with other items arising during the year, the calendar provided the forward plans as at February 2020.

Relationship with the Minister and management

24. The Chair of the Board meets with the Treasurer's Office once a month to keep the Treasurer informed of the general operations and business performance of icare and to report developments in the activities of icare, as required by section 6(3)(b) of the SICG Act. The Treasurer attends one Board meeting annually.
25. Management and the Board have a robust and constructive relationship. Outside of the scheduled Board and Committee meetings, executives frequently interact with, and seek guidance from, directors (particularly the Chairs of relevant Committees) on relevant matters. In addition, as detailed in icare's submissions in response to Term of Reference 1(e), the Chief Executive also meets at least weekly with Group Executives aligned with the different service line functions across icare's business (collectively called the Group Executive Team (**GET**)), for the purpose of raising issues that have arisen across icare's various business areas with the Chief Executive, which are then communicated from the Chief Executive to the Board (and vice versa).
26. In early 2020, icare engaged an external third party, Challis & Company, to conduct a review of the Board's effectiveness (**Board Effectiveness Review**). The Review found the following in relation to the relationship between Board and management:
- most parties either "*agreed*" or "*strongly agreed*" that the relationship between the Chair of the Board, each Committee and Group Executives is effective and constructive;
 - each Committee and Group Executives considered that the Board was effective across all areas; and
 - each Committee and Group Executives genuinely respected the Board for their efforts and guidance.

27. Further findings and recommendations made in the Board Effectiveness Review are set out at paragraphs [48]-[52] below.

Board Governance team

28. The Board Governance team facilitates the flow of information and reporting to the Board and Board Committees, providing secretariat support for the Board and each Committee. The Head of Board Governance:
- a. is accountable to the Board through the Chair on all corporate governance matters and is specifically responsible for coordinating, organising and attending all Board meetings;
 - b. assists the Chair and Chief Executive to develop agendas, manage meeting papers and prepare a range of documents to support the operation of the Board and its Committees (such as recording the minutes of meetings and actions arising from the meetings); and
 - c. oversees statutory and administrative procedures, identifies any corporate governance issues and implements any required initiatives and opportunities.
29. In 2020, the Board Governance team was separated into its own team, which reports directly to the Board, the Chair and the Chief Executive. Between 2015 and 2017, the team reported to the (then) Company Secretary (an executive in the Office of the Chief Executive) and between 2017 and 2019, to the (then) General Counsel and Company Secretary.

The Board's effectiveness and oversight

30. icare's Board has always acted diligently and in good faith in performing its role and carrying out its duties.
31. The Board is able and willing to challenge management on key issues whenever necessary, including on areas of performance or compliance. These are evidenced in the minutes of meetings, actions arising from the meetings and additional reporting or enhancements to management activities or practices.
32. Indeed, the model of Board governance that icare now has is quite distinct to the governance models of its predecessor entities. Prior to 1 September 2015, the Nominal Insurer and other authorities to which icare now provides services under section 10(1) of the SICG Act were administratively grouped together in:
- a. SRWS⁹⁶, under the governance of the SRWS Board. While the SRWS Board was a managing Board, practically speaking, the authorities that formed SRWS operated quite distinctly at that time and were separately physically located. While all decisions relating to icare's functions are to be made by or under the authority of the Board and that any act, matter or thing done in the name of, or on behalf of, icare by or under the authority of the Board is taken to have been done by icare, the SRWS Board's authority was not framed in these terms; and
 - b. NSW Treasury, under the oversight of the Deputy Secretary, Budget & Financial Management.⁹⁷ SI Corp had an advisory board that was able to make recommendations but not decisions.
33. Current Directors of the icare Board who were also members of the SRWS Board and SI Corp advisory board have noted a clear improvement in their ability to drive and make important decisions since the formation of icare, including significant digital and technological improvements and enhancements to the governance of risk in the TMF and Home Building Compensation Fund schemes.

⁹⁶In the case of WorkCover, which acted for the Nominal Insurer, the Lifetime Care and Support Authority and the Workers' Compensation (Dust Diseases) Board

⁹⁷In the case of SI Corp and BIG Corp

Examples of the Board's oversight

34. The Board and various Committees meet on a regular basis, with the ARC, CITC, IAC and Governance Committee each meeting bi-monthly and the PRC and Foundation Committee meeting quarterly. Consequently, many areas within icare report to the Board or a Committee on (at least) a monthly basis, in addition to the at least weekly GET meetings which provide a further channel of communication from icare's business to the Board (via the Chief Executive).
35. Since icare's inception in 2015, the Board has established and developed a range of governance functions, including an internal audit function, an actuarial function, and Board Committees to implement and improve the governance of the Nominal Insurer and the other authorities that icare provides services to.
36. Examples of stringent Board oversight and information flows include:
 - a. the consideration and approval of the following financial reports:
 - i. draft and audited financial statements for each relevant authority and the Nominal Insurer, which are considered by the ARC at least four times each year prior to being endorsed and submitted to the Board for approval;
 - ii. Capital Management Policies for the Nominal Insurer and the Lifetime Care and Support Authority of New South Wales, which are considered by the ARC annually for endorsement and then provided to the Board for approval;
 - iii. insurance liability valuation results for each relevant authority, which are peer reviewed by PricewaterhouseCoopers and Ernst & Young (on behalf of the NSW Audit Office) and endorsed by the ARC and submitted to the Board for approval bi-annually;
 - iv. actuarial monitoring reports, which are noted by the ARC and Board bi-annually;
 - v. financial condition report for all relevant authorities, which are endorsed by the ARC and approved by the Board annually; and
 - vi. a monthly Chief Financial Officer report, which is provided directly to the Board;
 - b. review of regular risk reports, including:
 - i. Quarterly Risk Report to the ARC, which includes an overview of icare's risk profile status, plans and activities;
 - ii. Quarterly Compliance Report and Regulatory Compliance Report to the ARC, which reports on compliance management processes, policies and procedures, and any issues and breaches including regulatory compliance incidents;
 - iii. Quarterly Assurance and Quality update to the ARC, which reports on the assurance and quality systems in place within the first line of defence and reviews business delivery outcomes (see icare's submissions in response to Term of Reference 1(e) for more details on the three lines of defence). From a specific review, issues such as the injured workers underpayment issue (discussed in icare's submissions in respect of Term of Reference 1(a)) were first identified and notified to the ARC at its November 2018 meeting;
 - iv. the bi-monthly Chief Risk Officer update to the Board, which is a regular report which provides a second-line view and assurance to the Board on management's activities;
 - v. risk workshops on key topics, such as the Risk Appetite Statement settings;
 - vi. review and approval of key risk and compliance policies such as the Risk Management Framework, Outsourcing Policy and Conflicts of Interest Policy; and
 - vii. bi-annual stakeholder engagement reports, which contain an analysis and update on icare's stakeholders and icare's engagement with them, including planned communications, and upcoming risks and mitigation strategies;

- c. the Personal Injury Operational Dashboard, which focuses on the Nominal Insurer and TMF workers compensation schemes, including the performance of scheme agents and claims managers (measured by customer feedback scores, compliance rates, return to work rates and other matters);⁹⁸
 - d. all Board papers require a risk analysis to be undertaken in relation to the issue or decision in question;
 - e. reporting to the Board across icare's three lines of defence at the ARC to ensure the Board has visibility of risks and issues across all lines of icare's activities;
 - f. closed sessions with the Internal Audit team, any external auditors and the Chief Risk Officer to enable direct access to the Board by the control functions within icare to enable frank discussions;
 - g. regular internal audit reporting on the annual Audit Plan and significant audit issues that arise and any outstanding issues;
 - h. regular reporting on sensitive matters referred to the Independent Commission Against Corruption and fraud investigations, which are overseen by the Internal Audit team; and
 - i. review of monthly Chief Executive and Chief Financial Officer reports (with each quarterly Chief Financial Officer report including an update on performance against the enterprise-wide performance scorecard).
37. Where matters for approval require more detailed scrutiny from the Board, relevant Charters require that such matters require a Board Committee's endorsement prior to approval being sought from the Board. These include the following:
- a. ARC consideration and endorsement is required prior to Board approval for a suite of key risk and financial matters, including:
 - i. the Audited Financial Statements;
 - ii. key attestations, such as the Internal Audit and Risk Management Policy and Cyber Security Policy Attestations;
 - iii. actuarial reports, Financial Condition Reports and insurance liability valuations;
 - iv. Capital Management Policies;
 - v. key risk policies, such as the Risk Appetite Statement and Risk Management Strategy; and
 - vi. key policies, such as the Fraud and Corruption Control Policy and Framework, the Outsourcing Policy and Conflicts of Interest Policy;
 - b. CITC consideration and endorsement is required prior to Board approval for key technology procurements or service provider engagements above \$30 million. Where such procurements are under \$30 million and able to be approved by the CITC, in the interests of transparency relevant material is typically submitted to the Board for noting;

⁹⁸This report was provided to the CITC over the course of 2018 and at every meeting in 2019, and to the Board in 2020. The CITC and the Board also participated in deep dives which were presented to the Board between May and August 2020 concerning return to work metrics and to advise on suitable performance metrics that should be tracked to monitor the health of the workers compensation insurance scheme managed by the Nominal Insurer.

- c. PRC consideration and endorsement is required prior to Board approval for key people and remuneration matters, such as:
 - i. performance objectives for icare staff each year;
 - ii. the Chief Executive's Performance Objective Outcomes and the payment of the Chief Executive's annual performance payment each year. It should be noted that the Performance Objective Outcomes for Group Executives are considered and approved by the PRC;
 - iii. the payment of any long-term performance payment under the long-term performance plan program; and
 - iv. the Executive Remuneration Policy;
 - d. IAC consideration and endorsement is required prior to Board approval for:
 - i. the Funding Investment Strategy and other foundation investment documents; and
 - ii. the Strategic Asset Allocations for the TMF, Workers Compensation Insurance Fund, Sporting Injuries Fund, Lifetime Care and Support Authority Fund and the Workers' Compensation (Dust Diseases) Fund; and
 - e. Governance Committee consideration and endorsement is required prior to Board approval for any matters which fall within its Terms of Reference. For example, recent updates to the Board's Conflicts of Interest declaration processes and a change to icare's Policy Governance Framework required Governance Committee endorsement prior to submission to the Board for approval.
38. Each Committee also receives regular reporting, in line with its Charter responsibilities and mandate. Examples of regular reporting include:
- a. for the CITC:
 - i. Customer Insights and Complaints Report;
 - ii. Change Delivery Report, which reports on the progress of key projects and milestones being undertaken by icare;
 - iii. key technology monitoring reports, such as bi-annual updates on progress against icare's Technology Strategy, Technology Operational Updates and annual Disaster Recovery and Business Continuity Updates; and
 - iv. an annual Chief Medical Officer Report;
 - b. for the PRC:
 - i. Group Executive People and Workplace Report, which provides an overview of key people matters at each meeting;
 - ii. bi-annual reports on eNPS and PMES Results;
 - iii. a Work Health and Safety Due Diligence Report, which is also submitted to the Board; and
 - iv. bi-annual Talent and Succession Reviews;
 - c. for the IAC:
 - i. Investment Governance Report, which includes management's view of all papers submitted by Treasury Corporation NSW (**TCorp**);
 - ii. a standing discussion with Mercer, icare's independent investment advisor;
 - iii. TCorp Investment Reports;
 - iv. reports on Key Asset Class Reviews and Quarterly Investment Pipeline and Implementation Reports to monitor the implementation of the strategic asset allocations approved by the Board; and
 - v. most recently, regular updates on TCorp's Investment Management transformation;

- d. for the Foundation Committee:
 - i. General Manager's Report, which gives an overview of key Foundation activities over the past quarter;
 - ii. Current Investment Scorecard, which gives an overview of all investments on foot and how they are performing against various criteria;
 - iii. financial reporting about how the Foundation is tracking against its budget; and
 - iv. a view of the pipeline of new investments; and
 - e. for the Governance Committee, a standing update on its forward agenda and progress on the Culture, Governance and Accountability Review, being a key priority for the Committee in the immediate future. It is expected that further standing items will be identified by the Governance Committee as it identifies areas of particular focus and importance for the Committee.
39. Where there have been significant programs of work, a regular report may be made to a relevant Board Committee. For example:
- a. for the build of the Nominal Insurer Single Platform, a regular, monthly report on the program was presented to the CITC by management and Guidewire, which was supplemented by an independent assurance report presented to the CITC by KPMG;
 - b. for the monitoring of progress and outcomes of the SIRA implementation plan for actions arising from the SIRA Compliance and Performance Review of the Nominal Insurer, regular status reports are provided to the ARC by management; and
 - c. for the SIRA 21-Point Action Plan, regular status reports are provided to the ARC by management.

Measures in place to ensure matters are raised to the Board

40. icare has a number of channels to ensure that information is regularly provided to the Board and that specific matters are raised with the Board where appropriate.
41. The key governance and assurance functions to ensure matters are raised for the Board's attention are:
- a. the Chief Risk Officer and Risk team, which prepares a bi-monthly Chief Risk Officer report to the Board. The Chief Risk Officer and Risk team also provide quarterly reports to the ARC, with the Chief Risk Officer being the key liaison for the Chair of the ARC. The Risk team is also responsible for reviewing and flagging risk issues that arise from any proposal that needs approval from the Board or ARC;
 - b. the General Counsel and the Legal team, which provide legal advice and scrutiny across icare's business and provide regular updates to the Board on significant litigation and other legal matters. The General Counsel also raises issues directly with the Board when necessary;
 - c. the Internal Audit team, which investigates any apparent or actual failures in reporting lines to the Board (which are raised directly with the Board, as set out at paragraph [36]f above);
 - d. the Strategic Sourcing team, which has oversight of icare's procurement activity, provides quarterly updates to the ARC and updates on all major contracts to the Board as part of Chief Executive Reports. The Strategic Sourcing team also reviews any procurement proposals submitted to the CITC and the Board for endorsement or approval; and
 - e. icare's Board Governance team ensures that, prior to any reports being submitted to the Board or one of its Committees, the relevant teams listed above have considered the report and any issues which need to be raised for the Board's consideration.
42. icare's reporting lines to the Board and its Committees are set out in its Risk Management Framework, which is set out in detail in icare's submissions in response to Term of Reference 1(e).

43. Finally, where particularly sensitive matters arise, such as investigations, icare has ensured that at least one Board member is aware of and involved in the investigation, on a confidential basis if necessary. For example, the investigation of a conflict of interest relating to icare's former Chief Executive was closely overseen by the Deputy Chair and the Chair of the ARC.

Independent reviews of the Board's effectiveness and oversight

44. As part of the Board's commitment to continually improving its effectiveness and oversight, it engages external third parties every three years to conduct reviews of its governance structures and their performance.
45. In 2017, icare engaged the Australian Institute of Company Directors to undertake a review of icare's governance, which included a review of the Board's effectiveness and oversight (**AICD Report**). This review involved carrying out surveys and interviews with board members and Group Executives, as well as seeking written feedback from the Treasurer. The AICD Report, provided to icare's Board in June 2017, found:
- a. icare had sound governance structures and arrangements in place, in particular, the governance arrangements established by the Board and the Committees were serving the organisation well;
 - b. the roles and responsibilities of the Board and management were clear;
 - c. the quality of icare's governing relationships were "*strong*"; and
 - d. the Board's relationship with management was operating in the governance "*sweet spot*", that is, the relationship was respectful, constructive and appropriately challenging.
46. The AICD Report found that there were no significant issues that would indicate immediate remedial action was required. To assist icare to continuously improve its governance structures, the AICD Report made 13 key recommendations relating to benchmarking and measurement, delegation, enterprise-wide risk management, addressing skills gaps and succession planning, and additional educational opportunities and resources for directors.
47. By June 2018, the implementation of these recommendations was either complete or almost complete. Of the two recommendations which were almost complete, one was completed by July 2020 and the other was an ongoing action for continuous improvement.
48. As outlined in paragraph [26] above, in March 2020 icare engaged Challis & Company to conduct a Board Effectiveness Review, being three years after the AICD Review. The Review involved:
- a. consideration of the AICD Report;
 - b. interviews with the Board members and Group Executives,
 - c. conducting surveys of Board members and Group Executives; and
 - d. follow-up discussions with the Board's Chair and the Chair of each Committee to discuss the results of interviews and surveys.
49. Challis & Company did not attend any Board or Committee meetings or review any Board or Committee papers as part of the review.
50. The Board Effectiveness Review, provided to Non-Executive Directors and the Board in May 2020, found, amongst other things:
- a. an effective Board has been the "*saving grace*" in steering icare through its performance issues, which have necessitated the Board to be operationally focused;
 - b. the organisation has struggled through an ambitious transformation and significant operational issues, including managing third-party providers; and
 - c. with a strong diversity of industry experience, functional expertise and thought, the non-executive directors have been deeply committed to the organisation and have worked cooperatively, tirelessly and effectively on its behalf.

51. The Board Effectiveness Review made 20 recommendations relating to the areas of risk, responsibilities, succession planning, relationships with the executive, stakeholders and communications, information flows and presentations, the Chair and Committees.
52. Of the 20 recommendations, four recommendations have been completed, seven are ongoing continuous improvement actions (that are continuing to be implemented) and eight recommendations are being progressed. There is one recommendation on hold while icare is in the process of recruiting a new Chief Executive.
53. In June 2018, as a mechanism to self-evaluate its performance between external reviews, the Board agreed to carry out its own internal assessment of its performance, and to identify strengths and areas for improvement, via Board Net Promoter Score (**bnPS**) surveys conducted across the Board and each of its Committees with directors and management personnel who were standing attendees at Committee meetings. More detail on the NPS measure is included in icare's submissions in response to Term of Reference 1(c).

Continuous improvement

54. The Board recognises that there are ongoing opportunities to improve its oversight. The Board has continually reviewed and improved its approach to governance as icare has unwound from its predecessor entities as part of the 2015 structural reforms, embarked on an ambitious transformation agenda and experienced increasing external scrutiny.
55. Examples of some of the changes the Board has implemented since icare's inception include:
 - a. strengthening financial reporting by requiring the submission of each of the reports listed in paragraph [36]a above for review by the Board and/or the relevant Committee;
 - b. through the internal Board Governance team, arranging for training to be provided by the Australian Institute of Company Directors to senior leaders on drafting Board papers;
 - c. commissioning independent reviews of its activities as described in paragraphs [44]-[53] above;
 - d. increasing monitoring and supervision of procurement practices within icare, including requiring Board approval prior to any reliance on the Nominal Insurer's exemption from Part 11 of the *Public Works and Procurement Act 1912*⁹⁹; and
 - e. most recently, establishing the Governance Committee to review and provide advice to the Board on best practice governance and regulatory engagement and assist with considering emerging issues in icare's external environment and changing stakeholder expectations.
56. The Board is committed to addressing relevant historical issues and strengthening the corporate governance and organisational maturity of icare.

⁹⁹See section 154A(4) of the 1987 Act

TERM OF REFERENCE 1(h): PROCUREMENT PRACTICES

Overview

1. Insurance and Care NSW (**icare**) acknowledges its procurement practices have been inconsistent and, in some cases, deficient, leading to procurement decisions that were inconsistent with icare's obligations as a NSW Government agency. Many of these issues have also been the subject of both internal audits and investigations and in some instances, requests for information by the Independent Commission Against Corruption (**ICAC**). icare has fully co-operated with all such requests in a transparent manner, and to date, ICAC has not taken direct investigative action nor has it instituted its own separate investigation or inquiry (although there are procurement matters that ICAC is currently considering).
2. icare also accepts that it has failed to comply with its obligations under the *Government Information (Public Access) Act 2009* (the **GIPA Act**) to publicly disclose Government contracts.
3. To address this, icare is in the course of revisiting its procurement practices across the entire organisation, in order to implement changes to improve those practices and minimise the risks of non-compliance and inconsistency going forward. icare's progress over the past six months includes:
 - a. undertaking a GIPA Act remediation program, which to date has resulted in the public disclosure of 475 contracts not previously disclosed or (for new contracts) disclosed within required timelines; and
 - b. establishing an Executive Steering Committee in April 2020, sponsored by icare's Group Executive, Organisational Performance and Group Executive, Strategy & Governance, to oversee a comprehensive program of ongoing compliance with both icare's procurement obligations and contract disclosure obligations under the GIPA Act.
4. icare is committed to continuing the work it has commenced in order to align its procurement and GIPA Act contract disclosure practices with the rest of NSW Government and welcomes any recommendations from the Independent Reviewer to help icare achieve this goal.

Government procurement of goods and services

Legislative background

5. Part 11 of the *Public Works and Procurement Act 1912* (the **Procurement Act**) provides for the procurement of goods and services by or for a NSW Government agency. Part 11 of the Procurement Act is non-prescriptive in nature, and instead establishes the NSW Procurement Board¹⁰⁰, which has broad powers to establish, implement and monitor procurement practices for NSW Government agencies. The NSW Procurement Board's full objectives and functions are detailed in sections 171 and 172 of the Procurement Act.

¹⁰⁰Section 164 of the *Public Works and Procurement Act 2012*

6. A central function of the NSW Procurement Board is to develop and implement directions and policies that apply to the procurement of goods and services by Government agencies.¹⁰¹ Government agencies must follow any direction or policy issued by the NSW Procurement Board.¹⁰² The NSW Procurement Policy Framework (the **NSW Procurement Rules**), which is issued as a policy by the NSW Procurement Board, is the key document outlining the procurement obligations of Government agencies.¹⁰³ It provides a consolidated view of Government procurement objectives and the Procurement Board's requirements as they apply to each step of the procurement process.
7. icare and each of the statutory authorities it provides services to¹⁰⁴ (other than the Nominal Insurer) are Government agencies for the purposes of Part 11 of the Procurement Act, and as such, each entity must comply with the NSW Procurement Rules. The Workers Compensation Nominal Insurer (the **Nominal Insurer**) is not a NSW Government agency for the purposes of Part 11 of the Procurement Act and therefore is not bound by the NSW Procurement Rules.¹⁰⁵
8. icare is a non-accredited Government agency under section 174 of the Procurement Act, and therefore must comply with the specific requirements outlined in Procurement Board Direction 2020-04.¹⁰⁶ Accredited Government agencies are subject to fewer requirements when undertaking procurement activity.

icare's procurement framework

9. icare's risk and procurement framework has been evolving since icare's establishment in 2015. Compliance with policies and procedures has been inconsistent and icare acknowledges certain aspects of its procurement framework are not sufficiently robust.
10. Certain contracts entered into by icare and/or the Nominal Insurer or other entities to which icare provides services have been the subject of intense media and Parliamentary scrutiny.¹⁰⁷ Many of these contracts have been the subject of inquiry by ICAC.¹⁰⁸ To date, ICAC has not undertaken any separate investigation of its own and has been satisfied with the internal and external investigations and enquiries icare has conducted. Indeed, while icare's procurement practices may have been inadequate, icare has not identified any evidence of intentional wrongdoing in relation to those contracts, although there are current procurement matters that ICAC is considering.

¹⁰¹Section 172(1)(b)-(c) and s175 of the *Public Works and Procurement Act 2012*

¹⁰²Section 176(1) of the *Public Works and Procurement Act 2012*

¹⁰³A copy of NSW Procurement Policy Framework is available online at:
<https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework>

¹⁰⁴As defined in section 10(1)(b) of the *State Insurance and Care Governance Act 2015*

¹⁰⁵Section 154A(4) of the *Workers Compensation Act 1987*

¹⁰⁶Procurement Board Direction 2020-04 is available online at:
<https://arp.nsw.gov.au/pbd-2020-04-approved-procurement-arrangements>

¹⁰⁷Including contracts with Perceptive Group Limited, Capgemini Australia Pty Limited, IVE Group, Internal Consulting Group, The Bridge International and icare's former Chief Executive's spouse

¹⁰⁸Including those contracts with Perceptive Group Limited, Capgemini Australia Pty Limited and icare's former Chief Executive's spouse

11. icare has previously taken the following steps to address identified concerns about its approach to procurement:
- a. an internal Procurement Policy was developed in May 2016, which was updated in May 2017 following a review by icare's Compliance Team into the efficacy of icare's procurement policies and procedures, and further updated in November 2018. The most recent version of icare's Procurement Policy:
 - i. applies to everyone working at icare;
 - ii. outlines the principles when procuring goods and services at icare, including complying with the NSW Procurement Rules and other applicable legislative requirements;
 - iii. clarifies that the policy applies to procurement undertaken on behalf of the Nominal Insurer, notwithstanding its exemption from the NSW Procurement Rules; and
 - iv. outlines the role of icare's Strategic Sourcing team, including when it must be engaged;
 - b. internal Procurement Guidelines were published in July 2016, which set out the guiding principles and operating procedures for procurement within icare and provide guidance on the standards of behaviour and conduct by those involved in procurement activities. The Procurement Guidelines have been updated multiple times in response to the development of the NSW Procurement Rules and icare's internal practices, with the most recent update in October 2020;
 - c. sourcing tools and templates have been implemented to support each stage of the procurement process;
 - d. organisation-wide training was delivered in July 2016 and again in 2019 to develop awareness of, and improve compliance with, icare's procurement obligations;
 - e. icare conducted an internal audit into its procurement activities from late 2017 to early 2018, which:
 - i. recommended icare's Procurement Guidelines and sourcing tools be updated to facilitate effective compliance with the NSW Procurement Rules; and
 - ii. undertook a gap analysis of icare's Procurement Guidelines and sourcing tools and the NSW Procurement Rules, making 44 findings;
 - f. in response to the internal audit, updates were made to the Procurement Policy, Procurement Guidelines and associated internal documents as outlined in paragraphs [11]a-c above. All actions from the gap analysis were closed by icare's internal audit on 19 June 2019;
 - g. a new General Manager, Strategic Sourcing was appointed in February 2018, with the following dedicated responsibilities aimed at improving icare's procurement practices:
 - i. leading and managing icare's sourcing strategy to ensure it meets the developing needs of the business;
 - ii. leading and developing the sourcing, procurement and purchasing team to enhance its customer focus and to lead innovation in sourcing strategies; and
 - iii. reviewing and developing icare's sourcing processes and activities to enhance the service delivered to the business;
 - h. in April 2019, icare arranged for ICAC to provide in-person corruption prevention training for the Group Executive Team and senior leadership team; and
 - i. in March 2020, icare conducted an internal audit focused on Contract Management (Pre-Execution phase) & Procurement (**March 2020 Audit**), which made recommendations relating to data quality, strategic procurement planning and enhanced governance. These recommendations are being addressed under the oversight of an Executive Steering Committee and are discussed in more detail below.

Current actions being taken to ensure on-going compliance with procurement obligations

12. In April 2020, as part of ongoing efforts to develop an effective procurement framework that meets its procurement obligations, icare appointed a Chief, Assurance and Sourcing as an additional level of oversight to drive improvements in operational practices to deliver better governance, compliance to sourcing policies and strategic outcomes.
13. icare also established an Executive Steering Committee in April 2020 to oversee a program for ongoing compliance (**Program for Ongoing Compliance**), sponsored by icare's Group Executive, Organisational Performance and Group Executive, Strategy & Governance. The Chief, Assurance and Sourcing also sits on the Executive Steering Committee.
14. The Executive Steering Committee's Terms of Reference include:
 - a. providing executive oversight of outstanding actions from the various internal and external audits discussed above;
 - b. reviewing whether icare has the correct structure and sufficient resourcing to meet its procurement obligations;
 - c. reviewing the adequacy of internal procurement documentation; and
 - d. addressing icare's non-compliance with publicly disclosing contracts under the GIPA Act (discussed in more detail below).
15. To date, the Program for Ongoing Compliance has delivered the following procurement process improvements:
 - a. approved a further revised Procurement Policy, which will be submitted to the icare Board in November 2020 with the following updates:
 - i. a requirement for the Board to approve any proposal for the Nominal Insurer to rely on its exemption from the NSW Procurement Rules; and
 - ii. a requirement for the Strategic Sourcing team to be engaged for all Information and Communications Technology (ICT) procurement and a reduction in the threshold for engagement of the Strategic Sourcing Team from \$150,000 to \$30,000 for the procurement of general goods and services, ensuring oversight across an increased range of procurement activity;
 - b. enhanced icare's centralised contract data repository with standardised document collection and storage processes;
 - c. improved the data quality of icare's contract register by introducing monthly reconciliation of purchase order reports;
 - d. established an 'Enterprise Sourcing & Planning Group', comprised of a cross-section of senior leadership, to improve co-ordination of procurement planning activities across the organisation;
 - e. updated several sourcing tools and templates to simplify market engagement processes;

- f. developed a new training program to improve procurement knowledge and compliance obligations across the broader organisation, which commenced in November 2020 and will continue for the first half of 2021. The training program includes:
 - i. awareness of NSW Procurement Rules,
 - ii. awareness of icare's Procurement Policy and Procurement Guidelines, ICAC guidelines, GIPA Act obligations, and use of the whole of Government pre-qualification schemes;
 - iii. guidance on when to engage the Strategic Sourcing team to support forecasting and planning of procurement; and
 - iv. key probity issues, such as conflicts of interest and gifts and benefits; and
 - v. introduced quarterly reporting to the Board's Audit and Risk Committee (**ARC**) on procurement activities, including for example, business as usual updates and progress against the improvements delivered under the Program for Ongoing Compliance. The quarterly reporting also updates the ARC on icare's GIPA Act contract disclosure obligations, as discussed in detail below.
 - g. On 30 October 2020, icare provided evidence to its Internal Audit team to support the completion of the following March 2020 Audit recommendations and is currently awaiting formal approval:
16. developing a strategy to close gaps between existing system functionality and future requirements;
- a. defining, documenting and implementing procurement planning at an enterprise-wide and category level;
 - b. developing a process to monitor and manage procurement plans, considering planned activities and required resourcing;
 - c. simplifying and consolidating existing procurement documents to develop a single set of guidelines;
 - d. identifying appropriate mechanisms to collate, store and publish key procurement documentation;
 - e. improving icare's process for capturing and addressing external engagements that are non-compliant with the NSW Procurement Rules by incorporating the reporting into icare's organisation-wide incident reporting register; and
 - f. investigating themes of non-compliance to understand whether further remedial action is required, which includes early engagement of Strategic Sourcing, procurement planning, and training and awareness;
17. Going forward, the Program for Ongoing Compliance will:
- a. implement the next phase of the March 2020 Audit deliverables described in paragraph [16] above, including updating the Procurement Guidelines;
 - b. improve contract management practices through implementation of a technology solution to automate sourcing workflows; and
 - c. improve procurement planning and sourcing activities, and ensure increased visibility for senior leadership and across the organisation over the procurement pipeline and contract management through monthly feedback from the newly-established Enterprise Sourcing and Planning Group (discussed at paragraph [15]d15.d above).
18. icare's Risk and Audit team has also commissioned EY to undertake an independent review into a sample of 30 icare contracts entered into since February 2020. The review will assess and provide recommendations relating to icare's compliance with the NSW Procurement Rules, including in the context of conflicts of interest, and will assess key icare procurement controls. icare expects to receive the review by February 2021.

Public disclosure of government contracts

Legislative background

19. Part 3, Division 5 of the GIPA Act sets out open access requirements for Government contracts with the private sector. Under section 27(1) of the GIPA Act, NSW Government agencies must keep a register of their Government contracts with the private sector that have (or are likely to have) a value of \$150,000 (including GST) or more.
20. Contracts on an agency's Government contract register must:
 - a. be publicly available;¹⁰⁹
 - b. contain the information outlined in sections 29 to 31 of the GIPA Act, less any commercial in confidence information;¹¹⁰
 - c. be published within 45 working days of the contract becoming effective;¹¹¹
 - d. be published for the longer of 20 working days or the life of the contract;¹¹² and
 - e. be published on the on eTendering.¹¹³
21. Part 3, Division 5 of the GIPA Act applies to icare in its own right, the Nominal Insurer and each of the statutory authorities that icare provides services to.¹¹⁴

History of icare's compliance with the GIPA Act

22. Historically, icare (including icare acting for the Nominal Insurer and in providing services to other relevant authorities) has failed to comply with the contract disclosure obligations under Part 3, Division 5 of the GIPA Act in a number of instances.
23. icare's failure to comply with these obligations has arisen from underdeveloped systems and internal processes and lack of clear understanding of accountabilities for disclosure.
24. The need to enhance icare's compliance with the GIPA Act was identified in September 2016 by the NSW Audit Office. icare's Internal Audit team also identified compliance with the GIPA Act as an issue in February 2017 and April 2018. icare acknowledges that it did not take action with sufficient urgency to address these compliance issues in the past, but has since undertaken extensive remedial action to improve compliance with its contract disclosure obligations going forward.

GIPA Act Remediation Program

25. In February 2019, icare commenced a GIPA Act Remediation Program to address its non-compliance with its public disclosure obligations under the GIPA Act. The GIPA Act Remediation Program was initially led by the icare's Strategic Sourcing team but oversight was reallocated in April 2020 to the Executive Steering Committee responsible for the Program for Ongoing Compliance.

¹⁰⁹Sections 6 and 18(e) of the GIPA Act

¹¹⁰As defined in section 32, of the GIPA Act

¹¹¹Section 27(1) of the GIPA Act

¹¹²Section 34 of the GIPA Act

¹¹³Section 35(1) of the GIPA Act

¹¹⁴Section 10(1)(b) of the SICG Act

26. The GIPA Act Remediation Program sought to progressively publicly disclose:
- active contracts valued at \$150,000 (including GST) or more that commenced on or before 31 March 2020 and had not previously been publicly disclosed; and
 - contracts that are no longer active valued at \$150,000 (including GST) or more, but which commenced on or after 1 July 2018 and ceased on or before 31 March 2020.
27. The rationale for these parameters was to strike a balance between addressing historical non-publication in a way that icare believed was consistent with the objectives of GIPA Act, while ensuring that resources were appropriately allocated to deliver on icare's procurement functions going forward more broadly, in particular, the Program for Ongoing Compliance.
28. Since the GIPA Act Remediation Program commenced, icare has publicly disclosed 475 contracts on eTendering between May 2019 and October 2020 on the dates specified in the table below:

Date of disclosure	No. of contracts disclosed on eTendering
Pre-April 2020	231
April 2020	0
May 2020	59
June 2020	59
July 2020	59
August 2020	63
September 2020	21
October 2020	12
Total	475

29. For completeness, not all the 475 contracts published to date form part of the GIPA Act Remediation Program. Since icare has improved its practices, some of these 475 contracts are new contracts that have been published in accordance with the timeframes specified for new contracts under the GIPA Act.
30. As the GIPA Act does not require publication of contracts that are no longer active, icare has published its historic, closed contracts (i.e. those contracts that form part of icare's GIPA Act Remediation Program) on eTendering for 20 working days, which is the minimum length of time a contract is required to be accessible.¹¹⁵ Contracts that were active at the time of publishing will remain publicly available on eTendering until their natural expiry or termination as required by section 34 of the GIPA Act.

Ongoing compliance with GIPA Act

31. icare's Program for Ongoing Compliance is also focused on ensuring ongoing compliance with GIPA Act contract disclosure obligations. To date, the Program for Ongoing Compliance has delivered the following GIPA Act contract disclosure improvements:
- updated icare's Procurement Policy and Guidelines to specifically address the contract disclosure obligations under the GIPA Act;
 - published an internal guideline titled "*Collecting & Reporting GIPA Contract Information*" on icare's intranet setting out compliance obligations and GIPA Act contract data collection and storage requirements;

¹¹⁵Section 34(2)(a) of the GIPA Act

- c. enhanced icare's GIPA Act contract database to:
 - i. capture all the contract information required to be made publicly available under the GIPA Act; and
 - ii. provide compliance reporting in relation to the requirement to publish contracts within 45 days from becoming effective under the GIPA Act;
 - d. included compliance reporting on icare's contract disclosure obligations under the GIPA Act in the monthly CEO major contracts report to the Board;
 - e. provided quarterly updates to the ARC on the GIPA Act contract disclosure obligations, which include updates on the improvement activities being led by the Program for Ongoing Compliance, the GIPA Remediation Program and icare's compliance with disclosing new contracts entered into since April 2020 (i.e. those that fall outside the GIPA Remediation Program);
 - f. rolled out an automated purchase requisition module in icare's online finance systems, removing manual processes and the risks associated therein;
 - g. proactively engaged with the Information and Privacy Commissioner (the **IPC**) on its approach to on-going compliance, including monthly updates; and
 - h. incorporated the reporting of contracts not disclosed in accordance with the GIPA Act into icare's organisation-wide incident reporting solution and processes.
32. The Program for Ongoing Compliance is also continuing to address the following GIPA Act contract disclosure objectives:
- a. implementing an improved information technology platform to capture contract information required to be disclosed under the GIPA Act, including for example, an automatic interface between icare's centralised contract register and payments solutions to identify discrepancies between disclosed contracts and actual spend;
 - b. embedding contract disclosure obligations under the GIPA Act into icare's processes;
 - c. reviewing and embedding controls to establish and maintain the completeness of icare's contracts register, including references to purchase orders; and
 - d. improving the documentation of procedures and controls relating to GIPA Act disclosures.
33. On 26 August 2020, the IPC notified icare that it will be conducting an audit of icare's GIPA Act compliance. A draft report detailing the IPC's Phase 1 findings was provided to icare on 1 October 2020, which made eight recommendations relating to ownership, oversight and assurance of the GIPA Act Remediation Program and icare's ongoing compliance, as well as recommendations relating to icare's contract register, staff training and public communications on icare's website.
34. icare responded to the IPC on 15 October 2020 advising that it has accepted all eight recommendations in full and is working to implement them in accordance with the timeframes specified in the IPC report. The IPC published its final report on 27 October 2020 confirming this approach.¹¹⁶
35. In accordance with the recommendation timeframes, icare provided the IPC with updates on 30 October 2020 relating to the status of the GIPA Act Remediation Program and a report on any instances of non-compliance with the contract disclosure obligations under the GIPA Act since April 2020.¹¹⁷ icare has also actioned the IPC recommendations with a 2 November 2020 due date relating to ownership and oversight, communications and staff training (as discussed in paragraph [15]f above).

¹¹⁶ Available online on the IPC's website at: <https://www.ipc.nsw.gov.au/media/3127>

¹¹⁷ This report identified a small number of instances of non-compliance (eight), which were due to late notification of the existence of the relevant contract or material variations to a contract to the Strategic Sourcing team. The improvements being made as part of the Program for Ongoing Compliance set out above, and in particular the improvements in automation to identify discrepancies, are designed to minimise the risk of such late notification going forward.

TERM OF REFERENCE 1(i): MANAGEMENT OF PROBITY MATTERS SUCH AS GIFTS, TRAVEL & CONFLICTS OF INTEREST

Summary

1. Insurance and Care NSW (**icare**) acknowledges that the management of probity matters is essential to the prevention of corruption.
2. icare has developed and implemented policies and procedures relating to travel, gifts and benefits and conflicts of interests, which are designed to manage such risks in accordance with best practice. icare continues to enhance and supplement these policies and procedures with external best practice guidance, including that published by the Independent Commission Against Corruption (**ICAC**).
3. In accordance with best practice, through its Risk, Compliance and Internal Audit teams, icare takes a holistic approach to probity and compliance, through the management of registers, provision of training, advice and guidance to staff, assurance activities, investigation of notifications, complaints and public interest disclosures and engagement with ICAC.
4. The Audit and Risk Committee (**ARC**) receives regular compliance reporting, which includes data for each relevant period on declarations, any policy exceptions and outcomes from monitoring and assurance activities. icare also has procedures in place to monitor for non-compliance and to promptly investigate any allegation or complaint of non-compliance, which icare has taken further steps to improve.
5. In some isolated instances, icare has not disclosed travel as a gift or benefit in accordance with its internal policies, not met statutory reporting obligations for international travel and identified deficiencies in the documentation and management of gifts or benefits and conflicts of interest in respect of certain contracts.
6. Where such issues have been identified, either through the reporting of incidents or through regular monitoring, icare has investigated and remediated the issues as appropriate and used the learnings from these issues to improve the processes going forward.
7. icare's Travel Policy, Gifts and Benefits Policy and Conflicts of Interest Policy are currently under review and revised versions will be considered by the Board for approval within the next six months. In enhancing the policies, icare aims to improve compliance at all levels of the organisation. To achieve this, the policy refresh includes:
 - a. adopting more directive language to clarify what conduct is permitted and what is not;
 - b. improving policy governance, including the tools and processes that support staff in complying with the policies;
 - c. clarification of roles and responsibilities, including better guidance to staff through examples;
 - d. undertaking an enterprise awareness and training campaign for new or amended internal policies, including greater guidance on how to comply and focussed training for high risk teams;
 - e. implementing additional policy compliance monitoring and assurance; and
 - f. disclosing all overseas visits in the annual report, regardless of who paid.

Relevant probity obligations

8. The management of probity matters is essential to the prevention of corrupt conduct, as defined in Part 3 of the *Independent Commission Against Corruption Act 1988* (**ICAC Act**). In addition, probity is central to the NSW Government agency ethical framework and core values outlined in Part 3 of the *Government Sector Employment Act 2003* (the **GSE Act**).

9. For the purposes of this section, we have focussed on probity in the context of travel, gifts and benefits and conflicts of interests as required by the Terms of Reference. It should be noted that icare staff are also required to comply with icare's Code of Conduct and Ethics, Performance Management Policy and other policies and procedures which address probity matters more broadly within the organisation (which are discussed further in icare's submissions in respects of Term of Reference 1(e)).

Travel

10. icare is required to comply with the *Premier's Memorandum OFS-2014-07-Official Travel in Australia and Overseas*¹¹⁸ when undertaking official travel using public money.
11. icare must also comply with section 9 of the *Annual Reports (Statutory Bodies) Act 1984* and Part 3 and Schedule 1 of the *Annual Reports (Statutory Bodies) Regulation 2015*, which require the disclosure of "overseas visits undertaken by officers and employees with the main purposes highlighted" in its Annual Report.
12. icare documents its obligations in its Travel Policy, which was approved by the Board's Risk, Compliance and Audit Committee (now the ARC) in May 2016. The Travel Policy:
- a. adopts certain key guidelines outlined in *Premier's Memorandum OFS-2014-07-Official Travel in Australia and Overseas*;
 - b. provides that alternative methods of communication to travel should be considered in the first instance;
 - c. requires that all requests for travel involving flights and accommodation must be approved prior to booking or undertaking travel;
 - d. requires that if any part of the official travel is being funded by an icare supplier or other third party, it is declared as part of the approval process; and
 - e. requires that overseas travel must be approved by the staff member's executive leader, the Chief Executive Officer and icare Board, and Ministerial approval is required for international travel by the Chair of the icare Board.

Gifts and benefits

13. Under section 13 of the GSE Act, the NSW Public Service Commissioner has directed that certain Public Service departments and agencies and other services of the Crown comply with minimum standards for managing gifts and benefits.¹¹⁹ This direction does not apply to icare, instead, icare has developed its own policy and guidance for staff to ensure that all offers and receipts of gifts and benefits do not give rise to conflicts of interests and are documented appropriately.
14. In addition, ICAC has provided guidance on its website regarding the development of gift and benefits policies.

¹¹⁸Available online at: <https://arp.nsw.gov.au/assets/ars/35251081e5/Tab-A-Policy-on-Official-Travel.pdf>

¹¹⁹Available online at: <https://www.psc.nsw.gov.au/employmentportal/ethics-conduct/behaving-ethically/behaving-ethically-guide/section-2/copy-of-public-service-commissioner-direction-no-1-of-2014>

15. icare outlines management and staff obligations in its Gifts and Benefits Policy, which was approved by the Board's Risk, Compliance and Audit Committee (as it then was) in 2016. The Gifts and Benefits Policy is supported by a Gifts and Benefits Procedure and Gifts and Benefits Decision-Making Guide, published in January 2017, which together:
- a. provide guidance on what would be considered a gift, benefit or bribe (including reference to travel not paid for by icare);
 - b. require all gifts and benefits offered with a retail value of \$100 or more to be approved by the person's people leader and, whether accepted or declined, declared on icare's Gifts and Benefits Register, which is maintained by icare's Compliance team;
 - c. provide that any gift or benefit which creates a conflict of interest should be declined (regardless of value) and declared on icare's Gifts and Benefits Register and Conflicts of Interest Register;
 - d. outline staff obligations should they be offered or receive a gift or benefit, such as considering the interests of the giver and whether it could create an actual, perceived or potential conflict of interest; and
 - e. outline the roles and responsibilities of icare management with regards to approval, declaration and audit of gifts and benefits received.

Conflicts of Interest

16. icare captures its conflict of interest obligations in its Conflicts of Interest Policy (**Col Policy**). When first approved by the (then) Risk and Audit Committee in November 2016, it set out basic principles to assist staff recognise when a conflict may arise, as well as explaining the roles and responsibilities in respect of declaring and managing conflicts. As the first version was high-level only, it was reviewed and updated in April 2018, and again in November 2019. Both updates were approved by the ARC. The current version of the Col Policy is supported by icare's Conflict of Interest Management Procedure (**Col Procedure**), and together:
- a. provide detailed guidance on what constitutes a conflict of interest and how to identify one;
 - b. require a person to declare actual, apparent or perceived, or potential conflicts of interest in the course of performing their role for icare. icare's Compliance team maintains icare's Conflicts of Interest Register;
 - c. provide guidance on how conflicts of interest are to be managed;
 - d. outlines the various obligations on icare staff and management; and
 - e. incorporate guidance from ICAC on managing conflicts of interest in the NSW public sector.¹²⁰
17. icare has also prepared a Conflicts of Interest Factsheet to assist staff to understand their obligations in relation to conflicts of interest under the Col Policy, Col Procedure and Code of Conduct and Ethics Policy.

¹²⁰Available online at: https://www.icac.nsw.gov.au/ArticleDocuments/232/Managing-conflicts-of-interest-in-the-nsw-public-sector_June-2019.pdf.aspx

Compliance of icare to date

18. Since late 2016, icare has maintained enterprise conflict of interest and gifts and benefits registers. Conflicts of interests and gifts and benefits that are declared by staff are reviewed by the Compliance team at the time of declaration to ensure that management strategies for those conflicts are appropriate. Any concerns raised in relation to conflicts and gifts and benefits are also investigated by the Compliance team. In addition, an annual declaration process is undertaken to ensure all staff in specific roles where conflicts can arise (largely, roles where there is delegated authority), provide a declaration of any conflicts of interest. In 2020, a regular monitoring program was introduced to review a sample of medium and high rated conflicts to assess the ongoing appropriateness of management strategies.
19. The Compliance team also provides advice and guidance to staff and people leaders on interpreting icare's CoI Policy and Gifts and Benefits Policy in specific scenarios and devising appropriate management strategies. In particular, it has provided guidance to staff on complying with the policies in high risk areas, like procurement and recruitment.
20. With regards to travel, domestic travel is managed at a business level in accordance with the Travel Policy and icare's delegations. For international travel, icare's Ministerial and Parliamentary Services team facilitates the approval process in accordance with icare's Travel Policy.
21. More generally, icare's employment contracts contain obligations requiring staff to comply with policies and complete mandatory training. icare has developed and delivered bespoke enterprise mandatory training modules to support relevant compliance policies and icare's Code of Conduct and Ethics Policy.
22. icare promptly investigates any allegation or complaint of wrongdoing, fraud or corruption, and proactively notifies ICAC as required under section 11 of the ICAC Act. Where ICAC requests information following receipt of public interest disclosures or otherwise, icare has fully co-operated in a transparent manner. To date, ICAC has not taken direct investigative action once icare has complied with its requests, nor has it instituted its own separate investigation or inquiry into any matter relating to icare, although there are a number of active matters that ICAC is currently considering.
23. Additionally, icare maintains a constructive working relationship with ICAC. For example, icare has invited ICAC to run training sessions and to attend ARC meetings to explain new policy guidelines.
24. The ARC receives regular compliance reporting, which includes data for each relevant period on declarations, any policy exceptions and outcomes from monitoring activities.
25. Generally speaking, non-compliance with policies is difficult to detect. This is not a difficulty that is unique to icare, but one that is faced by all organisations of a comparable size. In large part, icare's framework (as with all public and private sector frameworks on conflicts of interest) relies on staff considering their particular circumstances and self-disclosing current and potential personal interests that come into conflict with their public duty. While icare has records of numerous disclosures and management plans relating to travel, gifts and benefits and conflicts of interest, drawing conclusions about the extent of compliance is necessarily imprecise. Nevertheless, icare has procedures in place to monitor for non-compliance and to promptly investigate any allegation or complaint of non-compliance, which icare has taken further steps to improve (as detailed further below).
26. Through the reporting of incidents or through regular monitoring, icare has identified the following compliance issues:
 - a. other than one instance of disclosing overseas travel paid for by a supplier in a previous Annual Report, icare has only disclosed overseas travel paid for by icare in its Annual Report; and
 - b. there have been isolated deficiencies in the documentation and management of conflicts of interest in respect of certain contracts, some of which have received media and Parliamentary scrutiny (see icare's submissions in response to Term of Reference 1(h)).

Improving compliance and awareness

27. In light of the identified issues, icare is undertaking a suite of actions to improve compliance and awareness at all levels of the organisation. These actions are outlined in further detail below.

Policy review and governance

28. icare is adopting more directive language (for example, by using mandatory, rather than discretionary, terms) in its policy drafting to clarify icare's expectations on staff. This approach is endorsed by the ARC and approved by the Board.
29. icare is also developing a Policy Governance Framework to clarify the internal ownership and obligations for policy compliance. The Policy Governance Framework will be submitted to the ARC and Board in November 2020.
30. In respect of specific policies, the Col Policy has been reviewed and the revisions include:
- a. requiring a conflict of interest declaration for any personal relationship between an icare member of staff and any person they may engage with in the course of conducting icare business;
 - b. emphasising the role of people leaders to understand the risks in their teams to assist with managing probity issues;
 - c. requiring a quarterly attestation from relevant staff on conflicts of interest; and
 - d. clarifying the consequences of non-compliance with policy requirements.
31. The updated Col Policy will be submitted to the ARC and Board for approval at their November 2020 meetings.
32. icare has incorporated a conflict of interest declaration section into icare's standard Evaluation and Probity Plan procurement template and Request for Contract Execution template.
33. The Gifts and Benefits Policy and the Travel Policy are both also currently under review. It is envisioned that the revised Gifts and Benefits Policy and the revised Travel Policy will be submitted to the Board for approval in early 2021. Revisions to these policies will provide greater clarity on roles, responsibilities and requirements of the policies, as well as introduce guidance to staff on how to comply with the policy requirements.
34. The Compliance team is currently considering external guidance and consulting with icare's internal stakeholders to understand what further principles will help improve icare's compliance.

Awareness raising activities

35. icare is undertaking several activities to ensure that staff are aware of their travel, gifts and benefits, and conflict of interest, obligations and to ensure ongoing compliance.
36. In particular, icare is undertaking an awareness campaign for new or amended internal policies, which includes:
- a. communicating new or amended policies on icare's internal intranet, through all-of-staff emails, on staff screensavers, and through in-office electronic notice boards;
 - b. updating mandatory internal staff training modules;
 - c. targeted training for high-risk teams, including for example, training on conflicts of interest for the icare Strategic Sourcing and Talent Acquisition teams; and
 - d. standing offers to provide individual training to members of icare's senior leadership team.

37. These awareness campaigns will extend to the revised Travel Policy, CoI Policy and Gifts and Benefits Policy, once approved by the Board.

Other actions

38. In addition, icare is also implementing the following actions to increase compliance and improve transparency:
- a. all overseas visits will be disclosed in the Annual Report, regardless of who paid;
 - b. preparing an errata for the Treasurer to lodge with the Clerk of the Legislative Assembly and Legislative Council to correct previous omissions of overseas travel in the 2016-17, 2017-18 and 2018-19 Annual Reports;
 - c. a quarterly, rather than annual, attestation process for conflicts of interest for senior leaders;
 - d. increased second line assurance by the Compliance team on the integrity and validity of the Conflicts of Interest Register and requiring the Compliance team to provide assurance on the ongoing management of declared conflicts which are rated medium and high;
 - e. exploring better data analytics methods to identify non-disclosed conflicts of interest (whether intentionally or negligently withheld);
 - f. moving the Conflicts of Interest Register to an electronic application to enable greater data analysis and automated reporting and monitoring; and
 - g. centralising completed conflict of interest disclosure forms for business-led procurement.

TERM OF REFERENCE 1(j): RELATIONSHIP WITH SIRA

Summary

1. Under its new executive leadership, Insurance and Care NSW (**icare**) is working closely with the State Insurance Regulatory Authority (**SIRA**) to improve its relationship and is confident that both agencies are now operating in a more positive and collaborative manner.
2. icare's relationship with SIRA had previously been identified as an area of improvement in Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme published in December 2019 (the **Dore Review report**), and both icare and SIRA have since implemented a number of actions in response to those findings that serve to support the respective agencies' roles and responsibilities. Following these and a number of other steps taken by icare to improve the level of constructive engagement between the agencies, icare has recently received consistent, positive feedback from SIRA regarding the level of communication, transparency and engagement.
3. Historically, icare's relationship with SIRA has been complex, particularly at a senior executive level. The creation of icare and SIRA as separate entities under the *State Insurance and Care Governance Act 2015* (the **SICG Act**) was a substantial shift from the status quo, where relevant entities involved in the State's insurance and care schemes were self-regulated or subject to minimal external regulation. Clear understanding with regards to icare's role and the ambit of SIRA's regulatory powers in relation to workers compensation has improved since 2015, though at times there has been a lack of common understanding. This has not been evident in other schemes within icare's purview, nor in the collaborative efforts to address system issues such as the Mentally Healthy Workplace initiative.
4. To address these issues in the relationship, icare has acknowledged the need for greater consultation and the importance of reprioritising the regulator relationship through direct Chief Executive involvement. This is complemented by the icare Board, which has historically had, and continues to enjoy, a strong, open relationship with the SIRA Board. icare believes that its relationship with SIRA is now moving in the right direction, as demonstrated by the recent feedback received from SIRA.

Legislative background and context

5. The insurance and regulatory functions of the NSW State insurance and compensation schemes were separated between icare and SIRA by the SICG Act.

Legislative background

6. Under section 10(1) of the SICG Act, icare has the following functions:
 - (a) *to act for the Nominal Insurer in accordance with section 154C of the Workers Compensation Act 1987,*
 - (b) *to provide services (including staff and facilities) for any relevant authority, or for any other person or body, in relation to any insurance or compensation scheme administered or provided by the relevant authority or that other person or body,*
 - (c) *to enter into agreements or arrangements with any person or body for the purposes of providing services of any kind or for the purposes of exercising the functions of the Nominal Insurer,*
 - (d) *to monitor the performance of the insurance or compensation schemes in respect of which it provides services,*
 - (e) *such other functions as are conferred or imposed on it by or under the SICG Act or any other Act.*
7. Under section 24 of the SICG Act, SIRA has the following functions:

- (1) *SIRA has such functions as are conferred or imposed on it by or under this or any other Act (including under the workers compensation and motor accidents legislation and the Home Building Act 1989).*
- (2) *The functions of SIRA also include the following:*
 - (a) *to collect and analyse information on prudential matters in relation to insurers under the workers compensation and motor accidents legislation and the Home Building Act 1989,*
 - (b) *to encourage and promote the carrying out of sound prudential practices by insurers under that legislation and the Home Building Act 1989,*
 - (c) *to evaluate the effectiveness and carrying out of those practices.*
8. Under section 23 of the SICG Act, SIRA also has the following objectives:
 - (a) *to promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation and motor accidents legislation and the Home Building Act 1989 and the other Acts under which SIRA exercises functions,*
 - (b) *to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries,*
 - (c) *to promote workplace injury prevention, effective injury management and return to work measures and programs,*
 - (d) *to ensure that persons injured in the workplace or in motor accidents have access to treatment that will assist with their recovery,*
 - (e) *to provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation and the Home Building Act 1989,*
 - (f) *to promote compliance with the workers compensation and motor accidents legislation and the Home Building Act 1989.*
9. There is no equivalent provision concerning icare's objectives.
10. SIRA also has various functions under the *Workplace Injury Management and Workers Compensation Act 1998 (1998 Act)* and the *Workers Compensation Act 1987 (1987 Act)*. These are discussed in more detail in icare's submissions in response to Term of Reference 2(c).

Uncertainty arising as a consequence of the SICG Act

11. As discussed further in icare's submissions in response to Term of Reference 2(c), as between the SICG Act, the 1987 Act and the 1988 Act, there is some overlap and ambiguity in the respective responsibilities of icare, the Nominal Insurer and SIRA, as many of the statutory functions previously conferred on WorkCover under the 1987 and 1998 Acts were not clearly delegated to either icare, the Nominal Insurer or SIRA. The overlap of functions is a carry-over of the old structure of WorkCover and the historical intricacies of the relationship between the regulating authority and the Nominal Insurer, and also reflects the protracted history of workers compensation in NSW.¹²¹
12. To the extent the insurance and regulatory functions of WorkCover were retained in either SIRA, icare or the Nominal Insurer following the 2015 amendments, there continues to be an overlap of functions between the Nominal Insurer and the newly-created SIRA. This has resulted in a lack of common understanding of responsibilities under the legislation by all stakeholders in the system.

¹²¹See icare's submissions in response to Term of Reference 2(a)

13. While recognising the SICG Act and amendments to associated Acts in 2015 created some uncertainty across the roles and responsibilities of each agency, there have been continued attempts to address this lack of clarity through the numerous legislative amendments,¹²² subordinate legislation,¹²³ Guidelines and guidance materials that have been issued by SIRA¹²⁴ over the last five years.
14. In other areas of icare's business, where there is a clearer understanding and demarcation of roles and responsibilities between icare and SIRA (especially in relation to the Lifetime Care and Support Authority of New South Wales and the Home Building Compensation Fund), icare's relationship with SIRA is more straightforward and equivalent issues have not been encountered.

Evolution of icare's relationship with SIRA

15. The creation of icare and SIRA as separate entities under the SICG Act was a substantial shift from the status quo, where relevant entities involved in the State's insurance and care schemes were self-regulated or subject to minimal external regulation.
16. As newly established government agencies within a new legislative framework, it has taken some time for icare and SIRA to fully understand and operationalise the respective functional boundaries established by the SICG Act, particularly given the similarity in some of the functional responsibilities given to each agency. Examples of aspects of where it has taken some time for icare and SIRA to fully understand and operationalise their respective functional boundaries established by the SICG Act are set out in icare's response to Term of Reference 2(c).
17. Further, although SIRA regulates certain parts of icare's business, SIRA and its individual members of staff are also customers of icare for the purposes of the Treasury Managed Fund (TMF) general lines and workers compensation schemes. In addition, this non-linear relationship exists alongside multiple other stakeholders including NSW Treasury, the Workers Compensation Independent Review Office, SafeWork NSW, the Workers Compensation Commission (soon to be replaced with the Personal Injury Commission) and the NSW Ombudsman.

¹²²For example the following amendments to the SICG Act: *State Insurance and Care Governance Amendment (Investment Management) Act 2015*, *Statute Law (Miscellaneous Provisions) Act (No 2) 2015*, *Statute Law (Miscellaneous Provisions) Act (No 2) 2016* (which made amendments to include the scheme administered by the Building Insurers' Guarantee Corporation in the services provided by icare), *Regulatory and Other Legislation (Amendments and Repeals) Act 2016*, *Motor Accident Injuries Act 2017*, *Home Building Amendment (Compensation Reform) Act 2017*, and the *Workers Compensation Legislation Amendment Act 2018*.

The following amendments were made to the 1998 Act: *Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Act 2015*, *Industrial Relations Amendment (Industrial Court) Act 2016*, *Motor Accident Injuries Act 2017*, *Statute Law (Miscellaneous Provisions) Act 2017*, *Coal Industry Amendment Act 2018*, *Miscellaneous Acts Amendment (Marriages) Act 2018*, *Emergency Services Legislation Amendment Act 2018*, *Workers Compensation Legislation Amendment Act 2018*, *Statute Law (Miscellaneous Provisions Act (No 2) 2018*, *Government Sector Finance Legislation (Repeal and Amendment) Act 2018*, *Justice Legislation Amendment Act (No 2) 2019*.

¹²³For example, the State Insurance and Care Governance Regulation 2015, which has been amended by the State Insurance Care and Governance Amendment (Delegation) Regulation 2016.

¹²⁴See, for example, the following guidelines which have been issued under section 376(1)(c) of the 1998 Act:

The Workers' Compensation Guidelines which can be found here:

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

The Standards of Practice which can be found here:

<https://www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/other-instruments/standards-of-practice>

The Claims Management Guide which can be found here:

<https://www.sira.nsw.gov.au/workers-compensation-claims-guide>

18. icare's understanding of SIRA's regulatory role has been maturing over the past five years and icare understands and acknowledges that there is a perception of resistance to regulatory oversight. To some degree, this perception is correct. icare has adapted to the role of the regulated entity as roles and responsibilities have become clearer.
19. Going forward, icare will continue to focus on the sustained delivery of services to the NSW insurance and care schemes in a way that aligns with and respects regulatory authority. icare has been assisted in this regard by the Dore Review report, which made findings about areas where icare could improve its understanding and operationalisation of its obligations with respect to SIRA.
20. icare is working with SIRA to implement agreed actions required under SIRA's 21-point Action Plan developed in response to the Dore Review findings, as detailed further in icare's submissions in response to Term of Reference 1(b).
21. icare has also had the benefit of submissions to the Standing Committee on Law and Justice by key workers compensation system participants which have highlighted areas where stakeholders expect increased focus and improvement by icare as a regulated entity and by SIRA as a regulator.

Actions taken by icare to improve the relationship

22. In addition to the progress icare is making against SIRA's 21-point Action Plan, icare and SIRA have taken the actions described below to improve the level of constructive engagement between the agencies.

Formal committees between the agencies

23. Recognising the opportunity to mature the relationship, icare and SIRA executives agreed to formally establish several new forums, by terms of reference, to improve the exchange of information, address known and emerging concerns and promote efficiency by minimising duplication or unnecessary activity. The specific monthly forums that commenced were:
 - a. Executive Committee meetings between icare executives and SIRA executives, which commenced in 2018;
 - b. Joint Premium and Prudential Oversight Committee (JPPOC), which was established in 2019; and
 - c. Joint Claims Assurance Committee (JCAC), which was established in 2019.
24. One of the successes of this revised engagement model was seen through the JPPOC, where different elements of the Nominal Insurer pricing model were reviewed and tested over the six months from July 2019 to December 2019. JPPOC made 13 recommendations, all of which were included by icare in the 2020/21 premium filing submitted to SIRA in December 2019. SIRA confirmed the non-rejection of this filing in April 2020.

Direct Chief Executive involvement

25. icare and SIRA have also worked together to establish several other avenues for engagement.
26. The primary change has been to build a trusting and collaborative relationship between icare's interim Chief Executive and the SIRA Chief Executive. The Chief Executives have scheduled fortnightly meetings which also include SIRA's Executive Director, Workers Compensation and icare's Head of Regulatory Affairs. The purpose of these meetings is to discuss current issues and to assist with each agency understanding their respective positions to drive alignment. This is supplemented by informal discussions between the two Chief Executives several times a week.

27. To support the Chief Executive relationship, the agencies have committed to cementing an already positive relationship between icare's Head of Regulatory Affairs and SIRA's Executive Director, Workers Compensation who communicate frequently.
28. icare's interim Chief Executive has also initiated meetings with system stakeholders and members of SIRA's tripartite forum and initiated an icare-focused multilateral forum with these and other stakeholders, of which SIRA will be a standing member.

Opportunities to collaborate and partner

29. icare has taken the following opportunities to more proactively collaborate with SIRA:
 - a. invited SIRA to attend meetings with EML and other claims providers to ensure alignment and clarity regarding icare's and SIRA's expectations of claims providers;
 - b. initiated a fortnightly meeting with NSW Treasury and SIRA regarding PIAWE;
 - c. initiated meetings between icare's Chief Risk Officer and SIRA regarding any concerns raised or updates regarding the status of the independent Culture, Governance and Accountability review being conducted by PricewaterhouseCoopers; and
 - d. encouraged management to initiate meeting with SIRA to discuss, clarify and address issues, and regular updates are provided by Group Executives on concerns SIRA has raised.
30. icare and SIRA have also initiated new projects that reflect their new, constructive relationship, including:
 - a. a joint project between SIRA's policy director and icare subject matter experts to examine the workers compensation legislation and how it is operationalised from injury through to dispute, in order to identify behaviours that impede good customer outcomes;
 - b. review and refinement of JCAC's reporting to ensure it aligns with SIRA's expectations and provides the appropriate level of information to support effective regulatory oversight; and
 - c. to address SIRA's concerns regarding case managers, icare has:
 - i. initiated an escalated conduct review process for workers who raise poor conduct by case managers or service providers, directly addressing SIRA's concerns in this area;
 - ii. quarantined claims with escalated complaints of poor conduct from the Personal Injury team and transferred them to icare's Care team for ongoing management; and
 - iii. sought membership of the Personal Injury Education Foundation, of which SIRA is a member, to improve case manager and other personal injury training modules.
31. icare has received positive feedback from SIRA regarding the level of communication and transparency, and the two agencies are working collaboratively and effectively.
32. icare also has existing strong, collaborative relationships with other key workers compensation system participants, including SafeWork NSW, the Workers Compensation Independent Review Office, the Workers Compensation Commission (soon to be replaced by the Personal Injury Commission) and the NSW Ombudsman.

TERMS OF REFERENCE 2(a): WHETHER THE NOMINAL INSURER AND TREASURY MANAGED FUND WORKERS COMPENSATION SCHEMES ARE DELIVERING ON THEIR POLICY OBJECTIVES

Summary

1. Workers compensation schemes across the world have traditionally been complex and difficult to manage, requiring a balance between the fair and equitable treatment of workers, the commercial interests of their employers and overall scheme financial sustainability.
2. The NSW workers compensation scheme is no exception and has been the subject of considerable and ongoing reform since its inception in 1910. Consistently with the experience in other states and countries, a scheme that perfectly balances the interests of all the relevant participants in a financially sustainable manner remains elusive. Numerous attempts have been made by successive Governments in NSW over many decades to adapt and improve the scheme in an effort to drive better outcomes and better achieve its policy objectives.
3. In 2015, Insurance and Care NSW (**icare**) was established against this backdrop, in an attempt to address problems experienced in previous iterations of the NSW workers compensation scheme. An important objective, as discussed in icare's submissions in response to Terms of Reference 2(c) and 3, was to invoke clear statutory and operational separation between the functions of providing Government insurance services and the regulation of those services.
4. The combined efforts of the newly formed agencies of icare, acting on behalf of the Worker Compensation Nominal Insurer (the **Nominal Insurer**) and providing services to the NSW Self Insurance Corporation (**SICorp**), and the State Insurance Regulatory Authority (**SIRA**) were intended to achieve the following policy objectives for the NSW workers compensation scheme:
 - a. supporting injured workers to recover and return to work;
 - b. providing proper assistance to workers with the highest needs; and
 - c. making sure that all changes to benefits will not compromise the financial sustainability of scheme.
5. By their nature, these policy objectives pull in different directions and involve balancing the divergent interests of numerous stakeholders. Notwithstanding these inherent challenges, icare believes that that the Nominal Insurer and TMF workers compensation schemes are progressing towards the realisation of the outcomes they were set up to achieve, supported by the objectives under the *State Insurance and Care Governance Act* (the **SICG Act**) to address transparency, operational efficiency and better outcomes for customers.
6. icare's transformative claims service models have resulted in a number of improvements to both schemes, and these improvements have already proven their potential to deliver operational efficiencies, improved customer outcomes and economies of scale. While there have been issues with the execution of the Nominal Insurer's ambitious claims service model, icare has taken steps to resolve these issues and has ensured the TMF scheme's new claims service model adopts learnings from past mistakes.
7. In addition, icare remains committed to continuing to support injured workers and ensuring they are provided with the benefits they are entitled to receive under the legislation without compromising the financial sustainability of the schemes. icare has developed and implemented several effective programs and tools to support injured workers to recover and return to work (as well as assisting employers to support their workers to do the same) and provide workers with the highest needs with the support they need.
8. icare is committed to further improving its operations so that it can continue to deliver on these policy objectives and is eager to work with the necessary stakeholders in order to do so.

Overview of the Nominal Insurer and TMF workers compensation schemes

Nominal Insurer

9. The Nominal Insurer is established under section 154A(1) of the *Workers Compensation Act 1987* (**1987 Act**) and is the compulsory workers compensation insurer for NSW employers, other than self and specialised insurers. Importantly, the Nominal Insurer:¹²⁵
 - a. is a legal entity;
 - b. may take proceedings and be proceeded against in the name of the Workers Compensation Nominal Insurer;
 - c. is not and does not represent the State of NSW or any authority of the State; and
 - d. is taken to be a licenced insurer as if it were the holder of an unrestricted licence in force under the 1987 Act.¹²⁶
10. The Nominal Insurer's functions are broadly described as "such functions as may be necessary or convenient for enabling the Nominal Insurer to function and operate to the fullest extent as a licensed insurer". Specifically, these include:
 - a. issuing workers compensation policies to NSW employers other than self-insurers;¹²⁷
 - b. calculating and collecting workers compensation insurance premiums;
 - c. issuing directions to any employer with respect to the insurance arrangements of the employer;¹²⁸
 - d. managing and meeting claims for covered employers;
 - e. entering into contractual arrangements with Scheme Agents to exercise powers on behalf of the Nominal Insurer;¹²⁹ and
 - f. acting as the insurer on risk for uninsured liabilities.¹³⁰
11. The liabilities of the Nominal Insurer as an insurer under a policy of insurance can only be satisfied from the Workers Compensation Insurance Fund established under section 154D of the 1987 Act; the liabilities of the Nominal Insurer are not liabilities of the State, icare or any authority of the State.¹³¹
12. icare acts for the Nominal Insurer pursuant to section 10 of the SICG Act and section 154C of the 1987 Act. Section 154C confirms the following regarding the relationship between icare and the Nominal Insurer (references to "ICNSW" are to icare):
 - (3) *ICNSW acts for the Nominal Insurer and anything done or omitted to be done by ICNSW on behalf of or in the name of the Nominal Insurer is taken to have been done or omitted by the Nominal Insurer.*
 - (4) *In acting for the Nominal Insurer, ICNSW has and may exercise all the functions of ICNSW under this Act, the 1998 Act or any other Act or law.*
 - (5) *A liability incurred by ICNSW when acting for the Nominal Insurer is a liability of the Nominal Insurer and not a liability of ICNSW or the State.*

¹²⁵Section 154A of the 1987 Act

¹²⁶Section 154B(1) of the 1987 Act

¹²⁷Section 155 of the 1987 Act

¹²⁸Section 154B(2) of the 1987 Act

¹²⁹Section 154G of the 1987 Act

¹³⁰Section 140 of the 1987 Act

¹³¹Section 154B(5) of the 1987 Act

13. In the 2019/2020 financial year, the Nominal Insurer insured 328,000 businesses across NSW and more than \$190 billion in wages. The Nominal Insurer received 63,321 new workers compensation claims in the last financial year.

Treasury Managed Fund

14. The TMF is a Government managed fund scheme that deals in part with workers compensation claims brought against NSW Government agencies.¹³² Unlike NSW employers under the Nominal Insurer workers compensation scheme, any NSW Government agency covered by a government managed fund scheme is taken to be a self-insurer for the purposes of the 1987 Act.¹³³ For the purposes of workers compensation, SICorp's functions include paying the liabilities of participating Government agencies on their behalf and receiving contributions from participating agencies towards the cost of its liabilities.¹³⁴ A detailed overview of the TMF and SICorp's role in relation to it generally is set out in the Background.
15. Unlike the Nominal Insurer, the TMF is not an insurance scheme in any conventional sense, but is rather *"an accounting mechanism by means of which the [TMF] is disbursed to meet claims of Government agencies"*. It is a mechanism that *"might aptly be described as an insurance phantasm"*.¹³⁵ It is noted, however, that, for the purposes of purchasing reinsurance, the TMF Statement of Cover is treated as a binding policy against which reinsurers can measure their liability. The Statement of Cover is not binding on SICorp.
16. Under the SICG Act, icare provides services (including staff and facilities) to SICorp.¹³⁶
17. The TMF Workers Compensation fund covers approximately 200 Government agencies and 340,000 public sector workers that are supported in their recovery and return to work if they sustain a workplace injury. The TMF received 15,354 new workers compensation claims in the last financial year.

2015 reforms to the NSW workers compensation system

18. A detailed history of reforms to the NSW workers compensation system prior to 2015 is provided in the Background to these submissions.
19. In 2015, NSW Treasury led a Strategic Insurance Review of the State's insurance schemes (including both the Nominal Insurer and TMF schemes). The review found there was room for improvement in the following areas:
 - a. operational efficiencies and performance, lack of which was leading to diseconomies of scale and the disaggregation of expertise;
 - b. capability gaps relating to the management of insurance schemes, including in relation to the management of scheme volatility, customer service and providers; and
 - c. perceived conflict of interest issues between the regulation and operation of the workers compensation scheme.
20. Importantly, the Strategic Insurance Review found that *"there is no ideal model in Australia that NSW can look to as the model that will best provide improved outcomes, cost efficiencies and more effective management of liabilities"*.¹³⁷

¹³²See Treasury Circular TC20-05 3 November 2020

¹³³Section 211B(1) of the 1987 Act

¹³⁴Section 211B(1) of the 1987 Act

¹³⁵QBE Insurance (Australia) Limited v NSW Self Insurance Corporation [2013] NSWSC 1841 at [37]-[38]

¹³⁶See sections 10(1)(b) and 10(2)(d) of the SICG Act

¹³⁷Strategic Insurance Review, section 1.1

21. In response, the (then) Government introduced further reforms, which abolished WorkCover and established icare, SIRA and SafeWork NSW, as the three separate agencies to deliver in tangent the following policy objectives for the NSW workers compensation scheme:¹³⁸
- a. supporting injured workers to recover and return to work;
 - b. providing proper assistance to workers with the highest needs; and
 - c. making sure that all changes to benefits will not compromise the financial sustainability of scheme.
22. The goal was to introduce a system that was fair, sustainable and customer-centric.
23. In addition to the policy objectives upon which the SICC Act was based, SIRA also has specific statutory objectives in exercising its functions under the NSW workers compensation legislation.¹³⁹ These include:
- a. to promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces;
 - b. to promote the prompt, efficient and effective management of injuries to persons at work;
 - c. to ensure the efficient operation of workers compensation insurance arrangements;
 - d. to ensure the timely and effective resolution of disputes arising under the workers compensation legislation; and
 - e. to ensure the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation relates.
24. Further comment on these statutory objectives is contained in icare's submission in response to Term of Reference 2(c).

Delivery on policy objectives

Policy Objective 1: Supporting injured workers to recover and return to work

25. The *Workers Compensation Amendment Act 2015* introduced a number of initiatives to promote injured workers' recovery and return to work after a workplace injury. These included:
- a. introducing a minimum safety net weekly payment for the most seriously injured workers (with over 30 per cent permanent impairment);
 - b. recognising the extent of injury and impairment of workers with more than 30 per cent impairment by terming them "*workers with highest needs*";
 - c. recognising the extent of injury and impairment of workers with more than 20 per cent impairment by terming them "*workers with high needs*";
 - d. providing for a fairer system for review of work capacity decisions, allowing workers to continue receiving weekly payments while their work capacity decision is under review;
 - e. extending medical benefits for life for workers with high needs and highest needs (those above 20 per cent impairment);
 - f. extending medical benefits for all workers, regardless of their level of permanent impairment, for two years from the date of claim or the date of last payment of weekly benefit, or for five years for workers with more than 10 per cent impairment;

¹³⁸Workers Compensation Amendment Act 2015 Second Reading Speech
<https://www.parliament.nsw.gov.au/bill/files/292/2R%20Workers%20Compensation%20and%20cognate.pdf>

¹³⁹Section 22 of the 1998 Act

- g. removing time limits on access to artificial aids and members, making compensation accessible for life;
 - h. return to work assistance and re-training payments were introduced, aimed at encouraging and supporting injured workers to return to work; and
 - i. increasing entitlements to lump sum payments.
26. In giving effect to the overarching policy objective to support injured workers in their recovery and return to work, icare has worked over the last five years to ensure the appropriate and consistent delivery of entitlements to injured workers as prescribed by the legislation.
27. As outlined in icare's response to Term of Reference 1(a), icare has introduced several changes to the NSW workers compensation system to help support injured workers. These have included:
- a. a new claims service model, introduced to the Nominal Insurer scheme in January 2018, that was intended to make the claims process simpler, more transparent and more effective, and to deliver fairer and more consistent outcomes to injured workers. The model recognises the need for fast, efficient service for most claims, while also ensuring that claims at risk of prolonged time loss, or with more complex circumstances, receive the support they need. Significant improvements were made to the claims service model during 2019 and following the publication of Janet's Dore's report on the Nominal Insurer of the NSW workers compensation scheme (**Dore Review report**) in December 2019;
 - b. in 2018, icare sought to update the TMF workers compensation scheme model. Over an 18-month period, icare ran diagnostics with NSW Government agencies, including conducting interviews, workshops and validation sessions. Showcases were presented and NSW Government agencies were invited to survey and provide feedback on the proposed model. The new claims service model was developed collaboratively and was rolled out to TMF claims management providers in January 2020;
 - c. both the Nominal Insurer and TMF new claims service models enable injured workers and employers to easily lodge workers compensation claims and otherwise access services under the schemes;
 - d. icare has continued to focus on improving customer service outcomes for both injured workers and employers using the claims service model across both the Nominal Insurer and TMF schemes. Additional information is provided in icare's submission in response to Terms of Reference 1(a) and 1(b);
 - e. icare engaged Righthandturn Pty Ltd in October 2019 as a Customer Advocate to meet with stakeholders in the Nominal Insurer scheme and customers that provided written submissions to the Dore Review, in order to gain further insights on their experience as a customer interacting with icare and identify opportunities for icare to enhance its customer service delivery. The Customer Advocate issued a report on 18 December 2019 with a number of recommendations that icare has since acted on;¹⁴⁰ and
 - f. an initial review of the Nominal Insurer's Decision Rights Framework was undertaken in July 2019, following which the framework was simplified. A further, more comprehensive review is currently underway, including addressing reporting requirements by claims management providers and devolving accountability for pre-litigation referrals and WPI assessments back to claims service providers. The purpose of this ongoing review is to ensure clarity and accountability in respect of decision-making, which ultimately will assist in the management of claims.

¹⁴⁰More detail is provided in icare's submissions in response to Term of Reference 1(a)

28. icare has also developed a number of programs and tools to assist case managers and providers in their support of injured workers' claims and return to work in both the Nominal Insurer and TMF schemes. These include:
- a. **Work Capacity Handbook**
 - iv. This handbook has provided case managers with guidance in best practice case management, including both the claims management practices leading up to a decision and the work capacity decision itself.
 - v. Previously, work capacity decisions had generally been interpreted by the scheme as being an alternate to liability decisions, i.e. an avenue for a worker's claim to be discontinued.
 - vi. The handbook seeks to educate case managers on the appropriate application of work capacity decisions, highlighting that these decisions are made several times over the lifetime of a claim and are decisions to confirm a worker's current work capacity and ability to earn in suitable employment and/or PIAWE, not a tool for the cessation of weekly payments in relation to the liability of a claim.
 - vii. The handbook encourages case managers to look at the claim and the worker's situation holistically and ensures that case managers understand that a work capacity decision is simply the by-product of good case management and effective return to work planning, with the ultimate and primary goal always being a recovery at work.
 - viii. A key focus of the handbook is procedural fairness, empowering case managers to have open and transparent conversations with workers about the information that may be used when making a decision and when and why these decisions may be made on their claim. This shift in communication ensures that workers better understand the process, and are informed about the reasoning and impact of a decision even if that decision results in a reduction or cessation of their weekly payments in the future.
 - b. **Workplace Rehabilitation Handbook and Online Tool**
 - i. The Rehabilitation Handbook has encouraged a more cooperative and collaborative approach between claims management providers and rehabilitation providers, so that each are better able to understand the others' roles. Both providers are then able to focus on the worker's return to work.
 - ii. The Rehabilitation Handbook has been a driver for more positive relationships and behaviours between providers, and has helped communicate the changes in claims management that have occurred in the industry over the past few years.
 - iii. Changes have recently been made to the interactive online tool to further improve its content, including further guidance around claims in the early intervention space and the importance of early referrals. This interactive online tool will eventually replace the Rehabilitation Handbook, enabling it to be updated more easily and regularly.
 - c. **Whole Person Impairment (WPI) training program**
 - iv. This program aims to educate providers on WPI and its relevance to claims management, procedures and processes, eligibility and application of assessments, and quality assurance, including data remediation.
 - v. The determination of a worker's degree of permanent impairment is arguably the single most important decision made on a claim, once liability has been accepted. It is imperative that claims management providers support injured workers and other stakeholders in the process, whilst also ensuring compliance with the legislation (even where such compliance results in adverse decisions) and, above all, ensuring due diligence in their approach.

29. icare has also sought to support injured workers as they transition from the workers compensation system in a number of ways, including by virtue of sections 38 and 39 of the 1987 Act. As outlined in icare's response to Term of Reference 1(a), examples of the services provided by icare to support transitioning workers in across both the Nominal Insurer and TMF schemes include:
- a. commencing plans in November 2015 for a transition program in consultation with claims management provider representatives. As a result, icare developed the Workers Assistance Program, including a training program for all claims management provider staff, to assist with the transition;
 - b. creating a Community Support Service through a partnership with St Vincent de Paul Society, Uniting and Interact People Solutions to help people link in with the community and transition to the other services available. The model focuses on:
 - i. connecting workers to both local and federal government services while coaching and building motivation and resilience;
 - ii. increasing social participation, independence and return to health; and
 - iii. supporting workers to achieve a range of goals and helping them to access education and return to employment.

Uptake of the service far exceeded icare's expectations and it received positive feedback from workers with a broad range of success stories, encouraging icare to continue offering this service through a partnership with Uniting;
 - c. working with Centrelink to ensure people can use their workers compensation exit letters to commence their Centrelink applications, avoiding delays in accessing payments;
 - d. openly communicating with injured workers via proactive phone calls, tailored letters, information packs supplied to their doctors and a digital video to help them understand the changes under section 39 of the 1987 Act;
 - e. working closely with service providers to ensure they act with transparency and adeptness to enable a smooth transition for affected workers; and
 - f. re-engaging with all claims management providers to outline expectations for supporting workers subject to the limitations of section 38 of the 1987 Act, and seeking to ensure that all workers with highest needs are supported with recovery strategies and entitlements are paid in a timely manner.
30. In creating the Workers Assistance Program, icare's objectives were to ensure that:
- a. workers were provided all reasonable opportunities to gain employment;
 - b. there was consistent service delivery across all scheme agents;
 - c. the customer experience was positive;
 - d. the number of complaints were minimised; and
 - e. additional harm to injured workers would be prevented.

31. To support those transitioning workers, icare developed:
- consistent case management practices, including notification to customers and contact protocols;
 - alternative service models, including the Community Support Service and the Advisory Assistance Service to help workers with additional advice on their questions;
 - standardised letters;
 - timeline cards and additional communication tools; and
 - checklists, including “*questions to ask my doctor*” and a toolkit for accessing free and low-cost services.
32. In May and June 2020, icare worked closely with EML and GIO to proactively identify claims in the Nominal Insurer portfolio where the claimant had been absent from work for between 130 and 200 weeks’ but had some capacity for work. The purpose of the review was to ensure that all aspects of section 38 of the 1987 Act had been addressed and the necessary support had been provided to the worker. Additional strategies for the case manager to implement on specific claim files were also identified to help support the injured worker. icare’s data analysis identified approximately 450 claims that met the review criteria, and additional support has been provided to those injured workers.
33. icare has also required claims management providers in the Nominal Insurer scheme to provide reporting on claims within this cohort in order to more closely monitor the support being provided, as well as requiring provider reporting on progress made by providers on supporting injured workers’ work capacity and opportunities for return to work.
34. While icare has endeavoured to always support injured workers to recover and return to work, within legislative boundaries, there have been a range of factors that have driven a general decline in return to work (RTW) across all workers compensation schemes in NSW. This being said:
- the 12-month RTW rate for the Nominal Insurer scheme has steadily improved from a low point in July 2019 (until a recent deterioration relating to COVID-19);
 - as at July 2020, RTW performance for the Nominal Insurer scheme at 26 weeks was 82.4 per cent. As at September 2020, RTW rates for the Nominal Insurer scheme are now above self-insurer RTW rates and comparable to specialised insurer RTW rates;
 - as at July 2020, RTW performance for the TMF scheme at 26 weeks was 86.91 per cent. As at September 2020, RTW rates in the TMF scheme remain higher than self and specialised insurers; and
 - the system average¹⁴¹ as at July 2020 was 77.94 per cent.
35. In early 2019, icare introduced an information technology platform to the Nominal Insurer scheme to enable the use of a centralised claims system, intended ultimately to be used by all claims management providers for both the Nominal Insurer and TMF. Since commencing lodging new claims on this system, the transparency and control enabled by the centralised claims system has been a significant contributor to recent improvements in RTW performance through enabling icare to provide more targeted support and direction to injured workers.
36. More recently, icare, working with EML, has introduced a number of performance remediation measures and stronger operational controls to help improve the delivery of claims services by EML in the Nominal Insurer scheme (as detailed in icare’s response to Term of Reference 1(a)). This has included delivering training to claims staff to help lift capability and embedding operational and governance structures focusing on key performance indicators (for example, compliance, work capacity decisions and RTW metrics).

¹⁴¹System average includes all schemes, namely the Nominal Insurer, self-insurers, specialised insurers and government self-insurers (Source: SIRA TMF data books provided by SIRA to icare)

37. A number of changes to EML's remuneration and incentives structure will help drive improved performance across the Nominal Insurer scheme. This, in turn, will positively impact upon the quality of service and support provided to injured workers in the scheme.
38. icare continues to focus on rehabilitation, recovery and returning injured workers to work as one of the primary objectives of the workers compensation legislation. The transitional period since 2012 – encompassing a significant upheaval to legislative benefits as well as a major structural overhaul to the workers compensation system – has been challenging, and, as with any new organisation, icare has encountered impediments.
39. icare will continue to give effect to this policy objective in line with the legislative intent, while ensuring the financial sustainability of the workers compensation schemes in NSW is maintained.

Policy Objective 2: Providing proper assistance to workers with the highest needs

40. In order to meet the policy objective of providing proper assistance to workers with the highest needs, icare established the Workers Care Program. In addition to ensuring that workers with the highest needs receive the benefits they are entitled to under the legislation, the Workers Care Program was designed to ensure that all such workers are provided with the support they need to achieve the best possible medical outcome and return to independence. The feedback that icare has received from such workers since the launch of the program demonstrates that it has proven effective in achieving this goal.

Background

41. As provided above, the Workers Compensation Amendment Act 2015 introduced the concepts of “workers with high needs” and “workers with highest needs”. Section 32A of the 1987 Act defines these as workers whose degree of permanent impairment has been assessed to be more than 20 per cent and 30 per cent respectively, or that the insurer is satisfied that the degree of permanent impairment is likely to be more than 20 per cent or 30 per cent respectively.¹⁴² Previously, such workers were defined as “seriously injured”.¹⁴³ The shift in terminology (and benefits) in 2015 recognised that these workers, in particular, required greater support and assistance in their recovery and return to work.
42. Prior to icare's inception, the claims of “seriously injured” workers were managed by the Nominal Insurer's scheme agents. Although they were managed by specialist or complex case management teams, their spread across the Nominal Insurer's numerous scheme agents meant they were subject to inconsistent case management practices and limited opportunities to leverage expertise, resulting in varied personal and medical outcomes.

Overview of the Workers Care Program

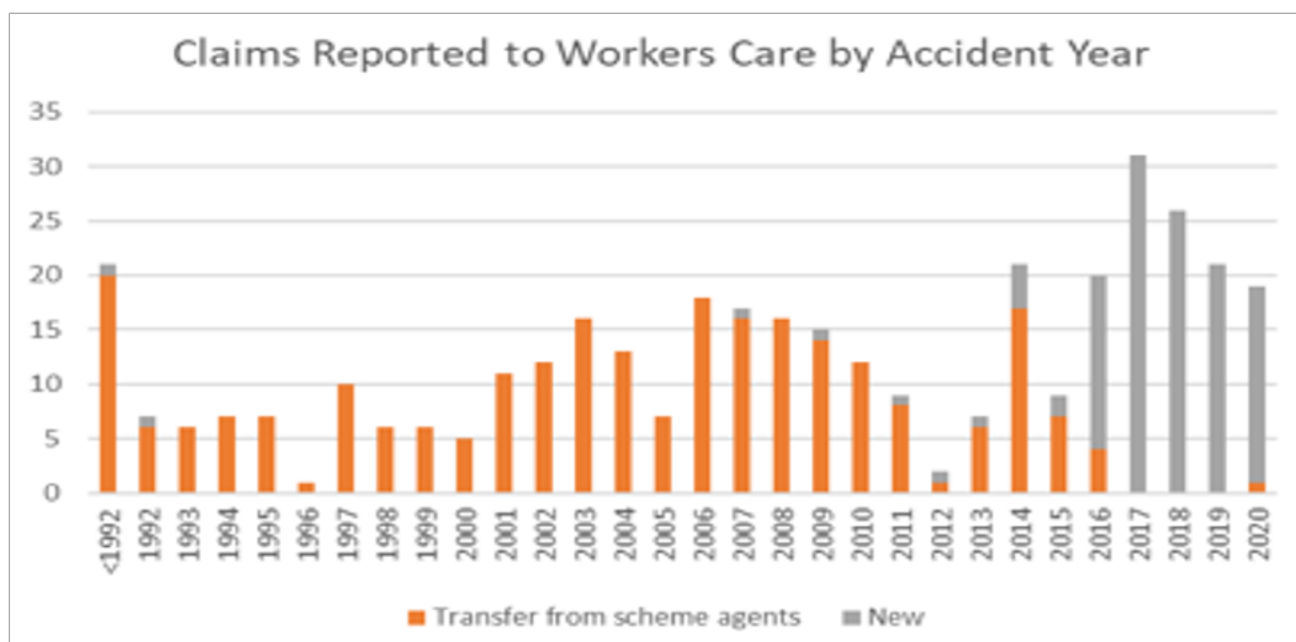
43. Prior to the establishment of icare, work had already commenced to design and develop a best practice framework for severely injured workers (those workers with over 30 per cent whole person impairment, or **WPI**). This work resulted in the establishment of icare's Workers Care Program in 2016, which adopted an operating model similar to the Lifetime Care and Support Authority model and applied it to workers who met the injury criteria for the Lifetime Care and Support Scheme.

¹⁴²Section 32A of the 1987 Act also provides that if an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, then the worker is considered a worker of highest needs.

¹⁴³Section 32A of the 1987 Act (prior to amendments pursuant to Workers Compensation Amendment Act 2015)

44. The Workers Care program was established by icare to assist injured workers who meet Care's severe injury criteria, which includes severe brain injuries, spinal cord injuries, burns (>40 per cent full thickness), blindness (total) and amputations (bilateral or very high unilateral).
45. Initially post-injury, workers with severe injuries are managed on behalf of the Nominal Insurer by a claims management provider in the Specialised, Medically Complex, portfolio.
46. On confirmation that a worker's injury meets the severe injury criteria, the claim is transitioned to the Workers Care Program for management of their treatment, rehabilitation and care. The claims management provider continues to manage weekly benefit payments and the legal aspects of the claim, including whole person impairment, common law claims and commutations. Figure 1 below sets out the numbers of injured workers who have transitioned into the Workers Care Program, by accident year.

Figure 1: Claims reported to Workers Care by accident year (1992 - 2020)

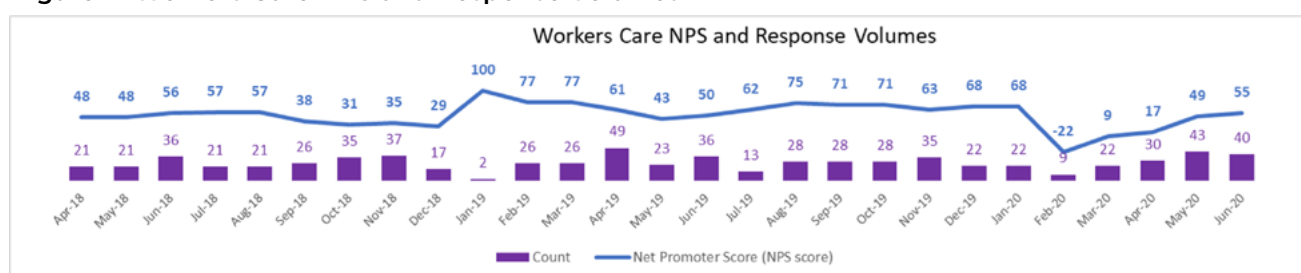


47. The purpose of the new model was to achieve better quality of life outcomes, improved consistency in service delivery, clearer management approaches aligned to expectations and best practice in case management for workers. By centralising the management of these claims, workers receive targeted and specialist case management with the care and support they need to achieve the best possible medical outcome and return to independence.
48. Additionally, benefits were also anticipated for icare, providers and the workers compensation scheme more generally, including more efficient use of resources and capabilities, better collaboration with the medical and allied health sector, and more useful and prescriptive guidelines for service providers, particularly attendant care.
49. This model puts severely injured workers at the centre of all planning and decision-making about the services they receive and begins as soon as possible after their injury. The focus of the model is on helping people with severe injuries achieve their goals at home, work and in their community, by using specialised service providers who understand the needs of severely injured people.

Delivery on policy objective

50. In 2017, icare commissioned surveys to be conducted with workers who had transferred into the Workers Care Program.
51. Qualitative research conducted by MODD Research & Evaluation Pty Ltd (**MODD**) found that, overall, the transition to icare for transferred workers was received very positively when compared to their previous experience with scheme agents.
52. The results showed that, through the Workers Care Program, the workers had formed more supportive relationships and had improved access to, or experienced improvements in the quality of, services, equipment and home modifications. For some, there had been a significant positive change in their lives.
53. A subsequent quantitative survey conducted by MODD found:
 - a. 89 per cent of workers surveyed were satisfied with how the Workers Care Program met their needs, and 22 per cent were “extremely satisfied”;
 - b. the main reasons a minority (9 per cent) expressed dissatisfaction with the program were communication, the adequacy or sufficiency of service providers and delays associated with the approvals process;
 - c. approximately nine in ten respondents reported they were satisfied with six services tested, including case management, attendant care, and physiotherapy. The level of satisfaction with two common service providers was particularly high: 95 per cent were satisfied with case managers/management and 98 per cent were satisfied with their physiotherapy service; and
 - d. 89 per cent agreed with the statement, “*I have enough say about the services and equipment I receive*”, while 93 per cent were satisfied with the time to access services and 80 per cent satisfied with the time to access equipment.
54. As evidenced by NPS results and qualitative feedback, icare has largely been successful in supporting the State’s most vulnerable injured workers and ensuring their needs are met in a compassionate and supportive environment. Work on this policy objective will always remain ongoing. Figure 3 below sets out the Workers Care NPS and response volumes.

Figure 2: Workers Care NPS and Response Volumes¹⁴⁴



Policy Objective 3: Ensuring changes to benefits will not compromise the financial sustainability of scheme

55. Notwithstanding icare’s commitment to supporting injured workers and ensuring they are provided with the benefits they are entitled to receive under the legislation, icare has been vigilant about doing this in a way that does not compromise the financial sustainability of the scheme. This is addressed further in icare’s submissions in response to Term of Reference 2(b).

¹⁴⁴The dip in February 2020 has been attributed to the low response rate

TERMS OF REFERENCE 2(b): FINANCIAL SUSTAINABILITY OF THE NOMINAL INSURER AND TREASURY MANAGED FUND WORKERS COMPENSATION SCHEMES

Summary

1. The Workers Compensation Insurance Fund (the **WCIF**), which is administered by the Workers Compensation Nominal Insurer (**Nominal Insurer**), has been and continues to be in a sustainable financial position. The WCIF has experienced challenges in recent years, due to external factors such as:
 - a. legislative and regulatory factors outside the Nominal Insurer's control;
 - b. external economic factors, such as the impacts of the extreme 2019-2020 bushfire season and the COVID-19 pandemic;
 - c. rising medical costs; and
 - d. increases in psychological injuries.
2. Notwithstanding the above challenges, which have each contributed to the Nominal Insurer's financial performance in recent years, the financial position of the Nominal Insurer remains at a level where it can meet its financial obligations as they fall due. As a long tail scheme, the Nominal Insurer's finances are managed with a plan to return the funding ratio to target levels over the coming six years.
3. Similarly, the workers compensation component of the Treasury Managed Fund (**TMF**) scheme (and the scheme as a whole) has been and continues to be in a sustainable financial position. While the TMF has also been impacted by many of the external factors impacting the Nominal Insurer as well as atypical general liabilities losses, the funding ratio for the TMF remains at a level where it can meet its liabilities. Further, if necessary, it is able to meet the liabilities of Government agencies by virtue of contributions to the TMF from consolidated revenue as part of the annual finalisation of the State accounts. The State will always cover its own liabilities.
4. Due to the fundamentally different nature of the WCIF and workers compensation component of the TMF scheme, each have been addressed separately below.

The Nominal Insurer

Overview of the financial characteristics of the WCIF

5. The Nominal Insurer is responsible for managing the operation of the WCIF.¹⁴⁵ The assets of the WCIF may be invested in such manner as the Nominal Insurer thinks fit, subject to the investment strategies determined by icare under the SICG Act.¹⁴⁶ The assets of the WCIF are subject to a statutory trust and are held on trust to be applied only for the purposes set out in the 1987 Act for the benefit of workers and employers.¹⁴⁷
6. A key indicator to determine the performance, and more broadly the sustainability, of the WCIF is the ratio between the assets owned and the WCIF's future liabilities (the **funding ratio**). The WCIF's funding ratio is set by icare's Board in its Capital Management Policy for the WCIF, which is reviewed and approved annually by the Board.
7. Excluding any risk margin, the liabilities for the Nominal Insurer are \$16.6 billion as at 30 June 2020. This is the best estimate, without bias, of all claims liabilities to be met and is matched by the assets of the organisation.
8. Given that liabilities need to be met by sufficient assets for years into the future, which has an inherent

¹⁴⁵Section 154D of the 1987 Act

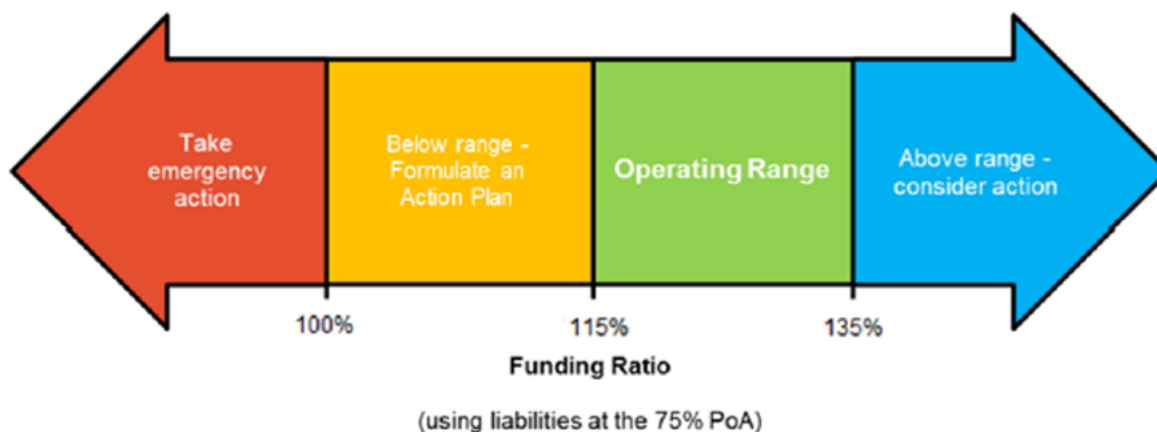
¹⁴⁶Section 154D(3) of the 1987 Act; section 12(4)(a) of the SICG Act

¹⁴⁷Sections 154D(2) and 154E of the 1987 Act

risk for uncertainty, the Nominal Insurer holds an additional amount of liability margin, called the risk margin, of \$1.9bn at the 75 per cent Probability of Adequacy (**POA**). This additional amount is matched by holding more assets which increases the probability that the WCIF can meet its obligations in the face of uncertainty based on actuarial modelling of future fund projections.

9. The POA is a statistical measurement of the level of confidence that the outstanding claims liability will be sufficient to meet claims as and when they fall due as. The target POA is 75 per cent. At 75 per cent POA, there is a 75 per cent level of confidence that the reserves will be sufficient to meet claims in the long-term future if the reserves were invested in a matching Australian Federal Government Bonds portfolio.
10. The target range for the WCIF funding ratio is between 115 per cent to 135 per cent at 75 per cent POA. This target range was determined using the Australian Prudential Regulation Authority's Prudential Capital Requirement as a benchmark for the low end (the "floor") of the range.
11. In addition, dynamic financial modelling was performed, where hundreds of thousands of simulations played out the uncertainties in both the liabilities and assets. The upper range of the operating range represents the area where, if the Nominal Insurer were to enter run-off (and stop writing new policies), it would have only a 1 in 200-year chance of not being able to meet all its financial obligations.
12. This range is represented green in the figure below.

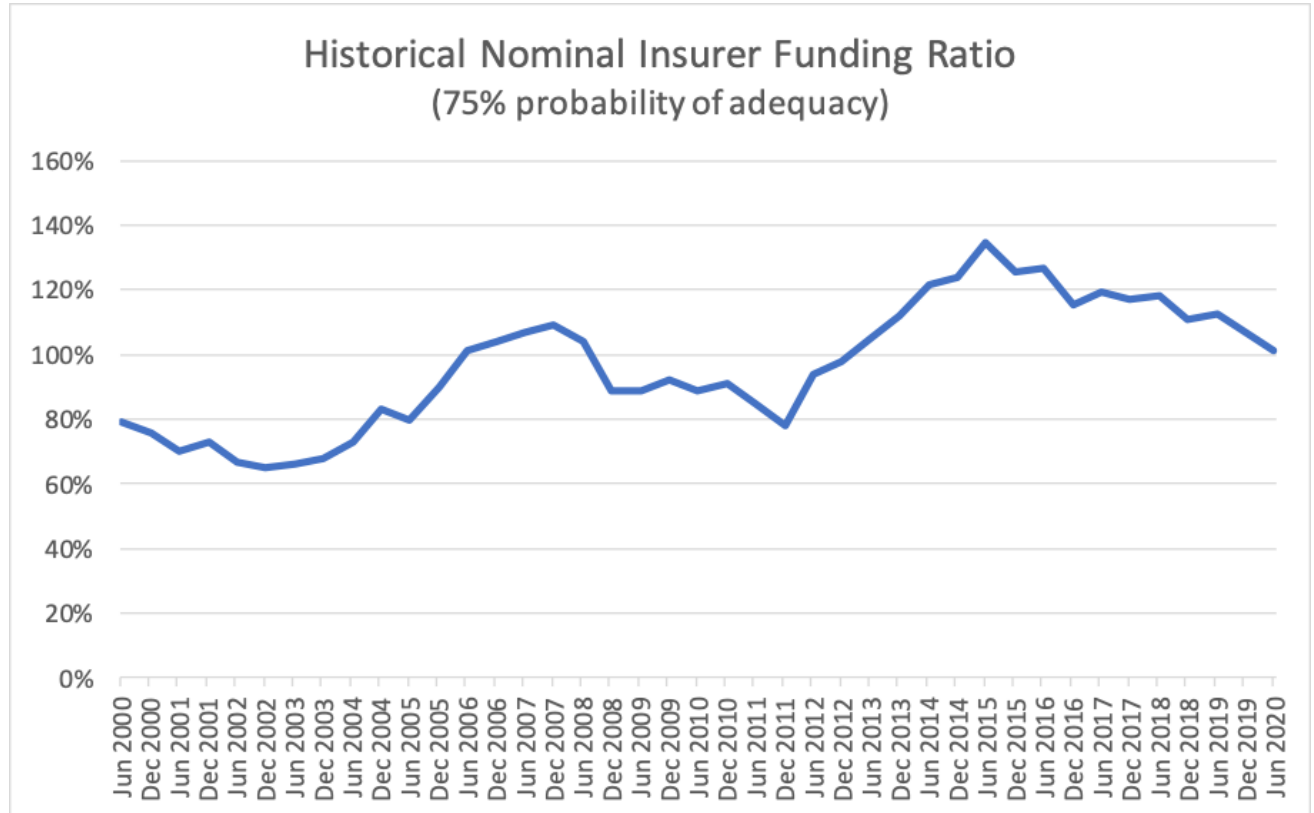
Figure 1: Target funding ratios



13. The chart below illustrates the funding ratio for the WCIF

since 2000 at a 75 per cent POA. Historically, the funding ratio prior to 2012 was below 100 per cent. Legislative amendments enacted in 2012, combined with favourable investment income over 2012 to 2015, saw the funding ratio improve to 139 per cent at 30 June 2015.

Figure 2: Funding ratios over the past 5 years since icare established (June 2015 – June 2020)



14. In June 2012, a number of legislative amendments were introduced in the NSW workers compensation system. Consequential upon these changes, and the increased uncertainty caused by the amendments, a decision was made to adjust the funding ratio's POA for WCIF from 75 per cent POA to a more prudent 80 per cent POA.
15. In June 2020, icare reduced its measure of the WCIF's funding ratio to 75 per cent POA. A decision was made to reduce the funding ratio's POA as:
 - a. legislative amendments in 2015 (which repealed and wound back amendments introduced in 2012) meant that icare could adopt a less prudent approach;
 - b. 75 per cent POA is the standard measure used across Australia;¹⁴⁸
 - c. adopting a measurement of 75 per cent POA increases icare's ability to compare the WCIF's performance against other financial reports, noting:
 - iv. the State Insurance Regulatory Authority (**SIRA**) reports the results for the WCIF at 75 per cent POA; and
 - v. personal injury schemes in other Australian jurisdictions publish financial results at 75 per cent POA.

¹⁴⁸In accordance with accounting standards (AASB 110) and auditing standards (ASA 570)

16. The Nominal Insurer is funded through premiums collected from the employers of NSW, and there is no profit margin incorporated into its pricing of those premiums. As the Nominal Insurer operates on a 'break-even' basis, any increases in benefits paid to injured workers will ultimately need to be offset by either increases in premiums, reductions in operating expenses, higher investment income or a reduction in the funding ratio.
17. The most impactful and controllable lever to offset against additional scheme costs is increasing premiums. Importantly, if additional scheme benefits are introduced and apply retrospectively, the price of future premiums must be raised above the present break-even premium rate to meet the costs of those additional benefits, in circumstances where the costs of the amendments were not factored in the premium charged at the time the policies were issued.

Issues relevant to the WCIF's financial sustainability

Overview

18. The financial sustainability of the WCIF is related to, but distinct from, the operational and financial performance of the scheme.
19. Janet's Dore's report on the Nominal Insurer of the NSW workers compensation scheme published in December 2019 (**Dore Review report**), and icare's response to the Dore Review report, focused on financial performance as a subset of operational performance of the Nominal Insurer. icare's submissions in response to Terms of Reference 1(a) and 1(b) similarly focus on the operational and financial performance of the WCIF.
20. The financial sustainability of the Nominal Insurer concerns the sustainability of the Nominal Insurer scheme over the medium to long-term, rather than the scheme's financial performance in past years.
21. For example, a scheme may experience poor financial performance over a number of years but may remain financially sustainable in the medium to long-term. Assessing the financial sustainability of these schemes involves considering the regulatory landscape of each scheme and the levers available to address or mitigate external economic or other factors that might cause poor financial performance over a single year.
22. Both the Nominal Insurer and the workers compensation component of the TMF are long-tail schemes (claims may be latent and take many years to develop and be reported), meaning that longer term strategies can be employed to ensure ongoing financial sustainability.
23. Valuations of future liabilities and POA are undertaken every six months, and audited annually. The financial position and sustainability of the WCIF is then assessed and adjustments may be made through the levers discussed below to ensure, as far as possible, that funding remains at sustainable levels.
24. As noted above, the financial sustainability of the WCIF has been impacted by the following factors:
 - a. legislative and regulatory factors outside icare's control;
 - b. external economic factors, such as the impacts of the extreme 2019-2020 bushfire season and the COVID-19 pandemic;
 - c. rising medical costs; and
 - d. increases in psychological injuries.

Legislative and regulatory factors

25. There are four legislative and regulatory factors that have impacted the WCIF's financial sustainability:
- a. the winding back of legislative amendments to the 1987 Act in 2015;
 - b. regulatory matters affecting medical costs;
 - c. legislative matters affecting medical costs; and
 - d. the levers available to the Nominal Insurer to offset any poor financial performance compared to private organisations.

Winding back of legislative amendments

26. Prior to 2012, the funding ratio for the WCIF was below 100 per cent. New limitations to workers compensation entitlements were introduced by amendments to the 1987 Act in 2012 (the **2012 Amendments**), specifically the introduction of a five-year (260 week) cap on weekly payments for injured workers with an assessed level of whole person impairment (**WPI**) of 20 per cent or less.¹⁴⁹ Combined with favourable investment income over 2012 to 2015, the 2012 Amendments saw the funding ratio improve to 139 per cent at 30 June 2015.
27. Amendments to the 1987 Act in 2015 (**2015 Amendments**) partially unwound the limitations to compensation entitlements introduced by the 2012 Amendments. Together with the recasting of the extent of savings from the 2012 Amendments as a result of using new, more robust data, the 2015 Amendments unfavourably impacted the financial performance of the WCIF by \$2.4 billion or 21 per cent funding ratio.

Regulatory matters affecting medical costs

28. Pursuant to the 1987 Act, SIRA is responsible for setting the maximum fees applicable for medical or related treatment.¹⁵⁰
29. Fees paid for medical treatments across the NSW workers compensation system are extremely high when compared with other Australian workers compensation jurisdictions, or with costs for NSW patients outside the system.¹⁵¹

¹⁴⁹Section 39 of the 1987 Act

¹⁵⁰See section 61. See also sections 62, 63, 63A, and 64 in relation to other fees which are set SIRA.

¹⁵¹*Healthcare in Personal Injury Schemes*, Report for SIRA, Workers Compensation scheme; Ernst & Young; 24 July 2019

30. For example, the 2018/2019 financial year rates applicable in each jurisdiction have been applied to a number of procedures in Table 1 below, and clearly show scheduled fees in NSW are much higher than in other Australian jurisdictions:¹⁵²

Table 1: Comparison of scheduled medical fees across jurisdictions

	NSW	QLD	Victoria	Comcare	MBS ¹⁵³	AMA ¹⁵⁴	Codes
Spinal Fusion	\$20379.4	\$9281.25	\$7319.55	\$9281.25	\$2421.25	\$9281.25	MZ741 MZ731 MZ761 MZ751 MZ820
Disc Replacement	\$8400	\$5600	\$4100.3	\$5600	\$1822.35	\$5600	MZ830
Knee Reconstruction / Repair	\$4290	\$2860	\$2474.56	\$2860	\$956.5	\$2860	MW145
Shoulder Reconstruction /Repair	\$4290	\$2860	\$2474.56	\$2860	\$956.5	\$2860	MT800
Knee Arthroscopy + Meniscectomy	\$2790	\$1860	\$1450.2	\$1860	\$551.6	\$1860	MW215

31. These high costs can be addressed through regulatory amendment to fee schedules applicable to the NSW workers compensation system.

Legislative matters affecting medical costs

32. In most Australian workers' compensation jurisdictions, the test for determining whether treatment or services are appropriate is based on the concept of that treatment being "*reasonable and necessary*".¹⁵⁵
33. The 1987 Act diverges from this test, and uses the "*reasonably necessary*" test.¹⁵⁶ The test in the 1987 Act differs from similar personal injury schemes in NSW,¹⁵⁷ as well as Commonwealth schemes like the National Disability Insurance Scheme (**NDIS**), which apply a "*reasonable and necessary*" test.
34. Although the difference in wording in the 1987 Act may appear innocuous, it has had profound and potentially unforeseen consequences for claimants by creating incentives for medical and allied health service providers around fee-for-services, rather than encouraging the system to take a holistic view of a person's ability to 'function and recover'.
35. The "*reasonably necessary*" test applied by the 1987 Act allows all manner of treatment to be approved, including those considered as being of low value or potentially harmful. This has contributed to the steadily increasing medical spend, and persistent non-improvement in patient outcomes, over the years.

¹⁵²Note that these figures are for the primary procedure only, and do not include fees for associated services such as hospital and anaesthesia

¹⁵³Medicare Benefits Scheme

¹⁵⁴Australian Medical Association

¹⁵⁵See e.g. *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic); *Workers' Compensation and Rehabilitation Act 2003* (Qld); *Workers' Compensation and Injury Management Act 1981* (WA); *Return to Work Act 2014* (SA); *Workers Rehabilitation and Compensation Act 1988* (Tas); *Return to Work Act* (NT); *Workers' Compensation Act 1951* (ACT); *Safety, Rehabilitation and Compensation Act 1988* (Cth)

¹⁵⁶Sections 60(1). See also sections 59, 60A, 60AA, 61, 62 and 63 of the 1987 Act

¹⁵⁷See e.g. the *Motor Accidents Injuries Act 2017*; *Motor Accident (Lifetime Care and Support) Act 2006*

36. A review of case law relating to “*reasonably necessary*” treatment supports this. It is well-established that the “*reasonable and necessary*” test is more demanding than the “*reasonably necessary*” test.¹⁵⁸ In *State Super SAS Trustee Corp Ltd v Perrin*,¹⁵⁹ the Court of Appeal held that the “*reasonably necessary*” standard did not require absolute necessity for surgery proposed. The adverb “*reasonably*” modified the strictness of what was “*necessary*”.
37. One example which demonstrates the implications of the “*reasonably necessary*” test is the number of spinal fusions being approved and undertaken within the workers compensation system for back injuries, despite the evidence suggesting this is not best practice.¹⁶⁰ In some cases, spinal fusion may even result in permanent reduction of function, which may limit future work ability.
38. The current system therefore provides a financial incentive for providers to recommend surgery, rather than consider conservative treatment options that may lead to better health outcomes in the long-term.
39. The Workers Compensation Guidelines (October 2019),¹⁶¹ which expanded the list of pre-approved medical treatments, has relaxed the “*reasonably necessary*” test even further, as workers are able to access services and incidental expenses with limited scope for denial under the legislation.
40. These changes have a direct impact on the increase in medical expenditure. As an example, if every claim managed by the Nominal Insurer used the allowable \$110 per claim for reasonable incidental expenses (such as strapping tape, TheraBand, exercise putty, disposable electrodes and walking sticks), this would add an additional \$6.6 million to annual medical expenditure (based on 60,000 claims per year). If applied across all NSW workers compensation claims, this figure alone would exceed \$10 million.
41. In “A Best Practice Workers Compensation Scheme”¹⁶² paper published in May 2015, the Insurance Council of Australia submitted that:

“A best practice scheme will provide medical and other treatment that is ‘reasonable and necessary’, with payments made as costs are incurred. This definition has established jurisprudence. Treatments will include doctor visits, physiotherapy, surgery, other hospital, pharmaceuticals, prostheses, occupational therapy, vocational rehabilitation and associated travel.”
42. icare has, to date, endeavoured to address internal levers and leakages to help retain the increasing medical spend. However, as has been submitted in the past,¹⁶³ icare is an advocate for the ‘best practice’ scheme as identified by the Insurance Council of Australia and considers legislative change necessary in order to further address the rising costs .

¹⁵⁸ *Diab v NRMA Ltd* [2014] NSWWCPCD 72, *Watson’s Culcairn Hotel Pty Ltd v Dwyer* [2016] NSWWCPCD 5

¹⁵⁹ *State Super SAS Trustee Corporation Ltd v Perrin* [2016] NSWCA 232

¹⁶⁰ Choosing Wisely Australia; Faculty of Pain Medicine, ANZCA: tests, treatments and procedures clinicians and consumers should question; 13 February 2018; <http://www.choosingwisely.org.au/recommendations/fpm>

¹⁶¹ *Workers Compensation Guidelines, Requirements for insurers, workers employers and other stakeholders*; State Insurance Regulatory Authority, October 2019; Table 4.1; <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/guidelines/workers-compensation-guidelines>

¹⁶² *A Best Practice Workers Compensation Scheme*; Insurance Council of Australia published in May 2015 [https://www.insurancecouncil.com.au/assets/report/Mayper cent202015per cent20per cent20aper cent20Bestper cent20Practiceper cent20Workersper cent20Compensationper cent20Scheme.pdf](https://www.insurancecouncil.com.au/assets/report/Mayper%202015per%20per%20aper%20Bestper%20Practiceper%20Workersper%20Compensationper%20Scheme.pdf)

¹⁶³ icare submission to SIRA on ‘Regulatory requirements for health care arrangements in the NSW workers compensation and CTP schemes’ <https://www.icare.nsw.gov.au/news-and-stories/icare-makes-submission-to-sira-healthcare-regulation-consultation#gref>

Levers available to the Nominal Insurer

43. The levers available to the Nominal Insurer in managing the financial sustainability of the WCIF are:
 - a. setting premium rates;
 - b. managing claims performance;
 - c. managing investment performance; and
 - d. managing operational expenses.
44. Of these levers, only expense management is predominantly within icare's control, with all other levers only being partially influenceable by icare.
45. Out of icare's control are:
 - a. the number of injuries, their nature and severity; and
 - b. external factors such as economic factors of unemployment and underemployment making return to work (**RTW**) difficult, and employee and employer relations that make RTW challenging.
46. Medical costs are also largely outside of icare's control.¹⁶⁴
47. One of the key levers available to the Nominal Insurer to improve financial performance is to increase pricing for premiums payable by employers in NSW.
48. To ensure that responsible and sustainable pricing for premiums is maintained, there are two key policies in place. The first is the pricing framework that is part of the icare Board's Capital Management Policy. This document ensures the responsible management of the WCIF's solvency.
49. The second is the pricing framework in the Pricing Policy. The purpose of this document is to ensure pricing is anchored to the most recent independent scheme valuation conducted by the Nominal Insurer's external actuary.
50. There are two separate and distinct scenarios where a pricing variation may be necessary:
 - a. a price variation may be required to improve the Nominal Insurer's funding ratio, as controlled by the Capital Management Plan.
 - b. a price variation may be required in response to a change in the actuarial valuation of the operational break-even premium rate (**OBEP**); that is, the premium rate required to cover the expected cost of claims and expenses in a given year, after allowing for expected investment returns. The OBEP rate is more closely aligned to the Nominal Insurer's performance than the funding ratio.
51. Under the 1987 Act, SIRA is responsible for approving pricing for workers compensation insurance premiums.¹⁶⁵ The Nominal Insurer files a submission to SIRA concerning premium pricing for the upcoming financial year in December of each year (**premium filing**).
52. SIRA typically responds to the Nominal Insurer premium filing by either rejecting or not rejecting it.

¹⁶⁴See "Management of medical services and costs" from paragraph 70 onwards

¹⁶⁵Sections 168 and 169 of the 1987 Act

53. Since the introduction of the current premium model in the 2015/16 financial year, icare has maintained the same average premium rate despite cost increases due to external factors outside of icare's control, such as legislative changes to compensation entitlements, systemic super-inflated medical costs and the broader economic environment. Figure 3 below sets out the premiums charged between 2006 and 2020, expressed as a percentage of wages insured in that financial year:

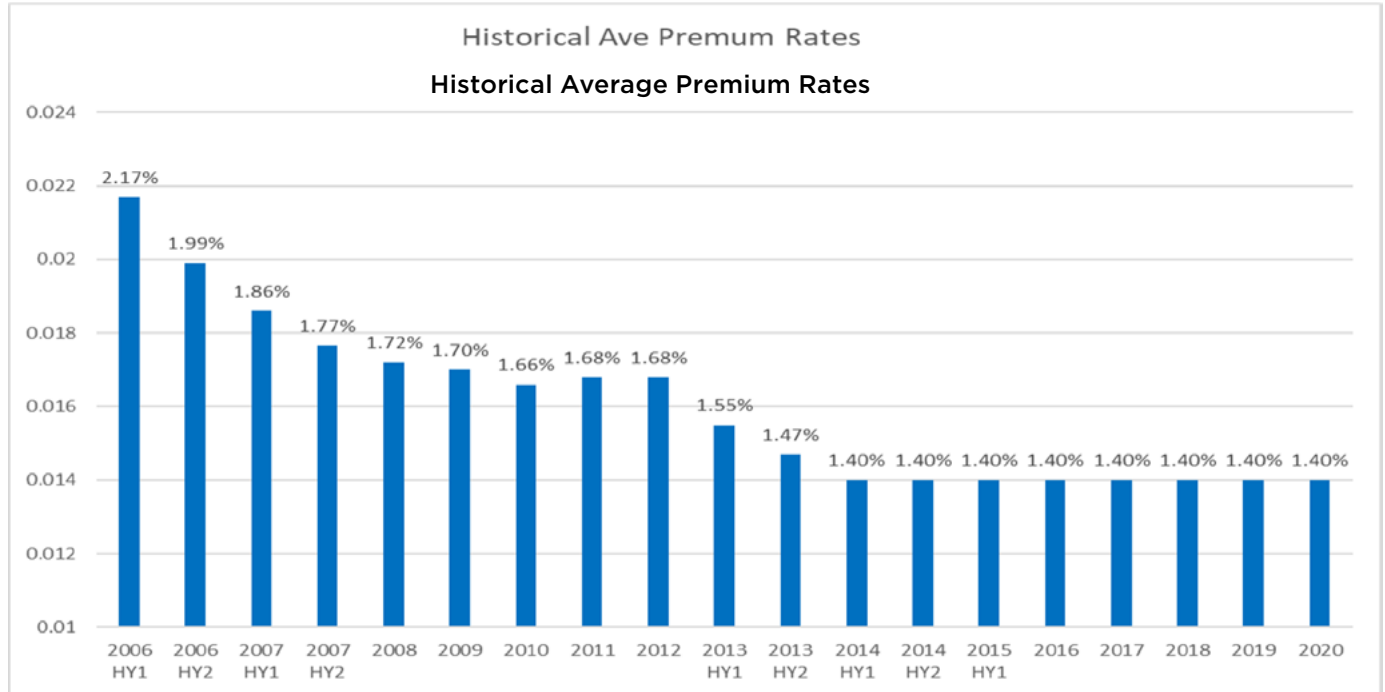


Figure 3: Historical average premium rates for WCIF scheme

54. As set out in icare's submissions in response to Term of Reference 1(c), icare achieved \$190 million in premium reductions for NSW employers in the 2019/20 financial year, with a cumulative total of \$1.586 billion in premium reductions since 2015. icare has achieved premium savings to employers through the Employer Safety Incentive (**ESI**) and Scheme Performance Adjustment (**SPA**), which were introduced at the commencement of the 2015/16 financial year following significant Government changes to the NSW workers compensation premium model.
55. A price increase raising the average premium rate from 1.40 per cent of wages to 1.46 per cent of wages was submitted to SIRA in December 2019. icare recommended the reduction of the ESI from 7.5 per cent to 3.5 per cent. These amendments would have increased the premium collection rate to 1.52 per cent of wages. This increase was in line with the Capital Management Plan as a responsible action to recover the funding ratio position of the Nominal Insurer over a three-year period. This also set the Nominal Insurer premium collection rate above the most recent OBEP rate of 1.50 per cent that was known at the time of filing. Table 2 below provides further detail.

Table 2: Nominal Insurer premium collection rates since 2017/2018

	Latest Valuation OBEP Known when Filing	Target Collection Rate	Variation of known OBEP to Target Set per cent
2017/18	1.30%	1.40%	7.69%
2018/19	1.41%	1.39%	-1.42%
2019/20	1.49%	1.39%	-6.71%
2020/21 Approved Premium Filing	1.50%	1.52%	1.33%
2020/21 On Hold Rates	1.50%	1.40%	-6.67%

56. Under the Market Practice and Premium Guidelines (**MPPG**), SIRA can either reject a price filing or not reject it. SIRA's response to this price filing was to not reject it.
57. In line with the Government policy to support employers during COVID-19, icare deferred the premium filing for the 2020/21 financial year. This policy decision will benefit NSW employers and result in \$300 million lower premiums collected over the 2020/21 financial year (compared to the premium filing). As a result, there is an expected premium shortfall for the 2020/21 financial year, which is estimated to have an unfavourable impact on the funding ratio by 1.8 per cent.
58. icare advised SIRA of the deferral on 19 May 2020 and SIRA confirmed receipt on 29 June 2020. In addition, icare has proactively offered support to employers in a number of ways:
- offering premium payment deferral to assist with the employers' cashflow;
 - putting premiums on hold for businesses closed due to COVID-19; and
 - updating wage declarations to reflect the lowers wages for premium relief to those employers affected by COVID-19.
59. The intention is to resume the deferred premium filing from the 2021/22 financial year onwards.

External economic factors

60. The WCIF's solvency has been affected by multiple factors over the past five years. It is important to note that a large part of the deterioration in solvency (as shown in the net result and funding ratio) is a result of events outside of icare's control.
61. Two key external factors have been:
- sustained low interest rates; and
 - the COVID-19 pandemic.

Low interest rates

62. Economic factors affect the funding ratio. Economic factors since 2015 have resulted in a 5 per cent net (unfavourable) impact across assets and liabilities impacting on funding ratio (\$0.8 billion).
63. Economic assumptions used to discount the future expected claims cashflows (as required by accounting standard AASB1023) have been at historically low levels. These low interest rates have an unfavourable impact on the results of the Nominal Insurer as more funds are required to be provisioned to meet future claims cashflows. This has impacted the Nominal Insurer by \$1.5 billion or 9 per cent funding ratio. This is partially offset by favourable investment income above the pricing assumption of 5 per cent per annum by \$0.7 billion or 4 per cent funding ratio. The net result is unfavourable by \$0.8 billion or 5 per cent funding ratio. In particular:
- Liabilities: As interest rates fall (drop in the yield curve) this means that more funds need to be

put aside on the balance sheet to pay for future claims resulting in an increase in liabilities. The unfavourable impact on liabilities from reducing interest rates over the last five years is 9 per cent funding ratio (\$1.5 billion).

- b. Assets: The hedging strategy for the Nominal Insurer has provided a partial offset on the asset side to the unfavourable yield curve movements impact on the liabilities side. Favourable investment income has improved the funding ratio by 4 per cent (\$0.7 billion). This has been estimated as the outperformance of investments above 5 per cent per annum which is the assumption used for setting the OBEP.

COVID-19

64. The COVID-19 pandemic significantly impacted the Nominal Insurer's financial results in the 2019/20 financial year. The Nominal Insurer experienced an unfavourable total impact of approximately \$1 billion or 6 per cent funding ratio. The impacts of COVID-19 on the Nominal Insurer (as well as other funds, including the TMF) are set out in Table 3 below:

Table 3: Impact of COVID-19 on funds

\$m	NI	IfNSW	LTC	DDC*	HBCF
Net Result incl Covid	(1,873)	(635)	(877)	(190)	(109)
Investments	647 ▼	946 ▼	560 ▼	86 ▼	-
Premium	110 ▼	-	-	-	-
Claims Incurred	260 ▼	339 ▼	(19) ▲	-	126 ▼
Expenses	28 ▼	0 ▼	1 ▼	0 ▼	-
Cash Injection	-	(343) ▲	-	-	-
Net Results excl Covid	(829) ▼	307 ▼	(336) ▼	(103) ▼	18 ▼

65. Key drivers of the net loss of \$1 billion were:
- lower premiums due to lower wages (this was largely offset by lower claims);
 - higher unemployment outlook expected to impact RTW results;
 - the need to include an additional risk margin due to uncertainty and investment market volatility; and
 - increased bad and doubtful debts as a result of COVID-19 provisioning.
66. The net result and funding ratio for the Nominal Insurer as at 30 June 2020 normalised for COVID-19 impacts has been calculated as 101 per cent at 75 per cent POA with a net loss of \$0.8 billion, see further in Table 4 below.

Table 4: Nominal Insurer net result and funding ratio, taking account of COVID-19 impacts

	Reported Results		Estimated COVID-19 Impacts (premium, claims incurred, expenses and net investment income)	Results excluding the impacts of COVID-19	
	Net Result	Funding Ratio		Estimated Net Results	Estimated Funding Ratio
Nominal Insurer	(1,894)	101% (75% POA) 98% (80% POA)	1,044	(850)	107% (75% POA) 104% (80% POA)

Rising medical costs

67. The key unfavourable impact on experience and assumptions in the WCIF has been due to the increase in the number and quantum of medical payments. The legislative and regulatory matters described in paragraphs 25 onwards also have an impact.
68. Increases in medical costs have unfavourably impacted the WCIF by \$1.3 billion or 9 per cent of the funding ratio.
69. Both icare and SIRA have taken steps to understand the reasons for the rise in medical costs in the NSW workers compensation system. These steps have confirmed that:
- utilisation (being the number of services accessed by a claimant) is the principal driver of increasing medical costs; and
 - regulated costs for medical procedures in NSW are the highest in Australia (see commentary from paragraph 28 above). Potential savings of 14 per cent of medical spend can be realised if NSW medical fees were aligned with other jurisdictions, such as Worksafe Victoria.¹⁶⁶
70. In relation to these identified issues, icare has:
- made submissions to SIRA, as the relevant Authority, regarding the importance of regulatory measures to align the NSW approach with other jurisdictions; and
 - taken steps to address over-utilisation of services by claimants, including improving the integrity of icare's payments system, improving treatment approval systems and procedures, and undertaking increased, targeted oversight of medical providers, as detailed further below.

Findings of Dore Review and other independent analyses

71. The Dore Review report found the following in respect of medical costs:
- medical expense inflation has been in excess of 10 per cent per annum for consecutive years;¹⁶⁷ and

increases in medical costs are inherently tied to medical utilisation.¹⁶⁸ Therefore, significant increases in medical utilisation resulted in increased medical costs.¹⁶⁹ For this reason, inflation of medical costs was considered to be a compounding issue rather than the main cause of trend of increasing expenses.¹⁷⁰
72. The correlation between increases in medical utilisation year on year and medical expenses was

¹⁶⁶'Healthcare in Personal Injury Schemes', Report for SIRA, Workers Compensation scheme; Ernst & Young; 24 July 2019

¹⁶⁷See Dore Review report [5.4.4(d)]

¹⁶⁸Utilisation meaning the use of medical services or treatment: see Dore Review report [5.7.23]

¹⁶⁹Dore Review report [5.7.23]

¹⁷⁰Dore Review report [5.7.23]

expressed in figures 25 and 26 of the Dore Review report (described as Figure 4 below).¹⁷¹

Figure 4: Percentage changes in medical spend and medical utilisation year on year

Figure 25 – Percentage change in medical spend year on year

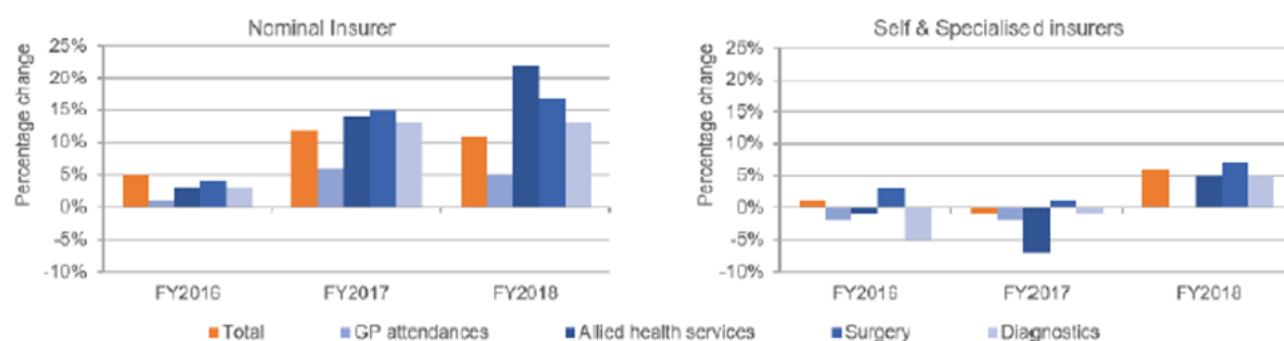
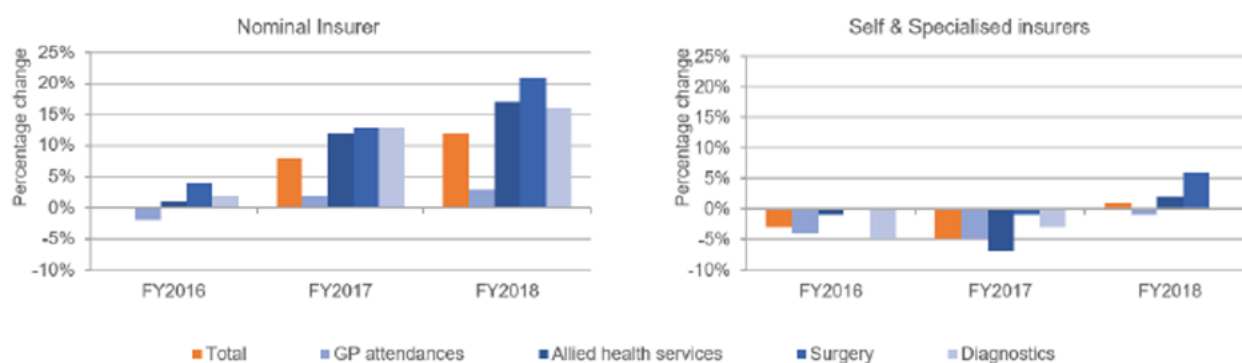


Figure 26 – Percentage change in medical utilisation year on year



73. The Dore Review report also found that while the sector experienced an increase in medical costs similar to State and national schemes, none experienced an increase in medical expenditure of double digits for consecutive years.¹⁷² In this respect, the medical costs inflation experienced in the Nominal Insurer scheme was inconsistent with the national trends and the trends for other participants in the NSW scheme.¹⁷³ This increase was illustrated as set out in Figure 5 below.

¹⁷¹<https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements> Regulatory requirements for health care arrangements (Sydney: State Insurance Regulatory Authority, 2019)

¹⁷²Dore Review report [5.7.10]

¹⁷³Dore Review report [5.7.9] - [5.7.11]

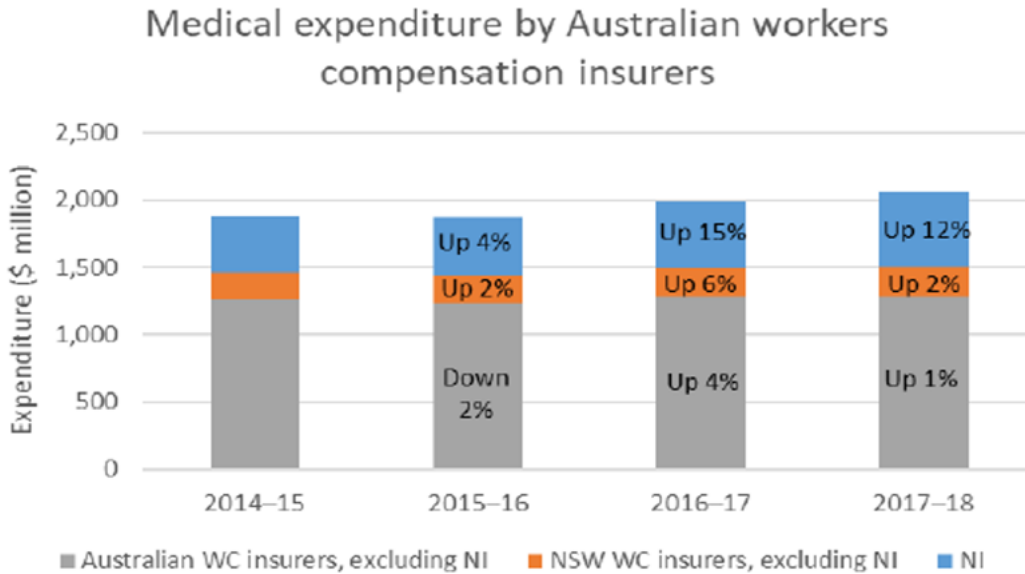


Figure 5: Medical expenditure by Australian workers compensation insurers (Source: Figure 22 [p47] Dore Review report)

74. Each year, Finity Consulting (**Finity**), acting as appointed external actuary for the Nominal Insurer, models the average medical payment per active claim (**PPAC**) as part of the annual valuation of workers compensation liabilities. This valuation is subject to separate external peer review by PwC actuaries, consistent with the Institute of Actuaries of Australia standard PS103 and Australian Prudential Regulation Authority standard CPS320. The Finity valuation is also subject to independent review and audit by the NSW Audit Office.
75. Workers compensation data is supplied as at March of each year to allow sufficient time for analysis and reporting in time for closing June accounts. This is the standard approach followed across the insurance industry.
76. The most recent valuation by Finity dated 30 June 2020 (the **2020 Finity Report**) provides the latest view on PPAC.¹⁷⁴ Figure 6 indicates that medical inflation as measured by PPAC started increasing significantly in the 2016/17 financial year and has only stabilised in the 2019/20 financial year. The increases shown in Figure 6 are the rates above economic inflation.

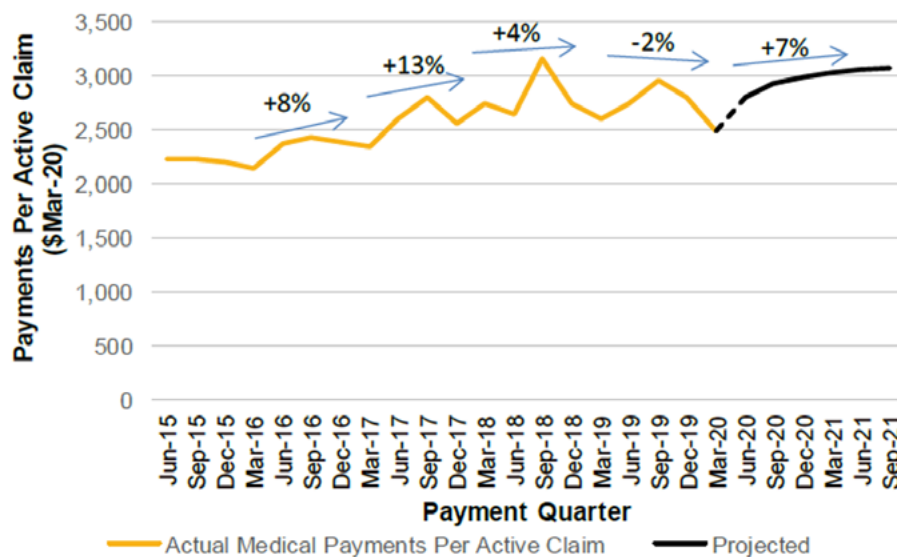


Figure 6: Medical inflation measured by PPAC (Source: 2020 Finity Report)

¹⁷⁴Page 11 of the 2020 Finity Report

77. The following Table 5 shows the actual rate of increase.¹⁷⁵ Superimposed inflation is the rate at which medical cost inflation exceeds the general level of inflation in the economy.

Table 5: Rates of medical cost increase

Model Segment	Actual Superimposed				Adopted Superimposed Inflation			
	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Later
Medical 0-20% WPI	8%	13%	4%	(2%)	5%	2%	-	-
Medical 21-100% WPI					2%	1%	-	-

78. Table 5 indicates that:

- the two financial years of 2016/17 and 2017/18 had significant increases to medical costs well above general inflation of 8 per cent and 13 per cent respectively; and
- the two financial years of 2018/19 and 2019/20 had a relatively moderate to stable experience with inflation of 4 per cent and -2 per cent respectively.

79. While the actuarial valuation is able to identify types of claims that are subject to increasing medical costs, it does not ascertain the causal reasons or drivers for the increases.

80. Accurately understanding the reasons for the increased pressure on medical costs in the NSW workers compensation system has been a challenge for both icare and SIRA. A number of independent analyses have been commissioned by icare and SIRA respectively to help determine causal factors:

- Ernst & Young Healthcare in Personal Injury Schemes Report for SIRA Workers Compensation Scheme 24 July 2019:*
 - EY performed a preliminary analysis on behalf of SIRA on the interjurisdictional benchmarking of medical costs fee structures across Australia, as well as assessing medical costs and medical spend dynamics in the NSW workers compensation system (aggregated across all insurers). The report breaks down the \$73 million increase in medical expenditure as set out in Figure 7 below.¹⁷⁶

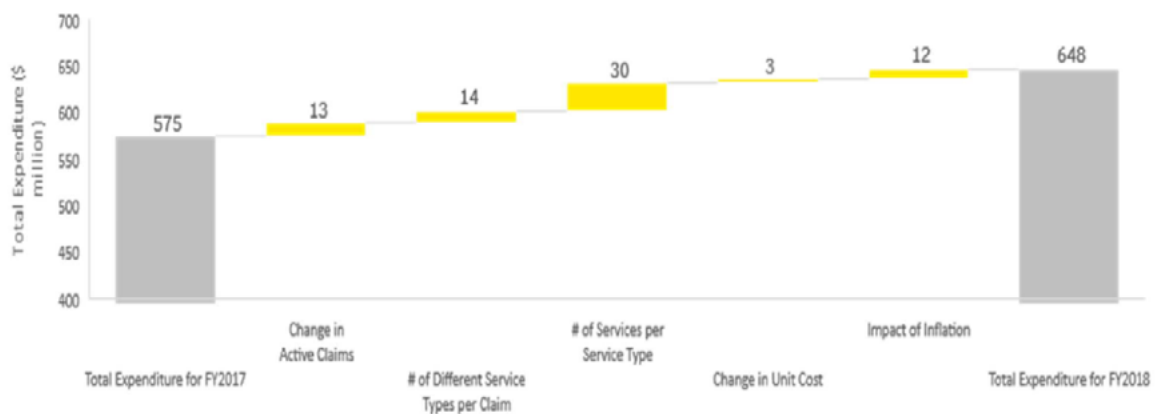


Figure 7: Cost driver analysis for total in-scope medical expenditure for FY16/17 to FY17/18

- While service utilisation (number of services that are provided to a claimant for each service type during the year) was the principal driver of cost increases (making up 61 per cent of the \$73 million), the report makes no conclusions on the underlying causes of the increased utilisation. It is unclear what proportion of the increased utilisation is as a result of claim behavioural change as opposed to insurer leakage in approving medical treatment.

¹⁷⁵Table 6.9, page 134 of the 2020 Finitly Report

¹⁷⁶Section 5.2.2 of 24 July 2019 EY Report, Figure 6: Cost driver analysis for total in-scope medical expenditure for FY2016-17 to FY2017-18

- b. *Ernst & Young Healthcare in Personal Injury Schemes Summary of preliminary findings for NSW Workers Compensation and Compulsory Third Party schemes 11 September 2019:*
- i. Following SIRA's announcement of a call for submissions on healthcare across NSW personal injury schemes, EY prepared a report using existing analysis and concluded NSW had the highest medical fee schedules compared to all Australian jurisdictions.
 - ii. In response to SIRA's call for submissions on healthcare in NSW personal injury schemes, icare prepared a detailed submission in November 2019 (annexed at **2B-1**). icare made a number of recommendations, including:
 1. addressing the provision of low-value care in the NSW workers compensation system;
 2. revisiting the medical fee schedules and frequency of indexation, in particular, the fees for surgeries in NSW; and
 3. replacing the "reasonably necessary" legislative test in NSW with a test that supports the delivery of a value-based care model to ensure treatment is appropriate for the injured worker.
- c. *Quantum Health: Analysis into icare medical cost increases in Nominal Insurer and Treasury Managed Fund 28 April 2020 (Quantum Report)*. As part of icare's medical strategy refresh in October 2019, icare engaged Quantum Health in January 2020 to assist with understanding the key drivers of medical cost increases. The Quantum Report analysed medical cost increases from the 2015/16 to 2018/19 financial years across the workers compensation system in NSW. The key findings of the report are summarised in Table 6 below.
- d. *Synapse | SIRA Industry Presentation 10, 11 and 12 June 2020 (Synapse Presentation)*:
- i. Instructed by SIRA, Synapse analysed medical practitioner invoices (excluding general practitioners) for 1000 workers compensation claims across multiple workers compensation insurers. 887 related to icare and its claims providers. As the analysis was based on a target sample (which itself was focused on high medical spend claims), it cannot be extrapolated across the entire injured worker population reliably (as reported by the media). The key findings of the report are summarised in Table 7 below.
 - ii. icare conducted a review of a segment of the claims data that was utilised by Synapse in drawing its conclusions. The segment reviewed included 53 claims representing the highest overpayments identified by Synapse (amounting to \$1.4 million, or 20 per cent of the overpayments). The key findings of the review are summarised in Table 8.
 - iii. The Chief Medical Office concluded that only \$177,396 of the \$1.4 million identified as leakage by Synapse was accurate. A copy of icare's report is annexed at **2B-2**. The veracity of conclusions from the Synapse Presentation are therefore uncertain. icare is engaging SIRA on the Chief Medical Office's detailed analysis of the 53 claims to reconcile Synapse's findings and gain confidence on potential insights.

Table 6: Quantum Report

No.	Key findings
1	There has been a \$246 million increase in medical spend over the three financial years from 2015/16 to 2018/19. Medical spend in the 2018/2019 financial year amounted to \$773 million.
2	Of the \$246 million increase in medical costs over the three-year period, at least 78 per cent (\$193 million) of the increase was due to systemic or non-controllable factors.¹⁷⁷
3	\$272 million (35 per cent) of the \$773 million medical spend in the 2018/2019 financial year was potentially addressable: \$205 million (26.5 per cent) requires changes to the regulatory and legislative environment before icare can control spend; and \$67 million (8.7 per cent) could have been controlled by icare via improved claims management and systems controls.
4	Potentially \$205 million (27 per cent) of the \$773 million spend in the 2018/19 financial year could be addressed through regulatory reform. Of the \$205 million:¹⁷⁸ \$106 million (14 per cent) of the \$773 million could be saved if NSW medical fees were on the same schedule as WorkSafe Victoria; and \$38 million could be saved through a reduction in utilisation of surgical services in areas of prone to low value care¹⁷⁹ (for example, spinal surgery, pain relief, shoulder and knee arthroscopy).
5	Potentially \$67 million (9 per cent) of the \$773 million spend in the 2018/19 financial year could be addressed by icare through improved claims management and system controls.¹⁸⁰ Of the \$67 million: \$15 million was due to payment leakage issues – that is, approval of medical payments found to be non-compliant; \$27 million was due to permitting over-utilisation of allied health low value care (primarily overuse of physiotherapy services); \$10 million was due to permitting over-utilisation of mental health low value care (primarily overuse of psychological services per claim); and \$3 million was due to permitting over-utilisation of long term allied health services.

¹⁷⁷ Page 4 of Quantum Report

¹⁷⁸ Page 6 of Quantum Report

¹⁷⁹ See paragraphs 93 and 94

¹⁸⁰ Page 7 of Quantum Report

Table 7: Synapse Presentation

	Key findings of the Synapse Presentation	Limitations of the Synapse Presentation
1	Claimants were identified by SIRA as having higher utilisation of medical practitioner service. ¹⁸¹	For the sake of expedience, only the 2016 AMA Fees List schedule was used to examine payments.
2	The 1,000 claims analysed included all workers compensation insurers in NSW and represented \$29.5 million of medical spend.	For the sake of expedience, only the 2019 Workers Compensation Fee Orders were used.
3	Of the 1000 claims analysed, 877 were related to icare schemes.	The analysis did not ascertain how many different doctors billed services for each patient.
4	Of the 1000 claims analysed, \$9.8 million (33 per cent) of the \$29.5 million in medical spend were concluded to be incorrect.	Synapse did not have access to clinical or other information (e.g. surgical reports) on these individual claim files when they undertook this review.
5	Of the \$9.8 million, \$6.9 million were a result of potential overpayments by icare.	See Table 8 below.

Table 8: icare review of claims data utilised in the Synapse Presentation

No.	Key findings of icare's review
1	Synapse applied the AMA 2016 fee schedule which is lower than the fee schedules used in subsequent years and as a result, incorrectly classified several payments as leakage.
2	Synapse indiscriminately classified leakage for multiple uses of an item number. Upon review of the claim file and clinical information, in many cases it was identified that these uses were clinically appropriate and in accordance with SIRA Fee Orders and AMA Fees List schedule (for example, for severe hand injuries or other complex injuries).
3	There were misunderstandings by Synapse of workers compensation hospital billing practices resulting in the appearance of duplicate payments. On inspection of the claims file, icare confirmed this was not the case.
4	In some instances, Synapse classified the entire original payment amount as a potential overpayment, rather than just including the invalid proportion of this payment.
5	Synapse reviewed Claims Data Repository data only. Using detailed sample claims data, icare was able to use additional information to identify true overpayments. This led to a significant gap between the Synapse and icare analyses. icare's methodology and findings have been presented to SIRA, with further review and validation requested by SIRA in the form of the detailed claims drill down.

Increase in psychological injury claims

81. In the Nominal Insurer's portfolio, the percentage of new claims that are psychological injury claims has significantly increased from 4 per cent to 6 per cent of all new claims lodged.
82. This has affected the financial performance of the WCIF as, generally, psychological injury claims have longer recovery periods and typically have longer periods of time off work (as detailed further from paragraph 161 below in relation to the TMF workers compensation scheme).

¹⁸¹Page 5 of Synapse Presentation. This was also confirmed by the SIRA Chief Executive at the Standing Committee's hearing on 24 August 2020:

"That was a pilot study of 1,000 claims. They were particularly selected to be the types of claims we thought were at risk of having poor administrative controls over medical spends..."

Actions taken by icare to address leakage and systemic issues

83. icare has implemented the following actions to address payment integrity and medical cost leakages for the WCIF:
- a. in February 2020, claims system alerts were created to flag if a payment had exceeded the maximum gazetted rate for that specific payment code, preventing payments being made above the gazetted fee rates;
 - b. in July 2020, additional system validations were added to ensure compliance with SIRA gazettes and fee schedules; and
 - c. system enhancements were also introduced to capture additional healthcare data to facilitate better decision-making in relation to:
 - i. the type of service requested;
 - ii. whether the requesting service provider is appropriate to provide the requested service; and
 - iii. whether the specific coding/cost of the service is appropriate.
84. In order to achieve maximum benefits from the system validations and enhanced data capture, icare has commenced the development of additional guidance material and has provided ongoing education for case managers.
85. icare's enhancement actions will also allow healthcare data to be captured more effectively, which will augment icare's ability to conduct data analysis. Better data analysis will:
- a. identify treatment providers who are statistical outliers (cost for frequency) for further review; and
 - b. identify providers who are delivering high value care for injured workers.
86. A full list of enhancement actions icare took to address payment integrity is annexed at **2B-3**.
87. Since December 2019, case manager training and exception reporting on claims that have treatment exceeding Official Disability Guidelines (**ODG**) has been implemented to ensure an uplift in capability and increased oversight and scrutiny of claims exceeding ODG.
88. The ODG is a decision support tool that sets expectations of recovery, return to work and recommended treatment options for workers compensation injuries. The tool uses a combination of evidence-based medical literature and claims data analytics to provide recommendations and is utilised extensively in workers compensation in the United States of America. The ODG tool has been implemented as a decision support tool to assist claims staff with decisions against requests for medical investigations and treatments.
89. icare licenced this tool in 2017. It enables the streamlining of treatment approvals for injured workers and highlights to claims staff when requested treatment is inconsistent with medical evidence.
90. The ODG tool was initially customised to the Australian healthcare system for use within NSW, using data from Nominal Insurer closed claims in 2016. Ongoing customisation occurs on an annual basis, increasing the size of the data set and improving the specificity of the tool for use in the NSW workers compensation scheme. The closed claims data for the current dataset covers claims from 1987 to 2019, with a total of 832,216 closed claims from the Nominal Insurer included in the Australian customisation.
91. ODG has been available to icare's claims service providers prior to the introduction of the claims service model in 2018. Utilisation of the tool became easier once the icare claims system went live in 2019, as ODG is integrated into the system and provides real-time feedback to the case manager at the time when treatment is being reviewed.
92. icare recognised that an area of concern was over-utilisation of allied health services, where treatment may be appropriate for the injury, but the provider is providing more services than recommended (**low value care**).

93. Low value care is defined as “care which evidence suggests confers no or very little patient benefit, or imposes a risk of harm that exceeds likely benefit, or incurs cost grossly disproportionate to the added benefits obtained.”¹⁸² The icare claims system now counts the number of accumulated allied health treatment sessions, so the case manager can determine whether the type of treatment is appropriate and when the requested sessions exceed the recommended number of treatments.
94. In July 2020, icare added functionality to the treatment approval screen which raises a red flag if the number of recommended allied health treatments have been exhausted. This functionality was added to monitor and address the increasing utilisation of allied health services. Where a red flag is raised, additional review of the treatment is required, either by an appropriately skilled case manager or injury management specialist. Any such review focuses on determining whether approval of treatment outside of ODG recommendations is reasonably necessary. This may include consideration of other factors influencing the worker’s recovery, and may require additional contact with the worker’s treatment provider to obtain further details in relation to the need for the requested treatment.
95. Other instances of low value care being approved in the NSW workers compensation system include surgical interventions for which there is limited evidence for injured worker benefit or where the risk of harm or cost exceeds any health benefit obtained.
96. For example, the costliest routine surgical intervention in the workers compensation system is spinal fusion. Knee arthroscopies are less costly, but they are the highest volume surgical interventions. The majority of evidence in the literature does not support knee arthroscopy for degenerative joint changes.¹⁸³ Both nationally and internationally, leading practice guidelines indicate spinal fusion is not recommended in uncomplicated chronic low back pain.¹⁸⁴ In the NSW workers compensation system, these surgical interventions continue to be approved as they are considered “reasonably necessary” pursuant to the accepted interpretation of section 60 of the 1987 Act.
97. To illustrate this point, if low-value surgical interventions such as spinal fusion surgery were reduced by 10 per cent, and workers offered alternative, evidence-based interventions instead, the NSW workers compensation system could realise net savings of \$2.1 million annually. If the rate of approval of knee arthroscopies was reduced by 15 per cent, where evidence suggests it is not indicated, net annual savings of \$400,000 could be realised, taking into account the cost of alternative, evidence-based interventions.
98. Increasing the health literacy of injured workers, as well as offering second opinions, will go some way towards reducing the costs to the system of low value surgical interventions. However, for substantive costs savings, legislative amendment to limit approvals of such low-value treatment may be necessary.
99. In July 2020, SIRA consulted on a Health Outcomes Framework for the NSW workers compensation and motor accident compulsory third party schemes, which focused on introducing value-based care services into the schemes. icare is fully supportive of this initiative and has provided SIRA with feedback on implementation of this framework.
100. icare also holds regular healthcare reform meetings with SIRA, focusing on collaboration and progression of key themes to support the introduction of value-based care into the NSW’s personal injury schemes. The key themes identified include:
- a. addressing fee schedules;
 - b. ensuring increased governance of all health providers in the schemes;
 - c. supporting the implementation of robust clinical and treatment guidelines which support evidence-based treatment; and
 - d. improving healthcare data coding and measurement of healthcare outcomes.

¹⁸²Medical Journal of Australia 203 (4); 17 August 2015

¹⁸³<https://www.choosingwisely.org.au/recommendations/ara1>

¹⁸⁴<https://www.choosingwisely.org.au/recommendations/fpm5>

101. In March 2020, icare analysed provider behaviour in the provision of allied health services. This analysis identified certain providers that had significantly higher average number of treatment sessions and/or cost of service. Ten providers were selected for further review. icare corresponded directly with these providers and identified the providers' high billing practices compared to peer averages. Nine responses were received, explaining the increased complexity in each case and the severity of the particular injury which contributed to the higher costs. Of these:
- a. three providers agreed to address the higher servicing and spend;
 - b. two providers deflected fault, and these responses were considered unreceptive; and
 - c. four providers justified their higher-than-average spend.
102. icare has continued to monitor these providers over the remainder of 2020. icare intends to analyse whether notifying providers of concerns has been successful in reducing over-servicing behaviours. Consideration will then be given to scaling this approach more broadly.

Other issues

103. It is worth noting that medical costs are also impacted by the assessment methods used in personal injury schemes, which may provide incentives to use more low value treatments. For example, personal injury schemes in NSW use various methods to assess WPI. The American Medical Association's Guides to the Evaluation of a Permanent Impairment, 5th Edition (**AMA 5**) is used in workers compensation, whereas the Compulsory Third Party and Lifetime Care and Support schemes use AMA 4. There are current reasons as to why each scheme uses a different edition of the AMA Guides, noting that both have been tailored for use within NSW.
104. The method of assessment in the AMA 5 Guides attributes greater degrees of impairment for subsequent interventions in the management of an injury. This provides a potential perverse incentive for injured workers to undergo low value medical treatments, such as surgery, in order to reach impairment benchmarks without any improvement in function.¹⁸⁵
105. With the move to simplify the dispute resolution system across personal injury, it is timely to assess the use of AMA 6 across both schemes as a means of aligning medical treatments with improved patient outcomes rather than increased impairment. icare understands that further work will be required to ensure AMA 6 is suitable for use across the schemes.

Impact of claims management

106. The Dore Review report attributed a significant portion of the deterioration of the WCIF funding ratio to claims management issues, in particular an increase in weekly payments associated with poor RTW outcomes. However, this factor has had a comparatively minor impact on the financial performance and financial sustainability of the WCIF. Although it has had its challenges, the transformation of the claims service model on behalf of the Nominal Insurer has achieved savings for the WCIF scheme since 2015 (as detailed further in icare's submissions in response to Terms of Reference 1(a) and 1(c)). For example:
- a. there have been significant investments in icare data platforms and reporting. The improvements in data capture, quality and reporting in respect of WPI for claimants has enabled improvements in actuarial models which resulted in a favourable impact of \$0.7 billion or 4 per cent of the funding ratio;
 - b. the claims performance has had, in aggregate over the last five years, favourable experience for weekly benefits, which has favourably impacted the Nominal Insurer by \$0.879 billion or 5 per cent of the funding ratio; and
 - c. all financial years up to and including the 2018/19 financial year have been favourable as any

¹⁸⁵Busse et al, *Comparative Analysis of Impairment Ratings From the 5th to 6th Editions of the AMA Guides*, JOEM 60 No 12 December 2018

deterioration in the RTW claim outcomes for more recent cohorts of injured workers has been offset by favourable performance in the RTW claim outcomes for injured workers who have been off work for longer periods.

107. More recently, however, the 2019/20 financial year has been unfavourable (\$0.2 billion deterioration) due to recent RTW performance in the Nominal Insurer scheme. In addition, the year commenced with a higher weekly claims run rate (an additional \$0.2 billion per annum), creating a total impact of \$0.4 billion. This figure includes impacts on the scheme due to the COVID-19 pandemic.
108. icare has also taken a number of steps to improve the WCIF scheme's financial performance and financial sustainability to the extent icare is able to control this, including through proposed changes to premium pricing, claim management model improvements and improved management of medical costs, which are detailed above and in icare's submissions in response to Terms of Reference 1(a) and (b).
109. At the time of the Dore Review report, there was no evidence that the poor RTW performance had impacted on the scheme's financial performance. However, icare acknowledges that since that time there has been some adverse financial impact attributed to the decline in RTW for the 2018 accident year.
110. As explained above, other external factors beyond icare's control were the main drivers in the decline in the Nominal Insurer scheme funding ratio, and the Nominal Insurer's RTW performance has since showed signs of improvement, including as a result of further changes to the claims service model implemented after the Dore Review.

Assessment of the WCIF's financial sustainability

111. Notwithstanding the various factors that have impacted the WCIF's financial performance, it remains at a funding ratio of 101 per cent at 75 per cent POA as at 30 June 2020.
112. There are no immediate concerns regarding the Nominal Insurer's ability to meet its financial obligations as they arise. The WCIF has approximately \$19 billion in assets, which can, if needed, be readily liquidated to cover any liabilities. icare pays approximately \$2.5 billion in liabilities annually.
113. Nevertheless, as with any investment management, there are limits on the ability of the current WCIF financial position to withstand additional adverse shocks.
114. icare has a number of new and ongoing management strategies for premiums, claims management and medical costs, which are set out in detail above and in icare's submissions in response to Terms of Reference 1(a) and (b). In summary, those initiatives are:
 - a. claims costs savings of \$139 million in the 2020/21 financial year resulting from actions addressing medical claims cost escalation, improvements in return to work and continued focus on work capacity decisions; and
 - b. a series of anticipated premium changes in future years.
115. These initiatives are forecasted to result in a return to surplus anticipated from the 2021/22 financial year.
116. The financial position of the WCIF remains at a level where it can meet its financial obligations as they fall due, and will continue to be managed in line with the Nominal Insurer Business Plan (as submitted to SIRA) to return the funding ratio to target levels over the coming six years.

The Treasury Managed Fund

117. Under the *Self Insurance Corporation Act 2004 (SICorp Act)*, SICorp operates Government managed fund schemes, including the TMF.¹⁸⁶ A detailed overview of the TMF and SICorp's role in relation to it generally is set out in the Background to these submissions.
118. The TMF investment strategy is executed by the NSW Treasury Corporation (**TCorp**). In the TMF scheme, the valuation for the workers compensation liabilities and general lines liabilities are performed separately, but the funds are invested and managed together and the funding ratio is determined holistically.
119. Within the TMF workers compensation component of the TMF scheme, there is a further notional division between two primary categories, Emergency (**EMER**) and Non-Emergency (**NEMER**). The EMER portfolio includes all first responders (for example, NSW Police, Fire & Rescue and Ambulance NSW), which have varied legislative entitlements.
120. Distinct from the Nominal Insurer, the TMF:
- a. is a scheme where the employer, i.e. each NSW Government agency, plays an active role in the management of risks and any claims. Government agencies are self-insurers for the purposes of the 1987 Act¹⁸⁷ and work closely with their appointed claims manager and SICorp in the support and management of claims across all product lines; and
 - b. as a self-insurance scheme, is not a product of insurance for the acceptance of third-party risk, but is a scheme used to ensure the Government is managing liabilities in a responsible way. The TMF does not provide risk cover of the character of insurance but is an accounting mechanism by which government funds are administered, invested and disbursed to meet future Government liabilities. In effect, the TMF is a tool of fiscal discipline and prudent management of risk rather than of risk transfer.
121. In accordance with section 10(1)(b) of the SICG Act, icare provides services to SICorp. icare, on behalf of SICorp, manages liability assessment and pricing, strategic asset allocation of investments and claims management. The TMF and NSW Government are protected by the reinsurance it purchases each year.
122. The TMF is funded to protect against average losses from across the State's entities. Instead of acting in the manner of an independent fund or commercial insurer by relying on surpluses in years with low claims or high investment returns to cover inevitable poor years, the TMF is governed by a Net Asset Level Holding Policy (**NAHLP**).
123. Under the NAHLP, an optimal funding range was established for the TMF of 105 per cent to 115 per cent, to be tested in the first quarter of each calendar year based on the ratio of TMF assets to the December valuation of State liabilities. Considering the extent of NSW assets and liabilities, the TMF usually has a lower proportional funding 'buffer' than other Australian Government managed funds (for example, in 2019, NSW was funded to 114 per cent, Victoria to 128 per cent, Queensland to 157 per cent, South Australia to 141 per cent, Western Australia to 135 per cent and ACT to 138 per cent).
124. In order to maintain the optimal funding level required under the NAHLP, TMF member agencies are invoiced for an annual contribution proportional to their anticipated liabilities for the upcoming 12-month period on 1 July. Separately, a transfer between the TMF and consolidated revenue is made on or before 30 June as part of the finalisation of the State accounts, and can be a deposit or withdrawal depending on the liability position. Contributions to the TMF from State entities are not conventional insurance premiums and the character of cover provided is not insurance. Similarly, the NAHLP is an administrative mechanism by which the liabilities are balanced annually between the TMF and the consolidated Government accounts.

¹⁸⁶Section 4 of the SICorp Act

¹⁸⁷Section 211B of the 1987 Act

125. Being funded only to the level necessary to respond to the average of expected liabilities, the TMF does not operate independently of the State budget or finances. Consequently, the TMF is not managed under the insurance accounting standard, but under Australian Accounting Standards Board standard 137 Provisions, Contingent Liabilities and Contingent Assets.
126. TMF liabilities are funded based on a 'central estimate' valuation. This means funding the TMF to a 53 per cent POA is considered appropriate from an audit perspective. A 53 per cent POA valuation is taken without bias towards optimism or conservatism and makes no allowance for outcomes differing from the estimate of the insurance liabilities, either because of the inherent uncertainty of the distribution of possible outcomes, or because of the randomness of future outcomes.

Oversight of the TMF

127. In order to assess the financial sustainability of the TMF, it is necessary to appreciate the operational and regulatory differences between the workers compensation component of the TMF and the WCIF.
128. As the TMF only addresses the State's liabilities, unlike the schemes operated by the Lifetime Care and Support Authority of New South Wales, the Workers Compensation (Dust Diseases) Authority or the Nominal Insurer, it is not treated separately from the general government accounts and is in no sense independent of NSW Treasury control. The matrix of obligations between icare, the NSW Treasury Asset and Liability Committee (**ALCo**) and the Treasurer is as follows:
- a. the Treasurer sets the investment objectives and benchmarks, overarching risk appetite and (noting there is an implicit legislative requirement for the TMF to be fully funded¹⁸⁸) the TMF funding ratio;
 - b. in practice, the Treasurer's operational oversight of the TMF occurs through the ALCo; and
 - c. icare on behalf of SICorp manages liability assessment and pricing, strategic asset allocation of investments and claims management.
129. Over the course of 2019 and 2020, the ALCo has reviewed and endorsed several improvements and amendments to the operation of the TMF through a Whole-of-State Insurance Review (**WoS Insurance Review**) conducted between September 2018 and July 2020.
130. The WoS Insurance Review team comprised of members from NSW Treasury and icare, with support for specific pieces of work from TCorp and Guy Carpenter (the Government insurance risk advisor). The relevant findings of the WoS Insurance Review were presented to the ALCo in several papers across 2019 and 2020.
131. In the light of the findings of the WoS Insurance Review, the ALCo endorsed:
- a. a commitment to the principle of full funding of the TMF and a 'funding floor' of 105 per cent, but replacing the upper funding adequacy ratio with a multi-factored consideration;
 - b. acknowledgement of increased volatility of the net correction in consequence of the increased stability of contributions by TMF member agencies; and
 - c. recognition that higher funding ratios can deliver stronger financial results for the State, defraying liabilities more effectively, avoiding urgent unanticipated liabilities interfering with budget cycles and requiring subsequent borrowing at potentially higher rates which could potentially weaken the State's credit rating.
132. Since the completion of the WoS Insurance Review, icare and NSW Treasury have transitioned to an ongoing engagement plan.

¹⁸⁸Section 11(4) of the SICorp Act

Issues relevant to financial sustainability

Overview

133. The TMF workers compensation scheme is a long-tail scheme (claims may be latent and take many years to develop and be reported), meaning that longer term strategies can be employed to ensure ongoing financial sustainability.
134. Similarly to the WCIF, valuations of the liabilities and POA of the TMF are undertaken every six months and audited annually. The financial position and sustainability of TMF is then assessed and adjustments may be made through the levers discussed below to ensure, as far as possible, that funding remains at sustainable levels.
135. The financial sustainability of the TMF has been impacted by the same factors that have impacted the WCIF (see paragraph [24] onwards):
 - a. legislative and regulatory factors outside icare's control;
 - b. external economic factors, such as the impacts of the extreme 2019-2020 bushfire season and the COVID-19 pandemic;
 - c. rising medical costs; and
 - d. increases in psychological injuries.

Legislative and regulatory factors outside icare's control

136. The legislative and regulatory actors that have impacted the WCIF's financial sustainability have had a similar impact on the TMF's financial sustainability, especially TMF's NEMER portfolio.¹⁸⁹
137. In addition, as set out at paragraphs [138] to [151] below, the TMF has also been impacted by the net corrections made in the 2018/2019 and 2019/2020 financial years.

External economic factors

138. In aggregate, the Self Insurance Fund has received \$99 million from NSW Treasury since the formalisation of the NAHLP, and the TMF has contributed \$1.051 billion back to NSW Treasury. The annual transfers across participating NAHLP schemes are provided in the table below:

¹⁸⁹As the EMER were exempt from the 2012 Amendments. However, the EMER portfolio is similarly impacted by the "reasonably necessary" test as the WCIF as set out from paragraph 24 onwards.

Table 9: TMF funding from Consolidated Fund

FY	TMF	CRIF	PMF	TAC	GWC	SRA/RIC	Total
2005-06	\$1,000						\$1,000
2006-07	\$910						\$910
2007-08	\$300						\$300
2008-09	(\$390)		(\$15)	(\$25)			(\$430)
2009-10	\$30		(\$5)	(\$35)		(\$35)	(\$45)
2010-11			(\$41)		(\$14)		(\$55)
2011-12	(\$220)		(\$3)				(\$224)
2012-13	\$195	(\$40)	(\$10)			\$60	\$205
2013-14	\$920			(\$10)		(\$5)	\$905
2014-15	\$380			(\$15)	(\$10)		\$355
2015-16	\$185		(\$55)	(\$50)			\$80
2016-17	\$195		(\$90)	(\$20)			\$85
2017-18	\$10		(\$50)				(\$40)
2018-19	(\$1,115)	\$5	(\$100)	\$30	(\$10)	\$55	(\$1,135)
2019-20	(\$1,348)	\$10	(\$632)	(\$25)	(\$5)	(\$10)	(\$2,010)
Total	\$1,051	(\$25)	(\$1,001)	(\$150)	(\$39)	\$65	(\$99)

139. The 2012/13 to 2017/18 financial year results were primarily driven by a period of stable claims costs and strong investment returns.
140. In the 2018/19 financial year, there was a significant adverse correction in the TMF. This adverse correction was not driven by claims performance or underlying weaknesses, but by changes to economic assumptions used to value the liabilities, including the change to use the Commonwealth Government bond yield (which increases the size and volatility of the liabilities). The TMF has been under similar pressures to other self-insurance funds and the WCIF, including pressures from increased medical costs, medical discharge and psychological injuries.
141. Until the 2019/20 financial year, however, the general lines liabilities in the TMF have been broadly stable (~3 per cent increase per year).
142. The outworking of the NAHLP calculation was that as at December 2019 the TMF ratio was 108 per cent. icare advised NSW Treasury that this reflected a \$647 million increase in workers compensation claims liabilities of Government agencies and a \$306 million increase in other liabilities, including \$140 million in bushfire liabilities. While significant trends, no immediate net correction was required in this circumstance.
143. However, by the completion of the assessments in March 2020, TCorp and icare advised NSW Treasury that since December 2019, there had been a significant deterioration in the value of the invested TMF assets. Unrealised investment losses (i.e. reduced value of investment assets not liquidated) due to COVID-19 had already reduced the funding ratio to 95 per cent against the estimated liabilities included in the December 2019 valuation. Because of this deterioration, the TMF required a contribution from the NSW Consolidated Fund of \$1.18 billion to maintain full funding against the December valuation of liabilities.

144. Additionally, although a full valuation is not performed in March, by mid-April 2020, the joint icare-NSW Treasury working group was evaluating the best approach to the net correction, having regard to the following factors:
- a then-anticipated \$650 million of additional bushfire costs above the \$140 million estimated in the December 2019 valuation due to widespread damage to Government property;
 - \$250 million in COVID-19 liabilities for Government agencies in relation to hospital utilisation if the pandemic remained at or below the then-imposed lockdowns (and if normal business resumed for NSW by July 2020), and up to \$750 million in the case of an extended lockdown and reliance on private hospitals for public patients;
 - \$162 million in newly reported child abuse and dust disease claims from periods prior to 1989, which as Pre-Managed Fund (**PMF**) claims would require 100 per cent NAHLP funding;
 - between \$600 million and \$1.8 billion liability for historic child abuse claims that the independent actuaries estimated had been incurred but not yet reported across the history of the TMF and PMF, and based on the assessment, would be included in the June valuation results; and
 - Government Managed Insurance Scheme management amendments arising from the WoS Insurance Review of up to \$481 million in agency 'hindsight contribution' payments and \$650 million in other ALCo-endorsed funding enable funding.
145. None of the 2019/20 financial year losses from across the State's agencies are related to icare's performance as TMF scheme manager, either dating to losses incurred before the formation of icare or unforeseen general liabilities of the NSW Government.
146. To address these losses, icare and NSW Treasury jointly developed a proposal in April 2020 for a \$4 billion funding transfer in two tranches, enabling both the return to the TMF "floor" and providing a buffer against future uncertainty of consolidated revenue impacts. This joint icare-NSW Treasury position received endorsement from the ALCo on 13 May 2020. On 30 June 2020, the Treasurer approved the immediate transfer of \$2 billion (\$1.348 billion for the TMF and \$632 million for PMF pre-1989 losses), returning the funding ratio to the TMF "floor" of 105 per cent. A further review of the operations and strategy of the TMF was conducted before a determination regarding the further \$2 billion was made, and a decision was made to make no further NAHLP corrections under after the December 2019 valuation for the TMF.
147. As at November 2020, the final valuation positions amounted to:
- \$550 million due to State losses from the bushfire season;
 - \$343 million due to COVID-19 impacts on State agencies and entities; and
 - \$828 million for cases of historic child abuse.
148. As a result of the investment performance since March 2020 and the \$2 billion net correction already made, the TMF funding ratio is currently at 105 per cent.
149. Over 70 per cent of these increases in liabilities arises from the general lines, and in particular, are primarily latent child abuse and property/revenue loss claims from bushfire and COVID-19 that are neither systemic nor expected.
150. Most of the remaining 30 per cent of the increase in liabilities arises from the increases in weekly experience of NEMER and EMER and psychological claims, as well as increases in medical costs in the TMF workers compensation scheme, in particular, an increase in claims from medically discharged police officers and a higher number and severity of psychological claims. As noted below, psychological injury claims tend to be difficult to manage as they are often influenced by non-work factors and return to work challenges, resulting in longer claim tails and higher costs.

151. In recognition that the TMF contribution methodology had not been significantly amended in 30 years, the ALCo initiated a TMF Product and Pricing Review, undertaken by icare in 2019. As a result, a new contribution model was designed to recognise that the costs incurred by the NSW Government were in the majority stemming from the activities of 11 large agencies that accounted for 95 per cent of exposure. The proposed new calculation adjusts pricing to reflect this, as well as to provide agencies with a clearer accountability for cost drivers under each agency's control. SIRA was advised of the proposed changes in November 2020.
152. The new pricing and performance model provides large NSW Government agencies with a clearly defined and agreed pricing basis that is set to the central estimate of their performance trajectory at the start of each year and small NSW Government agencies with clearer tracking and simpler, more comprehensible engagement. To support each agency's return to work and prevention programs, each agency is provided with transparent quarterly performance monitoring to ensure they are afforded the greatest opportunity to outperform their contribution and ultimately receive an Annual Performance Adjustment (APA) refund. It is anticipated that the new APA model will provide the key agencies with a more focused and transparent funding relationship with NSW Treasury around controllable return to work outcomes, with a desire to improve prevention investment strategies.

Rising medical costs

153. The TMF scheme has been affected by the same causative factors and cost drivers that have driven medical costs, and the utilisation of medical services, up in the Nominal Insurer scheme.
154. Since 2018, monthly medical costs in the TMF scheme have increased by approximately 30 per cent. However, as a percentage of overall costs over the same period, medical costs have remained relatively stable, varying between 21 per cent and 23 per cent of total claim costs as provided in Figure 8 below.¹⁹⁰

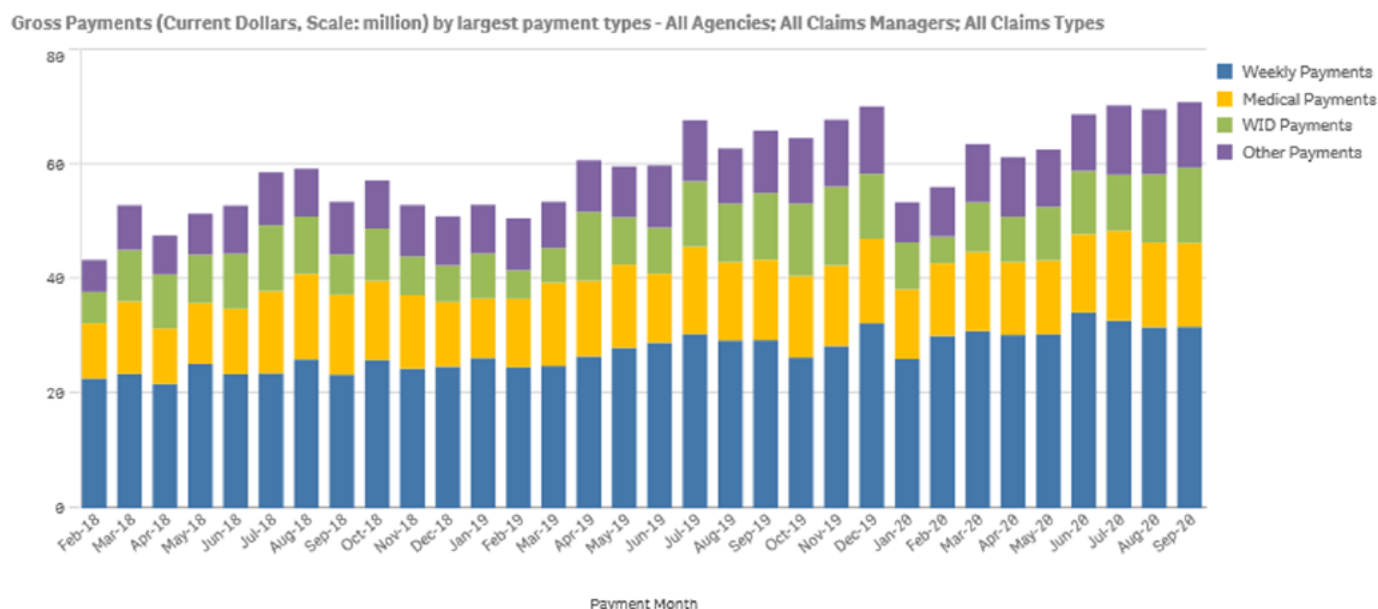


Figure 8: TMF Monthly Gross Payments (Source: icare internal monthly actuarial monitoring)

¹⁹⁰Various Qlik monthly icare actuarial reports 2018-2020

155. Increases have been seen across all types of medical costs, with increases noted in Allied Health Services and Private Hospital Services as provided in Figure 9 below.

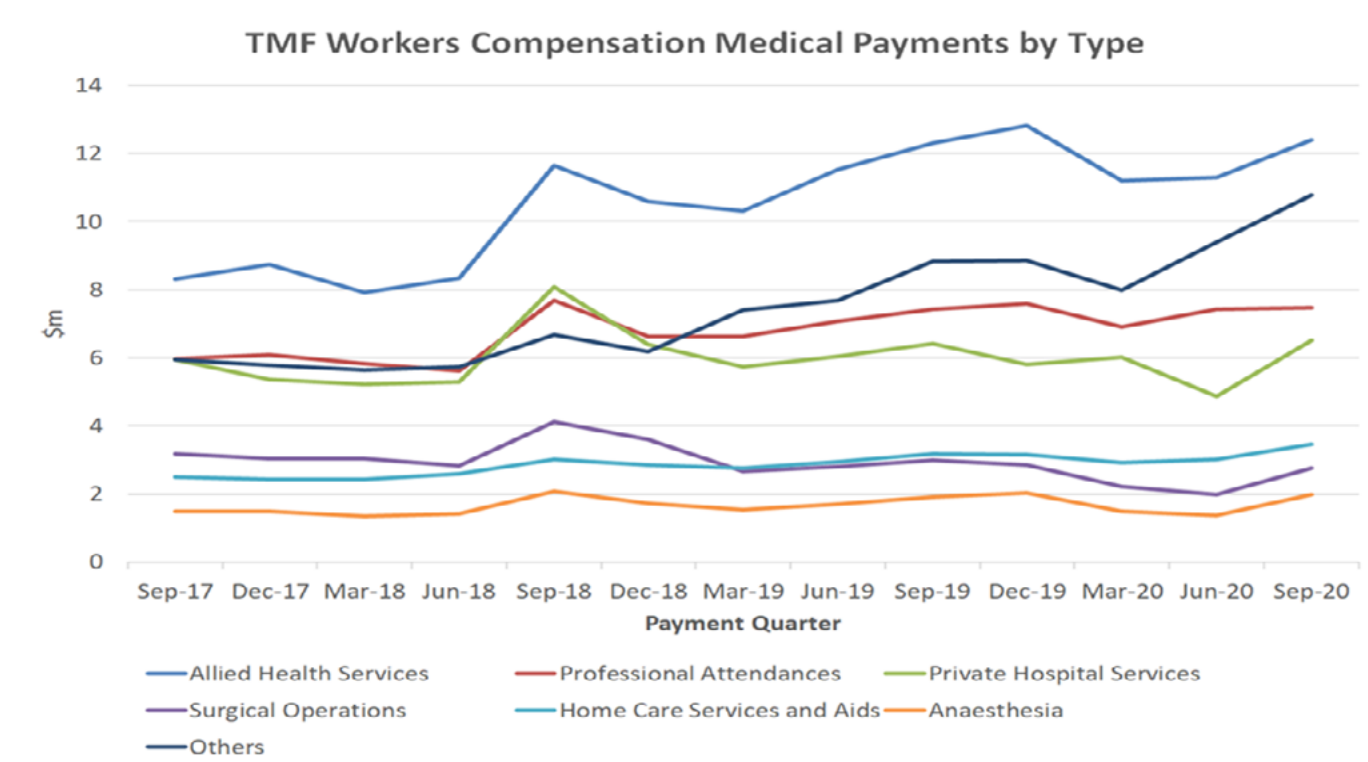


Figure 9: Analysis of medical costs (Source: icare internal monthly actuarial monitoring)

156. icare and SIRA have both sought to understand the causes of the increases in medical spend and medical utilisation in the workers compensation system and have taken steps to address leakage and systemic issues across the system (as detailed from paragraph [67] above).
157. The new TMF claims management provider remuneration model, effective from 1 January 2020, also focuses on medical cost containment through the expense control metric and seeks to address a key area of financial deterioration due to the increased medical costs across the TMF scheme.

Increase in psychological injury claims

158. In addition to the impact of increasing medical costs in the workers compensation system in NSW, in the TMF workers compensation portfolio, in particular, there have been significant increases in the number of psychological injuries reported which has adversely impacted the overall RTW outcomes and the cost of workers compensation for the State of NSW.
159. While the overall liability for the TMF scheme has remained stable (as shown in the Finity analysis in Figure 10 below), it should be noted that the foundational claims performance is still significantly impacted by both psychological injury claims (scheme wide) and medically discharged claims (NSW Police).

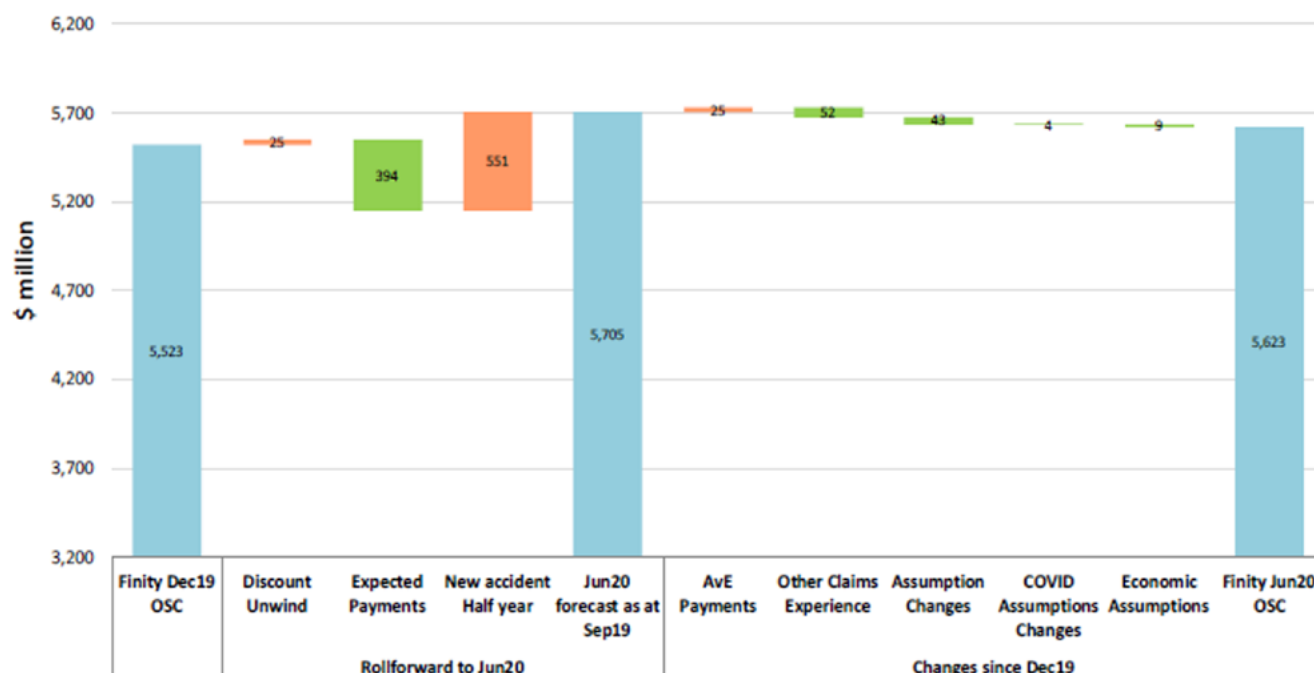


Figure 10: Finity analysis of TMF liability changes

160. In general, once psychological injury claims commence weekly benefits, they take longer to return to work and have a WPI that often reaches the work injury damages (WID) threshold of 15 per cent. These characteristics skew the tail portfolio towards one dominated by psychological injuries.
161. Long term tail strategies to redeploy workers is more difficult for psychological injury than physical, and vocational training is often less effective.
162. Across the TMF portfolio the projected number of psychological injury claims is expected to continue to rise across government agencies from approximately 12 per cent in 2014 to over 20 per cent in the 2020/2021 financial year, as set out in Figure 11 below.

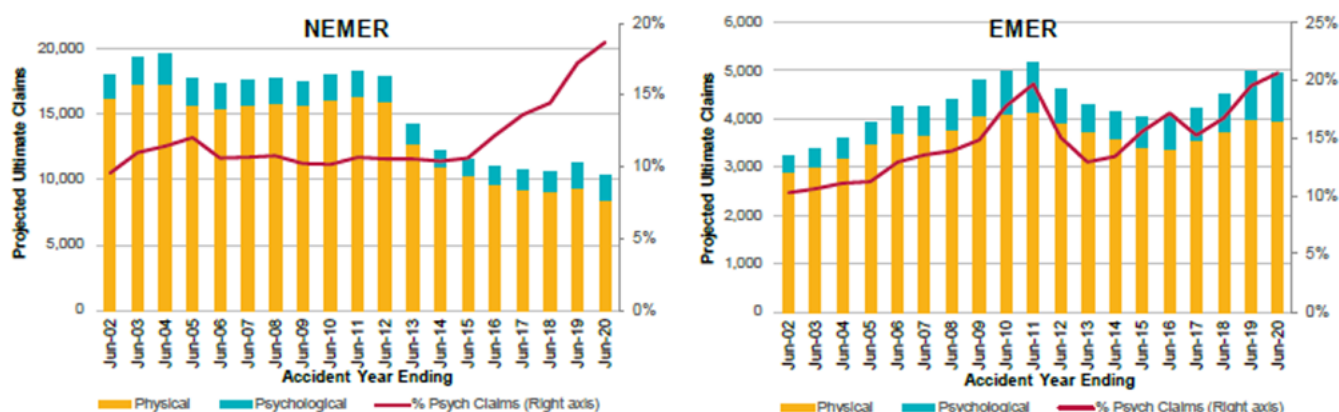


Figure 11: NEMER and EMER Projected Claims - Psychological Injury (Source: Figure 1 on Page 8 of the Finito Insurance for TMF - Workers Compensation Liabilities at 30 June 2020 Report)

163. The impact of psychological claims is not just in length of time off work and increased claims costs. The portfolio is compounded by increasing levels of assessed WPI. The proportion of psychological injury claims reaching the 15 per cent WPI threshold has shifted significantly upwards over the past ten years, as detailed in Figure 12 below.

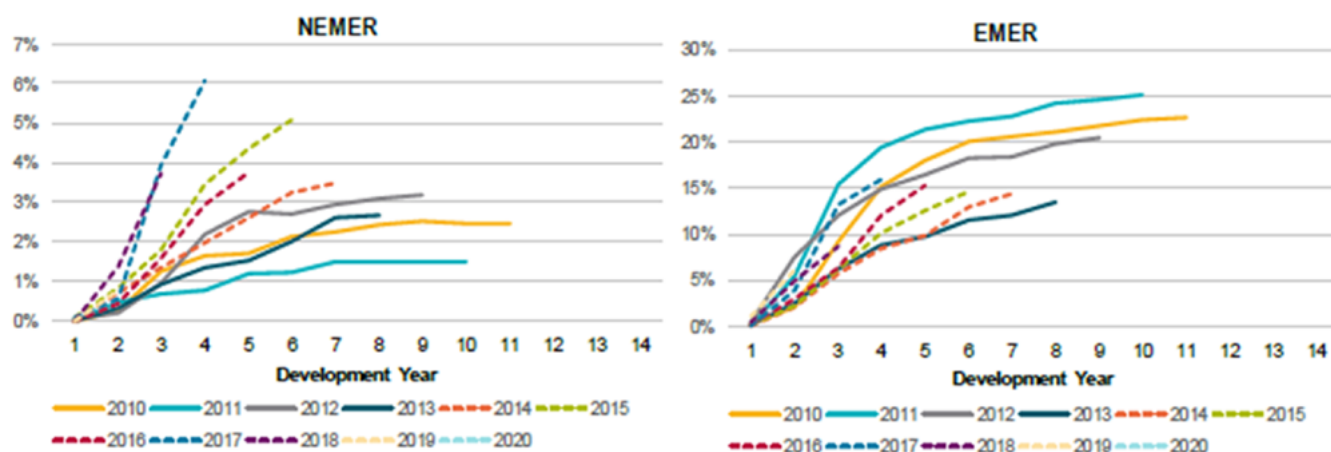


Figure 12: Proportion of Psychological Claims reaching 15per cent WPI (Source: Figure 2 on Page 9 of the Finity Insurance for TMF – Workers Compensation Liabilities at 30 June 2020 Report)

164. Breaching the 15 per cent WPI threshold enables workers to commence a WID action against their employer, placing upward pressure on the number and quantum of WID settlements. It should be noted that WPI is used not only in relation to WID, but also for determining ongoing entitlements to weekly and medical benefits (for example, identification of threshold for section 39 limits). As a result, WPI assessments are now conducted earlier in the lifecycle of the claim compared to historical use.
165. The effective management of psychological injury claims, particularly prevalent in the EMER portfolio (for example, NSW Police) can be influenced by workplace or industrial processes such as medical discharge or retirement. A worker may have a workers compensation claim, and also be deemed no longer fit to conduct their employment, and, as a result, a medical discharge from employment is a possible employment outcome. This concurrent workplace practice can impact the efficacy of workers compensation claims management such as vocational activities or retraining.
166. The number of medically discharged claims have increased year on year as provided in Figure 13 below. This impacts not only in terms of costs (approximately \$800,000 per claim) but can also influence WID claims and can negatively impact on RTW performance as workers do not want to disrupt the medical discharge process by demonstrating capacity and participating in RTW.

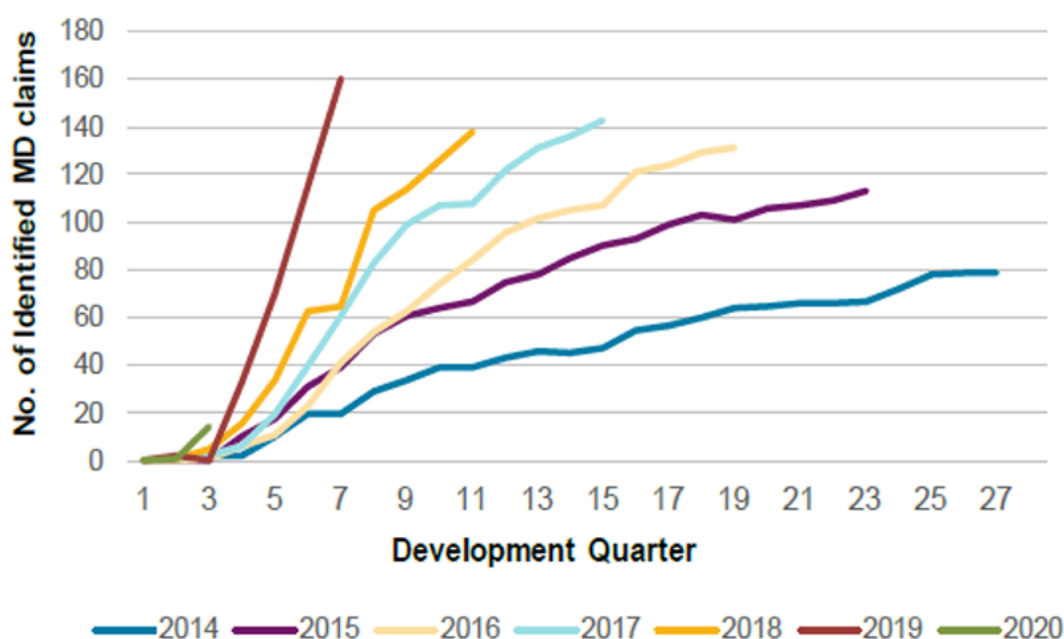


Figure 13: Rate of medically discharged claims (Source: Figure 3 on Page 10 of the Finity Insurance for TMF – Workers Compensation Liabilities at 30 June 2020 Report)

Impact of claims management

167. Because responsibility for claims management in the TMF scheme is shared between SICorp (with icare providing services to SICorp), NSW Treasury and the participating Government agencies, SICorp has a more limited ability to influence financial performance through claims management as compared to the WCIF.
168. In recognition of each NSW Government agency's role as self-insurer, the TMF provides the agencies that carry 95 per cent of the government's workers compensation liabilities with increased contribution volatility (i.e. performance-based cost increases or returns through an APA). As in the case of the WCIF, claims management issues have not had a substantial effect on the financial performance or financial sustainability of the TMF.

Assessment of the TMF's financial sustainability

169. Similarly to the Nominal Insurer, various external factors have impacted TMF's financial performance. However, the TMF, as an accounting mechanism by which government funds are administered, is expected to be able to meet the liabilities of government agencies by contributions to TMF from consolidated revenue as part of the finalisation of the State accounts. In other words, the State will always cover its own liabilities.
170. A 2020 June valuation of TMF did not see a further strengthening of the Net Central Estimate. The TMF scheme liability of \$5,705 million forecast at December 2019 for June 2020 held relatively stable with a slight reduction to \$5,623 million. This was largely driven by a reduction in claims payments.
171. The TMF funding ratio is currently at 105 per cent at 53 per cent POA as at 30 June 2020, and icare expects that going forward TMF will be capable of covering average anticipated liabilities without requiring further correction.

TERMS OF REFERENCE 2(c): THE LEGISLATIVE AND REGULATORY STRUCTURE OF THE NOMINAL INSURER AND TREASURY MANAGED FUND SCHEMES

Summary

1. Insurance and Care NSW (**icare**) and the State Insurance Regulatory Authority (**SIRA**) were established in 2015 by the *State Insurance and Care Governance Act 2015* (the **SICG Act**). One of the primary objectives of the SICG Act was to “create a clear statutory and operational separation between the functions of providing government insurance services and the regulation of those services”¹⁹¹ by creating three new entities:
 - a. icare, a single provider of services for New South Wales insurance and care schemes;
 - b. SIRA, a new independent regulator of New South Wales insurance schemes; and
 - c. SafeWork NSW, an independent workplace safety regulator.
2. From a workers' compensation perspective, the intention was that the operational and regulatory functions previously conferred on the WorkCover Authority of New South Wales (**WorkCover**, as it then was) would be separated between these three new entities.
3. Specific functions are designated to icare, the Workers Compensation Nominal Insurer (the **Nominal Insurer**), the NSW Self Insurance Corporation (**SiCorp**) and SIRA under the *Workers Compensation Act 1987* (the **1987 Act**), the *Workplace Injury Management and Workers Compensation Act 1998* (the **1998 Act**) and the SICG Act. icare:
 - a. acts for the Nominal Insurer, which is the compulsory workers compensation insurer for NSW employers, other than self and specialised insurers; and
 - b. provides services to SiCorp, which operates the Treasury Managed Fund (**TMF**) for, amongst other things, workers compensation claims brought in respect of participating NSW Government agencies, which are self-insurers for the purposes of the 1987 Act.
4. Overall, this structure and the relevant legislative provisions have been successful in driving improvements in transparency and accountability through the separation of operational and regulatory functions, and the performance of the State's insurance and care schemes entrusted to icare.
5. However, the protracted history of workers compensation in NSW¹⁹² and the historical intricacies of the relationship between the regulating authority and the Nominal Insurer has meant that the separation of operational and regulatory functions has, in a number of respects, created uncertainty. This has resulted in a lack of common understanding of responsibilities under the legislation by stakeholders in the system, affecting the potential to fully achieve a separation of functions under the SICG Act.
6. icare remains committed to a model in which it is subject to independent regulatory oversight, although considers that greater clarity in the boundaries between respective functions in the system would enhance the fulfilment of those functions. In particular, a review of the functions assigned to SIRA under sections 22 and 23 of the 1998 Act presents a potential opportunity to provide greater certainty on the respective roles of SIRA and icare.

¹⁹¹Second reading speech, Workers Compensation Amendment Bill 2015 and the cognate State Insurance and Care Governance Bill 2015: <https://www.parliament.nsw.gov.au/bill/files/292/2R%20Workers%20Compensation%20and%20cognate.pdf>

¹⁹²Further detail is provided in the Background to these submissions

7. To this end, icare has been working with SIRA to further clarify respective roles and responsibilities, including accepting the recommendations of Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme published in December 2019 (the **Dore Review report**). icare welcomes the opportunity to assist the Independent Reviewer and SIRA to remove uncertainty under the legislation and further improve the operation and regulation of the relevant schemes.

Background

8. A detailed history and description of SIRA, icare, the Nominal Insurer and TMF is contained in the Background to these submissions, as well as in icare's submissions in response to Term of Reference 2(a).
9. Broadly speaking, workers compensation is provided in NSW by the Nominal Insurer, self-insurers and specialised insurers.¹⁹³ Any Government employer covered by the Government's managed fund scheme is taken to be a self-insurer for the purposes of workers compensation legislation.¹⁹⁴
10. The NSW workers compensation system has experienced many reforms over the past four decades. These changes have largely been made in response to fluctuations in the financial position and following various significant and comprehensive reviews and overhauls of the system, with a view to striking a balance between the interests of employers, workers and other stakeholders. The provisions of the 1987 Act, the 1998 Act and the SICG Act are supplemented by a significant volume of other primary and subordinate legislation, Guidelines and guidance materials that deal with premium setting, benefits, claims management, regulation, information sharing and numerous other matters.
11. This legislative activity has included numerous attempts to improve the regulatory environment, most recently through the creation of SIRA as an independent insurance regulator under the SICG Act. This was preceded by the establishment in 2012 of the SRWS Board and the WorkCover Independent Review Officer (now the Workers Compensation Independent Review Officer) (**WIRO**). On 1 March 2021 (or a later date as fixed by proclamation), a new Personal Injury Commission will also be established.
12. As set out in the Background to these submissions, the structural reforms enshrined in the SICG Act arose following NSW Treasury's Strategic Insurance Review in 2015. The objective of the Strategic Insurance Review was to investigate, recommend and develop the structural and operational reforms necessary to optimise the NSW Government's policy, regulatory and enabling insurance and self-insurance functions. Further details on the findings of the NSW Treasury Strategic Insurance Review that led to the current legislative and regulatory structure have been included in icare's submissions in response to Term of Reference 3.
13. In addition, the Strategic Insurance Review also compared an improved Government delivery model for workers compensation with a private market underwriting model.¹⁹⁵ While the Strategic Insurance Review concluded that both models would show improvement on the status quo, the primary recommendation made was for a privately underwritten scheme.¹⁹⁶

¹⁹³Guild, HEM, Coal mines insurance Pty Ltd, StateCover Mutual, Racing NSW and Catholic Churches Insurance Limited: <https://www.sira.nsw.gov.au/insurance-coverage/workers-compensation-insurance/how-to-get-workers-compensation-insurance>

¹⁹⁴Section 211B(1) of the 1987 Act

¹⁹⁵Section 3, Strategic Insurance Review

¹⁹⁶See, for example, page 21, Strategic Insurance Review

14. The Strategic Insurance Review also made recommendations on improved regulatory design.¹⁹⁷ The regulatory model proposed was said to be “*suitable for both privately and publicly underwritten schemes*,”¹⁹⁸ but the report addressed various models of traditional regulation in a context most apt for an operational model involving private actors, consistently with the Strategic Insurance Review’s primary recommendation in that regard. There is limited discussion of any difference in the regulatory design depending on whether a private or a public underwriting model were adopted, or the particular features or challenges that may be associated with regulating Government entities.¹⁹⁹
15. The State Insurance and Care Governance Bill 2015 and cognate Workers Compensation Amendment Bill 2015 adopted the Strategic Insurance Review’s recommendations regarding regulatory design, but opted for the secondary operational recommendation, i.e. retaining public underwriting for the NSW workers compensation scheme with an improved Government delivery model. As a consequence, while the principles and objectives of the scheme and its regulation (including as reflected in the Strategic Insurance Review) remain sound, there are some disparities in relation to the interaction between the regulatory design and the public underwriting model as both have been implemented. The impact of these matters on the achievement of the policy objectives under the current structure are explored further below and in icare’s submissions in response to Term of Reference 3.

Overview of legislative and regulatory structure

16. The key regulators in the workers compensation system are:
 - a. SIRA, a body corporate and NSW Government Agency constituted by section 17 of the SICG Act with the function of acting as an independent insurance regulator for workers compensation, motor accidents and home building;
 - b. WIRO, an independent statutory officer appointed by the Governor of NSW under section 24 of the 1998 Act, who deals with complaints about insurers and runs the Independent Legal Assistance and Review Service, which provides free, independent legal advice to injured workers who have a disagreement with their insurer regarding entitlements;
 - c. the Workers Compensation Commission, an independent statutory tribunal established by section 366 of the 1998 Act in order to resolve workers compensation disputes between workers, employers and insurers across the State (soon to be replaced by the Personal Injury Commission); and
 - d. SafeWork NSW, which acts as the NSW workplace health and safety regulator. Schedule 2 of the *Work Health and Safety Act 2011* (the **WHS Act**) provides that the Secretary of the Department of Customer Service is known as SafeWork NSW for the purposes of performing regulatory functions under that Act.

Overlap of SIRA’s functions with other participants in the system

17. Sections 23 and 24 of the SICG Act set out the principal objectives and functions of SIRA. These are detailed further in icare’s submissions in response to Terms of Reference 1(j).
18. The 1987 and 1998 Acts outline several functions of SIRA for the purposes of workers compensation. Section 22(2) of the 1998 Act provides that SIRA (described as “the Authority”) has certain general functions under the workers compensation legislation, and section 23(1) confers several specific functions on SIRA. Relevant aspects of these provisions are addressed in further detail below.

¹⁹⁷Section 7, Strategic Insurance Review

¹⁹⁸Section 7.1, Strategic Insurance Review

¹⁹⁹Apart from the setting of prudential standards, at section 7.4.5, Strategic Insurance Review. Further, we note that while the Nominal Insurer itself does not represent the State of NSW, it is inextricably linked with the Government as icare is a NSW Government agency and acts for it. It is also the compulsory insurer in NSW and is required to provide an uninsured liabilities scheme.

19. As detailed in icare's submissions in response to Terms of Reference 2(a) and 3, the legislative and regulatory structure of the Nominal Insurer and TMF workers compensation schemes have largely been effective in achieving the multiple and intersecting policy objectives of both the SICG Act and the schemes more generally.
20. However, as between the SICG Act, the 1987 Act and the 1988 Act, there is some overlap and ambiguity in the respective responsibilities of icare, the Nominal Insurer and SIRA. Many of the statutory functions previously conferred on WorkCover under the 1987 and 1998 Acts were not clearly delegated to either icare, the Nominal Insurer or SIRA. As a result, in addition to fulfilling a supervisory function in respect of the workers compensation system and ensuring compliance with the workers compensation legislation, SIRA was also given very specific functions in respect of the operation of the workers compensation legislation and particular elements of the workers compensation system in NSW. In particular, many of SIRA's powers appear to require SIRA to engage in certain operational actions more readily ascribed to an insurer, rather than a regulator.
21. For example, pursuant to sections 22 and 23 of the 1998 Act, SIRA is responsible for the following functions, among others:
- a. the day to day operational matters relating to the workers compensation scheme;²⁰⁰
 - b. to initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers;²⁰¹
 - c. to ensure the availability of high-quality education and training in such prevention, management and rehabilitation;²⁰²
 - d. to develop equitable and effective programs to identify areas of unnecessarily high costs in or for schemes to which the workers compensation legislation relates;²⁰³
 - e. to identify (and facilitate or promote the development of programs that minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers, or both;²⁰⁴
 - f. to develop programs to meet the special needs of target groups, including workers who suffer severe injuries, are unable to return to their pre-injury occupation, are unemployed, live in remote areas, women, persons of non-English speaking backgrounds and who have a disability;²⁰⁵ and
 - g. to facilitate and promote the establishment and operation of return-to-work programs.²⁰⁶
[emphasis added]
22. Similarly, many of the functions assigned to icare, the Nominal Insurer and SICorp are described in broad terms. In particular, the Nominal Insurer *"is taken to be a licensed insurer as if it were the holder of licence ... as if that license were not subject to any conditions [and] has such functions as may be necessary or convenient for enabling the Nominal Insurer to function and operate to the fullest extent as a licensed insurer and "may do and suffer all other things that persons may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions".*²⁰⁷

²⁰⁰Section 22(1)(b) of the 1998 Act

²⁰¹Section 23(1)(a) of the 1998 Act

²⁰²Section 23(1)(b) of the 1998 Act

²⁰³Section 23(1)(c) of the 1998 Act

²⁰⁴Section 23(1)(f) of the 1998 Act

²⁰⁵Section 23(1)(h) of the 1998 Act

²⁰⁶Section 23(1)(i) of the 1998 Act

²⁰⁷Sections 154A and 154B of the 1987 Act

23. The breadth of these powers is necessary to ensure that the Nominal Insurer, which is not and does not represent the State of NSW or any authority of the State of NSW, is able to properly operate the Nominal Insurer's scheme. Similar considerations apply to the powers granted to SICorp (in relation to the TMF workers compensation scheme) and icare (to act for or provide services to the Nominal Insurer and SICorp).
24. The Nominal Insurer is required to issue policies, manage claims and comply with relevant legislative requirements that relate to these matters. However, in circumstances where many of the functions that might ordinarily be expected of an insurer – for example, responsibility for day to day operational matters relating to the workers compensation system – are assigned to, or shared with, SIRA, this has the potential to lead to ambiguity, as well as the duplication of effort (for example, in the issuing of guidance material as to how the interpretation of legislation and case law is operationalised) and uncertainty for customers.
25. Some examples include:
- a. the Nominal Insurer, SICorp, SIRA and SafeWork NSW all have rights and responsibilities relating to injury prevention, and at times these parties have been uncertain as to how these operate in practice:
 - iv. SIRA's principal objectives include the promotion of the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces,²⁰⁸ and to promote workplace injury prevention, effective injury management and return to work measures and programs.²⁰⁹ It also has specific functions including:
 - 1. to initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers;²¹⁰
 - 2. to ensure the availability of high-quality education and training in such prevention, management and rehabilitation;²¹¹
 - 3. to develop policies for injury management, worker rehabilitation, and assistance to injured workers;²¹²
 - v. SafeWork NSW has the power to make regulations on matters relating to the regulation or prohibition of specific activities at workplaces,²¹³ protection and welfare of workers²¹⁴ and hazards and risks;²¹⁵
 - vi. section 5.4 (Principle 4) of the Market Practice and Premium Guidelines (**MPPG**) issued by SIRA requires the Nominal Insurer's pricing model to provide incentives for risk management and good claims outcomes; and
 - vii. SICorp is required to make payments from the TMF to provide incentives to authorities of the State to enhance the management of liabilities;²¹⁶
 - b. icare and SIRA have issued conflicting guidance in relation to how to interpret pre-injury average weekly earnings calculations and the effect of the Court of Appeal decision in *Hee v State Transit Authority of NSW [2019] NSWCA 175 on weekly benefit entitlements*; and

²⁰⁸Section 22(1)(a) of the 1998 Act

²⁰⁹Section 22(c) of the SICG Act

²¹⁰Section 23(1)(a) of the 1998 Act

²¹¹Section 23(1)(b) of the 1998 Act

²¹²Section 23(i)(k) of the 1998 Act

²¹³Clause 1(2) of Schedule 3 of the WHS Act

²¹⁴Clause 4 of Schedule 3 of the WHS Act

²¹⁵Clause 5 of Schedule 3 of the WHS Act

²¹⁶Section 11(2)(d) of the *NSW Self Insurance Corporation Act 2004*

- c. SIRA, SafeWork NSW, WIRO and the WCC have certain overlapping functions when it comes to the resolution of employer and worker complaints, creating uncertainty for customers as to who to direct those complaints to.
26. Such overlap is especially challenging given the fact that the Nominal Insurer is not the only insurer in the workers compensation system over which SIRA has oversight as a regulator.
27. The designation of operational matters to the regulator is a carry-over of the old structure of WorkCover and the historical nature of the interaction between WorkCover and the Nominal Insurer. To the extent the insurance and regulatory functions of WorkCover were retained in either SIRA, icare or the Nominal Insurer following the 2015 amendments, there continues to be an overlap of functions between the Nominal Insurer and the newly-created SIRA. Removal of this overlap and further clarification of the respective roles of SIRA as regulator, the Nominal Insurer as the nominated workers compensation insurer and icare as the single provider of services to the Nominal Insurer and other relevant authorities, would complete the *“statutory and operational separation between the functions of providing government insurance services and the regulation of those services”* intended to be achieved by the passing of the SICG Act and 2015 amendments.
28. While icare has been working with SIRA to clarify these and other issues, as well as seeking to reach agreement on each entity’s overarching role and responsibilities, a review of the functions assigned to both icare and SIRA under the workers compensation legislation presents a potential opportunity to provide greater clarity on the separation of powers in the NSW workers compensation system and enhance the operation of the schemes.
29. There may also be opportunities for legislative reform that could assist with other aspects of the operation and management of workers compensation in NSW, including the management of increasing medical costs in the system. icare has outlined potential legislative amendments that may assist both icare and SIRA in managing medical costs in the NSW workers compensation system in icare’s submissions in response to Term of Reference 2(b), as well as through icare’s submission to SIRA’s consultation on the ‘Regulatory requirements for health care arrangements in the NSW workers compensation and CTP schemes’. icare has also been working closely with SIRA in responding to SIRA’s 21-Point Action Plan to address rising medical costs in both the Nominal Insurer and TMF schemes (additional detail has been included in icare’s submissions in response to Term of Reference 1(b)).

TERMS OF REFERENCE 3: REVIEW AS REQUIRED BY SECTION 32 OF THE SICG ACT

Summary

1. Section 32 of the *State Insurance and Care Governance Act 2015 (SICG Act)* requires the relevant Minister to review the Act to determine whether:
 - a. the policy objectives remain valid; and
 - b. the terms of the Act remain appropriate for securing those objectives.
2. Through the introduction of a new single insurance and care provider, with responsibility for managing over \$38 billion worth of assets, and a new independent insurance regulator, the SICG Act marked a significant change from the status quo. Indeed, the Strategic Insurance Review led by NSW Treasury prior to the SICG Act found “[a]n assessment of statutory and self-insurance functions in other Australian jurisdictions reveals that there is no ideal model in Australia that NSW can look to as the model that will best provide improved outcomes, cost efficiencies and more effective management of liabilities”.²¹⁷
3. An important policy concern identified by the Strategic Insurance Review was the separation of regulatory functions and operational functions into separate entities. On 1 September 2015, three discrete agencies were established upon the commencement of the SICG Act to address this and other concerns:
 - a. icare, a single insurance and care service provider;
 - b. SIRA, a new independent insurance regulator; and
 - c. SafeWork NSW, an independent workplace safety regulator, responsible for performing the work health and safety functions previously performed by WorkCover.
4. In particular, the SICG Act and 2015 amendments sought to “create a clear statutory and operational separation between the functions of providing government insurance services and the regulation of those services” by the creation of these three new entities.²¹⁸
5. Having regard to the Strategic Insurance Review and the Second Reading speech, icare considers that the policy objectives of the SICG Act can be best described as:
 - a. creating greater transparency and accountability by separating regulatory and operational functions;
 - b. consolidating functions to generate operational efficiencies and enable economies of scale; and
 - c. establishing less adversarial, customer-centric organisations, leading to better return to work and quality of life outcomes.
6. Since its inception, icare has remained focussed on discharging the significant responsibility of being entrusted with the State’s insurance and care schemes, and believes that it has made significant progress against the policy objectives of the SICG Act.
7. icare has undertaken a transformational agenda to maximise synergies between the schemes and achieve efficiencies and cost savings. It has developed and applied a “commercial mind, social heart” ethos to attract and retain suitably experienced staff motivated to achieve better return to work and quality of life outcomes for people in the State of NSW. This has been facilitated and enhanced with the conferral of responsibility to icare’s Board for the overall superintendence of the organisation, which has allowed icare’s Board to drive the approach and improvements to the operation of the schemes.

²¹⁷Section 1.1, Strategic Insurance Review

²¹⁸Second reading speech, Workers Compensation Amendment Bill 2015 and the cognate State Insurance and Care Governance Bill 2015: <https://www.parliament.nsw.gov.au/bill/files/292/2R%20Workers%20Compensation%20and%20cognate.pdf>

8. icare acknowledges that, as with any major structural change, this undertaking has met with a number of operational challenges. icare has been addressing these issues including in response to the findings contained in Janet Dore's report on the Nominal Insurer of the NSW workers compensation scheme published in December 2019 (the **Dore Review**), and remains confident that the improvements it has made to the operation of its schemes leaves it well-positioned to continue to deliver the SICG Act's objectives of operational efficiencies, economies of scale and improved customer outcomes. In particular, icare is committed to working with SIRA to continue to realise the potential for improved transparency and accountability through the separation of regulatory and operational functions.

Policy objectives of the SICG Act

Findings of NSW Treasury's Strategic Insurance Review

9. As set out in the Background, the structural reforms enshrined in the SICG Act arose following NSW Treasury's Strategic Insurance Review. The objective of the Strategic Insurance Review was to investigate, recommend and develop the structural and operational reforms necessary to optimise the NSW Government's policy, regulatory and enabling insurance and self-insurance functions.
10. The findings of the Strategic Insurance Review can be broadly categorised as follows:
- without the structural separation of insurance operational and regulatory functions, there will always be potential for conflict of interest; and
 - integrating the State's insurance schemes will allow insurance expertise to be aggregated and staff with the right experience to be attracted and retained, leading to better claims outcomes and lower costs.
11. An important policy concern identified by the Strategic Insurance Review was the separation of regulatory functions from operational functions into separate entities.²¹⁹ At that time, WorkCover both acted for the Nominal Insurer and as the regulator of the workers compensation scheme, meaning it concurrently regulated and competed with non-government self and specialised insurers.
12. The Strategic Insurance Review referred to commentary from the Productivity Commission that separating regulatory from operational functions has "*the potential to enhance the quality of service provided to consumers and the effectiveness of service provision*"²²⁰ and the Wallis Financial System Inquiry, which noted in its final report that "*a single prudential regulator offers regulatory neutrality, greater efficiency and responsiveness, greater resource flexibility, economies of scale and lower costs in regulation, and more flexibility to cope with likely future changes in the financial system*".²²¹ It found that without separating these functions, "*there will always be potential for conflict of interest*".²²²
13. NSW Parliament's Standing Committee on Law and Justice (the **Standing Committee**) also raised concerns regarding WorkCover's potential conflicts of interest, and these conflicts were acknowledged and criticised by many stakeholders in the system in their submissions to the Standing Committee at the time. Recommendation 1 of the 2014 Review provided:
- "That the Minister for Finance and Services, in consultation with the WorkCover Independent Review Office and other stakeholders, consider establishing a separate agency or other administrative arrangements to clearly separate the roles of regulator and nominal insurer in the workers compensation scheme, and implement that model as soon as possible."*

²¹⁹Sections 1.4 and 2.5.3, Strategic Insurance Review

²²⁰Section 2.5, Strategic Insurance Review

²²¹Section 2.5, Strategic Insurance Review

²²²Section 1.1, Strategic Insurance Review

14. In the Minister for Finance and Services' (as he then was) Second Reading speech introducing the SICG Act and cognate bills²²³, he clarified:
- "[we] are ... making the insurance structures in New South Wales easier to understand. The reforms ... are an overhaul of State insurance and care schemes and the way in which those schemes are serviced in New South Wales [and will] create a clear statutory and operational separation between the functions of providing government insurance services and the regulation of those services ... consolidating regulatory responsibility for State insurance into one regulator will enable a consistent and robust approach to the monitoring and enforcement of insurance and compensation legislation in this State"*
15. In addition, he explained, *"the new structure will be far more transparent and accountable and, most importantly, lead to better outcomes for injured workers. The new organisations will be more customer-centric, streamlined and efficient, building economies of scale and focussing on clear objectives"*.²²⁴
16. The Minister described the following specific features of icare and SIRA:
- "Insurance and Care NSW will be a centre of excellence for long-term care needs, combining claim cohorts with similar care needs to focus on return to work and quality of life outcomes.*
- Insurance and Care will deliver workers compensation that is less adversarial.*
- There will be fewer forms and less bureaucracy, and injured workers will have more say in their treatment and return-to-work pathway.*
- ...
- "SIRA will focus on ensuring key public policy outcomes are being achieved in relation to service delivery to injured people, affordability and the effective management and sustainability of the insurance schemes."*²²⁵
17. Against this background, icare considers that the policy objectives of the SICG Act can be described as:
- creating greater transparency and accountability by separating regulatory and operational functions;
 - consolidating functions to generate operational efficiencies and enable economies of scale; and
 - establishing less adversarial, customer-centric organisations, leading to better return to work and quality of life outcomes.
18. As discussed in icare's submissions in response to Term of Reference 2(c), it is worth noting that the Strategic Insurance Review's recommendations regarding regulatory design were primarily directed to a proposed shift to a privately underwritten workers compensation scheme. The decision to implement the recommended regulatory design but retain a public underwriting model has, to an extent, affected the achievement of the policy objectives of the SICG Act (as explored further below and in icare's submissions in response to Term of Reference 2(c)), particularly in regards to the separation of regulatory and operational functions.

²²³Second Reading Speech, *Workers Compensation Amendment Bill 2015* and cognate bills
<https://www.parliament.nsw.gov.au/bill/files/316/2R%20Workers%20Compensation%20and%20cognate.pdf>

²²⁴Second Reading Speech, *Workers Compensation Amendment Bill 2015* and cognate bills
<https://www.parliament.nsw.gov.au/bill/files/316/2R%20Workers%20Compensation%20and%20cognate.pdf>

²²⁵Second Reading Speech, *Workers Compensation Amendment Bill 2015* and cognate bills

Overview of key features of the SICG Act

19. On 1 September 2015, three discrete agencies were established upon the commencement of the SICG Act:²²⁶
- a. icare, a single insurance and care service provider;²²⁷
 - b. SIRA, a new independent insurance regulator;²²⁸ and
 - c. SafeWork NSW, an independent workplace safety regulator, responsible for performing the work health and safety functions previously performed by WorkCover.²²⁹
20. Various amendments were also made to workers compensation legislation, which are described in more detail in icare's submissions in response to Terms of Reference 2(a), (b) and (c).

icare

21. icare is a body corporate and NSW Government agency constituted under section 4 of the SICG Act. Under section 10(1) of the SICG Act, icare has the following functions:
- a. *to act for the Nominal Insurer in accordance with section 154C of the Workers Compensation Act 1987,*
 - b. *to provide services (including staff and facilities) for any relevant authority, or for any other person or body, in relation to any insurance or compensation scheme administered or provided by the relevant authority or that other person or body,*
 - c. *to enter into agreements or arrangements with any person or body for the purposes of providing services of any kind or for the purposes of exercising the functions of the Nominal Insurer,*
 - d. *to monitor the performance of the insurance or compensation schemes in respect of which it provides services,*
 - e. *such other functions as are conferred or imposed on it by or under this or any other Act.*
22. icare is also required to determine investment strategies for the investment of any scheme fund.²³⁰
23. Effectively, icare brought together separate insurance and care schemes that were previously administered by authorities 'grouped' together for staffing and governance purposes in SRWS and NSW Treasury. Those authorities included WorkCover (which acted for the Nominal Insurer), the Lifetime Care and Support Authority of New South Wales (the **Lifetime Care and Support Authority**), the (then) Workers' Compensation (Dust Diseases) Board, NSW Self Insurance Corporation (**SICorp**) and the Building Insurers' Guarantee Corporation (**BIG Corp**). Despite these administrative groupings, the creation of icare marked the first time their staff and facilities were completely integrated.
24. Notwithstanding this, from a statutory perspective, each authority remained (and continues to remain) separate and is governed by its own specific legislation.²³¹
25. icare was established as a NSW Government sector agency, described by NSW Treasury as one of its 'Government businesses' and designated as a Public Financial Enterprise (now a Public Financial Corporation (**PFC**)). This is the same designation given to the New South Wales Treasury Corporation (**TCorp**), constituted under section 4 of the Treasury Corporation Act 1983 (**TCorp Act**).
26. Other Government businesses include State-Owned Corporations such as Essential Energy, Sydney

²²⁶Under the State Insurance and Care Governance Bill 2015

²²⁷Section 4 of the SICG Act

²²⁸Section 17 of the SICG Act

²²⁹Clause 3(2)(b)-(c) of Schedule 4 of the SICG Act; clause 1 of Schedule 2 of the *Work Health and Safety Act 2011*; see also Schedule 14 of the State Insurance and Care Governance Bill 2015

²³⁰Section 12(1) of the SICG Act

²³¹1987 Act, *Motor Accidents (Lifetime Care and Support) Act 2006*; *Workers' Compensation (Dust Diseases) Act 1942*; *NSW Self Insurance Corporation Act 2004*

Water, Water NSW and Landcom. The common feature of these organisations is an additional level of independence from Government when compared with traditional departments and executive agencies.

27. As Public Financial Corporations, icare and TCorp share several characteristics. Both have responsibilities for the management and oversight of significant financial undertakings, requiring specialist expertise. As provided elsewhere in this submission, icare has \$38 billion worth of assets under management, the equivalent to an ASX 20 listed company.
28. As a result, both icare and TCorp:
- a. are governed by Boards with the ability to establish committees;²³²
 - b. may employ their own staff and are not subject to the requirements of the GSE Act relating to the employment of Public Service employees;²³³
 - c. are not subject to Part 11 of the *Public Works and Procurement Act 1912* for some or all of their procurement activities;²³⁴ and
 - d. are required to prepare and submit an annual statement of business intent to the Treasurer that sets out their business plans for the next financial year.²³⁵
29. More detail on icare's governance, employment and procurement requirements and arrangements is provided in icare's submissions in response to Terms of Reference 1(e), (f), (g) and (h).

SIRA

30. SIRA is a body corporate and NSW Government agency.²³⁶ Its objectives and functions are described in more detail in icare's submissions in response to Term of Reference 1(j) and 2(c).
31. In SIRA, the regulatory functions previously performed by WorkCover (in respect of workers compensation), the Motor Accidents Authority (in respect of Compulsory Third Party (CTP) insurance) and NSW Fair Trading (in respect of home building compensation insurance, formerly home warranty insurance) were consolidated.²³⁷
32. Unlike icare, SIRA's staff are employed in the public service.²³⁸ It has an advisory Board that must include the Secretary of the Department of Finance, Services and Innovation (now the Department of Customer Service).²³⁹ SIRA's Chief Executive is also employed in that department.²⁴⁰

²³²Sections 5 and 6 of the SICG Act; sections 4(2), 4A, 4AA and 4C of the TCorp Act. Importantly, TCorp's Board is required to include two representatives from NSW Treasury (including the Secretary), and the Chief Executive is appointed by the Treasurer (rather than the Board).

²³³Section 15(1) of the SICG Act; section 4(10) of the TCorp Act

²³⁴Section 154A(4) of the 1987 Act

²³⁵Section 11 of the SICG Act, <https://www.treasury.nsw.gov.au/information-public-entities/government-businesses/public-financial-corporations>

²³⁶Section 17(1) of the SICG Act

²³⁷Section 24 of the SICG Act

²³⁸Section 21 of the SICG Act; section 59 of the Government Sector Employment Act 2013

²³⁹Section 18 of the SICG Act

²⁴⁰Section 19 of the SICG Act

SafeWork NSW

33. SafeWork NSW acts as the NSW workplace health and safety regulator. Schedule 2 of the *Work Health and Safety Act 2011* provides that the Secretary of the Department of Customer Service is known as SafeWork NSW for the purposes of performing regulatory functions under that Act.
34. Prior to the creation of SafeWork NSW, WorkCover was responsible for workplace health and safety regulation.²⁴¹

Delivery on policy objectives

35. As set out in paragraph [17] above, the policy objectives of the SICG Act can be summarised as follows:
 - a. creating greater transparency and accountability by separating regulatory and operational functions;
 - b. consolidating functions to generate operational efficiencies and enable economies of scale; and
 - c. establishing less adversarial, customer-centric organisations, leading to better return to work and quality of life outcomes.
36. Delivery against each of these objectives is considered in greater detail below.

Policy Objective 1: Greater transparency and accountability through the separation of regulatory and operational functions

Overview of regulation by SIRA

37. icare's submissions in this section relate to the role of SIRA as regulator. We have not focussed on the regulatory role played by SafeWork NSW.
38. SIRA does not regulate icare per se. Rather, SIRA is responsible for regulating:
 - a. licensed insurers within the NSW workers compensation system, which includes the Nominal Insurer, which icare acts for, as well as other specialised insurers;
 - b. self-insurers within the NSW workers compensation system, which includes each NSW Government agency covered by the TMF as well as non-government entities. The TMF is operated by SICorp, to which icare provides services (including staff and facilities); and
 - c. the home building compensation scheme, including the Home Building Compensation Fund (HBCF), administered by SICorp.²⁴²
39. While SIRA does not have a role in regulating the Lifetime Care and Support Authority, the two are required to cooperate in relation to the funding of the Lifetime Care and Support Scheme and the provision of statutory benefits for treatment and care to claimants who continue to be entitled to such benefits under the Motor Accident Injuries Act 2017 five years after the date of the relevant accident.
40. The introduction of an independent insurance regulator on 1 September 2015 was a substantial shift from the status quo. As provided in the Background to these submissions, the relevant predecessor entities were either self-regulated or subject to little or no regulation. For WorkCover, which was responsible for acting for the Nominal Insurer as well as implementing, enforcing and regulating the workers compensation system, the practical effect of the 2015 reforms was that the functions previously performed by it needed to be divided between the Nominal Insurer, icare and SIRA, as described in further detail in icare's submissions in response to Term of Reference 2(c).

²⁴¹These functions were conferred on SafeWork NSW by clause 3(2)(b)-(c) of Schedule 4 of the SICG Act

²⁴²Section 24 of the SICG Act; sections 22 and 23 of the *Workplace Injury Management and Workers Compensation Act 1998*; sections 7, 8 and 12A of the *NSW Self Insurance Corporation Act 2004*

41. These changes needed to be complemented by fundamental changes in philosophy, as icare (on behalf of the entities for which it acts and which it provides services to) was required to develop a commercial outlook and approach to its business with a workforce outside the Public Service environment in which its predecessors had previously operated. SIRA, on the other hand, needed to develop a regulatory mindset and build the relevant infrastructure to reflect its newly created role in the system as a new insurance regulator.

Increased accountability and transparency

42. In icare's view, the results of the structural separation have been largely successful. The section below sets out a number of ways in which accountability and transparency have been enhanced since the commencement of the SICG Act.

Regulatory action

43. Since 1 September 2015, SIRA has been able to exercise several different levers and mechanisms by which to hold the Nominal Insurer and SICorp to account. Some examples include:
- a. SIRA has powers to prosecute insurers for breaches of their statutory obligations.²⁴³ SIRA has imposed one letter of censure and three civil penalties on the Nominal Insurer (two civil penalties under section 183A of the 1987 Act and one penalty notice under section 246 of the 1998 Act) since 2017, for certain alleged breaches of those Acts and its regulations, as follows:
 - viii. 18 January 2018: penalty notice issued to Nominal Insurer for failure to comply with section 74 of the 1998 Act, and failure to determine a claim as required by section 281 of the 1998 Act;
 - ix. 1 August 2019: civil penalty imposed on Nominal Insurer for failure to comply with statutory obligations (claims management);
 - x. 16 January 2020: letter of censure issued to Nominal Insurer for failure to comply with direction issued under section 194 of the 1987 Act; and
 - xi. 22 January 2020: civil penalty imposed on Nominal Insurer for failure to comply with Workers Compensation Market Practice and Premiums Guidelines;
 - b. since the fourth quarter of 2017, SIRA has issued 250 notices to icare, the Nominal Insurer and SICorp under section 238AA of the 1998 Act, which provides SIRA with the power to obtain information, documents or evidence in relation to a possible contravention of the 1987 or 1998 Acts or the regulations made under those Acts. Many of these notices have required the return of significant volumes of documents. SIRA also has various other powers to require insurers to disclose data and information to it;²⁴⁴

²⁴³Section 23(1)(l) of the 1998 Act

²⁴⁴e.g. Sections 40B and 40C of the 1998 Act

- c. under section 202A of the 1987 Act, SIRA can conduct audits of any workers compensation activities of an insurer to determine whether those activities are being carried out effectively, economically and efficiently, and in compliance with the 1987 and 1998 Acts and any regulations made under those Acts. SIRA has conducted eight audits under section 202A of the 1987 Act from the beginning of 2017 to present, as follows:
 - xii. December 2018, regarding claims data;
 - xiii. 2019, as part of the Dore Review;
 - xiv. May 2019, regarding insurer action after injury notification;
 - xv. September 2019, regarding claims data;
 - xvi. February 2020, regarding certain Corrective Services claims;
 - xvii. March 2020, being a Quarterly Claims Review – Quarter One;
 - xviii. August 2020, being a Quarterly Claims Review – Quarter Two (not yet finalised); and
 - xix. November 2020, regarding PIAWE (not yet finalised).

Further, icare has been advised of SIRA's intention to undertake an audit on icare's use of the Workers Compensation Insurance Fund;

- d. SIRA is empowered to issue directions to insurers to comply with various provisions of the 1987 and 1998 Acts.²⁴⁵ SIRA has issued six Direction Notices pursuant to section 194 of the 1987 Act since the start of 2017, as follows:
 - xx. March 2018, regarding deceased workers affected by section 39 of the 1987 Act;
 - xxi. June 2019, regarding RTW data;
 - xxii. December 2019, regarding a service provider;
 - xxiii. September 2020, regarding data reporting;
 - xxiv. October 2020, regarding 'date claim made'; and
 - xxv. November 2020, regarding a service provider;
- e. under section 202B of the 1987 Act, the Nominal Insurer is required to prepare and submit to SIRA a business plan for its workers compensation insurance business at least every 12 months. Two draft versions of the Nominal Insurer's Business Plan for the 2020/21 financial year were provided to SIRA in September 2020, with feedback provided on both occasions. SIRA's feedback was incorporated into the final version of the Nominal Insurer's Business Plan which was submitted to SIRA on 30 September 2020 in accordance with the legislative requirements;
- f. since home building compensation scheme reforms in 2018, SIRA has issued several guidelines under new powers given by the *Home Building Act 1989* (the **Home Building Act**), dealt with many scheme regulatory matters (including licence applications by putative providers), imposed licence conditions on SICorp's deemed HBCF operating licence, implemented legislative reform and dealt with a variety of complaints by builders and homeowners. SIRA also has powers to issue fines and sanctions against, and request information from, licence holders including SICorp, and on 1 February 2018 issued a direction to SICorp to produce data to SIRA on an ongoing basis under section 121C of the Home Building Act; and
- g. SIRA commissioned the Dore Review, pursuant to its powers under sections 23 and 24 of the SICG Act and sections 22 and 23 of the 1998 Act.

²⁴⁵Section 194 of the 1987 Act; section 59D of the 1998 Act

Reporting

44. icare and SIRA have established a significant matter notification process which covers the Nominal Insurer, SICorp and icare with regards to its functions and responsibilities under the workers compensation scheme. icare is required to notify SIRA of matters of “*significance*” relating to “*Litigation*,” “*Privacy*,” “*Compliance*” and “*Other*” in accordance with agreed definitions. Since this process was established in September 2018, icare has notified SIRA of eight matters of significance relating to its operations within the workers compensation scheme, as follows:
- a. four significant litigation matters;
 - b. one compliance matter; and
 - c. 3 matters of other significance (i.e. of reputational or media significance).
45. Several notifications have also been made to SIRA in respect of the HBCF, where a similar arrangement is in place.
46. In addition to being required to report significant matters, the Nominal Insurer and SICorp also have other reporting obligations to SIRA, which cover information relating to an extensive list of matters including, by way of example, fatalities, workers transitioning from the scheme (e.g. under section 39 of the 1987 Act) and COVID-19.

Additional oversight

47. Separately from SIRA, there are also various other mechanisms by which icare is kept accountable for the operation of its schemes through oversight by other parts of the NSW Government:
- a. icare is required to provide the Treasurer with annual Statements of Business Intent and business plans for approval,²⁴⁶ and NSW Treasury monitors performance against the relevant targets set;
 - b. SICorp,²⁴⁷ BIG Corp²⁴⁸ and the Sporting Injuries Compensation Authority²⁴⁹ are subject to the direction and control of the Treasurer. In addition, the Treasurer can give written directions in the public interest to both icare²⁵⁰ and the Lifetime Care and Support Authority;²⁵¹
 - c. the Workers Compensation Independent Review Office (**WIRO**) deals with insurer complaints made by injured workers and receives feedback on individual claim dispute issues. WIRO also publishes reports regarding the performance of individual insurers, including the Nominal Insurer, using this information;
 - d. the Workers Compensation Commission, an independent statutory tribunal established by section 366 of the 1998 Act in order to resolve workers compensation disputes between workers, employers and insurers across the State (soon to be replaced by the Personal Injury Commission); and
 - e. as NSW Government agencies, icare and the authorities to which it provides services are also subject to scrutiny by the Independent Commission Against Corruption (**ICAC**), the Information and Privacy Commission (**IPC**), the NSW Audit Office, the Public Service Commissioner and other entities. Many of these bodies also have oversight of the Nominal Insurer, notwithstanding it is not a NSW Government agency.

²⁴⁶Section 11(1) of the SICG Act

²⁴⁷Section 4(3) of the *NSW Self Insurance Corporation Act 2004* (SICorp Act)

²⁴⁸Section 103Q(3) of the *Home Building Act 1989*

²⁴⁹Section 7A of the *Sporting Injuries Insurance Act 1978*

²⁵⁰Section 7 of the SICG Act

²⁵¹Section 38 of the *Motor Accidents (Lifetime Care and Support) Act 2006*

48. icare executives are also regularly called to give evidence at Parliamentary inquiries and the SICG Act expressly provides for the establishment of the Law and Justice Committee to oversee the insurance and care schemes.²⁵² This Committee convenes, conducts hearings and regularly reports to Government on matters including the performance of icare.
49. There is currently also a separate special review being conducted by the Independent Pricing and Regulatory Tribunal (**IPART**) of the home building compensation scheme and HBCF:
- In December 2019, the Minister for Customer Service referred to IPART a number of matters for special review concerning the efficacy of the HBCF and the home building compensation scheme.
 - The review deals not only with the operational aspects of the HBCF but also issues for the scheme, such as impediments to entry to the scheme by private providers of cover, the role of the regulator and possible scheme enhancements to assist risk management.
 - IPART released a Draft Report on 18 September 2020 and held a virtual public hearing on the report on 29 September 2020. IPART made several draft recommendations concerning scheme changes (including the overall NSW building scheme), improvements to HBCF processes and SIRA's role. The final report is expected within the next month.
50. In addition, as a result of the governance frameworks in place at icare (discussed in further detail in icare's submissions in response to Terms of Reference 1(e) and 1(g)), icare also monitors compliance within the organisation through numerous internal processes. From time to time, this has led to the self-reporting of certain discrepancies identified through these internal processes, for example icare's investigations into underpayments of weekly benefit entitlements to injured workers following an internal review of PIAWE calculations that commenced in 2019 (discussed in further detail in icare's submissions in response to Terms of Reference 1(a)).
51. Alongside SIRA's oversight, this framework provides a high level of oversight and accountability over icare beyond that which applies to private workers compensation insurers.
52. The additional reporting obligations to SIRA and other parts of the Government imposed on icare have also assisted with enhancing transparency of the operation of the relevant schemes. Such efforts have also been assisted by the transition to a centralised claims system in the Nominal Insurer's scheme which provides icare with greater transparency and control over claims data across the different scheme agents. icare also provides all NSW Government agencies with access to an online reporting tool which provides agencies with full transparency and access to their claims data, allowing them to review their portfolio monthly and generate reports to suit the needs of their agency.

Opportunities for improvement

53. There are some examples, particularly in terms of the workers compensation legislation, where the structural separation has not been completely successful in its implementation. This is because SIRA, icare and the Nominal Insurer have not always been able to reach a common understanding of their responsibilities under the legislation, described in more detail in icare's submissions in response to Terms of Reference 1(j) and 2(c).
54. As discussed in icare's submissions in response to Terms of Reference 1(j), icare's relationship with SIRA is also complicated by the fact that icare and SIRA interface in different ways other than as simply operator and regulator. In addition:
- although WIRO is described as an "*independent*" statutory office,²⁵³ it is funded by SIRA through a levy paid by icare;²⁵⁴ and
 - SafeWork NSW is also funded by SIRA through the same levy.²⁵⁵

²⁵²Section 27 of the SICG Act

²⁵³Sections 24 and 27 of the 1998 Act

²⁵⁴Section 35(2)(c) of the 1998 Act

²⁵⁵Section 35(2)(b) of the 1998 Act

55. There have been recent improvements in the relationship between icare and SIRA, including efforts to further clarify their respective roles and responsibilities following the Dore Review, as described further in icare's submissions in response to Term of Reference 1(j). Such efforts are expected to assist with the achievement of the intended policy objective of greater transparency and accountability through the separation of regulatory and operational functions between SIRA and icare, which has previously been hampered by the uncertainty described above.
56. By way of counterexample, in other areas of icare's business where there has been a clearer understanding and demarcation of roles and responsibilities between icare and SIRA (especially in relation to the Lifetime Care and Support Authority and the HBCF), icare's relationship with SIRA has been more straightforward and equivalent difficulties have not been encountered. For example:
- a. building on a positive relationship formed while delivering the Lifetime Care and Support Scheme and the CTP insurance scheme in parallel, the Lifetime Care and Support Authority and SIRA are successfully working to deliver CTP Care, which provides treatment and care statutory benefits for people injured in a motor accident in NSW, who have such needs five years or longer after their accident; and
 - b. following reforms in 2018 to allow private sector participants to compete for market share with HBCF and enhance SIRA's powers to monitor and regulate the home building compensation scheme, as of the 2020/21 financial year, HBCF has the most sustainable pricing and underwriting model in the NSW warranty environment. This has been achieved by icare by introducing a risk-based approach, reducing operating expenses and introducing a capital investment strategy.
57. icare is optimistic that continued efforts between icare and SIRA will further contribute to achieving this policy objective in respect of the workers compensation system.

Policy Objective 2: Generating operational efficiencies and enabling economies of scale through the consolidation of functions

58. The key rationale for the creation of icare as a new Government organisation that acted for the Nominal Insurer and provided services to various other insurance and care schemes was to consolidate insurance expertise in the one entity.
59. As explained in the Strategic Insurance Review, *"if implemented and executed well [this] will achieve better claims outcomes, assist whole-of-government risk management and drive the commercial focus of the business from one place. This will provide lower costs for the State across its insurance and self-insurance businesses ... A focussed and dedicated entity can attract and retain quality staff with the right insurance expertise to support a single operator"*.²⁵⁶
60. In icare's view, it has successfully created operational efficiencies through the single insurance and care provider model. icare has been able to achieve these efficiencies by consolidating expertise and leveraging shared capabilities in areas such as actuarial analysis, risk, provider management, claims operations, digital and technology and large-scale transformation. Many of these areas require specialist expertise that icare has been able to successfully attract from the broader insurance market to set up in-house teams, appropriate for its undertaking, in part as a result of its ability to employ its own staff outside the NSW Public Service.

²⁵⁶Section 5.1.1, Strategic Insurance Review

61. As described in further detail in icare's submissions in response to Term of Reference 1(c), since its inception to the end of June 2020, icare has successfully:
- a. achieved \$469 million in operating expenses savings through improvements to its operating models, internal organisational structures and the centralisation and rationalisation of supporting functions;
 - b. realised \$214 million in claims-related expenses savings through improved claims operations and contract negotiations with suppliers and providers of hearing aids, legal and medico-legal services, investigators, rehabilitation and imaging services; and
 - c. taken actions that have enabled a release of \$313 million of actuarial reserves as a result of the implementation of enhanced claims management strategies. In particular, these have resulted in lower weekly benefit costs for claims aged over five years (i.e. claims with whole person impairment (**WPI**) higher than 20 per cent) through various initiatives to support RTW for workers with long-term injuries (as detailed further in icare's submissions in response to Term of Reference 1(c)).
62. In addition to these financial benefits, icare considers that the following are also evidence of new operational efficiencies:
- a. through icare's specialised actuarial, underwriting and finance teams, it has been able to successfully develop and implement foundational governance infrastructure and processes that did not exist in icare's predecessors, including implementing budgets and forecasts for the Nominal Insurer, a pricing policy, a Capital Management Plan, and a Financial Condition Report;
 - b. in order to ensure that injured workers with the highest needs within the Nominal Insurer's scheme receive the proper assistance, icare established the Workers Care Program. In addition to ensuring that such workers receive the benefits they are entitled to under the legislation, the Workers Care Program was designed to ensure that all such workers are provided with the support they need to achieve the best possible medical outcome and return to independence, by adopting an operating model similar to the Lifetime Care and Support Scheme. The feedback that icare has received from such workers since the launch of the program demonstrates that it has proven effective in achieving this goal. Further details on the Workers Care Program have been included in icare's submissions in response to Term of Reference 2(a);
 - c. icare has integrated the care schemes run by the Lifetime Care and Support Authority, Workers Compensation (Dust Diseases) Authority and Nominal Insurer (i.e. the Workers Care program) through the use of shared service provider panels and projects to improve outcomes across the three schemes;
 - d. the TMF's bespoke claims service model was built using a collaborative approach with NSW Government agencies and their workers, and was designed to ensure a consistent service experience for injured workers and agencies across NSW Government. icare helps NSW Government agencies recover loss or repair damage to \$193 billion in public assets, including buildings, motor vehicles and other government property and infrastructure, and also provides a number of services and tools to agencies to drive improved workers compensation performance and consistency across all agencies, including an online reporting tool (discussed in paragraph [51] above), TMF's Agency Advisory Council and quarterly Agency Performance Adjustment reports. The work of icare's agency engagement teams has also allowed for more streamlined processes and utilisation of shared service arrangements across agencies, and has supported agencies experiencing disruption and financial strain in the past 12 months following the bushfires, floods and COVID-19;

- e. under icare's stewardship, the CRIF has gone from being underutilised by Government to insuring over 3,500 projects covering \$25 billion of Government infrastructure, saving the Government an estimated \$15 million per year in construction insurance project costs. The CRIF has also increased Government oversight of and access to policy terms and conditions, reducing the administrative burden of ensuring policies are current or adequate, and removing complex issues around multiple policies operating over one project or on annual renewal cycles. icare has also developed the CRIF portal, which allows agencies to declare, insure and manage payments for their construction insurance online; and
- f. as of the 2020/21 financial year, HBCF has the most sustainable pricing and underwriting model in the NSW warranty environment, which has been achieved by introducing a risk-based approach, reducing operating expenses and introducing a capital investment strategy.

Policy Objective 3: Better return to work and quality of life outcomes through the establishment of less adversarial, customer-centric organisations

Return to work outcomes

- 63. One of icare's keystone attempts to create a less adversarial, more customer-centric organisation was the introduction of the Nominal Insurer's new claims service model, complemented by a transition to a new claims technology platform. The model was intended to make the claims process simpler, more transparent and more effective, and deliver fairer and more consistent outcomes to injured workers.
- 64. Unfortunately, there was a negative impact on the Nominal Insurer's RTW rates due to the movement and transition of claims between claims management providers in late 2017, which was exacerbated by operational challenges associated with the initial launch of the new claims service model from 2018 to late 2019. This was affected further by various external factors that drove a general decline in the RTW rates across all insurers in the NSW workers compensation system, with the least decline in the TMF portfolio.
- 65. icare has dealt extensively with RTW performance and its attempts to improve RTW performance in its submissions in response to Terms of Reference 1(a) and 2(a), including the improvements to the new claims service model following the Dore Review to address the initial operational challenges encountered. icare is confident that the effect of actions it has taken will contribute to addressing the decline in RTW, and notes that RTW rates in the Nominal Insurer's scheme have steadily improved since mid-2019 (until a recent deterioration relating to COVID-19). Indeed, as at September 2020, RTW rates for the Nominal Insurer scheme are now above self-insurer RTW rates and comparable to specialised insurer RTW rates. The RTW rates in the TMF portfolio remain higher than self and specialised insurers, strengthened by the customer-centric approach icare has taken to working with NSW Government agencies and their workers, and the collaborative approach it took to building its bespoke claims service model and ensuring consistency of customer service through claims management, a decision rights framework, customer empowerment, risk profiling and increased oversight.
- 66. icare is also focussed on improving RTW rates for participants in the Lifetime Care and Support Scheme. Over 70 per cent of participants in this scheme have a traumatic brain injury and can face challenges returning to work and maintaining employment. icare has established a partnership with the NSW Agency for Clinical Innovation to establish and pilot a vocational program (the Vocational Intervention Program) to support those with a brain injury to return to work. Stage one of the Vocational Intervention Program was very successful, doubling the RTW rate when compared with the control group. As a result, icare has provided further funding to expand the program across NSW.

Better quality of life outcomes

67. Whereas RTW outcomes are used to measure the success of workers compensation schemes, since inception, icare has sought to achieve better quality of life outcomes for participants in both its workers compensation and care schemes, including the Lifetime Care and Support Scheme, the Workers Care Program and the dust diseases scheme run by the Workers Compensation (Dust Diseases) Authority (**Dust Diseases Care**).
68. While quality of life outcomes cannot be measured as readily as RTW outcomes, customer NPS scores for participants in all five of icare's key schemes have continually improved since 2017, as detailed in icare's submissions in response to Term of Reference 1(c).
69. icare also conducts surveys of the participants and injured workers in its care schemes. The most recent survey showed 88 per cent satisfaction with the Lifetime Care and Support Scheme and 95 per cent satisfaction with the Workers Care Program.
70. icare has taken a customer-centred approach to achieving better quality of life outcomes for participants in these schemes, including through the initiatives described below.

My Plan and My Affairs

71. icare has developed a person-centred, strengths-based planning approach called My Plan to support planning for participants and injured workers in the Lifetime Care and Support Scheme and Workers Care Program. An equivalent program has also been developed for workers in the Dust Diseases Care scheme called My Affairs.
72. My Plan and My Affairs put the injured person at the centre of the planning process and provide a number of tools to ensure that their individual circumstances and preferences are the priority when developing their plan. They promote a working partnership between participants and injured workers and their families, icare and service providers, as well more choice and control in identifying their goals and support needs.

Safeguarding Framework and Committee

73. icare has developed a Safeguarding Framework to effectively manage risk and ensure the safety of participants and workers in both the Lifetime Care and Support Scheme and Workers Care Program. This work recognises that some participants and workers may be vulnerable to abuse, harm or neglect and, due to their injuries, may be unable to protect or empower themselves.
74. The aim of the Safeguarding Framework is to keep participants and workers safe in their home environment, to strengthen existing safeguards and supports, and to maximise independence through a range of initiatives that aim to promote choice and control. The Safeguarding Framework reviews icare's internal structures and systems and external programs, and supports that focus on quality, safety and prevention.
75. As part of this framework, the internal Participant Safeguarding Governance Committee oversees the assessment and delivery of services to participants who are vulnerable because of their injury and/or age. This Safeguarding Governance Committee has oversight of internal safeguarding initiatives and practices and external projects supported by icare.
76. This Committee oversees the application of the safeguarding tool to develop a risk assessment profile of participants and workers, which can be used to develop individualised safeguarding strategies for those individuals.

77. icare has also undertaken the following safeguarding and quality activities aimed at improving quality of life outcomes for participants in its care schemes and severely injured workers:
- a. to ensure the protection and promotion of participants' human rights, icare has developed a Restrictive Practice Authorisation Policy that aligns with the National Framework for reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector;
 - b. the Service Provider Quality Assurance Framework, implemented in April 2018, outlines a risk-based approach for the relationships with different service provider groups, including approved providers. The framework provides guidance on managing performance and issues and outlines the governance activities implemented by staff. icare is currently engaged in further developing its audit and governance program of service providers to ensure robust measures and systems are in place and to provide greater assurance over the quality of service provision;
 - c. icare has continued to work with specialist providers to define capabilities and expectations in high risk areas. A panel of Care Need Assessors for participants with complex and challenging behaviours has been established;
 - d. in partnership with the Physical Disability Council of NSW (**PDCN**), icare has developed a Wellbeing Visitors Program. This program provides an impartial external service to review a participant's current circumstances and provide information and advice on accessing the community and other services. The program has an inherent safeguarding function in its review of a participant's environment. The PDCN will visit participants and provide recommendations to icare and referrals to outside community groups; and
 - e. the safeguarding framework outlined above is for all participants, regardless of age. In response to the Royal Commission into Aged Care Quality and Safety, icare also regularly reviews its participants in aged care facilities and has focussed its Wellbeing Visitors Program on older participants.

Empowered Living Program

78. icare established the Empowered Living Program in 2017. The aim of the program is for participants and workers to have an awareness of, and access to, new-to-market assistive technology (**AT**) solutions to empower them with greater independence to enhance their overall quality of life. To achieve this aim, icare conducted customer research and engaged specialist providers to conduct market scans to identify new-to-market AT solutions that can address common participant problems.
79. A key problem identified in 2017 was enabling participants to have more active control of their home environment and home modifications. icare has identified and piloted new home automation technologies that can enable participants with limited mobility and impaired hand function to increase their independence in controlling their home environment. This includes fully integrated tablet/phone-based systems that can control doors and video intercoms, lights, air conditioning/heating, blinds, TV/AV and music, as well as voice control. A demonstration space has been set up at Sargood on Collaroy for participants to trial equipment.
80. icare has also developed 360-degree panoramic virtual tours of three modified homes. These tours are now being demonstrated to newly injured participants to help them understand what a modified home looks like, and to support them to make choices for their own home modifications.

Other activities

81. icare has also undertaken the following activities aimed at improving quality of life outcomes for participants and injured workers in its care schemes:
- a. *Guidance for spinal cord injury*: After extensive research and review, icare released the third edition of the *Guidance on the support needs of adults with spinal cord injuries* in December 2017, which was developed by a working party of health professionals, researchers, service providers, support workers and injured people, utilising the practical knowledge of clinical experts and the first-hand experiences of injured people. The resource assists injured people, their family and health professionals to make informed decisions about support for living with a spinal cord injury and has been used by schemes around Australia.
 - b. *Peer to peer support*: Feedback from participants and injured workers and their families has identified a need for social, emotional and practical support by other people with a brain or spinal cord injury and their family members, based on first-hand experience. icare has worked with disability organisations to develop new peer support programs or expand existing programs. There is a peer support program for family members, including children, run by Carers NSW, a peer support program for people with a brain injury and family run by Synapse, and a peer support program for people with Spinal Cord Injuries run by Spinal Cord Injuries Australia.
 - c. *Psychiatry fellowships*: icare has partnered with the University of Sydney's Brain Mind Centre, the Royal Australian and New Zealand College of Psychiatry and the Northern Sydney Local Health District to establish three psychiatry fellowships in brain injury for advanced trainees. The fellowships aim to increase the capacity of specialist mental health services in NSW to support people with a brain injury.
 - d. *Pain management*: Pain continues to be a significant problem for many participants. Over 50 per cent of participants with a brain injury complain of pain and the impact it has on their daily lives. icare is working with the Agency of Clinical Innovation (NSW Health) to establish pain clinics in all metropolitan brain injury and spinal cord units as well as establishing a service to the regional brain injury units.

Customer-centricity generally

82. icare takes a customer-centred approach to its work across all schemes. This is evidenced by the improvements in its customer NPS across all five of its key schemes since January 2017, as set out in icare's submissions in response to Term of Reference 1(c).
83. icare's customer-centric approach is embodied in the measures it has taken to hold the Nominal Insurer's workers compensation premiums stable for 7 years, giving confidence and predictability to the employers of NSW. As set out in more detail in icare's submissions in response to Term of Reference 1(c), icare has passed on a total of \$1.586 billion in premium reductions since inception. At 1.4 per cent of wages, the Nominal Insurer's premium is the cheapest across the workers compensation system in NSW, below the national average, and lower than historical premiums.
84. Additionally, icare has improved pricing mechanisms in the TMF schemes by developing NSW Self Insurance Principles, and in line with these, working with NSW Treasury to review the TMF pricing and reinsurance strategies across the workers compensation and general lines portfolios for the first time in 30 years. The new pricing model is considered by NSW Treasury and NSW Government agencies to be less volatile, improving Government budget forecasting and reducing cross-subsidisation, and moved towards a more equitable and transparent allocation of scheme costs between agencies based on their risks.

85. Some of icare's other key customer achievements across its schemes include:
- a. the creation of several online portals and other technological enhancements to make processes more accessible, efficient and effective, including:
 - i. an online portal for policy purchasing and renewal for employers in the Nominal Insurer's scheme;
 - ii. online claims portal in the Nominal Insurer's scheme, allowing customers to lodge claims 24/7, which saw a change in the mix of who lodges claims, with the proportion of claims lodged by injured workers or their representatives increasing from 5 to 15 per cent of claims;
 - iii. an online Builder Self Service Portal (**BSSP**) for builders in the HBCF scheme;
 - iv. the introduction of a single information technology platform across all scheme agents in the Nominal Insurer's scheme; and
 - v. digitising the Dust Diseases Care application process to cut processing times;
 - b. improved customer experience in the HBCF scheme, where the builder NPS score has improved by +27. icare attributes the improvement in builder opinion to various initiatives, including developing the BSSP, which provides greater flexibility and an improved experience, and conducting a program of face to face presentations in regional and metropolitan NSW to engage with builders on policy coverage, premiums and claim trends;
 - c. introduction of the Risk Education eXpress (**REX**), which supports NSW Government agencies to build capabilities to protect the people, assets and services of NSW through a diverse curriculum of programs, on-demand resources and a peer connect community focussed on mental health. Between 2019 and 2020, REX has increased:
 - i. its programs on offer from 47 to 124;
 - ii. the number of participants from 1,263 to 2,895; and
 - iii. average NPS from +53 to +68;
 - d. proactive support to customers during the severe 2019/20 bushfire season, including through:
 - i. contacting participants in the Lifetime Care and Support Scheme to ensure their emergency plan was in place and working with local service providers to ensure that the needs of any participants requiring accessible alternative accommodation and equipment were met;
 - ii. contacting workers in the Dust Diseases Care scheme to check on wellbeing, provide reminders about lung health and advise that they act early if they have any breathing difficulties; and
 - iii. offering additional EAP and counselling services to the Rural Fire Service to ensure they had all the critical incident debriefing required to deal with being involved in the traumatic circumstances;
 - e. proactive support to customers and make necessary operational adjustments to account for the effects of COVID-19;
 - f. introduction of an online platform in 2018 to collect NSW Government agency information to ensure that icare has all appropriate data regarding each agency's risks, which has enabled significantly improved timeliness and accuracy of the Government's view of its property and liabilities, exceeding any other NSW database in completeness;
 - g. expanded access to screening and medical services for lung diseases with the Lung Bus and a new medical screening facility in the Sydney CBD;
 - h. preparation of a Grief Support & Information pack for families and friends who have experienced the sudden loss of a loved one at work; and
 - i. proactive support and management of the most-at-risk customers identified as part of the NPS program.

86. icare has also continued to focus on improving customer service outcomes for both injured workers and employers using the claims service model across both the Nominal Insurer and TMF schemes. icare engaged Righthandturn Pty Ltd in October 2019 as a Customer Advocate to meet with stakeholders and customers that provided written submissions to the Dore Review, in order to gain further insights on their experience as a customer interacting with icare and identify opportunities for icare to enhance its customer service delivery in the Nominal Insurer's scheme. The Customer Advocate issued a report on 18 December 2019 with a number of recommendations that icare has since acted on. Further detail has been included in icare's submissions in response to Term of Reference 1(a).

The creation of a less adversarial system

87. icare acknowledges that instead of creating a less adversarial workers compensation system, it has focussed on a non-adversarial system, which, amongst other things, has led to declining RTW rates in the Nominal Insurer. However, with these RTW rates having steadily improved, icare believes it has struck the right balance.
88. One of icare's key initiatives in this regard has been the implementation of the Medical Support Panel (**MSP**) in May 2017 for the Nominal Insurer's scheme, in order to provide workers, employers and treating providers in NSW with expedited medical decision making on claims, improved customer experience and collaborative relationships with medical stakeholders to assist workers to receive timely and appropriate health interventions.
89. This need was highlighted as a result of concerns raised by the NSW Government Standing Committee on Law and Justice and the Victorian Ombudsman regarding the increasing use of Independent Medical Examinations (**IMEs**) by case managers and the impact on outcomes and delays in treatments for workers. Further supporting these concerns was a review conducted by icare of IME services provided between 2013-2015, which found that more than 50 per cent of workers were waiting on average six weeks for treatment to be approved that could have been approved without delay.
90. The MSP is comprised of medical specialists with the expertise to review case files and make recommendations in relation to whether medical investigations and health interventions are evidence-based, best practice or reasonably necessary. The MSP facilitates case manager understanding of the medical aspects of a claim and discussion with the injured worker, as well as ensuring peer to peer discussions with relevant treating providers and employers as required.
91. Since the inception of the MSP, the medical specialists on the panel have:
- a. improved timelines for decision-making and reduced treatment delays for injured workers;
 - b. reviewed over 14,000 referrals for medical treatment and interventions;
 - c. provided support and medical guidance on 55 per cent of these referrals in an average of less than 5 days from date of receipt without needing an IME (compared to 50 per cent within an average of six weeks during 2013 to 2015); and
 - d. provided concise medical case summaries, objectives and relevant questions for the remaining 45 per cent of cases requiring a physical assessment through an IME.
92. The MSP has also had the benefit of reducing costs. In the 2018/19 financial year, the combined cost to the Nominal Insurer of the MSP and IMEs was \$17.7 million, compared to the \$27 million cost of IMEs alone in the 2017/18 financial year. The MSP has also since been rolled out for particular aspects of the TMF scheme, including as part of an early intervention approach with NSW Police for claims with a Post-Traumatic Stress Disorder (PTSD) diagnosis.

93. Other initiatives icare has taken to create a less adversarial workers compensation system include:
- a. development and implementation of the Workers Assistance Program and Community Support Service to support injured workers as they transitioned from the scheme in both the Nominal Insurer's scheme and the TMF scheme, as described in more detail in icare's submissions in response to Terms of Reference 1(a) and 2(a);
 - b. development of handbooks, programs and other tools to assist case managers and providers in their support of injured workers' claims and return to work, including the Work Capacity Handbook and the Workplace Rehabilitation Handbook and Online Tool (used in both the Nominal Insurer's scheme and the TMF scheme) as well as the Whole Person Impairment program (used in the Nominal Insurer's scheme), as described in more detail in icare's submissions in response to Term of Reference 2(a); and
 - c. proactive management and decision rights have substantially reduced the average time to make a liability decision on a fatality claim. In particular, all notifications of a fatality are responded to proactively by specialist fatalities Case Managers who contact families and employers directly to offer counselling support and information about the claims process. Ongoing proactive engagement throughout the investigation has resulted in a reduction in liability decision timeframes and has provided a more positive customer experience for those impacted by a death, regardless of the outcome.

