

Standing Committee on Law and Justice
2020 Review of the Workers Compensation Scheme
Questions on Notice from 15 December 2021 hearing

QoN #	TRANSCRIPT PAGE #	QUESTION	ANSWER												
1	Pg. 3	<p>The Hon. DANIEL MOOKHEY: I also thank you on the record for the submission that icare has made to this update inquiry, as well as the assistance that icare has provided in responding to calls for papers from the House. I know that is an onerous thing. Mr Harding, I might start where you left off: on the question of employee numbers, remuneration and the like. What is the current headcount of staff directly employed by icare?</p> <p>Mr HARDING: I do not have that number exactly off the top of my head. It is about 1,500, as I said in my opening remarks.</p> <p>The Hon. DANIEL MOOKHEY: I think your annual report said it is 1,432 as of 30 June 2021. Has it gone up since then?</p> <p>Mr HARDING: That was at 30 June, Mr Mookhey. There are plenty of changes happening across icare.</p> <p>The Hon. DANIEL MOOKHEY: Is it higher than that?</p> <p>Mr HARDING: As I said to you a minute ago, I do not have the exact number with me today. I can find that for you. But I do not believe it is higher than the 1,500 that I have just provided to you as a round number.</p> <p>The Hon. DANIEL MOOKHEY: Okay, thank you.</p>	<p>Employee Numbers:</p> <table><tr><td></td><td></td><td></td></tr><tr><td>30 June 2021</td><td>1,432</td><td>193</td></tr><tr><td>15 Dec 2021</td><td>1,490</td><td>173</td></tr><tr><td>10 Jan 2022</td><td>1,498</td><td>170</td></tr></table>				30 June 2021	1,432	193	15 Dec 2021	1,490	173	10 Jan 2022	1,498	170
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2	Pg.5 & 6	<p>The Hon. DANIEL MOOKHEY: Yes, and you are quite right, Chair. But, Mr Harding, you have said that employee costs look like they have gone up by \$40 million and I appreciate your explanation. You said that you have reduced contingent labour but your financial report says icare spending on contractors has more than doubled. Please can you explain to me how we square these respective circles?</p> <p>Mr HARDING: If you can provide me the specific line that you are talking to, I will—</p> <p>The CHAIR: Order!</p> <p>The Hon. DANIEL MOOKHEY: It is on page 16 of your—</p> <p>The CHAIR: Order! The problem I have is that with two of you speaking Hansard, in particular, will have trouble recording this and also it is very hard for everybody else to follow. Mr Harding had the call. Mr Mookhey, I will allow him to seek his clarification.</p> <p>The Hon. DANIEL MOOKHEY: Sure.</p> <p>The CHAIR: Then you can address that. But, yes, please only one at a time. Mr Harding, you have the call.</p> <p>Mr HARDING: Thank you, Chair. As I was saying, Mr Mookhey, if you provide me with the specific line item that you are interested in, I will get that answer for you on notice.</p> <p>The Hon. DANIEL MOOKHEY: Thank you. It is on page 16 of your financial statements that you tabled in Parliament two weeks ago and it is in Notes to the Financial Statements, Other Operating Expenses. There are two line items which you wish to clarify in the hearing on notice. The first is Consultants, Other, which has gone from \$5.7 million to \$11.5 million and then Contractors, \$26,503,000 in 2020 to \$67,363,000. I would be very interested if you could</p>	<p>The references to the icare financial statements in Hon Daniel Mookhey's queries are below:</p> <p>Variances for each cost item relate to:</p> <p>(a) \$5.8 million in consultants - other relates to provision recognised in FY21 for future work to be completed on an 'Improvement Program' in response to the recommendations contained within the McDougall, Dore and SIRA reviews. This is a provision only – no money was paid to consultants or contractors during FY21.</p> <p>(b) \$40 million variance in contractors is comprised of,</p> <ul style="list-style-type: none"> • Approximately \$18 million additional provision recognised in FY21 for future work to be completed on an 'Improvement Program' in response to the recommendations contained within the McDougall, Dore and SIRA reviews. This is a provision only – no money was paid to consultants or contractors during FY21. • Our labour costs were previously recorded in each scheme's accounts. We centralised our contractor/consulting/contingent worker cost pool in the icare service entity in FY21. As a result, \$22 million of costs previously incurred and recorded in respective schemes in FY2020 were transferred to icare in FY2021. There is no overall increase in labour costs for icare. <p>(c) Our labour costs were previously recorded in each scheme's accounts. We centralised our contractor/consulting/contingent worker cost pool in the icare service entity in FY21. As a result, the \$8.9 million variance in fees hosted contingent workers was a result of</p>
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		<p>clarify that, please, as well. For what it is worth, there is another line item here that says "Fees Hosted Contingent Workers", which has gone from \$30,677,000 to \$39 million. So that one has gone</p>	<p>costs previously incurred and recorded in respective schemes in FY2020 - transferred to icare in FY2021. There is no overall increase in labour costs for icare.</p>
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up, too. If you wish to provide any clarity as to why or how we can reconcile what you are telling us with what your statements are saying, that would be most welcome. With that, I am happy to pass to Mr Shoebridge.

Mr HARDING: The process of plucking random numbers out of the annual report and comparing them is not a particularly constructive one.

The Hon. DANIEL MOOKHEY: Well, Mr Harding—

The CHAIR: Order! No, no.

The Hon. DANIEL MOOKHEY: —you might be offended by the questions.

The CHAIR: Mr Mookhey! Order!

The Hon. DANIEL MOOKHEY: You might be offended by these questions.

The CHAIR: Mr Mookhey! Please. I am trying, as best I can, to maintain a level of civility here. Mr Harding had the call. He can challenge what you are saying and you can then address it afterwards, if you like. Mr Harding, you have the call.

Mr HARDING: Thank you. We will provide them to you on notice, Mr Mookhey, no problem. I am happy to pass to Ms Bansal, who will answer the conversation that we have had about consultants. In respect to the contractors, I am very happy to provide you with the factors on notice, but what I would like to repeat is over all there has been, in an organisation such as icare where you have a large employment force working on a number of different schemes across a number of different bodies, there are changes that move in and out of each of those schemes throughout the year. I will get those for you and we can have the answer to your question about the contractors. In terms of consultants, I am happy to pass to Ms Bansal. That is very easily explained.

	2021	2020	Variance
Consultants – Other	11,510	5,712	5,798 (a)
Contractors	67,363	26,503	40,860 (b)
Fees Hosted Contingent workers	39,597	30,677	8,920 (c)

3	Pg. 6 & 7	<p>Mr DAVID SHOEBRIDGE: I am going to ask you, Mr Harding, from your annual report: There has been a \$41 million increase in contractor expenses last year. That is not a small figure. You are the CEO. How do you explain a \$41 million increase in contractor expenses in just one year? As Mr Mookhey pointed out to you, it went from \$26 million to \$67 million. Now, you are the CEO. From what I understand, your answer is you will take it on notice, but I do not think that is acceptable for a \$41 million increase and I would ask you for some details.</p> <p>Mr HARDING: Well, Mr Shoebridge, I have already answered the question from Mr Moo-khey and I will take it on notice and provide that detail to you. I am very happy to provide it. It is not about having questions that I cannot answer or questions that I find difficult to answer. It is about respect and it is about the fact that I would not allow any of my staff to question their teams or their people in a manner that was disrespectful or aggressive because, under the law, that can constitute bullying and harassment, as I am sure you are well and truly aware.</p>	Please see Item 2 above.
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4	Pg. 8	<p>Mr DAVID SHOEBRIDGE: Let's do a little trip through history lane to get a sense of where icare's expenses have gone. We could start in 2016, but that may be slightly unfair because it may not have been a full operating year, but your annual reports show that the employee expenses from icare in your first full year of operation in 2017 were \$100 million—that is from your own annual reports. They show that in 2018 it grew to \$131 million—the employee expenses. There was a remarkable year, 2019, when there was a slight dip down to \$127 million, but then it surged in 2020 to \$170 million. That was before the provision from the Auditor-General. Can you explain the \$43 million surge—the almost one-third increase—in employee expenses between the financial year 2019-20 to \$170 million? Is that explicable?</p> <p>Mr HARDING: Are you asking me, Mr Shoebridge, or Ms Bansal?</p>	<p>The figures quoted by Mr Shoebridge refer to the icare service entity as noted below:</p> <table><tr><td>icare</td><td>2017</td><td>2018</td><td>2019</td><td>2020</td><td>2021</td></tr><tr><td>Employee related costs</td><td>100,394</td><td>131,073</td><td>127,335</td><td>170,780</td><td>214,226</td></tr></table> <p>Increase in employee related costs from 2017 largely relates to a mix of transformation and additional functional costs which were previously performed and incurred by scheme agents (eg: underwriting and enhancement of icare's claims management capability)</p> <p>Employee cost increase in FY2021 compared to FY2020 largely relates to transformation costs which were previously incurred and recognised in respective schemes.</p> <p>Refer below to the transformation cost summary:</p>	icare	2017	2018	2019	2020	2021	Employee related costs	100,394	131,073	127,335	170,780	214,226																																			
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		<p>Mr DAVID SHOEBRIDGE: Whoever has the answer, Mr Harding.</p> <p>Ms BANSAL: There would be multiple reasons as our schemes grow underneath and also you would see an offsetting all to decrease other lines of business, as well as those changes in insourcing versus outsourcing. Overall, that is why Mr Harding's comments about if we look at the cost base overall for icare expenses and track the expense rate, what we have seen is the expense rate has actually improved over the period. So there may be increases in employment costs that are offset by other cost line items.</p> <p>Mr DAVID SHOEBRIDGE: Let's take it through to now. We had \$100 million of employee expenses in 2017. In 2021 it is now at \$214 million of employee expenses in icare. The headcount has risen from</p>	<table><tr><td>Transformation costs</td><td>2017</td><td>2018</td><td>2019</td><td>2020</td><td>2021</td></tr><tr><td>Workers</td><td></td><td></td><td></td><td></td><td></td></tr><tr><td colspan="6"></td></tr><tr><td rowspan="2">e</td><td></td><td></td><td>8,393</td><td>7,468</td><td>-</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr><tr><td>Lifetime Care</td><td></td><td></td><td>14,256</td><td>6,105</td><td>-</td></tr><tr><td>Dust Diseases Care</td><td></td><td></td><td>3,504</td><td>1,313</td><td>-</td></tr><tr><td>Total</td><td>49,246</td><td>129,835</td><td>184,749</td><td>147,332</td><td>-</td></tr></table>	Transformation costs	2017	2018	2019	2020	2021	Workers												e			8,393	7,468	-						Lifetime Care			14,256	6,105	-	Dust Diseases Care			3,504	1,313	-	Total	49,246	129,835	184,749	147,332	-
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under 1,000 to the better part of 1,500. You have more than doubled employee expenses in just four financial years. No other part of government has doubled its employment expenses, or anything like that, from \$100 million to \$214 million. Is that all just an accountancy mirage that we should just ignore?

Mr HARDING: No. There are explainable changes that occurred through that period, Mr Shoebridge, which I am sure you are well aware of. You will know that at a period in time there was this huge contingent workforce that was being conducted. It is well documented in Mr McDougall's reports, and in other reports, that we were working on the Nominal Insurer system program—NISP, or whatever it was called back in the day. At a period of time the organisation made a decision to bring those contingent workers onto the payroll. So there are changes that have happened through the history of the business. I do not have that history; I was not there back then. I am happy to get that explanation for you on notice and to help you with that, but really that is history. You have to respect the fact that schemes grow, new participants grow and the amount of exposure for even the Nominal Insurer has grown.

5	Pg. 9	<p>Mr DAVID SHOEBRIDGE: Some sort of high level, fairly abstract answer from you I do not think is adequate, particularly when in just the past 12 months total expenses have grown from \$783 million to \$925 million. Surely you came with an adequate explanation for the better part of \$150 million of additional expenses that has been booked.</p> <p>Mr HARDING: We had explained, Mr Shoebridge, the changes. Let me put it this way: The past has been well ventilated in other reports. Those changes have been discussed in Mr Shoebridge's report in this Committee in previous periods. My focus and the team's focus is on how we take icare forward to the place where it needs to be. In that, we have committed to \$100 million worth of savings, and we are well progressed towards that. We are also working forward through changes to return-to-work improvements, as well as improved risk and governance, accountability and the culture of the organisation. All of those changes are changes to improve the Nominal Insurer and to improve the other schemes that icare supports to where we want them to be.</p> <p>The CHAIR: Mr Harding, I am going to have to—</p> <p>Mr DAVID SHOEBRIDGE: Mr Harding—</p> <p>The CHAIR: Order! Mr Harding, the question was quite specific from Mr Shoebridge, particularly around the \$150 million increase. He has asked for some details.</p> <p>Mr HARDING: I have offered to get them on notice for him, Chair.</p>	<p>The increase in icare costs of \$143 million (\$925 million less \$783 million) is offset by the reduction in transformation costs of \$147 million in the schemes in 2021 (see table 2 above).</p>
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6	Pg. 9	<p>Mr DAVID SHOEBRIDGE: You said that you were bringing to book on employee expenses money that had previously gone on contingent workforce and on contractors. Mr Mookhey has asked you—and I am going to repeat the question—how could that possibly be the case when your own financial reports for 2021 have \$106 million of icare's funds going to contractors and contingent worker fees?</p> <p>Mr HARDING: I have already—</p>	Please see response to Item 2 above.
		<p>Mr DAVID SHOEBRIDGE: How much was there going on contractors and contingent worker fees if after that work you still have \$106 million going?</p> <p>The CHAIR: Mr Shoebridge, you asked a question and then you jumped in again for a second editorialisation.</p> <p>Mr DAVID SHOEBRIDGE: I will rephrase it: Before you made these changes the 2020 financial statements show that there was \$57 million going on contractors and contingent workers. You say you have transferred them across to employee expenses, but the next year we see \$106 million going on contractors and contingent workers. Please square the circle for me.</p> <p>Mr HARDING: Mr Shoebridge, I have answered this question and I have committed to give you the answer on notice, as I have before.</p>	

7	Pg. 10	<p>The Hon. DANIEL MOOKHEY: On notice, are you in a position to be able to identify that by certainly award band I think you can do, but I do not know how you describe your executive remuneration?</p> <p>Mr HARDING: Those people in the employment agreement category—as I said, those 65—the majority of them are in that employment agreement category; they are not in the award category. There are only the 25 in the award category.</p> <p>The Hon. DANIEL MOOKHEY: Okay. In the public service, if this was to happen, we would have Band 2 or Band 1, State Executive Service [SES] Band 2, Band 3 and, I think, Band 4. Do you have an equivalent system?</p> <p>Mr HARDING: Yes.</p> <p>The Hon. DANIEL MOOKHEY: Can you on notice provide us how many redundancies per band?</p> <p>Mr HARDING: Yes.</p> <p>The Hon. DANIEL MOOKHEY: Thank you very much</p>	<p>Redundancies into public service equivalent bandings:</p> <table><tr><th>Band</th><th>Headcount</th></tr><tr><td>icare Award</td><td>33</td></tr><tr><td>IEA unbanded</td><td>27</td></tr><tr><td>Band 1</td><td>18</td></tr><tr><td>Band 2</td><td>5</td></tr><tr><td>Band 3</td><td>1</td></tr><tr><td>Total</td><td>84</td></tr></table> <table><tr><td colspan="2"></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>	Band	Headcount	icare Award	33	IEA unbanded	27	Band 1	18	Band 2	5	Band 3	1	Total	84						
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8	Pg. 11	<p>The Hon. DANIEL MOOKHEY: How much did you pay recruitment firms to help you find the additional 300 staff that you employed last year?</p> <p>Mr HARDING: I do not have that number. I will just check if Ms Bansal does.</p> <p>Ms BANSAL: I am just checking the consultants list if I have that available.</p> <p>The Hon. DANIEL MOOKHEY: I appreciate that. If you do not, you can take it on notice.</p> <p>Mr HARDING: Happy to.</p> <p>Ms BANSAL: We will provide it on notice.</p>	<p>KornFerry were the recruitment firm utilised. The amount paid in FY21 was \$2.8 million.</p> <table><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>																				

9	Pg. 15 to 17	<p>Mr DAVID SHOEBRIDGE: Mr Harding, of the 8,000 files that were reviewed, of more than two years, the great majority of those did not have an underpayment that was provided, and the \$4.1 million was concentrated in the 627 files where you found an underpayment. Is that right?</p> <p>Mr HARDING: That is right.</p> <p>Mr DAVID SHOEBRIDGE: So I assume that the amount that they received was significantly more than 4 per cent.</p> <p>Mr HARDING: No, it is 4 per cent, but it is significantly more, on average, as an absolute dollar term, because of the length of time that they had been off work.</p> <p>Mr DAVID SHOEBRIDGE: Correct. But I assume that some were paid more than 4 per cent and some were paid less than 4 per cent. Do you know what the largest amount paid was?</p> <p>Mr HARDING: In percentage terms or in dollar terms?</p> <p>Mr DAVID SHOEBRIDGE: Give me whatever figures you have to hand.</p> <p>Mr HARDING: I am not sure I have got it at hand, but I am happy to get it for you on notice. I do not have it at hand. I am happy to provide it to you on notice, but I can say the 4 per cent reflects—we have</p>	<p>We also attach a copy of the sample factsheet and correspondence sent to injured workers impacted by PIAWE remediation.</p> <ul style="list-style-type: none"> • TAB B - Sample PIAWE mailout Factsheet • TAB C - Sample PIAWE mailout Letters <p>A copy of the Final Deloitte report <i>icare: PIAWE Remediation Review Phase 3: Recommendations for improving PIAWE</i>, is also attached for the Committees information.</p> <ul style="list-style-type: none"> • TAB D - Deloitte PIAWE final report for icare
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		<p>looked at the statistical spread of the underpayment rate, if you like, and the 4 per cent is where we have landed because it is reflecting the median of that. There is a long tail, but it reflects the absolute best-case scenario that we can for—</p> <p>Mr DAVID SHOEBRIDGE: It is in the bell curve.</p> <p>Mr HARDING: As I said, we are confident and comfortable accepting the overpayment risk in that.</p> <p>Mr DAVID SHOEBRIDGE: Are you confident and comfortable accepting the underpayment risk?</p> <p>Mr HARDING: As to the Chair's question, anyone who feels that that is not enough is well able to come back and ask for a full review. As we have said, we have written to all 280,000 of them and had responses from a lot of people already.</p> <p>Mr DAVID SHOEBRIDGE: But your business does not have the records in order to work out the accurate payment.</p> <p>Mr HARDING: No, but if the injured—</p> <p>Mr DAVID SHOEBRIDGE: That is the truth of the matter, is it not, Mr Harding? You do not have the records to work out an accurate payment, and so you have adopted this class resolution.</p> <p>Mr HARDING: To be clear, Mr Shoebridge, neithericare, nor the employer, nor the injured worker—because the process we have gone through for those file-by-file reviews is to seek that from each person. If an injured worker has the data and they have their payslips and other information to help us with the PIAWE calculation, we are very happy. That is the opportunity for them to come forward through either the mail-out or through the opportunity to request a review.</p> <p>Mr DAVID SHOEBRIDGE: But I was not asking you, Mr Harding, about what records injured workers have. You have a statutory obligation to only make</p>	
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		<p>payments in accordance with law on the basis of the information you need to make lawful payments. So I am asking you again: Is it true that you are making this in-class payment because your organisation</p>	
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		<p>does not have the records to determine an accurate payment for many of these workers?</p> <p>Mr HARDING: I am happy to say the answer to that is yes, that is correct. The reason for that is because the injured worker and the employer have, neither, provided it during the process when we have requested it. When you look at the complexity of the calculation, Mr Shoebridge—we have had this conversation before. I actually believe at one point you sponsored the idea of a class action payment or a class payment, and I think it is the best resolution, given the advice we have had, to enable us to get funds back to injured workers.</p> <p>Mr DAVID SHOEBRIDGE: Mr Harding, to be clear—</p> <p>The CHAIR: Order! Mr D'Adam has a point of clarification.</p> <p>The Hon. ANTHONY D'ADAM: I just wanted to ask if Mr Harding would be able to provide to the Committee a copy of the correspondence that has been sent to the injured workers in relation to this.</p> <p>Mr HARDING: Absolutely, we are very happy to. Perhaps just as a matter of interest, we have also, within that correspondence, had reference to support services, so people who are concerned or who have psychological injuries as a result of their claim, or as a result of their claim involving psychological injury, can get support in case the conversation about reopening their PIAWE calculation triggers that. We are happy to provide copies of the communication that went through, absolutely.</p> <p>Mr DAVID SHOEBRIDGE: Mr Harding, for the record, I have indicated on behalf of my party that we would be willing to cooperate if any legal changes were needed to ensure payments of a class kind could be made lawfully from the scheme. There have not been any such changes made to the</p>	
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		<p>scheme, despite our open offer to assist, if needed, to provide the legal authority to make the payment in kind. So I am asking you: Under what legal authority did you make a payment in kind? Under what</p>	
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		<p>provision of the Workers Compensation Act? What legislative remit did you have to undertake this payment in kind?</p> <p>Mr HARDING: We have legal advice that demonstrates that, because the payment relates specifically to the injured person's benefits, it is a payment that we can make under the current Act. Obviously, we have legal advice to ensure that we can make that payment. In respect of your offer, Mr Shoebridge, we would love to take that up. We have just received the third report from Deloitte, which was a forward-looking report about what simplification can be made for PIAWE in the future, and we would like to come forward with you in the future to perhaps suggest some regulatory changes that might help support injured workers to get the payments that they deserve in future.</p> <p>The Hon. ANTHONY D'ADAM: Are those reports in the public domain—the Deloitte reports that you have received?</p> <p>Mr HARDING: The Deloitte reports are in the public domain. The third one has only just been received. We have a cross-agency committee that involves the New South Wales Treasury and SIRA. The SIRA CEO and I sit on that with the Treasury Secretary and his representatives. That report was received, I think, last week. We will put that report on our website in due course, and I am very happy to provide it to the Committee if that is of interest.</p> <p>Mr DAVID SHOEBRIDGE: You see, Mr Harding, the workers compensation Acts—the two Acts read together—only allow icare to make payments where it has been satisfied that there is a legal entitlement to the payment. I ask you again: In the absence of actually working out the entitlement that each worker has, what was the legal capacity that you have had to make the in-class payment?</p> <p>Mr HARDING: Our legal advice is that the</p>	
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		payments are specific to the individual, and because they are related to that individual's benefits they are payments that icare or the Nominal Insurer can make.	
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10	Pg. 19	<p>The Hon. DANIEL MOOKHEY: Yes, that will happen. Mr Harding, you made reference in your opening statements to changes in the claims model that you are intending to do. I want to explore some of what has happened before we get to that point. Last year your predecessor—who was the interim CEO at the time—agreed, did he not, to extend EML's contract to permit EML to exercise the option of providing an additional year of service as a claims agent? That is fair?</p> <p>Mr HARDING: Yes. Do you want me to continue?</p> <p>The Hon. DANIEL MOOKHEY: He made that decision, and it is continuing on. Did he make the decision to continue it for one year or for two?</p> <p>Mr HARDING: At that point in time, the decision was to continue it for one year. On receipt of the McDougall report—and the Dore report supported Mr McDougall's report—the recommendation was that to really allow time for those changes that had been implemented</p>	<p>The contact has been published on the eTender website in accordance with the requirements of the <i>Government Information (Public Access) Act 2009</i>.</p> <p>There were no co-investments agreed as part of the 2022 EML contract extension. However, there is likely to be an increase in the remuneration as the contract is focused on delivering improved return to work outcomes. The key factors for the likely increases are:</p> <ul style="list-style-type: none"> • EML now manages more claims than in 2021 • Salary pressures across the industry (partly due to increased tenure of EML staff) • Increased incentives associated with more 'stretch' targets of performance to further motivate improvement <p>As the 2021, co-investment was predominately associated with additional resourcing and retention of existing resources to increase capability and capacity in EML, this is captured within the 'stretch' performance targets and therefore a specific co-investment was not required.</p>
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		<p>through that original extension to take effect and to be seen and to be bedded in, that it should be extended for a further year. That also does align with the renewal dates for the other approved provider, service providers, that we use. It enables us time to do the work that we are currently doing to design the new claims model and to ensure that we can have a multi-agent model going forward, that is robust and appropriate for purpose.</p> <p>The Hon. DANIEL MOOKHEY: The decision was made sometime after the McDougall review to permit EML to exercise their option and provide additional services for next year too. They will go for the full seven years. For next year's extension, has icare increased EML's remuneration or have you made any co-investments with EML?</p> <p>Mr HARDING: I will pass to Ms Maini. I will just answer the first part and perhaps Ms Maini can talk to the co-investments and the process of what we are doing with EML. In respect to that contract extension, it is still not yet signed so it remains commercial in confidence. It will be provided on the GIPAA, obviously, on the contracts Act.</p> <p>The Hon. DANIEL MOOKHEY: Of course.</p> <p>Mr HARDING: You have that information, or I am happy to provide it on notice.</p> <p>The Hon. DANIEL MOOKHEY: Sure.</p>	
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11	Pg. 19 & 20	<p>The Hon. DANIEL MOOKHEY: Okay, I will not push you on it on that basis. Last year when icare agreed to extend it for one year, it made a \$20 million co-investment. Is that correct?</p> <p>Mr HARDING: Correct, and I am happy to pass to Ms Maini, who can talk about the impacts of that.</p> <p>The Hon. DANIEL MOOKHEY: Again, we will get to Ms Maini. The co-investment paid for the matters that you described in your opening statement. Is that fair?</p> <p>Mr HARDING: Some of those, yes.</p>	<p>The co-investment was a small part of the overall agreement with EML predominately associated with additional resourcing and retention of existing resources to increase capability and capacity in EML.</p> <p>In relation to the 2021 co-investment, EML has been required to produce monthly reporting on all elements of the \$20 million co-investment over 2021.</p> <p>Fees have only been paid following review of this reporting through the remuneration governance processes.</p>
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		<p>The Hon. DANIEL MOOKHEY: Did icare develop a business case before it agreed to pay EML an additional \$20 million?</p> <p>Mr HARDING: To be clear, it was \$10 million from icare and \$10 million from EML.</p> <p>The Hon. DANIEL MOOKHEY: Sure.</p> <p>Mr HARDING: Part of the attraction was that EML would have skin in the game to do that. I was not present at the time, in terms of the board discussions and what business cases were presented. I repeat that I think Ms Maini has quite a lot of information that would discuss the value that that is creating as we go forward.</p> <p>The CHAIR: Mr Mookhey, I am going to give Ms Maini an opportunity to present some information because she may be able to address some of your points.</p> <p>Ms MAINI: Mr Mookhey, the question you asked was around the co-investment.</p> <p>The Hon. DANIEL MOOKHEY: Yes, but the specific question I asked Mr Harding was, prior to the decision to extend the contract by one year and make what Mr Harding says was a \$10 million investment from icare, which triggered a further \$10 million from EML, whether there was a business case prepared by icare prior to you agreeing to that.</p> <p>Ms MAINI: I will have to take that on notice to look through what was provided in the past in terms of business cases. I can say, though, what we have done and worked with EML on in relation to the co-investment has been as follows—which really directly relates to the efforts we are putting into return to work and the focus we have on working and supporting injured workers and those who are on claims to get better outcomes.</p> <p>The Hon. DANIEL MOOKHEY: If you wish to provide that in short, that would be great.</p>	
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12	Pg. 20	<p>Ms MAINI: I just wanted to close off with the fact that all of that investment has ensured that there has been a reduction in turnover and an upskilling in case managers, so the average case manager's tenure is now 2.9 years. Hopefully all of this will bear fruit and put us on the path to continue to fix return to work.</p> <p>The Hon. DANIEL MOOKHEY: I am glad you said that, Ms Maini, because you basically just answered my immediate follow-up question: Did you think this was effective? I imply from your answer that you did. But did you present a board paper, Ms Maini, at the September board called Nominal Insurer Claims Strategy Update? In it, you said:</p> <p><i>The 2020 extension negotiation resulted in a \$20m co-investment in retention. These funds have predominantly been used to reduce case-loads which EML assert enables development of capability. This may be the case, however icare has not specifically monitored this expenditure or the business case behind it. As such, and noting the recent implementation of the investment, it is not clear whether this investment has resulted in improved capability or not. Notwithstanding the effectiveness of this investment, we conclude that the model would ideally incentivise the development and retention of talent, rather than require that icare negotiate to achieve it.</i></p> <p>So I appreciate your answer. The problem with that answer is that it appears to contradict what you have said to the board, which is that icare has not specifically monitored whether or not the additional \$10 million you put in has in fact produced the outcomes that you have just referenced.</p> <p>Ms MAINI: I do not have that paper with me, Mr Mookhey. I am happy to take it on notice and review that material. What I can say is that we are focusing on making sure that we are actively monitoring the previous co-investment that was made by icare.</p>	<p>Ms Maini presented a board paper at the September Board titled Nominal Insurer Claims Strategy Update</p> <p>icare and EML have made significant investments in training, including onboarding programs and technical training for case managers and claims advisors, development of specialist team and leader roles, PIAWE capability uplift training, tailored whole person impairment training, training in work capacity decisions, liability determinations and payment obligations, and specialist coaching sessions with respect to RTW strategies for building injured workers' capacity for work and job seeking as well as medical management to support optimal recovery and return to work.</p> <p>icare has also launched a Professional Standards Framework across the Nominal Insurer and TMF that provides case managers with learning and career pathways, in order to rebuild industry-wide capability, expertise and capacity. This is a long-term program that seeks to transform the role of a case manager into a profession that is attractive to new starters and where pathways exist for development and growth.</p> <p>icare has a strong focus on ensuring that it continues to increase upskilling claims managers to focus on delivering outcomes for injured workers. icare is actively monitoring the co-investment going forward, actively driving capability and ensuring that capability is monitored.</p>
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If you received workers compensation payments from October 2012, they may be inaccurate

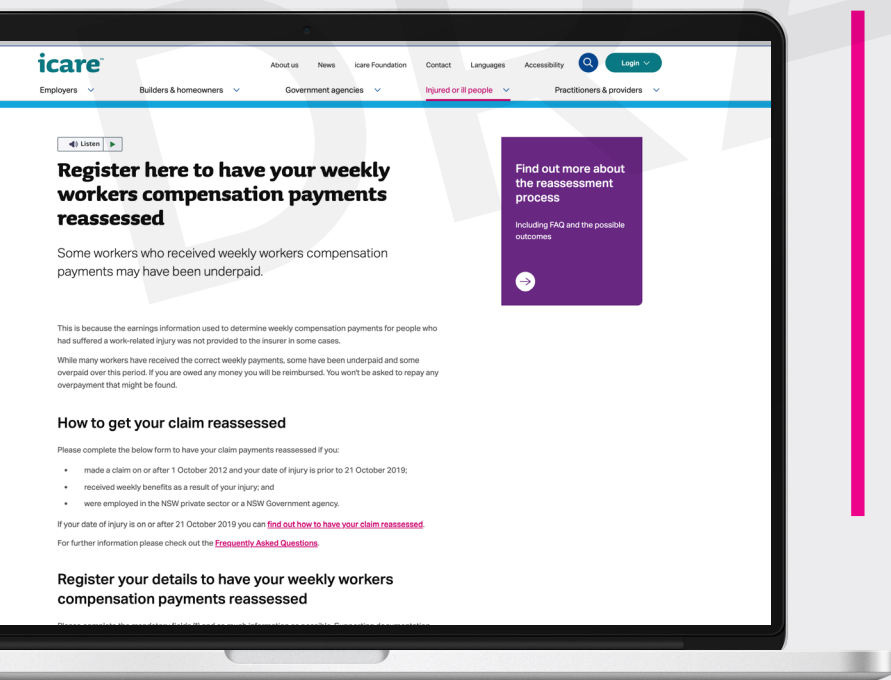
From October 2012, the way workers compensation payments in NSW were determined changed. This changed the information required and the calculation process used by insurance companies to determine the weekly compensation payments for people who had sustained a work-related injury.

icare, which replaced WorkCover NSW, initiated a review of how weekly workers compensation payments were determined by insurers. In some instances missing earnings information or other issues may have resulted in people being underpaid.

If you received weekly compensation payments that started on or after 1 October 2012, you may have been paid an incorrect amount.

We are inviting you to have your weekly compensation payments reassessed to understand if they are correct.

To request a reassessment of your weekly compensation payments, head to our website: www.icare.nsw.gov.au/assessment-form (you can also scan the QR code on this fact sheet).



If my payments are reassessed, what is the process?

If you are eligible, we will pass your details to your insurer to perform the reassessment of your weekly entitlements. They will contact you after you've submitted your request for a reassessment.

To support this process they may request additional information about your earnings in the year prior to your claim, i.e. payslips, leave records and other pay information.



Does this matter raise issues for you?

We acknowledge the information in this letter may cause you concern. If you are feeling anxious or stressed, we encourage you to contact our free mental health support service, Acacia Psychology on 1300 078 489 or info@acaciapsychology.com

What are the possible outcomes of the reassessment?

There are five possible outcomes:

There is a change to your weekly workers compensation payments



1. You have been overpaid

You will not be required to pay back any overpayment. However, if you are currently receiving weekly payments, your future payments will be adjusted.



2. You have been underpaid

This will result in a reimbursement to you. If you are currently receiving benefits, your ongoing weekly payments may also be adjusted.

There is no change to your weekly workers compensation payments



3. No change

After reassessing your application, there may be no change.



4. Insufficient earnings information

There is missing earnings information needed to determine an outcome.



5. A reassessment is not possible

This may be an outcome if you have a claim that has previously been settled.

If you need further advice

What if I'm unsure how to proceed?

You can call the icare team on 02 6714 8003 for more information. Alternatively, you can also contact your union or a lawyer if you are unsure about what this notice means or would like to get advice on what to do.

If you have any concerns, you can contact the Independent Review Office (IRO). IRO receives and accepts enquiries or complaints about the conduct of an insurer and is ready to take your call about this process. If required, IRO can connect you with an approved lawyer to provide legal advice which may be provided free of cost.

Contact IRO on 13 94 76, by email contact@iro.nsw.gov.au or webform available at www.iro.nsw.gov.au. An IRO Solutions Team member will respond to you within one business day.

Where can I seek financial advice?

We encourage you to seek financial advice if you need to and these free publicly available support services may be able to assist:

- Moneysmart
www.moneysmart.gov.au
- HSNet
www.hsnet.nsw.gov.au



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你是否需要这些信息的译文？
请访问网站 www.icare.nsw.gov.au/assessment-form 或扫描二维码。
我们的网站有中文版。

您是否需要翻譯這個資訊？
請進入 www.icare.nsw.gov.au/assessment-form 網站，或掃描二維碼。
我們有用您的語言製作的網站。

क्या आपको इस जानकारी का अनुवाद करवाने की आवश्यकता है?
www.icare.nsw.gov.au/assessment-form वेबसाइट पर जाएँ या QR कोड स्कैन करें।
हमारी वेबसाइट आपकी भाषा में उपलब्ध है।

이 정보의 번역본이 필요하십니까?
www.icare.nsw.gov.au/assessment-form 를 참조하시거나 QR 코드를 스캔하세요.
본 기관의 웹사이트는 여러분의 언어로 번역되어 있습니다.

Quý vị có cần dịch thông tin này hay không?
Truy cập trang mạng www.icare.nsw.gov.au/assessment-form hoặc quét mã QR.
Trang mạng của chúng tôi có phiên bản bằng ngôn ngữ của quý vị.

If you have any questions regarding the reassessment process or need additional support, please contact the icare team on 02 6714 8003. You can lodge your assessment at icare.nsw.gov.au/assessment-form or scan the QR code.

{#Worker_First_Name} {#Worker_Last Name}
{#AddresseeCompanyName}
{#Street_Address}
{#Suburb_Locale} {#State} {#Post_Code}

Your claim number is: {#Claim_Number}
While working for: {#Employer_Name}

{#Date}

Dear {#Worker_First_Name},

Your workers compensation payments may be inaccurate

We are writing to you about your workers compensation claim.

Some workers who received weekly workers compensation payments that started on or after October 2012 may have paid an incorrect amount. This is because the earnings information used to determine weekly compensation payments for people who had suffered a work-related injury was not provided to the insurer in some cases.

Please be aware anyone found to have been overpaid their weekly benefits will not be required to repay any money. However, if you are currently receiving weekly payments, your future weekly payments may go up or down after the reassessment.

Does this matter raise issues for you?

We acknowledge the information in this letter may cause you concern. If you are feeling anxious or stressed, we encourage you to contact our free mental health support service, Acacia Psychology on 1300 078 489 or info@acaciapsychology.com.

What does this mean for me?

We are inviting you to have your weekly compensation payments reassessed to understand if they are correct.

What do I need to do?

1. Read this letter and the accompanying fact sheet.
2. If you want to know more, head to the website www.icare.nsw.gov.au/assessment-form, or scan the QR code on this letter.
3. Decide if you want your claim payments reassessed.

Yes, I want to have my workers compensation payments reassessed

Please register by completing our online form at www.icare.nsw.gov.au/assessment-form and your insurer will contact you. This process is free-of-charge.

You can also call us on **02 6714 8003** if you need help to register your interest or for more information about the wage information that is required for your reassessment.

No, I don't want to have my payments reassessed

If you do not want to have your claim reassessed, you do not need to do anything. You can change your mind at a later date.

What do I need to know about the reassessment?

In reassessing your workers compensation payments:

- **if you are currently receiving weekly payments, your future weekly payments may go up or down.** In most cases, three months' notice will be given if there is a change to your future payments where they go down.
- we may request more information from you about your earnings in the 52-week period prior to your injury. We will use this, along with other information we already have about your claim to make a reassessment, and
- there is no guarantee that after a reassessment you will be owed money. In some instances, there may be no change to your entitlements. However, we encourage all workers who want to have their weekly compensation entitlements reassessed to check whether they are owed money and apply for a reassessment.

Again, if you have any questions, please contact the icare team on **02 6714 8003** or for more information visit the website **www.icare.nsw.gov.au/assessment-form**, or scan the QR code on this letter.

Yours sincerely,



Mary Maini
Group Executive, Workers Compensation
Insurance and Care NSW (icare)



icare.nsw.gov.au/assessment-form

هل تريد الحصول على هذه المعلومات مترجمة؟ يرجى زيارة الموقع الإلكتروني
www.icare.nsw.gov.au/assessment QR أو مسح رمز الاستجابة السريعة
موقعنا متوفر بلغتك.

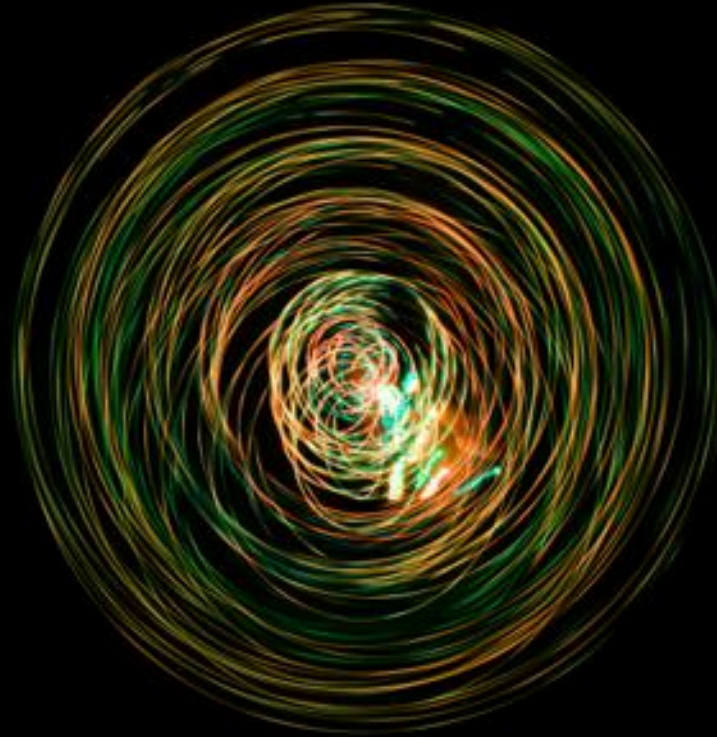
你是否需要这些信息的译文？
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我们的网站有中文版。

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我們有用您的語言製作的網站。

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हमारी वेबसाइट आपकी भाषा में उपलब्ध है।

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본 기관의 웹사이트는 여러분의 언어로 번역되어 있습니다.

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Trang mạng của chúng tôi có phiên bản bằng ngôn ngữ của quý vị.



icare: PIAWE Remediation Review

Phase 3: Recommendations for improving PIAWE
performance

Inherent Limitations

The Services provided are advisory in nature and have not been conducted in accordance with the standards issued by the Australian Auditing and Assurance Standards Board and consequently no opinions or conclusions under these standards are expressed. The matters raised in this report are only those which came to our attention during the course of performing our procedures and are not necessarily a comprehensive statement of all the weaknesses that exist or improvements that might be made. Our work is performed on a sample basis; we cannot, in practice, examine every activity and procedure, nor can we be a substitute for management's responsibility to maintain adequate controls over all levels of operations and their responsibility to prevent and detect irregularities, including fraud. Recommendations and suggestions for improvement should be assessed by management for their full commercial impact before they are implemented. We believe that the statements made in this report are accurate, but no warranty of completeness, accuracy, or reliability is given in relation to the statements and representations made by, and the information and documentation provided by Insurance and Care NSW ("**icare**") personnel. We have not attempted to verify these sources independently unless otherwise noted within the report.

Limitation of Use

This report is intended solely for the information and internal use of icare in accordance with our letter of engagement of 31 August 2021, and is not intended to be and should not be used or relied upon by any other person or entity. No other person or entity is entitled to rely, in any manner, or for any purpose, on this report. We do not accept or assume responsibility to anyone other than icare for our work, for this report, or for any reliance which may be placed on this report by any party other than icare.

Deloitte understands that icare will provide a copy of this report to the State Insurance Regulatory Authority ("**SIRA**") and NSW Treasury. We agree that a copy of the report can be provided to SIRA and NSW Treasury and also be released publicly on its website, on the basis that it is published for general information only and that we do not accept any duty, liability or responsibility to any person or entity (other than icare) in relation to this report. Recipients of this report should seek independent expert advice as this report was not prepared for them or for any other purpose than that detailed in the engagement terms with icare and cannot be relied upon by anyone other than icare.

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Executive summary



Executive summary

Introduction

Deloitte has been asked to review and identify issues with the method for the calculation of pre-injury average weekly earnings (**PIAWE**) under the New South Wales workers (**NSW**) compensation scheme with consideration to the statutory and regulatory framework as well as existing practices. We have engaged with a broad range of stakeholders to hear their views about the effectiveness of the 2019 reforms and gauge options and review relevant documentation for further refinement and/or reform.

The current workers' compensation scheme in NSW is inherently complex and has undergone a series of reviews over the last few decades. We spoke to representatives from equivalent schemes in Victoria and Queensland who spoke to a similar complexity in their underlying system. The challenges lie within the schemes' history (different provisions applying depending on the date of injury) and the intertwined and dense legislative and regulatory framework. The scheme also references and performs calculations based on the complex underlying entitlements determined by the relevant State or Federal industrial relations system. This feeds into a series of challenges from an operational and cultural perspective.

Observations

From our engagement with stakeholders we have made 7 key observations, of which a number interrelate.

1. Challenges to obtaining information required to make the calculation
2. Inconsistent understanding of what information is required to make the calculation
3. Contested status of PIAWE as a work capacity decision
4. Short timeframes to calculate PIAWE
5. Complexity applying provisions in the regulatory and legislative framework
6. Importance of communication to avoiding disputes and complaints
7. Low uptake of PIAWE Agreements

These observations are impacted by different aspects of the underlying scheme – some of which lie in its design (i.e. rules) and others are related to the way in which it is being implemented (operational) and the perspective of the organisations involved in the implementation (culture). Each of these provide different levers that could be used to enhance the administration and efficiency of the PIAWE calculation as well as the speed and quality of outcomes.



Operational
Underpinning processes
and systems



Cultural
Perception and current
practice



Rules based
Legislative or regulatory
framework

Executive summary

Recommendations

During our engagement, we heard some differing opinions about the limitations on reform from a technical and legal perspective as well as differing opinions about the merit or effectiveness of any potential reforms. In some cases, further ‘deep dives’ into these issues would provide greater clarity about the root cause and enable a tailored response to be designed, using the right combination of operational, cultural or rule changes. In all cases, we would recommend consultation when implementing recommendations or changes. Our recommendations align to the three phases of the PIAWE calculation process within icare’s Service Expectation Guidelines and respond on an operational, cultural and rules-based level. We have also put forward a ‘blue sky’ option which considers a more radical option to calculate PIAWE which is freed of some of the existing complexities, adjustments and exclusions built within the current NSW scheme as well as similar schemes throughout Australia. It poses a ‘what if’ as to how the calculation could be reimagined for the future.

Recommendation	Responsible
Information gathering	
1. Earlier engagement with employer to obtain information to calculate PIAWE	icare/ SIRA
2. Guidance on the expectations of the role and obligations of employers	SIRA
Calculation/ Re-Calculation	
3. Shift the perception of a single “exact” PIAWE calculation and the adjustment process	icare/ SIRA
4. Targeted amendments to the legislation/regulations/guidelines including the PIAWE definition, adjustment for unpaid leave and aligning payment periods	SIRA
5. Enhanced operational guidance on PIAWE components, adjustments and exceptions	icare/ SIRA
6. Clarity on the use and availability of PIAWE agreements	SIRA
7. Explore technology capability to automate calculation of PIAWE and aspects of case management	icare
Communication of PIAWE (<i>recommendations relating to information gathering are also relevant to communication</i>)	
8. icare to undertake consultation (‘deep dive’) to understand operational impact of PIAWE being a work capacity decision	icare/ SIRA
9. Foster opportunities to enhance collaboration between SIRA, particularly in relation to PIAWE calculation, processes and guidance material including by reference to recommendations 1, 3, 5, 8 and 10.	icare/ SIRA
10. Consider content, language and dissemination of communication and guidance materials	icare/ SIRA

Blue sky thinking



Our detailed recommendations (page left) are based on the premise that PIAWE, a longstanding feature of the workers compensation scheme and conceived within the existing framework, is retained to assess compensatory income under the scheme.

As is evident from our detailed recommendations, there are inherent complexities in requiring a calculation to be made which requires a large amount of complex information to be provided, assessed and a decision to be made in a short amount of time. This is compounded by the complexity of underlying labour regulation in Australia and wide-spread non-compliance with record keeping obligations.

Deloitte believes there is an opportunity to consider a different calculation mechanism to derive fair compensation for injured workers that would avoid some of the known obstacles and reduce complexity as well as the administrative burden.

Exploring the use of taxable income

Taxable income over the previous financial year (or quarters) could be used to determine income support for injured workers. Looking at taxable earning would reduce the administrative burden and the complexity of carrying out the present adjustments, assessments or exclusions. Referencing an existing calculation representing yearly income would streamline the determination and reduce the administrative and cost burden on employers and other parties to the process, enabling them to focus on supporting the scheme’s purpose of supporting workers to recover from their injury and return to work. We understand there would be financial savings in the administration of claims which flows into scheme savings.

Such a drastic change will require considerable consultation with relevant agencies, and possibly other workers’ compensation schemes, any other relevant stakeholders and the Australian Tax Office (ATO).

Background and approach



Background

Background

The NSW workers compensation system provides support to people injured at work, including assistance with recovering and returning to work wherever possible.

Its objectives include:

- to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury;
- to provide prompt treatment, effective and proactive management of injuries and necessary rehabilitation to assist injured workers and to promote their return to work;
- to provide income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment; and
- to be fair, affordable, and financially viable.¹

The *State Insurance and Care Governance Act 2015* (NSW) (**SICG Act**) establishes the governance and regulatory arrangements for the workers compensation schemes in NSW by creating:

- icare: to operate the State's workers compensation insurance scheme;²
- SIRA: to regulate the State's workers compensation insurance scheme;³ and
- SafeWork NSW: to regulate workplace health and safety.⁴

Prior to the SICG Act, these functions were largely performed by WorkCover. The scheme reforms resolved a perceived conflict of interest in a single organisation having concurrent responsibilities for operating the workers compensation scheme, regulatory oversight of that and other schemes (as well as scheme agents) and workplace health and safety.⁵ The legislative and regulatory framework that sits behind the workers compensation scheme can be found at Appendix 1.

icare

icare is established as a body corporate and NSW Government Agency which provides workers compensation insurance and insurance services through two primary schemes.⁶ Under the SICG Act, its functions are to:⁷

1. act for the Workers Compensation Nominal Insurer (**NI**) under which workers compensation cover is provided to private business;⁸ and
2. provide services to relevant insurance or compensation schemes including the NSW Self Insurance Corporation (**SI Corp**) which is the administrator of the NSW Treasury Managed Fund (**TMF**), under which workers compensation cover is provided to NSW government employees.⁹

Through the NI and TMF schemes, icare is the largest workers compensation service provider in NSW, with coverage of more than 326,000 public and private sector employers and 3.6 million employees. Employers and workers not covered by the schemes include some larger private businesses who self-insure or employers covered by specialist industry schemes.¹⁰

In acting for the NI, icare may enter into arrangements for the appointment of scheme agents to exercise its functions, subject to its direction and control.¹¹ Currently, EML, GIO, Allianz and QBE are engaged by icare to provide services to the NI and Allianz, EML and QBE are engaged by icare to provide services to the TMF. We define these service providers collectively as the Claims Service Providers (**CSP**). Notably, the purposes and objectives of icare are not defined under the SICG Act, although this inclusion has been recommended as part of a recent review.¹²

SIRA

As the regulator, SIRA's objectives include the promotion of safe workplaces, the prevention of workplace injuries, and ensuring the efficient operation of workers compensation insurance arrangements and effective dispute resolution.¹³ Its general functions include ensuring compliance with workers compensation legislation, establishing complaint handling procedures for complaints made by employers and injured workers and monitoring the financial viability of the scheme.¹⁴

Dispute resolution

The Personal Injury Commission (**PIC**) and Independent Review Office (**IRO**) are the dispute resolution bodies that deal with Workers Compensation disputes. The IRO seeks to resolve disputes on a more informal basis whereas the PIC is empowered to make legally binding decisions.

Background

2019 reforms

Since the introduction of the *Workers Compensation Legislation Amendment Act 2012* (NSW), a worker's PIAWE has been the basis for the calculation of weekly benefits compensating a worker for loss of earnings. Amendments to PIAWE were subsequently made in 2018 and again in 2019.

Our work considered the regulatory regime of PIAWE since the commencement of the *Workers Compensation Amendment (PIAWE) Regulation 2019 (2019 Regulation)* which applies to workers injured on or after 21 October 2019.

The 2019 reforms aimed to simplify the way in which PIAWE is calculated, making it easier for workers and employers to understand and for scheme agents to apply. The changes were intended to:

- be transparent and applicable to a wide range of working arrangements;
- save time and allow workers, employers and CSPs to focus on return to work, and improve outcomes for workers;
- enable employers and workers to agree on a PIAWE amount, as an alternative pathway to the CSP making a work capacity decision; and
- reduce PIAWE-related disputes.¹⁵

What is PIAWE?

A worker¹⁶ who has a work-related injury and is unable to perform their full pre-injury duties, is compensated for lost earnings through weekly payments based on PIAWE. There are classes of deemed workers and exempt workers within the scheme.¹⁷

PIAWE is defined¹⁸ as the weekly average of the gross earnings received by a worker for work in any employment in which the worker was engaged at the time of the injury. In calculating the PIAWE, no regard is to be had to earnings for work performed before or after the period of 52-weeks ending immediately before the date of injury (the **relevant earning period**).

Earnings. means the amount that is the income of the worker received for work but excludes:

- superannuation
- the monetary value of any non-monetary benefit unless a worker is entitled to use of the benefit

(e.g. a work vehicle)

- payment for loss of earnings under the workers compensation or other insurance/ compensation schemes (e.g. compensation for a past injury within the 52 weeks)
- payment without obligation by the employer (e.g. a bonus)
- earnings for the hours the worker worked and/or was on paid leave.¹⁹

There are additional factors to consider for short-term workers²⁰ and apprentices, trainees and young people.²¹ The PIAWE is also subject to the adjustment of the relevant earning period in the *Workers Compensation Regulation 2016 (2016 Regulation)* including:

- *Adjustment for workers not continuously employed:* If a worker was employed for four weeks or more but less than 52 weeks, PIAWE is calculated over the period of continuous employment in that role or if a worker was employed for less than four weeks, PIAWE may be calculated based on the weekly average of the earnings the worker could reasonably have expected to earn during that employment (if it were not for the injury) for the period of 52 weeks after the injury
- *Adjustment for financially material change to employment:* If a worker had a financially material change to earnings which is ongoing in nature (e.g. a promotion or change in hours), PIAWE is calculated from the period of continuous employment since the change came into effect
- *Alignment of relevant earning period with pay period:* If it is simpler to align to the worker's usual pay cycle (if there is no disadvantage to the worker i.e. no difference in earnings for either period)
- *Adjustment for unpaid leave:* If a worker received no earnings from work for at least seven consecutive calendar days due to the taking of unpaid leave
- *Adjustment for prescribed periods relating to COVID-19.*²²

Timeliness requirements

There are two requirements relating to timeliness. CSPs must:

- make a decision on PIAWE by calendar day seven following notification of the claim to allow payments to commence based on complete or interim (incomplete) information (if no reasonable excuse applies²³ or liability is declined) as required by the legislation
- make a new decision within five days of receipt of further evidence as required by SIRA Standard of Practice S7.2)

A high level process map of what happens in the first seven days of a claim can be found at Appendix 5.

Background

Risk Discovery Review

In 2019, icare conducted a PIAWE Risk Discovery Review of the Nominal Insurer (**2019 Review**) to explore the nature and extent of the PIAWE calculation risk. The 2019 Review was completed post the implementation of the claims system which identified an issue with PIAWE. The 2019 Review assessed and recalculated the initial PIAWE for a sample of NI files with the results indicating potentially incorrect payments (under and over) and insufficient information to support the initial calculation.²⁴ The data discrepancy relates to initial PIAWE calculations made between 2012 and 2019, with the majority of cases predating the launch of icare in 2015.²⁵

In 2020, icare established the PIAWE Review and Remediation program to ensure all potentially impacted workers (with claims in the period of 1 October 2012 and 20 October 2019) have the opportunity to have their claim reassessed.²⁶

Deloitte engagement

In 2021, the Treasurer and the Minister of Customer Service announced that icare had engaged Deloitte to assess the extent to which the PIAWE Program Methodology could be considered appropriate, fair and timely as it relates to the compensation of impacted underpaid workers across the NI and the TMF components of the PIAWE Program, and identifying areas for improvement (if required).²⁷

A report titled 'Assessment of the design effectiveness of the Pre-Injury Average Weekly Earnings (PIAWE) Review and Remediation Program Methodology' was released on 14 August 2021. The report made a number of relevant observations for our purposes regarding PIAWE including the approach to the calculation. The report noted that, at the time of the 2019 Review, icare's interpretation of the legislation was that the PIAWE calculation could only be deemed correct when all the required information is obtained and considered. This included details of relevant awards, enterprise bargaining agreements and payslips.²⁸

The report observed that icare had the expectation that scheme agents would contact employers to request any missing information and, where required or provided, that the PIAWE would be updated. Instead icare had found that there was a risk that PIAWE calculations could be deemed incorrect as the majority were based on the limited information available at the time and not based on complete information. This led to establishment of the remediation program.

One further aspect of the report of relevance to this work is the types of information that may be used in a PIAWE calculation. CSPs will contact workers and employers to request any missing information. The examples set out below feed into our observations and recommendations that additional guidance would be beneficial.

Table 4: List of information type that may be used in a PIAWE calculation		
#	Decisions	Information that could be used
1	Relevant Period	Employment contract PIAWE form Payslips Leave records (daily breakdown) Daily earnings (for a period after unpaid leave) Other information (such as statement from worker/employer)
2	Determine the Nature of Payments	Payslips Contract Enterprise Bargaining Agreement (EBA) (or confirmation that one does not exist) Award
3	Calculate Payments	Payslips Contract EBA (or confirmation that one does not exist) or Award Comparable employee earnings Fringe Benefits Tax (FBT) taxable values and whether worker has a Non-Pecuniary Benefit (NPB) Evidence of employer's FBT status
4	Concurrent Employment	All of the above for concurrent job
5	Self-employed/Working Directors	If the above is not available: Bank statements Tax returns Accountant report BAS statements Statement from worker
6	Workers under 21/Apprentices	EBA Award Contract
7	Agreements	Agreement form Contract Payslips

Our approach

Our approach

All jurisdictions in Australia have workers compensation schemes with similar objectives as NSW. Workers compensation is a specialised and complex area. Like all legislative frameworks, it seeks to balance the interests of a range of stakeholders – employers and workers as well as the various entities involved in operationalising the scheme. In seeking to understand the complexity associated with calculating PIAWE and opportunities to improve this, Deloitte was cognisant of the following:

1. The scheme has recently been reviewed and revised by the 2019 Regulations.
2. In achieving this ‘balance’ there are necessary tensions between achieving fair and consistent outcomes but also ensuring the system is not unnecessarily complex or difficult to implement or systematise.
3. Timeliness to pay injured workers is a critical imperative, as they may not be able to earn their full earnings while injured and a core objective of the scheme is to adequately compensate for loss of earnings due to work based injuries.
4. Employment records are often not what they should be. Although various laws, such as the *Fair Work Act 2009* (Cth), require the maintenance of detailed pay records, non-compliance with these obligations is not uncommon as has been noted by the national regulator for workplace laws, the Fair Work Ombudsman.
5. The rules determining what employees are paid in Australia are very complex, with over 100 Modern Awards operating to determine detailed entitlements. This means that any basis for calculating compensatory earnings will themselves incorporate complexity.
6. PIAWE (or a form of PIAWE) is a feature of each state workers compensation scheme in Australia.

Deloitte considered its role to listen to feedback but also consider the extent and source of perceived problems. In other words, to understand the impact the problems or challenges were having on the capacity of the CSPs to calculate PIAWE and also the basis for the problem - e.g. whether it was the requirements in the legislation, the way the legislation has been operationalised and/or the impact of embedded cultural practices or perceptions on icare or the CSPs.



Is there a problem?



What is the nature and impact of the problem?



What is the source of the problem?

Our methodology

Our work included the following:



Review relevant reports and materials. We reviewed relevant documents including internal icare documents, SIRA guides and other resources, internal and external reviews/ audits and reports. Documents reviewed can be found at Appendix 2.



Workshops and stakeholder interviews. We conducted internal sessions with relevant icare personnel as well as interviews with **15 external scheme stakeholders** recommended by icare. The stakeholders interviews were arranged by icare. They included representatives from Queensland and Victorian equivalent workers compensation schemes. Stakeholders interviewed can be found at Appendix 3. We sent surveys to brokers, government agencies and employers. Survey questions are found at Appendix 6. We received 21 anonymous responses.



Report and recommend. A report identifying options for the improvement of the PIAWE calculation from a statutory and regulatory perspective. The measures identified considered legislative or regulator reform, revised guidance material, rules or manuals, improved internal processes and cooperative mechanism with government, CSP, employers and workers.

Observations



Detailed observations

Observation 1: Challenges to obtaining information required to make Calculation (1/2)



Who did we hear this from?	All
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1.1 Background

To perform a PIAWE calculation, the Claims Management Guide: Insurer Guidance²⁹ indicates that pay information should be requested from the employer as soon as practicable to meet the legislated timeframe for commencing weekly payments. Under the SIRA Standard of Practice (s7.1) the worker and employer are to be advised what information is required to be supplied within three days of the claim notification.

Where an CSP requests specific information in respect of the claim or documentation, the employer must provide such information that is in the employer’s possession or reasonably obtainable within seven days on risk of penalty.³⁰ SIRA is also empowered to order an employer to supply records related to wages, although this is related to and can only be shared with a CSP for the purpose of calculating the relevant premiums.³¹

1.2 Observations

1.2.1 Obtaining information from employers

The consistent feedback from stakeholders is that obtaining information is done cooperatively (none mentioned use of compulsion) but it is difficult to obtain information required to calculate PIAWE within the seven day legislative timeframe (also *discussed in observation 4*). We also note that not all stakeholders were aware of the obligation of employers to provide information and penalties (some parties were adamant there was no such obligation). There are various reasons contributing to less than full and accurate information being provided by employers:

- Employers do not have all the information required to provide to the CSP (or it is with third party payroll providers or bookkeepers)
- Employers are unable to provide the volume or detail of information required within the seven day timeframe (e.g. earnings can include wages, shift and other allowances, overtime amounts, commissions, the value of non-monetary benefits and piece rates)
- Earnings information may need to be supplemented with information regarding leave, working patterns or working arrangements to determine the relevant exceptions or adjustments to calculations required under the legislation which is not always retained in an easily accessible record.

For example, agents may ask for supplementary information such as a daily breakdown of working hours and earnings to determine if an employee had seven or more consecutive days of unpaid leave.

- There may be a lack of communication or response from the employer
- Employers who have not made or kept full and accurate records (in potential breach of record keeping obligations pursuant to the *Fair Work Regulations 2009*) are less likely to respond to requests for information
- There are few apparent incentives (legislative or at a policy level) for an employer to comply and limited consequences for non-compliance
- It can be difficult to obtain information relating to concurrent employment and more than one employer is required to assist.

1.2.2 Format of information from employers

Where information is provided, there are also commonly issues with the format that requires it to be transposed or translated as follows:

- The information is not always broken down into the detail required to identify elements of income that should or should not be included in PIAWE
- The format of the information and/or data provided varies from employer to employer due to different payroll and record keeping systems. This may involve some manual data manipulation or entry to be implemented in guidewire (for NI claims) or a scheme agents system (for TMF claims).
- Sophistication of pay roll systems, particularly amongst smaller employers or those who are self-employed. This may include hand written records or offline excel spreadsheets
- Data dumps which involve manipulation to get to a usable format
- Pay codes change and differ across payroll systems and organisations. Case managers have to decipher what they are used for.

Detailed observations

Observation 1: Challenges to obtaining information required to make Calculation (2/2)



Who did we hear this from?	All
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1.2.3 Information from workers

Requesting information from workers is not a primary collection method. We understand there may be sensitivities asking workers as the focus for workers during this time is on their injury and treatment. We also heard that workers may not have access to payslips if they are on work platforms they cannot log onto when not at work.

Other jurisdictions ask for earnings information from workers and employers in the claim form. In the Victorian workers compensation scheme, the Workers Injury Claim Form includes a Part A for the worker to complete which includes details of the injury as well as primary earning and other employment details. Part B of the form is completed and signed by the employer. There is also an Employer Injury Claim Report, where an employer can provide the worker's earnings but this form is not compulsory.

We heard from the scheme that the forms would in tandem, where by a PIAWE can commonly be calculated based on information provided by workers and confirmed by the employer in the claim form process. It appears that workers are likely be incentivised to provide their earnings details to appropriately calculate the PIAWE although this needs to be balanced with the circumstances of the worker.



Insight: A worker's earnings information is the first step to calculate PIAWE. Difficulty in obtaining information was noted to be a major pain point for all stakeholders. While there may be some powers available for gathering information for the PIAWE calculation, they are not commonly utilised or understood. Their use may need be balanced with the desire of a CSP to have a cooperative relationship with an employer, which may otherwise be impaired. Compulsion powers exist in other state schemes, although incentives to comply are considered more effective than punitive measures. Another measures to consider includes more engagement with workers to obtain information.

Detailed observations

Observation 2: Inconsistent understanding of what information is required



Who did we hear this from?	CSPs
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2.1 Background

The legislation, regulations and guidelines do not specify the information required to perform a PIAWE calculation. It is generally understood to be the average of a worker’s gross weekly earnings over the 52 weeks prior to their date of injury as shown in this diagram provided in the Claims Management Guide: Insurer Guidance:³²



2.2 Observations

Historically, there appears to have been a common understanding or interpretation that performing a complete PIAWE calculation required 52 weeks of earnings information. icare expected that all relevant information should be obtained and considered to perform an accurate calculation.³³

In 2021, icare wrote to SIRA seeking advice on icare’s approach relating to the collection of earnings related information and the subsequent PIAWE calculation. icare sought confirmation that a PIAWE determination reached on the information provided by the employer and/or worker on or before calendar day seven (following outlined steps to collect the information) will be deemed to be a compliant determination under the legislation. icare noted that the 2019 Regulations had introduced the concept of an interim PIAWE, as well as PIAWE agreements and this signalled a broader acceptance that a decision based on all available information, but not necessarily all required information, was acceptable.

SIRA responded that it considered the process outlined by icare broadly aligned with the legislation and the Standards of Practice. SIRA noted that in determining PIAWE, there is a requirement for the CSP to request pay information from the employer as soon as possible and for the employer to provide requested information to the CSP within seven days of the request. Further, that a worker’s weekly payment should not be delayed because a CSP does not have sufficient information to determine the correct PIAWE.

This position is consistent with what we heard was the understanding of most stakeholders and what they read as the current intention of the legislation. That is, there is no “perfect decision” but a sound and rational decision based on the information reasonably sought and made available within the 7 day period. We also heard that guiding principles such as fairness, transparency and efficiency were also appropriate to interpreting the information and performing the calculation.

We heard that progress was underway to operationalise this position, particularly to support front line staff administering claims to make decisions based on information available. This was surfaced in various reviews and audits conducted both by icare and internally by scheme agents.

There was an awareness that the calculation performed in the 7 days could be incomplete or incorrect given the limited information may be available instead of more complete information. There may also be circumstances where information was not sought appropriately which will also compromise the calculation.

We also heard feedback that there is a tacit ranking to the types of earnings information that can be used or are acceptable. Payslips and payroll extracts are generally preferred over bank statements or tax summaries (which are used if payslips are not provided). While there is no guidance on the preference or priority of information types (for example, should 4 weeks of payslips be used over 6 months of bank statements?), it was expressed that there needed to be a flexibility and discretion for claims managers given the limitations of what may be provided.



Insight: There is a perception that a ‘perfect’ calculation is a requirement, and that this in turn requires ‘perfect’ and complete information. The flow on effect of this being that case managers may not be confident about when and how to make a decision when they have ‘less than perfect’ information while needing to balance their clear obligation to make a timely decision under the legislation. This may be amplified where incomplete information is available and there is uncertainty about what information is most acceptable.

Detailed observations

Observation 3: Contested status of PIAWE as a work capacity decision



Who did we hear this from?	CSPs; NIAC representatives; legal panel representatives
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3.1 Background

When a worker's PIAWE is determined by a CSP, it is a work capacity decision (WCD) under section 43 of the *Workers Compensation Act 1987* (NSW) (**1987 Act**). Interim PIAWE and amendments to PIAWE are also considered work capacity decisions. Matters described under section 43 of the 1987 Act have a formal review mechanism and can be bought before the PIC. Workers can also request an internal review by the insurer. The equivalent determination in Victoria and Queensland did not have the work capacity decision status.

3.2 Observations

3.2.2 Status of a work capacity decision

There was consistent feedback relating to the status of a PIAWE determination being a work capacity decision. WCSPs, some legal panel representatives and union and employer representatives deposed that this status has flow on consequences.

For a number, their view was that PIAWE being a WCD causes an administrative burden as there are notification and documentary processes attached to the decision of this status, particularly where the amount of PIAWE is reducing. Where there is a reduction in weekly payments that have been paid continuously for 12 weeks, the WCSP is required to give the worker three months' and 7 business days (for the postal rule) notice before the change comes into effect (noting this applies whether it is a WCD or not).³⁴ Depending on system capability, this may require a case manager to manually adjust when the three month notice period has elapsed. Their view was that a work capacity decision also involves a more formal review pathway and escalation process as it is perceived as a more 'formal' decision. The perceived status of a WCD itself and the review mechanism being 'formal' is perceived to be a major problem as it creates a reluctance to review and revise PIAWE decisions as we heard it is a more difficult change.

For other stakeholders there was a concern that a WCD more appropriately described an assessment to determine a worker's capacity to perform pre-injury duties and that, in contrast, PIAWE was a calculation function. The labelling of PIAWE as a WCD may lead to confusion that an assessment should have been conducted into capacity that has not been performed.

3.2.3 Alternate view

Alternatively, some stakeholders stated that in order to determine a worker's capacity you first need to determine a worker's PIAWE and therefore they are intrinsically linked. This may also be true when a re-assessment of capacity consequently requires a new PIAWE calculation. Some stakeholders also pointed to historic experiences associated with WCDs. We heard that capacity is a daily conversation in case management and should be the focus.

There may also be complexities in calling it something else and it having a separate review mechanism. The PIC as 'one stop shop' can also deal with dual capacity or calculation issues as part of the one dispute.



Insight: The majority of stakeholders interviewed raised this as an issue. When we considered why it was a problem, stakeholders were not able to clearly articulate what elements of the status were causing the difficulties. There appears to be hangover from historical settings where a work capacity decision is associated with additional effort. There is also a view that PIAWE is a mere calculation and should not be dealt with as a part of a capacity assessment. It is clear that there is more consultation to be done in this space to get to the root cause of the issue and whether divorcing PIAWE from the WCD status would benefit the scheme.

Detailed observations

Observation 4: Short timeframe to calculate PIAWE



Who did we hear this from?	All
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4.1 Background

Provisional weekly payments are to commence within seven days after initial notification to the CSP (or icare) of the injury (s 267(1) of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (1998 Act), unless the CSP has a reasonable excuse not to commence payments. icare has recently issued updated PIAWE Service Expectations to CSP which identify the ‘compliance’ requirements under the legislative and regulatory framework (including SIRA Standards of Practice) and ‘good practices’ by reference to icare and SIRA expectations.

Within the seven day period, a significant number of steps are required of a CSP including:

- **Information gathering:** advise the worker and employer how PIAWE may be determined, what information is required to be supplied and the timeframes (within three business days)
- **Calculation/recalculation:** make an initial PIAWE (could involve an interim PIAWE decision) calculation to facilitate a weekly payment (within seven days), unless a reasonable excuse applies.
- **Communication:** provide the worker and employer in writing details of the initial calculation of PIAWE and how that has been calculated (within seven days)

Given the compressed timeframes, making employers aware of the need to provide pay information at the earliest opportunity may increase the likelihood that the relevant and most appropriate information can be located and provided.

4.2 Observations

4.2.1 Purpose of seven day timeframe

The purpose of the seven day timeframe is to ensure an injured worker receives income support as soon as possible. A worker’s weekly payment should not be delayed because a CSP does not have sufficient information to determine the correct PIAWE. If the CSP determines that there is likely to be a delay in receiving all required information, it should make an interim PIAWE calculation and the expectations outlined in SIRA Standard of Practice 7 should be followed.

4.2.2 Interim PIAWE

Standard 7 of the Standards details that an interim PIAWE calculation can be made where a CSP has insufficient information to make a complete calculation. The purpose of making an interim PIAWE calculation within seven days is to make sure the person is paid as quickly as possible. Workers will not be disadvantaged if the CSP has not been able to obtain all information required to calculate PIAWE, or if an CSMP has not yet approved a PIAWE agreement (although we note it is icare’s expectation that a PIAWE agreement is approved/not approved within the first 7 days of initial notification). We heard this is crucial in maintaining the relationship between employer and worker and ensuring that the worker can return to work as soon as possible.

The legislation does not specify a timeframe in which all earnings information must be received or to make a ‘final’ PIAWE. There is a legislative requirement that an follow up is made to obtain it and that PIAWE is updated within five days of receiving additional evidence.

Applying an Interim PIAWE depending on the circumstances may not be overly complicated, but we heard the view that it often creates more work (both in calculation, communication and notice requirements as this is a work capacity decision) as re-calculation is usually required at a later stage when further information is received.

Interim calculations are heavily utilised, particularly in the NI space. An interim calculation was made in almost 70% of claims lodged in May 2021. There is no requirement in the legislation that an interim PIAWE become a ‘final’ PIAWE. This may be the case because, similarly, a non-interim PIAWE is never final as it is also subject to the same rules to update based on new supporting evidence. A claim can be closed with an interim PIAWE decision. This is also the case in the Victorian scheme.



Insight: Whilst the timeframe to obtain information, liaise with worker and employer, calculate PIAWE and start paying workers is short, the purpose and principle of fairness is at play here – to get money into the pockets of injured workers within seven days. While other schemes may provide longer periods to commence payment we did not hear calls for change and make no suggestion to do so. There may be some interest to consider a mechanism to close off an interim PIAWE and convert it to a PIAWE calculation which confirms the completion of following up to obtain further information but we note this would add more administration.

Detailed observations

Observation 5: Specific complexities within the definition of what is included and excluded in PIAWE (1/2)



Who did we hear this from?	All
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5.1 Background

The 2019 Regulations changed the method for the calculation of PIAWE. The method is outlined earlier in this report. What is included and excluded in the calculation is a fundamental aspect of PIAWE.

5.2. Observations

5.2.1 Legislative and regulatory framework complexity

Whilst we heard that the reforms reduced complexity in the framework, there was still consistent feedback from stakeholders that there are complexities associated with the definition of PIAWE. The McDougall Report identified that one of the reasons that complexity exists is that the calculation is intensely fact-dependent. It cannot be carried out unless and until the employer (more usually, the CSP) has all the necessary information that must be considered in making the calculation. An alternative approach was posed by the McDougall Report whereby simplifications in the PIAWE calculation process could allow for a simplified data set to be used. It was suggested this approach may be easier to apply and acknowledged that while the resulting estimate of pre-injury earnings may not be as precise, the existing PIAWE process also results in imprecise estimates based on incomplete information.

There are two sets of legislation, one regulation, SIRA Standards of Practice and SIRA Guidelines a CSP needs to comply with. There is a Claims Management Guide with a division for 'Insurer Guidance' although its status is unclear.³⁵ There are multiple places that staff source information about expectations regarding requirements for PIAWE which leads to confusion about what is expected. A lack of clarity regarding legislative and regulatory requirements, as well as inconsistent messaging regarding icare service expectations leads to confusion. We heard from some legal panel representatives that their involvement in PIAWE is often a matter of statutory interpretation.

The legislative framework and SIRA guidance materials provide guidance for some specific scenarios but not all. Claim managers will regularly seek support from specialist teams within the CSP for guidance and interpretation. It is therefore unclear whether 'inaccuracy' reflects an error during an audit or review, or a legitimate difference in interpretation of the reviewer.

5.2.2 Unpaid leave

Section 8 E of the 2016 Regulations provides that the 52-week period over which PIAWE is calculated may be adjusted where a worker received no earnings from work for at least seven consecutive calendar days due to the taking of unpaid leave. The period is defined from the first day of unpaid leave and ends on the day before the worker returns to work or to a day of paid leave.

Generally, where a worker has taken unpaid leave there is a requirement to obtain a day by day break down of earnings, hours worked or leave records from an employer to understand if a worker falls under this exclusion. This creates additional work, complexity and communication with the employer for the CSP. Its perceived value has a disproportionate impact on the complexity it creates.

We heard that the exclusion of unpaid leave is also a feature of the Victorian scheme. Any week where the worker did not work and was on unpaid leave or was on paid leave at a rate less than the base rate of pay is excluded.³⁶

5.2.3 Inclusions and exclusions / non- monetary benefits

A number of payment types are excluded when determining PIAWE. This can involve some complexity as to the meaning and application of terminology such as discretionary payments which leads to uncertainty about whether to include or exclude certain amounts (i.e. certain allowances). Determining what should be included or excluded may involve the interpretation of an industrial instrument or employment contract which impacts or delays the timing of the calculation.

5.2.4 Relevant period

Section 8D of the 2016 Regulation provides that the relevant earning period (generally 52 weeks) may be adjusted to align to the worker's usual pay cycle/ pay period (if there is no disadvantage to the worker i.e. PIAWE is not reduced by aligning to the workers' usual pay cycle when compared to the unadjusted period). Whilst this regulation simplifies the framework to enable the alignment to pay cycles so there is no need to include half a pay period (which will often require a further breakdown of information), the requirement to assess if there is no disadvantage in using this approach appears to defeat the purpose of what the regulation is

Detailed observations



Observation 5: Specific complexities within the definition of what is included and excluded in PIAWE (2/2)

Who did we hear this from?	All
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trying to achieve. This creates additional work, complexity and potential request for information. We also understand that this is a source of error arising from audits – the CSP are not taking into account if aligning pay cycles adversely effects the result for the worker.

5.2.5 Material Change

Adjustment can also be made for a material change in earnings under section 8D of the Regulations. We have heard that it is however difficult to determine what is a material change thus causing difficulties for a variety of stakeholders. There are also opposing views as to what a material change is.

5.2.6 Concurrent employment

If the worker has more than one job at the time of the injury, the CSP will need to gather the same information (where relevant) from the worker/employer for each job to allow them to calculate the PIAWE for each job separately. This adds a heightened level of complexity for the CSP to obtain information and complete the calculation.



Insight: Other schemes interviewed also experience similar levels of complexity but did not seem as concerned about making decisions based on the information available and/or revising decisions when further information was made available. However, we witnessed a culture of risk aversion and a reluctance to make decisions in NSW - with a focus on compliance over getting injured workers back to work. There are consequences if calculations are deemed 'inaccurate' which drives this culture of risk aversion. Whilst there is no doubt that the framework is complex and could be subject to legislative and regulatory simplification, education and guidance to give case managers comfort to make a decision may be the first step of reform.

Detailed observations

Observation 6: Importance of communication to avoiding disputes and complaints



Who did we hear this from?	CSPs; IRO; PIC; NIAC representatives
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6.1 Background

PIAWE and the broader workers compensation framework is undoubtedly complex. This creates challenges for workers, employers and case managers to understand and communicate the many intricacies of the scheme (PIAWE included). However, there has been a significant reduction in the number of disputes following the simplification of PIAWE in 2019. The updated Service Expectations set out the following expectations in relation to communication:

Expectation 1. The insurer (CSP) is to provide to the worker, in writing, the details of the initial calculation of PIAWE and how that amount has been calculated, within two business days of the liability decision AND PIAWE determination (except agreements) is a Work Capacity Decision and must be communicated as such, in writing, where the decision results in a different amount. The notice must include detail on how PIAWE was calculated and what evidence was used (**SIRA Standard of Practice (S3.2) AND S43(1)(d), 1987 Act, Standard of Practice S7.2 & 7.3**)

Expectation 1a. The insurer (CSP) is to provide to the worker and employer in writing the details of the initial calculation of PIAWE and how that has been calculated, no later seven days from injury notification (**icare expectation relating to good practice**)

Expectation 2. Reasonable attempts should be made to communicate initial PIAWE calculations verbally with the employer and worker by day seven (**icare expectation relating to good practice**)

Expectation 3. PIAWE recalculations that:
a.result in a change in the PIAWE amount: Reasonable attempts should be made to communicate verbally with the employer and worker
b.do not result in a change in the PIAWE amount: The worker and employer should be informed that the recalculation has been completed, either verbally or in writing (**icare expectation relating to good practice**)

6.2 Observations

6.2.1 Communication between worker, employer and CSP

We heard from the icare dispute resolution subject matter experts, CSPs, the IRO and the PIC

that where the PIAWE calculation is not communicated effectively to workers and therefore not understood that this leads to an increase in the number of PIAWE disputes.

We have heard that workers struggle to understand what is required of them and how PIAWE is calculated. Workers receive formal written communication to notify them of the PIAWE outcome. The lack of understanding is accentuated where written communication is not accompanied by a verbal explanation as to how they have determined a worker's PIAWE. It is common for letters to seem clear to the scheme who design them, yet make no sense to the person who is reading them. Most workers will compare the PIAWE to their last payslip and where there is a significant difference this may lead to arguments with case managers or to disputes being raised. We understand that deescalating or resolving issues is often dependant on the case manager's ability to explain the make up of PIAWE to the worker. The level of education and engagement throughout the process to best manage a worker's expectations is critical to avoid disputation and maintain trust.

Employer understanding is often dependant on the size, sophistication and experience in this space. Small businesses that have never had a claim before need guidance throughout the processes about how PIAWE is calculated, what is required to make the calculation as well as other matters relating to the claim.

6.2.2 Relationship and communication between the worker and employer

How the claim will play out is often dictated by the existing relationship between the worker and employer. If there is a lack of trust, this may aggravate the process and increase the possibility of a dispute.



Insight: In order to be able to effectively communicate to workers and employers, case managers need to be skilled in their understanding of how PIAWE has been calculated. The level of communication required with the employer is often dependant on their size, sophistication and past experience. The Service Expectations will more fully articulate the communication expectations (i.e. reasonable attempts, verbal communication). Further guidance to clarify the requirements for calculating PIAWE will strengthen effective decision-making and communication. There may also be the potential to conduct a plain language review of PIAWE communications to workers and employers.

Detailed observations

Observation 7: Low uptake of PIAWE Agreements



Who did we hear this from?	All
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7.1 Background

A PIAWE agreement records an agreed PIAWE calculation between the worker and employer and must be approved by the scheme agent. An application for the approval must be made within five days of the claim notification³⁷ and the scheme agent has seven days to determine the application from receipt.³⁸ To approve an agreement the scheme agent must be satisfied that the agreed amount reasonably reflects the worker's PIAWE and that the agreement is otherwise fair and reasonable.³⁹

7.2 Observations

7.2.1 In practice

The five day timeframe appears to operate so that there is sufficient time for a PIAWE calculation to be performed if there is no agreement or a withdrawal from an agreement. Whilst many stakeholders stated they liked the idea of them, the strict legislative requirements in relation to the timeframe undermines their potential use. While intended to reduce the complexity of the PIAWE determination process and stakeholders referred to liking the 'idea' of them, it has not had the effect anticipated as it still requires substantial information from the employer and a PIAWE determination must still be made in every case, as the agreement between injured worker and employer only extends to the basis upon which PIAWE is calculated, not the amount of PIAWE altogether.

7.2.2 Uptake

We heard consistent feedback from stakeholders that the uptake of PIAWE agreements is extremely low. In the first six months following the reforms, less than 100 agreements were reached in the NI scheme, despite over 20,000 PIAWE calculations being performed.

The requirement that the PIAWE agreement needs to be agreed to by both the worker and the employer within five days is a key contributor to this. Where the information is available to calculate PIAWE, there is no incentive for them to be used.

Workers are often in a vulnerable position during the first five days of lodging a claim and are unable to make an agreement. Injured workers must be involved in the agreement process which can be difficult to arrange, whereas wage evidence can be supplied to the CSP without

involving the worker – producing a result that is likely to be more accurate and fair.

Many stakeholders believed that agreements could be efficient and effective and were significantly underutilised. A number suggested this was because it was easier to perform the calculation than to attempt to reach agreement. Further, the calculation would be required in any event (given the requirement that an agreement must reasonably reflect PIAWE).

7.2.3 Authority to sign

There is a gap in understanding as to who has the authority to sign a PIAWE agreement on behalf of an employer. It is particularly difficult in large organisations and government departments and agencies who may have complex and hierarchical administrative rules relating to such practices.

7.2.4 Administrative burden

CMPS are required to inform workers and employers of the option to make a PIAWE agreement as per the service expectations.

7.2.5 Reasonable test

Where a worker and employer enter a PIAWE agreement, the legislation still requires the CSP to be satisfied that the agreement is 'reasonable'. This requires provision of earnings information that could be used for a calculation rather than an agreement.



Our thinking: There was a strong view that the current approach to agreements was not fit for purpose. There is a reluctance of employers to participate, particularly where data is available to perform the calculation. While agreements appear to be a beneficial mechanism to create certainty and reduce disagreement (particularly where there is limited information), the timeframes severely impact the uptake. There may also be value considering how the 'reasonably reflects PIAWE' test is framed and the intent as it is being interpreted as requiring a *de facto* PIAWE calculation.

Overview to recommendations



Overview to recommendations

Deloitte was engaged to consider recommendations aimed at simplifying the existing PIAWE legislative framework and how a more balanced and appropriate means of calculating benefits for injured workers could be formulated.

In light of the complexity, objectives and timeframes inherent in the scheme, insurers, employers and workers are confronted with balancing the imperative to make a timely decision (i.e. within seven days) and the desire to make an accurate calculation. This balancing act has resulted in a number of behavioural responses. Resolving this tension requires the weighing up of how much effort to invest in seeking 'more perfect' information against the need to make a decision within seven days. A fair outcome is one that properly balances these imperatives.

Various changes may be implemented to reduce complexity and encourage a more openly pragmatic approach to accuracy based on using information that is available and being more open to adjusting in the event that more information becomes available.

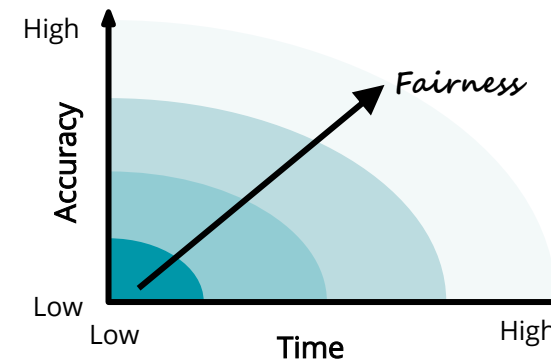
We spoke to representatives from equivalent schemes in Victoria and Queensland who spoke to complexity in the underlying system. Both schemes have a version of PIAWE which is done in the initial phase of the claim journey. The approach we have taken is to first look to opportunities to address culture and operational factors that are at play. We have identified some opportunities for minor changes that would reduce complexity without, in our view, compromising key elements of the Framework.

Deloitte observes that historically, workers compensation schemes in Australia have evolved over many decades to use an approach to assessing appropriate compensatory payments that draw on the underlying complex industrial relations system but excludes some entitlements that form a part of workers' remuneration. We note the complexities of calculating PIAWE which are also attributable to the complexities in Australia's industrial relations framework (i.e. record keeping requirements and payment of wages, additional entitlements and allowances). The widespread underpayment of wages that we are currently experiencing demonstrates that employers have not always kept full or accurate records. Although steeped in a long history, there is a complexity in this and complexity adds to cost and confusion in regulation. This creates costs to administering the schemes and makes it hard for participants to understand their entitlements under the scheme.

The legislation requires a sound, logical and rational decision based on SIRA's overarching claims management principles:

- fairness and empathy
- transparency and participation
- timeliness and efficiency

Time, accuracy and fairness were competing factors we heard throughout our engagement with stakeholders. Fairness is often difficult to measure and an approach that may be deemed fair for one cohort (as its relatively accurate and calculated quickly) may not be fair for another. This was the subject of discussion when drafting the 2019 Regulation.

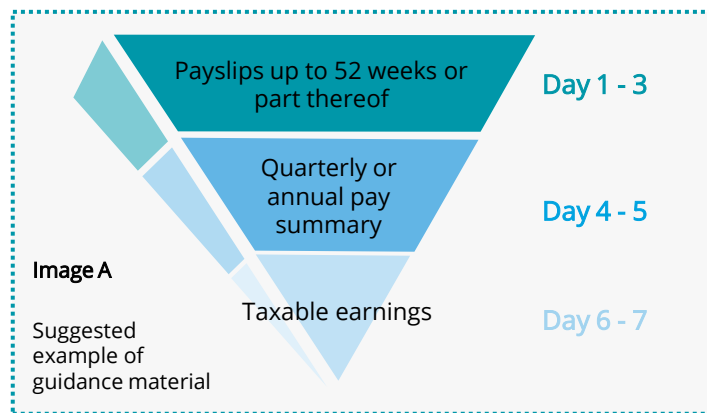


In our view, in considering complexity, timeliness and accuracy against the backdrop of fair outcomes, it is imperative that workers are able to quickly access compensation when they are not able to work. Compromising 'perfect' accuracy is more consistent with a fair outcome than compromising timeliness.

Deloitte considers that all available information should be sought and reviewed to inform the PIAWE calculation, but that priority should be given to making a prompt decision based on what information is available within the timeframe. Guidance should be developed to address what approach to be taken to 'fill the gaps' when the information is incomplete. The principle that should be applied here is fairness to the worker. For example, if in doubt about whether a payment should or should be included, we would suggest it be included initially with scope to revise at a later date if further information suggests it should not be.

Overview to recommendations

Key frustrations relate to the provision, format and completeness of information provided in a timely manner in order to make a PIAWE calculation by day seven. The perception that a 'perfect' and compliant calculation requires 'perfect' information could be addressed by adopting a posture of using the information that is available and establishing clear processes for 'filling in the gaps' which are set out in guidance and training materials (**Image A**).



We have used similar concepts where there is no of time and attendance records in our remediation experience. In the absence of such records, weight is placed upon other sources of information.

Underlying all our recommendations are some principles around what 'good' looks like in any regulatory scheme, especially when it involves vulnerable stakeholders:

- **Clear and prompt communication** is critical so parties understand what is being asked of them and what they are required to do (particularly to maximise getting the most information possible within seven days). Clear and simple templates (plain language) are a good way to systematise this along with confident, well trained staff who can tailor communications to their customers
- **Accessible and user friendly systems** so that workers, employers and CSPs are able to easily provide what is necessary e.g. to upload and communicate information
- **Well trained and supported staff** who are focussed on delivering on the objectives of the scheme and supported to balance the inherent tensions and make appropriate judgements to ensure fair outcomes

Further and more widespread consultation should be conducted when implementing recommendations or changes.

Blue sky thinking

Our detailed recommendations below are based on the premise that PIAWE or some equivalent mechanism is retained to assess compensatory income for injured workers under the scheme. We note that it is consistent with the approach in other workers compensation schemes and a longstanding feature of such schemes.

However, we also note that there are inherent complexities in requiring a calculation to be made that in turn requires a large amount of complex information to be provided to and assessed by insurers in a short amount of time. We also note that the complexity of the underlying labour regulation in Australia, and widespread non-compliance with record keeping obligations, provides additional obstacles and administrative burdens in carrying out this calculation. The need to navigate intricate exclusions in the absence of full information about the nature of certain payments adds yet another layer of complexity.

When we spoke with Queensland and Victorian representatives of their schemes, they all observed the inherent complexity in carrying out this calculation and the administrative burden in accessing and assessing the information required to do so.

Deloitte considers there are opportunities to consider different mechanisms to derive fair compensation for injured workers that would be far less complex or administratively burdensome. Simple regulation is fairer regulation and the public interest is served by reducing the cost of administering regulation where this can be done without compromising fair outcomes.

One such opportunity that the NSW Government may wish to explore is to use taxable income, already defined and of relevance to all workers under Tax laws.

Taxable income over a previous financial year may be just as relevant and more readily available than seeking a full year of pay documentation from employers and then carrying out further assessments that exclude or adjust certain payments. This amount could be obtained through direct access (by consent) of readily available earnings information from sources such as the ATO or the employee.

We understand the ATO's position on data-sharing is evolving in some areas. For example, employers who do not receive super information from an employee, when requested, are able to

Overview to recommendations

make requests of the ATO to obtain details. It may be worth exploring such options with the ATO, which may require employee consent or other data sharing protocols.

We acknowledge that there would need to be a way for workers or employers to provide alternative or supplementary information in the event that the previous year's taxable income was not an appropriate reflection of the current income or work arrangements for the worker. An additional (current) payslip could be used as a reference point or appropriate questions could be asked through a claim or assessment form. This is similar to a current function of the PIAWE framework where a CSP is required to re-calculate on provision of addition information.

We have not included this as a separate recommendation given it is a significant departure from the current approach but consider it would be worthy of consideration and further consultation. Using an existing figure such as this would obviate the need for a complex calculation and delays obtaining appropriate and relevant information.

Benefits to the scheme

Taxable income over the previous financial year (or quarters) could be used to determine income support for injured workers. Looking at taxable earning would reduce the administrative burden and the complexity of carrying out the present adjustments, assessments or exclusions. Referencing an existing calculation representing yearly income would streamline the determination and reduce the administrative and cost burden on employers and other parties to the process, enabling them to focus on supporting the scheme's purpose of supporting workers to recover from their injury and return to work. We understand there would be financial savings in the administration of claims which flows into scheme savings.

Recommendations





Information gathering

Operational
Cultural
Rules based



Recommendation 1: Earlier engagement with employer to obtain information to calculate PIAWE

Early engagement can assist the parties understand what information is needed and the best way to provide it, and assist decision makers access the best information available to inform the most accurate PIAWE calculation possible within the timeframe. While compulsory timeframes have a part to play, a culture of early and quick engagement on the part of icare and designing processes and communications that are easy to understand and respond to could enhance the quality of information before decision makers.

Details	Source	Which observation does this address?	Impact of change	Difficulty/effort to change
<p>a. Notification: Encourage and enable provision of earnings information from employers at the earliest point including on notification of injury/ lodgement of claim. Given the requirement to make a decision in 7 days, it is important to access relevant information as quickly as possible.</p>				
<p>b. Forms: Consider enhancing and standardising forms (or online portal inputs) with questions/checklist for employers and/or workers to identify relevant PIAWE components, adjustments and exclusions from calculation at time of claim lodgement. This would guide the gathering of complete and accurate information. It could be adapted for use in phone communications as appropriate.</p>		1. Challenges to obtaining information required to make calculation		
<p>c. Examples of earnings information: Identify and clarify the type of earnings information that may be provided by employers to perform the PIAWE calculation within the seven days period and thereafter. E.g. payslips, bank statements, tax summaries. (see also Recommendation 3a)</p>		4. Short timeframe to calculate PIAWE		
<p>d. Automated communication: Consider automated communications to employer/worker of earnings information required and how it should be provided (e.g. format and content). We support the practice of informing workers about the information required and, in the case of interim PIAWE, informing the worker about what is missing so that they can assist in the process.</p>				
			High	Medium

Information gathering

Operational

Cultural

Rules based



Recommendation 2: Guidance on the expectations of the role and obligations of employers

Clarity in expectations from the outset for all stakeholders would help ensure that information that is available is provided promptly and in a usable and useful form. These recommendations go to clear communication and expectation management around the provision of information.

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
<p>a. Time: Regulator to establish a reasonable time frame for the provision by the employer of required data points for PIAWE calculation.</p> <p>b. Expectations during claims lifecycle: Regulator to educate and inform employers about expectations and the requirement for cooperation during the course of claims. For example, provision of documented guidance or training videos directed to PIAWE and providing relevant earnings information.</p> <p>c. Education: Consider strengthening educational activities, in addition to that which is provided at the time of taking out the insurance policy, including:</p> <ul style="list-style-type: none"> the importance of earnings information the timely provision of this information to the CSP; and PIAWE agreements in accordance with Schedule 3 (3) of the 1987 Act. <p>d. Regulatory powers: While cooperation is the best way in which to access information quickly, reinforcing formal obligations, and the potential consequences of not providing information necessary to make a PIAWE decision, may encourage and prompt employers to give appropriate priority to requests. For example, emphasising in communications that cooperation is the preferred approach but that the provision of information is a requirement under the law and penalties may apply in the event of non-compliance. Consider other mechanisms, including through legislative or regulatory powers, to encourage and/or require that employers provide information relevant to PIAWE. For example, through an impact (positive or negative) on premiums, reimbursements to payments or an impost of interest /processing fees caused by unreasonable delay.</p>	<div>Ω</div> <div>⚡</div>	<p>1. Challenges to obtaining information required to make calculation</p> <p>2. Inconsistent understanding of what information is required</p>	High	Medium – High

Calculation/ Recalculation

Operational




Cultural

Rules based



Recommendation 3: Shift the posture of a single “exact” PIAWE calculation and the adjustment process

The perception that a ‘perfect’ calculation is required based on ‘perfect’ information is having an impact on the approach. Shifting this perception and behaviours so that decision makers are confident in performing a calculation based on information available within the timeframe will assist in getting the balance right. We note SIRA’s recent advice on this topic and acknowledge icare are in the process of operationalising this advice in a similar manner to the actions we have recommended. It is important that icare is able to confidently implement this change and there is clear support from SIRA that this is appropriate.

Details	Source	Which observation does this address?	Impact of change	Difficulty/effort to change
<p>a. Guidance material and culture:</p> <ul style="list-style-type: none">Consider updated Guidelines, Regulations and/or Standards to normalise and accommodate a calculation based on the available earnings information within the 7 day decision-making period (and thereafter) to confirm the revised approach to PIAWE calculation post-2019 (as detailed in communication between SIRA and icare) and shift the perception that there is a single ‘exact’, ‘perfect’ or ‘accurate’ calculation of PIAWE.Provide further guidance on the information available and can be used to calculate PIAWE. A “hierarchy” of information sources against timelines could be developed which identifies the process for requesting or using narrower (fewer weeks) or less accurate information sources (bank/tax statements instead of payslips/payroll data) over the seven day period before the calculation must be made.Build consensus and understanding that reviewing new information and performing recalculations is a normal and expected activity within the PIAWE framework. Provide training and/ or guidance to ensure scheme agents understand that they can use the information available to them within seven days to determine PIAWE and adjust on receipt of further information.Update the claim manager training covering the request, collection, assessment, and calculation of PIAWE. <p>b. Understand culture and perception of claims managers: Survey claims managers to understand how they feel about performing PIAWE calculations and making determinations. Based on the results on the survey, implement training and guidance supported by strong, visible and consistent change management processes within the organisation and with respect to stakeholders. Survey again in 6 months to see whether their perception has changed.</p>	  	<p>1. Challenges to obtaining information required to make calculation</p> <p>2. Inconsistent understanding of what information is required</p> <p>4. Short timeframe to calculate PIAWE</p> <p>6. Importance of communication to avoiding disputes and complaints</p>	High	Medium

Calculation/ Recalculation

Operational
Cultural
Rules based



Recommendation 4: Targeted amendments to the legislation/regulations including the PIAWE definition, adjustment for unpaid leave and aligning payment periods

Given the recency of the current scheme and recent revisions, we have not recommended significant changes to the legislative framework. However, we note there are some key areas of complexity that were raised with us that appear to be adding significantly to the complexity of PIAWE calculations in some circumstances. There are opportunities to simplify PIAWE calculations by reconsidering some of these more complex elements. The policy behind the current provisions was no doubt sound and designed to produce a fair outcome, but should be weighed up against the degree of complexity that arises as a result of each of the following elements.

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
<p>a. Unpaid leave:</p> <ul style="list-style-type: none">Modify clause 8E of the 2016 Regulation by simplifying the adjustment for unpaid leave, to require any days of unpaid leave be disregarded from the relevant earning period.Alternatively, simplify the provision to exclude any period of unpaid leave of more than 7 days whether consecutive or non-consecutive. An exclusion provision should also be considered for periods in which an employee was on paid leave at a rate less than the ordinary rate of pay. <p>b. Casual and seasonal workers: Clarify via legislation that for casual and seasonal workers the method for calculating PIAWE is to use the number of weeks normally worked in a year as the relevant earning period, disregarding any weeks involving unpaid leave and any weeks during which the worker did not receive earnings as a worker.</p> <p>c. Alignment to pay period: Remove requirement that aligning a pay period must result in no disadvantage to the worker and permit time that does not align with the pay cycle to be excluded from the relevant earning period.</p>		5. Specific complexities within the definition of what is included and excluded in PIAWE	High	High

Calculation/ Recalculation

Operational
Cultural
Rules based



Recommendation 5: Enhanced operational guidance on PIAWE components, adjustments and exceptions

Clear guidance and positive relationships between all stakeholders leads to more efficient and consistent outcomes.

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
<p>a. Regulator guidance: SIRA to update and enhance the Guidelines to provide greater detail and clarity on the calculation of PIAWE and PIAWE components including examples and relevant PIC decisions. It could address scenarios where there is insufficient information for a PIAWE calculation and common, ambiguous or contested definitions or circumstances. For example instructive guidance or examples of included/excluded allowances, financially material changes in circumstances, or consideration of issues arising from short term workers or concurrent employment.</p>		1. Challenges to obtaining information required to make calculation	High	Medium
<p>b. Interaction between SIRA and icare: SIRA and icare to establish an agreed protocol by which an interim PIAWE is to be converted to a non-interim PIAWE which supports the flexibility where limited information is available but resolves the calculation absent the provision of further information.</p>		2. Inconsistent understanding of what information is required		
<p>c. Uplift operations: Consider what can be done operationally to re-calculate PIAWE when further information is received that is more efficient and less formal.</p>		4. Short timeframe to calculate PIAWE 5. Specific complexities within the definition of what is included and excluded in PIAWE		

Calculation/ Recalculation



Operational

Cultural

Rules based



Recommendation 6: Clarity on the use and availability of PIAWE agreements

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
<p>a. Regulator guidance:</p> <ul style="list-style-type: none">• Amount: Regulator to establish guidance for the agreed PIAWE amount.• Use cases: Regulator to identify potential user's of the agreement (e.g. small employer without comprehensive payroll system) and develop material that highlight the benefits of agreement (e.g. allow works to focus on injury recovery).• Signatories: Guidance to scheme agents and workers on who can sign on behalf of the employer. <p>b. Deep dive into willingness to participate: Regulator to obtain further understanding of the limitations and willingness of a worker/employer to make an agreement on day five and consider an extended period of up to four weeks for the worker and employer to submit a PIAWE agreement. In the alternative, Regulator to extend the timeframe (i.e. to seven days since the injury notification) for workers and employers to make a PIAWE agreement.</p> <p>c. Communication of option to reach PIAWE agreement: Further consider the expectation that requires scheme agents to offer the option of a PIAWE agreement whether this is burdensome or impairs communications or the relationship between agent and employer.</p> <p>d. Flexibility of PIAWE agreements: Increased flexibility and modernisation of the accepted format of the agreement, which could include:</p> <ul style="list-style-type: none">o i. The current form signed by both the worker and employer, oro ii. Written approval from both the worker and employer, oro iii. Verbal approval from both the worker and employer to the case manager.	 	7. Low uptake of PIAWE agreements	Medium	High


Calculation/ Recalculation

Operational
Cultural
Rules based



Recommendation 7: Explore digital technology capability to automate calculation of PIAWE and aspects of case management

Easy access to providing the right information via digital systems would reduce administrative burden and potentially increase speed and accuracy. We note other states (Victoria) are exploring digital solutions.

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
<p>a. Shared portal: Create online portal for work/employer to input information required for PIAWE calculation and upload supporting evidence.</p> <p>b. Publicly available calculator: Implement an online tool, such as a PIAWE Calculator, to assist to increase awareness and understanding of the calculation methodology and promote consistency in the calculation of PIAWE across the scheme.</p> <p>c. Internal scheme calculator: Creating a calculator that would provide online support to an employer (across both NI and TMF) that CSP could rely on without receiving physical documents.</p>		<p>1. Challenges to obtaining information required to make calculation</p> <p>4. Short timeframe to calculate PIAWE</p> <p>5. Specific complexities within the definition of what is included and excluded in PIAWE</p>	High	High



Calculation/ Recalculation

Operational
Cultural
Rules based



Recommendation 8: icare to undertake consultation (“deep dive”) to understand operational impact of PIAWE being a work capacity decision

As noted earlier, there is a perception that the status of a PIAWE decision as a work capacity decision is a problem. Understanding what is behind this perception and the extent to which any procedural or formal requirements might be streamlined or reduced could have significant impact on the approach and posture of decision makers, including their confidence to make and appropriately revise decisions.

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
a. Understanding the impact: Understand any administrative burden imposed by the nature of PIAWE being a work capacity decision and the impact on performing and reviewing the PIAWE calculation.		3. Contested status of PIAWE as a work capacity decision	Medium	Low
		4. Short timeframe to calculate PIAWE		

Communication



Operational

Cultural

Rules based



Recommendation 9: Foster opportunities to enhance collaboration between SIRA, particularly in relation to PIAWE calculation, processes and guidance material including by reference to recommendations 1, 4, 8 and 10.

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
<p>a. Explore collaborative opportunities to measure, test and understand the impact of PIAWE changes or initiatives between SIRA, icare and CSP including by reference to recommendations 1, 3, 5, 8 and 10.</p> <p>Consider regular surveys or reporting channels to raise and address issues relating to calculation, guidance materials, processes, systems and technology. Reflect on whether a mutual commitment to common goals and values surrounding the purpose, intent and approach to the compensation of weekly earnings and PIAWE between icare and the Regulator can be a basis upon which collaboration can develop.</p>	 	All	Medium	Medium

Communication

Operational





Cultural



Rules based



Recommendation 10: Consider content, language and dissemination of communication and guidance materials

Details	Source	Which observation does this address?	Impact of change	Difficulty/ effort to change
a. Source of truth: Create one ‘source of truth’ document for the CSP (similar to Victoria’s consolidated claims manual). Alternatively SIRA to consider the consolidation of PIAWE guidance material for the CSP that is split across the Claims Management Guide (Insurer Guidance), Guidelines and Standards of Practice.		All	Medium	Medium
b. Plain language: Revise language of communication and other documents sent to CSPs, employers and workers (plain language review).				
c. Dissemination: Consistency of dissemination of information/ training/ guidance material to all parties (i.e. all scheme agents within NI and TMF).				
d. Culture and training: Training to enhance confidence around making judgements relating to PIAWE calculations.				

Appendices



Appendix 1 – The legislative and regulatory framework

The primary legislative and regulatory framework of the scheme comprises:

- *Workers Compensation Act 1987* (NSW): Contains provisions that govern the entitlement to and calculation of statutory workers compensation benefits
- *Workplace Injury Management and Workers Compensation Act 1998* (NSW): Contains procedures for making a claim, dispute resolution, injury management and other scheme provisions.
- *Workers Compensation Regulation 2016* (NSW): Include provisions as to the calculation of PIAWE.

The two Acts and Regulation are to be read together.

Other relevant legislation/guidance material:

- *State Insurance and Care Governance Act 2015* (NSW) Establishes the constitution and functions of icare and SIRA.
- *Personal Injury Commission Act 2020* (NSW): Abolished the Workers Compensation Commission and established a single, independent tribunal called the Personal Injury Commission to resolve workers compensation disputes on and from 1 March 2021. Establishes the Independent Review Officer (IRO) which replaces the Workers Compensation Independent Review Officer (WIRO) on and from 1 March 2021.
- *SIRA's Workers Compensation Guidelines*: Support delivery of the objectives of the Acts and Regulation by informing and guiding insurers, workers, employers, injury management consultants, independent medical examiners and other stakeholders in the process of claiming workers compensation in NSW.

The Guidelines are made under section 376(1)(c) of the 1998 Act and SIRA requires stakeholders to comply with the parts of the Guidelines that apply to them.

SIRA's Standards of practice: Set expectations for claims administration and conduct expectations for insurers.

The Standards form the claims administration manual, for the purposes of section 192A of the 1987 Act and are to be read in conjunction with the requirements of the workers compensation legislation, regulation and guidelines.

Appendix 2 – Documents Reviewed (1/3)

Document Name	Date received
Online learning	
Module 1 – Understanding PIAWE – 111001	Pre 31 August 2021
Module 2 – Managing PIAWE in practice – 111003	Pre 31 August 2021
Module 3 – Communication, Agreements and Dispute pathways – 112001	Pre 31 August 2021
Calculators	
PIAWE calculators (Guidewire)	Pre 31 August 2021
SIRA	
SIRA - Calculating PIAWE	Pre 31 August 2021
Pre-injury average weekly earnings (PIAWE) reference guide (Version 2)	Pre 31 August 2021
PIAWE on a Page	8 September 2021
SIRA Standards of Practice 2021	8 September 2021
SIRA PIAWE Letter 2021 04 01	21 October 2021
SIRA PIAWE response 16 April 2021	21 October 2021
Reports	
Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme: Janet Dore, Dec 2019 ('Dore' Report)	8 September 2021
Compliance and Performance Review of the Nominal Insurer- Part 1 Claims Management: EY, December 2019	8 September 2021
Nominal Insurer Quarterly Claims File Review: EY, 2020 (Q1 &2) - Quarter 1 and 2 are separate documents	8 September 2021
icare and workers' compensation independent review: Robert McDougall QC, 30 April 2021 (part of 5-year statutory review)	8 September 2021
2020 Review of the Workers Compensation Scheme: Legislative Council: Standing Committee on Law and Justice, Report dated 30 April 2021	8 September 2021
Report On NSW Workers Compensation Arrangements In Relation To Pre-injury Average Weekly Earnings (Piawe)	8 September 2021
Internal icare reports, advice, internal processes and other resources	
PIAWE Risk Discovery Review 2019	?
History of the PIAWE Risk Discovery Project and the PIAWE Review and Remediation Program	9 September 2021

Appendix 2 – Documents (2/3)

Document Name	Date uploaded
Further icare documents	
Desktop review_sources register	14 September 2021
PIAWE Agency engagement CX Report	14 September 2021
PIAWE CSP Engagement CX Report Full Report	14 September 2021
PIAWE Diagnostic Discussion Guide	14 September 2021
PIAWE Diagnostic Playback internal 4 June 2021	14 September 2021
PIAWE Diagnostic Report 31 May 2021	14 September 2021
PIAWE diagnostic synth	14 September 2021
Copy of PIAWE Calculator – Injury on or after 10 21	14 September 2021
PIAWE Wage Calculator – able to shift RP (effective 19.10.19)	14 September 2021
Updated Blank PIAWE Calculator	14 September 2021
Combined CSP feedback on PIAWE expectations	9 November 2021
NI PIAWE Calculation – Service Expectations Process	9 November 2021
PIAWE Expectations Final	9 November 2021
Workers Compensation Amendment (Covid 19) weekly payment compensation	14 September 2021
Initial PIAWE Decision – Technology Program	14 September 2021
PIAWE Calculations – Technology Program	14 September 2021
PIAWE Consolidation – Capability Program	14 September 2021

Appendix 2 – Documents (3/3)

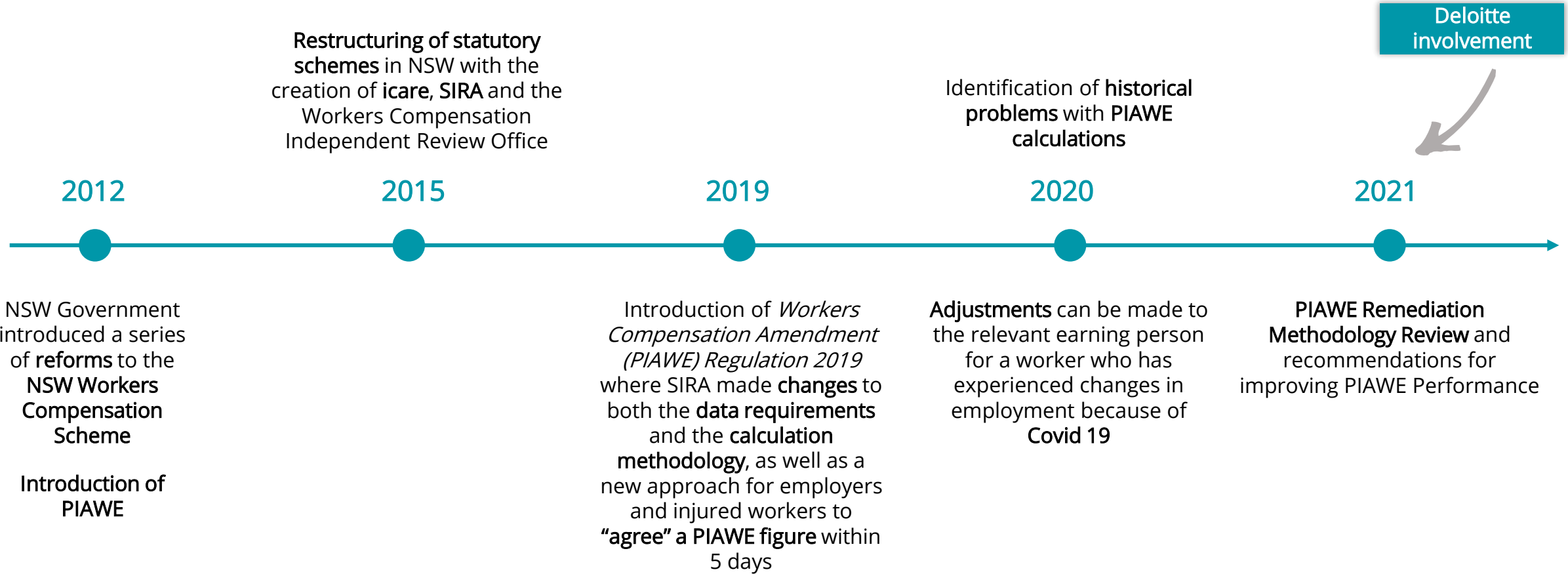
Document Name	Date uploaded
Miscellaneous	
PIAWE Diagnostic Report_31 May 2021	14 September 2021
Claims payment and Controls Review Deidentified	23 August 2021
Draft PIAWE SteerCo ToR and Charter	6 September 2021
Draft SIRA feedback	6 September 2021
Research into PIAWE reform	12 October 2021
PIAWE RR -Training Materials - Handbook	23 August 2021
Claims Payment and controls Review Deidentified	23 August 2021
PIAWE Survey	19 October 2021
Icare PIAWE Methodology Final Draft v2	14 September 2021
PIAWE Audit Tool Draft updated 17.08.2021	14 September 2021
Workers Compensation Amendment (COVID-19 Weekly Payment Compensation) Regulation 2020	14 September 2021
Icare PIAWE 2021 – Findings summary Report	9 November 2021
Icare PIAWE 2021 NI Report – icare Version	9 November 2021
Icare PIAWE 2021 TMF Report – icare Version	9 November 2021

Appendix 3 – Stakeholders interviewed

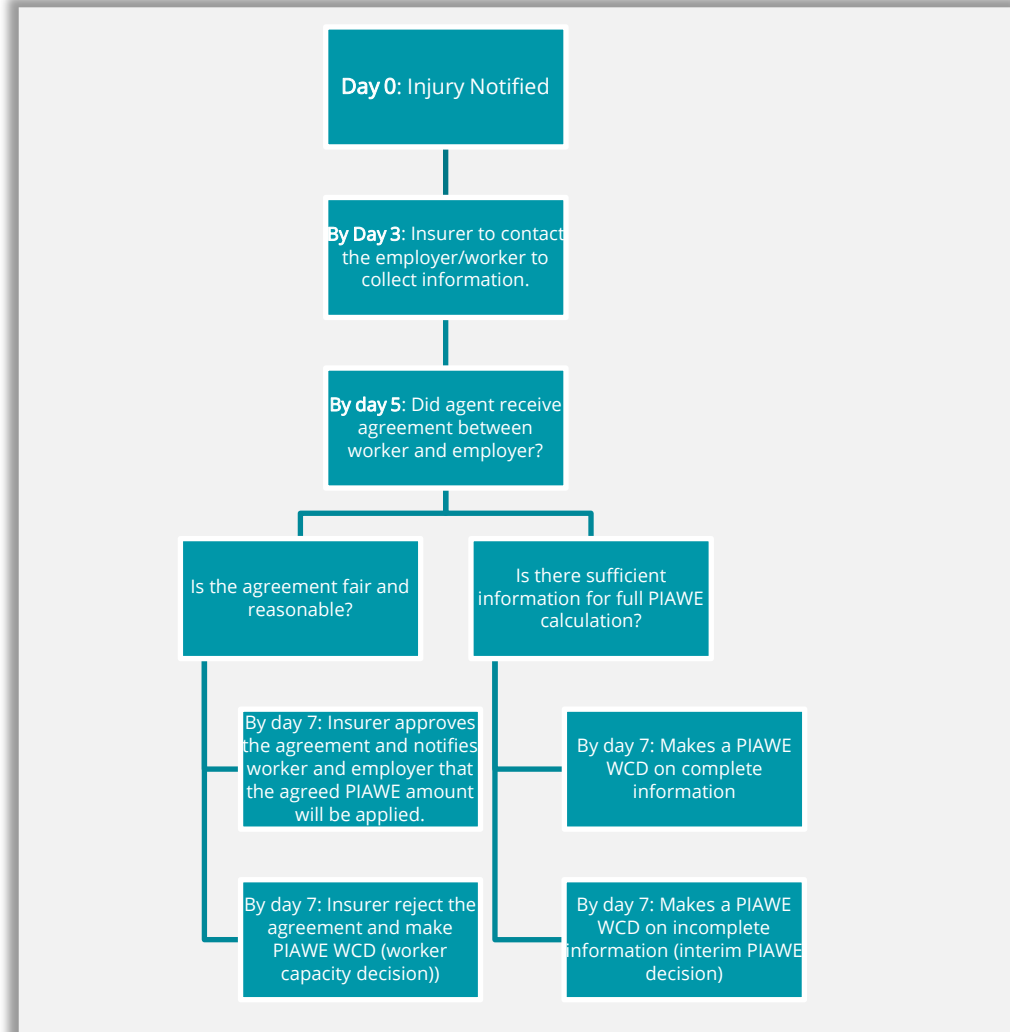
Organisation	Number of interviews	Date of Interview(s)
Icare (TMF, NI and Dispute Resolution)	6	9 September 2021, 13 September 2021 (2 meetings), 22 September 2021, 28 September 2021, 27 October 2021
EML	1	10 October 2021
GIO	1	5 October 2021
Allianz (NI & TMF)	2	7 October 2021 & 14 October 2021
QBE (NI & TMF)	2	7 October 2021 & 15 October 2021
NIAC (Unions & AIG)	2	6 October 2021
Independent Review Office (IRO)	1	19 October 2021
State Insurance Regulatory Authority (SIRA) (Executive and Policy)	2	5 October 2021 & 6 October 2021
Personal Injury Commission (PIC)	1	15 October 2021
Icare legal representatives (Moray & Agnew, Hicksons & Bartier Perry)	3	10 October 2021, 12 October 2021 & 14 October 2021
Other scheme representatives (Worksafe Vic & Workcover QLD)	2	13 October 2021
Total	23 interviews	

Appendix 4 – History of PIAWE

The workers compensation income support has been on an enhancement journey for 9 years. During this time the method in which PIAWE is calculated has evolved and continues to evolve to today so that it can become as fair and accurate as possible.



Appendix 5 – Process map of first 7 days of claim



Appendix 6 - Survey questions

Survey questions			
1	What are your experiences of PIAWE since the 2019 reforms? What are the benefits of the current framework?	6	What information to perform the calculation is most difficult to provide? What information to perform the PIAWE calculation is readily available to you and that could be used to reflect a worker's pre-injury wage?
2	Are there any challenges relating to the current PIAWE framework? (Please put in priority order)	7	What is a reasonable timeframe for you to provide the information required to calculate PIAWE? What informs your point of view?
3	If you could propose changes to PIAWE framework/ processes, what would your top 3 ideas be? Why?	8	How useful are PIAWE agreements? What are the barriers to their uptake, if any?
4	How does the use of 52 weeks of income inform a worker's pre-injury earnings? How many weeks could represent average earnings for: 1.a permanent worker (full time or part time) 2.a casual worker 3.a seasonal or short-term workers 4.other irregular patterns of work (long on/off roster cycles)	9	What impact do the following exclusions have to the information you are required to provide? •>7 days unpaid leave; •Discretionary payments; and •Monetary value of non-monetary benefits •Could adjusting or removing exclusions from the calculation reduce the volume of information required? If so, why?
5	What is the operational impact of providing the information required and responding to PIAWE related enquiries?	10	Are there any other matters which you consider relevant that are not addressed in the questions above?

Appendix 7 – Endnotes (1/2)

1. Section 3, *Workplace Injury Management and Workers Compensation Act 1998*
2. Part 2, *State Insurance and Care Governance Act 2015* establishes the constitution and functions of icare
3. Sections 22 and 23, *State Insurance and Care Governance Act 2015* establish the principle objectives and functions of SIRA.
4. Statutory review of the *State Insurance and Care Governance Act 2015*, Part 3, p 307
5. Statutory review of the *State Insurance and Care Governance Act 2015*, Part 3, p 307
6. Sections 4 and 5, *State Insurance and Care Governance Act 2015*
7. Section 10, *State Insurance and Care Governance Act 2015*
8. Section 10(c), *State Insurance and Care Governance Act 2015*. This extends to entering into agreements or arrangements with a person/body purposes of providing services or exercising the functions of the Nominal Insurer.
9. Treasury Circular TC-20-05 requires all government agencies to be TMF members for their insurance requirements. SI Corp administers the TMF pursuant to the *NSW Self Insurance Corporation Act 2004* (NSW).
10. There are a total of 70 self-insurers and 6 specialised schemes: Statutory review of the *State Insurance and Care Governance Act 2015*, Part 2, p 252
11. Section 154G *Workers Compensation Act 1987*
12. This has been recommended in the Statutory review of the *State Insurance and Care Governance Act 2015*, Part 3, p 310
13. Section 23, *State Insurance and Care Governance Act 2015*
14. Section 23, *State Insurance and Care Governance Act 2015*
15. <https://www.icare.nsw.gov.au/news-and-stories/piawe-reforms-to-take-effect#gref>
16. Section 4, *Workplace Injury Management and Workers Compensation Act 1998*
17. Schedule 1, *Workplace Injury Management and Workers Compensation Act 1998*
18. Clause 2, Schedule 3, *Workers Compensation Act 1987*
19. Clause 6, Schedule 3, *Workers Compensation Act 1987*
20. Clause 4, Schedule 3, *Workers Compensation Act 1987*
21. Clause 5, Schedule 3, *Workers Compensation Act 1987*
22. Sections 8B-8EA, *Workers Compensation Regulation 2016*
23. Section 267(2), *Workplace Injury Management and Workers Compensation Act 1998* and Table 2.1 in Part 2 in the Workers Compensation Guidelines.

Appendix 7 – Endnotes (2/2)

- 24. icare website: <https://www.icare.nsw.gov.au/news-and-stories/piawe-reforms-to-take-effect#gref>
- 25. icare media release dated 27 July 2020: <https://www.icare.nsw.gov.au/news-and-stories/icare-provides-further-update-on-piawe-remediation#gref>
- 26. icare media release dated 27 July 2020 : <https://www.icare.nsw.gov.au/news-and-stories/icare-provides-further-update-on-piawe-remediation#gref>
- 27. icare media release dated 24 August 2021: <https://www.icare.nsw.gov.au/news-and-stories/2021/update-on-historical-piawe-remediation#gref>
- 28. Deloitte Report: Assessment of the design effectiveness of the Pre-Injury Average Weekly Earnings (PIAWE) Review and Remediation. Program Methodology dated 14 August 2021. Link: <https://www.icare.nsw.gov.au/-/media/icare/unique-media/about-us/publications/files/piawe-deloitte-report.pdf>
- 29. The Claims Management Guide is a document distinct from the Workers Compensation Guidelines which has statutory effect (being made under section 376(1)(c) of the 1998 Act). Link : <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/insurer-guidance/compensation-payable/calculating-piawe-after-21-October-2019>
- 30. Section 264(2), *Workplace Injury Management and Workers Compensation Act 1998*
- 31. Section 174, *Workers Compensation Act 1987*
- 32. Link: <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/insurer-guidance/compensation-payable/calculating-piawe-after-21-October-2019>
- 33. Deloitte Report: Assessment of the design effectiveness of the Pre-Injury Average Weekly Earnings (PIAWE) Review and Remediation. Program Methodology dated 14 August 2021. Link: <https://www.icare.nsw.gov.au/-/media/icare/unique-media/about-us/publications/files/piawe-deloitte-report.pdf>
- 34. Section 80, *Workplace Injury Management and Workers Compensation Act 1998*
- 35. Notably, the guide includes much more extensive guidance regarding the PIAWE calculation than the Guidelines.
- 36. Section 153, *Workplace Injury Rehabilitation and Compensation Act 2013* (VIC)
- 37. Clause 3, Schedule 3, *Workers Compensation Act 1987* and clause 8J(2), *Workers Compensation Regulation 2016*.
- 38. Clause 8K(2), *Workers Compensation Regulation 2016*.
- 39. Clause 8K(4), *Workers Compensation Regulation 2016*.



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