Standing Committee on Law and Justice – 2020 Review of the Workers Compensation Scheme

State Insurance Regulatory Authority (SIRA) - Answers to questions taken on notice at the Hearing held on Wednesday 15 December 2021

Mr PARKER: So on the underwriting result, variance to the half-year budget, $597 million.
The Hon. DANIEL MOOKHEY: Negative or positive?
Mr PARKER: Positive.
The Hon. DANIEL MOOKHEY: I am not sure we are talking about the right things here because that is quite the turnaround in the space of a month. Can I table this and provide this to you and see if we are talking about the same principle position?
Mr PARKER: It might be easier if we refer to your September—
The Hon. DANIEL MOOKHEY: It might be easier if we return to the September date, unless you have the same information one year advanced. There are copies as well for other members.
Mr PARKER: I have got that in front of me now.
The Hon. DANIEL MOOKHEY: Which one do you have there, sir?
Mr PARKER: Financial year to date September 2020-21.
The Hon. DANIEL MOOKHEY: You can see down the bottom there, year to date actual underwriting result $998 million negative. Do you see that?
Mr PARKER: Yes, I can.
The Hon. DANIEL MOOKHEY: Have you got an update on that number?
Mr PARKER: Sorry, I think that was the one I just read out.
The Hon. DANIEL MOOKHEY: If you do not, it is okay. You can take it on notice what is the basis of the September numbers.
Mr PARKER: We will take that on notice.
The Hon. DANIEL MOOKHEY: It is only a month's difference. But the underwriting result here—
Mr DAVID SHOEBRIDGE: I think there is something to discuss. This shows a $998 million negative on the underwriting result and a $175 million net negative variance against budget. Mr Parker, I thought you had said that a month later on the figures you had had a $500 million positive variance. That has been a hell of an October.
Mr PARKER: I think if we provide the same document for October for the Committee on notice.
Mr DAVID SHOEBRIDGE: But I thought that you had said that your numbers had a $500 million positive variance to budget in October and, if so, I think we should just stop a moment and reflect on that. If there was a $675 million turnaround in a month—
Mr DENT: Perhaps if we could just have a moment while he is trying to find the right line on a phone screen.
The CHAIR: I was going to say, just to clarify, if it is possible to direct perhaps the secretariat to where the document is we can provide a copy to Mr Mookhey and Mr Shoebridge.
Mr DENT: We will attempt to get a copy for the secretariat. They are not published.
The Hon. DANIEL MOOKHEY: Maybe on notice can you respond to Mr Shoebridge's question?
Mr PARKER: Absolutely.

ANSWER

The Nominal Insurer month-on-month reporting is subject to fluctuations driven mainly by market movements of investment returns and variations in inflation and discounting that impact the value of outstanding claims liabilities.

The $597 million is referenced from the 'Full Nominal Insurer Financial Results – October 2021' representing a positive variance to the half-yearly result (HYR) Budget.

The underwriting result for September 2021 was $998 million negative. This represented a $175 million negative variance to Budget.

The underwriting result for October 2021 was $417 million negative. This represented a variance to half year budget of $597 million positive.

The basis for the budget expected numbers has changed between September and October to reflect the June 2021 valuation.

With reference to the year-to-date underwriting results, we note that the large proportion of the variation between September to October 2021 results was driven by a reforecast budget and projected total claims costs changed in the October 2021 financial report, mainly driven by changes from a positive movement in risk free rates ($750 million) partly offset by a movement in inflation rates (-$250 million) for a net positive impact of approximately $500 million. There was also positive movement in the Unexpired Risk Reserve of $118 million driven by the half year valuation. Combined, these account for much of the variation to budget and actuals between September 2021 and October 2021.

The Hon. DANIEL MOOKHEY: But they are increasing premiums, are they not?
Mr DENT: They are increasing premiums. So it is a gradual process over the course of a decade. The intent by the icare board, I understand, is so as not to have too great an impact directly on, particularly in their case, small businesses in the immediate term, so that it will gradually get closer to break even over a period of time. That said, that period of time, I think, is probably longer than they are hoping for.
The Hon. DANIEL MOOKHEY: What do you mean by "that is longer than they are hoping for"?
Mr DENT: Mr Parker, correct me if I am wrong, but it is going to take more than at least six years to get closer to break-even, but I will let you speak to that.
The Hon. DANIEL MOOKHEY: Sorry, let us set this out. They have provided you with indication of the premiums over the following five years, six years, 10 years?
Mr DENT: That was in their business plan.
Mr PARKER: Yes, they have. With the results over recent months, SIRA has been concerned about the funding ratio and the insurance ratio and how that relates to the capital management policy set by the icare board. Because of that we have written to both Treasury and icare asking them to explain what is the action that they are going to take to move their financial position back into a higher zone, if you like, because for the insurance ratio it has dipped under 120 per cent. In that response, the requirement if that is deteriorating is an action to bring that within the acceptable range within five years, and at the moment the projections were that that would return to that range within the next 10 years.
The Hon. DANIEL MOOKHEY: They are not going to be charging adequate premium levels, which could either be a good thing or a bad thing depending on the perspective, for at least a decade is a summary of what you just said then, Mr Parker. Is that correct?
Mr PARKER: That is some modelling that has been provided from icare to SIRA. SIRA assesses it though on an annual basis.
The Hon. DANIEL MOOKHEY: Sure, but the clear point is the break-even premium is 1.77 per cent of scheme wages in New South Wales, is it not, Mr Dent?
Mr DENT: Correct.
The Hon. DANIEL MOOKHEY: Currently it is at 1.4 per cent?
Mr DENT: Correct.

The Hon. DANIEL MOOKHEY: And it is intending to rise to 1.77 per cent over the next decade?
Mr DENT: The final position over the next decade is not, but the break-even point will be 1.77 per cent. Mr Parker might know when—
The Hon. DANIEL MOOKHEY: That is a 26 per cent increase in premiums coming to New South Wales businesses in the next five to 10 years. Is that correct?
Mr DENT: To achieve break-even that would need to be the case, yes.
The Hon. DANIEL MOOKHEY: And that is what is in icare's business plan. Is that correct?
Mr PARKER: I do not want to mislead the Committee so we might take that on notice.

ANSWER

icare has shared with SIRA the Nominal Insurer's (NI):

- 2022 Business Plan,
- 2022 Premium Filing (which incorporates its 10 year projected premium),
- 30 June 2021 Valuation, and
- 30 June 2021 Financial Condition Report.

This above information has been shared with SIRA with the caveat of commercial in confidence.

From this information, it has been noted the target premium collection for FY 2021-2022 was 1.47% of wages, with icare proposing to increase this rate by 2.9% each year for the next 6 premium years (see table below from 2022 NI Premium Filing).

	FY21/22	FY22/23	FY23/24	FY24/25	FY25/26	FY26/27	FY27/28	FY28/29	FY29/30	FY30/31
Future Target Premium Rate	1.47%	1.52%	1.56%	1.60%	1.65%	1.70%	1.75%	1.79%	1.82%	1.85%
Year-on-year increase		*2.9%*	*2.9%*	*2.9%*	*2.9%*	*2.9%*	*2.9%*	*2.6%*	*1.6%*	*1.6%*

The operational breakeven premium (OBEP) rate of 1.77% of wages reported in the NI Financial Condition Report at 30 June 2021 is a point in time measure of required premium collection to ensure the financial position is sustainable. The income component of the balance sheet includes both investment returns and premium collected, and should the investment return oscillate, the OBEP will similarly be affected.

The Hon. DANIEL MOOKHEY: So the Comensura contract—was that incorrectly billed to the Nominal Insurer?
Mr AZZI: Like I said, I just want to be careful because the report is still in draft.
The Hon. DANIEL MOOKHEY: Yes, sure, but is that your draft finding?
Mr AZZI: The draft finding—not that it was incorrectly billed, but the draft finding did talk to that Comensura was used to lease other property, and there was a 5 per cent mark-up then also charged to the Nominal Insurer.
The Hon. DANIEL MOOKHEY: To be clear, this is the contract that icare entered into with a labour-hire company to rent—I think it is 201 Kent Street, Mr Shoebridge?
Mr DAVID SHOEBRIDGE: Two levels.
The Hon. DANIEL MOOKHEY: Two levels at 201 Kent Street, which has harbourside views, for which there was a mark-up of 5 per cent that was then billed to the Nominal Insurer.
Mr AZZI: Yes.
The Hon. DANIEL MOOKHEY: That is what your forensic audit found?
Mr AZZI: Yes.
Mr DAVID SHOEBRIDGE: Did your forensic audit look to whether or not that was intended to subvert oversight by Treasury and restrictions by Treasury on the prior request from icare to expand its floor space?

Mr AZZI: The audit just looked at the financial expenditure. However, I will say that I think icare have engaged an independent review in that regard, and they may provide that.
Mr DAVID SHOEBRIDGE: Can you give an indication of the scale of the funds that were inappropriately—at least in your draft report—taken from the Nominal Insurer by icare?
Mr AZZI: Again, it is in draft. It may change, subject to further information.
The CHAIR: If there are concerns, you can take that question on notice.
The Hon. DANIEL MOOKHEY: It is a draft finding.
Mr DAVID SHOEBRIDGE: We are happy to accept it as a draft. I know that there are some negotiations still underway. What is the scale of it, Mr Azzi?
The CHAIR: You can take the question on notice, however.
Mr AZZI: If you just give me a moment. I think it was to the tune of over $20 million.
Mr DENT: I think it might be best at this point if we take that on notice and provide that detail to you.
The Hon. DANIEL MOOKHEY: If you have the information by the time the hearing is over, that would be helpful.

ANSWER

The audit of the Workers Compensation Insurance Fund (WCIF) considered whether funds drawn from the fund were complaint with requirements set out in s154E(2) of the *Workers Compensation Act 1987*. The audit considered the following areas:

1) Service costs charged by icare to the WCIF;
2) Supplier payments across 13 entities selected by SIRA;
3) Contractor payments to previous staff members of icare;
4) Travel costs; and
5) Expenditure on the broker payment for the Protect Together program.

The audit was not an exhaustive review of all monies spent from the WCIF, hence the report did not provide a total of funds that were potentially inappropriately taken from the Nominal Insurer by icare.

The function and authority to inspect and audit the WCIF, belongs to the Auditor-General as per s154F of the *Workers Compensation Act 1987.* This audit was a discrete audit that looked at the use of the WCIF across select areas and transactions over a 5-year period.

In clarification of a previous response provided during the hearing, the $20 million mentioned by Mr Azzi referred to the Capgemini Australia Pty Ltd and Comensura Pty Ltd sublease arrangements valued at $20,761,939. The appropriateness of these arrangements was not examined by the audit.

In February 2022, SIRA expects to receive a response from icare regarding the findings of the audit.

The final audit report will be provided to Treasury and the Auditor-General.

Mr DAVID SHOEBRIDGE: I am having trouble. In its evidence today icare indicated that the surge in its employee expenses was because it had moved contractors and contingent labour onto the books. That is hard to accept because their contingent labour costs and their contracting costs increased in the last financial year substantially, by about $40 million. They then also indicated that some of it was about regularising the practice that they had previously had, of dipping into the Nominal Insurer funds and not bringing them to books on icare. I have difficulty accepting that. At

best we are seeing some $22 million of that showing up in the Nominal Insurer funds, but we know just in the last two years icare's employment expenses have increased by $87 million—just in two years. Does your report shed any light on those aspects, Mr Azzi?
Mr AZZI: It does not go into all of that detail, but the scope was quite defined. I am happy to provide a copy of the report on notice, if I can.

ANSWER

SIRA is considering whether the final WCIF audit report can be made public.

The Hon. DANIEL MOOKHEY: But 700,000 invoices were not being paid. Was it because the IT system failed?
Mr PARKER: I will put that into context. Over the period, icare paid $2.41 billion between 2019 and March 2021. But there was a percentage of invoices that were—we can talk about the reason in a moment—parked to be manually reviewed over that period. Icare identified that those invoices had not been reviewed. We provided supervision over icare to make sure that those invoices were reviewed, and those that were not duplicate invoices or had not been subsequently paid were in fact paid.
The Hon. DANIEL MOOKHEY: Just to be clear—I do not want to ask too many more questions on this because time is limited—714,000 invoices were not paid, and was that because of the IT system?
Mr PARKER: That was one reason.
The Hon. DANIEL MOOKHEY: This inquiry has examined at length the IT systems and what happened with the Nominal Insurer with the single platform, as it is called.
Mr PARKER: Because of the importance of the question, we do have detailed analysis as to the reason provided in detail as to what caused this.
The Hon. DANIEL MOOKHEY: Can you provide that to us on notice?
Mr PARKER: Absolutely.

ANSWER

icare identified the issue as being related to the processing of invoices from providers in Guidewire. This apparently resulted in some invoices not being paid and instead being suspended until manual intervention was completed, resulting in a backlog of unactioned payments. The root cause analysis undertaken by icare identified that when a case manager reviewed a 'failed' invoice record, a process step to either mark the record as 'processed' or 'rejected' had been missed and this had resulted in 733,000 failed invoice records in Guidewire between 2019 and 2021, in relation to approximately 93,000 claims.

SIRA has investigated this matter and determined that the Nominal Insurer's failure to pay invoices promptly is a contravention of section 74A(1) of the *Workplace Injury Management and Workers Compensation Act 1998*. As a result SIRA issued a Letter of Caution to the Nominal Insurer dated 10 December 2021. The Letter of Caution requires the Nominal Insurer (icare) to provide detailed reports to SIRA to allow it to continue to monitor icare's performance in this regard and allows SIRA to take further enforcement action should further breaches of this nature be identified. These reports are to be provided to SIRA on 31 March 2022 and on 30 September 2022.

Mr DAVID SHOEBRIDGE: On a different matter, can I ask you about the COVID-19 claim assessment. Icare's numbers show that as at 10 September 2021, the Nominal Insurer had a total of 560 COVID-19 claims for the whole period from February 2020 to 10 September 2021. Indeed, 73

per cent of those had been rejected on a reasonable excuse basis and the majority because there had been no time loss incurred. Do you know what the cost to the scheme was of those 560 claims related to COVID-19?
Mr DENT: I suspect that number has not changed dramatically since we last had a conversation to that effect. I am just looking for it—unless you can point to it sooner, Mr Parker. The total cost of the claims to date for the NI? Here we go. The total amount is $22 million, in terms of gross incurred costs of claims and payments. I am not sure that is specific to the NI.
Mr DAVID SHOEBRIDGE: That is the total cost to the workers comp scheme for COVID-19 claims to date?
Mr DENT: To date, as at 31 October 2021.
Mr DAVID SHOEBRIDGE: And that is both benefits paid and the cost of managing the claims added together, is that right?
Mr DENT: That would be benefits paid only, not the cost of claims management.
Mr DAVID SHOEBRIDGE: I am sorry, I thought you read—
Mr DENT: Gross incurred costs of claims.
Mr DAVID SHOEBRIDGE: Gross incurred cost is the two added together, is it not?
Mr PARKER: We might take that on notice, to clarify.
Mr DAVID SHOEBRIDGE: But either way, that is $22 million. Do you know how many claims that relates to?
Mr DENT: There are 1,095 claims in total.
Mr DAVID SHOEBRIDGE: That would clearly have to be both the Treasury Managed Fund and the Nominal Insurer added together?
Mr DENT: Yes.
Mr DAVID SHOEBRIDGE: Could you provide a breakdown, if you can, between Treasury Managed Fund and the Nominal Insurer?
Mr DENT: I am happy to take that on notice, yes.
Mr DAVID SHOEBRIDGE: Do you know how many of those claims were made under the deeming provisions that were put in? And, if so, what the costs of those have been, what part of the $22 million relates to the deeming provision?
Mr PARKER: We do have it. However, I would not be able to total it up now to provide it to you, Mr Shoebridge. I have a breakdown of the costs against the different industries. I have a breakdown of which ones are covered by presumption and which ones are not, but I just do not have the totals.
Mr DAVID SHOEBRIDGE: Could I ask you if possible—and you can say no because you have a right to provide this within 21 days—to provide those by the close of business today? That would be extremely helpful.
Mr DENT: We will endeavour to, otherwise we will take that on notice.
Mr DAVID SHOEBRIDGE: That would be helpful.

ANSWER

The following answer was emailed to the Committee secretariat on 22 December 2021. COVID-19 claims (reportable only) by insurer type and COVID-19 presumption
Workers Compensation claims data as at 31 October 2021.

All COVID-19 claim types	COVID-19 presumption applies		No COVID-19 presumption		Total			
Insurer type	**Count of claims**	**Gross incurred cost**	**Count of claims**	**Gross incurred cost**	**Count of claims**	**Gross incurred cost**	**% of COVID-19 claims where presumption applies**	**% of COVID-19 claims**
Nominal Insurer	259	$2,947,979	214	$7,629,188	473	$10,577,167	55%	36%
Self	260	$1,210,325	54	$1,613,690	314	$2,824,015	83%	24%
Specialised	31	$428,964	17	$672,338	48	$1,101,302	65%	4%
TMF	441	$8,431,219	48	$1,517,408	489	$9,948,627	90%	37%

WC Scheme	991	$13,018,487	333	$11,432,625	1,324	$24,451,112	75%	100%

Note: Gross incurred cost is the sum of payments plus an estimate of future liability if the claim is still open at the end of the current financial year. It does not include insurer administration costs.

As at 31 October 2021:

- Workers Compensation Scheme had 1,324 COVID-19 reportable claims. 991 (75%) of these COVID-19 claims were made under the presumptive legislation.
- NI has 473 (36%) of Workers Compensation Scheme COVID-19 claims. 259 (55%) of these COVID-19 claims were made under the presumptive legislation.
- TMF has 489 (37%) of Workers Compensation Scheme COVID-19 claims. 441 (90%) of these COVID-19 claims were made under the presumptive legislation.

The Hon. ANTHONY D'ADAM: Do you believe that has had a material impact on the four-week return-to-work rates?
Mr DENT: I could not say that with certainty.
The Hon. ANTHONY D'ADAM: I am happy for you to take that on notice as well.

ANSWER

The following table outlines the number of claims and return to work (RTW) rates for all claims and for COVID-19 claims, for claims made under the presumptive legislation, as at 31 October 2021.

	Number of accepted claims	RTW at 4 weeks
Jan- June 2020 (First wave)		
All claims	25,834	69%
COVID claims	50 (0.2%)	NP*
July - Dec 2020 (Presumptive Legislation introduced July 2020)		
All claims	28,025	67%
COVID claims	9 (0.03%)	NP
COVID claims (presumptive)	7	NP
COVID cases (not presumptive)	2	NP
Jan – June 2021		
All claims	28,602	65%
COVID claims	4 (0.01%)	NP
COVID claims (presumptive)	4	NP
COVID cases (not presumptive)	0	NP
July – Oct 2021 (Second wave) 4 months data only		
All claims	15,713	62%
COVID claims	689 (4.4%)	70%
COVID claims (presumptive)	592	68%
COVID cases (not presumptive)	97	80%

*NP- rates are not presented due to numbers being too small and therefore not statistically relevant

In summary:

1) COVID-19 claim numbers to 31 October 2021 are low and have had minimal material impact on scheme performance both on claim rates and RTW rates.
2) 4-week RTW rates across all claims during the COVID-19 pandemic have continued to decline from 69% to the rate of 62% (as at 31 October 2021). Reasons for this decline may include:
    a) Employers have reported difficulty in providing suitable work opportunities due to the impact of lock downs and isolation requirements.
    b) Delays for injured people in accessing treatment.

3) 4-week RTW rates for COVID-19 claims are higher than 4-week RTW rates for all claims (see second wave data in table). This is expected as the majority of people return to work within 4 weeks of a COVID-19 diagnosis.

NSW Workers Compensation COVID-19 claims data as at 31 October 2021

COVID-19 claims (reportable only) by insurer type and COVID-19 presumption
Workers Compensation claims data as at 31 October 2021

All COVID-19 claim types

	COVID-19 presumption applies		No COVID-19 presumption		Total			
Insurer type	**Count of claim**	**Gross incurred cost**	**Count of claims**	**Gross incurred cost**	**Count of claims**	**Gross incurred cost**	**% of COVID-19 claims where presumption applies**	**% of COVID-19 claims**
Nominal Insurer	259	$2,947,979	214	$7,629,188	473	$10,577,167	55%	36%
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