Submission No 25

INQUIRY INTO 2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

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2020 Review of the Workers Compensation Scheme

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1. Summary

1.1 Introduction

I wish to thank the Committee for an opportunity to provide a submission that I hope will assist its review of the workers compensation system.

I have 35 years' experience in personal injury schemes, as an actuary advising schemes, as a senior executive within insurers managing personal injury portfolios, and an advisor to schemes including carrying out many reviews of claims management. My association with the NSW workers compensation scheme started in 1985 and includes advising WorkCover for over 10 years in two stints plus managing workers compensation business within insurers. Before I retired in early 2018, I was the principal actuary to SIRA for workers compensation and CTP. I was the principal advisor to Treasury in its review of the government's insurance entities in 2015, that led to the creation of icare and SIRA. During my career I advised most governments in Australia and some overseas, on personal injury schemes including inquiries or reviews of these schemes. I advised the NSW Law & Justice Committee in its first ever review of workers compensation in 2001/02.

In January 2018 icare launched a new unproven claims management model, with a single provider, bringing key decision making in-house and under-resourcing direct claim management functions. This was compounded by the introduction of a less than fully functional new claims management system in February 2019. The consequences were poor performance in all areas of claims management that led to poor RTW rates and a major deterioration in the claims performance and financial position of the Nominal Insurer (NI).

icare has loss the trust of their employees, customers, service providers and the public. icare has squandered many billions of dollars of employer money. icare and its Board have a long record of poor operational performance, poor governance, and lack of transparency. The extent of icare's non-compliance with legislation is extensive.

I am speaking out due to the terrible damage icare's mismanagement has inflicted on injured workers and because icare's performance of the Nominal Insurer scheme is at the extreme end of a worse possible case.

1.1 Strong evidence of icare's poor performance

The defence by the Treasurer, icare and its Board to the current crisis in the performance and viability of icare has been that the former workers compensation scheme was poorly run and that all issues are just part of fixing the previous broken system, holds no weight.

The facts as set out in my submission strongly refute their assertions as summarised below. Most facts are in the public domain. This my summary of the situation icare's finds itself in respect of the NI:

1. Injured workers are significantly worse off under icare:
    - They are significantly worse off since the 2012 legislative reforms reduced their compensation benefits and, in many cases, substantially reductions occurred
    - They are not returning to work as the collapse in return to work (RTW) rates demonstrate - about 20,000 more injured workers are still off work after 6 months than before icare's new claims operational model was implemented. Long term injured claimants are having their benefits terminated. Untold harm is being done to injured claimants who are not returning to work impacting their families, mental wellbeing, and financial situation

2. Employers are significantly worse off under icare:
    - The breakeven premium rate, which was used for 30 years up to 2017 as the key measure of the adequacy of premiums indicates premiums, needs to increase by about $1bpa or 40% to be adequate. That is, even before the 2021 year starts, the NI has already lost $1b
    - Two key measures of the adequacy of premiums are substantially worse than before the 2012 legislative reforms and should be of great concern to employers:
        - The ratio of undiscounted claims cost to premiums from the Scheme Actuary's report shows that NI premium rates are the least adequate they have been in the last 15 years and in 2018 and 2019 they were half as adequate as in 2012 and 2013 and more than 35% less adequate than in the three years to 2011
        - Operational cash flow in the last two years to 2019 is $600m pa worse than in the few years leading up to the 2012 reforms. I expect the 2020 results to show this will have increased to about $800m worse. Compared to the three years ending 2007 the operational cash flow is worse by about $1,400m pa
        - Under icare's stewardship, the NI needs substantially more favourable investment returns than at any time in the past 15 years to fund claims payments and expenses. It is an understatement to suggest that will be difficult to achieve
    - The key metrics of underwriting losses, operational cash flow, collecting premiums, premium debtors, claim payments, expense levels and RTW rates are all at historically poor levels including before icare was created and before the 2012 reforms. Some are substantially worse than previous periods
    - icare inherited an NI funding ratio of 131% or a $4b surplus when it was created. That strong funding ratio was due almost exclusively to the reduction in injured workers compensation benefits arising from the 2012 legislative reforms. Before the 2012 reforms the funding ratio was around 90%. In the last five years the funding ratio has reduced from 131% to less than 100% (on icare's basis of accounting since 2015) – this is a dramatic reduction of $4b over a relatively short period. Projecting current trends, the funding ratio will reduce to below 90% in the next two years and possibly even in 2021, that is worse than before the 2012 legislative reforms. icare have squandered a healthy financial position
    - As my analysis shows in section 6.4 it can be inferred that icare's mismanagement has cost the NI at least $6b to the end of December 2019; money which cannot be recovered (this number excludes any understating of NI's liabilities
    - <u>The status of current NI metrics demonstrates that the NI's financial position is set to worsen substantially over the next few years.</u> The funding ratio and premium adequacy metrics above assume the NI's claims liabilities are adequately reserved. A much worse picture emerges if, as I believe, the NI's claims liabilities are significantly understated.
3. There is a strong evidence that every aspect of icare's insurance operations are poorly managed and, in my experience, all are worse than when WorkCover existed even before the 2012 legislative reforms. These include:
    - Poor governance has been allowed by the icare Board, its CEO and CRO
    - Poor systems and processes and lack of normal controls of an insurance business
    - Seemingly almost non-existent risk management
    - A flawed premium system
    - Calculation of premiums, issuing of premium notices and collection of premiums have had major issues
    - Development and implementation of IT systems has been poor and has delivered poor results
    - Design of icare's claims operational model is a disaster
    - Misguided selection of a single claim agent model and poor remuneration of the single agent
    - All aspects of claims management have been poorly managed
    - Substantial amounts of claims leakage (i.e. claims payments that should or need not have been paid)
    - Compliance with legislation is poor
    - Poor behaviour by its executives and Board
    - Poor attitude towards SIRA the regulator

1.2 Cause of the icare disaster

The primary reason the icare disaster happened is due to the responsible Minister appointing board members who had no understanding or experience in workers compensation or personal injury especially claims management. The Board then proceeded to appoint icare executives who had no experience in workers compensation or personal injury. If you do not understand the business, you do not know the wool is being pulled over your eyes nor do you know what questions to ask.

icare was doomed to fail from day one. The responsible Minister and icare's Board demonstrated a lack of understanding of icare's business and the type of people needed to effectively manage the business.

The reasons why icare has been able to continue to fail for so long are:

1. icare management have pulled the wool over their Board and the Minister
2. The failure of many government entities to take action including the Auditor General, ICAC where evidence before the Committee suggests ICAC took no action despite referrals, until recently inaction by the Information Commissioner, Treasury did nothing about the situation at icare despite SIRA raising concerns and inaction by the NSW Ombudsman
3. SIRA has been hampered by two key problems:
    - SIRA has almost no real regulatory power over icare. This was raised in the Dore report. It is pointless having a regulator with no real power.
    - SIRA has been placed in an impossible political situation. icare reports to the Treasurer who is a more senior minister than SIRA's Minister. The Treasurer has come out many times stating what a great job icare has been doing. SIRA's Minster has not made one public comment about icare despite all SIRA's actions and especially the damming Dore report. The continual denial and the strong public support of icare by the Treasurer has placed SIRA in an impossible situation as icare's regulator.

1.3 Key actions to improve icare's performance

Immediate action needs to be taken to fix icare. The most important steps are:

1. Successful reform of icare will only be achieved with trust in its leaders. icare, its Board and responsible Minster must rebuild the trust of employees, employers, injured workers, and service providers with the first step for icare and its Minister to be completely honest and admit they got it wrong.
2. The rest of icare's Board must be replaced; at least two people need to be appointed with extensive and successful experience in workers compensation or personal injury - one with workers compensation/personal injury claims management and one with general insurance financial matters preferably a personal injury actuary. A board is needed that will address the governance shortfalls at icare – good corporate governance is the board's responsibility.
3. icare executives must be replaced with people having successful experience in icare's business especially workers compensation claims management.
4. In the interim period, as steps 2 and 3 will take some time, the new icare chairman should appoint an expert group to advise him and the CEO on fixing icare - this group should include experienced well respected experts in workers compensation claims management, an actuary, a lawyer plus experts in restructuring and governance.
5. icare needs immediately to abandon the 'new claims operational model'. As the Dore report stated icare needs to get back to fundamentals of good claims management. The premium system needs a complete overhaul.

6. An independent actuarial assessment of the insurance liabilities of the NI needs to be commissioned to assesses the full potential financial damage to the NI that has arisen. This should be commissioned by SIRA not by icare, the Treasurer or NSW Treasury.
7. icare needs to comply with all legislation. Compliance is not an option for icare.
8. SIRA urgently needs greater regulatory powers over icare.
9. While I do not have a preference of either public or private underwriting of workers compensation schemes (there are good examples around Australia where both models work well), serious consideration should be given to privatising the NSW scheme - the history of the NSW scheme over more than 30 years is that successive governments have poorly managed the NI.
10. There needs to be a royal commission into icare. The main reason for such a review is to ensure what has happened at icare does not happen again.

The compensation benefits of injured workers should not be further eroded. They should not have been reduced in 2012 – the government should have focused on improving claims management.

1.4 Conclusion

Since icare was created in 2015 it has been and continues to create a social, economic and governance disaster for the workers and employers of NSW. What has happened at icare since 2015 is just wrong. It should never have been allowed to happen. The factual evidence that icare is a disaster is extremely strong and this submission sets out a major part of that evidence, all publicly available.

Anyone with successful experience in workers compensation knew in 2017, when icare announced the new claims operational model, that icare was "a train wreck just waiting to happen" but no one in power listened. It was worse as icare sort to silence critics and continued their spin. Three years on and nothing has changed.

The comments by SIRA's CEO on 4 Corners that she has grave concerns about icare is an excellent description of how I, injured workers, employers, service providers and the public feel about icare's extremely poor performance.

No-one trusts anything that icare, its Board and responsible minister do or say. How can anyone trust the people who created such a disaster to fix it. It is time for a total refresh of all positions with people who understand and have substantial successful experience in personal injury schemes. It can be fixed but it will take time and a lot of money.

This submission demonstrates that the NI's financial position is set to worsen substantially over the next few years based on the Scheme Actuary's report. If the level of the understatement of the NI's claims liabilities emerges at the levels I estimate then the NI's financial position will end up in an extremely poor situation over the next few years that will be considerably worse than the position the scheme was in prior to the 2012 legislative changes.

Injured workers should not suffer due to icare's mismanagement of the Nominal Insurer. They should not be the punching bag.

icare and the NI can be fixed but it will take a concerted effort by experienced workers compensation experts and a lot of money and time. It will be difficult to mitigate the damage to injured workers. I expect it will be possible to mitigate a proportion of the financial consequences of icare's mismanagement but there will still be a major cost for employers to bear.

1.5 Structure of my submission

My submission is focused on icare and the NI and covers the following matters:

- Why I am speaking out about icare is covered in section 2

- My experience with personal injury schemes and my experience specifically related to the NSW workers compensation scheme, is set out in section 3
- Key matters that led to my concerns about icare, its management and performance are summarised in section 4
  icare's NI financial performance and claims
  is covered in detail in section 5. This includes a summary of key aspects of claims management; consequences of poor claims management; a summary of key aspects of the Dore report and the supporting EY reports; illustrating the substantial deterioration in the NI claims experience from SIRA claims data

- Various aspects of the management of NI's business by icare are described in section 6 including the objectives of creating icare; analysis of icare expenses and underwriting performance; adequacy of NI premiums; the size of icare's the financial disaster; icare's core business; medical management and rehabilitation; potential fraud; over serving and over billing; premium debtors; risk management; icare's compliance with legislation and other concerning aspects of icare's performance
- Reasons for icare's failures are summarised in section 7
- A high-level outline of what needs to be done to fix icare is covered in section 8.

The key part of my submission analysis
icare's performance metric and icare's operational performance.

2. Why I am speaking out

Having retired in March 2018 I found myself in a unique position having been the principal actuary to SIRA, the principal advisor to NSW Treasury review of insurance entities, a good understanding of claims management and with access to public data published by SIRA. My reasons for speaking out are:

- The main reason for speaking out. The results of icare's management of workers compensation is ruining people's lives when they are not able to return to work (RTW). I have seen this first hand from my charity work - people not being able to return to work are being left in a situation where they have inadequate money and need to rely on charities to feed themselves and survive. Their personal lives are a disaster suffering depression, divorces, family disown them, etc. SIRA's data shows there are now more double the number of injured workers still on benefit after 6 months since icare introduced their 'new claims operational model' in 2018. As a result of icare's new claims operational model 20,000 more workers are still off work after 6 months and these workers are unnecessarily suffering enormously from icare's poor management. Lots of research is available that notes the adverse impact on people of not being able to return to work (The Dore report mentions this matter). It is just tragic.
- The performance of the NI scheme is at the extreme end of a worse possible situation – the extent and speed of deterioration is just breath taking. It is creating a major financial problem for employers who solely fund the NI.

An actuary speaking out is part of section 5 of the Actuaries Institute code of conduct which states, "Speaking Up: Members will appropriately respond to non-compliance by others."

icare has not accepted blame for the social and economic problems it is creating. Until the 4 corners program in late July nobody was publicly speaking in the media about the issues at icare. Despite the damning Dore report and SIRA's actions the government had been silent – not a word from the either icare nor its Minster and not a word from SIRA's minister. It is even worse than being silent as the Treasurer has explicitly stated many times that icare are doing a great job including at budget estimates in late 2019 and early 2020, and even after the 4 corners program.

3. My experience with personal injury schemes

I am a Fellow of the Institute of Actuaries of Australia and have had extensive experience with personal injury compensation schemes since 1985 and until I retired in 2018. My experience includes:

- A long association with the NSW workers compensation scheme since 1985 having been an actuarial adviser to WorkCover from 1985 to 1990, secondary actuary to WorkCover from 2007 to 2012 and as principal actuary in respect of workers compensation to SIRA from 2015 to my retirement in 2018 in relation to workers compensation. In addition:
    - I was the principal advisor to the NSW Treasury review of all the NSW Government's insurance entities in 2015 that led to the creation of icare and SIRA
    - Principal actuary to the NSW CTP scheme for the government from 2012 until I retired to the MAA from 2012 to 2015 and to SIRA from 2015 until I retired in 2018
    - From 1991 to 2001, I held various senior executive roles within insurers that related to the workers compensation and CTP schemes including management of both classes of business including claims management (including NSW)
    - From 2001 to 2015 I advised other insurers and entities in the NSW workers compensation system including the NSW Upper House Law & Justice Committee (2001/02), Insurance Council of Australia, Coal Services Pty Ltd (specialised workers compensation insurer), StateCover (specialised workers compensation insurer), the Treasury Managed Fund (now managed by icare) and a number of self-insurers
- I have had considerable experience in claims management for personal injury schemes having been responsible for CTP and workers compensation claims management as a senior executive within insurers. I also led many claims management reviews at EY for about 17 years for personal injury schemes including Comcare, Insurance Commission of WA, Motor Accidents Commission (SA) and WorkCover QLD, a number of insurers including Coal Services, StateCover, GIO, etc and self-insurers. It is worth noting the following from the claim's management reviews:
    - There was a wide range of the quality of the claims management in the review results – some schemes/insurers performed exceptionally well while others had poor claims management
    - In two schemes and one insurer, each with poor claims performance, the entity made major improvements to the claims management as recommended in my reports. I am also aware of another state-based workers compensation scheme that made major improvement to claims management. The result in each of the 4 cases was a significant improvement in service levels together with a major improvement in the scheme/insurers financial position of 20% or more of claims liabilities.
- I have experience with other personal injury schemes within Australia and overseas including Western Australia, South Australia, Northern Territory, Tasmania, ACT, Queensland, Federal government, New Zealand and in Canada. This work includes reserving, premium rating, monitoring performance, strategic reviews, claims management reviews, costing of legislative changes to scheme benefits and audits of financial accounts.

I have also written several professional papers on personal injury including one on lessons from claims management reviews I have led. I have appeared at and advised inquires related to workers compensation and personal injury schemes.

4. Key matters that led to my concern since 2015

This is a summary of the key matters that led to my concern about icare's mismanagement and poor performance. Please note that I do not have any of the documentation referred to below except in relation to my analysis of SIRA's public data.

4.1 2015 and 2016

There were three events in 2015 that gave me cause to seriously start to question if WorkCover/icare and its CEO knew what they were doing. Later in 2015 it was starting to become obvious icare and its CEO did not understand icare's business.

Drafting of the State Insurance and Care Governance Act. During the drafting of this legislation to create icare and SIRA, I verbally advised Treasury that it was important the legislation provided SIRA with adequate powers to regulate icare. I was informed by Treasury at the time that the CEO of WorkCover was driving the drafting of the legislation. I never sighted the draft legislation until it was introduced into parliament by WorkCover's Minister. In hindsight it appears letting the then WorkCover CEO drive drafting of this legislation was a major mistake as SIRA did not end up with adequate powers to regulate icare. The Dore report recommended SIRA needs more powers to regulate icare.

Claims IT system. Around May 2015 as part of the work on the NSW Treasury review of the government's insurance entities (before icare was created), Treasury provided me with a copy of the business plan for the new IT claims system. This business plan, signed off by the WorkCover Board, enabled WorkCover to proceed with the project. Notable features of the business plan that I recall included:

- The document contained Cap Gemini's logo/name on every page
- The presentation seemed to imply that they had already decided to use the Guidewire IT claims platform. I assumed at the time that they had conducted a detailed assessment of the IT systems that were available. Guidewire was a system that was in use by several Australia general insurers and had a good reputation
- The business plan stated major savings would result from the new IT claims system of between 10% to 20% of claims costs (I can't remember the exact figure but it was within this range) plus administration cost savings which were significant. Most of the savings were to come from reducing claims costs
- The plan stated that work was to start in September 2015 with implementation starting for the NI in the last quarter of 2016 and then proceeding onto the remaining icare schemes and funds
- The budget stated was up to $140m.

I rang my contact at NSW Treasury for the insurance entity review and told them the business plan was rubbish and they were never going to achieve the claims cost savings as IT systems do not reduce claims costs only improving claims management results in savings. I told my contact at Treasury I could not believe the WorkCover CEO (later to be icare's first CEO) put the plan to their Board and was in disbelief the Board approved it. This is the first time I started to have doubts that WorkCover, its CEO and Board knew what they were doing. An experienced workers compensation claims manager would never support the promises made in the business case.

Listing icare on the Stock Exchange. During and after the Treasury review of insurance entities, the then CEO of WorkCover made comments about a plan to do and IPO (Initial Public offering) and list it on the Stock Exchange. At the time I described the plan as crazy and it seemed to me the CEO did not understand much about WorkCover's business. There were three reasons why icare could go down this route were:

- The ACCC would not allow a monopoly to be privatised (i.e. NI, Lifetime Care & Support (LTCS) and Dust Diseases schemes were all monopolies)
- Premium rates for the LTCS would need to about triple if it were privatised due to the need to adopt different accounting standards (i.e. insurance standard) and comply with APRA requirements (I had advised a few governments about such schemes including NSW)
- The Dust Diseases scheme would need to change to the insurance accounting standard and as such would need to raise over $500m in premiums overnight plus additional capital to comply with APRA requirements.

The idea was no secret as it was mentioned a few times over the next few years with a notable event in 2017 where icare's CRO presented to government departments and mentioned this objective (another EY partner was present at this presentation and came back and told me about the statements).

New premium system formula. In the last quarter of 2015 I was contacted by people who worked in the NSW workers compensation industry and suggested that I review the new workers compensation premium formula released by WorkCover in the Insurance Premiums Order (IPO) that applied to employer premiums from 30 June 2015. They had significant concerns about the new formula. I did a quick review and contacted SIRA who requested EY to undertake a formal review of the new premium formula.

My team and I reviewed the new premium formula and provided a report to SIRA towards the end of 2015. While the previous formula had deficiencies, our review highlighted major flaws with the new formula – it was much worse than the previous formula. While I cannot remember much of the details from the report two examples highlight the problems:

- Our report provided an example of an employer with a $1m premium (i.e. a relatively large employer with tens of millions of wages). Our report set out an example where such an employer increasing its wages by $1 (yes just $1) would result in the employer's premium reducing by $100,000 or by 10% (nothing else needed to change)- a crazy outcome
- In the early 2000's the government introduced legislation referred to as 'grouping' to stamp out a rort where larger employers with poor claims experience exploited the premium system by splitting themselves into smaller legal entities to achieve a lower premium. The 2015 IPO effectively undid that legislation enabling poorly performing employers to again rort the premium system. That is, WorkCover who was the regulator of the workers compensation system, introduced a premium system that was not only non-compliant with workers compensation legislation but undid the previous legislation. [note this was not included in the 2015 report but was identified as an issue in 2016 and communicated to SIRA].

There were further developments as I was contacted in 2016 and told that icare was not complying with the IPO in respect of the premium formula. Towards the end of 2016 at SIRA's request, my team and I reviewed

icare's compliance with the IPO and the premium formula icare filed with SIRA from 30 June 2016. Our report to SIRA estimated icare did not comply with the IPO and premium formula in about 10% of experience rated policies. The non-compliance went one way – employers received a lower premium. It appears that all an employer or insurance broker needed to do was ring icare and complain about their premium and they received a discount. Just to be clear WorkCover and icare are legally required to comply with the IPO and premium formula they file with SIRA.

In my view icare's non-compliance was clear evidence that the new premium formula introduced by WorkCover/icare in 2015 had significant flaws. Some of the reductions in premium were large (e.g. $500,000). icare's non-compliance destroyed the integrity of the premium system specifically designed to provide incentives for employers to improve their claims experience by improving safety systems. That is, instead of improving safety, an employer just complained to icare about the high premium – a perverse incentive.

The Dore report (see submission as well) and subsequent action by SIRA confirmed icare's non-compliance.

4.2 2017

By the end of 2016 it was obvious to me the management of icare did not know what they were doing and by the end of 2017, my concern increased substantially.

Delays in issuing premium notices. Historically employer premiums were calculated, and premium notices issued by icare's then agents (i.e. Allianz, GIO, QBE, CGU, EML). From April/May 2017 icare took over that role. In the last three months of 2017 I was alerted that icare had seemingly not issued any initial premium notices on policies since they took over this function nor had they issued any hindsight premium notices. The premium notices for 30 June 2017 policies should have been issued in July and August. By mid-November 2017 premium notices had still not been issued and employers and insurance brokers were complaining. My industry contacts informed me there appeared to be a major problem with icare's new IT premium system. It was unclear what the problem was as the premium formula is just a simple calculation based on available data for each employer. The only plausible explanation is that icare did not have all the data to calculate the premium which was hard to believe.

I understand that calculating premiums became a manual exercise for icare to be able to issue premium notices. There were also many errors in the premium notices (see submissions to the Dore review).

The delays in issuing premium notices seemed to be 6 months or more in some cases and continued well into 2018.

If icare had such lengthy delays issuing premium notices, then employers would not be paying premiums. In late 2017 some of my EY colleagues went to a meeting with NSW Treasury and SIRA staff. My colleagues reported back that Treasury officials were puzzled why icare had requested $500m in investments be liquated for cash when it had not been planned. The answer was obvious, icare were not receiving employer premiums due to not issuing premium notices to employers and icare needed cash to pay claims (note than from the NI accounts cash on hand at 30 June 2016 was $776m, at 30 June 2017 was $339m and at 30 June 2018 was $181m provided additional evidence for the above issue).

New claims operational model. Around September 2017 my EY colleagues went with SIRA to a presentation given by icare on its new claims operational model (not IT system) – I understand this was the first time SIRA were provided with details of the new model. My EY colleagues showed me a short presentation from icare which provided limited detail. I sought more details of the model from my industry contacts and it was clear that the model was going not going to work and would be a disaster. I took steps to try and inform SIRA of my concerns with the new model.

I informed senior SIRA officers of my view and arranged for them to meet separately with two very senior insurance and well-respected executives with long term experience in workers compensation claims management in the NSW scheme. It was better for SIRA to understand that my concerns were shared by others in the industry.

I also told SIRA they should engage with the scheme stakeholders and service providers including employer groups, unions, icare agents and others. It appears SIRA did not take this action until late in 2018.

I was very vocal in the later months of 2017 and early 2018 about icare both to SIRA and within EY. I told SIRA icare was a train wreck waiting to happen and it was going to be a disaster. I told a number of my EY colleagues that EY should not do any work for icare as when, not if, icare blows up, EY does not want to be anywhere near icare (I was recently reminded of my comments within EY when someone I had not heard from for over 2 years called me about icare).

SIRA did not seem to be taking any notice of my views and it was frustrating. I approached my senior contact at NSW Treasury from the 2015 review of the Government's insurance entities. I was hoping they would be able to act on icare from the Treasury end. At our meeting I informed the Treasury contact of my great concerns and told them icare was a train wreck waiting to happen and it was going to be a disaster. They responded to my concerns that there was a problem raising concerns within Treasury as the head of Treasury was previously on the board of icare and thought very highly of the icare CEO (words to the effect were the sun shines out of the icare CEO). A dead end.

30 June NI insurance liability valuation. Before I retired from EY in late March 2018, we were requested by SIRA to review the June 2017 icare Scheme Actuary actuarial insurance liability valuation for the NI (the EY health check report in April 2018 was the result of that work). We identified that medical costs were increasing significantly and undertook more detailed investigation using techniques we had developed in 2009. That work was a detailed investigation of rising medical costs for a few years up to 2009 which had resulted in significant increases in medical claims liabilities of the NI. (refer to section 6 for further details of the 2009 investigation of medical expenses).

4.3 After my retirement

When I retired in 2018, I was looking forward to a life without icare and SIRA. During the latter months at EY I became very disenchanted that SIRA and NSW Treasury did not understand the gravity of the mismanagement that was occurring at icare.

Deterioration in NI claims experience. I became aware from my industry contacts in July/August 2018 that SIRA had for the first time released public data on workers compensation claims experience and it contained some concerning trends regarding the NI claims experience.

I started to analyse SIRA's data and I confirmed that the NI experience was starting to show concerning trends especially in relation to RTW experience. I admit I did have doubts in 2018 that the RTW rates could deteriorate so much in such a short time but as data emerged from SIRA every month it confirmed the deterioration was real. The quantum of deterioration seemed hard to believe as it was so severe.

I continued to analyse SIRA's data and put the results on Linkedin in a series of posts and articles. Conclusive proof of the extent of the deteriorating claims experience came from the substantial increase in claim payments especially weekly and medical payments. The deterioration is off the 'Richter scale'.

It became clear that icare's new claims operational model was an unmitigated disaster and that the NI was going to experience poor future financial results. However, I and many others that I spoke to have been very surprised that did not reflect the poor emerging claims experience. a major disconnect has emerged between the deterioration in the claims experience and the more favourable results

icare conduct against speaking out. People within icare and external to icare are frightened to speak out about icare or criticise them. People have contacted me directly and I have spoken to others with knowledge that icare threaten and intimidated those that speak up. icare threaten the individual's employment directly and indirectly. In one case icare issued instructions that no one was to use a provider who criticised icare.

I have plenty of witnesses to confirm matters described above.

5. NI's claims experience

5.1 Why the Scheme Actuary's actuarial work requires a detailed focus

There needs to be a detailed focus on for the following reasons:

- The Scheme Actuary recommends the quantum of almost the total liabilities on the NI's balance sheet. At 31 December 2019 of $19.32b in total liabilities on the NI's balance sheet 98.7% or $19.06b were estimated by the Scheme Actuary in its insurance liability report. Consequently, the Scheme Actuary's recommended insurance liabilities have a major impact on the level of the NI's profit or loss in each financial period and on NI's stated solvency level. The Scheme Actuary's work can have by far the largest impact on these two measures, much more than investment returns and premium levels.
- The Scheme Actuary's work has major consequences on the following:
    - The adequacy of the premium rates icare/NI charge employers
    - The management of icare's business including the success or otherwise of icare's claims management strategy. If an actuary significantly under or overestimates the insurance liabilities for an insurer this will send the wrong message to the insurer's management of the success or otherwise of their business models and strategies
    - The need for legislative changes to the scheme
- NI's insurance liabilities, are in my view, substantially understated by at least $3b (i.e. 18% of claims liabilities) and possibly by as much as $6b (i.e. 35% of claims liabilities) as at 31 December 2019. There is a major disconnect between the substantial deterioration in the NI's claims experience from 2018 and the relatively small increases in the insurance liability since 2018.

Consequently, a major focus needs to be placed on the Scheme Actuary's work for icare in respect of the NI.

The deterioration in the NI's claims experience continues to be very concerning based on the latest publicly available data from SIRA to August 2020 (most of the analysis presented in this document is based on SIRA's data to March 2020). The claims experience is continuing to deteriorate and there are no signs of any material improvement in RTW rates.

For this submission in I have reviewed many documents of which the most important are:

- The report by the Scheme Actuary titled "Insurance Liabilities as at 31 December 2019 – NSW Nominal Insurer, Insurance and Care NSW" dated 2 April 2020
- The independent review of the Nominal Insurer (NI) commissioned by the State Insurance Regulatory Authority (SIRA) known as the "Dore report" and the EY reports that support the Dore report (https://www.sira.nsw.gov.au/fraud-and-regulation/review-of-the-nominal-insurer)
- EY report titled "compliance and Performance Review of the Nominal Insurer State Insurance Regulatory Authority December 2019 Part 1: Claims Management"

https://www.sira.nsw.gov.au/__data/assets/pdf_file/0009/584604/EY-Review-of-the-Nominal-Insurer-Part-1-Claims-Management.pdf

- The data published by SIRA which I have used in this document is https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports. Note that some historical reports are no longer available on SIRA's website.
- The EY report titled "Key risks associated with the 31 December 2019 Nominal Insurer Valuation" https://www.parliament.nsw.gov.au/lcdocs/other/13539/Tabled%20document%20-%20Key%20risks%20associated%20with%20the%2031%20December%202019%20Nominal%20Insurer%20Valuation.PDF. I refer to this report as the "EY key risks report".
- EY report titled "Nominal Insurer 2020 Quarter 1 claims file review State Insurance Regulatory Authority" of July 2020 commissioned by SIRA https://www.sira.nsw.gov.au/__data/assets/pdf_file/0009/584604/EY-Review-of-the-Nominal-Insurer-Part-1-Claims-Management.pdf.

5.2

5.3 Key aspects of NSW workers compensation legislation

The key aspects of the legislation are:

- Benefits are primarily pension based except for statutory lump sums and the ability to commute weekly benefits either via a statutory commutation or a common law remedy (i.e. Workplace Injury Damages or WID)
- Loss of earnings are provided to the injured worker (commonly referred to as weekly benefits or weekly payments) which start out at 95% of pre-injury earnings then drops to 80% after 13 weeks. Reduced weekly payments are paid to workers who return to work on reduced hours
- Weekly benefits cease at:

    - 3 years if the worker has work capacity but is not working and has a WPI (WPI is measured in whole percent) is less than 21%
    - 5 years unless the injured worker has an assessed WPI of more than 20%
    - At retirement age if WPI over 20% with no work capacity or WPI over 30%
- Medical and allied health payments to injured workers ceases 2 years after weekly benefits stop if an injured worker has a WPI less than 11% or 5 years after weekly benefits cease for WPI between 11% and 20% or cease (e.g. retirement, death, etc). Medical payments are paid for life if an injured worker has a WPI over 20%
- WID are available to an injured worker if the WPI is assessed at more than 15% (WID is essentially common law but only for loss of earnings). WID cannot be accessed until a statutory lump sum is awarded to the injured worker. All other compensation or benefits cease once a WID is awarded. Note that in practice a worker who has a WPI over 20% and has work capacity can effectively put in a WID claim to avoid the work capacity test. There also must be proven negligence on the part of the employer for a WID.
- Statutory lump sums (i.e. s66) are available to an injured worker if the WPI is assessed at more than 10% or more than 15% for psychological injuries.
- Rehabilitation, legal, investigation and other costs flow from treatment of the injury and the claims process e.g. legal costs for disputes, S66, Commutations and WID claims
- While weekly benefits can be commuted there are in practice very few.

There was an important retrospective element to the cut-off of weekly benefits at 5 years for claims with a WPI less than 21% for claims with an accident date to June 2012. For these claims they had a grace period of 5 years which ended in December 2017 for claims that had an assessed WPI less than 21% (some claims may not have had that assessment by that date). This created a discontinuity in the time series of the number of active weekly claims which SIRA recognised in the data it published (see later sections in this document for further details).

5.4 Key aspects of claims management processes and implications

Claims management is complex, so I have set out a summary of the key matters in relation to the NSW workers compensation scheme that are relevant to this submission (some other aspects are discussed in section 6).

The key driver of the cost of the NI scheme is the timing and rate at which injured workers return to work either at their previous position or another position at the employer or a new employer. This is made clear in the system objectives in section 3 of the Workplace Injury Management and Workers Compensation Act 1998, which states (my underlining for emphasis).

> "3 System objectives
>
> The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives—
>
> (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
>
> (b) to provide—
> • prompt treatment of injuries, and
> • effective and proactive management of injuries, and
> • necessary medical and vocational rehabilitation following injuries,
>
> in order to assist injured workers and to promote their return to work as soon as possible,
>
> (c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,

(d) to be fair, affordable, and financially viable,

(e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,

(f) to deliver the above objectives efficiently and effectively"

There is very strong evidence over many years that the ability to return a worker back to work as soon as possible is best served by what is commonly referred to as early intervention i.e. early correct diagnosis of the type and extent of injury and supporting the worker to obtain the necessary treatment as soon as possible after the injury.

The longer a worker is not fit to return to work the higher the cost to the scheme via weekly payments for loss of earnings and medical and treatment support. If the worker does not return to work relatively early then additional costs are incurred for rehabilitation, legal and investigation expenses. For workers off work for long periods who suffer a significant permanent impairment the cost increases significantly. Additional costs are incurred for statutory lump sums, common law (i.e. WID) remedies, extension of weekly benefits and medical benefits past 5 years and related legal and investigation costs.

A worker failing to return to work early suffers adverse impacts on their wellbeing which can have a significant impact on their longer psychological health, social, family, and financial circumstances. These impacts are well known and documented and there are good examples that have been aired in recent times in respect of icare's poor management of claims.

It is very well understood by experienced workers compensation claims managers that if an injured worker has not returned to work after 6 months the chances of that worker returning to work are slim. This is also the case even after the worker has been off work for 3 months.

It is no accident that weekly and medical payments in the first year after an accident make up about 90% of claim payments e.g. in accident year 2018/19 in the first development year, they represent 89% of total claim payments made.

It is logical that more medical and allied health services is a consequence of an injured worker being off work i.e. the worker is not fit for work and needs medical and allied health treatment. That is, the large increase in medical costs in the NI scheme is a reflection that workers are not returning to work. As SIRA has shown in its consultation on health care (see https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements) the NI has seen a major increase in surgery costs. From my previous work for WorkCover NSW in 2009 when I undertook a detailed investigated of the increase in medical costs, it is clear surgery is a major driver of medical costs. This is logical as there are diagnostic and related services plus specialists' services before surgery plus hospital and related services to assist during the surgery, and post medical and allied health services such as physio, OTs, etc.

More surgery is a strong indicator more injured workers have significant permanent impairment. For example, before surgery an injured worker may have only been able to prove a 5% WPI but after surgery or the fact that they had surgery, now means they can obtain a 20% WPI assessment. That is the surgery was unnecessary (i.e. this is an example of over servicing covered in section 6). Some of the claims managers I have spoken to have identified this is a general issue in the system not just an icare matter. These non-icare claims managers have strategies in place to limit unnecessary surgery. In most cases necessary surgery takes place soon after an injury occurs. One needs to ask why so many injured workers are having surgery 18 months, 2 years and longer after the injury occurred and why there has been an explosion of surgery in the NI. The increased medical spend has not improved RTW outcomes, it has instead resulted in a major deterioration in RTW outcomes. This discussion highlights the absurdity of the excessive amount of medical costs (see further comments in section 6).

Weekly payments may continue for some injured workers for up to 40 years. Weekly payments have a thicker tail than medical payments (see later information included later in this document for evidence). Medical has a higher early peak and then after a few years, when surgery and other treatment takes place, the tail of payments is largely from GP visits and pharmaceutical type costs as treatment is no longer effective (I have

studied this in detail as part of the work I undertook for SIRA as their principal actuary). That is, a deterioration in return to work rates has a greater gearing impact on weekly payment liabilities than medical liabilities i.e. weekly liabilities increase more than medical liabilities for the same percentage increase in weekly or medical payments earlier in the life of an accident year.

While an injured worker is not able to return to work weekly and other payments continue unless an injured worker dies, retires, is statutorily cut-off (e.g. less 21% WPI after 5 years), or receives a WID or commutation lump sum payment.

There is a key practical aspect of how weekly payments are paid to an injured worker. Weekly benefit payments are primarily made by the employer while the worker is still employed by the original employer (note that an employer cannot sack a worker with an injury for 6 months under NSW workers compensation legislation). Employers recover these weekly payments from the insurer. The recovery process can be slow and may take many months. The recovery time in recent years has been longer due to changes to the NI premium system introduced in June 2015. Under this premium system every dollar in weekly payments results in an employer's experience premium increasing by a factor of about 20. To avoid higher premiums employers have slowed down seeking recoveries of weekly payments (which is evident in the claims experience from information in the Scheme Actuary's report and some analysis I have undertaken on SIRA data).

This practical payment of weekly payments is a significant issue for icare's new claims operational model as explained in a later section of this document.

The results of WPI assessments have a major impact on the cost of the NI scheme. As noted above additional benefits flow to an injured worker from WPI assessments over 10%, 15% and 20%. WPI assessments are only undertaken after an injury stabilises. Under the 2012 changes to the workers compensation legislation the WPI assessment is a once only assessment which has resulted in a significant slowdown in injured workers obtaining these assessments. The Scheme Actuary notes this is section 9 of their report. Specifically, at the bottom of page 127 of their report they state:

> "The introduction of an 11% WPI threshold and the removal of top-ups is believed to have altered behaviour, with injured workers now tending to delay their WPI assessments until their condition has stabilised and to maximise their chances of exceeding the threshold. Previously, injured workers may have received multiple WPI assessments and consequently multiple s66 payments. The resulting impact is a 'slowdown' in s66 payments after the 2012 reforms."

In practice WPI assessments start after about 2 years and continue for many years reflecting the long time for injuries to workers to stabilise. As a WPI assessment is a one and only event and cannot be undertaken a second time, injured workers wait for several years (even more than 5 years) to have the assessment to ensure they maximise the financial gain from their injury.

Workers not able to return to work after a period e.g. 3 or 6 months have a reason; they normally have a permanent impairment. A deterioration in return to work rates at 6 months and longer durations will result in more injured workers having a permanent impairment. I have discussed this aspect with doctors, allied health professionals and experienced workers compensation claims managers and they all concur with this view.

Consequently, a deterioration in return to work rates takes many years to be reflected in greater numbers of WPI assessments over 10%, 15% and 20% and subsequently in payments for s66, WID and extension of weekly and medical payments after 5 years (for claims with a WPI over 20%). I have spoken to doctors, allied health professionals, lawyers and experienced workers compensation claims managers who are all heavily involved with the NSW workers compensation scheme and they all agree there will be a large increase in the number of claims with a WPI over 10%, 15% and 20% from the substantial deterioration in RTW rates.

Another feature of the claims experience is that injured workers with a WPI over 20% are effectively exempt from the work capacity test (i.e. s38) if they lodge a WID claims.

Due to icare's mismanagement of medical and allied health treatment and costs it is possible the deterioration in WID and S66 plus the 5-year cut off for weekly and medical benefits (s39) will be worse than the deterioration in RTW rates. Experienced senior workers compensation claims managers and senior insurance executives I have spoken to who are involved in the NSW scheme agree with this view, the only question is how much worse the experience will be.

It has been demonstrated over many years that prompt and proactive management of claims is required to achieve early return to work. The system objectives noted above make it clear that prompt treatment of injuries and proactive management of injuries is key to achieve early return to work (my underlining for emphasis):

> "(b) to provide—
> - prompt treatment of injuries, and
> - effective and proactive management of injuries, and
> - necessary medical and vocational rehabilitation following injuries,
>
> in order to assist injured workers and to promote their return to work as soon as possible,"

icare's new claims operational model does the opposite of what the system objectives require. The evidence for this view is quite strong being clearly set out in the Dore report and also the recent report from EY titled "Nominal Insurer 2020 Quarter 1 claims file review State Insurance Regulatory Authority" of July 2020 which was commissioned by SIRA. I have noted some statements from the Dore report in the next section. The results in July 2020 EY report demonstrate that icare's claims management is poor. Some results in the EY report include:

- Section 6.2 - 41% of claims were triaged into the wrong triage category and in 54% of these the time to relocate the claim to the right category was not reasonable
- section 7.2 - 44% of claims were not pro-actively managed during the rehab process
- section 7.2 - 58% of claims have not been pro-actively managed
- section 7.2 - in 48% of claims the injury management plan was not appropriate to the needs of the injured worker
- section 7.2 - in 40% of claims the injury management plan did not fulfill the requirements of Section 45 of the Act
- section 7.3 - engagement with the treating doctor by the icare/EML claims manager was the worse for specialist and psyche claims (only 33% and 30%) which are the very claims that need much more interaction with the doctor (these are the most serious and difficult claims). It was also worse for claims with a longer period off work
- section 7.3 - engagement with employer (essential if you are trying to get someone back to work) was worst for specialist and psyche claims (only 11% and 10%). It was also worse for claims with a longer period off work
- section 7.4 – the appropriateness and effectiveness of the injury management plan was worst for specialist claims and psyche claims and worse for the claims with a longer period off work
- Section 9.2 - 35% of injured workers were not paid the correct weekly payments (i.e. loss of wages)
- Section 9.2 - 70% of claims which had incorrect or interim PIAWE amounts paid have not been corrected
- Section 9.2 - in 46% of claims insufficient evidence was available of the worker's incapacity to support the weekly benefits being paid.

It is my view that icare is not complying with the workers compensation system objectives set out in the legislation. Inactive claims management is core to the design of icare's new claims operational model.

Further discussion on claims management is set out in section 6 of this submission.

5.5 Dore report key issues raised

In 2019 SIRA commissioned an independent review of the NI and the resulting report referred to as the "Dore report", was published in December 2019 titled "Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme" dated December 2019. It is worth highlighting key views expressed in the report:

In the Executive summary the Dore report stated:

> "The new claims model, led to a significant deterioration in the performance of the NI, through poorer return to work rates, underwriting losses, no competition and therefore, concentration of risk."
>
> and
>
> "The deterioration in the performance of the NI, covered in section 5 of this report, has continued, with much of the decline coinciding with the implementation of the new claims model. icare suggests that the deteriorating performance is the result of factors beyond its control. While there have been some external factors that affected the deteriorating performance of the NI, the primary driver for the decline is the implementation and operation of the new claims model implemented by icare.
>
> During the course of this review, icare has implemented a number of improvements to address the deteriorating performance of the NI. Although some of these initiatives may have had some benefit to the scheme and stakeholders, they have not yet abated the ongoing deterioration in the NI's performance.
>
> Performance of the NI must improve on the basic indicators of RTW, claims management service and premium transparency."

In the Dore report conclusions in section 10 stated:

> "The absence of case management fundamentals is all too clear, with substantial shortcomings leading to declining RTW, lack of employer input, minimal verification processes, rising medical costs and provider management issues. As EY stated the model is based on automatic triage of claims, is often incorrectly assigning claims to appropriate support levels and, combined with immediate acceptance of claims through provisional liability, is causing cost blowouts due to the consequent limited claims management support being provided to a large proportion of injured workers. It is even more unfortunate that workers have not always received prompt treatment and employers have been excluded from input into RTW processes and claim validation."

The supporting EY report to the Dore report on claims management highlighted the following key issues with icare's claims management or its new claims management operational model for the major deterioration in return to work rates. These issues are summarised in section 3.1 under "Key conclusions" and section 3.3 titled "Key findings from the claims file review" in EY's report titled Compliance and performance Review of the Nominal Insurer State Regulatory Authority December 2019 Part1: Claims management" referred to as the EY report below.

- Triaging of claims:
    - On page 19 of the EY report they state, "the triage process has been ineffective in allocating claims to the correct level of support" and "almost one in every two claims was initially triaged into the wrong level of support."
    - On page 19 and 20 in the EY report they state, "Compounding this initial wrong classification, we identified from the file review that the time taken to move claims to the required level of support is substantial." For the Empower category to which 60% of all claims are allocated (refer to Table 4 in section 3.2.1 on page 16 of the EY report) the EY report states "it took on

average 90 calendar days to move claims; more than 25% of claims in the sample took more than 105 days." For Guide claims (20% of all claims) the average delay was 32 days and 25% took more than 50 days

The EY report notes the intent of the Empower and Guide category of claims, which represent 80% of claims (refer Table 4 in section 3.2.1 on page 16 of the EY report) is that there is minimal intervention by case managers. This was a key design of icare's claims operational model. That is, icare intended that 80% of claims had no or little claims management input from icare/EML resulting in no or little assistance being provided to the injured worker. Pro-active claims management cannot be provided to 80% of claims if the intention is only for minimal intervention by case managers (see other comments about pro-active claims management earlier in this section)

It is clear from the details provided in the EY report and my discussions with claims managers involved in the management of NI claims that claims in these two categories (i.e. 80% of claims) receive almost no assistance and are left to sort out their own medical and allied health treatment service needs

- There should be no inference that the proper triaging of claims will lead to injured workers receiving the attention they require. It is clear from the EY report and the supporting EY claims management report that claims which were identified as requiring special attention often did not receive the necessary care and support
- Use of provisional liability (section 3.3.2 page 20) – EY state" The increased use of provisional liability is likely exacerbating the problem outlined in the previous section with the triage process." The excessive use of provisional liability is misleading and causes unnecessary distress, confusion, and reputational damage. This is because a provisional liability decision automatically generates correspondence indicating the claim is not fully accepted and is undergoing further investigation
- Other key findings in section 3 of the EY report relate to the decision making between icare and EML not being effectively implemented and the icare contract with EML not incentivising EML to be an active participant in the claim's management process.

icare's triaging of claims occurs when the claim is first known by EML/icare (i.e. first reported). I have spoken to many experienced workers compensation claims managers (and a doctor who specialises in workers compensation claims) and their strong view is that it is impossible to effectively triage a claim when the claim is first reported to EML/icare. The triage process is poorly designed and underestimates the vast number of variables associated with personal injury claims. There are too many Rumsfeldian "unknown unknowns". This is indicative of the triage designers lack of experience in workers compensation and personal injury claims management. The process alienates all the key stakeholders as it does not promote the building of relationships. The reasons for their views include:

- There is insufficient medical information available about the injury when the claims are first notified. I have spoken to a doctor who specialises in NSW workers compensation and they told me a doctor cannot accurately assess many injuries when a claim is first reported. Doctors need to see how the injury develops and responds to treatment or they need other diagnostic information (e.g. x-rays, ultrasound, MRI, etc) or they refer them to medical specialists for a view. Allied health professionals I have spoken to have similar views. Experienced workers compensation claims managers also agree with this view
- The situation in the work environment of the worker can have a major impact on how the injured worker responds. The recovery from the injury and return to work may be quite different for a supportive employer versus a non-supportive employer. These aspects are rarely captured in the claim details at the onset of the claim report
- The workers personal circumstances (e.g. family, financial and mental health) may have a major impact on return to work and again these are rarely captured in the claim details at the onset of the claim report.

As noted above the longer it takes for active management of a claim to occur the worse the return to work outcomes. By leaving an average of 3 months for Empower claims to be allocated to the right support level, there is little hope of an early return to work.

One key problem with icare's model is that once a claim has been incorrectly allocated to the Empower or Guide categories there is no management of the claim by EML/icare for a considerable period. An insurer needs to proactively follow up a worker or their employer or medical specialists to know whether they have returned to work or not and that does not happen under icare's claims model for Empower and Guide claims categories. Medical and other bills are not a catalyst for action since EY explain in their report that these are largely automated for low risk claims. Other activities such as injury management plans are also automatically generated for these claims. The only trigger available for reallocation to a more appropriate support level and active case management seems to be when it is known a worker has not returned to work. But as explained above, as EML/icare do not actively follow up a claim then EML/icare only find out an injured worker has not returned to work when the employer notifies EML/ icare they are recovering weekly payments they made to the worker, which may take months.

It is also worth noting key comments from the executive summary of the EY key risks report in section 1.3 in relation to key risks:

> "The major risk identified relates to the findings of the Dore report in regard to claims management.
>
> The Dore report concluded that improved claims management was required to improve return to work outcomes in addition to the implementation issues being resolved."

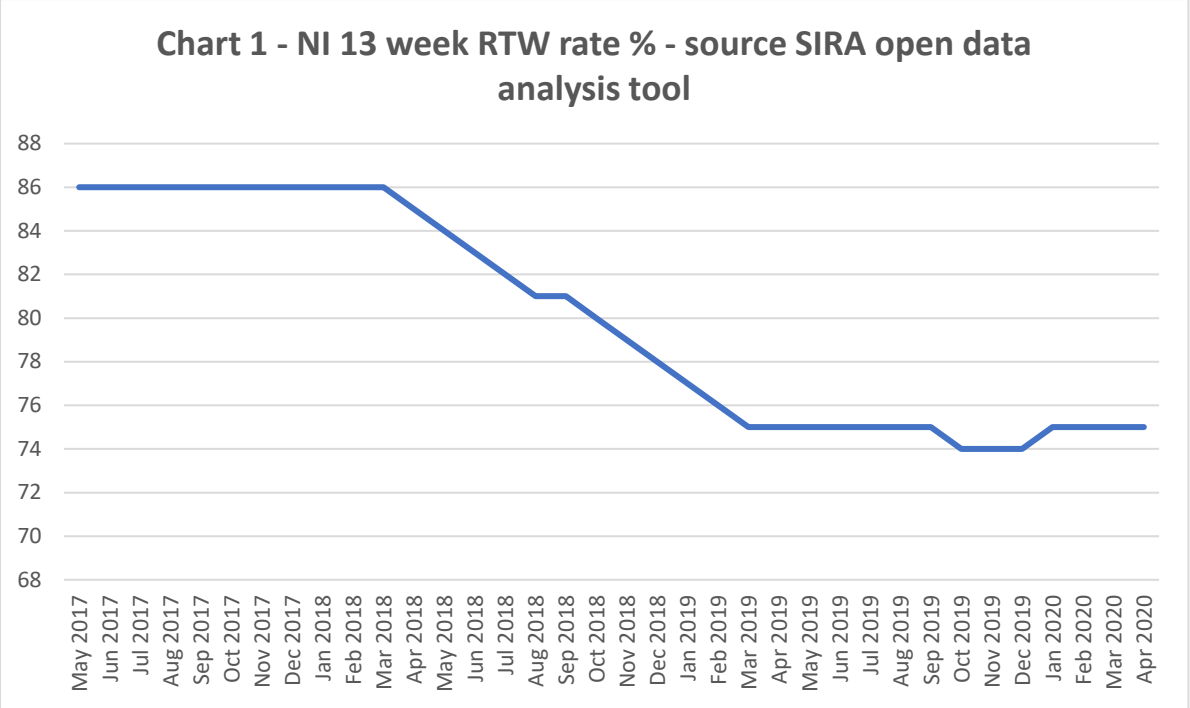
5.6

Introduction

In the EY report titled “Nominal Insurer 2020 Quarter 1 claims file review State Insurance Regulatory Authority” of July 2020 which was commissioned by SIRA, which reviewed claims in 2019, they note that triaging is still incorrectly allocating claims to the incorrect support level in 41% of claims while of these 54% the timing of to the correct support level was unreasonable. the improvements icare stated have not led to any improvement in the claims experience (e.g. RTW rates have not improved as noted in chart 1 below). Not only has it not improved it seems from the factual claim payment evidence that the claim experience has deteriorated even further.

SIRA’s NI RTW data

The chart below is based on SIRA’s April 2020 Open Data Analysis Tool.



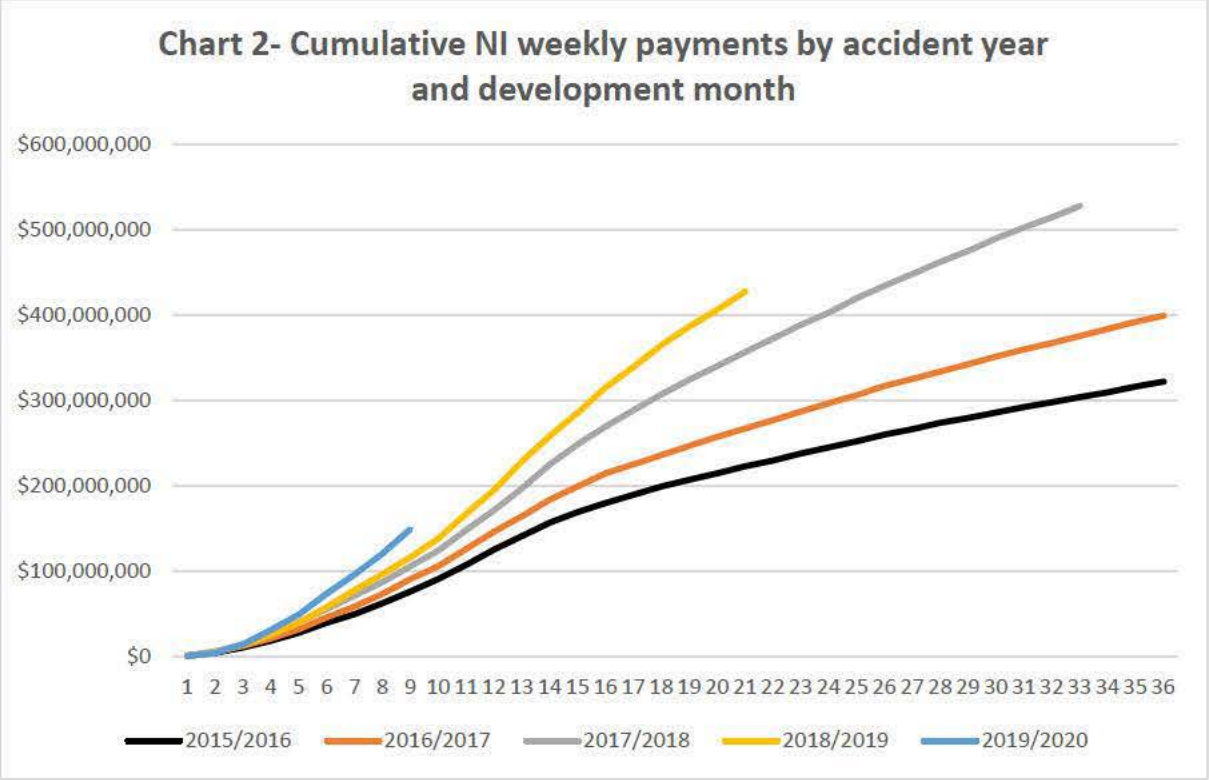
The above chart shows the NI RTW rates were stable from May 2017 to February 2018 at 86%, declined from February 2018 to May 2019 from 86% to 75% and remained stable at 75% from March 2019 to April 2020.

The 4 weeks and 26 weeks RTW rates SIRA data also shows no improvement in RTW rates to April 2020

NI weekly payments by accident year to 31 March 2020

The different RTW performance calculation results between SIRA and icare will probably confuse some readers. Accordingly, I have reviewed weekly payments below as they are a direct reflection of RTW rates at all durations – i.e. one cannot dispute them.

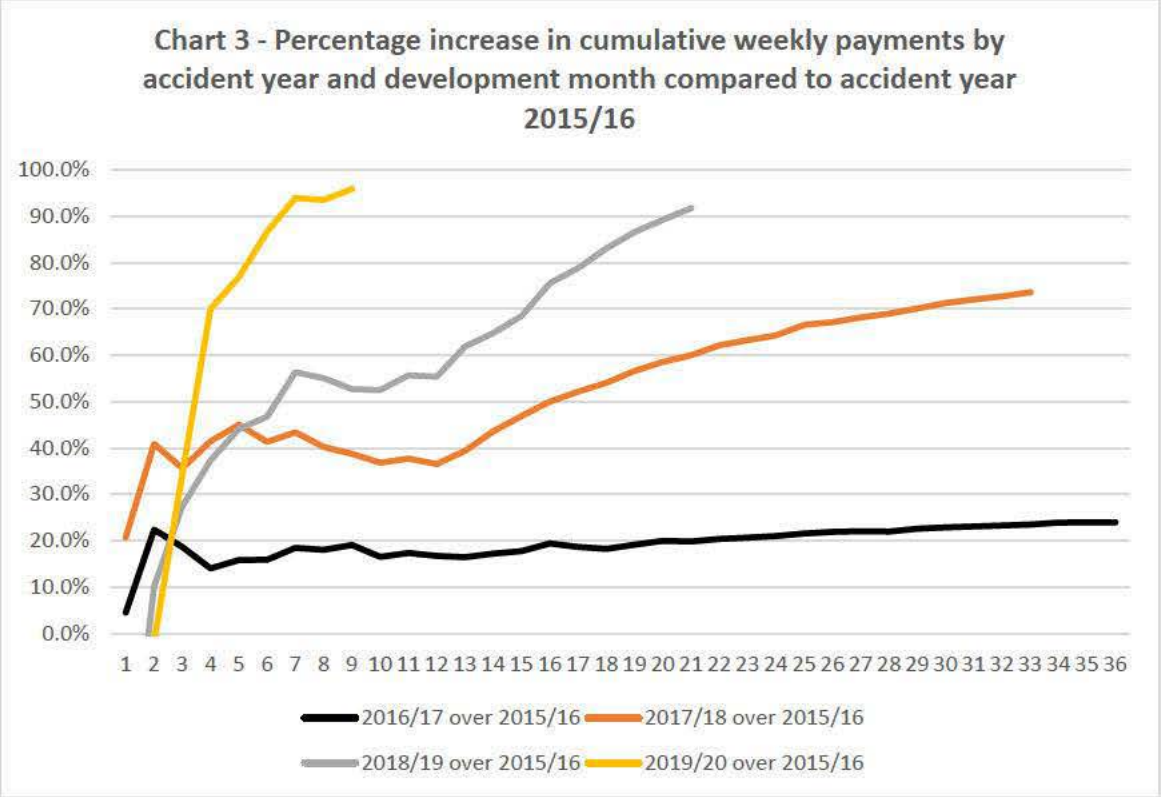
The following chart using data from SIRA shows cumulative weekly payments by accident year and development month for accident years 2015/16 and later. The data is to March 2020 in all charts.



There does not seem to be any sign of an improvement in weekly payments (i.e. no improvement in RTW rates). However, a more insightful way to assess the extent of changes in weekly payments and any improvement or deterioration, is set out in the following three charts:

- Percentage increase in cumulative weekly payments by accident year and development month compared to accident year 2015/16
- Monthly NI weekly payments by accident year and development month
- Percentage increase in monthly weekly payments by accident year for each development month compared to accident year 2015/16.

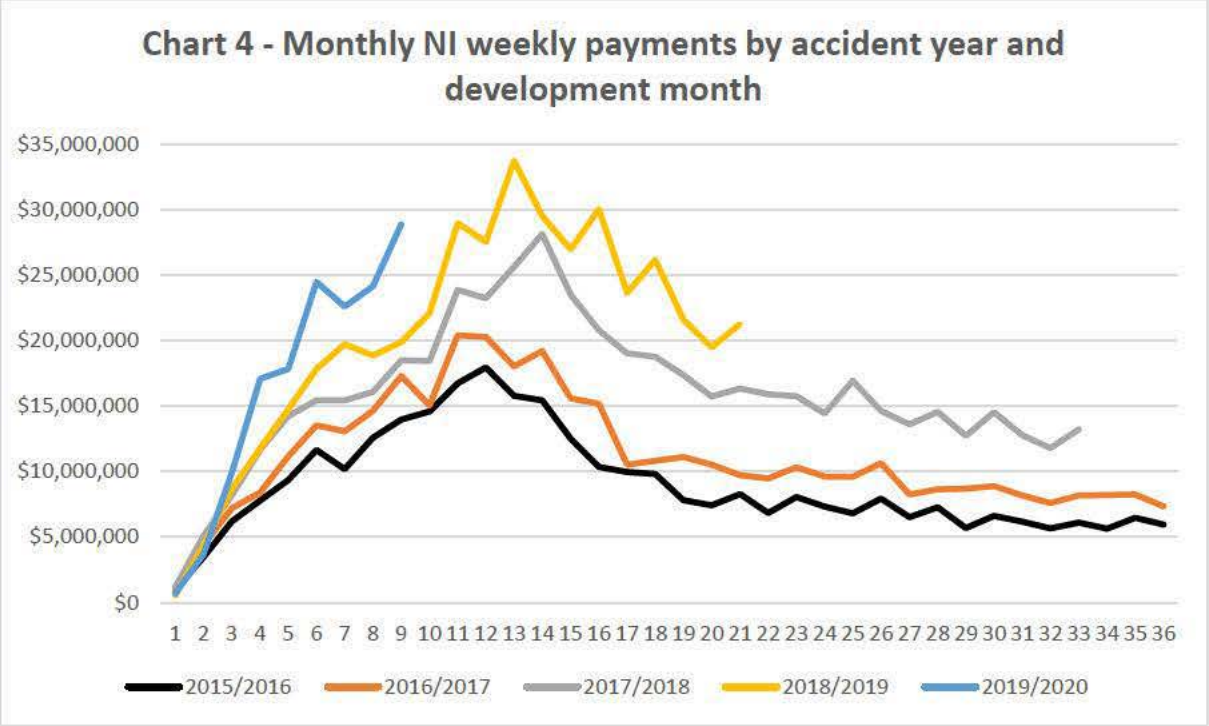
The first of these charts is set out below.



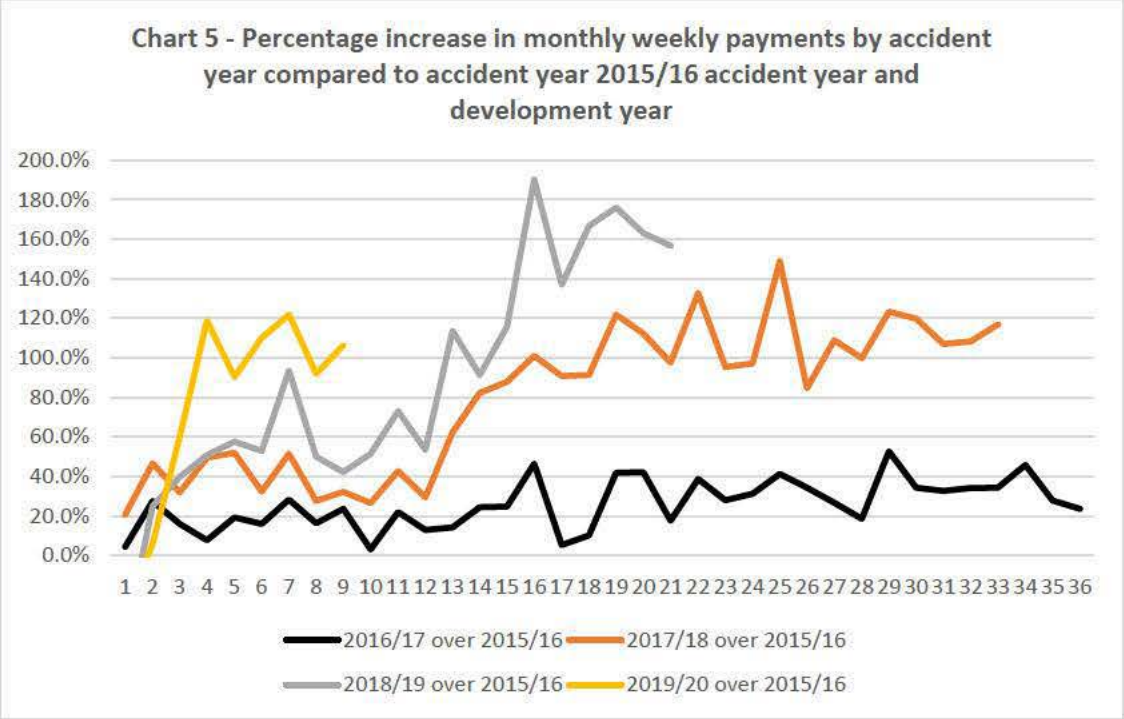
The above chart does not show any improvement in cumulative weekly payments from October 2019 to February 2020 (e.g. for accident year 2018/19 from development 16 to development month 20), rather it shows a significant deterioration in cumulative weekly payments which suggests a further deterioration in RTW rates between these two dates.

There are two periods where there appears to be a slowdown in payment of weekly compensation being in the first half of calendar years 2018 and 2019 (payment not accident years) which shows up in accident year 2017/18 between development months 6 to 12 coinciding with payment months January 2018 to June 2018) and in accident year 2018/19 between development months 6 to 12 coinciding with payment months January to June 2019.

After these periods there is a significant escalation in cumulative weekly payments which can be seen in accident years 2017/18 (from development month 12) and 2018/19 (from development month 12). I would have expected a slowing down in the rate of deterioration in the last six months after the catch up in payments from the backlog but that has not happened as the escalation in cumulative weekly payments has not slowed to March 2020.



The above chart shows some further insights as it is just monthly payments rather the cumulative payments. It is quite clear that each subsequent accident year has higher monthly weekly payments than the preceding one. Even allowing for the increase in claim numbers from accident year 2017/18 (about 10%) there does not appear to be improvements in RTW rates, rather it suggests each subsequent accident year is displaying further signification deterioration in RTW rates than each prior accident year (even with a slowdown in payments for some periods as noted above



The above chart provides more clarification that each subsequent accident year has significantly higher monthly weekly payments than the preceding one at every development month except the first few. This makes it clear that the adverse trends are not due to a slow down or speeding up of payments.

NI Weekly payments by accident period from SIRA's March 2020 "Workers Compensation Monthly Report (Dashboard)" show weekly payment data from accident year has not improvement (see later discussion in this section for further details and in the attached link from about page 12 https://www.sira.nsw.gov.au/__data/assets/pdf_file/0003/877332/WC-Dashboard-2020.pdf).

The above charts and discussion strongly suggest that RTW rates have deteriorated markedly in the 6 months to September 2019 and 6 months to March 2020

5.8

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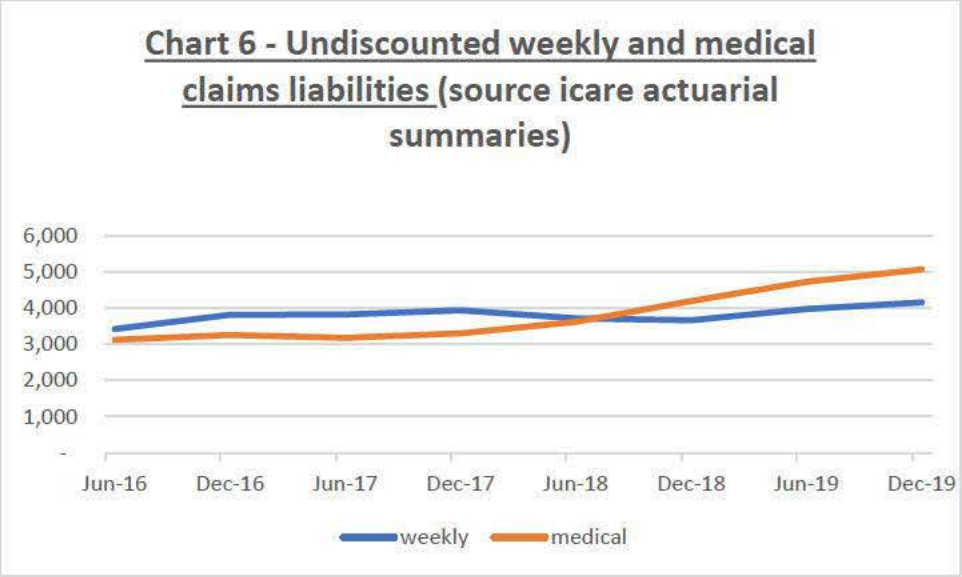
that reported to me (it can save lots of time in assessing draft results). They are simple checks on the results and ensures an actuary sees the forest and does not get buried in the trees. If the sense check identifies the results were possibly wrong by a significant margin (i.e. did not make sense), then I would explain the logic of the sense check to the actuary and ask the them to go back and review their work. Usually the actuary would come back with revised results and explain why the initial results were incorrect

The following chart shows the undiscounted weekly and medical claims liabilities (excluding risk margin of 15.1% and claims handling loading of 8.5%) from the summary of the actuarial valuation on icare's website (https://www.icare.nsw.gov.au/about-us/annual-reports/).



Medical liabilities increased from $3.25b at December 2016 to $5.06b at December 2019 a 56% increase whereas weekly liabilities have only increased from $3.80b to $4.15b by 9% or about 3%pa which is a little above normal inflation. Note that the increase in medical liabilities is about 10% more than the increase in total medical payments of about 45% during the same period whereas weekly payments increased by about 75% (adjusted for the discontinuity caused by the retrospective legislative impact arising from s39 i.e. 5 years cut off of weekly benefits for injured workers having an assessed whole person impairment below 21% for accident periods up to 2012 as noted earlier in this submission – note that the same adjustment to medical payments does not need to be made for another 2 to 5 years as medical payments continue for 2 to 5 years after weekly payments cease as explained earlier in this submission).

Medical and weekly payment increase details are set out in the tables below.

Table 1 - Medical payments

	Amount paid $m (actual or calculated from data source)	Annual increase from previous year	Source
2014/15	427		
2015/16	449	5%	https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements
2016/17	503	12%	https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements
2017/18	558	11%	https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements
2018/19	651	17%	https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports; July 2018 report
Calendar year 2019	687	6%	https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports; July 2019 report
Total estimated increase since 2014/15		**61%**	
Total estimated increase since 2015/16		**53% (estimated to be 45% since December 2016)**	

Notes: Figures in blue are calculated and all others are actual figures from the stated source

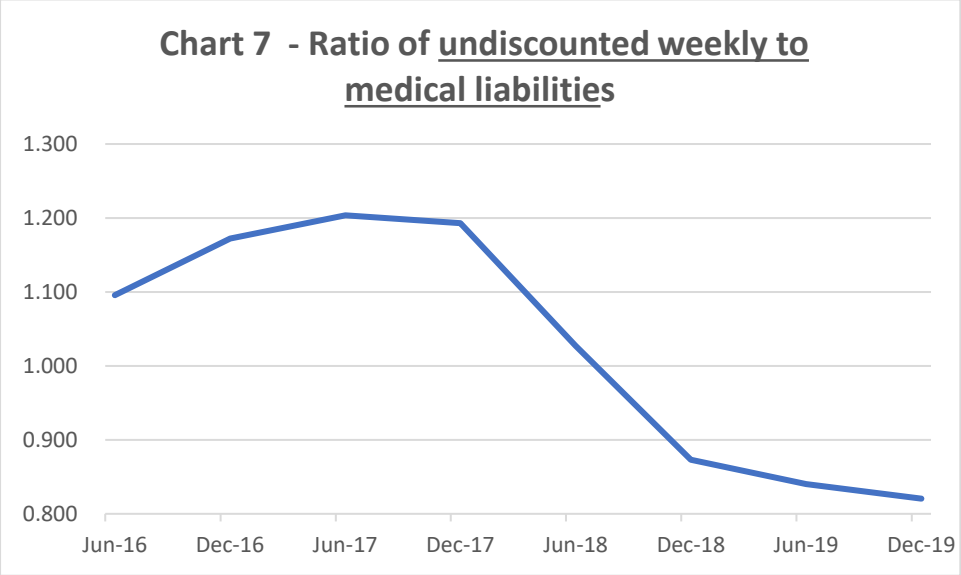
Weekly payments on the same basis as displayed in Figure 17 of the Dore report is set out below.

Table 2 - Weekly payments

Six months to	Amount paid $m	% increase from previous 6 months	Sources for amount paid
Dec-16	285		Estimate based on Figure 17 on page 44 of Dore report plus https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports
Dec-17	295	4%	Estimate based on Figure 17 on page 44 of Dore report plus https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports
Jun-18	330	12%	https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports in tab titled "Efficiency Weekly benefits"
Dec-18	396	20%	https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports in tab titled "Efficiency Weekly benefits"
Jun-19	411	4%	https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports in tab titled "Efficiency Weekly benefits"
Dec-19	498	21%	https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports in tab titled "Efficiency Weekly benefits"
Total estimated increase from December 2016 to December 2019			**75%**

Please note the weekly claim payments data in the above table is sourced from SIRA's Workers compensation monthly dashboard report and the payments data does change a little as later data is made available. Later data generally results in a small increase in claim payments. The table from this source includes the following note "*To ensure consistency across the time series, the table excludes Section 39 injured workers that exited the system."

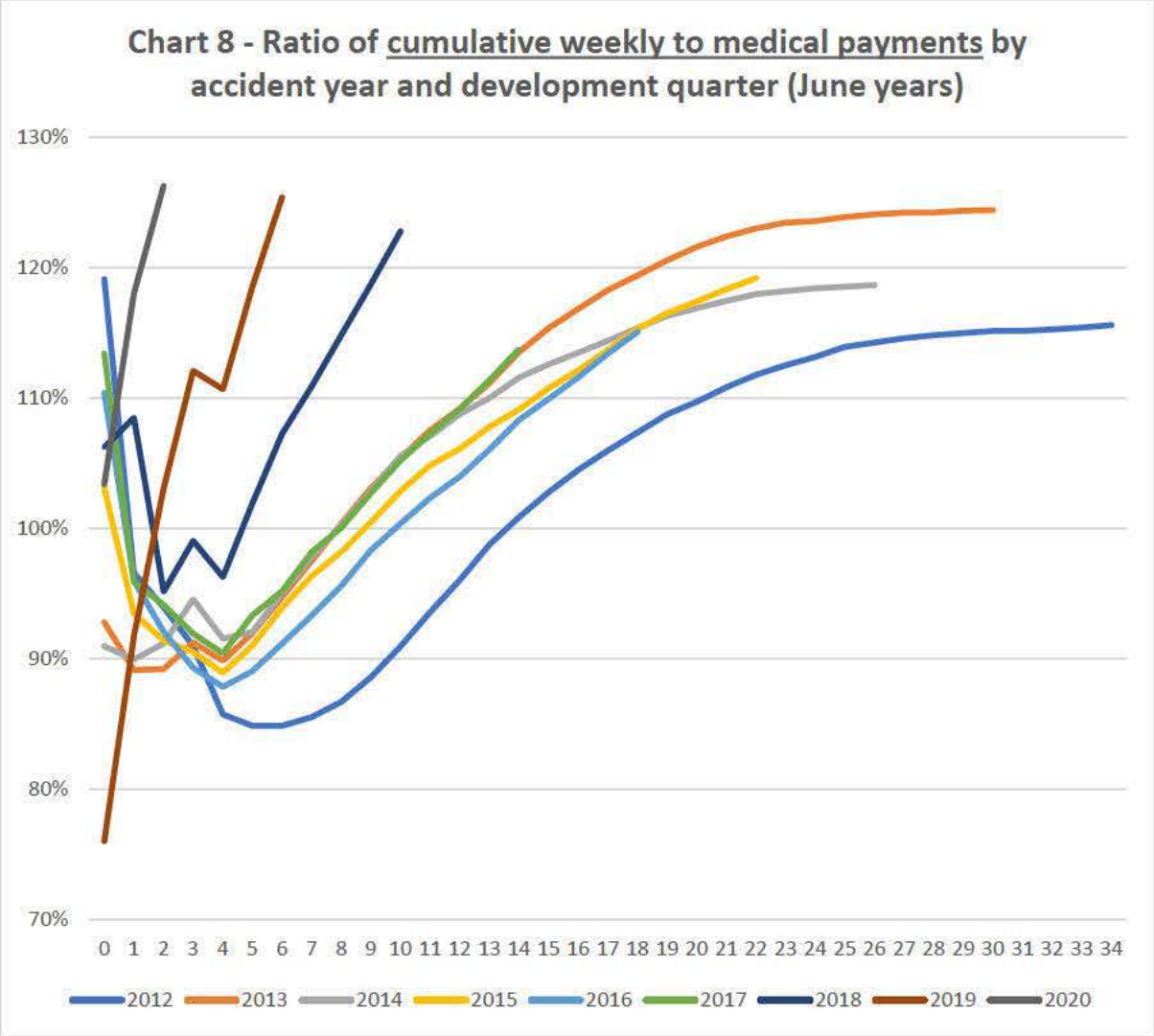
The next chart shows the ratio of weekly to medical liabilities in the previous chart.



Having been around the NI scheme since 1985 one thing that always stuck out was weekly claims liabilities were always the largest component of the NI's total claims liabilities. Consequently, it is very surprising to see weekly claims liabilities being well below medical claims liabilities. The ratio of weekly to medical liabilities was about 1.2 from December 2016 to December 2017 and then fell at each subsequent 6-month valuation to 1.03 (June 2018), 0.87 (December 2018), 0.84 (June 2019) and 0.82 at the December 2019 valuation. The reductions occurred since icare implemented its new claims operating model when return to work rates plummeted.

I refer you to earlier charts in this section of the very substantial increase in weekly payments while the charts on medical payments later in this section show lower but still significant increases in medical payments for recent accident years. From the charts in section 6 and the charts at the end of this section and the above two tables, it is obvious weekly payments have increased significantly more than medical payments since 2016. Further detail of the more significant increase in weekly payments compared with medical payments is set out in the following charts.

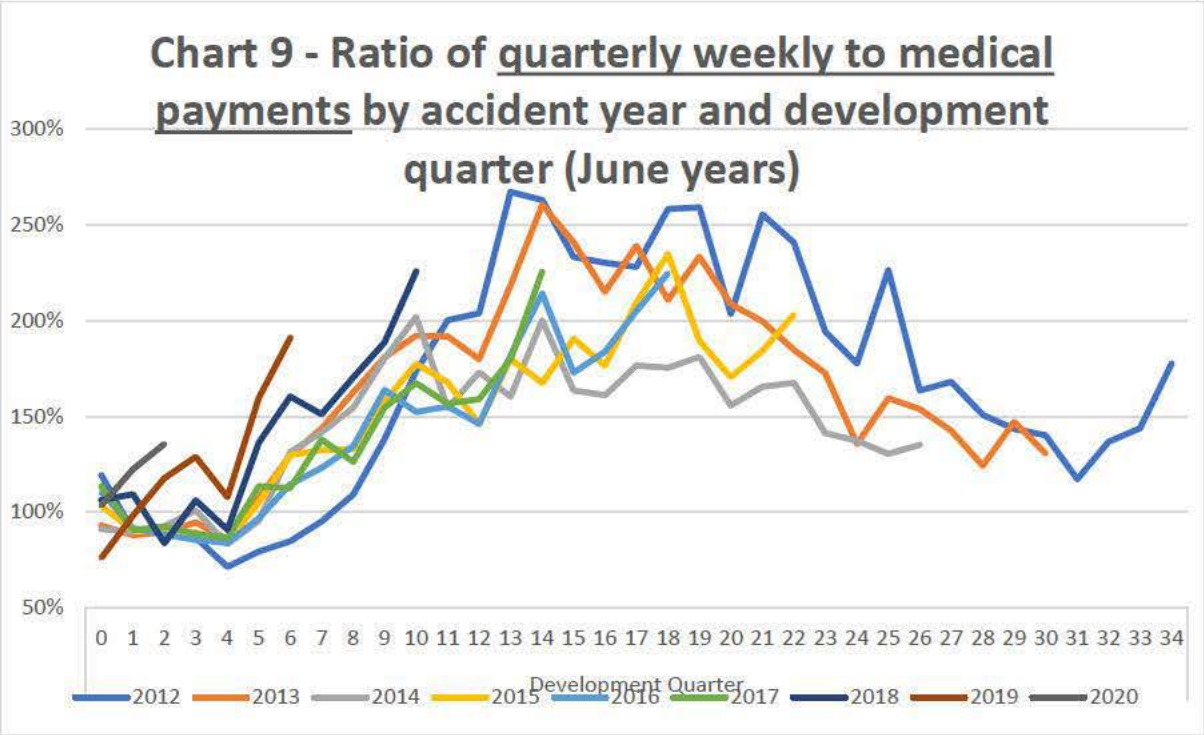
The following chart shows the ratio of cumulative weekly payments to cumulative medical payments in the last nine accident years (or since July 2011 or nearly nine years to March 2020) from SIRA data.



The notable features in the above chart are:

- Each line from development quarter 10 is above 100%
- Each line is trending upwards and no line goes down over time (except for the early development quarters). In the last three accident years (2018 to 2020) the upwards trend is exceptionally strong
- In the last three accident years (2018 to 2020) weekly payments are substantially higher than each previous year and by a large margin (i.e. since icare's new claims operating model was implemented)
- Since 2016 (i.e. payment years not accident years) the ratio of weekly to medical payments have increased significantly for all accident years as can be seen from the upward trend of all lines in the above chart.

The following chart shows the same information in the above chart but instead of cumulative payments it uses quarterly (i.e. three months) payments which is a more insightful and relevant basis for assessing outstanding claims liabilities.



The notable features in this chart are:

- The last three accident years (2018 to 2020) stand out with exceptionally high levels compared to all previous accident years
- Most accident years after three years (i.e. 12 development quarters) have a ratio of quarterly weekly to medical payments over 150% but some do seem to reduce below 150% after six years (24 quarters) but not below 130% (except for accident year 2012 for one quarter)

Since 2016 the ratio of weekly claim payments to medical payments have increased with some accident years showing significant increases in the ratio. Despite this adverse performance the ratio of weekly to medical claims liabilities fell to 84% at June 2019 and 82% at December 2019

A possible explanation is that medical liabilities are too high. But that does not seem plausible since the increase in medical liabilities reflects the increases in medical payments since 2016.

Some simple calculations:

- If the ratio of weekly to medical liabilities had been maintained at 1.2 since 2017 then weekly liabilities would have been about $2.0b higher on a discounted basis including risk margin and claims handling loading (the basis of icare accounts)

- If a 1.3, 1.4 or 1.5 ratio is adopted the increase in weekly claims liabilities is $2.5b, $3.0b and $3.5b
- Increases of $2b, $2.5b, $3.0b and $3.5b represent 12%, 15%, 18% and 21% of icare total outstanding claims liabilities.

Note that these figures exclude premium liabilities which should in practice be included but no separate figure for the weekly liability component is available.

As discussed in earlier in this section, on key aspects of claims management and implications, the major deterioration in RTW rates will result in many more claims passing through the key WPI thresholds of 10%, 15% and 20% that provides access to statutory lump sum benefits (s66 at over 10% WPI), common law (or WID at over 15% WPI) and 5 year threshold (s39 for access to ongoing weekly and medical costs at over 20% WPI). When injured workers are still off work after six or 12 months there is normally a good reason – the injured worker normally has a permanent impairment. The substantial increase in the number of surgeries supports the view that many more injured workers have a permanent impairment. It takes at least two years from the injury date for even small numbers of WPI assessments to be undertaken – i.e. at December 2019 there will have been almost no WPI assessments undertaken since the NI RTW rates deteriorated as a result of icare's new claims operating model.

With further deterioration in medical costs after two years from the date of injury still to be apparent from the major deterioration in RTW rates there will almost certainly be a need to increase medical claims liabilities above current levels. In addition, there will be flow on increases in legal and investigation payments arising from future increases in WPI assessments, S66 and WID actions by injured workers which will require additional claim liabilities to be set aside. I deal with these matters next.

5.9

The number of claims exceeding the 10%, 15% and 20% WPI thresholds has a major impact on the valuation results. By far the biggest saving from the 2012 legislative amendments came from cutting off access to weekly and medical benefits after 5 years for WPI less than 21%.

I have spoken to several highly experienced senior workers compensation claims managers, an experienced senior lawyer and a senior insurance executive who all have extensive and current experience with the NSW scheme for over 30 years (they are not icare staff) including those who are currently involved with the management of icare claims. The comments I have received from one of these claims managers was unsolicited. The consistent view of each of these claim's manager is that there will be a major increase in the number of claims exceeding each of the 10%, 15% and 20% WPI thresholds from the major deterioration in RTW rates. Some even hold a view that the increase in the number of WID claims (i.e. claims exceeding 15% WPI) will be worse than the deterioration in RTW. I agree with the views of these claims' managers and even the possibility of WID experience being worse than the deterioration in RTW.

Conclusion

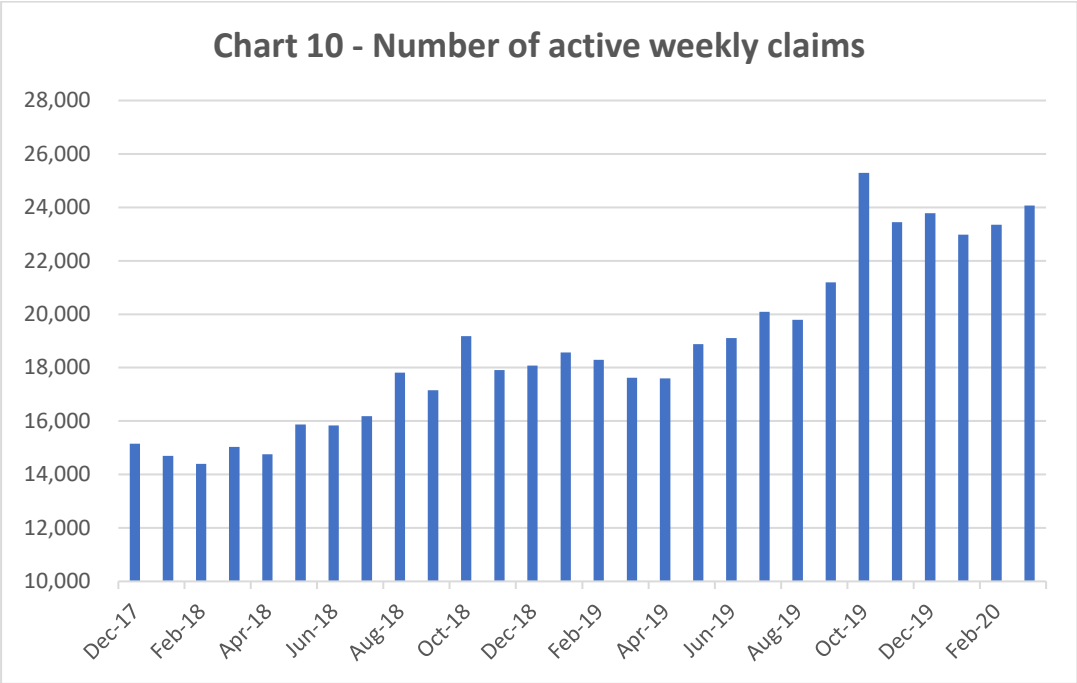
5.10 Medical payments

Other than the impact from an increase in the number of claims exceeding 20% WPI as discussed above, medial liabilities are sensitive to the rate of medical claims inflation

The level of medical payments at all durations is related to the number of injured workers still off work. It is logical that injured workers off work need medical and allied health services.

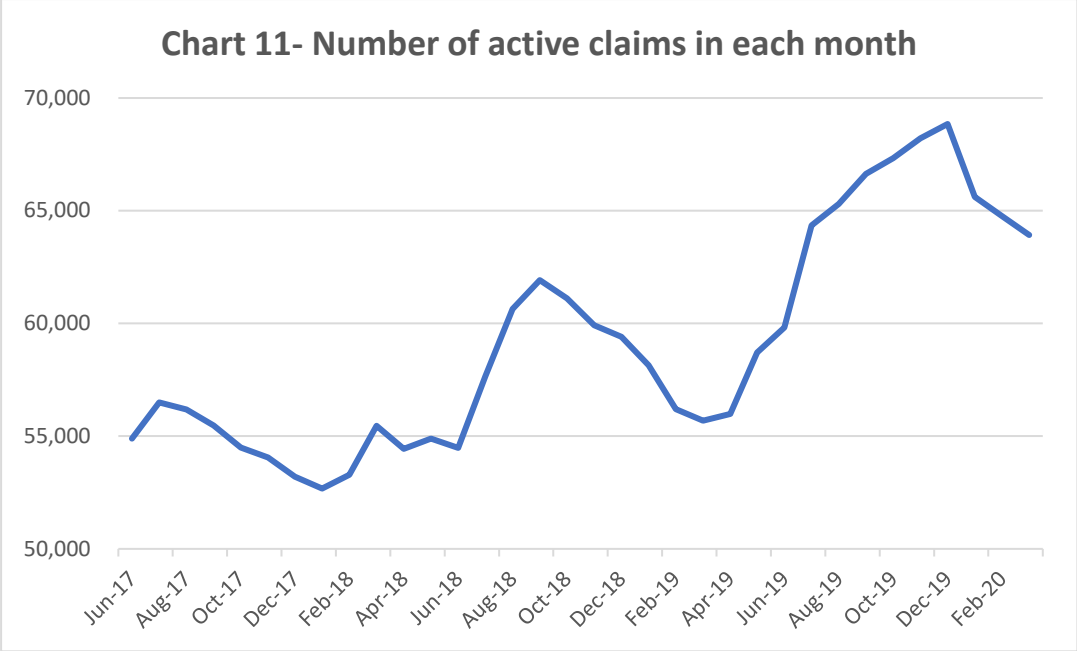
experience.

5.11

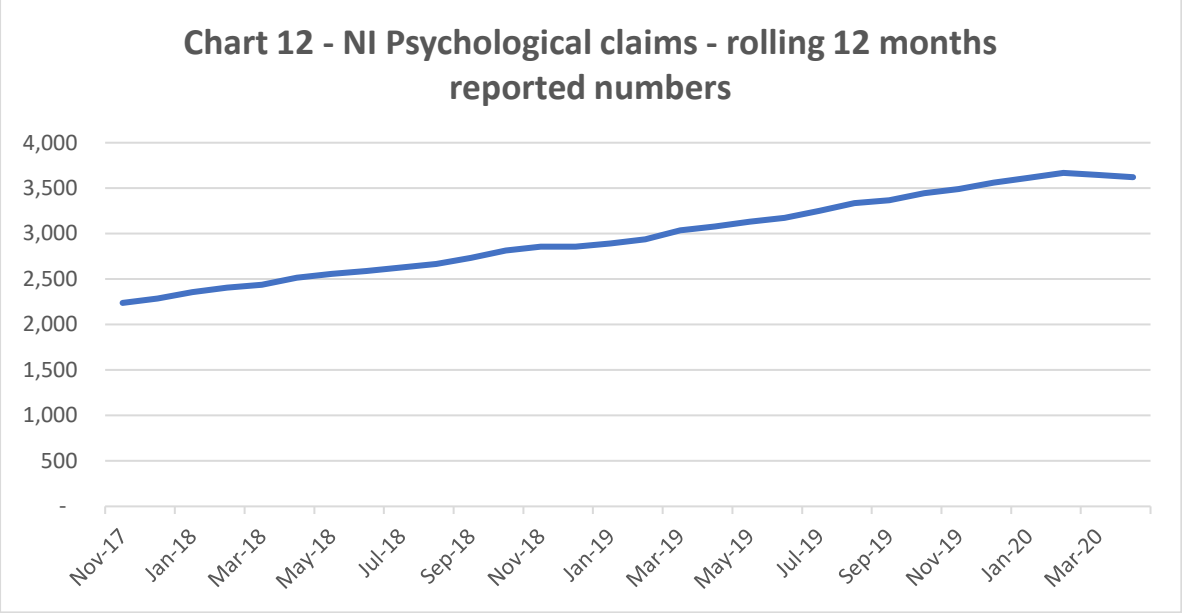


Unfortunately, SIRA has not published data prior to December 2017 nevertheless the trend since that month is strongly upward. Backlogs in payments between January and June 2018 and then again in the first half of 2019 distort the trends but it is clear there has been a major increase in the number of active weekly claims of over 50%.

Data on the total number of active claims published by SIRA back to June 2017 shows a similar pattern in the chart below. The reduction in active numbers in late to early 2018 is notable and the distortion caused by payment backlogs noted above is more obvious.



Psychological claims have an average claims size of about double other injury types in workers compensation schemes and in NSW this is also the case. These types of claims are generally much more complex and difficult to manage than other injury types. SIRA data shows there has been a major increase in the number of psychological claims being reported as shown in the following chart.



The above chart shows that the number of reported psychological claims have increased by between 50% and 60% since 2017.

The increasing number of psychological claims is a trend impacting other workers compensation schemes not just the NI or NSW and is a longer-term feature of these schemes.

5.12 Changes in NI claims liability over time

I have analysed the changes in the claims liability from the summary icare publishes on its website every 6 months https://www.icare.nsw.gov.au/about-us/annual-reports/) and from icare's annual report as set out in the table below. In the actuarial summary there is an analysis of the change in the liabilities.

Table 3 – Analysis of changes in NI claims liabilities

	Year ended 30 June ($M)				
	2015	**2016**	**2017**	**2018**	**2019**
Incurred claims cost less recoveries (O/S claims only)	1,089	2,920	2,710	2,197	3,362
Adjust for:					
changes in economic assumptions	-386	-474	-19	-59	-1,092
changes in claims handling allowance	0	-13	29	110	0
changes in risk margin assumption	0	78	0	72	0
add WID adjustment (oversight in previous valuations)	0	0	0	0	495
less 2015 benefit changes	0	-1,344	0	0	0
less increase in S39 change in liabilities (includes risk margin & CHE)	0	0	-1,040	-517	0
changes in economic assumptions	0	-13	29	110	0
Underlying change in outstanding claims liabilities (i.e. Excluding changes to unearned premium and URR)	**703**	**1,166**	**1,680**	**1,802**	**2,765**

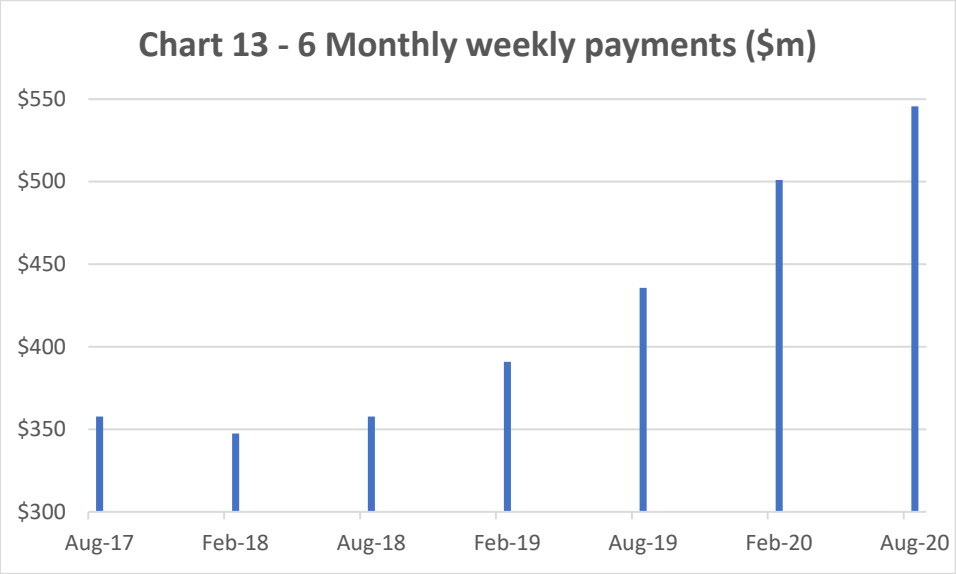
Table 4 - Movement in NI outstanding claims liabilities

	Movement in outstanding claims liabilities sourced from icare summary of actuarial valuations ($m) -					
	Valuation date					
	June 2017	**December 2017**	**June 2018**	**December 2018**	**June 2019**	**December 2019**
Claims experience	-38	-212	-134	128	19	276
Assumptions changes	74	390	-58	-30	-110	315
Updated wages				123	21	-15
Economic assumptions	261	-41	100	180	912	-131
Risk margin and CHE		-125	-36		0	-10
Total movement in liabilities	**297**	**12**	**-128**	**401**	**843**	**433**

5.13 Updated SIRA data to August 2020

SIRA has published updated data to August 2020 in its open data portal. The data format is different to the charts earlier in this document. The August 2020 open data shows that there has been no real improvement in RTW rates for the NI (they have been stable since early to mid-2019) while claim payments have increased significantly since March 2020.

The following chart sets out the total weekly payments across all accident years made in each 6-month period from March 2017 to August 2020 (from SIRA published data).



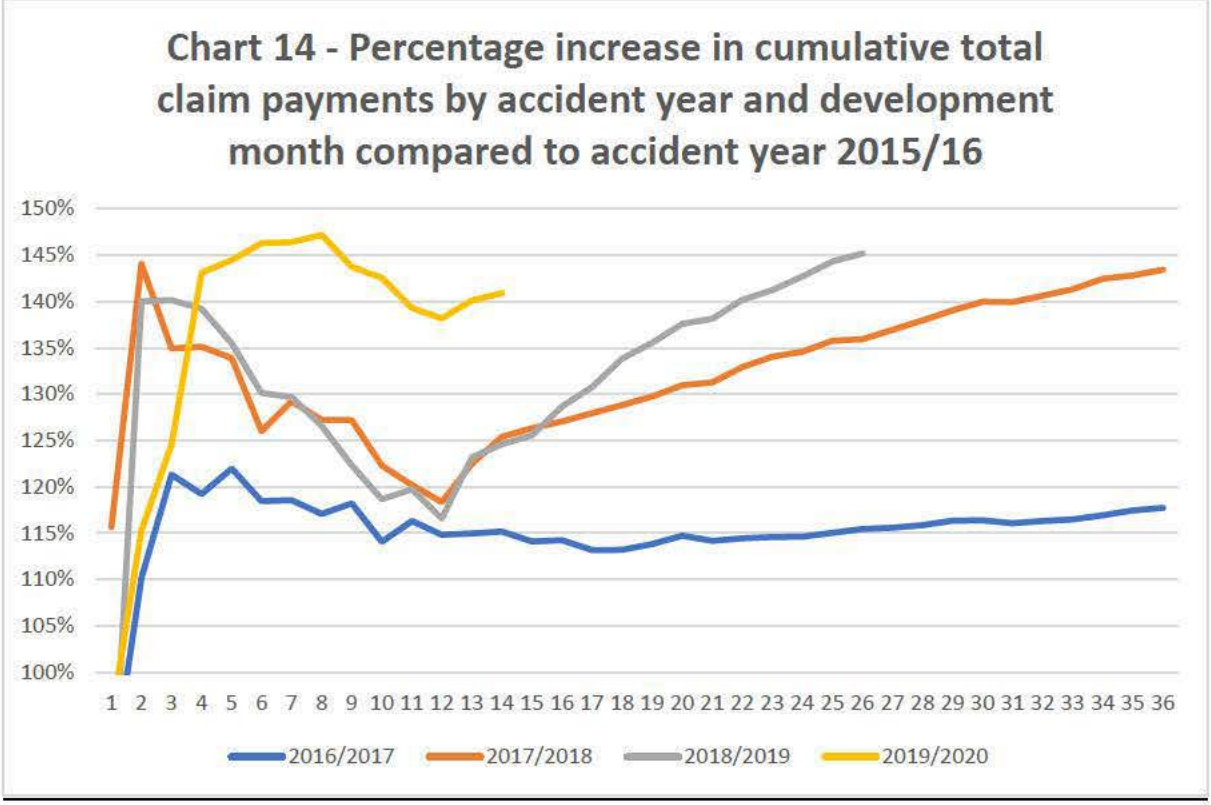
Total weekly payments were:

- 26% higher in the year to August 2020 than the previous year
- 52% higher in the year to August 2020 compared to the year ended August 2018 and August 2017
- 25% higher in the 6 months to August 2020 compared to the 6 months to August 2019
- 53% higher in the 6 months to August 2020 compared to the 6 months to August 2018 and 6 months to August 2017.

This chart indicates there has been no improvement in RTW rates.

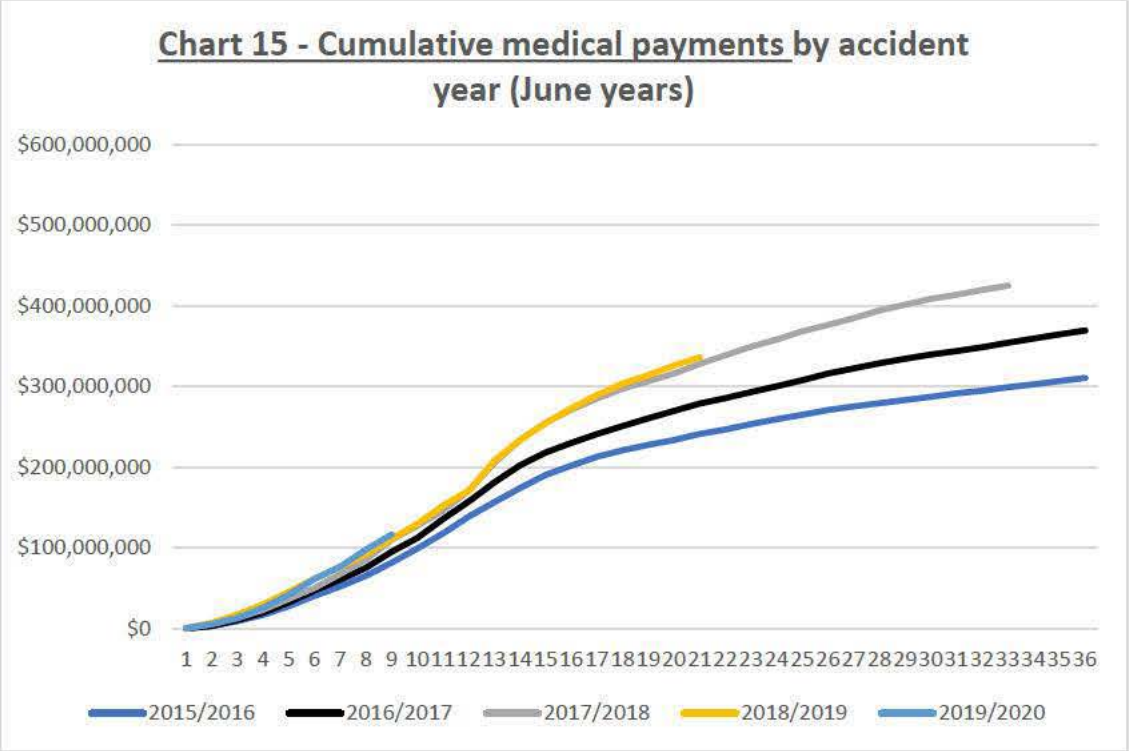
For a long tail workers compensation scheme these increases in such a short period are extremely concerning and with no sign of an improvement in RTW rates further significant increases in weekly payments will emerge over subsequent periods. Of even more concern is adverse flow to WID, s66 and medical payments that will emerge over future years from the major increase in weekly payments to August 2020 (note weekly payments directly reflect RTW rates at all durations).

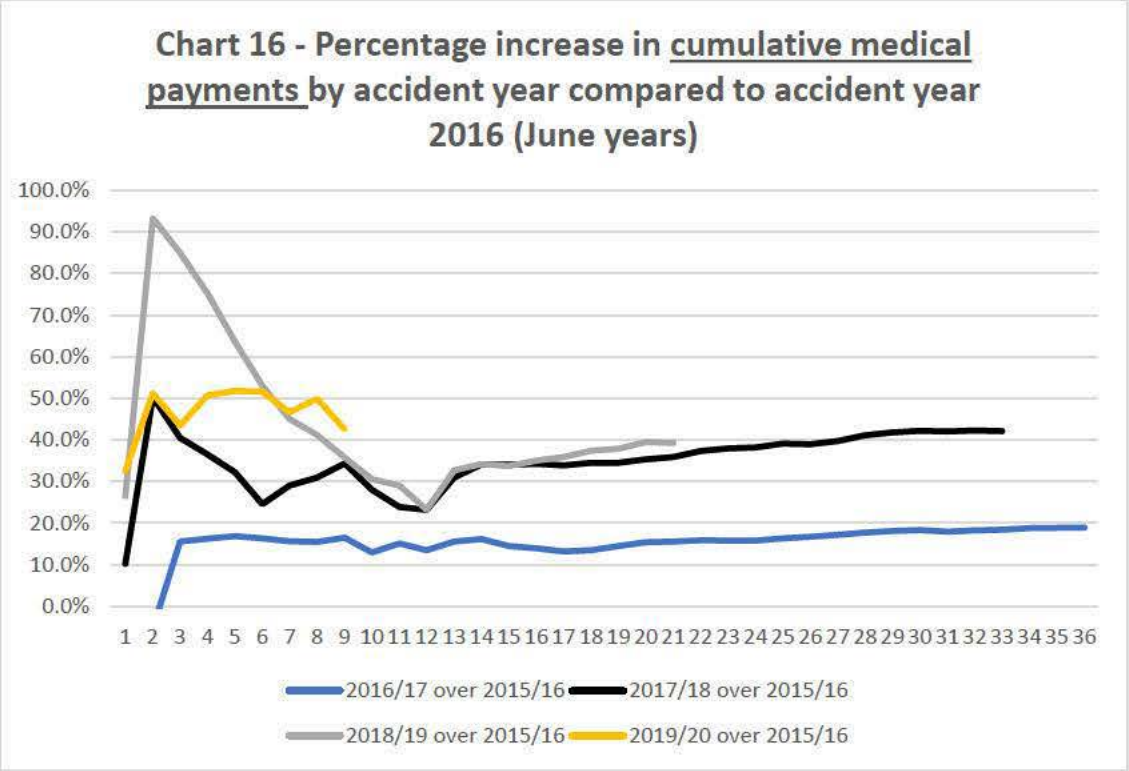
The following charts set out a summary of the claim payment experience to August 2020.



This chart shows that since March 2020 there has been further significant deterioration in the claims experience as evidenced by the upward slope in the accident years payment increases and the widening gap between each subsequent accident years' experience. For the 2019/20 year the line has declined but at a much lower rate than previous years.

5.14 Other charts (experience to March 2020)





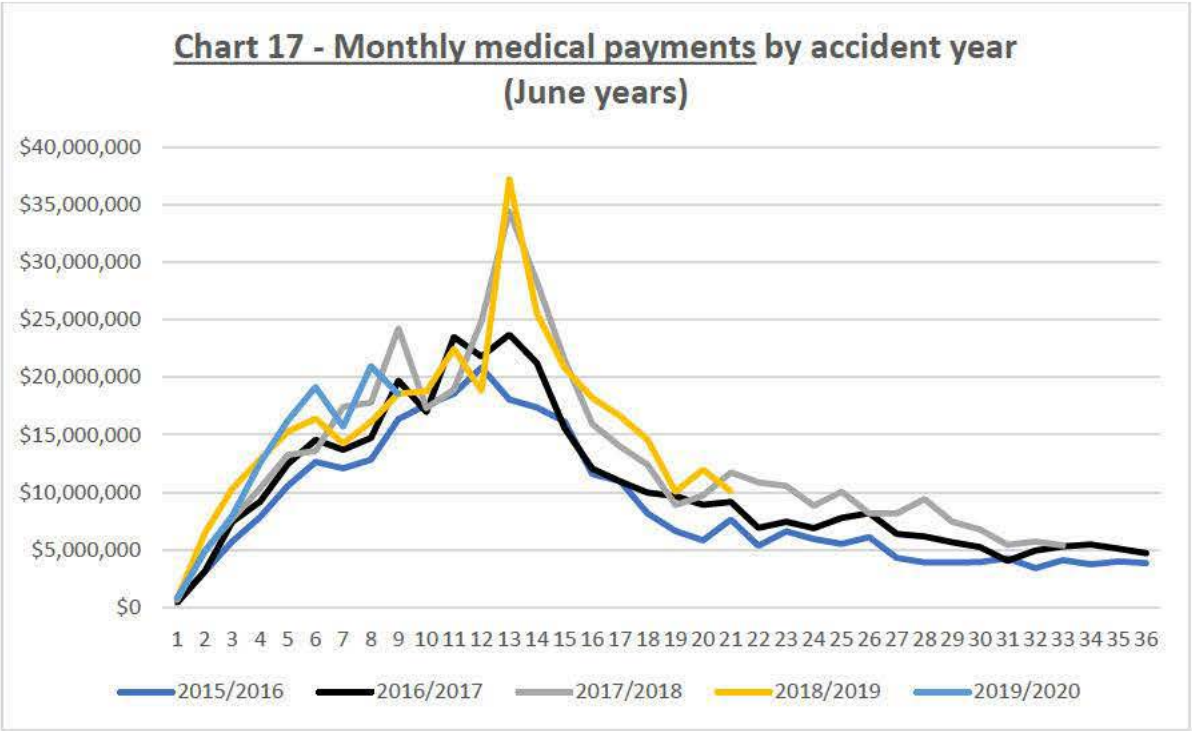


Chart 17 - Monthly medical payments by accident year (June years)
$40,000,000
$35,000,000
$30,000,000
$25,000,000
$20,000,000
$15,000,000
$10,000,000
$5,000,000
$0
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36
2015/2016
2016/2017
2017/2018
2018/2019
2019/2020

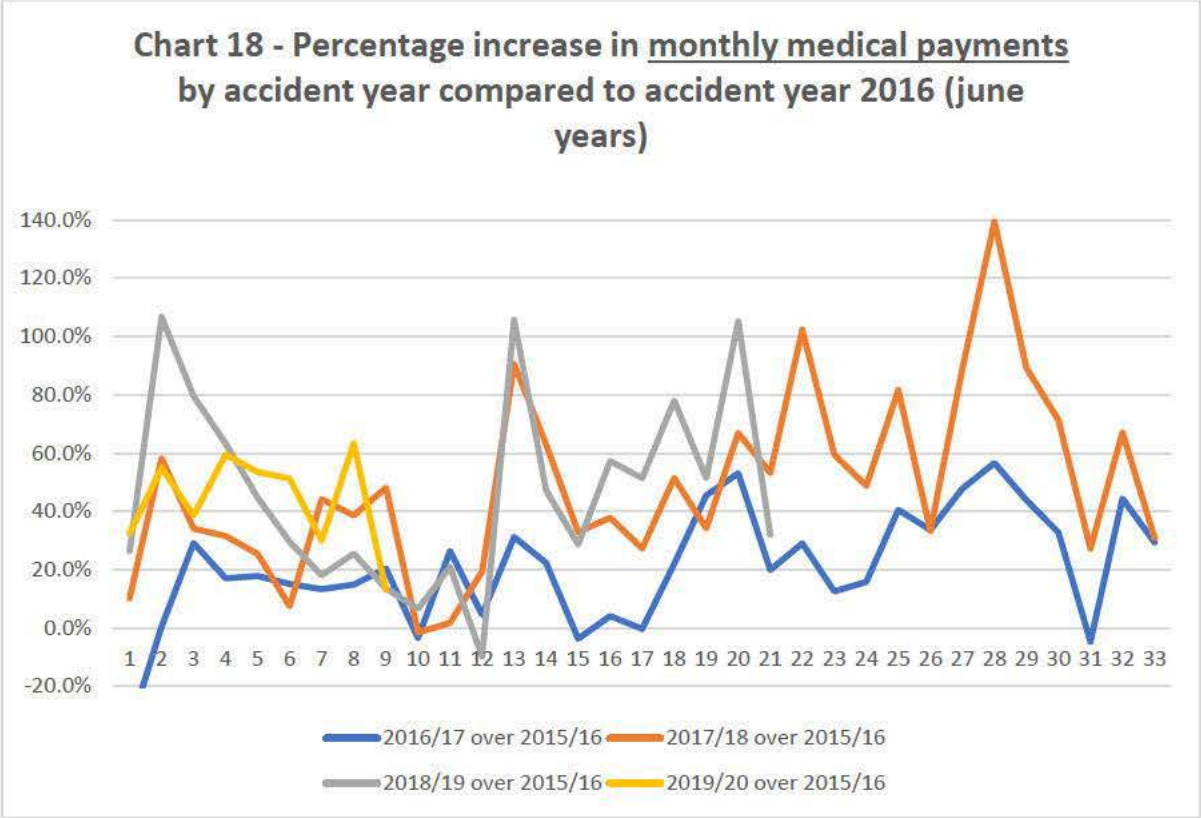


Chart 18 - Percentage increase in monthly medical payments by accident year compared to accident year 2016 (june years)
140.0%
120.0%
100.0%
80.0%
60.0%
40.0%
20.0%
0.0%
-20.0%
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33
2016/17 over 2015/16
2017/18 over 2015/16
2018/19 over 2015/16
2019/20 over 2015/16

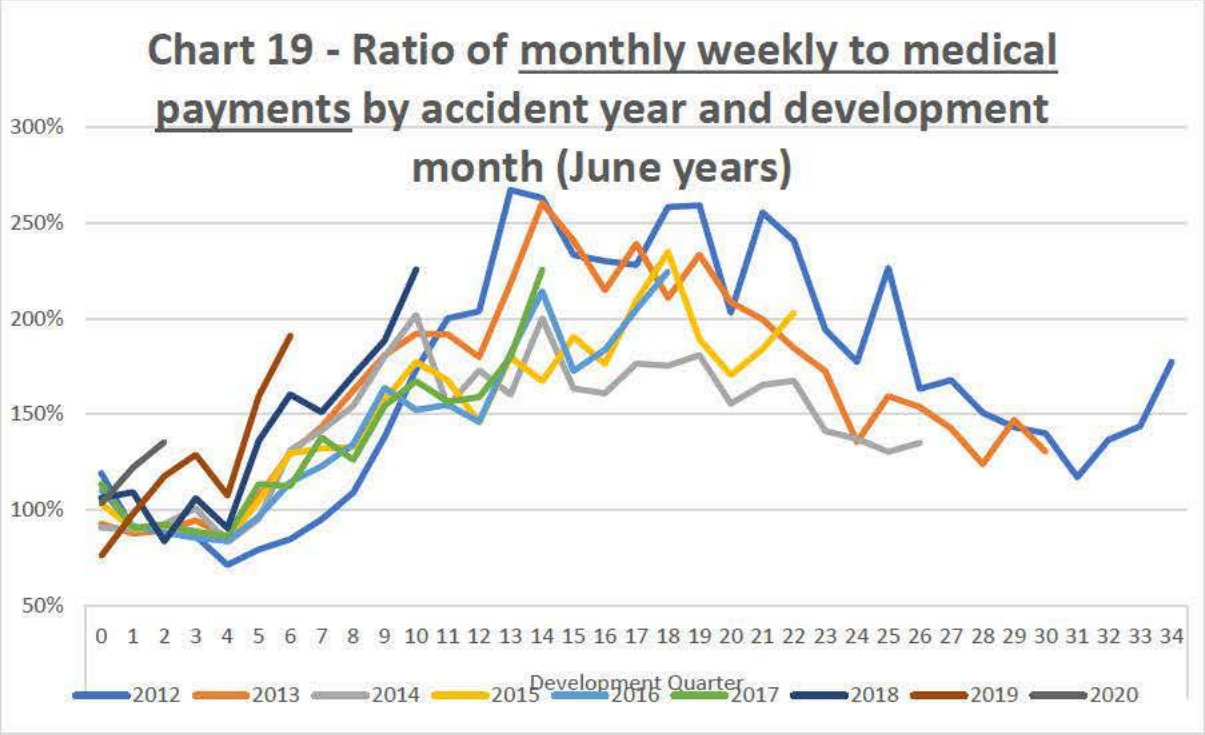


Chart 19 - Ratio of monthly weekly to medical payments by accident year and development month (June years)
300%
250%
200%
150%
100%
50%
0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34
Development Quarter
2012 2013 2014 2015 2016 2017 2018 2019 2020

6. Various aspects of the management of NI's business by icare

6.1 Objectives of forming icare

The report of the NSW Treasury review of insurance entities recommended creating a separate insurance regulator (i.e. SIRA) and a new government commercial entity to manage the insurance operations of the government (i.e. icare).

The objectives of creating icare as the NSW government's insurance operation entity were discussed in the committee meetings of the NSW Treasury review of insurance entities that I was principal adviser to in 2015 and documented in Treasury's report..

There were two main reasons for creating a separate insurance operations entity:

- One key objective in setting up icare was to make it into a proper commercial enterprise of the government and be able to attract good quality insurance staff. This required icare to offer higher salaries to attract appropriately qualified staff.

  I strongly made the point to the committee that in my view icare's predecessor WorkCover, had for many years poorly managed workers compensation claims. This was my experience with the scheme, and it was backed up by my industry contacts (as an example of the poor management refer to my comments below in relation to medical management).

  One of the key reasons for WorkCover's poor performance was their inability to attract quality experienced workers compensation staff especially people with claims management experience as the salaries offered were well below market rates.

- The other key reason was to create an operational insurance entity separate from the insurance regulator to address the conflicts of interest within WorkCover that arose from being the policeman of occupational health and safety and the operational insurance entity. These conflicts had been an issue for many years.

The intention of paying higher salaries to icare staff was on creation of icare, to go and find quality people external to WorkCover with good experience in personal injury insurance and especially workers compensation claims management. This included appointing icare senior executives and icare Board members with this experience.

However, this did not happen.

In 2015 there was no one in a senior role or on the WorkCover Board that had the required experience in personal injury insurance and especially workers compensation claims management. This is what happened since icare was created:

- The responsible Minister has not appointed one person to the icare Board that had any prior experience in personal injury schemes and workers compensation claims. He did not even appoint anyone who had general insurance experience

- At executive level, the icare Board just rolled over the current unqualified WorkCover executives into the same roles at icare and effectively about tripled their remuneration overnight (see later in this section for further analysis).

All the evidence points to icare's management pulling the wool over the eyes of their Board and their Minister, and his office, icare's Board pulled the wool over the eyes of their Minister and his office. It is the blind leading the blind. If you do not understand the business, you do not know that you are having the wool pulled over your eyes and you do not know what questions to ask.

If the icare Board had just one member with quality experience in workers compensation especially claims management then icare management would not have been allowed to implement the new claims operational

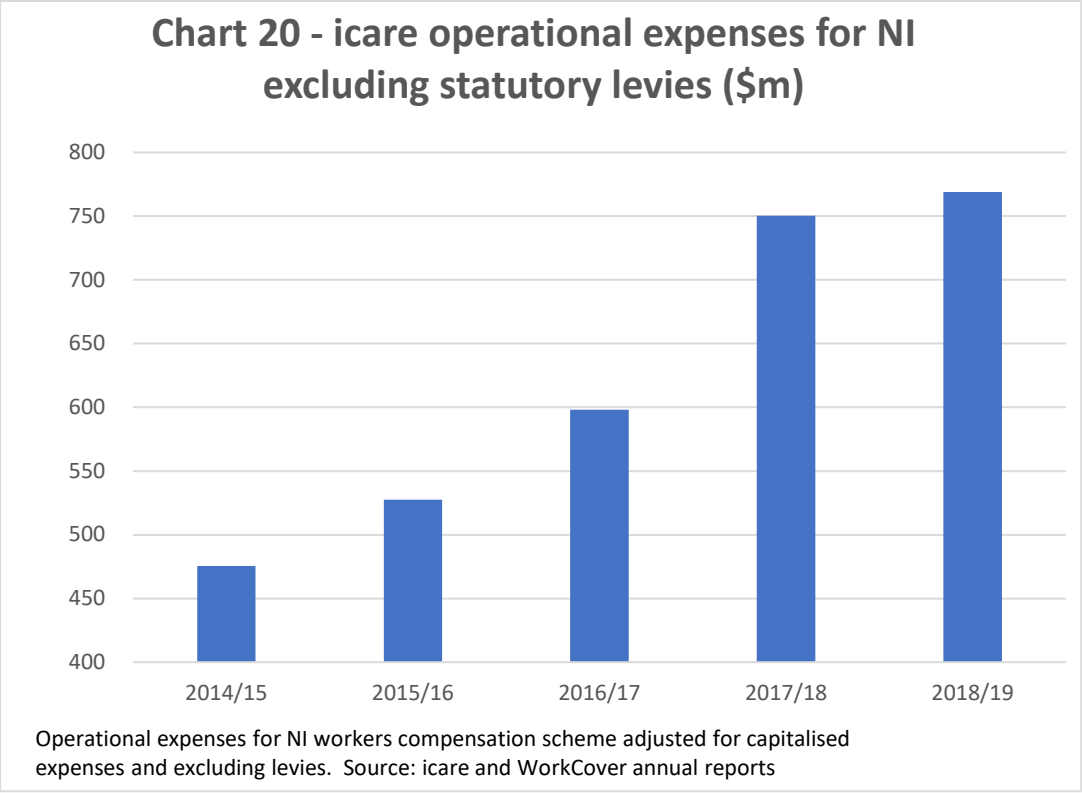
model, the 2015 premiums system would have been dismantled, the IT system would not have been approved based on the business case presented and a range of other claims management and other initiatives would not had been implemented by icare. The claims operational model would not have gone past a vague 'thought bubble'.

icare was doomed to fail from day one. The Minister and icare's Board demonstrated a lack of understanding of icare's business and the type of people needed to effectively manage the business.

6.2 icare's operational expenses, underwriting results, and funding ratio

I have analysed the expenses of the NI, Lifetime Care & Support Authority (LTCS), and the Dust Diseases Board (DDB) schemes from the icare and WorkCover annual reports from 2014/15 to 2018/19. All icare expenses are charged back to the schemes it manages. In my analysis I have adjusted for capitalised expenses and attempted to ensure each year's expenses are on the same basis which is principally to allow for changes to the way investment expenses are dealt with in the accounts for 2014/15 and 2015/16; these expenses have been excluded in all years. All transformational expenses and payments to claims agents have been included. The results are shown in the following chart.

The following chart shows the history of the NI operational expenses.

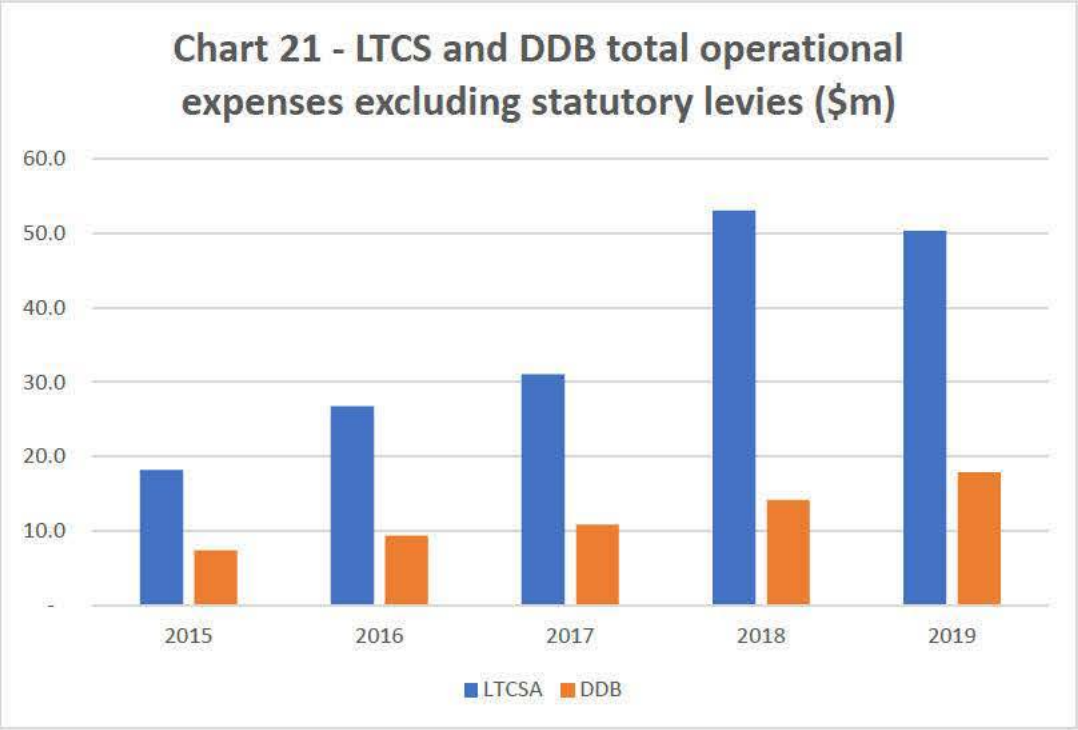


Operational expenses for NI workers compensation scheme adjusted for capitalised expenses and excluding levies. Source: icare and WorkCover annual reports

The above chart shows in 2017/18 and 2018/19 the NI's operational expenses were about 60% higher than in 2014/15 before icare was created. The NI's Scheme Actuary insurance liability report for 31 December 2019 (page 211) in table 21.3 does not show any material reduction in budget expenses for 2020/21 over previous years. It appears rather than expenses reducing after implementing the IT claim system as the business case promised (see section 4 for details) and as stated by the CEO in the 2017/18 icare annual report (page 13) "we remain on track to deliver more than $200 million in operational savings per annum", no material reduction in expenses have emerged or are planned to emerge in the near future and clearly nothing like $200m pa. Instead the NI operational expenses seem to be stuck at about $300m higher than there were in 2014/15.

I would have expected that operational expenses in 2019/20 and especially in 2020/21 would drop significantly due to implementing the new claims IT system.

The following chart shows the corresponding figures for LTCS and DDB.

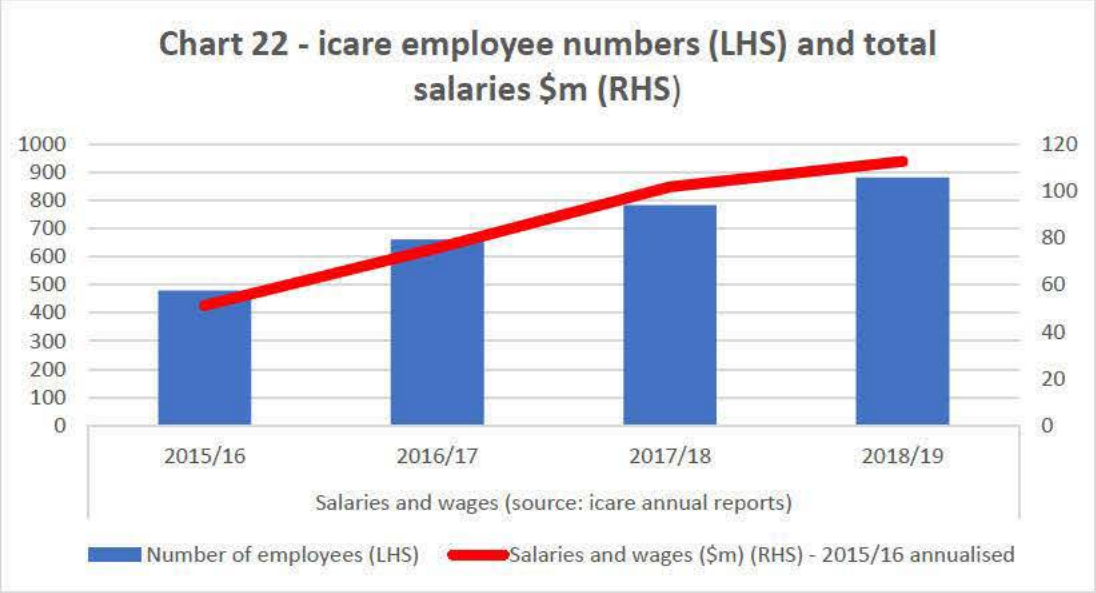


LTCSA operational expenses in 2018 and 2019 are approaching three times the level of 2015 while for the DDB they are nearly 2.5 times the level in 2015. These are exceptionally large increases.

In total the cumulative increase in expenses above the levels in 2014/15 were $743m for the NI, $89m for LTCSA and $21m for DDB or a total of $853m. Using a normal inflation rate of 2.5%pa the increase in expenses above normal inflation is about $624m for the NI, $84m for the LTCSA and $19m for the DDB or a grand total of nearly $750m.

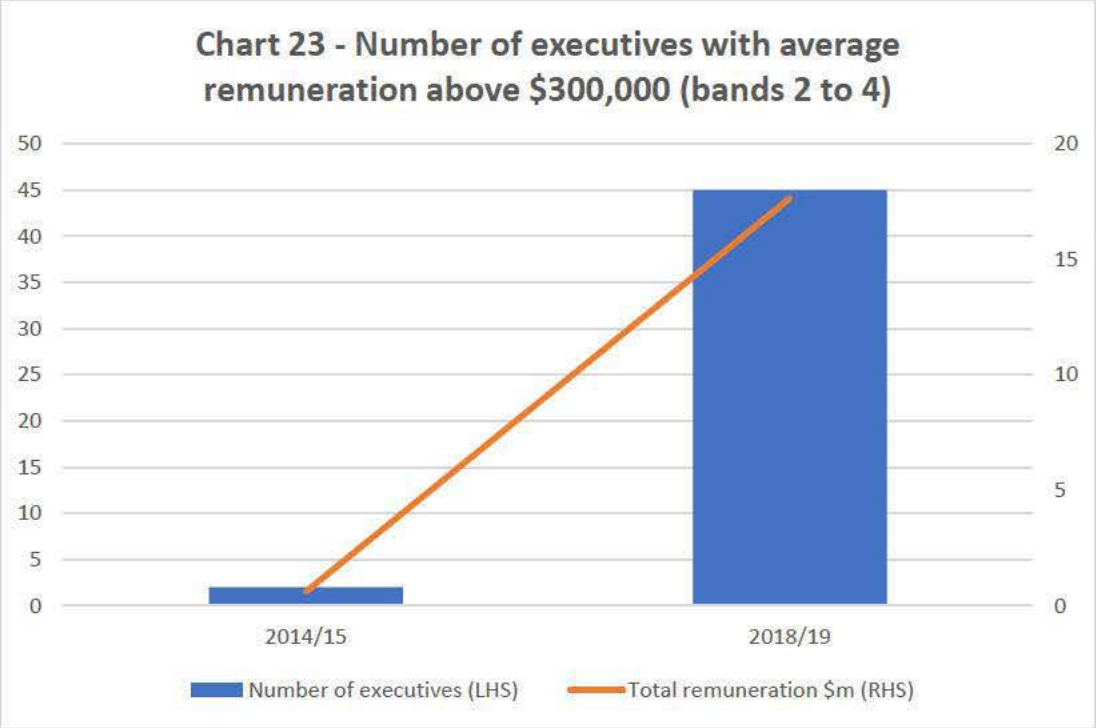
Based on the budget figures for the NI shown in the Scheme Actuary's report for the NI the cumulative additional inflation adjusted expenses above 2014/15 levels will be around $800m by the end of 2019/20 and $1,000m at the end of 2020/21.

The following chart sets out the increase in icare's employee numbers and corresponding salaries sourced from their annual reports.



Employee numbers have increased by 83% from 480 in 2015/16 to 880 in 2018/19 while salaries have increased even further by 120% from $51m to $113m. During this period average salaries have increased from $107k to $127k an increase of 20% or an average annual increase of 6.2% or about 2.5 times the cap of 2.5% for NSW government employees.

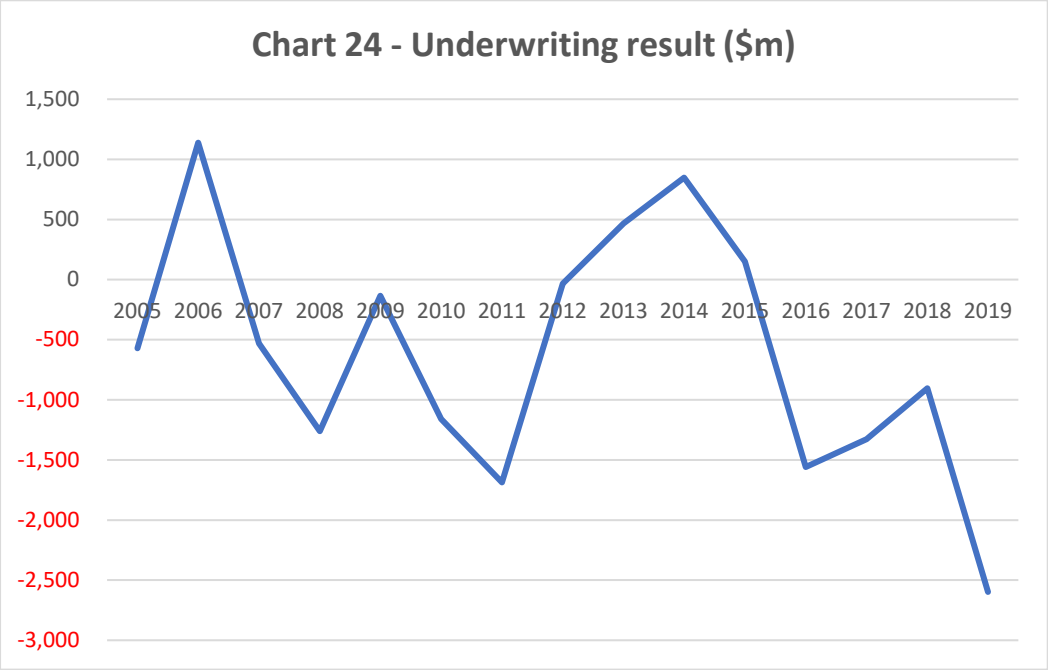
The following table sets out the remuneration of executives at icare and WorkCover extracted from annual reports of icare, WorkCover and other entities within the SRWDS cluster of agencies.



The increase in executive remuneration is stunning from 2 executives in 2014/15 earned a total of $0.61m to 45 executives in 2018/19 earning a total of $17.65m or a 23- and 29-fold increase. Remuneration of executive salaries at icare increased by nearly 27 times the NSW public service level of 2.5%pa increase.

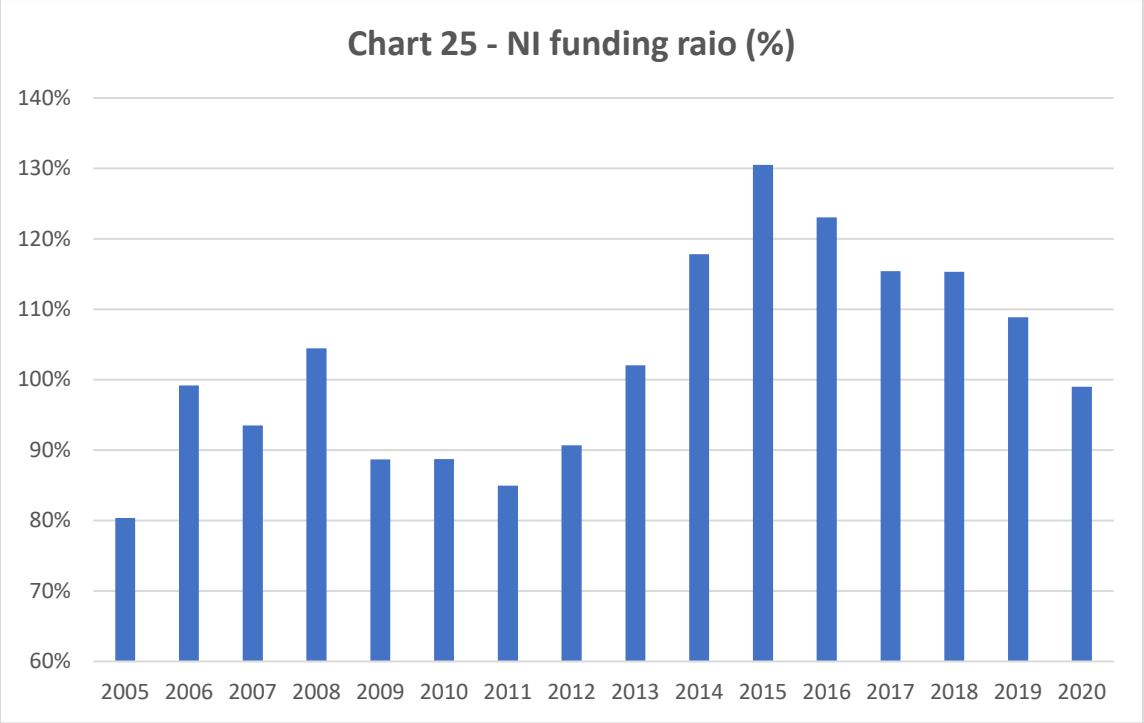
The increase in the NI expenses and especially the mammoth increase in executive salaries correlates with a major deterioration in the performance of the NI and icare. It is a stunning example of mismanagement being rewarded with higher and higher salaries.

The following chart sets out the underwriting results for the NI since 2005. In recent years icare has started to capitalise expenses and I adjusted them, so these expenses flow through to the underwriting results. I have also included the transformational expenses in recent years in the underwriting results as icare have been excluding them. In addition, I have included other income in the underwriting results I believe these adjustments are a better way of comparing operational results excluding investment income, over a longer period. The adjusted underwriting results are shone below.



The above chart shows how the underwriting result has significantly deteriorated in recent years. The underwriting result is now worse than any period leading up to the 2012 legislative reforms. I expect the underwriting loss in 2020 to possibly exceed $2.5b making the operational results much worse than in the lead up to the 2012 reforms.

The following chart shows the ratio of the NI's total assets to total liabilities or what is commonly referred to as the funding ratio or solvency ratio [the funding ratio shown for 2020 is based on information disclosed to the Law & Justice Committee by icare using the same risk margin icare has adopted since its creation].



The notable features from this chart are:

- There was a rapid increase in the funding ratio from 2011 to 2015 from 85% to 131%. This increase was a direct result of the 2012 legislative reforms which led to a major reduction in the NI claims liabilities as the then Scheme Actuary reduced claims liabilities in line with the emerging claims experience
- Despite favourable investment returns except for probably 2020, there has been a dramatic reduction in the NI funding ratio from 131% to less than 100% at June 2020. The reduction in the funding ratio during this period is a direct reflection of the poor operational performance of icare.

6.3 Adequacy of NI premiums

The following details are sourced from the Scheme Actuary insurance liabilities valuation report of 31 December 2019.

For decades until recently, the adequacy of the NI's premium rate was assessed relative to what is referred to as the breakeven premium rate. If the actual premium rate charged or collected was less than the breakeven premium rate it was considered that:

- Premium rates were inadequate to fund the cost of the scheme for all injuries occurring in a year
- The funding ratio would likely decline in the future.

The breakeven premium rate is based on the projected cost of claims (excluding any risk or profit margin) discounted using the same rates used to discount outstanding claims liabilities, plus levies and NI operational expenses. On page 213 of the Scheme Actuary's report, the actuarial breakeven premium rate is assessed as 1.95% of wages at 31 December 2019. This includes a risk margin of 15.1% and excluding this margin the breakeven premium rate is 1.74% of wages. The rate of 1.74% compares to:

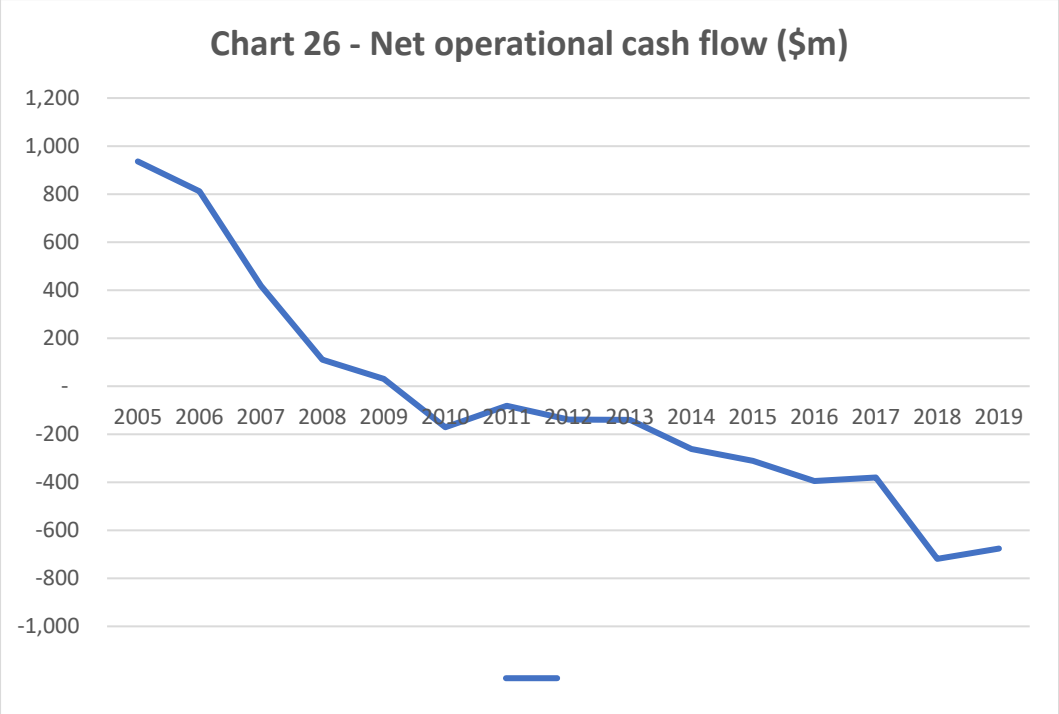
- 1.40% of wages is the rate icare have consistently stated publicly is the rate they have charged employers at least for the last four years or 0.34% lower than the breakeven premium rate. For the year ended June 2019 this equates to a difference of $681m
- In the years ended June 2017, 2018 and 2019 the actual premiums received by the NI (excluding premium debtors) were 1.20%, 1.22% and 1.26% (see page 239 of Scheme Actuary report) which equates to a difference approaching $1b in 2019 compared to the premium at a rate of 1.74%.

That is, in 2019 icare collected premiums at a level that will result in premiums being inadequate by about $1b or in other words before the 2020 year starts the NI scheme has already incurred a loss of about $1b.

If allowance was made for my view of the underestimation of the costs of claims, then it is plausible that they NI has been collecting premiums at a level which could be inadequate by of the order of $2.5b pa – which would mean premium rates would need to double from current levels.

Two other performance indicators also show that current premiums are inadequate, and these are net operational cash flow and the ratio of claims cost to premium. These measures exclude the impact of investment earnings and discounting of claims liabilities.

The following chart sets out the net operational cash flow since 2005 from icare and WorkCover annual reports.

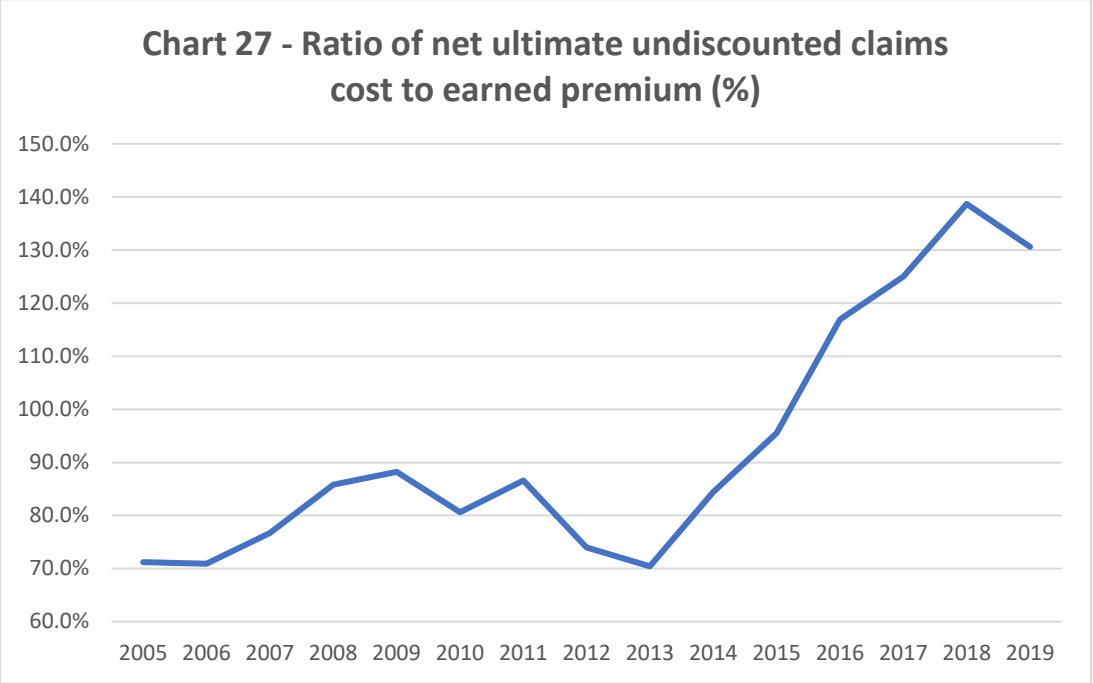


The lower the operational cash flow the more icare needs to rely on investment income instead of increasing premiums to fund the NI. It should be noted during this period there has been a reduction in the expected level of investment returns. The above chart shows:

- A major deterioration in operational cash flow over the last 15 years. Since 2015 annual operational cash flow has declined by over $1.5b and since just before the 2012 legislative reforms annual operational cash flow has declined by over $600m
- In the last two years there has been a marked deterioration in cash flow to around a negative $750m in each year. Based on SIRA's data on claim payments I expect the operational cash flow to worsen and may even approach a negative $1b in 2020.

The deterioration in operational cash flow is a good indication that current premium rates are significantly less adequate than any time in the last 15 years. Current premiums are now significantly less adequate than in the years leading up to the 2012 reforms.

The following chart sets out the ratio of net undiscounted ultimate claims cost to earned premium as set out in Appendix D of the Scheme Actuary's 31 December 2019 insurance liabilities report. It is a better indicator of the adequacy of premiums than operational cash flow.



This measure shows the NI must rely on significant greater investment returns to fund the cost of claims and expenses.

The above chart shows an even more stark deterioration in this indicator of the adequacy of NI premiums. The ratio of claims cost to premium has increased from a range of 70% to 90% up to 2013 to over 130% in the last two years. The ratio is almost double the level in 2012 to 2013 and 2005 to 2006. In the last two years the adequacy of premiums is almost half what it was in 2012 and 2013 and over 35% less adequate than in the years leading up to the 2012 reforms. This measure shows the NI must rely on significantly greater investment returns to fund the cost of claims and expenses than at any time in the last 15 years.

The results in the above chart indicate a major deterioration in the adequacy of premiums since icare was created. If expenses were to be included the measure would indicate an even greater deterioration in the adequacy of premiums as they have increased significantly since icare was created.

icare, in public articles believes the 1.4% premium rate is adequate but the approach to the adequacy of premiums for the NI scheme for close to 30 years to 2017 suggests icare is living in a fool's paradise. The decline in the NI's funding ratio is partly due to icare collecting premiums which are significantly too low as the following analysis demonstrates. The other two measures above also demonstrate that current premiums are significantly inadequate.

If the NI's claims liabilities are significantly understated, as I believe they are, the extent of the inadequacy of premiums will be more substantial than shown in the above chart.

<u>The analysis set out above conclusively demonstrates that the NI funding ratio will continue to substantially worsen over the foreseeable future unless employer premiums increase significantly or the major deterioration in claims experience and expenses are dramatically reversed. The results set out above of the adequacy of premium should be a great concern to employers of NSW.</u>

6.4 The size of the financial disaster for the NI

There has been a focus on the reduction in the NI surplus from about $4b at June 2015 (before icare was created) to a small deficit at June 2020 (using the risk margin of 15.1% that has been adopted since 2015 by icare). The following detail illustrates the possible extent of the cost of icare's disastrous management of the NI.

As I note earlier in this section the cumulative additional expenses above normal inflation is estimated to be about $0.8b at the end of June 2020 and $1.0b at end of June 2021. It will take more time and money to fix icare so the $1b may end up being $1.25b or even more.

The deterioration in claim payments since 2014/15 above normal inflation of 2.5%pa is about $0.9b based on icare's annual reports to 2018/19 and SIRA's data for 2019/20. If medical payments had 25% leakage since 2015 then the wastage above industry average leakage of 7%, produces a figure of about $0.4b in payments that should not have been made. This amount can be added to the above $0.9m amount giving a figure of $1.3b.

The increase in claims liabilities needs more careful consideration. There were several adjustments to the valuation due to benefit changes and increases in s39 liabilities up to the 2016/17 year which makes it difficult to assess the impact; I have only considered the increase in liabilities since June 2017. I have also excluded changes in economic assumptions, claims handling expenses and risk margin loading changes. Excluding a reduction in liabilities of about $500m (undiscounted) which appears to be an adjustment for an oversight in past valuations the increase in liabilities above normal inflation of 2.5%pa from June 2017 to December 2019 is about $2.4b (discounted).

The total of the above matters is $4.7b (i.e. 1.0+1.3+2.4 – excluding additional expenses after June 2021).

While icare states it has been charging employers an average premium of 1.4% of wages it has only been collecting around 1.2% based on the Scheme Actuary's December 2019 insurance liability valuation report (see appendix D of their report). The difference between the target 1.4% and actual collection exceeds $1.5b, that is, icare under collected premiums $1.5b below its target.

Adding the under collection of premiums to the above total gives $6.2b.

Adding my estimated level of under reserving of between $3b and $6b increases the figure to between $7.7b and $10.7b excluding the under collection of premiums or between $9.2b and $12.2b including the under collection of premiums.

It can be inferred that icare's mismanagement of the NI has cost at least $6b to the end of December 2019 which cannot be recovered. Including my estimate of under reserving icare's mismanagement may end up costing up to between $9b and $12b. While these numbers are approximate, even if they overestimate the financial size of icare's mismanagement by up to $2b (which I view as unlikely), they are substantial numbers. Even excluding the under collection of premiums they still illustrate the major financial costs of icare's mismanagement.

6.5 icare's core business and customer

I recall talking to a boss of mine about 25 years ago about the insurance business. He explained that claims management is an insurer's core business and so it is for icare. If there were no claims the insurer would not exists. It is that simple.

If I buy a car off a motor dealer, I am their customer. If an individual or a business buys an insurance policy from an insurer, they consider themselves to be the insurer's customer. Under the contract of insurance with their customer for third party claims (i.e. where a party makes a claim against another party the latter being the insurer's customer), the insurer manages all claims on behalf of the customer made against the customer.

When an employer buys a worker's compensation policy from icare/NI then icare/NI acts on behalf of the employer in managing a claim against the employer – managing claims on behalf of an employer is icare/NI's core business and the only reason icare/NI exists. That is, the employer is icare/NI's customer. It is quite simple to understand. Why does icare not understand who their customer is. icare state in their public information that they consider the injured worker is their customer.

As noted in the Dore report and various submissions to the Dore review, icare have a strategy of excluding the employer from the management of the claim as much as possible. The employer is key in assisting the injured worker in their return to work as quickly as possible, yet icare want to exclude them. RTW rates are much better where an employer is actively engaged in assisting the RTW of a worker as much as possible. There is lots of documentation on this matter if one cares to review it and most legislation in workers compensation schemes set out employer responsibilities to ensure employers are engaged as much as possible in assisting workers return to work as soon as possible (NSW is no exception).

The Dore report and especially the supporting EY claims management report, makes it clear that the objective of icare's new claims operational model was for 80% of claims to have almost no interaction with icare/EML claims staff. That is, icare's claims strategy has essentially an objective of not to manage about 80% of claims. But claims management is icare/NI's core business. icare are telling employers, their customers, we are not going to manage your claims despite having a contractual obligation to do so for the approximately 300,000 employers icare/NI insure.

To illustrate icare's approach to involving the employer one needs only to review the recent report from EY titled "Nominal Insurer 2020 Quarter 1 claims file review State Insurance Regulatory Authority" of July 2020 which was commissioned by SIRA. This report notes in section 7.3 that icare's engagement with employers was the worse for specialist and psyche claims (only 11% and 10%). It was also worse for claims with a longer period off work (e.g. 26 weeks). These are the costliest and more difficult claims yet icare engagement with employers seems to be almost non-existent which probably partly explains why the RTW for these groups are so poor.

The above paragraphs demonstrate icare's and its Board's lack of understanding of icare's core business.

6.6 Medical management and rehabilitation

Icare has poorly managed the medical aspects of injured workers. The evidence for this view is strong as briefly described below.

Before providing this evidence, some background from 2009 is useful to note. I and my colleagues at EY in 2009 carried out a detailed investigation for WorkCover of the causes of a significant increase in medical expenses for the NI when I was the secondary principal actuary for WorkCover from 2007 to early 2012. The results of this investigation demonstrated:

- Major over billing by medical professionals
- Significant over servicing by medical professionals.

WorkCover acted on a few individual specialists and one allied health organisation regarding over billing and over servicing. It was our view at the time these were just the tip of the iceberg. Despite the evidence presented to Workcover they stopped any further investigation and action.

In section 5 above, I looked closely at medical expenses and noted that medical payments for the NI increased by 61% from about $427m in 2014/15 to about $687m in calendar year 2019 while undiscounted medical claims liabilities increased by 56% from $3.25b at December 2016 to $5.06b at December 2019. In the Scheme Actuary's NI December 2019 insurance liability valuation they noted medical claim payments had increased significantly above normal inflation since about 2008 and since 2014 it has been about 10%pa (also see pages 17 and 18 of the EY report titled "Key risks for the Nominal Insurer Valuation 31 December 2019" discussed in the previous section of this submission).

The Dore report from page 47 examines medical costs of the NI and notes (my underlying for emphasis):

> "The quarterly average medical payment per claim has continued to rise since 2011, however the NI's average costs have increased in a disproportionate measure to the rest of the scheme."
>
> "The level of medical costs inflation experienced since the creation of icare is inconsistent with national trends and trends for other participants in the NSW scheme."
>
> "The workers compensation scheme is undergoing faster medical spend growth, particularly in recent years, than either private health insurers in NSW, or Medicare."
>
> "The increase in medical costs and spend for the NI is inherently tied to medical utilisation. The significant increase in claims utilisation has resulted in the increase of medical costs."

This increase in medical expenditure is not reflected in improved RTW rates rather the reverse has emerged with a major deterioration in RTW rates.

My interpretation of the Dore report discussion on medical costs shows that icare lost control of medical costs on claims which resulted in significant over servicing and over billing by medical and allied health professionals. The Dore report sets out examples of both over servicing and over billing.

In 2020 SIRA commissioned a study of medical costs and the results are documented in a presentation by Synapse dated June 2020. That study was similar in nature to the EY one of 2009 into NI medical costs but was a more robust, detailed, and sophisticated study by a specialist organisation covering all workers compensation insurers in NSW not just the NI. It concluded there was evidence of major over billing by medical professionals. The Sydney Morning Herald article on 17 August stated (my underlying for emphasis):

> "The Sydney Morning Herald and The Age can reveal icare's poor systems are failing to pick up incorrect payments or errors which adds as much as 25 per cent a year to icare's medical bill for sick and injured workers. In 2019 icare spent $845 million on medical expenses."
>
> "A leaked report by Synapse Medical Services, commissioned by the State Insurance Regulation Authority (SIRA) in June 2020, found icare was failing to pick up blatant gouging and incorrect billing by medical practitioners as part of the workers compensation scheme."
>
> "The report highlighted a medical practitioner charging for a caesarean anaesthetic for a man on workers compensation, which icare had then paid out. Other instances include doctors claiming more than $4000 for shoulder surgeries for patients who had knee injuries."
>
> "SIRA chief executive Carmel Donnelly said the findings indicated inadequate controls on one in four medical payments, compared with the global average of just 7 per cent."

The AMA president was quoted in the media as follows:

> "Australian Medical Association NSW President Danielle McMullen said that while doctors should take care to bill correctly, insurers should also have appropriate processes in place to ensure the correct item numbers were being applied.
>
> "This would be a simple governance process for a competently run insurer," Dr McMullen said

I agree with this statement.

Using the 25% over payment figure produces a figure of about $170m in 2019 of over payments of medical and allied health costs for the NI.

But WorkCover knew in 2009, 11 years earlier that there was significant over billing and over servicing by medical professionals but did almost nothing about it.

The problem identified in 2009 by EY and in 2020 by Synapse of over billing and over servicing is not unique to icare as it is an international issue in the health industry when insurers have poor systems and processes to identify over billing and over servicing.

There are two underlying causes for the huge amount of medical costs leakage by icare:

- Not having a systematic approach to stop over billing. Medicare and health insurers have historically employed a systematic approach to this problem which uses the data collected to identify over billing according to set rules. In 2009 I and my colleagues discussed these systematic approaches with WorkCover, but they were not interested. That is, at EY pointed out in the claim's reviews of the NI for SIRA, there is a lack of scrutiny of invoices from medical and allied health professionals
- Inadequate scrutiny of medical services to stop over servicing by medical professionals.

The Dore report and the supporting EY report plus the first claim review conducted by EY for SIRA titled "Nominal Insurer 2020 Quarter 1 claims file review" dated July 2020 demonstrates poor management of all medical aspects of claims and provides evidence for the two underlying causes of medical claims leakage noted above.

Part of the claims leakage by icare is a result of their claims operational model. The EY report "Compliance and Performance Review of the Nominal Insurer Part 1: Claims management" notes:

- On page 8 "Overall, the claims file review indicates that there is potential for substantial claims leakage within the NI scheme. That is, arguably unnecessary payments being made that are not resulting in better outcomes for injured workers."
- Page 16 – "light touch processing – Treatment approvals are either processed automatically or escalated to staff members on level of risk. For "low risk" treatments, an automatic approval is generated and sent to the service provider"
- Page 16 – invoice payments – Invoices are "read" into the system using optical character recognition; business rules then decide if the invoice is to be paid or not."
- In relation to Injury Management Plans (IMPs) on page 74 "Despite their existence, IMPs appeared to be extremely generic and often not suited to the unique circumstances of the claim"
- In relation to the medical treatment plans on page 75 "In approximately 40% of claims reviewed, the medical treatment plan was either non-existent or had not been reviewed on an ongoing basis as the circumstances of the claims evolved.

  > "in cases where the NTD was coordinating treatment in the absence of a treatment plan, there was no apparent scrutiny as to the appropriateness of the treatment being carried out."
  >
  > "Frequently allied health services being funded with no AHRR or in excess of the treatment requested through the AHRR"
  >
  > "Expenditure on prescription drugs, diagnostic tests, hospital fees, surgical costs, physiotherapy and travelling expenses in many cases did not appear to undergo proper scrutiny. In many cases there was evidence on file that much of this expenditure was either not warranted, excessive, or at the least, enquiries should have been made about the invoices submitted"

The above quotes are just some examples of poor medical management by icare of injured workers and poor scrutiny of invoices and proposed treatment.

The first claim review conducted by EY since the Dore report has similar observations to the above EY report. For example:

- On page 2 – "Consistent with the findings from the initial review, it was identified in this review that injury management plans (IMPs) were often generic or basic, and in many instances, they were not appropriately updated to reflect the injured worker's changing circumstances: Of the 85 claims reviewed, 72 had an injury management plan prepared. The IMP was considered to be appropriate to

the needs of the injured worker in 37 of these claims (52%). Furthermore, the reviewers considered that the plan was not adhered to or reviewed on an ongoing basis in 47% of claims reviewed"

- On page 26 – "In the 22 claims (25% of the sample) that the reviewers considered did not have sufficient scrutiny of medical costs, there is a high correlation with the view that they did not have a sufficient medical treatment plan documented in the IMP (15 of the 22 claims). This 25% cohort involved a range of possible over-servicing issues including diagnostic services, pharmaceuticals and allied health services."

It is clear from the Dore report and EY reports that there is inadequate scrutiny of medical treatment and invoices by icare. In my experience in personal injury claims where there is inadequate scrutiny it leads to exploitation by professionals servicing injured workers and oversights by these professionals are not picked up.

Since 2015 there has been a major increase in rehabilitation payments in the NI scheme. Despite this RTW rates have deteriorated significantly. There appears to have been no favourable benefit on RTW rates from the increased rehabilitation spend and if anything, there appears to be an inverse relationship between higher rehabilitation spend and RTW rates (i.e. reduced RTW rates). Other personal injury compensation schemes have seen similar trends. One recent example is the South Australian workers compensation scheme which saw deteriorating RTW rates with higher rehabilitation spend and an improving RTW rates from a lower rehabilitation spend.

The evidence is that icare has poorly managed rehabilitation. For example, in relation to rehabilitation the EY report "Compliance and Performance Review of the Nominal Insurer Part 1: Claims management" notes on page 73:

- "In the cases where the rehabilitation provider was not being effective, there was a lack of pro-activity on the part of EML to rectify the situation. It appeared in many cases that once a rehabilitation provider was appointed, then EML also ceded the case management to the provider, leading to a lack of oversight of costs"
- "The reviewers considered that EML was not active within the rehabilitation process, It was their view that in many cases, injured workers, employers, NTDs and the rehabilitation providers were largely left to attend to matters as they saw fit"

Despite the strong evidence of icare's poor medical management of claims icare has continually stated that it is 'outside their control'. This statement lacks any credibility and is no secret as it is included in many articles on their website, was their response to the Dore report, is noted by in the Challis & Company of 29 May 2020 on its icare Board effectiveness review and in public presentations by icare executives. What is extraordinary about icare's view is to my knowledge they have not produced a single piece of evidence that demonstrates it was outside their control. The Dore report in section 8.1.1 rejected icare's assertion that it was outside their control. By their denial icare have demonstrated that their Board and management are not accepting accountability for their poor performance.

The evidence from the Dore report and the various EY reports and submission to the Dore review as summarised in this submission demonstrate that not only are injured workers not receiving early proper diagnosis and treatment, but they are not receiving the appropriate treatment. In addition, injured workers are not receiving effective rehabilitation despite the huge increase in rehabilitation payments. This has led to a major deterioration in RTW rates.

In my experience in personal injury schemes a strong correlation exists between increases in medical payments or higher rehabilitation and poorer RTW rates. The NI is no exception as with the substantial increases in medical and rehabilitation costs in the NI scheme the number of injured workers still off work at longer duration (i.e. 13 weeks, 26 weeks and longer) has about doubled.

But icare went even further. In icare's submission to SIRA's consultation on regulatory requirements for health care in 2019, they recommended that injured workers should co-fund medical costs out of their own pocket. This is just an extraordinary view considering all the evidence about icare's poor management of the medical aspects of injured workers claims. icare are saying that they want injured workers to pay for icare's

mismanagement. Refer to the SIRA consultation process on Regulatory requirements for health care costs in workers compensation 2019 (https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements).

6.7 Potential fraud, over servicing and over billing

Within the personal injury industry, it is acknowledged that a poorly managed claims process inevitably leads to financial abuse of the system by service providers and claimants. When it is commonly known expenditure is not properly scrutinised, it invites parties to exploit this weakness. In these situations, insurers become a 'soft target'. This can manifest itself in various ways. It can come in the form of illegitimate claims, excessive periods of incapacity and over-servicing and over billing by providers. An effective claims operation is expected to combat this area of wastage. The evidence from the EY reports documenting the review of icare's claims management and the Synapse report on medical payments highlights that icare's claims management is ineffective and that substantial amounts of payments are being made that should not have been made.

The claims operational model and the very poor claims management by icare with low level of scrutiny, or in some cases no scrutiny, opens itself up to potential fraudulent activity plus over servicing and over billing by medical and allied health professionals and other parties. Based on my experience with personal injury schemes, given the substantial increases in medical claims payments, I expect a significant level of fraud, in addition to over servicing and over billing, by medical and allied health professionals to be occurring in the NI scheme due to the poor claims management and lack of scrutiny by icare. icare is a clear soft target.

A good example of significant levels of suspected fraud and substantial amounts of claim payments that should not have been made by insurers is the NSW CTP scheme in the five years up to 2018. During that period, I was involved in assisting SIRA with the NSW Police and insurers to set up a taskforce to investigate potential fraud by injured workers and service providers. There have been a significant number of publicised arrests by the police taskforce. Insurers became a soft target for unethical organisations and individuals due in my view to poor claims management.

A similar approach is warranted for workers compensation in NSW. In CTP it required the cooperation of insurers, the regulator, and the NSW police. It was viewed by all as a great success and had a major beneficial impact on the NSW CTP scheme.

SIRA and all insurers (not just the NI or icare) together with NSW Police should set up a taskforce to combat over servicing, over billing and fraudulent activity by parties within the NSW workers compensation system. As the CTP taskforce showed it can only really be effective if it is an industry wide taskforce. While SIRA is best placed to facilitate and organise the taskforce it would be up to individual insurers to bring matters forward for investigation and prosecution. It would be beneficial to work with the medical colleges to help contain over servicing, over billing and potentially fraudulent activity (but the clear responsibility for containing such activity lies with insurers).

I want to make it clear that in many cases the service provider is not necessarily to blame for over servicing and over billing. Rather it is the insurer's lack of scrutiny that is the cause.

6.8 NI premium debtors

There has been a major deterioration in the NI premium debtors (i.e. premium owed by employers) since icare took over the calculation of employer premiums, issuing of premium notices and collection of premiums around April/May 2017 (please also see my comments in section 4 on other issues with icare taking over these functions). The evidence from icare and WorkCover annual reports is summarised below.

Table 5- NI premium debtors - year ended 30 June from annual reports ($m)

		2015	2016	2017	2018	2019
Bad debts written off		29.5	20.3	25.1	22.1	44.3
Premium past due but not considered impaired		38.8	50.1	90.1	225.7	263.4
	of which is <3 months overdue	22.2	29.2	46.7	69.3	98.1
	of which is 3-6 months overdue	7.5	13.2	28.1	62.1	52.4
	of which is > 6 months overdue	9.0	7.8	15.3	94.3	112.9
Impaired premiums		28.6	37.2	35.1	87.2	56.7
	of which is <3 months overdue	3.9	4.4	2.6	5.1	6.4
	of which is 3-6 months overdue	4.0	7.8	5.2	7.2	3.7
	of which is > 6 months overdue	20.7	25.1	27.3	74.9	46.6
	increase in impaired premiums	-6.3	8.6	-2.1	52.1	-30.5
Premiums receivable		306.0	359.7	424.5	653.5	733.0

The notable features are shaded in the above table and show:

- Premiums overdue by the due date but not considered impaired have increased by 5 and 6 times in 2018 and 2019 compared to the average of 2015 and 2016
- Premiums past due date for over 6 months but not considered impaired have increased by over 10 times the levels in 2015 and 2016
- Impaired premiums have increased by 3 and 2 times in 2018 and 2019 compared to the average of 2015 and 2016
- Premiums receivable in 2019 are more than double the levels in 2015 and 2016.

Collecting premiums on time is a particularly important function of any insurer. It seems icare are not following up employers to pay premiums in a timely manner. Since icare took over collection of premiums from agents they have performed poorly in collecting premiums and it can be inferred icare have poor controls in place.

6.9 icare's compliance with legislation

icare's non-compliance with legislation is just breathtaking. The number of pieces of legislation icare have beached is extensive and each piece is being breached not once, not a few times but seemingly in some cases thousands and even tens of thousands of times. I provide a list below of examples from various reports.

- Dore report examples:
    - Page 12 - "3.3.6 ….an extract from an icare Board report, titled EML New Co Operational Performance CITC February 2019, provided in the course of the Review. Page 9 of the report expressly highlights that icare's compliance with section 267(3) of the 1998 Act, namely icare's compliance with determining liability within the 12 weeks allowed for provisional liability status, is adhered to in only 54 per cent of cases…."

      The 54% comes from the chart on page 12 of the Dore report which shows that icare's compliance was only 54% for the whole of calendar year 2018.

    - Page 65 - "7.2.9 PwC also noted the need to review process compliance, but at a later stage, which is unfortunate if this was interpreted to overlook regulatory compliance."

    - Page 67 - "7.3.3 As an example of 'teething problems', the implementation of the NISP system on 4 February 2019, resulted in 4,137 notifications received by the NI between 4 February and 25 March 2019 in which the data indicated a failure to comply with determination timeframes. Consequently, in May 2019 SIRA conducted an audit of 50 randomly selected files from the 4,137 claims. The audit checked for compliance with the

Workplace Injury and Workers Compensation Act 1998 (sections 43, 267, 268) and section 84 of the Workers Compensation Act 1987.

7.3.4 The audit on the 50 files found:
a) section 267 (weekly payments) - 4 per cent compliance
b) section 268 (reasonable excuse) - 5 per cent compliance
c) section 84 (weekly payments) - 54 per cent compliance.

This issue is illustrated in paragraph 3.3.6 above. It also indicates that in the early months of the new claims model and automated triage on the NISP, compliance was a lower order priority."

- Premiums from page 59 to 62 –
  "6.2.3 In the course of completing their review EY found the following:

  a) In 23 per cent of policies, EY found increases greater than 30 per cent, and 10 per cent with decreases of more than 30 per cent in at least one of the 2017/18 and 2018/19 policy renewal years
  b) Around 10 per cent of policies in 2018/19 appear to have been charged differently from the premium formula for the following reasons:
    1. Incorrect claims costs (C values)
    2. Errors in the application of the premium formula where a key variable (claims performance adjustment) was incorrectly determined
    3. The underwriter had used judgement to provide the policy holders with a discount
    4. Incorrect capping or flooring of premiums

  6.2.4 Issues with the determination of claims costs for inclusion in the formula were found by EY to be due to manual rather than system correction functionality and lack of governance.
  a) Concerns about discounts being applied when premium holders complained was due to elements of the premium formula creating large movements in premium. Although the application of discretion on requests might have been reasonable, it was not provided for in the 2018/19 premium filing to SIRA and creates inequities for policy holders who do not query their invoices.

  The timeliness of the renewal notices and premium calculations for 2018/19 was in breach of the MPPGs in 70 per cent or more of cases reviewed by EY."

The underlined words highlighted above imply icare's non-compliance was probably no accident.

- SIRA actions and reports:
  - SIRA fined icare twice for non-compliance with legislation (refer to SIRA's workers compensation regulation bulletins).
  - Reference should also be made to SIRA and icare's documents on icare's non-compliance with PIAWE (i.e. incorrect payments to injured workers in respect of weekly payments)
- EY report titled "Nominal Insurer 2020 Quarter 1 claims file review State Insurance Regulatory Authority" of July 2020 which was commissioned by SIRA. Some examples:
  - section 9.2 contains details such as:
    - 35% of injured workers were not paid the correct weekly payments (i.e. loss of wages)
    - 70% of claims which had incorrect or interim PIAWE amounts paid have not been corrected
    - in 46% of claims insufficient evidence was available of the worker's incapacity to support the level of weekly benefits being paid. This finding is particularly concerning given the rapid and substantial increase in weekly claim payments in the

last two years. It indicates a significant amount of weekly payments are possibly being paid without adequate justification.

- section 7.2 - in 40% of claims the injury management plan did not fulfill the requirements of Section 45 of the Act

- Information Commissioner report on icare compliance which stated in its report of October 2020 titled "icare – GIPA – Compliance Report Phase 1" (https://www.ipc.nsw.gov.au/sites/default/files/2020-10/Final_icare_Phase_1_Compliance_Report_October_2020.pdf)

> "The results of this desktop audit together with the icare's self-assessment have demonstrated that icare has not been compliant with the contract register requirements of the GIPA Act. This noncompliance has been ongoing over a number of years."

It is arguable if icare's new claims operational model even complies with the objectives of the NSW workers compensation legislation as set out in section 3 of the Workplace Injury Management and Workers Compensation Act 1998, which states (my underlining for emphasis):

> "3 System objectives
>
> The purpose of this Act is to establish a workplace injury management and workers compensation system with the following objectives—
>
> (a) to assist in securing the health, safety and welfare of workers and in particular preventing work-related injury,
>
> (b) to provide—
> • prompt treatment of injuries, and
> • effective and proactive management of injuries, and
> • necessary medical and vocational rehabilitation following injuries,
>
> in order to assist injured workers and to promote their return to work as soon as possible,
>
> (c) to provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses,
>
> (d) to be fair, affordable, and financially viable,
>
> (e) to ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
>
> (f) to deliver the above objectives efficiently and effectively"

It is obvious from the Dore report and the EY supporting report that icare's new claims operational model is not ensuring prompt treatment of injuries, does not proactively manage claims and not ensuring injured workers receive the necessary medical and vocational rehabilitation. The strongest evidence the model is probably not complying with the Act objectives is the major deterioration in RTW rates.

I note the Dore report also questions if icare's new claims operational model complies with the objectives of the legislation.

The cause of the non-compliance is due to a much more fundamental and deeper problem. In my view the root cause of the non-compliance is due to:

- icare's senior management and Board do not have the requisite experience in workers compensation especially claims management. In addition, the competency of management and board members are highly questionable

- This inexperience has manifested itself by icare not having in place appropriate systems (e.g. IT) and processes to ensure high levels of compliance including appropriately training staff on compliance. In my view icare has probably dismantled many of the controls in the systems and processes that were previously in place under WorkCover that had ensured compliance. The evidence for my last comment comes indirectly as the non-compliance seems to have only come about since icare was formed (PIAWE is one exception) and based on information from my industry contacts.

An example of the poor approach and attitude of icare towards compliance with legislation is provided in the report by Challis & Company of 29 May 2020 on its icare Board effectiveness review as follows:

- The report states on page 16:
  "Some NEDs see compliance as inviolable and believe the Organisation needs to seek to comply with all legislative and regulatory requirements. Other NEDs and most Executives believe icare needs to be more pragmatic as it will be unable to comply with all requirements. We recommend that the Board and Executive agree on a classification and prioritisation of compliance requirements."

- On page 17 one non-executive director states:

  "We have to run the business regardless of the Regulator and must do our best to comply but-if there are areas where we cannot comply-we need to take a principled view that. if we comply, we would need to charge employers more (and then spell out the reasons)."

In addition to the above statements in relation to government experience the report on page 21 states:

> “The majority of the Board doesn't innately understand the DNA of government. It is beyond government relations to the actual running of government."
>
> "[We need] Government/stakeholder management [expertise]."

The icare Board and management do not seem to comprehend that compliance with legislation is mandatory. It is not icare’s choice whether it complies with legislation or not. icare needs to comply with all legislation. icare needs to have in place the necessary systems and processes to ensure they have a high degree of compliance with legislation.

6.10 Risk management

The contents of the Dore report and the EY reports on claims management reviews of the NI, the Synapse report on medical expenses and other matters set out in this submission demonstrate a failure of icare’s risk management.

In the Challis & Company of 29 May 2020 on its icare Board effectiveness review some relevant comments made on risk management were concerning.

From the non-executive directors:

> "There have been so many bushfires and we didn't get warned. Which lights were flashing deeply red?"
>
> "The Executive was slow to resource those [risk and compliance] functions and have not always carried through on the right cultural messages to state the importance of managing risk and compliance."
>
> "Our risk reporting is improving: however, we are not as mature in this area as we need to be. A key focus needs to be embedding first-line risk into business units and getting ownership and accountability across the business."

"We still need a first line of defence. It is not sufficient for the Executive to say that having the right purpose and intention will flow through to doing the right thing by the customer."

"The risk framework, although built, has not yet been operationalised. The Board and [Executive] are aware of these gaps. This needs to continue to be a key focus."

From executives:

"[We need] Clearer, simpler focus on risk."

"I don't believe that we have had good enough metrics in place to assess risk. However, these have been redesigned and lift us to another level of maturity."

The above comments together with the failure of much of the insurance operations at icare demonstrate a failure of risk management at icare. The lack of compliance demonstrates a risk function that is missing in action.

6.11 Other concerning features of icare's management of the NI's business

There are many other concerns about icare's management of its business. I only list them below as many have been addressed in the Dore report and in other documents and evidence elsewhere to the Law & Justice Committee:

- IT claims system had major delays of at least two years and was way over budget and according to my contacts within the industry was implemented despite a large list of major flaws. Apparently, it did not have many of the essential controls of an insurance claims system in place nor basic functionality when implemented in early 2019. Systems that do not have essential controls in place are open to fraudulent activity and poor operational results
- The one agent model with EML and especially the remuneration of EML which effectively was a cost-plus model. EML's objective is to make a profit (nothing wrong with that) and so its objectives were not aligned with icare's. icare has effectively admitted its one agent model has been a failure as it allowed Allianz, GIO and QBE to be Authorised Providers managing NI claims.
- Management of workers compensation claims is complex, being highly technical, requiring a good understanding of legislation, medical terminology and issues and many other aspects. The approach of icare was particularly wilful as they had a clear and documented strategy to employ claims managers with customer service skills instead of people with strong technical skills and previous personal injury claims management. It is obvious from all the evidence that they poorly trained the staff they recruited. icare dumbed down claim's management
- Significant under resourcing of EML by icare (note this was not due to EML's actions or strategy)
- Duplication within icare of EML claims activities. Why pay EML a large amount of money only to replicate the same functions and decision making within icare? Yes, EML needs to eb scrutinised but EML were paid to manage claims
- Reduction in investigation of claims as evidenced by a major reduction in these expenses, the Dore report and supporting EY reports and also in the EY report "Nominal Insurer 2020 Quarter 1 claims file review State Insurance Regulatory Authority" of July 2020 which was commissioned by SIRA noted that poor investigation of aspects of claims was one of many problems with claims management. It is essential to investigate the circumstances of an injury at the commencement of a claim (i.e. including cause of accident, the injuries and who is at fault) for a few reasons. Firstly, to ensure the injury to the worker happened at a work site and not at some other location, that in multiple injury cases that all injuries happened at the time of the accident at the work site. Lastly, so that if a WID or common law action is pursued by an injured worker that there is evidence of fault by the employer. icare cannot dispute any aspect of the circumstances of an injury if they did not undertake any investigations immediately after the accident occurred. The legitimate involvement of the employer in the investigation of the claim is important.
- Reduction in legal costs of claims as evidenced by a major reduction in these expenses
- icare plans to apply their failed new claims operational model to TMF workers compensation claims

- Payment of risk management fees or commission to large insurance brokers (see section 4 of this submission)

7. Reasons for icare's failure

7.1 International research of causes of insurer failures

Warren Buffet's company Berkshire Hathaway owns some of the largest insurers in the world. A famous quote of his, in relation to insurance, is 'to under reserve is to under-price'.

Research undertaken internationally notes the leading reasons general insurers (i.e. property and casualty insurers) fail is due to understating their claims liabilities and under-pricing. Australia is no exception (I am not suggesting icare or any of its schemes of funds it manages will fail as they are government entities).

A research paper by Darrell Leadbetter & Suela Dibra of June 2008 titled "Why Insurers Fail: The Dynamics of Property and Casualty Insurance Insolvency in Canada" The Geneva Papers on Risk and Insurance - Issues and Practice the https://link.springer.com/article/10.1057/gpp.2008.14 states in its Abstract on page 1 (my underlying for emphasis)

> "We analyse the involuntary exit of 35 property and casualty insurance companies from the Canadian insurance market over the 1960–2005 period, and consistent with other jurisdictions, find evidence that inadequate pricing and deficient loss reserves are the leading cause of insurer insolvency. Overall, we find that the operating environment generally provides the catalyst for insolvency, either through turbulent financial markets or reduced profitability in the industry, but most causes of involuntary exit can however be linked back to three sources within an institution: the quality and experience of governance/management, internal operational processes and risk appetite."

As I demonstrate in this submission there is strong evidence that icare is under reserving its claims liabilities and under-pricing the premiums employers pay. There is strong evidence that icare has poor governance and management and poor operational processes and systems. If icare/NI had been subject to supervision by APRA then APRA would have had major concerns about icare's performance in 2017 and forced icare to make major changes to its management, board, and operations in 2018.

Another research paper prepared by the American Academy of Actuaries is a useful reference titled "Property/Casualty Insurance Company Insolvencies September 2010 Developed by the Financial Soundness/Risk Management Committee of the American Academy of Actuaries" https://www.actuary.org/sites/default/files/pdf/casualty/PC_Insurance_Company_Insolvencies_9_23_10.pdf.

Just because an insurer has independent actuaries assess their claims liabilities and an external auditor signs off the accounts to be fair and reasonable does not mean the insurer will survive. The collapse of HIH in 2001, then Australia's second largest general insurer, is a prime example. It was found to be under reserved by billions of dollars. It had an independent actuary assess its liabilities and had an eternal auditor sign off its accounts as fair and reasonable, yet it became Australia's largest corporate collapse with a $5b deficit.

7.2 Summary of icare's poor management and performance

Every single aspect of icare's operations in respect of the Nominal Insurer (NI) (except investment management which is managed by TCorp) has been and continues to be a debacle including:

5. Poor governance has been allowed to occur by the icare Board, its CEO and CRO
6. Poor systems and processes
7. Almost non-existent risk management
8. A flawed premium system
9. Poor record of calculation of premiums, issuing of premium notices and collection of premiums
10. Development and implementation of IT systems
11. Design of icare's new claims operational model
12. Single claims agent model and poor remuneration of the single agent
13. All aspects of claims management

14. Substantial amounts of claims leakage (i.e. claims payments that should or need not have been paid) including substantial amount of over servicing and over billing by medical and allied health professionals
15. Compliance with legislation is poor
16. Poor behaviour by its executives and board
17. Poor attitude towards SIRA the regulator
18. It appears that icare has dismantled many of the normal controls an insurer has in place (evidenced by the apparent level of over servicing and over billing in medical payments, substantial increase in premium debtors, systemic non-compliance with legislative requirements, the results of the EY claims reviews and many other aspects noted in this submission)
19. Potentially significant amounts of fraudulent activity by various parties
20. Poor results from every single key indicators of its performance including underwriting results, claims payments, return to work rates (RTW rates), high expenses, high premium debtors, operational cash flow, under-pricing of premiums, under collecting of premiums, etc.

Accountability starts at the top of the tree. icare's Minister, the Board and senior executives need to accept accountability for the icare disaster - if there was just one person in this group who was a well-respected workers compensation claims manager they would not have allowed icare management to do what icare has done.

7.3 Reasons for icare's failure

There is one cause for icare's failure, and my submission sets out strong evidence for my view. There are also key reasons why icare has been able to continue failing for so long.

The key reason for icare's failure is obvious:

- Incompetent icare management and Board. No one on icare's Board or in senior management positions have any personal injury experience especially workers compensation claims management.

The reasons why icare has been able to continue to fail for so long are:

- The behaviour by icare management and its Board. icare management have pulled the wool over the eyes of their Board and the Minister. See also the report by Challis & Company of 29 May 2020 on its icare Board effectiveness. icare management appear to have misled their Board and the Minister and have been in denial about the failure of their strategy and actions. icare seem to have undertaken a Star Wars Jedi trick of waving hands over people and saying 'there is nothing to see here'
- The failure of action from the following government bodies has allowed icare's failure to continue for far too long before it was addressed and even today these bodies seem to have taken almost no action:
    - The Auditor General . Why has the Auditor General not qualified icare's NI accounts and raised the alarm on many other aspects of icare's performance?
    - ICAC. The evidence before the Committee suggests ICAC took no action despite referrals
    - Until recently inaction by the NSW Information Commissioner
    - NSW Treasury did nothing about the situation at icare despite SIRA raising concerns. Even the audit of the appointment of two of the Treasurer's staff was a half-hearted investigation and many key questions remain unanswered
    - Inaction by the NSW Ombudsman
- While SIRA has been proactive taking icare to task about its poor performance since the end of 2018, it was my experience before I retired in March 2018 that SIRA took no action about icare and did not seem to believe what I was telling them. Since then SIRA has been hampered by two key problems:

    - Under the State Insurance and Care Governance Act 2015 SIRA has almost no real regulatory power over icare. This was raised in the Dore report. It is pointless having a regulator with no

real power. SIRA is a toothless tiger by virtue of the legislation (refer to section 4 of the report for further details)

- SIRA has been placed in an impossible political situation. icare reports to the Treasurer and he is a more senior minister than SIRA's Minister. The Treasurer has come out many times stating what a great job icare has been doing and is continuing to do so. He is in complete denial about the icare disaster. SIRA's Minster has not made one public comment about icare despite all SIRA's actions and especially the damming Dore report. The continual denial and the public support of icare by the Treasurer has placed SIRA in an impossible situation.

  This points to a failure of one government entity to regulate another.

It is not just the poor performance of icare that needs to be investigated but the failure of the above government agencies who have a key role to ensure icare performed to community expectations.

8. High-level outline of actions to fix icare

8.1 Introduction

To date the Law & Justice Committee has received little real suggestions on a way forward to fix icare. Urgent and decisive action is required today not tomorrow.

In January 2018 icare launched a new unproven claims management model, with a single provider, bringing key decision making in-house and under-resourcing direct claim management functions. This was compounded by the introduction of a less than fully functional new claims management system in February 2019. The consequences were poor performance in all areas of claims management that led to poor RTW rates and a major deterioration in the claims performance of the NI scheme.

The size of the disaster at icare means that it will take years to properly fix and will cost hundreds of millions of dollars to fix. It is regrettable that most of the damage to injured workers from icare's mismanagement will be permanent. However, that does not mean that icare's expenses need to increase as there is a large amount of wastage within icare that will offset the cost of fixing icare (I list some below). In some areas it is not clear what the way forward is (I list these below).

icare, its Board and responsible Minister have loss the trust of their employees, customers, service providers and the public. My estimates indicate that icare has squandered at least $6b of employer's money and possibly it may end up as much as $12b from their mismanagement of the NI. These figures exclude the other schemes that icare manage. icare is a lawless entity that seems to think that complying with legislation is optional.

In coming up with recommendations on how to fix icare the Committee needs to be cautious in accepting the advice of vested interest groups of those stakeholders and service providers that will benefit from any advice they provide. The Committee needs to ask if the group or individual stands to gain financially from their suggestions? Are their suggestions sound or do they just provide a financial benefit to them?

This section describes actions that are required to fix the icare disaster. My suggested actions are not exhaustive and require extensive planning, organisation, and time. I have divided the actions into the following groups:

- Critical and essential actions to fix icare
- Investigations or reviews required to assess the best way forward
- Expense savings within icare

The extent of the work required to fix icare is substantial. Strong project management is needed to co-ordinate and facilitate the timing of all the steps including the dependences between each of them. While it is icare's Board responsibility to fix icare a subcommittee of the new icare Board should be set up to oversee reforming icare. There is so much to fix that priorities need to be set otherwise the new icare organisation will be overwhelmed (i.e. I realise not all my suggestions below will be priorities and may need to be deferred).

First a focus on what should not happen.

8.2 What should not happen

1. The compensation benefits of injured workers should NOT be further eroded. They should not have been reduced in 2012 – the government should have focused on improving claims management and icare's management of its business. Legislative change should be a last resort not first cab off the rank as it has been for the last 30 years.

   It is very disappointing that NSW Treasury senior executives suggested in writing that legislative change may be needed to fix the financial woes of icare – it just shows how little they understands of the causes of the problems at icare. The problem is the management of icare not the legislation.

2. icare's new claims operational model should NOT be implemented for the Treasury Managed Fund (TMF). I understand icare's plans for its implementation into the TMF are well advanced.

8.3 Projects to fix icare

1. Successful reform of icare will only be achieved with trust in in its leaders. icare's management, its Board and responsible Minster must rebuild the trust of employees, employers, injured workers, and service providers. The first step is for icare and its Minister to be completely honest and admit they got it VERY WRONG. Little progress will be made in fixing icare until this step takes place. Given the existing Minister has been disingenuous about icare's success, responsibility for icare should be given to another government member.

2. The rest of icare's Board must be replaced excluding the recently appointed chair; at least two people need to be appointed with extensive and successful experience in workers compensation or personal injury - one with workers compensation/personal injury claims management and one with general insurance financial matters preferably a personal injury actuary. A Board is needed that will address the poor governance at icare – good corporate governance is the Board's responsibility. A sub-committee of the new Board (no existing members should be on this committee) should be formed to oversee fixing icare.

3. icare executives need to be replaced with people having successful experience in icare's business especially workers compensation claims management (corporate functions like HR and IT can be excluded from this requirement). icare pays enough to attract good people and they should only pay sufficient remuneration to attract good quality executives and staff.

4. In the interim period, as steps 2 and 3 will take some time (i.e. probably over 6 months), the new icare chairman (or a sub-committee of the new icare Board) should appoint an expert group to advise him and the CEO on fixing icare - this group should include experienced well respected experts in workers compensation claims management, a personal injury actuary, a personal injury lawyer, a restructuring specialist and a governance specialist.

   This step is an important step as it will take many months to recruit suitable staff and board members. It should concern the committee greatly that icare are still being allowed to make strategic decisions that will have a major impact on the future performance of the NI and other schemes/funds that it manages. These decisions are being made by senior executives and board members who have no relevant personal injury, especially workers compensation claims management, experience. How can anyone trust the same executives and Board to make the necessary changes when they are the very ones that created this mess. While icare executives may be reaching out for advice to external people outside icare with the necessary experience, this is still not good enough. The icare executives will not know who to believe and implementing improvements is most probably well beyond the capabilities of any existing executive or board member. How can icare train their staff to manage claims well if they do not have the experience. It is akin to 'they do not know what they do not know'. In my experience I have seen many good projects implemented poorly due to executives not having the requisite experience.

   A good example is the extension of the contract with EML which I cover below.

5. icare needs to abandon the 'new claims operational model'. As the Dore report stated icare needs to get back to fundamentals of good claims management.

6. It is not just abandoning the claims model, every aspect of icare's workers compensation claims management operations and strategy requires a full review. To date the two claims reviews conducted by EY for SIRA have been quite limited in scope. For example, EY have not reviewed claims reported before 2017 and 2018 and 2019 claims were reviewed but not subsequently. Nor have they recommended the improvements that need to be made to claims management.

Duplication of EML functions within icare should stop.

A reset claims management strategy is needed. Almost every aspect of claims management requires improving. From medical management, use of investigators, use of provisional liability, the medical assessment panel, controls to stop rampant over billings and over servicing and to ensure compliance with legislation, proper engagement with employers and many others (e.g. even to recognise the employer is the customer). The icare medical panel probably needs to be abandoned as the evidence available suggests it is failing.

Different claims strategies are required for different cohorts of claims:

a. Claims reported prior to 1 January 2017 (or at least prior to 1 January 2018). These claims have largely been not exposed to icare's new claims operational management model and a high proportion will be close to the 5-year cut-off of weekly compensation (i.e. s 39) and many will seek to access WID. Claims in 2017, while not under the new claims model have been impacted by the transition to the single model agent arrangement and the evidence is they have also been poorly managed
b. Claims under the new claims operational model from 1 January 2018 until the date it is abandoned. The damage to these injured workers needs to be addressed as well as mitigating the financial impact
c. The cohort of future claims reported from the date the new claims operational model ceases to apply can be managed effectively from day one if a robust claims strategy is implemented.

Consideration of a focused commutation strategy could be considered for the first two groups. The commutation strategy needs to be appropriately targeted and managed with discipline otherwise if misdirected it may make the NI financial situation worse not better.

7. As a result of icare's recruitment, many of icare and EML's staff are probably not suited to effective management of workers compensation claims and other activities – it is not the employees' fault rather icare's. Unfortunately, icare has purged the industry of many good, experienced claims staff. icare and EML need to:

    a. Assess the capabilities of all staff and decide who to keep and who to part ways with
    b. Initiate a program to recruit good quality staff with a focus on previous personal injury claims experience and good technical skills
    c. EML and other claims agents need to be allowed to recruit the appropriate number of staff to best manage claims.

8. A major training program is required of icare and EML's staff and those of the other claims agents is required on all aspects of the basics of claims management. However, parties will need to source very experienced claims managers to conduct that training and currently icare and possibly EML do not have those staff.

9. The premium function at icare needs a complete overhaul including the premium formula and the IT system that supports it. icare needs to rectify all employer premiums which did not comply with the 2015 Insurance Premiums Order and premium filings approved by SIRA since that time. While I understand many employers will not be happy with this approach alternative actions are unfair on the bulk of employers who paid the correct premiums.

10. An independent actuarial assessment of the insurance liabilities of the NI needs to be commissioned to assess the full potential financial damage to the NI that has arisen. This should be commissioned by SIRA not by icare, the Treasurer or NSW Treasury.

11. icare needs to comply with all legislation. Non-compliance is not an option for icare.

    A review needs to be undertaken to identify all aspects where compliance is poor, and a program of controls and checks designed and implemented to ensure ongoing compliance on aspects of icare's business (not just NI).

12. SIRA urgently needs greater regulatory powers over icare.

13. There needs to be a Royal Commission into icare. Nothing less. The main reason for such a review is to ensure what has happened at icare does not happen again. The cost of a Royal Commission is insignificant compared to the financial and human cost that has resulted from icare's mismanagement.

14. The rectification of incorrect PIAWE amounts paid by icare needs to be addressed as soon as possible. This project should also address the over payment of premiums that arose from over payment of PIAWE

15. Conduct an independent review of icare's risk management functions including compliance functions.

16. All key performance measures for executive and staff bonuses need to be reviewed. The NPS measurement metric should be abandoned. NPS results can be manipulated to achieve a desired result and I find it interesting that the icare NPS results seem at odds with the submissions to the Dore report and other views of icare (e.g. social media). A review of past NPS assessments needs to be undertaken to assess if they were properly conducted and if not then icare staff should be asked to pay back past bonuses received (this may not be legally possible).

17. icare contracts with claims agents (i.e. EML, GIO, etc) are among the very largest of contracts the NSW government has with external providers. Fixing the performance of icare's claims management will requires the support and goodwill of existing claims agents.

    I recognise that icare's contract with EML and GIO needs to be extended to the end of 2021 as there is no other practical option available. The contracts should not be extended for any more than a year and should have clauses that provide icare with the flexibility to change aspects of the contract notably the claims strategy, performance indicators, remuneration and the ability to go to tender and appoint more claims agents during the term of the renewal period.

    All Authorised Provider contracts should be terminated from 31 December 2020, and all claims transferred to EML/GIO. Exactly what icare was seeking to achieve from this initiative is a mystery. By all accounts they achieved nothing. It did demonstrate that icare realised their one agent model was a failure.

    While it would be highly desirable to have more than one provider in EML, or GIO for tail claims, it is not practicable in the short term (e.g. 6 months) to go to tender and appoint more claims agents.

    The continued appointment of EML and GIO in 2021 should only be an interim step pending a full tender for claims management services.

    Before going to tender the following matters are essential to be addressed:

    - Aa robust claims management strategy using lessons from other successful management of workers compensation claims plus an effective IT claims system
    - icare's strategy in managing all claims agents. The model successfully applied in South Australia by RTWSA would be a good model to examine and follow. It is essential for icare to

be a proactive manager of agent's activities but to do so icare needs to develop its internal capabilities, but these do not currently exist
- Agent remuneration needs to complement icare's strategy of managing claims agents
- Realistic performance targets
- Whether the scheme will be privatised, and the form of any privatisation may impact a claims agent tender.

18. SIRA and all insurers (not just the NI or icare) together with NSW Police should set up a taskforce to combat over servicing, over billing and fraudulent activity by parties within the NSW workers compensation system. As the CTP fraud taskforce showed it can only really be effective if it is an industry wide taskforce. While SIRA is best placed to facilitate and organise the taskforce it would be up to individual insurers to bring matters forward for investigation and prosecution. It would be beneficial to work with the medical colleges to help contain over servicing, over billing and potentially fraudulent activity (but the clear responsibility for containing such activity lies with insurers).

    Within icare there needs to be a permanent compliance/fraud team. Most insurers have similar functions within their operations. This team could comprise include a team of former or active NSW police officers. The team should be given a brief to roam anywhere they like in relation to financial activities. This would extend to assessing behaviour of medical practitioners to the tendering processes for the introduction of large IT platforms. They should report directly to icare's Board Audit and Risk committee.

19. Change icare's name as it is so tainted. Not immediately but at some point, when icare's new Board and most executives are in place and a clear new strategy is developed including the decision on privatisation is made.

8.4 Matters requiring further investigation

Matters where further investigation is required before a way forward is clear:

1. Appoint a forensic investigation firm to investigate potential corrupt and illegal activities within icare. The firm should not have any existing contracts or have had contracts with icare since 2014. The firm should report to a sub-committee of new icare Board members.
2. Conduct a full review of the icare Foundation and results. The review should be undertaken SIRA. icare, the icare Board, Treasury and the Treasurer and his office should not commission the study.
3. While I do not have a preference of either public or private underwriting of workers compensation schemes, serious consideration should be given to privatising the NSW scheme. The history of the NSW scheme over more than 30 years is that successive governments have poorly managed the NI scheme. There are good examples around Australia where both models work well. Other states (e.g. Queensland, WA (CTP scheme) and more recently SA) have managed a publicly managed personal injury schemes very well over an extended period but not NSW. In my view it comes down to how the schemes are managed and supervised (and how to keep the politics out).

    A review needs to be undertaken to decide which system, public or private is in the best interests of injured workers and employers not the interests of service providers including insurers. The review should separately consider the future business to be written and the current outstanding claims.

    The legislation is already in place for the NSW workers compensation scheme to be privatised. If NSW does go down this route it needs to be implemented in a manner to best serve the interests of injured workers and employers of NSW. The South Australian privatisation of the CTP scheme is a good model to explore if privatisation is to be progressed.

4. A full review of icare's new claims IT system is required. What to do with icare's new claims IT system is a key question as it has cost so much and seems to be a disaster. It will require reconfiguration to put normal insurance processes and compliance controls in place, to meet the needs of the new claims strategy and to best facilitate good claims management. It is also unclear whether claims managed by other agents (e.g. GIO) and those managed by EML on the agents own system should be left on existing systems or migrated to the new icare system.

   A decision to privatise the scheme will have a significant impact on the future of the new IT claims management system.

   At a minimum, the review should assess all options and provide a cost benefit analysis of each.

   The icare IT system that supports the premium system also needs to be reviewed.

5. Review the management by icare of all other funds and schemes i.e. LTCS, DDB, SICorp (including TMF) especially in relation to claims management. The review should focus on what improvements should be made (no consideration should be given to privatisation these schemes for reasons I outlined in section 4 of this submission).

8.5 Cost savings

icare is a bloated organisation. Cost savings within icare should be an important and immediate focus:

1. Cost reductions that should be easy to achieve:
   - Immediately stop paying brokers risk management fees (disguised commission)
   - Immediately stop further funding of the icare Foundation; investigate if approved funding of current icare Foundation projects can be stopped or put on hold. With the financial state of the NI and the TMF, icare cannot afford to fund the icare Foundation
   - Substantially downsize icare's marketing and public relations departments and related functions (this will stop the spin coming from icare)
   - Stop the duplication of EML functions inside icare on individual claims

   These steps will save many tens of millions of dollars per year.

6. Reorganise icare to reduce the number of executives (icare is a very top-heavy organisation) and review the remuneration of all executive roles to be no more than market levels
7. Review icare staffing levels of all functions to ensure each function is staffed with the appropriate number of suitably qualified staff
8. A review should be initiated to identify all unnecessary functions that are not within icare's core insurance business functions (some examples include award functions and icare Foundation)
9. A review of all icare, NI and other scheme contracts with external parties should be conducted to assess the tasks/projects being undertaken. In reviewing the contracts there needs to be focus on whether the external party has the requisite experience to perform the project - for example if an external firm is advising icare/EML on claims management and that firm has limited or no experience in personal injury or workers compensation claims management then the contract should be immediately terminated. All tasks/projects that are not necessary or not adding value to icare's core business functions should be terminated as soon as possible.
10. Review whether the risk management fees paid to brokers since 2018 can be recouped.