

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Monday 24 August 2020

The Committee met at 9:30

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Catherine Cusack

The Hon. Anthony D'Adam

The Hon. Greg Donnelly

The Hon. Scott Farlow

The Hon. Trevor Khan

The Hon. Daniel Mookhey

The Hon. Rod Roberts

Mr David Shoebridge

The CHAIR: Welcome to the third hearing of the Standing Committee on Law and Justice 2020 Review of the Workers Compensation Scheme. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the Elders past, present and emerging, of the Eora nation and extend that respect to other Aboriginals present.

Today we will hear from Ms Janet Dore, former independent reviewer of the State Insurance Regulatory Authority; representatives from Employers Mutual Limited [EML]; members of the icare board; members of the board of the NSW State Insurance Regulatory Authority; and Mr Mark Lennon, president of the Australian Labor Party New South Wales branch, appearing as a former member of the icare board.

Before we commence I will make some brief comments about the procedures for today's hearing. While Parliament House is closed to public access, today's hearing is a public hearing and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. The guidelines for the broadcast of proceedings are available from the secretariat.

It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments to the media or to others after they complete their evidence as such comments will not be protected by parliamentary privilege if another person decided to take an action for defamation.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take the question on notice and provide answers within 21 days. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. To aid the audibility of this hearing I remind both Committee members and witnesses to speak into the microphones. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. I welcome our first witness, Ms Janet Dore.

JANET DORE, Former Independent Reviewer, State Insurance Regulatory Authority, before the Committee via videoconference, sworn and examined

The CHAIR: Ms Dore, would you like to start by making a short opening statement? If so, please keep it to no more than a couple of minutes.

Ms DORE: Thank you, Mr Chair. It was a privilege to be invited to review the NSW Workers Compensation Scheme on behalf of the State Insurance Regulatory Authority [SIRA]. I have had quite a bit of experience in insurance and personal injury schemes on the nib Health Funds board, the Transport Accident Commission [TAC] in Victoria and the Municipal Association of Victoria [MAV] WorkCare board currently. I have had a career in local government and partly in those insurance matters and I have taken the approach that I needed to listen, I needed to understand and I needed to focus on data. The context of the review certainly was in terms of the community expectations around the Hayne royal commission and the Australian Prudential Regulation Authority [APRA] review. I think it is true to say that there is heightened community interest in the use of money by public authorities. I had to bring myself up to speed pretty quickly with the New South Wales context, understanding the background to the introduction of the Nominal Insurer, icare. It has a unique structure and there was certainly the intent of Parliament that there should be less adversarial nature in the new scheme. With that, Mr Chair, I will answer questions.

The CHAIR: Thank you very much, Ms Dore. I will open up to questions and Mr David Shoebridge would like to start.

Mr DAVID SHOEBRIDGE: Ms Dore, first of all, thank you for what was an extraordinarily large body of work. Could I ask if you could describe the relationship you had with icare in the course of undertaking the review? What was your interaction with icare?

Ms DORE: I received pretty good cooperation from icare. They gave me a full day's briefing to start off the review. They had senior officials from each part of the business and they were very open and clear about what they were intending to do and the kinds of expectations they had for their new system.

Mr DAVID SHOEBRIDGE: When you say "new system", do you mean the automated system that was done under the contract with Guidewire and Capgemini?

Ms DORE: Correct, the Nominal Insurer single platform. I think the acronym is NISP.

Mr DAVID SHOEBRIDGE: We can just call it the single platform; is that the easiest way forward?

Ms DORE: Yes, absolutely.

Mr DAVID SHOEBRIDGE: How would you summarise the outcome of that project—the implementation and operation of the single platform?

Ms DORE: Too ambitious, too costly and too quick, I think is the way I would summarise it.

Mr DAVID SHOEBRIDGE: What about the underpinning assumptions in it: that injured workers can be largely dealt with through a computer assessment of the nature of their injury rather than interactions with case managers early on? What about that underlying assumption? Did you ever see any testing of that having been done by icare?

Ms DORE: No, and I think that is what I mean about too quick. The reliance on an algorithm based on sound principles of getting people through the system as quickly as possible and to automate process is a good idea in principle but the fact is these schemes are about people and their individual circumstances. I don't think the testing was rigorous enough, although I did not have access to the department concerning investigation or testing of the implementation. I believe that there were sound principles behind it but the peculiarities of workers compensation, because of individual circumstances, means you cannot rely on algorithms totally and you have to put really good checks in there to flag. For instance, somebody with quite a minor injury but whose background may have been in poor socio-economic circumstances, lack of support, they can deteriorate even though it is a minor injury if they do not get case management intervention early.

The Hon. DANIEL MOOKHEY: Thank you for your report. For what it is worth, it made excellent summer reading. I want to address one aspect in the context of our discussion about the automation process that you just described. My colleague Mr David Shoebridge in budget estimates put those concerns to the then chief executive officer of icare, Mr Nagle. The criticisms of your report for effectively the triage model, Mr Nagle says, "Janet did not understand the triage model". I want to you give an opportunity to reply. He said this back in February, to be fair. He made the point that perhaps some of your criticisms in your report arose from ignorance

that you may have had about how the model was meant to work. Would you reply and give your side of events in that respect?

Ms DORE: Thank you for the question. I certainly understood the intent of the triage model to process the majority of applications for compensation through the system to let people manage their own recovery. And that might work in the majority of cases. But I go back to the fundamental point that in personal injury management early intervention through case management is a key principle. I think the triage model, consistently we saw that the model was putting cases into the wrong buckets for handling, if you like, so whether it was a severe or moderate injury. This was misaligning those things and I do not believe that case management was applied anywhere near thoroughly enough.

The Hon. DANIEL MOOKHEY: In layman's term you observed that basically the algorithm was allocating injured workers to the wrong category and therefore their treatment path was incorrect because the algorithm was allocating a person with a minor injury to a serious injury or a person with a serious injury to a minor injury. Is that what you observed?

Ms DORE: That is what EY observed, as well my own discussions and looking at the data that Sara had and icare had published.

Mr DAVID SHOEBRIDGE: Ms Dore, you said that you were not aware of whether or not there had been any study or assessment by icare about the viability of the single platform in a workers compensation setting. Is that right?

Ms DORE: Correct.

Mr DAVID SHOEBRIDGE: Were you advised about a project called the WISE study or protocols?

Ms DORE: I do not recall them, Mr Shoebridge, I am sorry.

Mr DAVID SHOEBRIDGE: Would it surprise you that in May 2016 the board of icare had a presentation to them by the lead author of a detailed prolonged case study about return to work? They had presented to them this WISE protocols which showed them that for the kind of at-risk workers that you touched upon, workers that may have other issues in their life, issues at work, co-morbidities, at-risk workers, that that actually required more intense early intervention by caseworkers and there was a detailed study to show that it required more intense early intervention by caseworkers?

Ms DORE: I cannot recall it, bearing in mind that it is some months since I was last involved in this but I do not recall that but I certainly endorse it in principle.

Mr DAVID SHOEBRIDGE: In May 2016 the board was presented with data that showed from a detailed case study coming primarily out of NSW Health that 24 per cent of claims, irrespective of the nature of the injury—often quite minor muscular skeletal injuries—were identified as high risk of having poor return to work. When there was a detailed intervention done on that, the cohort where there was an intervention the average number of days lost from work was 30 days as against the control group where it was 56 days. It was all based upon early intense caseworker intervention. Was that ever raised with you by icare that they had that study?

Ms DORE: Not that I recall but it is very similar to something that we did, if I may, the Transport Accident Commission in Victoria. We did a longitudinal study of clients, about 1,000, tracked them over a three-year period. The bottom line was a person with a serious injury, loss of an eye, who was a university lecturer got back to work in less than two months and a woman with a neck injury, who had three children, was a sole parent, deteriorated into severe depression and did not get back to work at all.

Mr DAVID SHOEBRIDGE: In the kind of workers compensation space, if I could put that more broadly, putting motor accidents and workers compensation in a very similar pool, there is a kind of implicit understanding by experts in the field that early caseworker intervention is critical. Is that right?

Ms DORE: Absolutely and to do that you have to understand the individual circumstances. This is about the individual as much as anything else.

Mr DAVID SHOEBRIDGE: Given it is the basic understanding in the workers compensation space, was it ever explained to you how icare went and invested eventually \$360 million into a transformation project in 2017 which went exactly in the opposite direction? Did icare ever explain that to you?

Ms DORE: The explanations I got were based on the fact that they would periodically audit and check the cases from the algorithm but I did not see any specific evidence of that.

Mr DAVID SHOEBRIDGE: On the material that you had in front of you, would it be unfair to characterise this implementation of the single platform by icare as a mass experimentation on injured workers?

Ms DORE: I don't think they are the words I would use except I go back to what I said in the report about this being an ambitious disruption of the system. It appears that the injured workers have been the ones that have been disrupted in the process in many instances.

The Hon. TREVOR KHAN: Can I go back to the genesis of your report? Are you able to explain to the Committee—and you may or may not be able to explain the full dynamics—how you got the gig? How were you commissioned to do this?

Ms DORE: I have known the chief executive officer of SIRA, Carmel Donnelly, for some years when we were both involved in injury management schemes and I was the CEO of the TAC. I forget which position she was in at the time. I also do serve on the SIRA board sub-committee on the motor accidents scheme, the premium sub-committee.

The Hon. TREVOR KHAN: For how long were you CEO of the Transport Accident Commission? Was that it?

Ms DORE: Correct, seven years.

The Hon. TREVOR KHAN: So it is safe to say you are well experienced in these matters?

Ms DORE: Yes, I believe so.

The Hon. TREVOR KHAN: Have you seen the implementation of a system such as icare sought to do anywhere else?

Ms DORE: Not in its breadth. We actually implemented a new system at the Transport Accident Commission which took three years. It was underway before I started and it took at least three years to go through the process of development approvals, user acceptance, testing and subsequent changes as experience developed. So I would say it is an ongoing process and it was nowhere near as large because of the extent of the scheme as the icare proposals.

The Hon. TREVOR KHAN: Could you assist me in this regard? In terms of the process you went through prior to the preparation of, I would say, at least a draft report, what was the process of interaction with icare?

Ms DORE: It was a regular process of interaction. As I said, it started with nearly a full day's presentation. I had several meetings with the then CEO. I met with the chairman twice.

The Hon. TREVOR KHAN: When you say "the then CEO", I take it that was not Mr Nagle. That was Mr Bhatia, was it, or John Nagle?

Ms DORE: No, I never met Mr Bhatia—John Nagle.

Mr DAVID SHOEBRIDGE: He is currently "the then CEO", since the last committee hearings.

The Hon. TREVOR KHAN: Yes.

Ms DORE: I also met with the chair of the audit committee and the people and culture committee—I may have got that name wrong—and I was left in no doubt that I think the interactions between the board and management were clear and open, although I did see some evidence of information reports to the board. What concerned me most was that they were not comparing it back to the results before the start of the icare theme. If you do not compare with history, even though you have to make sure you are comparing like products, then you do not know if your outcomes have improved over the early outcomes.

The Hon. TREVOR KHAN: What were they comparing with, if they were not comparing with the pre-implementation?

Ms DORE: They were only starting with figures that I saw from the implementation of icare itself. I have pointed out that in the report in a couple of areas, I think.

The Hon. TREVOR KHAN: I am not going to hog the time because I am sure other members have more incisive questions than mine. We have gone to the stage of the preparation of the draft report. Was your report in draft form submitted to icare for comment or did you go straight to the preparation of a report?

Ms DORE: I went straight to the preparation of the report. The CEO of SIRA, as I recall, had always said she would share the final draft report with icare and at that stage give them time to make comments.

The Hon. TREVOR KHAN: I know I said it was a final question but I will ask: Did you have any interactions with the board as well as with the management of icare?

Ms DORE: Only single members of the board, the chairman and the two other board members I mentioned. I was never invited or requested to meet with the icare board.

The Hon. DANIEL MOOKHEY: Can you identify the board directors?

The Hon. TREVOR KHAN: I will finish there.

The Hon. DANIEL MOOKHEY: Just to clarify, because you went over that rather quickly, Ms Dore, you said that you met with the icare chair?

Ms DORE: Yes.

The Hon. DANIEL MOOKHEY: And that is Mr Carapiet.

Ms DORE: Mr Carapiet, yes.

The Hon. DANIEL MOOKHEY: Who else did you meet with from the icare board?

Ms DORE: The chair of the audit committee and—

The Hon. DANIEL MOOKHEY: That would be Mr Plumb.

Ms DORE: Mr Plumb, yes, and Lisa McIntyre, who I think was the chair of the People and Culture committee. I would have to go to my notes.

The Hon. DANIEL MOOKHEY: Was that a concurrent meeting you had with all the directors at the same time or were they separate meetings?

Ms DORE: No, I met with the chairman individually twice and I met with the two other board members together and only once.

The Hon. DANIEL MOOKHEY: What did you say to the chairperson?

Ms DORE: I introduced myself to him. I outlined the terms of reference, which he already had. In a couple of meetings I discussed what the overall intent was with setting up icare and the kind of governance structure in terms of the organisation. I asked him once whether or not there was an intent to privatise the scheme at some stage because there were people who were saying that to me. He unequivocally said no. Other than that, they were fairly general strategic matters of understanding the way that he chaired the board and he was very confident about the viability of the scheme.

The Hon. DANIEL MOOKHEY: Just to be clear, Ms Dore, when in time did these conversations take place? Did they take place prior to the publication of the report or after you completed your report?

Ms DORE: I met with him first around April-May last year and then I met him again probably August-September.

The Hon. DANIEL MOOKHEY: August-September would have been the time when you had completed the draft of your report but prior to the report being published. Is that correct?

Ms DORE: Yes, definitely, yes.

The Hon. DANIEL MOOKHEY: Did you put in the core findings of your report including your concerns about the solvency of the Nominal Insurer [NI]?

Ms DORE: I did indicate to him that it appeared that although there was good investment capacity on the board I was concerned about the funding ratio. But that was a matter that I knew SIRA had to take up with him, so I did not go into too much detail on that.

The Hon. DANIEL MOOKHEY: Can I just ask: What did Mr Carapiet say in reply when you put questions to him?

Ms DORE: He was very confident that there would not be a problem.

The Hon. DANIEL MOOKHEY: Did you have any separate meetings with any other icare executive that was not the CEO? Did you, for example, meet with the interim CEO, Mr Ferguson?

Ms DORE: Yes, he was acting as the conduit between icare and SIRA in terms of provision of information. I have known him since I was at the Transport Accident Commission [TAC]. Briefly I had a couple of individual meetings with him clarifying the information I wanted.

The Hon. DANIEL MOOKHEY: He put a submission to you, did he not, that he thought that the biggest problem in the scheme was actually medical expenses, not the Nominal Insurer single platform [NISP], and he wrote you a letter to that effect, did he not?

Ms DORE: You are testing my memory but that could have been the case. In fact, we had data—and it is very clearly shown in the report—that the medical expense rises at icare are far out of proportion than all the other insurance schemes, the self-insurers and the Treasury managed funds.

The CHAIR: Before I pass to Mr Shoebridge, I know Ms Cusack has been waiting to ask a question for a while and I will allow Ms Cusack to ask her question.

The Hon. CATHERINE CUSACK: Ms Dore, I wonder if you could tell us how you came to be selected to do this inquiry. I am interested because—

Mr DAVID SHOEBRIDGE: She has already been asked and answered that.

The Hon. CATHERINE CUSACK: Fair enough. In terms of a response you gave earlier concerning icare looking at the draft report, did you actually get icare's responses directly back to you?

Ms DORE: Yes, I was provided with them directly. I worked with the project manager to ensure that we took into account any or all those things that may have been inconsistent or inaccurate.

The Hon. CATHERINE CUSACK: Who was the project manager?

Ms DORE: It was a member of the SIRA staff, Mr Azzi.

The Hon. CATHERINE CUSACK: So the staff supported you directly in the preparation?

Ms DORE: Yes, there were a number of people within SIRA who assisted me with getting data, doing some analysis. I could not have done all that on my own. I may be experienced but that sort of report has to be an accumulation of analysis and hard facts, which I then incorporated as and where I thought it was appropriate. The structure of the report is clearly mine and the words are clearly mine but the data and the analysis have to be provided from other sources.

The Hon. CATHERINE CUSACK: Did they also assist you to get across New South Wales legislation?

Ms DORE: Yes, although I would never call myself an expert in that area.

The Hon. CATHERINE CUSACK: How was that done?

Ms DORE: When I asked about what the regulator's powers are, for instance, I was provided with tables which cited the relevant portions of the legislation and where their powers were, because one of the issues was whether the regulator had sufficient powers to regulate icare.

The Hon. CATHERINE CUSACK: Just in terms of your review of compliance in relation to icare itself, were you assisted on the legislation that governs icare?

Ms DORE: Absolutely. I had to rely on people in SIRA to give me that information.

The Hon. CATHERINE CUSACK: That was by way of a briefing, was it?

Ms DORE: There were a variety of ways in which I absorbed information: sometimes it was just written; other times it was a formal briefing; other times it was with one of the senior members of staff and the project manager and myself to explore issues I had not fully understood or needed more information on.

The Hon. CATHERINE CUSACK: Did you find strengths or weaknesses in the New South Wales legislation compared to the Victorian legislation, and has that been a factor?

Ms DORE: I am reluctant to speak, as a Victorian, about comparing legislation. But I would say that the scheme as established in New South Wales is unusual, in the sense that the split of the various functions for workers compensation into prevention, compensation and safety is a good principle. I would say that is a very good principle. But the relatively unconstrained nature of the way icare has been set up could be problematic. Certainly in a time of increased community expectations around the Hayne royal commission and so on I think it raises questions.

The Hon. CATHERINE CUSACK: In your opinion, does SIRA have sufficient powers to undertake the accountability role that it was set up to do, given that icare has been established to operate in a more sort of private sector, free market way?

Ms DORE: When you compare the way SIRA regulates other insurers, like Allianz and the other private sector firms—Suncorp—that were involved in this area, the setting up of icare as an unlicensed corporation was inevitably going to limit what the regulator could do because the regulator's powers are about licensed agents, for want of a better word or licensed insurers and icare is not licensed.

The Hon. CATHERINE CUSACK: Do you experience some frustration on SIRA's part in relation to that relationship?

Ms DORE: I think SIRA's earlier attitudes and responses were definitely based on, "Well, we're doing our thing," and there was some sense of not worrying about regulator interference, as they call it. I am not saying that was an overall attitude but that was certainly what I heard on a couple of occasions from people in there.

The CHAIR: I will pass back over to Mr Mookhey.

The Hon. DANIEL MOOKHEY: Ms Dore, I just wanted to continue that line of questioning we were on earlier about your opportunity to have dialogue with icare and others that you have to have dialogue with in this report. We have established that you had at least a couple of conversations with the chair. How many times did you have a chat with the chair of the audit and risk committee, Mr Plumb?

Ms DORE: Only once.

The Hon. DANIEL MOOKHEY: Was that at the same time, thereabouts, as your conversation with Mr Carapiet?

Ms DORE: I think it was later than the first time I had spoken with Mr Carapiet.

The Hon. DANIEL MOOKHEY: Did you put to Mr Plumb your same concerns that you put to Mr Carapiet, or at least the findings of your report?

Ms DORE: What I was trying to elicit from them was the level of experience that was within the board to understand personal injury management principles. There was certainly an acknowledgement that they were still in the early days but that they were very concerned about making sure that outcomes were right and that there were people on the board who understood the health system.

The Hon. DANIEL MOOKHEY: If the purpose of your conversation was to elicit an understanding as to whether or not the board had requisite experience to undertake personal injury management and understand the health dimensions of personal injury management, what did you conclude about the skills and capabilities of the board in that respect?

Ms DORE: I had the feeling that there was nobody who really understood the difference between managing health systems or managing individual health issues and the complexities of personal injury management, which, I believe, is a very separate kind of approach. The board may have called in expert assistance on those matters but I was concerned—

The Hon. DANIEL MOOKHEY: But basically no-one on the board, in your view, had experience in managing personal injury?

Ms DORE: Correct. The CEO had general insurance industry experience. Several of the senior managers I think did have good personal injury management experience but without fully understanding the board and the way it operated I was not sure that there was sufficient skill.

The Hon. DANIEL MOOKHEY: In your view, did the absence of skill on the board for the management of personal injury contribute to the deterioration in return to work performance as well as the scheme's finances, which resulted from the deterioration of return to work experience? Put simply, how could the board have held management to account if no-one on the board had any experience in personal injury management?

Ms DORE: I think it could have been a weakness, but I do not know because I did not sit inside of the board meetings. But I think the indicators of return to work deteriorating should have been a matter of great concern for the board in that space and I do not know whether it was interrogated enough.

The Hon. DANIEL MOOKHEY: Ms Dore, you met with the Secretary of NSW Treasury prior to the report being published, did you not?

Ms DORE: Yes.

The Hon. DANIEL MOOKHEY: How many times did you meet with the Secretary of NSW Treasury?

Ms DORE: Only about once.

The Hon. DANIEL MOOKHEY: That was circa October 2019?

Ms DORE: Yes. Quite late last year, yes.

The Hon. DANIEL MOOKHEY: What did you say to the Secretary of NSW Treasury when you met with him?

Ms DORE: I briefed him on the overall themes of the report and that I was especially concerned about both the funding ratio but more particularly the return to work and the absence of business input into understanding the legislation when it was first developed. I think business had been left out quite substantially in the process—at least that is what they were telling me.

The Hon. DANIEL MOOKHEY: When you say "business" you mean employers?

Ms DORE: Employers, yes. Sorry.

The Hon. DANIEL MOOKHEY: You say to the Secretary of NSW Treasury in October that you have concerns about the funding ratio and return to work. What did the Secretary of NSW Treasury say to you in reply?

Ms DORE: He said he found the briefing very helpful and that he would consider it seriously. But that was just a one-off meeting and what happened after that I do not know. There certainly was not any more communication with me.

The Hon. DANIEL MOOKHEY: Did you have the opportunity to provide your report to the Treasurer's office?

Ms DORE: No. That was a matter for SIRA. Once my report was given and adopted by the SIRA board it was SIRA's to manage distribution.

The Hon. DANIEL MOOKHEY: Were you ever asked to provide the Treasurer or the Treasurer's office a direct briefing about your report?

Ms DORE: No.

The Hon. DANIEL MOOKHEY: No contact whatsoever from the Treasurer's office to you as the independent reviewer since?

Ms DORE: None whatsoever.

The Hon. DANIEL MOOKHEY: Have you had any contact with the Treasurer's office in the last eight months about this?

Ms DORE: No—all through SIRA.

The Hon. DANIEL MOOKHEY: All through SIRA? Okay, I understand. Do any other members want to question the witness?

The CHAIR: I think you have the call, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Ms Dore, I move now to page 75 of your report. Do you have your report in front of you?

Ms DORE: I do.

The Hon. DANIEL MOOKHEY: Great. This is the section entitled "Issues outside terms of reference", which are issues I do not believe you therefore had the opportunity to investigate but you flagged as having some concerns. I take you to the one right down the bottom at paragraph 9.41, where you talk about the IT platform. It states:

A crucial part of the new model is the foundation on a single technology platform. This was implemented in a rapid timeframe and not combined with any organisational change management.

It goes on to state:

The concurrent move to a single claims manager (agent/service provider) in EML presented an enormous challenge in scale-up for volumes and capability. Recruitment directed by icare has focussed on customer service skills. This has resulted in a depletion of claims management skills before the NISP had been adequately tested and assured. EML staffing levels have been under target for some time, however icare has recently agreed to the necessary increases and budget.

You do say that this was all out of your scope, but am I right to infer that what you are saying is that at the same time icare is building a very ambitious IT platform it has simultaneously fundamentally altered its claims model, and that doing the two at the same time is what has led to a sharp deterioration in return to work?

Ms DORE: I think the combination of moving to a single provider who was I think under-resourced and lacking, therefore, any competition or skill in the market was compounding the exodus of skills that happened at the time of the separation. At the establishment of icare a lot of knowledge and skill went out of the sector. What icare was absolutely deliberately doing—and they were very keen to stress this in our discussions—was that, "We are recruiting for customer management skills, not technical workers compensation skills". They were taking quite a different approach to any compensation scheme that I have been involved in.

The Hon. DANIEL MOOKHEY: When you say that they were taking a different approach to any scheme you have been involved in, what do you mean by that? There is no other scheme that you are aware of that has tried this?

Ms DORE: There is no other scheme I am aware of that emphasises customer service skills over technical case management and individual personal injury management—that is, that I am aware of. Mind you, I would not call myself a national expert. But I do believe if you subsume technical skills to customer service skills then that could be a big weakness.

The Hon. TREVOR KHAN: Mr Mookhey, can I just interrupt? I am not interfering; I just wonder if Ms Dore could explain to me what she took to be "customer service skills"? It sounds like something you are looking for in a car yard.

The Hon. DANIEL MOOKHEY: I would have went with a fast food restaurant, but sure.

Ms DORE: I would have to go back and look at the icare documents, but I think an ability to deal with people and help them understand the issues and talk to them about process. I cannot elaborate any more than that, other than to say I could go back to some of the icare documents and clarify that on notice.

The Hon. TREVOR KHAN: Ms Dore, when you talked in terms of "they"—that is, someone within icare who you were speaking to—who was that? Who was this person or persons who you were chatting to about these matters?

Ms DORE: It was the whole senior management team of icare that I dealt with. Certainly I met with John Nagle a few times individually. Don Ferguson was another person who often sought to clarify my information needs and the people who were directly involved in formulating the new model and recruiting [inaudible] and emphasising the need for customer service skills. I cannot remember all their names but I have certainly got them. But Beth Uehling was one of them. She was the key driver of the new model and she was the one who had the most experience, I think, in personal injury management.

The Hon. TREVOR KHAN: Ms Dore, can you explain to me this: We have got a model which seems to be developing into a single scheme agent model. It seems to me that the claims officers, if that be the correct description, would be employed by EML, the single scheme agent. Am I right?

Ms DORE: I think that is an interesting point, because my understanding was that icare had set up some kind of parallel capacity within its organisation whereby EML met fortnightly with kind of equivalent managers.

The Hon. DANIEL MOOKHEY: It is a shadow team, what you are describing. You are saying effectively icare had a shadow team that it paid for to shadow EML in its claims management. Is that an accurate statement?

Ms DORE: I think it is a reasonable description. There certainly appeared to be duplication and probably put there as insurance for establishing a new system with a quite initially under-resourced agent or service provider, as they call it.

The Hon. DANIEL MOOKHEY: Just to step back through this. Icare makes a decision at the end of 2017 to move to a single claims manager, hires the smallest operator in the market and gives it the overwhelming majority of the portfolio. You are saying icare then establishes and pays for another shadow team to do effectively the same function?

Ms DORE: There was certainly a great deal of duplication there that was almost checking, verifying and authorising EML on certain procedures.

The Hon. DANIEL MOOKHEY: We are effectively paying the left hand to check what the right hand is doing. Is that inaccurate?

Ms DORE: I do not think it is inaccurate, but I did not have full knowledge of the extent of that team.

The Hon. DANIEL MOOKHEY: But you make the point—

The Hon. TREVOR KHAN: Sorry, could I just ask—Ms Dore, did you express any concern, both with regards to the two-stream reforms that were going on at the same time—that is my first question—and the second question, which I suppose is related, using Mr Mookhey's terms, this creation of a duplicate or "shadow" team in terms of managing claims generally?

Ms DORE: I inquired as much as I could about what the arrangements between icare and EML were. EML people were telling me there was confusion, and so were employers, about who was running the scheme: was it icare or was it EML. It was never really clearly explained to me how those icare interactions with EML were progressing.

The CHAIR: Ms Dore—

The Hon. DANIEL MOOKHEY: Sorry, can I just pick up on this, because this is directly—

The CHAIR: Yes.

The Hon. DANIEL MOOKHEY: Ms Dore, you make findings about this in your report. In paragraph 7.49 you state:

The challenges involved in the transformation were underestimated in terms of the times required for testing, verification of the model and its IT platform, as well as the consequences of reliance on a single agent for new claims (EML). The latter experienced alarming turnover rates and skills reduction and there is confusion about who is managing and at what level. Some claims decisions require approval from icare and therefore add to delays in processing. This poses challenges about the nature of the agreement between icare and EML which is described as a service provision agreement, not an agency arrangement. It therefore means icare controls and directs the operation of the entity that is engaged to carry out claims management which may inhibit EML from performing to the best of its ability.

You then make a finding, which is finding No. 9:

FINDING 9. icare should ensure its agreements with agents and service providers give adequate weighting to the primary goal of return to work [RTW].

Were you provided a copy of the service provider agreement?

Ms DORE: Yes, I was.

The Hon. DANIEL MOOKHEY: I happen to have it here, too. It makes it abundantly clear that icare controls, directs and manages EML. There is no ambiguity about that. Under this agreement icare can step in at any point and direct EML to do anything. Effectively it has paid for a shadow workforce to keep an eye on EML so it knows whether or not it needs to tell EML what to do. Is that accurate?

Ms DORE: I believe that is accurate.

The Hon. TREVOR KHAN: Ms Dore, can I just ask again—and I am not being in any way critical, but I note you have been careful in your working. Did you express to Mr Nagle or any other senior executive member of icare concern with regards to both the implementation of these two reforms and/or this shadow workforce, this shadow management style?

The Hon. DANIEL MOOKHEY: No, it is a workforce.

Ms DORE: I would not say that I expressed concern, because I was interacting with all parties with an open mind. I limited my interactions as to questions of why these things were happening and then seeking the appropriate documentation. My conclusion when I saw the agreement and the continued insistence of senior [inaudible] at icare that EML was a service provider, that certainly showed me that EML was a subsidiary kind of organisation under the control of icare, absolutely.

The Hon. TREVOR KHAN: Ms Dore, can I just say that I am not being critical of anything that you have done. The only reason I was asking was I was just wondering what their response to any criticism was so we could glean some idea as to what their thinking processes were and how defensive they were in terms of what they were doing. Do you want to in any way comment as to whether you got a feeling whether they had effective insight into what they were or were not creating?

Ms DORE: I would only say that I think they were supremely confident in their model, that they had real belief that this was the right way to go and the things that I would raise with them would be seen as part of the transformation process.

The Hon. TREVOR KHAN: How could they have that view when their return to work rates, which is the criterion which I think is perhaps the most important, were consistently dropping? It strikes me as counterintuitive to be supremely confident at a time where clearly there seems to be a metric which is going against good management of the scheme. Am I wrong?

Ms DORE: No, I think you are quite right. I think the comment I made to some of the senior executives at one presentation, which was a detailed presentation about the single platform, was, "Well, you had better have this working in the next six months and prove it up and show those return to work rates improving or there are going to be a lot more questions".

The Hon. TREVOR KHAN: Was there a response to that?

Ms DORE: "We'll try. That is asking a lot."

Mr DAVID SHOEBRIDGE: "Doing our job."

The Hon. DANIEL MOOKHEY: I will just ask one last question to finish this line and then hand to my colleagues. Ms Dore, I asked you about your finding No. 9, but your finding No. 11 is just as alarming. It states:

FINDING 11. icare should address the staff turnover at EML as a matter of priority to ensure case management services are improved.

That needs to be read in conjunction, I think, with your earlier recommendations, which are that it does not have any control. What is going on with EML's staff turnover? Why have you gone to the level where you are making a finding that the entity that is managing the overwhelming size of the portfolio seems to have massive problems with staff turnover?

The Hon. TREVOR KHAN: Or not managing.

The Hon. DANIEL MOOKHEY: Or not managing, as it seems.

Ms DORE: There was an alarming statistic that I quoted: some 22.5 per cent per month turnover, at one point—remembering that this is a point in time. That came from a report that was in icare board papers. I was alarmed at that. But subsequently that has been rectified by icare, as I understand it, that resources have been improving. But I think—

The Hon. DANIEL MOOKHEY: Hang on: In one month EML was losing one in five of their staff, more than—

The CHAIR: More than.

The Hon. DANIEL MOOKHEY: —one in five of their staff and icare had to supplement them by effectively bailing them out by providing them more resources. Is that what you are saying?

Ms DORE: The understanding I had from the CEO of EML was that they had been requesting more resources and they knew they were under-resourced, and they did finally get more resources to mitigate that risk.

The CHAIR: Ms Dore, I just wanted two clarifications. When you just said the CEO of EML, which CEO were you referring to?

The Hon. DANIEL MOOKHEY: Good question, Chair.

Ms DORE: The former rugby player. I cannot remember his name.

Mr DAVID SHOEBRIDGE: Mr Coyne.

The CHAIR: Mr Coyne. The reason that I ask is we have EML appearing next. We have two CEOs listed and I was just curious as to which one you were dealing with. My next question is about—obviously you have looked at how EML has been managing with icare. Have you had a look at all at Suncorp's interaction with icare and how it is handling the long tail cases that it has compared to EML? Did you have any experience in dealing with Suncorp, firstly, and secondly, the difference in claims management between the two organisations?

Ms DORE: I did speak with the executives at Suncorp and talked about the tail management. It seemed to me very clear that they knew very clearly how personal injury management works, how case management works and they had a very sound approach, is what I gathered.

The Hon. TREVOR KHAN: Just a follow-up question: Do I take it that we can compare that with EML, or is that an unfair interpretation of your last observation?

Ms DORE: It is probably unfair in the sense that EML was being tasked by icare to recruit people with customer service skills first and then train them technically. As I said earlier, the sector had experienced an exodus of skill and experience. It is just very hard to find people who have the right approach. When you are dealing with people it is one of the most challenging things. That could have contributed to therein upsetting circumstances, and I think that contributed to the higher turnover. I do not know what that turnover is today; I think it has stabilised.

The Hon. TREVOR KHAN: Ms Dore, just before I cede again I ask this: You talked in terms of EML complaining of being under-resourced—I think that is the term you have used. What does that mean? Does it mean—

The Hon. DANIEL MOOKHEY: They underbid.

The Hon. TREVOR KHAN: —it wanted more money so it could hire more people, or was it that they were to be allocated people? What does "resourced" mean?

The Hon. DANIEL MOOKHEY: Did they underbid on the contract?

Ms DORE: To answer your question, Mr Chairman, I meant people. Obviously that requires funding, but it is people to be able to bring down the case loads that individuals were handling from something like in the nineties to the seventies and, eventually, somewhere in the sixties. They were not able to do that unless they had more people.

The Hon. TREVOR KHAN: Right.

The CHAIR: The follow-up question that I was going to ask—this is the Chair by the way, Ms Dore; it is Mr Fang: I note that when you were talking about EML you effectively said that it was under direction at all times by icare. Was Suncorp under a similar arrangement and, if not, do you believe that had any effect on why Suncorp was potentially more effective in its role—or was it the culture and experience of the organisation?

Ms DORE: Thank you. The arrangement with Suncorp was of an agent kind of arrangement. There were certainly no instructions in terms of how it went about its business from icare, as I understand it. It had longstanding, experienced people with case management skills, whereas EML had some capability, albeit it was the smallest operator, as somebody said earlier. It just did not have the sufficient skill, I do not think, to do what it was being asked.

The CHAIR: So Employers Mutual Limited [EML] was under the direction of icare partly because they did not have the experience and partly so that icare could, I guess, have a level of control of the claims management of EML where Suncorp was under what you would call a more traditional model in the scheme of workers compensation. You saw a difference in the performance of the two models. Is that correct?

Ms DORE: Yes, very clearly different. The involvement of icare at EML was much stronger than any of the other agents.

The CHAIR: Thank you very much. The Hon. Antony D'Adam has indicated he wishes to ask a question and then it will be Mr David Shoebridge.

The Hon. ANTHONY D'ADAM: Ms Dore, can I take you to 7.3.1 of your report? I want to ask you about this statement:

... although access to the business case has not been granted to the reviewer.

It is referring to the Nominal Insurer Single Platform [NISP] system implementation. Can I ask this: Just in terms of that particular statement, did you actually formally seek access to the business case?

Ms DORE: Well, I did think that I had asked for it. I certainly had addressed that with the officials from the department that did the technical review of the implementation and I was referred to icare to ask for that. I do not believe that there is any written communication that I ever did request that formally but I got the distinct impression that I was told that the material I had was sufficient.

The Hon. ANTHONY D'ADAM: How did you get that impression? How was that conveyed to you?

Ms DORE: Well, all the data that had been submitted and given to me in terms of the model and the consultant's reports and the strategic documents demonstrated the intent.

The CHAIR: Mr David Shoebridge?

Mr DAVID SHOEBRIDGE: Thanks, Chair. Thanks, Ms Dore. Can I just ask you about the process of conducting your report? You went through a consultation process and you sought, I think, two rounds of submissions. Is that right?

Ms DORE: I think there was only one round, actually.

Mr DAVID SHOEBRIDGE: It was between May and July.

Ms DORE: Yes. Correct.

Mr DAVID SHOEBRIDGE: Of last year?

Ms DORE: Yes.

Mr DAVID SHOEBRIDGE: How did you go about seeking submissions?

Ms DORE: The State Insurance Regulatory Authority [SIRA] put the call out for submissions on their website and when they announced the review I made myself available for anybody who wished to have a direct discussion. I also identified stakeholders that I would like to—would have liked to have consulted with.

Mr DAVID SHOEBRIDGE: It would be fair to say that that submission process produced damning assessments of icare. As I read your report at page 14, in relation to people's experience with claims they collectively gave a rating of 1.9 out of 5 to icare's performance and in relation to people's experience of premium setting they gave collectively a rating of 2 out of 5. Is that right?

Ms DORE: It was a [audio malfunction], yes. Sorry: you were right about the submissions. I think there was a two-stage process, now I recall. But, yes, the submission process both in writing and personally were damning. They did show up the worst cases but of course in an inquiry like this you very rarely receive the other side of the coin. There were some comments that were favourable, there is no doubt about that, that I heard.

The Hon. DANIEL MOOKHEY: But just to be clear, of the submissions that you received, of the 155 submissions you received, 89 of them were from employers. The overwhelming majority of them were employers.

Ms DORE: Yes.

The Hon. DANIEL MOOKHEY: Which employer groups were the groups that you consulted with directly?

Ms DORE: I certainly consulted with the Chamber of Commerce. Look, I would have to take on notice—

The Hon. DANIEL MOOKHEY: Business NSW?

Ms DORE: Yes, yes.

The Hon. DANIEL MOOKHEY: And the Australian Industry Group?

Ms DORE: Yes, that is correct.

The Hon. DANIEL MOOKHEY: And the Master Builders Association?

Ms DORE: I do not recall directly.

Mr DAVID SHOEBRIDGE: Ms Dore, you had those rounds of submissions in May—between May and July—and then I think you said that you met with the chair of the board, Mr Carapiet, in August or September again. Is that right?

Ms DORE: Yes.

Mr DAVID SHOEBRIDGE: So by that stage you had had the benefit of all of those submissions and you had also seen the data on return to work. Is that right?

Ms DORE: Yes.

Mr DAVID SHOEBRIDGE: So I assume you put those concerns to Mr Carapiet. Is that what happened?

Ms DORE: I did not discuss fully the nature of the report except to say that they had not got many friends out there.

Mr DAVID SHOEBRIDGE: I think that is an understatement, Ms Dore, but yes. Did you raise with him, Mr Carapiet, the return to work—what at that stage was looking like a collapse in the return to work rates?

Ms DORE: I believe I did.

Mr DAVID SHOEBRIDGE: What was Mr Carapiet's response?

Ms DORE: Well, I think he would say—he said—and I would have to refer to my note—but he again reinforced that the board had confidence that this model was the right model and that certain actions were being taken to improve that rate. But I think that is in general terms all I can recall without referring directly to my notes.

Mr DAVID SHOEBRIDGE: If there is anymore detail you could give on notice, Ms Dore, or if you have your notes there I am happy to allow you to—if that can be obtained readily.

Ms DORE: I do not recall it as a very extensive or fulsome discussion and I certainly had raised the funding ratio issue that I was probably concerned to know whether he was concerned about that, but again I think he was putting his faith in management that they were taking the right approaches and that the board was satisfied with that.

Mr DAVID SHOEBRIDGE: Do you remember how long that meeting was?

Ms DORE: No more than half an hour.

Mr DAVID SHOEBRIDGE: Did you get a sense that he understood there was a very serious problem happening in his organisation? Your report shows it is a dreadfully serious concern. Did you get a sense the chair acknowledged the scale of the problem?

Ms DORE: No, I did not.

The Hon. TREVOR KHAN: Sorry, can you just—Mr David Shoebridge in a sense verbalised you there. Did you consider that the scheme was facing a very serious problem? I am not being critical of Mr David Shoebridge. I just want to get a feeling of how you would now describe what you saw the position as being.

Ms DORE: I thought it was quite serious because none of the indicators over that whole period were improving. There were some modifications made when I had talked about business groups or employers not being involved and Mr Nagle did acknowledge that they had perhaps gone too far in that direction by pushing employers away in the intent of getting less adversarial activities in the scheme. But I think they were minor things compared to the overall return to work solvency rates.

The Hon. TREVOR KHAN: Ms Dore, I am interested in this concept of pushing employers away perhaps for two reasons: The first is that they are the ones that are paying for the operation of the scheme, which is not an insignificant issue. They actually had some buy-in, I would have thought.

Mr DAVID SHOEBRIDGE: A little bit of skin in the game.

The Hon. TREVOR KHAN: Yes. A little bit of skin in the game.

Mr DAVID SHOEBRIDGE: Paying billions in.

The Hon. TREVOR KHAN: But the second reason is achieving a return to work necessarily involves a cooperative and indeed preferably an enthusiastic employer to receive many employees back. Would you not agree?

Ms DORE: That is certainly the impression that I got from many of the direct discussions with employer groups and examples I was given: that employers were frustrated they were not involved in the return to work plans for their own employees.

Mr DAVID SHOEBRIDGE: Ms Dore, did you know at the time that the bulk of the executive team had experience in the general insurance industry rather than the workers compensation industry? Were you aware of that at the time?

Ms DORE: I was aware that there were several people with general insurance experience rather than personal injury management experience, yes.

Mr DAVID SHOEBRIDGE: Looking back on it now, do you think that is part of the explanation for why they so enthusiastically embraced something that was contrary to all the kind of accepted norms in workers comp?

Ms DORE: I was always worried about the absence of knowledge about the real complexities of workers compensation with all the groups involved and the lack of focus on individual cases.

The Hon. DANIEL MOOKHEY: Ms Dore, I just want to return to the line of questioning that my colleague was asking about—about the competence of Mr Carapiet in respect to return to work performance. You said that effectively he was highly confident that it would be fine in the long term on the basis of his reliance on management, but I struggle to reconcile that view with what you say in your report at paragraph 5.9.12 in relation to return to work [RTW] rates reported by icare. You state:

A key illustration of this is the 13 week RTW rate at October 2018, reported by the icare data above as 69 per cent.

You go on to state:

This is significantly below the long-term average of 85 per cent prior to the model being implemented,—

And this is the crucial bit—

but apparently is not included in the icare Board papers.

How can the chair have confidence about return to work, how can the board have confidence in return to work if their board papers are not reporting to them the sharp collapse in return to work?

Mr DAVID SHOEBRIDGE: Hear no evil, see no evil.

Ms DORE: Well, I think it was my concern most of all that they were not comparing performance over a longer period and therefore were not seeing it totally in context.

The Hon. DANIEL MOOKHEY: But Ms Dore your report—you are being generous to them in saying that they were not comparing it to a benchmark. What your report says is that the data was not in their board papers. It was not like they were not comparing it to the benchmark. It was either they were not being told by management or they were not asking management the right questions about the key metric of the scheme and the key command of the Act, which is to return people to work. Is that unfair?

Ms DORE: No. That is correct.

Mr DAVID SHOEBRIDGE: But Ms Dore a competent board would have interrogated this data because at this point in time there was a data war going on between the regulator SIRA and icare. They both had different data. SIRA had much deeper longitudinal data going back many years and icare was trying to impose a new set of data on which only had a very limited retrospectivity. A competent board would surely have been interrogating those two sets of data, would they not?

Ms DORE: I cannot really comment on whether or not the icare board did that or not but I would expect in a workers compensation scheme that return to work is the ultimate metric.

Mr DAVID SHOEBRIDGE: But you cannot assess the return to work unless you have a historical perspective and because icare's data was so limited in time that historical perspective was not available to the board. You can say that, can you not?

Ms DORE: I believe that is the case—that was the case, yes.

Mr DAVID SHOEBRIDGE: So in your experience, having spent some seven years in charge of an extremely large statutory scheme, would you have accepted being provided only with that narrow window of data?

Ms DORE: I know my board at the Transport Accident Commission [TAC] would have interrogated me on that at every meeting and as well as the solvency ratio and the accident rates. Those were the metrics they would be concerned about.

The CHAIR: We have only got a few minutes left so I am going to pass questioning to the Hon. Trevor Khan, who has some questions, and I believe the Hon. Daniel Mookhey has just indicated he has some.

The Hon. DANIEL MOOKHEY: Yes.

The CHAIR: And then we will probably wrap up from there.

The Hon. TREVOR KHAN: Ms Dore, we took some evidence from SIRA but also from Suncorp on the last occasion. I do not know whether you have seen any of that but one of the issues that we looked at was a comparator of the return to work rates under the icare scheme compared to the Treasury Managed Fund compared to the self-insurers at least.

Ms DORE: Yes.

The Hon. TREVOR KHAN: All of them have shown a deterioration in their performance with regards to return to work although I think the general position that would be adopted is that icare's was perhaps the most alarming or somewhat—no, I withdraw that—was the most alarming. Did you consider the question of the different performance between those various components and why there has been a general deterioration in the return to work rates over the last few years?

Ms DORE: I only looked at the comparative return to work rates to see whether there were any outliers. We just looked at actual data. There was not a feeling that there was any particular end at play or the reasons for it; so the answer, I guess, is not fully.

The Hon. TREVOR KHAN: All right. Thank you.

The CHAIR: The Hon. Daniel Mookhey?

The Hon. DANIEL MOOKHEY: Thank you. Ms Dore, in your report you analyse the finances of the Nominal Insurer [NI]. You identify that the Nominal Insurer has been sustaining underwriting losses, which is the difference between money collected by premiums and money paid out in claims for a number of years. You identified in the last few years it lost \$2.5 billion in underwriting; that is, it paid out \$2.5 billion more in claims than it collected in premiums. You then go on to issue a rather stark warning in your report. You say:

The poor underwriting position of the NI [icare] is a real risk to the NI's sustainability.

It is a pretty stark warning to be making about a virtually monopoly insurer for which ultimately employers are liable. Are you still concerned about the "real risk to the Nominal Insurer's sustainability"? How concerned should we be about the risk of all this to the Nominal Insurer's sustainability.

Ms DORE: Well, unless premiums go up, and that means employers have to pay more, and if underwriting losses continue in this environment of low interest rates and difficult to achieve investment returns, then, yes, I was seriously worried and am—well, I was last year seriously worried. I cannot comment on this year.

The Hon. DANIEL MOOKHEY: Can you? Are you still seriously worried about it?

Ms DORE: I have not got—

The CHAIR: Are you in a position?

Ms DORE: Not really, no.

The CHAIR: Sorry, that was—

The Hon. DANIEL MOOKHEY: But you were worried about the sustainability and the solvency—

Ms DORE: I was worried.

The Hon. DANIEL MOOKHEY: But just to be clear: You were worried about the sustainability and the solvency of the Nominal Insurer last year.

Ms DORE: Yes, absolutely.

Mr DAVID SHOEBRIDGE: And that was before the impact on investment returns flowing from the economic crisis associated with the pandemic.

Ms DORE: Oh yes.

The CHAIR: Ms Dore, we have just reached time and I want to thank you for making yourself available for the hearing today via teleconference. The Committee has resolved that answers to questions taken on notice will be returned within 21 days. The secretariat will contact you in relation to the questions that you have taken on notice. Once again, thank you very much.

Ms DORE: Thank you, Mr Chairman.

The CHAIR: Thank you. We will take a short break now while our next witnesses come forward.

The Hon. ANTHONY D'ADAM: Just before that, can I ask this? There was a series of questions about the Work Injury Screening and Early Intervention [WISE] report that Mr David Shoebridge asked. I am wondering whether Mr David Shoebridge could table that report for the Committee's benefit?

Mr DAVID SHOEBRIDGE: I am more than happy to table. I will table two documents, in fact: One is the EML *Swiss Re: Excellence & innovation in Return to Work award in 2015/16*, which is a of the WISE report, and the other is the academic report into the WISE protocols. I table them both.

The CHAIR: Thank you very much. The Committee will take a short break while we prepare for the next witnesses.

(The witness withdrew.)

(Short adjournment)

ANTHONY FLEETWOOD, Chief Executive Officer, Employers Mutual Limited, affirmed and examined

MARK COYNE, Chief Executive Officer, Employers Mutual Management, affirmed and examined

TRACEY HARRIS, Chief Operating Officer and Service Provider Principal, Employers Mutual Management, sworn and examined

MATTHEW VICKERS, General Manager Workers Insurance and Scheme Agent Principal, Employers Mutual Management, sworn and examined

The CHAIR: I now welcome our next witnesses from EML. Before we commence let me acknowledge up-front that the representatives of EML have raised concerns in relation to their commercial obligations. I wish to observe, for the benefit of the witnesses, that these proceedings are covered by parliamentary privilege and the evidence given by witnesses today may not be used in any court proceedings against them or EML. I note that Mr Fleetwood and Mr Coyne are appearing under summons under paragraph 12 (b) of the Procedural Fairness for Inquiry Participants of the House. Witnesses appearing under summons may be required to answer questions if the Committee so decides. Failure to do so may constitute a contempt of Parliament punishable under section 11 of the Parliamentary Evidence Act 1901. I note that Ms Harris and Mr Vickers are appearing voluntarily and are not subject to those provisions although it is open to the Committee to summons you at a later hearing. Would you like to start by making a short opening statement? If so, please keep it to no more than a couple of minutes.

Mr FLEETWOOD: Yes. Thank you, Chair. Good morning. Thank you for the opportunity to attend today and thank you, Chair, for the clarification in relation to our evidence. EML is a personal injury claims management provider which has 110 years of continuous service to injured workers and employers in New South Wales. We were founded in 1910 by forward thinking individuals from a range of industries. They came together with a view to ensure that their workers were properly protected when injured. They formed an enduring partnership, a corporate mutual, to make a difference. We now operate nationally, servicing many organisations in the public and private sectors.

We help people get their lives back—that is our purpose. It is what drives our culture. The customer is at the heart of every decision we make and we are constantly engaging with our most valuable asset, our people, to ensure that we can deliver the best possible service to members of the community—often at their greatest time of need. EML was the largest provider of workers compensation claims management in Australia before the 2018 New South Wales contract was awarded, and we remain so. We draw on 110 years of specialist experience and a three and a half thousand strong workforce, committed to providing return to life outcomes and improving work health and safety for the broader community.

EML reinvests funds back into services and research initiatives to assist employers to create safer workplaces and to help their people return to work sooner after injury. We have allocated more than \$90 million in the last decade to projects to directly benefit employers and their workers. Through this investment, we have delivered a series of programs tailored to assist injured people to return to work. This includes post-traumatic stress disorder [PTSD] guidelines for emergency services, the NSW Police Force RECON program and Fire and Rescue NSW career transition. The latter is now in its fifth year. All of our projects are designed to help injured workers and their families or reduce the possibility of injury in the first instance.

While we have been engaged in New South Wales for 110 years, EML was engaged as the claims agent for ReturnToWork South Australia in 2006. That contract has been renewed or extended on five occasions. In 2016, as a result of our continued performance and services to stakeholders, we were selected by WorkSafe Victoria as an agent and commenced providing service to workers and employers in Victoria. EML has national contracts with iconic Australian brands to deliver self-insurance under the State-based schemes and also within the Comcare scheme. This also includes programs to assist employees to find future employment in the event that they can no longer undertake their current roles.

For 12 years we have also been in partnership with the hospitality industry in New South Wales—getting great outcomes for pubs, clubs and hotel workers and their employers. This year that strong relationship saw us work to mitigate some of the impacts of the COVID-19 crisis that resulted from the March shutdowns that significantly affected that industry. Our history was central in our focus when we participated in 2017 in the tender to manage 33, 50 or 100 per cent of the new return to work scheme. The potential to move to a more service-focused and empathetic case management model for customers was attractive. It would be a shift from a claims agent model to a claims service model. Icare was seeking to engage a service provider that was aligned in terms of focus on service to workers and employers.

The tender outcome saw icare award EML 100 per cent of the contract and move from five scheme agents to one, which was obviously a highly significant change to the scheme. This was coupled with icare's shift towards the implementation of its own claims management system rather than claims and data being managed by separate claims agents, and to a single model rather than different models of interpretation. This was new ground for icare and EML and, like all new systems, it was not without its challenges: Some employers were exempted to continue with their existing claims agents and there were issues around some of the projected resources which we have worked with icare to resolve. All of this was undertaken with the customer at the heart of every decision that we made. That remains the focus of EML. We have focused on continual improvement. While there is clearly further work to do, the month-to-month performance over the last year has shown continued improvement in outcomes.

EML's purpose is to help people get their lives back and that culture is central to us. We care deeply about injured workers and the employers we serve. We draw on 110 years of experience, our scale as the largest workers compensation claims manager in Australia, and our investment of more than \$90 million in a series of projects and initiatives that have a direct and positive impact on injured workers, their families and employers. Thank you for your time.

The CHAIR: Thank you. I will open up the questioning. The Hon. Daniel Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Mr Fleetwood, Mr Coyne, Ms Harris and Mr Vickers for your appearance today. Did you by any chance have the opportunity to hear any of the previous evidence being given by Ms Janet Dore?

Mr FLEETWOOD: Yes. We have seen a little bit of it. Obviously we have been outside more recently.

The Hon. DANIEL MOOKHEY: Yes, of course. I will take you to the Dore review and we will pick up where we left off with Ms Dore. She makes some reflections about your company's performance and she makes some specific findings, but the key part that gets to the nub of it is this quote from her report at 7.4.9, which states:

This poses challenges about the nature of the agreement between icare and EML which is described as a service provision agreement, not an agency arrangement. It therefore means icare controls and directs the operation of the entity that is engaged to carry out claims management which may inhibit EML from performing to the best of its ability.

Do you agree with Ms Dore that under your service provision agreement effectively icare has full control of your service provision, or at least the ability to direct you in a very specific way about what you do and how you do it?

Mr FLEETWOOD: Yes. That is the nature of the agreement, as indicated in my opening statements. It was previously a claims agent model and under the current environment it has moved to a service provider model, different in nature of the agreement and the way in which Ms Dore has characterised that is correct in a contractual sense.

The Hon. DANIEL MOOKHEY: And it is a fundamental difference between a scheme agent and a service provider, is it not, in that a scheme agent has a lot more autonomy than has a service provider and although you were being passed off as a scheme agent, you are in fact a service provider. Would you agree with all that?

Mr FLEETWOOD: I'm not necessarily sure to agree that we are being passed off as a scheme agent.

The Hon. DANIEL MOOKHEY: Well, that is my view. Yes?

Mr FLEETWOOD: Okay. So I certainly agree with the assertion that there is a difference between a service provider agreement and a claims agent agreement. As I sort of alluded to in the opening statements, we operate under both models. A claims agency agreement tends to be the model that a regulator would operate with. A service provider agreement we more commonly find with our self-insurance clients. And so, as noted, we operate under both models.

The Hon. DANIEL MOOKHEY: I will just table the service provision agreement just so that it is clear and in a minute I will table the contract extract. In fact, I will do it now. I table the contract award notice that was published at the end of last week. It shows that the contract you entered into with icare from 1 January 2018 to 31 December 2021 is worth \$386 million. Is that your recollection as to the value of the contract at the point you signed it?

Mr FLEETWOOD: Certainly not at the point we signed it. That was not our recollection.

The Hon. DANIEL MOOKHEY: What was it at the point that you signed it?

Mr FLEETWOOD: Sorry, could I just correct for the record? So our contract is 1 January 2018 to 31 December 2020 so I am not 100 per cent sure—

The Hon. DANIEL MOOKHEY: Well, I will table this because it says here—and this is a filing that icare has made with the contract database and NSW Procurement which is published and they are legally required

to publish it. It says 1 January 2018 to 31 December 2021. I will table it and provide it to the witness so that you can see it.

The Hon. DANIEL MOOKHEY: Can you tell me this: What was the value of the contract when you entered into it?

Mr FLEETWOOD: So—

The Hon. TREVOR KHAN: Sorry. Are we out by a year?

The Hon. DANIEL MOOKHEY: No, I will look at the duration of the contract.

The Hon. TREVOR KHAN: Right.

The Hon. DANIEL MOOKHEY: What was the value of the contract when you entered into it?

The Hon. CATHERINE CUSACK: "Duration" sounds different.

The Hon. DANIEL MOOKHEY: Well, I understand that you are saying, Mr Fleetwood, that you entered a contract to the end of this year which, to be fair, accords with what we understood as well. When you signed the contract in '17 to commence service provision in '18, what was the value of the contract when you signed it? For what period, what duration?

Mr FLEETWOOD: So to clarify our view of the duration, so we entered into a contract with a three-year initial term and two one-year options to extend in the favour of icare. So in theory there is a minimum term of three years subject to the clauses in relation to termination and an option in icare's favour for two further one-year's.

The Hon. DANIEL MOOKHEY: Yes.

Mr FLEETWOOD: So potentially that is where the clarification is there on 2021.

Mr DAVID SHOEBRIDGE: Well, Mr Fleetwood, if we are talking clarifications—and maybe you cannot answer this because maybe Mr Coyne was the person doing the negotiations at the time, so it is directed to either of you—what was the contract price at the time it was entered into? You say it is not \$386 million. What was it?

Mr FLEETWOOD: So the technical dollar value contract price we did not enter into. We have entered into an agreement for a cost-plus contract and the specific dollars of those were not known up-front because the nature of that we said it would be known over the course of the contract.

Mr DAVID SHOEBRIDGE: Well then, why do we not then look at what you were ultimately paid? What were you paid under the contract in each of those years to date?

Mr FLEETWOOD: We will take that on notice just to make sure that we get the exact numbers correct for you and we will provide that to you on notice.

Mr DAVID SHOEBRIDGE: Would it be fair to say you are on track if the contract continues through to the end of 2021—and that is on the assumption a renewal option is done? You are on track to have a contract in the order of \$386 million over the course of those four years.

Mr FLEETWOOD: I think it is important to make sure that the evidence we give today is correct. I would like to take that question on notice and we will come back to you with the exact numbers.

The Hon. DANIEL MOOKHEY: Mr Fleetwood, we are putting it to you on the basis of a document that icare has published themselves last week, that they are legally required to publish and that they have now got around to publishing, that they are paying you \$386 million.

The CHAIR: To be fair, Mr Mookhey, the witness has taken it on notice.

The Hon. DANIEL MOOKHEY: Sure. Are you at least in a position to confirm whether or not you agree that that contract notice that icare published is correct? I ask because we are going to be asking the icare board shortly and to be fair to them we would like to be able to put what you have said to them. Can we at least rely on that \$386 million, or is it wildly wrong?

Mr FLEETWOOD: With respect, I did not have access to that prior to it being tabled here. My apologies, but I would like to provide the correct information to the Committee and I would like to provide that on notice.

Mr DAVID SHOEBRIDGE: Notwithstanding the legal obligation to publish that contract detail in 2018 the public and the Parliament have not had access to it until it was published in the last few days or weeks—

The Hon. DANIEL MOOKHEY: Friday.

Mr DAVID SHOEBRIDGE: —by icare. Did icare consult with you about the publishing of those details?

Mr FLEETWOOD: To my knowledge, they have not consulted with me directly but I might ask my colleagues, Mr Coyne or Ms Tracey Harris, whether they have been consulted.

Mr COYNE: There was no consultation with me.

Mr DAVID SHOEBRIDGE: Well, when I say "you", I am talking about EML as an entity—

Mr FLEETWOOD: Yes.

Mr DAVID SHOEBRIDGE: —including you personally.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, all witnesses—no contact prior to the best of your knowledge?

Ms HARRIS: No.

Mr COYNE: Correct.

Ms HARRIS: None for me.

The Hon. DANIEL MOOKHEY: Fair enough. Mr Fleetwood, you said it was on a cost-plus basis and Mr Nagle previously in parliamentary forums has said that effectively the cost-plus is 10 per cent or 15 per cent. I cannot remember which one. David, do you remember? I think it was 10.

Mr DAVID SHOEBRIDGE: I think he said 10.

The Hon. DANIEL MOOKHEY: Is it 10 per cent?

Mr FLEETWOOD: Yes. So the contract is cost plus 10 per cent and there is an opportunity to earn a slightly higher amount, which is based on performance. So it could be up to cost plus 10 per cent and 4.8 per cent at variable remuneration.

The Hon. DANIEL MOOKHEY: Decided over what? That additional incentive that you have for an additional 4.8 per cent remuneration, how does icare determine whether they should pay you that? How often are you entitled to claim that payment?

Mr FLEETWOOD: So I will ask Tracey Harris to provide the detail but that is an annual amount so we operate on a calendar year basis. There is an annual opportunity to obtain that 4.8 per cent against various performance measures but—

The Hon. DANIEL MOOKHEY: But before Ms Harris answers, can I ask this: How many times have you received that payment?

Mr FLEETWOOD: Again, I will take that on notice and come back with the exact details.

The Hon. DANIEL MOOKHEY: Well, it has only been operating for three years, two years of which have been expired. Did you get it last year or did you get it the year before?

Mr FLEETWOOD: Yes. I appreciate what you are saying. I want to make sure that there is correct information provided to the Committee since—

The Hon. TREVOR KHAN: Mr Fleetwood, that is not asking for a dollar amount. I think it is reasonable if you indicate whether you got some or all of the bonus amount in the two previous years. I do not think that is a difficult question to answer.

Mr FLEETWOOD: We certainly have received some. I was actually seeking to ask Ms Harris to provide the information as she has a more detailed knowledge of the contract.

The Hon. TREVOR KHAN: Well, we will go to Ms Harris.

The Hon. DANIEL MOOKHEY: Sure. Thanks, Ms Harris.

Ms HARRIS: Thank you. So that variable remuneration component is split into two elements of 2.4 per cent each element. One of those is based on us meeting a volume of key performance indicators [KPIs] that include a number of measures, return to work, et cetera. The second is in relation to us meeting our expected operating costs or not exceeding our expected operating costs and that is a budget on cost that we provide to icare

at the beginning of each year. They review and approve that and then we are required to perform within those constraints throughout the course of the year.

Mr DAVID SHOEBRIDGE: Ms Harris, given you seem to have your head around the figures, can you tell us what your understanding is in terms of the payment of that 4.8 per cent variable remuneration in 2019?

Ms HARRIS: So in the first year of the contract we received the 2.4 per cent in relation to the expected operating cost coming within those ranges.

Mr DAVID SHOEBRIDGE: Yes.

Ms HARRIS: We did not receive the second piece, from memory. This year—it takes some time so we have not yet received confirmation on—there is an independent audit of the expected operating costs that occurs by an independent party. That has not been finalised and resolved yet.

The Hon. TREVOR KHAN: You are not expecting to get it for the other performance criteria, are you?

Ms HARRIS: No. Not that we have been advised, no.

Mr DAVID SHOEBRIDGE: Sorry: But this contract, I think you commenced operating under this contract in 2018. Is that right.

Ms HARRIS: Correct.

The Hon. DANIEL MOOKHEY: On 1 January 2018.

Mr DAVID SHOEBRIDGE: So we have 2018, then 2019 and then 2020.

Ms HARRIS: Correct.

Mr DAVID SHOEBRIDGE: And I am sorry, Ms Harris.

Ms HARRIS: That is okay.

Mr DAVID SHOEBRIDGE: It may have been my misunderstanding of your evidence. I think you said—did you say that in 2018 you got a 2.4 per cent bonus?

Ms HARRIS: Correct.

Mr DAVID SHOEBRIDGE: Then in 2019?

Ms HARRIS: They have not yet finished the final audit figures for the expected operating cost component.

The Hon. TREVOR KHAN: But let us be clear: In respect of the KPI 2.4 per cent component, there is no expectation of payment in respect of that?

Ms HARRIS: I have not had any specific discussions on that matter, so I will take it on notice but do not expect that there is.

The CHAIR: Just before we continue, Mr Fleetwood I believe you have the document that Mr David Shoebridge was referring to with the contract dates and the amount?

Mr DAVID SHOEBRIDGE: The other one?

The CHAIR: Yes. Would we be able to pass that to the secretariat, please, so that we could take copies and pass it to the Committee? And we will also make a copy for you as well.

The Hon. DANIEL MOOKHEY: That is actually a nice segue to just ask one other question on that.

The CHAIR: My apologies.

The Hon. DANIEL MOOKHEY: Have you been advised by icare that they are exercising their option to renew your contract for next year?

Mr FLEETWOOD: No, we have not been advised. We are currently in discussion with icare about what if anything that would look like.

The Hon. TREVOR KHAN: Who at icare?

Mr FLEETWOOD: So at the moment we are in discussion with a team from icare, Rob Craig, Tony Wessling and Sunil Chandra.

The Hon. DANIEL MOOKHEY: To be fair, Mr Craig is the chief operating officer of icare. Mr Wessling has now become the strategy director or has the role previously occupied by Mr Ferguson until Mr Ferguson became the interim chief executive. That is correct?

Mr FLEETWOOD: I would ask that you confirm their exact titles with them—

The Hon. DANIEL MOOKHEY: We will, don't worry.

Mr DAVID SHOEBRIDGE: That is fair.

The Hon. DANIEL MOOKHEY: It is fast changing. It is rapidly changing.

The Hon. TREVOR KHAN: You need to get a life, Daniel.

Mr FLEETWOOD: But, yes, they are part of the senior team.

The CHAIR: Order! For the sake of Hansard I ask we will have one comment or question at a time and allow the witnesses to answer.

The Hon. TREVOR KHAN: We will see how we go.

Mr DAVID SHOEBRIDGE: Could I go back to the 2.4 per cent bonus that is payable to EML if costs are constrained? I assume there is a cost envelope given to you each year under the contract—the maximum amount of money you can spend on claims managers, claims handling and the like. Is that right?

Ms HARRIS: Yes.

Mr FLEETWOOD: Sorry: so we participate in setting a—proposing a budget but, yes, there is an approved budget.

Mr DAVID SHOEBRIDGE: And irrespective of the impact on return to work or other indicators, if you stay within that budget you get a 2.4 per cent bonus. Is that right?

Mr FLEETWOOD: That is correct.

Mr DAVID SHOEBRIDGE: Does that not create a terribly conflicted situation? Because if you limit the resources you put into claims management, and that may see return to work rates blow out and may see a whole lot of real impacts in terms of the experience of injured workers and employers, by limiting that cost you actually get a contractual bonus. Have you discussed that conflict with icare?

Mr FLEETWOOD: If we firstly just in relation to the original intent of that, as we have noted this was a new, I guess, a bit of a green fields approach for icare.

The Hon. TREVOR KHAN: Sure was.

Mr FLEETWOOD: It was not obvious up-front about what the costs would be and icare, quite rightly—they have got governance about the amount that is spent on these things—they wanted to ensure that as a service provider that we were not wasting money. So that was the intent. The characterisation that you have given it in the question has certainly been a topic of discussion and in some of the discussions currently as to whether that model would be adopted as a—if there was to be an extension.

The Hon. TREVOR KHAN: I am sorry, could I just ask a follow-up question? In terms of—I have heard frequently this reference to cost plus. Understand the concept in my limited experience in life. What is included in the cost? For instance—because we have heard as to how medical expenses are going—are medical expenses included in the costs, or is that a component that simply is put to one side?

Mr FLEETWOOD: No. So the cost that we are discussing here is the administration cost of the claims management so the medical cost would be what we would term the claims cost, so this does not include the claims cost, the weekly benefits, the medical, the rehab. It is really only the administrative cost of managing claims—case managers, technical support, leaders, et cetera.

The Hon. TREVOR KHAN: Right. Ms Dore talked in terms of some of her evidence with regards to discussions she had with your organisation and talked about you being under-resourced at some stage and you having negotiations with icare to gain additional resources. Firstly, the discussion that Ms Dore referred to, was that with any of you at the table? Secondly, did you approach icare for additional funds, or essentially additional funds, to employ more—I will call them—claims officers?

Mr FLEETWOOD: Yes, so thank you. I will pass to Mark Coyne after a couple of comments. So the references that you are referring to in the Dore report are in relation to resourcing. So there have been discussions, and regular discussions, between Employers Mutual and icare about the required resources—what types of

resources, what is necessary to deliver service to our joint customers being the workers and employers in New South Wales—and that has been a regular and ongoing discussion. I might ask—

The Hon. TREVOR KHAN: Just before you go and I am interested to hear from Mr Coyne—

Mr FLEETWOOD: Yes.

The Hon. TREVOR KHAN: —but it seems to me that you have come here with an opening statement that indicates considerable experience in the area of workers comp but you go through a process of negotiation at the start of the year to set what we will call your resource envelope. But now we are talking about, having set that resource envelope for which you are paid 2.4 per cent over and above, you then during the course are negotiating with icare to expand the envelope for more resources. Now, if I am wrong in that characterisation I invite you to explain that I am wrong. I also invite you to explain why, with all your experience in workers comp, you need to be going backwards and forwards to icare.

Mr FLEETWOOD: Yes. So the characterisation: I would not describe that as wrong. I—and again both Mr Coyne and Ms Harris will be able to provide further detail in relation to the question. But the budget or the projection is based on a range of assumptions and you are correct: We do have a lot of experience in workers comp but we had not had experience in this particular circumstance where we are only taking on new claims. So on 1 January we received our first claim. Generally speaking in our experience you would take the transition of a portfolio from the outgoing claims agents. They retained all of those claims that reported up until the end of December in 2017. So the projection methodology that we were working with and icare's model of projection were different to what we might have done when we transitioned in South Australia, say, or Victoria where we took on a portfolio of claims. We understood at day one the number of claims that we were expecting to receive and the various other assumptions around that.

Mr DAVID SHOEBRIDGE: But taking on only new claims—

The CHAIR: Sorry. Mr Shoebridge, I am sorry I am just going to seek some clarification there. At the last hearing we heard evidence that EML were not in a position to be able to manage the existing claims as well as the new claims. Indeed, we heard evidence today from Ms Dore that at one point you had lost over 22 per cent of your workforce on the claims—

Mr DAVID SHOEBRIDGE: In a single month.

The CHAIR: —in a single month. Given that your testimony just now was the fact that you were only taking on new claims was a factor in the performance financially of the organisation, how can you indicate that you would have been able to take on those existing claims, given the evidence that we have had both last hearing and today that the people that worked for you were exiting or did not have the experience?

Mr FLEETWOOD: So thanks for the question. There are probably a couple of items there of clarification and you may not be aware but SIRA has posted a correction to that particular piece of data that you have referenced. I understand the history of that was that it was obtained from an icare board report and that was replicated in the Dore report.

Mr DAVID SHOEBRIDGE: Yes.

Mr FLEETWOOD: That information is incorrect. The information is reported as being a monthly turnover figure. It was actually an annualised turnover figure and I am sure you can appreciate that those turnover numbers were consistent with industry norms.

The Hon. TREVOR KHAN: What? Twenty-two per cent is consistent with an industry norm, Mr Fleetwood? Is that what you are saying?

Mr FLEETWOOD: Annualised turnover, yes it is.

The Hon. DANIEL MOOKHEY: No, no, no, no. That was clearly about one month.

The CHAIR: No.

Ms HARRIS: No, it—

Mr COYNE: It has been corrected.

The Hon. SCOTT FARLOW: What Mr Fleetwood is saying is that was incorrect.

Mr FLEETWOOD: Yes.

The CHAIR: He is clarifying the evidence that we were given. Thank you for that clarification.

Mr FLEETWOOD: Yes.

The CHAIR: But I guess it goes to the further point that initially you were saying that you have taken on a scheme where from 1 January you received your first claim as the sole provider without adopting the previous existing claims and that had an effect on your financial performance. However, we have heard other testimony that you were not in a position to be able to manage those existing claims and the new claims—

Mr DAVID SHOEBRIDGE: Because of the sheer size of the job.

The CHAIR: Yes. Those two issues do not correlate.

Mr FLEETWOOD: No. So maybe just to clarify what I was meaning when I was talking about the fact that we were not taking on the whole portfolio. I gave the example of in South Australia we transitioned the entire portfolio. Our experience is that the assessment and budgeting of resources in an existing mature portfolio is a relatively straightforward exercise.

What we were talking about here was a new operating model, a segmentation model that was new to the industry. The projections were based on new claims only and what I am saying is that it is different to our historical transitioning in the way in which we would have projected claims. I think the other factor is that this was new for icare; icare had engaged a service provider to assist in projecting out claims. A number of those assumptions in practice we identified over the course of 2018 were not accurate and they evolved with the actual experience. I guess the point of what I am saying is that in the ordinary course, and in response to Mr Khan's question, we have a lot of experience at transitioning, we would generally transition in a portfolio and in this case we transitioned new claims and there was a ramp up alongside of that.

The Hon. TREVOR KHAN: Mr Fleetwood, the problem that I have got—I accept what you say but the continuing concern I have got is that Ms Dore's evidence was with regards to discussions in 2019, not 2018. So what you have done is you have had a year in the scheme in 2018-19, you have had a negotiation with regards to additional resources at the end of 2018, the start of 2019, and you are then still negotiating with icare with regards to additional resources during 2019. You have gone past the transition phase, have you not?

Mr FLEETWOOD: We have certainly gone past the first stage in transition.

The Hon. TREVOR KHAN: There may be other reasons for it.

Mr FLEETWOOD: Yes, there are other reasons for that and I think Ms Harris will be able to assist with extra detail.

The Hon. TREVOR KHAN: And I am sure Mr Coyne is busting to get in on the discussion as well.

Mr DAVID SHOEBRIDGE: But just before we go there, Mr Fleetwood, you are comparing what happened in New South Wales with what happened in South Australia, but what happened in South Australia when EML took over the portfolio in South Australia was there was about a 25 per cent increase in claims management fees in the first year when EML took it over in South Australia in the 2008-2009 year, which is not on a scale comparable to New South Wales, but in 2008 and 2009 dollars an extra \$16.7 million was paid for claims management fees when EML took it over in 2008-2009. So there is form here, is there not, of EML coming in and seeing a substantial increase in claims management forms, because that is exactly what happened in South Australia?

Mr FLEETWOOD: I am certainly aware of what we were paid in South Australia. I would be happy to take the details of what was previously paid.

Mr DAVID SHOEBRIDGE: This is in the public reporting from the Affinity calculations, the public reporting on the scheme in South Australia. There was a 25 per cent increase in claims management fees paid in South Australia when EML took it over. There is form here, is there not?

Mr FLEETWOOD: I do not have access to that information right now that you have, but if you are saying that that is what has occurred, then that is what has occurred.

Mr DAVID SHOEBRIDGE: So far from this being unexpected, what we have seen is history repeating: EML coming in, taking over a whole scheme and claims management fees going through the roof. It is history repeating, is it not?

Mr FLEETWOOD: No. I do not think that is correct.

The Hon. DANIEL MOOKHEY: Can I ask Mr Fleetwood to sort of enlarge on this line of questioning? Why do you say return to work rates have fallen dramatically since icare moved to the single claims model? Do you feel like icare has properly supported EML in its transition?

The Hon. TREVOR KHAN: You are going into big areas there.

The Hon. DANIEL MOOKHEY: So why do you say, Mr Fleetwood, that return to work rates have fallen?

Mr FLEETWOOD: Again, I will provide some comment and I will ask Mr Coyne and Ms Harris—

The Hon. DANIEL MOOKHEY: Relatively briefly, if you do not mind.

The Hon. TREVOR KHAN: No, no.

Mr DAVID SHOEBRIDGE: I think take as long as is needed.

The CHAIR: The question has been asked. We will allow the witness to answer and we will proceed from there.

Mr FLEETWOOD: I think in the first instance it has been noted on the record and I think previous witnesses to this Committee have noted that due to the change in the scheme there was an expectation that there would be a downturn in return to work rates. I think it is further noted, and we agree, that that downturn that occurred was above what we would have hoped and what we expected. I think the answer is that there were some transition elements that were not anticipated.

The Hon. TREVOR KHAN: What are those?

Mr DAVID SHOEBRIDGE: Injured workers.

Mr FLEETWOOD: An example of that was the new model was designed around the implementation of a new system.

The Hon. DANIEL MOOKHEY: This is the Nominal Insurer Single Platform, to be clear—the IT system?

Mr FLEETWOOD: Yes.

The Hon. DANIEL MOOKHEY: Ms Dore made the point in her report that simultaneously moving to a single claims management model while rolling out a new IT platform was incredibly complicated and very ambitious, with which I presume you agree?

Mr FLEETWOOD: I think I would agree with both of those: it is quite complicated and it was an ambitious change program, yes.

The Hon. DANIEL MOOKHEY: This is the Capgemini Guidewire system that you were being told to use. Is that correct?

Mr FLEETWOOD: We know it as Guidewire, yes.

The Hon. DANIEL MOOKHEY: And you expected when you signed the contract that you would be using Guidewire on 1 January 2018. Is that correct?

Mr FLEETWOOD: That was the expectation.

The Hon. DANIEL MOOKHEY: But you did not use Guidewire from 1 January 2018.

Mr FLEETWOOD: No, we did not.

The Hon. DANIEL MOOKHEY: When did you start using Guidewire?

Mr FLEETWOOD: I will have a crack at the exact date, but if I am incorrect—

The CHAIR: I can see that Mr Vickers is indicating he may have an answer.

Mr VICKERS: I understand it was 4 February 2019.

The Hon. DANIEL MOOKHEY: So 13 months into the contract you start using this new IT platform, this bespoke IT platform that you were told you were meant to be able to use from day one. Is that correct?

Mr FLEETWOOD: Correct.

The Hon. DANIEL MOOKHEY: And in that 13-month period EML used its software to effectively make up for the fact that icare did not have their software ready. Is that correct?

Mr FLEETWOOD: Yes. We continued to use a modified version of our platform that was existing and in use in that particular—

The Hon. DANIEL MOOKHEY: On your cost-plus model—what was that platform that you were using, by the way?

Mr FLEETWOOD: The name we give it is EMICS.

The Hon. TREVOR KHAN: Can I just ask a question? Who were they trialling their platform with? I assume they did not just roll it out and say, "Bang, here we go"; they must have been trialling it with someone prior to—

Mr DAVID SHOEBRIDGE: It is dangerous to assume.

The Hon. TREVOR KHAN: Yes, it might be.

Mr FLEETWOOD: Yes, and, with respect, it is probably a question for icare, unless any of my colleagues have—

The Hon. TREVOR KHAN: I do not think they want to come back at the moment.

The Hon. DANIEL MOOKHEY: Sorry, I just want to continue this. But you were using your system called EMICS, which Ernst & Young [EY] in its reviews says in itself created problems. What I wanted to ask is were you passing on the costs of using EMICS to icare through this cost-plus model?

Mr FLEETWOOD: We were passing on the cost of maintaining and modifying that system, yes.

The Hon. DANIEL MOOKHEY: So, to be clear here, icare tells you, "Take over the claims portfolio. We are going to have this whiz-bang IT platform you can use", that platform is not ready when you take it over, you use your own software and you bill icare, which means, in effect, icare is paying twice for software—for the software that is not ready and the software that you are using at the time. Is that accurate?

The Hon. TREVOR KHAN: That is an unfair categorisation.

Mr DAVID SHOEBRIDGE: Also I do not think EML can answer that; they know you were paid for your software, but whether or not or whatever icare was doing with public money is not a matter for them.

The CHAIR: Order! One, Hansard will struggle to capture all this; two, we are questioning the witnesses, we are not having a debate amongst ourselves.

The Hon. TREVOR KHAN: I think it—

The CHAIR: Order! If Mr Mookhey has concluded his questioning then I will pass to Mr Shoebridge.

The Hon. DANIEL MOOKHEY: When did you stop using EMICS?

Mr FLEETWOOD: For the new service model we are continuing to use that. So for transition, on the fourth—I thought it was 5 February, but early February, all new claims that were received in the scheme are on the new system; anything that had been reported to that is on EMICS.

The Hon. DANIEL MOOKHEY: So in the total contract duration to date, which is what, January 2018 to now is 31 months, the people who were processed in the first 13 months of the contract are still being processed on the EMICS system and icare is still paying for that. Is that correct?

Mr FLEETWOOD: That is correct. Obviously a large number of those have been assisted to get back to work.

The Hon. TREVOR KHAN: Can we just go back to it because there was going to be a time when Mr Coyne and Ms Harris were going to get a roll, and that was to explain the resourcing issue which related to claims agents, which seems to be fairly central to this matter. Can we have an explanation as to what has happened because Ms Dore has made some observations?

Mr FLEETWOOD: I might pass straight to Mr Coyne and Ms Harris rather than—

The Hon. TREVOR KHAN: That would be great; I want him to have a starring role.

Mr COYNE: Thanks. I appreciate that. As much as you want me to have a starring role, I probably cannot add a lot more than what Mr Fleetwood has spoken about. There obviously were a lot of factors that resulted in, I suppose, our case managers not having the opportunity to properly service a number of injured workers that were coming through, and some of that, as Mr Fleetwood has talked about, is the fact that there were more claims that came through than what was expected. It was a brand-new operating model, so it took some time to adjusting towards that. So I would agree with, I think it was Mr Mookhey's statement or Mr Shoebridge, that there was certainly, from EML's point of view, a level of disappointment that we could not service the workers as well as we would have liked to have done.

The Hon. TREVOR KHAN: Let me put it to you this way: one of the things that Ms Dore referred to—and you can correct me or tell me I am incorrect—was that there had been some sort of assessment made that each claims agent would deal with, I took from her evidence, some 90 claims and there was an attempt to get that down to—I could be wrong because I am old and I forget things—either 80 or 70, and maybe down to 60. Was there an assessment made in your resourcing model as to the number of individual claims each claims officer would deal with? Was it 90? Was there some negotiation to bring it down with icare to some lesser figure?

Mr FLEETWOOD: There is a model and there are agreed target numbers. It was not 90. Without taking up all of the time, the model is segmented into three parts effectively, so there is what, in our language, is guide and empower largely the shorter-term claims and I think they are the group of claims that have been noted to this Committee by both SIRA and potentially Ms Dore, that they have a pool—they do not technically have a case manager assigned, there is a pool of case managers.

The Hon. TREVOR KHAN: They do not have case managers assigned, full stop, do they?

Mr FLEETWOOD: No.

Mr COYNE: They do not have a dedicated case manager assigned.

Mr FLEETWOOD: Then the return-to-work support segment is sort of the more general return-to-work claims that are going beyond the scale of the empower and guide and the target there is 65 of those claims per case management and specialist and then there is a specialised segment which are the claims that need a higher level of support due to the nature of the injury or circumstances surrounding, and the target caseload in that area is 35.

The Hon. TREVOR KHAN: Going on from that, is it correct that you have been negotiating with icare to bring down the number of claims per claims officer to a lesser figure and is that because everyone has worked out that there has been a collapse in return-to-work rates?

Mr FLEETWOOD: I think the way that we would characterise it is we have been working with icare to make sure that we have the required number of resources to meet the targets that have been set.

The Hon. TREVOR KHAN: I think that is a nice way of putting it but I think you need to give us a bit more flesh than that.

Mr FLEETWOOD: So no, we are not seeking to agree on a lower caseload number. The numbers that I have noted to you there are the target numbers in the current model.

Mr DAVID SHOEBRIDGE: But, Mr Fleetwood, that is less than half an hour per claim per week, assuming your case managers work a 40-hour week—less than half an hour per claim per week. That is for maybe contacting the worker, dealing with doctors, contacting the employer, arranging return to work, arranging attendance at medical assessments—less than half an hour per week per injured worker. You are not going to pretend to us that that is adequate, are you?

Mr FLEETWOOD: I guess in part that question is more of a policy question as opposed to a service provider question, but I will answer it by giving you the—

Mr DAVID SHOEBRIDGE: Sorry, Mr Fleetwood, you came here and said you were an expert in this—

The CHAIR: Order! Mr Shoebridge, allow Mr Fleetwood to continue his answer and then you can ask a follow-up.

Mr FLEETWOOD: Thanks, Chair. I provide you with an answer by way of the example of our hospitality portfolio. Members of the Committee may or may not be aware but Employers Mutual, in partnership with the Hotels Association and ClubsNSW, has an underwritten scheme in New South Wales, a specialised insurer.

The Hon. TREVOR KHAN: In other words, they are self-insurers.

Mr FLEETWOOD: No, it is a specialised insurer.

Mr DAVID SHOEBRIDGE: And you have a service provision with that insurer. We understand that.

Mr FLEETWOOD: Employers Mutual underwrite the risk. So in that model, Employers Mutual have complete control over the model, the resourcing et cetera. We, in that particular scheme, run a much higher resource level than we would in any of our other schemes; whether it is this icare scheme, whether it is in other jurisdictions, whether it is with our self-insurance clients, there is a balance, and that is why I say it is a policy decision. It is a balance between what the client wishes to spend on case management. I can assure you if we

adopted the model that we have in hospitality there would be a significant increase in claims cost—you have already called out the view of the increasing claims cost—and it is always a balance, it is a policy decision.

The Hon. TREVOR KHAN: Mr Fleetwood, that is not necessarily correct. The claims cost may well be as a result of underperforming claims; that is, low return-to-work rates.

Mr FLEETWOOD: Sorry, when I say that, I am referring to the cost of administration of the claims.

Mr DAVID SHOEBRIDGE: But, Mr Fleetwood, give us the comparison. Ninety cases per claims manager under your contract with icare, how many per claims manager in the hospitality work that you do?

Mr FLEETWOOD: I did note in response to Mr Khan's question that 90 is not the target. So 65 and 35 is the target in the icare scheme.

Mr DAVID SHOEBRIDGE: As amended, but it was originally 90.

Mr FLEETWOOD: No.

Mr DAVID SHOEBRIDGE: So what is it in hospitality?

Mr FLEETWOOD: In hospitality we would run at about an average of 40 per case manager right across. We do not have a segmentation model.

The Hon. TREVOR KHAN: Can I just ask again—it is a question I asked before: Ms Dore gave evidence—and it was part of what was being flicked over to Ms Harris and Mr Coyne—that there had been a conversation with regards to EML being under-resourced and negotiating essentially a change in the cost base. That is as I took her evidence to be, and she referred to these figures of dropping numbers per claim. Is the evidence that Ms Dore gave correct or has she dreamed it up that she was having conversations with somebody here?

Mr DAVID SHOEBRIDGE: Mr Coyne.

The CHAIR: She indicated it was Mr Coyne.

The Hon. TREVOR KHAN: With Mr Coyne then with regards to a negotiation to get the number of claims per claims officer down?

Mr COYNE: I think when you are looking at referencing return-to-work rates, which I think Ms Dore was doing, there is definitely a very strong alignment between the number of injured workers that a case manager will manage and the impact on return to work. So when you do have case managers managing injured workers that are up around 90 it becomes very hard to get those return-to-work outcomes. So yes, we are definitely continuing to have discussions with icare about improving our resourcing levels.

The Hon. TREVOR KHAN: Again, I am not being critical of you, Mr Coyne, or EML in this regard, it sort of gets to the nub of the problem: we are seeing a collapse in return-to-work rates; it is to your credit and to EML's credit if you are saying to icare, "You need to put more resources into claims officers to fix the problem." Is that the nature of the discussion you have sought to have with icare?

Mr COYNE: We have those discussions with icare and, as Mr Fleetwood said, we now are at the desired resourcing levels to meet the expectations of the return to work.

The Hon. TREVOR KHAN: And who have those discussions with icare been with?

Mr COYNE: I will probably pass on to Ms Harris to answer those questions. She has been having the discussions mostly.

Ms HARRIS: Perhaps to give you a little more context if I can just spend a minute giving you a little bit of history to understand the journey.

The Hon. DANIEL MOOKHEY: We just really need to know who exactly you are dealing with at icare.

The Hon. CATHERINE CUSACK: Point of order—

The CHAIR: I do not need to hear the point of order. Mr Mookhey, the witnesses are here for an hour and 20 minutes. You are welcome to ask them to return. I will allow them to use their time as they require. If we need to ask further questions we can ask them to come to a further hearing. Ms Harris, please continue.

Ms HARRIS: In early 2017, when EML was announced the successful tenderer for the new icare contract, icare commissioned a piece of work called Aspire 1 that had the objective of planning, co-designing and operationalising the new claims model. The stakeholders involved in that piece of work were from EML's team and they utilised a number of various specialist external consultants to work on the key elements to build the

model, to make sure that we had adequate resources and everything in place to go live in January 2018. A key component of that was the forecasting of the active claims volumes and they were highly assumptive based, and that was a key feeder into the ultimate resourcing model and numbers that were approved for go live in 2018 and as the model mobilised. Shortly after launch in 2018, we identified that the experience was materialising at a high rate in terms of claims volumes, so we immediately went to icare and commenced discussions on seeking approval to adjust that.

Mr DAVID SHOEBRIDGE: Could I ask you this, and it is probably to you, Mr Coyne, who was probably doing the principal negotiations at the beginning of this: Mr Fleetwood says you are a highly experienced workers compensation firm, you must have known that going to this single platform, which was all based upon a logarithm—

The Hon. TREVOR KHAN: An algorithm.

Mr DAVID SHOEBRIDGE: —an algorithm, sorry, thank you—I keep doing that—you must have known that going to this system, which was all based on an algorithm, and not having direct contact with workers, was fundamentally contrary to a basic understanding of dealing with workers compensation claims, where you need to speak to the worker, you need to understand what the doctors are saying, and you need to understand what the employer is saying. You must have understood that. This was a disaster happening from the outset, was it not?

Mr FLEETWOOD: I think it is appropriate for both Mr Coyne and I. I was involved in some of those discussions initially and certainly the objectives of changing the model and the approach—there were some sound objectives about it. Certainly one thing we need to be clear about is that the algorithm was not designed and the system was not designed to have no interaction between case managers and the stakeholders you have mentioned. Traditionally in a workers compensation portfolio it works a bit on the 80/20 rule where 80 per cent of new claims tend to be medical only or a very short-term loss of work and it is the 20 per cent that are the ones that are more complex and it is appropriate then to put your effort into the ones that are more complex—they need more support from us as a case manager; their doctors, their rehab providers will need more interaction with us, and it is about the balance of getting the right level of effort to those particular stakeholders.

As we have noted, every scheme has a different model of operating, and this was the model that we had been engaged to operate under and we believe that there was an opportunity to be successful in that model. I think it was based on a number of assumptions, which, as Ms Harris has indicated, in actuality turned out to be incorrect and needed to be refined.

Mr DAVID SHOEBRIDGE: Because it was a mass experiment with injured workers. There was no evidence underpinning this; it was a bunch of gut feelings from some general insurers who had no experience in workers comp. and you were left to implement it.

The CHAIR: Is there a question there, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: That is what has happened. There was no evidence given to you about it.

The CHAIR: Mr Shoebridge, you need to ask a question.

Mr DAVID SHOEBRIDGE: Mr Fleetwood, there was no evidence given to you to underpin this; it was a mass experiment that you ended up implementing.

Mr FLEETWOOD: I think they are your words, Mr Shoebridge. I would characterise it as icare were seeking to make a fundamental change to the way in which the key stakeholders, the workers and employers were engaged; they wanted to move away from a model that was heavily influenced by the negotiation of what was and was not entitled and they wanted to have a more empathetic model. That was the desire.

Mr COYNE: I would just add as well that, just in terms of the triaging, which was mentioned in the fact that the claims are sort of run through an algorithm, but what has happened is through EML and icare looking at what some of the challenges have been, the triaging has now gone from six weeks where the claims would sit in the Empower and Guide, it got reduced to four weeks and it has been further reduced to two weeks. In our view at EML that is probably the appropriate time that you would want to have a claim sitting for two weeks and then after that it would absolutely be not back at work but it needs to be elevated to a high-risk category.

The CHAIR: Mr Shoebridge, you have got some continuing questions, and Mr Mookhey, and then I have got some questions I want to clarify.

Mr DAVID SHOEBRIDGE: Under the contract with icare, they have the capacity to direct you to undertake activities and to engage service providers, is that right, a third party? Is that part of the contract?

Mr FLEETWOOD: The contract, as we have discussed, is a service provider as opposed to an agent and so that affords icare different rights than an agency agreement. But, to be fair, we have a number of agency agreements where we have the same robust interaction as we do with icare.

Mr DAVID SHOEBRIDGE: Did icare ever direct you to enter into arrangements with a firm called Bridge International?

Mr FLEETWOOD: I can confirm that they have not directed us to enter into arrangements with Bridge International. We have engaged with Bridge International and they have provided a number of services to projects that Employers Mutual and icare have jointly been running.

Mr DAVID SHOEBRIDGE: So you contracted with Bridge International and Bridge International has performed work for both EML and for icare, is that right, under that contract that you have engaged under?

Mr FLEETWOOD: I will get Mr Coyne and Ms Harris to provide some extra detail in relation to the exact nature of the arrangements.

The Hon. DANIEL MOOKHEY: Perhaps we can simplify it. Have you hired, contracted with Bridge International yourself and under your cost-plus contract passed the cost on to icare?

Mr FLEETWOOD: Very simply I can say that we agreed a set of services with the Bridge; those services were conducted under what is known as a project service order [PSO]—that is a mechanism within the contract that is a pure cost recovery; there is no margin attached to that.

The Hon. DANIEL MOOKHEY: Yes, but it is still to icare.

Mr FLEETWOOD: Yes. So services have been undertaken.

The Hon. DANIEL MOOKHEY: Mr Nagle has previously provided evidence which says that icare said that EML required this additional assistance and he pointed you to Bridge International amongst some other firms but made it very clear that it was your decision to engage with Bridge. But you are saying now that that was done pursuant to a project service order. Is that correct?

Mr FLEETWOOD: I am saying, yes, there was a project service order.

The Hon. DANIEL MOOKHEY: But Mr Nagle did suggest to you, or icare did suggest to you that Bridge would be an appropriate person to contract with.

Mr FLEETWOOD: I might ask Mr Coyne to respond to that question.

Mr COYNE: The Bridge International had done work initially for icare, looking at the implementation of the new model, and after that work had been completed we had discussions with icare around icare were keen to see whether it was the Bridge or somebody else do further work to implement the model in some of the other segments.

The Hon. TREVOR KHAN: Did Mr Nagle nominate Bridge? Let us not muck around. Did he say, "Look, pick up Bridge"?

Mr COYNE: If you would let me finish. As I said, icare had initially contracted the Bridge to do a review of the implementation of the new model. We worked with the Bridge as part of that because obviously they had to come into our operation to look at how the new model was being operationalised. We felt that they did some good work. When icare suggested that we look to continue to embed some of the new ways of learning we agreed with icare that would be an appropriate thing to do and we then looked to contract with the Bridge through the PSO.

Mr DAVID SHOEBRIDGE: You say you looked to contract with Bridge through the PSO, but icare directed you to contract with Bridge through the PSO. That is what a PSO is, is it not?

Mr COYNE: The PSO—again Ms Harris might jump in; I might get this wrong—I am pretty sure the PSO is to not get it confused with the estimated or annual operating cost. So because it is a project, it is done as a project service order; it is done outside the normal model.

The Hon. DANIEL MOOKHEY: It is basically so you do not have to internalise the cost in your approved budget that Ms Harris was interpreting—

Mr COYNE: Correct.

Mr DAVID SHOEBRIDGE: You see, it has two benefits, does it not? You do not have to internalise the cost but yet there is distance between icare and Bridge International because it is not icare contracting them,

it is EML contracting them, and they were the twin benefits that were sought to be achieved from that, were they not?

Mr COYNE: No. For us the benefits were that there was a resource coming in. From EML's perspective there was a resource coming in that was going to help us further operationalise the model.

Mr DAVID SHOEBRIDGE: Were you aware of the prior work history between senior executives at Bridge International and Mr Nagle, including through Wesfarmers? Were you aware of that at the time?

Mr COYNE: I am not sure I was aware of that at the time. I think subsequently that was made known to me, but that is not unusual in our industry because it is a small world sometimes, insurance, and generally you do get to network and work with different people.

The Hon. DANIEL MOOKHEY: Mr Fleetwood, in May this year is it the case that EML staff attended a meeting with icare staff in which EML staff were told icare would no longer support the engagement of Bridge to complete the work that they have been undertaking for five months despite seven months being paid for the project? And is it the case that you then sent an email to the CEO of icare, Mr Nagle, which you cc'd to the chair, Mr Carapiet, you cc'd as well to Mr Coyne, in which you said that was a surprise to you, it was a surprise that icare would no longer support the engagement of Bridge to complete the work that they have been undertaking for five months despite seven months being planned for the project? And is it not the case that—

The Hon. TREVOR KHAN: Well, you are now—

The Hon. DANIEL MOOKHEY: Mr Fleetwood, did you send an email saying that?

Mr FLEETWOOD: Yes, I did.

The Hon. DANIEL MOOKHEY: That is what happened? You turned up to a meeting and icare told you that Bridge were effectively—

The Hon. CATHERINE CUSACK: Can you just ask a question? With respect, Mr Chairman, he is reading out slabs of evidence.

The Hon. ANTHONY D'ADAM: He has just answered the question and Mr Mookhey has moved on to the next one.

The Hon. CATHERINE CUSACK: But he is not asking questions.

The Hon. DANIEL MOOKHEY: I am about to.

The CHAIR: I will allow some latitude because obviously Mr Mookhey has got a great amount of information that he—

The Hon. CATHERINE CUSACK: But this is about getting evidence from the witnesses, not getting evidence from him.

The Hon. DANIEL MOOKHEY: I take your point.

The CHAIR: Order! Mr Mookhey is burning his own time. I will allow him to put the evidence and ask the questions.

The Hon. DANIEL MOOKHEY: In that email that you sent to Mr Nagle and Mr Carapiet you also complained that you were advised that it was quite a shock to be told that EML's contract was at risk against the specific deliverance of this project. Did icare threaten your contract if this was heading off the rails?

Mr FLEETWOOD: I might make a few comments and then I will ask Ms Harris to provide the detail. I was not in the meeting that you are referring to, so the emails—

The Hon. DANIEL MOOKHEY: Ms Harris, though, was.

Mr FLEETWOOD: Ms Harris was.

The Hon. DANIEL MOOKHEY: You were directly at that meeting, were you not, Ms Harris?

Mr FLEETWOOD: Yes. If I could address the email?

The CHAIR: Mr Mookhey, allow him to answer.

The Hon. CATHERINE CUSACK: It has been a big effort to get them in here, so it is really worth hearing what they have to say.

The CHAIR: Order! I will allow Mr Fleetwood to address the questions of Mr Mookhey and then we can ask some follow-up questions.

Mr FLEETWOOD: Thanks, Chair. Yes, I confirm that I sent that email. I imagine that has been provided and you have a copy of that email.

The Hon. CATHERINE CUSACK: And he can read.

Mr FLEETWOOD: That is confirmed. And the contents of that email were as a result of a meeting between icare and members of our team. In terms of the specific point that you raised—was our contract threatened?—our contract is subject to ongoing review against performance targets and there are notice periods and terminations, and my view of what icare was saying to us is that there is an expectation we still hit the targets that have been agreed. But I will ask Ms Harris—

The Hon. DANIEL MOOKHEY: In the meantime, could I just table these two documents and provide them to the witness? I have got copies for other members of the Committee too. Ms Harris?

Ms HARRIS: There was a program of work that had been initiated in October by icare and EML became a part of that program in or around November/December. That program was being run by the Bridge and the targets et cetera for that program were set by icare. EML was providing resources and we were sitting in the steer co. to—

The Hon. TREVOR KHAN: Sorry. Sitting in the?

Ms HARRIS: In the steering committee that meets regularly, to monitor progress on that and we had a number of EML specialists and staff partaking in that program, as did icare. The reference to the comments that we talked about at this meeting, there was a sudden notice that the Bridge would be finishing the following day, however, that EML were expected to continue the project and still deliver on the targets.

Mr DAVID SHOEBRIDGE: Was there any explanation given to you about why this contract was being terminated with one day's notice to you?

Mr FLEETWOOD: There was an expectation that the services that were being provided by the Bridge were to augment effort and resources that EML were expected to have as part of our operation and the position that was put to us was that we needed to manage that through our own effort rather than continue to use external support at additional cost.

The Hon. TREVOR KHAN: Sorry, could I just ask—I am not being critical of Mr Fleetwood, but Ms Harris was at the meeting, and can I tell you that you should never play poker—were you given an explanation at that meeting?

Ms HARRIS: As to why?

The Hon. TREVOR KHAN: Yes.

Ms HARRIS: No.

Mr DAVID SHOEBRIDGE: Was it raised in the meeting that questions had been asked in Parliament in budget estimates about the relationship between Bridge International and icare and icare senior executives only a matter of a month and a half before the termination of the contract? Was that raised at all in the meeting?

Ms HARRIS: At the meeting no.

Mr DAVID SHOEBRIDGE: Has it been raised at any time in your discussion with icare about the termination of Bridge International, that the termination happened just weeks after there were concerns raised about the relationship between Bridge International and icare in Parliament?

Ms HARRIS: No, that was not raised in the meeting or in conversations.

The Hon. DANIEL MOOKHEY: Mr Chair, can I just flag that I would seek to have the witnesses stay until 12.20, which goes into our lunch break and does not disturb the rest of the hearing schedule?

The CHAIR: I will just confirm that with the witnesses. You are scheduled to appear until 12.10. Are you happy to make yourselves available for a further 10 minutes after that, finishing at 12.20?

Mr FLEETWOOD: Yes, Chair, that is fine.

The CHAIR: Thank you for your indulgence.

The Hon. CATHERINE CUSACK: I want to spend the time listening to the witnesses and not listening to Mr Mookhey, if that is possible.

The Hon. DANIEL MOOKHEY: Thank you, Catherine, I will do my best. Mr Chair, I just tabled and provided to the witnesses a copy of answers that came back to questions on notice asked in supplementary budget estimates, and it is to do with key subcontractors that are engaged by EML in the performance of their obligations under the service provider agreement. The service provider agreement says that the service provider agreement is between the workers compensation Nominal Insurer, icare Support Solutions Pty Ltd, Employers Mutual NSW Limited and Employers Mutual Management Pty Limited. Do you agree that that is who the contract is with, those four entities?

Mr FLEETWOOD: Yes.

The Hon. DANIEL MOOKHEY: And you have seen as well the list of subcontractors. I think my colleague asked on the first page between A and P and then they have come back in the answers and said basically that these are the lists of companies that are engaged by you as a key subcontractor. Just to be clear to you, you are required to disclose this under your service provider agreement, is that not correct?

Mr FLEETWOOD: I genuinely would like to take it on notice to confirm it exactly, but my understanding is we have to disclose and we disclose if anything changes. I am not sure it is an annual disclosure, but it may be.

The Hon. DANIEL MOOKHEY: Can I just ask you about the relationship between Employers Mutual NSW Limited and Employers Mutual Management? I have checked the tax records and it says that Employers Mutual Limited in the financial year 2018 had revenue of \$280 million and taxable income of \$8.4 million and taxpayer \$95,000, but the key bit is actually Employers Mutual Management Pty Limited—it also is required to disclose its revenue under Commonwealth tax transparency laws.

The Hon. TREVOR KHAN: Point of order—

The Hon. DANIEL MOOKHEY: This is context. Can I get to the question?

The Hon. CATHERINE CUSACK: I am dying for a question here. Is there a question?

The Hon. DANIEL MOOKHEY: Yes, there is a question.

The CHAIR: Order! It is impossible for the witnesses to follow what is occurring. If points of order are to be taken I expect someone to say "Point of order" and then we will address it.

The Hon. TREVOR KHAN: And that is precisely what I said.

The CHAIR: The Hon. Trevor Khan is now taking a point of order and I will allow him to continue.

The Hon. TREVOR KHAN: I take a point of order. This is an inquiry into the workers compensation scheme; there might be some relevance to workers compensation but—

The Hon. DANIEL MOOKHEY: I agree but I am just trying to—

The CHAIR: Mr Mookhey can continue.

The Hon. DANIEL MOOKHEY: It says in this tax data that the revenue of Employers Mutual Management was \$222 million in 1965. That is a company which is a party to the agreement and in the workers compensation scheme. Does Employers Mutual Management have any other client other than Employers Mutual Limited?

Mr FLEETWOOD: Employers Mutual Management, yes, it does have other direct clients.

The Hon. DANIEL MOOKHEY: How much of its revenue is coming out of this service provision agreement?

Mr FLEETWOOD: I would have to take that on notice and come back to you with specific detail.

The Hon. DANIEL MOOKHEY: I accept that Employers Mutual Limited is mutual as the way in which you described in your opening statement, but Employers Mutual Management is a company that is owned by three people. Is that correct?

Mr FLEETWOOD: That is correct.

The Hon. DANIEL MOOKHEY: And you are one of them. Is that correct?

Mr FLEETWOOD: Yes.

The Hon. DANIEL MOOKHEY: And the other ones are Mr Cameron McCullagh—

Mr FLEETWOOD: Yes.

The Hon. DANIEL MOOKHEY: And who is the third?

Mr FLEETWOOD: Mr Angus Cluskey.

The Hon. DANIEL MOOKHEY: You are the three owners of Employers Mutual Management. Is that correct?

Mr FLEETWOOD: Yes, correct.

The Hon. DANIEL MOOKHEY: To the extent to which Employers Mutual Management perform services for Employers Mutual Limited who perform services for icare—Employers Mutual Management, is that a for-profit company or a not-for-profit company?

Mr FLEETWOOD: Employers Mutual Management?

The Hon. DANIEL MOOKHEY: Yes.

Mr FLEETWOOD: Employers Mutual Management is a service entity to the group; it does not make a profit.

The Hon. DANIEL MOOKHEY: But you own it. You have a 15 per cent interest in it.

Mr FLEETWOOD: Correct.

The Hon. DANIEL MOOKHEY: Can I go now to two other companies which are listed as being providing services to icare through the subcontracting chain? The Aswig Group, which has many corporate forms, this is a company that is online and says that they offshore work to Malaysia, to Vietnam, amongst other entities. Aswig Group is an offshore expert—that is how they bill themselves. Is that correct?

Mr FLEETWOOD: As you indicated, there is a number of companies—I just want to make sure we have got the characterisation correct. AS White is an entity that provides resources to Australian companies; it employs resources in various offshore locations, yes.

The Hon. DANIEL MOOKHEY: What work is AS White performing offshore for icare?

Mr FLEETWOOD: AS White is not performing any services offshore for icare. AS White provides resources to a number of companies; one of those is Employers Mutual Management.

The Hon. DANIEL MOOKHEY: Aswig, though, are they providing offshore services?

Mr FLEETWOOD: No.

The Hon. DANIEL MOOKHEY: What services are they providing for icare?

Mr FLEETWOOD: Which Aswig entity are you referring to?

The Hon. DANIEL MOOKHEY: Aswig Solutions Pty Limited, Aswig Management Pty Limited, Aswig Group Pty Limited.

Mr FLEETWOOD: It may be better if I provide a detailed answer to you on notice. Aswig Solutions is a dormant entity; Aswig Group is also a dormant entity; and Aswig Management is a part of the Employers Mutual group.

The Hon. DANIEL MOOKHEY: And you have a pecuniary interest in those companies as well?

Mr FLEETWOOD: I do.

The Hon. DANIEL MOOKHEY: As do the other two people I mentioned earlier?

Mr FLEETWOOD: Yes, as does Mr Coyne.

The Hon. DANIEL MOOKHEY: You are a director of it, I think, as well. You are all directors—or, at least, the two of you are directors. Is that correct?

Mr FLEETWOOD: Correct.

Mr COYNE: Correct.

The Hon. DANIEL MOOKHEY: Is that a for-profit company?

Mr FLEETWOOD: Which entity are you referring to?

The Hon. DANIEL MOOKHEY: Aswig or AS White, whichever you wish to describe.

Mr FLEETWOOD: AS White is a for-profit entity; Aswig Management is part of the structure of the group.

Mr DAVID SHOEBRIDGE: Mr Coyne, I think you had the responsibilities that Mr Fleetwood currently has when the initial contract with EML was entered into in May of 2017. Is that right?

Mr COYNE: Not necessarily, no. I think Mr Fleetwood was doing the work for EML, yes. I am in charge of the management side of the management company and EML has a wider, I suppose, scope—they have a hospitality business, which I do not have anything to do with; they also have a joint venture doing life insurance work as well.

Mr DAVID SHOEBRIDGE: You were part of negotiating the contract in May of 2017. Is that right?

Mr COYNE: Yes, correct.

Mr DAVID SHOEBRIDGE: Mr Coyne, you are often called the rainmaker for EML. Would that be an unfair characterisation?

Mr COYNE: I would think so. I am more of a team player, Mr Shoebridge, so I do not take credit for myself.

The Hon. CATHERINE CUSACK: Where did you hear that?

The CHAIR: Order! Mr Shoebridge has got the call.

Mr DAVID SHOEBRIDGE: The contract being awarded in May of 2017, that was less than a year after EML retained the services of Premier State. Is that right?

Mr COYNE: That is incorrect.

Mr DAVID SHOEBRIDGE: When did you engage the services of Premier State?

Mr COYNE: We have been a client of Premier National since 2012.

Mr DAVID SHOEBRIDGE: Premier State?

Mr COYNE: Premier State, Premier National, sorry—they are the same entity.

Mr DAVID SHOEBRIDGE: One operates in New South Wales and one operates federally.

Mr COYNE: Yes.

Mr DAVID SHOEBRIDGE: So you have been a client since 2012.

Mr COYNE: Correct.

The Hon. TREVOR KHAN: Point of order: This is quite a serious inquiry. Law and Justice is a significant committee. The issue that we have got to deal with is workers compensation, and I think I have expressed my view with regards to my concern with the scheme. How about we stick to the terms of reference?

Mr DAVID SHOEBRIDGE: This is directly relevant, if you give me a minute to draw it.

The CHAIR: I will give you some latitude, Mr Shoebridge, but I will ask you to come back to workers compensation.

Mr DAVID SHOEBRIDGE: I will just be clear about it. Many people in the industry were surprised, to say the least, that the smallest workers compensation insurance firm, or one of the smallest workers compensation insurance firms came to the front of the pack and received a contract to deal with all new claims under the largest workers compensation scheme in New South Wales. Did you have the benefit of representations or arrangements organised by Premier State in obtaining that contract? Were they contracted with you in obtaining that contract?

Mr FLEETWOOD: I might answer both of those parts. I can confirm absolutely that there was no lobbying undertaken by Premier State in relation to awarding that contract. You noted in your question that there was a level of surprise as we were the smallest workers comp. provider. We have noted in our opening statement a number of times we were actually the largest workers compensation provider in Australia in 2017. That is a correct statement and I am not really certain whether the statements of others are accurate.

Mr DAVID SHOEBRIDGE: Mr Fleetwood, when the contract started you did not have the scale or capacity to meet the size of the claims that were coming in, did you? You did not have the scale and capacity from day one of the contract?

Mr FLEETWOOD: I might ask Mr Coyne to respond to the question.

Mr COYNE: From day one, obviously we did not have the people that we needed as the claims built, but I think your question is looking at the capability of EML to be able to scale up and I think we would have sat at around about 16 or 17 per cent of the market share when there were five agents and I think the highest market share of an agent would have been about 22, 23 per cent. So I would argue that whether it is 16 per cent or 22 per cent, to go to 100 per cent is a massive challenge for any organisation. So I think it is very unfair to say that. I think when you look at the transition experience that EML have—

Mr DAVID SHOEBRIDGE: I am listening, Mr Coyne.

The CHAIR: Please continue, Mr Coyne.

Mr COYNE: I think when you look at transitioning experience of claims, EML have by far the most experience. We ramped up in South Australia from scratch, we ramped up in Victoria from scratch, we started working in the TMF account from scratch, we transitioned 5,000 claims for one of the largest self-insurers in Australia and transferred over 110 of their people. So I think if you are looking at saying how could EML scale up, we had more transitioning experience than any other insurer.

Mr DAVID SHOEBRIDGE: But your experience in South Australia was, in terms of the cost of the scheme, disastrous. I put those figures to you before: a 25 per cent increase in claims management costs when you took over in South Australia. Far from endearing you to a future contract, that experience would warn people off.

Mr COYNE: Can I just confirm that when you say claims costs, are you talking about the claims liability or the claims handling costs that we are getting paid?

Mr DAVID SHOEBRIDGE: The claims management costs.

Mr COYNE: I think that goes to a bit of the comments that Mr Fleetwood has said before. When we look at our hospitality model, we do invest in additional resources to get better outcomes and I think that is around getting that balance right around the cost of paying for claims management as opposed to the liability improvements that you want to get.

The CHAIR: We have got 10 minutes to run. I have indicated that Mr Khan and Ms Cusack have questions. Do you have another question, Mr Mookhey? I also want something covered. We have all got about two minutes each.

Mr DAVID SHOEBRIDGE: I just have one final question on this point and it will be quickest. Mr Coyne, did you or anybody associated with EML meet with Mr Photios or representatives of Premier State at the time you were tendering for and negotiating the contract with icare?

Mr COYNE: I will have to take that on notice. I will have to go back and check my diary around that. I just emphasise what Mr Fleetwood would have said that at no point has Mr Photios been engaged by EML to lobby for that contract.

The Hon. DANIEL MOOKHEY: Mr Coyne and Mr Fleetwood—

The Hon. CATHERINE CUSACK: Mr Chairman?

The CHAIR: It is still the same line and then I will take the call and pass it to Mr Khan.

The Hon. CATHERINE CUSACK: It is on the same line..

The Hon. DANIEL MOOKHEY: Mr Coyne and Mr Fleetwood, on 6 December last year, seven days prior to the release of the Dore review, you met with the Treasurer directly. Who organised that meeting? Was it Premier State or representatives of Premier National? What was discussed at that meeting.

Mr COYNE: I went to that meeting. That was organised by my executive assistant, Alicia Zibens. She made contact with the Treasurer's office and obviously EML is a large provider to the New South Wales Government so it was a general catch-up on the New South Wales workers compensation—

The Hon. DANIEL MOOKHEY: Did you discuss the Dore review

Mr COYNE: Not extensively. We did mention that. We did say that the Dore review was obviously coming out and he was looking forward to seeing that.

The Hon. DANIEL MOOKHEY: Was a Mr Edward Yap present at that meeting?

Mr COYNE: No.

The Hon. DANIEL MOOKHEY: When you say your executive assistant did it, that is an administrative function. Was there any other representative from Premier, State or any other company that is not EML attending that meeting?

Mr COYNE: No, it was just myself.

The Hon. DANIEL MOOKHEY: So it just you and the Treasurer directly?

Mr COYNE: Correct.

The Hon. DANIEL MOOKHEY: Only two?

Mr COYNE: Correct.

The Hon. DANIEL MOOKHEY: Did the Treasurer have any staff with him?

Mr COYNE: No.

The Hon. DANIEL MOOKHEY: What did the Treasurer say to you about how he felt the performance of the workers compensation system was going?

Mr COYNE: He just thanked me for giving him the information. I pretty much covered the same stuff that we have covered today in terms of some of the challenges that we have had with the scheme.

The Hon. DANIEL MOOKHEY: Did you try to—

The Hon. TREVOR KHAN: I thought you were going to ask one question?

The Hon. DANIEL MOOKHEY: It is along the same lines. Did you actually put to him—

The Hon. TREVOR KHAN: That actually does not constitute one question.

The Hon. DANIEL MOOKHEY: Did you suggest to him that the Dore review should be disregarded?

Mr COYNE: Not at all, no way.

Mr DAVID SHOEBRIDGE: Is it highly unusual—

The CHAIR: Order ! No.

The Hon. SCOTT FARLOW: Point of order:

Mr DAVID SHOEBRIDGE: Is it highly unusual for the head of an organisation like EML and the Treasurer with no staff?

The CHAIR: Order! I will now pass the questioning to the Hon. Trevor Khan.

Mr DAVID SHOEBRIDGE: No staff.

The Hon. TREVOR KHAN: I think you have indicated you had 16 per cent of the market at the time when the contract was awarded. With the benefit of hindsight—or even perhaps at the time—do you actually consider it may have been overly ambitious to try to essentially become the single provider of services from 16 per cent?

Mr FLEETWOOD: Look, I think I might make a couple of comments and Mark Coyne might wish to add some comments. As we indicated in our opening statement, the options to tender were for 33, 50 or 100—

The Hon. TREVOR KHAN: This is not a criticism of you—

Mr FLEETWOOD: No, I agree. Obviously as a specialist we want to be servicing the scheme. We put in a compliant tender which covered all three of those options. I think it is reasonable to say that we were a little bit surprised to be awarded 100 per cent. We had anticipated that we were probably more likely to get 50 per cent. There was certainly market discussion that they were going to go back to two or three providers. So it was a surprise. I would not characterise that was too much of a risk from our perspective.

The Hon. TREVOR KHAN: Mr Fleetwood, I can understand why any company would take what is offered to them. I am, in a sense, asking you to rise above the opportunity that it provided and really deal with the question about really, looking objectively at it, were you being asked something that, not necessarily was doomed to failure, but had a bit of hair on it in terms of a proposal?

Mr FLEETWOOD: Certainly I would not quite characterise it like that but I certainly think it was complex and, I think, it has been noted already today that there were a number of moving parts outside of just the simple exercise of moving to one scheme agent and so, yes, in hindsight it was quite complex. I guess, with the

benefit of hindsight, we definitely would have done some things differently. I think we still could have made that successful and we fully intend to do that going forward.

The Hon. TREVOR KHAN: Sure. My final question relates actually to your interaction with icare now. We had evidence from Ms Dore earlier—I doubt you probably heard it, you were probably sitting outside there which is a disadvantage to you. Essentially the evidence that she gave was that icare is involved—and this is not directly her evidence, I want to make certain—in operating what might be a degree of shadow management over claims which is reflected in your service agreement with them which essentially makes the decision-making for EML more difficult or, in fact, takes a lot of control that you would normally have in operating as a claims agent. Do you have a view that the level of control that icare has operated has unduly affected the outcome of claims management that you have been involved in?

Mr FLEETWOOD: I think there is a first part of that. So while they are not the terms that I would use, certainly given the nature of this arrangement—we are a service provider—there is a range of people in icare who are working very closely with us on that service provision, and to an extent slightly differently to what we would see in other jurisdictions where there are multiple agents.

The Hon. TREVOR KHAN: You are not masters of your own destiny, are you?

Mr FLEETWOOD: We see it more as attempting to work in partnership. We both have a very common and genuine goal about servicing the injured workers and employers of New South Wales. We quite often have different views about how that is done most effectively, and we have robust discussions about that. Would we do it exactly the same way if it was completely up to us? Well, I have given the example of our hospitality portfolio. We would probably do it in a slightly different way but they are not the decisions for us as a service provider, they are policy decisions for icare and for this Government.

The CHAIR: I want to tidy up some evidence that Mr Nagle gave last hearing. He indicated that the tender that you were asked to submit to, was purely on new claims; that the existing tail was not required and certainly part of your evidence today indicates that that was the case. Is it your understanding that it existed for new claims only, not for the tail?

Mr FLEETWOOD: I might just say that is my understanding. Mr Vickers was intimately involved so I might get Mr Vickers to confirm that.

Mr VICKERS: The tender spec that was released by icare on 21 December 2016 spoke to new claims and also up to 44,000 existing claims, so the tail claims or run-off claims, I think they have been characterised in this forum, were included in the tender spec that was responded to.

The CHAIR: The contract that you were awarded was just for new claims only? You were not offered the tail role initially or were you offered it and then rejected it?

Mr FLEETWOOD: Again, I might ask Mr Vickers to clarify it. But we still manage the tail that was the Employer's Mutual active claims at that time. But to my understanding we just manage ours, we did not get transfer of anyone else's tail.

Mr VICKERS: A slight correction to that statement. We received the workers with the highest needs portfolio so those with 31 per cent whole person impairment or greater from CGU and QBE as they were exiting as agents and then in 2018 as Allianz exited as an agent we received the Allianz workers with highest needs portfolio.

The Hon. DANIEL MOOKHEY: So that is people with 31 per cent impairment before they are eligible to join the Lifetime Care and Support Scheme.

Mr VICKERS: I believe that the Lifetime Care and Support Scheme has a different set of criteria which is above the 31 per cent. Not all workers with 31 per cent are admitted into the Lifetime Care and Support Scheme.

The CHAIR: In the original tender submission that you made you submitted pricing for managing that tail and you submitted pricing for new claims. Were they separate pricing or was it a combined amount?

Mr VICKERS: We were provided with a pricing template by icare to complete with the tender spec. There was a workshop held on 24 January 2017 at icare's offices, attended by all five scheme agents, as they stood at the time. A large part of the questioning at that centred around how to complete the pricing template that was provided.

The CHAIR: My last question, noting the time, we heard from other scheme agents that during the notification process of how the tender had been formalised, it was a somewhat informal process initially with Mr Nagle in his office. From EML who attended that initial conference? Was it with Mr Nagle—

The Hon. TREVOR KHAN: You have got to ask whether they actually did have such a meeting? It was only with Suncorp that we know of.

The CHAIR: Yes. How were you notified? Mr Coyne and Mr Fleetwood, were you both in attendance with Mr Nagel?

Mr FLEETWOOD: Just to clarify, Chair, are you referring to the awarding of the contracts?

The CHAIR: Yes.

Mr FLEETWOOD: I might ask Mr Coyne to—

Mr COYNE: Yes, it was in a formal discussion in the office to my recollection. And it was myself and our group executive, Gerard McDermott, who is no longer with EML.

The Hon. TREVOR KHAN: Did you get a cup of tea?

Mr COYNE: Did I have a cup of tea?

The Hon. TREVOR KHAN: Yes.

Mr COYNE: I probably did, yes.

The CHAIR: Mr Coyne, I guess you were the lead point on that contract. Mr Fleetwood, you were with the company but—

Mr FLEETWOOD: I did not attend that meeting but I certainly did attend subsequent meetings. Mr Coyne and I attended together to discuss the detail of the contract.

The CHAIR: I will just make sure, around the grounds, that nobody has any further points they wish to clarify before we draw it to a close?

Mr DAVID SHOEBRIDGE: That is the wrong question but I will control myself.

The Hon. SCOTT FARLOW: Is it a point of clarification or a question? The time has expired.

The Hon. DANIEL MOOKHEY: It is the last question on the line of questioning.

The Hon. SCOTT FARLOW: But the time has already expired.

The Hon. CATHERINE CUSACK: We extended it.

The CHAIR: I will allow it so that we can finalise.

The Hon. DANIEL MOOKHEY: Thank you. Do you have any ex-partner of PremierState or PremierNational currently engaged or contracted with you, either as an employee or a contractor and, if so, who?

Mr FLEETWOOD: I think you would be referring to Mr David Begg. Mr David Begg is a full-time employee of Employers Mutual.

The Hon. DANIEL MOOKHEY: Since when?

Mr FLEETWOOD: I will come back on notice with an exact date.

The CHAIR: Thank you. Anybody else? We will finish there.

Mr FLEETWOOD: Sorry, Chair: Just for completeness, I wanted to table my opening statement. I did not say it at the time.

The Hon. TREVOR KHAN: That is very helpful.

The CHAIR: Thank you very much. I believe you have some documents that Mr Mookhey has provided to you. The Committee has not got a copy of those, Mr Mookhey.

The Hon. DANIEL MOOKHEY: They are answers to supplementary questions but I will table them.

The CHAIR: Thank you very much. Thank you for appearing today. The Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to any questions that you have taken on notice.

Mr COYNE: Thank you.

Mr FLEETWOOD: Thank you very much. I appreciate your time.

(The witnesses withdrew.)

(Luncheon adjournment)

DAVID PLUMB, Chair of Audit and Risk Committee, icare board, affirmed and examined

MICHAEL CARAPIET, Chair, icare board, sworn and examined

DON FERGUSON, Interim Chief Executive Officer, icare, sworn and examined

GAVIN BELL, Chair of People and Remuneration Committee, icare board, sworn and examined

The CHAIR: Thank you very much. Would each of you like to start by making a short opening statement? If so, please keep it to no more than a couple of minutes.

Mr CARAPIET: I might do the opening statement, Chair, on behalf of everybody if that is okay?

The CHAIR: Thank you very much.

Mr CARAPIET: The New South Wales Government established icare in 2015, creating one of the largest insurance organisations in the country. With \$38 billion of assets, icare administers Insurance for NSW, comprising 10 schemes on behalf of the Government. icare also manages other schemes, with the largest being the Workers Compensation Scheme, being the Nominal Insurer. The NI has around half of icare's assets and accounts for 57 per cent of premiums. Over 62,000 claims are managed annually by four scheme agents. This Committee pushed for many of the reforms in 2015 as everyone recognised that it was vital to better assist injured workers and business.

With five separate scheme agents previously, each running independent IT systems, providing data that was months out of date, there was no clear view on what was happening to the customer. icare has progressively corrected this, making the scheme fairer to injured workers and more reliable and predictable for business. Injured workers and employers are increasingly satisfied with the Nominal Insurer, evidenced by the injured worker Net Promoter Score for June 2020 being positive 23, up from negative three 12 months ago. For employers, it was positive eight up from negative 29—lots of progress.

Other schemes globally are looking to emulate the system the Government set up because the NI has delivered quicker treatment times and faster payments for injured workers, online 24/7 access for business and premiums kept at record low levels, faster decisions by removing paperwork and improving systems, and we now have real-time data and we have generated over \$1 billion in operational and claims savings. The list goes on but we accept that we have to continue improving. icare acknowledges that the NI's return-to-work rate has fallen faster than other New South Wales workers compensation insurers and needs to get better, particularly for small and medium enterprises. However, the financials for the NI are in reasonable health—at 101 per cent at 75 per cent probability of adequacy. Subject to COVID-19 abating as expected, no drastic measures are needed.

The Workers Compensation Scheme is better than it has been, but we hoped to be further progressed. We need to keep the scheme's financials in balance and continue to improve return-to-work rates, despite the current economic challenges. To provide a balanced-scorecard approach on scheme performance, it is important to understand what levers are within icare's control to influence. There are two key revenue levers—premiums and investments. Workers compensation premiums have been kept at the lowest levels in 33 years and our investment strategies have cushioned the scheme from COVID-19 impacts. icare is responsible for controlling expenses, such as the NI's own operating costs, service provider payments, managing medical costs and income expenses according to the legislation and regulation.

What icare has little to no control over are the numbers of claims, the schedule of medical fees and income replacement levels. We also have no control over external regulatory and compliance costs, which amount to over 8c in every premium dollar. Our operating costs are budgeted to fall to 18 per cent of premiums for the current year and stabilise at 15 per cent from 2021 onwards as the transformation program ends. It should be noted that the NI must take on all customers, even those who are uninsured, costing the scheme \$17.6 million last year. We expected to find problems when the single IT system turned on. One of these was historical errors in pre-injury average weekly earnings [PIAWE] calculations, which go back as far as 2012, pre-dating icare.

We recognise that difficult issues have arisen but, when they have, icare has dealt with them. More may arise in time and we will continue to fix the problems of the past and any new issues, regardless of how confronting they may seem. The entire icare team encourages anyone to raise concerns. We will continue to listen and act. At the heart of recent criticism has been integrity. We are disappointed by what has been presented and accept that changes must continue. We have built better governance frameworks and capabilities and the board has now established a corporate governance committee and initiated an independent review.

The interim CEO Mr Ferguson comes from the Care side of icare and brings a fresh approach. Mr Ferguson introduced the Workers Care Program, providing seriously injured workers the same levels of support

given to those injured in motor vehicle accidents. He has already reached out to the regulator and met with various critics and written or spoken to key employers, industry and injured worker groups. We should acknowledge the staff at icare—from those on the front line through to the staff who make things happen behind the scenes. Their extraordinary efforts make the lives of others better. The team here will provide all we can to the Committee in undertaking its duties and for any matters taken on notice we will endeavour to have the answer to you as soon as possible.

The CHAIR: Thank you very much. "Mr Cara-pi-et"—is that the correct pronunciation?

Mr CARAPIET: Yes.

The CHAIR: Thank you. Would you mind tabling your opening statement for the benefit of Hansard?

Mr CARAPIET: Sure.

The CHAIR: Thank you very much. I will open up the hearing for questions and turn to the Hon. Daniel Mookhey.

The Hon. DANIEL MOOKHEY: Thank you, Mr Plumb, Mr Carapiet, Mr Ferguson and Mr Bell for your appearances and for making yourselves available. It is appreciated. Mr Ferguson, I congratulate you on your interim appointment.

Mr FERGUSON: Thank you, Mr Mookhey.

The Hon. TREVOR KHAN: Can the Committee members each have a copy of the opening statement?

The Hon. DANIEL MOOKHEY: Mr Bell, I will start with you on the issue of executive remuneration. Is it the case that the contract of the former CEO, Mr Nagle, set his fixed remuneration at \$700,000 and allowed him to obtain an additional incentive payment as well as enrolling him in a long-term performance payment scheme?

The Hon. DANIEL MOOKHEY: So his fixed remuneration, since he has been CEO, is \$700,000. Is it the case that in 2017 he received an additional incentive of \$200,000?

Mr BELL: In 2017? Bear with me, Mr Mookhey. I just need to confirm that that was the case.

The Hon. DANIEL MOOKHEY: In the interest of time, I might put all the figures to Mr Bell so that he can check them.

The Hon. TREVOR KHAN: No.

The CHAIR: No, he is addressing the question. I will allow him time to prepare.

Mr BELL: Yes, that is the case.

The Hon. DANIEL MOOKHEY: In 2017 he receives an additional incentive payment of \$200,000. In 2018 he receives an additional incentive payment of \$231,361. Is that correct?

Mr BELL: That is correct.

The Hon. DANIEL MOOKHEY: In 2019 he receives zero for an additional incentive, but he receives a long-term performance payment of \$106,667 for performances rendered between 2016 and 2019. Is that correct?

Mr BELL: That is correct.

The Hon. DANIEL MOOKHEY: Working through the group executives who received bonuses last year, is it the case that all of them received a bonus payment?

Mr BELL: Yes, it is.

The Hon. DANIEL MOOKHEY: That means that 11 of them received the bonus payments?

Mr BELL: No, I think it was eight, in fact—the eight who were there for the full period. It may well be 11 and I will have to take that question on notice.

The Hon. DANIEL MOOKHEY: If you do not mind, that would be useful. Is it the case that one executive received a bonus of \$134,000, and the highest incentive paid to any executive last year was \$175,730?

Mr BELL: Last year—do you mean FY20?

The Hon. DANIEL MOOKHEY: FY19—paid on 16 September 2019.

Mr BELL: So two years ago?

The Hon. DANIEL MOOKHEY: No, a bonus given on 16 September 2019.

Mr DAVID SHOEBRIDGE: Calendar year 2019.

Mr BELL: Yes, but in respect of FY19.

The Hon. DANIEL MOOKHEY: Sorry, yes.

Mr BELL: Sorry, could you repeat your question?

The Hon. DANIEL MOOKHEY: I will simplify the question. Was the highest bonus paid to any group executive \$175,730?

Mr BELL: Yes, it was.

The Hon. DANIEL MOOKHEY: Two other executives received long-term performance payments. Is that correct?

Mr BELL: That is correct.

The Hon. DANIEL MOOKHEY: One of them was Mr Ferguson?

Mr BELL: Yes.

The Hon. DANIEL MOOKHEY: And one of them was Ms Liston?

Mr BELL: No, it was not.

The Hon. DANIEL MOOKHEY: Who was the other one?

Mr BELL: Mr Craig.

The Hon. DANIEL MOOKHEY: Sorry, my error. Mr Ferguson, you received an additional incentive last year of \$158,028 and a bonus payment of \$160,000 under the LTTP. That is correct?

Mr FERGUSON: It was \$120,000 under the LTTP.

The Hon. DANIEL MOOKHEY: Yes, and an additional bonus payment of \$158,000 under your annual incentive.

Mr FERGUSON: That is correct.

Mr DAVID SHOEBRIDGE: That was in addition to—what is your base salary, Mr Ferguson?

Mr FERGUSON: It is \$457,000.

Mr DAVID SHOEBRIDGE: So what was the total amount you received in that year?

Mr FERGUSON: It is the addition of those amounts, so the \$457,000 plus the short-term and long-term for that particular year.

Mr BELL: If I can assist, Mr Shoebridge, I think the total is \$735,357.

The Hon. DANIEL MOOKHEY: But the highest-paid executive was either Mr Allsop or Mr Craig, was it not?

Mr BELL: The highest-paid executive in that year was Mr Craig.

The Hon. DANIEL MOOKHEY: Mr Craig received a bonus payment of \$175,730; that was his annual incentive?

Mr BELL: That was his annual incentive.

The Hon. DANIEL MOOKHEY: And \$120,000—

Mr BELL: No, Mr Craig received an annual incentive of \$175,730 and a long-term performance payment, based on the previous three years, of \$160,000, totalling \$870,817.

Mr DAVID SHOEBRIDGE: The quickest way, Mr Bell, might be for you to read the name of each of these eight executives and the total amount they received in that financial year.

Mr BELL: In that financial year John Nagle received \$860,667; Nick Allsop received \$546,543; Elizabeth Uehling received \$571,048; Sara Kahlau is now a group executive but was not at that stage, so I do not have the figure for her; Sam Liston was only employed for part of the year so the figure, I think, is misleading, but the figure is \$185,253; the figure for Mr Ferguson I gave you but, to repeat, it was \$735,357; Rashi Bansal,

who you met on the last occasion, was only a group executive for part of the year so, once again, the figure is not terribly representative, but her figure was \$194,848; Andrew Ziolkowski received \$366,151, but I suspect he was not employed for the full year; and Rob Craig received \$870,817.

Mr DAVID SHOEBRIDGE: Mr Bell, that is close to \$4 million just paid to senior executives in one financial year. Is that right?

Mr BELL: I think it is closer to \$3.6 million, but it is thereabouts. Sorry, I correct that; I think the figure is 3.96 so, yes, close to \$4 million.

Mr DAVID SHOEBRIDGE: I had 3.9-plus. In 2019, \$4 million in just one financial year. How much was paid, collectively, to the executive team for the 2020 financial year, 2019-20?

Mr BELL: I do not have that calculation but I can tell you the figures individually, if that would help.

Mr DAVID SHOEBRIDGE: Please do.

Mr BELL: Working through the same order as previously, Mr Nagle was paid \$700,000; Mr Allsop was paid \$430,000; Ms Uehling was paid \$450,669; Ms Liston was paid \$467,057; Mr Ferguson was paid \$471,154; Ms Bansal was paid \$445,611; Mr Ziolkowski was paid \$488,822; Mr Craig was paid \$548,588.

The Hon. DANIEL MOOKHEY: Mr Bell, in the financial year 2017-18 there were six executives who received a bonus. In 2018 six executives received a bonus. But then we go up to nine in 2019, or last year.

Mr BELL: The last year is FY20, which were the figures I just read out.

The Hon. DANIEL MOOKHEY: So the number of executives who are getting bonuses is going up.

Mr BELL: No, in fact, it is going down.

The Hon. DANIEL MOOKHEY: Do you dispute that in financial year 2017-18, there were six?

Mr BELL: It was either five or six, and then eight in FY19 and none in FY20.

The Hon. DANIEL MOOKHEY: For 2019, the number of executives going up increases by three. At the same time, the financial results of icare are deteriorating. If these are meant to be bonus performance payments for services rendered, what is the rationale for paying these executives bonuses when the scheme's performance is deteriorating?

Mr BELL: First of all, I do not think the performance of icare was deteriorating. So I do not agree with the premise of the question.

Mr DAVID SHOEBRIDGE: The executive team got paid, on your figures, almost \$4 million in financial year ending 2019, and then they got paid almost the exact figure—I make it \$3.959 million—collectively in 2020. Over the course of those two years return-to-work rates dramatically deteriorated. Thousands of workers were not going back to work under your watch, yet the executive team still gets paid just shy of \$4 million collectively. How does that work? How does that ever work?

Mr BELL: I think there are a number of elements to it. Firstly, we are talking about icare; we are not just talking about the Nominal Insurer. When we are talking about the Nominal Insurer, we are talking about one very important aspect of it, so I concede return to work is a very important aspect. But the key performance indicators against which the executive is judged are icare-wide and they take a balanced scorecard approach. So it is not just based on one indicia, being return to work.

The Hon. DANIEL MOOKHEY: Are group executives the only executives or only staff at icare eligible for bonuses?

Mr BELL: No.

The Hon. DANIEL MOOKHEY: Who else is eligible to be paid a bonus?

Mr BELL: The next layer of management is the senior leadership team.

The Hon. DANIEL MOOKHEY: What are they defined as? Are they general managers?

Mr BELL: No, they are the next layer down, and then general managers would be below the senior leadership team.

Mr DAVID SHOEBRIDGE: Do general managers get bonuses as well?

Mr BELL: Yes, general managers get bonuses, as do senior leadership team members.

Mr DAVID SHOEBRIDGE: What level do you have to be to not get a bonus in icare?

Mr BELL: I think there are about 200 people in icare that get a bonus.

The Hon. DANIEL MOOKHEY: Two hundred people out of a staff of approximately 1,200?

Mr BELL: That is right.

The Hon. DANIEL MOOKHEY: So, more than one in ten people at icare are eligible for a bonus?

Mr BELL: That is correct.

The Hon. DANIEL MOOKHEY: What is the total quantum of bonuses paid to all icare staff from the last three years?

Mr BELL: I would have to answer that question on notice. I do not have it to hand.

The Hon. DANIEL MOOKHEY: Do you have the last year in hand?

Mr BELL: I do not think I do, no.

Mr DAVID SHOEBRIDGE: To make that answer useful, if you could break it down by category and also by financial year—

Mr BELL: I can break it down by financial year and category on notice.

The Hon. DANIEL MOOKHEY: Mr Carapiet, did you have the opportunity to watch or see or read Mr Nagle's evidence at the last hearing that we had?

Mr CARAPIET: I watched part of it and I read—

The Hon. DANIEL MOOKHEY: You read the transcript?

Mr CARAPIET: I read most of it, yes.

The Hon. DANIEL MOOKHEY: I would like to talk to you about a specific aspect, which is him explaining the circumstances in which he was denied a bonus last year. When I say "bonus" I mean—his additional incentive was still paid—his long-term performance bonus. Did you hear what he had to say about that?

Mr CARAPIET: Yes, I did.

The Hon. DANIEL MOOKHEY: Are you aware that he said that he offered you his resignation after the board effectively sanctioned him for failing to adequately disclose the arrangement in relation to his wife? Do you recall him saying he offered his resignation?

Mr CARAPIET: He did not offer his resignation.

The Hon. DANIEL MOOKHEY: Your evidence is now directly contradicting what Mr Nagle said. Do you want to tell us your version of events?

Mr CARAPIET: The version of events is that he was unhappy at being sanctioned in the way the board sanctioned him. He thought it was overly harsh and he was reflecting on his future.

Mr DAVID SHOEBRIDGE: Just to be clear, he thought losing his bonus was overly harsh? He did not have a salary deduction. He was not terminated. He just did not get one part of his bonus that year and he thought that was overly harsh.

Mr CARAPIET: He did not get his short-term bonus and one third of his long-term bonus was forfeited as well. He got no salary increase.

The Hon. DANIEL MOOKHEY: Just so we are clear here, I just want to read you the transcript from the Hansard transcript at the time. I will start at this point. I asked him:

Did it occur to you at that point to perhaps resign?

This is after he had confirmed that he lost 100 per cent of his short-term incentive. Mr Nagle said:

Yes.

I said:

Why did you not resign?

Mr Nagle said:

Because at that time I discussed it with the Chair. I was extremely unhappy at the treatment, feeling that I had disclosed and it had been a well-known issue. The Chair asked me to reconsider. I reconsidered. We were also in the middle of the SIRA review and I felt it was more appropriate to support the organisation and carry on.

I asked:

When did that conversation with the Chair take place?

Mr Nagle said:

I could not tell you off the top of my head. I would have to look it up.

Going on, I ask him:

You say that this was during the Dore review so that implies that the conversation with the chair in which you expressed your displeasure at being sanctioned by the board took place last year.

Mr Nagle said:

Yes, July 2019 roughly from memory.

I said:

And is that because that is when your remuneration is usually decided ...

He said:

No, because the board had made the decision ...

I said:

So when you said to Mr Carapiet, who is the chair, that you were disappointed with the board's decision to sanction you, what did Mr Carapiet say back to you? Did he talk you out of resigning? Is that what you are implying?

Mr Nagle said:

Effectively.

I said:

And for what reason?

He goes:

I think this is a very sensitive matter to me. The reality is that he expressed the board's disappointment. He expressed the support of the board to me to carry on. Given the scenario that I care was in with the Dore review ongoing, I agreed to review. I advised him at the time that I would take a short period of time. Unfortunately, my youngest brother had also passed away ...

He is effectively implying that you talked him out of it because you thought it would create an adverse reflection on I care whilst the Dore review was underway. Do you agree with that?

Mr CARAPIET: That is incorrect.

The Hon. DANIEL MOOKHEY: Is that what happened?

The Hon. TREVOR KHAN: Just let him answer.

The Hon. DANIEL MOOKHEY: In your version, what happened?

Mr CARAPIET: The whole board had a very detailed conversation on this issue because it is a very serious issue.

The Hon. DANIEL MOOKHEY: Do you recall, did that conversation—

Mr DAVID SHOEBRIDGE: I think he has got more to say.

The Hon. TREVOR KHAN: Please let him answer.

The Hon. DANIEL MOOKHEY: I thought he had finished. Sorry, Mr Carapiet.

Mr CARAPIET: It was a very serious conversation that the board had. We came to the unanimous decision that the sanction, based on the advice we had, was the appropriate decision for the board. Now, having made that decision, the board wanted Mr Nagle to continue. He always had the option not to continue but I pointed out to him that he had that option. He had the option to stay because the board felt that the sanction was sufficient. It was a material, financial sanction.

The Hon. DANIEL MOOKHEY: I will just conclude on this particular line of questioning with this: He makes it clear he offered his resignation. He says you talked him out of it. Do you reject that?

Mr CARAPIET: He did not offer his resignation.

The Hon. SCOTT FARLOW: He did not say that.

The Hon. DANIEL MOOKHEY: He did. Do you reject that?

The CHAIR: Order! Mr Mookhey asked for clarification. Mr Carapiet can clarify that but we will not be putting words in the mouths of witnesses.

The Hon. DANIEL MOOKHEY: Sure. I am putting it to you that he offered his resignation and you rejected it.

Mr CARAPIET: I have already given you my answer, Mr Mookhey.

Mr DAVID SHOEBRIDGE: Mr Carapiet, it was very serious because he had failed to disclose as he should have a material conflict of interest with his wife getting a contract with icare.

Mr CARAPIET: To the board.

Mr DAVID SHOEBRIDGE: That is right. How much was his wife's contract?

Mr CARAPIET: I do not know. She was a contingent worker. She had been there for a while. She had an original term of, I think, 12 months. That was subsequently extended a couple of times. I do not know what she was paid but I will take it on notice and get back to you.

The Hon. DANIEL MOOKHEY: Mr Plumb, you oversaw what was called the Project Stanley investigation from the audit and risk committee. Is that correct?

Mr PLUMB: That is correct.

The Hon. DANIEL MOOKHEY: Project Stanley was the investigation name given to this particular matter to do with the employment of the former CEO's wife?

Mr PLUMB: That is correct.

The Hon. DANIEL MOOKHEY: In the course of that did you discover what the value of the contract was?

Mr DAVID SHOEBRIDGE: We know you did, Mr Plumb.

The CHAIR: Order! What I want to do is have Mr Shoebridge listen to the evidence that is provided and then asked questions, not to interject with commentary throughout this. It is going to go much smoother and much quicker if we just allow questions to be asked of the witnesses, let them provide a response and then ask for clarification, not interjecting with our own commentary. Mr Mookhey, you have the call.

The Hon. DANIEL MOOKHEY: Thank you. Mr Plumb, did you, in the course of the Project Stanley investigation, discover what the value of the contract was to the former CEO's wife?

Mr PLUMB: Yes, I did.

The Hon. DANIEL MOOKHEY: What was the value?

Mr PLUMB: My best recollection—I do not have it in front of me—was that she was paid \$750 per day and she was paid over three years. She started somewhere in early '16 and finished in early '19. It was an amount in excess of \$800,000 over that period of time.

The Hon. DANIEL MOOKHEY: In excess of \$800,000 over the three-year period? Thank you.

Mr DAVID SHOEBRIDGE: Mr Carapiet, I listened carefully to your opening address and you gave us an address which was about all the positives that you say icare achieved. The one issue of concern that you put on the record was the return to work rates. Would that be a fair summary of your opening address?

Mr CARAPIET: No. I think what I said is that we have achieved quite a lot in a relatively short period of time but there is much we have to improve. There are still lots of tasks being undertaken across the organisation to improve many aspects of our operations. This is a continuous improvement program we have across many aspects.

Mr DAVID SHOEBRIDGE: Mr Carapiet, on the front page of *The Sydney Morning Herald* today there is the most senior employed—former, now—risk and audit officer from your organisation, who has put on the record that when he raised the conflict of interest between your former CEO Vivek Bhatia and the engagement of Capgemini, which was a \$200 million contract. He raised with Vivek Bhatia the issue that Mr Bhatia was good friends with the CEO of Capgemini and Mr Bhatia is recorded by the whistleblower as having become enraged

and saying, "Fuck this. Fuck this. How dare you come in here and tell me this is happening?" You sought not to address that. How could you not address that, if nothing else—your former CEO saying to a whistleblower who raises integrity issues with him, "Fuck this. Fuck that. How dare you come in here and tell me that this is happening?"

The CHAIR: Mr Shoebridge, you have read it on to the record once. I allowed that. I think repeating it again is inappropriate.

Mr CARAPIET: The matters raised by Mr McCann were thoroughly investigated at the time. Given the confidential and sensitive nature of some of what he has raised, we are limited in what we are able to say, but I might pass on to one of my colleagues who has more detail.

The Hon. DANIEL MOOKHEY: Sorry, sir. Just before you do, can you identify why you say you are limited in answering this question?

Mr CARAPIET: There are some personal issues involved and the people are not here to either agree or disagree one way or the other.

The Hon. DANIEL MOOKHEY: Are you identifying a legal constraint?

The CHAIR: No, no, no. Mr Mookhey, I will allow Mr Carapiet to clarify his answer and then you can ask a follow-up.

Mr CARAPIET: There are things we can say—

The Hon. DANIEL MOOKHEY: Well, what can you say?

The Hon. TREVOR KHAN: Don't interrupt all the time, Daniel.

Mr CARAPIET: I will pass it on.

Mr BELL: If I might be able to assist, Mr Mookhey—sorry. Was it Mr Mookhey or Mr Shoebridge who addressed the question?

The Hon. DANIEL MOOKHEY: Both of us.

The Hon. TREVOR KHAN: It was a team effort.

The Hon. DANIEL MOOKHEY: It is a serious matter.

Mr BELL: I agree. It is a very serious matter. Mr McCann raised, in a sense, two discrete aspects. He raised a series of issues that might be termed compliance or impropriety issues. He also brought a workplace claim. The workplace claim included, for example, the suggested conversation.

The Hon. DANIEL MOOKHEY: He also identifies himself—

The Hon. TREVOR KHAN: Point of order—

The Hon. DANIEL MOOKHEY: Sorry, I will let him finish. Had you finished?

Mr BELL: No, I had not finished.

The CHAIR: I will take the point of order.

The Hon. TREVOR KHAN: He knows what it is. Witnesses are answering questions and are being interrupted as they answer. I think this evidence is really important and it does not need to be truncated.

The CHAIR: I will uphold the point of order. I indicate to members that we are responsive to the procedural fairness resolution of the House. I ask that we all observe that as we allow witnesses to answer. Mr Bell, if you would continue.

Mr BELL: The workplace grievance aspect of Mr McCann's complaints included four examples of the conversation you have just referred to, including a—sorry, the alleged conversation with Mr Bhatia. Mr Bhatia, as I understand it, denies the conversation. We engaged an external workplace investigator to investigate the workplace grievance side of Mr McCann's complaints. Mr McCann refused to participate in that investigation and the result of the investigation was that the allegations were unsubstantiated.

The Hon. DANIEL MOOKHEY: Can I now put to you the second aspect of the allegations that we heard about this morning? Mr McCann says he also received a series of threatening emails from anonymous email addresses and a package on his desk with a pair of rubber gloves and a message that said, "You filthy poofter who comes in here. Ask your co-workers and everyone else what they think of you." He went on to say he received

disturbing emails from an anonymous account: "icare does not want gay in the workplace. You should get out. Do not touch our cups, plates or cutlery. Your type are disgusting." Was that investigated?

Mr BELL: Yes, it was. So that I am clear—and I think I speak on behalf of both the board and icare—that that was disgraceful.

The Hon. DANIEL MOOKHEY: But what happened then, sir? You said it was disgraceful—

Mr BELL: We investigated it and we had our internal IT people try to trace the source of those emails. They were unable to do so. We spoke to Mr McCann and said we were going to get an external investigator to try to trace the source of those emails. He did not want us to do it. We did it in any event. They were unable to trace the source of those emails. They were not from an icare address, they were from an address outside of the organisation and we were not able to ascertain who had left the letter.

The Hon. DANIEL MOOKHEY: But you agree that, factually, this happened?

Mr BELL: I agree that factually the letter was there and I agree that factually somebody sent him those two emails.

Mr DAVID SHOEBRIDGE: Did you consider referring the emails to the police, given that using a telecommunication service to harass, threaten or intimidate is a serious criminal offence? Did you refer it to the police?

Mr BELL: Mr Shoebridge, I need to be careful because I do not recall precisely about that. My best recollection is that, firstly, we discussed that with Mr McCann, who was a former policeman. His personal view was that as they were from a Gmail address, Google would not allow us to trace through it and, therefore, we did not go to the police immediately. Having said that—as I say, my best recollection is—we did speak to police and were told much the same. I do have to qualify that because, as I say, it is my best recollection but it is some time ago.

Mr DAVID SHOEBRIDGE: I understand. What steps did you take to address the fact that one of your senior staff had received such a grossly offensive note in his workplace directed to his work? What steps did you take to review the workplace culture in the organisation and to try to remedy what, on the face of it, looked like an appalling example of workplace culture?

Mr BELL: Is that a question to me?

Mr DAVID SHOEBRIDGE: What steps did any of you take?

Mr BELL: As I said, we took several steps to address it to try to work out who had sent that.

The Hon. DANIEL MOOKHEY: Has anyone ever apologised to Mr McCann from the icare leadership or icare board for the manner in which he was treated?

Mr BELL: Mr Mookhey, just so it is clear, I have not met Mr McCann. But I understand several people have apologised to him for what he did. He obviously suffered greatly through this period and, as I understand it, was having both physical and mental health problems. My recollection is that on over 40 occasions people from icare tried to support him through that.

The Hon. DANIEL MOOKHEY: But has the board ever apologised to him?

Mr BELL: Not that I—

The Hon. DANIEL MOOKHEY: Would the board like to apologise to him now?

Mr DAVID SHOEBRIDGE: Before we get there—

The CHAIR: Before we even get to that, Mr Shoebridge, once again, we will ask a question, allow the witness to finish and then we will pause before we start interjecting again because I think Mr Bell had not finished his statement before another question was put to him. Procedurally and ethically that is not fair.

The Hon. DANIEL MOOKHEY: I agree with you. Can I perhaps direct that to the Chair, then?

Mr BELL: Perhaps I can finish.

The Hon. DANIEL MOOKHEY: Sure.

Mr BELL: The final part of your question to me was whether the board apologised. By the time we got to resolution with Mr McCann, he was not speaking directly with anybody from icare. The matter was ultimately resolved and both parties reached agreement. Mr McCann was acting through separate legal representation, so

I suspect the board has not actually apologised other than through the actions of its staff in trying to help him through what was obviously a very difficult period.

Mr DAVID SHOEBRIDGE: Were the circumstances in which Mr McCann's employment concluded with icare reported to the board?

Mr BELL: Yes, I believe it was.

Mr DAVID SHOEBRIDGE: Mr Ferguson, did you report it to the board?

Mr FERGUSON: This is not a matter that I have had any dealings with previously.

Mr BELL: Mr Shoebridge, if I might interrupt? My best recollection is, I reported it to the board.

Mr DAVID SHOEBRIDGE: Mr Carapiet, do you recall it being reported to the board?

Mr CARAPIET: I recall Mr Bell telling us about it.

Mr DAVID SHOEBRIDGE: Well, did they report the obscenely offensive emails and the note?

Mr CARAPIET: What the board understood was that there were some offensive emails but certainly not the detail that you just mentioned. They were offensive and the board—they are just not normal emails that people should get.

Mr DAVID SHOEBRIDGE: Where you advised of the context in which those emails were received by Mr McCann? That he had been repeatedly raising integrity issues about the tendering, the theft and those other integrity issues in icare? Was that raised with you in the report?

Mr CARAPIET: They were separate issues. What Mr Bell was trying to say, Mr Shoebridge, is that there were two lines of issues that Mr McCann raised: One was the conduct of others and the other was his personal employment. So, if we are going to the claims he made in terms of corruption and the like, those were thoroughly investigated by ICAC, by external parties and by internal people as well.

Mr DAVID SHOEBRIDGE: Sorry, Mr Carapiet, you have your senior risk and audit office with an unblemished and highly successful career raising integrity issues about the CEO, about tendering, about theft of tens and tens of thousands of dollars of equipment and, in that context, he receives threatening offensive emails and a threatening, offensive note in his an employment and you did not draw a connection?

Mr BELL: Can I answer that?

Mr DAVID SHOEBRIDGE: No. Mr Carapiet, you are the board member. I put the question to you.

The CHAIR: No, Mr Shoebridge—

Mr CARAPIET: Mr Bell undertook the investigation for us on behalf of the board as chair of the—

Mr DAVID SHOEBRIDGE: But on the workplace—

The CHAIR: Order!

Mr CARAPIET: One of us is actually giving you the answer.

The CHAIR: Mr Carapiet, please.

Mr DAVID SHOEBRIDGE: I am trying to let you answer, Mr Carapiet.

Mr CARAPIET: If I can pass on to a fellow board member who had much more detailed knowledge than me on the specifics. That is the best answer you are going to get from us.

The CHAIR: Mr Carapiet—

The Hon. TREVOR KHAN: Point of order.

The CHAIR: I will hear the point of order.

The Hon. TREVOR KHAN: These are serious matters. I think that the witnesses are seeking to answer and what we get is two members of the Committee jumping over the top of themselves and jumping into the witnesses. It is unreasonable for the Committee as a whole to behave this way and it is unreasonable to these witnesses who have come here voluntarily to get that performance. I ask that members restrain themselves a little bit. I have not sought to intervene, I am not running cover—they are quite capable of answering but they have to be given the opportunity of doing so.

The CHAIR: I will uphold the point of order. I have indicated a number of times that you have to ask a question and allow the witnesses to answer. If Mr Bell is more appropriate to answer the question then, Mr Bell, being here, should be allowed to answer the question. So, Mr Shoebridge, while you may ask it through Mr Carapiet, if Mr Bell indicates that he is more appropriate to answer it, then I believe that he should be allowed to do so. Mr Bell, you have the call.

Mr BELL: When I started my evidence in relation to Mr McCann I said that they are two discrete issues. You are trying to conflate the two both in time and context. The emails that Mr McCann received and the letter Mr McCann received, as I said earlier, were disgraceful and were addressed directly. We were unable to work out who sent them or why they were sent. The issues that Mr McCann raised in relation to impropriety were completely separate. I do not believe that the person who sent the emails had anything to do with any of the other issues, nor were they addressed together.

Mr DAVID SHOEBRIDGE: On what possible basis do you draw that conclusion?

Mr BELL: Have you read the emails?

Mr DAVID SHOEBRIDGE: How do you draw the conclusion that they are disconnected?

Mr BELL: Have you read the emails?

The Hon. DANIEL MOOKHEY: Do you have them, sir?

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: On what possible basis—

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: —do you draw the conclusion that—

The CHAIR: Order! We had this discussion a few minutes ago. Mr David Shoebridge was asking a question. The question was asked. Mr Bell was starting to answer the question. The Hon. Daniel Mookhey then jumps in with another part of the question and then Mr Shoebridge starts interjecting on Mr Bell. Nothing is going to happen if this continues. We are going to ask a question and then allow the witness to answer. Mr Bell, you have the call to address the first question from Mr Shoebridge.

Mr BELL: No, I do not have them with me. I can track them down if you would like me to. But the tenor of the emails—as, I think, the Hon. Daniel Mookhey or yourself raised—went to sexual preferences and also physical illnesses. They occurred at a time that I do not think necessarily links them to the other issues.

The Hon. DANIEL MOOKHEY: Mr Plumb, the second aspect of this investigation is the corruption elements that Mr McCann raised, which I presume, as the audit and risk committee, was more in your bailiwick than perhaps it was in Mr Bell's. Is that correct?

Mr PLUMB: That is correct. The audit and risk committee has responsibility for those matters.

The Hon. DANIEL MOOKHEY: Mr McCann used to attend those audit and risk committee meetings, and at some point he stopped attending those meetings. Is that correct?

Mr PLUMB: That is correct. My understanding was that Mr McCann had been on a period of leave or similar, because I was made aware that there were some personal workplace issues happening.

The Hon. DANIEL MOOKHEY: When the corruption allegations that Mr McCann was investigating reaches the audit and risk committee—we have heard from Mr Carapiet and Mr Bell, to be fair, that internal investigations were launched, external investigations were launched and matters were referred to ICAC. Can you tell us when that happened and who particularly was the external investigator?

Mr PLUMB: The matters that were involved occurred, in my understanding, around about June 2018, after Mr McCann had left work, and arose in the context of his issues. They were referred to ICAC et cetera, and there was internal work done and responses were issued back directly to the board on those matters in late 2018.

The Hon. DANIEL MOOKHEY: Can you table or, on notice, provide us with the responses that you just referred to, which were received back as a result of that investigation?

Mr PLUMB: Yes, I can.

Mr DAVID SHOEBRIDGE: Mr Plumb, while we are tabling documents, I think Mr Ferguson or Mr Bell indicated that an independent report was done in relation to Mr McCann's allegations. Is that right, Mr Bell?

Mr BELL: In relation to Mr McCann's workplace grievance type allegations, yes.

Mr DAVID SHOEBRIDGE: Have you got a copy of that with you?

Mr BELL: I do not have it with me. It was, from memory, done by an organisation called Workplace Dynamics, who are a workplace investigator.

Mr DAVID SHOEBRIDGE: Can you provide a copy of that to the Committee, please?

The Hon. TREVOR KHAN: Point of order: I have allowed all of this without taking objection, apart from procedural matters. But this is, at its heart, a Committee that is undertaking an investigation into the performance of a workers compensation scheme. What is now being asked—that is, the tabling of a report relating to a serious but personal grievance—goes beyond the terms of this inquiry. Quite frankly, I think it is unnecessary for the purposes of this inquiry.

Mr DAVID SHOEBRIDGE: To the point of order: We are not talking about any single employee. We are talking about the only risk and audit—effectively, fraud—officer in care, who left the organisation having raised dozens and dozens of unresolved complaints and concerns about fraud and theft in the organisation. I suggest that it directly relates to this Committee's work.

The Hon. TREVOR KHAN: Further to the point of order: As has been pointed out by Mr Bell, there are what seem to be two discrete issues. One relates to appalling emails and, perhaps, a conversation with Mr Bhatia. The other relates, as you quite rightly point out, to serious allegations of corruption and the like. If what this report dealt with is corruption and the like, I would [audio malfunction] the request. But that is not the request.

Mr DAVID SHOEBRIDGE: Further to the point of order: We have limited time, so all I will say is that the assertion of Mr Bell is that they are unrelated. I think a fair observation would raise serious questions about that. I am not going to press the matter in relation to Mr Bhatia.

The CHAIR: I will make the point that we only have about three minutes left of Opposition and crossbench time. I will reserve on this and discuss it with the Committee later. I am inclined to agree with the Hon. Trevor Khan that if it is of a personal matter, then it is not really relevant to the Committee. If it is of the second nature, then we will have a discussion about it later.

The Hon. DANIEL MOOKHEY: Mr Ferguson, the person who negotiated the agreement with Mr McCann that led to his separation was Susan Lulham. That is correct?

Mr FERGUSON: It is not actually a name I know, Mr Mookhey. As I mentioned before, it is not a matter I have had any prior involvement in.

The Hon. DANIEL MOOKHEY: Who was the person who entered the agreement?

Mr FERGUSON: As I have said, it is not a matter I have had any involvement in and I do not—

The Hon. DANIEL MOOKHEY: Was it Susan Lulham?

The CHAIR: No, Mr Mookhey—

The Hon. DANIEL MOOKHEY: With some indulgence, I will make this clear.

The CHAIR: I want to allow him to finish before he is interrupted again. It also makes it hard for Hansard.

The Hon. DANIEL MOOKHEY: You did identify that that was not the name of the person.

Mr FERGUSON: No, sorry, I actually said it is not a name I know. Did you say Susan Lulham?

The Hon. DANIEL MOOKHEY: Yes.

Mr FERGUSON: If that is the case, yes, that is somebody I know.

The Hon. DANIEL MOOKHEY: Is that the person who entered into the non-disclosure agreement [NDA] and the conclusion agreement?

Mr FERGUSON: I do not know.

The Hon. DANIEL MOOKHEY: That is the view that has been put forward by Mr McCann. That is a person who was a direct report of yours.

Mr FERGUSON: That is correct.

The Hon. DANIEL MOOKHEY: You are telling us you were not aware of it, notwithstanding the fact that at least Mr McCann says your direct report is the person who entered into it.

Mr FERGUSON: These are matters that are dealt with in the utmost of confidentiality. For example, the matter that we were referring to before in relation to the CEO is something that was not widely spoken about across the organisation. These are not things that are discussed in detail with other members of the organisation.

The Hon. DANIEL MOOKHEY: Mr Bell, the board was informed that Mr McCann had entered into an agreement. Is that correct?

Mr BELL: Yes, that is correct.

The Hon. DANIEL MOOKHEY: Were you informed that he had entered into a nondisclosure agreement as a part of that agreement?

Mr BELL: To be frank, Mr Mookhey, I do not recall whether I was told there was an NDA in the agreement. But if there is, I am prepared to accept that that was the case. It is, of course, a two-sided agreement. I do not raise that facetiously. Throughout the process Mr McCann was very concerned about privacy and confidentiality. Whether the NDA was in there at his choice or at icare's choice, I do not know, or whether it was just a boilerplate clause in a lawyer's agreement. I do not know.

The Hon. DANIEL MOOKHEY: Can I put to you the way this appears, and you can at least explain to me why perhaps it is incorrect to reach the conclusion that I reach. It appears that a person raises serious allegations about corruption, because it is his job. At some point later he is subjected to an internal bullying campaign that is vile, morally repugnant and homophobic. He then is exited from the organisation in an agreed manner but, as a part of that, a government agency enters into a non-disclosure agreement with a person who was raising corruption allegations. It appears that the organisation was compelling him to enter into a non-disclosure agreement so he would not circulate his claims of corruption to a wider audience. That is the proposition I would like to put. If you disagree with it, can you tell me why that is an incorrect conclusion to draw from the fact that icare entered into a non-disclosure agreement with a person who was blowing the whistle on corruption?

Mr BELL: There are six or seven premises in your question. I will try and remember them.

The Hon. DANIEL MOOKHEY: I can remind you.

Mr BELL: Most of them I disagree with. As I said, there were two discrete lines of inquiry in relation to Mr McCann. I will need to confirm the chronology because I do not have the chronology precise in my head. The issues of impropriety and corruption raised by Mr McCann were addressed completely separately. Mr McCann, throughout the time since he first raised an issue, was very concerned about privacy and confidentiality because of the subject matter of the emails. He did not want people in the organisation to know about the subject matter, so we respect that. He went on several periods of medical leave. We supported him through all of those periods of medical leave. I think I can give you substantial records of attempts to, one, ensure that he was physically and mentally healthy; two, find ways to get him to return to work; and, three, offer him an alternative role, because he was not prepared to come to work.

The ultimate situation was he simply was not coming back to work and we had to resolve that issue. There was an external process where he was legally represented, icare was represented and, from recollection, there was either a conciliation or an arbitration and an agreement was struck. I do not have the agreement in front of me, I do not know that the NDA was put there at our request or at his request and I do not know whether the NDA relates to matters beyond his employment complaint—I just do not know.

The Hon. SCOTT FARLOW: Mr Carapiet, Mr Mookhey has drawn you to the evidence of Mr Nagle previously. Following-up on from that, did anyone from the icare board express any concerns with the appointment of Mr Nagle as CEO?

Mr CARAPIET: We went through—every year you update your succession planning in case one of your senior executives leaves unexpectedly. That is what the board sees and it flows through the whole organisation—but the board sees the plan for the senior executives. On the senior executive list, if Mr Bhatia left unexpectedly, the person who we nominated to step into his shoes temporarily was Mr Nagle; just like when Mr Nagle left, the person we had nominated to step into Mr Nagle's shoes was Mr Ferguson. This is just normal practice that boards go through. Mr Bhatia left very early in 2018 and Mr Nagle stepped in in an acting capacity and the board then started a search for a new CEO that went—Mr Bell, was it several months?

Mr BELL: Yes, it went for at least three months.

Mr CARAPIET: Three months. From the list of candidates who were interviewed, Mr Nagle was selected as the preferred candidate.

The Hon. SCOTT FARLOW: Was that a unanimous decision of the board?

Mr CARAPIET: Yes, the board has always made unanimous decisions.

The Hon. SCOTT FARLOW: We heard previously about Mr Nagle's evidence with respect to his wife. At the last hearing, Mr Nagle also provided evidence about a trip he had taken to Las Vegas to a Guidewire conference. Was that reported to the board?

Mr CARAPIET: Yes, I approved it. I approved that in April 2018 whilst he was still in an interim role.

The Hon. SCOTT FARLOW: Did any members express any concern about that trip at the time it was presented to the board?

Mr CARAPIET: No, we had staff going to the Guidewire conferences for some years. One of the areas for development of Mr Nagle was his public speaking and this was an ideal opportunity for him to do it in front of a couple of thousand people.

The Hon. SCOTT FARLOW: Is this generally accepted practice within, not just within icare, but within the general insurance industry?

Mr CARAPIET: Yes, I think so. There are numerous—this is not unusual situation.

Mr FERGUSON: If I may, Mr Carapiet, industry conferences can occur locally and they can occur internationally. We had a rival products within icare to Guidewire, which was another international claims platform. Many other jurisdictions across Australia and New Zealand, like parts of icare—I was leading the lifecare scheme at the time—were using this rival platform. I was invited to attend conferences of this other one; however, we had elected to move over to Guidewire's unified platform so I elected not to. But our representatives at those international conferences from equivalent other jurisdictions such as Victoria, the Accident Compensation Corporation [ACC], Transport Accident Commission [TAC], WorkSafe—it is a very common practice within the industry.

The Hon. SCOTT FARLOW: Following on from some of the information that has been provided to the board, we have heard quite a bit about the rising medical costs. Is that something that has been reported to the board and the board is aware of?

Mr CARAPIET: Yes, it is an issue across all insurers that have to meet medical costs. Whether you are a medical insurer or a workers comp insurer, rising medical costs are a real issue. We have looked at it, we are supporting SIRA in its review and we have made a submission. But that is a large part of our costs, some of which are under our control and we are trying hard to improve our management of medical leakage payments, errors—those sorts of things. We have to improve our systems and we are continuing to do so. But the big aspects of the medical costs are really regulatory and legislative. In New South Wales relative to Victoria, we are on a rate that for a few apples comparisons, you can pay up to three times for the same treatment.

The Hon. SCOTT FARLOW: What leads to that increase in New South Wales compared to those other jurisdictions?

Mr CARAPIET: That is the schedule of rates and that is what SIRA is looking at right now.

The Hon. SCOTT FARLOW: And that is published by SIRA.

Mr CARAPIET: That is the first thing. The other thing is that there are differences in legislation between New South Wales and Victoria that make it harder to police medical costs. The Victorian and Queensland systems have a test of "reasonable and necessary", where in New South Wales it is "reasonably necessary". Icare still has a lot of responsibility to make sure that our part of medical costs are managed better.

The Hon. SCOTT FARLOW: Effectively what you are putting forward here is that this is a concern you have had in terms of the regulator's schedule of costs. What action have you taken with the regulator to express those concerns?

Mr CARAPIET: We have made a detailed submission and our expectation is that the regulator will make a decision on that within a few months. We are looking forward to that decision. They have been working hard at it and we have been working cooperatively with them on it.

The Hon. SCOTT FARLOW: Do you believe that this impost of costs has affected the scheme's long-term viability?

Mr CARAPIET: It has not affected the viability but it is a big element of the cost. If we just had to look at changing the schedule of rates to what they pay in Victoria, that would improve the liability profile we estimate by hundreds of millions of dollars. If the Parliament felt fit to change that one item in the legislation—

The Hon. SCOTT FARLOW: So this is from "reasonable and necessary" to "reasonably necessary"?

Mr CARAPIET: No, from "reasonably necessary" to "reasonable and necessary".

The Hon. SCOTT FARLOW: Apologies, yes.

Mr CARAPIET: That would bring us into line with Queensland and Victoria. They have said that they both have that test, I understand. That also is several hundred million dollars.

The Hon. CATHERINE CUSACK: Are those costs benchmarked against other States in your submission?

Mr CARAPIET: Yes, this is apples and apples.

The Hon. CATHERINE CUSACK: Is the submission something you could share with the Committee?

Mr CARAPIET: Absolutely.

The Hon. CATHERINE CUSACK: Thank you. The icare board was aware of the decline in funding ratio between 2018 and 2020, I understand?

Mr CARAPIET: Yes.

The Hon. CATHERINE CUSACK: That decline was not attributed to mismanagement by icare officials, correct?

Mr CARAPIET: Partially, yes. We had some responsibility for the return-to-work rates. The return-to-work rates have not been as good and that has had a negative impact. But the bulk of the difference does not come from us. Some of the operational efficiencies balanced the negative return-to-work rates and prior periods but the bulk of the decline had to do with economic conditions, medical costs and the impacts of past legislative changes.

The Hon. CATHERINE CUSACK: Do you have an actual breakdown?

Mr CARAPIET: I might pass to Mr Plumb—he has the details readily available.

Mr PLUMB: Thank you very much, Mr Carapiet. When icare was created in June 2015, the funding ratio—at 80 per cent probability adequacy—was 130.5 per cent. Members of the House may well be aware that immediately before icare was formally put in place, an announcement occurred of what was known as the 2015 reforms, where some of the 2012 reforms were given back to participants in the scheme.

That was not booked in the June 2015 accounts. It was instead booked in the next year because it happened after the close of those accounts. It was properly disclosed to that effect in those accounts and those audited accounts. The effect of that was \$1 billion, or 9.6 per cent approximately the funding ratio. The other big legislative change impacts—and people with a long history of the scheme will be aware that, in the 2012 reforms, one of the key aspects of that was a cut-off point was made for weekly benefits at 20 per cent whole person impaired. One of the issues that had been there is that had not determined before whether people were entitled to benefits or not. Those reforms were known as section 39.

Committee members may also remember that in 2017 there was a very substantial program of work where icare—and I understand that this Committee favourably commented on that work—went back and dealt with the transitioning of those workers of the scheme. As part of that, the whole person impaired position was assessed properly for each of those and approximately 25 per cent of those who were previously treated as under 20 per cent were, in fact, over 20 per cent. The effect of that—and, once again, it has been disclosed in our annual reports appropriately—over the 2017 year end and the 2018 year end was 1.4 billion, or 11 per cent. If we take those two amounts together, we end up with around about 109 per cent or 110 per cent as the funding ratio as applied after those legislative changes. Then, in addition to that, there are obviously a number of other factors that are what I would call ups and downs on the profile. The increase in medical costs previously referred to as the superimposed inflation, which impacted the scheme right through 2013-14—and you can see in various actuarial reports that covered out—led to about a \$1.4 billion decrease.

Then the other significant decrease that I could say has occurred in this period is the impact of COVID-19. COVID-19 has impacted the scheme in a number of areas. Firstly, premiums have had to be rebated with the lower workers bill. Secondly, claims provisions in the valuation in June have been increased by approximately \$260 million, as well as the investment market impact. That COVID-19 impact is approximately \$1 billion that is gone through in this year. Over the life of the scheme, there has also been a net variance between favourable investment income above what we allow for in the pricing model and the economic assumptions which are applied to liabilities. As those who work in this sort of sector will be aware, the bond rates by which we discount our

liability have reduced dramatically over the last few years and short-term bonds are currently at around about 25 basis points. That has had a net negative effect on the scheme. There have been positive releases that have occurred through enhanced data, enhanced modelling and other issues. I know we talk about return to work being negative in the short term, and it has been, but over the life of icare there has actually been a \$0.8 billion favourable weekly benefits experience.

The Hon. CATHERINE CUSACK: What is the period that you are referring to?

Mr PLUMB: The period there I am referring to is from June 2015 to roughly June 2020.

The Hon. CATHERINE CUSACK: I want to ask about the COVID-19 impact. Can you quantify the amount of impact those economic issues associated with COVID-19 have had on the funding ratio?

Mr PLUMB: This is just on the Nominal Insurer?

The Hon. CATHERINE CUSACK: Yes. The second part to that question is will this affect the capacity of return to work?

Mr PLUMB: I will take both questions approximately. The impact has approximately been 5 per cent on the funding ratio at 80 per cent, and that is approximately \$1 billion. That is made up of a number of components. The first component is there has been 110 million, in the current period, reduced in premiums in the final quarter of the year. Obviously, as we know, employment is dropping off and the wage bill has reduced. That has been booked in this year. In addition to that, there is approximately \$260 million that the actuary has reserved for on a future basis in relation to the current level of claims assumptions, which will impact through return to work because, inevitably in a situation such as COVID-19, there are less jobs available for people to go back to. They are more disparate from their employers, and that is one of the major issues that the scheme will face going forward.

The final issue is the investment markets have overall declined from where we were in the COVID period. That is approximately \$600 million on a net basis for the Nominal Insurer. I should add that going forward there are significant risks to the scheme in relation to COVID-19 and how it materialises. If we were going to go into a Victorian situation, the issues would be much more significant in terms of return-to-work performance, and they would also impact premiums further. The other issue that we are very conscious of in the board—and we have what is known as a liability-aware investment strategy, which we appropriately and conservatively provide for our liabilities—is the inherent risk to investment markets. If there is a scenario where, down the track, the COVID issues become worse, we will see a market correction inevitably in that scenario. It is a further risk.

Mr FERGUSON: I wonder if I might add briefly some excellent work done recently by an actuary who is looking at return to work using SIRA data, as well as more recently. July 2020 data straight out of the Guidewire system indicates that at this stage—the background is that we found that pleasingly the return to work rates deterioration had arrested and was starting to come back up—slowly, but they were.

The Hon. DANIEL MOOKHEY: Who is the actuary?

Mr FERGUSON: A gentleman by the name of John Trowbridge. Although a pleasing arresting of the deterioration and it is starting to climb back up, the most recent evidence is that there is COVID impact that is starting to be seen. But at this stage it is far too early to tell the significance of that. So acknowledging that there were challenges in relation to performance pre-COVID, so I am not trying to conflate the two things, but it is evident, as the economy downturns and so on, that there is a COVID impact. At this point, the information that we have is at the 26-week level it seems to be about 4 per cent in terms of the return to work performance. Whether or not that will stay at 4 per cent or reduce to 2 per cent or go up to 10 per cent really depends, as Mr Plumb said, on what the New South Wales experience is in relation to COVID.

The Hon. TREVOR KHAN: Mr Carapiet, I invite you to comment on this. It seems to me that with what we will describe as the changes commencing in January 2018, icare sought to do three things. The first was to change from a scheme agent to a service agent model. The second was to go from what I think was five scheme agents down to, essentially, one. The third was the introduction of the Nominal Insurer single platform. It seems to me that what icare sought to do was introduce three quite significant changes to the way workers compensation had been done. I wonder if, on reflection, you have a view as to whether that was a brave task that was set to be achieved without disrupting the whole workers compensation scheme.

Mr CARAPIET: A very brave task but we all know what the alternative was. The prior system did not work for injured workers, it did not work for employers and we did not know what was happening because we had to rely on data from other organisations that was months out of date and with no idea as to how accurate that really was. A big change was necessary. This had to be a big change and when I look at the scores currently—there have been missteps, do not get me wrong. There have been plenty of things we have had to go back and

correct and fix but a transformation of this size, complexity and scale inevitably comes with problems. It is just how you address those and go back and fix it. We are constantly looking at going back and fixing the stuff of the past while trying to keep the scheme running. As I said, for the first time that I can remember, we have positive net promoter scores [NPS] scores for both employers and injured workers, where they were negative this time last year.

They were massively negative for employers. In fact, that was one of the things from the Dore report: employers were entirely unhappy. We have made a huge effort, but not jeopardising the injured worker, which is always tricky because you are constantly trying to turn the dials and you are not going to get everything right. Circumstances change—COVID is now a whole new game and so we will have to look at it again. Fortunately, the June NPS scores give us some hope that what we are doing is actually moving in the right direction. I do not want to overstate anything but the team has made material improvements. There is still much we have to do to satisfy the regulator. We understand that. I think that is one of the things that Mr Ferguson has uppermost in his mind.

The Hon. TREVOR KHAN: I would have liked to interrogate that further but we do not have further time.

The CHAIR: Gentlemen, are you available to stay until 2.30 p.m. to allow some further questioning?

Mr CARAPIET: Yes, that is fine.

The CHAIR: With your approval and your indulgence, thank you very much. We will allow questioning until 2.25 p.m. from Opposition and crossbench members and then a final five minutes with the Government members if they elect to use it.

Mr DAVID SHOEBRIDGE: Mr Carapiet, on behalf of the board, will you give an absolute commitment to take no adverse action against Mr McCann arising out of his public disclosure of what happened to him at icare?

Mr CARAPIET: Absolutely.

The Hon. DANIEL MOOKHEY: Does the board wish to issue any apologies to Mr McCann?

Mr CARAPIET: I have to speak to the board about it but I am happy to take it to them.

The Hon. DANIEL MOOKHEY: Can we turn now to the employment of staff in the Treasurer's office employed by icare. We have had it established that two members of the Treasurer's staff were paid for by icare, one by the name of Mr Ed Yap and another unknown person. Firstly, do you know who the unknown person is?

Mr CARAPIET: I think it was a receptionist, I found out.

The Hon. DANIEL MOOKHEY: It was a receptionist?

Mr CARAPIET: Yes.

The Hon. DANIEL MOOKHEY: When was the receptionist employed by icare?

Mr CARAPIET: Secondments are not something the board has ever turned its mind to, I must say.

The Hon. DANIEL MOOKHEY: Employment, though. I asked you when was the employment with icare.

Mr CARAPIET: I do not know.

The Hon. DANIEL MOOKHEY: Do you know, Mr Bell?

Mr BELL: No, sorry, I do not know.

The Hon. DANIEL MOOKHEY: Do you know when the secondment began?

Mr BELL: No, I do not know.

The Hon. DANIEL MOOKHEY: Were you told, Mr Carapiet, that there was a secondment of two staff from icare to the Treasurer's office?

Mr CARAPIET: Not that I recollect but it may have happened.

The Hon. DANIEL MOOKHEY: To the best of your recollection, when did you first learn that there were two staff members being paid for by icare?

Mr CARAPIET: Recently, I think.

The Hon. DANIEL MOOKHEY: In the media?

Mr CARAPIET: Yes.

The Hon. DANIEL MOOKHEY: Does that go for you, too, Mr Bell?

Mr BELL: I will stand corrected but I think that is correct.

The Hon. DANIEL MOOKHEY: Have you identified any documentation of this arrangement since it has emerged in the media?

Mr BELL: Personally, no, I have not.

The Hon. DANIEL MOOKHEY: Do you know when the receptionist began or do we have any further information about the receptionist?

Mr BELL: I think I answered the question. I do not know when the receptionist began. People are looking for the documents and I have not seen them as yet.

The Hon. DANIEL MOOKHEY: Were you told, Mr Carapiet? Or was any of the board told at the time?

Mr CARAPIET: Not that I recollect but—

The Hon. DANIEL MOOKHEY: Has this ever been discussed?

The CHAIR: Order! I know you are short on time but, again, I withheld saying that you were interjecting when Mr Bell was interrupted but Mr Carapiet was just interrupted in the same manner. I ask that you let them finish first.

The Hon. DANIEL MOOKHEY: Sorry, Mr Carapiet, you were saying not to the best of your recollection.

Mr CARAPIET: I have no knowledge of the details of any secondments. Whether someone mentioned that there was someone from the Treasurer's office is not something that I ever paid any attention to, I must admit.

The Hon. DANIEL MOOKHEY: I understand. But that is why am asking to the best of your collection. To the best of your recollection, or any of the board members, was this ever discussed at a board meeting?

Mr CARAPIET: No, secondments are not discussed.

The Hon. DANIEL MOOKHEY: Can I ask, what was Mr Yap paid? Do you know, Mr Bell?

Mr BELL: I do not know.

The Hon. DANIEL MOOKHEY: Was he one of the 200 executives at icare who is eligible for a bonus?

Mr BELL: I do not know but I doubt it.

The Hon. DANIEL MOOKHEY: Why do you doubt it?

Mr BELL: Because I do not recall seeing his name on a list. It may be there—and I will provide the list—but I do not think that he is there.

Mr DAVID SHOEBRIDGE: Can you provide details of Mr Yap's remuneration over the course of his contract?

Mr BELL: No, I think in answer to a question either you or Mr Mookhey asked earlier, I was to produce a list of executives who received a bonus—

Mr DAVID SHOEBRIDGE: But I am now asking if you will provide on notice details of Mr Yap's employment.

The CHAIR: Mr Shoebridge, same deal. Mr Bell has to be allowed to finish his answer before you ask another question or interrupt with a comment.

Mr DAVID SHOEBRIDGE: I understand. I am simply asking to provide details.

Mr BELL: You are seeking two things. Just so I am clear, you want the list of executives who received a bonus—

Mr DAVID SHOEBRIDGE: I am not revisiting any of that, Mr Bell.

Mr BELL: You are not interested anymore—

Mr DAVID SHOEBRIDGE: I am not revisiting any of that.

Mr BELL: Okay.

The CHAIR: Mr Shoebridge!

Mr DAVID SHOEBRIDGE: I am asking about Mr Yap.

The CHAIR: Order! This is not going to work if you continue to do this. Mr Bell was asking for clarification—

Mr DAVID SHOEBRIDGE: Which I gave him.

The CHAIR: You gave him in a manner which was quite rude and, frankly, it is not productive. The witnesses are allowed to ask for clarification. If not, I will have to continue ruling this way and burning up all your time.

The Hon. DANIEL MOOKHEY: Thank you, Mr Chair. Thank you, Mr Bell, I accept your answer that you will take it on notice. Can I just ask, in respect to the arrangement under which Mr Yap was seconded and the receptionist was seconded, have you sought legal advice as to whether that was legal for icare to seconded them?

Mr BELL: No.

The Hon. DANIEL MOOKHEY: The Treasurer has said that this arose—

Mr BELL: Sorry, personally, I have not and I am not aware of icare seeking that legal advice but it may well have.

The Hon. DANIEL MOOKHEY: Thank you. The Treasurer in his public statement addressing this matter said that this arose in respect of a visa issue. Did icare ever sponsor Mr Yap's visa?

Mr BELL: Not to my knowledge.

The Hon. DANIEL MOOKHEY: Have you made any representations to any Commonwealth authority in respect to Mr Yap's visa? When I say "you", I mean icare.

Mr BELL: I am answering to my knowledge. To my knowledge, icare has not made those representations. I am not saying it has not, I am saying that to my knowledge it has not.

The Hon. DANIEL MOOKHEY: Has icare paid for any other staff in the Treasurer's office historically prior to these two positions?

Mr BELL: To be precise, I do not know, but it is possible there have been other secondments to the Treasurer's office.

The Hon. DANIEL MOOKHEY: Okay.

Mr FERGUSON: I can confirm that, yes, there have been other staff in the Treasurer's office. I do not have the details to hand.

The Hon. DANIEL MOOKHEY: How many?

Mr FERGUSON: I do not have the details to hand but I can confirm that there have been other staff that were present in the Treasurer's office

The Hon. DANIEL MOOKHEY: Were they seconded? Do you know which functions they were performing?

Mr FERGUSON: I actually do not have any further information. I can just confirm that I am aware that there were others.

The Hon. DANIEL MOOKHEY: Well, what can you tell us? Do you know when—

The Hon. SCOTT FARLOW: That there were others, that is what he just said.

The CHAIR: I think he has just provided that answer.

The Hon. DANIEL MOOKHEY: Do you know when they were being provided?

The CHAIR: Mr Mookhey, I think he has also answered—

The Hon. TREVOR KHAN: No, he has to be able to answer.

Mr FERGUSON: I recall one time there being a departmental liaison officer seconded for a period of time at some point, probably about two years ago. It is just by way of recollection—just to aid your understanding, I can confirm that there were others.

The Hon. DANIEL MOOKHEY: Since learning about this, have you identified the cost to icare of this secondment arrangement? Mr Ferguson, or the board?

Mr FERGUSON: Actually, the secondment arrangements are being reviewed by Treasury and we have provided information to Treasury to undertake that review. We have not undertaken any reviews independent of that.

The Hon. DANIEL MOOKHEY: Thank you, Mr Ferguson. That was not the question I asked. The question I asked was have you identified the cost to icare of the secondment arrangements?

Mr FERGUSON: As I said, we have not undertaken any independent reviews of the situation.

Mr DAVID SHOEBRIDGE: Will you provide to the Committee, on notice, full details of who in the employ of icare or contracted to icare has been paid while performing work in the Treasurer's office, including by name and by the amount that they were paid?

Mr FERGUSON: Yes, presuming there are no privacy issues. It does not sound like there would be, so yes.

Mr DAVID SHOEBRIDGE: Icare receives its income entirely from premiums that are paid by employers in New South Wales for workers compensation.

The Hon. TREVOR KHAN: And income earned on the investments.

Mr DAVID SHOEBRIDGE: And income earned on investments.

Mr CARAPIET: No. The NI is only, as I said, less than half the assets and only 57 per cent of the premiums. There are 10 State schemes and numerous non-State schemes that icare is responsible for.

Mr DAVID SHOEBRIDGE: Roughly half of the money to run icare comes from premiums paid by employers in New South Wales, correct?

Mr CARAPIET: That is right.

Mr DAVID SHOEBRIDGE: The balance comes from fees or charges that icare has for managing other public sector and other schemes. Is that right?

Mr CARAPIET: It is also premiums, but from other entities.

Mr DAVID SHOEBRIDGE: At the end of the day, if the money was not diverted to icare it would have been going towards paying injured workers in one form or another. That is the pool it would have gone into, correct?

Mr CARAPIET: Yes.

Mr DAVID SHOEBRIDGE: Mr Carapiet, do you believe it is appropriate—

Mr BELL: Can I disagree with that?

The CHAIR: Mr Bell?

Mr BELL: I apologise. I will not interject.

The CHAIR: No, if you have a contribution you are more than welcome to make it.

Mr BELL: Sorry, I was trying to be helpful and I may have misunderstood the premise of Mr Shoebridge's question.

Mr DAVID SHOEBRIDGE: We will move on. Mr Carapiet, do you believe it is appropriate for money that would otherwise be targeted towards paying injured workers to be used to provide political advisors in the Treasurer's office? Do you believe that is appropriate?

Mr CARAPIET: Secondments to Ministers' office, I think, are quite common around government. That is my understanding.

The Hon. CATHERINE CUSACK: Liaison.

Mr CARAPIET: You would know better than me; I do not have a lot of experience.

Mr DAVID SHOEBRIDGE: Mr Carapiet, I did not ask you about that. My question was quite direct. Do you believe it is appropriate for icare to be paying for political advisors in the Treasurer's office from money that is set aside to help injured workers?

Mr CARAPIET: These are not rules that I or the icare board set. These are government rules. My understanding is that it is permitted. If it is not permitted and we have done something that is not permitted, then I am very happy to think about it. But if we have done something that is permitted that may not have been documented, that is quite a different issue.

Mr DAVID SHOEBRIDGE: I will put this to you, Mr Carapiet: The Treasurer, in a statement, said that the secondment happened under the regulations under the Government Sector Employment Act. You would know full well, as the chair of the icare board, that that Act does not apply to icare employees. You would know that, would you not?

Mr CARAPIET: Partially, yes.

Mr DAVID SHOEBRIDGE: So you would know that the Treasurer's explanation was plainly false, would you not?

Mr CARAPIET: I have never put my mind to it.

Mr DAVID SHOEBRIDGE: How could you not have put your mind to this, given the degree of public discussion about icare paying for the Treasurer's political minders and advisers? How could you not, as chair, turn your mind to that?

Mr CARAPIET: Mr Shoebridge, this is a secondment. It is handled at the management level and there is an investigation happening by Treasury. Let us just wait until they come back and tell us what we need to do differently, if anything, and we will do it.

Mr DAVID SHOEBRIDGE: How about instead you do your job as the chair of the board—

The CHAIR: Order! Mr Shoebridge—

Mr DAVID SHOEBRIDGE: —and make investigations yourself about the misuse of public money—

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: —to pay for the Treasurer's political advisors?

The CHAIR: Order! Mr Shoebridge, this is not an opportunity for you to stand on a pulpit and preach. This is an opportunity for you to ask questions and seek a response. I ask you to control yourself. There is about a minute left. The Hon. Daniel Mookhey has the call.

The Hon. DANIEL MOOKHEY: What services is Mr Yap currently performing for icare now that he has returned, Mr Ferguson?

Mr FERGUSON: Mr Yap is not working for icare. Mr Yap has resigned.

The Hon. DANIEL MOOKHEY: When did he resign?

Mr FERGUSON: Last week.

The Hon. DANIEL MOOKHEY: So he returned to icare approximately two weeks ago, having never been employed at icare before, and he resigned within a week of returning. Are you seriously suggesting that he was a serious employee of icare—

Mr FERGUSON: I am not suggesting anything.

The Hon. DANIEL MOOKHEY: I want to finish my question, Mr Ferguson. I would like to put a proposition to you. He never worked a day at icare. He was hired by icare and then immediately seconded to the Treasurer's office. When the public learned about it, the secondment was terminated and he returned to icare, and then he resigned, having never performed a day of work at icare. Do you agree that that at least creates the appearance of a sham arrangement being engaged in to provide the Treasurer with political staff?

Mr FERGUSON: There is a lot of speculation in that statement. I do not have an answer for it.

The Hon. DANIEL MOOKHEY: Has the receptionist returned?

The CHAIR: We have now reached 14:25 and we are into Government members' time.

The Hon. SCOTT FARLOW: While we are on secondments, WorkCover was the predecessor to icare. Is that correct?

Mr CARAPIET: Yes.

The Hon. SCOTT FARLOW: Are you aware whether WorkCover supplied any departmental liaison officers to Ministers' offices in 2010? Mr Ferguson, I see you nodding.

Mr FERGUSON: I am aware, yes, they did.

The Hon. DANIEL MOOKHEY: They were an authority, though—a public sector agency.

The Hon. SCOTT FARLOW: WorkCover was an organisation that was completely funded by—

The Hon. DANIEL MOOKHEY: But they were a public sector agency.

The Hon. SCOTT FARLOW: —workers compensation payments. Is that correct?

Mr FERGUSON: Sorry, I am a little bit distracted. My understanding of your question is did they pay for workers compensation payments, and the answer would be yes. Concurrently, they provided staff to the Ministers' offices.

The Hon. SCOTT FARLOW: So departmental liaison officers were provided by WorkCover—

Mr FERGUSON: That is correct.

The Hon. SCOTT FARLOW: —to what was then Minister Daley's office, was it, in 2010?

Mr FERGUSON: I would need to check that, but they certainly provided them previously.

The CHAIR: Do Government members have further questions?

The Hon. CATHERINE CUSACK: Any allegations of corrupt conduct made from time to time against icare have always been sent to ICAC. Is that correct?

Mr CARAPIET: Yes.

The Hon. CATHERINE CUSACK: ICAC never investigated an icare corruption allegation, but left it to icare to resolve them. Is that correct?

Mr CARAPIET: As far as I am aware.

Mr BELL: I can answer that: That is not correct. ICAC did investigate a number of referrals and decided to take no action.

The Hon. CATHERINE CUSACK: And referred it back to your organisation?

Mr BELL: And referred it back.

The Hon. CATHERINE CUSACK: Has ICAC ever expressed any concerns regarding icare's probity and compliance processes?

Mr BELL: I think in the early days, yes, quite frankly. We got them in—brought ICAC into icare to give training on correct procurement processes.

The Hon. CATHERINE CUSACK: When was that?

Mr BELL: I think it was 2017 or 2018.

Mr PLUMB: It was 2019.

Mr BELL: It was 2019. I apologise.

Mr PLUMB: It was part of a comprehensive upgrading of training processes that was undertaken.

The Hon. CATHERINE CUSACK: How would you characterise icare's relationship with SIRA? It has come across to our Committee as being pretty bad.

Mr CARAPIET: At the board level, it is professional, courteous, productive, open, frank—no issues, really. At the management level it has not been as good as we would have liked and, really, this is one of the big tasks that Mr Ferguson has and the team have. We have been giving them clear guidance that the regulator's requirements need to be respected and followed. Remember, all of these people used to work together side by side five years ago. They were all in one place, so it is a bit surprising that it has not worked better, frankly.

Mr FERGUSON: I would be happy to add to that, if I can, Mr Carapiet. Acknowledging that I have been the interim CEO for literally two weeks, I have enormous regard for the role of the regulator and have very proactively sought to establish a very strong working relationship with the regulator in the capacity of interim

CEO. I think it is critical that we are as constructive, transparent and accountable for our actions as we can be. We need to be seen to be doing that, not just doing it, and part of that requires us to be much more forthcoming in the way in which we engage with the regulator. I think historically we have had challenges, as we have gone through such a substantial period of transformation, in at all times being as responsive as we should have been to the regulator. I certainly acknowledge that.

The commitment I have given and the way I have conducted myself in instructing the team is to be as collaborative and forthcoming and with the greatest regard for the role of the regulator. We have a lot of challenges, it is a very complex system, we cannot do in isolation and we need to make sure that we reach out to our stakeholders. That includes ones who are supportive as well as critics—to hear personally from them as to what is working well and the areas we need to improve. We need to be open to their feedback and willing to continue to refine and change the way we work in order to make the system as effective as it possibly can be.

The CHAIR: Thank you all very much for appearing today. That concludes our time with you and I appreciate the indulgence you have shown by extending your stay here. The Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will be in contact with you in relation to questions you have taken on notice. Once again, I thank you for your appearance.

(The witnesses withdrew.)

(Short adjournment)

GREG KEATING, Member, State Insurance Regulatory Authority Board, sworn and examined

NANCY MILNE, OAM, Deputy Chair, State Insurance Regulatory Authority Board, sworn and examined

CARMEL DONNELLY, Chief Executive, State Insurance Regulatory Authority, on former affirmation

TREVOR MATTHEWS, Chair, State Insurance Regulatory Board, sworn and examined

The CHAIR: I welcome our next witnesses, representatives of the board of the State Insurance Regulatory Authority [SIRA]. Would anybody like to start by making an opening statement? If so, please keep it to no more than a couple of minutes.

Mr MATTHEWS: I would like to take advantage of that, if I could. Thank you very much for the opportunity to appear today. I acknowledge the traditional owners of the land, paying our respects to Elders past, present and emerging. I think your Committee is doing a lot of very good work and we really appreciate the contributions that you are making through reviews of the New South Wales injury insurance schemes. I make an introductory comment about the role of the SIRA board. It is appointed by the Minister to determine the general policies and strategic direction of SIRA. Our role is largely to oversee, not direct nor manage, SIRA's activities. It is the Chief Executive who controls the day-to-day operation of the organisation, including the independent regulatory functions. Having said that, however, Carmel Donnelly openly and actively shares information with our board, and she appropriately seeks our advice on a range of matters. In turn, we lend our collective expertise to assist Ms Donnelly in her role.

One important way that the board has supported Ms Donnelly over the past 18 months is by serving as the steering committee for the independent compliance and performance review of the Nominal Insurer, managed by icare. In that capacity, we have been more closely involved than usual in advising on regulatory matters, including monitoring the performance of the Nominal Insurer and considering SIRA's regulatory response. We have also taken a keen interest in SIRA's development as a contemporary regulator and have actively considered the issues, findings and changing community expectations arising from the Hayne royal commission and the Australian Prudential Regulation Authority [APRA] capability review of the Commonwealth Bank of Australia. I note that the SIRA submission to this Committee outlines some of the ways in which the SIRA team have sought to build regulatory capability and public trust. Again, this is an approach the board fully supports.

The workers compensation system is a critical social safety net intended to provide affordable and effective insurance cover for employers and support for around 100,000 people injured at work in New South Wales each year. As we all know, icare manages around 65 per cent of all active workers compensation claims on behalf of the Nominal Insurer. The performance of the Nominal Insurer is therefore inextricably linked to the sustainability, affordability and effectiveness of the workers compensation system. In preparing for this Committee I have reviewed a chronology of events leading up to, and after, the Dore review. In reflecting on that time line, it is clear to me that SIRA has been diligent, methodical and fair in its supervision of icare. I am confident that SIRA has used the regulatory authority it has well. In my view, icare has not responded appropriately nor quickly enough to the regulator to address the decline in return to work and other issues that arose following its transformation program. I also do not believe that icare has paid sufficient attention to risk and compliance.

It was clear to the SIRA board from late 2017 that the ambitious scale and pace of change icare was pursuing carried significant risk. In the 12 months that followed we observed negative trends in return-to-work rates, liability valuations and costs, premium setting, operational reforms, risk management and data quality. SIRA was also aware of the increasing customer complaints and concerns raised by business representatives, unions and other stakeholders. I watched with interest Janet Dore's appearance before this Committee earlier today, including the commentary on her review, which was handed down in December 2019. In publishing the Dore review and the actions that flow from it, SIRA highlighted the range of issues that must be addressed in the interests of current and future customers and stakeholders of the workers compensation scheme. SIRA responded to the review with a 21-point action plan as a foundation for fact-based, steady improvement without causing uncertainty or volatility.

The absolute priority must be early and safe return to work. It is the core role of the system and the sharp decline since 2018 is unacceptable. Under the current claims management model, icare has not provided the support that people need to return to work. Icare's focus needs to be solving the issues. SIRA wants to see urgent action and evidence of improved return-to-work results. In December last year SIRA recommended that icare commission an independent review into its culture, governance and accountability as part of that 21-point plan. It is now abundantly clear that this recommendation should have been actioned with great urgency. It is paramount that in New South Wales we have a workers compensation system that people can trust. To that end, the SIRA

board is very pleased that the Government has expedited and expanded the scope of the five-year statutory review and appointed Judge Robert McDougall to lead it. Thank you again for the opportunity to contribute.

The CHAIR: Thank you. We will now open to questioning and start with Mr Mookhey.

The Hon. DANIEL MOOKHEY: Thank you for your appearance, Mr Keating, Ms Milne and Mr Matthews. Thank you for coming back, Ms Donnelly.

The Hon. SCOTT FARLOW: A regular.

The Hon. DANIEL MOOKHEY: Yes, twice in the span of four days—different inquiries. Thank you for that. Can I just start with some of the developments that have emerged since your last appearance, Ms Donnelly—addressed to either Mr Matthews or Ms Donnelly, however you see fit. Were you aware that icare had sought through the Treasury a review of SIRA's costs?

Ms DONNELLY: I will take that. I was thinking about this before coming along today. I believe I would have been told informally by a Treasury official that there had been some questions asked sometime in the past. I do not think I made a note of it. I certainly saw that reported in the press recently. Should I be prescient and guess that you want to know what I think about it?

The Hon. DANIEL MOOKHEY: In time, Ms Donnelly, but before we get there—

The Hon. TREVOR KHAN: He is breaking down his questions on this occasion into discrete items.

The Hon. DANIEL MOOKHEY: Yes, let's work it through.

The Hon. SCOTT FARLOW: Advisable.

The Hon. DANIEL MOOKHEY: When you are talking about a Treasury official, I think we have established previously that you were usually in contact with Deputy Secretary Gardner. Was it him?

Ms DONNELLY: It would have been him. Most commonly, we have been working with him or people in his team, yes.

The Hon. DANIEL MOOKHEY: Do you recall when you had that informal conversation?

Ms DONNELLY: I am sorry, I do not; I think perhaps late last year some time.

The Hon. DANIEL MOOKHEY: Was it in person or on the phone?

Ms DONNELLY: I think it might have been on the phone.

The Hon. DANIEL MOOKHEY: Did Mr Gardner identify that the people who were asking questions were with icare?

Ms DONNELLY: I do not recall. I have the vaguest recollection and, as I said, I did not make a note at the time. But I drew the conclusion that it was being raised by icare.

The Hon. DANIEL MOOKHEY: I think you were eager to tell us what you thought of it—or at least you anticipated that that was a question I was going to ask you.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: So let me ask you, what did you think of that?

Ms DONNELLY: Let me speak to that from the perspective of SIRA and also the perspective of icare. From the perspective of SIRA, I have been well aware that we are an organisation that has had to build its regulatory capability from the ground up with a budget that was developed without that knowledge of what the function would be to undertake. I have also been very aware that there is a power to have an Independent Pricing and Regulatory Tribunal [IPART] review at any time about our costs to see if they are appropriate. I would have expressed the same thing, I think, to anyone who raised it with me at any time: I welcome the transparency. Our costs—the disbursement, for instance, of the information from the funding that we have for the Workers Compensation Operational Fund is reported in annual reports and I have recently made that public again.

In fact, I think we have a handout we could give you about that. Basically, in terms of SIRA's perspective, we would welcome the scrutiny. We should have the appropriate budget to undertake our regulatory function and no more. From the icare perspective, I was disappointed to hear that because what I have wanted to see from icare was a focus on the declining return to work. I want to see workers recovering, getting back to work and getting on with their lives. I want to see premiums affordable. I want to see a sustainable system and I believe that is where they should be focusing their energy. I was disappointed to hear that, instead, they may have been channelling their energy towards challenging the regulator's budget, which looks a bit like shooting the messenger.

The Hon. DANIEL MOOKHEY: It looks like retaliation, actually.

Ms DONNELLY: To me, that is disappointing and unimpressive.

The Hon. DANIEL MOOKHEY: This was not being led exclusively by icare management. This was also being led by the icare chair. It was the icare chair who had written emails to the Secretary of the Treasury requesting that this review be undertaken, and it was the icare management that was following it up. This all took place in April this year, within months of the Dore review being handed in. Why should we not infer that that was an attempt at retaliation?

The Hon. SCOTT FARLOW: You just had him here; you could have asked him that.

The Hon. DANIEL MOOKHEY: If we had had time, we would have.

The Hon. CATHERINE CUSACK: I was wondering where the question was going, and eventually he found a way.

Ms DONNELLY: It is not my job to try and understand people's intent. What I can say was that if it was some form of action meant to stop us doing our job, it did not work.

The Hon. DANIEL MOOKHEY: The point that was being raised earlier by the icare witnesses, which I am sure you saw, was that 8c out of every dollar goes towards regulators. Actually, in fact, it goes to three: it goes to SIRA, it goes to the Workers Compensation Independent Review Office [WIRO] and it goes to SafeWork NSW. Is that correct, Mr Matthews?

Ms DONNELLY: And also the Workers Compensation Commission [WCC].

Mr MATTHEWS: The commission as well, and the Independent Legal Assistance and Review Service [ILARS].

The Hon. DANIEL MOOKHEY: Yes, and the WCC. Your former organisation, Mr Keating.

Mr KEATING: Exactly, yes.

Mr MATTHEWS: That is right.

The Hon. DANIEL MOOKHEY: All are paid for by levies.

Mr MATTHEWS: Yes.

The Hon. DANIEL MOOKHEY: So the implication that 8c out of the dollar is going to SIRA is incorrect?

The Hon. CATHERINE CUSACK: Point of order—

The Hon. DANIEL MOOKHEY: I am asking.

The CHAIR: I will hear the point of order.

The Hon. CATHERINE CUSACK: The member is, first of all, putting words into the mouth of a witness. He should have put this question to a previous witness.

The Hon. GREG DONNELLY: That is not a point of order. That is a debating point.

The Hon. CATHERINE CUSACK: It is a point of order. He is stating inferences in his speeches—

The Hon. DANIEL MOOKHEY: I can rephrase.

The Hon. CATHERINE CUSACK: —and then winding it up with a question mark at the end.

The CHAIR: I accept where the Hon. Catherine Cusack is going with this. We have had this conversation earlier. Putting words in the mouths of witnesses is problematic. I ask the Hon. Daniel Mookhey to ask a question and seek a response. To the other point that was raised about interjecting on the witnesses, please allow them to finish before asking another question.

The Hon. DANIEL MOOKHEY: I will rephrase, Mr Chair. Of the costs that are passed on through the levy, is it the case that 21 employees at SIRA are billed through the levy, or thereabouts?

Ms DONNELLY: I do not think that is correct. It was reported in the press that it was in the vicinity of 20 million—

The Hon. DANIEL MOOKHEY: Sorry, yes, you are right.

Ms DONNELLY: —per annum in the costs of the team that regulate workers compensation. I can confirm it is in that vicinity, yes.

The Hon. DANIEL MOOKHEY: Equally, that same report indicates that it was \$95 million to SafeWork NSW, or thereabouts. In fact, that was the result of the Treasury desktop review, as they called it. On those facts alone, it is quite clear that the majority of money that is being obtained through that levy, in terms of the four organisations that have been identified, is going to SafeWork NSW for the enforcement of workplace health and safety laws—which is entirely appropriate, just to be clear. That is your understanding, as well, of the allocation of the moneys collected through that 8c in every dollar?

Ms DONNELLY: The largest portion of that money does go to SafeWork NSW, yes. The next largest portion goes to the WIRO.

The Hon. DANIEL MOOKHEY: For the ILARS scheme, predominantly?

Ms DONNELLY: For ILARS and WIRO's other functions. The next portion is to SIRA and the next portion is to the Workers Compensation Commission.

The Hon. DANIEL MOOKHEY: Soon to be the Personal Injury Commission.

Ms DONNELLY: That will transfer into the Personal Injury Commission. You are quite right, yes.

Mr DAVID SHOEBRIDGE: Thank you all for attending today. Mr Matthews, Mr Carapiet's evidence towards the end of his evidence earlier was to the effect that there is a good relationship—a positive relationship—between the boards of SIRA and icare, but a less positive relationship between the staff. Do you have any observations about that conclusion?

Mr MATTHEWS: I would agree with that. We have tried to maintain regular or semi-regular contact—informal, mostly—at board level. But in our dealings with icare, we have repeatedly been told of frustrations that our management encounter with trying to get information, get a response and all that sort of thing. We have been told each time we get data about return to work, for example—that is the big one—there has been a very long argument about data quality, about methodology and all that sort of stuff. Quite frankly, we think that is not productive at all. You can measure return to work in a whole range of different ways; what is important is getting people back to work. The trends normally show the same thing whether you are using work status or whether you are using the time that the claim payments are stopped. So, yes, I would agree that we have been trying to maintain good relationships at board level and trying to encourage better relationships with, particularly, the former management.

Mr DAVID SHOEBRIDGE: Did you ever say to the icare board, "Can we stop arguing about these academic discussions about the formula and start talking about the substantive issues"? Have you had that really frank conversation with the icare board?

Mr MATTHEWS: Yes, a couple of times—and not just me, but my audit committee chair with the respective audit committee chair. We have done a number of things and we have made some progress, I am pleased to say. But it has been very frustrating from where we sit. As a board, it has been very frustrating. I can say to you, as a person who has sat on boards of other organisations, that I think the way this regulator has been treated by the regulated has not been very good at all.

Mr DAVID SHOEBRIDGE: The evidence that has come from icare in just the past few months—they continue to insist upon having this data fight, this calculation fight. Mr Nagle, in his evidence to this inquiry only weeks ago, was still taking us down this rabbit hole about data. At what point does your board issue some kind of communique or some formal statement that says enough is enough and asks for intervention by the Ministers? Is it at the point of asking for intervention by the Ministers?

Mr MATTHEWS: I hope that is not necessary now, because I think it looks like there is going to be change. But we will have to wait and see if there is genuine change. That is what we want.

The Hon. TREVOR KHAN: Ms Donnelly, I have sat on this Committee for some years now, as has Mr David Shoebridge.

The Hon. TREVOR KHAN: I cannot get away from my knowledge of previous inquiries of the workers compensation scheme, where SIRA has been somewhat the target of criticism with regards to some of the demands that your organisation has put on scheme agents. I can remember evidence we received, for instance, from Suncorp, relating to a whole variety of what seemed to be petty demands for information and the levying of penalties for what seemed to be relatively minor infractions. I make the observation that you seem to have become the white knight during this hearing, whereas in previous hearings that would not have been the regard you would have been given. Am I right to reflect upon the evidence that has previously been received by this Committee and

say there is a degree of fault on both sides of this equation? I understand why we are all jumping on top of icare now, but it seems to me that the previous evidence we have received has not been wholly in favour of SIRA's approach, either.

Ms DONNELLY: I will let you form your own view.

The Hon. TREVOR KHAN: You know what my view is.

Ms DONNELLY: I will acknowledge that there have been issues raised by different regulated entities about the regulatory burden and we listen to that. The issues that were being raised in the CTP inquiry and by Suncorp related to a period of time when our job implementing the will of the Parliament was to implement CTP reforms and we did so with a significant modernisation of data so that we could meet the needs, including from this Committee, of being able to monitor the performance. We got some pushback from some insurers about the burden of that. We listened and made some changes. Obviously, the Committee played a valuable role in drawing those to our attention very strongly. My understanding—and I met with senior people from Suncorp throughout that period to get an understanding directly from them—was that that was not a challenge to our role as the regulator, but asking us to think critically about regulatory burden.

The Hon. TREVOR KHAN: There is no doubt about that.

Ms DONNELLY: I will draw from my experience with a range of regulators in workers compensation and in CTP. In my assessment, not every time but more commonly than others, the experience from icare is that they are less willing to respond to us and they have raised issues that are not about us requiring good, real-time data. We are requiring data that we need to know whether anyone is returning to work as expected. I think that is a reasonable requirement. The legislation enables us to set those measures and require that information. We have been drawing their attention to non-compliance—that is very clear with the legislation. We have received feedback from them that we were asking them too many questions. Some of the questions—I listened to that feedback and went through all of the things we had raised with them in a three-month period and some of them were, "Would you like to give us some advice about something we are giving to advice to Government about?", just to consult. Some of them are public consultations and some of them were escalating complaints from injured workers who we felt had not been treated well.

For an entity that manages 84 per cent—between the Nominal Insurer and the Treasury Managed Fund—of the 100,000-odd people who are injured each year, you would expect some regulatory oversight. We are very clear about our regulatory approach. We treat everyone the same, whether they are public or private, if we believe we need to step in. But we step in more if the performance is poor. The most straightforward way for an insurer to get us out of their hair is to address the problem with their performance. We have been on about return to work consistently—return to work is slipping. Of course, they have lost their earned autonomy that they might have had if their performance was higher. I do not resolve on that.

The Hon. TREVOR KHAN: We have just had the board before us—and I am not trying to suck up to them but from my personal perspective their evidence was strong. But I am still left with you sitting here now with what seems to be somewhat of a disconnect between the evidence that things are now on the improve—although we have a problem with COVID—and your perception, which seems to me to be not as rosy. I invite you to comment now on whether you are painting a bleaker picture than what I take is the impression given by the board of icare?

Mr DAVID SHOEBRIDGE: Point of order: By way of clarification, it is my understanding that the evidence we had—I do not adopt your characterisation of the evidence. But in terms of the specifics, they said that return to work had ceased to deteriorate.

The Hon. TREVOR KHAN: I think they indicated—

Mr DAVID SHOEBRIDGE: There was a minor uptick that had gone backwards now with COVID-19. It ceased to deteriorate was, I think, their primary position.

The Hon. CATHERINE CUSACK: It plateaued.

Mr DAVID SHOEBRIDGE: It cannot plateau in a valley.

The CHAIR: I think Mr Khan is acknowledging that.

Ms DONNELLY: I am happy to confirm that in my view it has stabilised but at an unacceptable level, where thousands of injured workers who I would have expected to see—based on the performance from the beginning of 2018—returned to work, which is very important for their health status and quality of their life. Thousands have not returned to work that would have if there had not been a decline. I have some additional analysis. Our June data is now up on our data portal and I have asked the team to cut it a little bit more than we

often do and we are thinking about doing this going forward. To give you a sense, in January 2018, 89 per cent of the injured workers with the Nominal Insurer returned to work within six months. It is now 80 per cent from June. It has been 80 per cent for some time. When I look at the specialised insurers that have the smallest market share, but also offer policies to third parties and manage injured workers, their performance has overall slipped, as well. But when I take Coal Mines Insurance out, which is set-up by separate legislation and is the insurer we have the least regulatory oversight of—they do not have the same workers compensation scheme—the other specialised insurers working with the same legislation as the Nominal Insurer, their six month return-to-work rate is 89 per cent, i.e. exactly the same as it was for the Nominal Insurer in January 2018.

I met with Mr Ferguson last week and I made it very clear to him that if I see evidence and results that are delivering what the community expects and what the community deserves, I will be the first to say, "I have seen them, here is the evidence." But I need evidence. At this point, my conclusion is it has stabilised. It is not where should be.

The Hon. DANIEL MOOKHEY: Just as a follow-up, the financial dimension of that difference is significant because basically premiums are set assuming an 89 per cent return to work and when return to work is at 80 per cent for the biggest participant of the scheme, does that not create a future financial liability that is only going to grow over time?

Ms DONNELLY: It certainly does and one of the concerns that comes out of the risk assessment that we did was that there will be a point where actuaries will assume things are temporary and then there will be a point where they will say, "No, I cannot be convinced and, within my professional standards, I have to say that the liability is going to be bad for a long time." That is like a cliff. I heard the previous testimony about how premiums are low; they are not covering costs. The break-even premium is 1.59 per cent of wages. We think the actual collection is closer to 1.38 per cent and it has been lower than that. That is an early estimate from last year.

Mr DAVID SHOEBRIDGE: In the years preceding 2019 that gap was made up through investment returns—

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: —and that is not a sustainable way of funding a long-term workers compensation scheme, is it? Given investment returns are so cyclic?

Ms DONNELLY: Look, it most certainly—and Mr Matthews might want to comment—it would not be acceptable for an APRA authorised insurer. It may be acceptable for a Government backed insurer because you can make that decision on that—to decide not to take money out of the productive economy and Government will underwrite it. But the Nominal Insurer is not financially backed by the Government.

The Hon. DANIEL MOOKHEY: It is employers who would like it.

Mr DAVID SHOEBRIDGE: Mr Matthews?

Mr MATTHEWS: I was going to say—

The Hon. TREVOR KHAN: Can I just go to—

Mr DAVID SHOEBRIDGE: I think Mr Matthews wanted to add something.

Mr MATTHEWS: I think that is right. It is like a big mutual, the workers compensation system here in New South Wales. The only income you get is from the employers or the investment income, and the outgoing is quite obvious. So if we have a period of sustained poor performance investment-wise or claims-wise, the premiums will have to go up or the benefits will have to be changed. That is up to you.

Mr DAVID SHOEBRIDGE: And—

The CHAIR: We will go to the Hon. Trevor Khan for his final question, then the Hon. Scott Farlow and then the Hon. Antony D'Adam. If Mr David Shoebridge's question is on this point, we will hear it.

Mr DAVID SHOEBRIDGE: It is. We talk about the difference between 89 per cent and 80 per cent, and that sounds like a significant but marginal difference between 89 and 80. In fact, in terms of the proportion of workers not going back to work, it means you go from 11 per cent of workers not going back to work to almost doubling it at 20 per cent of workers not going back to work. It is quite a catastrophic change, is it not?

Mr MATTHEWS: Yes. That is why we are concerned.

Mr KEATING: It is actually almost 4,000 workers. That is the difference between 80 per cent and 89 per cent.

The Hon. DANIEL MOOKHEY: For a scheme that receives claims for 60,000 workers a year.

Mr MATTHEWS: Yes.

The CHAIR: Ms Milne, did you have a contribution?

Ms MILNE: My contribution was going to be those numbers.

The CHAIR: Thank you, Mr Keating. I will pass back to the Hon. Trevor Khan to finish his line of questioning, then the Hon. Scott Farlow and then the Hon. Antony D'Adam.

The Hon. TREVOR KHAN: Ms Donnelly, on the last occasion you tabled a document from Ernst & Young which summarised the key risks identified with the Nominal Insurer valuation.

Ms DONNELLY: That is right.

The Hon. TREVOR KHAN: That is a document that has not been made public yet.

Ms DONNELLY: No.

The Hon. TREVOR KHAN: We will see how that goes. What I am interested in—and I doubt you heard from Mr Nagle—is whether you have discussed the contents of that document with Mr Ferguson and whether you have received any substantive feedback from icare with regards to the contents of that document.

Ms DONNELLY: We certainly received feedback when I shared with them the draft, and that was before the last hearing. Since the last hearing Mr Ferguson has written to me, I think, in more constructive terms. I had expressed to him that my focus was the June valuation, that we would again have Ernst & Young do a risk review, and that I would want to step up involvement and also have our other scheme actuaries who do peer reviews in workers compensation to do closer to peer review for the June valuation. He has agreed that they engage early and do that. So that is really where the energy needs to go now—particularly, getting an accurate read of the financial situation as of 30 June.

The Hon. DANIEL MOOKHEY: When will you have the June valuation?

Ms DONNELLY: They are working on it now. Firstly, it is commissioned by icare—and they have, I understand, Finity and PwC as the key reviewers working on it now—and then our actuaries will get involved. Usually our report is available somewhere around three months after the point in time, but I am not sure at this point. Maybe you can direct that question to icare, because it is also subject to audit by the Auditor-General.

The Hon. SCOTT FARLOW: Following the last hearing we had with icare and with SIRA, there was a bit of debate between icare and SIRA about return to work and the methodology that was used for return to work. Do icare and SIRA use a different methodology when it comes to return to work?

Ms DONNELLY: SIRA has the legislative authority to set the metric that we judge performance by. We changed our method to calculate it not based on ceasing weekly benefits, which might include terminating benefits and not returning to work, but on work status reported by the worker to say that they are returning to work. I mentioned last time—and I have written to Safe Work Australia to propose consideration nationally of making that shift because it is linked, in my view, to perverse incentives that reward insurers for not giving people early support to help them return to work, and then cutting them off benefit and they still get their same incentive. There are other areas of improvement that we see, and that is our job. We have put out a discussion paper late last year about measurement of return to work.

I am certainly happy for insurers to use any other measures they want to use internally. There are some others that help you get a good, rich picture of what is happening so you know what effective action to take. We have done that consultation. We have worked jointly—and Mr Matthews may want to talk because he has been quite involved, me using his actuarial expertise—in looking at what else can we improve in the measures. So there are some ideas that have come out of that discussion with icare. However, the bottom line is we are the regulator. We consult, we get expert input, we are very transparent, but if we set a measure that we believe is the appropriate measure—having taken into account recommendations from this Committee and the views of stakeholders, including unions and workers and businesses—then that is the measure. There should not be a contest about it. There are appropriate channels for consultation and we work actively, but there is a reason why we chose that work status measure and I believe it is on very solid ground.

The Hon. SCOTT FARLOW: How well is that measure understood by icare and any other scheme agents as to how they can compute to that measure as well?

Ms DONNELLY: We are always happy to give them assistance, answer questions and help them implement, but we do not have that sort of issue with any of the other insurers.

The Hon. SCOTT FARLOW: Is it in presented in a formula or the like? How is it presented? I understand the consultation you are outlining. But just so that everybody can be on the same page, is that presented in terms of a formula?

Ms DONNELLY: There are formal guidance instruments that we have about what data needs to be reported to us. I think I have provided them to the Committee before but without wanting them to be published, because some of them might present a cybersecurity risk. There is lots of active engagement with insurers. If you want to see the formula, we can give you the formula.

The Hon. SCOTT FARLOW: Not really for my use, but I am wondering how it is supplied to icare or the scheme agents in terms of how they apply it so that everybody can be on the same page. Is that promoted to them as a formula or as a process so that they can report in the same way that you do?

Mr MATTHEWS: Can I say that the key is the data and capturing the work status. That is the key. If you capture the work status, you have got real information that you can put into all sorts of different formulae. As the CEO has said, we do not mind what insurers do amongst themselves; that is fine. But what we do want to do is have one set of criteria that we can then apply across the universe.

Mr DAVID SHOEBRIDGE: And you are moving to work status rather than just cessation of payments, which has been the traditional method?

Mr MATTHEWS: Yes.

Ms DONNELLY: We have moved.

Mr MATTHEWS: Yes, that is right. We have moved. I fundamentally believe that is a better way. There are different ways; it is a better way.

The Hon. DANIEL MOOKHEY: But you are doing this for everyone, not just the Nominal Insurer?

Ms DONNELLY: Everyone.

Mr MATTHEWS: Correct, yes.

The Hon. DANIEL MOOKHEY: Specialist, self-insurers—all of them—are all being measured the same way?

Ms DONNELLY: Yes.

Mr MATTHEWS: Yes, that is right. The other thing about return to work, just very quickly, is that it is a lagging indicator. It gives you a history about what has happened in history. Of course, what we are really interested to know is what is happening right now. To that, you need more information and more data and that is what we are working on as well. I think you might have heard earlier about some work that John Trowbridge is doing—another eminent actuary in this area. He has been working hard on this and he has got some interesting ideas based on reports and information done by others. So I am quite confident that we will come up with some better, more leading indicators as well as the traditional lagging indicator.

Mr DAVID SHOEBRIDGE: Have you had the pushback from all those other players that you are getting from icare?

Ms DONNELLY: No.

Mr MATTHEWS: No.

Mr DAVID SHOEBRIDGE: They have been asked to do the same thing?

Ms DONNELLY: That is right.

The Hon. SCOTT FARLOW: I do not know if you heard Mr Carapiet and the board before you came into this session.

The Hon. TREVOR KHAN: Can we clarify if they did hear it?

The Hon. SCOTT FARLOW: I took that as a nod from Mr Matthews.

Mr MATTHEWS: We heard most of it, yes.

Ms DONNELLY: I heard parts. If you keep going—it does not mean I will not be able to answer the question.

The Hon. SCOTT FARLOW: There was some evidence from Mr Carapiet about the schedule of medical fees in New South Wales and concerns with respect to medical fees as set by SIRA and, in particular, the

distinction between New South Wales, Victoria and Queensland with "reasonably necessary" as compared to "reasonable and necessary". I invite your comment on that and the characterisation there.

Ms DONNELLY: I will make some comments and it may be that others have something to say as well. I did hear that evidence and I do disagree with it. That is not to say that the regulated fees do not need to be assessed and reconsidered. We have a very comprehensive healthcare review out in the field right now and we have been consulting. We have signalled that we will move to a better regulatory framework for healthcare costs to take us from something that is a heritage for us to something that is leading practice. But the fact is that the inflation in healthcare costs in the workers compensation scheme is not matched by other parts of the healthcare sector. The rate of inflation for the Nominal Insurer and the Treasury Managed Fund is 13 per cent; for the specialised insurers it is 10 per cent; and for the self-insurers it is 3 per cent.

Of the increase that we have seen, we have had independent assessment from EY a couple of times. The contribution of the increases in fees in unit costs is 6 per cent of the total increase and the contribution in increased claim numbers is around 30 per cent. The number of claims going to the Nominal Insurer are relatively stable—they do not have a problem with a whole lot of new claims, significantly. It is the number of people who are staying on benefit for longer because return to work has declined. Utilisation, which is using more services for the same profile of injured people, is accounting for about 52 per cent of the increase. The other point I make is that the fees that we have are a maximum, they are not a mandatory fee schedule. There is nothing stopping icare negotiating fees below that schedule and our audits show that, in fact, sometimes they pay more than our scheduled fee, which is a breach. Sometimes they pay it once, twice, three or even four times. So the administrative controls—

The Hon. TREVOR KHAN: Administratively they mucked it up?

Ms DONNELLY: They will pay for the same service multiple times a lot of the time, which is part of our healthcare review audit.

Mr DAVID SHOEBRIDGE: That is an expensive approach.

The Hon. DANIEL MOOKHEY: On that, we heard some in the public domain recently about this, Ms Donnelly—

Ms DONNELLY: That is right.

The Hon. DANIEL MOOKHEY: This was a Synapse Medical report. Did you commission that?

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: And this was a report—

The Hon. TREVOR KHAN: Just a minute, she had not finished.

Ms DONNELLY: I had not finished, though. I would like to finish.

The CHAIR: As Chair, I am also waiting to give Mr D'Adam the call.

The Hon. DANIEL MOOKHEY: I will curb my enthusiasm.

Ms DONNELLY: I have a couple of other points, which I think are important. There is one area that we have discussed before—I know Mr Shoebridge is familiar with this—where the fees for some surgeries are Australian Medical Association [AMA] plus a loading and that is being reviewed. But that only accounts for 6 per cent of the healthcare expenditure in the workers compensation scheme. To claim that that is the driver is overreach, I think, in terms of that as an explanation. I will make a quick comment about "reasonably necessary", which was brought up in icare's submission to our healthcare review.

Firstly, let me say, it is my job—I am happy to listen, I am happy to improve and we will consider whether or not there is evidence that that is a problem. But the reasonably necessary provision was introduced into the workers compensation scheme in July 1987 and the second reading speech—I have reviewed it—seems to intend that it should operate not one million miles away from the "reasonable and necessary" test that we have in CTP; however, if it needs to be reviewed, I am happy to give advice. What I do not understand is why it worked for 30 years and now, in the past three years, there has been an issue. I am happy to get to the bottom of that but I think there is an open question with that.

The Hon. TREVOR KHAN: I think that is a fair response.

Mr DAVID SHOEBRIDGE: And there is no case law that could explain it to a judge.

The CHAIR: Order! Mr D'Adam has been waiting patiently all day to ask some questions.

The Hon. ANTHONY D'ADAM: Ms Donnelly, I wanted to come back to this question about return-to-work rates and the shift to return-to-work ratio that was based on work status. When did that shift actually occur? When did you implement that change in methodology?

Ms DONNELLY: I might need to check but I think it would be the 2016 review of this Committee—of workers compensation—that made recommendations that we were to improve the way that we were measuring return to work. I can very easily check and come back to you on notice but it has been in that past three- to four-year period.

The Hon. ANTHONY D'ADAM: Just to follow-up, is the data included on return-to-work rates in SIRA's submission based on this new criteria?

Ms DONNELLY: Yes.

The Hon. ANTHONY D'ADAM: But the position of icare—are they reporting data on the basis of the old definition? Is that right?

Ms DONNELLY: No, they are required to report to us based on the new definition and we are holding them to account on that. We have been working through over that period of time getting better quality for that data. But internally, and expressing in their own targets, they prefer to use the measure around cessation of benefits. I have certainly heard them argue that that is because it is a financial measure and therefore it is audited. My argument is that it is a financial measure that is a proxy for actual return to work that does not have validity and may have perverse impacts.

The Hon. ANTHONY D'ADAM: Is it possible that the date of implementation of the new methodology was on or around that period from 1 January 2018, when it seems apparent from the data in SIRA's submission that that is when the return-to-work rates started to decline?

Ms DONNELLY: I am happy to clarify but if you are suggesting that the decline that we are reporting is an artefact of that measure, I can confirm that it absolutely is not. I will give you two other data points: There are a number of data points about their actual average days on weekly benefits in the first six months that we publish on our dashboard—you can see that; and there are data points around the increase in weekly payments. All of these are correlated. Further to that, last year, because I felt that I did not have accurate data about the true level of return-to-work performance in New South Wales because of the data quality problems from icare, I commissioned an independent survey of injured workers using exactly the same methodology that Safe Work Australia uses for the national benchmark and using the same company. That showed there was a decline in return to work for the Nominal Insurer of around the same magnitude. So, in my mind there is no doubt that their return to work has declined and it is not because the measurement was difficult to implement.

The Hon. ANTHONY D'ADAM: Earlier today we heard from Employers Mutual Limited [EML] and I think it was Mr Fleetwood who made reference to that it seemed like a policy position—I am not sure what the origin of this position is—to move to a less adversarial approach to claims management. I wonder, is that policy position something that has been driven by SIRA or something that has been driven by icare?

Ms DONNELLY: When icare first discussed that, I welcomed it. Let me unpack a little bit why I welcomed it. There is a strong, reliable body of evidence in personal injury schemes, particularly workers compensation, that, where a worker has a perception of injustice—and I am not just talking about real injustice but even if they feel disrespected and have a perception of injustice—their return to work and their health outcomes will be negatively impacted. However, you cannot have a system—what we have seen from icare—that leaves them without support, without the tailored coordination but is not adversarial, and not see return to work decline. A non-adversarial climate is a good thing—treating workers with respect and reducing perceptions of injustice are good. But it is not an either/or trade-off with active claims management that is getting them the supports, the right health care and the tailoring of their workplace so that they can return to work. You need to do all of it.

The Hon. ANTHONY D'ADAM: Can I just clarify, that policy shift was made by icare, it was not something that came at the instigation of SIRA?

Ms DONNELLY: No, it was a choice by icare. But it was something that, knowing the evidence base, I was supportive of—not understanding, perhaps, at the time the full picture of what they intended because we did not have visibility over it all. I would have seen it as an improvement on top of proper support of claims management, not an either/or.

The Hon. ANTHONY D'ADAM: Let me extend on that supposition. Is it possible, then, that in the absence of a more adversarial approach, fewer workers are therefore being taken off benefits as a result of active

claims management or shifted back to work, and that that actually may be one of the drivers—or perhaps the primary driver—for the decline of return-to-work rates?

Ms DONNELLY: No, I am going to refute that. I will go back to my earlier point: There is a strong body of evidence globally that in personal injury schemes—assuming that you have good claims management—where the culture and the service that is delivered is non-adversarial and people are treated with respect and supported, return to work improves.

The Hon. TREVOR KHAN: So what we have moved to is a system of—

Ms DONNELLY: Non-adversarial neglect.

The Hon. TREVOR KHAN: —non-adversarial, but no claims management, in essence.

Mr DAVID SHOEBRIDGE: I think you said non-adversarial neglect, Ms Donnelly.

Ms DONNELLY: That is what I said.

The Hon. DANIEL MOOKHEY: We also heard this morning from EML and from Ms Dore. She observed that icare has created what this morning was termed a shadow workforce to supplement EML's resources.

The Hon. CATHERINE CUSACK: I think that was your term, actually.

The Hon. DANIEL MOOKHEY: It was mine, and it was accepted by the witness. Was SIRA aware of icare establishing, through its resources, a workforce to supplement EML's claims management?

Ms DONNELLY: I commissioned Ms Dore to be the independent reviewer for that review for the purpose of her looking into it more deeply than I certainly had time to do, so I accept her report. My awareness comes quite strongly from her report, as well as my own insurer supervision team. I have had meetings with stakeholders, including with Mr Fleetwood. From the stakeholders—some of whom were quite, I think, open and courageous in telling me what they thought, but not necessarily putting this in writing in their submissions—the impression that I have is that the balance of governance was problematic and that there were times where EML, who, on the face of it, were engaged because they have expertise in this kind of function, then were perhaps too closely directed to do things other than what they would normally have done and did not have enough autonomy to gear up the staff and so on and make some decisions. And then, in other cases, the governance was not strong enough, because a lot of change—a very ambitious strategy—was implemented without due regard for the risk and compliance.

The Hon. DANIEL MOOKHEY: On a slightly unrelated matter, you said earlier that it was deteriorating and then it plateaued.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: To be clear, it was deteriorating in financial year 2018-19. That is correct?

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: When did you say that it started to plateau?

Ms DONNELLY: I do not have all the data in front of me. But if I look at January through to this year, notwithstanding the impact of COVID it has been fairly stable. I will take that on notice, if you like.

The Hon. DANIEL MOOKHEY: But it is very clear it was still deteriorating in 2018-19 and in the first half of 2019-20?

Ms DONNELLY: That is my recollection. I am happy to confirm it on notice.

The Hon. TREVOR KHAN: There is a fit-for-work rate; is that the same? I am looking at figure 3 in the non-published Ernst & Young report.

Mr DAVID SHOEBRIDGE: We went through that last time.

The Hon. TREVOR KHAN: We did.

Ms DONNELLY: We did. It is not the same as return to work.

The Hon. TREVOR KHAN: But the fit for work is showing an improvement, which is not reflected in the return-to-work rates.

Mr DAVID SHOEBRIDGE: In fact, a variance between fit for work and return to work would show significant problems, would it not?

Ms DONNELLY: Yes.

The Hon. TREVOR KHAN: Yes. I am troubled.

Mr DAVID SHOEBRIDGE: I am curious about what level of expenditure would trigger direct intervention from the regulator, if you were troubled by expenditure by icare. I will give you one example: In a statement that, I think, was provided to Mr Parker at SIRA by Mr McCann, he sets out the circumstances where in 2017 icare approved a contract to create a workspace called an imaginarium for some \$5 million to \$6 million. The imaginarium was meant to be a space for icare staff so that they could be more creative and inclusive. It had operable walls, writable walls and electronic boards. Would that kind of expenditure of icare's funds—\$5 million to \$6 million on an imaginarium—trigger a closer oversight by the regulator?

The Hon. TREVOR KHAN: Ms Milne should not play poker.

Ms DONNELLY: When I met with Mr Ferguson last week—and we had exchanged emails from meeting pretty much as soon as he was appointed as the interim CEO—I foreshadowed with him that I had a couple of matters about regulatory actions that we wanted to bring forward and that I had not been able to discuss with Mr Nagle. One of those that I talked about with him last week and that I have now formally communicated to him about is that we will do an audit of the use of the workers compensation insurance fund by the Nominal Insurer managed by icare in order to assess compliance with the legislation. That is off the basis of not only the statement by Mr McCann. We have a number of investigations on foot that have raised issues, and so we are going to do a thorough independent audit.

Mr DAVID SHOEBRIDGE: When I read that and I thought about all the injured workers who have contacted me because they cannot get proper payments and they cannot get their medical expenses sorted, and I saw that between \$5 million and \$6 million had been spent on an imaginary for icare, I was extremely angry and I wanted to know who will investigate that. Do I understand that you will?

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: Does the scope of the audit that you just described include the use of the funds to second staff to the Treasurer's office?

Ms DONNELLY: It could include the use of the fund to pay for anybody who is not being employed in the functions that that fund has use for.

The Hon. TREVOR KHAN: Why are those matters not for a responsible board—

The Hon. DANIEL MOOKHEY: Could the witness complete the answer?

Ms DONNELLY: We will look at some particular risk areas that we have identified. Another one, I will just say, rolling into that investigation is our other assessment of the fees being paid to brokers.

The Hon. TREVOR KHAN: It is perhaps inappropriate language, but if SIRA is going to intrude into what I can describe as the business of icare to that extent, what is the purpose of the board?

The Hon. DANIEL MOOKHEY: The icare board?

The Hon. TREVOR KHAN: The icare board.

The Hon. DANIEL MOOKHEY: It is a good question.

Ms DONNELLY: There is a question that I will share with you that I have thought long and hard about in establishing SIRA's role in regulating workers compensation. It does go to another topic that, obviously, I will give input to Justice McDougall and I have mentioned to the Committee before about where we have, in practice, gone to extend and use our powers. There are elements of lack of clarity about what our powers are over the Nominal Insurer and icare and some legacy functions where we could, in fact, have some powers to act with the scheme agent that maybe there is more pushback if we were to do it with the Nominal Insurer.

The legislation has a lot of areas of poor clarity. That raises the question of when we look at what can we do about an issue that we come across, and we look at what powers are available to us—do we start to step in and direct scheme agents, in which case what is the point of having another layer of people managing? I do really understand and stand by the need for a strong independent regulator that is not conflicted, but there are certainly dilemmas that arise, and we have found them in enforcement choices that would effectively have us stepping in and doing icare's job for it.

Mr DAVID SHOEBRIDGE: Do any of the board members have a reflection on this? I mean, that is kind of your job apropos of SIRA. How do you reflect upon that in the icare context?

Mr MATTHEWS: It is hard for us to say.

Ms MILNE: I have sat on a number of APRA regulated boards and have considerable experience of APRA regulation. I have long bored my fellow board members with examples of where APRA would have been given far more information, been far more involved and engaged, and we just do not have the powers to do that. I certainly welcome the review of the legislation and, hopefully, we can make some submissions about that.

Mr DAVID SHOEBRIDGE: I do not want to get caught up on this imaginarium thing, but it is almost like an example which proves the case. I cannot conceive how an expenditure like that was permitted from funds that are meant to be designated towards injured workers in a highly regulated environment.

The Hon. TREVOR KHAN: Their money is being taken essentially, at least in part off employers, so it is both sides of the equation.

Mr DAVID SHOEBRIDGE: Mr Matthews, Ms Milne?

Mr MATTHEWS: It is hard. That is one specific example but you would expect there would be scrutiny of expenses at a great level.

Mr DAVID SHOEBRIDGE: On this expenditure line, in response to the Dore report, one of icare's responses was to commence a campaign called "Positive Change", for which they engaged a PR company and spent \$150,000 to get out and put positive spin for icare as a conscious response to the Dore report. Again, how does this happen from money that is meant to be from employers for injured workers?

The Hon. DANIEL MOOKHEY: And is it encompassed by your audit?

Mr DAVID SHOEBRIDGE: Yes, will that be picked up there?

Ms DONNELLY: Yes. I do feel that what we have experienced is more deflection rather than acceptance of responsibility and misdirected effort that could have been channelled into improving the real services and outcomes for injured workers.

Mr DAVID SHOEBRIDGE: Perhaps they are the responses you could come up with in an imaginarium.

The CHAIR: Mr Shoebridge—

Ms DONNELLY: We do not have one and, you know, having had our budget—

The CHAIR: Order! I will allow Ms Cusack to ask a question.

The Hon. CATHERINE CUSACK: Thank you very much. Ms Donnelly, thank you for mentioning APRA. Is there any reason why icare and workers compensation could not be regulated by APRA? I understand they are established under State legislation and State mandates, but what is preventing, particularly if the Government set up a model where it says, "We want you to reflect more of the private sector and the free market and have those behaviours"—why would you not look at trying to register it and have it regulated by APRA?

Mr MATTHEWS: We have a memorandum of understanding [MOU] with APRA and we talk to them on a regular basis, but it is the unique circumstances of the Nominal Insurer, managed by icare, which means that it is difficult to do.

Ms MILNE: And all of the relevant Federal legislation establishing APRA exempts State insurers—

The Hon. CATHERINE CUSACK: Absolutely. I understand that it does. I am just wondering, you know, big idea, big thought thing.

Ms MILNE: Yes.

Ms DONNELLY: My understanding is that a State could ask for an exception to be made.

The Hon. CATHERINE CUSACK: Would that be a useful thing to do, given that it would be subject to—

Ms DONNELLY: I am sure that the other, smaller insurers who are subject to APRA oversight would see that as more of a level playing field. I would say one of the other considerations is that our responsibility is broader. APRA will look at, obviously, the prudentials and market practice, et cetera. But we are actually assessing whether or not insurers are compliant and performing against the workers compensation legislation, which is New South Wales legislation. APRA does not tend to go into claims handling and so on.

The Hon. CATHERINE CUSACK: If I can put this to you, you seem to have an advocacy role and an advocacy for best practice in terms of the outcomes for the injured workers—

Ms DONNELLY: Yes.

The Hon. CATHERINE CUSACK: —which is not necessarily how I would see APRA, which is very into the credential management.

Ms DONNELLY: That is right. I think we are agreeing. I would say, in the CTP scheme, where every single one of the insurers is an APRA authorised private underwriter, we have a very strong MOU with APRA—we share information, we try not to duplicate and we have a co-regulator relationship. We focus on the more detailed areas of looking after whether or not the case management is up to scratch and the service delivery. Of course, we have an interest in affordability, which may not be quite so strong in APRA's mandate—they want to see financial strength.

Ms MILNE: The alternative to that is to provide some of the APRA powers to SIRA in the New South Wales legislation.

Mr DAVID SHOEBRIDGE: Rather than a fresh regulator in the space?

The Hon. CATHERINE CUSACK: Yes, it is just that APRA is not a fresh regulator. It is very big and very experienced and it is very scary for organisations that are doing millions of transactions a year—if you see what I am saying.

The Hon. TREVOR KHAN: Perhaps not scary enough.

The Hon. CATHERINE CUSACK: I wonder if aspects could be—particularly if you are saying we want a more corporate board model, why not make them fully accountable in the way that those organisations are? Is that a—

Ms MILNE: I think one of the other points is that a general insurer would be regulated by not only APRA in the credential sense but also ASIC in terms of its market conduct; whereas SIRA does both of those roles and, therefore, is a more compact and specialised regulator.

The Hon. DANIEL MOOKHEY: Ms Donnelly, last time we asked about the Fitzpatrick matter and I think you said that you were still in the process of investigating. We did not press because you still were. Can you give us any update as to where we are up to with that?

Ms DONNELLY: I can. We have undertaken a thorough investigation, which is coming to its closing of a first phase. I will explain the first phase. It has been extensive, we have used our powers to obtain thousands of documents and go through those. The investigation team is finalising its report to me and I expect to have it by the end of August and then to be very promptly considering what action I take. Already, on the basis of their preliminary findings through that investigation, that has raised some further issues so I have determined that we will undertake a phase two of that investigation. I do not want it to go on—I want to be able to close out phase one—but there are some further matters that we have also exercised our powers to get further information so there will be a phase two. There are some other matters that came out of that investigation that have arisen from the scope of that investigation, which may result in some broader, systemic actions as well.

The Hon. DANIEL MOOKHEY: I understand and I do not want to press you on phase two or three. You say that phase one will be complete by the end of August, which is effectively next week.

Ms DONNELLY: That is right.

The Hon. DANIEL MOOKHEY: Will you be publishing a report into phase one?

Ms DONNELLY: The decision process that we will take—we will have a policy position of making things public unless there is an overriding public interest against disclosure. For me, that would include consideration about whether making it public at a particular time might jeopardise any actions that I need to take. I have not seen the final report and I will make that decision properly when I see it.

The Hon. DANIEL MOOKHEY: Earlier in your evidence we were talking about the Synapse Medical report. When was that commissioned?

Ms DONNELLY: I cannot remember precisely but it has been this year as part of the healthcare review process.

The Hon. DANIEL MOOKHEY: Has that report been completed?

Ms DONNELLY: That was a pilot study of 1,000 claims. They were particularly selected to be the types of claims we thought were at risk of having poor administrative controls over medical spends so that we could illustrate to insurers across both personal injury schemes the sorts of errors that we then needed to have

regulatory frameworks to address. It is a pilot and we are going to do a yet more detailed audit using the same methodology

The Hon. DANIEL MOOKHEY: But the pilot—or at least the parts of the pilot that are public—was alarming in that it identified high levels of duplicate payments for services, payments for services not rendered or payments for repeat services that were, effectively, more than required.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: It was estimated at the time to have cost the scheme \$800 million. That is an incredibly large amount.

Ms DONNELLY: That is not my estimate, but certainly the study indicated that of those thousand claims, which were chosen to be the sort of claims—it is not a random sample—where we would expect to be able to learn what kind of problems were manifest, around 25 per cent of the expenditure was assessed by Synapse to be outside of what a billing control would have prevented.

The Hon. DANIEL MOOKHEY: With your prescience you may have anticipated this particular question. Can we have a copy of the report?

Ms DONNELLY: I am happy to take that on notice and certainly provide it. I do not think I have a copy with me.

The Hon. TREVOR KHAN: Does that mean that you will provide it?

Ms DONNELLY: Can I just say that it is not a report. It is a presentation that was part of that pilot going back to the insurers showing them what we found.

The Hon. DANIEL MOOKHEY: Can we have the presentation?

Ms DONNELLY: Yes.

The CHAIR: Mr Mookhey, I am sure with your prescience you would have realised that I was about to call time. If there is anything that you need—

The Hon. DANIEL MOOKHEY: With your prescience I am sure you would have anticipated that I would test your boundaries.

The CHAIR: You always test the Chair, Mr Mookhey. With that, I thank the SIRA board. The Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to the questions that you have taken on notice. Thank you for appearing and for making yourselves available today.

(The witnesses withdrew.)

(Short adjournment)

MARK LENNON, Former Director, icare, sworn and examined

The CHAIR: Welcome back to the last session of our hearing. I welcome our next witness, Mr Mark Lennon. Would you like to start by making a short opening statement?

Mr LENNON: I place on record that my full name is Mark Roy Robert Lennon and I am here in my capacity as a former director of icare. I have been dealing with workers compensation for over 30 years and I have been involved in the various reforms to the scheme in one way or another over that long period of time. One of my first jobs in the union movement in New South Wales was as a trainer at TUTA, the Trade Union Training Authority, which no longer exists. That was in 1987 and I had the task of running one-day workshops for union officials on the new workers compensation legislation. For those who remember that legislation, it was particularly controversial legislation at the time, mainly because of its curbs on access to common law. Even though when I was running the courses I was just the messenger, needless to say I was very unpopular.

Then we move to one of the most significant pieces of legislation, the 1998 Act. From the workers' point of view, that is one of the most significant pieces in the last 30 years because of its emphasis on return to work, injury management and, of course, rehabilitation. The whole concept of the rehab provider and the concept of a return-to-work plan arose as a consequence of that legislation. It is significant for those reasons, because for the first time we were not just focusing on the compensation, we were focusing on the importance—as I am sure you have heard, and as I have listened to today's proceedings I have heard—of getting injured workers back to work. I will pass over the 2001 Act. Most of the time in regard to that one I spent outside this building, but we will not go there. Of course, then we have the most significant one. There is an issue with a lag of more than 10 years between the 2001 legislation and the 2012 legislation. Even though there were minor amendments over that period, it was a long time in my experience with this system over the past 30 years before any significant reforms were undertaken.

I obviously did not agree with the 2012 legislation, particularly because for the first time ever time limits were introduced to workers' benefits in this State. The purpose of that little history is to say that many problems have occurred over that time. I have looked at many of the issues that confront the workers compensation system, obviously particularly from the perspective of injured workers. The one thing that in my experience seems to constantly occur, amongst other things, but this one has been discussed today, is the issue of case management and, in particular, the issue around the skill level, experience and expertise of case managers. Time and time again, and I know it will probably come up in discussions today, we get to this issue of high turnover, inexperience and, putting aside the models, injured workers not getting the service they need. As a consequence they are not getting back to work as quickly as possible. The other issue that remains prevalent at the present time and that has grown over the years is of course psychological injury and, in particular, ensuring that workers suffering psychological injury get treatment as quickly as possible.

To that end, I am only touching on this briefly, the submissions of the Police Association of New South Wales to this Committee, where they argue that there should be a presumption that the cause of the injury was work, might be the way to go. They talk in their submission about examples in the US where that has occurred. They are speaking about emergency workers, not across the board. That is something that should be considered at some stage by this Committee and, indeed, by the Parliament generally. Just coming back to claims management briefly. Reading the submissions to this inquiry and putting aside two or three blatant marketing exercises—if you would like to talk to us, we will talk to you about the rest of the compensation systems around the country—what I found interesting was the number of comments about the need for more competition in the scheme and with the issue of scheme agents. My experience is that competition has been around for a long time, particularly over the past 15 years, and despite all the endeavours to make sure that agents are working effectively and are incentivised to deliver, it does not seem to have worked.

From my perspective I do not think it has been in the best interests of injured workers. That said, that is one reason why the operating model, without going into the detail that icare has attempted to bring in, was worth pursuing, particularly its increased use of automation. In the digital age, where so many people under the age of 25 communicate principally through their smartphone, there is an expectation, and there will be an expectation among the next generation of workers, that compensation will be able to be accessed digitally. There will be concepts such as straight-through processing. I do not say that that is going to be how the majority of claims are handled, but we have to go down that path. In all walks of life, that is the path organisations have gone down and it has to happen in the workers compensation system as well. If, in my view, that empowers injured workers to be able to have more control over their claims and more understanding of where their claims are, then obviously I am all for it and I support it.

I know this has also been discussed today as well, moving to a single platform. It helps to acquire better data about the scheme and how it is operating. Obviously that is for the benefit of all users of the scheme. In closing, one thing I know you never forget in this Committee, but I have lost sight of it since the changes happened back in 2015, is that prevention is always better than cure. I am really keen to ensure that, whatever I do next, I have an idea of what is happening with SafeWork, that oversight continues with SafeWork as we press it to try and ensure that prevention happens in the community, that we try to minimise the number of injuries in the workplace and continue to do that to the best of our endeavours. I will leave it there. Thank you, Chair.

The CHAIR: Thank you so much.

The Hon. SCOTT FARLOW: Thank you very much for making yourself available to the Committee. With over 30 years of experience in the workers compensation space you are a very appropriate person to be sitting on the icare board, do you see that to be the case?

Mr LENNON: Well, you might think that, but yes.

The Hon. SCOTT FARLOW: In many ways, did you see your role as sort of a voice for workers on the board and the voice for work safety?

Mr LENNON: Whatever board you are on you have to act in what is in the interest of the organisation. You have a responsibility to deliver what is the responsibility of the board in terms of the governance of the icare organisation. Clearly, my experience that I brought to the board was from the perspective of injured workers but I was not there—you cannot be an advocate for any particular interest group when you are a member of the board.

The Hon. SCOTT FARLOW: Indeed. And Mr Lennon, you said that you are appearing today, of course, as a former member of the icare board and you talked a little bit about other boards you were involved in. What other positions do you have at present or other boards that you sit on?

Mr LENNON: The only other board that I sit on is—for want of a better word—a corporate board, StatePlus financial services.

The Hon. SCOTT FARLOW: Are there any other roles that you have? You are the president of the Labor Party. I will take that as an—

Mr LENNON: I am but that is a committee of management, not a board per se. There are a couple of not-for-profit organisations, Australian People for Health, Education and Development Abroad [APHEDA], otherwise known as Union Aid Abroad. I am on the committee of management, which is a corporate board there. Also, the McKell Institute and a small organisation called the Sydney Financial Forum.

The Hon. SCOTT FARLOW: You have a lot of board experience and you were on the board of icare from its inception, is that correct?

Mr LENNON: That is correct.

The Hon. SCOTT FARLOW: From that experience, what was your perception of the operation of the board and how it was run?

Mr LENNON: I do not have any issues with the operation of the board.

The Hon. SCOTT FARLOW: Okay, so you do not have any issues at all with the operation of the board or the actions taken by the board during your time there?

Mr LENNON: I was privy to listening into the board's evidence before. You heard Mr Carapiet say that the decisions of the board were unanimous and that was the case.

The Hon. SCOTT FARLOW: And with respect to the decisions outlined, we have had questions and you have acknowledged that you heard some of the questioning before. So with respect to remuneration and the like, there were not any issues that you had concerns with while you are sitting on the board?

Mr LENNON: Without going into discussions about particular issues, on any board there is always debate and discussion. What particular issues I or other members of the board may have had differences of opinion about et cetera or advocated various positions, I do not think it is appropriate for me to go into the detail. Suffice to say that in the end, as you have heard from Mr Carapiet, the decisions on those issues were unanimous.

The Hon. DANIEL MOOKHEY: Mr Farlow asked you a question about the difference between remuneration. How many of those decisions were made at the remuneration committee versus considerations at the board.

Mr LENNON: To the best of my recollection most of the decisions were made at the People and Remuneration Committee. The decision again—and I am just trying to recall the decision—and this is standard practice, regarding the CEO's remuneration is made at the board—

The Hon. DANIEL MOOKHEY: Mr Nagle told that to us in his appearance that his remuneration was decided by the board but the implication being that the remuneration committee decided everybody else's.

Mr LENNON: That is my understanding but the board had to endorse any decision by committees.

The Hon. DANIEL MOOKHEY: Of course.

The Hon. SCOTT FARLOW: And the board endorsed all of those decisions unanimously?

Mr LENNON: That is correct, Mr Farlow.

The Hon. SCOTT FARLOW: And with respect to your role on the board, was there any interaction with the Treasurer at all in terms of the board and the operation of the board?

Mr LENNON: Only where, in my time with the board, he has appeared to speak to the board at a lunch break on two if not three occasions—two that I can best recollect or it may have been three. The only other interaction with their Treasurer was when he was part one or two of the icare functions. The Care and Service Excellence [CASE] awards he spoke at last year and he may have been at one or two others.

The Hon. SCOTT FARLOW: So from your understanding, Mr Lennon, the board of icare was charged with the ultimate management of the organisation, not the Treasurer, that is correct?

Mr LENNON: Mr Farlow, I have been around on government boards for a long time. The legislation, State Insurance and Care Governance Act, outlines the responsibilities of the board et cetera. But when you look at how these things operate, clearly often the Minister of the day—also in my view and not just in this particular example—the Minister of the day often has a general oversight in regard of the activities of the organisation.

The Hon. SCOTT FARLOW: With respect, in terms of your position on the board, did you see that at all in your time at the board?

Mr LENNON: In respect of?

The Hon. SCOTT FARLOW: Any intervention from the Treasurer with respect to your position on the board. Did you see any instance where the Treasurer intervened in the operation of icare.

The Hon. CATHERINE CUSACK: In a tender? In the IT? In the staffing? In remuneration decisions?

Mr LENNON: I think you would have to say that with any government there is always, when it comes to workers compensation, there is always government intervention when it comes to premium setting.

The Hon. CATHERINE CUSACK: To the legislation.

Mr DAVID SHOEBRIDGE: What does that mean in practice with the Treasurer? You say there is intervention in premium setting but what does that actually mean?

Mr LENNON: My understanding is that the boards often make decisions in terms of premiums maybe should rise. That in this case has to go to SIRA. My understanding is though that the premiums are not going to rise as a consequence of a government decision.

The Hon. SCOTT FARLOW: Let us be specific about the decision you are talking about, there was a determination at one stage by the board was there for premiums to rise?

Mr LENNON: That is right.

The Hon. SCOTT FARLOW: And there was intervention from the Treasurer so that premiums would not rise, is that what you are saying?

Mr LENNON: I cannot say there is intervention by the Treasurer. That is quite right but it is my understanding that it went to SIRA. SIRA signed off on it as the regulator and then the Government was of the view, whether that is the Treasurer or Treasury—

The Hon. SCOTT FARLOW: The Government did not proceed with that?

Mr LENNON: That is—

The Hon. DANIEL MOOKHEY: Can we just identify which premium filing we are talking about? Do you recall if it was the 2018-19 premium filing?

Mr LENNON: It would have been for this particular year that we are in now.

The CHAIR: And are we speaking about the fact that it was caused because of COVID or was it before that?

Mr LENNON: I would have to take that on notice.

Mr DAVID SHOEBRIDGE: These are independent boards and there is quite a formal process for a direction to be issued. There needs to be a public notice of a direction, so how was this influence or direction done in practice?

Mr LENNON: Mr Shoebridge, it was the support of the board. The Government was not was not keen to proceed with an increase.

Mr DAVID SHOEBRIDGE: And then the board reversed its decision?

Mr LENNON: No. It is my understanding at the moment—and I might have to check this—the board in its decision remains but I might stand corrected on that.

Mr DAVID SHOEBRIDGE: There has not been a premium increase notified.

Mr LENNON: That is right.

The Hon. DANIEL MOOKHEY: To be fair to icare, it did publicly confirm in budget estimates and elsewhere that it sought a 4 per cent premium increase. This is not news. It is on the public record. This fact was heavily contested in February. We can only confer that that was before COVID hit where it was out about 4 per cent.

The Hon. CATHERINE CUSACK: But it was recommended.

The Hon. DANIEL MOOKHEY: Yes.

The Hon. CATHERINE CUSACK: A recommendation.

The Hon. DANIEL MOOKHEY: No, that icare had filed an application with SIRA for a 4 per cent increase. Does that accord with your memory, Mr Lennon?

Mr LENNON: The discussion about increase had been going on for some time, Mr Mookhey. That is right. Timing wise, exactly when is hard for me to recall, but there had been discussion for some time that clearly premiums need to rise and, in my understanding, we were looking at a filing of about 1.52 per cent

The Hon. DANIEL MOOKHEY: Yes, which was worked out to be 4 per cent. I asked the regulator this in budget estimates to be fair. That is why I am saying this. I asked Ms Donnelly at budget estimates whether or not icare had failed to increase premiums and she said yes. It is 4 per cent, which works out to be 1.52 from a 1.4 base, so none of this is not public. That is all on the record.

The Hon. SCOTT FARLOW: The facts as they stand, Mr Lennon, are these: The icare board approved a premium increase that was notified to SIRA. That premium increase has not occurred.

Mr DAVID SHOEBRIDGE: Well, icare seeks a premium increase and it is SIRA's job to approve it or rejected and that has not happened.

Mr LENNON: My understanding was that SIRA had approved it.

Mr DAVID SHOEBRIDGE: And then somehow it was vetoed by the Government?

Mr LENNON: You might characterise it that way. The Government, as I understand it, made a public statement that there would be an increase in premiums.

The Hon. SCOTT FARLOW: And to your knowledge that is the only intervention by the Treasurer with respect to the icare board that you were alluding to earlier?

Mr LENNON: To the best of my knowledge, that is right.

The Hon. SCOTT FARLOW: With respect to the appointment of the CEO we asked Mr Carapiet whether there was anyone on the board who had concerns about the appointment of Mr Nagel as CEO, did you have any concerns?

Mr LENNON: No.

The Hon. SCOTT FARLOW: Why was that? Mr Nagel had been acting as an interim CEO after the departure of Mr Bhatia.

Mr LENNON: That is right.

The Hon. SCOTT FARLOW: The board had confidence in him as the CEO at the time?

Mr LENNON: With all these things, as I say, there is always discussion around it and I just thought that Mr Nagel, with a vast amount of experience in the insurance industry I saw as a very steady person and what was needed in the organisation at the time and was the right fit.

The Hon. TREVOR KHAN: After the disclosure about the employment of his wife did your view change? I have to say I am somewhat unsettled by that.

Mr LENNON: Let me just say that there was a robust discussion about that issue about his wife and I think we have all got varying opinions about Mr Nagel as a consequence of that, but at the time, if I go back to Mr Farlow's question it was about the initial appointment, as I understand it.

The Hon. SCOTT FARLOW: That is right.

Mr LENNON: You always ask the questions and play devil's advocate and someone on the board did and we should. It is not to say that he was the perfect candidate but he was the appropriate candidate at the time.

The Hon. SCOTT FARLOW: Picking up from Mr Khan's question, when it did come to light about the employment relationship with his wife within icare you and the board made the determination that the appropriate path to take was in terms of suspending his bonus payments?

Mr LENNON: That is correct.

The Hon. SCOTT FARLOW: At that stage do you believe he should have resigned as CEO?

Mr LENNON: The decision was that he stay, that was the unanimous decision of the board and I was party to that decision.

Mr DAVID SHOEBRIDGE: It was about \$800,000 that went to his wife and he had not disclosed the conflict of interest as the head of the organisation.

Mr LENNON: I understand. No, he had declared the conflict of interest. The issue was that the board had not been made aware of it.

Mr DAVID SHOEBRIDGE: You are the body that holds him to account, no one else can.

The CHAIR: I have an order of people who are seeking the call.

The Hon. SCOTT FARLOW: I have more questions.

Mr DAVID SHOEBRIDGE: To be fair it is on this line of questioning. The only body in an organisation that can effectively hold the CEO to account is the board, that is the case is it not, Mr Lennon?

Mr LENNON: That is correct.

Mr DAVID SHOEBRIDGE: Failing to disclose the conflict of interest to the board means that the only body that could have held Mr Nagel to account was not in the loop, that is the problem, is it not?

Mr LENNON: That is right.

Mr DAVID SHOEBRIDGE: And this was not a small nondisclosure, it was a contract that went for years under which Mr Nagel's wife was paid some \$800,000, is that right?

Mr LENNON: As I understand it now, having heard the earlier evidence about the \$800,000.

Mr DAVID SHOEBRIDGE: Were you not told at a board level the quantum of money paid to Mr Nagel's wife?

Mr LENNON: My recollection at the time, and it may have arisen subsequent, but not at the time.

Mr DAVID SHOEBRIDGE: How did you not ask that basic question, how much are we talking about? There is a difference between a \$5,000 contract and an \$800,000 contract, how did you not ask that basic question on the board?

Mr LENNON: I just cannot remember in the debate at the time whether that came up. The issue primarily was why were we not told initially about the conflict of interest.

Mr DAVID SHOEBRIDGE: I cannot understand how you survive. You are the head of an organisation. You have key integrity tests about fit and proper policies and the like, how did he survive having failed to disclose

an \$800,000 payment, not to somebody marginally associated to him but to his wife by the organisation that he was leading?

Mr LENNON: We come back to the issue, Mr Shoebridge, that he did not fail to disclose, the question was why was it not reported to the board.

Mr DAVID SHOEBRIDGE: The only body that could hold him to account.

Mr LENNON: You have seen through project Stanley, you saw the investigation that was undertaken, we have to make sure that what we considered was in the best interests of the organisation. And that was to retain him at that time, 14 months after the last CEO left, retain him as the CEO.

The Hon. DANIEL MOOKHEY: Can I, firstly, establish that you are one of nine members of the board?

Mr LENNON: That is right.

The Hon. DANIEL MOOKHEY: And you heard Mr Carapiet's evidence earlier today?

Mr LENNON: I did.

The Hon. DANIEL MOOKHEY: And you heard Mr Carapiet say that it was generally the attitude of the board that there are matters which boards look into and there are matters that are left to management, did you hear that part of his evidence?

Mr LENNON: I did.

The Hon. DANIEL MOOKHEY: And you agree with him that that is the appropriate role of a board?

Mr LENNON: Absolutely. Sometimes though it is hard for boards and management to work it out.

The Hon. DANIEL MOOKHEY: The theme of your evidence so far has been the board is collectively responsible, not any one individual such as yourself is responsible, it is a collective responsibility, do you agree?

Mr LENNON: Absolutely.

The Hon. DANIEL MOOKHEY: Let us talk a bit more about project Stanley which we only heard about today in substantial effect. This was a project led by the audit and risk committee, is that correct?

Mr LENNON: That is right.

The Hon. DANIEL MOOKHEY: The bulk of the investigation that you are describing is, in fact, the proceedings of the audit and risk committee that did the bulk of the work on the investigation, is that correct?

Mr LENNON: That would be correct.

The Hon. DANIEL MOOKHEY: When did project Stanley commence, do you now recall?

The Hon. SCOTT FARLOW: Just quickly, did you sit on that committee as well?

Mr LENNON: I sat on the ARC, but then I left the ARC and I just cannot remember.

Mr DAVID SHOEBRIDGE: That is audit and risk?

Mr LENNON: Yes, that is right. I cannot remember, Mr Farlow, exactly when I left the audit and risk committee. I think it was the start of last year, February 2019.

The Hon. DANIEL MOOKHEY: Was that prior to project Stanley. Were you on the audit and risk committee when project Stanley was being led? For a period of time?

Mr LENNON: For a period of time, yes.

The Hon. DANIEL MOOKHEY: But when project Stanley was finalised, you were not, is that fair?

Mr LENNON: It was February last year when we had the report.

The Hon. DANIEL MOOKHEY: When did project Stanley commence, do you have any recall?

Mr LENNON: No, I am sorry, I cannot recall, Mr Mookhey.

The Hon. DANIEL MOOKHEY: That is all right. Who undertook project Stanley, who was the external investigator, do you recall?

Mr DAVID SHOEBRIDGE: Workplace Solutions?

The Hon. DANIEL MOOKHEY: No, that was the other one.

Mr LENNON: I am just trying to recall, I was looking at this the other day. I am just trying to remember, it was a law firm.

The Hon. DANIEL MOOKHEY: Could you take it on notice?

Mr LENNON: I will take that one on notice.

The Hon. DANIEL MOOKHEY: When the board discussed the findings of project Stanley, we asked Mr Carapiet this, was the board told that Mr Nagel had offered his resignation?

Mr LENNON: I am having trouble with that one, whether it was or not.

The Hon. DANIEL MOOKHEY: Have you seen Mr Nagel's evidence to this inquiry a couple of weeks ago?

Mr LENNON: I did.

The Hon. DANIEL MOOKHEY: We asked him this question, I do not want to repeat the entire answer?

The Hon. TREVOR KHAN: Please do not.

The Hon. DANIEL MOOKHEY: I will not. I asked him:

The Hon. DANIEL MOOKHEY: Why did you not resign?

Mr NAGLE: Because at that time I discussed it with the Chair. I was extremely unhappy at the treatment, feeling that I had disclosed and it had been a well-known issue. The Chair asked me to reconsider. I reconsidered.

To be fair to Mr Carapiet, he denied the import of that conversation and he denied the implication that it gave rise to. I want to be fair to Mr Carapiet about that too. That is the evidence of Mr Nagle. We have this scenario where the CEO's evidence at the time is in direct conflict with the chair's. What I am going to ask you is, was the board made aware of any of this at the time?

Mr LENNON: I am sorry, that there was a conflict between them for that, allegedly Mr Nagel wanted to resign?

The Hon. DANIEL MOOKHEY: Both.

Mr LENNON: I honestly do not recall.

The Hon. TREVOR KHAN: Did Mr Nagel address the board on these matters?

Mr LENNON: No.

The Hon. TREVOR KHAN: Did you have any direct discussions with Mr Nagel?

Mr LENNON: Not at the time, no.

The Hon. TREVOR KHAN: Can I just say that I was troubled by his evidence. He seemed bewildered. Not only did he feel wounded by the decision that was made by the board, but he seemed to me bewildered that it was such an issue. Did you ever get that impression from Mr Nagel?

Mr LENNON: I did. I think most of the board got the impression that he was—

The Hon. SCOTT FARLOW: He was peeved.

Mr LENNON: —disappointed with the penalty that he received as a consequence.

The Hon. DANIEL MOOKHEY: He said he was angry.

The Hon. TREVOR KHAN: It seemed to me to go further than that, Mr Lennon, and it went to the point where he thought it was an unjust outcome that he was held to account. Am I right in that regard?

Mr LENNON: Yes, I think you are right in making that assumption. He seemed to be very bewildered by it, as you said, Mr Khan.

The Hon. TREVOR KHAN: That leaves me concerned, if somebody who holds that position as CEO does not understand the conflict arising for the employees of the organisation of employing a wife in the food chain, as to the decision-making capacity of that individual, does that come to your mind at all? Did he actually know the ethical bounds that should apply to a CEO? I would like an answer.

Mr LENNON: I will answer Mr Khan's question. I would say his reaction that you have just outlined really raised concerns amongst board members about his future.

Mr DAVID SHOEBRIDGE: But you kept him on. I do not understand. But you kept him on.

The CHAIR: Mr Shoebridge, Mr Mookhey will continue his line of questioning. Mr Farlow and Mr Khan have indicated they have questions.

The Hon. TREVOR KHAN: I will accede to Mr Farlow in due course.

The Hon. DANIEL MOOKHEY: Mr Farlow, if you have another line of questioning?

The Hon. SCOTT FARLOW: I think this has deviated from where we were on the following questions.

The CHAIR: Mr Lennon, you wanted to make a point?

Mr LENNON: I just wanted to make the point with regard to Mr Nagle remaining on. I accept what people are saying around the table about some of his actions, but you have to make a judgment. Certainly in the short- to medium-term what was in the best interests of the organisation, given the position it was in at the time, and I think this afternoon Mr Carapiet or someone else referred to the fact we were in the middle of the SIRA review, the fact that the previous CEO had only left 14 months before, the fact that Mr Nagle is very competent when it comes to his skills in the insurance industry, the fact that prior to his appearance here he was performing and dealing with the issues of the day quite well and actually had improved his performance. For all those reasons, that is the reason he remained.

The Hon. DANIEL MOOKHEY: One other aspect on this matter, I do not know if you heard Mr Bell earlier this morning and Mr Carapiet, who were describing the selection process that led to the appointment of Mr Nagle in the first instance.

Mr LENNON: Yes.

The Hon. DANIEL MOOKHEY: He said at the time that there was an external search undertaken. That accords with your recollection?

Mr LENNON: It does.

The Hon. DANIEL MOOKHEY: I believe it was Egon Zehnder who was hired to do that search?

Mr LENNON: I am not sure, but that sounds about right.

The Hon. DANIEL MOOKHEY: In the course of that search are you able to provide any insight as to why this conflict was not discovered then? The evidence of Mr Nagle is that this arrangement was established with his wife when he was a group executive and he informed the then CEO, Mr Bhatia, and he then said he made an equal disclosure to the chief people officer—I do not know who that was at the time. Was this identified at all in the external search that was undertaken? To the best of your recollection did the board ever seek to understand why it was not told?

Mr LENNON: I do not recall it being discovered as part of the selection process or the Egon Zehnder process. And, again—sorry, I missed the second part of your question.

The Hon. DANIEL MOOKHEY: In the course of receiving the results of Project Stanley, or in Project Stanley, did the project ever identify the reason why this was not brought to the board's attention?

Mr LENNON: The whole reason why, yes.

The Hon. DANIEL MOOKHEY: What was the reason why?

Mr LENNON: It seems to be that he told a number of other senior officials. He told—as you heard from the record—Mr Bhatia earlier in the piece when Mr Bhatia was the CEO and Mr Nagle was the head of workers compensation, or head of the workers compensation division. Mr Bhatia apparently okayed it but did not see it necessary, as I understand it, to bring it to the board. At some stage when he became CEO he informed—and it may be before that—he informed the general counsel.

The Hon. DANIEL MOOKHEY: His evidence is that he made a dual notification, one to Mr Bhatia and one to the chief people officer.

Mr LENNON: And my understanding was he made one to the chief risk officer.

The Hon. DANIEL MOOKHEY: Maybe that is correct, chief risk officer.

Mr LENNON: And it was put on the register of interests, but the chief risk officer did not think it necessary.

The Hon. DANIEL MOOKHEY: That is Gavin Pearce?

Mr LENNON: That is right.

The Hon. DANIEL MOOKHEY: To the extent to which there is any documentation about this, it is only an entry from the chief risk officer onto the risk register?

Mr LENNON: That is my understanding.

The Hon. DANIEL MOOKHEY: Is part of the reason why there seems to be so much haze because you would have expected Mr Nagle to document this disclosure in a more thorough manner than a verbal conversation with the CEO at the time, and a verbal conversation with the chief risk officer, which leaves the chief risk officer to make an entry into the register and not Mr Nagle? Is that unfair?

The Hon. TREVOR KHAN: You might have expected Mr Bhatia to have done a little bit more?

The Hon. DANIEL MOOKHEY: Or Mr Bhatia to have made the entry?

Mr LENNON: I am sorry, I do not want to infer what certain people should have done at what time. Let me just say this—

The Hon. DANIEL MOOKHEY: I guess the core of the question is—

Mr DAVID SHOEBRIDGE: Let him answer.

The Hon. TREVOR KHAN: Well, no, no.

Mr LENNON: What was evident is the system broke down, that there were senior executives in the organisation, various ones, who were informed about Mr Nagle's wife working in the organisation but no-one thought it necessary to tell the board.

The Hon. DANIEL MOOKHEY: Did Project Stanley establish whether or not the work that was allocated to Mr Nagle's wife was ever tendered for?

Mr LENNON: I cannot recall on that one, Mr Mookhey.

The Hon. DANIEL MOOKHEY: I have another line.

The CHAIR: I will pass to Mr Farlow to complete his line of questioning, then I will pass to Mr Shoebridge, who has been waiting patiently, to allow his line of questioning.

The Hon. TREVOR KHAN: That is unusual.

The CHAIR: It is late in the day and I appreciate that everyone is being well behaved, then we can go back to Mr Mookhey if he has further questions.

The Hon. SCOTT FARLOW: Mr Lennon, overall, despite these challenges with management and the issues with Mr Nagle, your impression of the board was that it was a diligent board that was conducting its activities well?

Mr LENNON: I have the utmost respect for the people on the board who I serve with.

The Hon. SCOTT FARLOW: While you were on the board were there any instances where you had grounds for concern that icare would not be able to carry on its role supporting and caring for injured workers?

Mr LENNON: No. That was always with workers compensation, with my 30 years, you know when there are—you can see the trouble clouds in the distance, shall I say, Mr Farlow. Clearly the nature of the beast, there are often cyclical problems that arise, there are structural problems that arise, 2012 reforms—did not agree with it, but there you are. Then all of a sudden there are changes in 2016, which were good.

The Hon. TREVOR KHAN: I think you gave evidence about the 2012 reforms.

Mr LENNON: I did, then I got quoted in Parliament as a result. The 2016 reforms would back some of the, improved some of the benefits of workers. That is a good thing. As you heard, I think from Mr Plumb this afternoon, that 2012 in terms of section 39 meant that not as many workers as anticipated left the scheme. In my view that is a good thing, they are still receiving benefits, prefer hopefully they could return to work and get assistance to return to work, but that is a good thing. Of course, then you have got an economic downturn. All of a sudden the storm clouds are gathering once again around the scheme, but I believe at the present time, you heard

it is at 98 per cent valuation, at 80 per cent POA, and 75 per cent POA instead of 101 per cent. It is okay at the present time but work needs to be done.

The Hon. SCOTT FARLOW: Mr Lennon, to those storm clouds, I think your evidence was that it was cyclical as well, there were effectively some teething problems, there were some cyclical issues there, some storm clouds on an economic front gathering, but from your perspective sitting on the board you did not see any huge structural challenges for the workers compensation scheme or icare as an entity under that scheme?

Mr LENNON: No doubt you have to say, as has been discussed many times today, had we embarked on the claims management model, was problematic. It is a worthwhile exercise. That was in my book, and remains, the issue that needs to be addressed. As I said in my opening remarks, I think it is the right direction; however, certainly—and our own work that has been done by Mr Trowbridge, I think you heard Mr Ferguson talk about that, showed that from January 2018 to June 2019 there was a deterioration of return to work and there were problems with the system and people were not—because of the guide and the segmentation—getting the assistance they needed as quickly as possible, and that needs to be fixed. There is no doubt. That is a structural problem that is the responsibility of icare.

The Hon. SCOTT FARLOW: Mr Lennon, do you believe that the icare board needs to go?

Mr LENNON: That is a decision not for me. That is a decision for other people to make, Mr Farlow.

The Hon. SCOTT FARLOW: Indeed, but from your own assessment sitting on the board do you believe that the board should go?

Mr LENNON: As I say, again, that is not a decision or a question for me to answer. It is one for others to undertake and consider.

The Hon. SCOTT FARLOW: But from your own position on the board, you sat there in the belly of the beast, so to speak.

The Hon. DANIEL MOOKHEY: Point of order: Mr Chair, we have been called up twice throughout the day for pressing witnesses when it is quite clear that their position was established. While I do not wish to be the pot calling the kettle black, I might have to in respect of Mr Farlow. Mr Farlow has asked the question twice and the witness has answered the question twice.

The Hon. CATHERINE CUSACK: To the point of order—

The Hon. SCOTT FARLOW: Let us cut through this. I will ask a different question. Mr Lennon, in your time on the board was there anything that was presented to you that gave you reason to believe that you should resign as a director and that fellow board members should as well?

Mr LENNON: Sorry, Mr Farlow?

The Hon. SCOTT FARLOW: Was there anything during your time on the board of icare that made you question your own position on the board or question the other members sitting around the board as to whether they should remain members of the icare board?

Mr LENNON: I cannot speak for other members of the board. They may have seen things that they may have considered would warrant, in their view, them resigning, but I have not spoken to anyone to that degree. From my own perspective, in terms of any issues where I may have considered that I should resign from the board, no, I cannot particularly say that there was.

The Hon. SCOTT FARLOW: Mr Lennon, why did you resign from the icare board?

Mr LENNON: That is a matter for me, Mr Farlow. I am not here to discuss the reasons I resigned. I have my own reasons. I sent a letter to the Treasurer.

The Hon. SCOTT FARLOW: It seems like it was a board that was operating well. It seems like the only reason you resigned from the board was because it became a political issue.

Mr LENNON: As I say, I had my reasons to resign and I am not here to discuss those personal reasons. I resigned. I made my decision.

The Hon. SCOTT FARLOW: Mr Lennon, did the Leader of the Opposition contact you and ask you to resign from the icare board?

Mr LENNON: Again, I am not here to discuss the reasons why I resigned from the board.

The Hon. SCOTT FARLOW: What about any members of the Leader of the Opposition's staff? Did any of them contact you to ask you to resign from the icare board?

Mr LENNON: Again, I am not here to discuss why I resigned from the icare board.

The Hon. SCOTT FARLOW: Any member of Parliament, any member of the Labor Party?

The Hon. GREG DONNELLY: Point of order: I have been exceedingly patient with the line of questioning, which is simply reciting a string of propositions where Mr Lennon has stated his position very clearly.

The CHAIR: While I accept that, I was listening intently to the question and I think Mr Farlow is entitled to ask that question in particular. There are questions around the timing and I think Mr Farlow is seeking some clarification around the timing of your resignation, Mr Lennon, which is why I am allowing him to press the question. However, I accept that you are providing an answer and that answer is yours to give. Again, I am allowing that and I am not interjecting on that. Mr Farlow has the call. I am sure he has almost concluded that line of questioning. I do not uphold the point of order.

The Hon. SCOTT FARLOW: Mr Lennon, was it ever put to you that you could either be president of the Labor Party or remain on the icare board?

Mr LENNON: Again, I am not going into discussions about why I resigned. Let me just say this—

The Hon. SCOTT FARLOW: But you did not resign because you had a belief that the board was not operating well or that you believed that the whole board should resign because of the operation of icare.

Mr LENNON: I had a belief that it was appropriate for me to resign. I had my reasons and I made that decision.

The Hon. SCOTT FARLOW: Mr Lennon, do you believe that icare is operating well as an organisation?

Mr LENNON: I have my own views about icare and obviously from the perspective of the board, but it is clear to many around this table who have access to far more information than I do, as a consequence of standing orders and things of that nature, that they have a different view.

The Hon. SCOTT FARLOW: Mr Lennon, during your time as a member of the icare board do you believe that you acted personally—I am not talking about any other members of the board—but in the best interests of workers, scheme participants and employers throughout New South Wales?

Mr LENNON: I believe that I acted in accordance with my obligations under the legislation to undertake my activities as director with care and diligence.

Mr DAVID SHOEBRIDGE: Mr Lennon, it has been publicly reported that your brother is married to the Treasurer's wife's sister, is that right?

Mr LENNON: That is correct.

The Hon. TREVOR KHAN: I probably have a relation with the Pope on that ground.

Mr DAVID SHOEBRIDGE: Your brother is married to the sister of the Treasurer's wife. That is the relationship.

Mr LENNON: That is correct.

Mr DAVID SHOEBRIDGE: A number of people have suggested to me that you regularly caught up socially with the Treasurer over the course of the last few years. Were there regular family catch-ups with you and the Treasurer?

Mr LENNON: That is not correct.

The Hon. CATHERINE CUSACK: Who suggested that, Mr Shoebridge?

The Hon. TREVOR KHAN: Point of order: This is an inquiry into the workers compensation scheme. That is really getting away from the substance.

Mr DAVID SHOEBRIDGE: My question is quite simple: Was it ever raised?

The CHAIR: Mr Shoebridge, I am going to rule on the point of order. I uphold the point of order.

The Hon. TREVOR KHAN: I am really uncomfortable with this.

The CHAIR: I will allow Mr Shoebridge to close the loop on what he is attempting to ask before he moves on to the next question.

Mr DAVID SHOEBRIDGE: Did you and the Treasurer ever discuss issues in relation to icare while you were on the board of icare in social settings, apart from the examples you gave earlier?

Mr LENNON: No. I would say that I would see the Treasurer socially, for want of a better word, as a consequence of family connections once a year maybe. Let me pose this question to yourselves: How often do you see your sibling's in-laws?

The Hon. CATHERINE CUSACK: We have all been in lockdown apart from anything else.

Mr LENNON: I do object to the question.

Mr DAVID SHOEBRIDGE: Mr Lennon, you were on the board when the decision was made to go to the new Capgemini Guidewire programming. Were you on the board at that time?

Mr LENNON: I was, yes.

Mr DAVID SHOEBRIDGE: You must have been told at the time that, implicit in that transfer, most injured workers having had their claims assessed under an algorithm were not going to have any direct contact from a claims manager for some six weeks, because that is how it was implemented. You must have been told that?

Mr LENNON: That is correct.

Mr DAVID SHOEBRIDGE: Were you in the board meeting in May 2016 when a presentation was made to the board about the results of the WISE study? The research was partly funded by icare and showed that detailed early intervention by claims managers was essential to get workers back to work. Were you on the board in May 2016 when that was made?

Mr LENNON: I would have been. Yes, absolutely.

Mr DAVID SHOEBRIDGE: In May 2016 a presentation was made to the board by the authors of WISE, by senior academics, which said that early intervention by claims managers, direct one-on-one intervention, halved the period that workers were off work for the control group. It halved the period. Does that now ring a bell?

Mr LENNON: It does. I am just trying to think of the report, but I do not recall the presentation directly. What you are referring to does ring a bell, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Can you explain to me how as a board member you get a presentation in May 2016 that says, "Early active intervention by claims managers halves the time that people are off work", and then less than 12 months later you sign off on a policy which sees the great bulk of workers not seeing a claims manager for six months and instead handled by a computer and an algorithm. How do you go from A to B? How did that happen?

Mr LENNON: I think that is a bit linear, Mr Shoebridge. There are a whole range of factors that come in when you are considering these issues. The truth is, when we went down the pathway with the new claims operating model and to this concept of segmentation, as I said—and I am happy to stand corrected—but my focus was always on ensuring that more control was put in the hands of the workers. If 60 per cent of the claimants who apparently did not need a case manager could go back to work quickly, but with the appropriate treatment and with the power to deal with that issue themselves, then I would support it.

Mr DAVID SHOEBRIDGE: How does not being contacted by a claims manager for six weeks empower an injured worker? How do you make that statement?

Mr LENNON: That evidence—happy to accept that it did not work. We have now gone to two weeks—sorry, not we, I am no longer there. Icare has now gone to two weeks in that regard.

Mr DAVID SHOEBRIDGE: Mr Lennon, it is a bit makes no sense at all for you to say that consciously going to a regime where most workers do not see a claims manager for six weeks empowers workers. It does not empower workers.

The CHAIR: Mr Shoebridge, I am going to rule that out of order because you are now putting words in Mr Lennon's mouth. That is not actually what he said.

The Hon. TREVOR KHAN: Look, I know time is short so I just want to acknowledge Mr Lennon's decades of commitment to the labour movement. I do not see the point in prolonging the exercise.

The Hon. CATHERINE CUSACK: Mr Lennon, I wanted to say that I have actually heard evidence from you before in relation to boards that you have been on. I have been in Parliament since 2003. I have immense

respect for your professionalism and your position that you are not there to be a workers representative as opposed a part of a team that is leading the organisation. They are different hats. The evidence that you have given today I have respect for and I understand. My understanding is that you respect your fellow board members and you believe that the issues that you are contributing on are important issues in terms of the best interest of injured workers.

Mr LENNON: It is the same with any board. The best interest of injured workers and the other stakeholders is not just—we have focused a lot on the Nominal Insurer, but also the Treasury Managed Fund [TMF] and those who are injured in motor accidents and therefore looked after by Lifetime Care.

The Hon. CATHERINE CUSACK: It is so important for the hundreds of thousands of people affected by the good governance of this organisation that their perception is that there is integrity and it is acting in the best interests of its charter, yes?

Mr LENNON: Yes.

The Hon. CATHERINE CUSACK: I just want to say that I thought you being a member of the board really contributed to giving that reassurance to ordinary workers, not just to government but to ordinary workers.

The Hon. ANTHONY D'ADAM: Point of order: There is no question. It is just a statement.

The Hon. CATHERINE CUSACK: He is responding to me.

Mr DAVID SHOEBRIDGE: It is not a question.

The Hon. DANIEL MOOKHEY: That is fine. If it is just an interaction to which Mr Lennon can respond, let us just have the response.

The Hon. CATHERINE CUSACK: That is why there is the interest in why you left the board. I hear you when you say personal reasons, but just in terms of the governance and the interests of the organisation and the people that it serves, it is a void if I can put it like that. This is why we want to understand—

The Hon. GREG DONNELLY: Point of order—

Mr LENNON: No, I am happy to answer. Ms Cusack, I resigned.

The Hon. CATHERINE CUSACK: It is a genuine question.

Mr LENNON: I resigned and I have made no public comment since. I do not intend to now as to the reasons of my resignation. I think that is a right I have.

The Hon. CATHERINE CUSACK: I understand that your statement at the time was "muddying the waters"?

Mr LENNON: I have made no public statement and made no statement to that effect.

The Hon. DANIEL MOOKHEY: I want to turn to two matters, Mr Lennon. The first is to do with the Pre-injury Average Weekly Earnings [PIAWE] issue of the underpayment of workers. When was the board first informed that this issue had arisen?

Mr LENNON: Sorry, I cannot remember whether it was earlier this year or late last year. I think it was early this year, Mr Mookhey.

The Hon. DANIEL MOOKHEY: What is on the public record is that sometime—actually now it is clear that when the PIAWE changes went through Parliament, icare for some reason commissioned a risk review. That risk review was commissioned circa March 2019, the results of which were then effectively handed to the regulator early this year in the span of about 12 months. Does that accord with your recollection that it would have been the February or March meetings this year?

Mr LENNON: It would have been, I think, yes.

The Hon. DANIEL MOOKHEY: And what was the board told about the issue?

Mr LENNON: People were not characterising it as underpayments or overpayment but there had been a problem as you have heard I think from others. As a consequence of the introduction of the new IT platform, an issue had arisen that there was a problem with the benefit payments, the PIAWE. As a consequence, injured workers had been underpaid and also there were instances where some workers had been overpaid.

The Hon. DANIEL MOOKHEY: Until the point where you left the board, which was earlier this month or last month. I cannot remember.

Mr DAVID SHOEBRIDGE: Recently.

The Hon. DANIEL MOOKHEY: Recently. Did management ever provide a plan to the board that outlined when the first worker would be paid money owed and the last worker would be paid money owed?

Mr LENNON: My understanding is that they were looking at this first worker being paid—and I am might again stand corrected—in this six month period from now on.

The Hon. DANIEL MOOKHEY: One of the 19 that was rechecked?

Mr LENNON: That is right, in this period. They had obviously outlined a clear plan of investigating and researching the extent of the issue. I think it was the March issue because Mr Garling was appointed by icare to assist the process, particularly in quality assurance.

The Hon. DANIEL MOOKHEY: Kim Garling you are referring to?

Mr LENNON: I am talking about Mr Kim Garling, former Workers Compensation Independent Review Office [WIRO]. Again, I have to declare interest because he is a long-time family friend. I do remember that being the minutes of, I think, the February or March meeting this year.

The Hon. DANIEL MOOKHEY: To other issues on a similar vein —

The Hon. SCOTT FARLOW: Just quickly on PIAWE, we heard evidence before from Mr Ferguson that that sort of predated icare. It went back to 2012, is that correct?

Mr LENNON: That is right. It was 2012. I think we went 2012-2018 because it only became evident once data moved onto the new platform is my understanding.

The Hon. DANIEL MOOKHEY: To other matters, Mr Lennon, in a similar vein, earlier today three of the nine board directors said that they were never informed about the Ed Yap arrangement with the Treasurer's office and that it was not discussed with the board. Does that accord with your recollection as well?

Mr LENNON: It does.

The Hon. DANIEL MOOKHEY: And was the first time you discovered that the Ed Yap secondment was in the media?

Mr LENNON: It was

The Hon. DANIEL MOOKHEY: And was that also the first time you discovered the secondment of the second person who we now learn is a receptionist?

Mr LENNON: It was.

The Hon. DANIEL MOOKHEY: The other matter, which has been coming up throughout this evidence today and the previous hearing, was about the non-disclosure and non-publication of contracts on the public database. When was that identified as a problem to the board?

Mr LENNON: It would have been earlier this year I think.

Mr DAVID SHOEBRIDGE: It is now called the Government Information (Public Access) Act [GIPPA] remediation program?

Mr LENNON: That is right.

The Hon. DANIEL MOOKHEY: So earlier this year the board was told?

Mr LENNON: That is right. Let me just say when it was first raised in estimates. I think that is when it became known. That is right.

The Hon. DANIEL MOOKHEY: Just to be clear on your recollection, I asked the question in estimates of the Treasurer and to the then CEO who effectively took no notice, and then thereafter you are saying that report was given to the board.

Mr LENNON: That is my recollection.

The Hon. DANIEL MOOKHEY: What did management say to the board as to the reasons why icare was not publishing its contracts?

Mr LENNON: I think it has been clear that it was an oversight.

The Hon. DANIEL MOOKHEY: Did the board understand when management first learned about this issue?

Mr LENNON: I cannot recall that one, Mr Mookhey.

The Hon. DANIEL MOOKHEY: In some of the documents which are now public—and you made reference to those under Standing Order 52, which to be fair I have spent a lot of time reading those documents. It is clear that management suspected that actually the Auditor-General brought this to the attention of the management team towards the end of 2018 and management knew circa 2018, now 14 months before there was any of the public revelation. Was that ever brought to your attention on the board?

Mr LENNON: Not at that time if you are talking about 2018. Or are you asking the question of whether the factor was brought to management's attention then was eventually revealed to the board?

The Hon. DANIEL MOOKHEY: Because there seems to be this dynamic that has emerged through the Dore review—

The Hon. TREVOR KHAN: No, no. He was asking for clarification.

The Hon. DANIEL MOOKHEY: I will give Mr Lennon clarification. The question I was asking was whether the fact that management seem to know, or at least there was a basis for management to know, as early as towards the end of March 2018 that there was a problem about icare disclosing its contracts. That fact was ever brought to your attention?

Mr LENNON: I cannot recall it being brought to my attention.

The CHAIR: Mr Mookhey, I will stop you there. Mr Farlow and Mr Shoebridge have indicated that they have further questions.

The Hon. DANIEL MOOKHEY: I respect your authority.

The Hon. SCOTT FARLOW: Mr Lennon, you have outlined your long history in workers compensation helping injured workers throughout the State. The only reason that you resigned from the board was because your presence on the board was proving to be a political distraction to Labor's political attack, is that not correct?

The Hon. GREG DONNELLY: Point of order.

The CHAIR: Mr Lennon has previously answered that question. I will give him the opportunity to address it now that it has been raised but I do believe he has answered these questions previously.

Mr LENNON: I will just say that my previous answers stand.

Mr DAVID SHOEBRIDGE: Mr Lennon, you were on the risk and audit committee for quite some time, is that right?

Mr LENNON: Yes, for three years.

Mr DAVID SHOEBRIDGE: Were you advised in that time that the Nominal Insurer was not a government agency for the purposes of the Public Works and Procurement Act and therefore was not covered by government tender requirements?

Mr LENNON: I cannot recall if it was at the ARC, but I was aware of that.

The CHAIR: It is now five o'clock and any further questions can be put on notice. Mr Lennon, thank you for attending the hearing today. The Committee has resolved that answers to questions on notice will be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice. That brings the hearing today to a close.

(The witness withdrew.)

The Committee concluded at 17:00.