

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

**INQUIRY INTO 2020 REVIEW OF THE WORKERS COMPENSATION
SCHEME**

CORRECTED

At Macquarie Room, Parliament House, Sydney on Wednesday 2 December 2020

The Committee met at 10:00.

PRESENT

The Hon. Wes Fang (Chair)

The Hon. Anthony D'Adam
The Hon. Greg Donnelly (Deputy Chair)
The Hon. Scott Farlow
The Hon. Trevor Khan
The Hon. Daniel Mookhey
Mr David Shoebridge

PRESENT VIA VIDEOCONFERENCE

The Hon. Catherine Cusack

The CHAIR: Welcome to another public hearing for the inquiry into the Workers Compensation Scheme. Before I commence, I acknowledge the Gadigal people who are the traditional custodians of this land and I pay respect to the Elders past, present and emerging of the Eora nation, and extend that respect to other Aboriginal people present. Today we will be hearing from representatives from the icare board and management. Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live on 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 broadcast guidelines, I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. Whilst parliamentary privilege applies to evidence given to the Committee it does not apply to what witnesses may say outside of this hearing. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond they can take a question on notice. Written answers to questions on notice are to be provided within 21 days. If witnesses wish to hand up documents they should do so through the Committee staff. In terms of audibility for today's hearing I remind both Committee members and witnesses to speak into the microphone. For those with hearing difficulties who are present in the room today please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

JOHN ROBERTSON, icare Board, affirmed and examined

DAVID PLUMB, Non-executive Director, icare Board, on former oath

DON FERGUSON, Interim Chief Executive Officer, icare, on former oath

RASHI BANSAL, Group Executive Organisational Performance, icare, on former oath

ROB CRAIG, Interim Group Executive Personal Injury Claims, icare, affirmed and examined

NICK ALLSOP, Group Executive—Care, icare, affirmed and examined

SAMANTHA LISTON, Group Executive People and Workplace, icare, affirmed and examined

ANDREW ZIOLKOWSKI, Group Executive, Prevention and Underwriting, icare, on former affirmation

The CHAIR: Would one or two of you like to begin by making a short opening statement? If so, please keep it to no more than a couple of minutes?

Mr FERGUSON: Thank you very much. Thank you for the opportunity to present to the Committee today. These past months have been an extremely challenging period for icare and I understand the genuine concern felt by the Committee and wider community. I would like to assure all of you, that my colleagues at this table and in our offices around the State that manage workers compensation—and the many other schemes we look after, including Lifetime Care, Dust Diseases Care, home building, TMF general lines, sporting injuries and more—have never stopped doing all we can to improve the lives of injured people, to support businesses, to rebuild homes and support the State's assets. I want to be clear that the organisation, as it has been characterised, is not the organisation we aspire to be.

Over the last three months, icare has introduced numerous key changes, as we work to be the organisation that people expect us to be. The changes include; icare has invested in improving current claims management and changed the dedicated case manager threshold to seven days to provide further support to injured workers. We have changed key performance metrics to align with the regulator, including the return to work metrics. We have established a Nominal Insurer [NI] advisory group, including unions, to represent injured workers, employer groups and government bodies. These bodies will inform and advise on key matters and provide input into significant proposed changes. We have signalled a new tender for claims management in mid-2021, which will be informed by consultation with the advisory group and customers and other stakeholders. We have established a new Board Governance Committee and appointed the Promontory as a key advisor. This includes Peter Kell, the ex-ASIC deputy chief as a special advisor.

We have changed the relationship with the regulator to emphasise constructive feedback, accountability and collaboration. We have introduced new tougher workplace policies on conflicts of interest, secondments, gifts and benefits, travel and more. And, we have strengthened procurement practices and policies so the community can have confidence with any new contract icare enters into at the same time as we continue to remediate past contracts. We have removed NI exemption delegations such that only the icare board can approve its use. Further changes have been made with key personnel in members of the executive team and the board. This includes assigning Dr Allsop to directly uplift the pre-injury average weekly earnings remediation program. We also have a new chief risk officer in Jane McGovern.

Other changes have occurred in the past 18 months including the group executives responsible for personal injury, care, organisational performance and human resources. Two new board members just announced, Mr John Walsh and Michael Cameron, bring both strong financial acumen and a wealth of experience in serving others, particularly in the disability sector. Things are changing. Our fully unqualified audited workers compensation funding position at June 2020 is at 101 per cent. Our return to work rates are no longer declining and we are starting to see improvements. That said, we all recognise that we are still a way off what the community, the Government and this Committee expects of us. We will work tirelessly to earn your confidence through outcomes, not words. Lastly, I am very concerned to hear about the issues that have been raised in previous Committee hearings. I can assure this Committee that such matters are entirely contrary to icare's values and purpose and should not occur in any organisation.

Any employee of icare can raise an issue and be heard. Public interest disclosures can be made at any time and will be dealt with as a matter of priority. In addition, any employee, no matter their role in the organisation, can refer a matter to the Independent Commission Against Corruption at any time. I know this hearing is fulfilling its duties as per the terms of reference of this inquiry. All of us here respect the Committee, its role and duties. We are here today to genuinely address any questions you may have and will do so with transparency and openness, the same way we are assisting with a number of other reviews and investigations,

including that conducted by the regulator and Mr Robert McDougall, QC. We await their recommendations. Finally, I would just like to say that our people are our most vital asset and again I want to call out the hard work they do day in and day out to put our customers first. They have been through a lot and, despite all the public scrutiny in relation to the Nominal Insurer, they continue to do all they can for our customers. I feel privileged to work alongside them.

The CHAIR: Thank you, Mr Ferguson. Would you be able to table that statement for the benefit of Hansard?

Mr FERGUSON: Of course.

The Hon. DANIEL MOOKHEY: Thank you to all icare leaders who are here. Mr Robertson, congratulations on your appointment. Forgive me if I inadvertently refer to you as "Robbo" throughout this hearing.

Mr ROBERTSON: You might not be the only one to do that.

The Hon. DANIEL MOOKHEY: I am sure. It is always nice to see alumnus of the Legislative Council doing so well.

The Hon. SCOTT FARLOW: You could aspire to the role.

The Hon. DANIEL MOOKHEY: One day.

Mr ROBERTSON: It is a short list.

The Hon. DANIEL MOOKHEY: I will formally tender a bundle of documents and ask that they be distributed to the same coterie of distribution that we have been adopting.

The CHAIR: Thank you.

Mr DAVID SHOEBRIDGE: Thank you, all, for your attendance today. Mr Ferguson, in your opening you said that return to work rates are improving.

The Hon. TREVOR KHAN: No, that is not what he said.

Mr DAVID SHOEBRIDGE: It is indeed what you said.

The Hon. TREVOR KHAN: No.

The CHAIR: He said they were not declining.

Mr DAVID SHOEBRIDGE: Mr Ferguson, did you say return to work rates are improving?

Mr FERGUSON: Yes, I did say that. The underlying return to work rates have been improving.

Mr DAVID SHOEBRIDGE: Yes.

The Hon. TREVOR KHAN: Sorry.

Mr DAVID SHOEBRIDGE: The June 2020 dashboard shows that at 26 weeks return to work rates for the Nominal Insurer are still at only 82 per cent. It shows there is a decline in the return to work rates after four weeks and it shows a decline in return to work rates after 13 weeks. How do I square that data with your statement that return to work rates are improving?

Mr CRAIG: Sorry, Mr Ferguson, would you like me to take the question?

Mr FERGUSON: Yes, sure. Thanks, Mr Craig.

Mr CRAIG: I have a series of data. The first thing I would like to note is that we have been remediating the data within our system, and the remediation of the data has also provided uplifts in the performance, and that if we go all the way through to where the State Insurance Regulatory Authority [SIRA] dashboard is up to, the return to work rate, using the 26-week work status measure and a 12-month rolling average, is about 84 and a bit, 84.5, and it has had a constant increase using the SIRA measure. It is now above that of specialised insurers and it is also above that of self-insurers, and so it is also above where this Committee heard it was in July.

Mr DAVID SHOEBRIDGE: Are you saying that that is unpublished data, even though the June report was just published last night on the SIRA website, Mr Craig?

Mr CRAIG: This is the data that has gone through to August and that is with SIRA.

The Hon. TREVOR KHAN: Is he able to table that?

Mr DAVID SHOEBRIDGE: I will come to that in a second. In July 2017 return to work rates for the Nominal Insurer were at 92 per cent to 93 per cent, and you say they are currently at 84 per cent. Is that right?

Mr CRAIG: Sorry, at the twenty-sixth week?

Mr DAVID SHOEBRIDGE: Correct.

Mr CRAIG: At the twenty-sixth week the return to work work status for 12-month rolling average in July is also just over 84.

Mr DAVID SHOEBRIDGE: Have you got those documents to table, Mr Craig?

Mr CRAIG: I have got a page here with that on it. Yes, I can table that.

Mr DAVID SHOEBRIDGE: Would you table that now, please?

Mr CRAIG: Yes. I may need to refer to it again but you are welcome to table it.

Mr DAVID SHOEBRIDGE: So return to work rates are 10 per cent lower than they were in July 2017. Is that right?

Mr CRAIG: The chart that I have only goes back to November 2017, and at that point they were at 89 per cent roughly—yes, they were 89 per cent—and so we have had about a 5 per cent deterioration.

Ms BANSAL: Mr Craig, maybe I can assist there.

Mr CRAIG: Thank you.

Ms BANSAL: Maybe I can assist with the answer. The data we are referring to is the latest data that is available on the SIRA open data tool on the SIRA website. That shows that our return to work performance on the same measure that SIRA uses is in excess of 84 per cent. The equivalent measure in 2017 was 89 per cent. I do note that it cannot be compared directly to the 2017 return to work measure because there has been a change in industry mix and also a change in small medium enterprise mix back to 2017. Therefore, a like-for-like comparison needs to adjust for those measures, which would actually reduce the return to work rate, in our estimation, by around about 2 per cent.

Mr DAVID SHOEBRIDGE: Okay, we seem to be caught in data wars again. I thought this might happen. I might hand you a copy of the most recent dashboard reported by SIRA just in the last 24 hours. Are icare and SIRA still in dispute about data?

Mr CRAIG: No.

Mr DAVID SHOEBRIDGE: Alright. Mr Ferguson, I might give you a copy as well. That might assist. Mr Ferguson, I might take you to it, given it was your opening statement that troubled me. Are you familiar with this document?

Mr FERGUSON: It is in front of me, yes.

Mr DAVID SHOEBRIDGE: You have seen these dashboards before?

Mr FERGUSON: Yes.

Mr DAVID SHOEBRIDGE: Could I ask you to go to the sixth page, this graph—return to work at four weeks. Have you got that there?

Mr FERGUSON: Yes.

Mr DAVID SHOEBRIDGE: So you agree that you accept SIRA's data now?

Mr FERGUSON: That is correct.

Mr DAVID SHOEBRIDGE: This is the most recent SIRA data, and it shows that, in fact, the June 2020 return to work rates, which include medical-only claimants, have fallen to a new low for the Nominal Insurer at just on 75 per cent. Do you see that?

Mr FERGUSON: I accept that is what this says, yes.

Mr DAVID SHOEBRIDGE: Yes, and in fact the Nominal Insurer is the worst performer of all the schemes.

Mr FERGUSON: That is how it is presented here.

Mr DAVID SHOEBRIDGE: I asked earlier whether icare is disputing the SIRA data. You do not dispute the data, do you?

Mr FERGUSON: I am not seeking to dispute it; I am seeking to defer to Mr Craig's earlier comments in relation to the updated information that he had, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I will come to Mr Craig in a second. The next page is the return to work, including medical-only claimants rates, at 13 weeks. Do you see that?

Mr FERGUSON: It is in front of me.

Mr DAVID SHOEBRIDGE: Again you will see the Nominal Insurer is the worst performer.

Mr FERGUSON: I see that.

Mr DAVID SHOEBRIDGE: Again you will see a deterioration in the month leading up to June.

Mr FERGUSON: I see that.

Mr DAVID SHOEBRIDGE: I will take you to the next one—return to work, including medical-only claimants rates, at 26 weeks. Do you see that?

Mr FERGUSON: Yes.

Mr DAVID SHOEBRIDGE: And again you will see perhaps it has not deteriorated but it has stagnated at a historic low for return to work in the June data. Do you see that?

Mr FERGUSON: I can see the pattern over time.

Mr DAVID SHOEBRIDGE: Yes. Do you disagree with my characterisation that it stagnated at a historic low in June 2020?

Mr FERGUSON: That is what it appears to do.

Mr DAVID SHOEBRIDGE: And indeed if you look at November 2017—do you see that? You can see that on SIRA's data the return to work rate at 26 weeks was in the mid-nineties in November 2017. Do you see that?

Mr FERGUSON: Mr Shoebridge, I might just note, if I may, that icare has been reporting for some time that the return to work rates are not where we want them to be.

Mr DAVID SHOEBRIDGE: No, but I just want you to agree with me or disagree with me that in November 2017 the return to work rates were in the mid-nineties—were in the low, in the sort of 92 per cent, 93 per cent in November 2017

Mr FERGUSON: Sorry, which page are you now referring to?

Mr DAVID SHOEBRIDGE: At 26 weeks—the one I was just on.

Mr FERGUSON: Sorry, 26 weeks in—

Mr DAVID SHOEBRIDGE: November 2017.

Ms BANSAL: Mr Ferguson—

Mr FERGUSON: Yes, I can see that.

Ms BANSAL: Mr Ferguson, I would just like to interrupt and remind you that this is medical-only claimants rate.

Mr DAVID SHOEBRIDGE: It includes medical-only claimants rate. It is all.

Mr CRAIG: Can I please offer an explanation?

Mr DAVID SHOEBRIDGE: Do you agree with me that it is in the 92 per cent, Mr Ferguson?

The CHAIR: Sorry, Mr Shoebridge. Mr Craig has indicated that he might be able to provide some information.

Mr DAVID SHOEBRIDGE: I will go to Mr Craig in a second.

The Hon. DANIEL MOOKHEY: Sorry, Chair. We might need to set the rules early. If a question has been directed at a specific person, that specific person should be invited to reply first. And then if the questioner

has any follow-up questions, they can direct it, given that Mr Shoebridge has already flagged that he intends to ask Mr Craig questions. That would make it easier.

The CHAIR: Seeing as I am the Chair, I will not be dictated to on the rules. If Mr Ferguson is asked a question but one of the other members who has more specific information is able to provide it to the Committee, then I will allow that person to answer the question. So Mr Craig has indicated that he wants to make a response to that and I will allow that to happen for the benefit of the Committee and in the interests of time.

Mr DAVID SHOEBRIDGE: Mr Chair, could I simply ask that the person of whom I ask the question endeavour to answer as best they can, and if anybody else in the team thinks they can add additional information or bring further information, by all means I am happy for them to go after. But if the person of whom I ask the question could have the first go at answering it, given that I direct the questions, not you.

The CHAIR: Mr Shoebridge, I am determining that we can have this discussion now if you want. We have all of icare's board and executive team here. Some people have certain experience in certain areas. If they are able to provide more detailed information than Mr Ferguson—

Mr DAVID SHOEBRIDGE: I am very happy for that to happen.

The CHAIR: Then that is what I determine is to happen.

Mr DAVID SHOEBRIDGE: Sorry, Mr Chair. As the Chair, you cannot tell me who to ask my questions of. I reject that proposition and, if necessary, we will have a short deliberative to address it absent the witnesses. I will not have you telling me who my questions are directed to and to whom I ask to answer the question. It is not your role as Chair.

The CHAIR: No, but if you are asking a question of Mr Ferguson and Mr Craig indicates that he has an answer—

Mr DAVID SHOEBRIDGE: Additional information. I am very happy for him to add it after Mr Ferguson has had a go at answering the question.

The CHAIR: I will allow Mr Ferguson to defer to Mr Craig to answer the question as well.

The Hon. DANIEL MOOKHEY: To be fair, Mr Chair, in this scenario Mr Ferguson did not refer to Mr Craig—you did. We had additional witnesses literally say, "I am just going to interrupt you there." Perhaps to make it clear for everybody, a witness who has been asked a question should be given the first right to respond. If there are other people who wish to add any information, they can be given a reasonable opportunity, but the person who is asking the question is capable of directing the question.

The CHAIR: I appreciate that, but also, I was not aware if Mr Ferguson had heard Mr Craig indicate that he could answer the question.

The Hon. DANIEL MOOKHEY: It is not the responsibility of the Chair to make that call, respectfully.

Mr DAVID SHOEBRIDGE: Or to redirect questioning. Anyhow, perhaps this will all work out neatly if the witness who is first directed to is given the first opportunity to answer the question without assistance from the Chair or anybody else.

The CHAIR: Continue the questioning.

Mr DAVID SHOEBRIDGE: Mr Ferguson, do you agree that as at November 2017 the return to work rates for all claims including medical-only claimant rates was in the about 92 to 93 per cent according to the data?

Mr FERGUSON: Mr Shoebridge, I am assuming this is leading to something that is specific to the return to work performance. I can confirm that I can read the graph and agree to any proposition in relation to points on the graph. In terms of whatever question it is leading to, I would like to defer to Mr Craig.

Mr DAVID SHOEBRIDGE: I am not trying to be tricky here. You accept SIRA's data; this is what SIRA data is showing. I just want to make sure we are on the same page about reading what the graph shows.

Mr FERGUSON: In my opening statement I was referring to our use of the SIRA metric going forward, which is what we are now doing, and so we are now publishing our return to work metrics using the SIRA metric in order to try to move the noise out of that process, which you referred to earlier in relation to if there are still disputes about data. Mr Craig's answer was no. What I am saying is that our approach going forward is to remove noise out of the system in relation to data interpretation and to use the SIRA metric, which we are now publishing.

Mr DAVID SHOEBRIDGE: Mr Craig, a series of the data points that you gave in your most recent set of answers had figures that were contrary to what we see in these graphs, including a figure that you gave as at

November 2017 suggesting return to work rates were lower than what are contained in SIRA's graph. Why do we keep having this data war between icare and SIRA?

Mr CRAIG: For clarity, SIRA and ourselves are clear we can measure the way that SIRA measures and we can replicate their measurement to about 0.1 per cent. There are two very material items that we need to consider when looking at this. One item is that the normal conversation that we have with SIRA is actually on return to work, excluding medicals. The stats that I provided yourself only had the return to work, and so if a claim was a medical-only claim then that is excluded from the data. It is a slightly different dataset and that is why the history does not line up.

In terms of the more recent data for the June numbers, we at that point were saying a return to work rate for June was 82 per cent. That is just on the return to work, excludes medicals. With the data remediation work that we have been doing in concert with SIRA—and we work actively and engage with them in and around that, and they are comfortable with our progress on that—that same number got lifted to 84 per cent. What I am suggesting is that the graphs that you are looking at, the underlying recent data is understated by at least 2 per cent at the 26-week. I do not have the equivalent with the medical piece in it. You can refer to within the SIRA website as opposed to these quarterly dashboards. There was a monthly version and it clearly says that we are at 84 per cent.

Mr DAVID SHOEBRIDGE: Mr Ferguson, there is now a near-record number of just under 25,000 injured workers receiving weekly benefits, up from just 15,000 injured workers receiving weekly benefits in June 2018. In fact, that number increased in the June quarter according to the most recent published data from SIRA. Again, if the number of injured workers who are receiving weekly benefits are not back at work is at a near-record of 25,000, how can you put to us that there is an underlying improvement here?

Mr FERGUSON: I refer to Mr Craig's previous answer on that, Mr Shoebidge.

Mr DAVID SHOEBRIDGE: You accept that there is a near-record number of injured workers receiving weekly benefits at the moment?

Mr FERGUSON: I accept that.

Mr DAVID SHOEBRIDGE: And do you accept that that is a major liability and a significant reason why there is substantial pressure on the funding ratio in icare?

Mr FERGUSON: There is pressure on the funding ratio from the Nominal Insurer for a range of different reasons and that is one of them, Mr Shoebidge.

Mr DAVID SHOEBRIDGE: I will hand over to Mr Mookhey.

The Hon. DANIEL MOOKHEY: I will address these questions to Ms Bansal first. Ms Bansal, can you confirm that the Nominal Insurer net loss for the year ending 30 June 2020 was \$1.873 billion?

Ms BANSAL: I can confirm, as per the audit financial statements, it is \$1.894 billion.

The Hon. DANIEL MOOKHEY: Sorry, \$1.894 billion. And the underwriting loss was \$2.274 billion?

Ms BANSAL: It was \$2.195 billion.

The Hon. DANIEL MOOKHEY: And that follows a net loss the year previous of \$873 million?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: And the year previous to that of \$8.53 million?

Ms BANSAL: The year ending June 2018 was—

The Hon. DANIEL MOOKHEY: Sorry, \$853 million?

Ms BANSAL: No, sorry. Those are not the correct numbers.

The Hon. DANIEL MOOKHEY: What was it?

Ms BANSAL: I am just confirming again that as at 30 June 2018 it was \$89 million positive.

The Hon. DANIEL MOOKHEY: Okay, so in the course of the past two years, the net loss sustained by the Nominal Insurer was in excess of \$2.5 billion or thereabouts?

Ms BANSAL: Yes, that is the maths of the two years.

The Hon. DANIEL MOOKHEY: But the underwriting loss over the past three years is above \$5 billion, is that correct?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: And the funding ratio at icare's inception was set to 131 per cent, was it not?

Ms BANSAL: At 75 per cent probability of adequacy it was around about 135 per cent.

The Hon. DANIEL MOOKHEY: It was 135 per cent at 75 per cent adequacy at icare's inception.

Ms BANSAL: That is not at icare's inception, that is at 30 June 2015. Icare was incepted, as you would know, at September.

The Hon. DANIEL MOOKHEY: Okay.

Mr DAVID SHOEBRIDGE: That is the most proximate date, is it not?

Ms BANSAL: I would like to explain that it is not a like-for-like—

The Hon. TREVOR KHAN: Point of order: It is the point of order that I have now repeatedly taken. We are not into tag teams, and that one member should be given the run rather than two going at the witness at once.

The CHAIR: I uphold the point of order. It is a point I was about to make.

The Hon. DANIEL MOOKHEY: We accept.

The CHAIR: I will pass back to Mr Mookhey to continue questioning.

The Hon. DANIEL MOOKHEY: On Monday icare published its results of the June evaluation, did it not?

Ms BANSAL: Yes, Mr Mookhey.

The Hon. DANIEL MOOKHEY: And that shows the funding ratio at the 75 per cent probability of adequacy is 98 per cent.

Ms BANSAL: No, at 75 per cent probability of adequacy—

The Hon. DANIEL MOOKHEY: Sorry, 80 per cent.

Ms BANSAL: Yes, at 80 per cent. Mr Mookhey—

The Hon. DANIEL MOOKHEY: The scheme is in deficit, is it not?

Ms BANSAL: Chair, I would like to answer the previous question about 30 June 2015.

The CHAIR: Yes, I was about to say that you obviously had not concluded your answer and was going to give you the opportunity to continue.

Mr FERGUSON: The 30 June 2015 results are not a good proxy for icare's set up because at icare's set up there were significant reforms that were passed, referred to as the 2015 reforms, which actually gave benefits worth \$1 billion back to injured workers. Icare took a hit in its reserves, and therefore its funding ratio, of approximately 10 per cent at its inception. The 135 per cent, even though it is a result at 30 June 2015, is not really the icare starting position.

The Hon. DANIEL MOOKHEY: So would you prefer—

The CHAIR: Mr Mookhey, please allow her to finish.

The Hon. DANIEL MOOKHEY: So you accept therefore we should use 125 per cent or thereabouts?

Ms BANSAL: Approximately.

The Hon. DANIEL MOOKHEY: Sure. So either way from 125 per cent to 98 per cent is broadly speaking agreed.

Ms BANSAL: So Mr Mookhey, you are not comparing like for like again because you are comparing—

The Hon. DANIEL MOOKHEY: So could you—

The CHAIR: Order!

The Hon. TREVOR KHAN: Point of order: The witness is entitled to finish an answer before the next question is asked.

The Hon. DANIEL MOOKHEY: I accept that. I was just going to ask Ms Bansal to give us the like for like number so we can all just come down. Ms Bansal, what was the like for like number that you would prefer we use?

Ms BANSAL: If you are quoting the starting position at 75 per cent probability of adequacy then the closing position also needs to be at 75 per cent probability of adequacy, which is 101 per cent at 30 June 2020.

The Hon. DANIEL MOOKHEY: Sure. So if it is 125 to 101 that would be 75 per cent probability of adequacy.

Ms BANSAL: That is right. I would also like to bring your attention to the 2012 reforms that saw significant releases. It was in 2012. When experience emerged, experience was different to expected at that point in time and we saw a deterioration in funding ratio of 11 per cent referring back to the 2012 reforms and that was a loss of \$1.4 billion.

The Hon. DANIEL MOOKHEY: I appreciate the context but Mr Ferguson you agree that \$5.5 billion of underwriting losses over the course of three years is a disaster, don't you?

Mr FERGUSON: I would not characterise it that way in light of Ms Bansal's explanation.

The Hon. DANIEL MOOKHEY: Would you also reject the characterisation that the disappearance of the employer surplus from however you wish to measure it, from 125 to 90 to 101 is a disaster as well?

Mr FERGUSON: If it is in relation to reforms that were undertaken I think there is a very clear explanation for that deterioration.

The Hon. DANIEL MOOKHEY: Do you understand the employer concern that their surplus has disappeared and they are facing the prospects of premium pressure?

Mr FERGUSON: I am hearing you say that, Mr Mookhey. I think employers are always going to be concerned about premium pressure.

The Hon. DANIEL MOOKHEY: So your view is that no employer has in the recent period expressed a concern to you—

Mr FERGUSON: No, that is not what I am saying.

The Hon. DANIEL MOOKHEY: I am asking you now, Mr Ferguson, has any employer expressed to you since you have become the interim CEO grave concerns about what the implications of icare's financial deterioration are on premiums?

Mr FERGUSON: I have not had that characterisation directly to me. I have certainly had representation of concerns in relation to icare performance and the potential impact on premiums.

The Hon. DANIEL MOOKHEY: Okay. Thank you, I appreciate that. Ms Bansal, do you have the tender bundle in front of you? Can you go to document number two please?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: This is an email that the former CEO sent to the then Secretary of Treasury about a year ago, 13 December 2019, that you were copied into. It is in response to Mr Pratt's appearance at the icare board which took place in November that year.

Ms BANSAL: I am not aware of—

The Hon. DANIEL MOOKHEY: Fair enough.

The Hon. TREVOR KHAN: Can we just ensure that the witness speaks into a microphone?

The Hon. DANIEL MOOKHEY: Well you can see the first line is my apologies in the delay in getting this to you as requested at the board last month, you see that?

Ms BANSAL: Yes, I can read that sentence.

The Hon. DANIEL MOOKHEY: You see that attached to this is a document that says New South Wales Treasury briefing funding ratio December 2019?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: And you see that that document is document number three, I think, or it is the second part of document number two.

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: Great. You see at the bottom paragraph it says we will shortly be filing our premium rates for 2020 and there will be a combination of approach of winding back our safety incentive and a small base rate increase referencing the rising medical costs, poor investment outlook and increased compliance costs, do you see that?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: You see that then led to icare making the application for a premium increase earlier this year?

Ms BANSAL: Yes, that is correct—late last year.

The Hon. DANIEL MOOKHEY: Then the Treasury intervened and deferred that effectively or asked icare to not continue—

Ms BANSAL: I do not agree with that assertion, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Well, we have had the Treasury Secretary come before us and say that the Treasurer requested that icare defer any premium increase. Do you agree that the Treasurer requested that icare defer a premium increase?

Ms BANSAL: So the Treasury Office [TO] briefing notes signed by the Treasurer had a message that the Government has deferred numerous taxes, levies and fees, icare should do the same.

The Hon. DANIEL MOOKHEY: So you agree that the Treasurer requested that icare defer the premium increase?

Ms BANSAL: The Treasurer requested that icare consider.

The Hon. DANIEL MOOKHEY: Then icare made the decision to defer for this year.

Ms BANSAL: icare did more work on the rate filing and looked for impacts of the premium deferral and recommended to our board to defer the premium increase and we submitted a new rate filing with the SIRA.

The Hon. DANIEL MOOKHEY: I do not think we are in any dispute about that. What I am asking is what is your intention for next year?

Ms BANSAL: We are currently doing our work for the December 2020 evaluation and will be looking at the operational break even premium that comes out of the valuation, that gives us an indication of the costs for the year ahead. Based on that we will be recommending a rate filing to our board and lodging a rate filing with SIRA.

The Hon. DANIEL MOOKHEY: Can you turn to page 2 of the briefing note? Do you see paragraph 1, prevention and pricing?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: The icare has put in place actions for staged unwinding of the employer safety incentive and the focus on improving loss prevention and recovery, do you see that?

Ms BANSAL: Yes.

The Hon. DANIEL MOOKHEY: This was the safety incentive provided to employers that were not making claims, wasn't it?

Ms BANSAL: It was an employer safety incentive. I am not across the detail of how the safety incentive works in detail.

The Hon. DANIEL MOOKHEY: Well is Mr Craig or Mr Ferguson able to explain—

Ms BANSAL: I will have to defer to Mr Ziolkowski.

The Hon. DANIEL MOOKHEY: Is he sworn? If he is not sworn, he cannot answer.

Mr ZIOLKOWSKI: I was sworn previously.

The Hon. DANIEL MOOKHEY: Welcome aboard.

Mr ZIOLKOWSKI: Just to confirm the employer safety incentive is an across-the-board upfront incentive applied to the premium for small and experience rated employers across the board irrespective of their relative claims performance.

The Hon. DANIEL MOOKHEY: That is useful. Thank you. You can see that in the second sentence there "the current employer safety incentive [ESI] of 7.5 per cent discount is proposed to reduce to 5 per cent in FY 2002/21", can you see that?

Mr ZIOLKOWSKI: Yes.

The Hon. DANIEL MOOKHEY: Did that happen?

Mr ZIOLKOWSKI: The employer safety incentive is still at 7.5 per cent as part of the deferral of the pricing changes that have been made as part of supporting the employers of New South Wales during COVID-19.

The Hon. DANIEL MOOKHEY: So that was part of the decision to not pursue the premium increase and maintain a discount?

Mr ZIOLKOWSKI: That is correct.

The Hon. DANIEL MOOKHEY: What are your intentions for next year given it says here that you were intending to reduce it by 2.5 per cent in the current financial year?

Mr ZIOLKOWSKI: As Ms Bansal has answered, we are currently reviewing the pricing. We are reliant on the December valuation. We will have those results next month and we will then be updating our price filing in February.

The Hon. DANIEL MOOKHEY: So you are yet to make a decision, is that the right inference?

Mr ZIOLKOWSKI: That is correct.

The Hon. DANIEL MOOKHEY: You produce monthly financial results, do you not?

Ms BANSAL: Yes, we produce monthly results.

The Hon. DANIEL MOOKHEY: And you provide that to Treasury?

Ms BANSAL: Yes, we do.

The Hon. DANIEL MOOKHEY: Can you tell us what was the latest monthly result that you provided?

Ms BANSAL: We recently provided our results for October 2020 two Treasury and to SIRA.

The Hon. DANIEL MOOKHEY: What did the October 2020 results say?

Ms BANSAL: The October 2020 results are a net positive result of \$225 million.

The Hon. DANIEL MOOKHEY: Is that yearly or quarterly?

Ms BANSAL: Yes, it is year to date so it is the four months year-to-date.

The Hon. DANIEL MOOKHEY: And what is your projection for the coming financial year—the total for the financial year?

Ms BANSAL: Unfortunately I do not have that with me, we do—

The Hon. DANIEL MOOKHEY: Is it possible to get it before the end of the day or take it on notice.

The Hon. TREVOR KHAN: Can we just let her finish answering her question before you ask the new one. She had not finished.

Ms BANSAL: Yes. I can get that for you.

The Hon. DANIEL MOOKHEY: Thank you very much. I appreciate that.

Mr DAVID SHOEBRIDGE: I took a note that the underwriting loss for the Nominal Insurer for the last financial year was \$1.8 billion. Is that the right figure?

Ms BANSAL: So that is a net loss, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: The net underwriting loss?

Ms BANSAL: No, net loss.

Mr DAVID SHOEBRIDGE: And what was the underwriting loss?

Ms BANSAL: The underwriting loss was \$2.195—

Mr DAVID SHOEBRIDGE: And the difference between the two is partly as a result of returns on capital, is that right?

Ms BANSAL: The main difference between those two is investment income, which is the critical source of income and aspect that is used in all insurance companies.

Mr DAVID SHOEBRIDGE: What is your estimate for the underwriting loss for this financial year? It was \$2.195 billion last year, what is your current estimate for the underwriting loss for this financial year?

Ms BANSAL: As I said to Mr Mookhey, I am happy to take that on notice and get the projection for 30 June 2021. I would also like to bring to your attention that underwriting result is not the factor that we would look at it is net result, because investment income is a critical source of income and we look at investment income as well. That is actually managed through the strategic asset allocation with Mercers and TCorp.

Mr DAVID SHOEBRIDGE: Are you being advised by your investment managers that there is going to be a substantial uptick in investment returns?

Ms BANSAL: So we have a projection of what the investment income will be. That does not allow for any COVID-19 recovery. It is based on 20-year expectations and that is what we use in our projections. I can confirm that the protection for investment income for this year is around about 4.8 per cent.

Mr DAVID SHOEBRIDGE: And how did that compare to last year?

Ms BANSAL: So, last year was significantly impacted by COVID, as you would be aware, the one in 100 years pandemic. Even then our investment income was a positive 2.4 per cent in that year. In FY 19 we had an investment income of just in excess of 10 per cent.

Mr DAVID SHOEBRIDGE: Mr Ferguson, on any view of it icare is going to have another substantial deficit into the next year for the Nominal Insurer, do you agree?

Mr FERGUSON: Yes, it is going to be a very tricky year.

Mr DAVID SHOEBRIDGE: You have a board position to bring the scheme back into a positive financial territory within seven years, is that right?

Mr FERGUSON: Yes.

Mr DAVID SHOEBRIDGE: Is it the case that either injured workers are going to pay for the failings that icare through benefit cuts or employers are going to pay for the failings at icare through premium increases to meet that gap?

Mr FERGUSON: Not necessarily, Mr Shoebridge. And that is because although the board has a position to return to that target within seven years under the current circumstances it may be that the seven years needs to be revised to a longer period of time.

Mr DAVID SHOEBRIDGE: I want to be clear, does icare accept responsibility, does icare management accept responsibility, at least in part, for the substantial financial deterioration?

Mr FERGUSON: As I mentioned before, Mr Shoebridge, there are a number of factors that contribute to the financial position of the scheme and one of those factors is performance and certainly the performance of the Nominal Insurer when it comes to claims is not where the organisation would like to be.

Mr DAVID SHOEBRIDGE: Mr Ferguson, before the reform processes, claims management processes started there were just over 15,000 injured workers receiving weekly payments, now as we sit here it is close to 25,000. That is one of the major drivers of the deficit and that is by and large icare's failing, is it not?

Mr FERGUSON: I do not accept that proposition, Mr Shoebridge. I note that Ms Bansal had something to add to the previous question.

Ms BANSAL: Thank you, Mr Shoebridge. I have previously mentioned to the Committee the two significant impacts that we saw impact the funding ratio because of the 2012 reforms and the 2015 reforms. Another significant impact of 9 per cent funding ratio is because of the low interest rate environment that we see ourselves in. The risk-free rate is currently at 0.1 per cent. We used risk-free rates in a yield curve to discount our liabilities and that has an impact of \$1.5 billion on our reserves. It means that we take a hit to our balance sheet because of the increase we have to put through in these reserves. So, 9 per cent funding ratio impact can be explained because of that. As I just mentioned the actual investment returns are well in excess of risk-free rates of 0.1 per cent. That is one major impact.

The other major impact on our funding ratio has been the increase in medical costs that we have seen, the increased utilisation and superimposed inflation in medical costs, and that has had a further impact of 9 per cent on our funding ratio. We have actually seen unfavourable return to work experience in our front end. So, from the 2018 accident years onwards. However, we have seen significant favourability in our tail for return to work and weekly active claims. In a net position that actually is a favourable result to our funding ratio of 5 per cent. So, those are some of the key factors that have impacted our funding ratio overall. So, four of those factors that I have described, the 2012 reforms, the 2015 reforms, the change in the risk-free rates in this current environment and medical costs are outside of icare's control. The weekly claims experience has been favourable, which is made up of unfavourable return to work experience in the more recent accident years, however favourable in the tail, so prior to the 2018 accident years.

Mr DAVID SHOEBRIDGE: Mr Robertson, you are the new chair of icare, how do you feel sitting here and hearing your executive team find every excuse apart from their own failures, which are real, which are on record, to explain the disastrous financial position at icare?

The Hon. TREVOR KHAN: That is bloody outrageous.

The CHAIR: Before you answer that, Mr Robertson, I would normally disallow a question of that sort. However, I suspect that you are preparing for a swing, so I will allow you to answer the question.

Mr ROBERTSON: I was about to say, thank you, Mr Khan, but I can probably cope on my own.

The Hon. TREVOR KHAN: I was not going to take a point of order, I was just going to make the observation.

Mr ROBERTSON: Frankly, I just do not accept the premise of the question, Mr Shoebridge. To be frank it demonstrates a lack of understanding on your part as to how the scheme works, how it is funded and the like. I have spent 25 years around the workers compensation scheme. Starting from this premise that the scheme is in crisis is a very dangerous thing to be doing on the part of this Committee. I have seen what happens firsthand in my experience as a union leader, as a union organiser and here when the scheme is put in a position that you are seeking to betray it, which in the end by and large by my experience has only led to benefit cuts.

This is a scheme that is functioning in very difficult circumstances right now with the COVID pandemic. It is a one in 100 years. Each of the comments that have been made by the team that are here are being made with a view to helping the community understand. To be honest, it was pretty disappointing while Ms Bansal was actually answering you having a conversation with Mr Mookhey, because the response was quite informative as to some of the things that lead to the outcomes that we are seeing now. My biggest concern with the way this Committee is behaving is the undermining of confidence in the scheme.

Mr DAVID SHOEBRIDGE: It is the Committee's fault. Are you seriously saying it is the Committee's fault?

Mr ROBERTSON: No.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: This is the problem. You are part of the problem still.

The CHAIR: Order! Mr Shoebridge, you asked an open and leading question and now you are getting the response. You will allow Mr Robertson to give that response. You will not interrupt him. Mr Robertson has the call.

Mr ROBERTSON: Mr Shoebridge, I am not blaming this Committee for anything. I am saying that this is a very dangerous path to be heading down where you start talking about benefit cuts and premium increases. One of the reasons I chose to take on the role of chairman was obviously there were issues to be addressed. We all share responsibility, the team that is here, this Committee and others to make sure that we do our best to put the scheme in the best possible position to meet the purpose that it is here for. That is, to make sure that injured workers, where they find themselves in circumstances where they are reliant on the scheme they are able to be certain that the scheme is going to be able to look after them, help them get on with their life when they are injured.

Most people who find themselves in those circumstances, and you talk about those 25,000 people, they are people that I deal with in my other role who find themselves in a situation for various reasons where they cannot put food on the table. These are not just numbers, they are real lives, they are people that are impacted. Yes, things need to improve and I do not think that anyone has sat at this table and suggested otherwise. But to suggest that investment returns in a climate like this are the responsibility of the management team, frankly, is absurd. To suggest the return to work rates are not being impacted by COVID in the hospitality sector and some of those other sectors, again, is something that should not be contemplated here.

Return to work rates are not where they should be and I will be the first to concede that. It is a priority because the best we can do with the scheme is to ensure that people get back to work as soon as they can so we do not end up in situations where you go from having a physical injury to a psychological injury. I would say to you, Mr Shoebridge, with the greatest of respect, that these people here are doing a job and there are factors that are beyond their control and despite the circumstances they are still doing the job that is expected of them. You may accept that or otherwise but it is not about excuses. It is not about excuses. It is about an understanding of how the scheme works and the real human impact of what is happening within the scheme.

The Hon. DANIEL MOOKHEY: I want to turn to some other matters now if that is possible. Mr Ferguson, earlier this year Ms Beth Uehling resigned as the head of personal injury. Is that correct?

Mr FERGUSON: That is correct.

The Hon. DANIEL MOOKHEY: And it was soon after her appearance at this Committee?

Mr FERGUSON: That is correct.

The Hon. DANIEL MOOKHEY: What were her reasons for resignation?

Mr FERGUSON: I might hand that over to Ms Liston.

The Hon. TREVOR KHAN: I am a little bit concerned that this is a public hearing. I do not know what the reasons are but—

The Hon. DANIEL MOOKHEY: I am happy to hear the explanation; hence the question.

The Hon. TREVOR KHAN: I am concerned that we are going on to what is, essentially, a personnel matter. I am just a bit concerned that it may not be appropriate for that answer to be given publicly.

The Hon. DANIEL MOOKHEY: I accept that, and if there is a view that the witness cannot answer in public, I am sure the witness can say that.

The Hon. TREVOR KHAN: They may not be aware of that.

The Hon. DANIEL MOOKHEY: Are we seriously going to be wanting to trip them up on a basic question when they have already issued public statements to explain this? Seriously, we want to go down that path?

The CHAIR: Order!

The Hon. TREVOR KHAN: I have seen some pretty shabby stuff in this hearing already, Daniel.

The Hon. DANIEL MOOKHEY: Yes, so have I; hence the question.

The CHAIR: Order!

The Hon. DANIEL MOOKHEY: So can we just have the witness answer the question?

The CHAIR: Order! Mr Khan, are you taking a point of order?

The Hon. TREVOR KHAN: Yes, that is absolutely what I am doing.

The CHAIR: While the inquiry's terms of reference are quite broad in that the Committee is investigating the workers compensation scheme, I will uphold the point of order in this instance. But I will allow Mr Mookhey to put the question in writing for written response. The Committee can then determine whether to publish it or not.

The Hon. DANIEL MOOKHEY: Sorry, what is the ruling that you are making? That the question is out of order or that the question cannot be asked in a public hearing? It is a basic question: Why did the former head of the workers compensation scheme resign?

The CHAIR: Mr Khan has taken a point of order and I am upholding the point of order.

Mr DAVID SHOEBRIDGE: On what basis?

The Hon. DANIEL MOOKHEY: On what basis, Chair? It is her question.

The Hon. TREVOR KHAN: I am not asking that the answer not be given, but if it relates to personal matters, then the witness should be able to take it on notice and give an answer in writing. That is all I am asking.

Mr DAVID SHOEBRIDGE: Correct. To the point of order: If there are matters of a personal nature, I would agree with Mr Khan that matters of a personal nature should be taken on notice. If there are matters of a professional nature, relating to work performance or the like or issues in relation to work—

The Hon. TREVOR KHAN: Go your hardest, yes.

Mr DAVID SHOEBRIDGE: —they should be on the record.

The Hon. DANIEL MOOKHEY: I am glad we resolved that. I repeat the question: Mr Ferguson, what were the reasons for Ms Uehling's resignation?

Mr FERGUSON: Mr Mookhey, I would like to refer that to Sam Liston.

Ms LISTON: We did not provide public reasons for Ms Uehling's departing icare so I am conscious of ensuring that I do not breach any confidentiality that Ms Uehling has from a personal nature regarding her resignation. There was a combination of factors that led to Ms Uehling leaving icare. Some of those matters were raised by icare and they were not performance-related to do with her performance standards in the role but they were to do with a number of matters that had been raised with Ms Uehling. I am happy to help the Committee and answer those questions. I am conscious, though, of—whether or not there is an ability for me to go out of camera to answer those—

The Hon. SCOTT FARLOW: Could we perhaps move in camera?

The Hon. DANIEL MOOKHEY: On notice, any additional information you feel willing to provide would be helpful. I am not interested in much more than that. We will welcome any additional information that you can provide on notice. I am happy to leave it there.

The CHAIR: You are able to take the question on notice, which means that you will be able to provide an answer in written form within 21 days. That is probably the best way for you to answer that question in this instance.

Ms LISTON: Yes.

The Hon. CATHERINE CUSACK: Mr Chair, can I add my thoughts to this?

The CHAIR: Ms Cusack, are you taking a point of order?

The Hon. CATHERINE CUSACK: Yes, because whether the reply is personal or professional, it will open it up to giving the person a right of response. I believe that these issues are much better dealt with in camera.

The Hon. DANIEL MOOKHEY: I will not pursue the matter any further. I am happy to move on.

The CHAIR: If we are not going to pursue the matter, I am happy to allow you to continue the questioning.

The Hon. DANIEL MOOKHEY: Mr Ferguson, after Ms Uehling's resignation you appointed Mr Craig as acting or the interim group executive of personal injury claims?

Mr FERGUSON: Yes, that is correct.

The Hon. DANIEL MOOKHEY: That was your decision?

Mr FERGUSON: That was my recommendation, yes.

The Hon. DANIEL MOOKHEY: To the board?

Mr FERGUSON: Yes.

The Hon. DANIEL MOOKHEY: And the board agreed to that decision?

Mr FERGUSON: Yes.

The Hon. DANIEL MOOKHEY: And that was when Mr Carapiet was the Chair?

Mr FERGUSON: Yes.

The Hon. DANIEL MOOKHEY: Okay. What are Mr Craig's qualifications for that role?

Mr FERGUSON: Mr Craig is a longstanding executive of icare with good knowledge of the full business of icare, as one of the executives. He was, at the time of being asked to relieve in the role for the limited period of time, actively involved in supporting performance management of our lead contract with our claims manager and was also involved in the renegotiation of the extension of the contract of our claims manager. And so because of his very active involvement in the management of performance within the scheme at that period of time, it seemed the least disruptive to me to allow for some continuity in that and to ask him to continue to do what he was doing and step across and provide additional oversight of the broader operations of the scheme.

The Hon. DANIEL MOOKHEY: Thank you, I appreciate that. Either to Mr Ferguson or to Mr Craig. What is Mr Craig's salary?

Mr FERGUSON: I believe Mr Craig would have that in front of him.

Mr CRAIG: My salary for last year for the end of year was \$548,000.

The Hon. DANIEL MOOKHEY: And your remuneration package for the last year?

Mr CRAIG: Again for the year ending June 2020, it was the 548 and it had the potential for a 40 per cent upside, of which zero was paid.

The Hon. DANIEL MOOKHEY: I understand for the year previous to that, the evidence from Mr Bell at the last appearance was that you received \$870,000 total remuneration.

Mr CRAIG: That is correct.

The Hon. DANIEL MOOKHEY: And that makes you, at the time, the highest paid public servant in New South Wales, does it not?

Mr CRAIG: I do not know the other salaries. I cannot comment on that.

The Hon. DANIEL MOOKHEY: Mr Craig, it might be helpful if you want to come up here for this round of questioning. It is your choice.

Mr CRAIG: No, leave me here.

The Hon. DANIEL MOOKHEY: It is your choice. I was just inviting you because it might make it easier for you. Mr Craig, have you earned any other income whilst you have been serving at icare?

Mr CRAIG: I do earn other income in different ways while serving at icare.

The Hon. DANIEL MOOKHEY: Can you identify the other sources of income that you receive currently and have received in the past?

Mr CRAIG: Income in terms of from effort, as it were, while working for icare: I am also the Chair of the Australian Payments Network, and this is a thing that I have been doing since 2012 and was well understood by icare in my employment, and there was support for that. And then more recently I am also the Chair of a company called Squirrel, which is a Fintech in New Zealand.

The Hon. DANIEL MOOKHEY: So step by step: Australian Payments Network—you are the Chair of that?

Mr CRAIG: Yes, I am.

The Hon. DANIEL MOOKHEY: And you receive remuneration?

Mr CRAIG: I am. I do.

The Hon. DANIEL MOOKHEY: And you have received remuneration in each of the years that you have worked for icare?

Mr CRAIG: For that, I have.

The Hon. DANIEL MOOKHEY: Yes, and you say that you have become the Chair of a Fintech called Squirrel Limited or Squirrel Group Limited.

Mr CRAIG: It is actually Squirrel Group. It is a New Zealand group of companies.

The Hon. DANIEL MOOKHEY: When did you become the Chair of that?

Mr CRAIG: I became a director towards the end of last year and the Chair on 1 April of this year.

The Hon. DANIEL MOOKHEY: You became the Chair of that. Are they the only sources of remuneration that you have received in addition to your icare salary?

Mr CRAIG: From work effort. I have a very active investment portfolio, and that is passive, and I receive income—just if you put money in the bank, you will receive income in the same way. I do that. I take considered risks and invest in various things, so there are other sources of income but I interpreted your question to be from work effort.

The Hon. DANIEL MOOKHEY: Yes, you interpreted it correctly, Mr Craig. Can you identify that they are the only two sources from which you say you are receiving income through work effort?

Mr CRAIG: Correct, while employed at icare.

The Hon. DANIEL MOOKHEY: With respect to those two roles, did you disclose them?

Mr CRAIG: Absolutely.

The Hon. DANIEL MOOKHEY: The Australian Payments Network—who did you make that disclosure to?

Mr CRAIG: That was to Vivek Bhatia.

The Hon. DANIEL MOOKHEY: Was that written?

Mr CRAIG: The original one was not written but when there was a change in CEO and Mr Nagle took the helm, I disclosed that in writing to Mr Nagle.

The Hon. DANIEL MOOKHEY: That was in 2018?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: When did you make the disclosure to Mr Bhatia?

Mr CRAIG: Before starting.

The Hon. DANIEL MOOKHEY: That would have been in 2015?

Mr CRAIG: Yes, 2015.

The Hon. DANIEL MOOKHEY: So for three years there was no written declaration of that role?

Mr CRAIG: There was a lot of clarity in and around that. It was not in a written form, but it was very clear and very understood.

The Hon. DANIEL MOOKHEY: Yes, but it was not documented.

Mr CRAIG: I have said that the key thing is was it clear and understood? Absolutely.

The Hon. DANIEL MOOKHEY: That is not my question. My question was: Do you agree that for the first three years it was not documented?

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: When you became the head of Squirrel Group, who did you disclose that too?

Mr CRAIG: I sought permission as to whether or not icare would support and allow that. That was to Mr Nagle.

The Hon. DANIEL MOOKHEY: Did you seek that in writing?

Mr CRAIG: I did.

The Hon. DANIEL MOOKHEY: And he approved it?

Mr CRAIG: In writing.

The Hon. DANIEL MOOKHEY: Yes, he did?

Mr CRAIG: He did.

The Hon. DANIEL MOOKHEY: Was this then disclosed to the board?

Mr CRAIG: I also put in an interest form in the process and Mr Nagle managed it with the board. I cannot comment on what his conversations were with the board.

The Hon. DANIEL MOOKHEY: Mr Plumb, was this disclosed to the board?

Mr PLUMB: It was not directly disclosed to the board. However, the process of managing conflicts of interest sits on a register in the compliance area and any issues around the management team would be expected to be appropriately escalated if inappropriate.

The Hon. DANIEL MOOKHEY: There was no escalation to the board?

Mr PLUMB: Not in relation to that matter, no.

The Hon. DANIEL MOOKHEY: Mr Ferguson, when you appointed Mr Craig to head up the workers compensation scheme after Ms Uehling resigned, were you aware that Mr Craig was also chairing a Fintech mortgage brokerage platform that also offers insurance services?

Mr FERGUSON: I recall him disclosing it at the time. He made no secret of it.

The Hon. DANIEL MOOKHEY: And you appointed him still despite him having that responsibility?

Mr FERGUSON: I did not see the connection between the two at the time.

The Hon. DANIEL MOOKHEY: And you maintain still that it is an appropriate role for the head of workers compensation to be performing currently?

Mr FERGUSON: I am not sure the connection to serving in a company in New Zealand to his interim role here.

The Hon. DANIEL MOOKHEY: I am asking a very simple question, Mr Ferguson. You have no objection to Mr Craig chairing this Fintech firm while he is responsible as the group executive of the workers compensation scheme in New South Wales?

Mr FERGUSON: No, not based on that knowledge.

The Hon. DANIEL MOOKHEY: Do you understand that a workers compensation system in crisis that is being led by a person who has a branch of site hustles might create issues of confidence in whether or not the person is performing all of their duties towards fixing a system that is fundamentally heading the wrong way?

Mr FERGUSON: I do not accept that assertion, Mr Mookhey.

The Hon. DANIEL MOOKHEY: You are honestly sitting here saying that the group executive whose job it is to turn around the workers compensation system is okay to be simultaneously chairing a Fintech firm in New Zealand, seriously?

Mr FERGUSON: I was very grateful for Mr Craig agreeing to step in at short notice in very, very difficult circumstances to assist in leading a complex area of the business, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Should not the only focus of the group executive responsible for fixing the workers compensation system be the workers compensation system in New South Wales?

Mr FERGUSON: Many employees have secondary employment, Mr Mookhey, and that is not against the rules.

The Hon. DANIEL MOOKHEY: Well, that brings me to my next question. There is no policy bar of secondary employment at icare, is there?

Mr FERGUSON: The first focus for Mr Craig and all employees is on their role at icare. As long as they are performing that role appropriately and their attention is not distracted by other interests then there is no rule against having secondary employment.

The Hon. DANIEL MOOKHEY: My question was: Is there no policy in place at icare that prohibits your group executives from having other jobs?

Mr FERGUSON: No.

Mr DAVID SHOEBRIDGE: Mr Ferguson, if one of your executives is receiving more than half a million dollars in salary with a remuneration package under which they previously have received \$870,000 dollars. Do you not think it would be an expectation of the people of New South Wales that they would devote 100 per cent of their work effort to the job at icare?

Mr FERGUSON: I cannot speak on behalf the expectations of the community, Mr Shoebridge. I will repeat my previous answer, if you would like me to, in terms of my concern is in relation to his focus upon his job. Mr Craig, like anyone else who undertakes secondary employment, provides assurance that their first focus is on their primary role, which is with icare.

Mr DAVID SHOEBRIDGE: Is it not a simple fact that if you have an extremely high-pressure, long-hours job at icare that that is going to be impacted upon if you have two other jobs chairing two other corporations? It is just inevitable that it is going to impact on your ability to do the long hours needed to turn icare around.

Mr FERGUSON: My observation of Mr Craig is that he has an enormous capacity for work. I cannot comment on what he does in his other time, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Mr Craig, in addition to your roles with the Australian Payments Network and Squirrel Group, did you receive any remuneration from Internal Consulting Group [ICG] whilst working with icare?

Mr CRAIG: I started with icare in October of 2015. I started as a contractor. The process to commence with icare occurred very quickly. I had some components of work that I had made previous commitments to that I needed to deliver out. There was a period in the first month of contracting to icare. I was not an employee. I did a couple of days of work and completed a commitment for a client of ICG, but there was no overlap between the work that I did for the ICG client this and the work that I did for icare. The time is very separately accounted for.

Mr DAVID SHOEBRIDGE: Were you ever a partner for Internal Consulting Group?

Mr CRAIG: I have never been a partner. I have never been a shareholder or myself or any of my family interests hold any shares or anything of any of that nature. I have not been an employee of them.

Mr DAVID SHOEBRIDGE: Did you receive any remuneration by way of payment for referrals from ICG whilst working with icare?

Mr CRAIG: I received no payment of referrals of any form or shape to do with any icare work.

Mr DAVID SHOEBRIDGE: Did you receive payments for referrals for ICG unrelated to work at icare whilst you were employed at icare?

Mr CRAIG: Yes. In the last month when I was tidying up there was a small referral payment that had also occurred that was for referrals that were previously done, but my commitment to Mr Bhatia was that I would not seek any other consulting work. I would focus my attention and my primary account abilities around icare, which is exactly what I did, noting that Mr Bhatia was well aware that I was of the chair of the Australian Payments Network and still am.

Mr DAVID SHOEBRIDGE: Mr Craig, in 2016-2017 did you have any role in a corporation or a company that dealt with the manufacturing or distributing of lights?

Mr CRAIG: Yes, I am in a partnership. I am, if you like, a silent investor these days in a company that manufactures lights for the film industry. I and the family still owns that. It is owned by three people and the other two people work in it full-time, manage it and lead it.

Mr DAVID SHOEBRIDGE: Have you disclosed that to icare?

The CHAIR: Mr Shoebridge, I am giving very wide latitude to this question; however, I am yet to link it to the terms of reference. I ask that you indicate to me how the bridge is being made from where we are to the terms of reference.

Mr DAVID SHOEBRIDGE: It is about integrity in the management of icare.

The Hon. DANIEL MOOKHEY: Whether or not he disclosed this to icare.

The CHAIR: Okay.

Mr DAVID SHOEBRIDGE: Have you disclosed that interest to icare at any point?

Mr CRAIG: I have.

Mr DAVID SHOEBRIDGE: In writing?

Mr CRAIG: I have.

Mr DAVID SHOEBRIDGE: When?

Mr CRAIG: As part of the remediations of our conflict of interest I provided a full set across everything to make sure that everything was on the record.

Mr DAVID SHOEBRIDGE: When was that?

Mr CRAIG: I would have to take the question on notice.

Mr DAVID SHOEBRIDGE: Did you travel overseas for that business whilst working for icare?

Mr CRAIG: The last trip that I did for— I have done one trip with that business where I took annual leave.

Mr DAVID SHOEBRIDGE: Whilst working for icare?

Mr CRAIG: While working for icare. I took three days and it was a trip.

Mr DAVID SHOEBRIDGE: Did you disclose to icare that you would be working for this business whilst on annual leave, Mr Craig?

The Hon. TREVOR KHAN: Point of order: I can understand the forensic purpose of looking as to whether icare has appropriate systems in place. But this is now getting close to character assassination of somebody who is here. If you are now starting to get to the point where you are employing that somebody who goes on annual leave has to give some sort of an agenda to an employer as to what they are doing on that just think about what the implications of that are for the whole public service? The answer is that is nonsense.

Mr DAVID SHOEBRIDGE: Let me be clear. The concern I have is somebody in a senior executive role, having multiple other employments or remuneration work that they do, and not disclosing that to a major public sector employer. That is my concern.

The CHAIR: Well then that is the question Mr Shoebridge.

The Hon. TREVOR KHAN: Well in that regard, the answer is his evidence is—whether it has been done in one way or another—that he has been disclosing these matters.

Mr DAVID SHOEBRIDGE: After the event. Years after the event.

The Hon. TREVOR KHAN: You can make that point but it has to end at some point.

The CHAIR: I am going to uphold the point of order and ask Mr Shoebridge to move on.

Mr DAVID SHOEBRIDGE: I will hand over to Mr Mookhey.

The Hon. DANIEL MOOKHEY: On the Internal Consulting Group, you said that you disclose that, that was to Mr Bhatia?

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: And that was verbally?

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: And that was sometime in 2015 or 2014 when you came on board?

Mr CRAIG: I came on board in 2015 and it was part of the coming on-board process. There was a transition where I said that I would wind out of all work for other clients. I had an active set of clients. I was an active consultant so I closed all those out as per my commitment.

The Hon. DANIEL MOOKHEY: To the best of your knowledge, Mr Plumb, were these arrangements reported to the board, either the audit of risk committee or any board discussion?

Mr PLUMB: There was a board discussion on them in 2019 when we were looking at various matters.

The Hon. DANIEL MOOKHEY: And that is because in 2019 you led an overhaul of conflict of interest procedures, is that correct?

Mr PLUMB: That is correct. I want to give a little bit of background on this. We instituted Project Stanley to investigate matters. We also being investigated some matters that were covered in a separate disclosure to the Treasurer.

The Hon. DANIEL MOOKHEY: Just to be clear to everyone, Project Stanley was the investigation into Mr Nagel's arrangements?

Mr PLUMB: Mr Nagel's wife, exactly. As part of that I did request to do some additional procedures and some additional deep dive that went beyond the scope of that just to make sure everything that had previously been addressed had been covered off.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Plumb, and we will get to that deep dive later but I appreciate that is useful context. Do you not agree that four years from a senior executive reporting this to the board discussing it is a pretty significant lag?

Mr PLUMB: I think it is fair to say that the conflict of interest processes in icare have been upgraded over that period of time. But I will talk about the situation obviously in terms of Mr Craig's coming on. He was originally employed as a consultant and as a contractor in the organisation in 2015. Appropriately when he was required to, through annual declarations, he made the appropriate declarations of his ongoing conflicts.

The Hon. DANIEL MOOKHEY: icare let a \$500,000 contract to an internal consulting group, didn't it? Mr Ferguson or Mr Plumb?

Mr PLUMB: Yes, it did.

The Hon. DANIEL MOOKHEY: And that contract was let circa, well when was that contract let, do you recall?

Mr FERGUSON: I personally do not—

The Hon. DANIEL MOOKHEY: Well Ms Bansal, you led the Government Information Public Access Act remediation project, did you not?

Ms BANSAL: Yes, I am currently leading the GIPA remediation project.

The Hon. DANIEL MOOKHEY: And we ask you questions about the Internal Consulting Group contract when Mr Nagel was present, do you recall?

Ms BANSAL: I do not recall but I take your word for it.

The Hon. DANIEL MOOKHEY: Well, it is on the *Hansard*. We discussed the \$500,000 contract, which from memory was circa 2016 I believe.

Ms BANSAL: As I said, I do not have details of that particular contract in front of me.

The Hon. DANIEL MOOKHEY: Can you give us any sense that Mr Craig's conflicts of interest played no role in the decision to let a \$500,000 contract to Internal Consulting Group without tender?

Ms BANSAL: That is prior to my time at icare, Mr Mookhey, So I cannot comment on the particular details of a particular contract. What I can assure you is that we have been remediating GIPAA requirements for all contracts and we are working collaboratively with the Information and Privacy Commissioner to ensure all those contracts are put onto the eTender website as per the requirements and we continue to focus on that.

The Hon. DANIEL MOOKHEY: Mr Plumb, in the wake of your deep dive in 2019 did that deep dive surface any concern about the \$500,000 contract to the Internal Consulting Group and Mr Craig's conflict of interest.

Mr PLUMB: It did but what is absolutely clear in the facts and the review around that is that Mr Craig had previously worked in association with Internal Consulting Group. That arrangement had ceased at the end of October 2015 when he became a contract to icare. He subsequently became an executive of icare so he was not an executive of icare until approximately 1 July 2016 and a contract was arranged with Internal Consulting Group separately to Mr Craig and that was done through Mr Bhatia.

The Hon. DANIEL MOOKHEY: But these are the facts, are they not Mr Plumb? Mr Craig completes consulting work for Internal Consulting Group as part of a transition, do you agree?

Mr PLUMB: My understanding of the facts were that Mr Craig had undertaken work before joining icare but received payment for work a few weeks after joining icare on previous work.

The Hon. DANIEL MOOKHEY: Sure. Then equally he receives a referral fee for work that is from Internal Consulting Group [ICG] that is not related to icare? Do you agree?

Mr PLUMB: That referral fee was for work that was previously done before he joined icare and joined icare as a consultant. To the best of my knowledge Mr Craig has not received any referral fees since becoming an icare executive or, in fact, in relation to any icare work?

The Hon. DANIEL MOOKHEY: Then in 2016 a \$500,000 is given to ICG without tender, do you agree?

Mr PLUMB: I am not sure whether it was tendered or not but I do know that a senior ICG individual was recruited to assist with some strategy work and he may have had some other assistance and that was rendered by Mr Bhatia.

The Hon. DANIEL MOOKHEY: Sure. There is no written declaration of Mr Craig's conflict of interest until 2018, do you agree?

Mr PLUMB: On the evidence that it says there but by 2018 Mr Craig had no interest in Internal Consulting Group going forward. In fact, he ceased to have any connection with them very soon after joining icare as a consultant.

The Hon. DANIEL MOOKHEY: Agreed. But then the board does not discuss this until late 2019?

Mr PLUMB: Correct.

The Hon. DANIEL MOOKHEY: Do you not agree that those series of facts paint a disturbing picture of the consequences of not having a conflict of interest policy in place?

Mr PLUMB: I think what those circumstances show, Mr Mookhey, is indicate the need to have a strong conflict of interest policy in place to be able to deal with perceptions and to be also able to have a clear record of decisions taken. icare did not have a conflicts of interest policy in place when it was formed. Fortunately, one of the ramifications of the State Insurance and Care Governance Act and the whole structure put in place was that icare had to develop its policy framework from ground zero. One of those policies was the conflicts of interest policy, which to my recollection was approved by the board in about October 2016 or November 2016.

The Hon. DANIEL MOOKHEY: Mr Plumb, just quickly on that, why did icare not just continue the conflict of interest policy that applied at the safety and return to work organisation that preceded it, given that so many of the employees, including Mr Ferguson, worked at this exact same organisation and then rolled over? Why did you not just roll over the same public sector policies as opposed to effectively decide that there was a year zero approach when icare was formed?

Mr PLUMB: My understanding, and as I came onto the board as a new director in October 2015, was because of the governance structure the policies that applied in relation to safety return to work, which formed part of the department of financial services or the offices of financial services did not automatically carry over and that we therefore had to start again. Also, you would be aware that NSW Self Insurance Corporation [SICorp] came into the organisation as well. SICorp was also separately part of the department of financial services and that did not apply going forward either.

The Hon. DANIEL MOOKHEY: Mr Craig, you are a shareholder in a company called Rintveld Pty Ltd, are you not?

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: And you have a 50 per cent share ownership of that?

Mr CRAIG: The family is 100 per cent.

The Hon. DANIEL MOOKHEY: And that has a 50 per cent ownership in a company called Mind My Health Pty Ltd, is that correct?

Mr CRAIG: Well, there is a consulting company, but there is also a family trust and the family trust has the ownership.

The Hon. DANIEL MOOKHEY: The corporate group has an ownership?

Mr CRAIG: It is the family, we think about it that way, related parties, yes.

The Hon. DANIEL MOOKHEY: And what services does Mind My Health provide?

Mr CRAIG: It provides psychological services.

The Hon. DANIEL MOOKHEY: And has it ever provided any psychological services in relation to workers compensation?

Mr CRAIG: I think it has, but not to icare. It does have a policy not to do it. It has done one or two for a non-icare client.

The Hon. DANIEL MOOKHEY: Did you disclose your interest in Mind My Health Pty Ltd to icare?

Mr CRAIG: I did.

The Hon. DANIEL MOOKHEY: When did you do that?

Mr CRAIG: I did that, again, as part of the initial set up with Mr Bhatia and I did that as part of the lifting of the conflicts of interest component and I also did that as part of Mr Nagel taking over as CEO.

The Hon. DANIEL MOOKHEY: Mr Ferguson, when you appointed Mr Craig as the head of the workers compensation business were you aware of that interest?

Mr FERGUSON: I do not believe I was.

The Hon. DANIEL MOOKHEY: Did you make inquiries into conflicts of interest?

Mr FERGUSON: I did not know about it to make inquiries, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Did you check Mr Craig's register?

Mr FERGUSON: No, not specifically, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Mr Craig is required, as a group executive, to make an annual declaration under the new policy since 2019, is he not?

Mr FERGUSON: Yes, and I imagine he did that accordingly.

The Hon. DANIEL MOOKHEY: Did you, Mr Craig, do that accordingly?

Mr CRAIG: Actually, I had a conversation with Mr Ferguson and we actually ran through this. Including this, we ran through the whole list.

The Hon. DANIEL MOOKHEY: You recall, Mr Craig, disclosing this to Mr Ferguson?

Mr CRAIG: Yes, and working our way through. As we have discussed, there is a list of things and I made sure that we went through and ticked all those off.

The Hon. DANIEL MOOKHEY: When did you do this, Mr Craig?

Mr CRAIG: That would be about six or eight weeks ago. Mr Ferguson was on the phone.

Mr FERGUSON: I do note—

The Hon. DANIEL MOOKHEY: —Let me finish, Mr Ferguson. This was prior to your appointment as the head of the workers comp?

Mr CRAIG: I could not confirm that. It was probably after, to be honest.

The Hon. DANIEL MOOKHEY: Mr Ferguson, do you recollect that conversation?

Mr FERGUSON: Yes, I do. I recall it being after his appointment.

The Hon. DANIEL MOOKHEY: What did you do in response, after Mr Craig told you that there were these conflicts, or at least these interests, we will put it that way?

Mr FERGUSON: Mr Craig informed me that he was in the process of updating all of his conflicts of interest, or had done that as part of that annual process. The discussion I had with Mr Craig was that he had an interest in the company that you make reference to—and I cannot recall the name.

The Hon. DANIEL MOOKHEY: Mind My Health.

Mr FERGUSON: And that there were procedures in place, a policy in place, to ensure that they were not providing any services that were within icare's remit.

The Hon. DANIEL MOOKHEY: Do you still, sitting there today, stand by the decision to appoint Mr Craig to the role?

Mr FERGUSON: For having an interest in an organisation that does not provide services to icare, yes.

The Hon. DANIEL MOOKHEY: You do not see there is any conflict between Mr Craig having ownership in a company that provides clinical psychology that has done workers comp matters and Mr Craig running the workers comp business, that does not present any issue to you?

Mr FERGUSON: I will repeat my previous answer, Mr Mookhey.

The Hon. DANIEL MOOKHEY: Which was?

Mr FERGUSON: That in disclosing that he has an interest in a company that is not providing services to icare I did not see that as an issue in terms of a conflict.

The Hon. DANIEL MOOKHEY: You were derelict not to check his conflict of interest register prior to his appointment, were you not?

The CHAIR: I am not going to allow that question.

The Hon. DANIEL MOOKHEY: I am allowed to put the proposition and he can deny it.

The CHAIR: I would like you to reword it.

The Hon. DANIEL MOOKHEY: Your failure to check Mr Craig's conflict of interest register prior to his appointment was the wrong decision, was it not, Mr Ferguson?

Mr FERGUSON: As I said before, I had a comprehensive conversation not long after his appointment to discuss the various interests Mr Craig has. There were no interests that were pertinent to the role.

The Hon. DANIEL MOOKHEY: As I counter, Mr Ferguson, Mr Craig currently chairs the Australian Payments Network, currently chairs a Fintech mortgage brokerage firm that also offers insurance, he has an interest in a business that is performing work in the workers compensation space and you appointed him as the head of the workers compensation business and you still maintain that does not present any issues to you and nor, therefore, should the public care. Is that seriously your position?

Mr FERGUSON: I actually think he said it does not provide services in this space at this point.

The Hon. DANIEL MOOKHEY: Mr Craig said that it did.

Mr FERGUSON: And I am happy for him to clarify that, Mr Mookhey.

The Hon. CATHERINE CUSACK: Point of order: I have listened patiently for some sort of allegation, there is no allegation. If this is such a personal line of questioning I believe this evidence should be taken in camera and can be published at a later time. I am just sitting here listening to smear and bullying of witnesses and I believe this evidence is more appropriate taken in camera—

Mr ROBERTSON: Innuendo.

The Hon. CATHERINE CUSACK: —if they want to embark on a fishing expedition in relation to people's personal matters. I hear no allegation being addressed here.

The Hon. DANIEL MOOKHEY: Would you like me to simply state the allegation?

The CHAIR: Ms Cusack, are you moving that we move in camera?

The Hon. CATHERINE CUSACK: Yes, chair.

Mr DAVID SHOEBRIDGE: To the point of order—

The Hon. TREVOR KHAN: If we are moving into a deliberative at this stage, is it not appropriate that discussion happen in the absence of the parties?

Mr DAVID SHOEBRIDGE: Can I speak to the idea of moving into a deliberative, which will take a significant amount of time from the inquiry. That will create a significant delay and there is a lot of material to get through. The purpose of the public hearing is to have a public hearing. I speak against the concept of going into deliberative on this.

The CHAIR: Does any other member wish to speak to the point of order?

The Hon. CATHERINE CUSACK: Just in response to that, I am not hearing material being gotten through, I am hearing a fishing expedition that is taking up a lot of time and involves traversing people's personal lives without a specific allegation being addressed.

The Hon. DANIEL MOOKHEY: I am happy to, again, state the central allegation if that would simplify things.

The Hon. TREVOR KHAN: How long is it going to go on for, Mr Mookhey, on this line?

The Hon. DANIEL MOOKHEY: On this particular point I think we are close to the second last question.

The Hon. TREVOR KHAN: I think that answers it. If it is the second last question let us just get on with it. I think there are substantial matters to do with workers comp, some of them have been addressed but we are really starting to strangle the cat here.

Mr DAVID SHOEBRIDGE: Can I be clear though, there are other issues in terms of contracting with the Nominal Insurer and the way in which contracting with the Nominal Insurer happens.

The CHAIR: Can we please get to those.

The Hon. CATHERINE CUSACK: I would urge you to get on with those questions then, I would urge you to do that. I will withdraw my motion if the intent is to get on with substantive matters to do with icare.

The CHAIR: I will allow you to continue the questioning, but as I have indicated we have to build a bridge to where you are in terms of reference.

The Hon. DANIEL MOOKHEY: Mr Craig, do you have the tender bundle in front of you?

Mr CRAIG: Yes, I think I do.

The Hon. DANIEL MOOKHEY: Mr Ferguson, do you have the tender bundle in front of you?

Mr FERGUSON: Is that in the pack that you provided?

The Hon. DANIEL MOOKHEY: Yes.

Mr FERGUSON: I would need a number, please.

The Hon. SCOTT FARLOW: That is what he is referring to as the tender bundle.

The Hon. DANIEL MOOKHEY: I am just asking whether you have the tender bundle in front of you.

Mr FERGUSON: Sorry, I thought you were talking about a document within that. Yes, I do.

The Hon. DANIEL MOOKHEY: Can we start at document 10. These documents are virtually identical. I will go through them very quickly and you can stop me if you want me to stop at any point, Mr Ferguson or Mr Craig. These are excerpts from the CEO report to the icare board that was made I presume quarterly or whenever the icare board met. Do you see that on major contracts it lists the contract, the description, the party, the term, the date signed and who it was approved? Do you see that?

Mr FERGUSON: Yes.

The Hon. DANIEL MOOKHEY: Do you see that, Mr Craig?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Yes, you see that there are two?

Mr CRAIG: Yes.

The Hon. TREVOR KHAN: Well, 18 is at the top of the page.

The Hon. DANIEL MOOKHEY: July 18 at the bottom, on document 10. Sorry, that was the confusion. Can you turn to document 11?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Do you see that there are four contracts directly approved by Mr Craig?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Can you turn to document 12?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Can you see that there are two that are approved?

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: Turning to document 13, you see that there are three contracts that are directly approved by Mr Craig?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: This tender bundle; I can go to document 20 if you wish me to go to document 20, but you can see that there is a pattern where there is a clear set of contracts that are directly being approved by Mr Craig? Can you see that?

Mr FERGUSON: I am sorry. I am not sure who you are directing your questions to now, Mr Mookhey?

The Hon. DANIEL MOOKHEY: To both you, Mr Ferguson, and Mr Craig.

Mr FERGUSON: Would you like us both to answer concurrently?

The Hon. DANIEL MOOKHEY: I asking you in seriatim: Do you agree that there is—

Mr FERGUSON: So if you are asking me—

The CHAIR: Mr Mookhey, for clarity, maybe you just ask—

Mr DAVID SHOEBRIDGE: Point of order: I think that this is a process of identifying what the documents are for both witnesses, at the end of which some questions will be put. The purpose is to provide fairness to the witnesses so they can see the evidentiary basis.

Mr FERGUSON: Thank you.

The Hon. DANIEL MOOKHEY: So in total, across from document 10 to document 23—

The CHAIR: Mr Mookhey, I am looking at document 20 and it is Ms Uehling who has approved the contract on document 20.

The Hon. DANIEL MOOKHEY: Sure. But from document 10 to document 23—

The Hon. SCOTT FARLOW: You are going to have a total number of—

The Hon. DANIEL MOOKHEY: There are 26 contracts approved or signed by Mr Craig, totalling \$68 million in fees or expenses. There are \$44 million of them that were undertaken through the exemption under the nominal insurance platforms. There are \$35 million of contracts that Mr Craig approved by direct negotiation that is disclosed on those documents. I accept that you might have to accept my word for that but that is the summary of the documents for the purposes of the coming questions.

Mr FERGUSON: I accept your word for that.

The Hon. DANIEL MOOKHEY: Great, thank you. Why was Mr Craig himself allowed to sign-off on \$68 million worth of contracts in total? Was that part of his duties?

Mr FERGUSON: I was not involved in those decisions at the time, Mr Mookhey, as his supervisor, so I would have to defer to Mr Bhatia or Mr Craig on that.

The Hon. DANIEL MOOKHEY: Mr Craig?

Mr CRAIG: What is the actual question?

The Hon. DANIEL MOOKHEY: Was it your responsibility to enter into all these contracts?

Mr CRAIG: Some of these contracts were commenced by people other than myself, and so these were the following-on pieces of work. In that context, yes, it was my accountability.

The Hon. DANIEL MOOKHEY: And you had a delegation, did you not, to enter into certain contracts below or close to a threshold?

Mr CRAIG: Yes, I had a delegation and all these are within that delegation?

The Hon. DANIEL MOOKHEY: What was the delegation?

Mr CRAIG: It was unlimited.

Mr DAVID SHOEBRIDGE: By definition, they all fall within that.

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: So just to be clear, you were capable of entering into any contract for any value?

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: Who gave you that authority?

Mr CRAIG: Mr Bhatia.

The Hon. DANIEL MOOKHEY: How did he give you that authority?

Mr CRAIG: In writing.

The Hon. DANIEL MOOKHEY: So he wrote you a letter. Was it a letter or was it in your letter of appointment?

Mr CRAIG: It was a letter.

The Hon. DANIEL MOOKHEY: I think Mr Shoebridge has a question on this line.

Mr DAVID SHOEBRIDGE: Mr Plumb, were you aware that an executive within icare had unlimited authority to contract on behalf of icare in that matter?

Mr PLUMB: No, I was not, Mr Shoebridge. My understanding is that the delegation is that contracts above \$10 million have to be approved by the board. Obviously, not physically signed—the board can delegate to that—but \$10 million is the board threshold.

Mr DAVID SHOEBRIDGE: And, in fact, that is quite a generous threshold, really, in terms of the board: \$10 million?

Mr PLUMB: I think it is something that reflects the scale of icare's operations. It is an organisation that has a very significant expense base and, therefore, the board cannot get involved in every contract, for obvious reasons.

Mr DAVID SHOEBRIDGE: You have been head of the ARC, the Audit and Risk Committee, since its inception, have you not, Mr Plumb?

Mr PLUMB: I was, from inception. I finished my five-year term, just for completeness, which finished in October of this year. You are limited to a maximum of five years, so I am no longer Chair of that body.

Mr DAVID SHOEBRIDGE: But up until October?

Mr PLUMB: Yes.

Mr DAVID SHOEBRIDGE: What are the risks in having unlimited delegations at an executive level which informed that \$10 million policy?

Mr PLUMB: The risks are, obviously, of concentration of approval that can obviously occur, and the risks of, if there is a process deficiency, that there is not that extra level of challenge and governance that deals to that.

The Hon. TREVOR KHAN: Sorry, David, can I ask one question?

Mr DAVID SHOEBRIDGE: Yes.

The Hon. TREVOR KHAN: Mr Plumb, why were you not aware that an unlimited—

Mr DAVID SHOEBRIDGE: That was my next question.

The Hon. TREVOR KHAN: Sorry. It just strikes me that the Audit and Risk Committee should be apprised of who has generous delegations.

Mr PLUMB: We have reviewed the delegations periodically and the board has reviewed it. I was not aware that there was an unlimited delegation. I believe that contracts above \$10 million would have to go for board approval. Also, there is a CITC approval—the Customer Information Technology Committee—for other contracts.

The Hon. TREVOR KHAN: I am not being critical of you, Mr Plumb.

Mr PLUMB: No.

The Hon. TREVOR KHAN: I want to make that quite plain. It seems that there would be the responsibility on somebody else to apprise the board and the Audit and Risk Committee. Am I assuming correctly that that obligation to apprise the Audit and Risk Committee would have fallen upon Mr Bhatia?

Mr DAVID SHOEBRIDGE: Or Mr Nagle.

The Hon. TREVOR KHAN: Or Mr Nagle.

Mr PLUMB: Correct. And for completeness, I might add, and as you would see through looking at papers, we do have a number of other review and checkpoints. So there is substantial internal audit work that gets done in icare and there is also substantial external audit work, including dealing with transactions and contracts.

Mr DAVID SHOEBRIDGE: But, Mr Plumb, you, as the Chair of the Audit and Risk Committee, had been kept in the dark about the fact that a senior executive had unlimited delegations to contract on behalf of the Nominal Insurer. Is that true, Mr Plumb?

Mr FERGUSON: Can I just add one clarification?

Mr DAVID SHOEBRIDGE: The question is to Mr Plumb.

The CHAIR: Mr Ferguson wants to add a clarification. I will allow that before Mr Plumb answers the question.

Mr DAVID SHOEBRIDGE: No, I am going to object to that. Mr Plumb has been the head of the Audit and Risk Committee for five years. He is an extremely qualified person. I am asking about what he knew in his role as Chair of the Audit and Risk Committee, and it is not for Mr Ferguson to answer that.

The CHAIR: Mr Ferguson is not answering that. Mr Ferguson is seeking to provide—

The Hon. DANIEL MOOKHEY: Point of order—

Mr DAVID SHOEBRIDGE: Then I press my question to Mr Plumb.

The Hon. DANIEL MOOKHEY: My point of order is that it is not within the Chair's responsibility to direct the questioning. No point of order was taken. The Committee member who is asking the question is entitled to direct it at first instance to the person required. We have gone through this. There is a specific and discrete reason for that, because it is about finding out Mr Plumb's knowledge independent of executives. That is why it is important that Mr Plumb be allowed to answer before executives. It is not the role of the Chair to intervene simply because a witness requests the right to make a contribution. The witness can make the contribution afterwards. That is standard practice in Legislative Council committees.

The Hon. TREVOR KHAN: To the point of order: Mr Plumb is a very competent and honest witness.

The Hon. DANIEL MOOKHEY: Yes, and he is being very straight.

The Hon. TREVOR KHAN: I think he is more than capable of making a contribution.

The CHAIR: My reason for allowing Mr Ferguson to respond first was that he said he was going to make a point of clarification.

The Hon. DANIEL MOOKHEY: That may or may not be necessary or relevant. But it is not the role of the Chair to have to do that at the request of a witness. The questioner is entitled to direct the questions and the witness to whom the question is directed is entitled to answer first, and then if there is a request for clarification that can be added, then that is when we consider that request.

Mr DAVID SHOEBRIDGE: It might be helpful if I put my question again because we may have forgotten.

The Hon. SCOTT FARLOW: To the point of order: Mr Shoebridge outlined before that the question at first instance goes to Mr Plumb and if he wishes any additional commentary to be made by Mr Ferguson, as has been indicated, he can do that.

Mr FERGUSON: I am happy to accept that.

The Hon. TREVOR KHAN: It then might have to be all unwound when everyone has been working off some false impression.

Mr DAVID SHOEBRIDGE: Let us just cut to the chase.

Mr FERGUSON: I am happy to accept that. It was just about the limitations of delegation.

Mr DAVID SHOEBRIDGE: Mr Plumb, were you kept in the dark, as the Chair of the Audit and Risk Committee, that a senior executive of icare, contrary to board policy, had unlimited delegations to contract on behalf of the Nominal Insurer?

Mr PLUMB: I was not aware that there were unlimited delegations to contract on behalf of the Nominal Insurer. However, I am aware of the requirement that all contracts above \$10 million are required to be reported to the board— sorry, the board to approve those contracts. I am also aware of the requirement to report significant contracts to the board.

Mr DAVID SHOEBRIDGE: And an unlimited delegation would be contrary to these requirements, would it not?

Mr PLUMB: An unlimited delegation would be contrary to the requirements. I think a substantive point too is: was that ever used? Because there is a requirement to have board approval of contracts over \$10 million, so there may be an issue that they are operating side-by-side.

Mr DAVID SHOEBRIDGE: Mr Ferguson, did you want to add something?

Mr FERGUSON: Thank you, Mr Shoebridge. I apologise for interrupting previously. I thought it might be useful for the Committee to note that my recollection is that the delegation was specific to the construction of the Nominal Insurer single platform, so it was not an unrestricted delegation in regard to expenditure under the Nominal Insurer. It was specific to a particular program of work which had overall approval by the board.

Mr DAVID SHOEBRIDGE: Mr Ferguson, they were the contracts with Guidewire and Capgemini for what ended up being a—

The Hon. TREVOR KHAN: A pretty expensive program.

Mr DAVID SHOEBRIDGE: —a \$200 to \$300 million transformation project, is that right?

Mr FERGUSON: That was part of it.

Mr CRAIG: Can I offer something here? First of all, I can confirm that the delegation is exactly as Mr Ferguson has described. It was very explicit for the build of the platform. Can I also say that people often characterise the platform as Guidewire and Capgemini, but there are probably 50 different pieces of technology within the platform. I do not know how many vendors but a large number of vendors supported the building of the platform.

The Hon. DANIEL MOOKHEY: Mr Craig, you said that Mr Bhatia provided that in writing to you?

Mr CRAIG: Correct.

The Hon. DANIEL MOOKHEY: On notice, can you provide us with that instrument?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Thank you. Mr Ferguson, are there other executives who have or have had such a delegation to the best of your knowledge?

Mr FERGUSON: Not to the best of my knowledge.

The Hon. DANIEL MOOKHEY: Did you have one?

Mr FERGUSON: No.

The Hon. DANIEL MOOKHEY: You are a former public servant, are you not?

Mr FERGUSON: Yes.

The Hon. DANIEL MOOKHEY: It is common in the public service for approvals above \$500,000 to have to be signed off by the secretary, is it not?

Mr FERGUSON: Possibly. I have not been in the public service for nearly eight years. I cannot recall a delegation specifically.

The Hon. DANIEL MOOKHEY: But you would agree that this practice of allowing unlimited delegations is exceptional to the public service norm?

Mr FERGUSON: I would expect so.

The Hon. DANIEL MOOKHEY: And icare is part of the public service?

Mr FERGUSON: It is a government agency.

The Hon. DANIEL MOOKHEY: At any point, to the best of your knowledge, did you check whether or not these delegations were in approval with public sector policies?

Mr FERGUSON: As I mentioned before, Mr Mookhey, I did not have responsibility or involvement at the time in relation to Mr Craig's delegations.

The Hon. DANIEL MOOKHEY: Did any other icare executive have these delegations?

Mr FERGUSON: I have answered that question previously.

The Hon. DANIEL MOOKHEY: Sorry, you are right. You did. Can we turn to the direct negotiations. We have identified at least \$38 million that you procured through direct negotiation that has been reported at least in these documents.

Mr CRAIG: I would frame it slightly differently. I would say that was procured. I also need to clarify that some of these are described as direct negotiations that actually were not, so there is a little bit of data issue.

The Hon. DANIEL MOOKHEY: This is the report that Mr Bhatia and Mr Nagle were giving to your board.

Mr FERGUSON: Correct. I realise that, but I know that some of these things are not actually correct. For instance, all the Deloitte ones. There was a panel arrangement and we went to market for those. That was the result of those. I know, for instance, that is not correct.

The Hon. DANIEL MOOKHEY: I accept that. On notice, if you wish to dispute—

Mr FERGUSON: I am just trying to correct what is here.

The Hon. DANIEL MOOKHEY: Of course. I appreciate that. Mr Craig, did you follow all applicable policies for direct negotiations?

Mr CRAIG: I need to clarify that different contracts and different arrangements were set up in a different way, and so there is no consistency in a sense. A number of them were actually negotiated in the set up by Mr Nagle. Therefore, if you like, the rates and those sorts of components were negotiated by somebody other than myself. I was following through in terms of the contracting. The other component that I would like to note is that even though a number of these are direct negotiations, in places we actually had two parties who provided the same services so that within icare we could set up competition to ensure good value was being achieved.

The Hon. DANIEL MOOKHEY: That is helpful context, Mr Craig, but my question was if you followed all applicable policies?

The Hon. TREVOR KHAN: That actually was not precisely the question.

The Hon. DANIEL MOOKHEY: I am asking it now. Did you follow all applicable policies?

Mr CRAIG: The setup of these contracts were, as per the delegation and as per the comment, they were all done under the NI and the critical piece around the NI procurement was insuring that we were getting good value for money. All contracts followed the good value for money principle.

The Hon. DANIEL MOOKHEY: It is helpful that you sought to follow that principle, but did you specifically follow the ICAC policy on direct negotiations?

The CHAIR: The ICAC or icare?

Mr CRAIG: The ICAC?

The Hon. DANIEL MOOKHEY: Yes.

Mr CRAIG: I am not familiar with the ICAC policy on direct negotiations.

The Hon. DANIEL MOOKHEY: Are you aware that that policy applies to icare as part of the public service?

Mr CRAIG: I am aware that the ICAC covers icare, yes.

The Hon. DANIEL MOOKHEY: Mr Plumb, are you aware that the ICAC policy on direct negotiations applies to icare?

Mr PLUMB: I would presume it would apply as part of the procurement framework.

The Hon. DANIEL MOOKHEY: And that policy requires that on every contract that there is a direct negotiation is approved at a senior level. Mr Craig, you have no knowledge?

Mr CRAIG: I have no knowledge of the ICAC policy, sorry.

The Hon. DANIEL MOOKHEY: I might short-circuit to Mr Ferguson than. Mr Ferguson, are you aware that the ICAC policy on direct negotiations applies to your organisation?

Mr FERGUSON: Not specifically. I am not disputing that it does. The ICAC certainly has accountability over all government agencies, including icare. We abide by procurement policies accordingly.

The Hon. DANIEL MOOKHEY: Do you not think it is somewhat troubling that there is no level of familiarity with ICAC's policy on direct negotiations?

Mr FERGUSON: I did not say there was not. I did not write the policy. I imagine that our policy would have taken into account all relevant government policies relating to procurement when our policy was developed.

The Hon. DANIEL MOOKHEY: Mr Plumb, in your conflict-of-interest deep dive, you identified that there was not any standard policies around procurement, certainly in a direct negotiations context, did you not?

Mr PLUMB: I am sorry, Mr Mookhey, I do not recall that. What I do recall is that in relation to the procurement policy, which the board approves, that there is a clear linkage to various policies and there is a requirement to consult and the procurement team on all significant contracts to be involved in. They are the people who have the expertise around which policies apply to operate.

Mr CRAIG: Can I please offer another comment?

The Hon. DANIEL MOOKHEY: Sure.

Mr CRAIG: My understanding is that the ICAC policy came into effect in August of 2018 and that it is a guideline. I will also note that each of these contracts went through a full legal and review process. I feel able to be able to rely on my colleagues in and around those components.

The Hon. DANIEL MOOKHEY: I accept that. That is a helpful context, Mr Craig, but you are aware that the policy you referred to from April 2018 was effectively version six of a policy that has been in place in the public sector since 2005?

The Hon. TREVOR KHAN: He makes two points. He did not say April, he said August. Indeed, it was 23 August 2018.

The Hon. DANIEL MOOKHEY: Either way, you accept—

The Hon. TREVOR KHAN: And it is a guideline.

Mr CRAIG: It is a guideline. I also note that in entering these contracts there are a range of people who support to ensure that the appropriate processes occur.

The Hon. DANIEL MOOKHEY: I will accept the premise of your position.

Mr CRAIG: Thank you.

The Hon. DANIEL MOOKHEY: In that, are you seriously drawing a distinction between a policy and a guideline when it comes to the ICAC's guidance to the public sector on direct negotiations? Are you seriously suggesting that because you say it has the status of the guideline it does not apply and therefore we should not put any weight on it?

Mr CRAIG: I am going to—

The Hon. DANIEL MOOKHEY: No, it is a question I put. It is a reasonable question. It arises from the witness' comment and it is fine for us to be able to—

Mr DAVID SHOEBRIDGE: It would be far quicker to allow the witness to answer.

The CHAIR: It appeared in your earlier question that you may not have been aware that it was a guideline.

The Hon. DANIEL MOOKHEY: No. I am aware of its status and I am aware of its history.

The Hon. SCOTT FARLOW: You misled the Committee as to what its status was.

The Hon. DANIEL MOOKHEY: I said it was a policy that applied. No one is disputing whether you want to call it a policy or—

The CHAIR: You called it a policy as opposed to a guideline.

The Hon. SCOTT FARLOW: You mischaracterised.

The Hon. DANIEL MOOKHEY: Then let me re-ask the question. Mr Ferguson, do you think the guideline that the Independent Commission against Corruption [ICAC] has put on direct negotiations applies to icare?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Thank you. Mr Craig, did you follow the guideline?

Mr CRAIG: I had support in entering these contracts and got advice in and around that to ensure that we did them in an appropriate way.

Mr DAVID SHOEBRIDGE: Mr Plumb, the ICAC guidelines say, amongst other things, that as a general direct negotiations should be avoided unless they clearly fall within the Government's legislative and policy framework and or the risk of corrupt conduct has been managed in accordance with these guidelines. As the long-term head of the arc, do you accept that is a sensible directive from ICAC—that as a general direct negotiation should be avoided?

Mr PLUMB: I accept that there is appropriate reason that the ICAC has put that in place. What I also would add for completeness is that icare has a team of procurement specialists led by a head of strategic sourcing, whose responsibility as part of this is to advise and to deal with on those individual guidelines and their applicability to contracts.

Mr DAVID SHOEBRIDGE: Do you accept that in terms of value of contracts that there have been a large value of contracts that icare has entered into, especially on behalf of the Nominal Insurer, through this direct negotiation process—like tens and tens of millions of dollars, Mr Plumb?

Mr PLUMB: I accept that quite a significant number of contracts, on the face of it here, have been done by direct negotiation.

Mr DAVID SHOEBRIDGE: One of the anticorruption measures that applies to contracts in the public sector is the transparency and the publishing of all contracts over and above \$150,000 in value, do you agree with that?

Mr PLUMB: I accept that the GIPA requirements require disclosure of contracts above \$150,000. I also point out for the benefit of the Committee that during the history of icare there has been significant directives and upgrading from the board and from the audit risk committee to management around the need to uplift procurement processes.

Mr DAVID SHOEBRIDGE: There has been entrenched inaction by icare in terms of its transparency and publishing of contracts as required under the GIPA Act—entrenched inaction by icare.

Mr PLUMB: I would not use the word entrenched inaction. I would say there has been clear directive from the board and from the audit risk committee to uplift processes and a buildout of the contracts register and framework to do that which was over cited with a degree of urgency. I accept however it should have happened more quickly than it did.

Mr DAVID SHOEBRIDGE: Have you got the tender bundle there in front of you, Mr Plumb?

Mr PLUMB: I have the tender bundle.

Mr DAVID SHOEBRIDGE: Could I ask you to turn to document 30? It is the icare GIPA compliance report phase one October 2020. Do you have that?

Mr PLUMB: Yes I do.

Mr DAVID SHOEBRIDGE: Are you familiar with this document?

Mr PLUMB: Yes, it was put to the audit and risk committee recently.

Mr DAVID SHOEBRIDGE: Could you turn to page 18? Point three commences "in summary this audit has identified—", do you see that?

Mr PLUMB: Yes.

Mr DAVID SHOEBRIDGE: I will just take you through these different elements and whether or not you agree with the conclusion of the IPC. Do you agree with their summary that there has been non-compliance with the contract register requirements of the GIPA Act by icare?

Mr PLUMB: To the best of my knowledge I would agree with that.

Mr DAVID SHOEBRIDGE: Do you agree that there was knowledge of non-compliance by management dating back to 2016?

Mr PLUMB: Yes I would agree in the context of it was brought to attention that there was non-compliance in 2016.

Mr DAVID SHOEBRIDGE: Do you agree that there was consideration of non-compliance by the icare audit and risk committee in 2018 and approval by that committee in 2018 of revised procedures to achieve compliance?

Mr PLUMB: I would agree and I would elaborate that the audit and risk committee and the board took strong direction to management to achieve compliance with this and continue to receive—at one point—monthly monitoring around procurement uplift in 2018-19.

Mr DAVID SHOEBRIDGE: Do you agree that there have been public statements of action published on icare's website and successive annual reports dating back to 2015-16 that provide assurances of remedial action to achieve compliance?

Mr PLUMB: I concur that the annual report, as it is required to, talks about the fact that they were not fully compliant with the GIPA requirements and that action was being taken to achieve that.

Mr DAVID SHOEBRIDGE: Do you agree that notwithstanding that there was an extended period of non-compliance and the absence of any effective remedial plan or action to achieve compliance until 2019? Do you agree with the conclusion of the IPC?

Mr PLUMB: I would agree that the remedial plan—with the benefit of hindsight— was not effective to achieve an urgent enough priority. There was a clear assignment of responsibilities initially to the chief financial officer to remediate and then to the chief risk officer and through 2018 and 2019 and in January 2020 it was put

back after a period that compliance should have been achieved by to the group executive organisational performance.

The Hon. TREVOR KHAN: Why did this take so long? This is not a criticism of you, Mr Plumb.

Mr PLUMB: I think the issue was a complexity in icare to build its central contract register to be all-encompassing to accomplish that. I think as well, despite a clear mandate, that the organisation was managing a lot of matters and may not have given this as much on the ground operational priority as it should have had.

Mr DAVID SHOEBRIDGE: I put those propositions to you because after going through those propositions the IPC in the report of October 2020 said that "in light of apparently entrenched inaction the IPC will continue to engage with, monitor and publicly report compliance with the contract reporting requirements of the GIPA Act by icare. Do you disagree with the IPC's conclusion that there was historical and entrenched inaction?"

Mr PLUMB: I would not say it is historical and entrenched but I agree that the action was not given significant priority and our position with procurement is not acceptable.

Mr DAVID SHOEBRIDGE: Are you aware that the GIPA remediation program from icare is not going to go back to the start of non-compliance and indeed it only reaches back to contracts entered into from the start of July 2018?

Mr PLUMB: Yes, I am aware that management has communicated that to the IPC and my understanding is the IPC has agreed to that.

Mr DAVID SHOEBRIDGE: Indeed it only—

Mr PLUMB: Sorry, if I may add Mr Shoebridge, all open contracts that continue in effect will have still been dealt with in that GIPA remediation program.

The Hon. TREVOR KHAN: Irrespective of the date that they were entered into.

Mr PLUMB: Yes. Irrespective of the date.

Mr DAVID SHOEBRIDGE: So if a contract is still open and still live then it will be remediated, is that your understanding?

Mr PLUMB: That is my understanding and my understanding is that those have been remediated.

Mr DAVID SHOEBRIDGE: Do you have any idea of the value of contracts that were opened and closed from the conception of icare until July 2018 that will not be disclosed? Are we talking \$10 million, \$50 million, \$500 million? Do you have any idea what the quantum of contracts that will not be disclosed and will not be publicly released is?

Mr PLUMB: I do not have that data, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Can you explain why there is not that level of transparency from icare? You have been the head of the Audit and Risk Committee for five years and you do not know.

The Hon. TREVOR KHAN: He is not the head now, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Up until October, up until one month ago, and you do not know the quantum of contracts that have never been publicly disclosed, do you accept that is a pretty fundamental failing, Mr Plumb? Not just you, but of the organisation.

Mr PLUMB: No, Mr Shoebridge, I do not accept it is a fundamental failing. I think that this situation has to be that organisation does need to look, and appropriately, at the cost benefit of going back and rebuilding the contract register from day one, the contracts that do not exist and the cost and effort, which eventually does get passed on to injured workers and other parties and against also the public purpose of doing that. I also note that in relation to the 2016 position what was absolutely clear was when those regulations came in, and this was referenced in sector wide audit office reports, there was a massive non-compliance across the whole sector. What I think happened here is that icare did not move forward quickly enough to actually remediate and be in the place that other organisations were by 2018 in the public sector.

Mr DAVID SHOEBRIDGE: Mr Ferguson, there are all sorts of deep rumours and concerns around different contracts with icare. We do not have time to put all of them to you. I will give you one example, just one example, there are repeated concerns to my office, for example, that Capgemini paid for the multi-million dollar internal stairs that were put into the Kent Street office and then that large capital expense was hidden by way of it being paid as a miscellaneous expense to Capgemini to hide the large, the very large multi-million-dollar expense

of the internal fit out. Are you aware of those rumours, is there any truth to it and has the contract for the multi-million dollar internal stairs been disclosed?

Mr ROBERTSON: Can I just say, chair, with your indulgence, rumour and innuendo is hardly the basis upon which we should be questioned here. I once worked in an organisation where we had a saying: If you had not heard a rumour by nine o'clock, start your own.

The Hon. DANIEL MOOKHEY: What was that organisation?

Mr ROBERTSON: It was a union, actually. It was the ETU. To be frank, to be asked about rumours, if Mr Shoebridge has something substantive on this to put he either ought to put it here or, frankly, refer it to the ICAC. To waste our time, we have sat here for two hours with another hour to go, and we have reached the point where we are now being asked questions about a rumour.

Mr DAVID SHOEBRIDGE: I understand it is embarrassing.

The CHAIR: I will address Mr Robertson.

Mr ROBERTSON: It is not embarrassing, it is embarrassing for you.

Mr DAVID SHOEBRIDGE: Hardly, Mr Robertson.

The CHAIR: Mr Robertson addressed that comment to me. The Opposition and crossbench have 2½ hours of questioning and the Government has half an hour at the end.

The Hon. DANIEL MOOKHEY: No, 15 minutes.

The Hon. TREVOR KHAN: Yes, 15 minutes, which I suspect will not all be used.

The CHAIR: Okay.

The Hon. DANIEL MOOKHEY: We decided this yesterday.

Mr DAVID SHOEBRIDGE: I press the question to Mr Ferguson.

The CHAIR: I am addressing Mr Robertson. I was about to rule the question out of order, but given that Mr Shoebridge was presenting it as a proposition and Mr Ferguson seems very well-equipped to bat it away and that is the way in which they wish to use their time for questions, I am prepared to allow them to do that. I was waiting to see if Mr Shoebridge had anything substantive to put towards those rumours and innuendo. I allow the question. Mr Shoebridge has the call.

Mr DAVID SHOEBRIDGE: If I could just recap: Was the contract disclosed and was it paid through Capgemini in the manner disclosed?

Mr FERGUSON: I would need to take that on notice.

The Hon. DANIEL MOOKHEY: Mr Craig, did you at previous points in your various responsibilities have staff members Tony Nelson and Julie Starling work for you?

Mr CRAIG: I did.

The Hon. DANIEL MOOKHEY: They were your reports?

Mr CRAIG: Yes, they were.

The Hon. DANIEL MOOKHEY: Can you turn to document number seven please?

Mr CRAIG: Sorry, number which?

The Hon. DANIEL MOOKHEY: Seven.

The Hon. TREVOR KHAN: You should tab this.

Mr DAVID SHOEBRIDGE: I complain often about Mr Mookhey's secretarial work, it is very poor.

The Hon. DANIEL MOOKHEY: You see document seven is the excerpt from the annual report 2016-17 on overseas travel?

Mr CRAIG: I do.

The Hon. DANIEL MOOKHEY: You see that Julie Starling and Tony Nelson took a trip to India.

Mr CRAIG: I do.

The Hon. DANIEL MOOKHEY: Were those trips paid for by Deloitte?

Mr CRAIG: I do not know.

The Hon. DANIEL MOOKHEY: Can you take that on notice?

Mr CRAIG: I can, absolutely.

The Hon. DANIEL MOOKHEY: Can you turn to document number nine.

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Bouzo, I do not know how to pronounce that name.

Mr CRAIG: Frances. Frances Bouzo, yes.

The Hon. DANIEL MOOKHEY: Did he work for you, or she?

Mr CRAIG: It is a she. Yes, she was in my team.

The Hon. DANIEL MOOKHEY: And you approved that trip?

Mr CRAIG: I would have been part of the process of approving that, but that would have gone to the board, to the chairman.

The Hon. DANIEL MOOKHEY: Was that trip paid for by a vendor?

Mr CRAIG: I do not think so, but I do not know.

The Hon. DANIEL MOOKHEY: Can you take that on notice as to whether or not Octonal paid for that trip?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: Equally, have you ever taken a sponsored trip?

Mr CRAIG: I have taken a trip to the Guidewire conference in 2019, which was paid by Guidewire and I was a keynote speaker at Guidewire. And also Guidewire had a new CEO and so I particularly wanted to seek a session and had a very valuable session with the new CEO of Guidewire as they are a critical partner for us.

The Hon. DANIEL MOOKHEY: Is there a reason why that trip is not listed in the gifts and benefits register that was produced to the upper House?

Mr CRAIG: Yes.

The Hon. DANIEL MOOKHEY: What is the reason?

Mr CRAIG: Because it was a work trip in the nature that I was both speaking at the conference and that I was also meeting with the CEO it was deemed not to be a gift or a benefit in that sense. However, I would also like to note that a trip like that was absolutely proactively signed off by the CEO at the time and by the chairman so there was a lot of transparency around both the trip and the funding.

The Hon. DANIEL MOOKHEY: Thank you for that. Mr Plumb, I just want to talk to you about some other matters now. Do you mind turning to document 25 now. Let me give you the prelude while you are finding it. This is an email that Mr Nagle sends to you or to Mr Carapiet, to which you are cc'ed and Mr Bell is cc'ed, do you see that?

Mr PLUMB: Yes, I do.

The Hon. DANIEL MOOKHEY: Mr Nagle reports, "We have uncovered a case where two staff members appeared to be gaming our recruitment system by employing people via companies they have set up specifically for this purpose and they have not declared or sought any permission to undertake this action. The action appears to have started recently and we have three suspect recruitments that we are investigating. We were alerted by GIO that some of their staff are being targeted by a recruiter and our review discovered an invoice from two companies who are not on our panel and appear to be owned by the staff. As you can see we have advised the ICAC as required and have instructed solicitors to assist in the investigation. We will advise further if anything is heard from ICAC." Do you see that?

Mr PLUMB: Yes, I do, Mr Mookhey.

The Hon. DANIEL MOOKHEY: This was reported to the Audit and Risk Committee, was it not?

Mr PLUMB: Yes, it was reported to the Audit and Risk Committee and we have had briefings subsequently from our head of internal audit and legal in respect of the matter.

The Hon. DANIEL MOOKHEY: You asked Norton Rose, the law firm, to do an investigation, did you not?

Mr PLUMB: I did not.

The Hon. DANIEL MOOKHEY: Ms Morbin did.

Mr PLUMB: I do not recall asking but I know that Norton Rose did an investigation.

Mr PLUMB: I might add on this, Mr Mookhey, that this is an example of staff actually detecting issues—

The Hon. DANIEL MOOKHEY: It is.

Mr PLUMB: —raising them and it being properly investigated, including by an internal audit unit which has grown from one person to 14 people during the history of icare.

The Hon. DANIEL MOOKHEY: I do not dispute any of that. In fact, it is a good example of some policies being triggered. Norton Rose did provide a report, though, did it not? To audit and risk?

Mr PLUMB: Sorry, I do not recall if we received a written report or a verbal briefing summarising that report. I can certainly recall receiving updates through 2020 and following up on the progress of that investigation and the actions that had been taken in respect to it, including the fact that it had been reported to the police and efforts to recover the money.

The Hon. DANIEL MOOKHEY: But did that report identify that part of the reasons why these people were capable of fleecing this scheme was because they were not clear policies and procedures in place around contract procurement?

Mr PLUMB: It identified some weaknesses in internal controls around procurement of recruitment agencies et cetera, and those were brought to the attention, obviously, of management to come back and strengthen controls around those. I think the minutes would reflect the substance of that discussion.

The Hon. DANIEL MOOKHEY: To be fair, the minutes do reflect the substance of that discussion. But do you not agree that this is now five years in after multiple warnings about weaknesses in internal control that have taken place over the time? And is this not further proof as to why the Audit and Risk Committee and the board should have acted much earlier on internal controls?

Mr PLUMB: I think you are taking an assertion on that, Mr Mookhey. I think that the Audit and Risk Committee and the board have acted very strongly to actually enhance internal controls. In a large organisation, frauds or poor activity do occur. What is actually important is the ability to actually—that they do get detected, appropriately investigated and dealt to. I cannot give a zero confidence that we will never have suspect issues.

The Hon. DANIEL MOOKHEY: Yes, I am not asking for that, to be fair.

The Hon. TREVOR KHAN: Otherwise we could do away with the courts.

The Hon. DANIEL MOOKHEY: Or this Committee.

The Hon. TREVOR KHAN: Even better.

The Hon. DANIEL MOOKHEY: Has recovery action commenced against these former employees?

Mr PLUMB: My understanding is that we are taking efforts to recover the money.

The Hon. DANIEL MOOKHEY: Yes, but I am asking you: Has recovery action commenced?

The CHAIR: I believe he just answered that.

Mr PLUMB: Yes.

The Hon. DANIEL MOOKHEY: What steps are you taking to recover the money?

The Hon. TREVOR KHAN: If criminal proceedings are underway potentially, you will not be doing recovery action at this stage, Daniel.

The Hon. DANIEL MOOKHEY: That might be helpful, Mr Khan, but that might be the answer that Mr Plumb might wish to give.

Mr DAVID SHOEBRIDGE: You would almost always seize the money first.

Ms LISTON: I might be able to answer that.

The Hon. DANIEL MOOKHEY: Could you, Ms Liston?

Mr PLUMB: Yes, if that is alright. If I could hand over because we have pursued the questions to make sure that recovery action is being taken. I will hand over to management to talk to that.

The Hon. DANIEL MOOKHEY: That would be helpful. Thank you, Ms Liston.

Ms LISTON: Yes. Our internal legal team is in the process of taking criminal action in relation to the two individuals who were involved in this matter. I am not sure of the current status of that but we will be pursuing that matter to the full extent of the law. The police have been notified and we are in the process of undertaking that.

The Hon. DANIEL MOOKHEY: I appreciate that, Ms Liston.

The CHAIR: Mr Mookhey, for the benefit of members, I have circulated the minutes where the resolution for 2 December was drawn up. There is a resolution for three hours of questioning with 30 minutes reserved for the Government at the end.

The Hon. DANIEL MOOKHEY: Are you guys going to insist? I thought yesterday afternoon we agreed on 15.

The Hon. SCOTT FARLOW: It was not an agreement. It was our view as to what it was, carrying on from yesterday.

The Hon. DANIEL MOOKHEY: Okay. Are you fine to do that?

The Hon. SCOTT FARLOW: No. But Mr Khan has asked some questions so you can have time.

The Hon. TREVOR KHAN: I have typically interfered and put people off their stroke.

The Hon. DANIEL MOOKHEY: Thank you, that is appreciated. I will move on in the interests of time. Mr Plumb, can you turn to document 26?

Mr DAVID SHOEBRIDGE: I will never miss another deliberative. I see there was an apology!

The Hon. TREVOR KHAN: One of very few.

The Hon. DANIEL MOOKHEY: You see that this is the report that was, I think, refer to as project C?

Mr PLUMB: I cannot remember the project name but I do remember the report.

The Hon. DANIEL MOOKHEY: Fair enough. It is hard to keep up with project names. I accept that. This is to do with the conduct of _____ from October 2015 to March 2018, yes? Do you agree?

Mr PLUMB: Yes.

The Hon. DANIEL MOOKHEY: And this is to do with the letting of \$26 million worth of contracts to two companies called Shape Australia and Data 2 Electrical. You can see that? It is in paragraph (1) (a) and (b).

Mr PLUMB: It is to do with \$26 million worth of contracts. However, the vast bulk of those were actually dealt with, it is my understanding from the findings of the report et cetera, in accordance with procurement policy, New South Wales Government rules. It more specifically relates to the conduct on two suspect contracts, if I remember correctly, of approximately \$300,000 each, and also some other related matters.

The Hon. DANIEL MOOKHEY: Yes, and basically the gist of it—from paragraph 6 to paragraph 8—is that the suspicion was that there was tampering going on in terms of the contracts and perhaps retrospective justification of the letting of these contracts. That is the implication that I draw. Is that an unfair characterisation?

Mr PLUMB: Sorry. I will just have to read it again if that is alright, Mr Mookhey?

The Hon. DANIEL MOOKHEY: Sure.

Mr PLUMB: So six—

Mr DAVID SHOEBRIDGE: You will bring it to the sex and drugs at some point?

The Hon. DANIEL MOOKHEY: Yes, I am about to. Can I table this while the witness is reading it? There are a couple of copies. The witness will need it. Sorry, it was left out of the bundle.

Mr PLUMB: Yes, it is in relation to poor execution of contracts et cetera.

The Hon. DANIEL MOOKHEY: Yes. Paragraph 9 states:

It is apparent from the emails reviewed that ... both had friendly, social relationships with certain Shape and D2E employees that were characterised by informality, banter, in-jokes and innuendo. Some of these communications (which were all sent using employee email addresses) go beyond what can be regarded as appropriate in a professional context. By way of example, the emails include reference to sexual acts, consumption of alcohol and the possible use of drugs. The emails also suggest that some of this conduct may have taken place in a storeroom on icare's premises.

Was that investigated?

Mr PLUMB: It was investigated. If I could just give a bit of context to the history of this, as my recollection is. Once again, this was a matter that was actually picked up by icare staff, and it originally came in relation to looking at overtime and related issues around that. And then an investigation was undertaken in conjunction with Allens and internal audit. It was reported up, I think initially, to the Audit and Risk Committee somewhere in June or July 2018 and updates provided, and then the full board would have received the summary of this report around that. And, yes, I think as you mentioned, Mr Mookhey, there are references to that. These were investigated. My recollection is there was no conclusive proof but there was reference made to the police in relation to the issues where they may have been illegal substances consumed.

The Hon. DANIEL MOOKHEY: How was that investigated? Because there is no reference in the minutes of the board discussions of any investigation into the potential drug use on icare's premises, none whatsoever.

Mr PLUMB: I would have to take that on notice, Mr Mookhey.

Mr CRAIG: I can offer a comment here if that is helpful.

The Hon. DANIEL MOOKHEY: Quickly, if you do not mind, Mr Craig.

Mr CRAIG: The facilities area came into my accountability and I noticed some irregularities which, actually—and Mr Plumb has already spoken to—gave rise to this, and started asking a series of questions. The leader of the business very quickly left the organisation, and then, when we put in a new leader and fully understood what was going on, that is when we understood and got a much better sense of this. And at that time that person raised those issues with myself, I raised those with the CEO and they went straight to the police and ICAC.

The Hon. DANIEL MOOKHEY: That is helpful context, Mr Craig, but, just to be clear, the person who was allowed to leave, was that ?

Mr CRAIG: She had left the organisation.

The Hon. DANIEL MOOKHEY: Yes, Mr Plumb? You are nodding.

Mr PLUMB: Correct. She had already left the organisation, which is when the issue was discovered.

The Hon. DANIEL MOOKHEY: And then the reference to police took place after she left the organisation?

Mr CRAIG: That is correct.

The Hon. DANIEL MOOKHEY: Thank you.

The Hon. TREVOR KHAN: You cannot stop a person leaving.

The Hon. DANIEL MOOKHEY: I am not doing that.

The Hon. TREVOR KHAN: It is not a form of slavery.

Mr DAVID SHOEBRIDGE: In fact, sometimes you do not want to.

The Hon. DANIEL MOOKHEY: The last question on this line. I just tabled a document. It is another excerpt from the CEO—

The CHAIR: I do not believe he has actually received it yet. We have had issues with the photocopier. It is coming around now.

The Hon. DANIEL MOOKHEY: It is an excerpt from the major contracts report that the CEO provides to the board as of May 2018, so this is when Mr Nagle was the interim CEO. This is Mr Nagle's report as interim CEO. You can see that one of the contracts investigated by Linklaters is the contract that is referenced in the first row. That is the SHAPE Australia \$3 million contracts to build the wellbeing suite on Pitt Street. It says that was

approved by Mr Vivek Bhatia and . Was any investigation undertaken into Mr Vivek Bhatia's role in this given that it lists him as having approved this contract?

Mr PLUMB: Mr Mookhey, I do not recall an investigation done into Mr Bhatia's role in that.

The Hon. DANIEL MOOKHEY: There is no evidence in any of the minutes that any investigation was taken into Mr Bhatia's role in these contracts. Can I ask why, as a result of the Allens and Linklaters report, no investigation was undertaken into Mr Bhatia's role?

Mr PLUMB: Mr Mookhey, I would not have the reason. It is the first this has been brought to my attention in relation Mr Bhatia's potential role in this. It is something that we would have to take on notice and advise appropriately.

The Hon. DANIEL MOOKHEY: When a reference was made to police about the potential drug use on icare's premises—

Mr CRAIG: Can I please offer—

The Hon. DANIEL MOOKHEY: No, Mr Craig, you cannot. I am in the middle of the question. Let me at least finish the question.

The Hon. SCOTT FARLOW: Point of order: Can we find out from Mr Craig whether his offer referred to the previous question that was asked of Mr Plumb?

The Hon. DANIEL MOOKHEY: We are two questions away from that. He cannot just interrupt because he would like to add.

The CHAIR: I will allow Mr Mookhey to finish his question.

The Hon. DANIEL MOOKHEY: I am asking Mr Plumb, specifically now, why was no investigation undertaken into how that was possible, especially if a reference was made to the police? Surely, you would have had to have asked the former CEO some questions about this?

Mr PLUMB: I am sorry, Mr Mookhey. I did not do the investigation. The investigation was done by an external investigator and in conjunction with our legal and internal audit teams. We received a summary report of the findings of that. We did not go through every single process that went through that investigation. We were comfortable that an appropriate and diligent review had been performed.

The Hon. DANIEL MOOKHEY: Mr Plumb, this fraud investigation was about contracts totalling some \$26.4 million, is that right?

The Hon. TREVOR KHAN: That is not his evidence.

Mr PLUMB: That is not my evidence. It was related to a subset of the contracts.

The Hon. DANIEL MOOKHEY: Alright. It says that the eight contracts procured directly by icare are listed in the schedule. The total face value of those contracts for \$26.4 million, the face value of the individual contracts range from \$350,000 to \$8.3 million. That was the scope of the Linklaters investigation. Do you see that on page 1?

Mr PLUMB: Yes.

Mr DAVID SHOEBRIDGE: And then on in paragraph 8 on page 2, Linklaters states:

We note that no documentary evidence was identified in the course of the investigation in relation to any formal pre-execution processes having been undertaken in respect of the contracts. This includes, for example, any documented competitive tender processes, negotiation of terms, or review by icare's in-house legal team."

Mr Plumb, this is systemic failure, is it not?

The CHAIR: Mr Shoebridge, I ask you to reword your question.

Mr DAVID SHOEBRIDGE: I am not going to. It is a systemic failure. Mr Plumb is in a position to answer it. Mr Plumb, this was systemic failure, was it not? Do you agree or disagree that it was a systemic failure?

Mr PLUMB: Mr Shoebridge, I think that if we go to the key findings—sorry, I am reading quite quickly—it did isolate in paragraph 6 to a subset of those contracts that the investigation was done. My understanding of the findings was that the major contracts, the big ticket items, actually went through that appropriate diligence process.

Mr ROBERTSON: If you go to paragraph 11 it is really clear, "Beyond a social connection, investigation has not identified any potential motivations for matters referred to above. In particular, no evidence

was found that is in any way suggestive of obtaining a personal financial benefit in connection with the contracts with Shape." We can cherry pick—

Mr DAVID SHOEBRIDGE: Mr Robertson, did you also read the section where they said that the execution pages for these documents were photocopied—

Mr ROBERTSON: I did. I read the whole thing.

Mr DAVID SHOEBRIDGE: And the documents were, on the face of it, clearly manipulated.

Mr ROBERTSON: I did.

Mr DAVID SHOEBRIDGE: And you are fine with that? You think that is fine?

Mr ROBERTSON: No. That is not what I am saying, but if we want to quote from the report, let us not cherry pick; let us quote from its entirety.

Mr DAVID SHOEBRIDGE: My question was to Mr Plumb and I have not finished. Mr Plumb, you do not accept that this report shows systemic failure, is that right?

Mr PLUMB: I do not accept that it reflects a systemic failure across the entire organisation at this point in time. I do accept that this reflects poor practice in relation to these contracts. The record is clear that action was taken to review and to overhaul and upgrade processes, including around procurement and related matters.

Mr DAVID SHOEBRIDGE: I suppose, Mr Plumb, the reason this was not picked up at the time was because the way the delegations operated it was just one person signing off on this with no pre- or post-checks, and that is an environment that is right for corruption. That is the problem, is it not?

Mr PLUMB: If we look through the contracts here, the issue is that some of them were signed by more than one signatory et cetera. Those obviously went through that review process. It does show absolute weakness that one person could sign off on some of those contracts individually.

The Hon. DANIEL MOOKHEY: Moving on, can we turn to document No. 28? This is to do with the remediation of underpayment for injured workers. This is the release that was issued on the day of the *Four Corners* program, do you see that?

The CHAIR: Who are you addressing the question to?

The Hon. DANIEL MOOKHEY: Mr Plumb.

Mr PLUMB: Yes, I see this.

The Hon. DANIEL MOOKHEY: Was this discussed at the board, the issuing of this release?

Mr PLUMB: No, it was not, Mr Mookhey.

The Hon. DANIEL MOOKHEY: So it was a management decision.

Mr PLUMB: It was a management decision.

The Hon. DANIEL MOOKHEY: Mr Ferguson, you saw this before it went out, did you not?

Mr FERGUSON: I do not recall seeing it before it went out, Mr Mookhey.

The Hon. DANIEL MOOKHEY: You issued a subsequent public announcement on your website about an update on the pre-injury average weekly earnings [PIAWE] review and remediation program last week or thereabouts, did you not?

Mr FERGUSON: That is correct.

The Hon. DANIEL MOOKHEY: In which you said that the process by which injured workers are capable of getting remediation is if they contact icare, that is correct?

Mr FERGUSON: That is one way of achieving remediation, yes.

Dr ALLSOP: If the Committee would like more detail I am happy to talk to it.

Mr DAVID SHOEBRIDGE: I will address this question to Mr Allsop. The most recent statement from icare is that instead of going through themselves, and icare investigating all claims for underpayments, icare is inviting injured workers who received weekly payment compensation between October 2012 and October 2019 to come forward if they believe that they have been underpaid. Is that the current status, Mr Allsop? You are relying on injured workers to come forward?

Dr ALLSOP: Thank you for the question. It is really important for the Committee's understanding that we spend a couple of minutes—and I will be brief because I appreciate that time is of the essence—but going back through the reason this preinjury average weekly earnings issue has arisen, I need to recall for the Committee that this was a result of a change in legislation in 2012. This was prior to the inception of icare. In fact, it was back when WorkCover was running the scheme. It involved changes to the way preinjury earnings were used and the determination of compensation payments to injured workers.

The intent of the change was honourable and good and it was designed to make sure that injured workers were more fairly compensated for their lost income during the period of claim. The challenge is that it relies on employers and injured workers providing 52 weeks of individual earnings information prior to the period of injury, including details around periods of leave, entitlements, any awards, changes in pay and all those sorts of things. It was widely accepted at the time that those information requirements were onerous and going to be challenging for employers.

I believe this Committee deliberated on the challenges and the potential consequences of those challenges and actually passed a recommendation in an earlier set of hearings that this be looked at. To the credit of all involved, it was looked at and there were changes made in 2019 to try and address that. Unfortunately they have not addressed the information requirements behind this. So what we are doing as part of the remediation program is we are actively giving injured workers the opportunity to submit additional information to help support the determination of pre-injury average weekly earnings and consequential weekly benefit entitlements.

That is not the only approach we are taking and we are proactively reviewing cases where we believe injured workers may have been potentially most impacted whether through the severity of their injury or the duration of time that they spent in receipt of weekly compensation. We are also providing opportunities for those injured workers to submit additional information to support that redetermination process. But critical to this whole piece, is that we do it in as expedient a manner as possible. Remember we are talking about potential cases here where injured workers may have had their claim and return to work up to seven or eight years ago.

Injured workers have, throughout the duration of their claim, and afterwards had the opportunity to dispute any entitlements that they felt may have been inappropriate. So we are making sure that we reach as many injured workers as possible accepting that a lot of the information we hold predates the formation of icare and was captured during the WorkCover days and may not be accurate in terms of address information, contact details, email addresses et cetera. The intent of reaching out and advising injured workers of their right to review is that we capture as many people as possible in this process while also proactively addressing concerns for those potentially most impacted.

Mr DAVID SHOEBRIDGE: How many injured workers have been proactively contacted by icare and had their underpayments addressed?

Dr ALLSOP: We are in the process of remediating somewhere between 4,500 and 6,000 injured workers that we believe are the most impacted. We have undertaken around 1,900 reviews so far of PIAWE determinations. I should clarify for the Committee that the PIAWE determination, while complex, is not the only piece of work we need to do with this program. Once we assess whether or not there is information available in order to determine PIAWE we have to assess whether or not any inaccuracies in that PIAWE determination have led to inaccuracies in the entitlements paid to injured workers—either underpayments or overpayments. That involves going through every week of entitlements paid to those injured workers from the point of their claim to the point they return to work all the present day if they are still in receipt of benefits.

Mr DAVID SHOEBRIDGE: For the record I voted against these changes—

Dr ALLSOP: Awesome.

Mr DAVID SHOEBRIDGE: —but we will come back to that at a later hearing. The initial estimate was that there were some 52,000 workers, who likely had been underpaid in 2019. Since then only 1,900 cases have been reviewed by icare. How do you explain that extraordinary discrepancy?

Dr ALLSOP: This remuneration program is in full flight and we are going through the top 4,500 to 6,000 injured workers. We are proactively reviewing those while also inviting other injured workers to reach out and seek a review. The 52,000 figure you referred to was a very early estimate set back in 2019 before we began a fall remediation program. It is probably not the most accurate estimate of the number of people who could potentially be remediated through this program.

Mr DAVID SHOEBRIDGE: Well, what is the most accurate assessment of the number of injured workers who have an entitlement to receive additional monies because of underpayments?

Dr ALLSOP: We estimate that less than 5 per cent of those potentially impacted will have a quantifiable underpayment that can be remediated.

Mr DAVID SHOEBRIDGE: What is the number, Mr Allsop?

Dr ALLSOP: So 5 per cent or less than 5 per cent of 240,000, so about—

Mr DAVID SHOEBRIDGE: So 25,000.

Dr ALLSOP: —maybe 12,000.

Mr DAVID SHOEBRIDGE: So my final question on this is there is in the order of 20,000 to 25,000—

Dr ALLSOP: Let us say 12,000.

Mr DAVID SHOEBRIDGE: So 12,000. You have done 900 reviews since 2019.

Dr ALLSOP: Sorry, we have done 1,900.

Mr DAVID SHOEBRIDGE: So 1,900 reviewed since 2019. At full flight this is going to take six years to complete.

Dr ALLSOP: No, because you are misrepresenting the timeframe there. The full review program kicked off in earnest in July and August of this year so we are currently reviewing the PIAWE determinations of about 200 injured workers each week. That is ramping up as we gain additional resources and the scheme agents and additional quality assurance resources within our own team. Another point I would like to add to this is what is most critical in this program is that we manage the wellbeing of injured workers. We are deeply concerned that potentially reaching out to injured workers may create anxiety for them so we are doing this in the most empathetic way possible to ensure we do not cause further harm to people who may have returned to work and not wish to contemplate their experience with injury again.

The Hon. DANIEL MOOKHEY: Just on that, has icare abandoned its presumption that applied to 60 per cent of cases that if you had insufficient information to make a calculation that therefore the calculation was correct?

Dr ALLSOP: I appreciate the question and if that characterisation has been made in the past, no, we do not hold that to be true. As I was saying earlier, the challenge with PIAWE is the onus information requirements on employers and injured workers. It is very difficult for employers to provide the required level of information within the seven day timeframe necessary to start entitlements. As a result there is often insufficient information on the file to determine whether or not the initial PIAWE was correct which is why, as part of this program, we are giving every injured worker the opportunity to provide that additional information in support of a redetermination—

The Hon. DANIEL MOOKHEY: I appreciate the context, Mr Allsop—

Dr ALLSOP: —if we do not get that additional information.

The Hon. TREVOR KHAN: Do not feel rushed. If Mr Allsop wants to answer, I think it is a very valid statement.

The Hon. DANIEL MOOKHEY: I appreciate that.

Dr ALLSOP: If we do not receive additional information and there is insufficient information on the file as a result of an inability of the employer or injured worker to provide it at the original point of claim then there is very little we can do to assess whether or not the original PIAWE determination, and consequently whether or not the weekly entitlements were accurate.

The Hon. DANIEL MOOKHEY: Has SIRA approved your remediation plan?

Dr ALLSOP: We are in active discussions with SIRA through the entire remediation program. We have a fortnightly steerco with them where we discuss the program—

The Hon. DANIEL MOOKHEY: My question was have they approved the remediation plan that you are currently operating?

Dr ALLSOP: It is not their position to approve or otherwise. We are telling them actively about what we are intending to do and how it is progressing and they are supportive of the approach. But it is not their role to approve the remediation program.

The Hon. DANIEL MOOKHEY: I appreciate that. Where are we up to in terms of identifying the scope of underpayment in the Treasury Managed Fund?

Dr ALLSOP: We have done some initial work to look at the extent of any PIAWE issues there. The Treasury Managed Fund operates very differently to the Nominal Insurer, particularly for the larger government agencies. For the larger agencies, they undertake the PIAWE determination themselves. They assess from that what the entitlements to be paid to injured workers are. They then send basically a remittance advice to the claims manager seeking reimbursement of the cost for that.

The Hon. DANIEL MOOKHEY: I just want to be clear, Mr Allsop. I agree with you 100 per cent and with respect to the Treasury Managed Fund [TMF] I am not directing any issues of fault to do with icare because you 100 per cent rely on what other agencies are telling you. I am asking more for an explanation and clarification as to where we are in the process.

Dr ALLSOP: Okay.

The Hon. DANIEL MOOKHEY: In fairness and just so you have some context, we put these questions to the Treasury Secretary, given the Treasury Secretary and the Treasurer are directly responsible for the management of the TMF, and actually the responsibility to remediate is theirs not yours. Now that we are clear about that, the view that the Treasury Secretary put to us was that they were still in the process of finding out from the agencies as to where the calculations were up to and they were struggling to get the information from the agencies that you could then use to run a remediation process. Of course, that is highly distressing given the TMF covers police, nurses and firefighters amongst many others. My question is more: Have the agencies provided you with the information you need to perform the calculations to determine whether or not there is underpayment?

Dr ALLSOP: Let me just, for the clarification of the Committee, stress that all sworn emergency services personnel were excluded from the 2012 reforms.

The Hon. DANIEL MOOKHEY: We are aware of the context.

Dr ALLSOP: Yes, okay. We have undertaken a review of 50 cases from large government agencies. We have sought information directly from those agencies and been provided with it, so we are able to assess whether or not PIAWE determinations and weekly entitlements were performed correctly. We are also actively in discussion with Treasury and SIRA, so we have a regular steering committee meeting with the three groups involved to determine what the best approaches in terms of a PIAWE remediation program.

The Hon. DANIEL MOOKHEY: That is not substantially different from what Treasury told us in September and what then icare management told us in July. When do you expect that you will be in a position to provide public—and specifically to the workers—guidance as to the scope, level and quantum of underpayment from the TMF and when they can expect remediation given that there is now clear discrepancy between remediation of the Nominal Insurer underpayments and the TMF underpayments.

Dr ALLSOP: We are having those discussions actively at the moment. We have a meeting with Treasury and SIRA coming up in the next couple of weeks where, having gathered the information from those sample reviews, we will determine an approach—

The Hon. DANIEL MOOKHEY: Are you working to a deadline?

Dr ALLSOP: Sorry?

The Hon. DANIEL MOOKHEY: Is there a deadline that you have imposed in that process so that the people who were injured whilst covered with TMF can have some knowledge as to when they can expect to know whether they were underpaid or not?

Dr ALLSOP: As I said, we are working with Treasury around that.

The Hon. DANIEL MOOKHEY: Is at their decision or yours?

Dr ALLSOP: It is their program, as you mentioned earlier. The responsibility sits there.

The Hon. TREVOR KHAN: Mr Mookhey and Mr Shoebridge, you are clear keep on the PIAWE issue, particularly with Mr Allsop.

The Hon. DANIEL MOOKHEY: That is useful.

The Hon. TREVOR KHAN: This is an important issue that has been in ventilated and we are more than happy for it to be pursued.

Mr DAVID SHOEBRIDGE: Mr Allsop, the correspondence from icare's then CEO in March estimated that the—

Mr ROBERTSON: Sorry, where are you referring?

Mr DAVID SHOEBRIDGE: This is document No. 29. Paragraph (h) on page 2 states:

Should underpayment hypothesis prevail in line with a sample test, the hypothesis has an estimated range of \$20m to \$40 m, with a very conservative high-end estimate of \$80 million. For simplicity we have taken a reasonable estimate of potential \$40m.

Is that still the scale of the underpayment?

Dr ALLSOP: No. As I mentioned earlier, this communication was based on very early analysis. It has since been superseded by the remediation program kicking off and a greater understanding of the potential for impacted workers to be remediated. The current estimate is much lower than that.

Mr DAVID SHOEBRIDGE: What is it?

Dr ALLSOP: We have booked a contingent liability into our 30 June 2020 accounts of approximately \$14 million in terms of remediation payments to injured workers in the Nominal Insurer. I should stress that has a high degree of uncertainty about it. It is very much dependent upon the number of people who reach out through our approaches and request reviews.

Mr DAVID SHOEBRIDGE: We have come back to where I started. The primary basis on which workers are going to be remunerated is not the work of icare going through the documents, but it is injured workers themselves going forward and self-nominating.

Dr ALLSOP: It is a combination.

Mr DAVID SHOEBRIDGE: On your current estimates, what proportion of the claims come from injured workers self-nominating as opposed to icare?

Dr ALLSOP: You are asking me to hypothesise on the response of a community and I cannot do that. What I can tell you is we are proactively looking at those who have the potential to be most impacted.

Mr DAVID SHOEBRIDGE: Mr Allsop—

The Hon. TREVOR KHAN: Let him finish.

Mr DAVID SHOEBRIDGE: I thought he had finished. Had you finished, Mr Allsop?

Dr ALLSOP: I have, thank you.

Mr DAVID SHOEBRIDGE: Can you not see that there might be a very real criticism of icare if one of the primary avenues for recourse is relying upon injured workers themselves to undertake this complex analysis to identify underpayment rather than icare doing the job?

The CHAIR: Mr Shoebridge, I do not believe that is the position that was put forward. I will allow Mr Allsop to elucidate on that.

Dr ALLSOP: In no way, shape or form are we asking injured workers to determine their own PIAWE or assess whether or not they were underpaid entitlements. We are seeking to advise them of their right, which they have always had, to seek to have their entitlements reviewed. In particular, through this program, to have this particular aspect of their entitlements reviewed.

Mr DAVID SHOEBRIDGE: Mr Allsop, unless they undertake their own assessment of PIAWE, how could they, and I quote, "believe they may have been underpaid their weekly entitlements?"

Dr ALLSOP: The whole purpose of this program is they do not have to believe they have been underpaid. If they want to ask the question, they can reach out and ask the question.

The Hon. DANIEL MOOKHEY: Why do not you just write a letter to all the injured workers who were covered by the Nominal Insurer and say, "You have this right. If you wish to do so, here is the number to call and here is the website to go to."

Mr ROBERTSON: If I can answer, because this is something that was discussed at the board that I spoke very passionately about based on my 25-plus years' experience of people who felt like they have been badly done by through the system. While it was suggested by management, I spoke very passionately because I was concerned about a letter arriving in the mail for somebody who might well have moved on from a terrible experience with workers compensation. You and others around this table would have seen this. I was conscious of not opening up a wound that may well have healed. It was suggested that this is what happened with CTP and my response was, "Well, CTP is very different for a refund on your registration to revisiting an experience in your life that could have been quite traumatic that you may well have moved on from. On balance, it was my view and the view then of the rest of the board that we ought to try these two options at this stage. Depending on what the

response rates are like, that might be something we initiate, but in doing so we are also being very conscious of the fact that there could be some ramifications the people's mental health as a result of revisiting this experience.

The Hon. DANIEL MOOKHEY: Mr Robertson, let me unpack that. You are saying management provided the board a recommendation that it is an option that could be pursued.

Mr ROBERTSON: Yes.

Dr ALLSOP: Can I provide some clarity?

The CHAIR: Mr Allsop, you will have the opportunity to provide clarity.

The Hon. DANIEL MOOKHEY: This was discussed in recent months at a recent board meeting?

Mr ROBERTSON: Yes.

The Hon. DANIEL MOOKHEY: You took a view not to pursue that action?

Mr ROBERTSON: I argued a case in which I argued against that option because I was conscious of the potential risks of somebody getting a letter like that out of the blue who may well have moved on with their life. It was not ruled out for ever, but it was my opinion that was subsequently supported that that was the most appropriate course of action at this time.

The Hon. DANIEL MOOKHEY: I appreciate the candour as a chair of disclosing the position you took on the board, which, to be fair, your predecessor did not do much of, but it still reaches this conclusion. Did you act on medical advice as to the reality of the risk?

Mr ROBERTSON: There was no medical advice.

The Hon. DANIEL MOOKHEY: So, in the absence of medical advice, the board decided that it might be too onerous—

Mr ROBERTSON: To be honest, Mr Mookhey, the short answer is yes. To be frank, if we sought medical advice on all these things we would be forever contemplating different decisions.

The Hon. DANIEL MOOKHEY: Mr Robertson, you have a chief medical officer.

Mr ROBERTSON: It has not been categorically ruled out. There was a view that these are the two options available at this point. It would be reviewed if the responses were not there. We may well have to initiate that and then take appropriate steps to provide services for people if there is a reaction or some impact in the negative because of this thing turning up out of the blue.

The Hon. DANIEL MOOKHEY: I appreciate that you may be pursuing this option later.

Mr ROBERTSON: It is made in good faith, not to avoid contacting people. Just to be really clear, nobody is trying to run away from contacting people on this, but it is being sensitive to the potential—we have seen this. We have all seen this.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Robertson.

The Hon. SCOTT FARLOW: The Government will elect to commence questioning.

The Hon. DANIEL MOOKHEY: Can I have one last question on this line of questioning before that?

The Hon. SCOTT FARLOW: One more question.

The Hon. DANIEL MOOKHEY: You say that this is a decision the board may revisit in the future. I presume that will be after you see the results of this program. When do you anticipate making that decision?

Mr ROBERTSON: One of the things that the Treasurer charged me with when it was announced that I was chair was PIAWE. It is obviously one of the eight things that were identified and we are receiving regular reports on this because it is one of the priorities for me. Regardless of the Treasurer's request, it is certainly one of the things that motivated me when this position was available to take it up because there are issues that need to be addressed. PIAWE is one of them, return to work is obviously the most significant of the others. Today has been a great history lesson on things that have happened in the past but I am focused on going forward and making sure that we are addressing things that are alive now and prioritising those things to make sure the scheme is doing the things that it ought to be doing, which is making sure people are paid appropriately, getting people back to work as quickly as they can in an appropriate fashion and giving them the support they need.

The CHAIR: I am going to allow Government members to ask questions in the final 10 minutes.

The Hon. SCOTT FARLOW: Dr Allsop, I think you wanted to make some comments earlier and if you wanted to just add that context.

Dr ALLSOP: While we are in the pilot stages of the media approach to injured workers, we intend to review that in the New Year to go out with either a broader media approach or, as the Chair has said, potentially write letters to injured workers. We are very aware of the potential impact on individuals wellness and wellbeing. Even through the approach we have at the moment, we have one person who has gone on to the self-harm risk list as a result of this program. So we are very cognisant of not wanting to endanger people's wellbeing through this approach but we will actively look at who we can contact, how we can contact them and make sure that we are giving every injured worker ample opportunity to be part of the program should they wish to—again remembering that this is back to WorkCover days and some of the address information, contact details for claims that closed up to seven years ago may not be of a level sufficient to be able to make contact directly.

The Hon. SCOTT FARLOW: In terms of the remediation process, you outlined a figure of 200 files being reviewed per week at the moment and said that was being ramped up. On that sort of estimation, I would imagine that the process would be completed by the end of next year. Is that your projection at the moment?

Dr ALLSOP: We anticipate doing all of those proactive reviews of between 4,500 and 6,000 by June next year and we will also be picking up anybody who comes through and request a review. We will address them over the course of that calendar year as well. We anticipate that the program for the Nominal Insurer should be as complete as it can be by the end of next year accepting that people can come back and request a review at any stage.

The Hon. SCOTT FARLOW: Mr Plumb, just turning back to the documents that were tendered by the Hon. Daniel Mookhey. I think it was from items 10 to 24 that were discussed in terms of that delegation. You outlined that there was a \$10 million figure in terms of any tender—

Mr PLUMB: That is correct. The contracts are to come to the board if they are above \$10 million. That is my understanding.

The Hon. SCOTT FARLOW: And that was individual contracts?

Mr PLUMB: Correct, yes. And also related expenditure for one commitment—\$10 million.

Mr DAVID SHOEBRIDGE: If there is an aggregation—

The Hon. SCOTT FARLOW: In terms of those tendered documents, from your view from 10 to 23 that has been tendered there, does anything breach that rule with respect to delegations being exercised by an individual below that \$10 million threshold?

Mr PLUMB: I would have to take that on notice.

The Hon. SCOTT FARLOW: Of course.

Mr PLUMB: We will have a review done of that and just make sure that they did not breach those delegation rules, which I think is the appropriate outcome.

The Hon. TREVOR KHAN: I do not have anything further.

Mr FERGUSON: I just note there were a couple of things that we took on notice that we can clarify very quickly if it was to the convenience of the Committee?

Mr DAVID SHOEBRIDGE: That would be helpful.

Mr FERGUSON: In relation to rumours mentioned previously around the attribution of costs of the staircase to Capgemini, I can definitively say that Capgemini did not pay for the staircase at icare. There was another one that Ms Bansal was going to provide clarification of for Mr Mookhey.

Ms BANSAL: So the projected net result at 30 June 2021 is a positive \$401 million.

The Hon. DANIEL MOOKHEY: On what?

Ms BANSAL: For the NI for 30 June 2021.

The Hon. DANIEL MOOKHEY: Thank you.

The CHAIR: I thank everyone for attending the hearing today. The Committee has resolved that answers to questions on notice will be returned within 21 days. I note that we have received some now but there were some others as well. The Secretariat will contact you in relation to the questions you have taken on notice and we thank you for your appearance today. That concludes the hearing.

(The witnesses withdrew.)

The Committee adjourned at 12:55.