REPORT ON PROCEEDINGS BEFORE

# STANDING COMMITTEE ON LAW AND JUSTICE

## 2020 REVIEW OF THE WORKERS COMPENSATION SCHEME

## UNCORRECTED

**At Jubilee Room, Parliament House, Sydney on Wednesday 15 December 2021**

**The Committee met at 9:15.**

**PRESENT**

The Hon. Wes Fang (Chair)

The Hon. Anthony D'Adam
The Hon. Natasha Maclaren-Jones
The Hon. Daniel Mookhey
The Hon. Rod Roberts
Mr David Shoebridge

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Taylor Martin

* Please note:
[inaudible] is used when audio words cannot be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

**The CHAIR:** Welcome to the follow-up hearing for the 2020 Review of the Workers Compensation Scheme. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of the land on which the Parliament sits. I also pay respects to Elders past, present and emerging of the Eora nation, and extend that respect to other Aboriginal people viewing this broadcast today. As a result of recommendation 7 of the 2020 Review of the Workers Compensation Scheme report, today we will be hearing from representatives from Insurance and Care NSW, or icare, and the State Insurance Regulatory Authority [SIRA].

Before we commence I will make some brief comments about procedures. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcast guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence to the Committee, it does not apply to what witnesses say outside the 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 are required to be provided within 21 days. If a witness wishes to hand up documents, they should do so through the Committee staff. Finally, I make a few notes on hearing etiquette to minimise disruptions and assist our Hansard reporters. To aid the audibility of this hearing I remind both Committee members and witnesses to speak into the microphones and avoid making comments when your head is turned away. Members and witnesses should also avoid speaking over each other so we can all be heard clearly. Finally, everyone should please turn their mobile phones to silent for the duration of the hearing.

**RICHARD HARDING**, Chief Executive and Managing Director, icare, affirmed and examined

**MARY MAINI**, Group Executive, Workers Compensation, icare, sworn and examined

**RASHI BANSAL**, Group Executive, Insurance for NSW and Home Building Compensation Fund, on former oath

**The CHAIR:** I welcome representatives from icare to this morning's session. We will now allow opening statements. Mr Harding, I believe you have an opening statement.

**Mr HARDING:** Yes, thank you, Chair. Thank you to everyone on the Committee for the opportunity to attend this hearing. Let me start by saying very clearly that the Nominal Insurer workers compensation scheme is in transition. Notwithstanding the significant long-term remediation program we have underway, this year we have continued to run into headwinds that have increased the challenges we face, including of course, COVID-19. I am optimistic, however. I say with confidence that the scheme of today will not be the scheme of tomorrow, but it will take some time. We are only just starting to see the beginnings of cultural change following the organisational restructure we put in place almost six months ago.

A new leadership team, a new vision, a new purpose and a new set of values are important foundations for the culture, but embedding these in the day-to-day interactions and behaviours of all our 1,500 employees will require sustained effort. The new policies we have introduced for risk, governance, gifts and benefits, conflicts of interest, and outsourcing are fundamental to the new way icare operates, and are being rolled out. Our efforts to improve return to work with New South Wales employers and to give injured workers the support they need to live their lives has been persistent; it is our single core focus as an organisation. But the efforts we put in today will not be realised for a longer period, and that is without considering the impacts of COVID, the changing nature of work and the sleeping pandemic of psychological injury across the community, which continues to grow.

I am pleased to say that three out of the four recommendations assigned to icare earlier this year by this Committee's report are now complete. We have provided a personal apology to Mr McCann, we have written to all 280,000 injured workers impacted by the historic pre-injury average weekly earnings [PIAWE] miscalculations, we have commenced proactive payments totalling $38 million for over 53,000 workers, and we provided an update to this Committee on 30 November on the remediation progress. With respect to the final recommendation regarding medical expenses, we continue to work with the State Insurance Regulatory Authority closely. At this point it is important for me to outline our progress on our remediation and improvement program, which was established to directly address the recommendations of the numerous reports over the last two years.

We have two major streams of work covering both the enterprise and the Nominal Insurer, which are well underway. I am pleased to say we also now have an independent assurance partner, Promontory, on board to audit our progress quarterly. Consistent with our new open and accountable culture, we will be publishing these results on our public website. One of the core components of the program is improving our claims model. We are putting great effort into engaging with the community and our providers. Since October we have released a public Have Your Say survey, which has received more than 160 responses. We have run focus groups; held stakeholder briefings, including with the Nominal Insurer Advisory Committee, where both employers and unions are represented; and held more than 35 one-on-one interviews with employers, workers and other parties. We have also done market analysis. All of those are key inputs for what will be a thorough and robust request for proposal [RFP] early in the new year.

We have listened to the feedback and we will remove the single provider dependency and move to a multi-claims service provider model. This time we will be adopting a more measured "test and learn" approach to ensure changes are well thought-out and well executed. A key area of focus has been—and remains—improving return-to-work outcomes. We need to get injured workers back to work as soon as possible, and work with New South Wales employers to ensure their return is safe and durable. There are complexities involved, which are heightened by circumstances such as the COVID-19 pandemic. Small businesses are particularly feeling the impact of COVID and this has unsurprisingly seen poorer return-to-work outcomes for those almost 300,000 workplaces. The emerging prevalence of psychological injuries is cause for concern. An increase of 2.4 times from 2015 is alarming.

With more people working from home and safe work practices not yet routine in residential workspaces, we are seeing different types of injuries emerging and greater difficulty for employers in getting people back to work. Key to this, as highlighted in both the Dore and McDougall reports, is the development of capability in claims and case management. So far we have done an enormous amount of work on this, which I am sure we will talk about later today. Key to that has been reducing caseloads for claims officers and managers from 60 to 48, and increasing size of teams and tenure of staff. We have also developed and are rolling out an enhanced training resource through a new professional standards framework. Other initiatives include piloting a first response service for small to medium employers to support early return-to-work planning, including referrals to workplace rehabilitation services and a focus on increased utilisation of vocational programs.

While the McDougall review made clear that the Nominal Insurer and Treasury Managed Fund workers compensation schemes are in a financially sustainable position, we remain committed to continue to improve their financial performance. The insurance funding ratio for the Nominal Insurer as at 31 October is 116 per cent, with an accounting funding ratio of 97 per cent. The insurance ratio is the measure recommended by Mr McDougall as it provides for a longer term perspective of financial sustainability.

I will finish by thanking the Committee for their ongoing interest and commitment to the New South Wales workers compensation system and Nominal Insurer. The transition we are undertaking is complex and will take time. We will not close out recommendations just when we have written a policy. It is only when it is embedded in the actions and behaviours of our employees and is sustained over time that we will view it as being done. It will need a concerted effort, not just by icare but also the unions, employers, regulators and our wider ecosystem.

I note the recent report by our independent remediation program assurance partner, Promontory—which has worked with other clients and major banks with similar challenges arising from the Hayne royal commission and the Australian Prudential Regulation Authority culture and accountability reviews several years ago—observed that programs such as this are "a marathon, not a sprint". I can assure the Committee that we will remain focused on the reasons we are here, which are to care for the people of New South Wales, build confidence and trust, and to help our communities thrive. Thank you.

**The CHAIR:** Thank you very much for making yourself available today and for making a copy of your opening statement available. I know that Hansard will appreciate it.

**Mr HARDING:** No problem at all.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Harding, for joining us this morning. It is good to see you, as well as Ms Bansal and Ms Maini. Ms Maini, I congratulate you on your appointment.

**Ms MAINI:** Thank you.

**The Hon. DANIEL MOOKHEY:** I also thank you on the record for the submission that icare has made to this update inquiry, as well as the assistance that icare has provided in responding to calls for papers from the House. I know that is an onerous thing. Mr Harding, I might start where you left off: on the question of employee numbers, remuneration and the like. What is the current headcount of staff directly employed by icare?

**Mr HARDING:** I do not have that number exactly off the top of my head. It is about 1,500, as I said in my opening remarks.

**The Hon. DANIEL MOOKHEY:** I think your annual report said it is 1,432 as of 30 June 2021. Has it gone up since then?

**Mr HARDING:** That was at 30 June, Mr Mookhey. There are plenty of changes happening across icare.

**The Hon. DANIEL MOOKHEY:** Is it higher than that?

**Mr HARDING:** As I said to you a minute ago, I do not have the exact number with me today. I can find that for you. But I do not believe it is higher than the 1,500 that I have just provided to you as a round number.

**The Hon. DANIEL MOOKHEY:** Okay, thank you. Your last annual report stated that your headcount was 1,172.

**Mr HARDING:** Yes.

**The Hon. DANIEL MOOKHEY:** In the course of a year it has gone up by 300-odd people.

**Mr HARDING:** Yes.

**The Hon. DANIEL MOOKHEY:** What are these 300 additional people doing?

**Mr HARDING:** As you are well aware, Mr Mookhey, icare operates a large group of schemes other than the Nominal Insurer. We also have previously had a significant usage of contingent workforce. The changes that you are talking about reflect us bringing contingent workforce on to being full-time employees, as well as such things as implementing the new compulsory third party [CTP] care scheme; implementing changes and growth in the construction risks fund that supports the Government's infrastructure spend; insourcing Home Building Compensation Fund [HBCF] underwriting and customer-facing processes; and improvements and increases in our risk and governance capability to help us support the implementation of the recommendations of Mr McDougall. There are a number of changes across icare that go towards the increases in headcount that you have talked about.

**The Hon. DANIEL MOOKHEY:** We will perhaps unpack some of that later on, in terms of your use of contingent workers, but I appreciate that. What is the additional cost of the additional 300-odd staff?

**Mr HARDING:** The cost base has remained the same because a large amount of that has been the bringing on board of contingent workers—as we have said, moving them from a higher cost contingent workforce into a lower cost contingent workforce. We have obviously also changed the structure of the workforce considerably through the restructures that we have gone about. Again, without giving you a specific number off the top of my head, it is roughly the same—flat.

**The Hon. DANIEL MOOKHEY:** Your annual report that was tabled in Parliament last week or the week before states that in 2020 your employee-related costs for icare—not the Nominal Insurer, but icare—were $161 million, while the same number reported in 2021 is $203 million. When you say roughly the same cost, you mean that there is a $40 million difference?

**Mr HARDING:** No. I am happy to pass to Ms Bansal to answer the question in more detail, but the answer to that is a change to the accounting practices that was recommended by the Auditor-General. Maybe I will ask Ms Bansal to provide a bit more detail.

**Ms BANSAL:** Sure. As you would recall, Mr Mookhey, we had an Audit Office finding around cost allocations to review the methodology and documentation. As part of that, we have consolidated all our expenses through the icare service entity. Expenses that would have gone directly into the schemes are now going through the service entity to create efficiencies and then they are allocated back into the scheme. There is no net increase in employment costs. That $40 million that you referred to is because those costs are now directly through the icare service entity instead of through the schemes. Overall our employment costs have stayed flat year on year.

**The Hon. DANIEL MOOKHEY:** Okay. Ms Bansal, I think you are referring to the finding that the Auditor-General made in the central report, in which she stated that for multiple years icare was attributing labour costs to the Nominal Insurer that it should not have been incurring. Is that what we are talking about, that particular finding?

**Ms BANSAL:** The finding related to us actually getting legal advice around our cost allocation practices, and further reviewing our documentation and strengthening that from a cost allocation piece. We have received advice—

**The Hon. DANIEL MOOKHEY:** Yes, and it specifically—

**The CHAIR:** Order! Mr Mookhey, can Ms Bansal please finish her answer?

**Ms BANSAL:** Icare has received legal advice from the Crown Solicitor's Office confirming that we are able to do cost allocations through the icare service entity into the schemes and that our methodology remains appropriate because it is based on costs incurred on behalf of the scheme. We have further strengthened our documentation and reviewed our methodology across the allocation of schemes. The latest report from the Audit Office for the 30 June 2021 accounts has actually confirmed that and closed that audit item off.

**The Hon. DANIEL MOOKHEY:** Indeed, but I am looking at that reform. I am looking at the workers compensation report. It states that for the workers scheme in 2020 you—I do not mean you; I mean icare collectively—allocated $30 million of labour costs to the Nominal Insurer. That has now dropped to $7.2 million, which reflects what you are talking about on labour costs. But, Mr Harding, it does not reflect or account for the full $43 million of additional employee-related expenses.

**Mr HARDING:** But, Mr Mookhey—

**The Hon. DANIEL MOOKHEY:** Just let me finish.

**Mr HARDING:** —there are lots of other parts of icare—

**The Hon. DANIEL MOOKHEY:** Mr Harding, let me finish.

**Mr HARDING:** —other than the Nominal Insurer, as we just talked about.

**The CHAIR:** Order! Mr Harding, in the same way that I asked Mr Mookhey to allow Ms Bansal to complete her answer, I will allow Mr Mookhey to complete his full question before I ask for a response.

**The Hon. DANIEL MOOKHEY:** Thank you, Chair.

**The CHAIR:** I might just add, Mr Harding, that once he has completed that question, if you feel that there are some inconsistencies then you may highlight those at that point.

**Mr HARDING:** Thank you.

**The Hon. DANIEL MOOKHEY:** Which surely, Chair, all witnesses would do. Mr Harding, you said to us that it was basically the same. The factors that you describe perhaps cover half of what we are talking about here. I am just asking you the additional cost to icare of increasing your headcount from 1,172 to 1,400 plus or 1,500 plus. If you are honestly telling me that it costs exactly the same, could you please explain how you have reached that result?

**Mr HARDING:** I have explained in my previous answer, Mr Mookhey, that the changes that you are reflecting occur across icare in total. As Ms Bansal has just outlined, the employment cost across icare has remained flat. There will be changes that go up and down within each business as each business changes its business model and its approach to delivering outcomes. As I said, we have a significant program of reducing our dependency on contingent workers, which is actually a good thing, and that will be part of it.

**The Hon. DANIEL MOOKHEY:** Sure.

**Mr HARDING:** But in overall terms, the numbers that you quoted before remain consistent across icare.

**The Hon. DANIEL MOOKHEY:** Mr Harding, I have one last question before I pass to my colleague. You say you are spending less on contingent workers—which, to be fair, I would welcome any move away, especially given some of the arrangements that have come to light in this inquiry. But the problem is that your financial report, again, states that in 2020 you spent $26 million on contractors and in 2021 you are at $67 million. It has more than doubled. The problem I have—

**The CHAIR:** Mr Mookhey, when you speak away from the microphone it does not aid members on Webex or those people watching the broadcast.

**The Hon. DANIEL MOOKHEY:** Yes, and you are quite right, Chair. But, Mr Harding, you have said that employee costs look like they have gone up by $40 million and I appreciate your explanation. You said that you have reduced contingent labour but your financial report says icare spending on contractors has more than doubled. Please can you explain to me how we square these respective circles?

**Mr HARDING:** If you can provide me the specific line that you are talking to, I will—

**The CHAIR:** Order!

**The Hon. DANIEL MOOKHEY:** It is on page 16 of your—

**The CHAIR:** Order! The problem I have is that with two of you speaking Hansard, in particular, will have trouble recording this and also it is very hard for everybody else to follow. Mr Harding had the call. Mr Mookhey, I will allow him to seek his clarification.

**The Hon. DANIEL MOOKHEY:** Sure.

**The CHAIR:** Then you can address that. But, yes, please only one at a time. Mr Harding, you have the call.

**Mr HARDING:** Thank you, Chair. As I was saying, Mr Mookhey, if you provide me with the specific line item that you are interested in, I will get that answer for you on notice.

**The Hon. DANIEL MOOKHEY:** Thank you. It is on page 16 of your financial statements that you tabled in Parliament two weeks ago and it is in Notes to the Financial Statements, Other Operating Expenses. There are two line items which you wish to clarify in the hearing on notice. The first is Consultants, Other, which has gone from $5.7 million to $11.5 million and then Contractors, $26,503,000 in 2020 to $67,363,000. I would be very interested if you could clarify that, please, as well. For what it is worth, there is another line item here that says "Fees Hosted Contingent Workers", which has gone from $30,677,000 to $39 million. So that one has gone up, too. If you wish to provide any clarity as to why or how we can reconcile what you are telling us with what your statements are saying, that would be most welcome. With that, I am happy to pass to Mr Shoebridge.

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

**The Hon. DANIEL MOOKHEY:** Well, Mr Harding—

**The CHAIR:** Order! No, no.

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

**The CHAIR:** Mr Mookhey! Order!

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

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

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

**The Hon. DANIEL MOOKHEY:** Before you do, Mr Harding—because you are the one who took umbrage at my questions—to be clear here, I am ambushing you with your annual report. This is not a surprise or trick questions here. My issue is—and I am happy for either you or Ms Bansal to clarify—is what you have told us in the first 20 minutes of this hearing seems to contradict sharply what your reports say. That is the question to you as CEO.

**The CHAIR:** Mr Mookhey. Mr Mookhey!

**The Hon. DANIEL MOOKHEY:** I have not finished, Chair. You are the one who is giving this evidence and therefore I am asking you to clarify why we should believe a word you are saying when it is so clearly contradicted by what is in your annual statements?

**Mr HARDING:** It is not contradicted in the annual statements, Mr Mookhey. What I am saying is completely consistent with the annual statements. I am, at the moment, offering to get you detail that will support what I have just said in respect to the questions you have asked. The manner in which you have asked them and how randomly you choose those numbers is your choice. I think, in a world where we are suffering from mental health and mental or psychological injury across our community, we would look to this Committee to uphold a higher standard and to respect the witnesses and the contribution that we are making through this process. However, I will pass to Ms Bansal to answer the question that you have asked in respect to the consultants.

**Ms BANSAL:** So the annual consultants spend for the year ended 30 June 2021 is $4.8 million and that is in—so just hear me out, Mr Mookhey, if you could just bear with me so I can explain to you the difference of the number you quoted there. In part one of the annual report you will see a table there that lists all our consultants spend by each and every consultant that we have used and that total is $4.8 million. As for accounting standards, because icare has undertaken a large remediation program and the make-good provisions, the expected spend that we need to make for that remediation program needs to be accrued and therefore that is in the financial statements. That makes the difference between the $4.8 million and the $11 million in there. That is the spend that we expect to incur in future years over the next two years as part of our remediation program. As we actually procure those resources and spend our money, that will be published in our annual report, line by line, for each consultant that we spend the funds on. The consultants spend has actually reduced from the year prior, where it was just over $5 million, to $4.8 million in the financial year that just finished.

**The CHAIR:** Thank you, Ms Bansal. I will now pass questioning to Mr Shoebridge to continue the questioning.

**Mr DAVID SHOEBRIDGE:** Thank you, Chair. For the record, I reject the concept that questions that are difficult to answer are some kind of breach of work safety and causing mental health issues. I reject that at the outset.

**The CHAIR:** Mr Shoebridge, I ask you to go to your questions, please.

**Mr DAVID SHOEBRIDGE:** I am going to ask you, Mr Harding, from your annual report: There has been a $41 million increase in contractor expenses last year. That is not a small figure. You are the CEO. How do you explain a $41 million increase in contractor expenses in just one year? As Mr Mookhey pointed out to you, it went from $26 million to $67 million. Now, you are the CEO. From what I understand, your answer is you will take it on notice, but I do not think that is acceptable for a $41 million increase and I would ask you for some details.

**Mr HARDING:** Well, Mr Shoebridge, I have already answered the question from Mr Moo-khey and I will take it on notice and provide that detail to you. I am very happy to provide it. It is not about having questions that I cannot answer or questions that I find difficult to answer. It is about respect and it is about the fact that I would not allow any of my staff to question their teams or their people in a manner that was disrespectful or aggressive because, under the law, that can constitute bullying and harassment, as I am sure you are well and truly aware.

**Mr DAVID SHOEBRIDGE:** Well—

**Mr HARDING:** My remarks earlier were just to heighten the responsibility of this Committee on its behaviour and the respect that I should be—

**The Hon. ANTHONY D'ADAM:** Point of order: It is not the role of the witness to criticise the procedures of this Committee. That is the Chair's role, and the Chair's role exclusively. The witness is here to answer questions. He should address his answers but he should contain his comments to answering questions and not provide a commentary on the procedures of this Committee.

**Mr HARDING:** Thank you. I am happy to do that.

**The CHAIR:** I will make the observation that, while that is correct, there are two points I will make. The first one is that we are responsive to the procedural fairness resolution of the House in 2018. That will be the first point. The second point is that I have allowed some fairly wide latitude in relation to the way questions are asked because there is quite a long lead-in and perhaps some editorialising while the question is being asked. Mr Harding is well within his rights to identify that. I will rule if I believe the questions are out of order. So far I believe all the questions that have been asked are in order. I just ask that we maintain a level of civility and respect in this room and we acknowledge the witnesses are here providing the responses and evidence. I would ask that we maintain some respect, both witnesses and questioners. Mr Shoebridge has the call. I will allow him to continue.

**Mr DAVID SHOEBRIDGE:** Mr Harding, you, through the Government, have said that there will be an increase in premiums. Premiums ultimately pay for expenses. There has been a $100 million increase in the last year in the Other Operating Expenses from icare and I am yet to hear a convincing argument that justifies the increase from $599 million to $699 million in just that one budget line item in icare's report—every dollar paid for by premiums.

**Mr HARDING:** Thank you, Mr Shoebridge. Can I just make some opening contextual comments and I will pass to Ms Bansal for the detail with respect to the question you have asked. As I have answered with Mr Moo-khey before—

**Mr DAVID SHOEBRIDGE:** It is just "Mookhey", as in "cookie".

**The CHAIR:** Order!

**Mr DAVID SHOEBRIDGE:** You talk about respect and three times or four times he has corrected it. It is "Mookhey" as in "cookie".

**The CHAIR:** Order! Mr Shoebridge, I am going to note that before I came into this place, when I read the name, I pronounced it in the way the witnesses are and I suspect that Mr Mookhey has appeared somewhat quite heavily in articles and items that Mr Harding may have read and he might have actually formed that audio memory in his mind. He is not doing it out of disrespect, I expect.

**Mr DAVID SHOEBRIDGE:** I am not suggesting he is. I am simply trying to get it corrected so it stops.

**The Hon. DANIEL MOOKHEY:** Chair, the Hon. Taylor Martin wanted to speak.

**The CHAIR:** Yes, I am sure that he will work on the pronunciation, but I think we need to also understand that it has been a continual problem. Mr Mookhey's name is becoming more and more published. It has certainly been not only this hearing.

**The Hon. TAYLOR MARTIN:** Wes, we have had this in committee hearings before. Mr Harding knows how to say his name. I find it extremely disrespectful and I am getting offended at the amount of times he is pronouncing it wrong. It is "Mookhey"—it is not hard.

**Mr HARDING:** I appreciate the feedback. I will do my best to pronounce the name correctly. I understand the concern that it can cause. Thank you.

**The CHAIR:** Thank you.

**Mr HARDING:** As I was previously answering, Mr Shoebridge, the accounts that we are talking about and the costs that you are referring to are not just in relation to the Nominal Insurer, they are in relation to other schemes across icare. So the implication that you are making about premiums may or may not be true, depending on how those costs are allocated through the service company. I will pass to Ms Bansal to discuss the other items that you have raised.

**Ms BANSAL:** Mr Shoebridge, the explanation I gave earlier around the cost allocation process impacts all expenses, so it impacts employment costs as well as other operating expenses. Those costs are now all flowing through the icare service entity. Overall, we have seen $145 million in costs that are now flowing through the service entity and then to the schemes instead of directly through to the schemes. The $45 million was because of employment costs and the $100 million is because of the other operating expenses. The annual report has our expense rate consolidated across all of our schemes, in part one of the report. That expense rate is 17.1 per cent across all of our schemes. If you look at the same expense rate in the annual report prior, it was 20.8 per cent. So the expenses have actually reduced overall across all of our schemes and across icare. In the year ended 30 June 2021 our expenses were favourable to our budget overall by around $70 million.

**Mr DAVID SHOEBRIDGE:** Let's do a little trip through history lane to get a sense of where icare's expenses have gone. We could start in 2016, but that may be slightly unfair because it may not have been a full operating year, but your annual reports show that the employee expenses from icare in your first full year of operation in 2017 were $100 million—that is from your own annual reports. They show that in 2018 it grew to $131 million—the employee expenses. There was a remarkable year, 2019, when there was a slight dip down to $127 million, but then it surged in 2020 to $170 million. That was before the provision from the Auditor-General. Can you explain the $43 million surge—the almost one-third increase—in employee expenses between the financial year 2019-20 to $170 million? Is that explicable?

**Mr HARDING:** Are you asking me, Mr Shoebridge, or Ms Bansal?

**Mr DAVID SHOEBRIDGE:** Whoever has the answer, Mr Harding.

**Ms BANSAL:** There would be multiple reasons as our schemes grow underneath and also you would see an offsetting all to decrease other lines of business, as well as those changes in insourcing versus outsourcing. Overall, that is why Mr Harding's comments about if we look at the cost base overall for icare expenses and track the expense rate, what we have seen is the expense rate has actually improved over the period. So there may be increases in employment costs that are offset by other cost line items.

**Mr DAVID SHOEBRIDGE:** Let's take it through to now. We had $100 million of employee expenses in 2017. In 2021 it is now at $214 million of employee expenses in icare. The headcount has risen from under 1,000 to the better part of 1,500. You have more than doubled employee expenses in just four financial years. No other part of government has doubled its employment expenses, or anything like that, from $100 million to $214 million. Is that all just an accountancy mirage that we should just ignore?

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

**Mr DAVID SHOEBRIDGE:** By 114 per cent?

**Mr HARDING:** Things like the Home Building Compensation Fund insourcing—

**The CHAIR:** Order!

**Mr HARDING:** —of capability to ensure that we provide better services—for example, the HBCF that I described earlier—growth in the construction risk fund, growth in the lifetime care scheme and growth because we are doing CTP Care. All of those sorts of factors happened through the business that drive that growth.

**Mr DAVID SHOEBRIDGE:** Mr Harding, your employee expenses have grown by 114 per cent in just four years. Your total operating expenses have grown by the better part of $300 million in those same four years, from $646 million in 2017 to $925 million in 2021.

**Mr HARDING:** As I said, Mr Shoebridge—

**Mr DAVID SHOEBRIDGE:** I cannot—let me finish.

**The CHAIR:** Mr Harding, please allow Mr Shoebridge to finish his question.

**Mr DAVID SHOEBRIDGE:** Some sort of high level, fairly abstract answer from you I do not think is adequate, particularly when in just the past 12 months total expenses have grown from $783 million to $925 million. Surely you came with an adequate explanation for the better part of $150 million of additional expenses that has been booked.

**Mr HARDING:** We had explained, Mr Shoebridge, the changes. Let me put it this way: The past has been well ventilated in other reports. Those changes have been discussed in Mr Shoebridge's report in this Committee in previous periods. My focus and the team's focus is on how we take icare forward to the place where it needs to be. In that, we have committed to $100 million worth of savings, and we are well progressed towards that. We are also working forward through changes to return-to-work improvements, as well as improved risk and governance, accountability and the culture of the organisation. All of those changes are changes to improve the Nominal Insurer and to improve the other schemes that icare supports to where we want them to be.

**The CHAIR:** Mr Harding, I am going to have to—

**Mr DAVID SHOEBRIDGE:** Mr Harding—

**The CHAIR:** Order! Mr Harding, the question was quite specific from Mr Shoebridge, particularly around the $150 million increase. He has asked for some details.

**Mr HARDING:** I have offered to get them on notice for him, Chair.

**Mr DAVID SHOEBRIDGE:** You see, now we are quarter of a billion apart. You made a commitment to $100 million in savings but, in actual fact, in that same financial year—

**Mr HARDING:** Over the next two years, yes—in the future years.

**Mr DAVID SHOEBRIDGE:** You made a commitment to $100 million in savings but instead of the financial reports showing $100 million in savings, they have shown $142 million in increased total expenses. We are now a quarter of a billion dollars away from your commitment that you made publicly and we have got nothing other than that you will take it on notice or there is some change in the way the accounting provisions are being paid. You are a quarter of a billion dollars out.

**Mr HARDING:** No. The $100 million is a commitment that we made over the next two years. I have already explained in response to Mr Moo-khey's question—

**The CHAIR:** Sorry, no, Mr Harding.

**Mr HARDING:** Mr Mookhey's question—I apologise.

**The CHAIR:** We addressed it earlier.

**Mr HARDING:** I apologise. Chair, to confirm what you have said before, it is a pattern that is in my head. I apologise that I am repeating it. I will endeavour to try and make sure I pronounce the name correctly.

**The CHAIR:** Thank you very much, Mr Harding.

**Mr HARDING:** As I was explaining, there is growth in other schemes that is reflected in those changes. I think I have answered the question previously.

**Mr DAVID SHOEBRIDGE:** You said that you were bringing to book on employee expenses money that had previously gone on contingent workforce and on contractors. Mr Mookhey has asked you—and I am going to repeat the question—how could that possibly be the case when your own financial reports for 2021 have $106 million of icare's funds going to contractors and contingent worker fees?

**Mr HARDING:** I have already—

**Mr DAVID SHOEBRIDGE:** How much was there going on contractors and contingent worker fees if after that work you still have $106 million going?

**The CHAIR:** Mr Shoebridge, you asked a question and then you jumped in again for a second editorialisation.

**Mr DAVID SHOEBRIDGE:** I will rephrase it: Before you made these changes the 2020 financial statements show that there was $57 million going on contractors and contingent workers. You say you have transferred them across to employee expenses, but the next year we see $106 million going on contractors and contingent workers. Please square the circle for me.

**Mr HARDING:** Mr Shoebridge, I have answered this question and I have committed to give you the answer on notice, as I have before.

**The Hon. DANIEL MOOKHEY:** Mr Harding, earlier this year you announced redundancies at icare, which I think affected at the time 8 per cent or thereabouts of icare staff. How many people were made redundant earlier this year?

**Mr HARDING:** Thanks for the question, Mr Mookhey. If you just give me one moment. Roughly 100 leadership team members were made redundant.

**The Hon. DANIEL MOOKHEY:** One hundred leadership teams.

**Mr HARDING:** There were 90 roles impacted in total.

**The Hon. DANIEL MOOKHEY:** So 90 people or 100 people?

**Mr HARDING:** Ninety people.

**The Hon. DANIEL MOOKHEY:** And they were predominantly leadership teams, were they?

**Mr HARDING:** That is correct.

**The Hon. DANIEL MOOKHEY:** Do you wish to—

**Mr HARDING:** Sixty-five of the roles were in management roles—65 of the 90 were management roles.

**The Hon. DANIEL MOOKHEY:** And the 25 who were not?

**Mr HARDING:** Twenty-five would have been in the award category. That could still have been in leadership roles, but that is an open question.

**The Hon. DANIEL MOOKHEY:** How much was the cost of those redundancies?

**Mr HARDING:** The cost was approximately $10 million that we have accrued in respect of redundancies.

**The Hon. DANIEL MOOKHEY:** Ten million dollars in redundancy costs. And, to be fair, in determining the cost of those redundancies—how did you determine the cost of the redundancies?

**Mr HARDING:** Based on the contractual commitments that we had to those employees.

**The Hon. DANIEL MOOKHEY:** The reason I ask you that, Mr Harding, is because you are exempt from public sector rules when it comes to these matters. So what was the average redundancy that was paid to each of these people?

**Mr HARDING:** I do not have it, but what I can tell you, Mr Mookhey, is the icare contracts are in line with the government standard in that respect and individual employment agreements are done in line with the government model.

**The Hon. DANIEL MOOKHEY:** So the government model, if a person is made redundant at an executive level, is to offer them 38 weeks redundancy.

**Mr HARDING:** Exactly.

**The Hon. DANIEL MOOKHEY:** The standard package is 38 weeks.

**Mr HARDING:** That is exactly it, yes.

**The Hon. DANIEL MOOKHEY:** On notice, are you in a position to be able to identify that by certainly award band I think you can do, but I do not know how you describe your executive remuneration?

**Mr HARDING:** Those people in the employment agreement category—as I said, those 65—the majority of them are in that employment agreement category; they are not in the award category. There are only the 25 in the award category.

**The Hon. DANIEL MOOKHEY:** Okay. In the public service, if this was to happen, we would have Band 2 or Band 1, State Executive Service [SES] Band 2, Band 3 and, I think, Band 4. Do you have an equivalent system?

**Mr HARDING:** Yes.

**The Hon. DANIEL MOOKHEY:** Can you on notice provide us how many redundancies per band?

**Mr HARDING:** Yes.

**The Hon. DANIEL MOOKHEY:** Thank you very much.

**Mr HARDING:** No problem at all.

**The Hon. DANIEL MOOKHEY:** And include the cost per band to those people?

**Mr HARDING:** No problem.

**The Hon. DANIEL MOOKHEY:** That would be appreciated, Mr Harding, thank you very much. So we have gone from reducing headcount by 90 and then hiring an additional 300 people as well. Did you make those people redundant because you did not think that they would match the new roles that you were seeking?

**Mr HARDING:** No, Mr Mookhey, the purpose of the restructure and the change to the organisational structure was to realign accountabilities and focus the organisation on the schemes. But we were also focused on reducing the number of layers of management between our executive team and our customer-facing staff to improve decision-making and improve the flow of information. We were also focused—the third focus of the program was to reduce the amount of duplication and complexity in the organisation. The benefits of clarity of accountability are very clear and we reorganised the organisation to be focused on a scheme-based accountability so that we have, like Ms Maini, someone who is accountable end to end for the activities of the Nominal Insurer, someone who is accountable end to end for the activities of the Lifetime Care and Support Scheme, for example, and that the people who work within those schemes know what their clarity of accountability is.

Further reducing the number of layers between the leadership team and our customer-facing staff is good practice; it is the best way to get the flow of information of what is really happening at the front line up to the executive to make decisions and to ensure that we have the information so that we can make decisions. It also improves for those frontline staff clarity of their accountability and the clarity of purpose that they have for doing the roles that they have. Lastly, as I am sure you would be aware from reading the previous reports that have been written, icare had developed a culture where it was very good at doing business with itself and that was where there was a significant amount of duplication through different roles and functions, a significant amount of complexity built into the business that was not supporting where we needed to get to. That was the purpose and that was the outcomes we have achieved through the change process. It was less about removing 100 people than it was about actually achieving those focused areas of accountability and the clarity that we needed about roles and people's responsibilities.

**The Hon. DANIEL MOOKHEY:** Did you utilise executive recruitment firms to help you source any of the 300 additional people that you have employed in the last 12 months?

**Mr HARDING:** Probably some of them, yes. The people coming into executive roles we would have used search firms for.

**The Hon. DANIEL MOOKHEY:** Was Korn Ferry one of them?

**Mr HARDING:** Korn Ferry is on the panel. We used Korn Ferry for a general recruitment service. We have just changed that through our procurement process to another company.

**The Hon. DANIEL MOOKHEY:** How much did you pay recruitment firms to help you find the additional 300 staff that you employed last year?

**Mr HARDING:** I do not have that number. I will just check if Ms Bansal does.

**Ms BANSAL:** I am just checking the consultants list if I have that available.

**The Hon. DANIEL MOOKHEY:** I appreciate that. If you do not, you can take it on notice.

**Mr HARDING:** Happy to.

**Ms BANSAL:** We will provide it on notice.

**The Hon. DANIEL MOOKHEY:** Of the additional people that you have employed, how many of them are entitled to an annual performance payment incentive?

**Mr HARDING:** I do not have that number with me, but in terms of across the icare organisation, that individual employment agreement I can give you an approximate number, which is about 120, 140 people.

**The Hon. DANIEL MOOKHEY:** Indeed. In terms of the documents that icare produced to the upper House, it shows that this year alone icare has employed 18 people who are entitled to an annual performance payment. Is that correct?

**Mr HARDING:** I do not have the document that you have got, Mr Mookhey, in front of me, so I can rely on your evidence, yes.

**The Hon. DANIEL MOOKHEY:** Sure. Then in the six months—actually from technically when this inquiry commenced—icare has, other than the 18, I count over 30 people have been employed in total entitled to an annual performance payment. Does that accord with what you understand, Mr Harding?

**Mr HARDING:** Again, Mr Moo-khey, you are quoting from a document I do not have access to. But I am happy to take your evidence as the basis for the conversation.

**The CHAIR:** Mr Harding, I know we have addressed this point numerous times—

**Mr HARDING:** I am sorry, it just keeps flipping through.

**The CHAIR:** I understand that. I ask for respect in this place from everyone, that we see respect. We may differ on some views, but Mr Mookhey is one of the smarter people that we have in this place.

**The Hon. NATASHA MACLAREN-JONES:** It's in *Hansard* now.

**The CHAIR:** I am happy for it to be in *Hansard*. I suspect that if ever there is a change in government somewhere in the very, very distant future you will be able to get his name right; so it would be an idea to start now.

**Mr HARDING:** Thank you, Chair, and please, Mr Moo-khey, my apologies. As I said, it is not intentional, it is just wired in my brain from the first meeting. I am very sorry, but I will focus on it.

**The CHAIR:** I appreciate it, thank you.

**The Hon. DANIEL MOOKHEY:** I appreciate that. I think, Mr Harding, you were at the point where you were prepared to accept that what I was putting to you was accurate.

**Mr HARDING:** Yes.

**The Hon. DANIEL MOOKHEY:** Great. Some of the people who have been offered annual performance payments whilst you have been CEO include Head of Corporate Relations; the General Manager of Strategic Delivery; the General Manager of Customer Policy and Design; the Risk Assurance Manager; Head of Regulatory Affairs; the Risk Manager, Technology Risk; Head of ICT Contract and Supplier Relationship; Customer Advocate; General Manager, Risk Management; Group Executive, Workers Compensation; Compliance Assurance Manager; Risk and Compliance Business Manager; Head of Risk and Compliance Business Partnering; Risk and Compliance Business Partner; and, of course, yourself. Again, can you explain to me why we have to offer someone like a head of regulatory affairs, a head of corporate relations, bonus payments to properly operate a workers compensation scheme?

**Mr HARDING:** Mr Mookhey, the scheme operates as a very complex scheme in an insurance sector and we compete for talent and for people in the organisation from that sector. Over 80-odd per cent of the people in the senior management category that you are talking about are from the insurance sector, and to keep heat in that sector we need to provide competitive salaries to ensure that we get the best people, and that includes an element of incentive. Mr McDougall's report did a review of our remuneration practices and the incentives that we pay and he found them to be not out of line with both private and public sector remuneration practices and certainly not anywhere in a realm of being excessive. There is work for us to do in terms of with the board over the next year to review our overall remuneration policies and how we believe we can bring a balance to those. But the point I think is most important here is, we want the best people that we can to come and work on the issues that we have in terms of fixing the business. We want to bring the talent from the private sector and the public sector in with attractive programs to ensure that we get them focused on the important matters that we have to address.

A number of the people you talked about were risk practitioners and they generally come from the insurance and financial services sector, and it is a very highly competitive marketplace at the moment for those types of individuals. Ensuring that we attract them and get those people working on and focused on the changes that we need to make over the recommendations that you would be aware of from both the McDougall review and the governance and accountability review that was done by PwC supporting Mr McDougall, risk is a significant element of that program of work. Having that talent on board and having those people with that experience and that background is critical to us in reforming icare and making the business the sort of organisation that we want it to be.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Mr Harding. At least, I appreciate that that is the rationale, which, to be fair, is a direct answer to my question. You said that this is in line with public sector practices and private sector practices, but the public sector practices abolished annual performance payments for SES three years ago. No secretary of any of the clusters is entitled to an annual performance payment [APP] nor is any other member of the SES. I just challenge you when you say that it is in accordance with public procedure, do you actually mean it is in line with private sector procedure?

**Mr HARDING:** I think, just to be clear and to clarify what I said, sir, the contracts and the termination clauses in those contracts and the terms and conditions in the contracts are consistent with the public sector—

**The Hon. DANIEL MOOKHEY:** I was asking you about performance payments.

**Mr HARDING:** The remuneration practices, as we talked about, for the individual employee agreements are in line with private sector, and in fact Mr McDougall points out they are not that different from other public sector organisations, whether you look in Victoria or South Australia where there is a commercial imperative to have insurance-capable people and people with the skills and capabilities that we need to run the complex organisations that we have. We need to ensure that we can compete in the marketplace for those people and to get the best talent. We want the best people working at icare.

**The Hon. DANIEL MOOKHEY:** Just to be clear, when you say that you need this, you are implying that you cannot operate the scheme without it. Are we to accept that that applies to the head of regulatory affairs and the head of corporate relations, both of whom in the private sector would be described as in-house lobbyists? Are we seriously suggesting that in order to attract people to fill those two roles we have to offer annual performance payments?

**Mr HARDING:** My statement is clearly general in respect to the overall approach to remuneration, and I highlighted for you some people in the risk and governance accountability areas that we are very focused on in our remediation program where the practices are very competitive in the marketplace. Those two roles, in particular, I am not going to debate with you. The practice and the structure of the framework is they sit within a management layer of the organisation where their peers are receiving an incentive structure and that is why they receive an incentive structure. But, as I said earlier, there is more work for us to do in conjunction with the board to review the overall remuneration structure for icare and get the best balance that we can. That is work that we are doing over the next year to ensure that we get that.

**The Hon. DANIEL MOOKHEY:** My last question—

**Mr HARDING:** I would highlight, Mr Mookhey—just before that—that for the past two years no bonuses have been paid to any executive at icare as a result of the performance of the business and the outcomes that have been achieved.

**The Hon. DANIEL MOOKHEY:** I appreciate that, but you have offered 18 contracts under your leadership which include the entitlement to an APP if certain criteria are met in the future. My last question is—and I understand both Mr Shoebridge and/or Mr Roberts might have questions on this matter—as CEO, is it still your intent to offer annual performance payments in future hires of icare executives?

**Mr HARDING:** As I just noted, we are in the process of going through a program of review with our board to develop a remuneration strategy for icare going forward. I am not going to, at this point, second-guess that process. There is a lot of work to be done to research and understand the best models for remuneration to ensure that we can ensure the best talent to icare and to ensure that icare gets the right people that it needs working on the problems that it is trying to solve.

**Mr DAVID SHOEBRIDGE:** Mr Harding, one of the issues that you have addressed in the past 12 months has been addressing some of the historic underpayments, at least insofar as it impacts the Nominal Insurer because of miscalculations in PIAWE.

**Mr HARDING:** Yes.

**Mr DAVID SHOEBRIDGE:** You are familiar with what has been done in that regard, I assume, in the past 12 months.

**Mr HARDING:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you want to just give me a short summary of what activity icare has done in terms of rectifying some of those historic underpayments?

**Mr HARDING:** I am very happy to, Mr Shoebridge. Thank you for the question. Icare has identified obviously the issue. We began by focusing on the most vulnerable and the most highly impacted, those people with greater than 104 weeks off work and on benefits. That was around about 8,000 files that we did a manual review of. In conducting the review, we obviously had issues with respect to identifying information flows that enable us to actually make payments. In respect of those people, we have made payments to 627 workers of

$4.1 million. That is why we have now moved on to look at the proactive payments program of work, which really deals with the next most severe cohort of people, those people between seven weeks and 104 weeks.

We have taken a view that we will apply the error rate that was incurred in the work we did on a file-by-file basis, and this is based on the advice that we have had from Deloitte, the wage remediation experts that we commissioned to come and help us and make sure that the program of work that we were doing was fair and reasonable and timely in its approach. To ensure it was timely and to ensure it was fair, the proactive payments approach is what we are now working on for that second cohort of people. That is where we will apply the error rate, which is around about 3.94 per cent, that was identified through the 8,000 file reviews to this new cohort of 53,000 injured workers and we will pay that through. When you apply that error rate of 4 per cent to the benefits for each individual through that, the total benefits accumulate to the $38 million that we have talked about.

We have also mailed out to every injured worker through both the Nominal Insurer and the Treasury Managed Fund [TMF] scheme to ask them to apply if they believe that their PIAWE calculation is incorrect or if they feel a miscalculation error applied to them, and we have had, again, a significant response to that with, again, a further 8,000. There is about 16,000 reviews that have been done in total that give us confidence that that 3.9 per cent error rate is a rate that we can rely on. Those payments are about to begin. We have been working with both Service NSW and with the social security group to ensure how we do those payments and that we do the payments in a way that do not unduly impact people.

Through that process we have now finalised discussions with both parties and we will be running a pilot before Christmas to test our program of payments and to ensure that the timing of that and how that actually flows through to people is appropriate, and in the new year Service NSW will begin making the payments to the 53,000 workers. That will take us through probably to the end of the first quarter next year to get the payments to those 53,000 people.

**Mr DAVID SHOEBRIDGE:** You have so far reviewed—at different times it is reported—16,000 files, sometimes 8,000 files.

**Mr HARDING:** There is 8,000 of the reviews that we did in respect to the people over 104 weeks and there is the response to the mail-out and to the advertising campaign—total that makes it 16,000.

**Mr DAVID SHOEBRIDGE:** Alright. So, of the 8,000 files that were physically reviewed—the numbers were checked—you found that 627 had underpayments. Is that right?

**Mr HARDING:** That is correct.

**Mr DAVID SHOEBRIDGE:** Therefore, $4.1 million was allocated amongst those 627 underpaid workers.

**Mr HARDING:** Based on the individual reviews that were done, yes.

**Mr DAVID SHOEBRIDGE:** Based on the individual reviews. That was a recalculation of the PIAWE and made in accordance with the Workers Compensation Act. Is that right?

**Mr HARDING:** That is correct.

**Mr DAVID SHOEBRIDGE:** There are now some 53,000—is that 53,000 additional workers?

**Mr HARDING:** Yes.

**Mr DAVID SHOEBRIDGE:** Or are the 627 part of the 53,000?

**Mr HARDING:** No, the 627 relate to the files that have been reviewed over the 104 weeks—the most vulnerable and the most impacted. That is what has given us the ability to apply an error rate to the next cohort of people.

**Mr DAVID SHOEBRIDGE:** Just working this through step by step, there are 53,000 injured workers—

**Mr HARDING:** Yes.

**Mr DAVID SHOEBRIDGE:** —who had between seven weeks and two years of benefits paid.

**Mr HARDING:** Correct.

**Mr DAVID SHOEBRIDGE:** They are the next category that you are reviewing?

**Mr HARDING:** Correct.

**Mr DAVID SHOEBRIDGE:** You say you are adopting a 3.5 per cent or—

**Mr HARDING:** No, 4 per cent.

**Mr DAVID SHOEBRIDGE:** A 4 per cent error rate. Does that mean that of those 53,000 workers, they are all being paid an amount that is equivalent to 4 per cent of their benefits?

**Mr HARDING:** Four per cent of the benefits that they would have received during the time off work. It is specific to each individual.

**Mr DAVID SHOEBRIDGE:** So it is a set percentage of all claims where workers have been off between seven weeks and two years.

**Mr HARDING:** That is correct. Mr Shoebridge, perhaps to provide some more colour or explanation, what we are trying to overcome is the information gap issue, which has meant that when we do those file reviews we have not been able to fully identify information to support a full PIAWE calculation. To do that for 55,000 people would be impractical. The advice we received from Deloitte—the wage remediation experts—was this sort of payment, where there is an information gap, is entirely suitable and appropriate in terms of seeking to get as much back to injured workers as we can. There is a risk of us overcompensating people, absolutely, in that process, but that is what we believe is the right thing to do.

**Mr DAVID SHOEBRIDGE:** Let us just step through this if we can.

**The CHAIR:** Mr Shoebridge, do you mind if I seek clarification of a point?

**Mr DAVID SHOEBRIDGE:** By all means, Mr Chair.

**The CHAIR:** Mr Harding, in that instance, if a worker believes that perhaps the 4 per cent does not cover their underpayment, are they able to request a review of their file and have the difference remunerated?

**Mr HARDING:** Thank you, Chair. I appreciate the question. Absolutely—the injured workers are always entitled to come back for a full file review at any point in time, should they believe that the compensation that is being paid is not appropriate, given their circumstances. That is always in place.

**Mr DAVID SHOEBRIDGE:** Mr Harding, of the 8,000 files that were reviewed, of more than two years, the great majority of those did not have an underpayment that was provided, and the $4.1 million was concentrated in the 627 files where you found an underpayment. Is that right?

**Mr HARDING:** That is right.

**Mr DAVID SHOEBRIDGE:** So I assume that the amount that they received was significantly more than 4 per cent.

**Mr HARDING:** No, it is 4 per cent, but it is significantly more, on average, as an absolute dollar term, because of the length of time that they had been off work.

**Mr DAVID SHOEBRIDGE:** Correct. But I assume that some were paid more than 4 per cent and some were paid less than 4 per cent. Do you know what the largest amount paid was?

**Mr HARDING:** In percentage terms or in dollar terms?

**Mr DAVID SHOEBRIDGE:** Give me whatever figures you have to hand.

**Mr HARDING:** I am not sure I have got it at hand, but I am happy to get it for you on notice. I do not have it at hand. I am happy to provide it to you on notice, but I can say the 4 per cent reflects—we have looked at the statistical spread of the underpayment rate, if you like, and the 4 per cent is where we have landed because it is reflecting the median of that. There is a long tail, but it reflects the absolute best-case scenario that we can for—

**Mr DAVID SHOEBRIDGE:** It is in the bell curve.

**Mr HARDING:** As I said, we are confident and comfortable accepting the overpayment risk in that.

**Mr DAVID SHOEBRIDGE:** Are you confident and comfortable accepting the underpayment risk?

**Mr HARDING:** As to the Chair's question, anyone who feels that that is not enough is well able to come back and ask for a full review. As we have said, we have written to all 280,000 of them and had responses from a lot of people already.

**Mr DAVID SHOEBRIDGE:** But your business does not have the records in order to work out the accurate payment.

**Mr HARDING:** No, but if the injured—

**Mr DAVID SHOEBRIDGE:** That is the truth of the matter, is it not, Mr Harding? You do not have the records to work out an accurate payment, and so you have adopted this class resolution.

**Mr HARDING:** To be clear, Mr Shoebridge, neither icare, nor the employer, nor the injured worker—because the process we have gone through for those file-by-file reviews is to seek that from each person. If an injured worker has the data and they have their payslips and other information to help us with the PIAWE calculation, we are very happy. That is the opportunity for them to come forward through either the mail-out or through the opportunity to request a review.

**Mr DAVID SHOEBRIDGE:** But I was not asking you, Mr Harding, about what records injured workers have. You have a statutory obligation to only make payments in accordance with law on the basis of the information you need to make lawful payments. So I am asking you again: Is it true that you are making this in-class payment because your organisation does not have the records to determine an accurate payment for many of these workers?

**Mr HARDING:** I am happy to say the answer to that is yes, that is correct. The reason for that is because the injured worker and the employer have, neither, provided it during the process when we have requested it. When you look at the complexity of the calculation, Mr Shoebridge—we have had this conversation before. I actually believe at one point you sponsored the idea of a class action payment or a class payment, and I think it is the best resolution, given the advice we have had, to enable us to get funds back to injured workers.

**Mr DAVID SHOEBRIDGE:** Mr Harding, to be clear—

**The CHAIR:** Order! Mr D'Adam has a point of clarification.

**The Hon. ANTHONY D'ADAM:** I just wanted to ask if Mr Harding would be able to provide to the Committee a copy of the correspondence that has been sent to the injured workers in relation to this.

**Mr HARDING:** Absolutely, we are very happy to. Perhaps just as a matter of interest, we have also, within that correspondence, had reference to support services, so people who are concerned or who have psychological injuries as a result of their claim, or as a result of their claim involving psychological injury, can get support in case the conversation about reopening their PIAWE calculation triggers that. We are happy to provide copies of the communication that went through, absolutely.

**Mr DAVID SHOEBRIDGE:** Mr Harding, for the record, I have indicated on behalf of my party that we would be willing to cooperate if any legal changes were needed to ensure payments of a class kind could be made lawfully from the scheme. There have not been any such changes made to the scheme, despite our open offer to assist, if needed, to provide the legal authority to make the payment in kind. So I am asking you: Under what legal authority did you make a payment in kind? Under what provision of the Workers Compensation Act? What legislative remit did you have to undertake this payment in kind?

**Mr HARDING:** We have legal advice that demonstrates that, because the payment relates specifically to the injured person's benefits, it is a payment that we can make under the current Act. Obviously, we have legal advice to ensure that we can make that payment. In respect of your offer, Mr Shoebridge, we would love to take that up. We have just received the third report from Deloitte, which was a forward-looking report about what simplification can be made for PIAWE in the future, and we would like to come forward with you in the future to perhaps suggest some regulatory changes that might help support injured workers to get the payments that they deserve in future.

**The Hon. ANTHONY D'ADAM:** Are those reports in the public domain—the Deloitte reports that you have received?

**Mr HARDING:** The Deloitte reports are in the public domain. The third one has only just been received. We have a cross-agency committee that involves the New South Wales Treasury and SIRA. The SIRA CEO and I sit on that with the Treasury Secretary and his representatives. That report was received, I think, last week. We will put that report on our website in due course, and I am very happy to provide it to the Committee if that is of interest.

**Mr DAVID SHOEBRIDGE:** You see, Mr Harding, the workers compensation Acts—the two Acts read together—only allow icare to make payments where it has been satisfied that there is a legal entitlement to the payment. I ask you again: In the absence of actually working out the entitlement that each worker has, what was the legal capacity that you have had to make the in-class payment?

**Mr HARDING:** Our legal advice is that the payments are specific to the individual, and because they are related to that individual's benefits they are payments that icare or the Nominal Insurer can make.

**Mr DAVID SHOEBRIDGE:** Mr Harding, if that is the answer that would mean that you could pay $5 million to a worker, or $100 to a worker, or $50 to a worker, or $10,000 to a worker. If it just has to relate to expenses or payments that is no legal constraint, nor is it an explanation of what provision in the Act has enabled you to make these payments. They are not made following a recalculation of PIAWE, nor are they made under section 38. I am still at a loss as to what was your legal authority to make these payments.

**Mr HARDING:** I have provided the answer. We have received legal advice that says that the Nominal Insurer has the capacity to make these payments, given their nature.

**Mr DAVID SHOEBRIDGE:** Would you provide that advice to the Committee?

**Mr HARDING:** I will need to take that on notice and just check about the commercial-in-confidence matters that may be contained in it. If there are none, I am happy to provide it. It is just a matter of checking that there are no other matters that might be confidential.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Harding. Just to finish up, I have a couple of ancillary questions to the ones that my colleague asked. Workers covered by the Treasury Managed Fund are not covered by the remediation program, correct?

**Mr HARDING:** No, they are. The Treasury Managed Fund program is slightly behind—further behind than we would like—the Nominal Insurer program. There are about 1,800 odd files that have been reviewed. We have taken a similar approach, of taking the most affected. In the Treasury Managed Fund those people are over 26 weeks, so it is a more thorough process. At the moment, we have not got to a point where we can determine a stabilised error rate, if you like. The volatility and the experience that we have got is quite significant. At the point in time that we do get that we will work with Treasury and SIRA again to determine whether there is an appropriate approach to making a similar payment through the Treasury Managed Fund.

**The Hon. DANIEL MOOKHEY:** Within the class of 53,000 people who are accessing the total sum of 38 million are people insured by the Treasury Managed Fund?

**Mr HARDING:** No, that is purely the Nominal Insurer.

**The Hon. DANIEL MOOKHEY:** That was the question. My question was unclear.

**Mr HARDING:** Sorry, I misunderstood.

**The Hon. DANIEL MOOKHEY:** To be fair, I perhaps could have asked it more clearly.

**Mr HARDING:** My apologies.

**The Hon. DANIEL MOOKHEY:** To be clear, the $38 million going to 53,000 does not cover the Treasury Managed Fund?

**Mr HARDING:** It does not include the Treasury Managed Fund.

**The Hon. DANIEL MOOKHEY:** Treasury are the insurer and SIRA is their regulator, so we will take that up with SIRA , which is probably the appropriate thing to do.

**Mr HARDING:** I am happy if you do. The process is a similar process that we are following through, in terms of getting enough data to understand how we can get funds back to people. A Treasury Managed Fund is a different fund. There are more overpayments in the Treasury Managed Fund than there are underpayments. As I said, the error rate at the moment is quite volatile in the process that we have got going because the sample size is quite small.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Mr Harding. To be fair, we were putting these questions to the Treasury Secretary and he made commitments about various matters. Given that he made those commitments, it is appropriate that we take it up with Treasury. I am just going to move on now. Mr Harding, I think the last time we saw you at budget estimates the four-week return-to-work rate was circa 62 or 63 per cent at that time?

**Mr HARDING:** Yes.

**The Hon. DANIEL MOOKHEY:** What is it currently?

**Mr HARDING:** Just bear with me, Mr Mookhey. The September rates have recently just gone up from SIRA, and for the Nominal Insurer it is still 63 per cent for the four-week rate.

**The Hon. DANIEL MOOKHEY:** Have you got the scheme-wide return-to-work rate of four weeks?

**Mr HARDING:** I do not, no.

**The Hon. DANIEL MOOKHEY:** All of them?

**Mr HARDING:** All of the insurers?

**The Hon. DANIEL MOOKHEY:** How does it benchmark, the NI and the September rate, to the rest of the scheme?

**Mr HARDING:** I do not have that. I think Mr Dent released a report yesterday.

**The Hon. DANIEL MOOKHEY:** Okay, I will take that up with Mr Dent. Mr Harding, I am reading from the CEO report that you gave your board in September. It says here that the four-week measure has decreased by 1.36 across the scheme to 61.03, driven by smaller insurers. It is listed on the NI report. Was that for the NI or is that for the scheme?

**Mr HARDING:** That would be for the NI. I think what you will be talking about there is the three-month rolling average, rather than the 12-month average—

**The Hon. DANIEL MOOKHEY:** Got it.

**Mr HARDING:** —which is the SIRA report.

**The Hon. DANIEL MOOKHEY:** The three-month average has dropped to 61 per cent, is that true?

**Mr HARDING:** True.

**The Hon. DANIEL MOOKHEY:** And according to the chart that is here—

**Mr HARDING:** If you are looking for the number now, just talking off the top of my head, I think the three-month rolling average is in the realm of 59.

**The Hon. DANIEL MOOKHEY:** It has dropped to 59.

**Mr HARDING:** This is an industry-wide issue, as we have talked about before.

**The Hon. DANIEL MOOKHEY:** It is not a surprise, given we had a lockdown, that the whole scheme would be hit. I accept that. But 59 per cent of a three-month average for a four-week return-to-work rate is approaching an historic low. It is getting back to the circumstances that caused SIRA to commission the Dore review. Why do you say that rate, that key measure, has dropped to such a low rate?

**Mr HARDING:** We agree with you. It is a very concerning trend line that is happening across the industry, not just for the Nominal Insurer. You tend to see the Nominal Insurer—and I am happy to pass to Ms Maini to talk about what we are doing about return-to-work rates and the focus we have there—just generally at a high level. Some comments—clearly it is a concern. However, the trends that we talked about in budget estimates are significant. There is a significant change that has flowed through the scheme with a significant impact of psychological claims. If you look in the four-week return-to-work rate, the return-to-work rate for psychological claims for that four-week level has almost halved in that period of time.

Further, as you pointed out, COVID is having an impact. It is early days for us to clearly understand what impact COVID has had. Obviously the lockdowns are having an impact. I mentioned in my opening remarks that, in particular, small businesses are struggling to find ways to bring people back to work. The Nominal Insurer is skewed towards small businesses. Of the 380,000-odd employers that we ensure, there are about 300,000 small businesses in there.

**The Hon. DANIEL MOOKHEY:** I think Ms Maini was either going to augment or add to your answer.

**Mr HARDING:** I am happy for Ms Maini to talk about the programs we have going to address return to work overall.

**The Hon. DANIEL MOOKHEY:** Perhaps before we do that I will go to the next part of the questioning, if that is possible?

**The Hon. ANTHONY D'ADAM:** Can I just ask you, before you move on, I do not understand how COVID contributes to affecting the return-to-work rate. COVID is not going to have an impact on the return-to-work rate; it is a short-term illness.

**Mr HARDING:** It is a combination of the lockdowns and a slowdown in the economy, and the fact that businesses are closed. Small businesses cannot find a place for people to get back into work.

**The Hon. ANTHONY D'ADAM:** You posited that COVID was going to have an impact on return-to-work rates. How specifically is that the case?

**The CHAIR:** It looks like Ms Maini is about to give you an answer to that. Can I suggest that Mr Mookhey continue his questioning, and then I suspect the answer given to Mr Mookhey's line of questioning will address the point that you have raised, Mr D'Adam.

**The Hon. DANIEL MOOKHEY:** Yes, that will happen. Mr Harding, you made reference in your opening statements to changes in the claims model that you are intending to do. I want to explore some of what has happened before we get to that point. Last year your predecessor—who was the interim CEO at the time—agreed, did he not, to extend EML's contract to permit EML to exercise the option of providing an additional year of service as a claims agent? That is fair?

**Mr HARDING:** Yes. Do you want me to continue?

**The Hon. DANIEL MOOKHEY:** He made that decision, and it is continuing on. Did he make the decision to continue it for one year or for two?

**Mr HARDING:** At that point in time, the decision was to continue it for one year. On receipt of the McDougall report—and the Dore report supported Mr McDougall's report—the recommendation was that to really allow time for those changes that had been implemented through that original extension to take effect and to be seen and to be bedded in, that it should be extended for a further year. That also does align with the renewal dates for the other approved provider, service providers, that we use. It enables us time to do the work that we are currently doing to design the new claims model and to ensure that we can have a multi-agent model going forward, that is robust and appropriate for purpose.

**The Hon. DANIEL MOOKHEY:** The decision was made sometime after the McDougall review to permit EML to exercise their option and provide additional services for next year too. They will go for the full seven years. For next year's extension, has icare increased EML's remuneration or have you made any co-investments with EML?

**Mr HARDING:** I will pass to Ms Maini. I will just answer the first part and perhaps Ms Maini can talk to the co-investments and the process of what we are doing with EML. In respect to that contract extension, it is still not yet signed so it remains commercial in confidence. It will be provided on the GIPAA, obviously, on the contracts Act.

**The Hon. DANIEL MOOKHEY:** Of course.

**Mr HARDING:** You have that information, or I am happy to provide it on notice.

**The Hon. DANIEL MOOKHEY:** Sure.

**Mr HARDING:** But at the moment we are in the process of finalising that and it still has not been signed, so I prefer to keep that in confidence until we can get to that point.

**The Hon. DANIEL MOOKHEY:** Okay, I will not push you on it on that basis. Last year when icare agreed to extend it for one year, it made a $20 million co-investment. Is that correct?

**Mr HARDING:** Correct, and I am happy to pass to Ms Maini, who can talk about the impacts of that.

**The Hon. DANIEL MOOKHEY:** Again, we will get to Ms Maini. The co-investment paid for the matters that you described in your opening statement. Is that fair?

**Mr HARDING:** Some of those, yes.

**The Hon. DANIEL MOOKHEY:** Did icare develop a business case before it agreed to pay EML an additional $20 million?

**Mr HARDING:** To be clear, it was $10 million from icare and $10 million from EML.

**The Hon. DANIEL MOOKHEY:** Sure.

**Mr HARDING:** Part of the attraction was that EML would have skin in the game to do that. I was not present at the time, in terms of the board discussions and what business cases were presented. I repeat that I think Ms Maini has quite a lot of information that would discuss the value that that is creating as we go forward.

**The CHAIR:** Mr Mookhey, I am going to give Ms Maini an opportunity to present some information because she may be able to address some of your points.

**Ms MAINI:** Mr Mookhey, the question you asked was around the co-investment.

**The Hon. DANIEL MOOKHEY:** Yes, but the specific question I asked Mr Harding was, prior to the decision to extend the contract by one year and make what Mr Harding says was a $10 million investment from icare, which triggered a further $10 million from EML, whether there was a business case prepared by icare prior to you agreeing to that.

**Ms MAINI:** I will have to take that on notice to look through what was provided in the past in terms of business cases. I can say, though, what we have done and worked with EML on in relation to the co-investment has been as follows—which really directly relates to the efforts we are putting into return to work and the focus we have on working and supporting injured workers and those who are on claims to get better outcomes.

**The Hon. DANIEL MOOKHEY:** If you wish to provide that in short, that would be great.

**Ms MAINI:** In working with EML we have made a number of changes. In July 2020, as I said, we had case managers who were made to ensure that workers who had, or expected to have, ongoing time loss for more than a week were allocated to a dedicated case manager. That was as a result of Ms Dore's report. We have also reduced caseloads from EML from an average of 60 in January 2020 to 48 as of October 2021. We have also recruited an additional 80 case managers since January. We have recruited 15 mobile case managers and we have also set up the Your Future program, which provides career transition services for complex cases.

**The Hon. DANIEL MOOKHEY:** Thank you.

**Ms MAINI:** I am happy to continue.

**The Hon. DANIEL MOOKHEY:** Sorry, I thought you had concluded.

**Ms MAINI:** No. That is alright; I am on a roll now. With the 337 injured workers who have been referred to that program since 2021, 49 workers have been placed into new employment and three workers have been upskilled to find competitive new employment. In addition, we have looked at targeting the use of vocational rehab providers to really support early intervention, especially those that are small business employers. That has been a 44 per cent increase since May 2021. As Mr Harding said, we are also piloting a first response service for small to medium employers to support early return to work. As of November we are also piloting a psychological risk screening service to target those injured workers who are at risk of continuous day off work for small businesses. That is in the pilot phase and we will be able to report on that to the Committee as we progress.

We believe the biggest factor that influences return to work is the upskilling of case managers. We have made significant investment in recruiting staff and building that capability. We have recruited 22 career coaches—or what we are calling capability coaches—across EML to support the uplift in training of case managers. We have also launched a professional standards framework, which I am happy to table for the Committee, which focuses, across the Nominal Insurer and Treasury Managed Fund—

**The CHAIR:** While you pass those to the secretariat to disseminate, I will ask Mr Mookhey if he has further questions.

**The Hon. DANIEL MOOKHEY:** I do. I appreciate the detail that you have provided, Ms Maini.

**Ms MAINI:** I just wanted to close off with the fact that all of that investment has ensured that there has been a reduction in turnover and an upskilling in case managers, so the average case manager's tenure is now 2.9 years. Hopefully all of this will bear fruit and put us on the path to continue to fix return to work.

**The Hon. DANIEL MOOKHEY:** I am glad you said that, Ms Maini, because you basically just answered my immediate follow-up question: Did you think this was effective? I imply from your answer that you did. But did you present a board paper, Ms Maini, at the September board called Nominal Insurer Claims Strategy Update? In it, you said:

> The 2020 extension negotiation resulted in a $20m co-investment in retention. These funds have predominantly been used to reduce case-loads which EML assert enables development of capability. This may be the case, however icare has not specifically monitored this expenditure or the business case behind it. As such, and noting the recent implementation of the investment, it is not clear whether this investment has resulted in improved capability or not. Notwithstanding the effectiveness of this investment, we conclude that the model would ideally incentivise the development and retention of talent, rather than require that icare negotiate to achieve it.

So I appreciate your answer. The problem with that answer is that it appears to contradict what you have said to the board, which is that icare has not specifically monitored whether or not the additional $10 million you put in has in fact produced the outcomes that you have just referenced.

**Ms MAINI:** I do not have that paper with me, Mr Mookhey. I am happy to take it on notice and review that material. What I can say is that we are focusing on making sure that we are actively monitoring the previous co-investment that was made by icare.

**The Hon. DANIEL MOOKHEY:** I am about to table this. I am sorry I did not bring a copy for you but I am sure we can get it photocopied very quickly. Your paper goes into quite a lot of detail, Ms Maini. To be clear, in terms of the paper you produced to the board, I think this Committee would strongly agree with your conclusions, because you were highly critical of the remuneration model icare applied with EML before. You said:

> The "cost-plus" remuneration model did not incentivise good performance against icare's objectives—

which, to be fair, the Committee agrees with. It goes on:

> icare's culture of prescription and a lack of performance management focus further undermined performance incentives
>
> …
>
> The segmentation approach is not delivering the anticipated benefits and has been diluted to a risk delineation approach rather than a differentiated support model.

You say:

> icare's model appears to have contributed to a broad-based increase in active claims and duration and failed to effectively understand and manage psychological claims
>
> …
>
> A lack of higher-level market forces further reduced performance incentives and reduced icare's ability to control the scheme
>
> …
>
> Low case manager capability is a systemic issue combining with remuneration incentives to drive higher claim numbers with longer durations

And that is before we get to the point you make about icare not monitoring its additional co-investment with EML. The irony, of course, is that I read this paper and agreed with you very strongly. It seemed like icare was finally recognising that its claims model was what destroyed return-to-work rates over the past four years. The problem I now have is that what you are saying to us seems to be slightly inconsistent with what you have said to the board. I will get a copy made for you.

**Mr HARDING:** If I can just jump in, Mr Mookhey, I think that was probably one of Ms Maini's first board papers, which provided what she had determined once she had been in the role for some time. The conversation we are having today about a focus on return to work is also the work that has been done since then to refocus icare and EML. We agree with what you are saying and it is the nature of the past. It has been well documented in the McDougall report and in the Dore report, so I do not think we have any disputes about the past at all.

**The Hon. DANIEL MOOKHEY:** Mr Harding, I appreciate you saying that, but Ms Maini's board paper was written in September, which is not that long ago. My issue with it is that it seems to be correct advice. I point out that it contradicts the two other CEOs who appeared before you in this particular inquiry in terms of what they were telling us. But I appreciate you say things have changed. But the issue I have specifically is that you are telling us that this extension with EML has helped—that the additional co-investment has led to all the factors that Ms Maini described at some length—but the board is being told that none of this is monitored and the executive in charge is not confident that that money—that additional $10 million that icare spent—has led to any of the improvements EML promised.

That is the issue, and that is why I am asking Ms Maini—because she wrote the paper—to be clear: Has EML performed its side of the obligations? Ms Maini, given you have just joined and you reviewed what took place before you, why was icare not monitoring whether or not its additional $10 million it gave to EML was producing what EML said it would, and that icare was getting what it was paying for?

**Ms MAINI:** Mr Mookhey, I cannot talk to the past. All I can do is really focus on the future. We are actively—

**The Hon. DANIEL MOOKHEY:** But Ms Maini—sorry.

**Ms MAINI:** Sorry, Mr Mookhey, we are actively monitoring all the co-investment going forward. We are actively ensuring that we are actually continuing to drive capability and that that capability is monitored. All I am saying is that the major focus for us is to make sure that we continue to increase upskilling our claims managers to really focus on delivering outcomes for injured workers.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Ms Maini, but I have one last question on this before I pass to my colleague. I appreciate that you say you cannot speak to the past, but you investigated this. You came in and investigated it. You inherited this portfolio. I am the first to acknowledge it is a difficult job. You clearly did inspect the EML contract and decision to extend it. You then wrote a board paper in which you told your board that icare was not monitoring whether or not the additional money it had paid EML had resulted in the improvements that icare was promised. Surely you did not write that to your board without taking proper steps to ensure that that advice was accurate. I am asking you now what I am sure the board would have asked you: Why was icare not monitoring its additional investment with EML for the seven-odd months until you took the job?

**Mr HARDING:** I am happy to jump in again, sir, if that is all right. I think Ms Maini cannot answer what happened in the past before she arrived—

**The Hon. DANIEL MOOKHEY:** No, I am not asking that, Mr Harding—

**Mr HARDING:** And we cannot speculate—

**The Hon. DANIEL MOOKHEY:** Sorry, Chair, I actually asked the question directly to Ms Maini because she wrote the report.

**Mr DAVID SHOEBRIDGE:** I think Mr Harding can have first go.

**The CHAIR:** Order!

**Ms MAINI:** If I could just wait, Mr Mookhey, until I read the board paper?

**The CHAIR:** Can I allow Mr Harding to address the report, Mr Mookhey? If you want to press it, I will allow you to do so with Ms Maini.

**Mr HARDING:** Ms Maini has obviously said that she started in April, she has reviewed the business and she has written a report to the board that describes what she has discovered. It is an open, transparent and honest assessment of what is there. She is not able to explain to you what has happened previously, and I think that is fair and reasonable from her point of view. Clearly our focus is on the work that she is doing now to address the issue she has discovered, to address the problems that are there and to improve the outcomes—renegotiation of an extension with EML, with the goal that we will achieve the outcomes that we have talked about and we will push for growth in capability in the workforce to get the right case managers talking to injured workers.

That is the focus going forward: to review the claims model and get to a competitive process where there is an opportunity for us to move to a multi-provider world with more capability and more capacity in the market. Those are the things that we are doing now. Those are the things that Ms Maini has focused on going forward. I think that is the point of that board paper from her. She has come in, looked at what is there and provided for me and the board a very clear, honest, open and transparent assessment of what is there. Now we are addressing those issues through the plan that she is talking about.

**The Hon. DANIEL MOOKHEY:** Mr Harding, I appreciate that. But let me now ask you this question, because you are the CEO and you have been the CEO since early this year. This contract with EML was only agreed to by Mr Ferguson towards the latter part of last year—from memory, I think it was October or November. You took the job in February. This was a key issue and remains the key issue in what is going on with return to work performance. Why were you as CEO not monitoring whether EML was doing what it said it would, and why were you not monitoring whether or not icare's additional $10 million had produced the outcomes we paid for? You are quite right that Ms Maini cannot answer that—but you are the CEO. Why were you not doing it, if that is the case?

**Mr HARDING:** In a very similar vein, Mr Mookhey, the focus has been on moving the organisation forward. We have had a process where the group executive at that time was focused on implementing the renewal processes—actually looking at the investment. The outcomes would have been not visible at that point of time, in the January/February time. The investment itself would have only just been starting to take place. I take your criticism; there should have been a greater focus on it. That is why we have changed the group executive for workers compensation. That is why we have a new team on board. It is why we are changing the structure of the organisation to have the focus on end-to-end accountability for the scheme.

At the time when I came in and the time that agreement was put in place, there was one executive accountable for claims and one executive accountable for underwriting. There was no clarity of accountability. That is why we changed that. That executive left the organisation and we now have Ms Maini here, who is going to implement the plans we just talked about, and who is implementing a very strong focus with EML on accountability and driving that change that we need to see. On your points about what should have happened, we all agree.

**The Hon. DANIEL MOOKHEY:** I am asking you to respond directly to the specific question that I am asking you as CEO. Your predecessor agreed to spend an additional $10 million with EML, extending the contract by a year. Come September your board is being told that for those sort of nine months that you were in charge that was not being monitored. I am asking you specifically why this was not at the top of your agenda, given this has been so crucial to return to work performance.

**Mr HARDING:** Maybe I was not clear in my previous answer, so I apologise. The focus at the time when I first arrived was on the implementation of the program of co-investment to get that to start to happen. The benefits arising from that—as we have just discussed, they are incrementally visible now and they will not be visible for some time, when you are talking about implementing growth in capability. One of the reasons we are able to talk about it with confidence now is because we are tracking it, we are measuring it and we are looking at those characteristics.

At the early stages of my arrival, as I said, the accountability model was not there. The focus of the organisation was on implementing the contract, not on measuring the outcomes because it was too early to measure the outcomes. But I am accepting your criticism, sir. I do not dispute the conversation you have had. We are in the process, as I said in my opening statement, of transforming an organisation that needed significant reform and that has an opportunity to have better governance and accountability frameworks in place. That is what our model is. The work we are doing right now is to improve those processes and to get that in place.

**Mr DAVID SHOEBRIDGE:** Ms Maini, the conclusions that you reached in your board briefing paper were based upon your five months in the job up to that point, is that right?

**Ms MAINI:** I do not have the board paper in front of me, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** I think we need to get you a copy.

**Ms MAINI:** Thank you.

**Mr DAVID SHOEBRIDGE:** Do you recall this document?

**Ms MAINI:** If I could just spend one minute—

**Mr DAVID SHOEBRIDGE:** Do you see on the last page that it says "submitted by" and then it states, "Mary Maini, Group Executive Workers Compensation"?

**Ms MAINI:** Yes, I do.

**Mr DAVID SHOEBRIDGE:** This was your document?

**Ms MAINI:** Yes, that is right, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** This was based upon, at that stage, five months in the job—April through to September?

**Ms MAINI:** That is right, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** The conclusions about the contract with EML were caustic, would that be a fair summary?

**Ms MAINI:** That would be fair.

**Mr DAVID SHOEBRIDGE:** If I take you to the bottom of page 2, I think CSP is claims service provider, is that right?

**Ms MAINI:** Claims service provider. That is correct.

**Mr DAVID SHOEBRIDGE:** It states:

> For the CSP there were limited financial implications for poor performance. This represented a disincentive for the CSP to invest in improved performance. An investment to improve performance would come out of CSP profit.

Do you see that? It is at the bottom of page 2, fourth last paragraph.

**Ms MAINI:** Yes.

**Mr DAVID SHOEBRIDGE:** That was because the way EML was remunerated—and the way it continues to be remunerated—is a cost-plus model, is that right?

**Ms MAINI:** That was the case. That is correct, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** It is still the basic case, is it not?

**Ms MAINI:** That is correct.

**Mr DAVID SHOEBRIDGE:** So the more they manage a claim, the longer a claim runs, the more profit they make. Is that right, Ms Maini?

**Ms MAINI:** Yes, but there are other measures in the contract as well, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** Well, but its primary remuneration is a cost-plus model.

**Ms MAINI:** That is correct.

**Mr DAVID SHOEBRIDGE:** In fact, you say just after the paragraph I took you to, "An amended remuneration model was implemented in 2020, which includes a slightly increased performance incentive linked to revised standards and measures. However, the overarching mechanism is the same and the degree of incentives at risk remains significantly below what was the case under pre-2017 contracts."

**Ms MAINI:** That is correct.

**Mr DAVID SHOEBRIDGE:** That was the state of play then and it is the state of play now, is it not?

**Ms MAINI:** Yes, but since that time we have extended. We have been in negotiations with EML and I cannot say anymore because we are actually in the middle of or close to finalising the new arrangements for the extension based on Ms Dore's report, which recommended that we extend the contract until we implement the new claims model. So until that—ah, yes—and because it is an extension we cannot vary the terms to a significant amount, but we have adjusted them when we can.

**Mr DAVID SHOEBRIDGE:** And then the—

**Ms MAINI:** I am sorry, Mr Shoebridge. I apologise for interrupting. I am more than happy, once we conclude that, to provide the Committee with a briefing on the changes that we have made.

**Mr DAVID SHOEBRIDGE:** That will be useful but the question is extending the core contract, and the core contractual provisions as far as EML is concerned is they get remunerated on a cost-plus model, and that is a contract that you are looking to extend into next year. Correct?

**Mr HARDING:** Chair, if I—

**Mr DAVID SHOEBRIDGE:** I am not blaming you for this, Ms Maini.

**The CHAIR:** Order!

**Mr DAVID SHOEBRIDGE:** I am just trying to understand what the situation is.

**The CHAIR:** Order! Mr Shoebridge, Mr Harding has asked for an opportunity to respond and I will allow him to do so.

**Mr HARDING:** Thank you. I think we all understand the point you are making. We agree, as Ms Maini has written in the paper, it is not acceptable, or it is not actually the best model we can use. Unfortunately, because we have an extension we are not able to vary the contract terms significantly. We have improved the incentive model in this new program but to get to a point where we can put a commercial RFP in the marketplace to change this model, we need to extend the program. In the new year we will be putting through an RFP that will have a very different set of drivers and a different set of circumstances to it. But the points that you are making here are ones that we have accepted well and truly before and we are working towards changing it.

**The CHAIR:** Thank you for your clarification, Mr Harding. Mr Shoebridge has the call.

**Mr DAVID SHOEBRIDGE:** So from 2017 to now the contractual model has been one that encourages lengthy claims, large numbers of interactions between the CSP and the worker because every time they handle the claim, every time they do something for as long as the claim lasts, EML makes a profit. That is the current contractual provision, is it not?

**Mr HARDING:** I think this has been well and truly ventilated—

**Mr DAVID SHOEBRIDGE:** You can just say yes.

**The CHAIR:** Mr Shoebridge—

**Mr HARDING:** —through Ms Dore's report, through Mr McDougall's report and through other reports. We accept that that model in the past has not delivered the outcomes.

**Mr DAVID SHOEBRIDGE:** I understand.

**Mr HARDING:** It is not actually—

**Mr DAVID SHOEBRIDGE:** And you will be extending that contract for how long? What is the current intention?

**Mr HARDING:** For one year to enable us to put a full RFP into the marketplace in the new year so that we can transition at the end of that year to a very different model.

**Mr DAVID SHOEBRIDGE:** So what is the duration that you are proposing for this fundamentally broken contract?

**The CHAIR:** Mr Shoebridge, please do not editorialise but I understand the question you are asking.

**Mr DAVID SHOEBRIDGE:** I do not think we are at disagreement. It is a fundamentally broken contract. When will it end?

**Mr HARDING:** I am happy to talk further on this but we have to be very careful both about probity here because we are going into an RFP that will a significantly complex RFP with full market participants.

**Mr DAVID SHOEBRIDGE:** I am asking about the contract extension.

**Mr HARDING:** Yes. Let me—

**Mr DAVID SHOEBRIDGE:** When will it extend to?

**Mr HARDING:** That is a relevant and sensitive matter to the RFP, but the contract will end in December next year in line with the contracts for the other providers. That is the final extension and, as I said to you, we are in the market in the new year with an RFP. Changing these practices, you do not want us to do this quickly. If we do this in a way that was done in the past, you will end up with a worse outcome. The return-to-work rates, as we have already discussed with the Mr Mookhey, are at a level that we are all uncomfortable with, right? We want to change this model to improve the outcomes but to do that we need to do that in a measured and practised way, without radical changes that are going to create more pain.

**The CHAIR:** Mr Harding, we are almost out of time. Mr Shoebridge, this will have to be the last question.

**Mr DAVID SHOEBRIDGE:** It is not just the broken element in the contract. It is how EML has performed it. This report points out that the turnover rate for frontline resources since the implementation of this in 2017 has been unacceptable throughout the entire contract period. Where are the claims being made against EML for their non-performance or their poor performance on the contract? Where is the damages claim being brought against EML?

**The CHAIR:** Mr Shoebridge, that is the question. I will allow Mr Harding to answer that.

**Mr HARDING:** All I can say to you, Mr Shoebridge, is our intent is to change the scheme to improve it, to get it better. The extension we are putting in place focuses on things like the turnover rate. It has been the number one focus for Ms Maini and her team, because fundamentally getting the case manager capability up, the case manager is critical. As Ms Dore said, the relationship between a case manager and an injured worker is 100 per cent correlated with their ability to get back to work and to get back to work in a reasonable time frame.

**Mr DAVID SHOEBRIDGE:** Look, Mr Harding—

**Mr HARDING:** Building that capability is all about reducing turnover, which you have raised. It is all about investing in the capability of people, which is what Ms Maini has been talking about. The professional standards that she has just circulated to the Committee are about developing that over time. So that is our focus, and that is where we are taking the scheme.

**Mr DAVID SHOEBRIDGE:** Well, Mr Harding—

**The CHAIR:** We are out of time, Mr Shoebridge. I will allow you one point of clarification.

**Mr DAVID SHOEBRIDGE:** Mr Harding, you say you are going to be speaking—Ms Maini is going to be speaking with EML about turnover and that we should take an element of comfort from that. Let me read from Ms Maini's report.

**The CHAIR:** Mr Shoebridge—

**Mr DAVID SHOEBRIDGE:** No. It is one sentence.

**The CHAIR:** Okay.

**Mr DAVID SHOEBRIDGE:** "This has been the subject of continuous discussion between icare and EML though we conclude those discussions have been largely ineffective in resolving what seems to be a systemic issue." That is your conclusion in the report—

**Mr HARDING:** That is the conclusion, yes.

**Mr DAVID SHOEBRIDGE:** —that discussions have failed to resolve it—

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

**Mr DAVID SHOEBRIDGE:** —and you tell me now that that is the solution going forward.

**Mr HARDING:** Mr Shoebridge, what I have said to you—and the turnover issue is a significant issue. We have been focused on and we have had conversations with EML significantly. They had improved their turnover.

**Mr DAVID SHOEBRIDGE:** "Discussions have been largely ineffective."

**Mr HARDING:** They have improved their turnover.

**The CHAIR:** Order! We are not going to talk over each other. Look, I think that we have come to the end of the hearing. I have very much appreciated you have made yourselves available today. There have been some questions taken on notice. You have 21 days to return those to us and the Committee secretariat will be in contact to organise the tabling of those answers. We will now have a short break and return at 11.15 a.m. Thank you.

**Mr HARDING:** Thank you. I hope you all have a merry Christmas.

**The CHAIR:** Thank you very much.

**(The witnesses withdrew.)**

**(Short adjournment)**

**ADAM DENT**, Chief Executive, State Insurance Regulatory Authority, affirmed and examined

**DARREN PARKER**, Executive Director, Workers and Home Building Compensation Regulation, State Insurance Regulatory Authority, on former affirmation

**PETRINA CASEY**, Executive Director, Motor Accident Insurance Regulation, State Insurance Regulatory Authority, on former affirmation

**MARK AZZI**, Director, Performance and Compliance Reviews, State Insurance Regulatory Authority, sworn and examined

**The CHAIR:** I welcome the representatives from SIRA. Do you have an opening statement? Is it a single one from the organisation?

**Mr DENT:** Yes, if you do not mind—just a brief one. Thank you for the opportunity to appear before the Committee today. I begin by acknowledging the traditional owners of the land on which we meet, paying my respects to Elders past, present and emerging. The New South Wales workers compensation system is the largest defined benefit scheme in Australia. It protects over 4.5 million workers and provides income replacement and medical support for almost 100,000 people injured at work each year.

Reviews by Janet Dore, Robert McDougall and this Committee have provided deep insight into the issues that must be addressed. While progress has been made, I have not yet seen evidence of turnaround in the most important indicators of scheme health. In June 2016 the funding ratio for the Nominal Insurer was 123 per cent. In June 2021 it was 98.8 per cent. If the four-week return to work measures remained at the levels experienced in 2016-17, an additional 33,000 workers would have remained at or returned to work. The cost impact of this on the scheme over five years is estimated to be in excess of $780 million.

The Nominal Insurer and the TMF account for 80 per cent of all claims. It follows that the health of the system is inextricably linked to the performance of icare. However, the deterioration in performance is not unique to icare. Similar trends are evident across the system. The cost of claims has significantly outstripped the modest 7.7 per cent increase in claims numbers. The percentage of psychological reported claims has increased by 77.4 per cent across the system. All insurers experienced an increase. Today total claim payments are 59 per cent higher than in 2015. Again, the sharp increase has been experienced across all insurer types. Claims are in the system longer with all insurers.

The average duration of a claim has increased by 14.2 per cent. The number of complaints lodged with the Independent Review Office and its predecessor organisation have increased by 219 per cent since 2015. Despite the claims disputation rate dropping, Independent Legal Assistance and Review Service fees have increased by 43 per cent over the same period. And over recent years there has also been an 11 percentage point decline in the number of people staying at work while recovering. The deterioration in return-to-work measures is evident across all insurer types, as well as in other jurisdictions.

If legislation passes next year in line with recommendations from this Committee and McDougall, SIRA will have the necessary powers to do a better job of holding icare to account. SIRA is doing what it can to influence the health of the scheme, but this can only achieve so much in a scheme that is approaching its expiration date. In the time since this legislation was introduced, the disease risks have changed, the nature of work has evolved and there has been a rise in the gig economy. These developments mean that, in some ways, the legislation is no longer fit for purpose.

Workers compensation legislation is complex. It has been over 30 years since there has been a holistic review. Today we are left with a complicated, confusing and outdated suite of legislation. Compliance with the existing legislation does not equal good performance. Compliance is a minimum standard, not a gold standard, and certainly not enough to turn around a system that is going backwards. So I am pleased that the Government has accepted Robert McDougall's recommendation to review the workers compensation legislation, and SIRA has commenced work on this. Reforms could tackle key issues facing the system today and stop it from trending backwards while delivering a workers compensation scheme that appropriately balances access to benefits, premium affordability and sustainability. I look forward to kicking off consultation on that next year to inform new legislation. I thank you again for the opportunity to address this Committee and assist you with your inquiry.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Dent, for your appearance today.

**Mr DENT:** You are welcome.

**The Hon. DANIEL MOOKHEY:** Thank you also, Mr Azzi, for your appearance. Dr Casey, good to see you again. Good to see you as well, Mr Parker. I am going to pick up on your opening statement, Mr Dent.

You say that you are not satisfied with icare's performance in respect to the Nominal Insurer. How would you describe the Nominal Insurer's performance in the past 12 months?

**Mr DENT:** In the last 12 months we have not seen the sorts of improvements that we obviously need to. What I will say is I have seen intent to do the right thing and to improve on, in particular, the claims management issues. But in what is a complicated year we have still seen a decline in performance, and there really is not any room for further decline. We have seen an horrendous decline over five years that has not been arrested this year. My impatience around seeing a turnaround is one that comes from the basis that there really is no room for it to get worse.

**The Hon. DANIEL MOOKHEY:** Indeed. You say that it has been an alarming performance over the past five years, but the past 12 months have been particularly severe, with fast falls in key return to work rates. Is that fair?

**Mr DENT:** That is fair. I do think it is worth qualifying that that has been the case across all insurer types, although more pronounced obviously with icare, which looks after 80 per cent of that system.

**The Hon. DANIEL MOOKHEY:** Sure. Let's get into that. It is the case that system-wide there have been adverse impacts, but the spread between the Nominal Insurer's performance, as managed by icare, and self-insurers and specialist insurers has blown out incredibly, has it not?

**Mr DENT:** I agree, yes.

**The Hon. DANIEL MOOKHEY:** We just heard from Mr Harding. Did you see Mr Harding's evidence?

**Mr DENT:** Most of it, yes.

**The Hon. DANIEL MOOKHEY:** We heard that the three-month average return to work rate on a four-week level has dropped to 59 per cent. Did you hear that?

**Mr DENT:** I did hear that.

**The Hon. DANIEL MOOKHEY:** I said that was quite concerning. It is scary, isn't it, Mr Dent?

**Mr DENT:** It is. The one qualification that I am sure Mr Harding would have used is that in that most recent three-month period there were lockdowns. While we do not have data to quantify that, I do not think you could exclude that being a consideration in the most recent three-month period. But, nevertheless, the rate is disturbingly low.

**The Hon. DANIEL MOOKHEY:** Yes. And, to be fair to Mr Harding, he did make that point as well. But it is terrifying to have gone from 66 per cent return of work performance in December last year down to officially—I think it is 62 per cent, according to your September update, but the leading indicator is down to 59 per cent.

**Mr DENT:** Sixty-three per cent according to the September update, but that is on the 12-month rolling average, not the three.

**The Hon. DANIEL MOOKHEY:** But the three-month rolling average is 59 per cent. The Nominal Insurer is heading back to the disastrous levels which caused SIRA to establish the Dore report. That is correct, yes?

**Mr DENT:** That is correct. I cannot speak to what caused SIRA, I was not here, but I would agree with you about the disastrous levels.

**The Hon. DANIEL MOOKHEY:** Mr Parker might be in a position to speak to that because I think he was here. Mr Parker, this is heading back to the disastrous levels that caused SIRA to establish the Dore report. That is correct?

**Mr PARKER:** What was important for SIRA at that time was when we saw indications that there were issues, or potential issues, with claims management, return to work and the financial position. That is when the chief executive at the time commissioned and asked Ms Dore to, over a 12-month period, investigate those elements, and we know the history of that report.

**The Hon. DANIEL MOOKHEY:** Indeed. Have you received further updates about the Nominal Insurer's financial performance for the first quarter of this year?

**Mr DENT:** Just to clarify, the first quarter of this financial year—so, therefore, as at September?

**The Hon. DANIEL MOOKHEY:** Yes. Have you received icare's financials for the year to date?

**Mr DENT:** Let me find what we have most recently. Mr Parker?

**Mr PARKER:** What is publicly available, or the information that we have been relying on, has been the financials at the end of June, both in the valuation from June and the financial condition report. To your question about what latest financials we have seen, we do have the October 2021 Nominal Insurer financial results.

**The Hon. DANIEL MOOKHEY:** Do you have that with you?

**Mr PARKER:** I was not able to print it out this morning.

**The Hon. DANIEL MOOKHEY:** So far, what is the current year to date actual underwriting result?

**Mr PARKER:** It is $416 million.

**The Hon. DANIEL MOOKHEY:** Negative?

**Mr PARKER:** Yes.

**The Hon. DANIEL MOOKHEY:** So the underwriting result is negative $416 million. Is that right?

**Mr PARKER:** Yes.

**Mr DAVID SHOEBRIDGE:** As at when?

**Mr PARKER:** The end of October.

**The Hon. DANIEL MOOKHEY:** I have the Nominal Insurer financials year to date as of September, which we can table and provide to you as well, if you wish. That reported an underwriting result of negative $998 million year to date, which it said at the time was $175 million worse than it had budgeted. Do you have the variance to budget on the Nominal Insurer's year-to-date result?

**Mr PARKER:** So on the underwriting result, variance to the half-year budget, $597 million.

**The Hon. DANIEL MOOKHEY:** Negative or positive?

**Mr PARKER:** Positive.

**The Hon. DANIEL MOOKHEY:** I am not sure we are talking about the right things here because that is quite the turnaround in the space of a month. Can I table this and provide this to you and see if we are talking about the same principle position?

**Mr PARKER:** It might be easier if we refer to your September—

**The Hon. DANIEL MOOKHEY:** It might be easier if we return to the September date, unless you have the same information one year advanced. There are copies as well for other members.

**Mr PARKER:** I have got that in front of me now.

**The Hon. DANIEL MOOKHEY:** Which one do you have there, sir?

**Mr PARKER:** Financial year to date September 2020-21.

**The Hon. DANIEL MOOKHEY:** You can see down the bottom there, year to date actual underwriting result $998 million negative. Do you see that?

**Mr PARKER:** Yes, I can.

**The Hon. DANIEL MOOKHEY:** Have you got an update on that number?

**Mr PARKER:** Sorry, I think that was the one I just read out.

**The Hon. DANIEL MOOKHEY:** If you do not, it is okay. You can take it on notice what is the basis of the September numbers.

**Mr PARKER:** We will take that on notice.

**The Hon. DANIEL MOOKHEY:** It is only a month's difference. But the underwriting result here—

**Mr DAVID SHOEBRIDGE:** I think there is something to discuss. This shows a $998 million negative on the underwriting result and a $175 million net negative variance against budget. Mr Parker, I thought you had said that a month later on the figures you had had a $500 million positive variance. That has been a hell of an October.

**Mr PARKER:** I think if we provide the same document for October for the Committee on notice.

**Mr DAVID SHOEBRIDGE:** But I thought that you had said that your numbers had a $500 million positive variance to budget in October and, if so, I think we should just stop a moment and reflect on that. If there was a $675 million turnaround in a month—

**Mr DENT:** Perhaps if we could just have a moment while he is trying to find the right line on a phone screen.

**The CHAIR:** I was going to say, just to clarify, if it is possible to direct perhaps the secretariat to where the document is we can provide a copy to Mr Mookhey and Mr Shoebridge.

**Mr DENT:** We will attempt to get a copy for the secretariat. They are not published.

**The Hon. DANIEL MOOKHEY:** Maybe on notice can you respond to Mr Shoebridge's question?

**Mr PARKER:** Absolutely.

**The Hon. DANIEL MOOKHEY:** The year-to-date variance, certainly as of September, surely, if it is the fact that in the first three months—July, August, September—the first three months of the year, the underwriting result is $998 million of negative and that is $175 million worse than icare expected, that puts a financial quantum on how alarmed we should be, does it not, Mr Dent?

**Mr DENT:** Yes.

**The Hon. DANIEL MOOKHEY:** Because it means that we are on track for a massive underwriting loss again.

**Mr DENT:** Potentially. The one qualifier would be—and, again, without the document in front of me—there are investment returns that then offset those each year.

**The Hon. DANIEL MOOKHEY:** Indeed, that is why—

**Mr DENT:** But I am not disagreeing with you at all, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** Sure. You can see here that the investment income that was received in each of these months shows you how we are tracking. It says here that as of September the investment income year-to-date actual was $140 million—

**Mr DENT:** Yes. That is quite low.

**The Hon. DANIEL MOOKHEY:** —as of that point, and that is $82 million less than what they were budgeting for. Do you see that?

**Mr DENT:** Yes, I do.

**The Hon. DANIEL MOOKHEY:** So the investment returns, as in high investment returns to offset the underwriting loss strategy that icare has, even if you accept that strategy is sound, they are not performing according to what they themselves expect. Is that a fair conclusion?

**Mr DENT:** That is correct. Obviously, the premiums written at this point in the year versus the expenditure do not match well at all.

**The Hon. DANIEL MOOKHEY:** Sure, and, to be fair to icare, the pattern is that they tend to collect the premiums a bit later in the year, so that would reverse the figures, which is why I am not too worried about what the underwritings are. I am looking absolutely at the variance to budget aspects, and it is clear, even if you accept the way the Nominal Insurer's cash flows work, where they get claims earlier in the year and premium income comes in later, they factor that into their budget. It shows here that their budget is pointing to an even bigger loss than before, and we should be worried about that as a committee, should we not, Mr Dent?

**Mr DENT:** I think so. Taking into account there are monthly fluctuations and, as you have noted, the seasonal sort of premiums coming through, returns on investments do not always get delivered month on month.

**The Hon. DANIEL MOOKHEY:** Sure.

**Mr DENT:** But notwithstanding all of that, on the face of them, they are not numbers that are fantastic to look at at all.

**The Hon. DANIEL MOOKHEY:** And, to be fair now, let us talk about this strategy of using investment returns to offset underwriting losses. It is fair, is it not, Mr Dent and/or Mr Parker, that Ms Dore took strong exception to that strategy, did she not?

**Mr DENT:** Ms Dore did. I will leave it to Mr Parker to perhaps answer in more detail, or even Mr Azzi, who was more involved in that review. What I would suggest though is I do not think Mr McDougall necessarily took the same degree of concern.

**The Hon. DANIEL MOOKHEY:** Sure, and, to be fair to Mr McDougall, in his report he might disagree, but you are the regulator, so your view matters.

**Mr DENT:** If only we had the power under current legislation to prudentially regulate icare—and I hope we do.

**The Hon. DANIEL MOOKHEY:** But, Mr Parker or Mr Azzi, whoever sees fit, let us take this step by step. Ms Dore did take strong exception to the use of investment returns to offset underwriting losses, did she not?

**Mr AZZI:** I think so. Ms Dore did express concerns with the volatility it can create in reliance on investment returns, although she also did recognise that it is sort of a standard provision in insurance. But she did call out—you are right in that—it does create volatility and that performance needs to improve, not just reliance on investment returns. She made that direct observation in her report, yes.

**The Hon. DANIEL MOOKHEY:** Indeed. Or, I guess alternatively, premiums have to rise to match the levels of performance. Correct?

**Mr AZZI:** That is right, yes.

**The Hon. DANIEL MOOKHEY:** And that is, the underwriting result needs to close, either through better claims management or higher premiums. That is fair?

**Mr AZZI:** That is right, yes.

**The Hon. DANIEL MOOKHEY:** And, in fact, using investment income as a strategy is risky, is the way she described it. Would you agree with that?

**Mr AZZI:** Yes, she said it was risky, and I think she made an observation about the volatility, yes.

**The Hon. DANIEL MOOKHEY:** Indeed. So basically we are returning to that scenario again, are we not, Mr Parker, Mr Dent or Mr Azzi—or Dr Casey, we are returning to that scenario again where in order to operate, as you say, Mr Dent, the biggest defined benefits scheme in the country, we are relying inherently on what is going on in global stock markets, equity markets, bond markets and hedge funds, are we not?

**Mr DENT:** Correct, yes.

**The Hon. DANIEL MOOKHEY:** Are you satisfied with that, Mr Dent, as the regulator?

**Mr DENT:** No, not at all. Obviously we want to see the scheme in a far more sustainable position than it currently is and that level of reliance could mean in a couple of bad years we would be in a deeply worse position. Notwithstanding that it is a long-tail scheme and the scheme, as McDougall did find, is solvent, so there is not a solvency concern, obviously that is not a trend that is going to keep it that way over the long term.

**The Hon. DANIEL MOOKHEY:** Indeed. You can see here—I think you said in your opening statement that the funding ratio was 98, did you say?

**Mr DENT:** I said 98.8 per cent.

**The Hon. DANIEL MOOKHEY:** As of 30 June, correct?

**Mr DENT:** Correct.

**The Hon. DANIEL MOOKHEY:** And that is the 75 per cent level probability of adequacy.

**Mr DENT:** That would be, yes. That is the number we are now using.

**The Hon. DANIEL MOOKHEY:** According to this, the funding ratio has deteriorated from 98 to 95 per cent as at September. Do you see that? It is on the balance sheet side of that financial—

**Mr DENT:** I do, yes.

**The Hon. DANIEL MOOKHEY:** And that is the 75 per cent probability of adequacy, do you see that, or sufficiency?

**Mr DENT:** Yes, correct.

**The Hon. DANIEL MOOKHEY:** But if we were still calculating, as we did until last year, on the 80 per cent probability of sufficiency, that would be circa 91 per cent, would it not?

**Mr DENT:** I would take your word on that, Mr Mookhey. I am not going to attempt to do the math on the run.

**The Hon. DANIEL MOOKHEY:** Does Mr Parker or Mr Azzi or Dr Casey wish to disagree that that is probably where the figure would come out if it was calculated on an 80 per cent probability of sufficiency?

**Mr PARKER:** I think if we looked at the end of June results and the difference between the 75 per cent probability of adequacy and the 80, it is about $500 million. So the difference in the percentage I am not sure, but in absolute dollar amounts it is in that vicinity, yes.

**The Hon. DANIEL MOOKHEY:** As riveting as I find these aspects of going through the financials, I want to talk about what it means for premiums. Have you calculated what the break-even premium is?

**Mr DENT:** SIRA obviously has not but actuaries have. The break-even premium—and please correct me—is in the order of about 1.77 per cent.

**The Hon. DANIEL MOOKHEY:** Of wages?

**Mr DENT:** Of wages. And the current premiums are closer to 1.4, and there is an intent, I believe, for them to move to 1.47.

**The Hon. DANIEL MOOKHEY:** So they will continue to collect less premiums than they require to break even. That is fair?

**Mr DENT:** That is fair.

**The Hon. DANIEL MOOKHEY:** But they are increasing premiums, are they not?

**Mr DENT:** They are increasing premiums. So it is a gradual process over the course of a decade. The intent by the icare board, I understand, is so as not to have too great an impact directly on, particularly in their case, small businesses in the immediate term, so that it will gradually get closer to break even over a period of time. That said, that period of time, I think, is probably longer than they are hoping for.

**The Hon. DANIEL MOOKHEY:** What do you mean by "that is longer than they are hoping for"?

**Mr DENT:** Mr Parker, correct me if I am wrong, but it is going to take more than at least six years to get closer to break-even, but I will let you speak to that.

**The Hon. DANIEL MOOKHEY:** Sorry, let us set this out. They have provided you with indication of the premiums over the following five years, six years, 10 years?

**Mr DENT:** That was in their business plan.

**Mr PARKER:** Yes, they have. With the results over recent months, SIRA has been concerned about the funding ratio and the insurance ratio and how that relates to the capital management policy set by the icare board. Because of that we have written to both Treasury and icare asking them to explain what is the action that they are going to take to move their financial position back into a higher zone, if you like, because for the insurance ratio it has dipped under 120 per cent. In that response, the requirement if that is deteriorating is an action to bring that within the acceptable range within five years, and at the moment the projections were that that would return to that range within the next 10 years.

**The Hon. DANIEL MOOKHEY:** They are not going to be charging adequate premium levels, which could either be a good thing or a bad thing depending on the perspective, for at least a decade is a summary of what you just said then, Mr Parker. Is that correct?

**Mr PARKER:** That is some modelling that has been provided from icare to SIRA. SIRA assesses it though on an annual basis.

**The Hon. DANIEL MOOKHEY:** Sure, but the clear point is the break-even premium is 1.77 per cent of scheme wages in New South Wales, is it not, Mr Dent?

**Mr DENT:** Correct.

**The Hon. DANIEL MOOKHEY:** Currently it is at 1.4 per cent?

**Mr DENT:** Correct.

**The Hon. DANIEL MOOKHEY:** And it is intending to rise to 1.77 per cent over the next decade?

**Mr DENT:** The final position over the next decade is not, but the break-even point will be 1.77 per cent. Mr Parker might know when—

**The Hon. DANIEL MOOKHEY:** That is a 26 per cent increase in premiums coming to New South Wales businesses in the next five to 10 years. Is that correct?

**Mr DENT:** To achieve break-even that would need to be the case, yes.

**The Hon. DANIEL MOOKHEY:** And that is what is in icare's business plan. Is that correct?

**Mr PARKER:** I do not want to mislead the Committee so we might take that on notice.

**The Hon. DANIEL MOOKHEY:** Sure. Icare has not been prepared to say what their intentions are for anything more than 12 months, and they are in fact quite reticent to tell us at various forums, but they have told you, have they not?

**Mr PARKER:** They have provided some modelling and a whole range of different scenarios that may play out, whether it is COVID-related in relation to the whole-person impairment, what claims will come through, what investment returns. There are different scenarios that have been put to us but, as I say, we are expecting by March that we will have the next filing from icare. That will be specific about what is the price for next year.

**The Hon. DANIEL MOOKHEY:** I just have two short questions before I hand to my colleague. This intention to increase premiums to recover some of the additional cost arises out of poor claims performance, does it not?

**Mr DENT:** I would not be so specific as to say that was the exact reason—

**The Hon. DANIEL MOOKHEY:** It is a large reason.

**Mr DENT:** —but poor claims performance is a large contributor to the current state of the scheme, yes.

**The Hon. DANIEL MOOKHEY:** In fact, to be fair to icare, in a board paper that we tabled earlier today, they say that:

> Since 2015, total break even premium (BEP) within the NI has increased approximately $800m after normalising for exposure growth and occurring in the following areas.

Of the $800 million additional they say that they need to collect to break even as of today's results, they say that $350 million is attributable to poor return-to-work performance, which is by far the biggest factor—

**Mr DENT:** I would agree with you.

**The Hon. DANIEL MOOKHEY:** You would agree with me, yes? To be very clear here, premiums are going up not because of COVID but because of poor claims performance, in large.

**Mr DENT:** That would be a reasonable statement for you to make.

**Mr DAVID SHOEBRIDGE:** I just wanted to explore with you the $780 million figure that you have identified being the cost over five years of the poor return-to-work performance. Was that the result of your analysis, Mr Parker?

**Mr DENT:** With great trepidation, Mr Shoebridge, I would suggest to you that was our actuaries.

**Mr DAVID SHOEBRIDGE:** Alright. That is interesting. That is the estimated cost over what five-year period?

**Mr DENT:** From 2015-16 through to today.

**Mr DAVID SHOEBRIDGE:** Alright. Do we know what the annual cost is anticipated going forward of that continuing poor return-to-work rate?

**Mr DENT:** I do not believe we have that to hand. No. We had some numbers come through last night to try and estimate to answer the question of the impact to date. Around 33,000 additional workers would have been at or had returned to work, and that $780 million is the cost of those delays.

**Mr DAVID SHOEBRIDGE:** Did the bulk of that occur as a result of, or did it coincide with, the change in the claims handling practices, the moving to a single claims service provider?

**Mr DENT:** Correct me if I am wrong, but I feel like the stark change appeared at that time.

**Mr DAVID SHOEBRIDGE:** In or about 2017?

**Mr DENT:** I think 2017-2018 is where you see the numbers start to shift dramatically on any graph.

**Mr DAVID SHOEBRIDGE:** To what extent has icare been working with SIRA as it proposes to give a 12-month extension to its current contract with EML and is working out its market pitch for a new tender?

**Mr DENT:** What I can say is that is where I think icare has been as constructive as I would hope. One of the more important things in sharing with us their enterprise improvement and Nominal Insurer improvement plans is very recently icare have engaged Promontory as an independent assurance provider over their improvement plans. What that means is Promontory will be publishing quarterly reports on their performance against those improvement plans, which speak to claims management improvement and the funds management of the Nominal Insurer among numerous other things. I think there were 107 recommendations from both McDougall and PwC that ended up in that. Importantly, Mr Harding has offered Promontory direct access to SIRA and SIRA direct access to Promontory so on a quarterly basis we will meet with Promontory to essentially work through with them the performance report they have provided so I have some degree of satisfaction that that work is actually underway and is achieving results or not.

**Mr DAVID SHOEBRIDGE:** Remind me if you will when the McDougall report was delivered?

**Mr DENT:** I will say that was earlier this year. I was not appointed at the time.

**The Hon. DANIEL MOOKHEY:** The day we delivered our report.

**The CHAIR:** I was about to say, it was a couple of hours—

**Mr DAVID SHOEBRIDGE:** I think it was May of this year.

**The Hon. DANIEL MOOKHEY:** Hours before we did it. We will get the update when we release our next report.

**Mr DAVID SHOEBRIDGE:** I think my memory is it was May of this year, and before that we had the Dore report, which is now at the better part of—

**Mr DENT:** Sorry, I am trying to shut that up.

**Mr DAVID SHOEBRIDGE:** That is okay. Before that we had the—

**The Hon. DANIEL MOOKHEY:** You lost your phone, did you?

**Mr DAVID SHOEBRIDGE:** That might tell you the date of the McDougall report.

**Mr DENT:** If only.

**Mr DAVID SHOEBRIDGE:** Before that we had the Dore report, which is now the better part of two years old. Would it be fair to say the Dore report made it very clear that the single contract with EML was producing very substandard results?

**Mr DENT:** Even I can say, I think that is very fair.

**Mr PARKER:** Yes.

**Mr DAVID SHOEBRIDGE:** Two years ago, SIRA and icare were on notice that the single contract with EML was a significant problem. We then get the McDougall report in May of this year, now about seven or eight months ago, which confirmed that and then put further recommendations. Can you explain how it is that we will have yet another 12 months of this poorly constructed contract, which is a core part of the reason why we have such poor return-to-work rates?

**Mr DENT:** I cannot explain that; that is a matter for icare's board. SIRA currently does not have the power to regulate icare directly or make its procurement decisions for it. My disappointment would be equally similar to yours. That is a contractual arrangement icare have entered into. In the meantime—

**Mr DAVID SHOEBRIDGE:** They have not yet. They are in the process of negotiating that.

**Mr DENT:** The contract extension—that is a matter for icare. I wish I could tell you I had any influence over that whatsoever.

**The CHAIR:** Can I just seek a point of clarification? Does SIRA have any oversight as to the contract terms or the contract visibility?

**Mr DENT:** No. That would entirely be a matter for the icare board.

**Mr DAVID SHOEBRIDGE:** We heard from icare earlier today that the core elements in that contract, being a cost-plus remuneration model which effectively rewards EML for not closing files and for continuing to manage open files, cannot be renegotiated over the next 12 months. So what, if any, program does SIRA have to monitor that contractual performance over the next 12 months? Because I look forward and it looks like a bleak 12 months for injured workers.

**Mr DENT:** I would agree with you on that front. So to "what, if any", very little, in the sense that that contract management is not a responsibility of us, as the regulator, as it relates to icare. We regulate, in a limited way, the Nominal Insurer, and I am looking forward to seeing legislation in this place next year that will start to shift that. Even then, I would suggest contract management would not be something that we are likely to have the power to influence. What I will say is in the meantime, we continue to meet monthly. Mr Parker and his team meet with Ms Maini and her team each month to monitor performance and talk about issues as we see them arise. There are other things that SIRA is committing to do around the system where we can have any impact at all to improve return to work. I think, fundamentally, outside of claims management, which I fully agree is the critical piece of this puzzle, there are other things that we hope to do in terms of working with employers and lifting compliance in other areas that we hope to mitigate what I suggest is probably not unlike a bleak year, as you would call it.

**Mr DAVID SHOEBRIDGE:** Another area that I have got to say troubles me is the massive increase in employee expenditure within icare, having increased from $100 million in financial year 2017 to now $214 million just four years on. It has more than doubled its employee expenditure. Indeed, that is a $44 million increase in just the past 12 months—from $170 million in the 2020 financial year to $214 million in the 2021 financial year. Has icare been able to explain to your satisfaction that massive increase in employee expenditure?

**Mr DENT:** No. They also are not required, unfortunately, in the current environment, to explain those sorts of things to us. I saw the annual report the day you would have, and I have to say the first comment I made was that is a staggering increase in the number of people and, I would suggest, without a commensurate increase in performance—in fact, quite the obvious. Unfortunately, it is not icare's responsibility to explain that to us, but I could not imagine what I would do with another 300 people, quite frankly.

**Mr DAVID SHOEBRIDGE:** What about the overall expenses having increased from $646 million in 2017 to $925 million in 2021? I assume it is the same answer: They have not got an obligation to explain it to you and they have not.

**Mr DENT:** And they have not. It is an impost on the system, and it is a cost to the insurance fund that is concerning if there is not a requisite improvement in result.

**The Hon. DANIEL MOOKHEY:** Just to follow up on that line of questioning, Mr Dent, you do have the responsibility of ensuring that money that is taken out of the fund is used legally, correct?

**Mr DENT:** Yes.

**The Hon. DANIEL MOOKHEY:** You are aware that earlier this year the Auditor-General made a finding that said that for multiple years icare was putting employee costs and labour costs into the Nominal Insurer when it should not have been, correct? You are aware of that?

**Mr DENT:** I am aware, generally, yes.

**The Hon. DANIEL MOOKHEY:** Mr Parker is aware of that as well?

**Mr PARKER:** Yes.

**The Hon. DANIEL MOOKHEY:** You can see that one of the things that icare had to do was stop doing that practice, correct? You are aware of that?

**Mr PARKER:** Yes.

**The Hon. DANIEL MOOKHEY:** Mr Shoebridge has spoken about icare's—the agency's—financial statements, but I am looking at the financial statements of the actual Nominal Insurer, which they tabled in Parliament two weeks ago. Have you seen them?

**Mr DENT:** We would have, generally, yes. I do not have them to hand.

**The Hon. DANIEL MOOKHEY:** They reported that labour costs in 2020—this is the period that led to the Auditor-General's concern. They said that icare was charging the Nominal Insurer $30 million worth of labour costs—in fact, to be very precise, $29,687,000—and that has now dropped to $7,230,000. Are you aware that there has been that drop?

**Mr PARKER:** I am not aware of the exact numbers.

**Mr DENT:** Not that specific number, no.

**The Hon. DANIEL MOOKHEY:** A $22 million drop, which is quite a large drop in one year. So I am inferring that perhaps icare was billing the Nominal Insurer at least $22 million worth of labour costs that it should not have been. Is that an unfair inference?

**Mr DENT:** I would not call it a fair inference, necessarily, without further investigation. But on that basis, I think it would warrant a considerably greater detailed look.

**The Hon. DANIEL MOOKHEY:** That is why I am asking the regulator, whose job is to ensure that the fund is being used as the law says it should. What steps are you taking now to investigate icare's historic practice—potentially continuing practice—of billing the Nominal Insurer with labour costs that it should not have.

**Mr DENT:** Before Mr Parker answers that directly, what I will say is that I do understand they have changed the methodology by which they apportion costs to the Nominal Insurer, and the previous model was certainly an unreasonable one, whereby costs were apportioned to all other schemes and the balance to the Nominal Insurer.

**The Hon. DANIEL MOOKHEY:** Clearly it has, because it has dropped by $22 million. I want to be very clear here. Icare has acted to implement—after the Auditor-General chided it in her report on the central agencies and made a high-risk finding, icare has in fact responded to her finding. But I am asking you, as the regulator, what are you doing to investigate whether or not it breached the law by billing the Nominal Insurer labour costs that it should not have.

**Mr PARKER:** Part of our role, as you say, is to look at this very point. It was raised in previous law and justice committee findings and reports. There was a whole host of questionable financial expenditure of the fund that was raised. As a result of that—and we have got our Director of Performance and Compliance Reviews here with us today—we commissioned a review, with an external forensic accounting company to go in and have a look at the Nominal Insurer's financials. We have done that. We have produced a draft report. We have shared that with icare, and we are very close to being able to finalise that report. I am not sure if even the draft report was captured in the papers that went to this Committee or not, but we have the director here who can provide some more information on the draft findings if that would be helpful.

**The Hon. DANIEL MOOKHEY:** I think it would be helpful.

**Mr AZZI:** If I may, just to correct this, the obligation on auditing and governing the use of the insurance fund actually sits with the Auditor-General under the legislation. However, we have exercised other powers we have under the legislation, like to do an audit of the use of the fund. We have provided icare with a draft report from Grant Thornton. Grant Thornton is the auditor that we have engaged. It has called out, like Mr Parker has said—and it is in draft. We have offered—process and procedural fairness—icare the opportunity to provide a response. They provided some further information, and it is being finalised as we speak. So I just want to be careful talking to it, but it has called out things like the billing of icare expenses to the workers compensation insurance fund.

**The Hon. DANIEL MOOKHEY:** What are we talking about? Are we talking about labour or are we talking about property?

**Mr AZZI:** It specifies expenses generally, so it is both. Basically, it talks to the allocation of funding and expenditure—that there were historical models used to bill for the other schemes and the balance was then charged to the Nominal Insurer.

**The Hon. DANIEL MOOKHEY:** Yes, Mr Azzi, I appreciate the information, but this was a very big focus of this inquiry that we are still technically doing—the 2020 review of workers compensation. So we were across the detail. I am asking you in the year since, what has SIRA found and what has SIRA done? We know labour costs were incorrectly billed. We know property costs were incorrectly billed. When we are talking about property costs, are we talking about icare's offices? Are we talking about the offices leased for labour-hire companies? What are we talking about?

**Mr AZZI:** Yes, so offices, labour costs—all of that was covered. There was even supplies—

**The Hon. DANIEL MOOKHEY:** Was the Imaginarium billed to the Nominal Insurer?

**Mr DAVID SHOEBRIDGE:** That is my favourite.

**Mr AZZI:** I do not know that detail. It does not go into that detail. We looked at quite a number of specific providers. I think it was 13 providers, from memory, that were raised by this Committee throughout the course of last year.

**The Hon. DANIEL MOOKHEY:** Was the Comensura contract?

**Mr AZZI:** Yes, that was looked into in some detail.

**The Hon. DANIEL MOOKHEY:** So the Comensura contract—was that incorrectly billed to the Nominal Insurer?

**Mr AZZI:** Like I said, I just want to be careful because the report is still in draft.

**The Hon. DANIEL MOOKHEY:** Yes, sure, but is that your draft finding?

**Mr AZZI:** The draft finding—not that it was incorrectly billed, but the draft finding did talk to that Comensura was used to lease other property, and there was a 5 per cent mark-up then also charged to the Nominal Insurer.

**The Hon. DANIEL MOOKHEY:** To be clear, this is the contract that icare entered into with a labour-hire company to rent—I think it is 201 Kent Street, Mr Shoebridge?

**Mr DAVID SHOEBRIDGE:** Two levels.

**The Hon. DANIEL MOOKHEY:** Two levels at 201 Kent Street, which has harbourside views, for which there was a mark-up of 5 per cent that was then billed to the Nominal Insurer.

**Mr AZZI:** Yes.

**The Hon. DANIEL MOOKHEY:** That is what your forensic audit found?

**Mr AZZI:** Yes.

**Mr DAVID SHOEBRIDGE:** Did your forensic audit look to whether or not that was intended to subvert oversight by Treasury and restrictions by Treasury on the prior request from icare to expand its floor space?

**Mr AZZI:** The audit just looked at the financial expenditure. However, I will say that I think icare have engaged an independent review in that regard, and they may provide that.

**Mr DAVID SHOEBRIDGE:** Can you give an indication of the scale of the funds that were inappropriately—at least in your draft report—taken from the Nominal Insurer by icare?

**Mr AZZI:** Again, it is in draft. It may change, subject to further information.

**The CHAIR:** If there are concerns, you can take that question on notice.

**The Hon. DANIEL MOOKHEY:** It is a draft finding.

**Mr DAVID SHOEBRIDGE:** We are happy to accept it as a draft. I know that there are some negotiations still underway. What is the scale of it, Mr Azzi?

**The CHAIR:** You can take the question on notice, however.

**Mr AZZI:** If you just give me a moment. I think it was to the tune of over $20 million.

**Mr DENT:** I think it might be best at this point if we take that on notice and provide that detail to you.

**The Hon. DANIEL MOOKHEY:** If you have the information by the time the hearing is over, that would be helpful.

**Mr DAVID SHOEBRIDGE:** I am having trouble. In its evidence today icare indicated that the surge in its employee expenses was because it had moved contractors and contingent labour onto the books. That is hard to accept because their contingent labour costs and their contracting costs increased in the last financial year substantially, by about $40 million. They then also indicated that some of it was about regularising the practice that they had previously had, of dipping into the Nominal Insurer funds and not bringing them to books on icare. I have difficulty accepting that. At best we are seeing some $22 million of that showing up in the Nominal Insurer funds, but we know just in the last two years icare's employment expenses have increased by $87 million—just in two years. Does your report shed any light on those aspects, Mr Azzi?

**Mr AZZI:** It does not go into all of that detail, but the scope was quite defined. I am happy to provide a copy of the report on notice, if I can.

**The Hon. DANIEL MOOKHEY:** Thank you for that.

**Mr DAVID SHOEBRIDGE:** Mr Dent, will you commit to tabling with the Parliament or providing publicly the final report, once it goes through from draft to final?

**Mr DENT:** Once I see the report I will certainly look at what is appropriate. I cannot imagine that there would be a public interest reason not to.

**Mr DAVID SHOEBRIDGE:** I will take that as a qualified yes.

**The CHAIR:** I think the—

**Mr DENT:** Take that as a deeply qualified yes.

**The CHAIR:** Mr Dent answered the question.

**Mr DENT:** Sorry, Chair. I should have taken that opportunity from you then.

**The Hon. DANIEL MOOKHEY:** I have one more question on this issue of compliance. Is icare appropriately assessing and agreeing to invoices that it receives from providers?

**Mr DENT:** Notwithstanding a significant remediation from a point in time when the answer would have been absolutely no, Mr Parker might have more detail, or Mr Azzi. The remediation is moving and has been completed. There was certainly a period of time in icare's history when the answer was very obviously no.

**The Hon. DANIEL MOOKHEY:** Where are we up to now, Mr Parker? Is there still a significant issue with provider invoicing?

**Mr PARKER:** Icare did report a significant matter to SIRA back in May this year, where they identified hundreds of thousands of invoices that have not been paid over a two-year period.

**The Hon. DANIEL MOOKHEY:** Sorry, can you repeat that? What did they notify you of?

**Mr PARKER:** On 14 May 2021, icare reported a significant matter where they had identified hundreds of thousands of invoices that they had not paid over at least a two-year period.

**The Hon. DANIEL MOOKHEY:** Hundreds of thousands of invoices not paid over a two-year period—how much money are we talking about that was not paid?

**Mr PARKER:** We have got the specific number: worth about $13 million, related to 714, 755 invoices.

**The Hon. DANIEL MOOKHEY:** I am confused, Mr Parker.

**The CHAIR:** There was $15 million, which was on 715,000 invoices. So they were invoices of around $2, thereabouts.

**The Hon. DANIEL MOOKHEY:** No. They would obviously vary across the spectrum.

**Mr PARKER:** But, on average.

**The CHAIR:** On average.

**The Hon. DANIEL MOOKHEY:** On average.

**The CHAIR:** Twenty dollars.

**The Hon. DANIEL MOOKHEY:** But 700,000 invoices were not being paid. Was it because the IT system failed?

**Mr PARKER:** I will put that into context. Over the period, icare paid $2.41 billion between 2019 and March 2021. But there was a percentage of invoices that were—we can talk about the reason in a moment—parked to be manually reviewed over that period. Icare identified that those invoices had not been reviewed. We provided supervision over icare to make sure that those invoices were reviewed, and those that were not duplicate invoices or had not been subsequently paid were in fact paid.

**The Hon. DANIEL MOOKHEY:** Just to be clear—I do not want to ask too many more questions on this because time is limited—714,000 invoices were not paid, and was that because of the IT system?

**Mr PARKER:** That was one reason.

**The Hon. DANIEL MOOKHEY:** This inquiry has examined at length the IT systems and what happened with the Nominal Insurer with the single platform, as it is called.

**Mr PARKER:** Because of the importance of the question, we do have detailed analysis as to the reason provided in detail as to what caused this.

**The Hon. DANIEL MOOKHEY:** Can you provide that to us on notice?

**Mr PARKER:** Absolutely.

**Mr DAVID SHOEBRIDGE:** On a different matter, can I ask you about the COVID-19 claim assessment. Icare's numbers show that as at 10 September 2021, the Nominal Insurer had a total of 560 COVID-19 claims for the whole period from February 2020 to 10 September 2021. Indeed, 73 per cent of those had been rejected on a reasonable excuse basis and the majority because there had been no time loss incurred. Do you know what the cost to the scheme was of those 560 claims related to COVID-19?

**Mr DENT:** I suspect that number has not changed dramatically since we last had a conversation to that effect. I am just looking for it—unless you can point to it sooner, Mr Parker. The total cost of the claims to date for the NI? Here we go. The total amount is $22 million, in terms of gross incurred costs of claims and payments. I am not sure that is specific to the NI.

**Mr DAVID SHOEBRIDGE:** That is the total cost to the workers comp scheme for COVID-19 claims to date?

**Mr DENT:** To date, as at 31 October 2021.

**Mr DAVID SHOEBRIDGE:** And that is both benefits paid and the cost of managing the claims added together, is that right?

**Mr DENT:** That would be benefits paid only, not the cost of claims management.

**Mr DAVID SHOEBRIDGE:** I am sorry, I thought you read—

**Mr DENT:** Gross incurred costs of claims.

**Mr DAVID SHOEBRIDGE:** Gross incurred cost is the two added together, is it not?

**Mr PARKER:** We might take that on notice, to clarify.

**Mr DAVID SHOEBRIDGE:** But either way, that is $22 million. Do you know how many claims that relates to?

**Mr DENT:** There are 1,095 claims in total.

**Mr DAVID SHOEBRIDGE:** That would clearly have to be both the Treasury Managed Fund and the Nominal Insurer added together?

**Mr DENT:** Yes.

**Mr DAVID SHOEBRIDGE:** Could you provide a breakdown, if you can, between Treasury Managed Fund and the Nominal Insurer?

**Mr DENT:** I am happy to take that on notice, yes.

**Mr DAVID SHOEBRIDGE:** Do you know how many of those claims were made under the deeming provisions that were put in? And, if so, what the costs of those have been, what part of the $22 million relates to the deeming provision?

**Mr PARKER:** We do have it. However, I would not be able to total it up now to provide it to you, Mr Shoebridge. I have a breakdown of the costs against the different industries. I have a breakdown of which ones are covered by presumption and which ones are not, but I just do not have the totals.

**Mr DAVID SHOEBRIDGE:** Could I ask you if possible—and you can say no because you have a right to provide this within 21 days—to provide those by the close of business today? That would be extremely helpful.

**Mr DENT:** We will endeavour to, otherwise we will take that on notice.

**Mr DAVID SHOEBRIDGE:** That would be helpful.

**The Hon. ANTHONY D'ADAM:** Do you believe that has had a material impact on the four-week return-to-work rates?

**Mr DENT:** I could not say that with certainty.

**The Hon. ANTHONY D'ADAM:** I am happy for you to take that on notice as well.

**Mr DAVID SHOEBRIDGE:** The presumptive claims are a proportion of $22 million in costs from February of last year, when we had the first COVID claim. Are those figures current as at today, Mr Dent?

**Mr DENT:** The numbers we have with us now are figured at the end of October, 31 October.

**Mr DAVID SHOEBRIDGE:** It is a subset of $22 million. Can you please explain to me how it is that SIRA has asserted that the future cost of those claims will be 600-odd million dollars, given that?

**Mr DENT:** I will certainly endeavour to, and I am certain I will not satisfy you with the answer. The numbers that made up the $638 million were an actuarial projection based on a series of scenarios using the Doherty modelling. The Doherty model was then extrapolated by the actuaries to take into account what New South Wales might have looked like based on using population data. They then took the scenario based on 80 per cent vaccination rates, which we know is now no longer relevant whatsoever. That $638 million was derived based on the likely rate of community transmission that became a workers compensation claim, should we have 80 per cent vaccination and should the Doherty modelling play out as expected. To date, our vaccination rate in New South Wales is over 93 per cent, or very close to—I have not checked this morning—which is obviously a very different scenario from that which was predicted by Doherty.

That modelling was completed on the basis of the only modelling we had, which was Doherty. To the extent that is still relevant—I think we could quite easily say that it is no longer relevant, although today's case numbers may be the start of the uptick that Doherty predicted. Who knows? What I saw on the way in this morning was quite a disturbing set of case numbers. If that starts to translate, maybe we are in an upward trend, but that number was $638 million because actuaries have to make a series of assumptions based on the facts they are provided. They had 80 per cent vaccination and they had a Doherty modelling curve they had to rely on, and that was where it landed. I could not think of a better scenario at the time to have used.

**Mr DAVID SHOEBRIDGE:** What was the nature of the claim that it was assuming? Was it assuming a short closed period claim, was it assuming—

**Mr DENT:** The modelling took into account a number of potential factors, predominantly the short closed period claims. It took into account the predicted likelihood of hospitalisation based on Doherty's numbers, so therefore it took into account medical benefits. It was not able to really predict long COVID because there really is not any data an actuary could use for that.

**Mr DAVID SHOEBRIDGE:** No, but pretty much every one of the figures that was found in the Doherty modelling in terms of hospitalisation rates, infection rates and then transmission rates, has been shown to be—at least in the experience to date—substantially in error and significantly higher than what the experience to date would show.

**Mr DENT:** I mean, I would not call an actuarial assumption an error; I would suggest that it was not correct.

**Mr DAVID SHOEBRIDGE:** A variance to reality?

**Mr DENT:** Absolutely. Quite fortunately, Mr Shoebridge, it is not the experience we are having, but there is no doubt that those were the numbers.

**The CHAIR:** Is it, in effect, a worst-case scenario, ensuring that every eventuality which potentially could have come up in an actuarial sense was accounted for and predicted?

**Mr DENT:** Yes, and if every one of those public health settings did not change. So it was based on a set of settings that have clearly moved since then.

**Mr DAVID SHOEBRIDGE:** So the estimate using the Doherty modelling and the actuarial assumptions was $638 million. That was, I assume, over five years, was it?

**Mr DENT:** That was for the first year if the Doherty model occurred the way it was expected.

**Mr DAVID SHOEBRIDGE:** Which is less than the $8 billion that had been initially analysed—but I digress.

**Mr DENT:** Which was a very different set of assumptions.

**Mr DAVID SHOEBRIDGE:** What is the current assessment of the cost of the COVID-19 presumption?

**Mr DENT:** As far as I am aware there is not a current set of models we can use to remodel that, so we are relying at the moment on monitoring what is coming through on a week-by-week basis in terms of cases. Doherty has not updated its modelling, nor am I aware of another model that we could use to do actuarial predictions.

**Mr DAVID SHOEBRIDGE:** But we have had the Minister out there trumpeting the $638 million cost and saying that that is the cost of the presumption and that we have to withdraw the presumption. But that is a rubbish figure, is it not?

**The Hon. DANIEL MOOKHEY:** It is redundant.

**Mr DAVID SHOEBRIDGE:** It has no connection with reality.

**Mr DENT:** The figure was provided on the basis of the assumptions that were provided. You cannot just take the figure. I think it would be unfortunate if only the figure was being used and not the set of assumptions around it. That figure has not played out because none of the assumptions are correct based on today's public health settings.

**Mr DAVID SHOEBRIDGE:** But it is misleading to use that figure as the cost of the presumption. You would not say to me that the likely cost of the presumption over 12 months is $638 million because that would be misleading me, would it not?

**Mr DENT:** I would not say that to you today by any stretch of the imagination. The day I was handed the report—and I would not have said it about the presumption; it was about the overall scheme, not just the presumptive legislation. Today I would hold that report with great trepidation and hand it to you and say, "This is the best work that was done at the time it was done using the assumptions that are contained."

**The Hon. DANIEL MOOKHEY:** To be clear, Mr Dent, that modelling scenario is redundant in large part because vaccination rates are much higher than we thought.

**Mr DENT:** Correct. I agree that the scenarios used are now redundant, yes. That is completely correct.

**Mr DAVID SHOEBRIDGE:** We will no doubt see you in a month or six weeks—

**Mr DENT:** I am looking forward to it.

**Mr DAVID SHOEBRIDGE:** —giving evidence about this very issue about a presumption and the cost of the presumption. Are you intending to have some analysis in place using the real-world experience? Are you intending to have some analysis about what the cost of the presumption will be?

**Mr DENT:** To the extent that we can. There are not other models that we can use from an actuarial point of view, so we will be able to use the facts that we have.

**The CHAIR:** I was going to ask that. If there is no updated modelling, what can you base it on? You really cannot, can you?

**Mr DENT:** You would hope to get an actuary who would be prepared to guess—

**The CHAIR:** They do not tend to guess.

**Mr DENT:** —and, as you can imagine, there are not very many of those around.

**Mr DAVID SHOEBRIDGE:** They have guessed in the past.

**The Hon. DANIEL MOOKHEY:** To be fair, Mr Dent, your point is that we need more data.

**Mr DENT:** Yes, and I do not have access to other models that more reliably reflect the circumstances we are currently in.

**The Hon. DANIEL MOOKHEY:** I have one last question in two parts. To be very clear—and I am sorry if you already answered this—what are the costs to date for all the COVID claims as a result of the presumption? Have you answered that?

**Mr DENT:** No, we have not been able to answer that in relation to the presumption specifically.

**The Hon. DANIEL MOOKHEY:** Given that we are here to inquire into the workers compensation scheme, it is fair to say that the cost of COVID to the scheme to date is minuscule compared to—

**Mr DENT:** It has been immaterial to date.

**The Hon. DANIEL MOOKHEY:** It has been minuscule to non-existent when compared to the cost of the scheme from the Nominal Insurer's collapsing performance returning workers to work. Is that correct?

**Mr DENT:** That is a correct statement.

**Mr DAVID SHOEBRIDGE:** In fact, the COVID cost is close to a rounding error in the scheme, is it not—$22 million?

**The CHAIR:** I will take that as a comment. On that note, we have reached the end of the hearing. I thank the witnesses today for making themselves available and for providing very detailed responses. For the questions that you have taken on notice, the secretariat will be in contact with you to arrange a tabling within 21 days. With that, I call the session to a close.

**(The witnesses withdrew.)**

**The Committee adjourned at 12:16.**