Insurance and Care NSW

Legislative Council Standing Committee on Law and Justice – icare update in response to recommendation 7

NOVEMBER 2021

UPDATE IN RESPONSE TO RECOMMENDATION 7 OF STANDING COMMITTEE ON LAW AND JUSTICE REPORT

Executive summary

1. In 2020, Insurance and Care NSW (**icare**) was the subject of several reviews, including the independent 'root and branch' review conducted by the Hon. Robert McDougall SC (**McDougall Review**)[1] and the NSW Legislative Council Standing Committee on Law and Justice's (**SCLJ**) *2020 Review of the Workers Compensation Scheme* (**SCLJ Review**). Each of these reviews made several recommendations in respect of icare, the Workers Compensation Nominal Insurer (**Nominal Insurer**) and the Treasury Managed Fund (**TMF**).

2. icare takes the matters raised in these reviews extremely seriously. It acknowledges that historical deficiencies in its procurement and probity processes were inconsistent with the expectations of public sector agencies. It accepts that the implementation of a new claims model led to a decline in return to work (**RTW**) rates in the Nominal Insurer scheme, with a corresponding impact on financial performance.

3. icare has embarked on a substantial, multi-year program of work to address the issues raised through these reviews (**Improvement Plan**) and has already made solid progress under it. In particular, icare has:

    a. comprehensively reviewed its policies and processes relating to procurement, information disclosure and the management of conflicts of interest, gifts and benefits and public interest disclosures to align with NSW Government requirements and expectations;

    b. as recommended by the McDougall Review, worked to update its Nominal Insurer Capital Management Policy by reference to the Economic Funding Ratio in addition to the Accounting Funding Ratio, which will provide a better indicator of financial performance of the scheme and enable better decision-making with respect to it;[2]

[1] Officially known as the *icare and State Insurance and Care Governance Act 2015 Review*.
[2] Paragraph [657] of Part 1A of final report of McDougall Review, and Recommendation 42.

c. implemented a subprogram called the 'Nominal Insurer Improvement Program', which has seven streams of work dedicated to the improvement of RTW performance and the provision of high quality claims management practices for injured workers, including reviewing the claims model and engaging with stakeholders to help inform the future claims strategy; and

d. developed several initiatives to improve psychological claims management and performance in the TMF scheme, including the Connect and Care Program with the Department of Communities and Justice (**DCJ**), which recently won the 2021 Australian Business Award for Product Innovation.

4. icare recognises that any program of organisational transformation that seeks to introduce fundamental changes will necessarily require a long-term approach in order to embed those changes. icare's Improvement Plan is no different in this regard. It is a comprehensive program of remediation and improvement to be implemented over several years, akin to comparable improvement programs in the banking and financial services sector following the Royal Commission into the Banking, Superannuation and Financial Services Industry (**Hayne Royal Commission**).

5. However, as regards the issues raised regarding the financial performance of the Nominal Insurer and TMF workers compensation schemes, it is important to acknowledge that the McDougall Review found that both schemes are in a financially sustainable position.[3] The final report of the McDougall Review concluded that:

a. "*any suggestion that the [Nominal Insurer] scheme's financial sustainability is currently in doubt is, in my opinion, unsupportable*";[4] and

b. "*the media reports as to the financial position of the TMF were based on an incorrect understanding of the way that the TMF is funded and operates… There is absolutely nothing in the submissions made or evidence given to my Review that raises any concerns about the financial position or sustainability of the TMF*".[5]

6. Indeed, despite the impacts of COVID-19, the March 2021 floods and a substantial increase in child abuse and psychological claims, the TMF had a positive net result of $599 million in the 2020/21 financial year and its RTW rates are higher than those of self and specialised insurers.

[3] Paragraphs [661] of Part 1A and [321]-[323] of Part 2 of final report of McDougall Review.
[4] Paragraph [661] of Part 1A of final report of McDougall Review.
[5] Paragraphs [321]-[323] of Part 2 of final report of McDougall Review.

7. It is also important to acknowledge that there is no quick fix to improve RTW rates, particularly in the current climate. The full impact of the COVID-19 pandemic is still unknown and it will likely continue to impact RTW as a result of forced shutdowns, restrictions on business operations and resultant challenges in the availability of suitable duties.

   The pandemic has had other influences as well; working from home has increased and we can expect that remote working and hybrid working models will continue, bringing new types of workers compensation risks and claims. We can also expect a significant increase in claims from workers who contract COVID-19, noting that other airborne communicable respiratory diseases have not historically been compensable illnesses.

   COVID-19 also has other unusual characteristics, including the potential to continue as a long-term disease rather than a traditional 'injury'. These changes have occurred at rapid speed alongside the changing nature of work, an increase in psychological injury claims across the Nominal Insurer and TMF schemes and an ageing working population.

8. Accordingly, we are observing shifts in the way we work, the way we think about being injured at work and the way we think about returning to work. Coming out of lengthy border closures and lockdowns, we are also mindful of the importance of rebuilding the economy and ensuring employers can be viable, in addition to continuing to support injured workers. In light of these developments, icare is dedicated to leading sustainable and innovative approaches to support injured people get back to work in this evolving RTW landscape.

9. To support icare's work across all these areas, icare has developed a new purpose, vision and values that reflect its responsibilities to the people of NSW. While the McDougall Review concluded that there was no evidence to suggest that icare has a widespread or inherently toxic culture,[6] the reset of icare's organisational purpose, vision and values is targeted at addressing the cultural issues raised in the McDougall Review and PwC's independent review of icare's governance, accountability and culture (**GAC Review**). To that end, cultural change and processes to embed that change form a significant part of icare's Improvement Plan. icare is committed to building the open, accountable and constructive culture expected of a public sector agency and has already taken several steps in the interests of greater transparency, including publishing RTW rates and other claims performance data on its website, as well as updates on its enterprise-wide, Nominal Insurer, pre-injury average weekly earnings (**PIAWE**) and Dust Diseases Care improvement and remediation programs.

---

[6] Paragraph [314] of Part 1A of final report of McDougall Review.

icare also publishes information on executive remuneration in its annual report over and above the statutory reporting obligations imposed on NSW Government agencies.

10. icare is also working openly and collaboratively across its business with SIRA, NSW Treasury and other relevant parts of NSW Government, including to support the simplification of the complex workers compensation legislative framework in order to address the challenges posed by the changing nature of work, particularly as NSW emerges from the COVID-19 pandemic.

While icare acknowledges the historical difficulties in its relationship with SIRA, icare's working relationship with SIRA has recently become more open, cooperative and collaborative, as evidenced by productive engagement in respect of medical costs, PIAWE and premiums. There are also regular meetings between icare and SIRA at various levels within each organisation, including monthly three-hour meetings attended by principal executives from each organisation where icare provides updates to SIRA on risk and enterprise improvement, performance reporting, premiums, claims, complaints/customer experience, audits/reviews and any other general business.

11. The McDougall Review concluded that if the recommendations made through that review "*are adopted and implemented, there is every reason to think that icare will be able to realise the efficiencies and savings it was established to achieve*".[7] icare has committed to making the necessary changes to address the recommendations of the McDougall Review, the SCLJ Review and numerous other reviews through its substantial improvement program. To demonstrate its commitment to achieving sustainable and meaningful reform, icare has recently engaged Promontory, an experienced and reputable external provider, to provide independent assurance over the program and report publicly on icare's progress each quarter. Promontory was appointed as independent assurance provider in October 2021 and will produce its first report in February 2022.

12. We look forward to sharing these reports with icare's customers, Parliament and the people of NSW, who we are committed to serve.

Background

13. The SCLJ Review made several findings and recommendations in respect of icare. This update has been prepared by icare in response to Recommendation 7 of the SCLJ Review:

[7] Paragraph [22] of Executive Summary of final report of McDougall Review.

STANDING COMMITTEE ON LAW AND JUSTICE – UPDATE IN RESPONSE TO RECOMMENDATION 7

> *That icare provide the Standing Committee on Law and Justice with an update by the end of 2021 as to:*
>
> - *any actions it has taken to ensure it is complying with all the requirements expected of a public sector agency, including compliance with information disclosure requirements, the procurement framework and policies relating to the management of conflicts of interest, gifts and benefits and public interest disclosures*
> - *the measures it is taking to improve the financial performance of the Nominal Insurer and Treasury Managed Fund and return to work rates.*

14. The SCLJ Review was undertaken concurrently with other reviews into icare, including the McDougall Review. The McDougall Review was a comprehensive, systematic review that considered almost all aspects of icare's operations in depth, in conjunction with a holistic review of the NSW workers compensation system and a statutory review of icare's governing legislation. It was supported by:

    a. broad public consultation, detailed submissions, document reviews and interviews with relevant stakeholders, including over 50 submissions received from a range of stakeholders (including insurance, business and legal stakeholders, workers who had direct experience with the workers compensation system and the broader community), 19 interviews with representatives of stakeholder groups that had made submissions, and 201 responses to a public survey; and

    b. five separate expert advisory reports covering claims management, Board effectiveness, financial sustainability and procurement and probity,[8] and including PwC's GAC Review. icare engaged PWC to conduct its independent review as part of the 21 Point Action Plan developed by SIRA following Janet Dore's report on the Nominal Insurer scheme published in December 2019 (the **Dore Review**).

---

[8] Other expert reviews included:

- Janet Dore: *Operational review of Insurance and Care and delivery of recommendations of the Dore Report*;
- Cumpston Sarjeant: *Independent review of Nominal Insurer – Financial Sustainability*;
- Effective Governance: *Governance Review*; and
- RSM: *Independent Review of icare Probity and Procurement*.

These reviews were all commissioned by NSW Treasury as part of the McDougall Review.

15. The McDougall Review and the external advisory reports (including the GAC Review) made a total of 158 recommendations relating to icare, the Nominal Insurer and TMF, including in respect of matters that were the subject of the SCLJ Review.

16. icare has embarked on a comprehensive program of remediation and improvement that addresses recommendations from all reviews undertaken over the last two years, referred to internally as the Improvement Plan (see paragraphs [3] and [4] above). icare first started developing the Improvement Plan in October 2020 following the appointment of its new Chair and prior to the finalisation of many of these reviews. Prior to that, an internal procurement improvement program had also commenced.

17. Since then, the NSW Government and icare have accepted all McDougall Review recommendations that apply to icare, and NSW Government has supported or noted the recommendations made by the SCLJ Review. Given the breadth and depth of the McDougall Review and its five supporting reviews, the Improvement Plan is based on addressing its recommendations. Many recommendations cross over with matters the subject of the SCLJ Review and, accordingly, the recommendations made by that review.

18. The Improvement Plan is a long-term program to be implemented over several years, like comparable improvement programs in other contexts (for example, the Commonwealth Bank of Australia's remedial action plan following the Hayne Royal Commission and the Australian Prudential Regulation Authority's Prudential Inquiry, which took over three years to complete). It has two major subprograms within it:

    a. the Enterprise Improvement Program; and

    b. the Nominal Insurer Improvement Program,

    each with several streams of work. The Improvement Plan has established formal governance structures for its development and implementation, including Board oversight, Chief Executive sponsorship and dedicated Group Executive leadership and accountability, and will be subject to independent external assurance provided by Promontory, following a rigorous procurement process that concluded in October 2021. Promontory will also provide quarterly update reports on icare's progress (which will be published on icare's website), with the first report to be published in February 2022.

19. icare has also been regularly and publicly reporting on its progress in implementing the Improvement Plan through its website.[9]

[9] See https://www.icare.nsw.gov.au/about-us/reform-at-icare/improvement-at-icare-updates.

Actions taken by icare to comply with requirements expected of a public sector agency

20. icare has committed to making changes to address the concerns raised by the McDougall Review, the SCLJ Review and other reviews as part of the Improvement Plan. In particular, icare has comprehensively reviewed its policies and processes in relation to procurement, information disclosure and the management of conflicts of interest, gifts and benefits and public interest disclosures to align with NSW Government requirements and expectations.

21. A substantial number of actions are already complete, as summarised below, and a significant volume of work is underway to embed these changes and build an open, accountable and constructive culture that supports their sustainability.

Procurement

22. Leveraging the work begun as part of an existing procurement improvement program, icare has consolidated a substantial stream of work to strengthen procurement compliance, transparency, frameworks and procedures. It is overseen by a Group Executive Procurement Uplift Steering Committee that includes representation from NSW Treasury and supports the business-wide change program on procurement practices. Additionally, the Board's Audit and Risk Committee (**ARC**) provides oversight, including by receiving quarterly updates.

Policies and processes

23. Several changes to icare's procurement policies and processes have already been implemented, including:

    a. a new Board-approved suite of policies that align icare's procurement framework with the NSW Procurement Policy Framework,[10] including a new Procurement Policy that addresses the circumstances in which the Nominal Insurer exemption from Part 11 of the *Public Works and Procurement Act 1912* (**Procurement Act**)[11] may be relied upon and includes processes to assist with the prevention, identification and remediation of non-compliance;

[10] As a non-accredited agency, icare seeks concurrence from NSW Procurement, with approval by the Deputy Secretary of NSW Treasury, for any procurement exceeding $680,000 (excluding GST). Concurrence has been received on 7 occasions in the past 12 months (noting that, in one of those instances, approval was instead provided by the Secretary of NSW Treasury rather than the Deputy Secretary).
[11] See section 154A(4) of the *Workers Compensation Act 1987*.

b. a new Procurement Approvals Framework which establishes clear processes and authority to approve procurement decisions under icare's recently revised Delegations Policy and Instrument, including the formalisation of the Board's requirement that its approval must be sought to rely on the Nominal Insurer exemption and only granted in exceptional circumstances; and

c. promoting and supporting a diverse supply base, including small and medium sized businesses, Aboriginal-owned businesses, regional businesses and Australian disability enterprises, by reference to the NSW Aboriginal Procurement and Small and Medium Enterprises and Regional Procurement Policies.

Capability development

24. icare has developed a comprehensive capability and development program for staff, which is aligned with the NSW Procurement whole-of-government capability framework for procurement and contract management. This includes:

a. a mandatory procurement foundations course launched on 31 August 2021, which has been completed by 91 per cent of icare staff (as at 24 November 2021) and includes training on essential procurement requirements and considerations in accordance with the NSW Procurement framework;

b. a procurement corruption prevention workshop provided by the Independent Commission Against Corruption (**ICAC**) to icare's Board and Group Executive team (**GET**), which has also been made available to icare employees involved in procurement;

c. multiple workshops and courses delivered by the Institute of Public Administration Australia (**IPAA**) and adapted specifically for icare on procurement capabilities, which have been made available to icare employees involved in procurement; and

d. a full suite of training courses which will shortly be rolled out to staff on specific topics such as corruption awareness and prevention, contract management, evaluation of tender responses, specification writing and sustainable procurement.

Systems and tools

25. icare has also uplifted its procurement systems and developed new tools to support employees to manage procurement and contract management, including implementing:

a. whole-of-government purchasing systems for regular icare purchases and providing training to upskill all staff who regularly use those systems; and

b. contract register and executive dashboards to enable better planning, tendering and contract management activities.

Information disclosure requirements

26. In 2020, the Information and Privacy Commissioner (**IPC**) initiated an audit of icare's *Government Information (Public Access) Act 2009* (**GIPA Act**) compliance. In response, icare commenced a GIPA Act Remediation Program to address historical non-compliance with its public disclosure obligations under the GIPA Act.

27. The GIPA Act Remediation Program sought to address icare's non-disclosure of contracts valued at $150,000 or more under the GIPA Act. This has resulted in the public disclosure of 869 contracts or standing offer arrangements either not previously disclosed or, for new contracts since April 2020, disclosed within required timelines. icare has processes in place to disclose all new contracts in accordance with GIPA Act requirements, as described further in paragraph [29] below.

28. Following the completion of the IPC's audit,[12] icare accepted all 14 IPC recommendations. icare has completed all but one of the 14 recommendations, with the only outstanding activity being an internal review of the newly implemented processes (which will be completed in December 2021). On 28 September 2021, the IPC wrote to the (then) Treasurer to inform him of the IPC's decision that no further action or examination is required and formally conclude its monitoring of the implementation of recommendations.

29. The ongoing processes icare has implemented to ensure compliance with disclosure requirements, and detect and remediate any non-compliance, include:

    a. updating icare's Procurement Policy and Guidelines to specifically address the contract disclosure obligations under the GIPA Act, supported by internal guidance and extensive staff training (as described above at paragraphs [23] and [24] in respect of procurement);

    b. enhancing icare's GIPA Act contract database and contract register information technology platform to facilitate compliance with disclosure requirements, including reporting and controls to detect non-compliance; and

[12] See final report published on 27 October 2020, which is available online on the IPC's website at: https://www.ipc.nsw.gov.au/media/3127.

c. including compliance reporting on icare's contract disclosure obligations under the GIPA Act in the monthly CEO report to the Board. This report is also provided to NSW Treasury. Reporting of contracts not disclosed in accordance with the GIPA Act has also been incorporated into icare's incident reporting processes, with any exceptions reported to the ARC quarterly.

Management of conflicts of interest and gifts and benefits

30. icare has implemented several changes to its probity policies and processes to address the concerns identified in the McDougall Review, GAC Review, SCLJ Review and other reviews, including:

  a. an updated Conflicts of Interest Policy and declaration process under which:

    i. quarterly attestation for conflicts of interests is required for all leaders who hold a financial and/or people delegation, and individuals in roles which are identified to be areas of high risk for conflicts of interest;

    ii. annual attestation for conflicts of interest is required for all staff;

    iii. the Group Executive team receive monthly reporting of new conflict of interest declarations and oversee the conflicts of interest register for their team; and

    iv. icare's Compliance team performs quarterly assurance activities and provides management reporting; and

  b. updated Gifts and Benefits and Travel Policies to improve processes for the acceptance and disclosure of gifts and benefits, including:

    i. identification and declaration of any potential conflicts of interest when receiving gifts and benefits; and

    ii. additional clarity and consistency for the approval and management of work-related travel, in line with NSW Treasury guidelines.

31. These policy updates were communicated to icare employees and supported by extensive training and education, with face-to-face conflict of interest training provided across icare targeted to high risk areas (including the Procurement, People & Workplace and Senior Leadership teams). Detailed training on conflicts of interest is also included in the annual compulsory compliance training that all staff are required to complete.

Complaints handling and public interest disclosures

32. icare accepts that it did not act on certain reports of wrongdoing in the past with sufficient speed or rigour. icare has issued formal written apologies on behalf of the Board and the organisation to Mr Chris McCann and each of the former Department of Corrective Services employees involved in a matter that was the subject of media scrutiny in 2020. icare's Chief Executive has also spoken personally to each of these individuals to acknowledge icare's role in their poor treatment.

33. icare has also made several improvements to its policies and processes regarding complaints handling and public interest disclosures (**PIDs**), including:

    a. a comprehensive review and update of its Reporting Wrongdoing Policy, Incident and Issue Management and Reporting Policy and supporting processes, with training provided across the organisation and targeted to incident co-ordinators within each team;

    b. the introduction and launch of an externally-managed Speak Up Hotline, which provides an independent channel for concerns to be raised and addressed in order to facilitate better reporting of wrongdoing and enable anonymous reporting and evidence-tracking; and

    c. improved processes for bringing reports of wrongdoing to the attention of management, supported by monitoring and assessment by icare's Risk team, quarterly reporting to the ARC, regular reporting to the GET and new forums across the organisation to discuss risk, including a 2-hour monthly risk-focussed meeting of the GET.

34. icare has also re-designed its process for receiving, handling and resolving PIDs and similar matters in a timely and confidential manner that appropriately protects disclosers, including:

    a. preparing new checklists and process maps to assist with identifying and assessing PIDs; and

    b. arranging for law firm Maddocks to provide training sessions for disclosure officers (to whom a PID disclosure can be made under icare's Reporting Wrongdoing Policy) about their obligations.

35. icare is working closely with SIRA and the Independent Review Office to better align its complaint frameworks and build efficiencies in how icare interacts with SIRA and reports complaints data.

Measures taken by icare to improve financial performance and return to work rates

RTW rates

36. The Dore Review and Ms Dore's subsequent review of claims management operations as part of the McDougall Review[13] identified skills, capability and the attraction and retention of capable staff as requiring ongoing focus in order to improve RTW rates. The McDougall Review also raised similar concerns regarding case manager workload and capability[14] and concluded that icare's changes to the claims model were implemented without due testing and with insufficient regard for risk.[15] The SCLJ Review made similar findings.

37. Noting these comments and findings, icare has taken several actions to address RTW outcomes to date:

    a. last year, icare and EML each invested $10 million in improving frontline capability and capacity among case managers (further detail provided in paragraphs [52] and [53] below);

    b. icare has commenced work on a new claims model that will involve multiple claims service providers and remove the single provider dependency on EML, as well as take a 'test and learn' approach to development and implementation (further detail provided in paragraphs [56] to [60] below). An important feature of the review of the claims model is the engagement of stakeholders to help inform the future claims strategy; and

    c. icare has implemented numerous other actions focussed on reducing the time or work effort to make a decision on a claim, ensuring better and fairer decision-making and more accurate and timely payments, incentivising earlier RTW and allowing case managers more time to focus on and support RTW activities, as well as to explore innovative approaches to RTW options (further detail provided at paragraph [53] below).

38. Many of the actions above have occurred under the Nominal Insurer Improvement Program, which is a subprogram of icare's Improvement Plan. The Nominal Insurer Improvement Program has seven streams of work that take a holistic approach to improving RTW outcomes. It is a long-term program to be implemented over several years, with the focus on sustainably improving RTW rates over the long term.

---

[13] *Operational review of Insurance and Care and delivery of recommendations of the Dore Report*.
[14] Paragraphs [185] and [218] of Part 1A of final report of McDougall Review.
[15] Paragraph [40] of Part 1B of final report of McDougall Review.

39. This is because the program is partly focussed on re-building industry capability and capacity, which will take time to realise. icare is also adopting a measured 'test and learn' approach that is cognisant of the findings from the McDougall Review that icare had previously sought to introduce changes to the claims model in an overly rapid manner without appropriate testing and regard for risks and impacts.[16]

40. Both the Nominal Insurer and TMF workers compensation schemes are long tail schemes and any improvements in RTW will take time to be realised. Additionally, RTW rates are calculated using a 12-month rolling average, and therefore any improvements will not be immediately apparent under the RTW metrics. To address this, we are tracking a number of operational measures as lead indicators of RTW performance. icare also publishes detailed claims data, including the RTW rate at 4 weeks, 13 weeks, 26 weeks, 52 weeks and 104 weeks,[17] on its website on a monthly basis in order to provide greater transparency and accountability and encourage the continued drive for improvements.

41. RTW rates have also been impacted due to rising psychological claims and disruptions from COVID-19. These trends have also impacted other insurers. icare has implemented several initiatives to improve psychological claims management and performance, including the Connect and Care Program for the TMF, which recently won the 2021 Australian Business Award for Product Innovation. These are detailed further at paragraph [61] below.

42. icare is committed to continuing to work with SIRA, NSW Treasury, the Department of Customer Service and other stakeholders on efforts to support the simplification of the complex legislative framework in order to address the challenges posed by the changing nature of work, particularly as NSW emerges from the COVID-19 pandemic.

Recent RTW performance

43. Figure 1 below sets out the RTW performance in the Nominal Insurer scheme since July 2019, with the Nominal Insurer's 26-week RTW rate based on work status codes (using Date Entered in Insurer System and 12-month rolling average) being 83.7 per cent in July 2021.[18]

[16] Paragraph [40] of Part 1B of final report of McDougall Review.
[17] See https://www.icare.nsw.gov.au/about-us/statistics/icare-workers-insurance-performance-data.
[18] The RTW rate differs greatly based on the time period the rate is measured. RTW rates at the early 4-week period are more volatile, while the RTW rate at the 26-week period is more stable and indicative of a worker's recovery from injury and effective claims management.

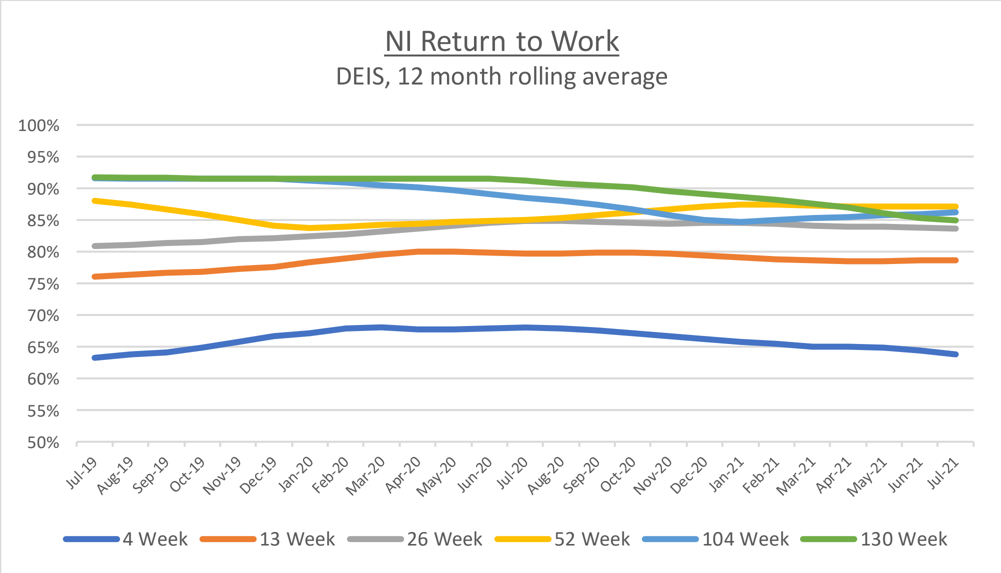

Figure 1: Nominal Insurer RTW rates from July 2019 to July 2021

44. As shown in Figure 2 below, the TMF's 26-week RTW rate based on work status codes (using Date Entered in Insurer System and 12-month rolling average) was 84.8 per cent in July 2021. While the TMF's 26-week RTW rate has experienced a 1.7 percentage point decline over the last 12 months, the equivalent RTW rates for self-insurers and specialised insurers have also been steadily falling since June 2018.

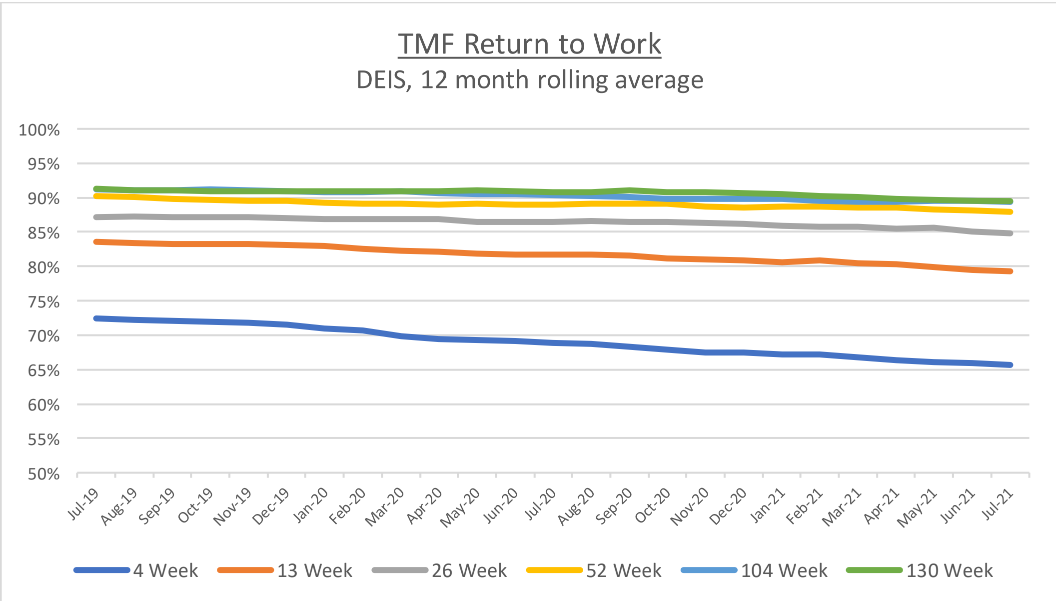

Figure 2: TMF RTW rates from July 2019 to July 2021

45. Based on data published by SIRA, as shown in Figure 3 below, the 26-week RTW rates as at July 2021 in both the Nominal Insurer (84 per cent) and TMF (85 per cent) schemes are higher than those of self-insurers (83 per cent) and comparable to those of specialised insurers (84 per cent), with the TMF performing better than both self-insurers and specialised insurers.[19]

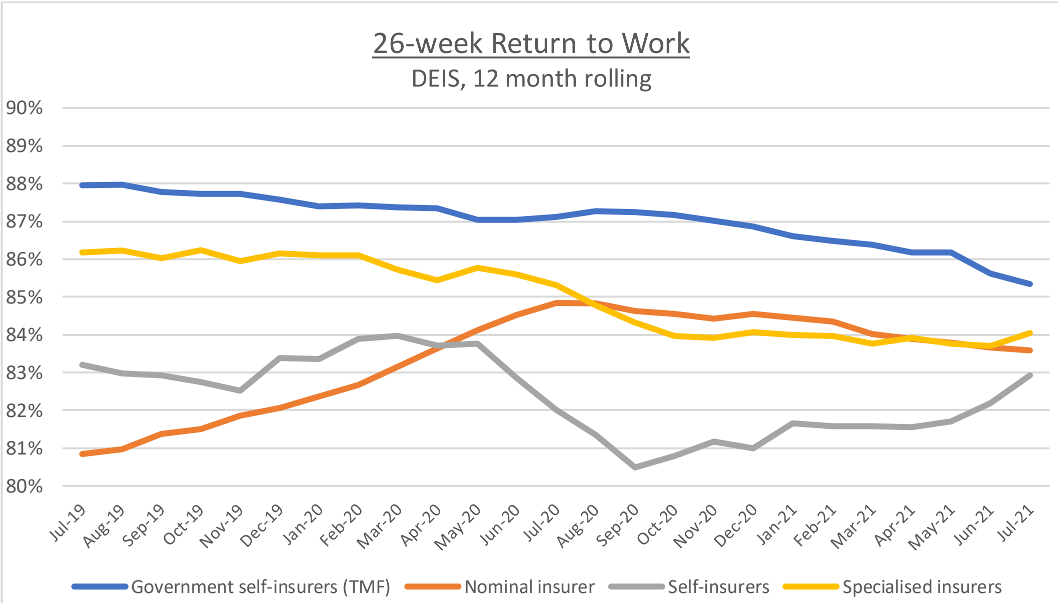

Figure 3: Comparison of RTW rates from July 2019 to July 2021

46. icare acknowledges that there has been a decline in the 4-week RTW rate in the Nominal Insurer scheme. This decline has been seen across all insurers, i.e. from August 2017 to July 2021, based on data published by SIRA,[20] the 4-week RTW rate has dropped by 11 per cent for the Nominal Insurer, 12 per cent for the TMF, 13 per cent for self-insurers and 9 per cent for specialised insurers (noting that it is difficult to compare RTW performance across insurers due to differences in portfolio mix, industry, size, injury mix and culture, all of which have a material impact on RTW). This is also consistent with the experience in other jurisdictions, which have encountered similar short-term challenges with RTW rates.

[19] See SIRA RTW data available on the SIRA website at: https://www.sira.nsw.gov.au/open-data/system-overview/rtwdata.

[20] Changes in SIRA's Workers Compensation Insurer Data Reporting Requirements from 1 July 2021 have also had operational, data capture and reporting consequences. icare estimates that these changes have contributed to a 1.4 per cent decline in 4-week RTW rates since 1 July 2021, based on a review of a sample of 185 claims for the Nominal Insurer's RTW metrics published by SIRA on its website.

47. The shifts in the mix of claim types across workers compensation schemes have contributed to these challenges, in particular the increase in psychological injury claims, which typically have a longer recovery period and subsequently a lower RTW rate.[21] For example, since 2015, the frequency of psychological claims has increased by 2.4 times in the Nominal Insurer scheme and by 1.6 times in the TMF scheme. Further, based on data published by SIRA, the 4-week RTW rate for mental illness has dropped from 40 to 26 per cent.

48. While the full impact of COVID-19 is unknown, this has also likely played a role due to forced shutdowns, restrictions on business operations and resultant challenges in the availability of suitable duties, which have occurred alongside fundamental shifts in the way we work, the way we think about being injured at work and the way we think about returning to work (as discussed at paragraphs [7] and [8] above).

49. In addition, the increasing number of small businesses covered by the Nominal Insurer scheme has also contributed to the reduction in the 4-week RTW rate, because small businesses are typically less able than large businesses to find appropriate work for returning workers, amongst other reasons. For example, the proportion of claims by injured workers from employers with less than 10 employees was 16 per cent in January 2020 and has risen steadily since March 2020, currently at 23 per cent. Employers with less than 10 employees account for 85 per cent of businesses insured by the Nominal Insurer (280,000 out of a total 330,000 employers).

50. To date, the 13-week and 26-week RTW rates have been more stable than the 4-week RTW rate. The deterioration in the 4-week RTW rate does not appear to have continued onto 13-week and 26-week RTW rates. We anticipate that this may change in coming months due to the recent lockdowns and the resulting impact on the labour market.

51. Emerging experience for claims up to 30 June 2021 was in line with actuarial expectations.

Actions taken to date – Nominal Insurer

Capability uplift

52. Under the Nominal Insurer Improvement Program, icare and EML have each invested $10 million in improving frontline capability among case managers and have implemented several initiatives to respond to case manager workload and capability concerns. These include:

[21] For example, based on icare's RTW data obtained from its click reports dashboard, 90 per cent of workers with physical injuries have returned to work 6 months after injury, compared to 50 per cent of workers with psychological injuries.

a. icare and EML have made significant investments in training, including onboarding programs (including technical training) for case managers and claims advisors, development of specialist team and leader roles, PIAWE capability uplift training, tailored whole person impairment training, training in work capacity decisions, liability determinations and payment obligations, and specialist coaching sessions with respect to RTW strategies for building injured workers' capacity for work and job seeking as well as medical management to support optimal recovery and return to work;

b. 97.8 per cent of newly recruited claims staff have completed compliance training as at October 2021;

c. icare has launched a Professional Standards Framework across the Nominal Insurer and TMF that provides case managers with learning and career pathways, in order to rebuild industry-wide capability, expertise and capacity. This is a long-term program that seeks to transform the role of a case manager into a profession that is attractive to new starters and where pathways exist for development and growth;

d. EML has rolled out a leadership development program to improve leadership capability in the short term, which is in place or completed for 95 per cent of frontline claims leadership staff;

e. caseloads per case manager have reduced from 60 in January 2020[22] to 48 in October 2021;

f. an additional 80 full time employees have been hired to manage claims since January 2021;

g. an additional 15 mobile case managers have been hired and onboarded to support high-risk injured workers return to the workplace, with 373 face-to-face interactions with customers in October 2021;

h. the turnover rate of case managers has reduced to 23.7 per cent as at September 2021 (which is lower than the 25.4 per cent turnover rate reported at the same time last year). This is projected to result in an annual turnover of 31.2 per cent, down from 37.9 per cent in 2020;

[22] EML had previously reported caseloads as high as 71 in August 2019, although the reporting criteria and methodology has since changed.

i. EML has increased the proportion of its workforce with over 2 years' tenure from 18 per cent at the start of 2020 to 44 per cent as at October 2021, with an average tenure across 1,329 claims management staff of 2.9 years;

j. EML has set up the Your Future Program to provide career transition services for complex cases, with 337 injured workers having been referred into the program since January 2021, of which 49 workers have been placed into new employment and a further 3 workers upskilled to be competitive in finding new employment independently. This program is delivered by 10 career transition specialists who have been recruited over the course of 2021 starting from January 2021;

k. EML has recently commenced additional pilot programs including:

    i. Risk Profiling in the small to medium employers' portfolio to target early intervention for high risk injured workers identified utilising a standardised biopsychosocial screening questionnaire. This pilot is a partnership with Konekt (a workplace rehabilitation provider) and commenced in November 2021; and

    ii. 'First Response' service for small to medium employers to support early return to work planning. This includes early referral to workplace rehabilitation services and a focus on increased utilisation of SIRA vocational programs to expedite return to work when the employer has challenges providing suitable duties. This pilot commenced in May 2021;

l. EML has recruited a legal specialist team to support changes in the decision rights framework (discussed further at paragraphs [53] and [79] below);

m. EML has recruited a centralised team of specialists to deliver one-on-one coaching and capability uplift of frontline claims staff. As part of this, 22 case management capability coaches have been recruited across EML, with over 900 coaching sessions being delivered on average every month; and

n. additional resources to create new dashboards for management reporting on operational teams, and to support system changes and analysis of operational performance by identifying trends and focus areas for improvement, including data quality.

53. icare has also taken the following additional actions under the Nominal Insurer Improvement Program to improve RTW outcomes, with a focus on early contact and timely and correct liability decisions. These actions include:

a. improving icare's oversight of claims service providers by restructuring icare's claims operations team, with new roles that work more closely with those providers. Significant effort has been undertaken to embed these new ways of working within icare's claims operations team;

b. better alignment of performance measures in existing claims service provider contracts in order to drive better RTW outcomes;[23]

c. identifying cohorts of claims at risk and developing strategies to ensure such claims are effectively managed through oversight and review of claims service providers. icare has undertaken targeted file reviews of the RTW performance of more than 11,000 claims since 2018, and continues to do around 1,000 file reviews each month (focussing on early intervention, work capacity and complex claims). The results of these file reviews are used to inform improved treatment decision-making and coaching to uplift capability for claims managers, and have supported RTW for individual workers;

d. updating the claims triage engine to increase the proportion of claims which are allocated to a dedicated case manager at lodgement. From July 2020, any injured worker likely to have a claim greater than 7 days has a dedicated case manager allocated to them;

e. revising icare's claims management decision framework, including improved application of work capacity assessments and oversight of claims at risk of prolonged incapacity, with a focus on ensuring effective oversight and management of key thresholds (discussed further at paragraph [79] below);

f. improvements to the way icare collects, uses and stores data, including by moving to reporting RTW metrics that are consistent with those used by SIRA; and

g. designing system controls for healthcare payments integrity to enable increased compliance with gazetted fee schedules (discussed further at paragraph [79] below).

54. There have also been improvements in the number of work capacity decisions to return them to pre-2018 levels, supported by investments to enable a dedicated focus on the capacity for suitable employment as part of the return to work pathway. This continues to be a focus of icare's and EML's efforts to improve the capability of case managers.

[23] icare will also seek to maintain the use of such measures when engaging with claims service providers as part of its upcoming tender process for claims service provider contracts commencing in 2023.

55. SIRA continues to actively supervise icare's progress with such reforms in line with the existing 21 Point Action Plan, the McDougall Review, Ms Dore's subsequent review of claims management operations as part of the McDougall Review[24] and the recommendations of prior reviews and audits of icare's claims management model.

Claims model and claims management services

56. icare has also started work on the development on an improved claims model, consisting of both:

   a. the claims service model, being the day-to-day claims and injury management service principles that claims service providers provide to injured workers; and

   b. the claims operating model, being the structure and management of the group of organisations that deliver claims services.

57. The claims model will involve a multi-claims service provider approach and remove the single provider dependency on EML. The aim is to have new claims service provider contracts in operation on 1 January 2023 to commence transition to the new model. Having regard to the McDougall Review's comments about the implementation of icare's previous claims model without sufficient testing, the progress towards the new model will be iterative and adopt a 'test and learn' approach such that customers and key stakeholders are involved in the transition, assurance can be provided for critical market participants, and transition and disruption risks can be adequately managed.

58. icare's new claims model seeks to combine learnings from past reports and reviews with a new strategy supported by new data, including stakeholder inputs and quantitative analysis of the Nominal Insurer portfolio and results. It will be supported by a Request for Proposal (**RFP**) process for claims management services in coming months, which will include a market engagement plan to enable refinement of the claims model through market and stakeholder inputs. As part of its stakeholder consultation, icare published a survey on the NSW Government's 'Have Your Say' website and received 168 completed surveys and one formal submission in response. icare has also conducted 36 one-on-one 60 to 90 minute interviews, focus groups and stakeholder briefings with employers, injured workers and other interested parties.

[24] *Operational review of Insurance and Care and delivery of recommendations of the Dore Report*.

59. The design of the new claims model will also be informed by specialist third party expertise to understand areas of over- and under-performance, assist with the redesign of the model and develop a sound procurement and probity strategy.[25] It is intended that the new claims model will feature a long-term contracting approach that will give claims service providers the confidence to invest but be flexible enough to allow the model to continue to evolve and enable the addition of new and specialised claims service providers over time.

60. icare is seeking to address specific concerns with the current claims model as follows:

   a. more competition between claims service providers in order to drive higher service quality;

   b. a remuneration model that demonstrably aligns claim service provider incentives with icare objectives, with a focus on health and social outcomes in addition to return to work and other financial sustainability measures;

   c. replacing the current segmentation approach with a combination of employers segmented by size and injured workers segmented by generalist and specialist, enabling a better differentiated experience for workers and employers across these two dimensions and incentivising claims service providers to build specialist capability to better meet the needs of specific claims types; and

   d. leveraging the ability of claims service providers to optimise claims and injury management, and focus on fostering capability through all aspects of the model.

Actions taken to date – TMF

61. icare has implemented several initiatives to improve psychological claims management and performance in the TMF portfolio, including:

   a. developing the Connect and Care Program to support effective claims management and prevention by empowering injured workers and their leaders to identify potential injuries, overcome barriers and achieve mutually beneficial outcomes. The program was initiated to develop a new way of assisting DCJ's workers who had suffered complex psychological injuries due to a riot at a youth justice centre. It was rolled out in 2021 to all DCJ employees and has resulted in significant improvements in recovery and RTW outcomes. It was recently recognised with the 2021 Australian Business Award for

---
[25] Finity have been engaged to support remuneration model design and Kearney have been engaged to support procurement strategy development.

Product Innovation and is currently being made available to other TMF agencies, recently being implemented by the Ministry of Health;

b. engaging with the Public Service Commission and SafeWork NSW to discuss psychological claim trends across the TMF portfolio in order to mitigate psychosocial risk in the workplace. icare has also briefed the NSW Treasury Asset and Liability Committee about these trends, the impacts on the TMF and Government agencies and the actions being taken to mitigate and manage the increasing frequency of psychological claims, with a view to developing long-term plans for the reduction in incidence of serious psychological injury claims under the NSW Government Sector Plan;

c. refreshing the Work Injury Screening and Early intervention, or WISE program, for NSW Government agencies and providing extensive training and learning to support NSW Government Sector employees to maintain their own mental health and support mental well-being in others (including through Mental Health First Aid, Leading with Psychological Safety and Mental Health Peer Connect programs);

d. working with claims service providers, SafeWork NSW and NSW Government agencies to leverage, develop and deliver programs that provide the tools and knowledge to prevent psychological injury claims and to improve claims management, including agency-specific programs; and

e. as part of icare's Internal Audit Plan for this financial year, icare's Internal Audit team is undertaking an internal audit of key controls relating to TMF workers compensation processes, focussing on claims managed by Allianz.

62. SIRA has also commenced a review of the TMF workers compensation portfolio and icare worked constructively with SIRA in relation to finalising its terms of reference. icare intends to engage cooperatively and transparently with SIRA during the review and consider any other areas for improvement that are identified.

Financial performance

63. The McDougall Review found that both the Nominal Insurer and TMF workers compensation schemes were in a financially sustainable position.[26] In particular, the McDougall Review concluded that:

[26] This conclusion was also supported by the Cumpston Sarjeant advisory report in respect of the Nominal Insurer as part of the McDougall Review (*Independent review of Nominal Insurer – Financial Sustainability*).

a. in relation to the Nominal Insurer, "*any suggestion that the scheme's financial sustainability is currently in doubt is, in my opinion, unsupportable*"; [27] and

b. in relation to the TMF, "*the media reports as to the financial position of the TMF were based on an incorrect understanding of the way that the TMF is funded and operates… There is absolutely nothing in the submissions made or evidence given to my Review that raises any concerns about the financial position or sustainability of the TMF*"[28] and "*the allegation of a $4 billion 'bailout' was factually incorrect… to the extent that the media commentary sought to assign to icare responsibility for the need for the transfer of cash into the TMF, it was wrong*".[29]

64. It must also be recognised that the TMF scheme works in a fundamentally different way to commercial insurance and operates in conjunction with NSW Treasury subject to the Net Asset Holding Level Policy (**NAHLP**). Despite the impacts of COVID-19, the March 2021 floods and a substantial increase in child abuse and psychological claims, the TMF had a positive net result of $599 million in the 2020/21 financial year.

65. icare's focus is on laying the groundwork for the ongoing financial sustainability of its schemes over the long-term, recognising that this will be affected by external factors including the changing work environment. The financial performance of both schemes is also affected by investment markets, which have only recently returned to baseline following the impacts of the COVID-19 pandemic. icare's investment strategies helped to absorb the effects of the uncertain pandemic environment.

66. Financial performance will also be supported by icare's efforts to improve and sustain RTW rates, including its initiatives to counteract the impact of the rise in psychological injury claims through better claims management and performance.

67. Relevant factors and actions taken by icare to address these factors are set out below.

Updated Capital Management Policy

68. The McDougall Review discussed two funding ratios:

a. the Accounting Funding Ratio, which is the funding ratio historically used by the Nominal Insurer. This measures the ratio of scheme assets to scheme liabilities (as per financial reporting measurements); and

[27] Paragraph [661] of Part 1A of final report of McDougall Review.
[28] Paragraphs [321]-[323] of Part 2 of final report of McDougall Review.
[29] Paragraphs [709] and [712] of Part 1A of final report of McDougall Review.

b. the Economic Funding Ratio (referred to by icare as the **Insurance Ratio**), which assesses the expected return from investment assets against claims liabilities.

69. The McDougall Review preferred the use of the Insurance Ratio, on the basis it provides a more realistic appraisal of the Nominal Insurer's financial position, and recommended icare switch to this measure.[30] This is because the long tail nature of the Nominal Insurer scheme requires a long-term investment strategy.

70. The Accounting Funding Ratio is significantly impacted by Australian Government Bonds yields. While these are generally the safest investment an investor can make, because of the Nominal Insurer's long-term strategy, its investments are expected to produce higher returns than those produced by Australian Government Bonds, which do not reflect the investment returns that the scheme is expected to earn in the long-term and that are built into pricing decisions.

71. Accordingly, the Insurance Ratio provides a more suitable and less volatile measure to estimate future financial sustainability as it compares assets and liabilities by factoring in the long-term expected return from the scheme's investment portfolio. In contrast, the Accounting Funding Ratio is based on point-in-time statutory financial statements that do not provide an accurate indicator of the scheme's ability to meet future claims and expenses having regard to the long tail nature of the scheme. While the Accounting Funding Ratio is often a simpler and popular tool, the McDougall Review noted that, when measured according to the more appropriate Insurance Ratio, there are no concerns as to the long-term financial sustainability of the Nominal Insurer.[31]

72. In response to the McDougall Review recommendation, icare has developed an updated Capital Management Policy for the Nominal Insurer in line with the Insurance Ratio approach. The new policy outlines how icare will formally manage capital and the long-term sustainability of the scheme by using the Insurance Ratio, but also continues to provide for the use of the Accounting Funding Ratio.

73. Under the new policy, the target zone for the Insurance Ratio is above 130 per cent at the 75 per cent Probability of Adequacy (**PoA**), which is set to achieve a minimum probability of coverage of 96.7 per cent in a hypothetical runoff scenario. The change to the Insurance Ratio as the primary measure provides an optimum indicator of financial performance and

[30] Paragraph [657] of Part 1A of final report of McDougall Review, and Recommendation 42.
[31] Paragraph [257] of Part 2 of final report of McDougall Review.

better means by which icare can track financial sustainability, and will enable better decision-making regarding the financial performance of the scheme.

74. icare has shared its new Capital Management Policy with SIRA and NSW Treasury. NSW Treasury recently engaged Cumpston Sarjeant to review the key assumptions set out in the Nominal Insurer Business Plan for financial sustainability. Cumpston Sarjeant made various recommendations with regards to ongoing implementation of the Insurance Ratio, which icare intends to action. icare plans to continue its review of related policies such as its Investment Policy and Pricing Policy. These will be reviewed over the course of the 2021/22 financial year as part of the annual policy review cycle.

Premium increases

75. One of the primary levers within icare's control to support the financial performance of its schemes is the setting of premiums. icare has increased premiums in the Nominal Insurer scheme for the current financial year, which is the first time this has occurred since 2014 (noting that premium changes were put on hold last year due to the need to support NSW businesses through the COVID-19 pandemic). Prior to this increase, NSW employers experienced the same pricing level of an average 1.4 per cent of wages since 2014, which is the lowest in 30 years and lower than the average rate across all Australian jurisdictions.[32] After icare's proposed premium filing in March 2021, SIRA has approved that the average premium rate will increase from 1.4 per cent of wages to 1.44 per cent.

76. Notably, these changes were not made to recover the impacts of lower RTW rates on the scheme. Rather, they sought to address longer-term inflationary pressures on the scheme, including to offset increases in medical costs and other cost pressures which have been absorbed by the scheme over the past eight years.

77. icare's approach will be to seek modest, consistent and predictable increases as required to address underlying cost pressures that exist in the scheme and in a way that will allow businesses to plan and adjust to these increases. This approach will balance the provision of ongoing support to NSW businesses and care for workers with future risks to scheme performance, including volatile investment markets, the delivery of operational improvements and the ongoing impact of COVID-19.

[32] By way of comparison, Western Australia gazetted a four per cent premium increase on 8 April, for an average premium rate of 1.704 per cent of wages for the 2021 policy year.

78. icare will continue with incentives and discounts to businesses that demonstrate a strong safety record and commitment to helping injured workers return to work. It is worth noting that premium complaints to icare are 40 per cent lower over the past 12 months and 46 per cent lower than in July 2020.

Reducing medical costs

79. icare is also continuing to investigate and implement measures to reduce medical costs, including to address over-utilisation and overbilling issues. Such measures include:

a. improving the integrity of icare's payment systems and controls. icare has commenced rolling out system improvements to embed further controls to align payments with approvals, prevent overpayments and capture the case manager's rationale behind the approval of treatments. The majority of system changes will be implemented by mid-December 2021. The final phase of this rollout was originally expected to be completed by February 2022, although this has now been pushed back following the decision to reprioritise work on automation enhancements to help manage the projected increase in COVID-19 claims over the coming months;

b. improving and embedding a revised treatment approval decision making framework, systems and procedures. icare is developing a revised Treatment Decision Making Framework following consultation with claims service providers. The revised framework aims to deliver compliant, consistent, replicable, and reasonably necessary treatment decision-making, and embed principles, practices, and procedures of the framework across icare and its claims service providers;

c. increasing the quality and extent of training given to claims management staff on the management of medical and other healthcare services. This will support the planned system improvements and revised Treatment Decision Making Framework, and will involve ongoing training and engagement with claims service providers; and

d. undertaking increased, targeted oversight of allied health service utilisation and healthcare providers. icare is engaging with relevant providers and peak bodies in relation to these measures, and dashboards are being further refined to identify actual as opposed to expected utilisation rates.

80. icare has been working collaboratively with SIRA to support the findings of SIRA's 2020 Healthcare Review, which addresses the reasons for escalating healthcare costs and leakage, as well as broader fee regulation and reform in the workers compensation system. In this regard, the McDougall Review recommended that SIRA should develop an accelerated plan for implementation of the findings of its Healthcare Review, with additional resources allocated where necessary.[33] SIRA is partnering with scheme stakeholders, including icare, to determine the approach to transition the system to value-based healthcare, with icare providing support on matters such as:

  a. the co-design of value-based models of care with surgeons, which will inform future surgical fee methodologies in the NSW workers compensation and CTP schemes; and

  b. the implementation of SIRA's value-based healthcare outcomes framework.

81. In this regard, icare supports SIRA's recent announcement that loadings on surgical procedure fees in the NSW workers compensation scheme will be removed from 1 July 2022, which will bring surgical procedure fees in line with Australian Medical Association rates and fees paid in the CTP scheme. Removing loadings from surgical procedures is expected to result in savings of $41 million for the Nominal Insurer scheme each year. icare looks forward to working with SIRA on other initiatives to address rising healthcare costs, including measures to improve insurer controls around treatment payments and approvals.

Reducing internal costs

82. icare is on track to reduce internal costs by saving $100 million over two years. icare is continuing to explore other areas of focus for additional cost savings, including by investigating further options to increase customer service and efficiencies through process improvements and automation.

Financial performance of Nominal Insurer

83. The Nominal Insurer continues to be in a financially sustainable position. As shown in Table 1 below, as at 30 June 2021 the Nominal Insurer had a positive net result of $63.3 million in the 2020/21 financial year.

[33] See Recommendation 36 of the McDougall Review.

Item	Total
Premiums / levies	$3.094 billion
Operating expenses	$991 million
Underwriting expenses	$1.037 billion
Underwriting result	– $1.417 billion
Investment income	$1.480 billion
Net result	**$63.3 million**

Table 1: Nominal Insurer financials as at 30 June 2021

84. The underwriting result reported in Table 1 above reflects the premiums received less the claims and expenses paid by the Nominal Insurer. It does not take into account the investment income earned, which is a critical source of income to support the Nominal Insurer being able to pay its claims and expenses, and in ensuring premium affordability for employers. This is because, unlike other insurers, the Nominal Insurer does not include profit or risk margins in pricing for risk, as it does not seek to make a profit from providing workers compensation insurance to NSW employers. The pricing of premiums therefore allows for investment income on invested assets, which allows the credit of future investment income to be passed onto employers through lower prices.

85. Accordingly, it is the net result (which factors in investment income by adding it to the underwriting result), rather than the underwriting result (which is expected to be a loss given how the scheme operates), that provides a true picture of the performance of the scheme.[34] Indeed, the Nominal Insurer has reported underwriting losses in each year since icare was established, with the results of WorkSafe Victoria also showing consistent underwriting losses each year over the same period. Notwithstanding these underwriting losses, the McDougall Review concluded that there were no concerns as to the financial sustainability of the Nominal Insurer scheme.[35]

[34] To this end, we note the comments above at paragraphs [68] to [74] regarding the appropriateness of the Insurance Ratio to measure the Nominal Insurer's financial performance as it considers investment income.
[35] Paragraph [661] of Part 1A of final report of McDougall Review.

86. As shown in Table 2 below, the Nominal Insurer has an insurance ratio of 122 per cent at the 75 per cent PoA as at 30 June 2021, with a forecast insurance ratio of 120 per cent at the 75 per cent PoA for the 2021/22 financial year. The Nominal Insurer's funding ratio was 99 per cent at the 75 per cent PoA as at 30 June 2021.[36]

	FY21 (30 June 2021)	Forecast FY22	31 October 2021 (unaudited)
Investment Funds under Management	$19.8 billion		$20.6 billion
Funding Ratio (75% PoA)	99%	97%	97%
Insurance Ratio (75% PoA)	122%	120%	116%
Target Insurance Ratio	Above 130%		

Table 2: Nominal Insurer funding and insurance ratios

87. For completeness, the Nominal Insurer funding and insurance ratios as at 31 October 2021, which are based on unaudited figures, are also shown in Table 2 above. While there has been a slight decline in both ratios since 30 June 2021, this is largely in line with expectations due to the cyclical nature of the Nominal Insurer's balance sheet over the course of the financial year. In particular, a large proportion of losses resulting from premium inadequacy is typically realised in the first couple of months each financial year as policies are renewed, which is later offset over the course of the remainder of the financial year as investment income is received. Indeed, the funding ratio of 97 per cent is 1 per cent better than projected, notwithstanding the decline in wages resulting from the impact of COVID-19 and the flow-on effects on premiums, noting that the period since 30 June 2021 coincided with the introduction of lockdowns in NSW following the outbreak of the Delta variant of COVID-19.

88. While the Nominal Insurer's insurance ratio of 122 per cent at the 75 per cent PoA (as at June 2021) is below the target zone of above 130 per cent at the 75 per cent PoA, the Nominal Insurer remains in in a strong position to meets its future liabilities.

89. The NSW Audit Office has also provided an unqualified audit opinion for the 2020/21 financial year accounts for the Nominal Insurer and Insurance for NSW (of which the TMF is the largest component). That opinion did not raise any high-rated audit items for the Nominal

[36] The claims liability in this ratio is discounted at Australian Commonwealth Government bond rates, i.e. the risk-free rates. Both the funding ratio and insurance ratio for the Nominal Insurer's liabilities have an 11.7 per cent risk margin in addition to best estimates.

Insurer or Insurance for NSW. Further, the one high-rated item raised in its review of 2019/20 financial year accounts (regarding the allocation of costs between the Nominal Insurer and the other schemes to which icare provides services) has also been resolved.

90. It should be noted that many of the factors exerting pressure on the Nominal Insurer's financial position are either wholly or partially outside icare's control, particularly in relation to the impacts of COVID-19 and increasing medical costs. As explained at paragraphs [75] to [82] above, icare intends to act on each of the levers within icare's control, with a focus on reducing costs and increasing premium rates where necessary, in addition to seeking to deliver improvements in its claim management model to lift RTW rates.

91. icare's investment strategies also continue to help support the financial position of the Nominal Insurer. For example, the financial strength of the Nominal Insurer's investments brought in income of $1.48 billion for the 2020/21 financial year and helped to absorb the impacts of the uncertain environment during the COVID-19 pandemic. It is anticipated that this strong position will help to gradually rebalance scheme funding as the economy recovers over the coming years.

Financial performance of TMF

92. As a self-insurance scheme for the public sector, TMF funding arrangements work in a fundamentally different way to commercial insurance. Unlike other funds managed by icare, the TMF does not operate independently of the NSW Government's budget or finances. Rather, it operates in conjunction with NSW Treasury through the NAHLP. Typically, payments are made by the TMF to NSW Treasury if the funding ratio exceeds 115 per cent, and grants are received by the TMF from NSW Treasury if the funding ratio falls under 105 per cent.

93. The TMF returns surplus funds to NSW Treasury in years where NSW Government agencies' claims are lower than expected and receives funds from NSW Treasury when claims are higher than expected. Over the 2020/21 financial year, NSW Government agencies experienced larger losses than normal, due to the impact of:

   a. the March 2021 floods ($142 million);

   b. the continuation of COVID-19 pandemic restrictions and business interruption losses to NSW Government agencies ($130 million);

c. increased reserves for child abuse claims related to proposed amendments to the *Civil Liability Act 2002*, which may result in awards of damages for child abuse matters that were previously settled ($250 million); and

d. a substantial increase in psychological injury claims ($86 million) and medical indemnity claims ($139 million).

94. Notwithstanding these losses, as at 30 June 2021 the TMF had a positive net result of $599 million in the 2020/21 financial year, as shown in Table 3 below.

Item	Total
Premiums / levies	$1.643 billion
Operating expenses	$181 million
Underwriting expenses	$237 million
Underwriting result	– $1,327 billion
Investment income	$1.926 billion
Net result	**$599 million**

Table 3: TMF financials as at 30 June 2021

95. As shown in Table 4 below, the TMF funding ratio was 109 per cent as at 30 June 2021. The insurance ratio for the TMF was 141 per cent as at 30 June 2021.[37]

	FY21	31 October 2021
Investment Funds under Management	$13.5 billion	$14.2 billion
Funding Ratio	109%	111%
Insurance Ratio	141%	135%
Target Insurance Ratio	NAHLP	

Table 4: TMF funding and insurance ratios

[37] The TMF Insurance Ratio is calculated using a 7 per cent discount rate, based on the investment return expectation for the scheme, instead of the risk-free rate required by accounting standards.

96. For completeness, the TMF funding ratio and insurance ratio as at 31 October 2021, which are based on unaudited figures, are also shown in Table 4 above. The funding ratio of 111 per cent is 2 per cent better than projected.

97. While the funding ratio dropped in the 2020/21 financial year due to the factors identified at paragraph [93] above, there continue to be no concerns about the financial position or sustainability of the TMF. As in the case of the Nominal Insurer, icare will continue to act on the levers within its control to help support the financial position of the TMF.