

# Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme

For the State Insurance Regulatory Authority (NSW)

Janet Dore

December 2019

## Table of Contents

1	Executive summary.....	5
2	Terms of reference.....	6
3	Introduction.....	8
3.1	Impetus for the review.....	8
3.2	Outline of reforms.....	8
3.3	Operating environment.....	10
4	Stakeholder submissions.....	14
4.1	Summary of submissions received.....	14
4.2	Key strengths.....	14
4.3	Matters for improvement.....	15
4.4	Analysis.....	15
4.5	Claims.....	21
4.6	Design.....	21
4.7	Implementation.....	26
4.8	Communication.....	28
4.9	Processes and supporting IT infrastructure.....	28
4.10	Approval and payment delays.....	29
4.11	Governance.....	29
4.12	Union submissions.....	30
4.13	Abridged return to work outcomes survey.....	32
4.14	Regional discussions.....	35
5	Performance of NI.....	36
5.1	Context.....	36
5.2	NI funding ratio.....	36
5.3	Loss ratio.....	38
5.4	Outstanding claims liability.....	40
5.5	RTW outcomes.....	41
5.6	SRC Reports and RTW outcomes.....	43
5.7	Claims management.....	44
5.8	Customer experience.....	50
5.9	Data quality and reporting.....	51
5.10	NI expense analysis.....	53
5.11	Overall performance.....	56
5.12	Original financial estimates.....	57
6	NI compliance with Market practice and premium guidelines.....	59
6.1	Principles of the Market practice and premium guidelines.....	59

6.2	Premiums.....	59
7	Benefits and risks of new claims management model .....	64
7.1	Background.....	64
7.2	Model implementation and risks.....	64
7.3	NISP system implementation .....	66
7.4	Summary .....	67
7.5	Expectations .....	69
7.6	Structure .....	69
7.7	SIRA’s legislative powers.....	70
7.8	Governance and relationships.....	70
8	icare response .....	73
9	Issues outside terms of reference .....	75
9.1	Transparency of NI communications.....	75
9.2	Strategic direction .....	75
9.3	Medical panel and provider management.....	75
9.4	IT platform.....	75
9.5	Agent management.....	76
9.6	Complaints and disputes.....	76
10	Conclusions .....	77
11	Findings.....	78
12	References .....	79
13	Appendix A: Supervisory approach for licensed insurers.....	0

## Table of figures

Figure 1 – NSW workers compensation system .....	11
Figure 2 – Liability decision timeliness .....	12
Figure 3 – Submissions received .....	14
Figure 4 – Average rating of claims and premiums experience .....	14
Figure 5 – Issues raised by stakeholder group .....	14
Figure 6 – Returned to work rate – Nominal Insurer (time series).....	34
Figure 7 — Current return to work rate – Nominal Insurer (time series) .....	34
Figure 8 – Funding ratio (75% PoS) .....	36
Figure 9 – Funding ratio since the split of WorkCover .....	37
Figure 10 – Funding ratio projection based on NI filings .....	37
Figure 11 – Loss ratio .....	38
Figure 12 – Underwriting result and investment income .....	38
Figure 13 – Assets to liabilities ratio – NSW compared to all Australian centrally funded schemes .....	40
Figure 14 – Outstanding claims liability .....	40
Figure 15 – RTW rates as measured by SIRA.....	41
Figure 16 – RTW including medical only claimants’ rate (as measured by icare) .....	42
Figure 17 – Weekly payments.....	44
Figure 18 – Average duration of weekly benefits paid in the first six months .....	45
Figure 19 – Average duration of weekly benefits paid in the first six months of injury using weekly payments - NI.....	45
Figure 20 – Average duration (days), including claims less than five days duration – NI .....	46
Figure 21 – Average medical payment by insurer type.....	47
Figure 22 – Medical expenditure by insurers .....	47
Figure 23 – Professional consultation billed with MRI service .....	48
Figure 24 – MRI payments exceeding gazetted maximum fees .....	49
Figure 25 – Percentage change in medical spend year on year .....	49
Figure 26 – Percentage change in medical utilisation year on year .....	50
Figure 27 – Gross written premium and premium received .....	50
Figure 28 – Return to work rates reported by icare .....	52
Figure 29 – Nominal Insurer budgeted expenses .....	53
Figure 30 – Expense ratio (excluding statutory levies) .....	53
Figure 31 – Transformation and transition expenses.....	54
Figure 32 – Summary of NI expenses .....	54
Figure 33 – Operating expenses .....	55

Figure 34 – Net earned premium and expense ratios.....	56
Figure 35 – Nominal Insurer FY2019 key highlights .....	56
Figure 36 – Solvency projections – base projections.....	57
Figure 37 – Premium rate movements between 2016/17 and 2018/19 – 30% threshold .....	60
Figure 38 – Analysis of SIRA capping, 2018/19 policies.....	61
Figure 39 – Analysis of icare flooring, 2017/18 policies .....	62

# 1 Executive summary

This compliance and performance review of the Nominal Insurer (**NI**) was commissioned in February 2019 by the Chief Executive of the State Insurance Regulatory Authority (**SIRA**) to determine the reasons for deterioration in the NI performance. Extensive consultation, data collection and analysis has been undertaken.

Since the 2015 reforms instigated the separation of regulation and operation into SIRA and icare respectively, among other changes, there have been multiple challenges to achieving the intent of the reforms.

SIRA has revised guidelines and reporting requirements but has had limited ability to oversee the NI consistently with other insurers in the scheme due to its unconditional licence. This has limited SIRA's ability to enforce guidelines and standards or to otherwise direct the NI to undertake an action or task.

icare, as the responsible entity for the NI, has pursued an ambitious model based on principles of triage, injured worker empowerment and straight through processing. This model was implemented in January 2018, with one insurance agent for all new claims (EML). In February 2019 a single IT platform, Nominal Insurer Single Platform (NISP) was introduced for operating the new claims model. Two other insurers, GIO and Allianz, were retained for managing run-off claims and a pilot Authorised Provider Model (APM).

The ambition of the model was matched by the ambition of the timeframe for implementation and the control by icare over the primary provider EML. This has caused substantial confusion within the market and employers in particular, have complained about the lack of involvement in return to work (RTW) plans and claims verification.

The new claims model, led to a significant deterioration in the performance of the NI, through poorer return to work rates, underwriting losses, no competition and therefore, concentration of risk. While investment returns for icare have bridged the gap in underwriting losses, the current economic environment of low returns does not bode well.

The deterioration in the performance of the NI, covered in section 5 of this report, has continued, with much of the decline coinciding with the implementation of the new claims model. icare suggests that the deteriorating performance is the result of factors beyond its control. While there have been some external factors that affected the deteriorating performance of the NI, the primary driver for the decline is the implementation and operation of the new claims model implemented by icare.

During the course of this review, icare has implemented a number of improvements to address the deteriorating performance of the NI. Although some of these initiatives may have had some benefit to the scheme and stakeholders, they have not yet abated the ongoing deterioration in the NI's performance.

Performance of the NI must improve on the basic indicators of RTW, claims management service and premium transparency. Findings of this review outline a constructive path towards those improvements. icare has responded to a preliminary draft of this report, in accordance with the terms of reference, and agreed with 11 of the 13 findings contained in this report.

If icare can undertake actions consistent with the findings of this review, there should be demonstrable progress towards improving the NI's performance.

## 2 Terms of reference

- 2.1.1 The State Insurance Regulatory Authority (**SIRA**) is the regulator of the workers compensation system in NSW. SIRA has a number of obligations and functions as the regulator as defined in sections 22 and 23 of the *State Insurance and Care Governance Act 2015 (SICG Act)* and section 23 of the *Workplace Injury Management and Workers Compensation Act 1998 (1998 Act)*.
- 2.1.2 Among the many legislative functions and obligations, is a requirement to collect, analyse and publish data and statistics, as the Authority (SIRA) considers appropriate, and to promote the efficiency and viability of the insurance and compensation schemes established under the workers compensation legislation, pursuant to which SIRA exercises functions.
- 2.1.3 In fulfilling that function, SIRA receives and reports on performance data and metrics from insurers operating within the workers compensation scheme. In 2018 SIRA observed deteriorating trends in the performance of the Nominal Insurer (**NI**).
- 2.1.4 The Nominal Insurer represents approximately 74 per cent of the workers compensation market share and is the largest insurer operating in the scheme. The performance of the NI has a material impact on the overall performance of the workers compensation scheme.
- 2.1.5 In response to the observed deteriorating trend, and consistent with its objectives, functions, responsibilities and powers, SIRA initiated a compliance and performance review of the NI (**the Review**) and appointed me as the independent reviewer to conduct the Review and produce a report on my findings (**the Report**).
- 2.1.6 The terms of reference for the Review are defined as follows:
- a) assess NI compliance with the Market practice and premium guidelines (MPPGs) and identify any unintended consequences, risks and priorities for improvement in SIRA regulation of the premiums of the NI
  - b) identify the benefits and risks to the performance of the NSW workers compensation system arising from icare's implementation changes to the NI operating model and supporting digital platforms
  - c) assess the NI's performance in relation to RTW outcomes, claims management (including guidance, support and services for workers, employers and health service providers), customer experience and data quality and reporting.
- 2.1.7 The terms of reference provided that a preliminary draft of the report would be issued to icare for comment and feedback, prior to publication of the final report. Section 8 of this report captures some of the feedback provided by icare and responses to that feedback.
- 2.1.8 Although, in the course of conducting the Review, many issues and concerns were drawn to my attention, the Review and consequently this Report are constrained to addressing matters within the terms of reference. Several matters have been referred to SIRA for further examination. In addition, section 9 contains observations beyond the scope of the terms of reference.

2.1.9 It is also important to note that this is not a whole of system review and it cannot cover all the intricacies of scheme design. The report is focussed on the main factors which will lead to better outcomes for the citizens of NSW contained in the terms of reference.



## 3 Introduction

### 3.1 Impetus for the review

- 3.1.1 This report is presented to SIRA in accordance with the terms of reference set by its Chief Executive, for an independent review of the NI of the workers compensation scheme of NSW. The NI is administered by Insurance and Care NSW (**icare**). icare is a NSW Government Agency established under the *State Insurance and Care Governance Act 2015 (SICG Act)*, governed by an independent board of directors appointed by and directly accountable to the Treasurer.
- 3.1.2 The Review was commissioned due to concerns about the NI operational and strategic direction, premium and prudential management, claims management outcomes and complaints made to SIRA. Although the Treasurer is the responsible minister for icare, the NI is not a State-backed scheme and Treasury does not have any formal oversight role or statutory powers in relation to the NI or icare. The performance of the NI, due to its significant market share in the NSW workers compensation market, has a material impact on employers, workers and the broader economy of the state of NSW.
- 3.1.3 This work has been supported by widespread contributions from interested parties, a professional team at SIRA, EY, and the NI team. My thanks to them all and to all the people who participated in consultations, discussions and submissions.

### 3.2 Outline of reforms

- 3.2.1 This section recounts the historical context of the 2012 reforms and compares the current position to the intent of the changes.
- 3.2.2 At 31 December 2011, the scheme was operating at a deficit of over \$4 billion, with a deterioration of \$1,720 million in the preceding six months.<sup>1</sup>
- 3.2.3 In response to the deterioration of the scheme, in June 2012 the then Treasurer, the Hon Mike Baird MP, introduced the Workers Compensation Legislation Amendment Bill 2012 and its cognate bill, the Safety, Return to Work and Support Board Bill 2012. Mr Baird said that the bills responded to the joint select committee's recommendations and represented a fundamental shift towards meeting the needs of the most seriously injured workers while strongly incentivising return to work for those who have the capacity to do so.<sup>2</sup>
- 3.2.4 The Government implemented its workers compensation reforms in stages from June 2012. In summary, the changes were:
- a) removal of journey claims where there is no real or substantial connection to work
  - b) limited lump sum payments for permanent impairment
  - c) removal of nervous shock claims

---

<sup>1</sup> *NSW Workers Compensation Scheme Issues Paper* (Sydney: WorkCover NSW, 2012), p. 7.

<sup>2</sup> *Legislative Assembly: Hansard* (Sydney: NSW Parliament, 2012), p. 13014.

- d) change of weekly benefits for seriously injured workers (those with an assessed whole person impairment of more than 30 per cent)
- e) capped weekly benefit entitlements to 260 weeks (five years)
- f) capped medical and related payments at 12 months for most workers after a claim is made or, where weekly payments of compensation are made, for 12 months after the worker ceases to be entitled to those weekly payments
- g) introduction of work capacity assessments
- h) establishment of a new three-tiered review process for work capacity assessment decisions.<sup>3</sup>

3.2.5 The reforms also established the WorkCover Independent Review Office (WIRO) as a new statutory office charged with reviewing insurers' work capacity decisions.<sup>4</sup> The office includes the Independent Legal Assistance and Review Service which provides free, independent legal advice to injured workers where there is a disagreement with insurers regarding entitlements.<sup>5</sup>

3.2.6 In June 2014, the Minister for Finance and Services, the Hon Dominic Perrottet MP, advised that there had been a significant improvement in the scheme's financial position and announced several enhancements to the 2012 workers compensation reforms to better support injured workers returning to work. These changes do not apply to all injured workers, being limited to those workers who received an injury and made a formal claim on or before 1 October 2012. The changes include:

- a) ensuring continued access to hearing aids, prostheses and home and vehicle modifications and related treatment until retirement age
- b) extending medical benefits for workers with whole person impairment assessed between 21 and 30 per cent, until retirement age
- c) providing workers injured in the 12 months before retirement age with the same entitlements as those who were injured at or after retirement age
- d) ensuring workers continue to be eligible for weekly benefits until a disputed work capacity assessment has been resolved
- e) clarifying the entitlement to a 'second surgery' period for workers where the initial surgery requires a second surgery falling outside the 12-month medical cap.<sup>6</sup>

---

<sup>3</sup> Carmel Donnelly, General Manager, *Answers to questions on notice* (Sydney: Safety, Return to Work and Support, 2014), pp. 1-2.

<sup>4</sup> "Chapter 2 Administration; Part 3 Workers Compensation Independent Review Officer", in *Workplace Injury Management and Workers Compensation Act 1998 No 86* (Sydney: Parliamentary Counsel's Office, 2019).

<sup>5</sup> *Claims management guide, Glossary: Independent Legal Assistance and Review Service (ILARS)* (Sydney: State Insurance Regulatory Authority, 2019).

<sup>6</sup> Hon Dominic Perrottet MP, Minister for Finance and Services, *Workers Benefit From NSW Government's Sound Financial Management* (Sydney: NSW Department Finance, Services & Innovation, 2014), p. 1.

- 3.2.7 These changes were expected to increase the scheme's liability by approximately \$280 million.<sup>7</sup>
- 3.2.8 In 2014 and 2015, the Standing Committee on Law and Justice for the Parliament of NSW, conducted a review (**L&J Review**) and explored further revisions to the scheme. One of the central issues was the conflicts of interest that arose from the multiple roles carried out by WorkCover in the regulation, implementation and enforcement of the workers compensation scheme and work health and safety legislation.
- 3.2.9 Concerns were raised regarding the potential conflict between WorkCover's roles as both the Nominal Insurer through its management of the Workers Compensation Insurance Fund, and as the regulator of the workers compensation scheme.
- 3.2.10 As the regulator, WorkCover was responsible for ensuring compliance with the relevant workers compensation legislation through education, engagement and enforcement, while as the Nominal Insurer it was responsible for the commercial roles of managing funds and appointing and overseeing the scheme agents that issue insurance policies and manage claims.
- 3.2.11 The L&J Review resulted in structural reform that addressed stakeholder feedback and the inherent conflict between the regulatory and insurance functions of the former WorkCover Authority.
- 3.2.12 These reforms were enacted under the SICG Act. The SICG Act commenced on 1 September 2015 and established three new organisations to regulate and operate NSW's statutory insurance and care schemes and regulate workplace safety, replacing the former WorkCover Authority. These organisations are as follows:
- a) State Insurance Regulatory Authority (SIRA) – a new independent regulator of NSW insurance schemes (worker compensation, home building compensation and compulsory third party)
  - b) Insurance & Care NSW (icare) – an insurance and care service provider
  - c) SafeWork NSW – an independent workplace safety regulator.
- 3.2.13 These organisations represent the key operational and regulatory entities that oversee the scheme today.

### 3.3 Operating environment

- 3.3.1 This Review has been conducted at a time of implementation of changes arising from the Hayne Royal Commission into the Financial Services Sector 2018 (**Hayne Royal Commission Report**).<sup>8</sup> A key question raised by that Commission was:

“Is there adequate oversight and challenge by the Board and its gatekeeper committees of emerging non-financial risks?”

---

<sup>7</sup> Hon Dominic Perrottet MP, Minister for Finance and Services, *Workers Benefit From NSW Government's Sound Financial Management* (Sydney: NSW Department Finance, Services & Innovation, 2014), p. 1.

<sup>8</sup> Hayne, K M, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report* (Canberra: Commonwealth of Australia, 2019), p. 333.

3.3.2 The Commonwealth Bank of Australia (CBA) report 2017 and most recent Australia Prudential Regulation Authority (APRA) 2019 review also focussed strongly on the management tone and ensuing culture embedded in organisations. In uniquely complicated systems of workers compensation (WC) participants and responsibilities, these elements are critical in achieving successful outcomes. Assessing and measuring culture is possible in Hayne’s view but appropriate methodologies are still evolving. Harvard Business Review recently cited research by Gartner that described culture as an amorphous concept for which there are no direct levers for shifting this way or that. Their advice is:

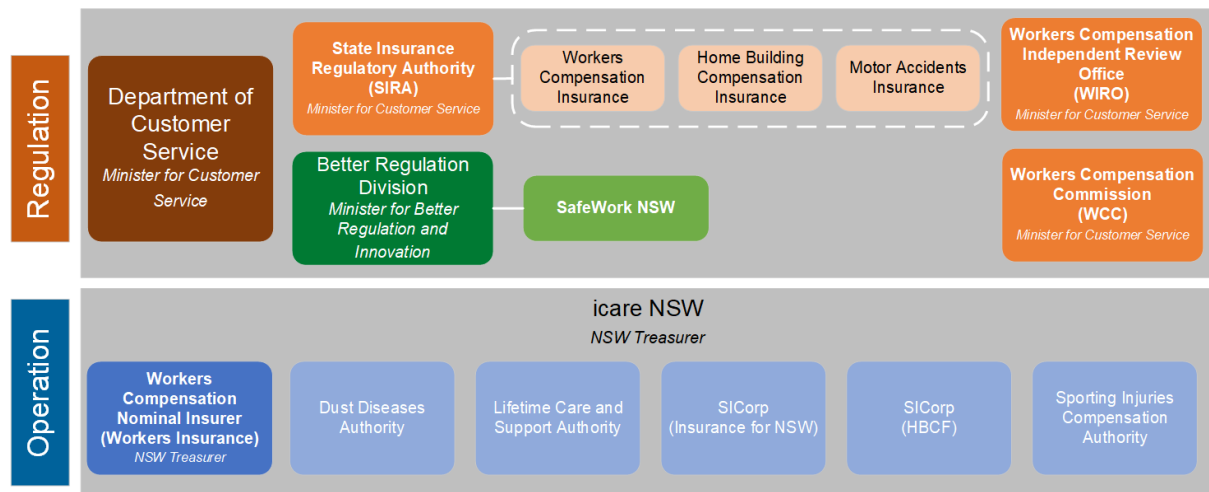
- a) do not use simple adjectives to describe culture
- b) do not measure culture with data alone
- c) alter policies to support cultural change and remove perversity.<sup>9</sup>

3.3.3 An additional requirement for regulators such as SIRA is an expectation “to recognise that there are two different steps:<sup>10</sup>

Having a wrongdoer compensate those harmed is one thing; holding wrongdoers to account is another.”

3.3.4 icare and SIRA are part of a fragmented workers compensation (WC) system involving three Ministers and five organisations as shown in the following figure:

**Figure 1 – NSW workers compensation system**



3.3.5 Recognition that internal organisational cultures also influence inter-organisation and stakeholder interactions has also emerged as a central factor to this review. It is evident from discussions that misunderstanding, disagreement and non-cooperation have characterised the relationship between SIRA and icare on many occasions. A primary example of this is the different criteria used to measure RTW outcomes between SIRA and icare. Whereas SIRA uses one measure to gauge the

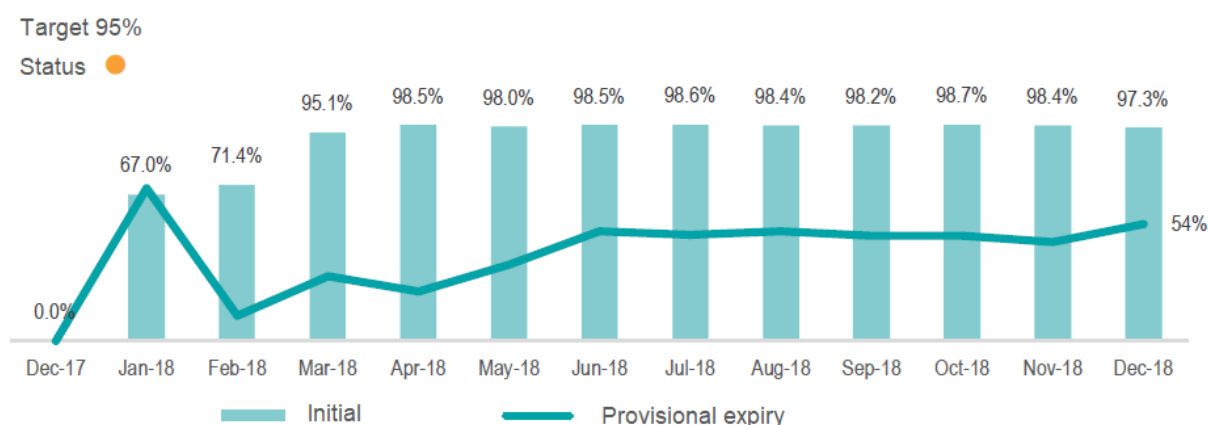
<sup>9</sup> Harvard Business Review, “The Wrong Ways to Strengthen Culture” (Massachusetts: Harvard Business School Publishing, 2019), July/August 2019 issue.

<sup>10</sup> Hayne, K M, *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report* (Canberra: Commonwealth of Australia, 2019), p. 4.

performance of the entire scheme, the NI utilises a different measure entirely in gauging its own performance. This example is illustrative of the strained relationship, because SIRA as the regulator, is empowered under section 23(m) of the 1998 Act, to *collect, analyse and publish data and statistics, as the Authority considers appropriate* (emphasis added). The fact that the NI has set its own measure rather than use the defined measure required by SIRA indicates a poor relationship between the entities and low regard for SIRA as the regulator.

3.3.6 This is best illustrated in the graph below, an extract from an icare Board report, titled *EML New Co Operational Performance CITC February 2019*, provided in the course of the Review. Page 9 of the report expressly highlights that icare’s compliance with section 267(3) of the 1998 Act, namely icare’s compliance with determining liability within the 12 weeks allowed for provisional liability status, is adhered to in only **54 per cent** of cases. Further, this same report highlights this risk as an intermediate or amber risk. The report also suggests that 46 per cent of the NI’s claims managed within the new claims model are non-compliant with the legislation, and that icare considers this non-compliance as a lower order risk. This approach to compliance seems to indicate an absence of concern with regulatory matters.

**Figure 2 – Liability decision timeliness**



3.3.7 None of this is healthy or helpful in achieving success for all participants in the WC system and may be a reflection of the independence of icare and the unconditional license of the NI. SIRA as the regulator for the scheme, has available to it a whole suite of powers that it can utilise to enforce or direct insurers to undertake an action or activity. However, many of those powers are constrained to the licensing of the insurer with the scheme. Under section 154B of the *Workers Compensation Act 1987*, the NI is taken to be a licensed insurer *and as if that licence were not subject to any conditions*. In practical terms, this limits the ability for SIRA to regulate the NI in the same way as other participants in the scheme (see further details in section 7).

3.3.8 It is however clear that lessons from recent reviews, including the Hayne Royal Commission, CBA Review 2018 and APRA Review 2019, should be applied for best practice in the financial services sector, including insurers and their regulators. The Australian Securities and Investment Commission (ASIC) Capability Review undertaken by PricewaterhouseCoopers (PwC) identified areas for improvement

such as decision-making criteria to ensure systematic assessment of which regulatory tool to use in which circumstance and for greater data analytic capability.<sup>11</sup>

- 3.3.9 SIRA and icare, as government agencies, are also required to provide advice to government in their respective capacities and jointly with others in cross-sector work, such as the Mentally Healthy Workplaces Strategy. This requires collaboration but cannot detract from individual agencies and their primary roles in the regulatory arena. As Hayne identified, there must be transparency rather than a 'behind closed doors' approach to wrongdoing. He criticised both APRA and ASIC for over-use of 'soft' regulatory tools and pointed to the importance of complaints handling in identifying systemic issues.

FINDING 1. SIRA should regularly review definitions where it requires reporting of data in consultation with all stakeholders.

FINDING 2. Regular meetings between Board chairs, CE and CEO of SIRA and icare should be continued on an open and constructive basis to promote understanding between, and professional relations with, the two organisations in meeting their respective responsibilities.

FINDING 3. SIRA should continue its review of governance and capabilities within the emerging contemporary approach to regulation.

---

<sup>11</sup> Harley, H. & Salimbeni, N., *ASIC Capability Review Volume 1: Evidence report* (Sydney: PricewaterhouseCoopers, 2015), pp. ix, xi, 16, 25, 29, 69.

## 4 Stakeholder submissions

### 4.1 Summary of submissions received

- 4.1.1 As part of this Review, submissions were invited during a public consultation between May and July 2019.
- 4.1.2 This report presents the key findings of the 163 submissions received as part of the consultation process. Eight submissions did not fall within the scope of the Review and have been excluded from the analysis.
- 4.1.3 Submissions were received from the following stakeholder groups:

**Figure 3 – Submissions received**

Employer	Broker	Industry/ business association	Worker	Provider	Solicitor	Union	Other	Total
89	27	10	8	6	4	2	9	155

- 4.1.4 The observations for each of the 155 submissions were divided into claims and premium-based observations. Stakeholders were able to rate their claims and premiums experience on a scale from 1 (being the worst) to 5 (being the best):

**Figure 4 – Average rating of claims and premiums experience**

	Submissions raising claims/premiums issues	Stakeholders applying rating	Average rating
Claims	146	64	1.9 out of 5
Premiums	102	57	2 out of 5

- 4.1.5 The following stakeholder groups raised claims and premiums issues:

**Figure 5 – Issues raised by stakeholder group**

	Employer	Broker	Industry/ business association	Worker	Provider	Solicitor	Union	Other	Total
Claims	83	26	10	8	6	4	2	7	146
Premiums	62	24	8	1	2	0	1	4	102

### 4.2 Key strengths

- 4.2.1 Some stakeholders commented positively on the following:
- injury prevention initiatives developed in collaboration with icare teams
  - where in place, designated icare underwriter relationships with brokers and other stakeholders operate well

- c) icare online portal for claims submissions has been well received
- d) the operation of the workers compensation system prior to introduction of the new claims model in 2018
- e) generally, well managed premium renewal process prior to icare taking the management of premiums in-house.

### 4.3 Matters for improvement

4.3.1 The following issues were consistently raised in submissions:

a) Premiums

- i. Inaccuracy of premium notices issued.
- ii. Delays issuing renewal documents, processing of wage declarations and hindsight adjustments.
- iii. Little transparency of the premium formula and employers' inability to understand their premium notice without the engagement of a consultant.
- iv. The structure of the premium formula leading to volatility, ad-hoc discounting, counterproductive incentives and premiums not being reflective of risk.

b) Claims

- i. Design of the new claims model, particularly claims management decision-making, lack of assigned case managers, automatic triage, routine acceptance of provisional liability and reduction to a single scheme agent.
- ii. Implementation of changes including issues with staff resourcing, retention and skill levels, lack of communication to stakeholders, lack of claims/return to work management, reporting issues, deficiencies in supporting processes and IT infrastructure.
- iii. Governance of new claims model highlighting stakeholder confusion over roles and responsibilities of icare and scheme agents, limited quality assurance and poor consultation with key stakeholders.

### 4.4 Analysis

#### Premiums accuracy

4.4.1 32 submissions raised that premiums have been calculated incorrectly on at least one occasion. Brokers reported errors in premiums for most of their clients and noted this to be an alarming sign as most employers would not understand that their premium has been calculated incorrectly. Some of the reasons for incorrect premiums issued include:

- a) failure to apply capping
- b) incorrect claims experience
- c) failure to process wage declarations in a timely manner, and
- d) debt collection processing and refund issues.



4.4.2 The following case studies are illustrative of this issue:

*Case study 1 – Confidential submission (Submission # 35)*

*‘Terrible, premiums have been late, premiums have been inaccurate, auto debits set up for years were missed, it[']s been a disaster!’*

*Case study 2 – Confidential submission (Submission # 32)*

*‘Premiums issued by other departments are encountering issues with incorrect wage or claim history resulting in clients being overcharged by thousands. Once notified of the discrepancies, there has also been a delay by icare in correcting the error to refund the client.’*

*Case study 3 – Confidential submission (Submission # 65)*

*‘Premium notices are often incorrect...[t]he most common error is that capping has not been applied.’*

### Timeliness

4.4.3 Significant delays with issuing premium notices, processing wage declarations and processing payments was raised by almost half the submissions. It was noted that these delays have a flow-on impact on a business’ ability to forecast and budget for upcoming premiums. Submissions have noted the adjustments for 2016/17 year remain outstanding.

4.4.4 The following case studies are illustrative of this issue:

*Case study 1 – Confidential submission (Submission # 13)*

*‘The wages declaration and processing is very slow... currently waiting on 2017/18 declaration process to be completed. This creates uncertainty and risk for employers.’*

*Case study 2 – Confidential submission (Submission # 32)*

*‘Actual wages are not being processed in a timely manner. Clients and brokers continually having to follow up processing. Renewal Premiums have been significantly delayed. June renewals in some cases have not been received until February, limiting the time for customers to pay off their premiums. Medium/Large employers were advised for 2018/2019 renewals they could not adjust their estimated wages until after the policy had issued. This resulted in a complete waste of paperwork/effort which only needed to be redone, further delaying the clients receiving their premiums.’*

*Case study 3 – Confidential submission (Submission # 75)*

*‘The RPL/LPR 2014/15 final 48 month and the 2015/16 36 month adjustment premiums to be calculated as at 30/6/18 were only recently processed and received on the 9/4/19. This late processing has resulted in iCare retaining possession of a bank guarantee in the order of \$█m for an extended period. This has resulted in additional expense to █ in terms of both the fees paid to the lender for the guarantee and more significantly the loss of access to working capital.’*

## Transparency

- 4.4.5 64 submissions raised issues about transparency and/or poor customer services. Since 2016/17, icare has viewed their premium methodology as 'commercial-in-confidence' and limited information was made publicly available in 2018/19. Submissions noted that icare underwriters have, in some instances, sought to fill this gap by providing a premium calculator ('premium projection tool').
- 4.4.6 Submissions cited transparency issues around the clarity of premium notices and the lack of publication of the premium formula, among other things, which hinders employers' ability to understand how their workers compensation premium is calculated. Further, it is claimed that icare is not responsive (including to industry groups seeking to assist their employer members) and provides poor customer service.

### *Case study 1 – Confidential submission (Submission # 3)*

*'Limited education/explanation of how premiums are calculated and what factors determine the end figure.'*

### *Case study 2 – Australian Industry Group (Submission # 113)*

*'... the change was not clearly articulated in advance; some large employers had significant increases in their premium that were not anticipated and, therefore not factored into their budgets...the ability for an individual employer to understand their premium, and how it can be reduced in the future, is still limited. Many employers tell us they do not understand their premium and are not provided with clear explanations from icare.'*

### *Case study 3 – Ray Faber Sheetmetal Pty Ltd (Submission # 103)*

*'...icare not responding to requests for variations even though acknowledging receipt of emails, I have tried on 3 occasions since January to request variations as we have lost over 25% of our workforce, and no response.'*

### *Case study 4 – NSW Small Business Commission (Submission # 135)*

*'The NSW SBC has also received representations from small businesses regarding the difficulty in understanding their premiums, including miscalculations that have required an independent consultant being hired to assist them in understanding the errors and resolving the issue.'*

## Premium formula

- 4.4.7 53 submissions raised issues related to the premium formula with respect to volatility, provision of premium relief and premiums not being reflective of risk. Most of these submissions (26) related to the volatility issue and in particular, the impact of claims on the premium.

## Volatility

### Case study 1 – NSW Business Chambers (Submission # 25)

*'The multiplier currently being used results in an unnecessary level of volatility, especially for particular industries, such as transport and care providers. The most extreme example encountered by the Chamber concerned a recently formed company which was part of a group where \$773 of claims costs translated into \$6,108.53 of additional loading (almost half of the Basic Tariff Premium).'*

### Case study 2 – Sydney Symphony Orchestra (Submission # 141)

*'Prior to the establishment of icare, our last workers compensation premium under GIO was \$384,873. Our first invoice from icare was for \$1,099,710. You will understand that for a small not-for profit charity this significant increase was a major problem to the company.*

*'Ultimately with the assistance of our insurance broker, the Sydney Symphony Orchestra sought a review of the proposed premium. The outcome of that review resulted in the cost for our projected premium being reduced from \$1,099,710 to \$594,289. Even with this significant reduction to the initial premium invoice the \$210,000 (54%) increase was a significant impost on the Sydney Symphony Orchestra's 2018 financial result and was detrimental to the object and purpose of our not-for-profit mandate.'*

### Case study 3 – Confidential submission (Submission # 88)

*'The premiums for our clients a[re] quite volatile. A simple claim can result in a premium doubling, which for any employer, particular[ly] medium sized clients it can be crippling for the organisation.'*

### Case study 4 – Hopkins Transport (Submission # 106)

*'Consequently[,] the additional financial cost to my business for one injury of \$30,000.00 over a four year period and questionable as to the causation of the injury being work related is \$187,063.80 on top of the premiums of \$324,838.20 over that time.'*

## Premium relief

### Case study 1 – Sydney Symphony Orchestra (Submission # 141)

*'The Sydney Symphony Orchestra was required to invest significant resources in the premium review process to achieve a reduced policy premium. Given we were not familiar with any of the reasons for increased premiums, i.e. the cessation of the 30% capping, the process was challenging on a small arts administration team.*

*'The Sydney Symphony Orchestra is currently seeking a further review of its 2017-18 final premium and 2018-9 projected premium costs, recently provided to us by icare.'*

#### Case study 2 – Confidential submission (Submission # 112)

*‘The need to apply for premium reviews (which may or may not result in a reduction) in order to try to obtain a premium which reflects the true risk and nature of the business.’*

#### Case study 3 – Confidential submission (Submission # 38)

*‘Premium reductions being provided to some policy holders to buy their silence over the mismanagement of their claims and valid concerns with the icare claims model.’*

#### Case study 4 – Confidential submission (Submission # 78)

*‘The client has had to seek a review by icare for premium relief due to claims performance over the last 2 years; however had the client not sought advice from their broker, they would not have known that premium relief was available to them. This experience has been fair, however it took a significant amount of time and resourcing by the employer, the broker to achieve an outcome.’*

### Perverse incentives

#### Case study 1 – Confidential submission (Submission # 68)

*‘Although the premium model introduced in June 2015 was meant to provide a more stable premium methodology, in its rawest form it is volatile (without the benefit of capping) as well as being open to manipulation (if employers choose not to claim reimbursement of wages).’*

### Premiums not reflective of risk

#### Case study 1 - Confidential submission (Submission # 112)

*‘Since the new premium model has commenced many of our medium and large employers are facing unreasonably high premiums which are not a true reflection of the performance of their business.’*

*‘By comparing an employer against the scheme rather than their classification, those in higher risk industries are in a situation where they are almost guaranteed to perform poorly. As noted by one of our clients, ‘premiums have risen dramatically over the past 2 years, and as a result have made it difficult to run a successful business’.*

*‘Whilst these employers continually aim to focus on safety, the increase in their premium means they do not have the funds to do so, resulting in the cycle of further injuries and increases to the premium.’*

#### Case study 2 – Confidential submission (Submission # 38)

*‘Premiums do not appear to reflect the individual risk of the policy holder. Rates are heavily driven by the Scheme performance.’*

## Customer care feedback

- 4.4.8 16 submissions provided feedback with respect to customer interactions in dealing with their premium issues. Customer interactions with employer and/or brokers occur via the underwriting team and/or customer care team.
- 4.4.9 There was consistently good feedback for the underwriting team. This stemmed mostly from brokers where they have a dedicated underwriter. The feedback for the customer care team is generally poor. Issues raised included inexperience of staff, inconsistency of messages and outcomes, long waiting queues, actions not followed through and inability to get dedicated assistance (due to access from a hotline number).

### Case study 1 – Confidential submission (Submission # 80)

*'The broker has a dedicated underwriter who is our central point of contact for premiums issued by icare. He is responsive, thorough, technically savvy and accurate so any dealing with him is usually a good one.'*

### Case study 2 – Confidential submission (Submission # 65)

*'Dealing with the underwriter team has been helpful as they are always willing to provide the assistance which is required. The icare underwriters understand that regular communication is needed, and they are timely in providing their responses, which are normally always within a reasonable timeframe. They understand the importance of brokers in the system which is why I don't think we have an issue dealing with the underwriters at icare. We do not have direct phone numbers which is frustrating and something that should be considered.'*

*'The Claims Resolutions Team at icare are inconsistent when making decisions. We have situations where relief was applied one year based on sound principles and then not carried through to the next year when the same request was made.'*

### Case study 3 – Confidential submission (Submission # 32)

*'The call centre set actions for underwriters which don't get processed i.e. updating broker codes, processing actual wages etc.'*

## Other issues

- 4.4.10 Three submissions raised other issues such as the adequacy of resourcing with respect to staff and systems, while six submissions raised issues with respect to incorrect application of Workers Compensation Industry Classification (WIC) code, or difficulty in understanding why a classification has changed.

### Case study 1 – Confidential submission (Submission # 68)

*'The above indicates that icare did not have sufficient internal resourcing nor were its systems efficient enough to absorb the underwriting function from the Agents within the timeframes icare imposed on itself. As a result[,] icare has not been efficient in collecting premium income which in turn limits the Nominal Insurer's ability to earn investment income to maintain stability in premium rates for the employers of NSW.'*

## Case study 2 – Australian Industry Group (Submission # 113)

*'We have two recent examples of employers approaching Ai Group to seek assistance to understand the WIC allocation when a review from icare has been unsuccessful. Whilst we are still working through these issues with the employers, it appears that their frustrations are as much with the communication processes as they are with the decisions that have been made. One employer described it as "they just told me that's how it is, without explaining why".*

*'Where classifications are being reviewed, it is important that time is taken to clearly explain the decisions made and the rationale behind those decisions.'*

## 4.5 Claims

- 4.5.1 Issues identified in submissions relating to claims management have been segmented into three categories: design, implementation and governance. Many of the submissions have highlighted that the issues overlap and have an impact throughout the life of a claim as well as on the employer premium.

## 4.6 Design

### Claims management model

- 4.6.1 90 submissions raised issues with the design of the claims management model introduced by icare on 1 January 2018. The submissions note impacts including delayed timeframes, inefficiencies and poorer outcomes from the services provided.

## Case study 1 – Confidential submission (Submission # 4)

*'EML are the worst agent/insurer we have ever dealt with. HOWEVER, we had no issues dealing with EML before the icare system came into place.'*

## Case study 2 - Metcash (Submission # 33)

*'There is often an autocratic approach to claims management. There is a depletion of empathy and people focus in the approach – it feels linear and scripted.'*

## Case study 3 – AEGIS Risk Management Services Pty Ltd (Submission # 42)

*'Stop treating Worker's Compensation like car insurance. Ours is not an insurance where prescriptive and rigid approach to the management of claims will work. Workers Compensation is about people and by our very nature we are all different. To effectively manage these differences there needs to be flexibility and creativity in the approach to achieving RTW outcomes.'*

## Case study 4 – Confidential submission (Submission # 68)

*'What the new claims management process has done [is] add layers of complexity or 'red tape' to the claims management process which has caused delays in decision making. These delays ultimately result in poorer*



*return to work outcomes and frustration on behalf of customers and stakeholders.'*

*Case study 5 – Confidential submission (Submission # 112)*

*'Ineffective claims model creating far more expensive claims and poor return to work outcomes in comparison to the prior model... Claims management is the greatest pain point for █████ and our clients on a daily basis. There has been a significant deterioration in the claims service in NSW since 1 January 2018 when icare enforced the new claims model and EML commenced management of all new claims.'*

*Case study 6 – Australian Manufacturing Workers Union (AMWU) – NSW & ACT (Submission # 133)*

*'icare should ensure that workers have the assistance they need so that they can obtain treatment in a timely manner.'*

*Case study 7 – Sydney Symphony Orchestra (Submission # 141)*

*'With GIO we could, in the interest of our ill/injured employees, work with them to improve the injury management experience. With icare you are just hoping they complete the right processes in a timely fashion, so treatment needs are not delayed.'*

*Case study 8 – Lifestyle Solutions (Submission # 155)*

*'Claims advisors are system driven to perform tasks. There is no proactive management of claims. There is no strategies or way forward.'*

**No assigned case manager**

4.6.2 73 submissions commented specifically on there being no assigned case manager, contributing to further delays, lack of proactive case management, inconsistent approach and errors, as well as lost paperwork. The outcome of this approach is seen as promoting reactive case management, poor communications and a lack of accountability.

*Case study 1 - Confidential submission (Submission # 4)*

*'They appear to have no escalation path. They assured us we'd have a consistent claim manager for complex claims due to our size, then denied ever providing this assurance and kept us on the merry-go-round of team leaders and supervisors, requiring us to start again with the same detail every time.'*

*Case study 2 - Confidential submission (Submission # 20)*

*'The EML system has had a negative effect on the experience for customers, both employers and employees. With no one specific to talk to, you feel like a number.'*

#### Case study 3 – Confidential submission (Submission # 74)

*'As the system is now disjointed our business and workers don't have a person they can call to expediate approvals or treatment requests which mean delay[s] in getting them back to work.'*

#### Case study 4 - ARPA (Submission # 138)

*'The lack of dedicated case manager and/or account manager has caused significant distress, frustration and delays in return to work. Because no one person manages a claim, (even though there are case notes) requires employers, workers and service providers to constantly repeat and provide information, and explain/discuss a claim matter, such as the justification for a treatment or service.'*

#### Automatic triage

- 4.6.3 50 submissions raised the automatic triaging of claims as a significant issue in delaying treatment and return to work outcomes highlighting the lack of proactive case management. Submissions note that this has increased inefficiencies within the scheme and added costs to employers. Additionally, triage appears to be carried out prior to information being obtained and does not seem to be reviewed following further information being obtained.

#### Case study 1 - Confidential submission (Submission # 20)

*'EML have been horrendous to deal with. Having a call centre look after the claims until 4 weeks is not ideal, not having a dedicated case manager is ridiculous.'*

#### Case study 2 – Confidential submission (Submission # 43)

*'With claims in Empower and Guide there is no time loss and these claims sit in the Empower and Guide with little liaison with treatment providers, therefore treatment is delayed quite extensively. Claims that sit in this section also appears to not have basic case management completed on them.'*

#### Case study 3 – Confidential submission (Submission # 92)

*'I've had a claim sitting in the Empower and Guide team for up to 10 months before it was escalated to a case management specialist. Within weeks, it was discovered that this claimant required surgical intervention and required more attention than initially thought -something that should have been addressed in the first 3 months.'*

#### Case study 4 – Lifestyle Solutions (Submission # 155)

*'At times we had injured workers advise they have not spoken with the claims advisor... There is little to no letters of liability provided without having to follow these up. There is no PIAWE confirmed which creates overpayments on regular occasions.'*



## Provisional liability acceptance

- 4.6.4 51 submissions raised concerns about the apparent routine acceptance of provisional liability under the new claims model. Employers expressed frustration due to a lack of consultation and evaluation of information provided. Some submissions suggest that this approach appears to be driven by workload and timeframes rather than a considered claims management decision.

### *Case study 1 – Confidential submission (Submission # 12)*

*‘Claims are just being accepted or PL without going through proper investigation and timeline is not followed.’*

### *Case study 2 - Confidential submission (Submission # 66)*

*‘Consultation and investigation on claims where there are genuine concerns regarding liability are usually dismissed, or in other situations the proactive approach and follow up on investigated claims is missing, resulting in adverse decisions on liability taking up to 3 months to achieve, or worse yet only being achieved well after provisional liability period has been exhausted. This results in increased premium and financial burden on the insured, and perhaps a false sense of security for the worker who feels their claim is accepted only to then have it declined after it has been accepted.’*

### *Case study 3 – Australian Industry Group (Submission # 113)*

*‘One of the key features of a scheme that has provisional liability, is the opportunity to utilise up to 12 weeks to make a decision. This should lead to better decision-making processes. However, we have been advised of some situations where decisions on claims have been delayed until the last days of provisional liability period. This often involves medical information arriving very late, leading to a feeling that the “clock is ticking” and decisions that appear to be made hastily. In these situations, employers feel that their views are not being considered and due process has not been applied.’*

### *Case study 4 – Confidential submission (Submission # 152)*

*‘For a business to have liability determined on a claim as a result of poor time management and no proper claims experience has a major impact on premium.’*

## Single scheme agent

- 4.6.5 59 submissions noted the shift to the single scheme agent and the loss of choice and competition within the scheme. This was viewed by many to have caused a deterioration in claims management as well as a depletion of the broader pool of experience of claims managers in the NSW workers compensation system. For many submissions, transfers between scheme agents allowed comparison between the new claims model introduced in 2018 and the old system which was generally preferred.

#### Case study 1 – Confidential submission (Submission # 55)

*'If ██████ continues to insure (rather than self-insure) we have no option but to insure with icare and there is little or no competition for ██████ to have a viable option. Historically ██████ had a choice of agent that would align to our management needs, but this option has been wiped out by icare with a single claims management being applied across the scheme. One size does not always fit all.'*

#### Case study 2 – Insurance Council of Australia (Submission # 132)

*'It has been well documented that competition in well designed injury insurance schemes can be beneficial. The benefits of competition to customers and the broader economy has been highlighted by various productivity inquiries. For example, the Australian Productivity Commission's 2004 Report on National Workers Compensation and Occupational Health and Safety Frameworks identified the competition in workers compensation schemes is likely to generate incentives for both efficiency and innovation as well as greater transparency in relation to premiums.'*

#### Case study 3 – Confidential submission (Submission # 156)

*'I think this project to reduce nominal insurers was rushed and has had a negative impact on all stakeholders of the scheme, which is very disappointing.'*

#### Other design issues

4.6.6 To a lesser extent, submissions raised the automated standard letter templates (see section 11) and the Medical Support Panel (see section 7) as issues.

#### Case study 1 – Metcash (Submission # 33)

*'Sending out standard template letters and not tailoring them to the target audience and directly related to the circumstances...'*

#### Case study 2 – Confidential submission (Submission # 70)

*'Automatic generation of generic letters and notifications have also led to confusion for injured workers, especially those who have already RTW.'*

#### Case study 3 – Confidential submission (Submission # 65)

*'Medical Service Panel (MSP) review delays in decision response and outside the 21 days. MSP review findings are not transparent even though this is not an independent assessment.'*

#### Case study 4 – Confidential submission (Submission # 112)

*'The Medical Support Panel is completely unnecessary, creating more delays... The current MSP process requires multiple levels of internal review at EML, unacceptable MSP responses as noted previously such as "go and follow up the doctor" and further delays which impact the worker's recovery and employer's premium.'*

#### Case study 5 – Confidential submission (Submission # 162)

*'Insurers could improve decision making by customising their reasons for rejection to the claimant's individual circumstances. It often appears that a formulaic approach is taken across categories of claims. In particular, Section 11A of the Workers Compensation Act 1987 continues to be applied without any specificity. Psychological injury claims continue to be denied on the basis of this Section without any detail being provided in the Section 78 Notice. Details should be provided of the particular type of reasonable management action that has occurred.'*

### 4.7 Implementation

#### Case manager capacity and capability

- 4.7.1 Relevant case manager experience and skill levels, as well as an understanding of workers compensation legislation/operations was raised in 75 submissions. Inappropriate hiring, inexperience and high staff turnover were all raised as issues. Positive comments were made about the motivations and attitudes of some individual staff.
- 4.7.2 High caseload volume and inadequate resourcing was raised in 51 submissions as negatively impacting the operation of the scheme. These issues were often connected with other issues of claims model design, communication, delays and RTW outcomes.

#### Case study 1 – Confidential submission (Submission # 3)

*'I thought it may have just been a badly managed case for us, however recently I have attended an Effective Claims Management seminar and a RTW Course and all participants report the same issues.'*

#### Case study 2 – Confidential submission (Submission # 55)

*'As outlined above[,] a much lower case load needs to be applied so that case managers can manage these claims effectively. It is a false economy to save money on less case managers and then incurring large back end costs due to mismanagement of files.'*

#### Case study 3 – Confidential submission (Submission # 125)

*'They should work on relationship management, ensuring a speedy response to requests and case timelines. This creates a positive effect for both companies and individuals who are being managed.'*

#### Case study 4 – NSW Small Business Commission (Submission # 135)

*'In a recent meeting with the NSW SBC, icare admitted that at the time of the structural adjustments to the NSW workers compensation system, they lost a large number of experienced staff and are still clearly in a rebuilding phase. This is clearly impacting on their ability to provide effective and efficient customer service to businesses and highlights the need for icare to be staffed by employees sufficiently qualified to accurately advise clients and improve processing times.'*

#### Case study 5 – Confidential submission (Submission # 152)

*‘When you have no communication, high caseloads and inexperienced staff accepting claims that have either gone past legislative timeframes or making liability decisions to get new claims off a “work queue” [it] is completely unacceptable and unprofessional.’*

#### RTW impact of model

4.7.3 84 submissions made reference to the noticeable negative impact on RTW outcomes since the introduction of the new claims model and related claims management changes. This was seen as leading to poorer outcomes for both workers and employers.

#### Case study 1 – Metcash (Submission # 33)

*‘RTW outcomes are primarily driven by the employer, there is limited support from EML... Delays in treatment from EML unless the employer or rehab provider continuously follows up.’*

#### Case study 2 – Confidential submission (Submission # 88)

*‘As far as return to work outcomes, our experience is that these have deteriorated. As mentioned, addressing barriers and case management have disappeared from the scheme, so simple tasks such as appointing a Rehab Provider is delayed by several weeks whilst a worker stays off work. As also noted above, claims stuck in the support centre which require action are also not appropriately managed or allocated a case manager. The bottom line is that all of these factors contribute to a poorer outcome for the scheme, and also the employer who suffers through significant premium increases. Injured workers also have poorer outcomes through delayed return to work.’*

#### Case study 3 – AMWU – NSW & ACT (Submission # 133)

*‘The AMWU has observed no improvement with respect to work outcomes and the customer experience, the evidence suggests a deterioration particularly with regards to return to work and the durability of return to work.’*

#### Case study 4 – Recruitment, Consulting and Staffing Association (Submission # 148)

*‘Some members have experienced poorer RTW outcomes as a result of the new triage system and online notification results. It has been reported that the automatic generation of generic letters and notifications has led confusion for injured workers, especially those who have already RTW.’*

#### Case study 5 – Confidential submission (Submission # 156)

*‘I am still waiting on [a] liability decision on claim [REDACTED]. The injured worker and doctor are interested in upgrading this worker’s hours but haven’t been able to because the insurer has not made contact with the injured worker, referrals to rehabilitation management or organised the case conference. So therefore the doctor has told me she is not upgrading.’*

*Again this is premium impacting and this worker is receiving the cap of wages.'*

## 4.8 Communication

4.8.1 The single issue raised most commonly across claims submissions related to communication (94). The quality, frequency and clarity of communication from the NI and its agents was consistently seen by all stakeholders as an issue to be addressed. These communication issues were viewed as leading to delays, confusion, worse outcomes and increased frustration between participants.

### *Case study 1 – Confidential submission (Submission # 88)*

*'The segmentation model is impossible to navigate, employers are stuck with numerous contacts who do not understand their business and are not equipped to make decisions on claims. Decisions are made with no communication or consultation with employers which leads to increasing frustration.'*

### *Case study 2 – Australian Industry Group (Submission # 113)*

*'Some employers are receiving feedback from their employees about them being frustrated with their interactions with the Agent. The employer is then asked to fix it, and in the eyes of the employee, can become part of the problem if not resolved.'*

### *Case study 3 – Confidential submission (Submission # 125)*

*'Less of deferring responsibility for actions. Less being non-responsive to requests. We shouldn't have to chase you for an outcome.'*

### *Case study 4 – AMWU – NSW & ACT (Submission # 133)*

*'Injured workers are largely unable to interpret the documentation they have in their possession and/or describe what icare (and or the scheme agent) told them or ask them to do verbally. This is in part due to the lack of education provided to an injured worker, as well as the quality of communication and the form of communication.'*

### *Case study 5 – Confidential submission (Submission # 152)*

*'Good or bad news, you need to communicate.'*

## 4.9 Processes and supporting IT infrastructure

4.9.1 24 submissions raised internal EML processes as an issue and 35 highlighted the lack of supporting IT infrastructure for the model and processes. These issues were viewed as contributing to a deteriorating quality of claims management, and outcomes promoting further errors, delays and poor decision-making.

### *Case study 1 – Confidential submission (Submission # 55)*

*'The changes imposed by icare, with little consultation and without the supporting infrastructure, has had significant impact on [REDACTED] through increased costs to manage their workers compensation programs (whether this is increased premiums or indirect costs of administration or cultural*

changes within their business). Additionally, the lack of accurate data available to [REDACTED] has limited our ability to scrutinise performance whether from a financial aspect or to utilise data to identify areas for improvement.'

#### Case study 2 – Confidential submission (Submission # 92)

'I've had numerous experiences when I contact the generic EML line and a claims advisor is unable to assist me because they do not have access to the guidewire system. Apart from the inconvenience, this creates a lack of trust for the scheme agent to be able to deliver on the minimum standard of case management.'

#### Case study 3 – Australian Industry Group (Submission # 113)

'We have received some positive feedback from employers regarding the recently introduced system of electronic lodgement. We have also received feedback about the system being unreliable, with "fatal error" being a regular outcome of the uploading process. Many employers have subsequently decided to utilise the electronic system for initial claim advice/lodgement, but to utilise emails to provide other documentation. When the lodgement process has seemed to be successful, it appears from the outside that the internal processing of documents is not immediate.'

#### Case study 4 – ACA Health Benefits Fund (Submission # 117)

'Poor documentation and paperwork i.e. missing doctor certificate.'

## 4.10 Approval and payment delays

4.10.1 31 submissions specifically mentioned experiencing delays in obtaining approval and delaying required or agreed treatment. 18 submissions raised experiences of payment and reimbursement delay.

#### Case study 1 – Confidential submission (Submission # 66)

'...the delay in calculating and communicating PIAWE results in wage payments being made incorrectly to the injured worker, and from there the insured is either responsible to top the worker up with further payments (leaving the worker with a perception of frustration in being underpaid) or needing to recover payments (again leading to frustration or possibly more financial hardship). From here the injured worker / employer relationship breaks down, which continues well after any Workers Compensation process has come to an end.'

## 4.11 Governance

4.11.1 Fewer submissions raised issues with the governance of the NI. However, those that did, highlighted significant concerns with the claims management model and icare's change management skills. It was also noted that the NI scheme is funded by employers and icare acts on their behalf, however employers feel they have no voice in decisions that impact the scheme.



## Clarity of roles and responsibilities

### Case study 1 – Australian Industry Group (Submission # 113)

*'We have received advice that much of the communications employers are receiving from their Agent are now branded as icare. This is blurring the lines between the nominal insurer and Agents acting on their behalf and creating confusion for employers. It may also be creating a reputational risk for icare, if Agent behaviours are not up to the expectations of the nominal insurer.'*

### Case study 2– Confidential submission (Submission # 152)

*'EML constantly blaming icare for "the model". icare constantly blaming EML for not understanding "the model".'*

*'Insurers tell us it's the icare model, icare tell us that EML have the licence to manage claims so they should manage them. EML seem to be either afraid of icare or just plain ignorant to the needs of SME business owners.'*

## icare consultation with external stakeholders

### Case study 1 – Confidential submission (Submission # 39)

*'Consulting employers in the design of the system, the big "icare decides" stick hasn't worked for you to date.'*

### Case study 2 – Confidential submission (Submission # 65)

*'I would like icare to issue a consultation paper prior to any changes to the icare workers comp model. The NSW Workers Comp Scheme is an employer funded scheme under the Nominal Insurer who icare acts for. I feel that employers and employer representatives should be made aware of any potential new changes prior to the changes being made, so they can provide opinion on the changes that may well affect business.'*

### Case study 3 – AMWU – NSW & ACT (Submission # 133)

*'icare does not consult with workers and unions in a meaningful manner. Consultation must commence that is meaningful and ongoing with workers and unions.'*

## 4.12 Union submissions

4.12.1 The submissions received were predominantly from employers and employer associations. The following analysis from the worker and/or claimant perspective is included from union submissions which represent significant worker groups.

4.12.2 The first is the Australian Manufacturing Workers Union (**AMWU**). The AMWU represents approximately 15,000 members in industries including, but not limited to, automotive, food, metals, engineering, printing and other kindred industries. Their submission (# 133) includes the following:

*'Injured workers are being pushed around and, in some cases, damaged, in a workers compensation system which has emerged over decades from piecemeal reforms mainly designed to harm and limit their entitlements...' (page 1)*

*'In practice[,] the Union sees from icare a continuing lack of knowledge in relation to required processes and function[,] and disregard towards injured workers and their circumstances despite overtures to the contrary. This has contributed to or created needless delay to treatment, injury management and return to work.'*  
(page 2)

*'The injured workers that the AMWU assist report and exhibit a lack of knowledge about their claim. Routinely there are questions regarding why the claim has not commenced? Progressed? Failed or is stalled? Injured workers are largely unable to interpret the documentation they have in their possession and/or describe what icare (and or the scheme agent) told them or ask them to do verbally. This is in part due to the lack of education provided to an injured worker, as well as the quality of the communication and the form of the communication. It seems dealing with an injured worker when they present to the AMWU, little or no account is taken of a worker's language needs, their comprehension nor their literacy or numeracy.'* (page 4)

*'icare and its agents don't take responsibility for ensuring injured workers are aware of rights such as pre-approved medicals[,] meaningful education of Nominated Treating Doctors (NTDs).'* (page 5)

#### Example

*'Summary – Initial notification made some four months prior to the worker contacting the AMWU. At the time of contacting the AMWU[,] the worker had sort [sic] assistance from a NTD, physiotherapist, Treating Specialists (though it was confused as to whether both were qualified and provided IME or medical reports to the insurer each time the worker saw them. The worker's employment was under threat from the employer as indications were that the nature of the injury and physical requirements of the pre-injury job were likely to be incompatible with medium and long continuation in the pre-injury job. However, it became obvious that the insurer had no idea, despite evidence on file, that the worker had been working suitable employment including short hours for much of the previous months, despite the activity in the claim. No decision had been made about weeklies at this time! That was resolved soon after however when the worker selected their own rehabilitation provider with their employment now at risk the insurer took weeks and multiple contacts to resolve the injured worker's selection of rehabilitation provider[,] delaying planning and causing unnecessary stress and distress.'*

#### Example

*'Summary – Worker contacted the AMWU in the initial weeks after suffering the injury which had been notified per the requirements of the legislation however the worker reported that his wages inclusive of workers compensation were delayed and then inaccurate, additionally the employer and insurer insisted that despite the significant pain that had caused him to attend his local hospital for assistance after hours and on weekends that he must continue to drive a plus 100 kilometre round trip to see the NTD who happened to be the company doctor. The selection of the company doctor had been a demand made upon him by both the employer and insurer, 'oh you should come to the workplace (plus 100-kilometre round trip from home) and attend our doctor'. In short (t)hat was unsustainable and the worker sacked the company doctor and selected one with less than twenty kilometres round trip remembering he resides in a regional town. The insurer and employer did not like that[,] however the worker was insistent[.] Not that they have any direct link[,] however if the insurer and*



*employer had shown the worker more respect and diligence in resolving the inaccurately calculated PIawe they may have [had] some influence[,] however the worker felt that he was abandoned in his pain and suffering without acknowledgement nor respect. It took 5 weeks to confirm correct payment including ensuring payment of public holidays.’ (page 11)*

4.12.3 The second union is Unions NSW. This union represents approximately 600,000 workers across the state of NSW, and is the peak body for unions in NSW, representing 60 affiliated unions and members from blue and white collar industries. Their submission (# 151) included the following:

*‘Much of the frustration and anxiety experienced by our members is as a result of breaches by insurers of their legislative requirements.’ (page 4)*

*‘To allow often young and poorly trained case managers, who have undertaken no medical training at all, to make a medical assessment on an injured worker by questioning the treatment plan of the NTD is absurd and not at all cost effective.’ (page 5)*

*‘The current return to work rates are low. When the government first enacted major changes to the legislation in 2012 it did so with a view to increasing return to work rates. This has simply not happened for many of the reasons already raised.’ (page 6)*

*‘An injured worker who has not received treatment immediately will often begin a long journey to recover from a potentially aggravated injury. This battle can also lead to mental health injuries and injured workers with mental health issues will always struggle to stay in work or find work.’ (page 7)*

#### 4.13 Abridged return to work outcomes survey

4.13.1 In support of this Review, SIRA engaged the Social Research Centre (**SRC**) to conduct an abridged return to work outcomes survey of the NI and the NSW workers compensation system (**SRC Reports**).

4.13.2 The SRC has managed the *National Return to Work Survey (NRTWS)* on behalf of Safe Work Australia, since 2012. The NRTWS measures, among other things, the RTW rate among the different jurisdictions across Australia. The most recent survey was completed in 2018, with the next survey scheduled in 2020.

4.13.3 The SRC Reports followed the same processes as the NRTWS to enable comparison of results. SIRA provided the SRC with a de-identified file containing all in-scope claims (32,865 in total). The eligible population included claimants with a work-related injury or illness who:

- a) submitted a claim with the NI (including EML, Allianz, CGU, QBE and GIO) between 1 January 2018 and 30 April 2019
- b) had at least one day away from work (due to their work-related injury or illness)
- c) had claims that were either open or closed.

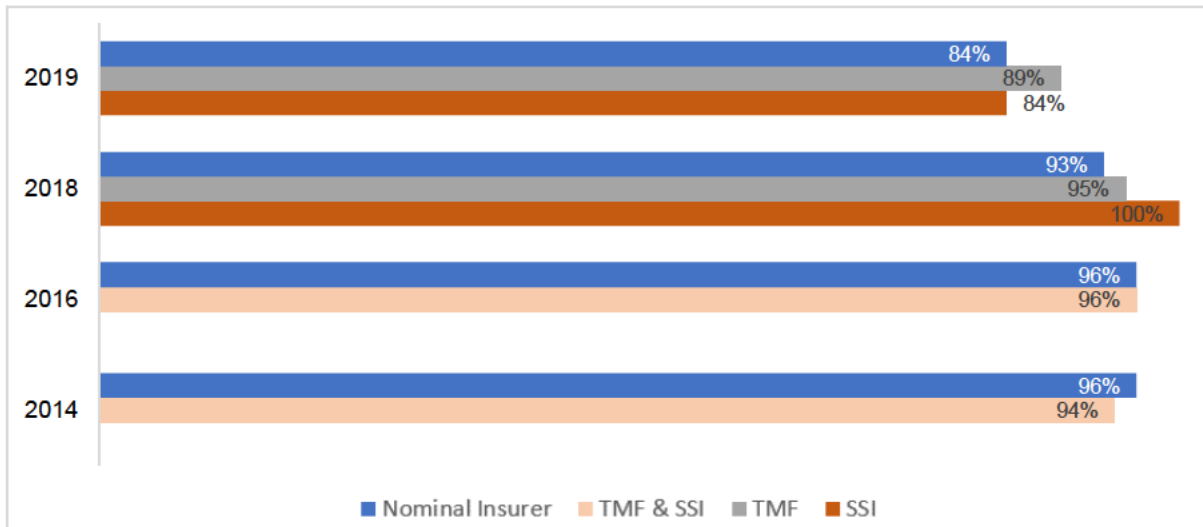
- 4.13.4 From this population file, a random selection of 2,500 claims was drawn for the NI and 2,000 claims for the Treasury Managed Fund (TMF) and Self and Specialised Insurer (SSI) population. SIRA provided contact information for these selected claims where available. Following checks (for complete and proper contact information), a primary approach letter (PAL) introducing the survey was sent out. The letter requested participation, including details for those wishing to seek more information (from either SIRA or the SRC), or opt out.
- 4.13.5 After allowing two weeks for the letter to be received and opt-out requests lodged, recipients were contacted by telephone. Computer assisted telephone interviewing (CATI) commenced on 17 July 2019 and finished on 4 August 2019. Of the 1,696 (main batch) for the NI and 1,184 for the TMF and SSI claimants initiated for telephone interviewing, 36 per cent of the NI claimants and 25 per cent of the TMF and SSI claimants completed the survey – yielding a final sample of 613 for the NI and 300 for the TMF and SSI.
- 4.13.6 The SRC Reports were predominantly focussed on the RTW outcomes from the sample of claimants having completed the survey. The survey results show that both key RTW outcomes – the returned to work rate and the current return to work rate – are significantly lower compared to the rates for the NI in previous years. Further, it highlights the NI's poor RTW performance, compared to other insurers in the NSW workers compensation system.
- 4.13.7 The 2019 NI RTW rate<sup>12</sup> has deteriorated to 84 per cent from 93 per cent in 2018 and 96 per cent in 2016. This rate measures the percentage of injured workers who report having returned to work at any time.
- 4.13.8 The current NI RTW rate measured by the survey<sup>13</sup> has reduced to 73 per cent from 83 per cent in the 2018 NRTWS.

---

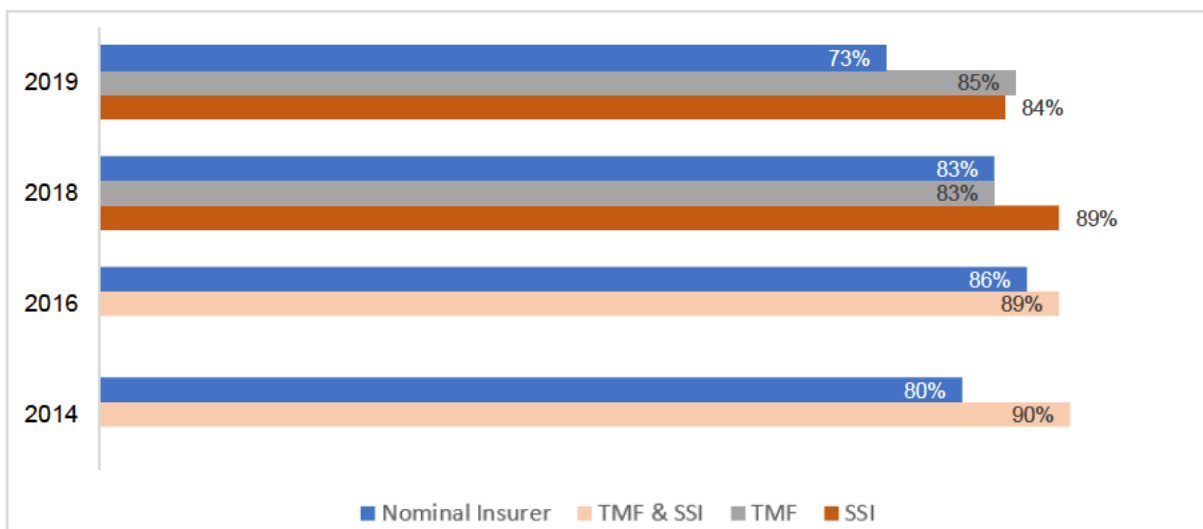
<sup>12</sup> Social Research Centre, *Abridged Return to Work Outcomes Survey: NSW Workers Compensation System*, (Melbourne: 2019), p. 6.

<sup>13</sup> Social Research Centre, *Abridged Return to Work Outcomes Survey: NSW Workers Compensation System*, (Melbourne: 2019), p. 8.

**Figure 6 – Returned to work rate – Nominal Insurer (time series)**



**Figure 7 — Current return to work rate – Nominal Insurer (time series)**



4.13.9 The returned to work rate is the proportion of injured workers surveyed who reported having returned to work at any time since their work-related injury or illness. It is based on question RTW1 – ‘Have you returned to work at any time since your work-related injury or illness?’ – and reports the proportion of injured workers who answer ‘yes’. Whereas the current return to work rate is the proportion of injured workers surveyed who reported having returned to work at any time since their work-related injury or illness, and being in a paid job at the time of survey. This measure is based on question RTW2 – ‘Are you currently working in a paid job?’ – and question RTW1 – ‘Have you returned to work at any time since your work-related injury or illness?’. It reports the proportion of injured workers who state ‘yes’ to both.

4.13.10 The key findings from the SRC Reports are as follows:

- a) Both key return to work outcomes – the returned to work rate and the current return to work rate – are significantly lower compared to the rates for the NI in previous years.
- b) Two cohorts reported significantly lower results within their categories – those who experienced mental illness (as compared to those with other injury types) and those who received 130 or more days' compensation (as compared to those who had fewer days compensated).
- c) Across all three dimensions of the Perceived Justice Scale (procedural, informational and interpersonal justice), the 2019 survey results are in-line with, or higher than, the 2018 NRTWS. This suggests that injured workers are more (or at least, no less) satisfied with the treatment and service they have received. However, those who experienced mental illness and those who received 130 or more days' compensation, reported significantly lower ratings for most attributes on the Perceived Justice Scale.

This suggests that the longer a person is off work, the less likely they are to return to work and less satisfied they are with the treatment service provided. With a clear deteriorating RTW rate, this cohort is likely to increase and thereby impact future results. Further analysis of this survey is contained in section 5.6.

## 4.14 Regional discussions

4.14.1 Regional visits were made to the cities of Tamworth, Wagga Wagga, Newcastle, Wollongong and Orange where employers, brokers and injured workers were in attendance. The views emerging from these discussions were similar to those reflected in the submissions above, with the additional concerns that specialist medical treatment may not be so easily accessed in the regional areas.

4.14.2 Their additional insights were as follows:

- a) Lack of access to the same person or claims manager, though for larger enterprises this was avoided through an allocated contact.
- b) Lack of knowledge by general practitioners (GPs) about the system and ensuing tendencies for prescribing without RTW focus. In the worst of cases, this has resulted in addiction to drugs (opioids) rather than appropriate pain management practice. SIRA has been provided with the details of two such cases to follow up with icare in what can only be described as a failure of the system - both cases occurred before the 2015 reforms.

**FINDING 4.** Priority should be given to a training program for GPs by icare.

## 5 Performance of NI

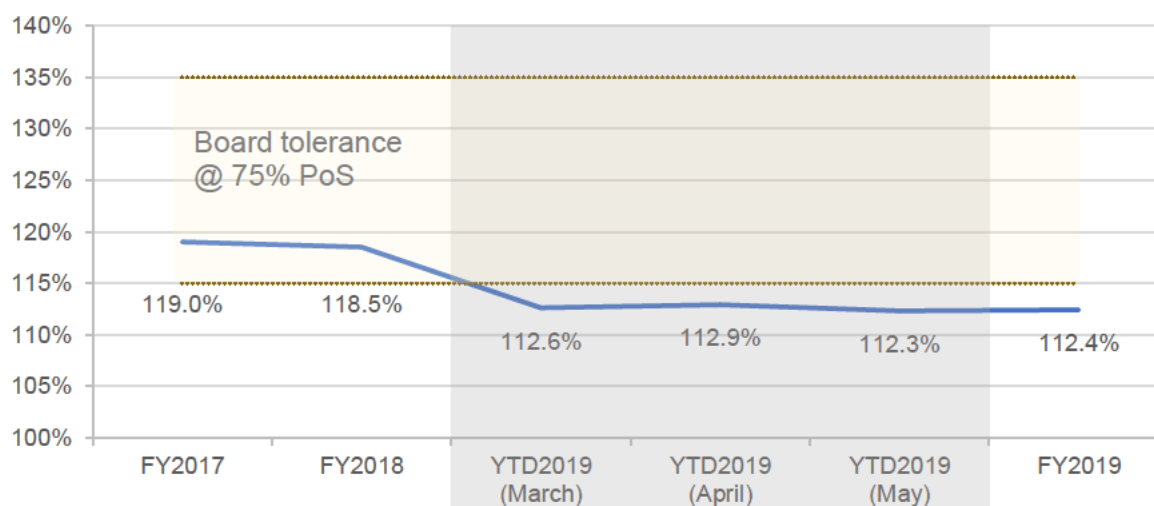
### 5.1 Context

- 5.1.1 The assessment of the performance of the NI in relation to RTW outcomes, claims management, customer experience and data quality and reporting, is the third item of the terms of reference. However, it is appropriate to address this first, because deterioration in the NI's performance was the trigger for SIRA to initiate this Review. The other items of the terms of reference then follow this analysis.
- 5.1.2 Each part of the terms of reference relating to performance will be covered, starting with the overall viability and sustainability of the NI's performance.

### 5.2 NI funding ratio

- 5.2.1 The funding ratio is set by the icare Board in its Capital Management Policy.<sup>14</sup> This was reviewed in November 2018 and changed from 120-140 per cent at 75 per cent risk margin to 115-135 per cent at 75 per cent risk margin. The current ratio at 75 per cent risk margin is 112.4 per cent which is outside the new range, although is still a solvent position. It is however a difficult economic period with historically low interest rates and improvement will be hard won and likely to take longer than earlier forecasts.
- 5.2.2 The following graph shows the steady deterioration in the funding ratio of the NI over several previous fiscal periods.

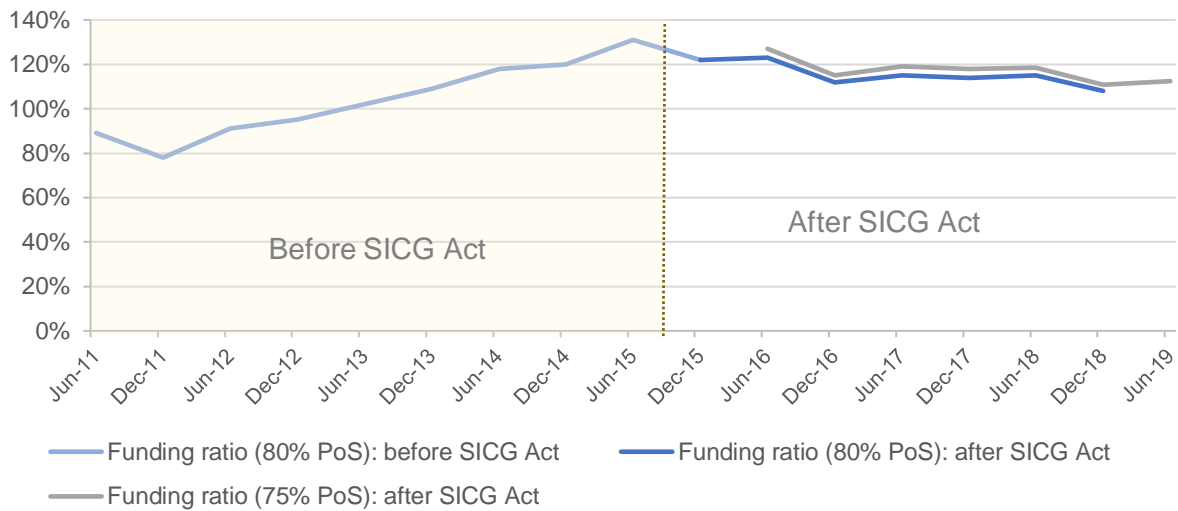
**Figure 8 – Funding ratio (75% PoS)**



- 5.2.3 The next graph (Figure 9), shows the deteriorating funding ratio since the split of WorkCover, although the ratio remains solvent, the deteriorating trend compared to the NI's fiscal position prior to the 2012 reforms, suggests that unless corrective measures are undertaken soon, the NI funding ratio will continue to decline.

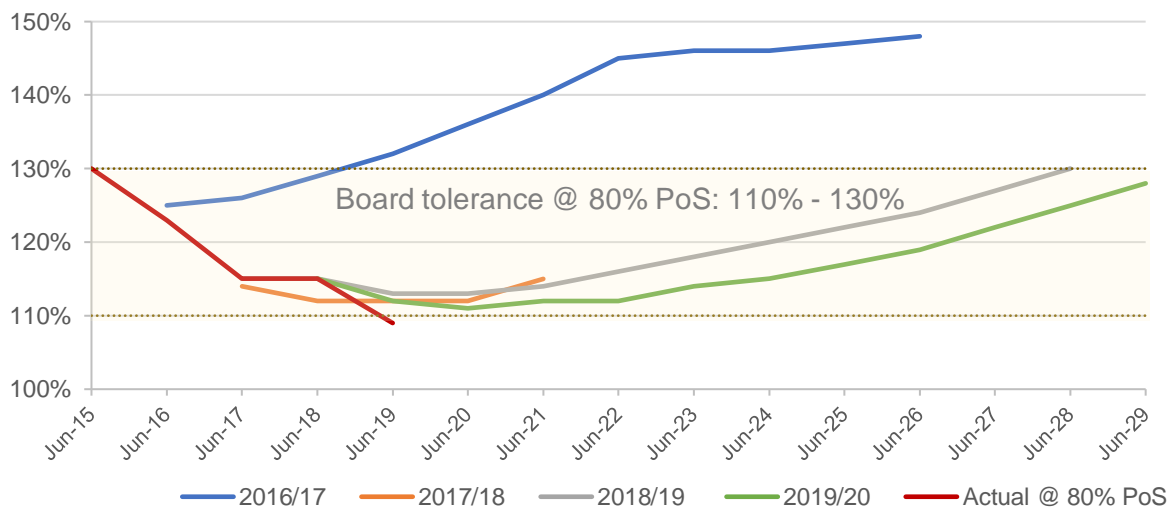
<sup>14</sup> *Workers Insurance Scheme (Nominal Insurer) Capital Management Policy* (Sydney: icare, 2018), p. 7.

**Figure 9 – Funding ratio since the split of WorkCover**



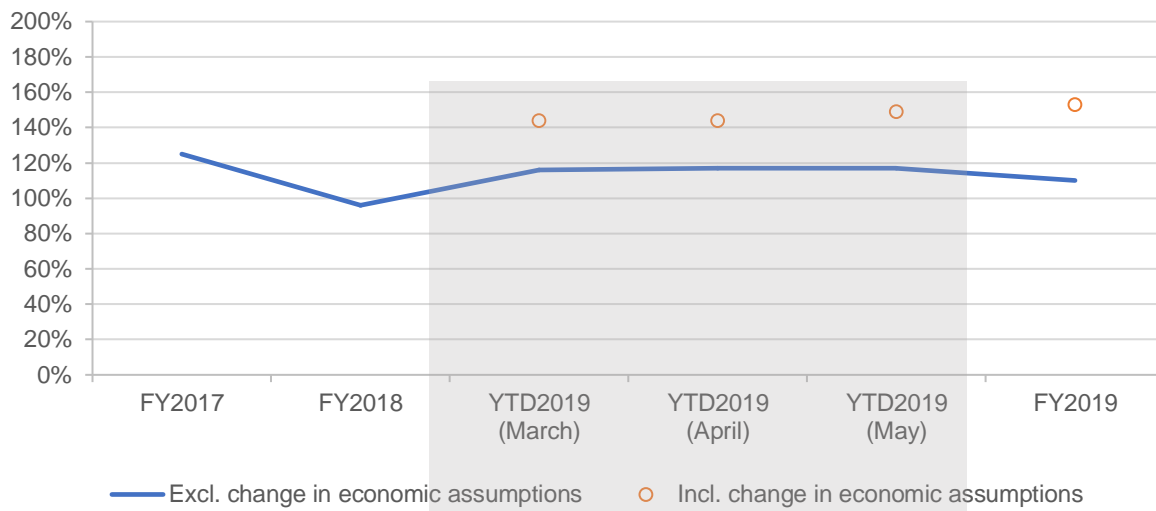
5.2.4 The deteriorating trend is further illustrated by the series of NI premium filings submitted to SIRA over four consecutive years. The premium filings contain an analysis by the NI of its historical funding ratio, together with projected trends anticipating movement of its funding ratio into the future. That analysis together with projected trends provided by the NI for the previous four consecutive filings, illustrated in the graph below, shows the lengthening time of projected recovery. Further, when contrasted with actual performance, the projections have failed to meet targets.

**Figure 10 – Funding ratio projection based on NI filings**



### 5.3 Loss ratio

**Figure 11 – Loss ratio**

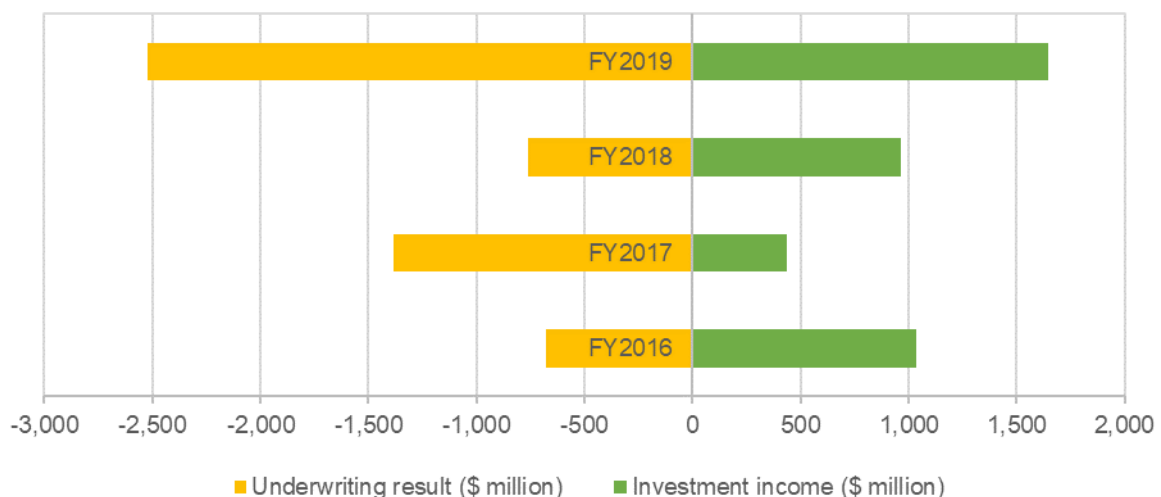


Source: Joint Premium & Prudential Oversight Committee report, JPPOC – ANALYSIS Nominal Insurer FY 2019 report, as at 30 June 2019.

Loss ratio data prior to 2017 is not available on the same basis and is therefore not shown in the figure above.

5.3.1 The loss ratio has deteriorated from 96 per cent in FY2018 to 110 per cent in FY2019. This reflects net claims incurred exceeding net earned premium, highlighting potential pressure to raise premiums to operate sustainably.

**Figure 12 – Underwriting result and investment income**



5.3.2 As detailed above, the underwriting result has significantly worsened from FY2018 to FY2019. icare continues to rely on investment income to bridge the gap between the negative underwriting result and the final profitability figure. While investment income has been increasing each year, this is heavily dependent on market forces. The recent interest rate reductions by the Reserve Bank of Australia (RBA) and the

possibility of further rate cuts could have a negative impact on investment performance.

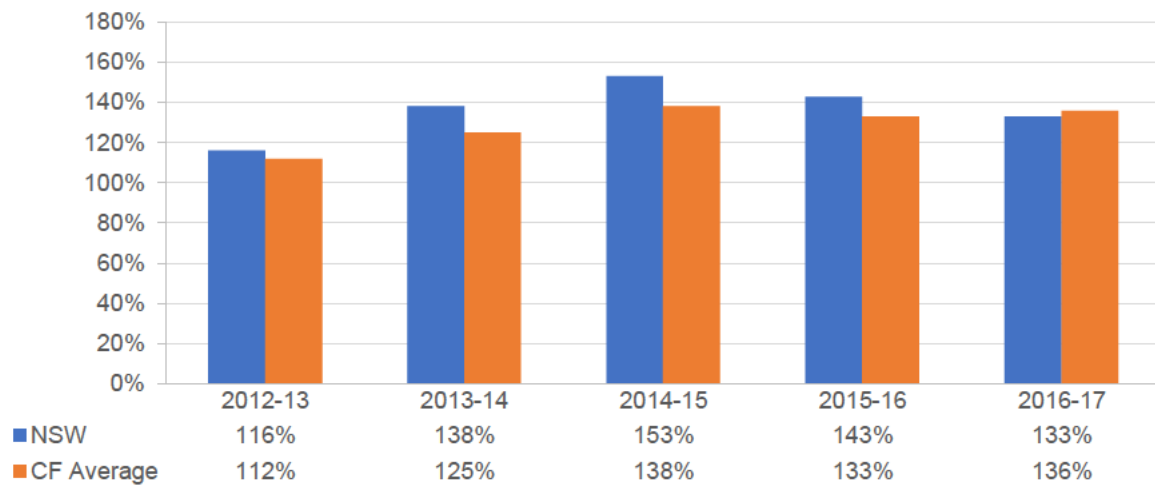
- 5.3.3 Reliance on investment returns is inherently risky, especially if depended upon to support the underwriting result. Insurers generally achieve a return by way of their underwriting position (premium less claims costs), investment returns and recoveries. The NI is not required to achieve a profit and is limited in its recovery function so the underwriting position and the return on investment are crucial. The reliance on investment is normal practice in insurance, but during times of economic downturn or volatility, that reliance, in this case not to make or improve on profit, but simply to just break even, is a risky approach.
- 5.3.4 The net result for FY2019 was a loss of \$874.3 million. Although a loss was projected by icare, this outcome was unfavourable to forecast by \$481 million. This is mainly due to the Finity June 2019 valuation, with adverse impact of changes in economic assumptions. The poor underwriting position of the NI is a real risk to the NI's sustainability.
- 5.3.5 Benefits were reduced in the 2012 reforms in light of a substantial deficit (see next section). Since the introduction of icare, the scheme has seen an approximately \$2.4 billion deterioration in the NI's capital position, during a time of historically low interest rates.
- 5.3.6 The following graph shows that NSW has generally been in a better position than other states until 2016/17.
- 5.3.7 Safe Work Australia used standardised definitions of assets and liabilities for the assets to liabilities ratio in the following figure to enable comparison of NSW to other jurisdictions.<sup>15</sup> These ratios will therefore differ from funding ratios reported by SIRA. Different measures of assets to liabilities can arise from different economic and actuarial assumptions in valuing liabilities as well as differences in the definitions of:
- a) assets and net assets, and
  - b) liabilities, such as allowance in some schemes for prudential margins, and allowance for different levels of claim handling expenses.

---

<sup>15</sup> *Comparative performance monitoring report 20<sup>th</sup> edition– Part 3* (Canberra: Safe Work Australia, 2019) p. 27.

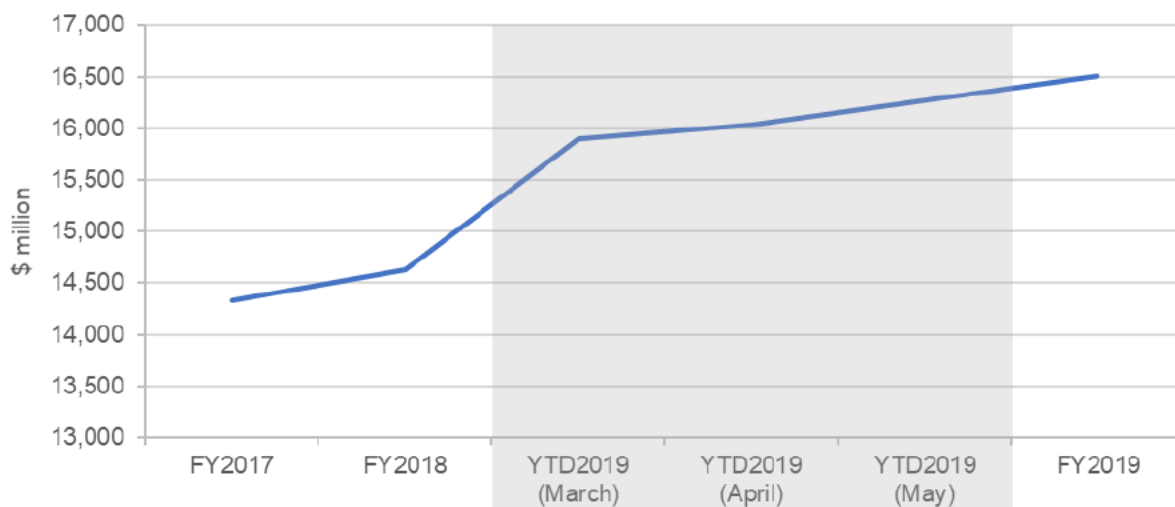


**Figure 13 – Assets to liabilities ratio – NSW compared to all Australian centrally funded schemes**



## 5.4 Outstanding claims liability

**Figure 14 – Outstanding claims liability**



Outstanding claims liability data prior to 2017 is not available on the same basis and is therefore not shown in the figure above.

- 5.4.1 Outstanding claims liability of approximately \$16.5 billion is the largest liability on the NI balance sheet.
- 5.4.2 The outstanding claims liability provision is the estimated future costs associated with claims that have occurred prior to the balance date.
- 5.4.3 The provision includes an allowance for the expenses associated with handling those claims plus a risk margin intended to ensure that the provision has an 80 per cent chance of being adequate to cover the future costs.

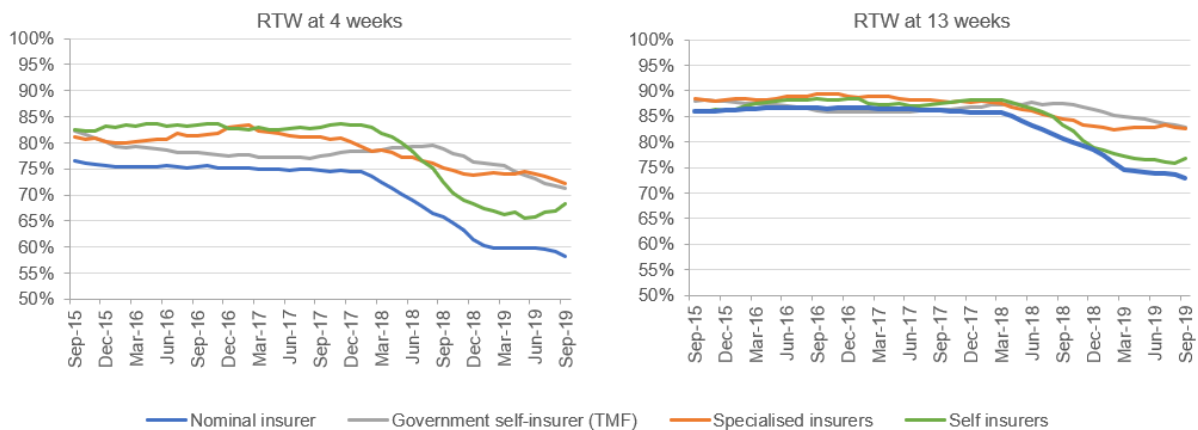
5.4.4 Over the past few years, the outstanding claims estimate has increased by approximately \$2 billion. Approximately \$1.2 – \$1.3 billion of that claims movement can be accounted for in the following changes:

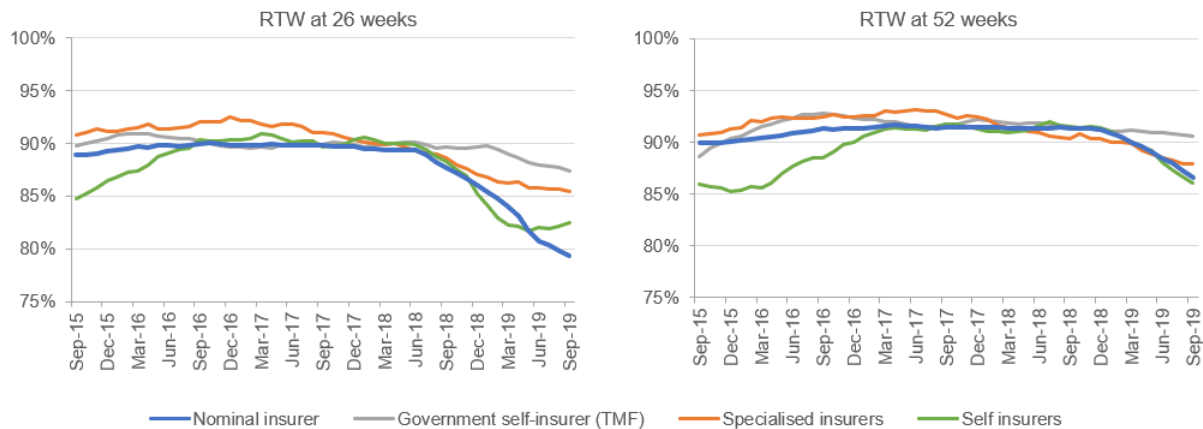
- a) **The unwinding of estimated reduction in claims liability following the 2012 legislative reforms - \$1.4 billion** - This is because the actual section 39 experience did not meet the liability reductions anticipated by icare’s actuary (PwC put through the initial reductions which were later reduced by Finity).
- b) **The additional claims liability of the 2015 benefit reforms - \$1 billion** - Weekly payments have increased at a rate greater than expected.
- c) **Economic assumption changes - \$0.8 billion** - Interest rates have continued to fall, impacting the risk-free earning rate used to discount the provision for outstanding claims which in turn has resulted in an increased provision.
- d) **Increases in medical costs - \$0.45 billion (external factors) / \$0.6 billion (total)** - Medical expense inflation has been in excess of 10 per cent per annum for several consecutive years.
- e) **\$2.5 billion in favourable movements.**

## 5.5 RTW outcomes

5.5.1 The graphs below show the RTW rates for injured workers who have had at least one day off work. This is consistent with the SIRA defined measure for RTW. The graphs highlight a deteriorating RTW trend for the NI across all measures.

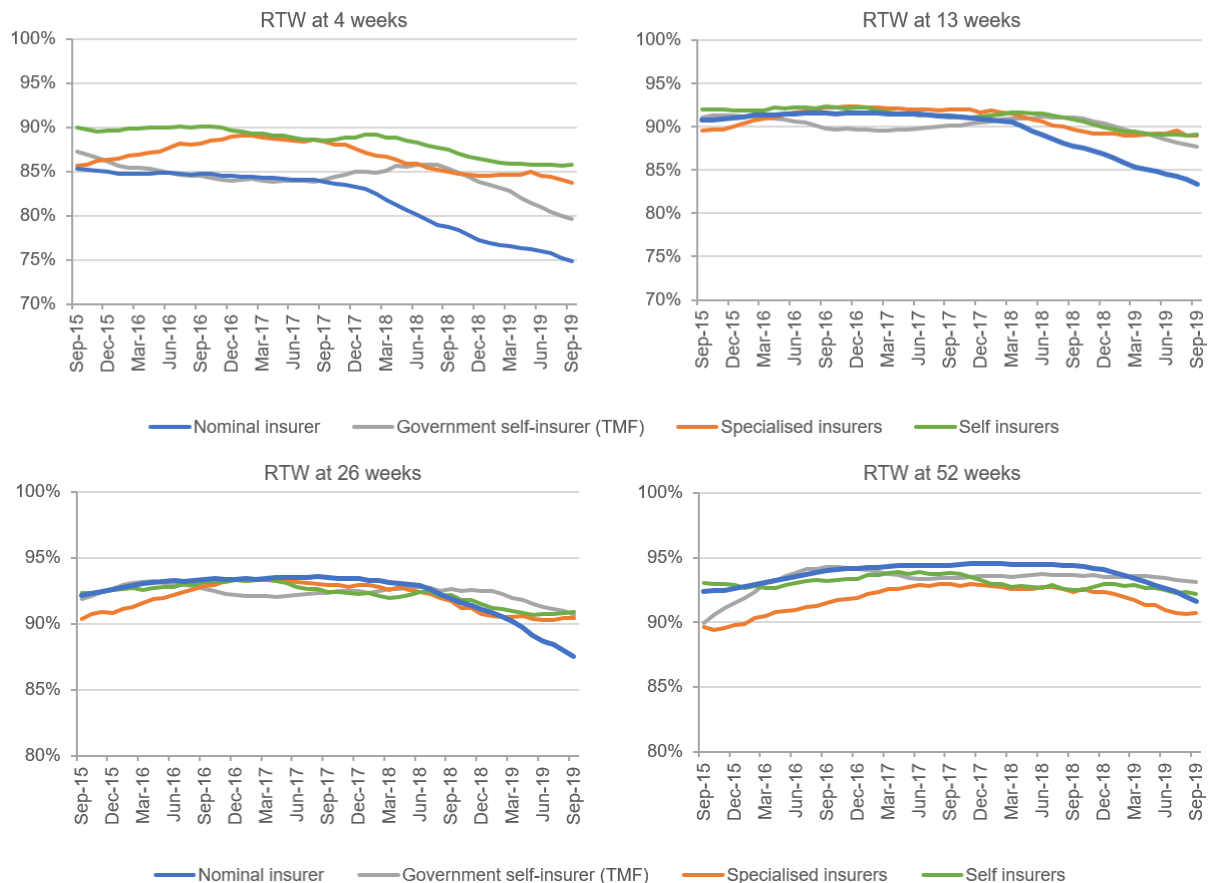
**Figure 15 – RTW rates as measured by SIRA**





5.5.2 icare measures RTW performance including injured workers with no days off work (i.e. medical only claims). As with SIRA’s measure of RTW, the graphs below illustrate a consistent deterioration in RTW outcomes.

**Figure 16 – RTW including medical only claimants’ rate (as measured by icare)**



5.5.3 Since the introduction of icare and until mid to late 2018, the Nominal Insurer had RTW rates at 26 weeks and 52 weeks that were consistent with other insurer types. The recent deterioration in the NI’s RTW at 26 weeks and 52 weeks is concerning, given icare’s recent focus on long-tail claims.

5.5.4 Deterioration in NI RTW performance followed shortly after the introduction of the new claims model in January 2018. Further deterioration occurred following the launch of the Nominal Insurer Single Platform (**NISP**), in February 2019. The cohort

operating under the new claims model will continue to grow and therefore further impact NI's overall performance.

## 5.6 SRC Reports and RTW outcomes

- 5.6.1 Findings from the SRC Reports suggest that approaches based on procedural fairness may result in positive claim experiences which in turn may contribute to improved RTW outcomes.<sup>16</sup> The SRC Reports suggests that while less adversarial processes may have improved claimant experience it has not supported improved RTW outcomes.
- 5.6.2 The findings reported by SRC confirm previous research with two key groups in the system – those with mental health claims and those who are off work for more than 130 days have a less positive experience and poorer RTW rates.<sup>17</sup>
- 5.6.3 The SRC Report findings indicate that despite injured workers being more (or at least, no less) satisfied with their experience in the system since it was last measured in 2018, RTW rates have deteriorated significantly.
- 5.6.4 These findings suggest that for RTW outcomes to be achieved, in addition to processes and interactions that result in positives experience, proactive, tailored and timely supports must be provided.<sup>18 19</sup>
- 5.6.5 These findings, when added to the trends in medical and treatment utilisation, (increased by 7.7 per cent on the previous year), may indicate the supports and interventions being funded are not appropriately targeted at achieving recovery and RTW. More detailed review of medical expenditure and RTW at the claimant level would be required to determine whether this was the case.<sup>20</sup>
- 5.6.6 The decline in 'Returned to work rate' to 84 per cent is concerning, particularly for those who reported mental health conditions where only 52 per cent reported a RTW outcome. Work disability has serious consequences.<sup>21</sup> Delaying returning to work can hinder a worker's overall recovery,<sup>22</sup> this is certainly the case for people with mental illness.

---

<sup>16</sup> Collie A, Sheehan L, Lane T, et al., "Injured worker experiences of insurance claim processes and return to work: a national, cross-sectional study" in *BMC Public Health* (UK: Springer Nature, 2019), 19:927, p. 11.

<sup>17</sup> Harvey, S, Sadhbh, J & Tan, L, et al. *Developing a mentally healthy workplace: A review of the literature. A report for the National Mental Health Commission and the Mentally Healthy Workplace Alliance* (Sydney: Black Dog Institute, 2014).

<sup>18</sup> Cullen K, Irvin E, Collie A, et al. "Effectiveness of Workplace Interventions in Return-to-Work for Musculoskeletal, Pain-Related and Mental Health Conditions: An Update of the Evidence and Messages for Practitioners" in *Journal of Occupational Rehabilitation* (UK: Springer Nature, 2017).

<sup>19</sup> *Taking Action: A best practice framework for the management of psychological claims for the Australian workers' compensation sector* (Canberra: Safe Work Australia, 2018).

<sup>20</sup> Ernst & Young, *Healthcare in Personal Injury Schemes Summary of preliminary findings for NSW Workers Compensation and Compulsory Third Party Schemes, Final report* (Sydney: State Insurance Regulatory Authority, 2019).

<sup>21</sup> van Vilsteren M, van Oostrom SH, de Vet HCW, et al., *The Cochrane Collaboration Workplace interventions to prevent work disability in workers on sick leave* (London: Cochrane, 2015).

<sup>22</sup> The Australasian Faculty of Occupational & Environmental Medicine, *Realising the health benefits of work – An evidence update* (Sydney: Royal Australasian College of Physicians, 2015).

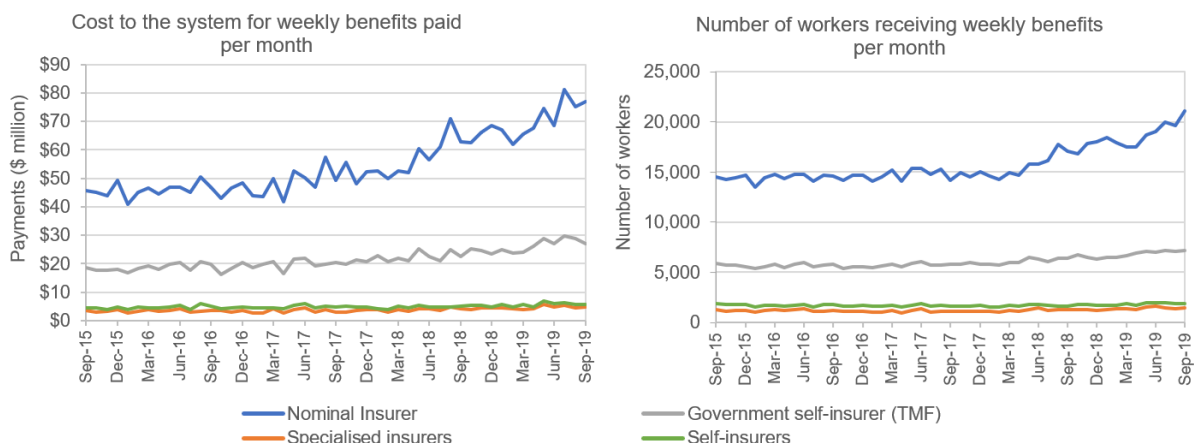
- 5.6.7 Work is a powerful determinant of health, and thus, re-entering the workforce can aid recovery and shorten the duration of treatment.
- 5.6.8 The evidence of the health benefits of work is clear – returning to work or remaining at work during recovery following injury or illness is an important component of rehabilitation and an important marker of functional recovery.<sup>23</sup> In fact, employment is a necessary element for improved mental health and reduced risk of depression.<sup>24</sup>
- 5.6.9 A positive support model is required to address the specific needs of key groups, (off work for 130 days or more and those with mental illness) so that they can achieve an earlier return to work.

## 5.7 Claims management

- 5.7.1 The two most significant cost components in any personal injury scheme are the weekly payments and the medical expenses involved in the management of the scheme. Measures of these costs establish how the NI is tracking relative to other scheme participants.

### Weekly payments

**Figure 17 – Weekly payments**



Note: To ensure consistency across the time series, these charts exclude Section 39 claimants that exited the system. The number of workers receiving weekly benefits counts the distinct number of workers receiving weekly benefits per month.

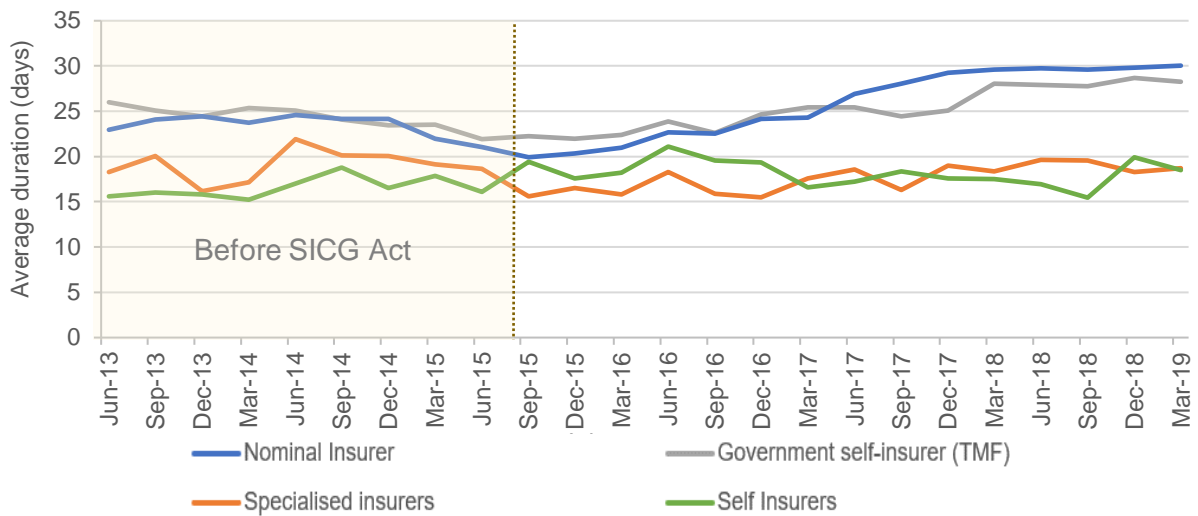
- 5.7.2 The graphs above highlight the NI total sum of weekly payments across the total number of workers in the scheme. Although the NI represents the largest insurer within the scheme and it is therefore expected that payment volumes, when compared with other scheme participants will be significantly higher, it is the upward trend of the NI as distinct from other participants that is of concern.
- 5.7.3 The additional costs are a risk to the workers compensation scheme viability when an increase from \$50 million in September 2017 to \$75 million in May 2019 is evident.

<sup>23</sup> The Australasian Faculty of Occupational & Environmental Medicine, *Realising the health benefits of work – An evidence update* (Sydney: Royal Australasian College of Physicians, 2015).

<sup>24</sup> Van der Noordt, M., IJzelenberg, H., Droomers, et al., "Health effects of employment: a systematic review of prospective studies" in *Occupational and Environmental Medicine* (London: BMJ Publishing Group Limited, 2014), Vol 71: 730-736.

## Duration of weekly benefits

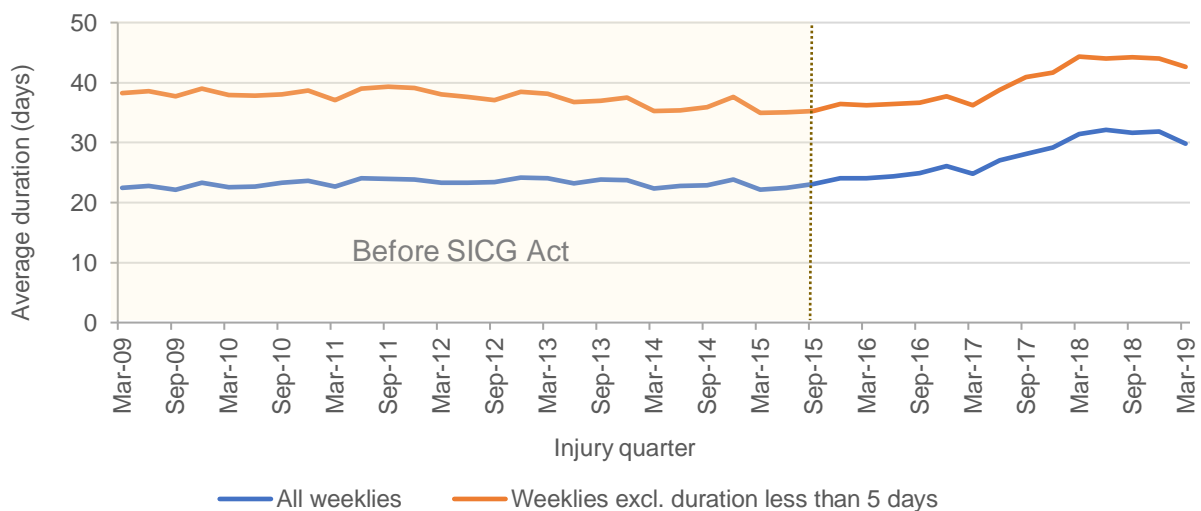
**Figure 18 – Average duration of weekly benefits paid in the first six months**



5.7.4 NI average duration of weekly benefits paid to injured workers in the first six months of a claim is at its highest in 10 years (higher than pre-2012 reform). It was those same trends in the pre-2012 period that pointed to the decline of the scheme and the ultimate legislative reform with reduced benefits to injured workers. The RTW measure has a direct correlation to both weekly payments and medical expenses. These two cost elements represent the greatest financial cost to the scheme. Hence a deteriorating RTW rate has a direct and real impact on the performance and continued viability of the workers compensation scheme.

## Average duration of weekly benefits

**Figure 19 – Average duration of weekly benefits paid in the first six months of injury using weekly payments - NI**

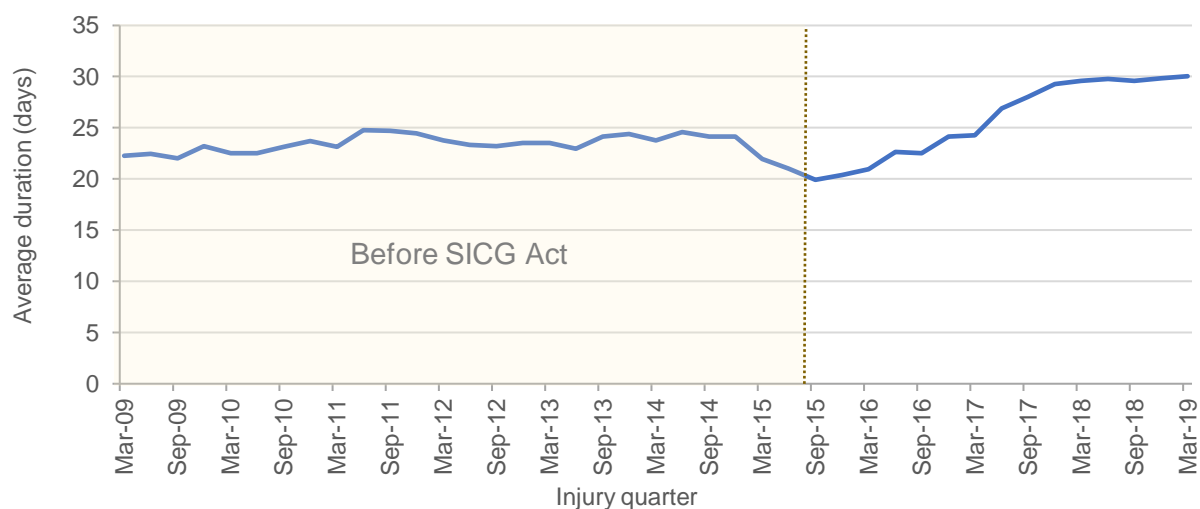


5.7.5 The February 2012 assessment of RTW performance reported to the NSW Parliament, noted that the average number of days on weekly payments within 26

weeks of injury was over 37 days. The same measure for the NI produced by SIRA, above, shows that increased average duration since September 2017, rose from 41 days to 44 days by March 2018.

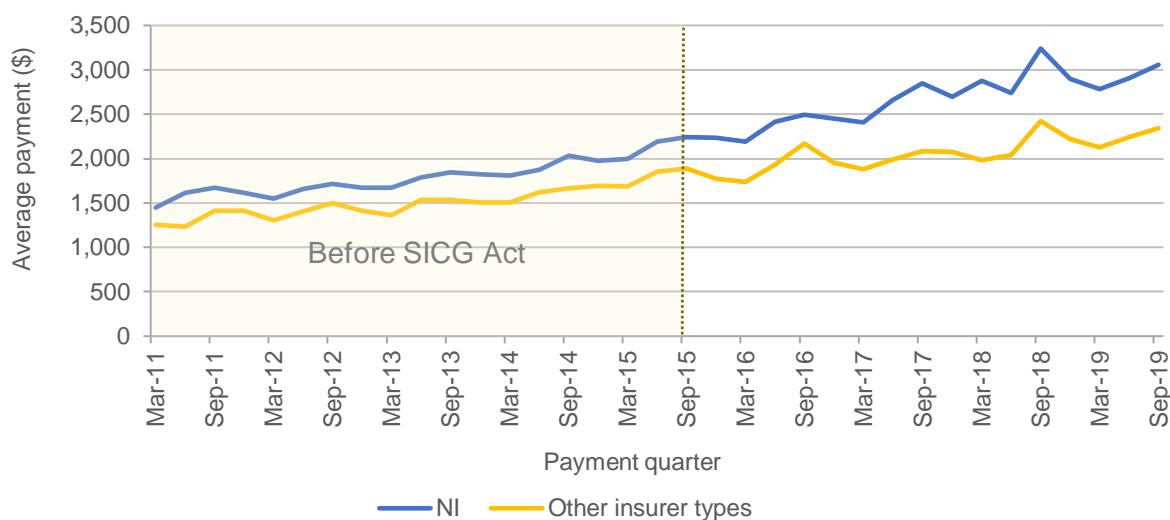
- 5.7.6 Prior to the 2012 reforms, the average duration of weekly benefits paid to injured workers receiving weekly payments for at least five days was 37 days (at 26 weeks from injury), whereas the average duration for the NI in March 2019 was 43 days.
- 5.7.7 The average number of days paid for all weekly benefits in the first six months (26 weeks from injury) reported by Finity (NI liability valuation as at December 2018, in figures 3 and 5.20 of that report) has been in the high 20s since late 2017, the highest since 2013. SIRA added the pre-2012 reform periods to Finity’s model (Figure 19) that shows average duration peaking in June 2018 at about 32 days. Regardless of the method, both measures indicate the average duration is currently at its highest in 10 years.
- 5.7.8 When considering the corresponding impact that the RTW rate has on weekly payments and medical expenses – the two largest cost contributors to the scheme – the trends are unfavourable and suggest a continued deterioration in the NI fiscal position.

**Figure 20 – Average duration (days), including claims less than five days duration – NI**



## Medical expenses

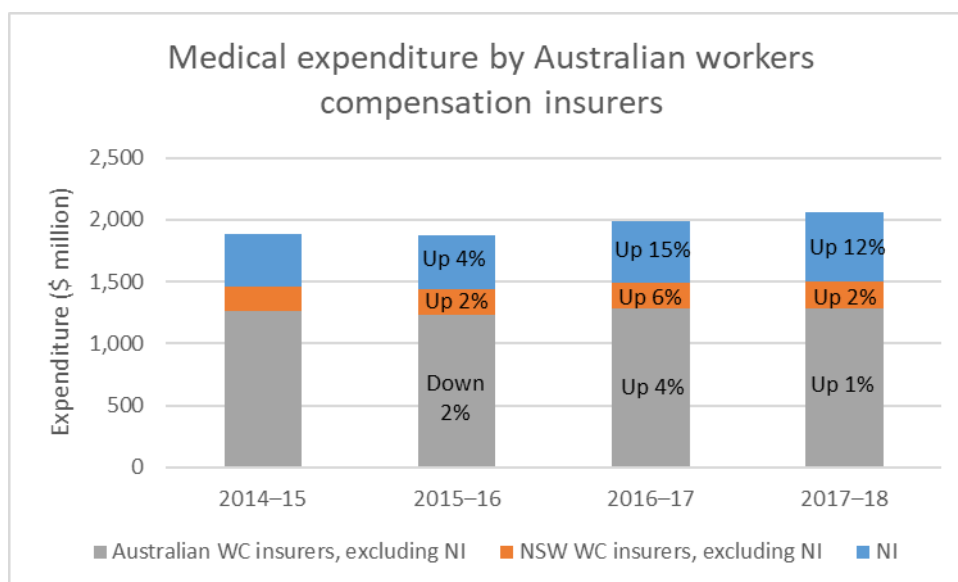
**Figure 21 – Average medical payment by insurer type**



5.7.9 The quarterly average medical payment per claim has continued to rise since 2011, however the NI's average costs have increased in a disproportionate measure to the rest of the scheme. In the period from March 2017 to September 2019 the average medical payment rose sharply.

5.7.10 The sector has experienced an increase in medical costs similar to State and National schemes. However, when assessing other schemes, none have had an increase in medical spend of double digits for consecutive years.

**Figure 22 – Medical expenditure by insurers**



5.7.11 The level of medical costs inflation experienced since the creation of icare is inconsistent with national trends and trends for other participants in the NSW scheme.



## Support services

- 5.7.12 The terms of reference require an assessment of the claims management of the NI, including guidance, support and services for workers, employers and health service providers.
- 5.7.13 icare and the NI should be commended on their management of the section 39 cohort of claimants. Its guidance, support to workers and health providers in and through that transition was exemplary.
- 5.7.14 Section 7 covers more detail about the new claims model, but the adoption of a less adversarial approach is a clear goal of the new NI claims management model. Although an adversarial approach to injured workers in need of support is not helpful, a commercial basis to claims management is nonetheless desirable. This requires the necessary checks and measures, through good governance to monitor transactions, identify outliers and review effectiveness in the provision of health services.
- 5.7.15 In assessing the claims management approach to support services, in light of a less adversarial claims model, a review conducted by SIRA is informative. The review indicated poor governance over transactions between the periods 2017 and 2018. It identified that some radiologists are invoicing for a professional attendance on the same date of service as an MRI. SIRA had previously determined that, in the absence of an associated interventional procedure, professional attendance consultation is not separately billable. This type of billing practice has increased 261 per cent from 2017 to 2018, as illustrated below.

**Figure 23 – Professional consultation billed with MRI service**

Year	Total all providers
2017	552
2018	1,446

- 5.7.16 SIRA publishes the Workers Compensation Medical Practitioners Fees Order, which among other things, sets maximum gazetted fees for MRI services. MRI for a single body area (payment classification code OP200) has a maximum fee of \$700, and MRI for two contiguous regions or two or more body parts (payment classification code OP210) has a maximum fee of \$1,050.
- 5.7.17 The SIRA data review (cited in Section 5.7.15 above) of MRI payments across the NSW workers compensation system from 1 January 2017 to 31 December 2018, identified significant variance in MRI payment amounts. icare introduced a lower maximum fees list for diagnostic imaging services effective 1 June 2018 and this explains some MRI fees being below the maximum gazetted fee. However, when analysing payments coded OP200 and OP210, there were a significant number of payments for a single date of service that exceed the maximum gazetted fee (Figure 24 below).

**Figure 24 – MRI payments exceeding gazetted maximum fees**

Payment code	Number of claims	Total payment
OP200 - Payments exceeding \$700	3,919	\$5,382,433
OP210 - Payments exceeding \$1,050	55	\$97,968

5.7.18 The lower maximum fees list for diagnostic imaging services introduced by icare, has seemingly served to confuse the industry and potentially increased the costs for medical treatments across the scheme.

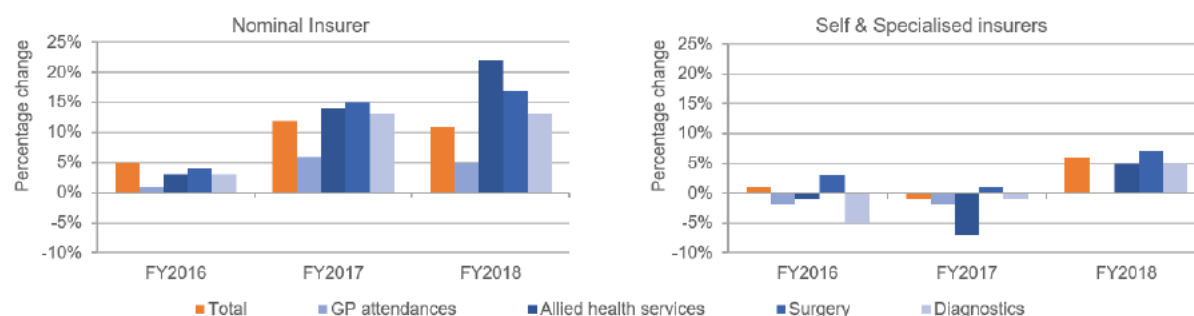
5.7.19 These billing practices pose wider risks beyond the NI, through contagion impacts. As the NI is the largest operator in the scheme, such overpayments could encourage other providers to replicate the practices with other insurers.

5.7.20 Although the use of MRI services is a small subset of far more significant spending by the NI on medical related expenses, it illustrates poor governance over medical payments which leads to greater utilisation and therefore greater expenditure.

5.7.21 Further, the MRI case study is not an isolated example. An analysis of support services reveals that the NI has had consistent year on year increases in medical spend across GP attendances, allied health services, surgery and diagnostics. The growth includes increases in items billed and earlier approvals of surgery.

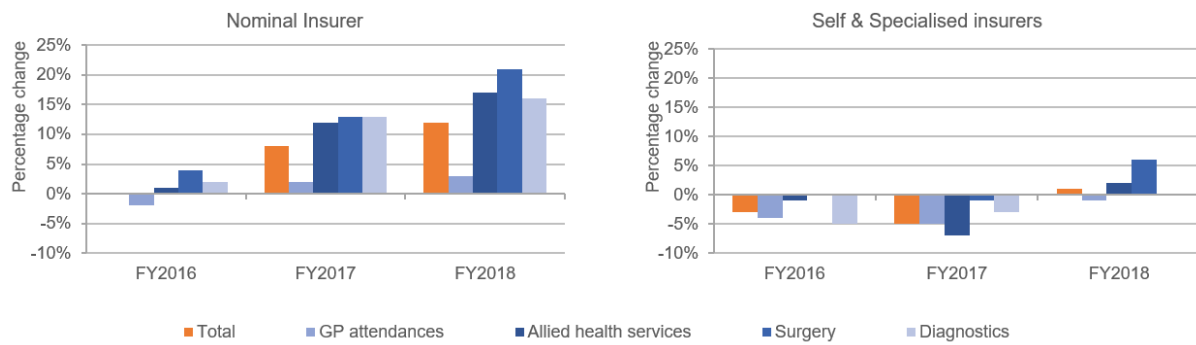
5.7.22 In contrast, self and specialised insurers paid less than the NI in the 2017 financial year and the subsequent increase in 2018 financial year was less pronounced than for the NI as shown in the following graphs.

**Figure 25 – Percentage change in medical spend year on year**



5.7.23 The increases in medical spend for the NI correlate closely to the increases in medical utilisation year on year, as demonstrated below. The utilisation measures the use of medical services or treatments. Inflation in medical costs is a compounding issue rather than the main cause of the trend.

**Figure 26 – Percentage change in medical utilisation year on year**



5.7.24 The workers compensation scheme is undergoing faster medical spend growth, particularly in recent years, than either private health insurers in NSW, or Medicare.<sup>25</sup>

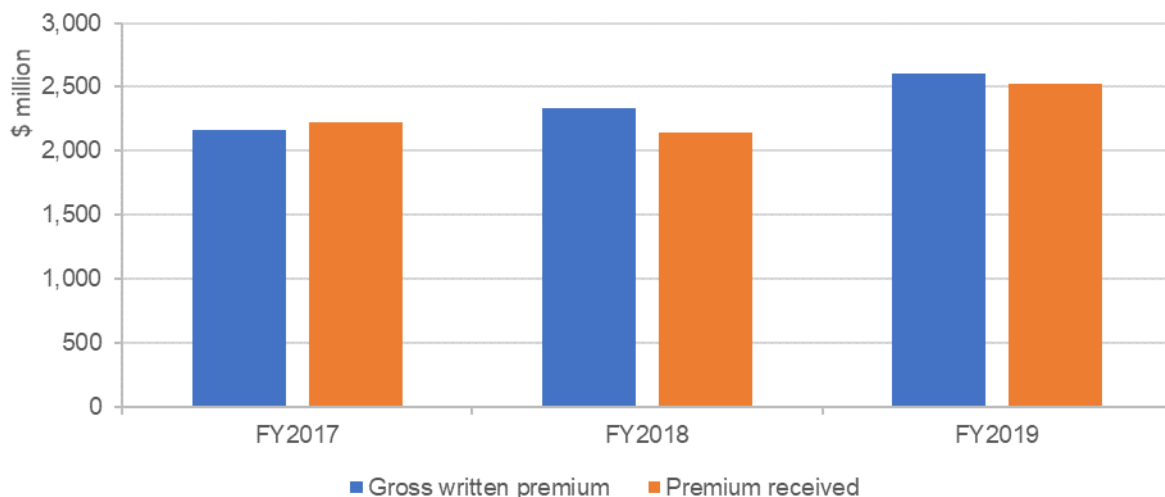
5.7.25 The increase in medical costs and spend for the NI is inherently tied to medical utilisation. The significant increase in claims utilisation has resulted in the increase of medical costs.

## 5.8 Customer experience

5.8.1 A detailed analysis of the new claims operating model and its impact on the customer (claimant) experience, is captured later in this report. However, a limited assessment of the premiums charged to employers against the return delivered on the premium to the scheme as a whole, is included here. The focus on employers as the customer is because the onus for maintaining the insurance fund (which underwrites the scheme) is on them (see section 154D(4) of the *Workers Compensation Act 1987*).

5.8.2 As a regulator SIRA is rightly concerned about scheme sustainability and needs to monitor key risks to ensure plans are in place to mitigate those risks.

**Figure 27 – Gross written premium and premium received**



<sup>25</sup> <https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements> Regulatory requirements for health care arrangements (Sydney: State Insurance Regulatory Authority, 2019).

Source: Joint Premium & Prudential Oversight Committee report, JPPOC – ANALYSIS Nominal Insurer FY 2019 report, as at 30 June 2019.

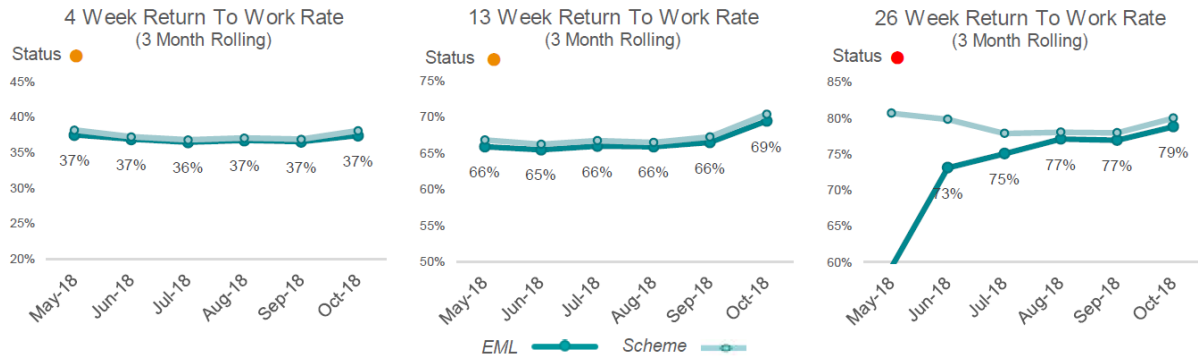
- 5.8.3 Gross written premium (GWP) has increased over the last three years. Premium received in FY2019 has also improved significantly when compared with the previous financial year. While this is a positive result, the section on profitability above highlights the underlying weaknesses that have led to the negative net result for FY2019.

## 5.9 Data quality and reporting

- 5.9.1 Prior to initiating the Review, in August 2018, SIRA observed deteriorating trends with the performance of the NI. It was initially considered that the deterioration was the result of poor data quality provided by the NI, impacting the results.
- 5.9.2 SIRA conducted an investigation into the data reporting of the NI and found that icare's approach and estimated RTW rates provided a different view on RTW experience by including 'medical only claims' (which have higher RTW rates than weekly benefit claims), resulting in a potentially distorted picture of the experience. This means that injured workers who do not take time off work as a result of a workplace injury are deemed to have returned to work, based on the 'medical only claims' RTW measure. Whereas the SIRA RTW measure requires that a person must first have taken time off work and subsequently returned to work.
- 5.9.3 This was further exacerbated by an increase in the proportion of medical only claims in the measurement cohort, which contributed significantly to the observed level of icare's RTW rate.
- 5.9.4 Data issues had a significant impact on measured RTW rates, leading to uncertainty as to the true underlying experience of RTW. Using an alternative measurement approach to mitigate some of the data issues, SIRA found that there had been a deterioration in RTW rates in 2018 when assessing the experience of weekly benefit claims.
- 5.9.5 The SIRA investigation found that while there had been some ongoing data quality issues which impacted the observed RTW rate, they did not account for the entirety of the reduction in the RTW rate.
- 5.9.6 A deterioration in RTW experience is also commented on in Finity's December 2018 valuation report of the NI's claims liabilities.
- 5.9.7 Information provided by icare as part of this Review highlighted risks and concerns identified with the operation of the NI. This included a report that expressed concerns about **data quality impacting operations and reporting**. While the issues with data quality have improved, it remains an ongoing concern.
- 5.9.8 Further, the SIRA investigation found that icare utilises data on a snapshot basis and therefore does not incorporate any data corrections overtime, whereas SIRA reflects any adjustments to claims data up to the date the model is run. This difference impacts reporting and differences in reporting by icare and SIRA.
- 5.9.9 This is evidenced by the fact that despite data from both EY and SIRA evidencing a decline in RTW outcomes by the NI, internal reporting for the NI suggests an

improvement in RTW rates (see table below, extracted from an internal icare report<sup>26</sup>).

**Figure 28 – Return to work rates reported by icare**



5.9.10 These graphs are consistent with icare reporting, being on a snapshot basis. When assessing these graphs, it should be noted that they begin in 2018, there is no baseline on the RTW rate prior to the new operating model being implemented and analysis is limited to variations within the framework of the new operating model. There does not seem to be any consideration of the success, failure or overall impact of the model on the workers compensation scheme.

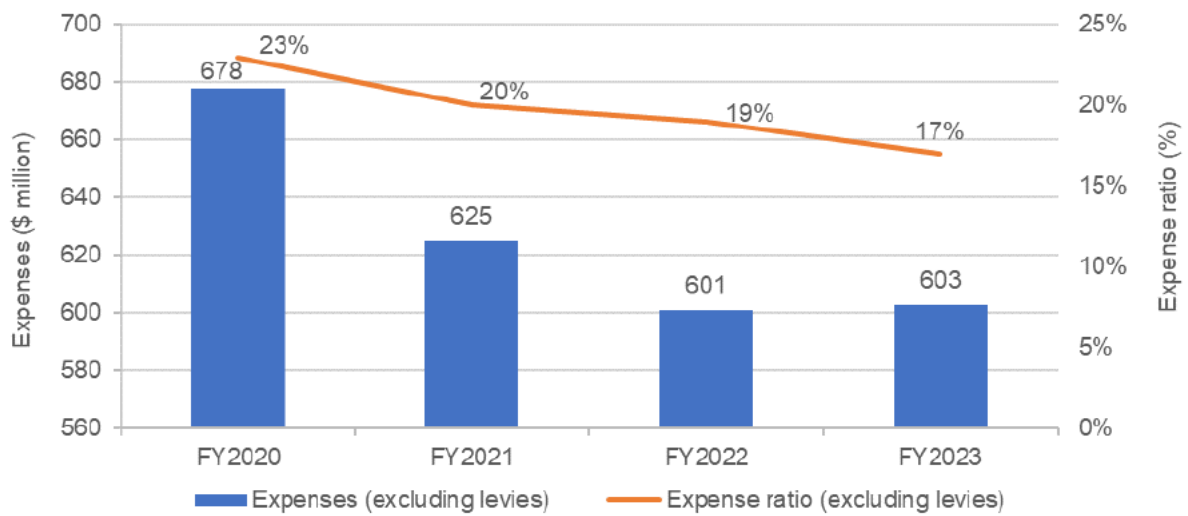
5.9.11 There is a clear difference in perspective between SIRA and icare. This is highlighted in this instance by the RTW measure. SIRA approaches its assessment on the basis of an extended baseline performance, whereas icare’s assessment is limited to several months of data captured within the new operating model. Accordingly, each party has different perspectives on the overall performance of the scheme.

5.9.12 A key illustration of this is the 13 week RTW rate at October 2018, reported by the icare data above as 69 per cent. This is significantly below the long-term average of 85 per cent prior to the model being implemented, but apparently is not included in the icare Board papers.

<sup>26</sup> icare, *EML NewCo Operational Performance CITC February 2019*, (Sydney: 2019) p. 12.

## 5.10 NI expense analysis

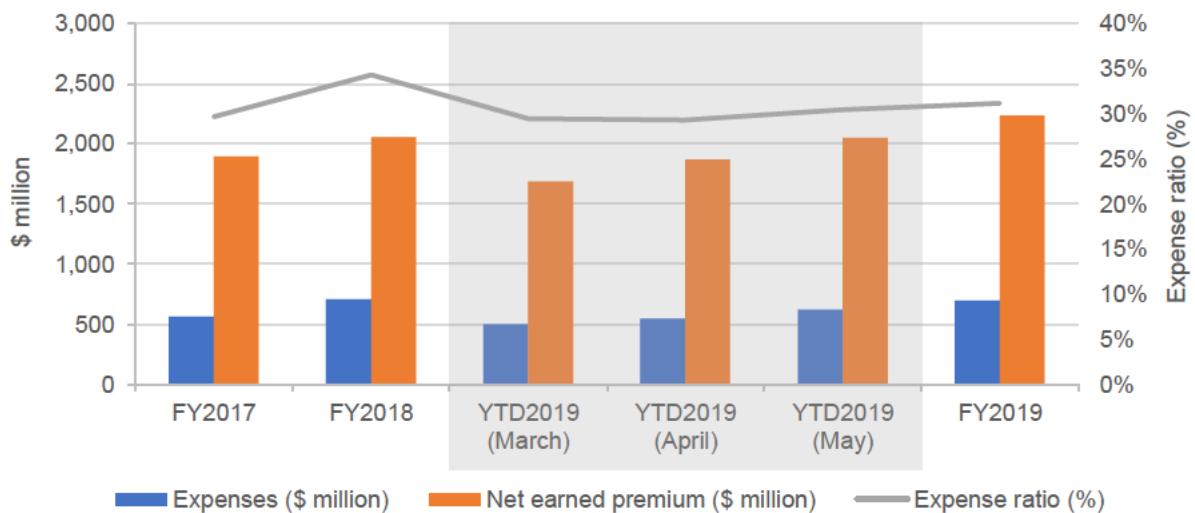
**Figure 29 – Nominal Insurer budgeted expenses**



Source: Joint Premium & Prudential Oversight Committee report, JPPOC – ANALYSIS Nominal Insurer FY 2019 report, as at 30 June 2019.

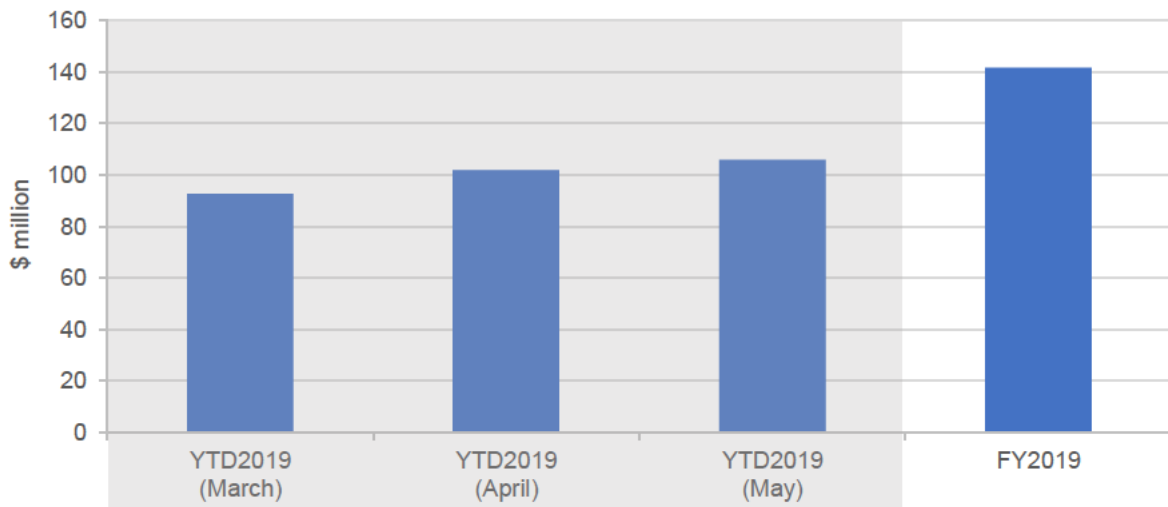
5.10.1 Expenses have been high, yet the NI has forecast a downward trajectory to reach 17% by 2023. In contrast, the predominant provider EML is contractually limited to 10% overall expenses. It is unclear how these forecasts will be achieved, particularly in light of the trends examined in this section.

**Figure 30 – Expense ratio (excluding statutory levies)**





**Figure 31 – Transformation and transition expenses**

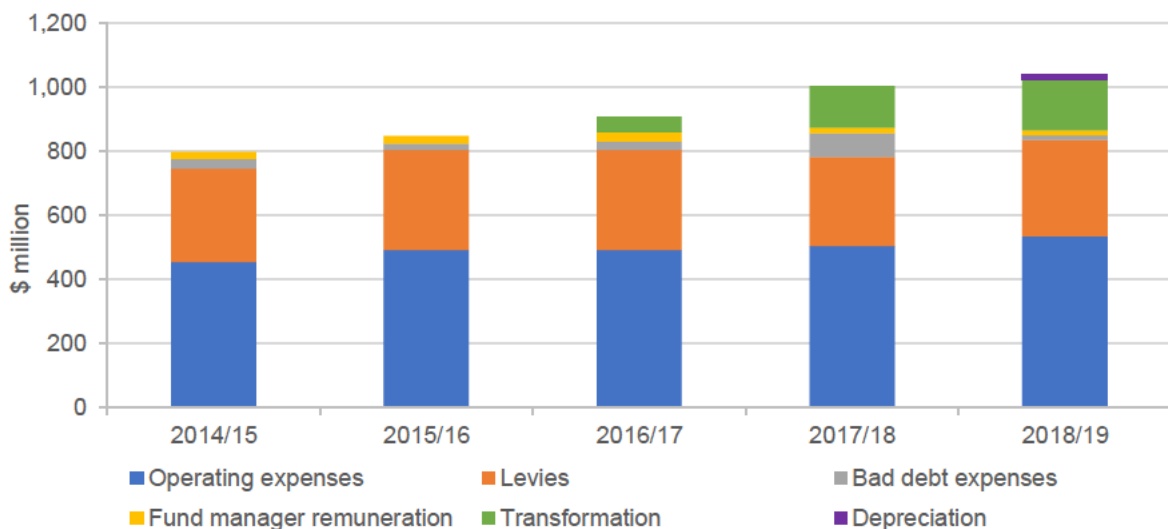


5.10.2 There have been variations in the NI's expense ratio over recent years, noting that this has occurred during icare's transformation phase.

5.10.3 Key areas of focus in the EY Review included:

- a) the nature of the NI's expenses
- b) the reasons for increases in the NI's expenses including the impact of the transformation program
- c) the impact on the expense basis of the new scheme agent model
- d) how the service fee payable to icare is determined
- e) splitting the expenses between direct expenses (such as payments to EML for claims management) and non-direct expenses (such as overheads).

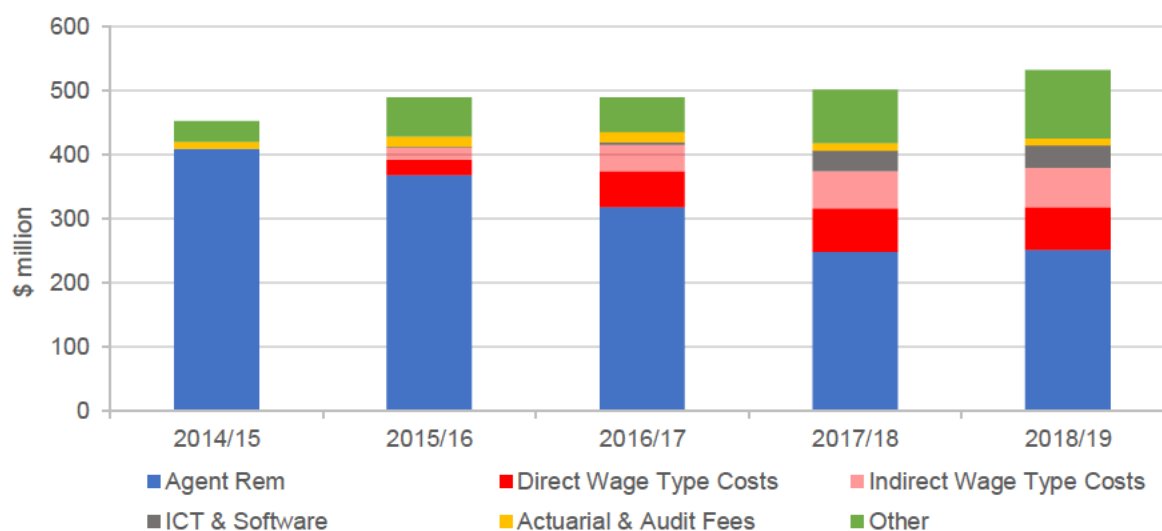
**Figure 32 – Summary of NI expenses**



5.10.4 In the 2018/19 financial year, the total expenses of the NI amounted to \$1 billion. This included levies of \$302 million and transformation expenses of \$159 million.

- 5.10.5 Overall, the NI's expenses have increased at an average rate of 5.5 per cent per annum since 2014/15.
- 5.10.6 Excluding transformation expenses and levies, the rate of increase has been 2.8 per cent per annum.
- 5.10.7 The NI's operating expenses (excluding levies and transformation expenses) amount to 24 per cent of the NI's net earned premium (excluding levies) in 2018/19.
- 5.10.8 The NI's operating expenses in the 2014/15 financial year were 26 per cent of net earned premium.

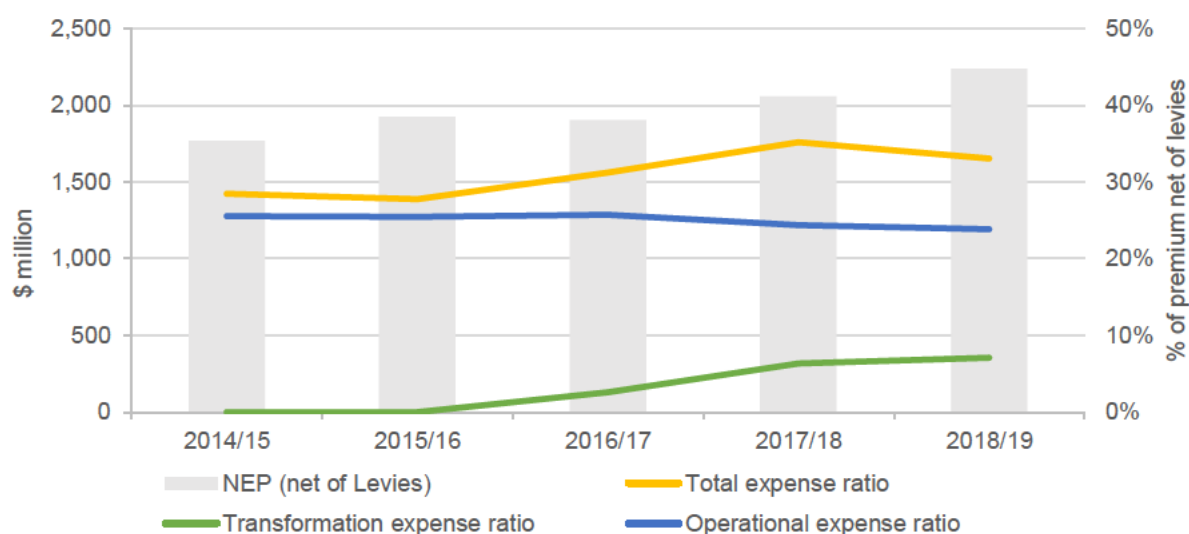
**Figure 33 – Operating expenses**



- 5.10.9 Operating expenses consist primarily of scheme agent remuneration, icare salary costs, ICT and software costs and other miscellaneous expenses.
- 5.10.10 The operating expenses have increased by \$81 million from \$452 million in 2014/15 to \$533 million in 2018/19.
- 5.10.11 Scheme agent remuneration has reduced by \$159 million from approximately \$410 million in 2014/15 to \$251 million in 2018/19.
- 5.10.12 The reduction in scheme agent remuneration has been offset by icare salary costs allocated to the NI. In 2018/19 these costs amounted to approximately \$129 million (in direct and indirect wage costs) which included both contractors and ongoing staff numbers.
- 5.10.13 ICT and software costs related to the NISP will be a recurring cost to icare (prior to the NISP, these costs were previously borne by the scheme agents and passed onto WorkCover through the scheme agent remuneration).
- 5.10.14 'Other' costs consist of a variety of different items to the costs explained above. This category has been increasing consistently over the five-year period.
- 5.10.15 The significant expenditure by icare in the roll-out of the new claims model has delivered an operational cost saving of \$30 million per annum based on the 2018/19 figures and includes the offset salary and ICT costs.



**Figure 34 – Net earned premium and expense ratios**



5.10.16 The total expense ratio includes all expenses, except levies. Transformation expenses were the main factor causing the increase in the total expense ratio since 2015/16. While transformation expenses are considered to be one-off expenses, they are still expected to be incurred into 2020/21.

5.10.17 The operational expense ratio has trended downwards since 2016/17, and includes the ongoing controllable costs of icare.

5.10.18 The net earned premium has increased on average by 4.8 per cent per annum since 2014/15. This increase is a combination of wage growth, portfolio growth and premium rate increases.

## 5.11 Overall performance

5.11.1 Overall, the current position of the NI is illustrated by the following figure.

**Figure 35 – Nominal Insurer FY2019 key highlights**

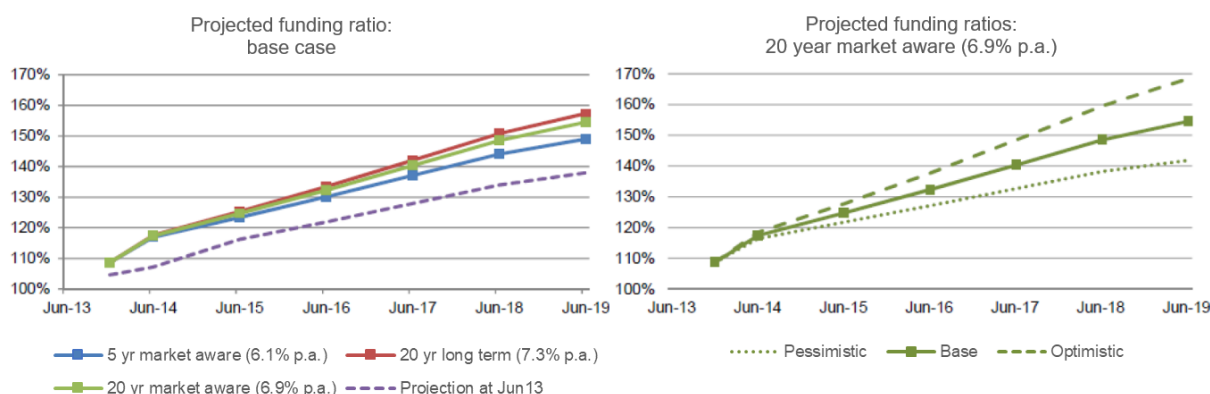
Item Description	Result	Annual trend
Gross written premium	\$2,605M	↑
Underwriting result	(\$2,522M)	↓
Loss ratio	110%	↓
Investment income	\$1,648M	↑
Net result	(\$874.3M)	↓
Funding ratio	112.4%	↓

5.11.2 Much of the decline has been caused by increasing claims costs, mostly due to increasing weekly payments and medical costs. These costs may also be related to the declining RTW rate.

## 5.12 Original financial estimates

5.12.1 In 2014, a 'Safety, return to work and support' Board briefing prepared by PwC (former actuaries for the workers compensation scheme), provided the following solvency projections into the future financial position of the workers compensation scheme.<sup>27</sup>

**Figure 36 – Solvency projections – base projections**



5.12.2 These projections assumed that:

- premium rates remain unchanged
- investment earnings unfold as per 'Projected funding ratio: base case' (left-hand graph)
- future claims experience unfolds as per 'Projected funding ratios: 20 year market aware'<sup>28</sup> (right-hand graph).

5.12.3 These projections suggested that with continued improvements in the financial returns on scheme investments and the ongoing decrease in liability with reduction in benefits of the 2012 reforms, the scheme would move towards an approximate \$6 billion surplus by 2019.

5.12.4 In measuring performance against this benchmark, it is important to consider that a number of the assumptions provided have improved beyond the projections (investment earnings), whereas others have deteriorated below the expectations (claims experience).

5.12.5 Further, with the added benefits introduced to the scheme following these projections, it was unlikely that the projected target would be met. However, it still does not explain the significant disparity between the projected \$6 billion surplus and the current position.

<sup>27</sup> Answers to supplementary questions on notice, WorkCover Authority of NSW – Attachment D: Workers Compensation Nominal Insurer Scheme – valuation results as at 31 December 2013, Safety, Return to Work and Support Board briefing (Sydney: WorkCover NSW, 2014), p. 11.

<sup>28</sup> Answers to supplementary questions on notice, WorkCover Authority of NSW – Attachment D: Workers Compensation Nominal Insurer Scheme – valuation results as at 31 December 2013, Safety, Return to Work and Support Board briefing (Sydney: WorkCover NSW, 2014), p. 11.

5.12.6 Benefits reduced in the 2012 reforms in light of a substantial deficit (see next section), assisted in delivering a surplus of \$3.99 billion by 30 June 2015. The current fiscal position has deteriorated to a surplus of \$1.58 billion, in a market with historically low interest rates and the NI showing deterioration in its performance.

FINDING 5. SIRA should continue its monitoring focus on capital adequacy in liaison with NSW Treasury officials.

## 6 NI compliance with Market practice and premium guidelines

### 6.1 Principles of the Market practice and premium guidelines

- 6.1.1 This section of the report addresses the first item in the terms of reference, specifically assessing the NI's compliance with the *Workers compensation market practice and premium guidelines (MPPGs)* and identifying any unintended consequences, risks and priorities for improvement in SIRA's regulation of the premiums of the NI.
- 6.1.2 SIRA is empowered by section 168 of the *Workers Compensation Act 1987 (1987 Act)* to issue guidelines with respect to policies of insurance, commonly referred to as the MPPGs.
- 6.1.3 The MPPGs require, among other things, insurers to lodge a premium filing with SIRA, outlining how they propose to determine and justify premiums. The imposition of the MPPGs, expressly includes the NI (see section 168(5) of the 1987 Act). Therefore, a breach of the MPPGs, is a breach of that Act.
- 6.1.4 Since 2015, NI premiums have moved from being set through the Government Insurance Premium Order to a principles-based file and write system under the MPPGs. The principles are:

**Principle 1:** Premiums are fair and reflective of risk

**Principle 2:** Balance between risk pooling and individual employer experience

**Principle 3:** Premiums should not be unreasonably volatile or excessive

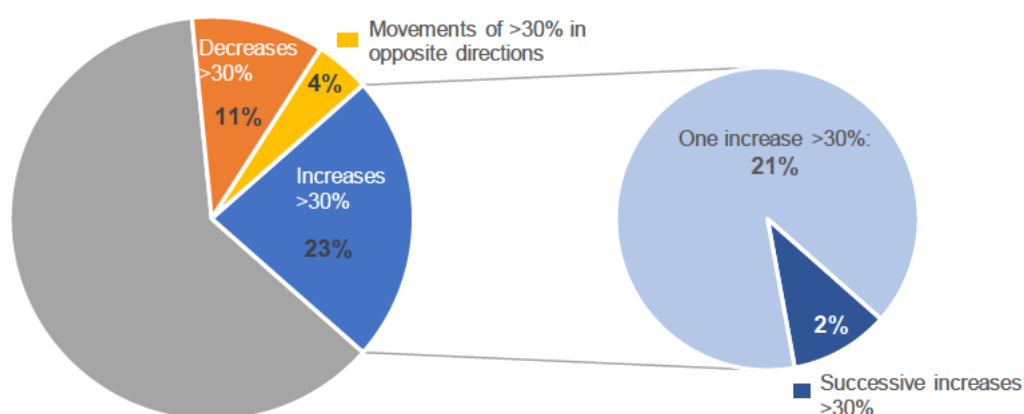
**Principle 4:** Incentives for risk management and good claims outcomes

**Principle 5:** The premium basis needs to be consistent with the insurer's capital requirements.

### 6.2 Premiums

- 6.2.1 Many submissions and consultations have referred to premium setting, late notices, variations and the opaqueness of calculations.
- 6.2.2 EY conducted a review of these matters on behalf of SIRA involving an audit of compliance with relevant guidelines including the MPPGs.
- 6.2.3 In the course of completing their review EY found the following:

**Figure 37 – Premium rate movements between 2016/17 and 2018/19 – 30% threshold**



- a) In 23 per cent of policies, EY found increases greater than 30 per cent, and 10 per cent with decreases of more than 30 per cent in at least one of the 2017/18 and 2018/19 policy renewal years.<sup>29</sup>
- b) Around 10 per cent of policies in 2018/19 appear to have been charged differently from the premium formula for the following reasons:<sup>30</sup>
1. Incorrect claims costs (C values)
  2. Errors in the application of the premium formula where a key variable (claims performance adjustment) was incorrectly determined
  3. The underwriter had used judgement to provide the policy holder with a discount
  4. Incorrect capping or flooring of premiums.

“The premiums for our clients are quite volatile. A simple claim can result in a premium doubling, which for any employer, particularly medium sized clients it can be crippling for the organisation”.  
(Submission # 88, anonymity requested)

“Limited education/explanation of how premiums are calculated and what factors determine the end figure”.  
(Submission # 3, anonymity requested)

6.2.4 Issues with the determination of claims costs for inclusion in the formula were found by EY to be due to manual rather than system correction functionality and lack of governance.

- a) Concerns about discounts being applied when premium holders complained was due to elements of the premium formula creating large movements in premium. Although the application of discretion on requests might have been reasonable, it was not provided for in the 2018/19 premium filing to SIRA and

<sup>29</sup> Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 2: Premium and policy review, (Sydney: EY, 2019), p. 27 Table 4.

<sup>30</sup> Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 2: Premium and policy review, (Sydney: EY, 2019), p. 4.

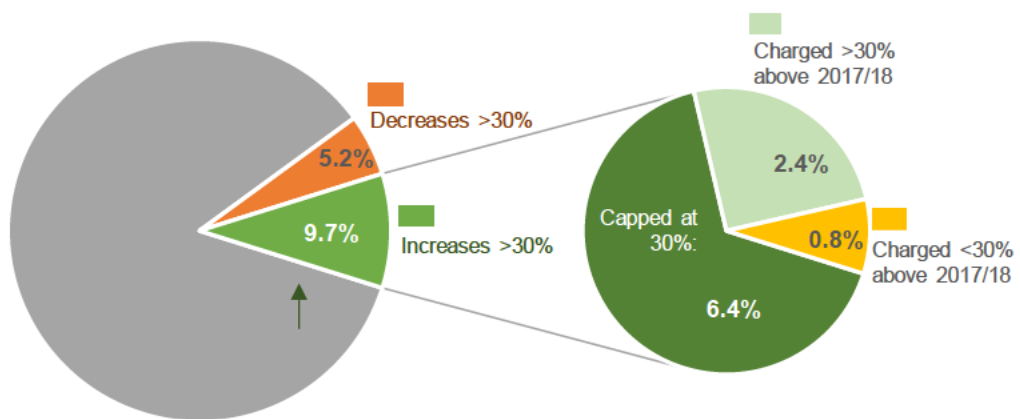
creates inequity for policy holders who do not query their invoices.

The NSW Small Business Commission has “received representations from small businesses regarding the difficulty in understanding their premiums, including miscalculations that have required an independent consultant being hired to assist them in understanding the errors and resolving the issue”. (Submission # 135, NSWBC)

b) Clause 6.12 of the MPPGs provides:

*“Where an insured employer is subject to being experience rated in accordance with section 6.7 of this Guideline, licensed insurers must ensure that the employer’s premium rate does not increase by more than 30 per cent from the previous policy year due to the employer’s own claim experience or due to amendments to an insurer’s premium methodology.”*

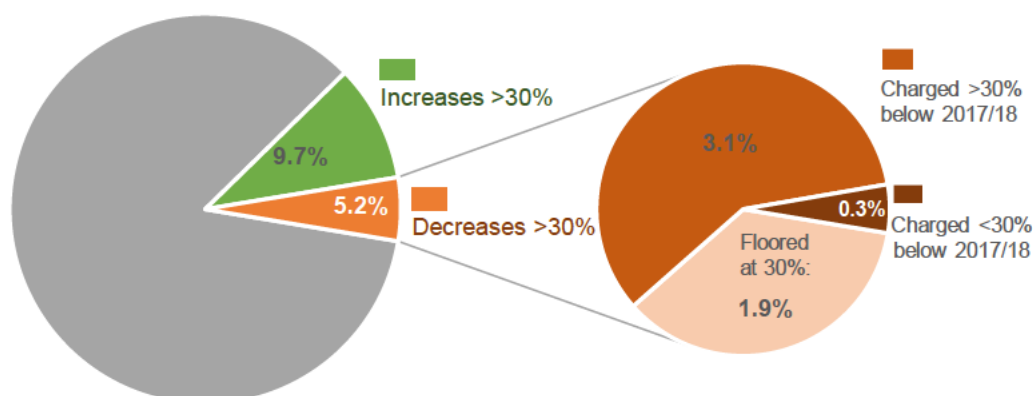
**Figure 38 – Analysis of SIRA capping, 2018/19 policies<sup>31</sup>**



<sup>31</sup> Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 2: Premium and policy review, (Sydney: EY, 2019), p. 14 Table 3.



**Figure 39 – Analysis of icare flooring, 2017/18 policies<sup>32</sup>**



6.2.5 Despite the above, EY found incorrect premiums outside the 30 per cent cap required by the MPPGs and the 30 per cent floor required by icare’s premium filing in almost 5.5 per cent of policies issued in 2018/19. System improvements are expected to improve these issues, but it is not clear whether 2019/20 policies will be corrected in time or will be reliant on manual adjustment.

6.2.6 The timeliness of the renewal notices and premium calculations for 2018/19 was in breach of the MPPGs in 70 per cent or more of cases reviewed by EY.<sup>33</sup>

“Actual wages are not being processed in a timely manner. Clients and brokers continually having to follow up processing. Renewal Premiums have been significantly delayed. June renewals in some cases have not been received until February. Medium / large employers were advised for 2018/2019 renewals they could not adjust wages until after the policy had issued. This resulted in a complete waste of paperwork/effort which only needed to be redone, further delaying the clients receiving their premiums.” (Submission # 32, anonymity requested)

6.2.7 icare has indicated this was at least partly due to a short time between the receipt of the approved MPPGs (which were

released on 1 March 2018 for commencement on 30 June 2018), and preparation of the premium filing. However, the material would have been the subject of discussion between the organisations for some time prior to that if proper professional relationships existed. Irrespective of timing, a breach of the MPPGs and therefore the legislation, is unacceptable as emphasised by the Hayne Royal Commission Report.

### Unintended consequences

6.2.8 One of the primary themes from the public submissions (Section 4) and the over 50 private consultations conducted with stakeholders across the industry, was the inconsistency or volatility in the premium pricing for workers compensation.

<sup>32</sup> Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 2: Premium and policy review, (Sydney: EY, 2019), p. 14 Table 3.

<sup>33</sup> Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 2: Premium and policy review, (Sydney: EY, 2019), p. 19 Figure 4.

- 6.2.9 These industry concerns regarding inconsistent premium pricing, was identified by EY in their detailed analysis and reporting on premiums. EY found that the way the scheme performance measure is applied within the premium formula means that relatively small changes in claims experience can lead to large changes in premium pricing. This occurs even for policyholders with good experience. This volatility in premium pricing creates a burden on NSW employers and makes their operations and budgeting difficult.
- 6.2.10 Although a volatile premium formula is not a breach of the MPPGs, the premium volatility combined with the failure to adhere to the 30 per cent capping imposed by the MPPGs, results in inconsistent and uncertain pricing for employers. Based on discussions conducted with various employers, industry associations and other stakeholders, this inconsistency and uncertainty in premium pricing results in an inability by employers to anticipate future cost and develop budgets accordingly. This limits their ability to price for future work, compete with other industry participants and in some cases limits the size of an organisation's presence in the state of NSW.

FINDING 6. icare should provide SIRA sufficient regular information to assure the regulator that premiums are calculated in compliance with the legislative requirements.

FINDING 7. icare should provide internal audit planning and risk mitigation actions to SIRA on a regular basis.

FINDING 8. Regular meetings between senior executives should be utilised to agree on and monitor mitigation plans so that formal penalties can be understood as last resort measures in accord with the spirit of the Premier's memorandum on inter-agency disputes.<sup>34</sup>

---

<sup>34</sup> Premier Bob Carr, *M1997-26 Litigation Involving Government Authorities*, (Sydney: Department of Premier & Cabinet, 1997).



## 7 Benefits and risks of new claims management model

### 7.1 Background

- 7.1.1 icare embarked on a significant transformation of the scheme in 2017 characterised by the then CEO as a ‘disruption of the industry’. It was aimed at reducing agent costs, streamlining and automating claims management through a single IT platform and enabling access through a portal. While this was a noble vision it was also an ambitious one as noted in advice from McKinsey in 2017.
- 7.1.2 McKinsey identified the trade-off of a single partner model as “a reduction in the level of competition between partners, a perceived reduction in choice for employers, and less optionality to easily swap out partners.”<sup>35</sup>
- 7.1.3 It also described benefits of a two-partner model including “the option of more easily exiting one partner if required (though under a ‘captive’ model, icare would be heavily accountable for *New Claims Org* performance).”
- 7.1.4 These observations were prescient (underlying SIRA’s concerns as the regulator), and are all too evident today as icare executes its new model of claims management.

### 7.2 Model implementation and risks

- 7.2.1 The technology platform known as Guidewire is a world class product and proven within the insurance sector. A key element of the new model is the technology described as the Nominal Insurer Single Platform (NISP). This is programmed to triage claims (based on an algorithm designed by icare) at their lodgement through the portal. This is founded on an 80/20 type rationale, that is, the majority of claims are not complex so recovery paths are easily selected.
- 7.2.2 This approach differs to the previous system which applied case management principles involving the individual management of claims. The new system is highly dependent on an algorithm which determines claim severity and therefore treatment. Such an automated process will miss the subtleties of individual circumstances, for which case management skills are needed, without extensive trial and error which ideally should be concluded before implementation.
- 7.2.3 EY examined the application of the new model as applied during 2018 and before the NISP was commissioned to understand performance of claims management, RTW outcomes and other legislative objectives.

“Stop treating Worker’s Compensation like car insurance. Ours is not an insurance where prescriptive and rigid approach to the management of claims will work. Workers Compensation is about people and by our very nature we are all different. To effectively manage these differences there needs to be flexibility and creativity in the approach to achieving RTW outcomes.” (Submission # 42, AEGIS Risk Management Services Pty Ltd)

<sup>35</sup> McKinsey, *icare claims operating model (section 3.1) Design and transition recommendations* (Sydney: McKinsey, 2017).

7.2.4 EY found the following key issues:

- a) The RTW outcomes of the 2018 claims cohort were impacted by the inaccuracies of the triage system combined with the design of the Empower and Guide segments. These segments do not assign injured workers a dedicated case manager and this has resulted in passive case management and a lack of timely intervention to ensure these claims received the most effective treatment.
- b) EML case managers have a lack of personal injury case management experience and this is leading to a lack of proactive decision-making and a passive approach to managing claims. This is compounded by EML staffing levels that have lagged behind budgeted full-time equivalent roles (FTEs) since the implementation of the claims operating model, resulting in high case loads.
- c) Overlaying this is a lack of effective governance (monitoring of experience, early recognition of problems and feedback to EML) in order to identify and rectify the problems identified by this review.

7.2.5 The whole claims model lacks an effective governance structure that would have enabled icare to identify and rectify the key findings from this review.

7.2.6 It is especially unhelpful that the EML contractual arrangement is weighted disproportionately to control of corporate expenses and minimally to RTW (1 per cent).

7.2.7 EY has undertaken an exhaustive audit program and written an extensive report into the claims management and new claim model of icare and determined that there were problems with the design, implementation and governance of the new claims model. This review will not repeat the extensive work undertaken by EY, so parties interested in a more detailed analysis should refer to the EY claims management report.<sup>36</sup>

7.2.8 It is difficult to escape the conclusion that there is too much being done at once, and that priorities (as identified by PwC<sup>37</sup>) to:

- a) monitor variances and establish one source of truth for data
- b) review structure and talent
- c) review processing times and case volumes and update FTE staffing needs

have extended the capacity of the organisation to the fullest.

7.2.9 PwC also noted the need to review process compliance, but at a later stage, which is unfortunate if this was interpreted to overlook regulatory compliance. This is reinforced by the recent strategic risk review of the NI, undertaken by KPMG<sup>38</sup> that found icare's risk maturity still at an intermediate level. Of particular concern is their

---

<sup>36</sup> *Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 1: Claims management*, (Sydney: EY, 2019).

<sup>37</sup> PwC, *Review of New Service Model* (Sydney: icare, 2018).

<sup>38</sup> KPMG, *icare Strategic Risk Review* (Sydney: icare, 2019), pp. 3, 7, 8.

observation that “in some change management initiatives and projects that while numerous oversight committees are established, suitable risk frameworks are not always in place”.

7.2.10 Collie<sup>39</sup> and his colleagues at Monash University have recently published the results of a nationwide study of compensation schemes which demonstrates that the process of the journey through compensation schemes is pivotal to recovery and health outcomes (previously cited).

7.2.11 This goes to the heart of claims management principles in personal injury schemes which deal with individual’s lives and circumstances, not solely in the workplace. An apparently minor injury can easily escalate in severity if early and appropriate treatment is not applied and a RTW plan (which should involve the relevant employer as a matter of good practice) is not developed. Some discussions pointed to a gap in the legislation on this matter but it should not need a legal basis to apply what is professional common sense.

“I’ve had a claim sitting in the Empower and Guide team for up to 10 months before it was escalated to a case management specialist. Within weeks, it was discovered that this claimant required surgical intervention and required more attention than originally thought - something that should have been addressed in the first three months.”  
(Submission # 92, confidential)

### 7.3 NISP system implementation

7.3.1 Implementation of the NISP has cost considerably more than originally estimated, although access to the business case has not been granted to the reviewer. This suggests the complexity and detail of establishing, testing and operating the system was not fully anticipated and, while that is a common circumstance with large technology projects, more time taken to attest acceptability by users would have been desirable. The timetable was apparently necessitated by impending expiry dates of agent contracts.<sup>40</sup>

“EML have provided *anonymous* with the best service possible, under, what we have seen to be, very difficult circumstances in a claims management model that is fundamentally flawed...we feel that the current performance of EML, reflects the system they have been forced to work within and less about the organisation’s competence for managing workers compensation claims”. (Submission #126, confidential)

7.3.2 The risks involved when switching to one system with less than adequate testing were higher than desirable. The concurrent reduction in agents, loss of skills due to the disaggregation of the system appears to run counter to the Government’s policy of competitiveness for the state. It is not apparent that in the strategic intent of ‘disrupting the system’ the risks were adequately acknowledged or addressed. Complaints from all interested parties demonstrate the ‘teething problems’.

<sup>39</sup> Collie, A, Newnam, S, Keleher, H, Petersen, A, Kosny, A, Vogel, AP & Thompson, J, 'Recovery within injury compensation schemes: a system mapping study' in *Journal of Occupational Rehabilitation* (UK: Springer Nature, 2019), vol. 29, no. 1, pp. 52-63.

<sup>40</sup> Personal communication with icare Board member, 2019.

7.3.3 As an example of ‘teething problems’, the implementation of the NISP system on 4 February 2019, resulted in 4,137 notifications received by the NI between 4 February and 25 March 2019 in which the data indicated a failure to comply with determination timeframes. Consequently, in May 2019 SIRA conducted an audit of 50 randomly selected files from the 4,137 claims. The audit checked for compliance with the *Workplace Injury and Workers Compensation Act 1998* (sections 43, 267, 268) and section 84 of the *Workers Compensation Act 1987*.

7.3.4 The audit on the 50 files found:

- a) section 267 (weekly payments) - 4 per cent compliance
- b) section 268 (reasonable excuse) - 5 per cent compliance
- c) section 84 (weekly payments) - 54 per cent compliance.

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

## 7.4 Summary

7.4.1 Pervading themes from this review include delays in processing, treatment approvals and absence of case management skills, all of which are crucial for early intervention and appropriate treatment. Premium setting, data quality and a range of other issues have also been raised during consultations, submissions and data submitted by key stakeholders. During this review, the following poor practices have been found:

- a) a lack of investigation of liability causation issues
- b) an overall lack of coordination of all service providers by the case manager
- c) a passive approach to injury management and RTW strategies
- d) a general lack of enquiry on the part of the case manager due to either capacity, capability or both.

7.4.2 EY analysed scheme performance as at August 2018 and in examining average payment delays found it to be 35.8 days.<sup>41</sup> This was an early indicator for concern about the new model and flagged for monitoring.

7.4.3 In March 2019, icare presented to the Independent Reviewer (IR) and admitted it had underestimated some of the challenges associated with disrupting the industry, including:

- a) employer perceived loss of control
- b) pace of change and impact to stakeholders
- c) delays created by scale of data quality issues
- d) service delivery consistency.

7.4.4 These items were also raised constantly during the consultation and review period. None of these are surprising risk factors in such a large transformation, however the last point impacts people requiring assistance and guidance most directly. This is a

---

<sup>41</sup> EY, *Scheme Monitoring @August 2018 State Insurance Regulatory Authority* (Sydney: EY, 2018), p. 13.

fundamental basis of personal injury claims management, that people's lives, wellbeing and recovery are intrinsically linked, not to payments, though of course an important part, but to RTW. The metrics discussed in the Report (and required by legislation) reflect those matters. From a regulator view-point, SIRA needs transparency about non-compliance and future mitigation, but it has not consistently received adequate information to be assured.

7.4.5 The 31 December 2018 valuation report from Finity (as the icare actuary) identified:

- a) break even premium moved from 1.41 per cent to 1.49 per cent
- b) funding ratio moved from 115.1 per cent to 107.5 per cent at 80 per cent risk margin, and 110.8 per cent at 75 per cent risk margin
- c) liabilities increased by \$1.3 billion.

7.4.6 Key risks identified showed the impact of potential changes on liabilities including:

- a) medical costs increase of 1 per cent = 4.9 per cent increase in liabilities
- b) section 39 outcomes increase of 5 per cent = 0.9 per cent increase in liabilities
- c) tail payments increase of 30 per cent = 4.5 per cent increase in liabilities.

7.4.7 In considering the analysis above, together with deteriorating performance trends, there are indicators of poor file management, and poor understanding of, and skills required for, compliance with legislation and best outcomes. When considered together with the staff turnover rate at EML of 22.7 per cent per month, and the EY findings about triage allocating claims to the wrong cohort, this represents a major risk for the NI and the workers compensation scheme.

7.4.8 At an annual rate of claim notifications around 100,000, 78.5 per cent are in the minimal and moderate injury severity category. EY found that a larger volume of claims in the 'Empower and Guide category' (which have little to no case management) had provisional liability status determined rather than a formal liability decision. The impact of this is that more people remain in a state of uncertainty about their claim under provisional liability status, with no case manager or management. With the RTW rate in decline, particularly the early RTW rates of four and 13 weeks, the cohort of injured workers remaining in a state of uncertainty for longer is increasing.

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

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

FINDING 10. icare should review its internal governance of the claims management model to ensure adequacy of intended outcomes. In particular it should consider allocating files to other agents with expertise to reduce the load on EML and provide time for skills and experience to improve.

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

## 7.5 Expectations

- 7.5.1 The 2014 projection of a large surplus has failed to eventuate for a variety of reasons, some of which are outside of icare's control, but the difference between expectation and today's position is stark. It is a matter for icare to realistically consider the strategic aspirations and intent of its approach in the current environment.
- 7.5.2 Much emphasis has been put by icare on the less adversarial intent of the scheme, but the Government also referred to the introduction of new insurers (including specialised insurers) provided they took all the risk in a particular industry and the NI was not left with the worst of them.
- 7.5.3 In his Second Reading speech introducing the amendments on 19 June 2012, the then Minister said:

*"Schedule 9 to the bill provides for amendments to the insurance provisions of the workers compensation legislation, which are intended to permit the entry of new insurers into the New South Wales workers compensation insurance market. These new insurers could include new specialised insurers that could underwrite specified industry classes. It is, however, the Government's intention that where a specialised insurer is approved they must take all of the risk in an industry and will not be permitted to pick and choose which risks are eligible, thus leaving the nominal insurer with the worst risks."<sup>42</sup>*

## 7.6 Structure

- 7.6.1 The NI has a unique statutory, governance and regulatory structure. icare was established by the *State Care and Governance Act 2015* in part to act for, and provide service to, the NI. icare is governed by an independent board of directors appointed by and directly responsible to the NSW Treasurer.
- 7.6.2 icare is required to report separately to the NSW Treasurer and has obligations to the NSW Government as a commercial government business. icare does not own, and is not legally responsible for, the financial liabilities of the NI. icare does not fall under the scope of APRA and holds an unconditional license in accordance with section 154B(1) of the *Workers Compensation Act 1987* (1987 Act).
- 7.6.3 The Workers Compensation Insurance Fund is administered by the NI and its assets are subject to a statutory trust for the benefit of workers and employers (section 154D(2), 1987 Act). Even though employers have no control over the management of

---

<sup>42</sup> Legislative Assembly: Hansard (Sydney: NSW Parliament, 2012), p. 13017.

the fund, they ultimately carry the financial burden of the scheme (as fund shortfalls are passed onto NSW employers through higher premiums).

- 7.6.4 icare created a separate entity entitled icare Support Solutions Pty Ltd, known colloquially as 'NewCo', to administer the NI responsibilities. This may have been part of other plans initially but appears now to be superfluous.

## 7.7 SIRA's legislative powers

- 7.7.1 As a regulator SIRA is somewhat limited (refer to section 3.3.7) in its powers over the NI due to the unconditional licence it has been granted. Section 189 of the 1987 Act enables SIRA to require the disclosure and provision of records relating to the business and financial position of an insurer. Section 192A of the 1987 Act enables SIRA to prepare and publish a claims administration manual and to give directions under sub-section (4) in relation to claims handling.

- 7.7.2 Under section 194 of the 1987 Act, SIRA has a broad power to issue directions to an insurer:

*“for or with respect to requiring the adoption and use by them of specified processes, procedures, strategies, policies and methods in the handling and administration of claims for compensation or work injury damages, either generally or in respect of specified class or classes of cases.”*

- 7.7.3 Although section 194(2) makes compliance with a direction a condition of an insurer's licence, the unconditional nature of icare's licence granted by section 154B appears to negate the power in respect to the NI. At best this is unclear, and at worse means a constrained regulator. This should be no comfort to the employers of NSW who fund the system. Attached at **Appendix A** is a table of some of the legislative powers available to SIRA, the table illustrates the limitations SIRA has when exercising its powers over the NI, as compared to either the self or specialised insurers.

- 7.7.4 If the regulator is hamstrung and APRA oversight is not required, it seems fair to ask, “Where is the independent prudential assurance which is normally a regulatory function?”

**FINDING 12.** The legislative powers available to SIRA should be reviewed and strengthened to enable proper oversight of the NI.

## 7.8 Governance and relationships

- 7.8.1 In a multi-variate structure as outlined above, together with business groups, unions, injured workers, medical, allied health, legal providers and different Ministers, the value of constructive and collaborative relationships cannot be overemphasised. Trust and common focus on outcomes are fundamental elements of a successful workers compensation system. This goes to incentives within the overall system and poses the question about the ultimate bottom line.

- 7.8.2 There are multiple accountabilities and intricate complexities in the system which must be managed and shared for overall success.

- 7.8.3 First class insurance practice demands attention to case management, capital management and premium reasonableness. These are the basic elements of



personal injury management schemes which are sometimes cast as 'brave social experiments'.

7.8.4 First class regulation requires attention to three main factors in workers compensation schemes:

- a) capital adequacy
- b) claims management (or service levels)
- c) premium levels.

7.8.5 In the Victorian system for example, which uses an out-sourced agent system described as 'competitive collaboration', there are extra payments to reward innovation and agent performance is assessed by an equal loading across finance, service, and RTW metrics. The service measures are based around key events in a cycle of claims and administered by survey to 5,000 injured workers and 1,500 employers a year.<sup>43</sup>

7.8.6 Nous Group has stated that:

*“regulatory agencies occupy a unique position in government. They exercise substantial powers as one of the more direct means by which laws are translated into tangible changes to the market and to society. However, they also serve as a ‘face’ for government’s authority, and are therefore subject to the demands and complaints of the organisations and people with whom they engage.*

*Regulatory successes – if they are noticed at all – are often observed only as the continuation of a safe and stable society; whereas failures often draw disproportionate criticism. This response disparity continues to grow, along with opposition to ‘red tape’ and scrutiny of government and regulators on traditional and social media platforms.”*

7.8.7 Nous conducted a series of forums with senior Australian regulators and distilled them into three key 'features' of an effective, contemporary, regulator:

- a) A regulator **can take action** when it has the right people with the right skills to engage with the contemporary market.
- b) A regulator **knows what action to take** when it understands the public's expectations.
- c) A regulator **will take the necessary action** when it has an organisational culture that accepts the risk of failure and supportive management.<sup>44</sup>

7.8.8 There has been criticism of SIRA as a regulator during consultation and discussions from employers, providers, icare and WIRO. An example was given by icare of a \$700 fine being a minor and extraordinary notice sent to an insurer on an infringement notice form similar to a parking infringement notice. Whilst this is the appropriate format for formal notices and, like parking infringements, are generally hand written, as a regulator it should be expected that regular reviews are conducted

---

<sup>43</sup> Personal communication with MD/CEO Office, 2019.

<sup>44</sup> Noone C., *What does it mean to be an effective regulator in today's Australia?* (Sydney: Nous Group, 2019).



of its methods and impacts in meeting its legal responsibilities and governance requirements.

FINDING 13. SIRA should build on its governance work since the Hayne Royal Commission and take up the challenge to operate as a best in class modern regulator.

## 8 icare response

8.1.1 In accordance with the terms of reference, icare was provided with the opportunity to issue a response to a preliminary working draft of this report. The items raised by icare and addressed are summarised in the table below.

icare feedback	Response
Medical inflation is beyond the control of icare and the NI	Please refer to paragraphs 5.7.10 to 5.7.11 and 5.7.16 to 5.7.21. It is clear that the medical inflation experienced by the NI is the result of medical utilisation by icare. This increase in utilisation and medical spend coincides with the introduction of the new claims model.
The funding ratio decline is due to factors beyond icare and the NI's control	<p>Please see 5.4.4 which recognised the external elements contributing to the deteriorating funding ratio. Several of these elements are the product of items beyond icare's control, however other elements such as medical costs (as per the above) is contributed to by icare.</p> <p>icare observes that the claims performance has not had a material impact on the funding ratio. This is partially correct and as noted in Finity's 30 June 2019 valuation report, in assessing the capital position of the NI, makes some allowance for the current deterioration in claims performance, however assumes that this decline will return to normal levels in the near future. The deteriorating claims performance of the NI has continued and failed to return to normal. Accordingly, unless the issue of deteriorating performance is addressed in the near to immediate future, it will likely have a material impact on the funding ratio of the NI.</p>
icare have agreed to 11 of the 13 findings	Noted.
RTW performance	<p>icare has stated their key focus has been on long-term RTW performance. Recent performance indicators suggest that this long-term RTW rate (26 and 52 weeks) is deteriorating.</p> <p>Further, the focus by icare on long-term RTW management, is inconsistent with the objectives of the workers compensation scheme as set in section 3(b) of the 1998 Act. This provision defines the objective of the scheme is <i>to assist injured workers and to promote their return to work as soon as possible</i>.</p>
Timing and point in time issues with the Review	icare identified that the performance result and issues identified by this Compliance and Performance Review of the Nominal Insurer, were due to the significant transformation program undertaken by icare, shortly before

icare feedback	Response
	<p>that the Review. Accordingly, the results are impacted by the timing. Further icare outlined a series of initiatives undertaken since implementation of the new claims model to remedy several of the issues identified in this Review.</p> <p>Although the issues, may be reflected by a point in time and icare may have taken measures to address some of the concerns, the performance of the NI has continued to deteriorate. Between providing the preliminary draft report to icare and finalising the final report, there has been a further deterioration in the performance of the NI.</p>
Royal Commission references	<p>Although the NI is not governed by the <i>Insurance Act 1973</i> or the <i>Insurance Contracts Act 1984</i>, it is still providing a product of insurance. Insurance is captured as a financial product under section 763A of the <i>Corporations Act 2001</i>. Accordingly, a Royal Commission into financial services, is a highly relevant reference point for this Review.</p> <p>Further, the findings of the Royal Commission set out community expectations for financial service providers and as such is a good reference for both icare and this Review.</p>

## 9 Issues outside terms of reference

### 9.1 Transparency of NI communications

- 9.1.1 It was apparent at commencement of this review that SIRA staff perceived an absence of transparency on the part of the NI team and had an overriding concern that key indicators such as RTW, claims costs and premium variability were not meeting expectations set by the reforms. There was also lack of clarity around the agent model where the NI had reduced the number of private sector firms to three, with one main provider and two ‘run off’ operators. This could be interpreted in terms of Board strategic direction to simplify matters during transition or management preference to recalibrate with a new IT platform. It was simply unclear to the regulator at the time and consequently it had no insight to any underlying impact on performance or risk management assessment.
- 9.1.2 At the initial meeting with the NI it became apparent that the enormity of centralising a new IT platform had caused significant delays with the premium renewal notices in 2016/17 and 2018/19 due to the data verification processes required for transfer to the new system operated by the NI. This is understandable given the scale of the project but the Department of Financial Services and Innovation (DFSI) ICT audit<sup>45</sup> to assess its veracity in 2018 had pointed to significant integration challenges still to be resolved which may then have been rushed.

### 9.2 Strategic direction

- 9.2.1 icare proclaims a focus on the customer in its strategic documents with the aim of early treatment and RTW. Execution appears to have focussed on the claim settlement process and the customer emphasis is on the injured worker, leaving the business operator and others as ‘interested observer’ stakeholders. This is a recurring theme from consultations with interested/involved individuals and groups, and in the public submissions received.
- 9.2.2 In the Second Reading speech introducing the reforms, the Minister described the need for a less adversarial system and this seems to have been interpreted in the new model as accepting provisional liability, get treatment and RTW as soon as possible, but not necessarily with coordinated involvement of employers (especially small business operators) who may only be involved with the system infrequently and find it difficult to navigate.

### 9.3 Medical panel and provider management

- 9.3.1 This review has not covered matters around medical treatment in any detail because the pre-eminent concerns raised were about delays to treatment caused by poor claims management. There were some concerns expressed about lack of choice and independent medical examiners, but it is an output of poor execution rather than an inherent problem with the new claims model.

### 9.4 IT platform

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

---

<sup>45</sup> Personal communication with Department of Finance Services and Innovation staff, 2018.

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

## 9.5 Agent management

- 9.5.1 The strategy to reduce the number of agents appears contrary to NSW Government objectives of competition and innovation and the Second Reading speech by the then Minister (see Section 7.5.3).

## 9.6 Complaints and disputes

- 9.6.1 The Workers Compensation Independent Review Office (WIRO) handles all complaints from workers within the system but there does not appear to be feedback loop to SIRA for improving performance. In fact there are distinct issues around data protection based on privacy principles. Regular data sharing to SIRA would be desirable for the purpose of reviewing process and policy within the regulator's ambit in accordance with section 40B of the Workplace Injury Management and Workers Compensation Act (1998 Act). Workers Compensation Commission (WCC) disputes handling is predominantly resolved at mediation/arbitration. A further avenue for disputes over premium filings is provided by Independent Pricing and Regulatory Tribunal (IPART).

## 10 Conclusions

- 10.1.1 McKinsey's<sup>46</sup> advice to icare clearly identified the reputational and implementation risk inherent to a single agent model. Much of the imperative around the transformation to the new model was apparently necessitated by impending expiry of agent contracts. It is easy in hindsight to conclude that project management was not adequately applied, organisational change not undertaken concurrently, and integration rushed. Unfortunately, these factors have all contributed to the inconsistencies evident in NI compliance and performance which both the analysis and feedback reinforce.
- 10.1.2 The absence of case management fundamentals is all too clear, with substantial shortcomings leading to declining RTW, lack of employer input, minimal verification processes, rising medical costs and provider management issues. As EY stated the model is based on automatic triage of claims, is often incorrectly assigning claims to appropriate support levels and, combined with immediate acceptance of claims through provisional liability, is causing cost blowouts due to the consequent limited claims management support being provided to a large proportion of injured workers. It is even more unfortunate that workers have not always received prompt treatment and employers have been excluded from input into RTW processes and claim validation. As funders of the system, and with obligations for safe working environments, employers view this as a shortcoming in the system and one that is compounded by opaque premium calculations and delays in notifications.
- 10.1.3 In financial terms, the position is somewhat fragile and while investment capacity is extensive on the icare Board, the fundamentals of RTW, underwriting, and claims management have not met expectations and do not compare well with the pre-reform outcomes.

---

<sup>46</sup> McKinsey, *icare claims operating model (section 3.1) Design and transition recommendations* (Sydney: McKinsey, 2017).

## 11 Findings

- FINDING 1. SIRA should review definitions where it requires reporting of data in consultation with all stakeholders.
- FINDING 2. Regular meetings between Board chairs, CE and CEO of SIRA and icare should be continued on an open and constructive basis to promote understanding between, and positive relations with, the two organisations in meeting their respective responsibilities.
- FINDING 3. SIRA continue its review of governance and capabilities within the emerging Fcontemporary approach to regulation.
- FINDING 4. Priority should be given to a training program for GPs by icare.
- FINDING 5. SIRA should continue its monitoring focus on capital adequacy in liaison with Treasury officials.
- FINDING 6. icare should provide SIRA sufficient regular information to assure the regulator that premiums are calculated in compliance with the legislative requirements.
- FINDING 7. icare should provide internal audit planning and risk mitigation actions to SIRA on a regular basis.
- FINDING 8. Regular meetings between senior executives should be utilised to agree on and monitor mitigation plans so that formal penalties can be understood as last resort measures in accord with the spirit of the Premier's memorandum on inter-agency disputes.
- FINDING 9. icare should ensure its agreements with agents and service providers give adequate weighting to the primary goal of RTW.
- FINDING 10. icare should review its internal governance of the claims management model to ensure adequacy of intended outcomes. In particular it should consider allocating files to other agents with expertise to reduce the load on EML and provide time for skills and experience to improve.
- FINDING 11. icare should address the staff turnover at EML as a matter of priority to ensure case management services are improved.
- FINDING 12. The legislative powers available to SIRA should be reviewed and strengthened to enable proper oversight of the NI.
- FINDING 13. SIRA should build on its governance work since the Hayne Royal Commission and take up the challenge to operate as a best in class modern regulator.



## 12 References

'The Wrong Ways to Strengthen Culture' 2019, Harvard Business Review, July–August 2019 Issue. Retrieved from <https://hbr.org/2019/07/the-wrong-ways-to-strengthen-culture>

Australian Prudential Regulation Authority 2018, 'Prudential Inquiry into the Commonwealth Bank of Australia', April, Australian Prudential Regulation Authority. Retrieved from <https://www.apra.gov.au/news-and-publications/apra-releases-cba-prudential-inquiry-final-report-and-accepts-enforceable>

Collie, A, Newnam, S, Keleher, H, Petersen, A, Kosny, A, Vogel, AP & Thompson, J 2019, 'Recovery within injury compensation schemes: a system mapping study', *Journal of Occupational Rehabilitation*, vol. 29, no. 1, pp. 52-63. <https://doi.org/10.1007/s10926-018-9764-z>

Collie, A, Sheehan, L & Lane, T, et al. 2019, 'Injured worker experiences of insurance claim processes and return to work: a national, cross-sectional study', *BMC Public Health*, 19:927, p. 11.

Cullen, K, Irvin, E, Collie, A, et al. 2017, 'Effectiveness of Workplace Interventions in Return-to-Work for Musculoskeletal, Pain-Related and Mental Health Conditions: An Update of the Evidence and Messages for Practitioners', *Journal of Occupational Rehabilitation*.

EY 2018, 'Scheme Monitoring update @August 2018 State Insurance Regulatory Authority', Confidential report, 25 September, p. 13.

EY 2019, 'Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 1: Claims management', Confidential report, 15 November.

EY 2019, 'Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 2: Premium and policy review', Confidential report, 15 November.

EY 2019, 'Compliance and Performance Review of the Nominal Insurer Report to the Independent Reviewer State Insurance Regulatory Authority Part 3: Expense Review', Confidential report, 15 November.

EY 2019, 'Healthcare in Personal Injury Schemes Summary of preliminary findings for NSW Workers Compensation and Compulsory Third Party Schemes', Final report, 11 September, State Insurance Regulatory Authority, Sydney. Retrieved from [https://www.sira.nsw.gov.au/data/assets/pdf\\_file/0006/556089/Ernst-and-Young-Healthcare-in-Personal-Injury-Schemes-Summary-of-preliminary-WC-and-CTP-findings.pdf](https://www.sira.nsw.gov.au/data/assets/pdf_file/0006/556089/Ernst-and-Young-Healthcare-in-Personal-Injury-Schemes-Summary-of-preliminary-WC-and-CTP-findings.pdf)

Harley, H. & Salimbeni, N. 2015, 'ASIC Capability Review Volume 1: Evidence report', 20 November, PricewaterhouseCoopers, Sydney, pp. ix, xi, 16, 25, 29, 69.

Harvey, S, Sadhbh, J & Tan, L, et al. 2014, 'Developing a mentally healthy workplace: A review of the literature. A report for the National Mental Health Commission and the Mentally Healthy Workplace Alliance', School of Psychiatry, University of New South Wales, Sydney, Australia. Black Dog Institute, Sydney, Australia.

Hayne, K M Commissioner 2019, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, 1 February, Commonwealth of Australia, pp. 4, 333. Retrieved from <https://www.royalcommission.gov.au/sites/default/files/2019-02/fsrc-volume-1-final-report.pdf>



Hon Dominic Perrottet MP 2014, Workers Benefit From NSW Government's Sound Financial Management, media release, 26 June, Department of Finance, Services & Innovation, Sydney. Retrieved from <https://www.finance.nsw.gov.au/about-us/media-releases/workers-benefit-nsw-governments-sound-financial-management>

icare 2018, Workers Insurance Scheme (Nominal Insurer) Capital Management Policy, 26 November, p. 7. Retrieved from <https://www.icare.nsw.gov.au/-/media/icare/unique-media/about-us/annual-report/media-files/files/cta/workers-insurance-scheme-nominal-insurer-capital-management-policy-nov2018.pdf>

icare 2019, EML NewCo Operational Performance CITC February 2019, Commercial in Confidence report, February, p. 12.

Joint Premium & Prudential Oversight Committee 2019, JPPOC – ANALYSIS Nominal Insurer FY 2019 report, June.

KPMG 2019, icare Strategic Risk Review, Confidential report, 14 August, icare, pp. 3, 7, 8.

McKinsey 2017, 'icare claims operating model (section 3.1) Design and transition recommendations', Confidential memo.

Ms Carmel Donnelly, General Manager 2014, Answers to questions on notice, Strategy and Performance Safety, Return to Work and Support, 28 April, pp. 1-2.

Noone C. 2019, 'What does it mean to be an effective regulator in today's Australia?', Nous Group. Retrieved from <https://www.nousgroup.com/insights/effective-regulator/>

NSW Parliament 2012, Legislative Assembly: Hansard, 19 June, p. 13014. Retrieved from <https://www.parliament.nsw.gov.au/hansard/Pages/home.aspx?s=1>

NSW Parliament 2012, Legislative Assembly: Hansard, 19 June, p. 13017. Retrieved from <https://www.parliament.nsw.gov.au/hansard/Pages/home.aspx?s=1>

Premier Bob Carr 1997, M1997-26 Litigation Involving Government Authorities, Premier's Memorandum, 8 October, Department of Premier & Cabinet. Retrieved from <https://arp.nsw.gov.au/m1997-26-litigation-involving-government-authorities>

PwC 2018, Review of New Service Model, Confidential report, December, icare.

Safe Work Australia 2018, *Taking Action: A best practice framework for the management of psychological claims for the Australian workers' compensation sector*, Canberra. Retrieved from <https://www.safeworkaustralia.gov.au/system/files/documents/1902/taking-action-framework-2018.pdf>

Safe Work Australia 2019. *Comparative performance monitoring report 20th edition – Part 3*. Canberra, pp. 8, 10, 27. Retrieved from <https://www.safeworkaustralia.gov.au/collection/comparative-performance-monitoring-report-20th-edition>

Social Research Centre 2019, 'Abridged Return to Work Outcomes Survey: NSW Workers Compensation System', October.

Social Research Centre 2019, 'Qualitative research with workers: Experience in the NSW workers compensation scheme (Nominal Insurer)', November.

State Insurance Regulatory Authority 2019, Claims management guide, Glossary: Independent Legal Assistance and Review Service (ILARS). Retrieved from <https://www.sira.nsw.gov.au/workers-compensation-claims-guide/glossary/i/ilars>

State Insurance Regulatory Authority 2019, Regulatory requirements for health care arrangements. Retrieved from <https://www.sira.nsw.gov.au/consultations/regulatory-requirements-for-health-care-arrangements>

The Australasian Faculty of Occupational & Environmental Medicine, 2015 *Realising the health benefits of work – An evidence update*, November.

The Australian Government the Treasury 2019, 'Australian Prudential Regulation Authority Capability Review', June, Commonwealth of Australia. Retrieved from [https://treasury.gov.au/sites/default/files/2019-07/190715\\_APRA%20Capability%20Review.pdf](https://treasury.gov.au/sites/default/files/2019-07/190715_APRA%20Capability%20Review.pdf)

Van der Noordt, M, Jzelenberg, I & Droomers, H, et al. 2014, 'Health effects of employment: a systematic review of prospective studies', *Occupational and Environmental Medicine*, Vol 71: 730-736.

van Vilsteren, M, van Oostrom, SH & de Vet, HCW, et al. 2015. The Cochrane Collaboration Workplace interventions to prevent work disability in workers on sick leave (Review)

WorkCover NSW 2012, NSW Workers Compensation Scheme Issues Paper, 23 April, p. 7. Retrieved from <http://dev.injuredworkerssupport.org.au/wp-content/uploads/2012/04/WorkCover-NSW-Workers-Compensation-Issues-Paper-1.pdf>

WorkCover NSW 2014, Answers to supplementary questions on notice, WorkCover Authority of NSW – Attachment D: Workers Compensation Nominal Insurer Scheme – valuation results as at 31 December 2013, Safety, Return to Work and Support Board briefing, 28 April, p. 11.

Workplace Injury Management and Workers Compensation Act 1998 No 86 (NSW) chapter 2 part 3. Retrieved from <https://legislation.nsw.gov.au/>

## 13 Appendix A: Supervisory approach for licensed insurers

The table below provides a sampling of the powers available to SIRA and sets out the limitations, if any, of the exercise of the powers that SIRA may have as against the NI, self and specialised insurers.

REGULATORY POWER	LEGISLATIVE REFERENCE	LICENSED INSURERS		SELF-INSURERS		COMMENTS
		SPECIALISED INSURERS	NOMINAL INSURER	LICENSED SELF-INSURERS	GOVT SELF-INSURERS	
LICENCE CONDITIONS	(Section 181 of the 1987 Act) Conditions of licence  (Section 211B of the 1987 Act) Govt employers SIRA may impose conditions	✓	✗	✓	✓	SIRA does not have legislative authority to impose conditions on the NI.
CONDUCT	Business plans  (Section 202B of the 1987 Act) Business plans of licensed insurers Licensed insurers to prepare and deliver a business plan and conduct business in accordance with the business plan  (Licence condition & section 189 of the 1987 Act request) Business plan required	✓	✓	✓	✓	
	(Licence condition) Conduct: The licensee must do all things necessary to ensure its workers compensation business is conducted efficiently, honestly and fairly.	✓	✗	✓	✓	SIRA cannot impose conduct requirements on the NI.

REGULATORY POWER	LEGISLATIVE REFERENCE	LICENSED INSURERS		SELF-INSURERS		COMMENTS
		SPECIALISED INSURERS	NOMINAL INSURER	LICENSED SELF-INSURERS	GOVT SELF-INSURERS	
	(Licence condition) Compliance with laws: The licensee must establish and maintain compliance measures to ensure legislative compliance.	✓	✗	✓	✓	SIRA cannot impose requirements to maintain compliance measures on the NI.
	(Licence condition) Self-audits: The licensee to undertake self-audits of its compliance with legislative requirements (claims management/ premium setting) and associated data quality and provide the results to SIRA.  Although this is specific to licence conditions, SIRA can conduct audits on the NI based on s202A of the 1987 Act	✓	✗	✓	✓	SIRA cannot impose self-audit requirements on the NI.
	(Licence condition) WC insurance business data: The licensee is required to give SIRA data, reports and information relating to its insurance business if requested by SIRA.  SIRA can however request information from the NI based on section 40B and 40C of the 1998 Act, though it is not an express licence condition.	✓	✗	✓	✓	There is no general information provision requirement under legislation.  SIRA cannot request WC data/ information from the NI.

REGULATORY POWER	LEGISLATIVE REFERENCE	LICENSED INSURERS		SELF-INSURERS		COMMENTS
		SPECIALISED INSURERS	NOMINAL INSURER	LICENSED SELF-INSURERS	GOVT SELF-INSURERS	
	(Licence condition) Notification of significant matters: The licensee to notify to SIRA of significant matters including significant legislative breach and privacy breach, significant legal matter, inability to continue operations and financial default and any other matter.	✓	✗	✓	✓	SIRA cannot impose significant matter notification requirements on the NI.
	(Section 40D of 1998 Act) Power to require a scheme participant to notify the Authority (SIRA) of any contravention of this Act.	✓	✓	✓	✓	Contraventions that must be notified must be prescribed in the Regulation
CLAIMS MANAGEMENT	Claims administration manual (Section 192A(4) of the 1987 Act): Direction to a licensed insurer to comply with the Claims administration manual.	✓	✓			
	(Licence condition) The Licensee to comply with the Claims administration manual.			✓	✓	
	(Section 194 of the 1987 Act) Direction to insurers regarding claims procedures: SIRA may issue directions requiring adoption of specified processes and strategies in the handling of claims for compensation or work injury damages.	✓	✓	✓	✓	

REGULATORY POWER	LEGISLATIVE REFERENCE	LICENSED INSURERS		SELF-INSURERS		COMMENTS
		SPECIALISED INSURERS	NOMINAL INSURER	LICENSED SELF-INSURERS	GOVT SELF-INSURERS	
PREMIUM SETTING	(Section 168 of the 1987 Act) Market practice and premium guidelines (MPPGs): Licensed insurer to comply with MPPGs. (condition on licence including the NI).	✓	✓	N/A	N/A	
PRUDENTIAL MANAGEMENT	(Section 202C of the 1987 Act) Prudential standards: The regulations may make provision with respect to prudential standards to insurers.  (Licence condition) Prudential management: The licensee must maintain long-term financial viability, prudent claims reserving policies and sufficient financial resources to meet WC obligations.	✓ (APRA regulated excluding the Govt monopolies)	✗	✓ (security requirements)	N/A (backed by the State Govt)	SIRA cannot prudentially regulate the NI as the Prudential standards have not been made and SIRA cannot impose licence conditions on the NI to compensate.
BUSINESS INFORMATION	Section 189 of the 1987 Act: Information and records to be supplied to SIRA (including actuarial reports, financial condition reports and business plans where applicable).	✓	✓	✓	✓	
	Section 40C of 1998 Act: Power to require an insurer to disclose data relating to policies, claims and other workers compensation matters.	✓	✓	✓	✓	

REGULATORY POWER	LEGISLATIVE REFERENCE	LICENSED INSURERS		SELF-INSURERS		COMMENTS
		SPECIALISED INSURERS	NOMINAL INSURER	LICENSED SELF-INSURERS	GOVT SELF-INSURERS	
ENFORCEMENT ACTIONS	Section 183A of the 1987 Act - Imposition of civil penalty and censure of insurer (for contravention of licence, Act or Regulations).	✓	✓	✓	✓	
	(Various sections) Application of penalty notices.	✓	✓	✓	✓	
	Section 202A of the 1987 Act Performance audits by Authority: SIRA can conduct an audit of all or any particular insurer's WC activities to determine whether the activities are being undertaken effectively, economically or efficiently.	✓	✓	✓	✓	
DEFAULTS	Section 190 of the 1987 Act: Notification of certain defaults.	✓	✓	✓	✓	
	Section 191 of the 1987 Act Power of Supreme Court to deal with insurer unable to meet liabilities.	✓	✓	N/A	N/A	
INFORMATION KEEPING	(Section 201 of the 1987 Act) Requirement to keep accounting and other records.	✓	✓	✓	✓	
	(Section 202 of the 1987 Act) Audit or inspect accounting and other records.	✗	✓	✗	✗	Section specifically excludes specialised insurers and self-insurers.

REGULATORY POWER	LEGISLATIVE REFERENCE	LICENSED INSURERS		SELF-INSURERS		COMMENTS
		SPECIALISED INSURERS	NOMINAL INSURER	LICENSED SELF-INSURERS	GOVT SELF-INSURERS	
	Section 173 of the 1987 Act Power to make regulations requiring premium calculation information.	✓	✓	N/A	N/A	
REGULATORY POWER	(Section 238 of 1998 Act) Power to enter premises and inspect records.	✓	✓	✓	✓	
	(Section 238AA of 1998 Act) Power to require information by way of written notice.	✓	✓	✓	✓	