



PERFORMANCE AUDIT

2 APRIL 2024

Workers compensation claims management

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

THE ROLE OF THE AUDITOR-GENERAL

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GPO Box 12
Sydney NSW 2001

The Legislative Assembly
Parliament House
Sydney NSW 2000

The Legislative Council
Parliament House
Sydney NSW 2000

In accordance with section 38EC of the *Government Sector Audit Act 1983*, I present a report titled '**Workers compensation claims management**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford PSM
Auditor-General for New South Wales
2 April 2024



RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

contents

Workers compensation claims management

Section one – Workers compensation claims management

Executive summary	1
Introduction	10
Reforms to the claims management model for the Nominal Insurer	20
Reforms to the claims management model for the Treasury Managed Fund	24
icare's accountability for workers compensation scheme outcomes	28
Oversight of workers compensation scheme performance	32

Section two – Appendices

Appendix one – Responses from audited agencies	38
Appendix two – About the audit	56
Appendix three – Performance auditing	58

Section one

Workers compensation
claims management

Executive summary

Workers compensation schemes in New South Wales provide workplace injury insurance for around 4.7 million workers. The effective management of workers compensation is important to ensure injured workers are appropriately supported and provided with prompt treatment to ensure timely, safe and sustainable return to work. There were around 110,000 injured workers compensation claims in 2022–23.

The two main workers compensation schemes in NSW are the Nominal Insurer (NI), which is for the private sector and is funded by premiums paid by employers, and the Treasury Managed Fund (TMF) which covers public sector workers and is funded by the NSW Government.

Insurance and Care NSW (icare) is responsible for managing the provision of workers compensation insurance, as well as several other insurance schemes. The State Insurance Regulatory Authority (SIRA) is responsible for regulating workers compensation and other insurance schemes. NSW Treasury has an oversight and monitoring role but does not directly manage or regulate workers compensation schemes.

icare outsources the management of workers compensation claims to several external insurance agents, which it refers to as claims service providers (CSPs). Tasks completed by CSPs include registering and assessing workers compensation claims, managing payments to injured workers, and liaising with injured workers, employers, and medical providers to support injury management and return to work.

The objective of this audit was to assess the effectiveness and economy of icare's management of workers compensation claims, and the effectiveness of SIRA's oversight of workers compensation claims. To address this objective, the audit considered whether icare's reforms to its workers compensation claims management models are effective and economical, and whether there is an effective performance and accountability framework for the NI and TMF.

Conclusion

In response to a significant decline in the performance of workers compensation schemes, icare is implementing major reforms to its approach to workers compensation claims management—but is yet to demonstrate if these changes are the most effective or economical way to improve outcomes for the schemes. icare’s planning and assurance processes for its reforms to its claims management approach did not adequately assess its existing claims models or conduct detailed analysis of other options to inform decisions on the changes. icare has implemented several broader organisational improvement programs in recent years. While these programs respond to recommendations of previous external reviews, they have not focused enough on icare’s accountability for improving return to work outcomes and maintaining the financial sustainability of workers compensation schemes.

icare has committed significant resources to reforms to its claims management models and broader organisational improvements in recent years. icare decided on a new claims management model for the Nominal Insurer (NI) in 2021. This decision was based largely on criticisms of the previous model in external reviews. icare did not conduct its own detailed analysis to identify the specific causes of performance problems or thoroughly test options and assumptions before proceeding with a multi-billion dollar procurement process to implement the new model. icare’s reforms to claims management for the NI introduce competition between outsourced Claims Service Providers (CSPs) and build financial incentives into contracts. The gaps in icare’s planning and assurance work mean it is unclear whether these changes will address the main causes of previous poor performance in the NI. Return to work rates in the NI have stopped declining in recent years, though performance remains below historical levels and the cost of the scheme continues to rise.

icare has not comprehensively reviewed or reformed its claims management model for the Treasury Managed Fund (TMF). icare produced a business case for a ‘TMF transformation program’ but this did not include an evaluation of the effectiveness or economy of the existing model being used for the TMF, or a detailed analysis of options for reform. Despite this, icare commenced a procurement process for CSPs for the TMF in December 2023 which will follow the model used for the NI reforms. This includes aiming to introduce competition between CSPs and making changes to its remuneration model. icare has adjusted contracts with CSPs several times in recent years, resulting in increases to the guaranteed fees paid to CSPs. Over the past five years, return to work rates in the TMF have fallen and the cost of the scheme has increased significantly. This has been driven largely by the increasing number of psychological injury claims.

When deciding on its overall strategy for reforming workers compensation claims management, the icare Board endorsed a decision to define icare’s role as a ‘platform’ provider that would facilitate self-direction and choice for employers and employees. icare did not adopt an alternative proposed model which placed transparency and clear accountability for scheme performance at the center of icare’s role. The decision to adopt the ‘platform’ model informed subsequent decisions icare made when making reforms to the NI and the TMF. icare’s most recent corporate strategy describes the current phase of its organisational strategy as ‘increase focus on those we serve’. icare also began reporting more detailed performance information for the NI in late 2023. This indicates a move towards a greater focus on outcomes.

icare’s reforms to the NI include work to improve the effectiveness of claims management processes. However, the primary objectives of the major reforms articulated by icare were system enablers such as creating a competitive market of outsourced claims managers, rather than the achievement of improved return to work outcomes and financial sustainability. icare’s reforms for the TMF in recent years have not given sufficient attention to the key issue of the increasing number of psychological injury claims, which poses substantial risks to the financial sustainability of the TMF. Many of icare’s reforms in recent years have been focused on internal improvements, which have contributed to a significant increase in icare’s corporate costs. For example, icare’s total permanent employee expenses increased by 29% between 2020–21 and 2022–23 while its spending on hired labour increased to more than \$100 million per year during this period.

SIRA has improved the effectiveness of its regulation of the NI in recent years but has only recently commenced activities focused on the TMF. Prior to 2019, SIRA was mostly focussed on developing regulatory guidelines and frameworks and was less active in supervising the schemes.

SIRA updated its regulatory framework to guide its approach to the oversight of workers compensation in 2021. In line with this framework, SIRA has targeted its recent regulatory activities to areas identified as higher risk, including the initial phase of claims management, and the management of psychological injury claims. SIRA developed a more strategic approach to regulating employer compliance with workers compensation obligations in 2020 but did not previously have a strategic approach.

The performance of the NI and TMF declined significantly between 2015 and 2019, but SIRA's reporting on workers compensation schemes did not raise concerns about their performance. SIRA's work in its initial years of establishment focused mostly on developing regulatory frameworks and standards and setting up its operations. SIRA commenced regular audits of the NI in 2019, after claims management performance in the NI had deteriorated significantly. Its first comprehensive audit of claims management files for the TMF commenced in 2023. SIRA's recent internal review identified it has not allocated sufficient resources to investigate and prosecute potential cases of fraud. SIRA has not yet fully addressed the review's recommendations, which included allocating more resources to fraud investigations.

NSW Treasury does not have a legislative role in relation to workers compensation which has limited its ability to support performance improvements. Recent legislative amendments providing NSW Treasury with information gathering powers on icare's activities should allow it to take a more active role.

1. Key findings

icare did not assess its existing claims management model or conduct a comprehensive options analysis assessing alternative approaches before commencing reforms to the NI

In 2021, following significant deterioration in the performance of the scheme, icare decided to change the NI claims management model from a single outsourced CSP to a model using multiple CSPs. icare did not conduct a detailed analysis of options before deciding on its new claims management model. During this audit, icare advised that it relied on the findings of an external review of the NI in 2019 to inform its decision to change its claims management model. This review had highlighted several problems with icare's single CSP claims management model and recommended that changes were required.

However, the findings and recommendations from an external review do not replace the need for icare to conduct its own detailed analysis before making major operational decisions. icare advised that the option of an in-house claims management model was discussed during meetings of the icare Board in 2021 but was not analysed in detail because it was not considered feasible. icare was established in 2015 but has not conducted a detailed assessment of the effectiveness and economy of the outsourcing approach it has used since its establishment.

icare did not complete a business case before commencing its procurement process for additional CSPs for the NI to support its new claims management model. At the point when icare sought approval from the icare Board to engage new CSPs, the maximum total contract value for the engagement of the six CSPs was estimated at between \$3.7 billion and \$6.4 billion over ten years. The NSW Procurement Strategy and NSW Treasury Business Case Guidelines require agencies to submit a business case to NSW Treasury for investment proposals over \$10 million. icare is not bound by these rules for procurement for the NI and its procurement policy does not require the development of a business case. However, the icare Board had decided that icare should follow NSW Government procurement policies for all of its procurement.

icare could have used a business case to conduct detailed analysis of the costs and benefits of different claims management models available to it. Options that were not explored in detail by icare include remaining with a single-provider model with improved support and performance incentives, in-house provision of services by icare, or various hybrid delivery models. The absence of a business case reduces icare's accountability for improved outcomes and means that the stated benefits and costs of icare's claims services model, including the assumptions behind the expected benefits, were not articulated or tested adequately.

icare conducted a comprehensive procurement process for new CSPs for the NI and has developed a payment structure that aims to provide incentives for improved performance

After selecting its claims management model, icare developed a detailed procurement strategy that outlined the objectives of the new claims management model for the NI, as well as expected costs, services sought, and a governance framework. The procurement process for CSPs involved an open market process that included extensive engagement with potential providers. This allowed icare to improve its understanding of the capacity and capability of providers and to use this to refine the details of its claims management model. This demonstrated a significant improvement in icare's procurement processes compared to previous examples of major procurements that did not comply with standard assurance and probity requirements.

icare developed a revised remuneration structure that aims to provide more financial incentives for CSPs to improve their performance compared to previous arrangements. Under the new model, the base fees for CSPs are set at below their expected operating costs, with additional payments dependent on the CSPs meeting performance targets. These changes are not yet fully implemented, as several CSPs only commenced work in late 2023 and the transition is being staged, so it is too early to assess the effectiveness of the changes to the remuneration structure at this point.

For at least the first year of the new model, icare has committed to paying a proportion of the performance-based outcome fees to CSPs even if they do not achieve their targets. This is intended to support CSPs to invest in their systems with the goal of achieving better longer-term performance. However, it means that for at least the first year of its new NI claims management model, icare will pay CSPs more for similar or potentially lower performance. CSP remuneration has increased in each financial year from 2018–19 to 2022–23.

The return to work rate targets for CSPs were lower in 2023 compared to 2022. icare lowered the return to work rate targets to account for the impact of the transition to the new multiple provider claims management model.

There are ongoing issues with the accuracy of weekly payments to injured workers

SIRA audits of the NI and TMF have identified examples of inaccurate calculation of weekly payments between 2012 and 2019 that led to the underpayment of compensation to around 20,000 injured workers totalling up to \$40 million. These errors are being addressed through remediation programs involving paying claimants who were likely to have been underpaid.

icare and SIRA reviews identified further errors in claim payments for NI claims after 2019, which arose as a result of adjustments for indexation not being completed. The underpayments affected an additional 13,915 claimants, with underpayments totalling up to \$14.7 million. In December 2023, SIRA issued a formal letter of censure to icare due to this breach of icare's responsibility to ensure workers compensation payments are in line with legislative requirements.

Audit Office of NSW financial audit reports in 2021 and 2022 found similar examples of incorrect payments that had not been identified or addressed by icare's peer review process. Problems identified included inaccurate calculations of payment amounts, indexation errors, and insufficient documentation to demonstrate how the calculation was made. The errors identified did not result in material financial statement errors. Our reports have made a repeat recommendation that icare needs to ensure it has sufficient controls in place to ensure correct payments are made.

icare's focus for reforming the TMF is not based on addressing key strategic challenges for the scheme

icare initiated a 'TMF transformation program' in 2022 in response to a decline in claims management performance and an increase in costs in the TMF. The business case for the TMF transformation program did not include an assessment of the key strategic challenges for the TMF or describe how the transformation would improve return to work rates. Instead, it focused predominantly on the implementation of a single IT platform for managing workers compensation claims. While a single IT platform may be an important technological enabler for claims management, it does not address the underlying strategic issues that have contributed to declining performance and increasing costs. icare expects that the implementation of the new IT system will cause a short-term decline in return to work rates for the TMF. Reducing performance in return to work rates, even if only temporarily, can have a long-term impact on outcomes for affected workers and for scheme costs.

icare has acknowledged that a key challenge to the performance of the TMF and the NI is the increase in psychological injury claims, with a particularly pronounced impact on the TMF. icare has trialled several programs for preventing and managing psychological injury in recent years and provided reports to NSW government agencies advising them about their increasing rate of psychological injury rates. However, these were not developed as part of a strategic approach to addressing this issue and were not a part of icare's improvement program.

In late 2023, NSW Treasury established a steering committee that will develop a whole of government plan for improving return to work outcomes. This provides an opportunity for icare to contribute to more focused work on improving the management of psychological injury claims.

icare has commenced a procurement process for the TMF without comprehensively assessing its claims management model

icare has had the same claims management model for the TMF, using the same three CSPs, since before it was established in 2015. icare inherited contractual arrangements with three CSPs that had commenced in 2010 and were renewed in 2015. Its most recent procurement process for CSPs took place in 2019. Before commencing the 2019 procurement, icare did not evaluate the effectiveness of the arrangements that were in place from 2010 to 2019 or analyse alternative options for claims management models.

In December 2023, icare completed a procurement strategy to guide its procurement of CSPs for the TMF. The strategy referred to broad improvement objectives for the TMF, which include improving return to work performance and increasing capability to manage psychological injury claims. It was supported by analysis of the recent performance of the scheme. The TMF procurement strategy included a brief comparison of the advantages and disadvantages of in-house and outsourced claims management models but did not assess these in detail or assess other options for models using a mixture of in-house and outsourced services.

The TMF procurement strategy estimates that the new claims model will lead to savings, but it does not provide detailed analysis to explain the assumptions behind these estimates and notes that the modelling is not complete. Fees paid to CSPs are likely to be higher under the new model because it is based on the model adopted in the NI. In the period between 2018–19 and 2022–23, the fees icare paid to CSPs increased by around 40%. icare's procurement strategy did not include any analysis of the factors influencing this increase in fees.

In addition, icare set its TMF return to work target in 2022–23 at around ten percentage points below its actual rate from the previous year. icare did not have any return to work rate targets for the TMF in its business planning documents prior to 2022–23.

icare's accountability for achieving the key objectives of workers compensation schemes – improving return to work outcomes and financial sustainability – is not clear enough

One of the stated goals of icare's NI improvement program is 'getting injured workers back to work sooner' and the improvement program includes implementing a new claims management model for the NI. Alongside this program, icare has made other smaller changes to the day-to-day claims management processes including clarifying roles and responsibilities and developing a professional standards framework.

While these practical changes have the potential to help improve claims management performance, icare's acceptance of overall accountability for scheme outcomes remains unclear. In 2021, icare considered several 'business models' that would guide its overall approach to managing workers compensation schemes. It decided to adopt what it described as a 'platform' model, which positioned icare as a facilitator of relationships between employers and the outsourced companies providing insurance claims management. Among the models that it chose not to adopt was a 'scheme administrator' model, which focused on transparency and clear accountability for performance.

This underlying approach can be seen in icare's reforms to the claims management model for the NI. Some elements of the reforms target improvements in return to work outcomes, such as the introduction of performance-based payments to CSPs. However, icare described the goal of its reforms as creating a competitive market of CSPs that would provide choice to employers, which indicates icare taking accountability for implementing system changes but not for the achievement of outcomes. It is also evident in icare's reporting on scheme performance in recent years, which has not provided adequate transparency about performance targets against key measures or the major challenges facing workers compensation schemes. For example, icare's Statement of Business Intent that outlines icare's strategic approach to managing its operations reports on return to work rate targets for the NI but these targets have changed in each of the last four financial years.

icare's most recent corporate strategy documents describe the current phase of its organisational strategy as 'increase focus on those we serve'. Prior to this, its organisational strategy was to 'simplify for improved outcomes'. This indicates a greater focus on injured workers compared to its previous approach. icare also plans to increase the amount of information it publishes on the performance of workers compensation schemes. In late 2023 it began publishing performance against several key outcome measures by CSP.

icare has committed significant resources to internal organisational improvement programs which have contributed to increases in icare's corporate expenses

icare commenced an organisational improvement program in 2021. The program involves implementing the recommendations from previous external reviews which focused on icare's management of the NI and the governance, accountability, and culture of the organisation. The reviews that informed icare's improvement program provided a combined total of 107 recommendations. Of these, 98 related to internal systems and processes at icare such as procurement, governance, and risk management. These are important improvements, but it is unclear why this work was prioritised over initiatives that could have made a more direct contribution to improving performance of workers compensation schemes.

icare has committed significant resources to its improvement program. It has commissioned regular independent reviews of its program and published these reports on its website. Accountability for implementing recommendations of external reviews is important. However, the strong focus on internal organisational projects has contributed to increases in icare's operating expenses. For example, icare's total permanent employee expenses increased by around \$62 million (29%) between 2020–21 and 2022–23 while its spending on hired labour increased to more than \$100 million per year. icare's other operating expenses increased by \$115 million (16%) during the same period. These costs are passed on to employers via increases in premiums for the NI and increased payments by NSW government agencies for the TMF.

SIRA increased its regulatory activities for the NI from 2019 but only began actively focusing on the TMF in 2023. Prior to 2019, SIRA was mostly focused on developing regulatory guidelines and frameworks

One of SIRA's key legislative objectives is to provide effective supervision of the workers compensation system, as well as other NSW insurance schemes. In 2021, SIRA updated its regulatory framework that sets out its approach to the regulation of the entities within its remit, including workers compensation schemes. The framework outlines its four 'pillars' of regulatory work – scheme design, licensing, supervision, and enforcement – and provides information on its approach in each of these areas. SIRA has increased its focus on supporting improvements to return to work outcomes and the management of psychological injury claims in recent years.

Prior to this, SIRA had developed regulatory standards and frameworks on the management of workers compensation. This includes the 2018 Standards of Practice outlining broad claims management principles and minimum claims management expectations, and the 2017 Insurer Supervision Model outlining SIRA's approach to monitoring and supervising the performance across worker compensation insurers.

SIRA advises its 2017 Insurer Supervision Model enabled it to identify a decline in the NI's performance in 2018. SIRA increased its monitoring and supervision of the NI from 2018–19 when it commissioned an independent review of the NI. SIRA also issued civil penalty notices on the NI in 2019 for breaching legislation and in 2020 for breaching guidelines.

SIRA conducted the first broad TMF review in 2023. Prior to this, SIRA had conducted a narrow review of workers compensation claims from Corrective Services NSW in 2020 and 2022. It is unclear why SIRA did not conduct broader audits of the TMF earlier. We did not see evidence of SIRA taking a strategic approach to the regulation of the TMF in earlier years despite the deteriorating return to work performance, increasing costs, and the emerging risks related to the rise in psychological injury claims.

SIRA began focusing on improving compliance of employers with workers compensation obligations from 2020, but did not have a strategy or active program prior to this

In 2020, SIRA created an Employer Supervision and Return to Work Directorate to develop an employer supervision strategy and focus its employer regulation approach. The strategy and framework for employers were finalised in 2022. SIRA established a team to undertake employer education activities and conduct reviews of employer compliance in 2021. SIRA did not have an employer supervision and compliance strategy or function prior to this. Rather, SIRA relied on SafeWork inspectors to review compliance and provided capability building resources to SafeWork and employers, such as guidelines and online tools.

SIRA has not allocated sufficient resources to investigate and prosecute fraud

SIRA has a legislative responsibility to assist in measures to deter and detect fraud within the workers compensation schemes. In February 2023, SIRA engaged an internal review to assess its capability and structure in enforcement and prosecution in all schemes it oversees, including the Compulsory Third Party scheme and the Home Building Compensation Fund. The review found there was a backlog of high-risk fraud referrals and recommended SIRA expand its investigations team to ensure referrals are appropriately investigated. This increases the risk that cases of fraud may have gone undetected in recent years.

During this audit, SIRA advised it has engaged additional resources for the employer investigations team and will consider further additional resourcing in 2024–25 to fully implement recommendations of the review.

There is duplication across SIRA and icare's workers compensation research programs

SIRA and icare have independently commissioned research and developed programs in similar areas in recent years. There is some overlap between this work, especially in mental health-related work. A more coordinated approach between SIRA, icare and other stakeholders would help improve the efficiency of these areas of work.

A previous review of the legislative arrangements for workers compensation found that SIRA had limited powers to regulate the NI because it cannot effectively impose enforcement actions and recommended SIRA be given additional regulatory powers over the workers compensation scheme. The review also found the roles and responsibilities between icare and SIRA were unclear in some areas. For example, SIRA as the regulator also has operational responsibilities over the workers compensation scheme. Both these issues are yet to be addressed.

NSW Treasury's role in overseeing icare is not clearly defined and its ability to support performance improvements in workers compensation could be improved

NSW Treasury does not have a legislated role in the management of workers compensation. icare is directly accountable to the icare Board and the icare Board is accountable to the responsible minister for icare's performance. In previous years there has been no consistent external oversight of icare's cost base, but in November 2023, icare's responsible minister announced that NSW Treasury will conduct a review of icare focusing on its operational costs.

The TMF is funded by the NSW Government and has a direct impact on the NSW budget, so NSW Treasury has a role in advising the Treasurer on the operations of the TMF. NSW Treasury also supports the minister responsible for icare, so has a role in advising that minister in relation to icare's management of the NI. This includes reviewing and advising the minister on icare's annual Statement of Business Intent (SBI). The SBI must be submitted to the minister and Treasurer and the minister may require icare to make changes if they are not satisfied with the SBI.

This audit identified several gaps in icare's governance and assurance processes for major projects. As described above, icare gained approval from the icare Board to proceed with changes to its claims management models without completing detailed options or cost-benefit analysis. icare has also focused significant resources and attention on activities that do not directly support the achievement of key legislative objectives of workers compensation schemes.

NSW Treasury has worked with icare to promote awareness of the significant increase in psychological injury claims in the TMF. This has included facilitating discussions at meetings of the NSW Secretaries Board and sending letters to the heads of NSW government departments. NSW Treasury is also chairing a multi-agency steering committee to develop a strategy to help improve return to work outcomes and financial sustainability in the TMF.

2. Recommendations

By December 2024, icare should:

1. ensure that its annual Statement of Business Intent clearly sets out its approach to achieving legislative objectives for workers compensation schemes. This should be published and should include:
 - a plan and actions for improving performance against the key legislative objectives of optimising return to work and maintaining the financial sustainability of workers compensation schemes
 - consistent and measurable targets relevant to the key legislative objectives of workers compensation schemes
 - plans for improving the management of psychological injury claims for workers compensation schemes.
2. develop a monitoring and evaluation framework and commence monitoring and evaluation of the effectiveness of its reforms to the NI and TMF. This should focus on assessing outcomes against the key legislative objectives of workers compensation schemes and icare's principal legislative objectives and align with NSW Treasury evaluation policy and guidelines
3. develop a quality assurance program to ensure weekly claim payments to injured workers are accurate and supported by sufficient documentation for verification of their accuracy.

NSW Treasury should:

4. work with relevant NSW government agencies including icare, SIRA, SafeWork NSW and the Premier's Department to:
 - identify and address NSW Government agency policies and practices that do not support optimal return to work outcomes or are not in line with legislative obligations
 - identify actions to improve the long-term financial sustainability of the scheme.
5. engage with the icare Board to ensure icare's management of workers compensation schemes is in line with the Commercial Policy Framework and other relevant NSW Treasury policies. This should include an increased focus on:
 - icare's transparency and accountability for the achievement of the key legislative objectives of workers compensation schemes
 - icare's governance and assurance processes for major reform projects, including its claims management models
 - icare's evaluation and monitoring of the outcomes of major reform projects.

By December 2024, SIRA should:

6. respond to gaps identified in its approach to investigating and responding to fraud
7. develop a coordinated research strategy, in consultation with icare and other relevant stakeholders, to ensure the value of research and pilot programs relating to workers compensation is maximised.

1. Introduction

1.1 Workers compensation system in New South Wales

Under the *Workers Compensation Act 1987*, it is compulsory for employers to hold workers compensation insurance. The NSW workers compensation scheme supports people injured at work by helping with the costs of living, medical expenses, and other supports to aid recovery and return to work. The support provided comes in several forms, including weekly benefits, domestic assistance, and education and training.

The effective management of workers compensation is important to ensure injured workers are appropriately supported and provided with prompt treatment to support timely, safe and sustainable return to work. Helping injured workers get back to work as soon as possible improves medical, social and psychological outcomes for claimants and has financial benefits through reduced claims costs for employers.

The first workers compensation scheme was established in NSW early in the twentieth century and applied only to personal injuries from defined dangerous occupations such as physical labour jobs. The modern workers compensation scheme was established in the late 1980s. It had a broader goal of promoting productive, healthy and safe workplaces. A single government entity, WorkCover, acted as both insurer and regulator for workers compensation. Its functions included: oversight and regulation; licensing of private insurance companies to manage claims; injury management; and oversight of the workers compensation fund.

Concerns about financial viability and potential conflicts between WorkCover's multiple roles emerged from the early 2000s. In response, the Law and Justice Committee of the NSW Parliament undertook an inquiry into WorkCover's operations in 2014. The review recommended, among other things, a clear separation between WorkCover's insurance provision and its regulatory functions.

The *State Insurance and Care Governance Act 2015* created three new entities to replace WorkCover. Insurance and Care NSW (icare) became the scheme operator. The State Insurance Regulatory Authority (SIRA) became the scheme regulator and SafeWork NSW became the regulator responsible for workplace safety.

icare manages the two main workers compensation schemes, which are:

- the workers compensation Nominal Insurer (NI) for the private sector
- the Treasury Managed Fund (TMF) for NSW government employees.

Exhibit 1 provides an overview of NSW workers compensation entities.

Exhibit 1: Government entities with responsibility for workers compensation in NSW

Workers Compensation				
Regulators		Operator		
SIRA	SafeWork	icare		
Insurance regulation: <ul style="list-style-type: none"> • NI • TMF • Self-insurance • Specialised (industry) insurers 	Workplace regulation: <ul style="list-style-type: none"> • licensing & registration • investigation • enforcement 	Insurance providers for: <ul style="list-style-type: none"> • NI • TMF 		
		<table border="1"> <tr> <td> NI providers: <ul style="list-style-type: none"> • EML • Allianz • QBE • GIO • DXC • Gallagher Basset </td> <td> TMF providers: <ul style="list-style-type: none"> • EML • Allianz • QBE </td> </tr> </table>	NI providers: <ul style="list-style-type: none"> • EML • Allianz • QBE • GIO • DXC • Gallagher Basset 	TMF providers: <ul style="list-style-type: none"> • EML • Allianz • QBE
NI providers: <ul style="list-style-type: none"> • EML • Allianz • QBE • GIO • DXC • Gallagher Basset 	TMF providers: <ul style="list-style-type: none"> • EML • Allianz • QBE 			

Source: Audit Office of New South Wales analysis of icare, SIRA and SafeWork NSW annual reports 2022–23.

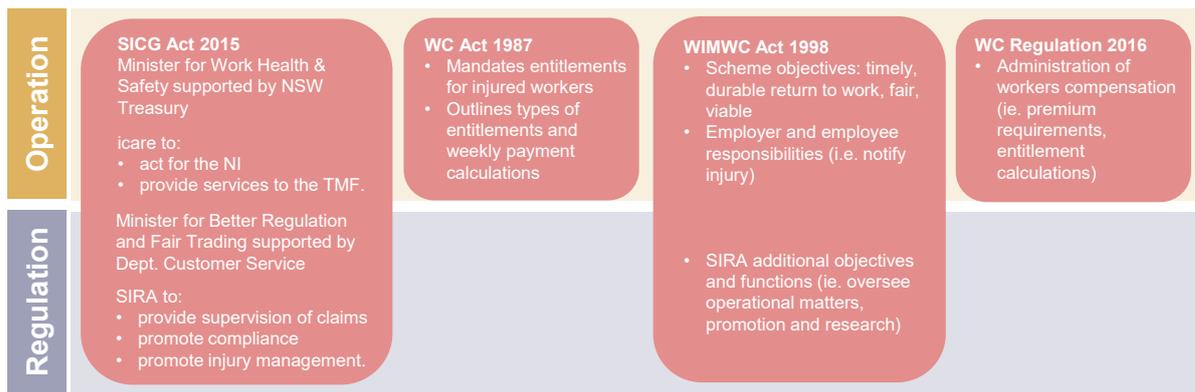
icare is a NSW Government agency governed by the icare Board. The icare Board reports to the Minister for Work Health and Safety on matters relating to workers compensation. The legislation that established icare in 2015 did not include a specific statement of icare’s principal objectives, but its role as manager of the workers compensation schemes gave it responsibility for the key objectives of workers compensation – supporting return to work and maintaining the financial sustainability of the schemes. A legislative amendment in October 2023 confirmed this, defining icare’s principal objectives as maintaining the financial sustainability of insurance schemes, optimising recovery and return to work for injured workers, and promoting efficiency, transparency and accountability in its operations.

SIRA is a NSW Government agency responsible for regulating the NI and the TMF and other workers compensation schemes including self-insurers and specialised insurers. SIRA also regulates the Compulsory Third Party and Home Building Compensation schemes and has some regulatory functions in relation to the Lifetime Care and Support and Dust Diseases Care schemes. SIRA is an independent agency and reports to the Minister for Better Regulation and Fair Trading.

NSW Treasury does not have a direct role in managing or regulating workers compensation schemes. However, it provides advice on the performance and operations of the workers compensation schemes to the Treasurer and the Minister for Work Health and Safety. It also has a direct interest in the financial sustainability of the TMF, as this is funded by the NSW Government.

The *Workplace Injury Management and Workers Compensation Act 1998* (WIMWC Act), the *Workers Compensation Act 1987* (WC Act), and the *Workers Compensation Regulation 2016* (WC Regulation) establish the workers compensation scheme in NSW. The legislative and reporting framework for workers compensation in NSW is set out in Exhibit 2.

Exhibit 2: Summary of the legislative framework for workers compensation in NSW



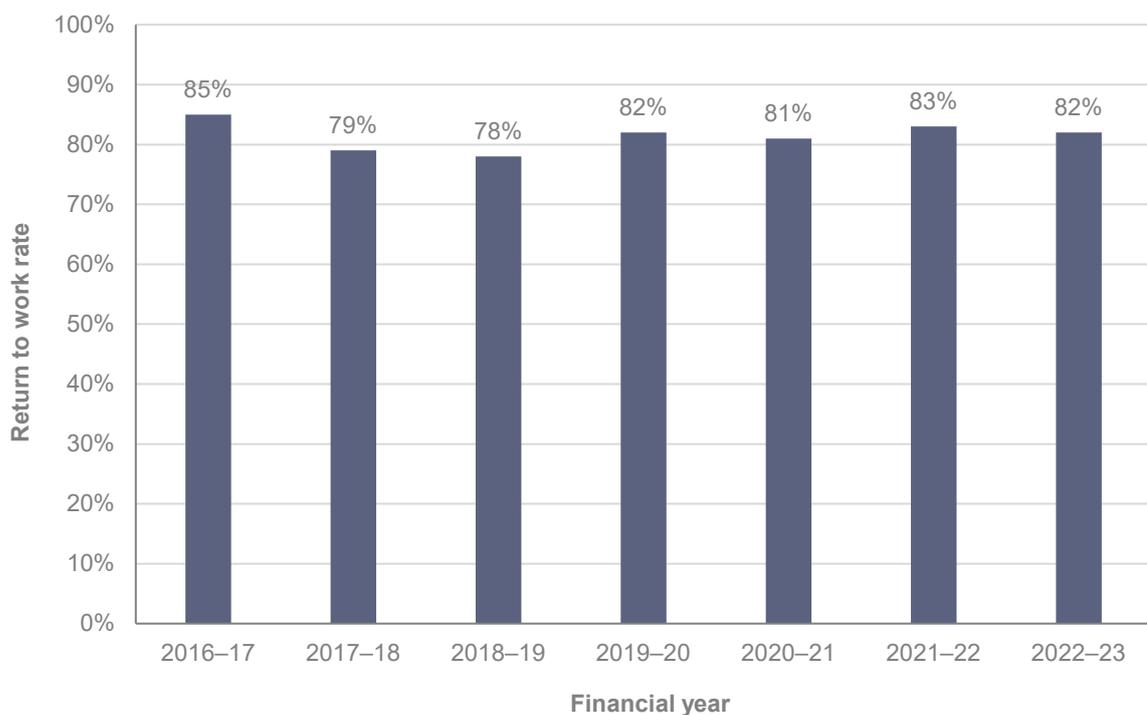
Source: Audit Office of New South Wales analysis of the *State Insurance and Care Governance Act 2015*, *Workers Compensation Act 1987*, *Workplace Injury Management and Workers Compensation Act 1998*, and NSW Governance Arrangements Chart – 1 January 2024.

1.2 Profile and performance of the Nominal Insurer

The NI is the entity that provides workers compensation services to private sector employers and employees. icare made a major change to its claims model for the NI in 2017, shifting from having multiple providers to a single provider. It also introduced a single IT platform for claims management in 2019, which took the place of multiple IT systems that were in use by icare and its CSPs.

There was a significant deterioration in the performance of the NI following these changes. For example, return to work rates at 13 weeks fell from around 85% in 2016–17 to 78% in 2018–19 (Exhibit 3). In addition to declining return to work rates, complaints about workers compensation insurers increased significantly around this time, more than tripling between 2015–16 and 2019–20.

Exhibit 3: Return to work rates at 13 weeks, NI, 2016–17 to 2022–23



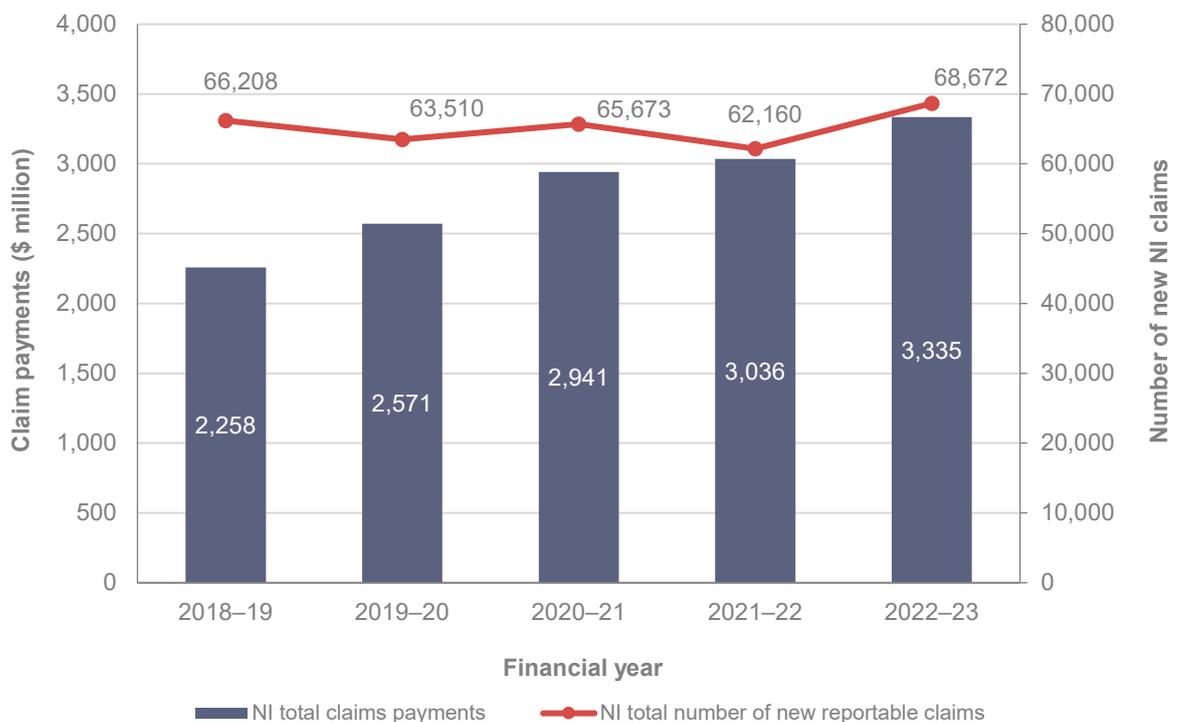
Source: Return to work data for financial years 2018–19 to 2022–23 sourced from SIRA 2023, Addendum to the 2022 Review of the Workers Compensation Scheme — Submission to the Standing Committee on Law and Justice. Return to work data for financial years 2016–17 to 2017–18 sourced from SIRA 2022, Inquiry into 2022 Review of the Workers Compensation Scheme — Submission to the Standing Committee on Law and Justice.

Several external reviews identified that the weaknesses in the implementation of the change to a single provider model and the introduction of a new IT system were major contributors to the decline in performance. The 2019 Independent reviewer report on the NI recommended that icare review its single-provider model and consider using additional providers to reduce the load on the single provider. In its response to the report, icare acknowledged that its implementation of changes to the claims model from 2017 had had a negative impact on workers compensation claimants.

icare subsequently commissioned research that identified a range of external factors that can influence workplace injury and return to work rates, including the changing nature of the workforce, workforce participation, and increasing complexity of mental health claims. These external factors are also evident in other comparable jurisdictions and may have contributed to poor performance in the NI, but they do not reduce icare’s accountability for improving scheme performance.

The decline in return to work rates in the NI was arrested from 2019–20 onward but return to work rates remain at lower than previous levels. This, combined with the ongoing costs of older claims, has placed pressure on the financial sustainability of the scheme. Total claim payments increased by approximately 47% over the last five years, from around \$2.3 billion in 2018–19 to \$3.3 billion in 2022–23. The number of new workers compensation claims only increased by around four per cent during this period. Premiums charged to employers have also increased by around 50%.

Exhibit 4: Total claims payments and total number of new claims, NI, 2018–19 to 2022–23



Source: SIRA 2023, Addendum to the 2022 Review of the Workers Compensation Scheme — Submission to the Standing Committee on Law and Justice.

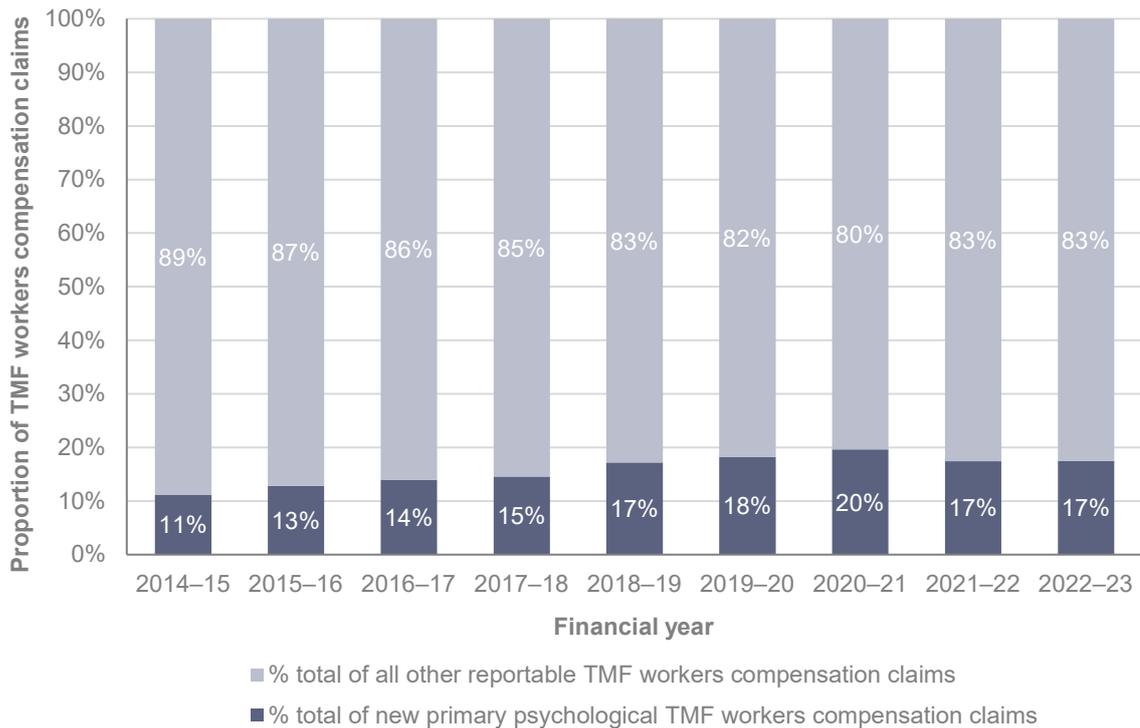
Over the last five years, the NI’s financial position has deteriorated from a net asset surplus of \$1.6 billion at 30 June 2019 to a net asset deficiency of \$1.8 billion at 30 June 2023. The negative net assets means that the NI does not hold sufficient capital to meet the estimated present value of its future payment obligations. icare also measures its financial sustainability by reporting on its insurance ratio, which measures the ratio of scheme assets to scheme liabilities while adjusting for expected returns on its investments. The insurance ratio for the NI has decreased to 100% in 2022–23, which is significantly below the minimum target of 130%. The insurance ratio was also below the target level in 2021–22 (102%) and 2020–21 (122%).

In April 2023, icare proposed an increase of 20% to the premiums for the NI for the upcoming financial year. The Minister for Work Health and Safety subsequently issued a direction to icare requiring that premium increases be limited to an average of eight per cent per annum in the next three financial years. icare had proposed increases to premiums for the NI several times in previous years but had these rejected by the Minister. This increased the pressure on the financial sustainability of the NI by limiting icare’s ability to increase its income. Other external factors that may have influenced return to work rates, and consequently costs of the scheme, include the impact of the COVID-19 pandemic. icare projections indicate that the insurance ratio for the NI will remain lower than the target of 130% until June 2032.

1.3 Profile and performance of the Treasury Managed Fund workers compensation scheme

The TMF provides workers compensation services to the public sector. The TMF also includes other types of insurance for the NSW Government, which are referred to as ‘TMF General Lines’. There has been a significant change in the profile of workers compensation claims being made in the TMF in recent years. In 2014–15, the proportion of TMF claims that were for psychological injuries was 11%. This had grown to 20% by 2020–21 and remained at a similar level in the following years (Exhibit 5).

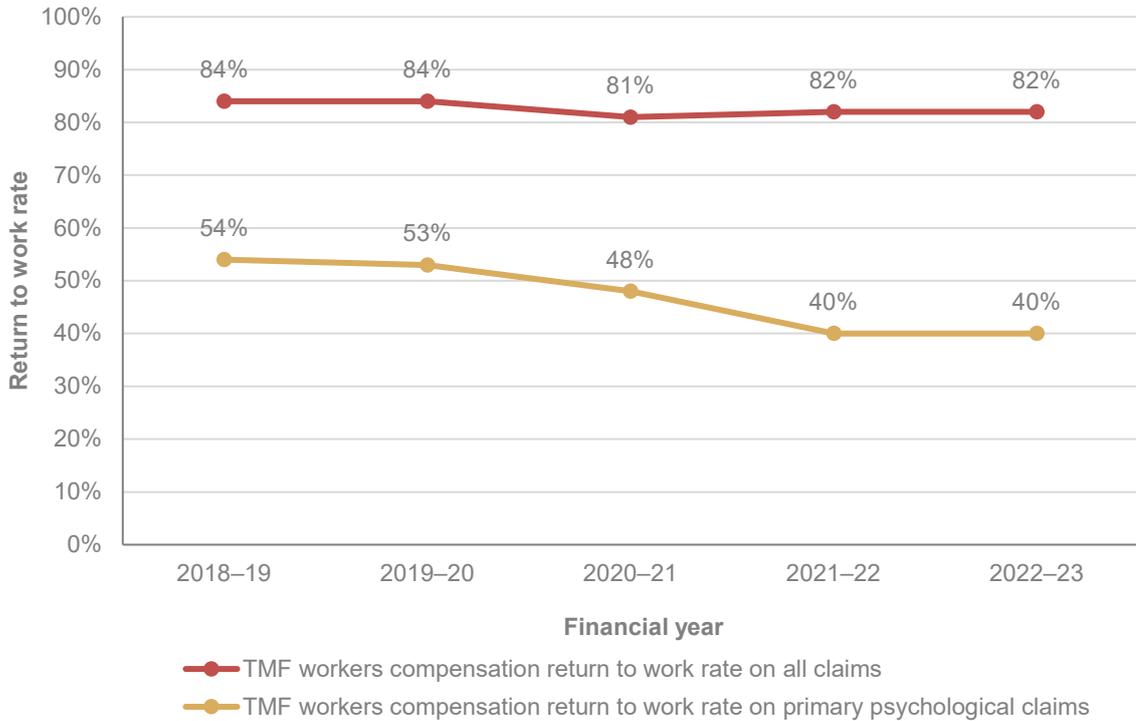
Exhibit 5: Proportion of psychological injury claims, TMF workers compensation, 2014–15 to 2022–23



Source: SIRA 2023, Addendum to the 2022 Review of the Workers Compensation Scheme — Submission to the Standing Committee on Law and Justice.

Psychological injury claims typically involve longer periods away from work and higher costs to the scheme compared to other types of workers compensation claims. Over the last two years, the return to work rate for psychological injury claims has been less than half the return to work rate for all claims (Exhibit 6). This chart also shows the significant deterioration in return to work rates for psychological injury claims in the TMF over the past five years, with rates falling from 54% in 2018–19 to 40% in 2022–23.

Exhibit 6: Return to work rates at 13 weeks, psychological injury claims vs all claims, TMF workers compensation, 2018–19 to 2022–23

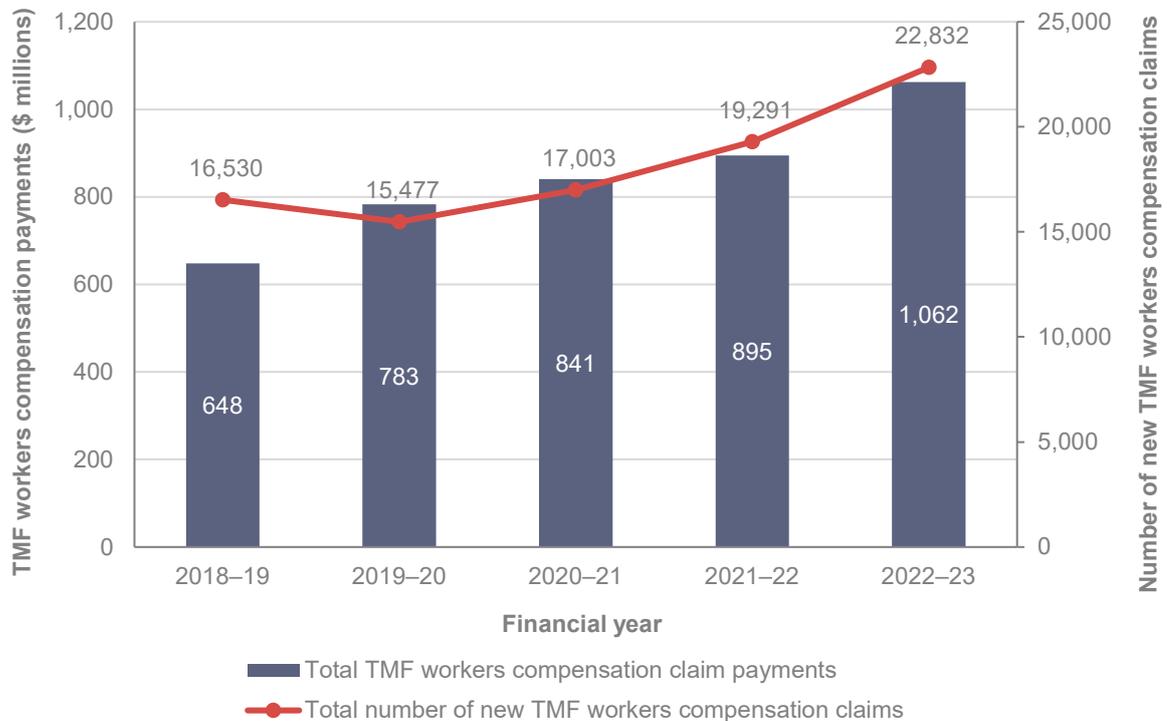


Source: SIRA 2023, Addendum to the 2022 Review of the Workers Compensation Scheme — Submission to the Standing Committee on Law and Justice.

The increase in the proportion of psychological injury claims has had a significant impact on the TMF. In 2014–15, payments for psychological injury claims made up 41% of all TMF claims payments, with 59% going to non-psychological injury claims. By 2022–23, the situation had reversed, with psychological injury claims payment making up 58% of TMF payments. This represents a fundamental change in the profile of TMF claims.

There was a decline in overall return to work rates in the TMF between 2018–19 and 2020–21, followed by a stabilisation at a lower than historical level in recent years. The impact of the factors discussed above can be seen in the key financial measures for the TMF. Total claim payments increased by approximately 64% between 2018–19 and 2022–23. The total number of new claims made has also risen significantly in the TMF, with an increase of almost 40% in the same period (Exhibit 7).

Exhibit 7: Total TMF workers compensation claim payments and total number of new TMF workers compensation claims, 2018–19 to 2022–23



Source: SIRA 2023, Addendum to the 2022 Review of the Workers Compensation Scheme — Submission to the Standing Committee on Law and Justice.

The TMF is the largest fund within the NSW Government Self Insurance Corporation (SiCorp), which also includes several other government managed funds that provide insurance-like services to NSW government employees. The TMF is also used to cover the State’s legal liability and insure government assets against losses due to natural disasters, cyber-attacks, and other events. The NSW Government has a Net Asset Holding Level Policy (NAHLP) which sets the target funding ratio for participating SiCorp schemes. The NALHP states that scheme assets should be between 105% and 115% of reported scheme liabilities. If the funding ratio is less than 105% NSW Treasury makes additional payments to address this. In 2022–23, NSW Treasury made an additional payment of \$669 million to increase the funding ratio to 105%. From 2018–19 to 2022–23, the NSW Government made a total of \$5.7 billion in additional payments to maintain a funding ratio of 105%. The increased costs of workers compensation claims in the TMF were a contributing factor to the need for additional payments from NSW Treasury into the TMF. However, historical abuse claims against NSW government agencies and property damage due to natural disasters were the biggest causes of TMF expenses in recent years.

1.4 Reviews of the workers compensation system

Several major external reviews have been completed in recent years. The three main previous reviews were the:

1. Independent Reviewer Report on the NI (2019) which was commissioned by SIRA and focussed on the operations and effectiveness of the NI.
2. Independent Review of icare and the SICK Act (2021) which was commissioned by the Treasurer and reviewed the legislative arrangements and operations of icare.
3. Governance, accountability and culture review (2021) which the icare Board commissioned in response to findings from the Independent reviewer report on the NI.

These reviews identified problems with claims management processes, return to work rates, governance, and accountability. Exhibit 8 summarises the findings and recommendations from the three external reviews that relate to workers compensation claims management.

Exhibit 8: Summary of previous external reviews of icare

Review	Selected key findings	Selected recommendations
Independent reviewer report on the NI, 2019	<ul style="list-style-type: none"> Single claims management model introduced in 2018 had problems with design, implementation, and governance Return to work rates declined with the introduction of the new single provider model in 2018 Implementation of the single IT system (Guidewire) cost more than budgeted and had less than adequate testing SIRA's regulatory power over the NI is somewhat limited due to legislation 	<ul style="list-style-type: none"> icare should ensure agreements with agents give adequate weighting to the primary goal of return to work icare should review its claims management model to ensure achievement of outcomes The legislative powers available to SIRA should be reviewed
Independent review of icare and the SICC Act, 2021	<ul style="list-style-type: none"> Remuneration model did not prioritise return to work as key objective icare's CSP had high rates of staff turnover, contributing to delayed contact with claimants icare procurement practices were not compliant with NSW procurement practices Confusion of legislative roles and responsibilities contributed to relationship difficulties NI costs have increased beyond rate of premium increase, staff more than doubled 	<ul style="list-style-type: none"> icare should prioritise stability and performance outcomes if icare intends to change models icare should invest in CSP skills and professional development icare should be bound to procurement equal or greater than other government agencies The government should consider reviewing workers compensation legislation icare should report publicly on its transformation expenditure and its stated benefits
Governance, accountability and culture review, 2021	<ul style="list-style-type: none"> There is a lack of clarity in the type of organisation icare is seeking to be and the compliance standards it is seeking to achieve icare's leadership has not invested sufficient time in reflecting, learning and course-correcting. Focus has been on transformation tasks and speed to deliver rather than outcomes icare has not had the discipline for delivering timely and quality outcomes to its customers 	<ul style="list-style-type: none"> clarify icare's role as an NSW Government agency with adherence to the standards expected of such an agency strengthen outsourcing policy and design, review KPIs used to measure scheme performance, and improve governance over scheme agent adherence to icare policies document icare's approach to strategic planning and prioritisation of projects adopt an accountability framework that provides clarity on standards, holds people to account, and applies consequence management

Source: Audit Office of New South Wales analysis of reviews listed above.

Several other parliamentary inquiries and government reviews on workers compensation have been undertaken. These include:

- the *Review of the Workers Compensation Scheme*, tabled in the NSW Parliament on 5 December 2023. The review focussed on the increase in psychological injury claims in workers compensation schemes, including whether the current schemes are fit for purpose to deal with psychological injuries. The review made eighteen recommendations, most of which focused on addressing the underlying causes of psychological injuries and declining return to work rates.
- the *2020 Review of the Workers Compensation Scheme*, conducted by the NSW Parliament's Law and Justice Committee. This focussed on the financial performance and administration of workers compensation, with a focus on the NI. The findings and recommendations of this review were similar to the Dore and McDougall reviews (summarised above).

1.5 About the audit

The objective of this audit was to assess the effectiveness and economy of icare's management of workers compensation claims and the effectiveness of SIRA's oversight of workers compensation claims. The audit examined whether:

- icare's claims management model is effective and economical
- there is an effective performance and accountability framework for workers compensation claims management.

The scope of the audit did not include:

- auditing self-insurers or specialised insurers operating within workers compensation schemes in NSW
- auditing CSPs engaged by icare
- auditing the role of SafeWork NSW or employers regarding workplace injury prevention.

2. Reforms to the claims management model for the Nominal Insurer

icare did not assess its existing claims management model or conduct a comprehensive options analysis assessing alternative claims management models before selecting its new claims management model for the Nominal Insurer

In 2021, icare decided to change the claims management model for the Nominal Insurer (NI) from a single outsourced claims service provider (CSP) to a model using multiple CSPs. icare did not conduct a detailed analysis of options before deciding on its new claims management model for the NI. icare did not complete a business case or undertake analysis of costs and benefits of the chosen model compared to other options, such as in-house provision of services by icare, a hybrid delivery model, or remaining with a single-provider model with improved support and performance incentives.

icare completed a procurement strategy which acknowledged a potential alternative model based on icare delivering claims management services. However, there was no detailed analysis or costing of this or other models for comparison with the outsourced model that had been chosen. The in-house provision option was not recommended because it was stated that 'competition between external service providers can drive better performance than what icare could achieve'. The 2019 Independent Review Report on the NI recommended that icare use additional providers to reduce the pressure on its single provider. It was appropriate for icare to consider this recommendation when developing its new claims model, but it does not remove the need for icare to conduct its own detailed analysis to support decision making on major projects.

The absence of a business case or other similar detailed analysis reduces icare's accountability for improved outcomes. It also means the stated benefits and costs of icare's claims services model have not been fully tested. Introducing competition and performance-based payments to CSPs might improve return to work and financial sustainability outcomes but could create perverse incentives or increase the risk of CSPs withdrawing from contracts. A business case would have also provided information that could have been used to inform an evaluation framework for the new claims services model, including interim measures to help assess whether intended benefits are on track.

A business case is the primary document to outline the case for change and analysis of alternative options, as well as the costs, benefits and financial viability of the proposal. icare's procurement policy does not require the development of a business case, but the NSW Procurement Strategy and NSW Treasury Business Case Guidelines require agencies to demonstrate value for money by submitting a business case to NSW Treasury for investment proposals over \$10 million. At the point when icare sought approval from the icare Board to commence the procurement process, the maximum total contract value for the engagement of the six providers was estimated at between \$3.7 billion and \$6.4 billion over ten years.

icare conducted a comprehensive procurement process to select CSPs for its new NI claims management model

The procurement process for new providers for the NI involved an open market process that included extensive engagement with potential CSPs. This allowed icare to improve its understanding of the capacity and capability of providers and work collaboratively to refine the details of its claims management model.

icare developed a detailed procurement strategy that outlined the objectives of the new model, expected costs, services sought, governance framework, and an evaluation plan. icare provided regular updates to the icare Board on the progress of the procurement process and sought approval for key decisions about the changes being made.

icare met its planned timeframe for having contracts with multiple CSPs in place by 1 January 2023. icare's contracts provide it with flexibility to adjust the performance measures after three years if required. The contracts also require 12 months' notice from the CSP if they wish to withdraw from the contract. This helps icare to manage the risk of a reduction in capacity to manage claims if an existing CSP withdraws.

icare is implementing a new remuneration structure for CSPs which aims to provide better financial incentives to improve performance

The icare Board approved the introduction of a multiple provider model as part of its NI Improvement Program in December 2021. As a part of planning for the change, icare developed a different remuneration structure for the new CSP contracts that aim to create stronger incentives for innovation to improve performance. The previous remuneration model for providers involved a guaranteed fee that was set at 110% of the estimated cost of providing the service and had no financial penalties if CSPs did not meet performance targets. The new remuneration model splits the fees paid to CSPs into three categories:

1. **a base fee**, a guaranteed fixed fee which covers 95% of a benchmarked cost agreed by icare and CSPs (this was the estimated cost of providing the service in an efficient way)
2. **a quality fee**, which may be positive (up to ten per cent of the benchmarked cost) or negative (up to five per cent) depending on the CSP's performance against the quality measures specified in the contract. These are mostly related to compliance with claims management processes such as timeliness, accuracy, and record keeping
3. **an outcome fee** up to 50% of the benchmarked cost depending on the CSP's performance against the outcome measures specified in the contract. These relate to the key performance measures in the system such as return to work rates, claim payments made, and medical costs. The outcomes fee can only be earned if the CSP achieves acceptable performance in the quality measures.

This remuneration model aims to provide CSPs with financial incentives to improve performance. Setting the 'base fee' at slightly below the expected cost of providing the service should mean that CSPs need to meet their quality measures to ensure they cover costs and would need to exceed performance targets in order to increase its profit margin. The success of this model will depend on factors including the appropriateness of the base fee and performance targets, and the behaviour of CSPs. These changes are not yet fully implemented and icare is taking a staged approach to the transition of new CSPs, so it is too early to judge their effectiveness.

icare's new remuneration structure will increase payments to CSPs for the NI without initially requiring improved performance

The new provider model is expected to cost up to \$100 million more per year compared to icare's previous, single provider model. This fee increase depends on the extent to which CSPs achieve its outcome targets. For example, if all CSPs improve their performance to a level where they meet all of their performance targets, the full \$100 million would be paid to CSPs. A lower amount would be paid if some CSPs did not achieve outcome targets. icare's modelling indicates that the extra costs in payments to CSPs would be offset by reductions in payments to injured workers as a result of improvements in return to work rates.

For at least the first year of the new model, icare has committed to paying a proportion of the outcome fees to CSPs even if they do not achieve their performance targets. This is intended to support CSPs to invest in their systems with the goal of achieving better longer-term performance. However, it means that icare will initially pay higher fees for similar or potentially lower performance.

icare lowered the return to work rate targets in 2023 compared to 2022 to account for the impact of the transition to the new multiple provider claims management model. Exhibit 9 shows the differences between the targets in 2021–22 and 2022–23.

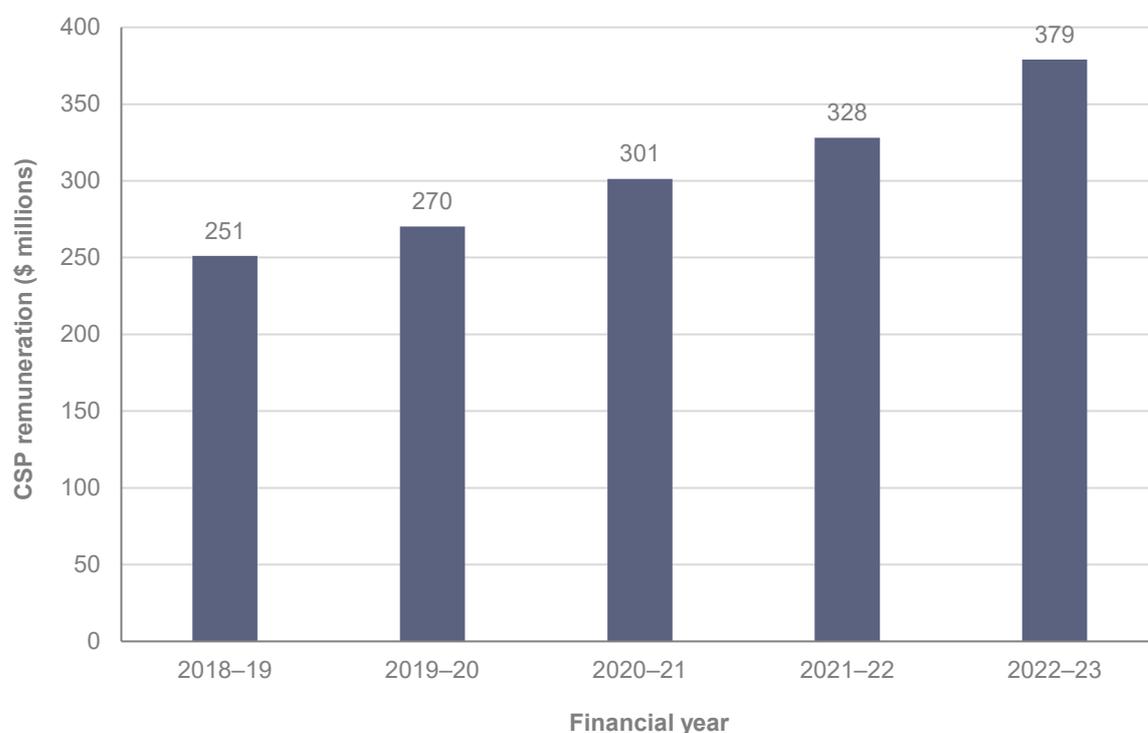
Exhibit 9: Return to work rate targets for the NI, 2021–22 and 2022–23

	Business Plan FY22 (%)	Business Plan FY23 (%)	Change
Return to work targets	4-week: 70.0%	4-week: 65.4%	4-week: -4.6%
	13-week: 85.0%	13-week: 77.5%	13-week: -7.5%
	26-week: 87.8%	26-week: 82.1%	26-week: -5.7%
	52-week: 89.8%	52-week: 85.6%	52-week: -4.2%

Source: icare planning documents (unpublished).

CSP remuneration has increased from around \$251 million in 2018–19 to almost \$379 million in 2022–23, an increase of more than 50%. CSP remuneration has increased in each financial year during this period (Exhibit 10).

Exhibit 10: Total payments to claims service providers for the NI, 2018–19 to 2022–23



Source: icare financial management reporting data (unpublished).

There are ongoing issues with the accuracy of weekly payments to injured workers in the NI

SIRA audits of the NI and TMF have identified examples of inaccurate calculation of weekly payments between 2012 and 2019 that led to the underpayment of compensation to around 20,000 injured workers totalling up to \$40 million. These errors are being addressed through remediation programs involving payments to claimants that are likely to have been underpaid.

Separately, icare internal reviews identified additional errors in claim payments for NI claims that were made after 2019, which arose as a result of adjustments for indexation not being completed. icare notified SIRA of the errors in September 2022. The underpayments affected an additional 13,915 injured workers and will require repayments totalling up to an additional \$14.7 million. In December 2023, SIRA issued a formal letter of censure to icare due to this breach of icare's responsibility to ensure workers compensation payments are in line with legislative requirements. SIRA stated that it issued the letter of censure to icare due to the quantum of the breach and icare did not notify SIRA about the issue in a timely manner. The mistakes in weekly payments to injured workers means that some injured workers have not received financial support in line with their legislative entitlements.

Audit Office of NSW financial audit reports on NSW Treasury in 2021 and 2022 found similar issues which had not been identified or addressed by icare's peer review process. Problems identified included inaccurate calculations of payment amounts, indexation errors, and insufficient documentation to demonstrate how the calculation was made. The errors identified did not result in material financial statement errors. Our reports have made a repeat recommendation that icare needs to ensure it has sufficient controls in place to ensure correct payments are made.

3. Reforms to the claims management model for the Treasury Managed Fund

icare's focus for reforming the TMF is not based on addressing key strategic challenges for the scheme

icare initiated a 'TMF transformation program' in 2022. The business case for the TMF transformation program did not include an assessment of the key strategic challenges for the TMF or describe how the transformation would improve return to work rates. Instead, it focused predominantly on the implementation of a single IT platform for managing workers compensation claims. While a single IT platform may be an important technological enabler for claims management, it does not address the underlying strategic issues that contributed to a decline in claims management performance and increase in costs in the TMF.

icare's analysis indicates that the implementation of the new IT system will cause a short-term decline in return to work rates for the TMF. Reducing performance in return to work rates, even if only temporarily, can have a long-term impact on outcomes for affected workers and for scheme costs. icare's internal modelling indicates that if the early stages of a claim are not managed well, claimants are much more likely to have a long-term claim.

The primary purpose of the workers compensation scheme is to optimise return to work outcomes for injured workers and to maintain the financial sustainability of the schemes. Previous reviews have stated that icare should apply a return to work focus for all its activities because this is the outcome on which it is judged by Parliament, workers, employers and the community.

icare has commenced a procurement process for the TMF without conducting detailed analysis of its claims management model

In December 2023, icare completed a procurement strategy for approval by the icare Board to guide its procurement of CSPs for the TMF. The TMF procurement strategy refers to the broader improvement objectives for the TMF, which include improving return to work performance and increasing capability to manage psychological injury claims. It contains a brief analysis of an in-house claims management model compared to an out-sourced approach. However, it does not include detailed analysis of options for its claims management model. This analysis contained a similar amount of detail as the procurement strategy for the NI (see Chapter 2). It did not include any evaluation of the outsourced model that icare has used previously and did not assess options for hybrid models that use a mixture of in-house and outsourced services. icare has had the same claims management model for the TMF, using the same three CSPs prior to its establishment in 2015. icare inherited contractual arrangements with three CSPs that had commenced in 2010. Its most recent procurement process for CSPs took place in 2019. Before commencing this procurement, icare did not evaluate the effectiveness of the arrangements that were in place from 2010 to 2019 or analyse alternative options for claims management models.

icare plans to draw on the work done for the NI procurement of CSPs in 2022 by using clauses in the NI contracts to extend them to cover TMF work. icare has also commenced an open expression of interest process to engage with other potential CSPs for the TMF.

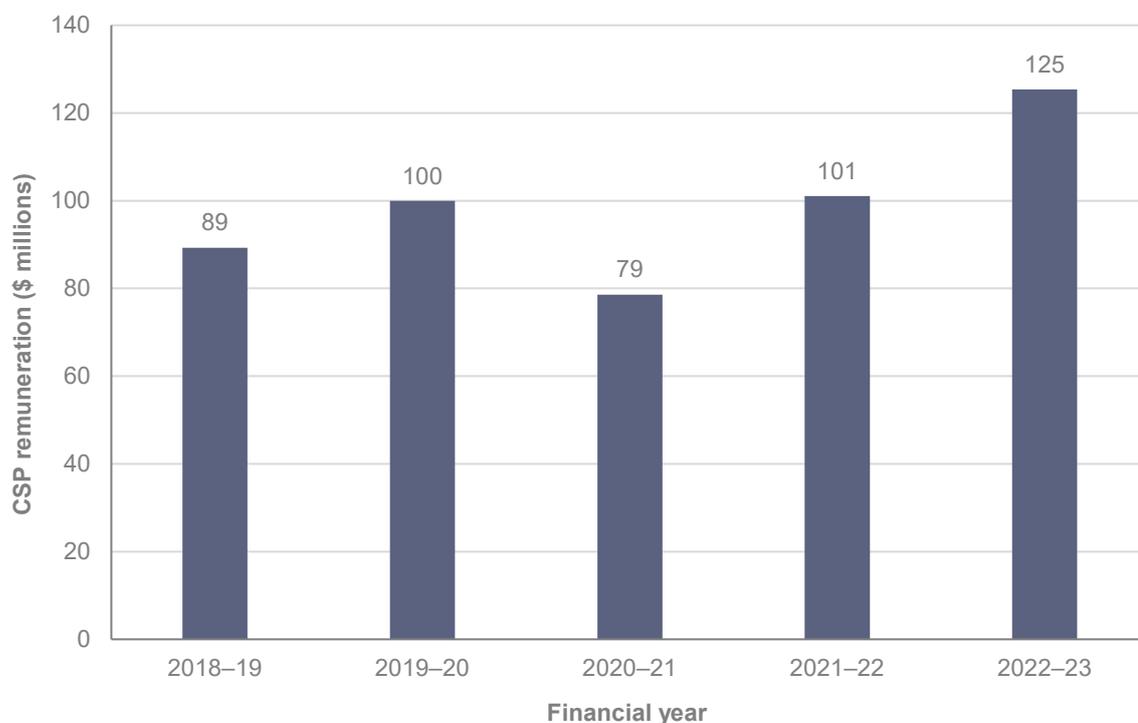
The TMF procurement strategy sets out options for a revised performance and remuneration framework for CSPs in the TMF. This is based on the work done for the NI procurement and has the same goal of providing stronger financial incentives for CSPs to improve their claims management performance.

icare’s analysis estimates that these changes will lead to savings because the new remuneration model will improve CSP performance, which will reduce overall scheme costs. However, the estimates presented in the TMF procurement strategy, which was presented to the icare Board for approval, do not have supporting analysis or completed modelling of costs. A key gap is the details used to estimate the actual costs for CSPs to deliver the services, which underpins the payment amounts under the revised remuneration framework. The strategy also does not include analysis of risks, such as impacts to return to work rates because of the transition to a new model. Without these details, icare cannot demonstrate that its planned approach is likely to deliver value for money.

Fees paid to CSPs for the TMF have increased significantly in recent years despite previous forecasts of reductions in fees paid and improvements in performance

icare’s payments to CSPs managing TMF claims has increased by around 30% in the last five years, rising from around \$90 million in 2018–19 to around \$125 million in 2022–23. This increase in payments to CSPs occurred during a period when return to work performance declined by two percentage points and the total payments for workers compensation claims increased by around 60%. The number of claims received also increased significantly in this time, as noted in Chapter 1.

Exhibit 11: Total payments to CSPs for TMF workers compensation, 2018–19 to 2022–23



Note: This chart shows payments to CSPs for the TMF workers compensation scheme only and excludes TMF general lines schemes.
Source: icare financial management reporting data (unpublished).

icare exercised extension clauses for the current contracts with CSPs for the TMF twice (in 2021 and 2022). icare made changes to the remuneration model when exercising the second extension but did not conduct a broader evaluation of the effectiveness of the claims model that was in place. The changes were aimed at increasing the alignment with NI contracts by introducing more performance-based fees. However, they involved an increase to the base fees paid to CSPs without making any more of the fees ‘at risk’. This meant that CSPs were guaranteed higher fees without any requirement to improve performance.

icare justified the fee increases on the basis that it would allow the CSPs to employ additional staff and reduce the number of claims each staff member was managing. Briefings to the icare Board seeking approval for this additional funding did not include detailed analysis justifying the cost increase but noted that CSPs had expressed concerns that they needed additional resources to address the impact of changes in the labour market such as increased competition for staff. The 2022 contract extensions increased the costs by up to \$72.5 million over two years.

In addition to increasing the payments to CSPs, icare set its return to work performance target below its actual rate from the previous year. The actual 2021–22 return to work rate for the TMF at 13 weeks was 82%. icare set its 2022–23 return to work rate target for the TMF around ten percentage points lower than this, at 71.8%. Having set a target below its actual rate, icare subsequently reported that it had met its return to work target in 2022–23, when in reality its performance had only been maintained. icare did not have any return to work rate targets for the TMF in its business planning documents prior to 2022–23.

The 2019 procurement strategy for CSPs for the TMF stated that the cost of contracts with CSPs would be reduced from \$100 million per year to \$67 million per year because of improvements to icare's operating model and technology platform. Rather than achieving these anticipated savings, the fees paid to CSPs remained at over \$90 million in 2020 and 2021 and the base fee was increased to \$106 million in 2024. NSW Procurement's review of icare's 2019 procurement strategy noted that icare had not provided sufficient detail in areas including the claims management model and the forecast savings.

icare has not given sufficient attention to addressing the increase in psychological injury claims, but has trialled some individual programs

icare has acknowledged psychological injury claims is a growing issue across both the TMF and NI, which has negatively impacted return to work rates and financial viability of the schemes. icare's 2022–23 Business Plan states that one of its priorities is developing a mental health strategy and plan for the TMF. SIRA has raised concerns about the management of psychological injury claims since 2019 when the Independent reviewer report on the NI was published. A SIRA claims file review published in July 2020 noted that most of the psychological injury claims in its sample did not include sufficient collection of information about the claim. It also found inadequate investigation of questions from employers about the causation of the injury in most cases. These findings indicated that CSPs may have been accepting and making payments for claims without adequate evidence that they were valid. Subsequent claim reviews published by SIRA in 2021 and 2023 made similar findings about weaknesses in the management of psychological injury claims.

icare commissioned analysis on the impacts of psychological injury claims on return to work rates in 2022. Key findings from this analysis relating to the TMF included:

- an estimated 50–66% of the decline in return to work rates in recent years can be attributed to the increasing volume of psychological claims
- the main source of increasing psychological injury claims payments is medical discharges of police officers who are assessed as unable to return to the workforce.

icare has several programs focusing on the prevention and management of mental health in the workplace (Exhibit 12). These activities are mostly small, individual projects and are not supported by an overarching psychological injury strategy or work plan. While the prevention of psychological injuries in workplaces is not primarily icare’s responsibility, its ability to achieve the key objectives of workers compensation schemes is affected significantly by this issue. Greater focus and attention to the management of psychological injuries is required from all relevant parties, including icare, to address the social and financial challenges the issue is presenting.

Exhibit 12: icare’s psychological injury-focused programs for the TMF

Program	Start date	Summary
Front of Mind Program	July 2020	Partnership with NSW Government front line agencies that develops and pilots prevention and early intervention supports for frontline workers.
Connect & Care Program	2019	Partnership with QBE and Department of Community Services to build agency capability to better manage psychological injuries.
Design for Care	July 2021	The project aims to support employers and employees in the health care and social assistance industry to improve work design, to reduce the risk of psychological injury.

Source: icare annual reports, 2018–19 to 2020–21.

icare’s procurement strategy for the 2019 procurement of CSPs noted that psychological injury claims were a significant factor for the TMF. The strategy stated that it would seek CSPs that could provide services for ‘complex’ claims but did not include any other specific actions to improve its ability to respond to this issue. Similarly, the 2023 TMF procurement strategy refers to seeking CSPs that have specialist skills in managing psychological injury claims but does not provide detailed plans for sourcing or using these providers.

NSW Treasury has worked with icare to promote awareness of the significant increase in psychological injury claims in the TMF. This has included facilitating discussions at meetings of the NSW Secretaries Board and sending letters to the heads of NSW government departments. NSW Treasury will also chair a multi-agency steering committee that will develop a strategy to help improve return to work outcomes and financial sustainability in the TMF. This provides an opportunity for icare to contribute to more focused work on improving the management of psychological injury claims.

4. icare's accountability for workers compensation scheme outcomes

Some of icare's reform activities aim to improve return to work and financial sustainability

One of the stated goals of icare's NI improvement program is 'getting injured workers back to work sooner' and the improvement program includes implementing a new claims management model for the NI (discussed in Chapter 2). Alongside this program, icare has made other changes that aim to improve the day-to-day claims management processes. In recent years icare has begun working to clarify roles and responsibilities for the claims management process. This has included consultation with CSPs and producing written documents that specify which issues should be handled by CSPs and which should be referred to icare.

icare has also developed a Professional Standards Framework that aims to provide a consistent set of standards that case managers are expected to adhere to. This framework sets out minimum standards and capability expected of CSP staff. It is a contractual requirement for NI providers to comply with the framework through its recruitment and training for staff. The framework is intended to also apply to the TMF but is not yet included in TMF provider contracts. Since 2021, icare has also provided training material to CSPs focussing on key aspects of claims management. Training covers topics that have previously been identified as areas of weakness, such as the calculation of weekly payments, initial contact, and injury management.

icare's accountability for achieving scheme outcomes is not clear enough

While the practical changes discussed have the potential to help improve claims management performance, icare's acceptance of overall accountability for scheme outcomes remains unclear. In 2021, icare considered several 'business models' that would guide its overall approach to reforming its workers compensation claims models. It decided to adopt what it described as a 'platform' model, which positioned icare as a facilitator and focused on self-direction and choice for employers and employees. Among the models that it chose not to adopt was a 'scheme administrator' model, which was characterised by transparency and clear accountability for performance.

This underlying approach can be seen in icare's reforms to the claims management model for the NI. Some elements of the reforms target improvements in return to work outcomes, such as the introduction of performance-based payments to CSPs (discussed in Chapter 2). However, icare described the goal of the reforms as creating a competitive market of CSPs that would provide choice to employers, which indicates icare taking accountability for implementing system changes but not for the achievement of outcomes. icare's plans for reforms to the TMF are similarly focused on icare's accountability for providing support systems for workers compensation schemes, rather than accepting responsibility for ensuring the key outcomes are achieved.

The management of workers compensation schemes is a complex task. There are external factors outside icare's control that influence the key performance measures of return to work and scheme financial viability. However, as the provider of workers compensation schemes, icare is primarily accountable for improving return to work rates for the NI and TMF and its strategies and activities should be focused accordingly. icare's most recent corporate strategy documents described its current phase of its organisational strategy as 'increase focus on those we serve'. This is a positive change from the previous year when the same phase was described as 'simplify for improved outcomes'.

icare has committed significant resources to internal organisational improvement programs

icare has committed significant resources to an organisational improvement program in recent years. The program responds to the recommendations of previous external reviews (summarised in Chapter 1). These reviews made a combined total of 107 recommendations. Of these, 98 related to 'enterprise improvement', covering internal processes such as governance, procurement and risk management. The focus of the recommendations on internal processes reflects the terms of reference for these reviews. As a result, icare's improvement program has a focus on internal organisational change, rather than a broader strategic assessment of the key challenges to the performance of workers compensation schemes, such as the rise in psychological injury claims.

The program has been overseen by an external advisor and quarterly reports have been published that outline progress, with the first report published in December 2021 and the most recent in August 2023. Accountability for implementing recommendations of external reviews is important. However, the strong focus on internal organisational projects has contributed to increases in icare's operating expenses without fully addressing the strategic challenges to the key legislative objectives of workers compensation schemes – optimising return to work outcomes and ensuring financial sustainability.

icare's employee and other operating expenses have increased significantly during a period when workers compensation scheme performance has not improved

According to its annual financial reports, icare's total employee expenses have increased significantly in recent years. The total number of employees at icare increased from 1,431 in 2020–21 to 1,756 in 2022–23, an increase of 23%. icare's budget for 2023–24 includes a further increase in staff numbers to 1,800.

There has been a corresponding increase in icare's employee expenses, with staff costs increasing by 29%, from \$214 million in 2020–21 to \$276 million in 2022–23. icare did not take on any new functions during this period and the performance of the NI and TMF did not improve, as described in Chapter 1. Over the past three years icare has added the highest number of new employee positions in the 'digital and transformation' area. Additional staff positions have also been created in corporate areas including people and culture and risk and governance. Many of these positions relate to icare's improvement program.

icare's other operating expenses have also increased in recent years, rising from \$699 million in 2020–21 to \$814 million in 2022–23. The majority of icare's other operating expenses are fees paid to CSPs. However, icare has also spent a significant amount on contractors, contingent workers, and consultants in recent years, despite also increasing its permanent staff numbers. Some of these contractor and consultant expenses related to icare's improvement program discussed above. Over the last three years, icare spent an average of more than \$100 million per year on hired labour, comprised of:

- \$60 million per year on contractors
- \$35 million per year on contingent workers
- \$8 million per year on consultants.

icare completed a review of its corporate expenses in September 2023 and reported the results of this review to the icare Board. icare's review stated that it had reduced its expenses by a total of \$88 million from 2019–20 to 2021–22. This included a reported decrease of \$40 million in spending on contractors and contingent workers, which is in contrast to its annual financial reporting data which shows an increase of \$25 million during this period. icare's expenses review used management reporting data which categorises expenses differently to the way expenses are categorised in annual financial statements. For example, a large proportion of expenditure on contractors and contingent workers was categorised as project expenditure in icare's management reporting. While this may be appropriate for management reporting purposes, it resulted in icare reporting lower expenditure on contractors and contingent workers in its expenses review compared to its annual reporting.

The number of icare senior executives in the top pay band for the NSW public service increased from two in 2021–22 to eight in 2022–23. The average remuneration of icare’s senior executives in 2022–23 was \$652,000. This is more than double the average remuneration for the two senior executives that were in the highest pay band at the former WorkCover Authority, icare’s predecessor agency, in its last year of operation in 2014–15. It is also approximately double the average remuneration for senior executives at icare’s equivalent entities in comparable jurisdictions. The average remuneration for the ten senior executives at WorkSafe Queensland in 2022–23 was \$285,000 and the average remuneration for the 11 senior executives at WorkSafe Victoria was \$276,000.

icare spent at least \$470 million on projects that were intended to improve the operations of the workers compensation schemes between 2016–17 and 2019–20. This includes the implementation of a single provider claims management model and the introduction of a new IT platform but does not include the cost of contractors and consultants who worked on these projects. Previous external reviews of icare found that these projects did not achieve their objectives and contributed to a deterioration in performance against the key legislative objectives for workers compensation of return to work and financial sustainability. icare spent another \$45 million on moving back to a multiple provider model for the NI from 2023.

icare’s reporting on the performance of workers compensation schemes has not provided a clear indication of performance in its core areas of responsibility

icare’s public reporting has not provided transparency in the key areas of return to work and financial sustainability of workers compensation schemes. Prior to 2019–20, icare did not report publicly on its return to work rate targets in the NI. icare did not report on a TMF return to work target until 2022–23. icare’s four most recent annual reports have included an ‘enterprise performance scorecard’. In 2021–22 this scorecard had 11 measures, with only four that related to insurance scheme performance (return to work rate in the NI, net results in NI, net results in TMF and investments). The scorecard had seven measures that related to icare’s internal processes in that year, such as staff engagement scores, risk management, and internal audit. In 2022–23, the scorecard included five measures that related to insurance scheme performance. However, the measure relating to return to work performance for the NI had changed from the previous years. As a part of its reforms to the NI, icare plans to publish more information about workers compensation scheme outcomes on its website. It commenced this reporting in December 2023.

The key document outlining icare’s strategic approach to managing its operations is the Statement of Business Intent (SBI). The measure icare has used for reporting on return to work targets for the NI in its SBI has changed in each of the last four years. Exhibit 13 shows icare’s internal reporting on NI return to work targets since 2020–21. The frequent changes to the way icare has reported on its key performance measures make it difficult to track its performance over time.

Exhibit 13: Return to work measures used for reporting in icare’s Statement of Business Intent (SBI), 2020–21 to 2023–24

Financial year	Reporting measure for return to work in SBI
2020–21	Return to work rate measured at 26 weeks after claim made
2021–22	Return to work rate measured at 4, 13, 26 and 52 weeks after claim made
2022–23	Return to work rate measured at 13 weeks after claim made
2023–24	Return to work rate measured as ‘working rate’ (using a different methodology)

Source: icare Statement of Business Intent from 2020–21 to 2023–24.

icare's public statements about its performance have underplayed the major challenges facing workers compensation schemes

The introductory messages from the chair of the icare Board and the CEO in icare's three most recent annual reports have a strong focus on icare's internal processes, including its progress in implementing its improvement program and icare's customer satisfaction and staff engagement ratings. icare's recent annual reports and website also include a large amount of information about its corporate improvement programs. The messages from the chair of the icare Board and the CEO of icare do include some references to icare's core responsibilities of ensuring the financial sustainability of the schemes and improving return to work performance, but these are presented less prominently than the commentary on projects that focus on icare's internal corporate improvement processes.

The NI and TMF have each faced financial sustainability pressures in recent years, as outlined in Chapter 1. Despite this, icare's annual reports have underplayed the extent of these issues. For example, the CEO's introductory message to the 2021–22 annual report stated 'the schemes icare manages remain in a sound financially sustainable position' despite the insurance ratio for the NI being 102% at the time, which is significantly lower than icare's target level of at least 130%. In 2022–23, the insurance ratio for the NI fell to 100%, but the CEO's message in the annual report for that year did not refer to the financial position of the NI.

The government's stated intention when reforming the workers compensation system in 2015 was to improve outcomes for injured workers, reduce premiums paid by employers, and separate the functions of operating and regulating insurance schemes. icare's key responsibilities as the manager of workers compensation schemes, as set out in workers compensation legislation, were supporting recovery and return to work for injured workers and maintaining the financial sustainability of the schemes.

5. Oversight of workers compensation scheme performance

SIRA has recently updated its strategic framework to improve the effectiveness of its regulatory activities

One of SIRA's principal legislative objectives is to provide effective supervision of the workers compensation system. SIRA updated its strategic framework in 2021. The strategy outlines guiding considerations across four 'pillars' of SIRA's regulatory work: scheme design, licensing, supervision, and enforcement.

SIRA has increased its focus on supporting improvements to return to work outcomes in recent years. It commissioned a research paper to inform SIRA's system-wide strategy to improve return to work rates. This paper provides a summary of the current evidence relating to factors most likely to support better return to work outcomes. This research has been used to inform SIRA's strategies and plans. For example:

- SIRA has a return to work action plan which outlines ten actions aimed at supporting improvements in return to work rates. Actions include reviewing insurers' return to work practices in 2022, developing a return to work standard of practice, and targeting compliance work to employers identified as higher risk.
- SIRA advises it is currently developing a 'Recover Through Work Strategy' which expected to replace its action plan. The draft strategy covers research, promotion and education activities related to early intervention, psychological injuries, and additional data and insights relating to return to work.
- SIRA developed a mental health recovery and support action plan in 2021 based on research it had commissioned.

SIRA has used regulatory instruments including written directions and letters of censure to icare when it has identified issues that require remediation, as noted in Chapter 2. SIRA's ability to regulate the workers compensation scheme is limited by the fact that it cannot impose licence conditions on the NI or other entities, which limits its ability to escalate its regulatory responses if needed.

A previous review of the legislative arrangements for workers compensation recommended that SIRA should be given additional powers to ensure it can fully perform its regulatory functions for workers schemes. The review also found the roles and responsibilities between icare and SIRA were unclear in some areas. For example, workers compensation legislation allocates operational functions to SIRA which has created duplication and inefficiencies as noted in this chapter. The review recommended government consider amending legislation to state clearly the powers and functions of each entity. Both issues are yet to be addressed.

SIRA was mostly focussed on developing regulatory guidelines and frameworks in the years after it was established

SIRA was created in late 2015 and was tasked with regulating multiple insurance schemes and establishing operational frameworks to supervise each insurance scheme within its remit. In the initial years of SIRA's establishment, SIRA developed guidelines and standards around the management of workers compensation. For example, SIRA's first Standards of Practice was issued in 2018 and contained broad claims management principles to guide insurer conduct and support the achievement of scheme legislative objectives. SIRA also first published an Insurer Supervision Model in 2017 which outlined SIRA's approach to monitoring and supervising the performance across workers compensation insurers. The model contained compliance and performance indicators to help SIRA identify and address risks in the areas of conduct, claims management and financial sustainability. SIRA advises this supervision model assisted it to identify a significant decline in the performance of the NI in 2018, which led SIRA to commission its first independent review of the NI in 2018–19.

SIRA has become more active in its regulation of the NI but only recently started actively supervising the TMF

SIRA increased its monitoring and supervision of the NI following the findings of the 2019 review, with SIRA commencing quarterly compliance and performance audit of claims management of the NI from July 2020. SIRA's reviews of the NI had a strong focus on compliance with specific legislative requirements, in response to concerns about a lack of capability among claims managers at the time. Some of SIRA's more recent reviews of the NI have selected a strategic focus area, such as compliance with the 'early intervention' requirements of claims management. This theme was selected based on research evidence indicating that the management of a claim in the first four weeks has a significant impact on return to work outcomes. SIRA advises that future audits will use a risk-based approach and focus on areas in which low compliance has been identified and there is evidence that the compliance requirement is based on better outcomes, such as injury management planning.

SIRA has issued two penalty notices as a result of its increased oversight on the NI:

- The penalty notice issued on 6 September 2019 totalled \$132,000. The penalties were imposed for icare's failure in 24 instances to commence weekly workers compensation payments within seven days of initial notification of the injury to the insurer.
- The penalty notice issued on 22 January 2020 totalled \$82,500. The penalties were issued for icare's failure in ten instances to ensure employer's premium rate does not increase by more than 30% from the previous policy year, as required in SIRA's premium guidelines. icare's failure to comply with the capping requirement led to impacted policy holders paying an additional premium totalling over \$700,000.

SIRA began regularly reporting to government on NI financial sustainability in 2016–17, with its first report provided to government in August 2018. The 2016–17 report noted generally that a new claims model had been implemented from January 2018 which may impact claims experience and make future treatment and costs more complicated. However, the report did not provide further details of these risks, such as potential impacts on the key areas of return to work or related cost impacts due to the transition. SIRA's annual reports from the years up to and including 2018–19 did not draw attention to any performance concerns for the NI or the TMF and did not provide detailed information on SIRA's supervision activities for the schemes. The reports focused mostly on other areas of SIRA's responsibility, particularly the implementation of reforms to the compulsory third party insurance scheme during 2017.

In January 2020, SIRA commenced investigations into the management of three Corrective Services NSW (CSNSW) claims in the TMF following reports it received around claims mismanagement. The report outlined several actions, including that SIRA undertake a broader review of the compliance and performance of the TMF and a larger audit of CSNSW workers compensation claims with a focus on psychological injuries. In August 2022, SIRA commenced a review of 100 CSNSW claims to assess the compliance of these claims against legislative and regulatory requirements. During the audit, SIRA advised these reviews led to SIRA developing the evidence base for undertaking its broader review of the TMF in 2023. The 2023 TMF review has a focus on managing psychological injury claims.

The audit did not see evidence of SIRA taking a strategic approach to the regulation of the TMF in earlier years despite the outcomes of SIRA's initial CSNSW investigations, deteriorating return to work performance, increasing costs, and the emerging strategic risk of the rise in psychological injury claims. Given these issues, a more active regulatory presence from SIRA would have been justified.

Any decline in return to work rates, even if only temporary, can have a long-term impact on outcomes for affected workers and for scheme costs. For example, research indicates that injured workers who are not working for a longer period become progressively less likely to ever return to work and are more likely to develop a secondary psychological injury associated with their initial injury. As a result, the poor performance of workers compensation schemes in previous years is having an ongoing impact on scheme performance today.

SIRA began focussing on improving compliance of employers with workers compensation obligations from 2020, but did not have a strategy or active program prior to this

In 2020, SIRA created an Employer Supervision and Return to Work Directorate as part of a broader organisational restructure. The Directorate was created to strengthen the focus and regulatory approach for employers and support the development of an employer supervision strategy and framework. The strategy and framework for employers were finalised in 2022. These are consistent with its organisation-wide regulatory framework and outlines SIRA's approach to planning and conducting regulatory activities in identified areas of highest risk.

In December 2021, SIRA also established an inspectorate to undertake employer education activities and conduct reviews of employer compliance with workers compensation obligations, in addition to those conducted by SafeWork NSW. Prior to this, SIRA did not have a dedicated employer supervision and compliance strategy or function, although it did provide educational resources for employers. It relied on SafeWork inspectors to conduct workplace inspections on its behalf, which were guided by SIRA's modelling work.

SIRA has legislative powers to enter workplaces to gather evidence, conduct audits and reviews, and impose penalties for non-compliance. SIRA targets its employer inspections primarily through a predictive data analysis tool, with a smaller number of inspections in response to complaints or referrals. The predictive tool assesses new workers compensation claims made and identifies those that are at higher risk of a poor return to work outcome, based on factors including the type of claim and employer or industry.

SIRA has not allocated sufficient resources to investigate and prosecute fraud

SIRA has a legislative responsibility to assist in measures to deter and detect fraud within workers compensation schemes. In February 2023, SIRA engaged an internal review to assess its capability and structure in enforcement and prosecution in all schemes it oversees, including the Compulsory Third Party scheme and the Home Building Compensation Fund. The review found there was a backlog of high-risk fraud referrals. This could indicate that cases of fraud in the workers compensation system may have gone undetected or unaddressed in recent years. The review recommended SIRA expand its investigations team to reduce the backlog of matters and ensure all icare referrals are investigated.

During the audit, SIRA advised that while it has not fully responded to these recommendations yet, it has engaged additional resources for the employer investigations team and will consider additional resourcing in 2024–25. SIRA also advised it had taken other actions to reduce fraud risks, including initiating regular meetings with icare to discuss new fraud referrals and working with icare on a Memorandum of Understanding to strengthen fraud investigations and prosecutions. However, these actions are unlikely to address the issues relating to resourcing that were identified in the review.

Some of SIRA's research and pilot programs duplicate or overlap with those of icare

SIRA has a legislative function to 'to initiate and encourage research to identify efficient and effective strategies for the prevention and management of work injury and for the rehabilitation of injured workers'. In 2019, SIRA commissioned a review of its research strategy on workers compensation and other insurance schemes which it oversees. The review found, among other things, additional work was needed to coordinate SIRA's research program to avoid duplication. The review recommended SIRA improve collaboration with icare, SafeWork and other stakeholders and develop a model for knowledge translation to ensure evidence informs practice.

SIRA and icare's research and pilot programs still overlap in several areas, especially workplace mental health-related research. For example:

- icare has a 'Front of Mind' program that is focussed on developing and testing mental health platforms, like development of apps and education programs. SIRA has a 'Recovery Boost' program which provides grants to universities and private service providers to research and develop programs related to mental health.
- icare has also developed a 'Design for Care' program in partnership with Curtin University to research work design impacting mental health. Similarly, SIRA has funded various research projects on workplace mental health, including Monash University's work-connected interventions for psychological injuries, and Black Dog Institute's two-year research fellowship on recovery after psychological injury.
- icare has reported it would be developing a mental health strategy and action plan in 2022–23. SIRA has also developed action plans and strategies on mental health.

SIRA revised its research strategy in response to the review's findings and recommendations. SIRA's *Research Strategy 2022–25* outlines its research objectives, actions, and measures of success. Actions include working with stakeholders to co-design research projects and working with stakeholders to prioritise research based on level of impact. Measures of success include creating opportunities for CSPs and other stakeholders to engage with SIRA's programs and increasing the number of research partnerships targeting personal injury evidence gaps.

NSW Treasury's role in overseeing icare is not clearly defined, limiting its ability to support performance improvements in workers compensation

NSW Treasury does not have a legislated role in the management of workers compensation. icare is directly accountable to the icare Board and the icare Board is accountable to the responsible minister for icare achieving its statutory objectives. The TMF is funded by the NSW Government and has a direct impact on the NSW budget, so NSW Treasury has a role in advising the Treasurer on the performance and operations of the TMF. NSW Treasury also supports the minister responsible for icare, so has a role in advising the responsible minister in relation to icare's management of the NI. This includes reviewing and advising the minister on icare's annual Statement of Business Intent, which icare must submit to the responsible minister and the Treasurer.

NSW Treasury has monitored icare's financial and operational performance and has reported regularly on this to the responsible Minister and the Treasurer. However, NSW Treasury has not taken action to address issues that it is aware of. For example, when reviewing icare's Statement of Business Intent (SBI) in 2022–23, NSW Treasury stated that it had concerns about the performance and financial sustainability of workers compensation schemes. Its response was to advise the responsible minister and the Treasurer to note its concern about these issues. In this review, NSW Treasury also advised that icare had not achieved its own forecasts from previous years for improvements to the financial position of the NI but did not propose any action in response to this. Similarly, NSW Treasury noted in another ministerial brief that icare made changes to its targets for return to work rates in 2020–21 that only required performance to be maintained or improve marginally. It expressed concern that this represented an acceptance of ongoing performance at lower than historical levels but did not propose any actions. NSW Treasury's lack of specific responses to these issues reflects its limited powers to influence icare's actions.

Recent changes to icare's governing legislation allow the Treasurer or the Secretary of NSW Treasury to require icare to provide information relating to its activities. This may help NSW Treasury to be more active in its oversight of icare's key decisions and activities. In November 2023, icare's responsible minister announced that NSW Treasury will conduct a review of icare focusing on its operational costs.

This audit has identified several gaps in icare's management of workers compensation schemes. For example, icare proceeded with changes to its claims management model for the NI that involve a multi-billion dollar procurement process without completing detailed options or benefit-cost analysis, as discussed in Chapter 2. icare has also focused significant resources and attention on internal corporate improvement activities that do not directly contribute to the achievement of the key legislative objectives of workers compensation schemes. Both of these issues have led to significant increases in icare's costs without improved return to work outcomes in recent years. Stronger engagement from NSW Treasury with the icare Board could help improve icare's performance by providing advice and challenge in areas in which icare has consistently under-performed.

Section two

Appendices

Appendix one – Responses from audited agencies

Response from icare



GPO Box 4052,
Sydney, NSW 2001
T 02 9216 3327
icare.nsw.gov.au

25 March 2024

Margaret Crawford PSM
Auditor-General for New South Wales
Audit Office of NSW

icare's Response to the Performance Audit on Workers Compensation Claims Management

Thank you for the opportunity to respond to the Audit Office's Performance Audit of the Management of Workers Compensation Claims in New South Wales. We acknowledge and accept the Audit Office's recommendations in supporting the effectiveness and efficiency of the workers' compensation scheme and welcome the recognition of several improvements icare has made in recent years.

icare is a large and complex organisation. We deliver a range of services across several insurance schemes for the state of New South Wales, operating a safety net that is integral to the social and economic fabric of the State.

All of icare's schemes are important to the well-being of the state. This is particularly true of the security provided by icare's worker's compensation scheme for the 3.6 million workers in NSW. Workers have the right to expect to go to work in a safe and healthy environment every day. They should also know that if something does go wrong, they will receive the caring, reliable, fair and focused support they need to recover and return to work as soon as possible. The need to effectively care for injured workers is balanced with the needs of the 329,000 public and private sector employers in NSW who also rely on icare to maintain an efficient insurance scheme, giving them the peace of mind that their operating costs are kept to a minimum.

At icare, we take the responsibility of providing this safety net and delivering high-quality, cost-effective care to all workers in NSW very seriously. icare has undergone a number of evolutions, from the pre-icare phase (WorkCover), icare's early establishment phase, and the post-2021 McDougall Review phase. In the spirit of continuous improvement, we are still evolving and have been working to build the systems to address past failures and build a solid foundation for the future.

As the report acknowledges, icare is amidst a significant and widespread transformation with a strategic plan, set in 2021, under a refreshed board and management team. The plan will reset the foundations of the organisation and deliver sustainable improvements over a 10-year period. icare is less than three years into this plan, focusing on stabilising and taking steps to improve our operations. While the program's ultimate success will be realised in coming years, icare is seeing indicators of improvement, such as the stabilisation of our return-to-work rates, despite nationwide declines across all other Australian workers' compensation schemes.

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Finally, it is important to note that icare's role is to improve outcomes for workers injured in the workplace. We have little influence over the rate at which workers are injured, physically or psychologically. Resolving these issues, which have a profound effect on the economics of the workers compensation schemes, requires a concerted effort by all three workplace safety partners – ourselves, SafeWork, which is responsible for workplace safety and injury prevention, and SIRA, which is responsible for scheme policy and legislative reform. In terms of injury prevention, both SafeWork and SIRA have an even more important role to play as they are empowered to consider both physical and psychological workplace safety, and any potential legislative or regulatory levers to address and prevent the further rise of psychological injury claims.

icare's evolution has been shaped by our responsiveness to various independent reviews, such as this one. Cognisant of our commitment to give the best care to injured workers whilst managing public money responsibly, we are keen to optimise the opportunity presented by expert insight and feedback.

icare accepts the Audit Office's three recommendations in supporting the effectiveness and efficiency of the workers' compensation scheme. However, some other findings in the report are inconsistent with the evidence provided to the Audit Office. We enclose further details in our response attached.

We wish to thank your Audit Team for their efforts and professional dealings during the audit.

Yours sincerely,



Stuart Farquharson
Acting Chief Executive Officer

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icare response

to the
New South Wales Auditor General's
Performance Report on
Workers Compensation Claims Management

March 2024

3

Summary and general comments

icare thanks the Audit Office for its review of our operations. We accept the three recommendations made by the Audit Office, and have offered some commentary on some of the other findings in the report.

icare was created in 2015, with a substantial reform agenda for the workers' compensation scheme commenced in 2021 under a refreshed board and management team, following the McDougall Review. There had been a number of issues identified, including a concerning drop in scheme performance from the previous claims model, which had been implemented in 2018. The compounding effect of a radically changing labour environment, along with the scale of an organisation that supports 3.6 million workers across the state, means that results from reforms are necessarily long tail. Changes to an organisation of such scale takes years, not months, to implement and results equally take time to materialise. The work is still in progress, but we are seeing good, early results.

The management of workers compensation is very complex. Return to work (RTW) results have been in nationwide decline since 2006 as a result of structural and other changes in the labour market and the economy. In recent years, the COVID-19 pandemic, the changing nature of work, increases in psychological injuries and the ageing working population have created additional RTW challenges and contributed to a general decline in RTW outcomes across all Australian workers compensation schemes. These are structural issues that are beyond the scope of icare to resolve. We are very pleased that despite this challenging environment, return-to-work rates (RTW) have improved from the lows of 2017-2019, remaining stable over this period of reform¹.

Finally, icare's improvement program will assist the financial sustainability of the scheme moving forward. As an insurer, we are subject to similar operating cost pressures as other insurers, we operate within a prescriptive, regulated environment, and do not control the rate at which workers become injured or the type of injury they sustain. Nor do we have control of substantive elements of our policy framework, or the same financial levers to pull as other insurance agencies. icare has not, for instance had control over the premiums it may charge, and has been required to fulfil a government direction with respect to capping premium increases.

icare's reform agenda will improve outcomes for injured workers, the businesses we serve, and our overall long term financial position.

Audit Office recommendations

icare accepts the three recommendations and, accordingly, intends to:

1. Publish our statement of business intent
 - icare will enhance the statement of business intent as per the recommendation and publish it on our website. This will be available along with the data we already publish,

¹ See p12 of the Auditor General's report Exhibit 3: Return to work rates at 13 weeks, NI 2016-17 to 2022-23

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including our strategy, business plan, comprehensive financial metrics, CSP performance results and more.

2. Develop a monitoring and evaluation framework and commence monitoring and evaluation of the effectiveness of our reforms to the NI and the TMF.
 - icare has a monitoring framework in place which focuses on benefits realisation. Following the audit recommendation, this framework will now be expanded to include a logic model consistent with NSW Treasury guidelines.
3. Develop a quality assurance program to ensure weekly claims payments to injured workers are accurate and supported by sufficient documentation for verification of their accuracy.
 - icare is in the process of improving its quality assurance program of payments, which includes end-to-end mapping of all controls on payments and embedding a continuous improvement program along with identification of system enhancements to further reduce the risk of payment errors.

Summary of Key Findings

There are a number of other Key Findings in the Audit Office report. A summary of icare's response to these is below:

1. icare is confident that we conducted an adequate options analysis before selecting our new claims management model for the Nominal Insurer. icare acknowledged the issues raised with the previous single-provider claims model in the 2019 Dore report and in the 2021 McDougall review. In search of an optimal model, an analysis of alternative models was undertaken. This included a review of insourcing, outsourcing with a single provider model and outsourcing with a competitive market model. This review was discussed at Board level and over a period of time with a number of documents produced rather than being expressed in a single document. The final result encapsulated all components of a comprehensive, well-informed business case and the work undertaken addressed the stated purpose and outcomes of NSW Treasury's Policy Guidelines on the Submission of Business Cases.

The chosen strategy of a slow transition to a multi-provider model was considered to:

- have the least disruptive impact on injured workers and employers already in the system. We did not want to move injured workers with open claims between providers given the disruption this would create to injured workers' return to work and health.
- reduce the risk of departure of capable and skilled case managers from the scheme as we transitioned share away from a dominant provider. The retention, recruitment and training of additional case managers was considered to be the key investment required to improve outcomes for injured workers and their employers.
- enable innovation and specialisation, particularly focused on psychological injuries, into the scheme.
- drive improved scheme performance through transparency and competition.

Our most recent data now shows that we have arrived at the right model. As a long-tail strategy with a ten-year horizon, there is an inevitable establishment period before the benefits of the changes are fully realised. We note that the Audit Office acknowledges this, and we have been pleased to see that return-to-work rates have stabilised over this period.

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For icare's detailed response see section [1.1/2.1](#) below.

2. There have been two key issues regarding the accuracy of weekly payments to injured workers: the determination of pre-injury average weekly earnings and the biannual indexation of payments. Some of the issues pre-date the formation of icare in 2015, and our discovery and remediation of these issues is an outcome of our program of continuous improvement. We remain steadfastly focused on fixing these. In the spirit of our culture and philosophy, if additional issues do come to light, we will advise SIRA in line with reporting obligations and work to promptly resolve them, as well as following the Audit Office recommendation to improve our quality assurance program in this area.

For icare's detailed response see section [1.3/2.5](#) below.

3. icare does not support the finding that our focus in reforming the TMF is not based on addressing the key strategic challenges for the scheme. Indeed, the focus for TMF has been to understand the drivers of performance and the opportunities for icare to better fulfil its statutory role, on behalf of SICorp. icare is committed to the primary objective of the TMF Transformation program, to improve RTW outcomes for both physical and psychological claims.

For icare's detailed response see section [1.4/3.1](#) below.

4. icare does not support the finding that we have commenced a procurement process for the TMF without conducting a detailed analysis of our claims management model. As noted, the NI model was determined following a thorough and robust process that has already begun to deliver improvements. The TMF claims model and procurement strategy has been built upon the learnings from the NI model to deliver economies of scale and scope across the TMF and Nominal Insurer schemes. icare will deliver a workers compensation model that will allow us to support all injured workers in NSW, irrespective of their role, industry or employer. It will also establish economies of scale and efficiencies through a shared platform, capability and resourcing across icare and the CSPs.

For icare's detailed response see section [1.5/3.2](#) below.

5. The Audit Office finding that '*fees paid to the claims service providers for the TMF have increased significantly in recent years despite previous forecasts of reductions*', can be explained by the unexpectedly significant increase in TMF claims volumes as acknowledged in the Audit Office's Report. icare has limited ability to influence the volume of workplace injuries, including psychological injuries resulting in claims being lodged by employers, but remains committed to ensuring all injured workers receive a consistent claims experience.

For icare's detailed response see section [3.3](#) below.

6. icare disagrees with the Audit Office finding that we have given insufficient attention to addressing the increase in psychological injury claims. Rather, the rise of psychological injury claims is of great concern to us, and better managing these claims is an inherent feature of many of icare's initiatives. However, while icare accepts responsibility for the management of claims, in icare's role as insurer, icare's role is to respond to injury events. icare does not have control over the number of claims it receives as a result of injuries and incidents in workplaces and the community.

For icare's detailed response see section [3.4](#) below.

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7. icare acknowledges the Audit Office's finding that while some of our reform activities aim to improve return to work and financial sustainability, the communication of our accountability is not clear enough. We are committed to ensuring this accountability is made clearer in icare's public-facing communications and intend to publish our Statement of Business intent as per the Office's recommendation.

For icare's detailed response see section [1.6/ 4.1/4.2](#) below.
8. icare acknowledges the Audit Office's finding that we have 'committed significant resources to internal organisational improvement programs' although we respectfully query the assertion that this program does not 'fully address' the strategic challenges to the key legislative objectives of workers compensation schemes. Janet Dore's 2022 Report noted that the Nominal Insurer Improvement Program contained all of the 'critical' elements to realise improved outcomes for injured workers.

For icare's detailed response see section [1.7/4.3](#) below.
9. icare disagrees with the Audit Office's case that our employee and other operating expenses have increased significantly during a period when workers compensation scheme performance has not improved. icare is amidst a significant transformation and is making investments today that will yield long-term, sustainable benefits into the future. A 2023 benchmarking analysis places icare favourably relative to peers with an operating expense ratio well below the private sector. For every \$1 spent in additional CSP fees, icare expects a return of \$3 in claims savings.

For icare's detailed response see section [4.4](#) below.
10. icare acknowledges the finding that our reporting on the performance of workers compensation schemes has not provided a clear indication of performance in our core areas of responsibility. With the CSP model now established with baseline data, in December 2023 we commenced publishing performance data for individual CSPs. We are committed to further publication of scheme performance data in 2024 and into the future.

For icare's detailed response see section [4.5](#) below.
11. icare does not agree with the finding that our public statements about our performance have underplayed the major challenges facing workers compensation schemes. icare runs multiple schemes, and each scheme has its own section within the Annual Report that contains a detailed summary of the financial performance of the scheme and customer experience. The Workers Compensation and Insurance for NSW chapters also include Return to Work rates sections and highlight initiatives that focus on injury prevention, improving workers resilience and innovations to address psychological injuries.

For icare's detailed response see section [4.6](#) below.
12. icare acknowledges the finding that some of SIRA's research and pilot programs duplicate or overlap with those of icare. We are committed to working with SIRA to ensure activities are coordinated, aligned, and prioritise the shared focus of best supporting injured workers, to minimise potential duplication.

For icare's detailed response see section [1.10/5.6](#) below.

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icare's detailed response to the Audit Office recommendations and specific key findings

icare has accepted the three Audit Office recommendations:

Audit Office recommendations

By December 2024, icare should:

1. ensure that its annual Statement of Business Intent clearly sets out its approach to achieving legislative objectives for workers compensation schemes. This should be published and should include:

- *a plan and actions for improving performance against the key legislative objectives of optimising return to work and maintaining the financial sustainability of workers compensation schemes*
- *consistent and measurable targets relevant to the key legislative objectives of workers compensation schemes*
- *plans for improving the management of psychological injury claims for workers compensation schemes.*

icare response: Accepted

icare comment: Our Statement of Business Intent will be published along with the rest of our performance data and the evaluation framework for the claims model (see below). This will include our approach to achieving legislative objectives for the workers compensation schemes and accompany our other published data, which includes our strategy, business plan, financial metrics, CSP performance results and more.

2. develop a monitoring and evaluation framework and commence monitoring and evaluation of the effectiveness of its reforms to the NI and TMF. This should focus on assessing outcomes against the key legislative objectives of workers compensation schemes and icare's principal legislative objectives and align with NSW Treasury evaluation policy and guidelines.

icare response: Accepted

icare comment: a monitoring framework is in place focussing on benefits realisation. This will be expanded to include a logic model consistent with NSW Treasury guidelines.

3. develop a quality assurance program to ensure weekly claim payments to injured workers are accurate and supported by sufficient documentation for verification of their accuracy.

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icare response: Accepted

icare comment: icare is in the process of improving this quality assurance program, which includes end-to-end mapping of all controls on payments and embedding a continuous improvement program along with identification of system enhancements.

icare's detailed comments on the key findings

1.1/2.1 icare did not assess its existing claims management model or conduct a comprehensive options analysis assessing alternative claims management models before selecting its new claims management model for the Nominal Insurer

icare does not support this finding. The McDougall Report, and icare's evidence provided to the McDougall Review at that time, acknowledged the issues with the previous claims model, the analysis done on the model and the need to move away from a single provider model. Prior to this, Janet Dore's 2019 report explored this matter extensively and found that *'the new [2017] 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'*. The outcome of this observation and related observations is summarised in Finding 10 of Ms Dore's report, being that, *"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"*.

It is critical to acknowledge that these recommendations were welcomed by the NSW Government at the time, with icare and SIRA tasked with actioning the findings relevant to each entity.

Following this, icare conducted a thorough options analysis including options around insourcing, outsourcing with a single provider model (the previous model) and outsourcing with a competitive market model.

The option for an insourced claims model was considered but not progressed to full financial analysis. The main reasons being:

- Findings of independent reviews where a single provider model created risk that would not be mitigated by insourcing claims.
- Practical considerations and effective impossibility of recruiting nearly 2,000 case managers in a 12-month period. This would also create the risk of loss of case managers, relevant to recommendation 3 of the McDougall Review.
- The large quantum of open claims that would need to be moved creating a risk of poor outcomes for injured workers and a drop in return to work rates.

No further costing analysis was conducted because this option was not practical and created large risk to scheme performance. It is likely that this option would have had a similar cost to the single provider model, which was the base cost for the modelling.

The other options considered were:

- Single provider outsourced model as was in effect from 2018 – 2022.
- Multi-provider model with a large scale transition of claims on 1 January 2023.
- Multi-provider model with a slow transition of claims from 1 January.

The key considerations when selecting the model were:

- Lowest impact to injured workers and employers
- Ability to quickly grow case manager capability in the scheme. This is the key part of the investment in the scheme that was required to improve outcomes for injured workers.

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- Ability to bring innovation and specialisation (focused on psychological injuries) into the scheme.
- Drive improved outcomes through competition and publication of performance transparently.

icare developed its new claims model working with Kearney (model design) and Finity (remuneration model, costs and benefits). Feedback was also received through an extensive “have your say survey”, consultation with various stakeholders including employers, injured workers, medical professionals and icare’s regulators.

With all those considerations, the multi-provider model was selected with a slow transition and a deliberate strategy to bring new providers on board one at a time and not move open claims so injured workers were not impacted.

In summary, icare acknowledges the report’s reference to the absence of a single business case document, but asserts that a robust process was undertaken to review the alternatives. We are very confident that the process encapsulated all components of a comprehensive, well-informed business case. While icare accepts this process happened over a period of time and was fulfilled through a number of documents, rather than being expressed in a single document, the work undertaken addressed the stated purpose and outcomes of NSW Treasury’s Policy Guidelines on the Submission of Business Cases.

1.2/2.2 icare conducted a comprehensive procurement process to select CSPs for its new NI claims management model

icare agrees with this finding.

2.3 icare is implementing a new remuneration structure for CSPs which aims to provide better financial incentives to improve performance

The new claims model aims to improve outcomes for injured workers by incentivising the CSPs to:

- Establish a comprehensive operation that meets key quality outcomes and complies with legislation
- Improve performance outcomes for injured works and employers including Return to Work targets
- Increase investment in case managers through lower caseloads
- Improve case manager training
- Further identify innovation opportunities.

The model is expected to drive a \$4.5 billion claims valuation benefit to the scheme over the next 10 years, as a result of improving return to work and outcomes for injured workers and employers.

1.3/2.5 There are ongoing issues with the accuracy of weekly payments to injured workers

icare acknowledges this observation – noting that there have been two key issues: the determination of pre-injury average weekly earnings (PIAWE) and the biannual indexation of payments. icare’s

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discovery and remediation of these issues is an outcome of icare's program of continuous improvement.

Since discovery, icare has taken significant measures to strengthen controls and improve oversight over our Claims Service Providers to reduce the incidence of inaccurate weekly payments. The evidence to date is that these additional controls are working.

icare has completed the remediation program to address the 2019 identification of the incorrect determination of pre-injury average weekly earnings. icare's remediation program for the historical indexation matter is drawing to completion in March 2024.

To ensure ongoing accuracy and mitigation of potential errors in calculating pre-injury average weekly earnings and its indexation, system enhancements have been implemented over the past two years, with the most recent updates for indexation in place in time for the next indexation period on 1 April 2024.

PIAWE and Indexation are complex matters and influenced by dynamic claim circumstances. We remain steadfastly focused on fixing these issues for the people we serve. If icare uncovers additional issues, in the spirit of our culture and philosophy, we will rectify them as quickly as possible, advising SIRA in line with our reporting obligations and working collaboratively to resolve them.

1.4/3.1 icare's focus for reforming the TMF is not based on addressing key strategic challenges for the scheme

icare does not support this finding. The focus for the TMF has been to understand the drivers of performance and the opportunities for icare to better fulfil its statutory role, on behalf of SICorp, to operate the TMF scheme. icare is committed to the primary objective of the TMF Transformation program, to improve RTW outcomes for both physical and psychological claims.

icare acknowledges that the implementation of the Guidewire platform for the TMF is a central aspect of the TMF Transformation business case. The program has 4 streams which all play an important role in addressing claims management performance:

1. Claims Model
2. Policy Model
3. CSP Performance Uplift
4. Single Platform

The platform is an enabler for the Claims Model and CSP Performance Uplift, and is being designed concurrently with other program deliverables to address the challenges being faced by the TMF, icare/SICorp and NSW Government agencies.

It is worth noting that icare has been progressively improving its approach to management of the TMF since its CSP Request For Proposal in 2019 within the constraints of a five-year contract. The then-new contract effective 1 January 2020 moved to a risk-based claims model to support focus on psychological injury claims. Contract extensions in 2023 introduced RTW targets specific to psychological claims to incentivise CSP focus and outcome.

1.5/3.2 icare has commenced a procurement process for the TMF without conducting detailed analysis of its claims management model

icare does not support this finding. There are surrounding circumstances of the development of the NI claims management model (see icare's response to finding 1.1/2.1) and decisions about translating it to the TMF that must be considered. Essentially, the TMF procurement strategy is predicated on the NI model (in line with icare's strategy) to ultimately deliver a workers compensation model that will allow icare to support all injured workers in NSW, irrespective of their role, industry or employer. It recognises the unique nature of NSW government agencies, however, and will also establish economies of scale and efficiencies through a shared platform, capability and resourcing across icare and the CSPs.

icare assessed the suitability and potential alignment of the NI model for the TMF in 2022 focusing on strategic ambition, sustainability, outcomes, CSP architecture and allocation, remuneration and performance management. The review determined that overall, there was strong alignment and suitability, noting differences would need to be addressed for claims allocation and engagement.

icare engaged Finity to assess the benefits to the scheme of the proposed claims model and remuneration structure. For the contract extension period (2023 - 2024), the revised remuneration structure, dependent upon achievement of RTW targets, would yield a benefit between \$700 million to \$1 billion. This has a foundational component in the development of the proposed procurement process. This benefit is calculated through a combination of both reduction in claims expenses (operational) and releases on future valuations (scheme sustainability).

A full business case including detailed analysis of claims model and alternatives is being presented to the icare Board in March 2024 for approval prior to the anticipated commencement of a procurement process with CSPs

3.3 Fees paid to CSPs for the TMF have increased significantly in recent years despite previous forecasts of reductions in fees paid and improvements in performance

During the current contract period, new claim volumes significantly increased beyond expectation. The increase in base fees to CSPs was designed to compensate for the increase in new claim volumes to ensure caseloads remain manageable for case managers to support injured workers in returning to work. Maintaining reasonable caseloads is a key operational lever to support RTW and injured worker outcomes. icare has limited control over the rate and severity of injuries in the workplace but remains committed to providing a consistent level of claim management service irrespective of the volume of claims being submitted by employers.

3.4 icare has not given sufficient attention to addressing the increase in psychological injury claims, but has trialled some individual programs

icare acknowledges the need for continued focus on the rising rates of psychological injury claims.

The recent increase in psychological injury claims is being driven by preventable non-traumatic workplace incidents. A recent review by the State Insurance Regulatory Authority has identified that 8 out of 10 psychological claims are related to these "preventable" workplace behaviours such as bullying, harassment and work stress.

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The sharp rise of psychological injury claims is of great concern to icare and managing these claims is an inherent feature of icare's various strategies and initiatives for claims management. Some of the initiatives icare has introduced include:

- our CSP remuneration model which now measures and remunerates physical and psychological claims differently - to ensure increased focus on psychological claims.
- introducing a specialised model for psychological claims in the NI. We intend to replicate this model in the TMF in the new CSP contracts.
- working with individual agencies on research and innovation programs relating to prevention of and recovery from injuries including psychological injuries.

However, while icare accepts responsibility for the management of claims, in icare's role as insurer, icare's role is to respond to injury events. icare does not have control of the number of claims it receives. SafeWork NSW, with responsibility for workplace safety and injury prevention, and the State Insurance Regulatory Authority, with responsibility for scheme policy and legislative reform, are more empowered to consider prevention, workplace safety, and any potential legislative or regulatory levers to address and prevent the further rise of psychological injury claims.

To ensure a coordinated and strategic response to this trend, in late 2023, icare, SIRA and SafeWork established a tripartite working group. One of the focus areas for this group is to collectively respond to, and address, the rise of psychological injury claims.

1.6/ 4.1/4.2 Some of icare's reform activities aim to improve return to work and financial sustainability

icare's accountability for achieving the key objectives of workers compensation schemes – improving return to work outcomes and financial sustainability – is not clear enough

icare's primary duty and focus is helping injured people return to work, whilst ensuring that icare's schemes are sustainable into the future. While there are important contextual and environmental factors that influence these objectives, for example, the nationwide decline in return-to-work rates, resulting from the changing nature of work and injuries, these objectives underpin everything icare does.

icare acknowledges the Audit Office's finding and is committed to ensuring this accountability is made clearer in icare's public-facing communications.

1.7/4.3 icare has committed significant resources to internal organisational improvement programs

icare's 'Improvement Program' (comprising of two streams: Enterprise and Nominal Insurer) was established as a specific and direct result of the recommendations arising from previous reviews. While icare has committed significant resources to these Improvement Programs, this investment will yield sustainable improvements to icare's governance and performance over time.

icare respectfully queries the Audit Office's assertion that this program does not 'fully address' the strategic challenges to the key legislative objectives of workers compensation schemes. We note

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that the Improvement Program is not the extent of icare's agenda and work, and has a specific focus of addressing previous reviews.

Furthermore, Janet Dore's 2022 Report noted that the Nominal Insurer Improvement Program contained all of the 'critical' elements to realise improved outcomes for injured workers.

4.4 icare's employee and other operating expenses have increased significantly during a period when workers compensation scheme performance has not improved

icare is amidst a significant transformation and is making investments today that will yield long-term, sustainable benefits into the future.

Benchmarking analysis affirms that icare's operating expenses is reflective of the scale of the organisation and compares favourably with its interjurisdictional counterparts or equivalent commercial organisations.

It is important to note that the majority of expenses for the NI and TMF are related to claims handling. For the NI, the \$1bn expense is managing \$19b worth of claims liabilities, for the TMF, the \$0.4b expense (combined between Workers Compensation and General Lines) is to manage the \$15b worth of claims liabilities. Expenditure has increased as icare is making investments to deliver better and more sustainable outcomes into the future. For example, the NI claims model is expected to deliver \$4.5b in claims benefits over the next 10 years. For every \$1 spent in additional CSP fees, icare expects a return of \$3 in claims savings. Other initiatives, for example, where icare has lowered caseloads, will mean increased fees to CSPs, however, the result is better return-to-work outcomes through improved case management.

4.5 icare's reporting on the performance of workers compensation schemes has not provided a clear indication of performance in its core areas of responsibility

icare currently publishes key scheme measures on its website. As the CSP model is now embedded and fully operational with some baseline data, we commenced publishing performance data for individual CSPs in December 2023. This includes RTW, customer satisfaction, caseloads and some compliance measures. icare acknowledges this finding and in the spirit of transparency, responsibility and continuous improvement across our schemes, we are committed to further publication of scheme performance in 2024 and into the future.

4.6 icare's public statements about its performance have underplayed the major challenges facing workers compensation schemes

icare does not agree with this finding. The purpose of the Message from the Chair and Message from the CEO is to give a brief overview of the organisation's key activities, priorities, achievements and outcomes during the financial year. Such letters are generally understood to be a quick snapshot at a whole of organisation level, rather than a detailed appraisal of individual scheme performance. icare runs multiple schemes, and each scheme has its own section within the Annual Report that contains a detailed summary of the financial performance of the scheme and customer experience. The Workers Compensation and Insurance for NSW chapters also include Return to Work rates sections

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and highlight initiatives that focus on injury prevention, improving workers resilience and innovations to address psychological injuries.

Volume 2 of icare's annual report is a substantial document and contains the full audited financial statements for the Workers Insurance (Nominal Insurer), Insurance for NSW, HBCF, Lifetime Care, Dust Diseases Care and Sporting Injuries schemes.

1.10/5.6 Some of SIRA's research and pilot programs duplicate or overlap with those of icare

icare acknowledges this finding. icare is committed to working with SIRA to ensure activities are coordinated, aligned, and prioritise the shared focus of best supporting injured workers, to minimise potential duplication. This is another of the focus areas of the tripartite working group icare has established with SIRA and Safework.

Response from NSW Treasury



Treasury

[REDACTED]
Our reference: P24/243
Your reference: PA6273

Ms Margaret Crawford
NSW Auditor General
NSW Audit Office
mail@audit.nsw.gov.au

Re: Performance Audit – Workers compensation claims management

Dear Ms ^{Margaret} Crawford

Thank you for the opportunity to respond to the Performance Audit Report on Workers Compensation Claims Management.

Treasury welcomes the Audit Office's report into claims management in the State's workers compensation system.

This report builds on a valuable series of reviews that seek to lift performance and drive greater accountability within the Nominal Insurer and Treasury Managed Fund and help improve fiscal, economic and social outcomes.

Treasury supports in principle Audit Office recommendations for an expanded role for Treasury consistent with Treasury's Commercial Policy Framework.

This is subject to confirmation that this change in Treasury's role is a priority for the Government.

Sincerely

A handwritten signature in black ink, appearing to read 'M. Coutts-Trotter'.

Michael Coutts-Trotter
Secretary, NSW Treasury

21 March 2024

Response from SIRA

State Insurance
Regulatory Authority



Our reference: BN-01393-2024
Your reference: PA6723

Ms Margaret Crawford
Auditor-General for New South Wales
Audit Office of NSW
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

Performance Audit – Workers compensation claims management final report

I refer to your letter of 26 February 2024 containing the Final Report of the performance audit on workers compensation claims management. On behalf of the State Insurance Regulatory Authority (SIRA), I thank you for the opportunity to provide a response.

We have carefully reviewed the report and accept the findings as they relate to SIRA. SIRA appreciates the independent review of its activities and the support it offers us to foster continuous improvement. We welcome the audit report's conclusion that SIRA has improved the effectiveness of our regulatory activities in recent years.

Following its establishment on 1 September 2015 as the independent regulator of the Workers Compensation, Compulsory Third Party (CTP) and Home Building Compensation insurance schemes, SIRA was responsible for implementing a significant Government reform package, along with establishing its operating rhythm as a new agency. The staff at SIRA have worked hard to support the Agency's establishment while also providing effective regulatory oversight that ensures the schemes we regulate protect and support the people who need them, now and in the future.

The audit report makes two recommendations that relate to SIRA which we accept. It should be noted that recommendation seven overlaps with a recommendation made by the Standing Committee on Law and Justice, 2023 Review of the Workers Compensation Scheme. Any action taken by SIRA regarding this recommendation will consider appropriate collaboration with icare and SafeWork to ensure that research programs are coordinated and focussed on high priority needs, consistent with the Government response to the Review.

We would like to thank the Audit Office staff who worked with us on this audit. We look forward to continuing our engagement with them to report on our progress in implementing the recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Petrina Casey".

Petrina Casey
Acting Chief Executive
State Insurance Regulatory Authority

Date: 15/03/24

Locked Bag 2906, Lisarow NSW 2252
contact@sira.nsw.gov.au

13 10 50
sira.nsw.gov.au

1

Appendix two – About the audit

Audit objective, criteria and scope

The objective of this audit was to assess the effectiveness and economy of icare's management of workers compensation claims and the effectiveness of SIRA's oversight of workers compensation claims. The audit examined whether:

- icare's claims management model is effective and economical
- there is an effective performance and accountability framework for workers compensation claims management.

The scope of the audit did not include:

- auditing self-insurers or specialised insurers operating within workers compensation schemes in NSW
- auditing claims service providers (CSPs) engaged by icare
- auditing the role of SafeWork NSW or employers regarding workplace injury prevention.

Audit approach

To assess the effectiveness of icare's approach to workers compensation claims management, the audit considered whether icare's activities were supporting the achievement of the key objectives of the workers compensation schemes that it manages.

To assess the economy of icare's approach to workers compensation claims management, the audit considered whether icare could demonstrate that it had:

- evaluated its approach to claims management and tested this against other potential options
- tested the market for CSPs to understand capacity, capability and price.

To assess the effectiveness of SIRA's oversight of workers compensation claims, the audit considered whether SIRA:

- has a clear strategy that identifies key risks to workers compensation scheme performance and targets activities to these
- had a clear approach for responding to non-compliance with legislative requirements for workers compensation schemes.

Our audit procedures included:

1. Reviewing documents including:
 - icare's strategy and planning documents relevant to workers compensation claims management
 - icare's contracts with CSPs for workers compensation claims management
 - relevant policy and procedure documents from icare and SIRA
 - relevant briefings and correspondence from icare, SIRA and NSW Treasury.
2. Interviewing staff at the audited agencies to understand the context and history of relevant issues.
3. Examining data on the performance of workers compensation schemes.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Auditing Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We acknowledge the cooperation and assistance provided by staff at icare, SIRA and NSW Treasury.

Audit cost

The estimated cost of the audit, including staff costs and overheads, is approximately \$500,000.

Appendix three – Performance auditing

What are performance audits?

Performance audits assess whether the activities of State or local government entities are being carried out effectively, economically, efficiently and in compliance with relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake audits is set out in the *Government Sector Audit Act 1983* for state government entities, and in the *Local Government Act 1993* for local government entities. This mandate includes audit of non-government sector entities where these entities have received money or other resources, (whether directly or indirectly) from or on behalf of a government entity for a particular purpose (follow-the-dollar).

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

During the fieldwork phase, audit teams will require access to books, records, or any documentation that are deemed necessary in the conduct of the audit, including confidential information which is either Cabinet information within the meaning of the *Government Information (Public Access) Act 2009*, or information that could be subject to a claim of privilege by the State or a public official in a court of law. Confidential information will not be disclosed, unless authorised by the Auditor-General.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the accountable authority of the audited entity(ies) who will be invited to formally respond to the report. If the audit includes a follow-the-dollar component, the final report will also be provided to the governing body of the relevant entity. The report presented to the NSW Parliament includes any response from the accountable authority of the audited entity. The relevant Minister and the Treasurer are also provided with a copy of the final report for State Government entities. For local government entities, the Secretary of the Department of Planning and Environment, the Minister for Local Government and other responsible Ministers will also be provided with a copy of the report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's Audit and Risk Committee / Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of NSW Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged to entities for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose

Curious and open-minded

Valuing people

Contagious integrity

Courage (even when it's uncomfortable)

Level 19, Darling Park Tower 2
201 Sussex Street
Sydney NSW 2000 Australia

PHONE +61 2 9275 7100

mail@audit.nsw.gov.au

Office hours: 8.30am-5.00pm
Monday to Friday.