

Insurance and Care NSW | Comensura Pty Ltd

EXTERNAL REPORT

9 April 2021

1 Executive summary**1.1 Background to this report**

We have been engaged by Insurance and Care NSW (*icare*) to conduct an external review of its engagement of Comensura Pty Ltd (*Comensura*) in relation to the Additional Capability and Hosted Services Agreement (*Comensura Agreement*).

The report has been prepared within a very limited timeframe. We have relied upon:

- a set of documents provided to us by icare on 18 March 2021;
- an interview conducted by Allens with _____, Interim Group Executive, Personal Injury at icare (and former Chief Operating Officer at icare);
- an interview conducted by Allens with _____, Managing Director of Comensura and Chief Executive Officer (APAC) of Comensura's parent entity, Impellam Group plc (*Impellam*);
- discrete instructions from icare on factual matters; and
- discrete inquiries of Property NSW and NSW Treasury.

1.2 Key findings

Our engagement is against the background of questions in NSW Parliament on 8 March 2021, which suggested that icare had sought to use the Comensura Agreement (at least in part) to obtain access to office premises in the Sydney CBD without disclosing the transaction to NSW Treasury. We are also instructed that a Treasury briefing note from 2018 suggests that, in 2016, icare had sought to avoid Treasury's endorsement for an increase in its floor space.

In the light of the potentially serious inferences that might be drawn from those circumstances, we have given careful consideration to the documents provided to us. We have not been able to validate any connection between the facts asserted in the Treasury note and the Comensura Agreement. Overall, we do not think there is any sound basis to impute an improper purpose to icare in relation to the lease arrangements:

- There was a credible commercial rationale for icare to seek a single holistic managed service provider for icare's contingent workforce needs, including premises, IT and associated services for the contingent workforce.
- A competitive public tender process was conducted with appropriate oversight and governance (including from the icare Board). The Comensura Agreement was negotiated, by all appearances, at arms-length with a substantial commercial counterparty.
- Comensura has supplied a significant contingent workforce to icare (over 1400 roles since May 2018), which personnel have utilised the premises leased by Comensura. Details of these roles are provided in section 3.5 below.

Notwithstanding that conclusion, some aspects of the lease arrangements under the Comensura Agreement (which may be relevant to the intention of icare) are not adequately explained on the information available to us:

- We have not identified a compelling commercial narrative to explain icare's payment to Comensura of a 5% mark-up on costs for the leases and design / fit-out works (even though some fee is unsurprising, and [redacted] recalled that the quantum of the fee was the subject of negotiation);
- We have not identified any necessary connection between the amount of office space leased by Comensura and the number of workers to be provided under the Comensura Agreement. Over time, there seems to have been a gradual drift towards full-time icare staff being located on the leased premises; and
- Negotiations for the Kent St leases suggest that the parties intended for Comensura to novate the leases to icare (or a nominated 3rd party) if the Comensura Agreement ended.

For completeness, over the course of 2020 icare worked with Property NSW to review its anticipated accommodation requirements after various leases expire in 2021. One outcome of that review is that the leases currently held by Comensura will be taken up by Property NSW on behalf of icare (see section 3.7 below). Accordingly, to the extent that the drift towards icare full-time staff using the premises (and the justification for paying a 5% mark-up on lease costs in those circumstances) raise concerns, those issues are being addressed.

2 Relevant commercial context to Comensura Agreement

2.1 Relevant agreements

In early 2016, icare on behalf of the Nominal Insurer entered into a Master Information Technology Services Agreement (**MITSA**) with Capgemini Australia Pty Ltd (**Capgemini**) for the provision, implementation and support of the 'icare solution' to manage certain insurance and compensation schemes (known internally as the 'Nominal Insurer Single Platform', or the **NISP**).¹ From July 2016, Capgemini entered into leases for the premises at 309 and 321 Kent St, Sydney pursuant to Statements of Work issued under the terms of the MITSA.²

Prior to the Comensura Agreement, icare engaged contingent workers for projects, temporary roles and fixed term assignments through a variety of mechanisms, including term employment contracts as icare employees, or procurement of individual contractors who were remunerated on individual terms. Temporary workers were also engaged through NSW Government Contingent Workforce Panel contracts across a large number of labour hire firms (**WofG Panel Arrangement**). icare concluded that this variety of mechanisms had resulted in inconsistency in the engagement terms and employment status of workers in icare, a lack of flexibility to meet variable workforce demands, and additional complexity in the operational management of its workforce through the use of multiple labour hire firms.³

In early 2017, icare commenced a project which was known internally as the 'Additional Resource Model' or the 'Augmented Resourcing Model' (the **ARM**).⁴ The commercial background and context to the ARM is set out in several briefing documents and can be summarised as follows:

- The ARM project was initiated in the broader context of icare's transformation program and the design of its '2020 operating model'. During the period of its transformation, icare expected that it would need to 'scale up' its contingent workforce.⁵
- The overarching purpose of the ARM was for icare to partner with a single managed service provider to meet its variable workforce demands, including through the provision

¹ Document A.2 (MITSA - icare and Capgemini), p.12.

² See, for example, Document A.3 (Statement of Work - Property Licence Level 8 dated 1 September 2016).

³ See, for example, Document B.7 (PRC briefing paper re: Resourcing Model Options dated 22 February 2017).

⁴ See, for example, Document B.1 (Deloitte Market Scan – ARM dated 16 March 2016).

⁵ See, for example, Document B.7 (PRC briefing paper re: Resourcing Model Options dated 22 February 2017).

of additional services such as IT platforms, technology (eg, phones and laptops), vendor management systems, and premises for icare's contingent workers through 'existing novated leases and future leases'.⁶

- As part of icare's procurement planning and evaluation strategy, icare considered whether its existing approach to managing its contingent workforce by using multiple different labour hire firms to engage non-permanent workers under the WofG Panel Arrangements could support the ARM. This approach was deemed to be unsuitable as it did not cover the full scope of services required to meet the needs of the ARM, which included managed services, provision of facilities, and provision of technology.⁷

In around February 2017, icare engaged Deloitte to advise on the procurement process, market analysis, financial due diligence, and co-design in relation to the ARM.⁸ Following this process, in early April 2017 icare commenced a public tender process by issuing a formal Request for Tender (**RFT**) and conducting a market briefing for interested parties. icare received submissions from four parties. On 29 May 2017, Comensura was notified that it was the preferred service provider subject to approval by icare's Board. A chronology of the steps in the RFT process is set out in **Schedule 1** to this report.

On 3 August 2017, icare entered into the Comensura Agreement on behalf of the Nominal Insurer and the other authorities to which icare provides services (the **other scheme authorities**). The Comensura Agreement was varied on 31 October 2017 to exclude the other scheme authorities.⁹ Pursuant to the Comensura Agreement, icare issued several Facilities Orders for the provision of leased premises (including leases novated by Capgemini) and additional services, being the design / fit-out of some premises.

On 18 December 2017, the Managed Services Provider (**MSP**) Customer Contract Order (**icare Customer Contract**) was entered into between Comensura and icare acting in its own right and on behalf of the other scheme authorities. The icare Customer Contract was entered into under the WofG Panel Arrangement and incorporated the terms of the Whole of Government Standing Offer Agreement entered into between NSW Procurement and Comensura effective 1 November 2014 (**WofG Head Agreement**).¹⁰

2.2 Interview with

During our interview, _____ provided to us _____ understanding of the commercial rationale for, and the relationship between, icare's engagements with Capgemini and Comensura.

- _____ explained that icare engaged Capgemini for the provision, implementation and support of the NISP Project. Under the MITSA, Capgemini was to provide to provide a 'turn-key solution' to design, build, implement and run certain insurance and compensation schemes on behalf of the Nominal Insurer. As such, Capgemini managed a large number of staff who worked on the NISP (although _____ is not aware of the nature of their contractual employment arrangements).
- _____ was aware of, but not directly involved in, the lease arrangements entered into by Capgemini. _____ understanding at the time is that those premises were to be used by Capgemini staff engaged on the NISP and that there was a need for constant interaction between existing icare staff and the NISP.

⁶ See, in particular, **Document B.13** (Item 3.3 Board briefing paper Augmented Resourcing Model dated 31 July 2017); **Document C.2** (RFT Part B - Statement of Requirements dated 6 April 2017).

⁷ **Document C.8** (icare RFT Procurement Planning and Evaluation Strategy v17 dated 28 April 2017), p.9.

⁸ See, for example, **Document B.1** (Deloitte Market Scan – ARM dated 16 March 2016).

⁹ **Document A.8** (Deed of Variation No. 1 - NI and Comensura dated 31 October).

¹⁰ **Document A.1** (Whole of Government Head Agreement - NSW Procurement and Comensura dated 1 August 2014); **Document A.9** (MSP Customer Contract Order - icare and Comensura dated 18 December 2017).

- By early 2017, icare decided to end its engagement with Capgemini. Part of the commercial rationale for the ARM and ultimately entering into the Comensura Agreement was icare's need to identify a single managed service provider who could provide (among other services) contingent workers to continue the NISP project following the termination of that engagement.

2.3 Interview with

During our interview, [redacted] provided to us [redacted] understanding of the commercial background to the RFT process for the ARM and [redacted] recollection of the commercial negotiations between icare and Comensura in relation to Comensura Agreement, including the lease arrangements.

- [redacted] explained that during the initial stages of the public RFT process, which called for responses in relation to human resources, technological and facility services, Comensura's submission to icare sought to emphasise its experience operating under WofG Panel Arrangements (for example, Comensura's referee in its written proposal was its Whole of Government sponsor from NSW Procurement). During the 'joint solutioning' phase of the RFT process, icare conveyed to [redacted] that it intended to partner with a single managed services provider who:
 - [redacted] could meet its requirements for the provision of contingent workers, leased premises and technology (eg, laptops and mobile phones); and
 - [redacted] was able to act as the 'employer of record' for the contingent workers (which entailed responsibility for procurement, payroll, performance management and being the employer on record for workers' compensation claims lodged by contingent workers etc).

These aspects of the ARM were not possible under the WofG Panel Arrangements – eg, [redacted] explained that Comensura does not act as 'employer on the record' for workers under those arrangements.

- In respect of the leasing arrangements, [redacted] understood that the provision of leased premises to icare (including through the novated Capgemini leases) would form part of a broader range of managed services to be provided under the Comensura Agreement.
 - The 5% fee payable to Comensura for the provision of facilities and workspaces (discussed further in section 3.6) was the subject of commercial negotiations prior to its inclusion in Schedule 4 of the Comensura Agreement. [redacted] explained that the 5% fee was agreed upon after Comensura had initially proposed an 8% fee and icare had proposed a 3% fee.
 - [redacted] explained that the provision of the leased premises to icare was viewed by Comensura to be one component of the managed services to be provided to icare. The primary commercial drivers for the 5% fee were: (i) the considerable legal and administrative burdens associated with holding the leases, and (ii) the financial risks to Comensura (and its parent entity, Impellam) arising from the leases being designated as a liability on the company's balance sheet under the relevant accounting standards.
 - [redacted] did not recall any discussions with icare concerning whether the size of the leased premises were intended to be proportionate to the number of contingent workers to be supplied under the Comensura Agreement. [redacted] understanding was that both contingent workers and icare staff were to occupy

the premises tenanted by Comensura. explained that, in practice, icare instructed Comensura as to the premises a worker would work from.

- clarified the nature of the managed services provided to icare under the Comensura Agreement both in interview and in a follow-up clarification statement provided to us by email.¹¹ In particular, explained that Comensura is not appropriately described as a traditional labour-hire firm, but rather as an operator of neutral vendor managed service programs, with a particular focus on local and state government customers. One of Comensura's major clients in Sydney and across NSW is the NSW State Government. Comensura uses a supply chain of pre-qualified labour hire providers which it manages for its customers through a 'procure to pay' vendor management technology platform to increase visibility and compliance and reduce cost, however it does not source workers directly. Using this platform, Comensura provides icare with a single, consolidated invoice for contingent workers and other services provided by 15 labour hire firms approved under the Comensura Agreement.

3 Are the terms of the Comensura Agreement appropriate?

3.1 Overview

The following key matters tend to support a view that the terms of the Comensura Agreement were appropriate:

- there was a credible commercial rationale for the ARM (including that the winning tenderer would provide premises from which the contingent workforce would operate) (see 3.2 below);
- there was a structured competitive tender process, overseen by external consultants in which Comensura was identified as the most suitable tenderer (see 3.3 below);
- the Comensura Agreement (and Facilities Orders made under it), based on the documents that we have, appear to have been negotiated on an arms-length basis (see 3.4 below); and
- a large contingent workforce has been delivered through the Comensura Agreement (see 3.5 below).

We cannot comment on the market prices or practices, but an agreement entered into in those circumstances does not tend to raise concerns.

Our review has not identified specific concerns with the terms of the Comensura Agreement (or Facilities Orders under it) subject to the following questions which we cannot fully answer:

- A 5% service fee was charged by Comensura on the costs of leased premises. This is referred to as a fee for 'property services' in Schedule 4 of the Comensura Agreement and in the terms of the Facilities Orders issued under that agreement. We have been unable to confirm the commercial negotiations relating to the amount of this fee based on the documents provided to us, however provided recollection of the negotiations of this fee in interview (see 3.6 below).
- While premises leased by Comensura were primarily used by contingent workforce staff initially, there appears to have been a gradual drift towards the premises also being used by employees of icare (see 3.7 below).

¹¹ Email from to and dated 31 March 2021 (at 6:44pm) re: icare | Comensura – external review interview.

- Some documents suggest that icare intended that it would have control of the leased premises regardless of whether the Comensura Agreement was in place (see 0 below).
- We have been asked to determine whether a 2018 Treasury briefing paper (outlined below) suggests that the method for providing the premises through a third party was intended to disguise the leases from Treasury. For reasons below, we do not have a sound basis to conclude that there was an intention to disguise the transaction (see 3.9 below).

In Section 4, we address the question of whether icare complied with NSW Government procurement and property requirements in relation to the ARM and Comensura Agreement.

3.2 There was a credible commercial rationale for the ARM and Facilities Orders under it

The commercial context outlined above explains much of the rationale for the ARM. explained that the purpose of the original leasing arrangements with Capgemini under the MITSA was to accommodate the substantial workforce required to implement and maintain the NISP.

While was not directly involved (and were responsible), at the time, understanding was that the Statements of Work issued under that arrangement for Capgemini to lease premises was principally driven by:

- an assessment of current and future requirements for contingent workers in order to deliver the NISP; and
- the service delivery benefits and operational efficiencies that were obtained by that contingent workforce taking leases contiguous with icare's premises.

Between 1 July 2016 and 1 March 2017, Capgemini entered into the following leases for the premises at 309 and 321 Kent St, Sydney pursuant to Statements of Work issued under the terms of the MITSA.

Premises	Term of lease	Parties	Statement of Work (SOW)
Level 10, 321 Kent Street	1 July 2016 – 30 June 2019	Capgemini Nominal Insurer	SoW dated 1 September 2016 ¹²
Level 8, 321 Kent Street	1 September 2016 – 1 March 2018	Capgemini Nominal Insurer	SoW dated 1 September 2016 ¹³
Level 9, 321 Kent Street	1 September 2016 – 1 March 2018	Capgemini Nominal Insurer	SoW dated 1 September 2016 ¹⁴
Levels 9 and 10, 309 Kent Street	1 March 2017 – 1 March 2019	Capgemini Nominal Insurer	SoW dated 1 March 2017 ¹⁵

explained that, when the relationship with Capgemini was terminated, icare's intention was that contingent workers provided by Comensura would take over, complete and run the NISP under the new ARM project, utilising a similarly-sized contingent workforce who would require substantially the same office space. confirmed that icare's intention was to replace Capgemini with a single provider who could provide a holistic solution to icare's needs. Viewed in the context of 's explanation regarding the intended continuity between the termination of the Capgemini Agreement and the overarching commercial objectives which the ARM was

¹² Document A.5 (Statement of Work – Property Licence Level 10 dated 1 July 2016).

¹³ Document A.3 (Statement of Work – Property Licence Level 8 dated 1 September 2016).

¹⁴ Document A.4 (Statement of Work – Property Licence Level 9 dated 1 September 2016).

¹⁵ Document A.6 (Statement of Work – Property Licence Levels 9 and 10, 309 Kent Street dated 1 March 2017).

intended to achieve, it is apparent that the arrangement for leased premises at Kent Street between icare and Comensura was intended to directly replace the arrangements with Capgemini.

The documents that we have reviewed as part of this investigation indicate that the provision of leased premises and the novation of the Capgemini leases were understood to be within the scope of Comensura's engagement as service provider under the ARM. For example:

- On 6 April 2017, icare issued the Request for Tender PE/200317/2017 for Additional Capability and Hosted Services on the NSW Government eTendering which, among others matters, specified that:
 - icare "seeks innovative approaches to how facilities and workspaces will be provisioned (e.g. leasing of office space, externally provisioned and managed spaces etc.);" and
 - the service provider would be required to:
 - (A) manage the leasing of office spaces for contingent workers;
 - (B) configure and provision workspaces for contingent workers; and
 - (C) manage facilities for contingent workers.
- On 31 July 2017, the icare Board approved the execution of the Comensura Agreement following consideration of a briefing paper which (at Annexure A) identified the provision of premises as a 'Key Contract Clause'. Specifically, the briefing paper stated:

The provision of facilities will be covered by separate orders to be entered into between the parties under the Agreement. The orders for the novation of any existing leases will require icare to reimburse Comensura for all amounts payable under the lease, except to the extent such amounts arise out of the wrongful acts or omissions of Comensura.¹⁶

The table below provides details of the leases which Capgemini novated to Comensura pursuant to Facilities Orders issued under the Comensura Agreement. Additional premises were also acquired under the Comensura Agreement in Wollongong.

Premises	Term of lease	Parties	Facilities Order
Level 1, Suite 2, 60 Burelli Street, Wollongong	1 January 2018 – 31 December 2020	Comensura Nominal Insurer	Facilities Order No.1 dated 1 January 2018 ¹⁷
Levels 9 and 10 309 Kent Street	1 July 2018 – 31 March 2020	Comensura Nominal Insurer	Facilities Order No.2 dated 1 July 2018 ¹⁸
Level 8, 9 and 10 321 Kent Street	1 July 2018 – 30 June 2023	Comensura Nominal Insurer	Facilities Order No.3 dated 1 July 2019 ¹⁹

3.3 There was a structured competitive tender process

The documents that we have reviewed show that the Comensura Agreement was entered into following a structured competitive tender process. Some features of the process include:

- Deloitte was engaged at the outset of the procurement process to provide a market scan of potential providers.²⁰

¹⁶ Document B.14 (Item 3.3 Tab A Key Contract Clauses dated 31 July 2017).

¹⁷ Document A.10 (Facilities Order No. 1 (Wollongong) – NI and Comensura dated 1 January 2018).

¹⁸ Document A.12 (Facilities Order No. 2 (309 Kent St) – NI and Comensura dated 1 July 2018).

¹⁹ Document A.13 (Facilities Order No. 3 (321 Kent St) – NI and Comensura dated 1 July 2018).

²⁰ Document B.1 (Deloitte Market Scan – ARM dated 16 March 2016).

- The tender documentation was issued as an open tender through the official NSW Government procurement website 'eTendering'.
- Tenders were lodged by four reputable service providers: BIGcare Pty Ltd, Comensura, Futurestep (Australia) Pty Ltd, and Randstad Pty Ltd.²¹
- The evaluation of each tender was a comprehensive process conducted over four stages, with separate reports prepared in respect of each evaluation stage.²²
 - The first stage recorded that four RFT responses were received from the providers listed above.²³
 - The second stage confirmed that each of the providers met the requirements of the ARM project.²⁴
 - The third stage evaluated each tender against a number of weighted categories, including company and financial viability (10%), service requirements, approach, culture innovation and experience (50%), commercial considerations (20%) and pricing (20%).²⁵
 - The fourth and final stage involved a comprehensive review process conducted by an Evaluation Committee, who prepared an interim report that found Comensura and Futurestep to be the preferred providers and recommended a clarification session be held with both parties.²⁶
- A final 'joint solutioning process' was undertaken with Comensura, who subsequently submitted a best and final offer for review by the Evaluation Committee. This offer was accepted.
- Procure Group provided external assurance concerning the probity of the procurement process. It concluded that no issues of a probity nature had come to its attention that would lead it to conclude that the process followed by icare in the evaluation of proposals for the ARM tender had not been conducted in a fair and equitable manner.²⁷

The tender process has all the appearance of a well-structured and diligently executed competitive tender in which Comensura was determined to be the most suitable tenderer.

3.4 Agreements appear to have been negotiated on an arms-length basis

At the time of the ARM, Comensura was (and it remains) part of the Impellam Group, the sixth largest managed service provider in the world with over 3,400 employees and global turnover of \$2 billion per year.²⁸ It was a significant commercial counterparty.

We have only reviewed a very small number of emails between icare and Comensura in relation to the negotiation of the Comensura Agreement and Facilities Orders. They provide anecdotal confirmation that negotiations appeared to be conducted on an arms' length basis. In our limited review we have not found evidence of inappropriate relationships or dealings between icare and Comensura staff.

²¹ See RFT responses contained in **Document C.9** (BIGCare RFT response dated 1 May 2017); **Document C.10** (Comensura RFT response) **Document C.11** (Randstad RFT response); **Document C.12** (Futurestep RFT response dated 1 May 2017).

²² See RFT evaluations contained in **Document C.13** (RFT Stage 1 - Evaluation Report dated 1 May 2017), **Document C.14** (RFT Stage 2 - Evaluation Report dated 1 May 2017), **Document C.15** (RFT Stage 3 - Evaluation Report dated 5 May 2017); **Document C.16** (RFT Stage 4 - Interim Evaluation Report dated 23 May 2017).

²³ **Document C.13** (RFT Stage 1 - Evaluation Report dated 1 May 2017).

²⁴ **Document C.14** (RFT Stage 2 - Evaluation Report dated 1 May 2017).

²⁵ **Document C.15** (RFT Stage 3 - Evaluation Report dated 5 May 2017).

²⁶ **Document C.16** (RFT Stage 4 - Interim Evaluation Report dated 23 May 2017).

²⁷ **Document B.11** (Procure Group Probity Report for the AC&HS RFT dated 7 July 2017, p.5-6).

²⁸ **Document C.10** (Comensura RFT response dated 1 May 2017, p.4).

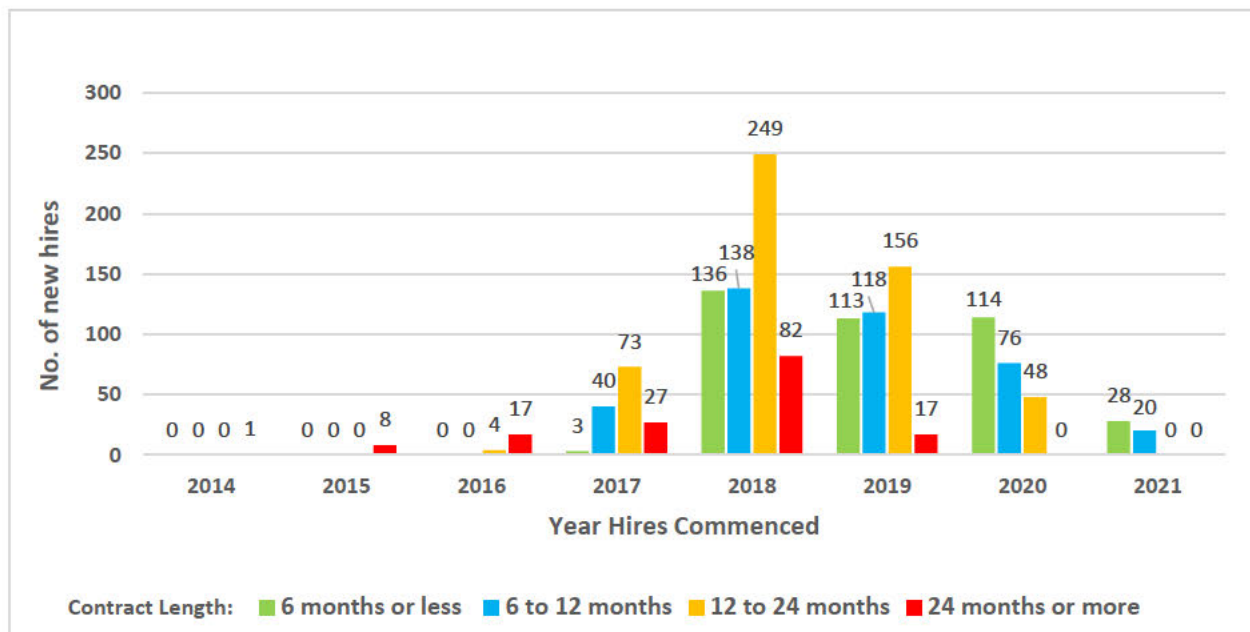
3.5 A large contingent workforce has been delivered

We have been provided with a list of all staff provided by Comensura up to March 2021.²⁹ The list identifies 1,487 roles that have been filled from time to time by contingent workers, including (among other roles):

- claims specialists;
- communications officers and customer experience staff;
- data, strategy and business analysts;
- compliance, legal and risk professionals; and
- various support functions, such as human resources, accounting, and payroll staff, administrative officers, facilities managers, and graphic designers.

The chart below has been prepared based on data provided by icare. The chart demonstrates that Comensura provided contingent workers to icare: (i) who performed roles that started and finished at various times, and (ii) who were employed for differing period ranging from less than 6 months to over 2 years. The high level of utilisation of the contingent workforce arrangements with Comensura is indicative that the arrangements are delivering the desired objectives. The high utilisation of workers engaged by Comensura in 2018 is consistent with the comments made by both [redacted] and [redacted] in relation to icare's requirements for intensive variable workforce demands during this period to deliver the NISP Project.

Chart: Analysis of roles provided to icare by Comensura



3.6 Supplier fees of 5%

Each of the Facilities Orders provides that icare will pay the costs of the leased premises plus a supplier fee of 5%.³⁰ There was not an equivalent supplier fee under the preceding Capgemini Statements of Work for provision of the same Kent Street premises.

The 5% fee for the provision of facilities and workspaces was included in Schedule 4 to the Comensura Agreement and was subject to the broader commercial negotiations with Comensura

²⁹ In this period, Comensura has provided contingent staff to icare through the Comensura Agreement and also under a NSW Procurement agreement (see Section 4 below).

³⁰ See, for example, **Document A.10** (Facilities Order No. 1 (Wollongong) – NI and Comensura dated 1 January 2018).

at that time. While the limited documents that we have been provided with do not explain how the amount of 5% was landed upon, the emails that we reviewed from that period do indicate that Comensura had concerns about the burden of carrying the leases, particularly in respect of the impact on their balance sheet.

confirmed that the 5% fee was negotiated to compensate Comensura for the costs and financial risks associated with holding the leases. In summary, stated that:

- The 5% fee payable to Comensura for the provision of facilities and workspaces was the subject of commercial negotiations prior to its inclusion in Schedule 4 to the Comensura Agreement. explained that the 5% fee was agreed upon after Comensura had initially proposed an 8% fee and icare had proposed a 3% fee.
- explained that the provision of the leased premises and the design / fit-out to icare was viewed by Comensura to be one component of the managed services to be provided to icare. The primary commercial drivers for the 5% fee were:
 - the considerable legal and administrative burdens associated with holding the leases; and
 - the financial risks to Comensura (and its parent entity, Impellam) arising from the leases being designated as a liability on the company's balance sheet under the relevant accounting standards.³¹
- Given Comensura's core business was the provision of managed services in relation to contingent workforces, entering into the leases was not commercially viable for Comensura unless they were connected to the Comensura Agreement. For that reason, Comensura insisted upon the insertion of clause 2.18 in the terms of the Facilities Orders, which provided for the leases to be novated to icare or a nominated third party if the Comensura Agreement was terminated.

recalled that the 5% fee was expressly set out in a report to the Board.³² We have confirmed that the 5% fee was explicitly referenced in a formal briefing paper that was prepared for a Board meeting held on 28 May 2018.³³ The Board approved the recommended lease structure at that meeting.³⁴

3.7 Possible drift in usage of premises and decision to transition leases away from Comensura

The intention of the Comensura Agreement was that the premises to be leased by Comensura would be used for the contingent workforce supplied by Comensura and a substantial number of vendor workers (not engaged under the arrangements with Comensura) initially to complete work under the NISP project. icare would have unrestricted access to the premises.³⁵

We do not have data to determine the extent to which the premises were used by the contingent and vendor workforces and the extent to which they were used by direct icare employees.

's recollection was that, at the outset, the premises were exclusively used for the NISP project, which was almost exclusively made up of staff initially under the Capgemini MITSA and subsequently contingent workforce staff engaged under the Comensura Agreement and a significant number of vendor workers (not under the arrangements with Comensura). Over the

³¹ See, for example, **Document D.21** (Email from to dated 22 March 2018).

³² **Document B.23** (Approved minutes of Board meeting dated 28 May 2018); **Document B.24** (Item 3.1 Board briefing paper Kent St Lease Arrangements for the ARM 28 May 2018).

³³ **Document B.24** (Item 3.1 Board briefing paper Kent St Lease Arrangements for the ARM 28 May 2018).

³⁴ **Document B.23** (Approved minutes of Board meeting dated 28 May 2018, section 3.1).

³⁵ **Document A.7** (Services Agreement – icare and Comensura dated 3 August 2017), page 51.

intervening years there had been a gradual increase in the number of permanent icare staff using the premises up to the point where, by late 2020, the proportion may have been in the order of 50% contingent workforce staff and 50% icare employees.

As outlined at 2.1 above, Comensura has ultimately delivered a contingent workforce to icare via two agreements. The leased premises have continued to be provided exclusively under the Comensura Agreement, which is now with icare on behalf of the Nominal Insurer only.

During our interview with [redacted], [redacted] recalled that initially, the leased premises were primarily occupied by icare's contingent and vendor workforce (with those contingent workers being engaged for the Nominal Insurer under the Comensura Agreement). However, [redacted] understanding is that over time the premises were also used by contingent workers engaged by icare under the icare Customer Contract, which icare entered into in its own right and on behalf of the other scheme authorities. We have not reviewed any documents that provide any detail on the actual occupancy details of the leased premises.

[redacted]'s recollection is that the leased premises were not used exclusively by icare's contingent workforce staff. For example, in relation to the Kent St premises, [redacted] recollection was that the premises were initially occupied in part by icare's existing call centre staff and partly by icare's contingent workforce. However, [redacted] also noted that there would have been an ambiguity in the status of certain workers, especially given icare's engagement of a significant number of vendor workers in relation to the NISP Project.

In respect of the Wollongong premises, [redacted] informed us that these were mostly occupied by contingent workers supplied by Comensura, and to a lesser extent, staff employed by Employers Mutual Limited (*EML*) (an appointed claims management service provider to icare). We have been instructed that it is icare's understanding that there was only one staff member from EML who was seconded to the Wollongong premises for a short period of time and that the remaining occupants of the Wollongong premises were a combination of contingent and vendor workers.

In June 2020, icare's Group Executive Team participated in an Accommodation Strategy workshop to review and consider icare's future accommodation requirements. At this workshop, it was agreed that icare should transition away from its Comensura hosted service arrangements in Wollongong and Kent Street, particularly given the 5% fee payable to Comensura for carrying those leases. As the Comensura lease for the Wollongong premises expired on 31 December 2020, icare was able to negotiate better lease terms for this site via Property NSW, including the removal of the 5% fee.

Property NSW were subsequently engaged to undertake a full market assessment of alternatives to icare's current arrangements in the Sydney CBD. Property NSW appointed CBRE Tenant Advisory as consultants to conduct a competitive process which resulted in two similarly priced offers from Charter Hall at 2 Market Street and Dexu/AMP at 321 Kent Street. On 17 December 2020 a formal recommendation was made to the icare Board to approve entry into a new lease agreement with Dexu/AMP for Levels 9-10 and 13-17 at 321 Kent Street.³⁶ A board briefing paper for that meeting notes that the Dexu/AMP offer was favoured as it would be more economical than moving icare's entire operation to a new building and cause less disruption to employees.

In addition, the recommendation specified that the lease agreements for the 321 Kent Street premises should be made directly between Dexu/AMP and Property NSW on behalf of icare, and that the premises at Levels 9 and 10 of 309 Kent Street should be surrendered. This arrangement would remove any future reliance on Comensura hosted services and remove three

³⁶ Document B.29 (Board Briefing paper Sydney CBD Accommodation Update dated 17 December 2020).

levels of office space between the two Kent Street office buildings. The new lease arrangements at 321 Kent Street are expected to commence in September 2021.³⁷

This outcome is consistent with [redacted]'s recollection that the term of leases to Comensura were intended to coincide with terms for icare leases so that icare could have ongoing control over its accommodation options. Fortuitously a holistic review and renegotiation has been able to occur in a weak rental market and at a time when icare could leverage more flexible ways of working adopted as a result of COVID 19 to maintain a level of remote working/work from home.³⁸

3.8 Possible intention to maintain control of premises regardless of Comensura Agreement

Some of the correspondence that we have reviewed indicates that icare wished to maintain control over the various leased premises regardless of the Comensura Agreement.

In relation to the Kent Street leases, on 21 March 2018, icare sent an email to Comensura which set out the proposed duration of the lease period for the Kent St premises to be novated to Comensura. Given that (at the time) the lease terms extended until 2023 and the Comensura Agreement expired on 2 August 2020, icare proposed that Comensura enter into a separate contract to cover the provision of premises only.³⁹

On 22 March 2018, [redacted] (then Managing Director of Comensura) responded by informing icare that:

A separate contract for the leases between Comensura and icare may not be appealing to Comensura as the icare ARM project has been considered as a whole commercially, and the prospect of not operating and receiving revenue for the MSP but retaining the lease obligations on our balance sheet changes our appetite to retain those leases.

Are there alternative contractual solutions to this?

In an email dated 25 March 2018, [redacted] informed [redacted] colleagues that icare may need to "find another home to house the leases from the expiry of the Comensura contract (with suitable protections for Comensura)" and that icare "should design our leases around our real requirements and then make the Comensura contract sit around those."

[redacted]'s explanation for this comment is that [redacted] primary purpose in the context of the lease negotiations (which were taking place under considerable time pressure) was to ensure that the leases were maintained in order to meet the need of icare's contingent and vendor workforce (regardless of whether that was provided by Comensura or others). Ultimately, the lease agreements with Comensura included terms providing for the novation by Comensura to icare or a third party where icare did not exercise the option to extend the Comensura Agreement on the dates specified.⁴⁰

Also, in relation to the Wollongong premises, on 27 November 2017, icare's external legal counsel Corrs Chambers Westgarth advised icare of commercial risks that would arise if it did not enter into the Wollongong lease directly or put in place a sub-leasing arrangement to which it could be a party.⁴¹ The advice noted that under the proposed arrangement:

- Comensura would hold all of the rights as tenant under the lease, and icare would have no ability to enforce the terms of the lease except through Comensura; and

³⁷ Document B.31 (Email from Property NSW to [redacted] dated 14 January 2021 attaching Heads of Agreement re 321 Kent Street dated 17 December 2020).

³⁸ Document B.29 (Board Briefing paper Sydney CBD Accommodation Update dated 17 December 2020), p1.

³⁹ Document D.23 (Email from [redacted] to [redacted] dated 25 March 2018).

⁴⁰ Document D.25 (Email from [redacted] to [redacted] dated 5 April 2018).

⁴¹ Document B.21 (Email from [redacted] to [redacted] dated 22 March 2018).

- icare was exposing itself to a greater risk of termination of the lease for insolvency of Comensura.

We have not reviewed any documents which indicate icare's consideration of the risks identified in this advice. We note however that these risks seem to have been partially addressed in the final lease agreement by a term providing Comensura with the right to novate any leases over the premises to icare or its nominated third party in the event the Comensura Agreement is terminated.⁴²

3.9 Internal Treasury brief – was there an intention to disguise the leases?

We have been asked whether the following note from an internal Treasury brief in 2018 is correct and what icare says in response to the allegation (on the basis of that brief) that leasing the premises through Comensura was intended to disguise the lease from Treasury:

In 2016, PNSW informed Treasury that icare had requested extra floor space to accommodate 187 additional staff. PNSW also advised Treasury that icare were of the view their budget and staff numbers only required the approval of their Board and not Treasury, despite Treasury advising icare of their reporting and information obligations under various Government policies. icare initially decided to enter a lease with PNSW via the Nominal Insurer (to avoid the need for Treasury's endorsement). However, icare subsequently decided against taking this approach and sought Treasury approval.

We have not been provided with any evidence of a request from icare to Property NSW in 2016 for additional floor space to accommodate additional staff. [redacted] was also not aware of any such request being made. We have made inquiries to Treasury NSW and Property NSW, requesting copies of any communications of the kind described in the internal Treasury brief. Both confirmed to us that they have searched for a record of the communications referred to in the briefing note and have been unable to locate any other evidence of such a request being made.⁴³ A representative of Treasury stated that [redacted] was not aware of any specific policy that would have required icare to seek approval from Treasury before entering into a lease.

We therefore cannot confirm whether the 2018 document is an accurate record of a request being made by icare to Treasury for leased premises. We also cannot confirm whether there is any connection between the commentary in that report and the leases entered into initially by Capgemini and later Comensura. However, we note the following:

- We are instructed by icare that, prior to June 2016, icare acting on behalf of the Nominal Insurer held the lease on levels 7 and 9 of 321 Kent St.
- The Capgemini leases were progressively entered into from July 2016. This included the lease for level 9 of 321 Kent St on 1 September 2016. That is the same year as is referred to in the report, but we do not know whether the request was said to have been made before or after July 2016. Therefore, we cannot confirm or disprove any temporal connection.
- We understand, but have not confirmed, that the space needs for the NISP Project were considerably larger than the 187 people referred to in the Treasury note. That would tend to suggest that the report is not referring to the same need for additional floorspace. [redacted] says that icare was growing throughout the period. It is therefore quite possible that the Treasury note (assuming that it does accurately record a request for additional space being made) is referring to an unrelated request for floor space.

⁴² See, for example, **Document A.12** (Facilities Order No.2) at cl. 2.18.

⁴³ Email from [redacted] (Treasury NSW) to [redacted] and [redacted] (Allens) dated 7 April 2021 (at 10:21am) re: Insurance and Care NSW – Inquiry re Treasury Briefing Paper from 2018; Email from [redacted] (Department of Planning, Industry and Environment) to [redacted] and [redacted] (Allens) dated 9 April 2021 (at 9:57am) re: Insurance and Care NSW – Inquiry re Treasury Briefing Paper from 2018.

- The ARM tender process documents specified that premises were to be provided by the winning tenderer. That process was conducted publicly in early 2017, which would not tend to be consistent with an earlier intention to disguise the fact that premises for icare's contingent workforce would be provided by the contingent workforce supplier.

In those circumstances we have no substantive basis on which we could conclude that there was an intention to 'disguise' the leases from NSW Treasury or Property NSW.

4 Compliance with NSW Government Requirements

4.1 Issues raised with NSW Procurement

Emails between icare and the NSW Department of Finance, Services, and Innovation (**DFSI**) in September and October 2017 indicate that concerns were raised in respect of the Comensura Agreement, particularly in relation to icare's compliance with NSW Government guidance and principles in respect of procurement.⁴⁴ The concerns, which were raised by NSW Procurement as well as other government suppliers, centred on the following alleged issues:⁴⁵

- icare's status as an unaccredited agency, which, it was alleged, required it to submit a procurement plan for approval to NSW Procurement, which was not done;
- icare not utilising certain whole-of-Government contracts;
- the proprietary Vendor Management System (**VMS**) under the contract was not compliant with the NSW government's mandatory framework 'ProcureIT'; and
- the likelihood that the arrangement did not deliver value for money.

In response to the concerns raised by DFSI, icare noted that:

- icare's procurement process was developed in accordance with the NSW Procurement Framework, in particular Board Direction 2016-01, and was tendered using the NSW eTendering portal through a comprehensive RFT process;
- icare reviewed existing Whole of Government Schemes and Panel Contracts, and determined that these were not appropriate as none offered a holistic solution that could meet icare's needs at the time;
- the nominated government vendor management system, 'Fieldglass', was not configured in a way that would provide optimal management of icare's contingent employees and in any event, icare obtained advice that the ProcureIT framework did not apply as the system being utilised for the ARM was procured by Comensura as the employer and not icare; and
- the arrangements did provide value for money as the overall fee structure was no more than those under the panel arrangements and any additional expenses were offset by other savings.⁴⁶

Ultimately, icare and DFSI negotiated a resolution to these concerns, which was to vary the Comensura Agreement to exclude the other scheme authorities.⁴⁷ Staff for other icare schemes that were provided under the pre-existing Comensura Agreement were re-engaged under the icare Comensura Contract (entered into under an existing agreement between Comensura and NSW Procurement), which complied with the Whole of Government Head Agreement 0008.

⁴⁴ **Document B.15** (Questions raised by Kelly OCG dated 26 September 2017); **Document B.16** (Email from NSW Procurement to DFSI dated 27 September 2017). Details of these concerns are outlined in the chronology at **Schedule 1**.

⁴⁵ **Document B.16** (Email from NSW Procurement to DFSI dated 27 September 2017).

⁴⁶ **Document B.18** (Email from _____ to Department of Finance, Services and Innovation dated 3 October 2017).

⁴⁷ **Document B.20** (Emails between Department of Finance, Services and Innovation and icare dated 30 October 2017).

Data provided by icare shows that, in the period from May 2018 to March 2021, a significant spread of contingent worker roles have been provided under both arrangements.⁴⁸

In light of the above, it appears that prior to the variation it was at least arguable that icare's arrangements with Comensura were not compliant with certain NSW Procurement guidelines. However, icare's response to DFSI's concerns indicate that these issues were carefully considered by icare at the time and a solution was negotiated with NSW Procurement.

4.2 Position since amendment of agreement

We do not consider that icare or the Nominal Insurer was in breach of any applicable legislation or guidelines after the Comensura Agreement was varied to exclude the other scheme authorities on 31 October 2017.

In respect of the NSW Government's procurement policies, we note that:

- The Nominal Insurer is not a government agency for the purposes of Part 11 of the *Public Works and Procurement Act 1912 (PW&P Act)*, which governs the procurement of goods and services for NSW government agencies.⁴⁹ As such, the Nominal Insurer was (and remains) not subject to that legislation or directions of the NSW Procurement Board.
- icare, as a government agency, was at all relevant times governed by the *PW&P Act*, and therefore was obliged to comply with certain procurement guidelines and directions, including in relation to the utilisation of certain mandatory whole-of-government contracts and government IT platforms. However, once the Comensura Agreement was varied such that icare entered into the contract on behalf of the Nominal Insurer only, those obligations did not apply.
- While it is the case that concerns have been raised from time to time by members of NSW Parliament in respect of the 'Nominal Insurer exemption', reliance on the exemption is lawful under current laws and the documents that we have reviewed indicate that icare's reliance on the exemption in the specific context of the Comensura Agreement was ventilated in an open and transparent manner at the time DFSI raised its concerns.

In respect of the NSW Government property policies, we note that:

- the M2012-20 Government Property NSW and Government Property Principles (*M2012-20*) impose obligations on certain NSW government agencies in relation to holding, operating, and maintaining real property. These include requirements for Property NSW to manage lease negotiations and approve all fit-out proposals under those leases, among other things.⁵⁰
- However, M2012-20 does not apply to the Nominal Insurer as it is not a government agency, as discussed above. Further, and in any event, there may be a reasonable basis to contend that M2012-20 does not apply to icare when it is acting in its own right. Nevertheless, we think this position is not without some doubt. In summary:
 - For financial reporting and policy framework purposes, NSW Treasury classifies each NSW Government agency as one of the following: general government sector, public non-financial corporations, and public financial corporations. icare is classified as a public financial corporation by NSW Treasury.⁵¹ A public financial corporation is defined as a government controlled operation or quasi-

⁴⁸ Data_Request_240321.xlsx.

⁴⁹ *Worker's Compensation Act 1987* (NSW), s154A.

⁵⁰ M2012-20 Government Property NSW (previously State Property Authority) and Government Property Principles.

⁵¹ See NSW Government Budget Paper No.1 in the Budget Statement 2020-2021, A4-3.

corporation mainly engaged in financial intermediation or the provision of auxiliary financial services.

- The 'Detailed Outline' that accompanied the introduction of M2012-20 provides that the requirements "apply immediately" to government agencies that are classified as general government sector agencies or public trading enterprises for the purposes of the NSW Government's policy framework.⁵² No reference is made to whether (and if so, when) M2012-20 is to apply to a public financial corporation such as icare. On that basis, the principles may be construed to apply only to those two categories of government agency.
- However, the terms of some principles set out in M2012-20 plainly purport to apply generally to "all government agencies",⁵³ while the application of others are limited in scope to "General Government Sector agencies" only. While no reference is made to public trading enterprises or public financial corporations in the terms of M2012-20, it would be difficult to read down the meaning of "all government agencies" without any textual basis in M2012-20 to do so.

For completeness, we note the two principles which purport to apply to "all government agencies" in M2012-20 impose the requirement: (i) to ensure government offices comply with Government policy in relation to sustainability and energy conservation, and (ii) to advise Property NSW of any vacant, underutilised or no longer required office space. In the event that M2012-20 does apply to icare, and assuming that icare was not able to rely upon the NI exemption, a question would arise as to whether icare has complied with those particular requirements. On the documents available to us, we are not able to consider that issue.

As outlined in section 3.7 above, over the course of 2020, icare has been working with Property NSW and an external consultant to review icare's future property needs and to renegotiate leases that will expire over the course of 2021.

4.3 Broader context

We understand that there is a broader debate about the appropriateness of icare's reliance on the NI exemption. Given that the issue is already under consideration, we do not see the need to comment further on it in this report.

5 Oversight by icare Board

We have not identified any obvious deficiencies in the oversight provided by the icare Board in relation to the entry into the Comensura Agreement or Facilities Orders for leased premises made under it.

In respect of the Comensura Agreement, there is documentary evidence that:

- the icare Board received appropriate and detailed briefing papers which set out, among other matters, the purpose and rationale for the engagement of Comensura and the key commercial terms of the engagement, including the leasing arrangements;
- Board minutes indicate that the icare Board challenged management in relation to material aspects of the Comensura Agreement, including the lease arrangements ('s recollection of the 28 May 2018 Board meeting is that specifically

⁵² See Budget Paper No.1, Budget Measures 2016-17, Appendix A3 'Classification of Agencies', which can be accessed at: https://www.treasury.nsw.gov.au/sites/default/files/pdf/2016-2017_Budget_Papers_BP1_Budget_Statement.pdf.

⁵³ See Principle 6 of the 'Guiding Principles' (relating to ensuring government offices comply with Government policy in relation to sustainability and energy conservation) and Principle 11 of the 'Government Property Operating Principles' (which requires agencies to advise Property NSW of vacant or underutilised office space).

challenged the commercial basis for the payment of the supplier fee of 5% to Comensura);⁵⁴ and

- the icare Board took appropriate steps to manage potential conflicts of interest which arose in relation to the tender process (which issue is considered in further detail in section 6.1 below).

Schedule 3 contains an annotated chronology of the involvement of icare's Board in the ARM.

On 31 July 2017, the Board discussed and was presented a paper on the ARM. This paper provided the Board with an overview of:

- the RFT process that had been undertaken for the ARM;
- the systemic issues arising from icare's existing contingent workforce model;
- the need to move towards a single-service provider model to minimise costs and increase flexibility and efficiency; and
- the Project Steering Committee's conclusion that Comensura was the RFT respondent which was most closely aligned with icare's key evaluation criteria.

This presentation to the Board also identified the provision of facilities for contingent workers as one of the key contract clauses to be entered into under the service provider agreement.

Following this presentation, the Board approved the execution of the contract with Comensura as the preferred service provider for contingent workers.

On 28 May 2018, the Board discussed and was presented with a paper by [redacted] on Comensura's agreement to take over the Kent Street property leases from Capgemini. The Board was told that under the proposed arrangements, icare would have a right to access these premises and that Comensura would be paid a fee of 5% of the annual lease spend for holding those leases. After requesting that management consider the long term location requirements of icare staff, the Board approved the proposed Comensura leasing arrangements.

[redacted] informed us that [redacted] recalls one member of the Board, [redacted], challenging the commercial basis for the proposed leasing arrangements at this meeting, and in particular the 5% fee payable to Comensura. [redacted] does not specifically recall [redacted] response to [redacted]'s question, but explained that [redacted] generally expressed the view that: (i) the fee was part of the entire commercial arrangements agreed with Comensura and, (ii) the costs of the property facilities were consistent with other costs within the arrangement.

We have not been provided with any documents showing separate consideration by the icare Board of the icare Customer Contract. However, as explained in section above, the substance of that agreement was to provide a separate pathway, under the WofG Head Agreement, for the services that would otherwise have been provided under the Comensura Agreement.

6 Other issues

We have been asked to identify any other issues that we think should be addressed in the context of this report. There are two other issues, outlined below, that we raise for completeness, although in context they do not give rise to particular concerns in relation to the Comensura Agreement.

⁵⁴ [redacted] noted that while [redacted] was not involved in the negotiation of the 5% supplier's fee payable to Comensura (which understood had been agreed at an earlier stage in negotiations), [redacted] recalls that part of its commercial justification was that under the new accounting standard (AASB 16) Comensura was required to capitalise the lease asset and lease liability on their balance sheet.

6.1 Relationship between [REDACTED] and Brand Influence Group

We are instructed that, prior to 27 January 2017, [REDACTED], icare's then Chair of the Board, put forward Brand Influence Group (**BIG**) to provide contingent workers to icare and that [REDACTED] had some form of association with BIG.

icare subsequently engaged BIG to provide 20 personnel who were required for February 2017. BIGcare Pty Ltd, a related entity of BIG, submitted a tender in the ARM process, but was ultimately unsuccessful.

While we do not have any information regarding the timing of any disclosures made by [REDACTED] prior to 27 January 2017 regarding the nature of [REDACTED] interests in BIG, the documents reviewed as part of this investigation indicate that icare implemented satisfactory processes for managing any conflicts of interests throughout the ARM process. In particular:

- On 31 January 2017, the engagement with BIG was subject to review by icare's in-house legal team and approved on the basis that: (i) the first contract would cover only the recruitment of the initial 20 personnel, (ii) further enquiries would be made regarding the length of the engagement of those personnel, and (iii) any further engagement with BIG would require a separate, more detailed contract.⁵⁵
- Minutes from the meeting of icare's People and Remuneration Committee held on 22 February 2017 record that [REDACTED] recused [REDACTED] from any consideration of the engagement of a third party service provider of contingent workers in order to manage a potential conflict of interest with BIG.⁵⁶
- Ultimately, following the tender process carried out with oversight from an external probity officer, icare engaged Comensura as a single service provider for its contingent workforce requirements.

6.2 Involvement of [REDACTED] in lease negotiations

[REDACTED], icare's former Head of Facilities, had some peripheral involvement in the negotiations between Dexus (as landlord for the Kent Street premises) and Comensura in relation to leases and Facilities Orders. We refer to this because [REDACTED] was referred to ICAC in relation to potentially inappropriate dealings with certain other suppliers to icare (not Comensura).

Our review did not identify concerns regarding [REDACTED]' conduct in this particular instance. Both Dexus and Comensura were substantial commercial parties and we did not identify indicators of any inappropriate relationships between [REDACTED] and the representatives of Dexus or Comensura.

[REDACTED] stated that [REDACTED] had no concerns regarding the propriety of [REDACTED]' conduct in relation to the leasing arrangements entered into under the Comensura Agreement and characterised the extent of [REDACTED] involvement as 'administrative in nature'.

⁵⁵ Document B3 (Email from [REDACTED] to [REDACTED], [REDACTED] and [REDACTED] dated 31 January 2017).

⁵⁶ Document B6 (Item 4.1 People and Remuneration Committee briefing paper Resourcing Model Options dated 22 February 2017).

Schedule 1 – Detailed chronology of RFT process in relation to the Additional Resourcing Model

Date	Description of event	Source
Between 31 January 2017 and 16 March 2017	<p>icare engages Workdynamic Australia to provide legal advice in relation to icare's proposed hosted services arrangement.</p> <p>icare engages Deloitte to provide services including, amongst other things, advice and support on the procurement process for the ARM, and a market scan on market readiness; and financial due diligence including on BIGcare Pty Ltd as the preferred provider for an interim solution. Six providers capable of delivering all of the required services are identified. Comensura was not identified as a provider in Deloitte's desktop analysis.</p>	B.1 B.3 B.4 B.6
Between 16 March 2017 and 6 April 2017	<p>icare Procurement and Planning Strategy considers the Contingent Workforce Prequalification Scheme and determines it is unsuitable as it does not cover the scope of services and meeting the needs of the ARM.</p> <p>The Procurement and Planning Strategy team recommends that the RFT go direct to the open market for reasons, including:</p> <ul style="list-style-type: none"> • to mitigate the risk that providers not assessed in the market scan with the capability to deliver the services, including recruiters and specialist outsourcing organisations, being excluded; • to allow providers and consortia to provide specific responses to their capability and capacity to deliver the services, given that the market scan was limited to a desktop analysis and blind market engagement; and • to limit any potential probity issues from services providers not being included. 	C.8
6 April 2017	<p>icare issues the RFT. The scope of the RFT includes contingent workforce services, categorised under forecasting / requisition services; sourcing and selection services; and service management, including VMS services. Under the RFT Part B 'Statement of Requirements', icare specifies that:</p> <p><i>icare seeks innovative approaches to how facilities and workspaces will be provisioned (e.g. leasing of office space, externally provisioned and managed spaces etc.). Whilst the model will likely need to be co-designed, key requirements include the ability to:</i></p> <ul style="list-style-type: none"> • <i>Allow flexibility and efficiency in how facilities are provisioned;</i> • <i>Deliver facilities with the same "look and feel" as icare facilities and workspaces;</i> • <i>Facilitate alignment to relevant workplace health and safety policies;</i> • <i>Facilitate smooth transition and integration of the employee to icare.</i> 	C.1 to C.3

Date	Description of event	Source
	<p>Under the RFT Part B2 'Service Descriptions', service 3.3 Premises / Facilities notes that the service provider would be required to:</p> <ul style="list-style-type: none"> • manage the leasing of office spaces for contingent workers; • configure and provision workspaces for contingent workers; and • manage facilities for contingent workers. 	
1 May 2017	<p>icare receives RFT responses from BIGcare Pty Ltd, Comensura, Futurestep (Australia) Pty Ltd and Randstad Pty Ltd.</p> <p>In relation to the facilities services, Comensura notes in its RFT that:</p> <p><i>Comensura can provide facilities/workspaces for temporary workers if required. This would be typically costed per individual scenario. Uniquely Comensura is currently located in 14/383 Kent Street, Sydney, NSW, 2000. icare also have office space in the same building so additional workspaces in this building could be provided if required</i></p> <p><i>Given Comensura share the same building with one of icare's offices it is anticipated that the same look and feel could be easily achieved if required. Any modifications to existing office space to reflect icare branding would be costed on a case by case basis.</i></p>	B.11 C.9 to C.12
1 May 2017 to 15 May 2017	<p>The Evaluation Committee considers each provider through four evaluation stages. Each tender is quantified against specified categories, including, amongst others, company and financial viability, service requirements, approach, culture innovation and experience.</p> <p>Presentations from each provider are given on 10 May 2017.</p> <p>icare's comments regarding Comensura were as follows.</p> <p><i>Hosted Solution – icare would like to understand whether Comensura can provide the full suite of hosted services (facilities and end user technology).... Confirmation on cost for mobiles/laptop provision would be appreciated e.g. can this also be done as a pass through.</i></p>	B.11 C.13 to C.17
15 May 2017	Comensura and Futurestep attend clarification workshops.	B.11 C.16
17 - 19 May 2017	Comensura is selected for and attends three joint solutioning sessions.	B.11
24 May to 22 June 2017	Comensura participates in the best and final offer process.	B.11
28 June 2017	Evaluation Committee makes its final recommendation.	B.11
7 July 2017	Procure Group provides its Probity Report for the RFT. The report concludes that no issues of a probity nature have come to Procure Group's attention that would lead Procure Group to conclude that the processes followed by icare in the evaluation of proposals for the RFT have not been conducted in a fair and equitable manner with due regard to probity.	B.11

Date	Description of event	Source
31 July 2017	icare Board approves the execution of the agreement with Comensura.	B.12
3 August 2017	icare executes the agreement with Comensura in its own right and on behalf of each authority icare provides services to.	A.7
26 September 2017	NSW Procurement and icare attend a teleconference to discuss a complaint received from a supplier about the RFT process undertaken by icare.	B.15
27 September 2017	NSW Procurement emails DFSI noting concerns that arose from the discussion, including that it appeared icare had circumvented the whole-of-government mandatory scheme for contingent labour.	B.15
29 September 2017	<p>DFSI emails icare outlining the concerns expressed in NSW Procurement's initial investigation, including:</p> <ul style="list-style-type: none"> • icare is an unaccredited agency without approval to undertake the procurement action. • The available mandatory whole-of-government contracts have not been utilised. • The proprietary VMS technology under the awarded contract is not compliant with ProcureIT. • There is a conflict of interest as Comensura, engaged under Contract 0008 and obliged to use the sector-wide VMS technology, will be operating on two platforms. • The icare program will undermine the existing solution and set a precedence for other NSWG entities to go outside the current and agreed NSWP guidelines to build programs that are not as regulated or efficient, and that do not deliver value for money. As an example, the icare MSP fee seems higher than that negotiated for other NSWG customers under Contractor Central. 	B.16
3 October 2017	<p>icare emails DFSI with background information and its view on the relevant procurement requirement. In particular, icare noted the following observations:</p> <ul style="list-style-type: none"> • icare evaluated the service offerings available under the whole of government contracts and determined that there was no solution that was fit for purpose to meet icare's specific needs. As a result, icare was able to do its own procurement or use another agency's arrangement in accordance with the NSW Procurement Framework. • icare subsequently engaged Deloitte to conduct a market scan of service providers and develop and facilitate a competitive procurement RFT process. • With regard to NSW Procurement's concerns on the VMS, icare noted that the 'c.net' VMS would be used by Comensura as the employer and not by icare in its own right. As such, the Procure IT framework did not apply. 	B.18
5 October 2017	DFSI and icare attend a meeting to discuss the concerns.	B.20

Date	Description of event	Source
10 and 11 October 2017	<p>Over email correspondence, icare and DFSI summarise the agreed positions following the meeting. In particular, they note that:</p> <ul style="list-style-type: none"> • the Nominal Insurer is outside the scope of the PW&P Act and the jurisdiction of the NSW Procurement Board; • the Nominal Insurer could make its own arrangements for a service provider for its own specific needs; • icare on behalf of the Nominal Insurer would appoint its own service provider, which may be Comensura, as a standalone contract; • icare would appoint a managed service provider from Contract 0008 which may be Comensura; • icare entities, excluding the Nominal Insurer, would engage vendors from Contractor Central Contract 0007 – Contingent Workforce; and • icare would utilise the Fieldglass VMS as required under Contingent Workforce Scheme SCM0007. <p>DFSI notes that Comensura would not be in breach of its head agreement if it engaged directly with the Nominal Insurer and act as the Employer of Record provided that the scheme suppliers were unaffected by this arrangement.</p>	B.20
31 October 2017	icare enters into a deed of variation to the Comensura Agreement which has the effect of excluding the non-exempt icare bodies from the Comensura Agreement	A.8
18 December 2017	icare enters into a customer contract order under the Contingent Workforce Managed Service Provider Contract 0008 and the Contingent Workforce Scheme SCM0007 on behalf of the non-exempt icare bodies.	A.9
7 May 2018	icare enters into a further deed of variation to the Comensura Agreement which has the effect of restating the Comensura Agreement. Amendments included replacing the VMS from Comensura's c.net5 technology to SAP Fieldglass as required Contingent Workforce Scheme SCM0007.	A.11

Schedule 2 – Chronology of the lease arrangements entered into under the Comensura Agreement

Date	Event	Source
1 July 2016	A Statement of Work is issued under the MITSA for the lease of premises at Level 10 of 321 Kent Street, Sydney NSW 2000 for an initial term of 3 years. The Nominal Insurer is granted access rights to the premises.	A.5
1 September 2016	Statements of Work are issued under the MITSA for the lease of premises at Levels 8 and 9 of 321 Kent Street, respectively, for an initial term of 1 year and 6 months. The Nominal Insurer is granted access rights to the premises.	A.3 / A.4
1 September 2016	A Statement of Work is issued under the MITSA for the lease of premises at Level 9 of 321 Kent Street for an initial term of 1 year and 6 months. The Nominal Insurer is granted access rights to the premises.	
1 March 2017	A Statement of Work is issued under the MITSA for the lease of premises at Levels 9 and 10 of 309 Kent Street, Sydney NSW 2000 (309 Kent Street) for an initial term of 2 years. The Nominal Insurer is granted access rights to the premises.	A.6
31 July 2017	presents a paper to the Board on the ARM, which included information regarding the leasing arrangements for the ARM.	B.12 to B.14
10 October 2017	Capgemini seeks approval from Dexus to surrender its leases at each of the Kent Street premises.	D.2
26 October 2017	Dexus approves the surrender of Capgemini's leases at each of the Kent Street premises with effect from 28 February 2018.	B.19
1 January 2018	A Facilities Order is issued under the Comensura Agreement for the lease of premises at Level 1, Suite 2 of 60 Burelli Street, Wollongong NSW 2000 (Wollongong premises) for an initial term of 3 years.	A.10
7 May 2018	The Comensura Agreement is amended and captures the lease arrangement regarding the Wollongong premises.	A.11
28 May 2018	presents a paper to the Board regarding the Kent Street lease arrangements for the ARM.	B.23 to B.25
28 June 2018	The Nominal Insurer and Capgemini execute a deed, terminating the Statements of Work referred to above with effect from 30 June 2018.	B.26
1 July 2018	A Facilities Order is issued under the Comensura Agreement for the lease of 309 Kent Street for an initial period of 1 year and 8 months.	A.12
1 July 2018	A Facilities Order is issued under the Comensura Agreement for the lease of premises at Levels 8 to 10 of 321 Kent Street, Sydney NSW 2000 (321 Kent Street) for an initial term of 5 years.	A.13

Date	Event	Source
19 July 2018	A Facilities Order is issued under the Comensura Agreement for the lease of 383 Kent Street, Sydney NSW 2000 for an initial term of 6 months.	A.14
26 June 2019	A Facilities Order is issued under the Comensura Agreement for the activity based working spaces fit out of 321 Kent Street.	A.15
June 2019	A Facilities Order is issued under the Comensura Agreement for the activity based working spaces fit out at Level 1, Suite 2 of 60 Burelli Street, Wollongong NSW 2000.	A.16
28 June 2019	A Facilities Order is issued under the Comensura Agreement for the design of the activity based working spaces at 321 Kent Street.	A.17
17 December 2020	and present a paper to the Board on Sydney CBD Accommodation Update, which includes information on the 309 Kent Street, 321 Kent Street and Wollongong premises.	B.28 to B.30

Schedule 3 – Chronology of Board involvement in the ARM Project

Date	Committee / Board	Event	Source
22 February 2017	People and Remuneration Committee	<p>This Committee was comprised of four icare Board members ((Chair), , and).</p> <p> presented a paper to the Committee on icare's resourcing model options. The purpose of this presentation was for the Committee to note that work was being undertaken to partner with a provider to co-design flexible resourcing solutions to enable icare to meet the variable workforce demands to deliver its transformation program and its ongoing operational needs.</p> <p>This paper informs the Committee:</p> <ul style="list-style-type: none"> • of the shortcomings of icare's existing temporary worker arrangements; • icare requires a partnership arrangement with a single organisation and that initial engagement had been commenced with Brand Influence Group (BiG); • Deloitte has been engaged to provide engagement expertise; and • an identified risk was remaining compliant with the Procurement Standards and that the control/mitigation strategy for this risk was the engagement of Deloitte, the steering committee watching brief and phased approach to implementation. <p>The Committee notes:</p> <ul style="list-style-type: none"> • excused from the relevant section of this meeting to manage a potential conflict of interest with a related party associated with this item; • management commented that there were a number of things to work through to ensure the design of the model best suits the needs of icare both now and in the future; and • the Committee agreed that it made sense to look at options to streamline contingent worker engagements. 	B.6 to B8
31 July 2017	Board	<p> presents a paper to the Board on the Augmented Resourcing Model (ARM). This paper:</p> <ul style="list-style-type: none"> • informed the Board that the RFT process had been completed and that the Project Steering Committee had provided endorsement to proceed with Comensura as the preferred managed service provider for icare's contingent workforce; Set out the systemic issues arising from icare's existing contingent workforce model; • Explained the needs to move towards a single service-provider model to minimise costs and increase flexibility; • explained that out of the four respondents to the RFT, Comensura was most closely aligned with icare's key evaluation criteria; 	B.12 to B.14

Date	Committee / Board	Event	Source
		<ul style="list-style-type: none"> • set out that the scope of the engagement included 'Facilities – existing novated leases and future leases for contingent workers' and that 'Agreement reached that icare's existing leases will be novated and future facilities contracted by Comensura'; • highlights one of the 'key contract clauses' for the provision of facilities and that the orders for the novation of any existing leases will require icare to reimburse Comensura for all amounts payable under the lease, except to the extent such amounts arise out of the wrongful acts or omissions of Comensura; and • identified the expected quantitative and qualitative benefits of Comensura's engagement. <p>The Board minutes state that:</p> <ul style="list-style-type: none"> • it was explained to the Board that the purpose of ARM was to obtain greater control over selection and management of contracts and to ensure they were a good fit for icare to protect its brand, customer and culture. <p>The Board approves the execution of the contract with Comensura.</p>	
28 May 2018	Board	<p>present a paper to the Board regarding the Kent Street lease arrangements for the ARM. The Board is told that:</p> <ul style="list-style-type: none"> • the leases for 309 Kent Street and 321 Kent Street will be held by Comensura from 1 July 2018 as part of the ARM arrangement; • Comensura has agreed to take over the leases from Capgemini from 1 July 2018 and to enter into leases with respect to 309 Kent Street and 321 Kent Street on icare's behalf for a term suitable to icare's resourcing needs; • icare has a right to occupy these premises; • icare pays Comensura 5% of the annual leasing spend for holding the leases; and • in recommending this lease structure, icare has taken into account a range of factors including leasing market benchmarking, anticipated leasing market trends and a reduction in the seating demand over time in alignment with icare's transition from transformation to optimisation. <p>The Board notes:</p> <ul style="list-style-type: none"> • it was informed that the agreement with Comensura had replaced a similar agreement with Capgemini; • it was expected that the floors at 309 Kent Street would be needed for around 18 months longer, as icare moved from transformation phase to run phase; and • it requested that management consider the long-term location of icare staff, having regard to customer and business needs and that this should include whether CBD, city fringe or suburban locations would be best aligned with icare's needs. 	B.23 to B.25

Date	Committee / Board	Event	Source
		The Board approves the recommended lease structure and for the CEO to execute the Facilities Orders under the ARM contract with Comensura to implement the lease structure.	
17 December 2020	Board	<p>and present a paper to the Board on Sydney CBD Accommodation Update. This paper:</p> <ul style="list-style-type: none"> • provides an update to the Board on the process undertaken, and suitable options identified for icare's Sydney CBD office given the imminent expiry of its lease for levels 13-17 at 321 Kent Street; • informs the Board that the Group Executive Team had decided in June 2020 that icare needs to transition away from the Comensura hosted service arrangements for its Wollongong premises, 321 Kent Street and 309 Kent Street, which requires a 5% fee payable to Comensura for all lease costs and/or outgoings; and • with the expiry of the lease over the Wollongong premises, icare was able to negotiate better lease terms for this site via Property NSW and in addition was able to save the 5% Comensura fee. <p>The Board notes that after discussion and a robust market review of potential property options, the Board approved that icare's CBD accommodation to remain at 321 Kent Street.</p>	B.28 to B.30