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## Tort Law Reforms a Success Five Years On

The Insurance Council of Australia today released "Industry in Focus" which shows the cost of public liability premiums has dropped 27 per cent in five years to 2008 while the number of policies written has increased by more than 20 per cent.

The latest Insurance Council of Australia "Industry in Focus" (attached) is a regular review of the Australian general insurance market.

In the report the council attributes reduced insurance costs to a range of tort law reforms introduced through co-operative arrangements between state and federal governments.

Importantly, the five years of data clearly shows that public liability insurance is now more readily available and is also more affordable in the Australian market.

It is clear proof that the objectives of the reforms have been met and should be maintained for the benefit of all in the Australian community.

The Industry in Focus data has been sourced from the National Claims and Policy Database (NCPD) and collected by the Australian Prudential Regulation Authority (APRA) over five years.

Overall the decrease in premium costs mirror an increase in the number of policies written.

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# LOOKING BACK ON TORT REFORM – A FIVE YEAR REVIEW

## INTRODUCTION

This Industry in Focus looks at the National Claims and Policy Database (NCPD) data collected by the Australian Prudential Regulation Authority (APRA) over a five-year period, with a detailed analysis of the current trends in the public liability market.

## KEY FINDINGS

- More public liability policies are being written but the pace of growth is slowing
- Premiums are cheaper
- State and territory performance is varied
- Claims patterns improving
- Tort reform has delivered available and affordable public liability insurance.

## BACKGROUND TO THE TORT CRISIS

In 2002, Australia experienced a crisis relating to the availability and affordability of public liability insurance. The so-called 'tort crisis' arose from a historically peculiar collection of coincidental events on the international and domestic fronts. These events, namely the collapse of the HIH group, the provisional liquidation of United Medical Protection (Australia's largest medical defence organisation), the destruction of the World Trade Centre, underwriting losses on policies written in the 1990s, falling investment returns, and an increasing tendency for the courts to increase awards for general damages, compounded to give rise to the tort crisis.

These events impacted directly on the general insurance industry through increased claims costs and uncertainty regarding the outcome of negligence cases, which in turn affected insurer profitability resulting in higher premiums or withdrawals of cover. As a result, governments across all jurisdictions implemented a comprehensive program of tort law reform including reforms to establishing liability and the extent of damages, as well as procedural reforms to how cases were presented in the courts.

The objectives of government intervention were twofold - to improve both the availability and affordability of liability insurance.

To coincide with the tort reforms, the Australian Prudential Regulation Authority (APRA) established the National Claims and Policy Database (NCPD) to improve the available information on liability classes. After five years of collections, the NCPD database provides evidence to indicate the success of the tort law project in improving the affordability and availability of liability cover.

## PUBLIC LIABILITY INSURANCE

### MORE PUBLIC LIABILITY POLICIES ARE BEING WRITTEN BUT THE PACE OF GROWTH IS SLOWING

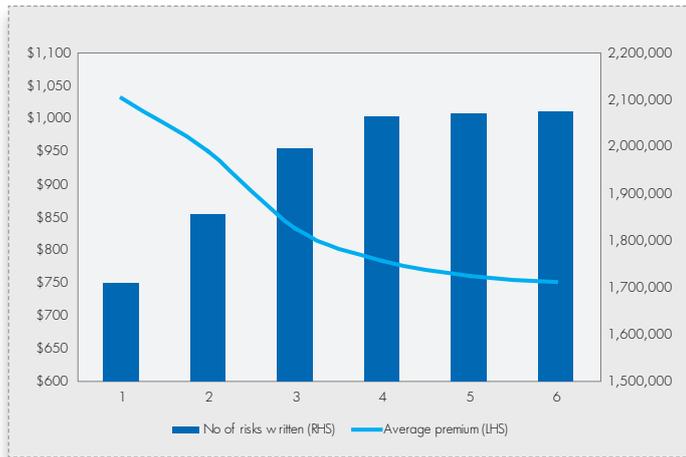
During the tort crisis, uncertainty about future public liability claims costs resulted in some instances of withdrawal of cover. It was not uncommon at the time to hear reports of community organisations seemingly unable to purchase insurance for their usual community activities.

Data from the NCPD shows that over the five years to 2008 the number of public liability policies (risks) written across Australia increased by over 20 per cent and now stands at 2,075,493. This growth mostly occurred over the 2004 to 2005 period (up by 17 per cent) with growth slowing to the extent that total policies written has remained virtually unchanged between 2007 and 2008.

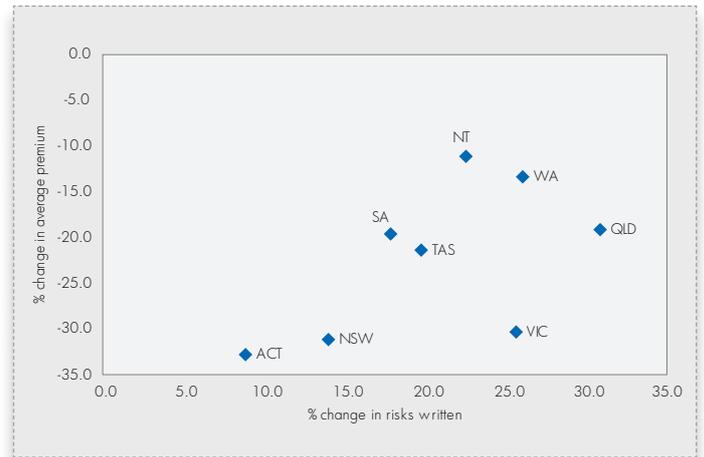
### PUBLIC LIABILITY PREMIUMS ARE CHEAPER

Across all the states, public liability premiums fell from an average of \$1,032 in 2003 to \$752 in 2008 – a decline of 27 per cent. Overall the decrease in premium costs mirrored the increase in the number of policies written: just as the number of policies written recorded their largest increases in 2003 and 2004, average premiums recorded their largest falls in the 2003 and 2004 period with the rate of decline slowing over subsequent years.

**GRAPH 1: NUMBER OF PUBLIC LIABILITY RISKS WRITTEN AND AVERAGE PREMIUMS – AUSTRALIA**



**GRAPH 2: SCATTER PLOT OF % CHANGE IN RISKS WRITTEN AND AVERAGE PREMIUM**



**STATE AND TERRITORY PERFORMANCE IS VARIED**

The number of public liability policies written between individual states is varied. Queensland recorded the largest increase (31 per cent), followed by Western Australia and Victoria which experienced an increase of around 26 per cent. Incidentally, these states were the only states that also managed to secure increases in the number of policies written in 2008.

In contrast, the ACT and NSW recorded smaller increases in the number of policies written over the last five years with increases over 9 per cent and 14 per cent respectively in the five years to 2008.

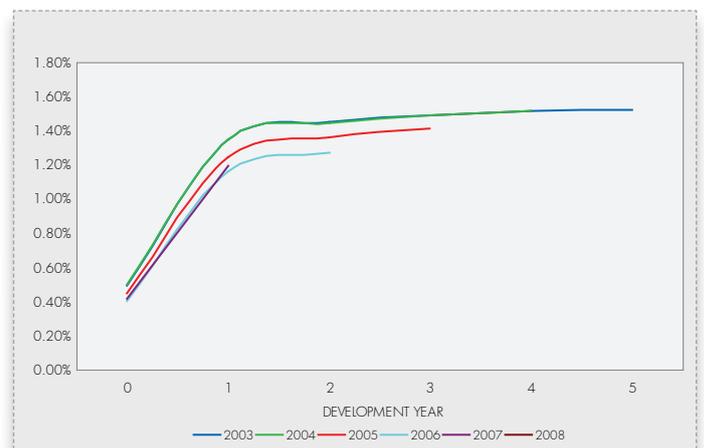
The graph below demonstrates how the individual states and territories have performed on the twin objectives of tort reform - being increasing the number of policies written and reductions in average premiums.

NSW and the ACT, while demonstrating the weakest growth in the number of policies written, recorded the largest declines in average premiums. In contrast, Western Australia and Queensland, which both recorded relative strong growth in the number of policies written, experienced more moderate declines in average premiums. Victoria's performance was arguably more balanced, recording a relatively large increase in policies and a significant decline in average premiums.

**CLAIMS PATTERNS IMPROVE**

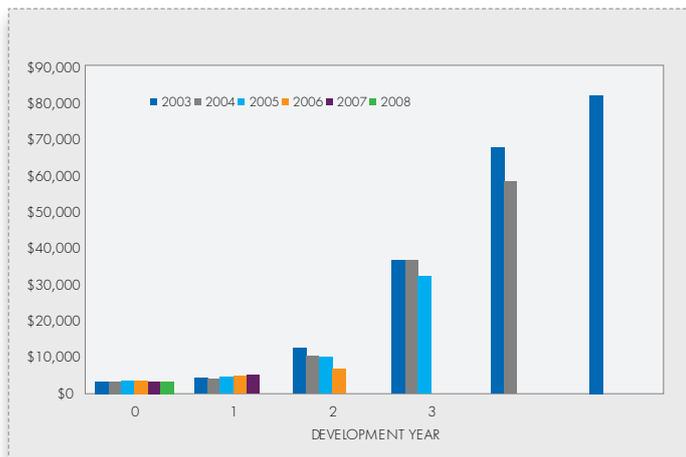
The NCPD data also reveals that the number of claims reported as a proportion of the number of policies has tended to decrease since 2003. The cumulative number of claims reported as a proportion of policies written by development year (which broadly refers to the years after a policy is written where a claim is developed and processed) is shown in the graph below. The claims frequency was virtually identical in 2003 and 2004 but fell in 2005 and 2006. The cumulative claims frequency in the early development years for the 2007 underwriting year is little changed from 2006 while claims made in 2008 for policies written in that year are also in line with the previous two years, indicating the reduction in the overall claims frequency from 2003/04 may be sustained.

**GRAPH 3: CUMULATIVE CLAIMS REPORTED AS % OF RISKS WRITTEN FOR EACH UNDERWRITING YEAR BY DEVELOPMENT YEAR**



While the average size of claims paid tended to increase for a given underwriting year in each development year, the average size of claims paid for the underwriting years since 2003 has seen little change. The average claim paid in 2008 for policies written in that year was in line with the average for the 2003-2007 underwriting years and while there was a small increase in the first development year for policies written in the underwriting years 2003-2007, there has been a decline in the average claim paid in later development years for the earlier underlying years.

**GRAPH 4: AVERAGE CLAIMS PAID IN DEVELOPMENT YEAR BY UNDERWRITING YEAR IN 2008 (\$'s)**



## CONCLUSION – TORT REFORM HAS DELIVERED

The nature of 'long tail' insurance lines, such as public liability, means that trend analysis must be looked at over the longer term. The NCPD, now in its fifth year of data collection, provides this longer-term view.

Analysis of the data suggests the plateau of gains over recent periods indicates the immediate benefits that followed the tort reforms may now have been absorbed and incorporated in policy structure – and therefore any retreat from tort law reform would risk these gains into the future.

Overall, it is clear that the objectives of the tort reforms that followed the liability crisis of 2002 have been met – public liability insurance is now more readily available, and is also more affordable.