Chapter 1

The problems of insurance buyers

1.1 The effects of increasing premiums on various groups—particularly community groups, small business and professionals—are described in this chapter. It compares information on average sector-wide increases with the experiences of those who gave evidence.

1.2 Concern about rising public liability and professional indemnity insurance premiums has featured heavily in the news since early 2001—particularly since the collapse of HIH Insurance in March 2001. Concerns increased throughout 2001 and have snowballed during 2002. In the Commonwealth Parliamentary Library's news clippings collection, items containing either 'public liability' or 'professional indemnity' number as follows:

2000, first half:	25
2000, second half:	33
2001, first half:	140
2001, second half:	116
2002, first half:	975

1.3 Broadscale statistics and industry surveys noted in submissions show significant premium increases. However a major part of the problem is the extreme variability of increases. Regardless of average figures, for many the situation is now undoubtedly a crisis. The Committee received many submissions from community groups, small businesses, and professional organisations describing sudden, exorbitant increases in premiums (regardless of claims history); inability to find insurance at any price; excesses and deductibles increased to an extent that makes the insured effectively self-insured for all but the biggest risks. Community events are cancelled, community groups are disbanding, professionals find themselves unable to practise their professions.

1.4 Unfortunately there is no suggestion that the increases will abate soon. Indeed, according to the Insurance Council of Australia, 'the cost of public liability claims is still well in excess of the amount of premium collected.'[1]

1.5 The matter is of high public importance, not only because of the widespread effects on small businesses and professionals, but also because of the effects on community groups and volunteer organisations which are the lifeblood of the country's communities, especially in the regions. The writing has been on the wall

1 Insurance Council of Australia, *Liability losses underline need for reform*, media release 27 August 2002.

since mid-2001. The Committee regrets that it has taken governments so long to act in response.

Effects on community groups

1.6 Many submissions described the effects of insurance problems on community groups and community activities. For example, the New South Wales Golf Association described the fate of the Croppa Creek Golf Club:

> Its membership totals only 8 people…The golf course consists of 9 holes on land leased from a local resident for a peppercorn rental…The club's public liability insurance was previously taken out by the Croppa Creek Bowling Club, a neighbouring facility. The bowling club simply included the golf club's land in its annual declaration to its insurance broker, and the golf club, in kind, provided an annual token donation of $100 to the bowling club. Very quaint, very simple, very effective.
>
> In March 2002, the Croppa Creek Bowling Club was advised by its insurance broker that it could no longer take out 'piggy back' insurance for the golf club…Aon [brokers to the NSW Golf Association] was able to obtain only two quotations, both from overseas, and the cheapest premium it could quote was for $4,364 for $10 million cover…the golf club's entire turnover the previous year had been $2,000…Currently, their course is closed with little prospect of re-opening.

1.7 According to the Association, the situation is far from unique. As another example Molong Golf Club, with 54 members faced an insurance bill increasing from $3,000 to $12,500. 'They have advised us it is highly unlikely they can continue.'[2]

1.8 Similar stories are being played out all over the country. The Maclean Scottish Association, for its Easter Highland Gathering, suffered an increase in public liability insurance premium from $1,500 to $5,000 in 2001. 'Next year's festival is very much in doubt.' The premium of the Chatsworth Community Hall Committee rose from $380 to $1,350. 'The Committee was only able to pay this premium, and thus keep the hall open, through a one-off donation of $900 from Council.'[3]

1.9 The Local Government and Shires Association of NSW listed over 80 threatened community events and community groups in New South Wales, from the Bombala local growers market to the Mudgee annual Christmas Carols.[4] The NSW Department of Sport and Recreation listed 86 similar examples, mostly of sporting groups, from the Big Banana ('rise in public liability [premium] from $39,900 to $140,000 in one year') to the Blue Light Discos ('400 per cent price hike') to the Combined Pensioners and Superannuants Association ('May have to cut staff to pay

2 Submission 26, NSW Golf Association Ltd, p. 1.

3 Submission 9, Maclean Shire Council, p. 1.

4 Submission 23, Local Government and Shires Association of NSW, p. 23.

for premium rise from $6,700 to $76,000').[5] Local government itself faces public liability premium increases of 30–50 per cent in the current year on average, with many examples of increases beyond this range—up to 100 per cent in several cases and 700 in one case. Industry sources suggest that further increases in the range of 30–50 per cent may be expected in 2003.[6]

1.10 Submissions gave many more examples of which some are reproduced in Appendix 4. It is obvious that they are only the tip of the iceberg. Similar situations have been in the media almost daily. The Local Government and Shires Association of NSW described the serious effects that the crisis is having on community cohesion, particularly in country areas:

> The loss of these activities has a number of potential impacts…
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> - People lose the opportunity to interact and become less connected to their community
> - People lose volunteering opportunities, diminishing their opportunity to serve their communities and enhance their sense of worth
> - People lose recreational opportunities (which are already modest in many rural and remote areas)
> - Communities feel a loss of cultural identity
> - Communities lose fund-raising activities, impacting further on local facilities and services
> - Communities lose economic benefits that flow from the tourist potential of many of these activities.[7]

1.11 According to the Country Women's Association of Victoria, 'Increases in insurance premiums are ruining the whole social fabric of communities…'

> People can no longer afford to have functions to raise income to cover the short fall in providing equipment and offsetting running expenses for schools, hospitals and sporting clubs. This will have a long term detrimental effect on society, driving us down to third world country status, with no community volunteer system, for which Australia is noted.[8]

1.12 Sporting groups are also affected. The Standing Committee on Recreation and Sport of the Sport and Recreation Ministers Council notes that 'it may be the case that…sport and recreation organisations are disproportionately affected by increases in the cost of PLI cover. It is clear that many sport and recreation activities are

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5 Submission 40, NSW Department of Sport and Recreation, appendix.

6 Submission 23, Local Government and Shires Association of NSW, p. 10.

7 Submission 23, Local Government and Shires Association of NSW, p. 8.

8 Submission 38, Country Womens Association of Victoria, p. 1.

regarded as high risk and attract larger premiums to compensate for that risk factor.'[9] Sport Industry Australia advised that community events are being cancelled and clubs are closing down.[10] A survey by the Sports Federation of Queensland in 2001 found that for sporting groups the average cost of public liability insurance had nearly doubled since 1999. Groups were concerned not only with the level of increase in premiums but also with the reduction in the level of coverage being offered and the difficulty of finding insurance in a shrinking market.[11]

1.13 Some examples in other submissions are:

- Surf Life Saving Australia Ltd: PLI premiums from $153,000 to $600,000 from 1996 to 2001.[12]
- Soccer Australia: premium increase from $42,785 to $440,000 over one year.[13]
- Australian Swimming Inc: increases from 150–350 per cent among affiliated organisations.[14]
- Australian Cricket Board: 'With renewals now approaching, brokers are advising some states to expect increases of over 100 per cent in their premiums…An additional impact of the increase in premiums in Victoria is seeing other organisations seeking to move their risk onto cricket…such a move creates a significant public policy issue as it threatens the viability of cricket clubs…'[15]

1.14 For the Country Women's Association of NSW, 'the most poignant effect of the current climate of litigation has come from Nursing Homes and Hostels….'

> Elderly people in these places are now prevented from contributing to their communities by such small responsibilities as arranging flowers, setting tables, tidying sitting rooms. For fear they cause an injury to another party when so doing, they have been told they are not to do these things. The result? They feel useless, a burden, their existence basically pointless.[16]

1.15 The Local Government and Shires Association of NSW summarised the frustration of many:

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9 Standing Committee on Recreation and Sport, *Review of Australian Sports Insurance—summary of a report prepared for the Sport and Recreation Ministers' Council*, March 2002.

10 Submission 44, Sport Industry Australia, p. 2.

11 Queensland Government, *Report of Liability Insurance Taskforce*, February 2002, p. 12.

12 Submission 18, Surf Life Saving Australia Ltd, p. 1.

13 Submission 37, Soccer Australia, p. 1.

14 Submission 43, Australian Swimming Inc, p. 2.

15 Submission 100, Australian Cricket Board, p. 2.

16 Submission 13, Country Womens Association of NSW, p. 2.

> The Daily Telegraph (Fri 8.0.3.02 p1) headlines it as the '*Death of Fun'* with the subheading *'As politicians plan another talkfest, community spirit is dying before our eyes*'.

Effects on small business

1.16 There have been severe effects on small business. Many submissions related to the outdoor recreation and tourism sector. The Queensland Outdoor Recreation Federation reported business closures and businesses operating without insurance.[17] A recent Queensland Government Liability Insurance Taskforce reported that the outdoor recreation sector has been affected by increases in insurance premiums of between 40% and 900%, the refusal of insurance cover and the decline in the number of insurance companies prepared to underwrite insurance for the sector. In addition, landholders are beginning to refuse access to their land for outdoor activities for fear of being sued.

1.17 In relation to the tourism sector, the Taskforce reported that:

> Anecdotal evidence has found that worst affected sectors of the industry are the events and adventure tour operators (with reported premium increases as high as 5,000 per cent). However, relatively soft-adventure operators (such as camping grounds), accommodation establishments, attractions and transport operators have also reported exorbitant increases in insurance premiums and inability to obtain public liability insurance cover…public liability insurance is the single largest issue confronting the amusement, leisure and recreation sectors, with the potential collapse of many operators in these sectors imminent because they can no longer afford to pay unreasonable public liability premiums. They have reported increases in premiums of 300 to 700 per cent over the previous year.
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> The Australian Parachute Federation reports public liability insurance premium increases of more than 300 per cent in the past few years. Individual operators have reported public liability insurance premium increases of between 40 and 209 per cent (accommodation establishments), 150 to 2,000 per cent (adventure activities) and 50 and 300 per cent (attractions).[18]

1.18 The Australian Hotels Association, as another example, reported particular hotels that had suffered increases from \$5,000 to \$26,000 over two years; from \$11,000 to \$31,000 over two years; from \$9,000 to \$27,000 in one year.[19]

1.19 In relation to event organisations, the Taskforce referred to a survey conducted by Deloitte Touche Tohmatsu (Deloitte) on behalf of Queensland Events Corporation in February 2001. The survey was conducted in order to assist in

17 Submission 47, Queensland Outdoor Recreation Federation, p. 1.

18 Queensland Government, *Report of Liability Insurance Taskforce*, February 2002, p. 16.

19 Submission 157, Australian Hotels Association, p. 5.

developing a response to difficulties that event organisers in Queensland had been experiencing in obtaining necessary public liability and other forms of insurance coverage. Approximately 400 responses were received. The Taskforce reported that the survey showed:

> 41.6% of respondents indicated that their insurance premiums (including public liability and professional indemnity) has increased by more than 50% over the last three years;
>
> 4.5% of respondents indicated that their insurance premiums had not increased;
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> 66.9% of respondents indicated that they had found it more difficult to obtain insurance coverage over the last 3 years;
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> 21% of respondents indicated that they had to either cancel or scale back their activities due to the cost or the unavailability of public liability and professional indemnity insurance.[20]

1.20 The Taskforce stated that 'it is important to acknowledge that there is a great difference from an insurance perspective between major events (Goodwill Games, Indy Car Race etc) and minor events (such as flower shows, community shows and country music festivals). The Deloitte report noted that there is competition amongst insurance companies to provide coverage for major events.'[21]

1.21 The Australian Horse Industry Council reported that 'the insurance company under-writing the majority of Australia's recreational horse industry has withdrawn from the market. At present the majority of commercial and not-for-profit associations in the horse industry have been unable to secure PLI after their current policies expire and will face closure if they cannot.'[22]

1.22 More generally, the Council of Small Business Organisations of Australia (COSBOA) reported increases of 200–500 per cent in the 2001–2002 financial year among its members. Some members report inability to get any coverage.[23]

1.23 According to the Country Women's Association of NSW, the effects on small business are especially severe in the country:

> When a carpenter in a country town finds his premiums have increased in a single year from $500 to $1100, a real instance, he has to decide if it is worthwhile to continue in business. In the average country town, the carpenters are not the leaders in earnings. When a horse riding business finds its cover now costs $2400 for the year when previously it had

20 Queensland Government, *Report of Liability Insurance Taskforce*, February 2002, p. 17.

21 Queensland Government, *Report of Liability Insurance Taskforce*, February 2002, p. 17.

22 Submission 75, Australian Horse Industry Council, p. 3.

23 Submission 113, Council of Small Business Organisations of Australia, p. 2.

> difficulties meeting a cost of $1500, and has made no claims against the policy—the family is unable to allow the business to continue.[24]

1.24 These closures not only withdraw the service from the town, they withdraw the wages from the local economy. As well, according to the CWA, small businesses are particularly affected by government demands that tenderers for government contracts carry $10–20 million in public liability insurance:

> The cost of such cover for the average small business has been estimated at $15 000. When a contract is worth only $20 000 such premium costs are unrealistic and impractical…While such premium increases are undoubtedly galling for big business, they are more easily absorbed or passed on to customers; neither of these options is realistic or affordable for the average small business.[25]

Effects on professions

1.25 Many professional groups have been severely affected by rising professional indemnity insurance premiums. The Committee received submissions by or on behalf of architects, engineers, accountants, surveyors, actuaries, lawyers, property valuers, financial planners, real estate agents; and on the medical side (apart from peak bodies like the Australian Medical Association) anaesthetists, midwives, nurses, chiropractors, pharmacists, physiotherapists, dentists, audiologists, general practitioners, pathologists, obstetricians and gynaecologists.[26]

1.26 For example, the Australian Council of Professions reported that professional indemnity premiums have risen by 'between 20 and more than 200 per cent recently.' The Council gives examples from its membership:

- dentists: 80 per cent increase this year
- engineers: 39 per cent increase from 1996-97 to 2000-2001
- 'some physiotherapists': 300 per cent increases over a year
- chartered accountants: 100–200 per cent
- from 2000 to 2001: architects 30–60%; engineers 30–60%; interior designers 20–35%; landscape architects 20–35%; management consultants 20–50%; project and construction managers 25–35%; quantity surveyors 30–45%; real estate agents 50–150%; town planners 30–45%; valuers 50–150%.

1.27 The Council believes it is unlikely that these increases reflect any sudden increase in claims.[27]

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24 Submission 13, Country Womens Association of NSW, p. 3.

25 Submission 13, Country Womens Association of NSW, p. 4.

26 Some of these are listed under the aegis of submission 55, Australian Council of Professions.

27 Submission 55, Australian Council of Professions, pp. 4, 9ff.

1.28 Other examples in submissions were:

- Surveyors: increases from 13% (with no changes or claims) to 300% (history not advised).[28]
- Valuers: 350% increase over 3 years; reduced scope of cover with higher excesses and limitations in the covered activities; increasing percentage of valuers denied cover.[29]
- Engineers: average increase of 18.9% in 2001–02 in a Victorian study. 'We are concerned that increases in 2002–03 will be of a similar order.'[30]
- Engineers: many firms report increases of 20–50 per cent during 2001; in some cases more than 100%. Some perceived high risk categories are becoming difficult or impossible to insure, and insurers are only offering policies with excesses/deductibles which are between 5 and 20 times what they were in 2000. Increased tendency for principals with market power to shift excessive and uninsurable risk onto smaller players such as consulting engineers and subcontractors.[31]
- Accountants: average increases of 25% in 2001; 40% since March 2002, with numerous instances of 100–300%. High excesses are being demanded which put them in breach of their professional body's rules and effectively make members self-insured for most claims. Taxation advice is being excluded.[32]
- Financial planners: increases from 30–1000%; increased excesses and exclusions.[33]
- Real estate agents: increases of 40–400% for $1 million cover; excesses increasing up to ten-fold. Agents who are not involved in many valuations each year, particularly in rural areas, are discontinuing valuation services as these are not covered.[34] [The problem is analogous to that of rural general practitioners discontinuing procedural work, considered below].

1.29 The extreme range of increases in these examples is noteworthy. This is taken up at paragraph 1.37.

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28 Submission 28, Association of Consulting Surveyors New South Wales Inc, p. 2.

29 Submission 122, Australian Property Institute, p. 2.

30 Submission 48, Association of Professional Engineers, Scientists and Managers, Australia and others, p. 4.

31 Submission 54, The Association of Consulting Engineers Australia, pp. 3-4. Similarly submission 108, Department of Industry, Tourism and Resources, p. 8: '…representations from industry organisations representing professional services firms in the construction industry, who believe that the increase in professional indemnity premiums and excesses for these firms is a result of the transfer of risk to these firms, including from public sector clients.'

32 Submission 125, CPA Australia, pp. 2-4.

33 Submission 94, Financial Planning Association of Australia Ltd, pp. 8-10.

34 Submission 91, Real Estate Institute of Australia, p. 3.

1.30 The Institution of Engineers describes the effects:

> increases in fees; a limiting of business activities to limit liability exposure by engineering firms; a diversion of financial resources by firms to enable them to self-insure; withdrawal of certain technical skills and services from the market; closure of small companies; a greater prevalence of uninsured engineers.[35]

1.31 Submissions suggest that the same effects probably apply in most of the professions mentioned.

1.32 Many professional groups as well as non-profit organisations mentioned that blanket demands for $10 million of cover as a condition of government contracts or grants are all out of proportion to the risks involved, and require premiums which have become prohibitive.

1.33 The Australian Council of Professions reports that directors and officers insurance 'is not widely held among professionals or, if held, is not seen as a big problem'.[36]

1.34 Health professionals have also been hard hit, particularly in obstetrics and midwifery. According to submissions the number of doctors in rural areas who are prepared to undertake surgical procedures is declining rapidly, as their earnings do not cover the cost of medical indemnity insurance.[37] There is a decline in the number of anaesthetists willing to be involved in obstetrics.[38] Obstetricians face premiums of over $100,000 per year, and neurosurgeons $250,000.[39] In New South Wales, at the scheduled fee for a confinement ($422.25), an obstetrician has to deliver 196 babies to pay the $82,500 annual premium. The Royal Australian and New Zealand College of Obstetricians and Gynaecologists expects a serious decline in the obstetrics workforce as older obstetricians retire prematurely and younger trainees increasingly opt out of obstetric practice.

> The average age of our practising obstetricians is 51 years of age…The specialists graduating in the 1990s and in the 21st century are indicating strongly that this situation is deterring them from practising obstetrics. We conducted a survey of our senior trainees in 2001 and got a 98 per cent response rate. Of that group, 24 per cent—about 126 of them—indicated they would not practise obstetrics once they achieve their specialist status. The reasons were threefold: firstly, the stress of medical liability; secondly,

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35 Submission 81, Institution of Engineers, Australia, p. 2.

36 Submission 55, Australian Council of Professions, p. 8.

37 Submission 111, Australian Medical Association, p. 1; Submission 52, Doctors Reform Society, p. 2.

38 Submission 16, Australian and New Zealand College of Anaesthetists, p. 2.

39 Submission 111, Australian Medical Association, p. 1; Submission 52, Doctors Reform Society, p. 2.

> the lifestyle situation of being a practising obstetrician was not appealing; and, thirdly—and equally importantly—because of the medical indemnity costs.[40]

1.35 Many independent nurses cannot practice their professions because they cannot get affordable professional indemnity insurance.[41] According to the Royal College of Nursing, independent midwives cannot get insurance at all. Most have either left the profession or returned to employed situations.[42] As a result national policies on homebirths cannot be implemented. Midwifery students cannot get clinical experience, with serious implications for the future supply of trained midwives. Hospitals are closing maternity wards.[43]

1.36 Some further examples from all the categories above are:

- an agency providing activities for people with epilepsy unable to obtain public liability insurance cover for any of its participatory events, even though no insurance claim has been made in the program's 12 year history;[44]
- an agency obliged to stand down all volunteers aged over 65 years because its public liability insurance cover excluded them;[45]
- refusal of cover for induction and training of people with disabilities where this occurs on sites other than at the organisation's own premises;[46]
- businesses forced to withdraw from government tenders due to being unable to obtain the required professional indemnity insurance;[47]
- professionals forced to breach their professional association's rules by continuing to practice while unable to obtain insurance cover at the level set by the association's rules; and[48]
- increasing exclusions from schools' policies may limit core curricular activities.[49]

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40 Dr J. Campbell (Royal Australian and New Zealand College of Obstetricians and Gynaecologists), *Committee Hansard*, 10 July 2002, p. 190.

41 Submission 70, Australian Nursing Federation, p. 1.

42 Submission 102, Royal College of Nursing, p. 102.

43 Submission 117, Australian College of Midwives.

44 Submission 59, ACROD Ltd, p. 3.

45 Submission 59, ACROD Ltd, p. 3.

46 Submission 59, ACROD Ltd, p. 4.

47 Submission 108, Department of Industry, Tourism and Resources, p. 7.

48 Submission 125, CPA Australia, p. 3.

49 Submission 106, National Council of Independent Schools' Associations, p. 1.

Individual stories versus wider statistics

1.37 Many submissions from peak groups reported surveys of their members. These usually showed more moderate—yet still significant—average premium increases than the extreme individual cases mentioned above. The survey figures are more in line with figures shown in *Selected Statistics on the General Insurance Industry* by the Australian Prudential Regulation Authority (APRA)—with the proviso that APRA's latest figures are to December 2001, and the situation has probably developed significantly since then.

1.38 Some average increases are mentioned above at paragraphs 1.26 and 1.28. Other examples are:

- A survey of members by the Australian Industry Group found that on average premiums were expected to rise by 41 per cent in 2002 (though small companies were worst affected with projected increases of 65 per cent).[50]
- A survey of members by the Queensland Council of Social Services in July 2001 found an average increase in premiums of around 30–40 per cent. [It should be remembered that the situation has probably changed greatly since then.][51]
- The Australian Chamber of Commerce and Industry reported various surveys of members by its State branches. The Victorian Employers Chamber of Commerce and Industry found average increases in PLI premiums of 80 per cent in early 2002. The Chamber of Commerce and Industry of Western Australia found a median rise of 35 per cent over the past year. The Victorian Automobile Chamber of Commerce found an average increase of 36.4 per cent. The State Chamber of Commerce (NSW) found that 51 per cent of respondents had increases from 10–100 per cent.[52]

1.39 In considering the apparent discrepancy between average figures and the extreme individual cases, it should be remembered that both average and median figures, regardless of sample size, can conceal wide individual variations. As well, it is natural that those who have been worst affected are keenest to have their stories heard, so collections of individuals cases will naturally tend to highlight the worst ones. Nevertheless, in the Committee's view the more moderate average figures are no cause for complacency. The extreme variability of increased premiums, and the apparently capricious way this has affected so many people and particular sectors, is an essential feature of the current crisis.

1.40 The March 2002 Trowbridge report for ministers summarises movements in public liability premiums. From a 1993 index of 100, premiums of survey respondents dipped to 68 in 1998 (that is, on average 1998 premiums were 68 per cent of 1993

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50 Submission 49, Australian Industry Group, p. 1.

51 Queensland Government, *Report of Liability Insurance Taskforce*, February 2002, p. 10.

52 Submission 90, Australian Chamber of Commerce and Industry, pp. 3-4.

premiums), rose back to 98 by June 2001, and are forecast to be 130 by June 2002 and 145 by 2003.

year	**% change in premium rates**	**premium rate index (1993=100)**
1993	-	100
1994	+4%	104
1995	-2%	102
1996	-12%	90
1997	-17%	74
1998	-8%	68
1999	+4%	71
2000	+17%	83
2001	+18%	98
2002 forecast	+32%	130
2003 forecast	+12%	145
source: Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, p.27; pers. comm. August 2002		

1.41 Comparing APRA statistics on public liability premium per $1,000 of private sector Gross Domestic Product shows a similar trend. Trowbridge comments: 'It is clear that the average premium rate increase in the current year is very steep, and that the insurance industry is expecting further increases next year.'[53]

1.42 The table above does not take account of inflation. As well, increasing premiums must of course be seen in context of the long term increase in claims expense. It is the balance between premium income and claims expense which chiefly determines the level of profit. According to ISC/APRA figures the net claims expense of public liability, product liability and professional indemnity insurance has almost doubled from 1993 to 2001.[54] Figures on average claim size from Insurance Statistics Australia's contributors show a similar trend.[55] Trowbridge summarises movements in the interim thus:

- healthy level of profit for 1992 and 1993 business

53 Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, pp. 26-7.

54 ISC/APRA data quoted in ACCC, *Insurance Industry Market Pricing Review*, March 2002, appendix C. Net claims expense ($million), year to 12/6/1993: public & product liability $283.118, professional indemnity $175.568, total $458.686. Year to 12/6/2001: public & product liability $582.728, professional indemnity $279.549, total $862.277.

55 Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, p. 16. Insurance Statistics Australia is a non-profit company owned by a number of insurance companies. It collects data for the benefit of members. It covers 22 per cent of the market.

- marginally unprofitable business in 1994 and 1995
- severe losses from 1996 through to 2000 with 1998 representing the low point in trends of profitability.

> On the basis of this data, which we regard as currently the best available indication, premiums would need to increase by around 100 per cent from 1998 levels to give adequate profitability.[56]

1.43 On the different effects on different categories of insurance buyers, Trowbridge comments that there are no reliable statistics; however anecdotal and qualitative evidence 'indicates that all segments of industry have faced increases in public liability premiums, but with extreme increases for organisations with high exposure to personal injury claims'. These are:

- any organisation with a high level of public traffic
- shopping centres etc (referred to as "slip and fall" risks)
- those with participants in dangerous activities (eg horse riding)
- local governments.

> This evidence indicates that premium increases of 20% are routine; 100% are not uncommon; 500% to 1000% have occurred. Those largest increases have typically arisen following a change of insurer (HIH collapse or another insurer no longer covering the event) where the basis of calculating premiums is different between insurers particularly if the risk is unusual.[57]

Market failure?

1.44 A notable feature of the crisis is the common report from insurance buyers that the number of insurers willing to deal has dropped dramatically; or at the limit, insurance cannot be obtained at any price. For example:

- Independent midwives cannot obtain insurance, as noted above.
- In 2000/2001 there were 23 professional indemnity insurance underwriters. Now there are eight, of whom only four write financial planning business.[58]
- 'The number of major multiline insurers has decreased from over 20 in the early 1990s to around six today…there are also indications that insurance companies

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56 Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, p. 33.

57 Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, p. 28.

58 Submission 94, Financial Planning Association of Australia Ltd, p. 3.

are taking the opportunity to improve the quality of their customer base by shedding low value customers.'[59]

- 'Lack of competition for the schools' liability business. Ten years ago in Victoria there were 10–12 underwriters prepared to write liability business for schools. Today there are 3…A take it or leave it approach in relation to price (premiums and deductibles)'.[60]
- 'Some perceived high risk categories [of engineering] are difficult or impossible to insure.'[61]
- 'Reduction in the number of companies prepared to underwrite outdoor adventure activities, leading to monopoly.'[62] For example, the insurance company underwriting the majority of Australia's recreational horse industry has withdrawn from the market. Most commercial and non-profit associations in the horse industry cannot renew their public liability insurance and face closure.[63]

1.45 As well as sudden exorbitant increases in premiums, excesses and exclusions, submissions report delays in confirming renewals:

> In many instances the negotiations have commenced a considerable time before the existing policy has expired. However the insurance companies appear to have deliberately strung out negotiations until the final 24 hours of the existing policies expiring before offering cover at a steeply increased premium on the previous year's cover. At this point of time business operators are faced with a decision of whether to shut down operations or continue to operate uninsured.[64]
>
> The experience has been that renewal notices are not being served until one week to two days before cover expires. In addition, quotes in relation to renewal are then taking up to three weeks and sometimes longer. This leads to uncertainty, the need to negotiate short-term extensions at the last minute to ensure interim cover, and gaps in cover.[65]

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59 Submission 23, Local Government and Shire Association of NSW, p. 5. The Australian Rugby League Ltd, Submission 82, p. 2 stated, 'No competition from other underwriters. When only one insurer is prepared to take on the risk our client has to pay the premium charged.'

60 Submission 24, Association of Independent Schools of Victoria Inc., pp. 4-5.

61 Submission 54, The Association of Consulting Engineers Australia, p. 3.

62 Submission 47, Queensland Outdoor Recreation Federation, p. 1. The Queensland Government, *Report of Liability Insurance Taskforce*, February 2002, p. 14, stated 'Of the three companies previously involved in underwriting outdoor recreation operations, there remains one in the market at present… there is a reluctance to insure, and in some instances even quote on the provision of policies, for some perceived "high risk" activities.'

63 Submission 75, Australian Horse Industry Council, p. 3; Similarly submission 6, Equestrian Federation of Australia, p. 1; submission 19, Riding for the Disabled Association of Australia Inc., p. 2.

64 Submission 147, Fire Protection Association Australia & Fire Contractors Federation, p. 6.

65 Submission 94, Financial Planning Association of Australia Ltd, p. 10.

1.46 In situations where the seller knows that the buyer cannot do without the service and has no alternative source of supply, it might be arguable that such behaviour is unconscionable conduct.

1.47 This behaviour is not the sign of an efficient competitive market. It suggests that some insurers are taking maximum advantage of the sellers' market created by the contraction of supply following the collapse of HIH.

1.48 As noted above, we should be cautious of taking the worst stories as representative of the average situation. Mr West of Royal and SunAlliance commented:

> Certainly there are some areas where there is limited competition; that is absolutely right…I would say that they are tip of the iceberg; they are not everybody. In looking at some of the solutions put in place in Victoria on the not-for-profit side, it is interesting to note how many cases have actually gone to that scheme. At the moment it is less than five per cent of the expected cases within a not-for-profit area…Ninety-five per cent of people actually got the cover, and they are not having a problem. Of course, obviously, the ones who come to attention are the ones who do have the problem.[66]

1.49 APRA stresses the high number of general insurers and comparatively low barriers to entry (compared with other financial services), indicating a competitive market:

> There are 111 companies now writing new business in the general insurance industry and the entry hurdle is $5 million…you would have to conclude that across the spectrum of the financial sector the general insurance industry is one of the more competitive parts.[67]

1.50 The Committee acknowledges this. However, as noted before, a fundamental element of the present insurance crisis is the highly variable and even capricious way it has struck particular groups and particular types of insurance buyers—particularly community groups and some types of small businesses such as outdoor recreation businesses. It is small comfort to an insurance buyer to know that there are 111 general insurers, if *not one* is interested in bidding for that particular business.

1.51 Mr Tony Abbot, Law Council of Australia, made this point:

> Although there are over 100 insurers in Australia, not all of them offer this type of insurance to segments like horse riding clubs. Many of the witnesses before you have found that, practically, they only have one or two insurers

66 Mr D. West (Royal and SunAlliance), *Committee Hansard*, 9 August 2002, p. 362.

67 Dr D. Roberts (Australian Prudential Regulation Authority), *Committee Hansard*, 9 July 2002, p. 133.

> in the market. They have no financial or actual ability to get alternative quotes in Australia or from overseas. It is a captive market.[68]

Are some insurance buyers being unfairly penalised?

1.52 Many submitters complained that their premiums had increased even though they have never made a claim. This misunderstands the nature of insurance. Individual buyers are pooled with others of similar character, and premiums are set to cover the claims expense of the pool. It is the essence of insurance that those who do not make claims subsidise those who do. They cannot expect to be insulated from the risk of the pool because of their personal good record.

> There are a lot of very innocent victims out there who are being penalised for poor performance and poor risk management on behalf of similar organisations or similar companies across Australia. There are some very innocent adventure risk people who do manage their businesses very well [but] the insurance industry has never been able to go down to a one-on-one individual risk level…You look at that class of business and work out how well it runs as a class of business Australia wide.[69]

1.53 However the complaint has more force when generalised to larger groups. For example, the Australian Cricket Board argued that 'cricket is also a low risk sport with claims history that demonstrates that the sport is not a major user of public liability insurance. Insurers do not seem to have taken account of these characteristics in setting premiums.'[70] Our Community surveyed the claims history of over 1,000 community groups:

> Over 1,000 community groups completed this survey undertaken by Our Community on a national basis…96% of respondents had not had a claim in five years. Of those groups who did have a claim on their insurance, the total money paid out by insurers represented less than 5 per cent of the total premiums paid over one year.[71]

1.54 Many submissions argued that insurers are exploiting classes of buyers who have little market power, regardless of their risk, to cross-subsidise higher risk classes:

> We believe that low risk professions such as quantity surveyors are being penalized by insurers who are attempting to offset their losses from the higher risk areas. In our opinion this is unconscionable conduct by insurers and likely to be a breach of the Trade Practices Act.[72]

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68 *Committee Hansard*, 8 August 2002, p. 269.

69 Mr R. Jones (Insurance Council of Australia), *Committee Hansard* 8 July 2002, p. 57.

70 Submission 100, Australian Cricket Board, p. 2.

71 Submission 71, Our Community, p. 3.

72 Submission 142, The Australian Institute of Quantity Surveyors.

> …it may be the case that professions with low numbers of claims are effectively cross-subsidising claims by professions and by other insurance clients in sectors where claims and litigation are more common.[73]
>
> Buying power seems to be a key factor here. The smaller the voluntary organization, the greater the cost for insurance…Collapse of companies is not the fault of volunteer organizations currently being held to ransom by those who are survivors in the insurance industry.[74]

1.55 Figures from the Trowbridge report of March 2002 seem to support these complaints. Within the public liability line of business, sport and recreation and welfare/community groups have been among the more profitable (or at least, the least unprofitable). Yet, according to submissions to this inquiry, these are the very groups that seem to have been hardest hit by the present crisis.

Public liability insurance—
Insurance Statistics Australia members
loss ratio 1994-1998 by industry segment

industry segment	loss ratio
all industries	142%
building	140%
special trades	94%
food stores	125%
welfare/community	87%
hotel accommodation	178%
sports and recreation	104%
unlicensed clubs	215%

source: Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, pp.34,69

- Loss ratio is claims expense divided by premiums. A lower figure is a better result for the insurer. Break-even point is about 90%, since other expenses must also be allowed for.
- Figures are averaged over accident years 1994-98.
- Insurance Statistics Australia is a non-profit company owned by a number of insurance companies. It collects data for the benefit of members. It covers 22 per cent of the market.[75]

1.56 APRA generally stresses the need for premiums to rise from their unnaturally low level of the late 1990s to restore the industry to reasonable profitability:

> We do not see higher premiums as either necessarily undesirable or completely avoidable. The most important protection a policyholder can have is the survival of the insurer, as a failed insurer cannot pay claims.[76]

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73 Submission 55, Australian Council of Professions, p. 12.

74 Submission 17, The South Australian Country Women's Association Inc., p. 2.

75 Mr R. Drummond (Insurance Council of Australia), *Committee Hansard* 8 July 2002, p. 49.

1.57 The Committee acknowledges this. However, as noted before, it does not explain the huge variations in premium increases. The March 2002 Trowbridge report suggests that public liability and professional indemnity premiums on average ought to rise by up to 100 per cent to restore them from the unnaturally low 1998 level to 'adequate profitability'. Trowbridge estimates that this will have happened by June 2002.[77] This raises the question of why so many people report vastly greater increases.

1.58 The Committee suspects that the answer lies partly in the different market power of the different types of insurance buyers, as suggested above; and partly in the difficulties of assessing the risk of many smaller pools. In the small Australian market, in the absence of industry-wide data-sharing, many insurers will tend to have too few customers in many categories to assess risk reliably.

> Where you have data built into wider cluster groups or you have to cluster data together, inevitably you get some cross-subsidisation within that pool, and we are not sophisticated enough, particularly in the liability area. We are better in some of the personal lives areas where the risks are more homogenous…[78]

1.59 One result of this may be unavailability of insurance if insurers regard the risk as too hard to estimate.

> …this absence of adequate data exacerbates the current insurance problem. Many insurers have realised that they need to take a more scientific approach to public liability and are very reluctant to enter some segments of the market because they have no data on which to base premium rates.[79]

1.60 Another result of inadequate information will be that different types of risks are lumped together in a way that will seem unfair to the lower risk insureds. The Committee received many submissions in the form 'We are being treated like X, with whom we have some superficial similarity, but our risk profile is actually much lower.'[80] Better information about risk, at a finer grain, is essential for tackling this problem.

> **Senator BRANDIS**—…it seems a bit silly that the bingo hall's premium should go up because it is in the same sector as the hang-gliding club.

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76 Dr D. Roberts (Australian Prudential Regulation Authority), *Committee Hansard*, 9 July 2002, pp. 130,133.

77 Dr D. Roberts (APRA), *Committee Hansard*, 9 July 2002, p. 137: for the year to June 2001 the loss ratio for professional indemnity business was 158.7; for public liability 171.3. Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, pp. 26-7,33.

78 Mr D. West (Royal and SunAlliance), *Committee Hansard*, 9 August 2002, p. 355.

79 Trowbridge Consulting, *Public Liability Insurance—analysis for meeting of ministers 27 March 2002*, March 2002, pp. 40-41.

80 For example, the Australian Cricket Board noted in paragraph 1.53.

> Surely, the narrower it [the pool] is the more fairly individual cases will be treated.
>
> **Mr West**—That is right, and that is where the data issue becomes critical… you have to have a certain amount of data in a cell to be able to price that. But, yes, within reason we want to narrow it down to smaller segments so that you can actually differentiate from a pricing point of view.[81]

1.61 There are two aspects to this problem. Firstly, databases must be designed so they can distinguish bingo halls from hang-gliding clubs. Secondly, there must be enough bingo halls in the dataset to give statistically reliable information. It is the second point which, in Australia's small market, implies the need for more orderly collation of industry-wide information—compulsorily if necessary. This is taken up in chapter 5.

1.62 There were many references in evidence to the effect that 'such-and-such category/activity is now *perceived* as being high risk [and this is the reason for large increases in premiums].' This raises the question: are the perceptions accurate? There was no evidence on this. As noted in paragraph 1.55, in the public liability line welfare, community and sporting groups have been among the least unprofitable. The Committee thinks it likely that in some areas—particularly in relation to community groups of the 'bingo hall' variety—the industry is over-reacting. The implication of many stories is that insurers, having become more risk-averse, and unsure what the risk really is, if they are willing to bid for the business at all, are bidding high to give themselves a good safety margin. Better industry-wide data should help answer these questions.

> The more data available, and the more rigorous that data, the more insurable the risk (generally), and the more equitable the price paid by the customer.[82]

1.63 Individual initiative may alleviate problems of lack of information. For example, Wollongong City Council, like many, suffered a significant public liability premium increase in 2001. Fearing the same in 2002, Council made every effort to impress on international underwriters that it is not involved in many risky activities that local governments overseas are often responsible for. As a result Council obtained insurance with only a small premium increase in 2002.[83]

1.64 However, the possibility of this type of initiative does not reduce the need for co-ordinated industry-wide data sharing. Community groups and small businesses cannot be expected to have the resources to take Wollongong's action and, having only small accounts, cannot so easily win the attention of insurers. For them the key need is better information about the risks of certain *classes* of insured, at a useful level

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81 Mr D. West (Royal and SunAlliance), *Committee Hansard*, 9 August 2002, p. 362.

82 Trowbridge Consulting, *Public Liability Insurance—practical proposals for reform*, 30 May 2002, p. 42.

83 Submission 56, Wollongong City Council, pp. 10-12.

of detail. That is a matter peculiarly within the knowledge and responsibility of insurers.