Chapter 4

The cost of claims

4.1 Evidence presented to this Committee suggests that not only has the number of claims risen but that the cost of claims has also increased. Trowbridge Consulting concluded that the continuing upward trend in claim costs is an underlying factor contributing to the insurance problems.[1] It stated that:

> Analysis has shown that the cost of public liability claims has been rising for a number of years at a growth rate above the level of inflation. This phenomenon is driven by bodily injury claims and it is to these claims that the proposals for broad-based tort reform are directed.[2]

4.2 According to Trowbridge Consulting, the estimated average public liability claim size for ISA contributors increased by about 10% per year on average between 1990 and 2000, although not in a steady progression. This increase was about double the increase in average weekly earnings:

Year	ISA	AWE at May	Change in AWE	AWE	12% p.a. Growth
1990	$7,219	569.3	-	$5,000	$5,000
1991	$5,068	591.7	3.9%	$5,197	$5,600
1992	$4,714	617.6	4.4%	$5,424	$6,272
1993	$5,900	632.6	2.4%	$5,556	$7,025
1994	$11,811	656.1	3.7%	$5,762	$7,868
1995	$10,561	687.8	4.8%	$6,041	$8,812
1996	$14,188	715.2	4.0%	$6,281	$9,869
1997	$15,111	736.8	3.0%	$6,471	$11,053
1998	$14,314	767.8	4.2%	$6,743	$12,380
1999	$13,986	790.6	3.0%	$6,944	$13,865
2000	$17,489	821.5	3.9%	$7,215	$15,529

Source: Trowbridge *Consulting Public Liability Insurance, Analysis for Meeting of Ministers 27 March 2002*, March 2002, Figure 5, p. 68. This analysis was based on 'accident year' and involved projection of the ultimate cost of claims based on the amounts paid to date and insurer case estimates from time to time.
ISA= average public liability claim size, ISA contributors.
AWE= average weekly earnings
The fifth and sixth columns show AWE growth, and 12% per annum growth, from a 'best fit' starting point, for comparison

1 Trowbridge Consulting, *Public Liability Insurance, Practical Proposals for Reform*, May 2002, p. iii.

2 Trowbridge Consulting, *Public Liability Insurance, Practical Proposals for Reform*, May 2002, p. 12.

4.3 The Law Council of Australia disputed the significance of these figures. Based on an actuarial report by Cumpston Sarjeant, the Council noted that it 'does appear that statistically an increase in the average cost of claims can be shown to occur because small claims have been taken out of the number of claims. That has been done over the last few years because insurers have increased excesses.'[3]

4.4 However, ISC and APRA data for the years ending 30 June 1993 to 2001 show that the total net claims expense for public and product liability and professional indemnity also increased greatly, from $458.6m to $862.2m:

Professional Indemnity & Public and Product Liability Insurance		
Year ended 30 June	Claims expenses less recoveries revenue ($'000)	Yearly percentage change
1993	458,686	-
1994	515,380	12.3
1995	600,089	16.4
1996	646,931	7.8
1997	752,997	16.4
1998	910,119	20.9
1999	1,194,996	31.1
2000	1,238,183	3.6
2001	862,277	-30.4
Source: ISA/APRA data quoted in ACCC, *Insurance Industry Market Pricing Review*, March 2002, appendix C.2.1 –C.2.9		

4.5 Although there are conflicting opinions about the extent of the increase in the cost of claims, the Committee is in no doubt that the cost of claims has risen over the years and is a factor in the rise of premiums.

4.6 This chapter examines the reasons behind the increasing cost of claims and the proposed solutions. The statistics available concentrate on public liability insurance premiums but the Committee is mindful that professional indemnity insurance premiums appear to be following a similar trend of escalating numbers and costs of claims.

4.7 Evidence presented to the Committee has identified the following areas of concern:

- the amount of damages awarded;
- increased costs associated with particular heads of damage, notably the cost of on going care;
- administration costs associated with claims;
- claims involving small sums for damages; and

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3 Mr Tony Abbott, *Committee Hansard*, 8 August 2002, p. 268.

- legal costs.

4.8 The report also examines the role that risk management has in preventing or minimising loss or damage.

The amount of damages awarded

4.9 Several submitters asserted that the increase in insurance premiums is partly the result of increases in claim payouts.[4] Some consider courts have been awarding unrealistic high damages, although no specific details were provided to support such a view apart from the few highly publicised cases.[5] It is impossible to reach any conclusion on whether a particular award was excessive without detailed knowledge of the case. The Committee accepts that what to some might seem to be an excessive award may be totally reasonable having regard to the plaintiff's injuries, loss and future needs.

4.10 In respect of claims that are settled, either by insurance companies or by the insured, it can only be assumed that both the claimant and the insurance company or the insured consider the amount agreed upon to be reasonable. However, several submitters and witnesses maintained that in cases involving 'small' amounts, these are often settled by the insurance companies or the insured on the basis that it is more economical to settle than to contest the matter in court.[6] The decision to settle rather than to defend claims may also be influenced by the perception that courts are regarded as being plaintiff friendly.

General damages

4.11 The Panel reviewing the law of negligence considered many options on how to limit liability and quantum of award for damages. It proposed imposing a threshold for awards of general damages as an appropriate way to reduce significantly the number and cost of smaller claims. General damages are damages for non-economic loss, including pain, suffering, loss of amenities, and loss of expectation of life. The Panel recommended that the threshold be based on 15 per cent of a most extreme case.[7]

4.12 Placing a cap on awards was also examined by the Panel as a means to contain costs. It believed that capping general damages would not have as material effect on the cost of claims as would the imposition of a threshold. Nonetheless, it found:

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4 For example, submission 79, Queensland Government; submission 80, Royal Australian College of General Practitioners.

5 For example, submission 20, Agricultural Societies Council of NSW Inc, p. 2.

6 Submission 47, Queensland Outdoor Recreation Federation, p. 7.

7 *Review of the Law of Negligence: Final Report,* September 2002, p. 193.

> In the light of the variety of caps that exist and the disparity in the levels of awards in the various jurisdictions, it might be thought impractical, at this stage, to recommend a national cap fixing a single monetary amount for all States and Territories. On the other hand, because of the absence of any measurable correlation between money, on the one hand, and pain, suffering, loss of amenities and loss of expectation of life, on the other, a reasonable cap on damages could not be said to be unprincipled. [8]

4.13 It went on to suggest that a cap of $250,000 would be appropriate. In the Panel's opinion such a cap would promote national consistency in awards of general damages, and have the additional advantage of reducing awards particularly in the two states with the greatest amount of personal injury litigation—NSW and Victoria.[9]

On-going care and rehabilitation

4.14 It is clear, however, that one of the main contributing factors in increasing court awards relates to the cost of future on-going care and rehabilitation, both of a medical and non-medical nature, particularly in cases involving catastrophic injuries. Some of the factors contributing to increases in these costs are the increased life expectancy of injured parties and improvements in the treatment of injuries, which often can be expensive. According to Dr Sedgley, Chairman of Council, Australian Medical Association (AMA), this is 'an ongoing thing—and they are expanding and expanding.'[10]

4.15 The degree to which these damages have increased in recent years is difficult to determine. However, the Royal Australian College of General Practitioners, in an exposure version of a background paper dated 17 April 2002, maintained that previously, claims in cases involving severe neurological impairment were in the order of $1–2 million; they are now usually in the range between at least $5 million and $10 million. It stated further that the $13 million in damages awarded to Sydney woman Calandre Simpson, who sued her obstetrician for negligence, would further boost claimants' expectations.

4.16 Ms Pamela Burton, Legal Counsel, Australian Medical Association, highlighted the increasing costs involved in the care of the severely disabled:

> …occupational therapy, machinery, equipment and types of aids to make life more comfortable are being bettered and come at much higher costs. Electric wheelchairs are being perfected. There are all sorts of communication machines—computers of all types to help people talk or to indicate their needs through their mouths and so on. These have expanded enormously. They were not considered or even thought of years ago…so

8 *Review of the Law of Negligence: Final Report,* September 2002, p. 194.

9 *Review of the Law of Negligence: Final Report,* September 2002, p. 194.

10 *Committee Hansard*, 8 July 2002, p. 24.

> there is a huge cost when you estimate the replacement costs up to, say, the age of 70.[11]

4.17 Dr Sedgely said that the AMA would:

> like to see long term care and rehabilitation costs removed from the system and also that the people who are injured are properly managed.[12]

4.18 When asked how long term care and rehabilitation costs could be removed from the system, Dr Sedgely stated that AMA was not advocating a no-fault compensation scheme similar to that which operates in New Zealand, but rather a scheme that is similar to that which applies in Victoria under the Transport Accident Commission.[13]

4.19 Both the Australian Amusement Leisure and Recreation Association Inc[14] and the Victorian Employers' Chamber of Commerce and Industry[15] also opposed the adoption of the New Zealand model. However, other submissions considered that a scheme similar to that which operates in New Zealand would be more appropriate.[16]

4.20 Witnesses presented the Committee with a range of schemes to address the cost of long term care and rehabilitation. The Committee considers that the issues involved are many and complex and require a detailed examination. Some of the proposals raised issues such as:

- should an injured party's right to determine his or her own form of care and treatment be removed, and if so, who would make the decisions on the level of care and treatment;
- should long term medical treatment and care be covered by Medicare or should the costs be covered by some national insurance fund; and
- how would such a fund be funded, by direct government funding or by imposing some form of levy on insurers.

Recommendation 5

The Committee recommends that a working group of Commonwealth, state and territory officers be established to examine how best to provide for the long term care and treatment of persons who suffer catastrophic injuries as a result of someone's negligence.

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11 *Committee Hansard*, 8 July 2002, p. 31.

12 *Committee Hansard*, 8 July 2002, p. 26.

13 *Committee Hansard*, 8 July 2002, p. 26.

14 Submission 78, p. 9.

15 Submission 98, p. 2.

16 For example, submission 34, Mr Nigel Bucknell.

Structured settlements

4.21 One of the schemes suggested to the Committee to provide for the long term care and treatment of seriously injured persons was structured settlements. Structured settlements were described by Ms Jane Campbell, Manager, Structured Settlement Group as:

> a way of paying compensation for personal injury, usually in very serious cases. Instead of a single lump sum being paid to an accident victim, the parties can agree that the defendant or insurer will use some or all of the compensation money to purchase a lifetime annuity for the accident victim. The annuity will be part of the settlement agreement between the parties and, once it has been purchased for the accident victim, the insurer can close their file. The accident victim will thereafter own an annuity contract with a life insurance company.[17]

4.22 As the Committee has previously noted, the Commonwealth and some states have introduced or propose to introduce legislation to facilitate structured settlements. However, such legislation is unlikely to result in a reduction in the amount of damages awarded. As explained by the Structured Settlement Group:

> The policy principle behind structured settlements is to provide a small tax incentive to encourage accident victims who would otherwise take their compensation as a single lump sum to take at least part of their compensation in the form of an annuity that can provide financial security for life.

It went on to say that structured settlements:

> will not, however, have any significant impact on the cost of claims and insurance premiums.[18]

4.23 The Committee considers the Commonwealth's structured settlement legislation is a worthwhile initiative as it will encourage people to take a long term view on how best they can provide for their future needs, particularly having regard to the tax exemption that will apply to certain annuities and deferred lump sums. However, it should not be seen as a complete solution to the problem of increasing insurance premiums.

4.24 The Committee notes that state and territory legislation would have to be introduced to provide for the awarding of damages under a structured settlement arrangement rather than a lump sum amount. The Committee would encourage those states and territories that have not enacted such legislation to do so.

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17 *Committee Hansard*, 9 August 2002, p. 371.

18 Submission 87, pp. 3-5.

Administrative costs in relation to claims

Insurance companies

4.25 Many submissions considered the increase in the number of claims has meant that administration costs of insurance companies has also increased and this has been a contributing factor in increasing premiums. It appears that the insurance industry does not keep details of administration costs associated with the handling of claims. Accordingly, it is impossible to say to what extent such costs impact on insurance premiums. Trowbridge Consulting stated that:

> Our assessment, both from our industry experience over the years and from research during this assignment, is that there has been little or no material change to the manner in which insurers have handled claims in recent years. Changes in claim handling can thus be excluded as a possible cause of the increase in the average size of claims…[19]

The insured

4.26 It was suggested to the Committee that there were several approaches that the insured could take to reduce their public liability and professional indemnity premiums. These include the adoption of good risk management practices, which is discussed later in this chapter, and taking a pro-active approach to reported incidents to discourage potential plaintiffs from proceeding to litigation. It was suggested that early intervention could be done without any admission of liability, and could be as simple as a phone call to the person expressing regret about the incident, sending a bunch of flowers with an appropriate note apologising for the incident or agreeing to meet any medical or other expenses the person may incur.[20]

4.27 Even in cases where a claim has been lodged, the insured can take an active role in trying to resolve the matter as soon as possible. An example is the practice adopted by Australian Consulting Surveyors Insurance Society in relation to claims. Once a claim is received a panel, made up of Society members, examines the claim to determine its merit. This is done in consultation with the insurer. This ensures that the merits of the claim are determined as early as possible, thus reducing the possibility of protracted court proceedings and the administrative costs of claims.[21]

4.28 The Committee endorses any measures that the insured can take to improve the management of the claims process. The Australian Consulting Surveyors Insurance Society has taken a sensible and practical approach to minimise the costs of claims. The Committee commends their initiative.

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19 Trowbridge Consulting, *Public Liability Insurance, Analysis for Meeting of Ministers 27 March 2002*, March 2002, p. 22.

20 Mr P. Cundall (Property Council of Australia), *Committee Hansard,* 9 August 2002, p. 402.

21 Submission 27, ACSIS Limited, pp. 2-3.

Legal and court costs

4.29 Where a claim for negligence has been lodged with an insurance company, legal costs will inevitably be incurred by both the claimant and the insurance company. In any subsequent successful court action or settlement the claimant's costs will be included in the amount of any award or settlement. While legal and court costs are significant components in the cost of claims, there is dispute over how important they are.

4.30 The Standing Committee on Recreation and Sport (SCORS) commissioned Rigby Cooke Lawyers to undertake a national review of issues relating to sport and recreation insurance. In their summary report to SCORS, dated March 2002, they stated that:

> According to the Insurance Council of Australia (ICA)…research undertaken by the insurance industry suggests the legal costs in liability cases are equivalent to around 50% of the value of the court award. Ultimately, these costs are reflected in premiums and as such it is policy-holders who pay these costs.[22]

4.31 The Australian Plaintiff Lawyers Association has disputed this figure. They maintain that the insurance industry's claim is based on the assumption that a plaintiff's legal costs are similar to a defendant's legal costs. As the insurance industry maintains that their legal costs in liability insurance claims amount to 25% of any award, the total legal costs would therefore amount to 50% of an award. According to the Association, it is too simplistic to assume that defendant's and plaintiff's costs correspond.[23]

4.32 In his evidence to the Committee, Mr Duncan West of Royal and SunAlliance Australia stated that he considered legal costs in personal injury cases would amount to approximately 40% of the total costs.[24]

4.33 In relation to a successful plaintiff's legal costs, these are paid on a party/party basis, which is invariably less that a solicitor/client basis. The difference in the level of these costs will depend on the agreement between the solicitor and his or her client. This difference can be increased where the solicitor acts on a 'no win no fee' basis due to an uplift factor which is provided for in relevant legislation. Without data that identifies specific amounts for both damages and legal costs in awards, plus details of the insurance industry's own legal costs in dealing with these claims, it is not possible to say what percentage total legal costs represents of the overall amount of damages awarded.

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22 Submission 40, NSW Dept of Sport and Recreation, p. 8.

23 Submission 61, p. 20.

24 *Committee Hansard*, 9 August 2002, p. 356

4.34 If the insurance industry's claim that legal costs represents 40-50% of the total cost of a claim is accepted, any reduction in these costs should lead to a reduction in public liability and professional indemnity insurance premiums.

4.35 Several submissions and witnesses suggested that the way claims are handled could be improved, which could result in reduced legal costs. Some of the suggestions included:

- notification of incidents by possible claimants which may not necessarily lead to a claim;
- notification of claims by claimants before court proceedings can be commenced;
- compulsory mediation and or conferencing; and
- independent panels to assess a claimant's degree of injury and incapacity.

4.36 The Committee was advised that some of these procedures already apply in some states in respect of workers compensation and compulsory third party insurance claims. The Committee notes that the Queensland *Personal Injuries Proceedings Act 2002* introduces these procedures in respect of personal injury claims. As the majority of negligence matters are prosecuted in state and territory courts, the Committee considers that all states and territories should investigate whether similar procedures could be adopted in respect of such claims. The Committee also notes the review of the law of negligence which, in looking at expediting the legal process, noted the success of '90 day rule' in South Australia particularly in resolving matters of professional negligence. It stated:

> This rule essentially provides that, at least 90 days before commencing an action, a plaintiff must give the defendant notice of the proposed claim. The notice must give sufficient detail of the claim to give the defendant a reasonable opportunity to settle the claim before it is commenced.

4.37 The Committee endorses its recommendation that consideration should be given to the introduction of a rule requiring the giving of notice of claims before proceedings are commenced.[25]

4.38 As referred to earlier, Mr Ian Marler, Chairman and Managing Director, Australian Consulting Surveyors Insurance Society, advised the Committee that his Society has established a series of panels which work closely with insurers to examine claims as soon as they are lodged. He considered this approach in dealing with claims, coupled with its pro-active role in risk management, has resulted in members' insurance premiums being contained to acceptable levels. He indicated that the general level of increase in premiums would be in the order of 30 to 40 per cent. Those surveyors with higher premium increases would be as a result of 'very bad claims record'.[26]

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25 *Review of the Law of Negligence: Final Report,* September 2002, p. 57.

26 *Committee Hansard*, 9 August 2002, pp. 391-395.

4.39 The Committee notes that the Productivity Commission is undertaking a research study into Australian insurance claims management practices. Its terms of reference include benchmarking Australian insurers' claims management practices against world practice, having regard to differences in legal processes between states and territories in Australia and the impact of litigation on claim costs. Legal costs should be a major consideration in this study.

4.40 The Committee also notes the findings of the Panel which considered measures to reduce the number and cost of smaller claims. It proposed legislation based on the principles that:

- no order that the defendant pay the plaintiff's legal costs may be made in any case where the award of damages is less than $30,000;
- in any case where the award of damages is between $30,000 and $50,000, the plaintiff may recover from the defendant no more than $2,500 on account of legal costs.[27]

4.41 The Committee considers that these proposals along with other proposals aimed at reducing the number and costs of claims that have been mentioned in this report require closer consideration.

Risk management

4.42 Risk management is considered to be an important factor in minimising the number of injuries and loss, limiting the extent of any damage and reducing the number of claims.

4.43 It was claimed that insurance companies have become more selective in the types of matters they are prepared to cover. Factors being taken into account are the type of matters for which insurance is being sought and the risk management practices of the person or organisation seeking insurance. It would seem that insurance companies are either refusing to provide public liability and/or professional indemnity insurance or substantially increasing premiums and imposing stricter conditions on policies in respect of activities which they perceive as high risk or where good risk management practices are not in place.

4.44 The Professional Standards Council stated that specialist engineers had reported reduced insurance premiums of 40% and more following their participation in the Cover of Excellence scheme under the *Professional Standards Act 1994 (NSW)*. Valuers had also seen insurance premiums drop from about 7% to 3% of gross fees since participating in the Cover of Excellence™ scheme.[28]

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27 *Review of the Law of Negligence: Final Report,* September 2002, p. 186.

28 Submission 99, p. 3. In its website, the Professional Standards Council states that 'Professional standards schemes underscore the commitment of members of occupational associations to maintain high ethical standards. They encourage professionals to adopt practical risk management strategies to achieve quality of service and to create a culture of excellence and

4.45 A contrary view was expressed in several other submissions where it was claimed that while their organisation or business had good risk management procedures in place with few or no claims, they still had experienced substantial increases in premiums.[29]

4.46 The principles spelt out in the exposure version of the Royal Australian College of General Practitioners Background Paper On Medical Indemnity Insurance (17 April 2002) has wide application across many disciplines and professions, not just the medical area. It identified a need:

> to establish a system that encourages voluntary anonymous reporting of all mistakes, beyond practice level, to ensure data is documented. It is important to develop a number of integrated local, regional and national reporting schemes.

It noted that:

> In the UK and in Australia, the absence of a national aggregated database of health care litigation claims has hindered the analysis. It has been impossible to identify where the real risks are, whether they are changing and which size claims are increasing most.[30]

4.47 The paper goes on to say that the level of reporting should go beyond claims. It cites 'The Heinrich Ratio' that suggests that:

> Most accidents can produce serious injury, however, they do not. For every one major injury, there are another 300 mistakes that do not result in injury. By limiting analysis and learning to events, which results in serious harm, there is a risk skewing learning to a very small cross section of accidents.[31]

4.48 As mentioned earlier, the Australian Consulting Surveyors Insurance Society, for example, has adopted a pro-active role in risk management. As evidence of this role, Mr Marler pointed out that in the last 4 to 5 years the Society has conducted 50 to 60 seminars, produced videos and audio tapes, sent out technical circulars and in

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responsibility. That culture supports qualified, proficient practitioners to serve the best interest of clients and provide a proper cover of protection.' The Council 'only approves schemes that adopt risk management strategies, complaint and discipline mechanisms, and insurance requirements that are likely to improve standards and protect consumers.' http://www.lawlink.nsw.gov.au/psc.nsf.

29 Submission 42, Royal Agricultural Society of Tasmania, p. 3; Dr Paul O'Callaghan, Australian Horse Industry Council, *Committee Hansard*, 10 July 2002, p. 265; Ms Therese Charles, Association of Consulting Engineers Australia, *Committee Hansard*, 8 August 2002, p. 290.

30 Royal Australian College of General Practitioners Background Paper *On Medical Indemnity Insurance*, April 2002, p. 27.

31 Royal Australian College of General Practitioners Background Paper *On Medical Indemnity Insurance*, April 2002, p. 28.

2001 produced a comprehensive risk management kit which was sent to all members.[32]

4.49 The Committee accepts that good risk management not only helps limit liability but also promotes ethical conduct. It fosters an ethos of personal responsibility and also reinforces the notion of one's duty of care. It is both a broad educational tool and a specific risk aversion mechanism. The Committee can see a most important role for the Commonwealth Government in taking the lead to promote risk management at a grass roots level at the workplace and in the playground.

4.50 An example of the lead being taken by the Commonwealth in improving the skill of small business in risk management was provided by the Department of Industry, Tourism and Resources. The Department advised that $250,000 was made available to the Australian Horse Industry Council, which is operating as the peak body for the industry, to develop a risk management model for the horse industry. The model will not only include a regulatory framework but risk management protocols. The Department advised that it would be encouraging other industry associations to adopt the model to develop their own risk management practices.[33]

Recommendation 6

The Committee recommends that the Commonwealth continue to assist organisations to develop their own risk management practices for their particular industry.

Professional Standards legislation

4.51 The Committee notes that both New South Wales[34] and Western Australia[35] have introduced professional standards legislation. The legislation provides for the limitation of liability of members of occupational associations as well as facilitating improvement in the standards of services provided by members. In return for receiving limitation on civil liability, members agree to compulsory indemnity insurance and the implementation of risk management strategies and complaint procedures. The Acts, however, do not apply to all types of occupational liability, eg liability for damages arising from the death of or personal injury to a person is specifically excluded.

4.52 Mr Warwick Wilkinson, Chairman, Professional Standards Council, advised that occupational associations whose schemes have been approved under the legislation 'administer risk management strategies upon their members. The focus is on systems for improving standards, reducing risks and protecting consumers'. He also advised that:

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32 *Committee Hansard*, 9 August 2002, p. 395.

33 *Committee Hansard*, 8 August 2002, pp. 316-317.

34 *Professional Standards Act 1994* (NSW).

35 *Professional Standards Act 1997* (WA).

> A strategic goal under the scheme is to improve the professional standards of members of the occupational association and protect consumers who utilise the services of those members. Underlying this are three strategic objectives: to improve the quality and competency of association members, to improve the ethical conduct of association members, and to make association members accountable for their work and conduct. The associations apply strategies to meet these key objectives. Some common strategies are entry qualifications, codes of ethical conduct, continuing education, quality assurance, technical standards and guidance, advisory and support services, complaint and disciplinary systems—and with that we encourage an element of transparency—and claims monitoring.[36]

4.53 Mr James Malins, Manager, Government Affairs, Institute of Chartered Accountants in Australia, advised that the Institute had concerns about the Trade Practices Act being used to circumvent the New South Wales professional standards legislation. He said:

> The scheme in New South Wales obviously cannot cap claims outside New South Wales or limit claims brought under federal legislation. We are concerned that section 52 of the Trade Practices Act is a cause of action that is commonly pleaded as an alternative in claims against professionals generally, and a claim brought under section 52 cannot be capped under the New South Wales legislation. Another concern is that we have national based practices. A firm that is a genuine national practice or national partnership will have some questions as to whether or not particular services are capped, particularly where they cross-border, in terms of New South Wales. It does raise the possibility of some jurisdiction-shopping to avoid the scheme in New South Wales.[37]

4.54 The Committee considers that the New South Wales and Western Australia professional standards legislation has potential not only to reduce the number of claims through pro-active risk management but also to establish procedures for resolving disputes at an early stage. The Committee suggests the Commonwealth encourage other states and territories to consider adopting similar legislation with the view to achieving uniformity.

Pooling

4.55 The Committee considers that another way for people to improve risk management procedures and at the same time improve their prospects of obtaining insurance at an acceptable premium would be through pooling.

4.56 Many submissions recommended the establishment of group insurance as a means of reducing premiums. Under such an arrangement people or organisations which carry out similar activities would combine as a single group to purchase public liability or professional indemnity insurance for the whole group. It is considered that

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36 *Committee Hansard*, 8 July 2002, p. 79.

37 *Committee Hansard*, 8 August 2002, p. 304.

such arrangements would be particularly useful to community and not-for-profit organisations.

4.57 Under a pooling or group insurance scheme the premium could either be shared equally by each member of the group or divided between them in accordance with their perceived level of risk. It would seem that where pooling or group insurance schemes operate, risk management procedures form an integral part and that members are obliged to adhere to these procedures in order to retain membership.

4.58 By pooling resources in this way it could be expected that there would be cost savings for all participants when compared to the cost of individual policies. However, the level of savings would depend on the number of participants in the scheme.

4.59 Several submitters advised that they were already taking part in such a scheme. These included Surf Life Saving Australia Limited and the Agricultural Show Council of Tasmania.[38]

4.60 One of the issues involved in group insurance is whether, in relation to community and not-for-profit organisations, membership should be voluntary or made compulsory.

4.61 In its report to the Queensland Government in February 2002, the Liability Insurance Taskforce, established by the government to develop strategies to assist organisations affected by increasing liability insurance premiums, stated in relation to the not-for-profit sector that:

> Many insurers believe that a voluntary pool would not be viable as more attractive risks are likely to be picked off by other insurers leaving the pool with the less attractive risks and therefore higher costs.[39]

4.62 In its submission, the Australian Plaintiff Lawyers Association referred to two case studies where pooling arrangements had led to savings in public liability insurance premiums:

- Agfest, an agricultural event organised by the Rural Youth Organisation of Tasmania, where premiums fell from $14,000 in 2001 to $3,000 in 2002; and
- Community Sector Insurance Program set up by NSW Meals on Wheels, through which member organisations are provided with pooled public liability insurance as well as assistance with risk management.[40]

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38 Submission 18, Surf Life Saving Australia Ltd. Submission 42, Agricultural Show Council of Tasmania.

39 Submission 79, Queensland Government, p. v.

40 Submission 61, pp. 21-22.

4.63 It would seem that where pooling or group insurance schemes operate, risk management procedures form an integral part of the scheme and members are obliged to adhere to these procedures in order to retain membership.

4.64 The Committee considers that, where possible, organisations should examine whether pooling arrangements would be appropriate for them. Governments could consider playing a leadership role in providing information on how to 'pool'.

4.65 While pooling or group insurance has led to savings for some organisations and professional groups, such arrangements may not be available to all industry groups, particularly those involved in high risk activities, eg adventure tourism and those that involve people with disabilities. In these circumstances some form of government assistance, either by way of subsidisation or underwriting may need to be considered.

Part III

The regulatory framework within which the insurance industry operates

The insurance industry is subject to cyclical movements. One of the most worrying aspects of the current situation was the suddenness and severity of the turn in the market which caught the industry and governments flat-footed when seeking to address the problem.

This section of the report provides an examination of the regulatory framework in which the insurance industry operates which includes an assessment of the data currently available on the industry.

This part also considers the role of APRA, the ACCC and ASIC as regulatory bodies concerned with various aspects of the insurance industry and the adequacy of consumer protection.