Lawyers for the People
AUSTRALIAN LAWYERS ALLIANCE

Inquiry into the Provision, Regulation and Pricing of modern insurance products for Small Businesses

Submission to the

Parliamentary Joint Committee on Corporations and Financial Services

6 March 2026

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Protecting and promoting justice, freedom and the rights of the individual.

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.[1]

[1] www.lawyersalliance.com.au.

Executive Summary

1. ALA members routinely act for injured people and their families and regularly engage with insurance systems and dispute resolution processes in practice. The ALA is well-placed to assist the Committee in understanding:

    - The real-world operation of compensation and dispute resolution systems when injuries occur;
    - How insurer conduct and claims-handling practices can increase friction, delay and cost;
    - The subsequent and predictable downstream consequences of potential civil liability reform, when redress rights are curtailed, and costs are shifted away from insurers and wrongdoers; and
    - Australian and international history of legislative intervention on tort-based and disability rights.

2. The ALA supports improved access to operationally usable, affordable and stable insurance for small businesses, not for profit organisations and community groups. This inquiry has been prompted by genuine concern about rising premium costs and increasing difficulty obtaining fit-for-purpose cover by small businesses, charities, community organisations and event-based associations.

3. Insurance exists in part to protect injured people, and to ensure that Governments and taxpayers do not wear the cost of another's negligence. Insurance is not an abstract business cost; it is a source of financial protection and access to necessary medical care and rehabilitation for injured Australians. It is critical that this review does not lose sight of the fact that decisions made about insurance or civil liability settings ultimately have a real life impact on individuals and families, often experiencing one of the worst times of their life.

4. The Committee has received, and is likely to receive, submissions asserting that rising injury claims and/or legal costs are driving premium increases and that further civil liability reform is therefore necessary. In the ALA's view, that conclusion is not established with the current publicly available data. Policy makers cannot provide proper treatment without a proper diagnosis of the cause of the sector's symptoms. Second, unlike many other regulatory and market-conduct interventions canvassed by the Inquiry, civil liability reform would impose

irreversible distributional consequences by shifting the costs of injury away from insurers and wrongdoers onto injured people, families and, ultimately, public systems.

5. The ALA has focused this submission on civil liability reform proposals because our members have expertise in assisting people who have been injured to obtain compensation from insurers within the current legal framework and civil liability laws.

6. This submission and its recommendations are informed by an independent economist report commissioned by the ALA, de-identified member case studies, stakeholder consultations, and publicly available insurer and regulator information, as well as the day-to-day experiences of the 1500 legal practitioners who make up our membership.

7. Broader analysis suggests that premium movements in liability insurance are influenced by a range of factors beyond domestic claims trends, such as reinsurance cycles, capital and investment settings, insurer capacity, and catastrophe risk. They cannot be explained by claim numbers or compensation payments alone. Relevant factors include, among other things:

    - insurer market structure and concentration (including capacity withdrawal from niche segments);
    - global reinsurance conditions and pricing cycles;
    - investment returns and capital/cost-of-capital settings;
    - catastrophe exposure modelling and climate-related risk reassessment; and
    - underwriting practices and product design choices (including exclusions and sub limits that hollow out cover).

8. Any changes to current civil liability settings carry a clear risk of cost shifting - in that the costs and inherent risk are shifted onto the individual and the state. The Committee should require any underlying cost shifting to be explicitly assessed before any civil liability reforms are considered.

9. Australia has been here before. During the early-2000s public liability 'insurance crisis', governments commissioned the Ipp Review in response to rising premiums and availability concerns. The key lesson from that period is that insurance access problems were never

purely driven by claims and litigation. Parliamentary inquiry work at the time pointed to major global and market drivers, including reinsurance pressures and a hardening insurance market following, amongst other things, the September 11 attacks on the United States, alongside claims costs.

10. The Ipp process itself also illustrates why Parliament should be cautious about using civil liability reform as a default tool: the actuarial work commissioned for Treasuries noted that many proposed changes were difficult to cost because suitable data was not collected and the real-world effect depended heavily on drafting, interpretation, market response and reinsurance conditions.

Our position

11. The ALA's view is that:

- Parliament should not legislate in response to unverified causal claims;
- Current public data, as has been released, is not sufficient to illustrate a singular primary reason for the increase in premiums. Any civil liability legislative reform without proper evidence risks being an exercise in cost shifting rather than cost reduction;
- Parliament should proceed with caution, and take into consideration recent civil liability legislative reform already enacted; and
- Further civil liability legislative reform will have drastic and severe foreseen and unforeseen consequences.

Recommendations

12. The ALA recommends a staged approach of practical measures the Committee can take:

Recommendation 1: The Insurance Council of Australia, the ALA and the relevant law societies in each state and territory confer so as to explore whether mutually agreed pre-litigation protocols can be established so as to promote appropriate early settlements of public liability claims.

Recommendation 2: Insurers in public liability claims be bound to guidelines akin to Model Litigant Guidelines.

Recommendation 3: The Committee should require further and wider minimum datasets before considering any potential civil liability reform.

Recommendation 4: Mandate segment/region quote and renewal outcome reporting.

Recommendation 5: Require a regulator-verified decomposition of premium movement into claims, expenses, reinsurance and capital/margin drivers.

Recommendation 6: Compel claims-pathway microdata with cost splits and timing to test narratives about litigation costs, and identify avoidable process costs.

Recommendation 7: Implement minimum operational insurance standards for small business and community organisation across the policy lifecycles.

Introduction

13. The Australian Lawyers Alliance (ALA) welcomes the opportunity to assist the *Parliamentary Joint Committee on Corporations and Financial Services* (the **Committee**), on the *Inquiry into the provision, regulation, and pricing of modern insurance products for small businesses and not-for-profit and community organisations operating in Australia* (the **Inquiry**).

14. Many of our members are business owners themselves and well understand the pressures felt by businesses of all sizes. One such challenge is the cost of insurance. Insurance acts as permission to engage in economically and socially useful activities in Australia and it is important that it remains accessible and affordable.

15. Business and insurance lobby groups have suggested that the rise in insurance premiums we have seen over recent years is substantially attributable to injured Australians seeking access to redress. Such claims are unsupported and should be rejected.

16. Australia, like many countries across the globe, is facing challenges in relation to cost of living, and the growing impact of climate change. We have seen extreme weather events, including floods, bushfires and cyclones, appear more frequently and at a more damaging scale. Combined with the increased cost of labour and materials and the well-documented increase in the value of real property, the cost of the repair and rebuilding of infrastructure, homes and business has markedly increased. Insurer responses to these challenges have been, in our view, less than satisfactory.

17. Reducing the common law rights of injured Australians will not fix cost of living pressures, will not affect climate change and will not materially impact the global insurance market.

18. To understand the true cost of reducing common law rights, it is necessary to consider why such rights exist, and what enforcement of such rights achieves, not only for the injured party, but for society as a whole.

19. The common law is foundational to our system of democratic government. The former Chief Justice of the High Court of Australia, Robert French AC, has said that *"many of the things that we think of as basic rights and freedoms come from the common law"*

20. Systems which include the payment of damages for personal injury have existed since at least the 18th Century BC[2]. In more modern times, the Industrial Revolution saw increased recognition of the economic consequences of personal injury and death, leading eventually to a recognition that those who by carelessness injure or kill others should be liable for the losses caused by that injury or death.

21. Our current system continues to operate as a compensatory rather than punitive form of redress. It recognises the economic consequences of injury or death by requiring repayment of proven material losses. Such losses often include:-

    a. Loss of earnings and earning capacity;

    b. Medical treatment and out of pocket expenses;

    c. Repayment to statutory bodies such as Medicare Australia, Centrelink and the National Disability Insurance Scheme;

    d. The cost of personal care, provided by family members gratuitously or professional carers professionally; and

    e. The cost of future treatment which will be required as a result of the negligence.

22. Of those categories of damages, we wish to note the following:

Gratuitous and Paid Care

23. The common law of Australia allows injured people to claim damages for gratuitous and paid care. This usually consists of attendant care and domestic assistance, and represents the burden placed on the family and friends of injured people who help them perform ordinary activities of daily living that they are unable to perform because of their injuries. This can include extremely personal care such as dressing, showering or toileting, together with routine activities such as shopping and laundry.

24. In this way, the common law recognises the burden placed on the family and friends of injured Australians.

[2] http://avalon.law.yale.edu/ancient/hamframe.asp

25. In most jurisdictions, caps are placed on the level of recovery. A minimum amount of care is required to be proven before any claim can be made at all, and the rate claimable is restricted (for example, to the average weekly earnings in the state or territory concerned). Further, in some jurisdictions, caps are placed, limiting the amount of care to 40 hours per week - even if the actual care provided is well in excess of that.

26. [3]Consider the case of a catastrophically injured child. Typically, one or both parents will give up work to meet the care needs of the child - including providing what amounts to nursing care (for example, administering lifesaving or preserving medication, changing catheters or stoma bags or using transfer hoists). Such parents may have lost earnings well in excess of the average weekly earnings cap and provide care well in excess of 40 hours per week. These claimants are already losing out and carrying the burden of their family member's injury. Further restrictions on their right to be compensated for that care would, in our view, be unjust and inconsistent with societal expectations. Assertions that family members engage in 'exaggeration' in relation to these claims is not our members' experience -, it represents ideological scepticism with respect to the lived experience of ordinary Australians who have been placed in a situation not of their making.

27. It has also been suggested that access to paid care should be restricted to those who, prior to settlement, have been able to engage paid carers. The problem in our view with respect to this suggestion is that most injured Australians are not able financially to access the paid care that they need until they have been able to settle the claim. In this way, wrongdoers

[3] See Hillcrest Jumping Castle Tragedy - https://www.youtube.com/watch?v=wLj2gvQ4Kws

benefit from caps on the care provided by family members until the settlement of the claim, which provides an incentive on their part to delay reaching a settlement. Further caps would increase this incentive.

Non-Economic Loss

28. The right to recovery 'general damages', also known as non-economic loss, non-pecuniary loss or damages for pain, suffering and loss of amenity are already capped in most states and territories, and already involve a threshold of injury to access. In our view, the use of medical panels to determine the amount of compensation for these damages is not desirable. Society expects that each claimant's pain and suffering be a function of the impact of their particular injury on their life as a whole. It also expects that these judgments are made by judges, rather than doctors.

29. Medical evidence is always a factor with respect to these decisions. It is the experience of our members that the current capping and threshold system in each state and territory largely works well. Different states and territories have different cultural and economic realities, and therefore standardisation of these damages would be inappropriate and unnecessary.

30. Further, Australia's compensation model is not unfettered. Strict statutory thresholds and a high evidentiary bar mean compensation is reserved for proven, genuine harm. Unlike the United States, where litigation is more readily pursued and punitive damages may apply, the Australian scheme is directly structured to deter speculative or opportunistic claims.

31. It is always for the plaintiff to prove, to the requisite standard, that such losses have been or will be incurred as a result of the fault. Wrongdoers and their insurers generally are not required to prove anything.

32. Our members routinely represent families torn apart by negligence on our roads, at workplaces or in hospitals. We encourage this committee to carefully review the case studies provided by our members in considering the effect of reducing damages payable to Australians injured through no fault of their own.

33. Consider the case of a catastrophically injured child, with an acquired brain injury. As a result of the negligence, that child will often have profound care needs. One or both parents will need to leave work altogether, or reduce their working hours to provide care. The family

home will require substantial adjustments to meet the injured child's needs. Medicare, Centrelink and the NDIS will step in to provide support. The child will be deprived of the opportunity to be a productive member of society, and will require professional care for life. The negligence has placed an economic burden on the child, his or her family and the state. By bringing a successful claim for damages, with skilled lawyers, the economic consequences of the injuries are significantly ameliorated. The child's parents are compensated for the care they have had to provide, at great economic cost to them. The costs (often borne by the NDIS and state agencies) of home modifications are recouped, services provided by the state through NDIS and medicare are repaid, the child's future substantial medical and personal care requirements are paid for in full, reducing the cost to the state for life. The child's parents return to being parents rather than carers, and the child's lost potential for economic productivity is repaid.

Case study 1

The client JG was born on 13 October 1999. He was a happy child and had been placed in a 'gifted and talented' stream at his school. In late 2010, when JG was around 11 years of age, he began to experience early morning headaches with nausea ,vomiting and weight loss.

*JG was admitted to a Western Australian hospital in June 2011 to investigate his symptoms, and was referred to the Defendant radiology practice to undergo a CT scan. A CT scan was performed on 25 June 2011 and reported by a radiologist employed by SKG (**the Defendant**) who determined that the scan was normal (**the CT Scan**). Unfortunately, the CT scan showed the presence of a brain tumour which was missed by the radiologist at this time.*

Following the scan, JG's condition deteriorated and he presented and was admitted to the Hospital on a number of occasions in late 2011 and early 2012. In April 2012, the CT Scan was reviewed by those treating JG and it was determined that it in fact showed the presence of the brain tumour.

The brain tumour was subsequently treated; though by this stage life saving treatment necessarily caused permanent damage to JG's brain. Life saving treatment a year earlier would not have caused such damage. JG was left with significant disabilities as a result of the delay in identification and treatment of his tumour, including major cognitive deficits which impacted his memory, executive functioning, social skills, employment prospects, ability to learn and ability to retain or follow instructions. He also had 55% visual impairments to both eyes, diabetes insipidus and fatigue.

JG required 24 hour care and would only ever work in supported employment. His lack of short term memory meant that he required supervision in relation to all decision making and health care needs. He could not be left alone. JG's mum was a single parent who was forced to work and provide care for her son. She gave up work at the age of 50, exhausted by her responsibilities.

The claim was resolved when JG was 20 years old for a sum of $10,279,176.

The compensation that JG received as a result of his negligently caused injury has had a profound impact on him and his family. JG's condition is life long and has enabled his family to access the best care and supports for him. It has alleviated the financial strain often associated with complex medical conditions and provides reassurance that his needs will be looked after in the future, particularly when family members become less able to provide or supplement those services. Accessing compensation for JG has also lessened the psychosocial burden on family members who would otherwise have a much greater responsibility and role in supporting and caring for JG. It allows them to regain some level of normalcy, although their lives will never be the same again. Finally, the compensation for JG means that he can access the funds to support him to have a better quality of life, such as holidays and social and recreational activities that are often not financially viable for people living with disabilities with no financial means of support. Whilst compensation can never give back to JG the life he would have had, it will give him the best possible chance of a meaningful, safe, autonomous, and enjoyable life post injury.

34. In a system of reduced rights, none of this happens, but the child remains injured. Parents are forced into poverty, the burden remains with the NDIS, Medicare and Centrelink. Through no fault of their own, the family are now dependent on the state and are a net cost to the economy more broadly.

35. Put simply, a reduction in compensation rights simply privatises insurer profit and nationalises their risk. It shifts the burden of injury from those who caused it to the injured person, their family, and society at large.

36. The committee should also consider other consequences of a reduced rights landscape. Our system of liability for harm encourages desirable behaviour throughout society, and disincentivises reckless behaviour. We can see the consequences of a reduction in those incentives very close to home in New Zealand, where there is no system of common law liability for personal injury. In 2019, an active volcano on White Island, 49km off the coast of New Zealand's North Island, erupted. Twenty two people lost their lives. Twenty five others suffered catastrophic injuries. Most of them will never fully recover. But this disaster was not unforeseeable. In the weeks leading up to the eruption, volcanic alert levels provided warning of increased danger. Private tour operators ignored these warnings and continued to ferry tourists to the island, with minimal safety gear and protection, no adequate shelter and no practical options for evacuation. It is apparent that those responsible for such tours took unreasonable risks with safety, in the knowledge that in New Zealand there is no possibility of being sued for negligence. In our submission, our system of accountability, duties and standards of care would have gone a long way to preventing or minimising the scale of this disaster. Even if the disaster could not have been prevented, in our system its victims could have sought closure and redress. In New Zealand, victims were forced to rely on the state funded 'Accident Compensation Commission', a system which will never fully account for what they have lost.

37. The root of this stems from some 40 years' ago, when New Zealand introduced a national scheme which abolished the right to pursue any damages claims. Those injured by the most egregious negligence, irrespective of how seriously injured and disabled they may become, are legally disentitled from pursuing a claim to recover their past and future losses. The scheme was, and remains unique. In the UK, USA, Canada and Australia; the common law has been and continues to be the foundation stone for legal rights in seeking compensation. The common law has proven to be a flexible and resilient facilitator of access to justice in all of those jurisdictions.

38. Central to the New Zealand scheme is a fundamental shifting of the cost burden from the wrongdoer and their insurer to the public purse, with poor results. Very early in the life of the New Zealand scheme, it became apparent that it was becoming too costly. Yet repeatedly over four decades, the response in New Zealand has been to increasingly rely on consolidated revenue to keep the scheme solvent, in lockstep with regularly reducing the rights and benefits available to those in need. The end result is that the scheme is perennially insolvent by any accepted commercial criteria. It is the worst of all worlds: providing low benefits, driven by a large and expensive bureaucracy, poorly funded and regularly needing taxpayer-funded injections of funds.

39. If looking across the Tasman is not enough, the experience of the South Australia workers' compensation scheme is also instructive. In 1994 the SA Government abolished the ability to pursue negligent employers, and introduced a pure no-fault scheme. Almost immediately it experienced financial trouble, and ended up being $1.4 billion dollars in the red, with a 70% funding ratio. For over a decade, two further policy responses emerged to deal with its funding problems: benefits for people injured at work were reduced, and premiums paid by employers increased to about double those of comparable jurisdictions.

40. A further cautionary lesson can be seen at the federal level with the experience of the National Disability Insurance Scheme (NDIS). The NDIS is a vital national program, but its trajectory has underscored the fiscal and operational pressures that are routinely found in large, complex schemes when demand outpaces planned costs. It is indicative of the fact that pure no-fault, longtail schemes almost always become financially unsustainable. Accordingly, those with disabilities suffer because the policy responses involve both diminution of rights and benefits, and extinguishment of appeal rights. The state, and by extension the taxpayer, is left to foot the ever-increasing bill.

41. Whilst the private insurance market has imperfections, both the NDIS and the New Zealand experience are in our view evidence that legislative change which generates a cost-shift can have negative, major, and usually irreversible fiscal and unfairness outcomes.

42. We do not say that our current system is perfect. Like all systems, it can be improved. We include recommendations for practical reforms to improve the speed of resolution of claims, and reduce costs for all parties. We make suggestions that we believe will improve insurance availability, usability and insurer transparency, without shifting costs to injured people and State and Federal governments.

Civil Liability Reform

43. The ALA recognises that there has been a rise in insurance premiums for small businesses. However, as we hope that we have made clear in these submissions, we do not believe that civil liability settings within Australia are the cause of such increases.

44. We have noted publications from the Insurance Council of Australia which make claims that civil liability is one of the core causes of premium increases. Its White Paper reports average public liability premiums up 55–60% since 2019 and spotlights reforms on psychological injury components, nervous shock, procedural streamlining, and legal-cost control.[4]

45. The ALA, to address these narratives, commissioned an independent report to inform the basis upon which we dispute that claims are driving insurance premium rates. The Report is **attached** as an annexure to this Submission.

46. We say that these are claims which are largely unevidenced and without data to support them. Our members are not experts in the insurance market generally. However, we are experts in the functioning of civil liability, compensation systems and dispute resolution within that system.

Psychiatric Injury

47. Our members have noted with dismay increased attacks within the media and elsewhere on Australians who have been injured psychiatrically, and submissions that the rights of these injured people to access redress should be restrained.

48. Over the last 25 years, there has been an increase in the understanding of the debilitating effects of psychiatric injury on individuals and their families. In our view, this represents medical and diagnostic progress. There is increasing awareness that psychiatric injury is just as real and debilitating as physical injury. Unfortunately, accessing treatment for these injuries has been traditionally more difficult than other medical care.

[4] Insurance Council of Australia, *A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform* (26 October 2025)

49. To bring a common law claim for psychiatric injuries in Australia, it is necessary for the plaintiff to prove that they have suffered from a recognised psychiatric illness that is the fault of the wrongdoer. In some jurisdictions, common law claims for psychiatric harm also require that the plaintiff be an immediate family member of the injured person, or were present at the scene of the injury, witnessing their loved one be placed in a position of peril. Our submission is that these settings strike the correct balance and limit compensation to those who can prove that they have been injured. Further restrictions placed on the ability of Australians to bring such claims would in our submission be regressive, and represent an unjustifiable scepticism with respect to accepted modern medical understanding.

50. Our members represent countless Australians who have, for example:-

- Lost a baby, child, spouse or sibling as a result of negligence;
- Become significantly disabled and lost access to their career and community; and/or
- Witnessed their family member sustain life threatening injuries as a result of third party negligence.

51. Insurers and their lawyers often, rightly, test the validity of claims made on behalf of the psychiatrically injured and exercise their right to have such plaintiffs examined by experts engaged on their behalf. It is only the plaintiff who meets the evidentiary threshold of proving, objectively, their injury that is successful.

Legal Costs

52. Most plaintiff-focused legal practices operate on a no win, no fee model. This is because most injured Australians lack the financial resources to fund the skilled representatives that they need to fully enforce their legal rights. In this way, the 'no win, no fee' system broadens access to justice for those who cannot afford to pay up front for legal services.

53. Because of the significant financial risk adopted by plaintiff lawyers, most states and territories allow successful lawyers to charge an uplift of up to 25% of their fees when successful. Critically, injured claimants have the assurance that, if the claim is unsuccessful, they will not be liable for their own lawyer's fees.

54. Costs are usually charged on a time spent basis. In other words, the more work required of a plaintiff lawyer to prove a case, the greater the fees. The time spent by a plaintiff's legal team in pursuing a claim is not solely within their control. Our members find that insurers and their lawyers play a significant role in increasing the legal costs associated with a dispute. Such behaviours include:-

    a. Failing to admit facts which they know to be true;

    b. Failing to provide documents relevant to the issue in dispute in a reasonable time;

    c. Delays in responding to a claim;

    d. Excessive and unreasonable demands for particularisation of aspects of the claim;

    e. Failing to secure expert evidence in a timely way;

    f. Refusing to engage in settlement discussions outside of the litigation process and insisting on Court proceedings; and

    g. Failing to make adequate offers to settle the claim.

55. Our members have noted calls to restrict the ability of plaintiff lawyers to recover their fees. Our view is that such calls should be rejected. As we have pointed out above, costs incurred by plaintiffs are not fully within their control and often a function of the behaviour of insurers and their lawyers.

56. Each state and territory already rightly heavily regulates the fees chargeable by lawyers. Costs can be and are routinely assessed by the Courts. Excessive overcharging is professional misconduct and can result in the loss of the ability to practise.

57. Further, the value of a claim is not necessarily correlated to the amount of work required to prove it. Some small claims are aggressively and robustly defended, meaning that much more work is required to prove them. The suggestion that costs recovery be capped on all claims under $300,000 is, in our view, misguided. To insurers, $300,000 may be an insignificant sum, but to most Australians this is far from the case. Restricting fees chargeable in recovering such significant damages will make their recovery economically unviable, which would restrict access to justice to those who can pay for it, and disproportionately affect vulnerable Australians.

Pre-litigation processes reform

58. Each state and territory has its own legislation, rules, and regulations that mandate how public liability claims must be litigated. This includes any pre-litigation steps that must be taken before commencing a Court proceeding.

59. At a high level, if it were possible for an injured party and the tortfeasor's insurer to engage in meaningful settlement negotiations prior to litigation, significant savings could be achieved by settling claims early and avoiding litigation costs.

Current barriers to pre-litigation settlements

60. Prior to an injured party issuing Court proceedings, a public liability insurer will typically engage a third-party 'claims manager' to handle the initial complaint prior to the commencement of Court proceedings. Examples of third-party 'claims managers' are organisations such as Proclaim. Sometimes, the third-party claims manager will make offers to resolve the matter. However, experience tells us that these pre-litigation settlement discussions in respect of injury claims usually do not result in a settlement, generally for one of two reasons:

    i. the representative of the third party claims manager does not have the requisite legal training, experience or qualifications to properly assess the true value of the claim; or,

    ii. the representative of the third party claims manager does not have the authority to negotiate settlement offers within a realistic range of compensation.

61. Because of these barriers, in jurisdictions where there are no requirements to hold pre-litigation settlement discussions, plaintiff solicitors usually proceed straight to issuing Court proceedings without first engaging in settlement discussions. This is often considered to be the fastest way to achieve an appropriate settlement, and also avoids unnecessary legal costs incurred by way of pre-litigation negotiations that have no reasonable prospect of achieving a sensible outcome.

A pre-litigation process

62. The ALA submits that there is utility in considering pre-litigation processes in other jurisdictions, and whether elements of those systems may be employed to craft pre-litigation processes for public liability in each state and territory.

63. By way of example, established pre-litigation settlement processes are successfully utilised under the Transport Accident Commission (TAC) scheme in Victoria. While no system can be said to be perfect, the TAC Protocols are widely respected amongst both plaintiff lawyers and the TAC. High rates of pre-litigation settlements are experienced under the TAC Protocols, when compared to other practice types.

64. The TAC is a Victorian Government-owned organisation established by the *Transport Accident Act* 1986. One of its roles is to act as the statutory insurer for people injured in transport accidents. Compensation claims are generally managed 'in-house' by the TAC (subject to exceptions). The TAC Protocols are a set of five key agreements that attempt to provide a structure for collaborative and non-adversarial processes for managing compensation claims. The TAC Protocols seek to expedite claims and minimise costs.

65. Primary keys to the success of the TAC Protocols are:

    a. Willing participation and collaboration between the TAC, Law Institute of Victoria and the ALA in drafting the protocols. All affected parties are represented by these organisations, meaning there is a genuine acceptance of, and engagement with, these pre-litigation procedures.

    b. Regular review and updating of the TAC Protocols, meaning that they are largely up to date, relevant and appropriate.

    c. The TAC demonstrates a commitment to its role as a model litigant, generally prioritising fair and prompt outcomes over winning disputes. For instance, in some cases the TAC will unprompted proactively grant a 'serious injury certificate', conceding that the injured party has met the injury threshold to pursue common law damages. This saves unnecessary legal costs that could otherwise be incurred with an adversarial defendant.

66. **Recommendation 1: The Insurance Council of Australia, the ALA and the relevant law society in each state and territory confer so as to explore whether mutually agreed pre-litigation protocols can be established so as to promote appropriate early settlements of public liability claims.**

Costs savings in approaches to litigation

67. Where a public liability claim proceeds to litigation in the Courts, a skilled defendant solicitor will make an early assessment as to whether it is appropriate to admit liability. Significant savings on legal costs can be made when a defendant admits liability in the early stages of a public liability claim.

68. The types of legal costs that may be avoided when liability is admitted include those associated with discovery, interrogatories and expert liability reports. The parties are then able to focus their attention on assessing the appropriate compensation to be paid in the claim.

69. All too often, defendants display a 'tactical adversarialism' approach to public liability litigation.

70. Defendants frequently refuse to admit liability, even in the most obvious cases of negligence. Further, it is not uncommon for a defendant to unnecessarily "take every point", causing costly interlocutory applications in litigation. This not only causes wasted legal costs, but creates a burden for the Court system in administering avoidable interlocutory steps of a proceeding, and in turn increases costs to the government and taxpayer.

71. The ALA submits that if insurers were bound to guidelines similar to that of a Model Litigant, significant savings could be made by insurers on legal costs. In turn, those savings on unnecessary legal costs could be directed towards making insurance more affordable to small businesses.

72. Model Litigant Guidelines exist in each state and territory and provide guidance on how government departments should respond to civil claims. The ALA submits that implementation and enforcement of similar guidelines for public liability insurers would result in significant savings on legal costs and fairer outcomes for injured persons.

73. Examples of the types of guidelines that insurers ought to be bound by include:

    a. not requiring the other party to prove a matter which the defendant knows to be true;

    b. not contesting liability if the defendant believes that the main dispute is about quantum; and

c. taking such steps, if any, as are reasonable to resolve such matters as may be resolved by agreement and to clarify and narrow the remaining issues in dispute.

74. The Victorian Model Litigant Guidelines, **attached** as Annexure 2, are an example of guidelines that could be adopted by insurers in litigation.

75. A key consideration for insurers in selecting the law firms they choose to defend public liability claims should be whether that firm demonstrates a commitment to making realistic offers of settlement early in a proceeding, so as to avoid unnecessary litigation costs.

76. Further, insurers should incentivise law firms they choose to defend public liability claims with rewards for early resolutions of claims.

77. A General Insurance Code of Practice (the Code) exists, as published by the Insurance Council of Australia. That code applies to a variety of insurance types, provided the insurer offering the policy is a signatory to the Code. The Code applies to public liability insurance. It does not apply to workers compensation insurance or motor vehicle injury insurance. The Code is silent on matters that ordinarily are prescribed by model litigant guidelines. It is the ALA's submission that the Code ought to be amended to incorporate a commitment to:

a. Appropriate pre-litigation settlements;

b. Reducing litigation costs by way of early admission of liability where appropriate; and

c. Appointing panel litigation legal firms who display a KPI and results driven commitment to early resolution of claims and reduction of litigation costs by way of appropriate concessions.

78. **Recommendation 2: Insurers in public liability claims be bound to guidelines akin to Model Litigant Guidelines.**

Cost shifting

79. Civil liability reforms that reduce access to redress for injured people shift costs away from insurers towards injured claimants and households through uncompensated loss, reliance on savings, informal care, and increased use of social security and health systems.

80. A practical consequence of narrowing liability or reducing damages is that some losses that would otherwise be met through liability insurance are borne by government systems,

including income support and publicly funded health and disability services, and by households through informal care.

81. Injured Australians who require significant care and medical treatment will still require that care and treatment if they lose their right to recover, in whole or in part, the costs of that care and treatment from those who caused their injuries. These costs will shift, inevitably, to state and federal systems such as Medicare, Centrelink and the NDIA. Care needs will be borne by families. Family members will be unable to engage fully and productively in work, causing further drags on tax receipts and productivity.

82. Injured Australians, who are no longer productive themselves, will require income support from Centrelink. Any policy change in this area must be made with these consequences in mind.

Current legislative reform already sufficient

83. It would be premature to contemplate further restrictions on the rights of injured people without first taking stock of reforms already underway. In recent years, substantial reforms have been made to workers' compensation legislation.

84. In Victoria, amendments to the *Workplace Injury Rehabilitation and Compensation Act 2014* took effect in March 2024, significantly reducing workers' compensation benefits paid, particularly in respect of psychological injuries.

85. In New South Wales, Parliament has only recently debated significant changes affecting psychological injury, including proposals to substantially increase whole person impairment (WPI) thresholds. The NSW Legislative Council passed an amended *Workers Compensation Legislation Amendment Bill* 2025 rejecting a key proposal to lift the WPI threshold for psychological injury to 30%, with the amended Bill ultimately receiving Royal Assent on 24 November 2025. The related *Workers Compensation Legislation Amendment (Reform and Modernisation) Bill* 2025 proposes staged increases in psychological injury WPI thresholds between 2026 and 2029.

86. Further, the Commonwealth has itself completed a comprehensive review of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) in order to evaluate the current national workers' compensation system. While civil liability and workers' compensation are properly matters for the states and territories, and are rightly tailored to local conditions,

this recent reform activity underscores the cautious approach required by Parliament when evaluating whether any further legislative reform is necessary.

87. If reform proponents contend that claimant rights are a material driver of premium or scheme pressures, decision-makers should first review whether recent rights-curtailing reforms have produced measurable improvements in affordability and access, or whether they have instead shifted costs downstream onto injured people, employers, health systems and other public budgets. For that reason, **the ALA position is that the Committee prioritise evaluation and learning from recent reforms and the SRC Act review before endorsing any further rights-reducing agenda.**

The Ipp Review

88. Experience from the early 2000s 'insurance crisis' and the subsequent Ipp-era tort reforms is often cited as proof that tort reform directly correlates with premiums falling. This is a fiction. The insurance industry was able to misguide governments into believing that the genesis of the crisis was found in claimant behaviour, over-generous judges and lawyers explaining, including through advertising, that claimants have legal rights. The truth was that the crisis was multifactorial, of which the collapse of an insurance company which had engaged in criminal behaviours, was key. HIH's was Australia's largest liability insurer, and its collapse had little to do with the claimants, their lawyers and the Courts.

89. If we look back, the Ipp Review Panel itself noted the absence of what it considered reliable empirical evidence sufficiently capable of measuring cause and effect, and therefore did not provide a quantified estimate of the reforms' premium impact.[5] Then, much like now, there appears to be a general absence of enough real data to justify the types of civil liability reform posited as the ultimate solution to rising premiums.

90. Across broad insurance prices, the ABS insurance CPI grew very quickly in the decade to 2001 (about 8% per year) and more slowly in the decade after 2002 (about 4–5% per year).[6] Premiums still rose faster than general inflation, indicating that reforms (were we to assume that they contributed) operated alongside other drivers. This indicates that tort reform alone

[5] Insurance Council of Australia, *A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform* (26 October 2025)

[6] Australian Bureau of Statistics, *Consumer Price Index, Australia* (Catalogue No 6401.0) Time Series Workbook (Insurance index and All groups CPI)

is unlikely to "fix" premiums; it may at most slow the rate of growth under certain market conditions.

91. The ACCC's monitoring function provides near-period evidence that premiums eased and that insurers attributed *some* easing to reforms. The ACCC's Fifth Monitoring Report recorded an average 4% fall in public liability premiums in 2004, and reported insurers' own estimates that tort reforms reduced premiums in 2004 relative to a "no reform" scenario—commonly 1–10%.[7]

92. However, even these reports emphasise confounding factors (notably reinsurance pricing and underwriting shifts). Thus, monitoring can improve transparency and discipline public debate, but it should not be presented as definitive proof of causation.

93. APRA's National Claims and Policies Database (NCPD) contains policy and claims data for public liability from the underwriting year 2003 onwards, which creates a hard limitation: it cannot itself show the decade prior to reforms.

94. Within that constraint, NCPD "Level 1" policy data indicate that the average written premium per risk fell from about $1,047 (2003) to $736 (2012) (around −29.7% nominal). Adjusted to the value of the 2003 dollar using ABS CPI, the 2012 figure is about $575, implying an estimated −45.1% real change from 2003 to 2012.[8] Meanwhile, total premium dollars were broadly flat while the number of risks increased substantially, suggesting broader coverage at lower average unit prices. Post-reform unit premiums were materially lower for years after 2003, but policymakers should not treat that pattern as establishing that tort reform *caused* the reduction. This is merely illustrative that tort reforms may in some circumstances help to **moderate** premium growth.

95. While it is true that premiums fell and remained lower for years after 2003, and that insurers believe that this is indicative of reforms playing a role, the available evidence does not prove a clear causal link or precisely quantify how much of the change is attributable to the reforms rather than broader market forces. In other words, the evidence does not support a precise claim that "Ipp caused X per cent of the change" over a decade, though insurers may seek

[7] Australian Competition and Consumer Commission, *Public Liability and Professional Indemnity Insurance: Fifth Monitoring Report* (Report, July 2005)

[8] Australian Prudential Regulation Authority, National Claims and Policies Database (NCPD) (including NCPD Level 1 Policy Data Reports)

to say this, because it is distinctly advantageous for them to do so**.** The Committee would be most unwise to be misled by a similarly flawed narrative today.

Premium affordability pressures in the small business insurance market: non-claims drivers

96. As mentioned, public discussion of rising small-business public liability premiums often defaults to a single explanatory narrative: that civil claims activity is increasing and insurers are simply passing those costs on. While this framing is politically convenient, and advantageous to insurers, it is not supported by the weight of regulatory, prudential or market evidence. In reality, premium pricing in liability classes is shaped by a complex interplay of global capital conditions, macroeconomic pressures, prudential requirements and structural insurance market dynamics, many of which operate entirely independently of domestic claims frequency or severity.

97. An '*Inquiry into the challenges and opportunities within the Australian live music industry*' was recently held, with a report *"Am I Ever Gonna See You Live Again?"* tabled in Parliament on 6 March 2025.[9] The report explored the challenges facing the live music industry, and made recommendations for a strong and sustainable industry future. After careful analysis of the live music industry, the complete recommendations made in respect of insurance were as follows:

'Recommendation 10

> *4.40 The Committee recommends the Australian Government partner with relevant stakeholders to undertake research into the viability of a self-insurance or mutual insurance model for the music industry and investigate other reforms and initiatives for insuring live music activities that could result in lower premiums for presenters.*
>
> *4.41 Further, the Committee recommends the Australian Government provide information on best practice management of live music venues and events with a view to reducing both risk to insurers and premiums for presenters.*
>
> *4.42 The Committee recommends Music Australia partner with the Live Music Business Council and the Insurance Council of Australia to develop a self-assessment app to provide a more accurate prediction of risk and a more customised insurance*

[9] https://almbc.org.au/wp-content/uploads/2025/03/AmIEverGonnaSeeYouLiveAgain.pdf

premium to reflect the main drivers of risk (outdoor events, multi-day events, late events, etc).'

98. The ALA endorses the above 'Recommendation 10' arising from the *'Inquiry into the challenges and opportunities within the Australian live music industry*'.

99. For policy reform to be proportionate, targeted and evidence-based, it is essential to distinguish between claims-driven cost pressures and the broader non-claims structural drivers that materially influence insurer pricing decisions. Misdiagnosis at this stage risks reforms that are, at best, ineffective and, at worst, counterproductive.

100. The following factors warrant detailed consideration.

Global Reinsurance Market Conditions

101. Australian insurers are deeply integrated into global reinsurance markets, where reinsurance functions as a critical mechanism for capital management and risk transfer, with its cost flowing directly through to the pricing of primary insurance products. In recent years, global reinsurers have operated under sustained pressure arising from elevated catastrophe losses across multiple regions, a reduced supply of capital following successive loss years, heightened investor risk aversion, and an increased cost of capital driven by higher interest-rate settings. These pressures have driven significant increases in reinsurance pricing and tighter terms and conditions.

102. The ACCC has explicitly confirmed that reinsurance costs are a major driver of premium adjustments in Australia.[10]

103. Crucially, reinsurance pricing reflects global catastrophe exposure and capital market conditions, not the claims experience of Australian small businesses. As a result, premium increases can, and often do, occur even when domestic civil liability claims are stable or declining.

[10] ACCC Insurance Monitoring Report 2025: https://www.accc.gov.au/about-us/publications/serial-publications/insurance-monitoring-reports/accc-insurance-monitoring-report-2025

Inflationary and input cost pressures

104. Insurance pricing is inherently forward-looking, reflecting not only historical claims experience but also the anticipated cost of future losses. In a period of broad-based economic inflation, insurers must recalibrate premiums to account for rising costs across the claims lifecycle, including increases in construction materials and labour, higher charges for specialist trades and repair services, supply-chain disruptions that extend replacement timelines, and escalating fees for professional services and expert assessments.

105. The ACCC's monitoring reports consistently identify construction cost inflation and broader input cost escalation as significant contributors to premium growth.[11]

106. These inflationary pressures affect underwriting assumptions even where claim frequency remains stable. A claim that cost $50,000 to resolve five years ago may now cost $80,000 or more — a structural shift that must be priced into premiums irrespective of litigation trends.

Prudential capital requirements

107. Australian insurers operate within a highly regulated prudential environment overseen by the Australian Prudential Regulation Authority (APRA). APRA's framework is designed to ensure the financial soundness of insurers and the stability of the broader financial system. Central to this framework are stringent capital-adequacy requirements, set out in **Prudential Standard GPS 110** (Capital Adequacy), which obliges insurers to hold sufficient capital to withstand a wide range of adverse stress scenarios, including severe underwriting shocks, market volatility, and operational risk events. Maintaining these capital buffers is not merely a regulatory formality—it imposes a real and measurable cost on insurers, as capital must be sourced, retained, and remunerated over time.

108. The cost of holding capital is itself influenced by external macro-financial conditions. Capital costs fluctuate with movements in interest-rate settings, global financial-market dynamics, investment-return performance, and the prevailing risk appetite of capital providers. These prudential and financial-market drivers operate entirely independently of trends in civil-liability claims, yet they directly shape the cost of underwriting risk. As capital becomes more expensive or scarce, insurers must price this into their products, meaning these

[11] ACCC Insurance Monitoring Reports overview: https://www.accc.gov.au/about-us/publications/serial-publications/insurance-monitoring-reports

prudential requirements and market conditions ultimately flow through to the premiums charged to small businesses.

109. APRA Prudential Standard GPS 110 (Capital Adequacy) sets out these obligations.[12]

Insurance market cyclicality

110. Insurance markets are inherently cyclical. They move through alternating phases:

    a. **Soft markets**: characterised by strong competition, abundant capital and downward pressure on premiums

    b. **Hard market**s: characterised by capital constraint, reduced risk appetite and corrective premium increases

111. Hardening cycles often follow periods of global catastrophe losses or capital withdrawals, rather than increases in liability litigation.

112. The Insurance Council of Australia's industry snapshot outlines the structural composition of insurer cost bases and the cyclical nature of market dynamics.[13]

113. Premium correction phases can therefore occur even when tort system settings remain unchanged. Treating premium increases as evidence of claims blowouts ignores the well-documented cyclical behaviour of insurance markets.

114. Further, we note that Industry aggregate performance can deliver strong profit outcomes in some years and weaker outcomes in others, consistent with a cyclical market influenced by underwriting conditions, catastrophes and investment performance. For example, APRA reported net profit after tax of ~$1.7b for the year ended 31 December 2021 and ~$2.3b for the year ended 31 December 2022.[14]

[12] https://www.legislation.gov.au/F2023L00682/latest/text

[13] ICA Industry Snapshot 2025: https://insurancecouncil.com.au/wp-content/uploads/2025/06/INCA015-Fact-Pack-2025_v3.6.pdf

[14] https://www.apra.gov.au/quarterly-general-insurance-performance-statistics?

110. Insurer Profits[15]

Year end	Total profit ($b)	Median profit ($m)
YE2014	4.6673	16.45
YE2015	3.0362	8.35
YE2016	2.7731	8.4
YE2017	3.7166	10.3
YE2018	3.7903	12.9
YE2019	3.7391	18.2
YE2020	1.6868	5.55
YE2021	2.2783	16.95
YE2022	1.767	10.8

Climate risk modelling and catastrophe exposure

115. Insurers are increasingly incorporating forward-looking climate-risk modelling into their pricing frameworks, driven by the rising frequency and severity of extreme weather events, heightened uncertainty within catastrophe-modelling assumptions, evolving regulatory expectations regarding climate-risk disclosure, and growing investor scrutiny of portfolios with material exposure to climate-related losses. The ACCC's Northern Australia Insurance Inquiry and subsequent monitoring reports identify catastrophe modelling as a significant driver of premium adjustments. [16]

[15] Source: Australian Prudential Regulation Authority, Annual general insurance institution level statistics database March 2005 to June 2023 (XLSX dataset, published 24 October 2023).

[16] Northern Australia Insurance Inquiry Final Report: https://www.accc.gov.au/publications/northern-australia-insurance-inquiry-final-report

116. Although climate risk is most visible in property classes, its influence extends across portfolios, including liability lines, through capital allocation, reinsurance structures and risk appetite settings. These adjustments occur regardless of recent claims experience.

Policy implications for reform consideration

117. The available evidence demonstrates that premium escalation in small business insurance markets is multi-factorial and often driven by:

    a. Global capital market dynamics;

    b. Reinsurance pricing;

    c. Inflationary input costs;

    d. Prudential capital requirements;

    e. Climate modelling assumptions; and

    f. Regulatory compliance costs.

118. Where aggregate premium increases materially exceed claims cost growth, it is analytically unsound to conclude that civil liability settings are the primary driver. Reforms that focus solely on restricting access to common law remedies risk:

    a. Misdiagnosing the source of affordability pressure;

    b. Delivering minimal or no premium relief; and

    c. Undermining access to justice without addressing structural pricing drivers.

119. If affordability concerns are to be addressed effectively, policy responses may need to consider:

    a. Reinsurance market structures and risk-pooling mechanisms;

    b. Investment in risk mitigation and disaster resilience;

    c. Targeted regulatory simplification; and

    d. Greater transparency around premium composition and cost drivers

120. A calibrated, evidence-based approach will ensure that reform settings are proportionate and aligned with the true drivers of market pricing, rather than those that are politically convenient but empirically unsupported.

121. The evidence is unequivocal: the current pressures on small business insurance premiums are not being driven by an increase in claim frequency, claim severity, or the exercise of injured persons' legal rights. The data from regulators, prudential bodies and the insurance industry itself consistently demonstrates that the dominant forces behind premium escalation lie in global reinsurance markets, capital costs, inflationary pressures, climate-related risk modelling and regulatory overheads. These are structural, system-level dynamics that operate independently of the conduct of injured individuals or the functioning of the civil justice system.

122. It follows that any reform agenda premised on restricting access to common law damages is fundamentally misdirected. Curtailing the rights of injured people will not meaningfully influence reinsurance pricing, moderate global capital constraints, or reverse inflationary cost trends. It will, however, erode accountability, diminish deterrence, and shift the burden of harm onto those least able to bear it, without delivering the affordability relief being sought.

123. A durable solution will not be found in limiting the rights of injured persons. It will only be found in addressing the genuine drivers of insurer cost structures: capital market volatility, climate-exposed risk portfolios, regulatory complexity and the need for more transparent pricing frameworks. Reform that ignores these realities risks being both ineffective and unjust

Data transparency and detail

124. As noted previously, the ALA commissioned an independent economist to examine what is really driving insurance premiums, both to respond to the industry claim that civil litigation is the main cause of premium increases, but also importantly, to help identify practical actions the government can take to reduce cost pressure and improve access for small businesses.

125. The report's central finding was that at present Parliament is being asked to make decisions in a fog; in that, key and basic information needed to properly understand access problems are not routinely reported and premium drivers are not explained in a clear, consistent and

comparable way.[17] In practice, that means the Committee is being asked to accept asserted explanations without the minimum transparency needed to test whether those explanations fit the areas where small businesses are actually struggling to obtain workable cover.

126. The ALA does not deny that legal costs can matter at the margins in some disputes. What the ALA rejects is the policy leap from 'legal costs exist' to sweeping reductions in rights and remedies; particularly where the industry has not provided the minimum datasets needed to show that civil litigation is the dominant driver of the specific access problems this Inquiry is examining. Until that changes, policy risks being shaped by the loudest narrative rather than on clear undeniable evidence, and small businesses will continue to carry the cost.

127. What is missing are answers to basic questions that any small business owner would assume are already known:

    a. how many businesses sought cover;

    b. how many received quotes;

    c. how many were declined or received 'no quote' outcomes;

    d. how many were not renewed, and why;

    e. time to quote; and

    f. what changed at renewal (exclusions, sub-limits, excess increases, limit reductions), with consistent reasons for this change.

128. It is therefore recommended that Parliament compel the minimum datasets needed to fully understand the drivers to rising insurance premium rates, and the inability for small businesses to access appropriate insurance cover.

Adopt an 'Evidence Gate' approach.

129. The Committee should recommend that the Government adopt an 'evidence gate' approach prior to making any uniform decision on major legislative reform. A proposition should not be used to justify legislative or regulatory change unless it can be checked on the public

[17] Economist Report, "*Recommendations and key insights*", Recs 1–6, pp 10–11; Report Summary, pp 1–2

record or made testable through specified data production.[18] Where an insurer or industry body asserts a causal claim but cannot or will not produce the minimum data needed to test it, we caution that Parliament should treat the claim as unproven, and additionally and recognise that this lack of transparency is itself part of the access problem that warrants intervention.

130. To ensure the Inquiry measures the right problem, the Committee should also adopt a framework that evaluates 'access' to insurance against four practical outcomes—availability, affordability, adequacy (operational usability), and quality/stability—and require reporting against each.[19] This keeps the focus on what small businesses experience, rather than what is easiest to measure.

131. Any civil liability reform proposals should not be advanced unless accompanied by a credible assessment of who would bear the costs and risks: be it injured individuals/households, small organisations and public systems. If that assessment cannot be produced on a reasonable evidence base, the proposal should not be recommended.[20]

132. **Recommendation 3: The Committee should require further and wider minimum datasets before considering any potential civil liability reform.**

Mandate quote and renewal outcome reporting

133. The Committee should recommend mandatory, standardised reporting administered by ASIC and APRA that is measurable by segment and region.[21] At a minimum, the reporting should capture:

    a. quote outcomes**,** no-quote outcomes**,** declines;

    b. non-renewals and renewal outcomes;

    c. time between receiving quotes and the bind;

[18] Ibid, Rec 1, p 10

[19] Ibid, Rec2, p 10

[20] Ibid, Rec 7, p 12.

[21] Ibid, Rec 3, pp. 10 - 11.

d. number of markets approached (where brokers are involved); and

e. renewal term movement that changes operational usability.

134. In addition, insurers should be required to provide structured reasons for decline and non-renewal decisions through a standardised reason taxonomy. This prevents "*silent rationing*" and creates an auditable trail for regulators to follow.[22] It also helps reduce disputes by ensuring claimants receive clear, understandable explanations rather than having to guess what went wrong or what has changed.

135. **Recommendation 4: Mandate segment/region quote and renewal outcome reporting**

Require a regulator-verified breakdown of premium movement

136. The Committee should recommend that APRA publish a regulator-verified breakdown of premium movement for relevant classes using a consistent method. Put simply, Parliament should be able to see, clearly and consistently, how much premium change is explained by claims costs, expenses, reinsurance, and capital/margin settings.[23]

137. The breakdown should be published using established inputs and methods so it can be checked over time and compared across classes and segments. This would materially improve the Committee's ability to target reforms to the real causes of premium pressure.

138. **Recommendation 5: Require a regulator-verified breakdown of premium movement into claims, expenses, reinsurance and capital/margin drivers.**

Require more data on claims pathways

139. To properly test recurring narratives about litigation and legal costs, the Committee should recommend that APRA or ASIC obtain de-identified claims file data for relevant lines with consistent categories of cost and timing.[24] Put simply, the data should distinguish, at a minimum: indemnity; claimant legal costs; insurer legal costs; cost adjustments/investigations; medical/rehabilitation costs; and other miscellaneous handling

[22] Ibid, Rec 4, p 11.

[23] Ibid, Rec 5, p 11.

[24] Ibid, Rec 6, p 11.

expenses. The purpose is ultimately to test claims about litigation cost and delay drivers, and to separate the avoidable process costs from the genuine underlying cost of risk.

140. Similarly, the Committee would be well-advised to request a claims cost split that can actually test the premise that excessive civil litigation is a driver for premium hikes, by separating indemnity payments from defence/handling costs and tracking disputes and time to resolution. If litigation is the dominant driver, the data will show it.

141. **Recommendation 6: Compel claims-pathway microdata with cost splits and timing to test narratives about litigation costs, and identify avoidable process costs.**

Process reform

142. Small businesses and community organisations repeatedly describe that their inability to obtain appropriate insurance is driven not only by price, but by the everyday mechanics of insurance products and processes. It is evident that the same shortcomings routinely occur: lack of transparency with decision making, delayed engagement with claim representatives and case managers, vague or obfuscating information requirements, impractical cover arrangements, and renewal volatility without clear explanations as to the reasons until late in the renewal process. Together, these are best understood as issues of market conduct and product usability, or in other words, the conduct of insurers in claims management and whether their products they provide are truly fit for purpose.[25]

143. These issues as outlined ultimately contribute to the access failures experienced by small businesses and organisations by imposing further transaction costs that reduce confidence and jeopardise the ability to trade or deliver services. We note these concerns are reflected in many of the submissions received by the inquiry to date.

144. In the ALA's view, these are practical problems that the system can itself solve by the implementation of targeted minimum standards that reduce these avoidable 'friction costs' and improve the practical operation of insurance across the entire policy lifecycle.[26] This establishes consistent minimum expectations for how insurers engage, disclose, renew and

[25] See, at the time of writing, published submissions from *InkSafe Standard & InkBook Platform* (Submission 3, 25 November 2025); *Outdoors Queensland Ltd* (Submission 5, 16 February 2026); *Ovens Valley Insurance Brokers* (Submission 7, February 2026); and *Drycleaning Institute of Australia* (Submission 8, undated). .

[26] Ibid, Rec 8, p 12; Rec 9, p 12; Rec 10, p 13

change the requirements for cover, without diminishing the substantive rights of the consumer.

145. **Recommendation 7: Implement minimum operational insurance standards for small business and community organisation across the policy lifecycles.**

Conclusion

146. The ALA welcomes the opportunity to contribute this Inquiry.

147. The ALA acknowledges the considerable work involved in this Inquiry and thanks the Committee for giving voice to the genuine challenges facing small businesses, not-for-profit organisations and community groups.

148. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.

Ian Murray

National President

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Annexures

FEBRUARY 2026

REPORT

AUSTRALIAN SMALL BUSINESS INSURANCE

FOR THE AUSTRALIAN LAWYERS ALLIANCE

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Disclosure

This report as prepared for Australian Lawyers Alliance and finalised in February 2026.

It draws on public data sources (including APRA NCPD and related APRA publications) and on working materials assembled for ALA to test whether key industry claims are replicable on the public record.

Where this report uses vignettes or examples, they are illustrative only. They do not determine fault or entitlements. Their role is to show why issues including availability and terms tightening cannot be evaluated without quote and renewal outcome data.

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Executive Summary

This report examines whether small businesses and community organisations can obtain insurance that is operationally usable for contemporary risks, and what policy action is available if access fails.

In many sectors, insurance operates as a practical precondition to trade. Without it, organisations can be unable to satisfy counterparties, funders, venue operators, regulators, or financiers.

When cover fails through price, capacity, non-operational terms, or renewal instability, risk does not disappear. It shifts onto injured individuals and households, onto workers and volunteers, onto counterparties and customers, and onto local councils, hospitals and public budgets. That cost shifting is a fairness and equity issue as much as a pricing issue.

Law and regulatory reformers in this area face a practical choice about evidence and decision standards. Some stakeholder proposals, including the Insurance Council of Australia October 2025 civil liability reform paper, proposes legal and procedural reform pathways intended to reduce premium pressure and improve availability. Many decision-relevant propositions in those reform narratives are not presently testable on public data as reported. This is most acute for availability, terms tightening, and the asserted pathways from civil liability settings to premiums in specific small business and community organisation segments.

If reforms are based on narrative rather than observable mechanisms, they can shift costs, weaken safety incentives, and reduce procedural fairness, without fixing the access problem they are intended to address.

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What can be said now on the public record is narrower, but still decision relevant.

1. There is material premium pressure in key small business relevant liability lines. APRA public reporting supports market level trend analysis, but it does not report quote outcomes, declines, renewal offers, or time to place cover.
2. Premium movement cannot be responsibly explained as claims costs alone on the current public record without a replicable decomposition. This report sets out the decomposition method and identifies the minimum additional disclosures needed to apply it using APRA public data.
3. The most policy relevant access failures are distributional and micro mechanical. This report does not infer availability from averages. A stable average can coexist with severe failure in tails. These require quote and renewal outcome datasets to measure.
4. Personal injury and claimant side insurance lawyers are not the primary lever that determines access, but they are central to market integrity and fair dealing. Lawyers do not set underwriting appetite, reinsurance programs, capital hurdle rates, commissions, or the exclusions and sub limits that can hollow out cover. Their role is different. They make the claims promise real in practice, by clarifying obligations, resolving disputes, and exposing process failures that manufacture delay and dispute cost. This protects injured claimants. It also supports small businesses and community organisations as insured operators who depend on timely claims outcomes, predictable claims handling, and fair dealing to remain viable and insurable. If stakeholders claim that lawyers drive premiums, this report recommends treating that as a hypothesis and require claims pathway data that separates indemnity from insurer controlled expense components.

On that basis, the core recommendations in this report are evidence first and regulator focused.

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1. Compel the minimum datasets needed to make access observable. This includes quote and renewal outcomes by segment, claims file microdata with cost splits, and insurer expense, reinsurance and capital allocation disclosures sufficient to explain premium movements.
2. Direct ASIC attention to the conduct mechanisms that determine small business access in practice. This includes product design and distribution practices, claims handling performance, and the transparency of underwriting decisions in small business relevant lines. Treat any civil liability reform proposal as incomplete unless it quantifies cost shifting and shows that the reform improves access rather than merely improving insurer financial outcomes.
3. Do not treat advocacy narratives as factual premises unless their key mechanisms are replicable on a specified dataset and a specified formula.

This report supports the reader with an evidence ladder. It sets out what public data can show now, what it cannot, and what production is required so Parliament can test claims rather than choose sides in an advocacy contest.

[redacted]

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Recommendations and key insights

Recommendations

Recommendation 1

Adopt an evidence gate for reform and treat untestable claims as advocacy

The Government should adopt a decision rule for this policy area. A proposition should not be used to justify legislative or regulatory change unless it is replicable on the public record or made testable through specified data production. Where an insurer or industry body asserts a causal claim but will not produce the minimum data needed to test it, the default policy position should be that the claim is unproven and opacity is a market failure that warrants intervention.

Recommendation 2

Define access as four measurable outcomes and require reporting against each

The Government should define access for small business and community organisations as availability, affordability, adequacy, and quality and stability. Regulators should be required to monitor and publish measures for each element, so reform is targeted to the actual failure. This avoids treating premium movement as a substitute for access and avoids market wide responses to tail problems.

Recommendation 3

Mandate segment level quote and renewal outcome reporting to make access observable

A mandatory reporting regime, administered by ASIC and APRA, that makes access measurable by segment and region should be created. It should capture quote outcomes, no quote outcomes, declines, non renewals, time to quote, number of markets approached, and renewal term movement that changes operational usability. This is the minimum foundation for an inquiry about availability and

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affordability. Without it, Parliament cannot distinguish price pressure from rationing, or capacity withdrawal from conduct failures.

Recommendation 4

Require a standard reason taxonomy for decline and non renewal and prohibit silent rationing

Insurers should be required to provide structured reasons for decline and non renewal, with minimum explanation standards. The policy objective is to prevent silent rationing through non transparent process and to create an auditable trail for regulators. This also improves dispute prevention because insureds can respond to known reasons rather than guessing.

Recommendation 5

Require a regulator verified decomposition of premium movement for relevant classes

APRA should publish a regulator verified analysis that decomposes premium movement into claims costs, expenses, reinsurance, and capital or profit margin drivers on a consistent method. The key point is that decomposition must be testable on stated inputs, not asserted in submissions. This allows the reader to test whether price movement is driven by claims pathway costs, global reinsurance pricing, expense inflation, capital settings, or allocation choices.

Recommendation 6

Compel claims pathway microdata with cost splits and timing to test causal narratives

APRA or ASIC should obtain de identified claims file microdata for relevant lines with a consistent cost taxonomy and timing profile. It should separate indemnity, claimant legal costs, insurer legal costs, adjusting and investigation, medical and rehabilitation, and other handling expense. The purpose is to test claims about litigation cost, delay drivers, and friction costs, and to distinguish avoidable process costs from genuine risk costs.

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Recommendation 7

Create a cost shifting test as a condition of considering civil liability reform

A formal requirement that any civil liability reform proposal be accompanied by a quantified cost shifting assessment should be created. The assessment should cover distributional impacts on injured individuals and households, small organisations, and public systems, including health and income support where relevant. If the cost shifting assessment cannot be produced on a reasonable evidence base, the reform proposal should not be recommended.

Recommendation 8

Prioritise policy responses that reduce friction cost through conduct and process reform

Government should prioritise reforms that reduce deadweight cost in permissioning markets through stronger conduct expectations. This should focus on product clarity and usability, distribution practices that produce no quote and late quote outcomes, claims handling performance, dispute prevention, and transparency. The policy aim is to reduce avoidable cost and delay that feed into premiums and undermine trust, rather than shifting cost by weakening claimant rights.

Recommendation 9

Strengthen consumer and small business protections for non operational cover

The Government and ASIC should consider reforms that address cover that is nominally present but operationally unusable. This should include clearer disclosure of key exclusions and sub limits for contemporary risks, stronger controls on unfair contract terms and misleading conduct in small business contexts, and sharper expectations that the product sold matches the permissioning need it is meant to satisfy.

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Recommendation 10

Set minimum stability protections for renewal and mid term changes in permissioning contexts

Policy settings should protect continuity of cover where insurance functions as permission to operate. This should include minimum notice for non renewal, transparent and timely renewal processes, and constraints on mid term variation practices that destabilise operations without meaningful risk justification. The objective is operational reliability for insureds, not a freeze on underwriting.

Recommendation 11

Establish an ongoing public evidence base for tail markets and regional outcomes

A standing program of public reporting should be created that focuses on tail outcomes. It should cover high risk sectors, regional and remote markets, and community organisations. The purpose is to keep policy anchored to the parts of the market where access failure is most likely and most harmful, rather than being distracted by averages.

Recommendation 12

Require ASIC to publish an integrated annual view of access and conduct drivers

ASIC should publish an annual synthesis that draws together access observability, complaints and dispute signals, claims handling supervision outcomes, distribution surveillance findings, and relevant enforcement activity for small business and community organisation insurance. The aim is to prevent fragmentation, reduce reliance on industry narrative, and give Parliament a clear oversight picture of what is driving access outcomes in practice.

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Key insights

This report applies a hard decision rule, and recommends not accept a proposition as a premise for reform unless it is replicable on the public record, or made testable through specified data production. Where minimum datasets are withheld, this report recommends treating the causal claim as unproven and treat opacity itself as a market failure.

Insurance now operates as permissioning, and cover is a condition of operating across contracts, tenders, venues, grants, licensing, and governance. When cover is unavailable, unaffordable, hollowed out, or unstable, lawful activity stops or contracts. The cost shifts to households, small organisations, and public systems.

Access is four failures that require different remedies. Availability concerns whether cover is offered, affordability concerns price and volatility, adequacy concerns whether cover responds to contemporary risks, while quality and stability concerns renewal reliability and mid term certainty.

Market averages are not an access measure. A stable average can coexist with severe failure in the tails across sectors, regions, and risk profiles. This Inquiry needs segment level outcomes, not only premium trend charts.

Public reporting can show premium movement but not access mechanisms. Without quote and renewal outcomes by segment, claims cost splits and timing, and transparent drivers of premium movement, the main causal claims in industry advocacy remain assertions.

Reforms that target claimant rights without isolating true cost drivers risk pure cost shifting. Plaintiff and personal injury lawyers do not set underwriting appetite, reinsurance structures, capital hurdles, distribution commissions, or product design. They are still

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central to market integrity because they test whether the claims promise operates in reality and they expose process failures that create delay and dispute friction.

Fairness and equity are performance tests. If reform lowers insurer outlays, reformers must ask who pays instead. If reform narrows cover or delays claims, the proponents must show which risks shift to injured people and taxpayers. Reform proposals that cannot quantify cost shifting should not proceed.

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Decision tests for the reformers

A proposition should be treated as decision grade only if it meets at least one of two tests. It is replicable on the public record. Or it can be made testable through specified data production with fields that allow independent checking.

Where a reform proposal claims premium relief, this report also recommends requiring a cost shifting account. The account should quantify who pays if insurers pay less. It should cover injured individuals, small organisations, and public systems.

A reform proposal should also state which access failure it targets. It should specify whether it addresses availability, affordability, adequacy, or quality and stability. If it cannot specify this, it is unlikely to solve a permissioning problem.

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Definitions and acronyms

This page defines key terms as used in this report. Definitions are functional (how the term is used for evidence and decision-making), not exhaustive legal definitions.

Definitions

Access to insurance cover means the ability of a small business or community organisation to obtain cover that is offered, affordable, adequate for contemporary risks, and stable/reliable through renewal and over the policy term. Access is not "premium movement" alone.

Adequacy (operational usability) means cover responds to contemporary business needs in practice, including exclusions, sub-limits, conditions precedent, claims-made triggers, and product design features that determine whether cover is usable when the insured needs it.

Affordability means the premium burden and volatility are workable for the insured's budget and risk profile, including whether affordability deteriorates through sudden step-changes at renewal.

Availability means an offer of cover is made on any terms, including whether the risk is declined, no-quoted, or non-renewed.

Claims pathway means the end-to-end process from notification to determination and payment/settlement, including investigation, liability and quantum assessment, dispute resolution steps, and litigation where commenced.

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Cost shifting means moving costs from one group to another, for example, from insurers/premiums to injured individuals/households, small organisations managing uninsured risk, or public systems without reducing the underlying harm.

Fairness and equity in this report means distributional effects and procedural fairness in market outcomes: who bears costs when cover fails or becomes non-operational; and whether claimants and insured organisations can obtain timely, understandable, and reliable outcomes.

Friction cost means the non-indemnity costs generated by process and dispute, including legal spend, investigation and adjusting expenses, expert costs, delay costs, and other costs that increase the total cost of claims without increasing compensation to the claimant.

Government means the Federal Government of Australia, unless otherwise stated.

Indemnity cost means amounts paid, or reserved, to satisfy the insurer's promise to pay, including settlements and judgments, as relevant to the line of business.

Permissioning, being insurance as permission to operate means insurance is a practical precondition to operate, such as tenders, contracts, licensing, venue access, funding requirements, governance obligations. Where permissioning applies, access failure functions as an operational shutdown.

Personal injury and plaintiff-side insurance lawyers refers to practitioners who act for injured claimants and insureds in disputes, and who test claims handling, liability and quantum decisions, and procedural fairness. This report treats their market role as a market-integrity function, not a price-setting function.

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Placement friction means the time, expense, and uncertainty involved in obtaining or renewing cover, including repeat submissions, multiple markets approached, iterations on terms, broker/agent time, and delays that interrupt business activity.

Quality/stability means reliability over time: renewal continuity, mid-term changes, claims handling performance, and whether the claims promise is delivered without avoidable delay or friction.

Acronyms

ABS: Australian Bureau of Statistics

AFCA: Australian Financial Complaints Authority

ALA: Australian Lawyers Alliance

APRA: Australian Prudential Regulation Authority

ASIC: Australian Securities and Investments Commission

BI: Business interruption

ICA: Insurance Council of Australia

LMI: Lenders mortgage insurance

NCPD: National Claims and Policies Database (via APRA)

NFP: Not-for-profit

PI: Professional indemnity / Personal injury (context dependent; this report uses "personal injury" when referring to claimant work)

PL: Public liability

SME: Small and medium enterprise

UWY: Underwriting year

FY: Financial year

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The role of lawyers in SME insurance access, affordability and adequacy

Too often insurance affordability pressure is wrongly attributed to legal costs and claimant rights. This report recommends treating that as a hypothesis rather than a default premise. Public data shows premium pressure in key lines, but it does not, by itself, identify a market wide claims shock as the dominant mechanism. It points the reader back to insurer controlled levers, including expenses, distribution settings, reinsurance and capital settings, product design, and claims and complaints handling.

Lawyers sit inside the permissioning chain because many small businesses and community organisations need insurance to lease, tender, obtain permits, and operate events. In that chain, competent legal work often reduces friction and cost shifting by making risk descriptions clearer, contracts insurable, and disputes resolvable. Where legal cost rises, it is often because policy architecture and insurer process force escalation.

Public debate often frames lawyer involvement as pure cost. In practice, lawyer involvement is usually a symptom. It tends to rise where policy terms are unclear, where claims decisions are delayed, or where internal dispute processes fail. In those settings, legal work can reduce net loss by forcing clarity, shortening disputes, and preventing cost shifting.

Treat “lawyers drive costs” as a testable hypothesis

This report includes a premium identity reconciliation based on APRA NCPD public statistics for public and product liability. This reconciliation should be treated as replicable only if the authors include tables showing inputs, definitions, and the calculation steps. Without that table, this paragraph becomes an assertion.

This report's own APRA-based premium identity reconciliation (FY basis; public + product liability) finds that most observed premium movement does not reconcile to claims per risk. On the figures already set out in this report:[1]

- Average premium per risk rises by about +$134.5 (FY2019 → FY2023).
- Only +$15.10 (about 11%) is explained by claims per risk.
- About +$120.31 (about 89%) sits in "underwriting expenses (derived)".
- Underwriting result per risk moves only marginally (about −$0.90).

Those movements sit inside allocation variables that are not observable on the public record at the segmentation level needed. They include distribution cost, operating expense allocation, reinsurance net cost, capital allocation and target return settings, and margin.

Separately, in public liability, the baseline pattern reported in this report is also inconsistent with a simple claims explosion story. Average written premium per risk rises materially across UWY2019 to UWY2023 while an early maturity claim frequency proxy falls over the same period. In this report, early maturity claim frequency proxy means claims per exposure reported at development year 0 in NCPD triangle extracts.[2] This does not prove what did drive premiums. It does raise the evidentiary bar for anyone asking Parliament to reduce rights on the basis that lawyers did it.

If stakeholders assert that legal costs or plaintiff lawyers are the dominant affordability mechanism, this report recommends requiring a claims pathway dataset that can measure it. The dataset should separate indemnity from insurer controlled handling and expense components. It should record litigated status, time to decision, time to resolution, and

[1] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (Web Page, 10 December 2025) https://www.apra.gov.au/national-claims-and-policies-database-statistics; Australian Securities and Investments Commission, Cause for Complaint: Complaints Handling in General Insurance (Report 802, December 2024) 4-5 https://download.asic.gov.au/media/5p3axgd0/rep802-published-5-december-2024.pdf.
[2] Ibid.

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dispute incidence. It should be segmented by sector, region, and activity type. Until those splits exist, this report recommends treating lawyer blame as advocacy rather than mechanism.

What lawyers actually do

Lawyers do not set underwriting appetite, reinsurance programs, capital hurdle rates, commissions, or the exclusions and sub limits that determine whether cover is usable. But lawyers can reduce permissioning failure and cost shifting in practical ways that map to availability, affordability, adequacy and stability.

Availability

For SMEs and not for profits, many no cover outcomes are not actuarial mysteries. They arise from process failures such as incomplete disclosure, unclear business descriptions, contracting requirements that cannot be evidenced, or submissions that do not fit appetite screens. Lawyers, often working with brokers, can improve availability by doing the work that turns a real operation into an insurable description and a compliant submission.

This includes turning real operations into a risk description that is not misclassified into a higher friction appetite cell. It includes aligning the report pack to gating requirements, such as cyber control state evidence, governance documents for not for profits, and safety systems for events and venues. It includes reducing information gap declines by standardising the evidence needed at quote and renewal. It includes negotiating objective conditions and realistic timeframes where a control uplift is needed, particularly cyber, so conditional quotes can bind rather than die in limbo.

If reformers want to reduce no quote outcomes, it should require quote and renewal reason codes that separate appetite and capacity from information gaps, pricing, control state gating, and contractual mismatch. Lawyers can reduce only a subset. Insurers control the rest.

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Affordability and premium burden

A quiet premium escalator in SME markets is the spread of contractual insurance requirements that are disconnected from risk, such as high minimum limits, broad indemnities, principal controlled endorsements, and certificate of currency demands that push SMEs into higher cost products or force bespoke negotiation that small organisations cannot do.[3]

Lawyers reduce premium burden and cost shifting by rewriting indemnities and liability allocation clauses so they can be met with available insurance, rather than requiring SMEs to self insure unlimited tails. They can cap liability and narrow scope so the insurance requirement becomes proportionate and purchasable. They can push back on one size fits all insurance schedules used by councils, venue owners, principals and grant makers that quietly function as market exit tools. They can prevent false comfort by ensuring SMEs do not pay for cover that still fails the permissioning gate because a key endorsement is unavailable or a key exclusion defeats the activity.

Regional SMEs can face thin markets and rigid contracting gates. Contract rationalisation is one of the few immediate interventions that can improve affordability without shifting cost onto injured people, households, councils or hospitals.

Adequacy and operational usability

SMEs routinely discover adequacy failure only after a loss. Policy usability can turn on technical architecture such as definitions, triggers, exclusions, sub limits, and conditions precedent. These are hard to compare and easy to bury.

[3] NSW Small Business Commissioner, Small Business Insurance Requirements Guide for Local Government (Guide, October 2023) https://www.smallbusiness.nsw.gov.au/sites/default/files/2023-10/3.%20Insurance%20Guide%20Councils%20.pdf; City of Port Lincoln, 'Community Group Insurance' (Web Page) https://www.portlincoln.sa.gov.au/community/lcis.

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Lawyers improve adequacy by translating the SME dominant risk pathways into a checkable wording checklist. They negotiate endorsements targeted to the permissioning gate rather than buying a larger headline limit that still does not respond to the dominant pathway. They insist on key terms disclosure in a usable format, because policy length is not consumer protection. They identify the mismatch between what the SME thinks it bought and what the policy can realistically deliver, particularly for cyber service components and business interruption triggers.

When lawyers observe repeated adequacy failures across insureds, the root cause is often not lawyer involvement. It is insurer product design and disclosure choices that make comparison and usability difficult.

Lawyers shorten disputes, reduce escalation, and limit cost shifting

In an ideal market, lawyers would be needed less often after a claim. In practice, insurer claims and complaints handling failures can create avoidable escalation into AFCA and litigation. That is not speculation. ASIC has reported on internal dispute resolution performance in general insurance and identified large scale shortcomings in complaint identification, response quality, and delay compliance.[4]

In December 2024, ASIC reported on a review of 11 general insurers, analysing over 1.4 million complaints and 36.9 million data points. ASIC's findings are hard to reconcile with any narrative that treats insurer conduct as a side issue:

- insurers failed to identify 1 in 6 customer complaints, denying customers the protections of the IDR framework;
- from 1.4 million complaints, insurers identified only 85 systemic issues, while AFCA identified 11 systemic issues from ~16,000 escalated complaints;

[4] Australian Securities and Investments Commission, Cause for Complaint (n 1) 4-5.

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- 1 in 8 IDR responses for rejected complaints failed mandatory content requirements;
- 1 in 5 delay notifications failed mandatory content requirements; and
- all insurers failed to provide delay notifications within required timeframes, with the worst performer late over 90% of the time.[1]

These are insurer controlled failures in the complaints pathway. They increase legal cost because escalation becomes rational. Lawyers then reduce net harm by triaging liability, forcing clarity on reasons and evidence, and settling early where positions are untenable. The causality matters. Poor process pulls lawyers into the system. A rights restriction agenda that leaves these failure modes untouched risks shifting cost rather than reducing it.

Where the affordability and adequacy problems actually sit

This report considers provision, regulation and pricing of modern insurance products. The main levers sit with insurers and their distribution chains. If reformers want to improve access without cost shifting, it needs to name the insurer controlled mechanisms that drive real world failure, and then require data that makes those mechanisms observable.

Where this report premium identity shows most observed movement sitting outside claims in a derived expenses residual, this report recommends not allowing that residual to remain a permanent black box. Require minimum disclosure of the drivers inside that residual, including commissions and MGA fees where held, reinsurance net cost, expense allocation, capital allocation and hurdle rates, and margin. Link that disclosure to the access outcomes dataset so profitability can be assessed alongside access.

This is basic accountability. If Parliament is asked to reduce legal rights to lower premiums, Parliament is entitled to know whether savings will be passed through or retained.

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The law has moved in the direction of product governance and fairness. Design and Distribution Obligations commenced on 5 October 2021.[5] Unfair contract terms protections were extended to insurance contracts from 5 April 2021.[6] Yet the first term of reference remains hard to answer from published datasets because the market does not publish the variables that define usable cover, including quote outcomes, non renewals, coded exclusions and sub limits, prerequisites, and renewal narrowing.

The remaining gap is that insurers and intermediaries are not required to produce outcome level data that would allow ASIC oversight and parliamentary oversight of ASIC to operate on facts rather than anecdotes.

Lawyers can improve access

Lawyers can support access, but only if the market becomes observable. This report recommends requiring datasets that separate what lawyers can fix from what sits inside insurer appetite and insurer process.

At placement and renewal, require structured reason codes that separate appetite and capacity decisions from pricing, information gaps, control state gating, and contractual mismatch. Require usability coding that records the exclusions, sub limits and prerequisites that break common permissioning requirements. Without this, reformers cannot distinguish between true capacity scarcity and avoidable process failure.

At the claims and complaints stage, require structured pathway fields that record internal dispute resolution invoked, time to outcome, escalation to AFCA, reason categories, and time to resolution bands. That dataset would allow reformers to test whether lawyer

[5] Australian Securities and Investments Commission, 'Design and distribution obligations' (Web Page) https://asic.gov.au/regulatory-resources/credit/design-and-distribution-obligations/.
[6] Australian Securities and Investments Commission, 'Are you ready? Laws on unfair contract terms apply to insurance from 5 April 2021' (News Item, 22 March 2021) https://asic.gov.au/about-asic/news-centre/news-items/are-you-ready-laws-on-unfair-contract-terms-apply-to-insurance-from-5-april-2021/.

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involvement concentrates in cases of insurer process failure, rather than being a primary cost driver.

To reduce transaction cost, require a standard one page SME key terms sheet that discloses pathway exclusions, key sub limits, key prerequisites, and renewal change flags. That reduces time spent on comparing long form wordings and lowers the chance of paying for cover that cannot satisfy a contracting gate.

Finally, reduce avoidable contracting inflation. Many affordability problems are amplified by third party insurance schedules that require unattainable cover. Reformers can then recommend model schedules for common settings such as council permits, venue hire, leases and principal contractor terms, so risk allocation becomes insurable rather than performative.

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Inquiry scope, evidence standard

This report was originally produced to assist the ALA in their submission to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into Small Business insurance.[7]

This section is specifically about the terms of reference for that Inquiry.

This Inquiry is framed as provision, regulation and pricing of modern insurance products for small businesses and not for profit and community organisations. In practice, it is deciding something more concrete.

First, whether small organisations can buy cover that is usable for contemporary risks. Second, whether any proposed regulatory or legislative change is justified by observable mechanisms rather than by narrative.

That matters because insurance now operates as a gatekeeper to routine activity. If cover cannot be obtained, or can only be obtained on hollow terms, activities stop, change form, or shift risk informally. The effect is that risk is pushed onto workers, volunteers, customers, landlords, local councils, hospitals and public budgets.

The Terms of Reference require the Committee to consider four topics. They cover access to cover that meets contemporary business needs including public liability, professional indemnity, cyber threats and business interruption. They cover affordability and availability across regions and sectors including regional and remote Australia and high risk industries.

[7] Parliamentary Joint Committee on Corporations and Financial Services, 'Small business insurance' (Web Page, Parliament of Australia) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/SmallBusinessInsurance.

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They cover the adequacy of the current regulatory framework. They also cover any related matters.

The Inquiry materials also remind submitters that the Committee is not here to resolve individual disputes. It may, however, use individual experiences to inform broader findings. This report therefore aims to support a work product that can be checked.

It identifies what kinds of access failures exist. It identifies where they occur by sector and region. It identifies what causes them, including claims pathway costs, reinsurance and capital settings, expense and allocation settings, distribution conduct, and product design. It then identifies what reforms can be justified on a record that can be tested.

That brings the Inquiry to an evidence standard. A proposition should not be treated as a factual premise for reform unless it is replicable now from defined data, or can be made testable by specifying precisely what must be produced to test it.

This does not assume any stakeholder narrative is wrong. It assumes Parliament should not move from story to statute without a mechanism that can be checked.

A practical definition of access

Access fails in more than one way. An organisation can appear insured in a portfolio statistic and still be locked out of usable cover in practice.

For this Inquiry, access should be treated as four linked dimensions.

Availability asks whether the organisation can obtain an offer of cover at all. Observable indicators include quote decline rates, non renewal rates, cancellation and non payment rates, and placement friction such as time to quote and number of markets approached.

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Affordability asks whether the organisation can pay for cover without undermining viability. Observable indicators include premium burden relative to turnover, payroll, or another size proxy, premium volatility, and the relationship between premium and limits and excess.

Adequacy asks whether the product responds to the risk the organisation faces. Failures often arise through exclusions, sub limits, definitions and triggers, particularly for cyber and business interruption, and through conditions precedent.

Quality and stability asks whether cover is stable enough to plan around. Observable indicators include renewal volatility, limits down, excess up, exclusions added, mid term endorsements, and sudden withdrawal from a segment.

For many SMEs and community organisations, insurance is not discretionary risk transfer. It is a permissioning input into routine operating arrangements. Access fails when any of the four dimensions breaks the chain that allows the organisation to trade and contract.

Permissioning is best understood as a practical sequence. Insurers and brokers set offer conditions, including quote or no quote, premium, limits and excess, exclusions and sub limits, prerequisites, and renewal changes. Those conditions are then tested against external operating gates, including procurement and tender minimums, lease and landlord requirements, venue hire and permits, finance covenants, grant conditions, and regulatory requirements. Where the offer does not meet those gates, the organisation faces a constraint response. It may cancel activity, withdraw from tenders or markets, trade uninsured or underinsured, restructure activities to shed risk, or shift risk downstream.

These responses can produce harms relevant to the Terms of Reference, including cancelled services and events, reduced community access, higher exposure borne by workers, volunteers and customers, increased disputes and uncompensated loss, and risk transfer to councils, hospitals, emergency services and public budgets.

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This is also why portfolio averages can appear stable while practical access fails in specific sector by region by activity cells. The binding constraint is often the permissioning test, not whether some policies exist somewhere.

This report recommends treating permissioning as an evidence requirement. It directs attention to quote and renewal outcomes, coded term movements, and the real world compatibility of cover with operating gates. It also frames fairness and equity as operational questions. When cover fails as permissioning, costs shift rather than disappear.

A sequence of testable questions

For each product line, the Committee can run a sequence of provable or disprovable questions.

Access

For each product line, what share of applicants receive a quote, and what share bind cover. The minimum dataset is quote requests, quotes issued, declines, and binds, segmented by sector, region, and size band.

Where cover is offered, how often is it offered only on materially tightened terms. The minimum dataset is tracked term codes at quote and renewal, including exclusions added, sub limits reduced, cyber security conditions, and business interruption triggers, waiting periods, and indemnity periods.

Is the access problem primarily price, capacity, or terms. The minimum dataset separates premium distribution movements from terms tightening incidence, and from limits and excess changes.

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Are access failures concentrated in identifiable cells rather than market wide. The minimum dataset requires segmentation at least by jurisdiction and industry group, plus size bands.

Affordability

What is the distribution of premium burden by sector and region. The dataset needs premium, size proxy, and segmentation. It also needs distribution measures, not just averages.

Are affordability pressures driven by claims experience, by reinsurance and capital costs, or by expense and distribution settings. The minimum dataset needs claims frequency and severity by segment, cost splits where available, plus indicators of reinsurance and expense and capital allocation used in pricing.

Adequacy

Can ASIC and the public observe outcomes that matter, including declines, non renewals, and terms tightening. The test is whether required reporting exists and whether disclosure practices allow meaningful comparison.

Where access failures exist, are they associated with identifiable market conduct issues, including disclosure, distribution, comparability, claims handling, and complaints pathways. The test uses complaint volumes and outcomes, claims time to resolution, reason codes for declines and non renewals, and product governance evidence.

On related matters, the core question is where costs go if cover becomes unavailable or unusable. The test tracks identifiable forms of cost shifting, including uninsured losses, curtailed operations, reliance on public services, contractual risk shifting, and informal labour practices.

Replication approach and Appendix 1

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Our position is that Parliament should not legislate on premises that cannot be replicated.

This report therefore adopts a decision standard. A proposition should not be treated as a factual premise for reform unless it is replicable now from defined data, or can be made testable by specifying precisely what must be produced to test it.

If a claim is replicable using public data, or data that can be responsibly produced, treat it as evidence. If it is not replicable, treat it as a hypothesis and issue a production requirement that would allow it to be tested. If it cannot be specified clearly enough to test, require the proponent to specify or withdraw.

This is the core function of the replication program and the reason Appendix 1 exists. Appendix 1 audits discrete propositions made in the Insurance Council of Australia October 2025 paper and assigns each a verdict based on testability and replication.[8]

The replication ledger identifies 60 discrete propositions and applies four verdict categories. They are supported, partly supported, not testable with public data, and ambiguous pending further specification.

Across the 60 propositions, 45 are either not testable on the public record or not specified well enough to test without further definition or data. On the verdict counts in Appendix 1, supported is 5, partly supported is 10, not testable with public data is 20, and ambiguous pending further specification is 25.

This does not prove the propositions are false. It means the public record cannot currently carry the weight placed on them as premises for reform. Supported also does not mean true in every segment and should be treated with the usual cautions.

[8] Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia, The Case for Civil Liability Reform (Report, October 2025).

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Limitations with public data

Public datasets, including APRA aggregate reporting, can establish anchor facts such as broad premium pressure, broad risk and exposure movements, and market composition changes.[9] They are useful to prevent debate from floating free of observable reality.

However, public aggregates generally cannot answer several of the Inquiry most decision relevant questions. They do not observe quote requests and declines, non renewals and their reasons, term tightening through exclusions, sub limits and definitions, the distribution tails of premium changes, the internal allocation splits needed to test what drives premiums, and the claims pathway detail needed to attribute costs to legal costs, litigation, mental injury, or particular claim types in a product specific way.[10]

Public data is still useful for baseline context, but additional production is required from APRA, ASIC, insurers and intermediaries to measure availability, affordability, adequacy and stability. On current public reporting settings, those transaction level outcomes are not published in a form that answers the Terms of Reference directly.

Vignettes

Stories are not evidence, but they can contextualise hard evidence.

The common public debate mistake is to treat insurance got more expensive as a single phenomenon. That is not the only failure mode. The three stylised vignettes below correspond to three different measurable failures.

[9] Australian Prudential Regulation Authority, National Claims and Policies Database statistics, statistical publication page; Australian Prudential Regulation Authority, Quarterly general insurance performance statistics, statistical publication page; Australian Prudential Regulation Authority, Annual general insurance institution level statistics, statistical publication page.
[10] Ibid; Australian Prudential Regulation Authority, APRA releases its National Claims and Policies Database statistics for year ending 31 December 2023, media release, noting level 1 data and report structure.

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The cafe that still has cover

A suburban cafe renews public liability. It gets a quote, but the premium is up 25 per cent. There is no dramatic exclusion change. The owner grumbles, but pays.

This is an affordability failure and potentially a volatility issue.

To test a pattern like this, the Committee would need premium distributions by size band and industry, premium burden relative to a size proxy, renewal business separated from new business, and a method that separates premium change from any term change.

The festival promoter who can only get hollow cover

A regional festival promoter can get a quote, but only if assault is excluded, the excess is tripled, and the policy has a low sub limit for certain event related liabilities. The premium is also high. The event cannot proceed because venue contracts require specific cover.

This failure is multifaceted across price, adequacy, and stability. The product exists but does not meet the need.

Testing requires coded terms, including exclusions and sub limits, limits and excess movements, non renewal counts and reason codes, and segmentation by sector and region.

The small charity told to uplift cyber controls

A small charity seeks cyber cover. The insurer will quote only if multi factor authentication is enabled, backups are configured in a particular way, and staff training is documented. The charity cannot meet the conditions quickly so the quote does not proceed.

This shows a combination of availability friction and affordability pressure, plus a modern feature of cyber cover. Control state conditions can function as a gating mechanism.

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Testing requires quote outcomes and reason codes that record security control gating, quoted not bound separated from declined, segmentation by size and industry, and term and condition codes for cyber controls.

Role of ASIC

The Terms of Reference explicitly remind submitters that the Committee role is oversight of ASIC as the corporate, markets and financial services regulator. That gives the Committee a specific remit in an insurance inquiry.

Market conduct and disclosure matter. If small organisations cannot compare products or cannot understand key exclusions and definitions, that is a conduct and disclosure issue, not merely an actuarial one.

Comparability and product governance matter. Modern insurance challenges, including cyber and business interruption, often turn on product design such as triggers, exclusions, sub limits and conditions precedent. Oversight questions include whether products are fit for purpose for the target market and whether distributors distribute them consistently with that purpose.

Distribution and placement friction matter. If availability fails through broker and market processes, such as slow placement, repeated approaches, and narrowing panels, that is observable if the right reporting exists.

Complaints and dispute pathways matter. Although the Committee cannot resolve individual disputes, it can examine whether systemic complaints patterns and claims handling outcomes indicate problems in the market functioning.

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If the Committee cannot see quote and renewal outcomes and terms tightening, ASIC cannot see them reliably either. Oversight then collapses back into anecdotes and press releases, which is not a sound basis for reform.

Role of APRA

The Committee oversight role is framed around ASIC, but a defensible record on small business insurance also needs APRA. APRA is the prudential regulator. It tests whether insurers can carry risk and pay claims over time. That matters because several commonly asserted premium driver narratives are prudential mechanism claims.

APRA relevance is narrow and practical. It helps separate capital and solvency constraints, portfolio claims performance, and market capacity and reinsurance dynamics. Without that separation, the Inquiry risks treating premium increases as a single phenomenon with a single cause.

APRA is therefore relevant for three testable purposes. It provides a public baseline for general insurance, including broad movements in premiums, claims, and exposures at class and jurisdiction level. It supports testing of capital and reinsurance narratives at system level through industry performance and capital adequacy statistics. It also provides long tail discipline for liability lines because claims development and reserving matter in public liability and professional indemnity analysis.

However, APRA aggregates generally cannot observe the most decision relevant access variables. They do not capture quote declines, non renewals, coded term tightening, and the distribution tails of affordability stress. Those are transaction level outcomes. They sit closer to ASIC conduct oversight and require targeted quote, renewal and terms data production.

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APRA anchors supply side mechanisms and portfolio baselines, while ASIC is where availability and usable cover become measurable.

Definitions and comparability rules

Even with data, insurance analysis fails when definitions drift. The definitions and comparability rules document sets minimum rules so time bases are explicit, availability is measured using quote and renewal outcomes, affordability is measured relative to size bands, term tightening is recorded using locked codes, and litigation and legal costs are defined consistently and separated where possible.

If definitions are not locked, every stakeholder can manufacture a result simply by choosing a time base and a denominator that suits its argument.

A practical choice

Putting it all together, the Committee faces a practical choice in how it treats stakeholder claims.

It can proceed on narrative and treat non replicable claims as factual premises and move straight to packaged reforms. Or it can proceed on testable hypotheses, use the public record for baseline context, compel the minimum datasets required to measure availability, affordability, adequacy and stability, and only then consider reforms whose mechanisms can be shown.

This report recommends the second approach. It fits the Committee oversight function, answers the Terms of Reference in a way that can be checked, and reduces the risk that reforms merely shift costs from insureds to households and governments while claiming a win.

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Appendix 1 is a tool to assist the Inquiry. It identifies what is supported, what is partly supported, what is not testable on public data, and what is too vague to rely on, plus what must be produced to resolve each gap.

Access to insurance for contemporary business needs

Small businesses and community organisations buy insurance to keep operating. They need it to sign contracts, access venues and finance, and protect staff and volunteers. When cover becomes too expensive, too narrow, or too hard to obtain, the practical choices are predictable and harmful. Organisations trade uninsured or underinsured. They stop higher risk community facing activities. They withdraw from markets, regions, or tenders. They shift risk to workers, volunteers, customers, landlords, councils, hospitals, and public budgets.

Insurance for small organisations is a permissioning device. Many small and medium enterprises and community organisations cannot trade, rent premises, run events, win contracts, or obtain finance unless they meet externally imposed insurance requirements. These requirements often include minimum limits, required endorsements, and proof of currency. When cover is unavailable, unaffordable, or hollowed out by exclusions and sub limits, the organisation often cannot simply accept more risk, it must stop the activity, change the activity to shed risk, or shift risk through contracts onto weaker parties.

Fairness and equity are not abstract here. When insurance fails as permissioning, costs do not disappear, they shift. The burden lands on those least able to bear it, including injured individuals, low margin small operators, volunteers, and the public systems that pick up the pieces.

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A fair insurance market therefore has two linked goals. It supports viable small operators and community services. It also supports fair and timely compensation for people harmed by insured risks, without forcing losses onto households and public services.

This Inquiry is therefore about premiums and about whether insurance markets deliver cover that is available, affordable, adequate, and stable for contemporary risks in public liability, professional indemnity, cyber, and business interruption.

This Part is structured to help the Committee make findings that are report ready.

1. **What the public record can show now as baseline:**

   Portfolio level indicators that are replicable using APRA National Claims and Policies Database Level 1 releases. APRA published the most recent National Claims and Policies Database statistics for the year ended 31 December 2023 on 31 July 2024.[11] APRA indicates the next release is expected in the first half of 2026.[12]

2. **What the public record cannot show as the access gap**

   The quote and renewal funnel and the usability of the policy. This includes declines and no quote outcomes, non renewals, time to quote and time to bind, walk aways where quotes are not bound, and the content of exclusions, sub limits, conditions precedent, and renewal narrowing. These define availability and adequacy as experienced by small organisations. They are not observable from APRA aggregates.

3. **How to make Terms of Reference item 1 testable quickly as minimum viable production**

   A locked and segmented outcomes dataset for quotes and renewals plus a locked and coded terms and usability dataset. Both should be publishable in aggregated

[11] Australian Prudential Regulation Authority, APRA Releases its National Claims and Policies Database Statistics for December 2023 (News, 31 July 2024).
[12] Australian Prudential Regulation Authority, National Claims and Policies Database Statistics, Update on National Claims and Policies Database report release, 10 December 2025, next issue first half of 2026.

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form, with suppression where needed, without compelling pricing models or confidential strategy.

This structure matters because the Committee can then say what is already observable, what is not observable but decision relevant, and exactly what production would close the gap.

Permissioning and the access chain

For small organisations, access fails when any of availability, affordability, adequacy, or stability breaks the chain that allows the organisation to trade and contract. Insurers and brokers set offer conditions, including quote or no quote, price, limits, excess, exclusions, sub limits, prerequisites, and renewal changes. Those conditions are then tested against external permissioning requirements, including tenders, leases, venue permits, finance covenants, grant conditions, and regulator requirements. When the offer fails the permissioning test, the organisation responds by cancelling activity, withdrawing from tenders, trading uninsured or underinsured, restructuring to shed risk, or shifting risk downstream through contract.

Those responses produce observable harms relevant to Terms of Reference item 1. Output and services are lost. Community access shrinks. Exposure is borne by workers, volunteers, and customers. Disputes and uncompensated loss increase. Risk is transferred to councils, hospitals, emergency services, and public budgets.

This is also why portfolio averages can appear stable while practical access fails in specific sector by region by activity cells. The binding constraint is often the permissioning test, not the existence of policies in aggregate.

Operational definition of contemporary business needs

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Terms of Reference item 1 is not satisfied by showing that some policies exist or that average premiums moved. The Inquiry needs a testable definition of whether insurance meets contemporary business needs for small businesses and community organisations. For this report, meets contemporary business needs should be treated as a minimum viable coverage standard that is observable and reportable.

A product line meets contemporary business needs in a segment, meaning sector by region by size band by activity flag, if for a typical insured in that segment.

Permissioning compatibility

The cover offered can satisfy routine third party requirements that function as gates to operating, including tender minimum limits, landlord and lease requirements, venue hire and permit conditions, finance covenants, principal contractor requirements, and grant conditions, without bespoke negotiation that is not feasible for small organisations.

This is testable using the share of quotes and policies meeting declared minimum limits, the share meeting required endorsements, whether certificates of currency can be issued on required terms, and time to bind, including median and P90.

Risk pathway fit

The cover responds to dominant loss pathways plausibly arising from the insured operating model, technology, and regulatory environment, not only legacy risks. This is the adequacy test.

This is testable using coded exclusions and sub limits by pathway, renewal narrowing flags, and where feasible claim outcomes by pathway and dispute incidence proxies.

Operational usability

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Usability fails when conditions precedent, prerequisites, waiting periods, high excess, or narrow triggers make cover practically non recoverable for common scenarios.

This is testable using waiting periods and trigger structures, prerequisite fields, excess distributions, and coded key limitation flags.

Renewal stability

The product remains usable over time. Renewals are not systematically characterised by limit reductions, excess increases, exclusion additions, sub limit reductions, or new prerequisites that break permissioning requirements.

This is testable using renewal narrowing flags, non renewal rates, and the distribution of changes including median, P75, and P90.

Affordability relative to scale

A product can be available yet fail contemporary needs if premium and any compliance uplift costs are disproportionate to turnover, gross margin, or cashflow such that the insured cannot prudently purchase the cover required to operate.

This is testable using premium burden bands and the share of quoted not bound outcomes attributed to price, using reason codes.

This operational definition turns contemporary needs into measurable outcomes. It prevents the Inquiry collapsing item 1 into an average premium statistic or a set of anecdotes.

Where the data sits

In practice, quote and renewal funnel fields are spread across brokers, underwriting agencies, and insurers. Placement friction is often recorded broker side. Terms and renewal

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change variables are usually extractable insurer side from policy and endorsement systems. Some permissioning compatibility flags may need broker input, for example whether a quote meets a contract minimum limit. Claims pathway variables sit insurer side. They need consistent coding to be comparable.

This supply chain clarity matters. Without it, data production can be dismissed as unrealistic even where the underlying fields exist in operational systems.

The role of personal injury and plaintiff insurance lawyers

ALA brings a specific lens. Personal injury and plaintiff insurance lawyers are not peripheral to insurance markets. They are part of the machinery that makes liability lines credible and fair.

First, they support fair compensation and deterrence. A liability market functions only if injured people can obtain redress in a way that is timely and predictable. That protects households from catastrophic loss and reduces cost shifting to the health system and income support.

Second, they support efficient dispute resolution. Plaintiff lawyers routinely narrow issues, obtain early evidence, and drive settlement where liability is clear. That can reduce claim duration and long tail uncertainty. It can also reduce costs that come from delay, repeated expert cycles, and unnecessary interlocutory conflict.

Third, they discipline market conduct. Where insurers adopt unclear positions, delay, or claims handling practices that inflate cost and delay, plaintiff lawyers create accountability through external review, dispute processes, and where necessary litigation. That is not a market failure. It is a market integrity function.

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Fourth, they reduce permissioning friction for small operators in the real world. Small businesses and community organisations often need legal help to interpret contracting requirements, respond to unreasonable risk transfer clauses, and resolve coverage disputes so that operations can continue. The legal profession often prevents small operators being forced into uninsured work through contracting pressure.

It is tempting for stakeholders to blame plaintiff lawyers for premium outcomes. For this Inquiry, that shortcut is unreliable.

Cyber and business interruption are not primarily personal injury pathways. Professional indemnity is about economic loss and professional standards, not bodily injury. Public liability can involve injury, but civil liability statutes in multiple jurisdictions restrict non pecuniary loss through thresholds and caps, including in New South Wales and Western Australia.[13]

Legal costs are also regulated. In Uniform Law jurisdictions, law practices must disclose the basis of legal costs and provide updated disclosure when there is any significant change to what has been disclosed.[14] Regulators also publish guidance about costs disclosure and costs practices, including guidance relevant to conditional costs agreements.[15] In class actions, percentage based group costs orders exist in Victoria under court supervision in defined circumstances.[16]

For the Committee, the correct discipline is to treat claims about legal costs driving premiums or terms tightening as testable hypotheses, not premises. If stakeholders assert that defence costs, claimant costs, dispute frequency, or litigated claim shares drive pricing

[13] Civil Liability Act 2002 (NSW) s 16.; Civil Liability Act 2002 (WA) s 9.
[14] Legal Profession Uniform Law (NSW) s 174.
[15] Victorian Legal Services Board and Commissioner, Costs Disclosure, guidance webpage; Legal Services Council, Information Sheet for Legal Practitioners, Costs Agreements, July 2022.
[16] Supreme Court Act 1986 (Vic) s 33ZDA.

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or availability in public liability or professional indemnity, this report recommends requiring minimum claims pathway fields to measure it, segmented appropriately. This avoids scapegoating, respects existing regulation, and keeps recommendations anchored to replicable facts.

Vignettes

These are stylised examples. They are not evidence of specific disputes. They illustrate why access must be measured as availability, affordability, adequacy, and stability.

> A small childcare provider renews public liability. Premium rises sharply. Wording does not change materially. The service stays open but pushes cost into fees, staff hours, or reduced services.

> A community festival can obtain a policy but it includes an exclusion or tight sub limit that defeats venue or council requirements. The event is cancelled or risk is shifted onto volunteers and contractors.

> A small engineering consultancy faces a professional indemnity renewal. Insurers will not quote, or quote only with reduced limits and sharp exclusions. The firm cannot tender without required limits.

> A small charity seeks cyber cover. The insurer requires controls and documentation the charity cannot implement quickly. The quote does not proceed.

These mechanisms require different datasets and different remedies. Treating them as one story produces blunt reforms that miss the failure points.

Public liability

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Public liability is a central permissioning line for many small operators and community organisations. It is also the line where injury and compensation interact most directly with small operator viability. Fairness and equity therefore run both ways. Injured people need timely compensation. Small operators need a stable and usable product that meets contracting gates.

Live music and festival activity illustrates permissioning clearly. Creative Australia reports that, for smaller operators, event cancellation cover premiums have been reported at 15 to 20 per cent of the event budget, and that around three quarters of participating festivals had policies underwritten by Lloyd's of London via brokers.[17] This is consistent with specialist capacity dependence and potential fragility in availability and terms for higher friction classes.

Public record baseline

Using APRA National Claims and Policies Database Level 1 underwriting year data, the figures set out in this report are intended to be replicable from the APRA Level 1 reports and the associated explanatory materials.[18]

The Inquiry cannot determine from APRA aggregates, including:

- how many small organisations sought cover and were declined or received no quote
- how often renewals were refused
- how long placement took
- how many insureds walked away because quotes were unaffordable or unusable
- whether cover is being hollowed out through exclusions, sub limits, and conditions
- whether stress sits in the tail in specific sector by region by activity cells

[17] Creative Australia, Music Festival Insurance Study, A Summary by Creative Australia, October 2025, Key insights section.
[18] Australian Prudential Regulation Authority, APRA Releases its National Claims and Policies Database Statistics for December 2023 (n 10).

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Exhibit PL 1. Replication audit cross reference, public liability availability and terms propositions and testability status

Proposition public liability access and terms	**Replication verdict public record**	**Why not replicable on public data summary**	**Minimum production required to test**
Availability of public liability cover has materially reduced for small organisations in specific sectors or activities	Not testable	APRA aggregates observe bound policies and portfolio averages, not quote attempts, declines, no quote outcomes, or non renewals by segment	Quotes and renewals outcomes dataset with quote requests, quoted, declined, no quote, quoted not bound, renewals due, renewals offered, renewed, not renewed, cancellations, time to quote and time to bind, reason codes, segmentation by state or territory, ANZSIC sector, size band, activity flags
Terms have tightened materially through exclusions, sublimits, or conditions such that public liability policies are less usable for contemporary operating needs	Not testable	Public datasets do not capture policy wording changes, exclusions, sublimits, conditions precedent, or renewal narrowing	Terms and usability dataset with coded exclusions and sublimits, limit and excess distributions, renewal narrowing flags including limit reduced, excess increased, exclusion added, sublimit imposed or reduced, aggregate imposed or changed, segmentation by state or territory, ANZSIC sector, size band, activity flags
Capacity withdrawal is occurring in identifiable sector and region and activity cells, reflected in repeated declines or non renewals	Not testable	Portfolio counts cannot reveal repeated declines and no quote outcomes or non renewals concentrated in specific cells	Same as above plus reason codes including appetite and capacity and include region category where held and include a mandatory activity flag for venues and events and other high friction classes

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even where the aggregate portfolio appears stable			
Placement has become materially more difficult, including longer time to quote, longer time to bind, and more markets approached for the same risk	Not testable	Placement friction measures are not reported publicly and are not observable from portfolio aggregates	Placement friction fields in the outcomes dataset including time to quote, time to bind, number of markets approached where held, renewal versus new business flag, segmentation as above
Premium increases are materially driven by claims pathway cost components including defence costs and dispute costs, rather than by capital, reinsurance, expenses, or risk mix changes	Partly supported or ambiguous	Aggregates show premium and claims movements but cannot attribute pricing changes to defence costs, dispute costs, reinsurance, expenses, or capital allocation without pathway and component splits	Claims pathway dataset where feasible with defence and handling cost proxies, litigated versus not litigated, time to resolution, dispute incidence proxies, segmentation as above, plus high level pricing component indicators where held

Minimum production required for public liability

To make availability measurable, require a quotes and renewals outcomes dataset segmented at least by State or Territory, ANZSIC sector, business size band, and activity flags including venues and events. The dataset should report quote and renewal volumes and outcomes, placement timing, and coded reasons for failure points. It should include quote requests received, outcomes quoted, declined, no quote, and quoted not bound. It

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should include renewals due, renewals offered, renewed, not renewed, and cancelled. It should include time to quote and time to bind, reported as median and P90. It should include reason codes for decline, no quote, non renewal, and quoted not bound using a locked codebook.[19]

To make adequacy and stability measurable, require a terms and usability dataset that can be aggregated safely but still shows what breaks permissioning in practice. It should report limits and excess distributions for new business and renewals. It should include coded exclusions and sublimits relevant to small operator usability. It should include renewal narrowing flags including limit reduced, excess increased, exclusion added, sublimit imposed or reduced, and aggregate changed. It should include permissioning compatibility flags tied to declared requirements, including minimum limit met and required endorsement available.[20]

Example

Venues and events provide a clean test of the difference between policies that exist and cover that meets contemporary operating needs. Venue hire, council approvals, and contracting chains commonly impose minimum limits and endorsement requirements. Conditional cover, or cover that is narrowed through exclusions and sublimits, can be unusable even where a policy exists.

The reader should be able to review, for venues and events by State or Territory and size band, the decline and no quote rate, the non renewal rate, the quoted not bound rate, and time to quote and time to bind, including median and P90. It should also report incidence

[19] Australian Prudential Regulation Authority, National Claims and Policies Database Explanatory Notes (Explanatory Notes, June 2018) 6-9 (limitations and interpretation of NCPD reporting).
[20] Australian Prudential Regulation Authority, Data Specifications and Classifications National Claims and Policies Database (Data Specifications, August 2016) (fields and classifications supporting coded reporting, including industry and policy measures).

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of renewal narrowing flags, incidence of key coded exclusions and sublimits, and the share of quotes that satisfy permissioning flags including limit and endorsement requirements.

Professional indemnity

Professional indemnity is a capability gate for many small professional service firms. It affects productivity directly through tendering and contracting. It is also a fairness issue because it supports trust in professional standards and provides a pathway for redress where economic loss is caused by professional error.

Public record baseline

Using APRA National Claims and Policies Database Level 1 underwriting year data, the replication in this report indicates the following portfolio level movements for professional indemnity across UWY2019 to UWY2023, on the definitions used in the Level 1 releases.[21] Average written premium per risk increased from about 2502 in UWY2019 to about 2691 in UWY2023, around 8 per cent. Portfolio average peaked at about 3272 in UWY2021 then fell to about 2691 in UWY2023. Risks written increased from about 858741 to about 973868, around 13 per cent. Lloyd's Australia accounts for a material share of professional indemnity gross written premium in the NCPD reporting, and any stated share should define the denominator explicitly.[22]

APRA's own NCPD analysis shows that portfolio averages can conceal dispersion across professional classes. It reports large variation in average premiums by occupation group, and it highlights subgroup movements within occupation groups.[23]

[21] Australian Prudential Regulation Authority, APRA releases its National Claims and Policies Database statistics for December 2023 (News, 31 July 2024) (Level 1 policy and claims reports for APRA regulated general insurers and Lloyd's Australia).
[22] Australian Prudential Regulation Authority, APRA releases its National Claims and Policies Database statistics for December 2023 (n 20) (reports cover APRA regulated general insurers and Lloyd's Australia, so Lloyd's share calculations depend on how the denominator is defined).
[23] Australian Prudential Regulation Authority, NCPD Analysis - Review of claims trends and affordability of public liability and professional indemnity insurance in Australia (Report, May 2023) 59 (section 3.1.4

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APRA aggregates cannot tell the Committee decline and no quote rates by profession and region, non renewal rates by profession and region, placement friction and walk away rates, terms tightening through exclusions, sublimits, retroactive date settings, and run off constraints, or whether permissioning compatibility is failing for common contracting requirements. That is a limitation of what Level 1 aggregates are designed to show, not a claim about whether access problems do or do not exist.[24]

Exhibit PL 2. Replication audit cross reference, professional indemnity availability and terms propositions and testability status

Proposition professional indemnity access and terms	**Replication verdict public record**	**Why not replicable on public data summary**	**Minimum production required to test**
Availability of professional indemnity cover has materially reduced for small organisations in specific occupations or contracting environments	Not testable	APRA aggregates observe bound policies and portfolio averages, not quote attempts, declines, no quote outcomes, or non renewals by occupation and region	Quotes and renewals outcomes dataset with quote requests, quoted, declined, no quote, quoted not bound, renewals due, renewals offered, renewed, not renewed, cancellations, time to quote and time to bind, reason codes, segmentation by state or territory, ANZSIC sector, size band, occupation and activity flags
Terms have tightened materially through exclusions, sublimits, retroactive date settings, or run off	Not testable	Public datasets do not capture exclusions, sublimits, endorsements, retroactive dates, run off constraints, or renewal narrowing	Terms and usability dataset with coded exclusions and sublimits, limit and excess distributions, structured fields for retroactive date and run off where held, renewal narrowing flags, segmentation by state or territory,

Occupation Group, including statement that there is significant variation in average premiums by occupation group and supporting table).

[24] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (n 1) (describes Level 1 reporting and notes the next release expected in the first half of 2026).

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constraints such that professional indemnity policies are less usable for contemporary contracting needs			ANZSIC sector, size band, occupation and activity flags
Capacity withdrawal is occurring in identifiable occupation and region cells, reflected in repeated declines, no quote outcomes, or non renewals	Not testable	Portfolio counts cannot reveal repeated declines and no quote outcomes or non renewals by occupation and region	Same as above plus reason codes including appetite and capacity and include region category where held
Placement has become materially more difficult, including longer time to quote, longer time to bind, or narrower panels approached	Not testable	Placement friction measures are not reported publicly and are not observable from portfolio aggregates	Placement friction fields in the outcomes dataset including time to quote, time to bind, number of markets approached where held, renewal versus new business flag, segmentation as above
Premium outcomes are materially driven by dispute intensity and defence cost pressure, rather than by risk mix, expenses, reinsurance, or capital allocation settings	Partly supported or ambiguous	Aggregates show premium and claims movements but cannot attribute pricing changes to dispute intensity, defence costs, or capital and reinsurance drivers without pathway and component splits	Claims pathway dataset where feasible with defence and handling cost proxies, litigated versus not litigated, time to resolution, dispute incidence proxies, segmentation as above, plus high level pricing component indicators where held

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Minimum production required for professional indemnity

To make availability measurable, require a quotes and renewals outcomes dataset segmented at least by state or territory, ANZSIC sector, business size band, and profession or occupation flags. It should report:

- quote requests received
- outcomes quoted, declined, no quote, quoted not bound
- renewals due, renewals offered, renewed, not renewed, cancelled
- time to quote and time to bind, including median and P90
- reason codes for decline, no quote, non renewal, and quoted not bound, using a locked codebook

To make adequacy and stability measurable, require a terms and usability dataset capturing:

- limits and excess distributions for new business and renewals
- coded exclusions and sublimits relevant to key professional classes
- renewal narrowing flags including limit reduced, excess increased, exclusion added, sublimit imposed or reduced, aggregate changed
- structured indicators where held for retroactive date settings and run off constraints
- permissioning compatibility flags tied to declared contracting requirements, including minimum limit met and retroactive date requirement met

Example

Consulting engineers, surveyors, and similar advisers are suitable worked cases because professional indemnity is commonly a tender or contracting condition. Access failure can present as conditional access where cover is offered only on terms that do not satisfy contracting requirements, or where exclusions remove dominant exposures for that profession.

Cyber insurance

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Cyber is a contemporary business need because it is a common pathway to disruption, economic loss, and regulatory exposure. It behaves differently from liability lines. Availability is often conditional on control state, and cyber products commonly bundle response services that smaller entities cannot readily procure on their own.[25]

Public record baseline

The Australian Signals Directorate, through the ACSC, reports persistent and increasing cyber impacts affecting Australian organisations and the economy, including increases in reported incidents and indicators consistent with continuing ransomware and data breach pressure.[26]

The public record also supports an access and uptake problem for smaller entities, but it is not well measured in a single public dataset. The Australian Government has recorded that many businesses report difficulty accessing cyber insurance or see it as too expensive, and that insurer technical requirements can deter small and medium businesses that cannot meet the cyber security standards applied to larger enterprises.[27]

What matters for Terms of Reference item 1 is that cyber access often turns on eligibility and prerequisites, not only premium. This requires data on control gated quote outcomes, and on uplift costs required to reach insurability.

Exhibit CY 1. Replication audit cross reference, cyber insurance availability and terms propositions and testability status

Proposition cyber access and terms	Replication verdict	Why not replicable on	Minimum production required to test

[25] Australian Signals Directorate, Australian Cyber Security Centre, Annual Cyber Threat Report 2024-25 (Report, 14 October 2025) 8-9.
[26] Ibid.
[27] Department of Home Affairs (Cth), Charting New Horizons: Horizon 2 Policy Discussion Paper (Discussion Paper, 2025) 15.

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	public record	**public data summary**	
Cyber insurance is broadly unavailable to small organisations as measured by decline and no quote outcomes	Not testable	Public record does not capture quote funnels, declines, no quote outcomes, or renewals in a way that can be segmented for cyber	Cyber quotes and renewals outcomes dataset with funnel outcomes, time metrics, reason codes, segmentation by state or territory, ANZSIC sector, size band, activity flags
Cyber terms have tightened materially through exclusions, sublimits, or prerequisites such that policies do not respond reliably to common small organisation loss pathways	Not testable	Public datasets do not capture cyber policy wording, sublimits, exclusions, prerequisites, or renewal narrowing by loss pathway	Cyber terms and usability dataset with coded sublimits and exclusions by loss type, prerequisites and conditions precedent fields, renewal narrowing flags, segmentation as above
Cyber business interruption cover is effectively unavailable or ineffective for small organisations because waiting periods, triggers, or prerequisites defeat usability	Not testable	Waiting periods, triggers, prerequisites, and cyber BI structures are not observable on the public record	Cyber BI fields within the terms dataset including waiting period, trigger type, indemnity period where relevant, prerequisites, sublimits, renewal narrowing flags, segmentation as above
Access to cyber cover depends materially on control state gating and associated uplift cost, which functions as a	Not testable	Control state fields and uplift costs sit outside public datasets and are not reported consistently	Control state fields including MFA, backups, patching cadence band, endpoint detection and response, incident response plan, training cadence band, plus uplift cost bands tied to declared control

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combined eligibility and affordability constraint			gaps, alongside funnel outcomes and reason codes

Minimum production required for cyber

Require a cyber specific quotes and renewals outcomes dataset that includes:

- funnel outcomes quoted, declined, no quote, quoted not bound
- renewals due, offered, renewed, not renewed
- time to quote and time to bind
- reason codes that distinguish appetite, pricing, loss history, and control failure
- structured control state fields for key controls used in underwriting, including MFA, backups, patching cadence band, endpoint detection, and incident response planning

Require a cyber terms and usability dataset that codes terms by loss pathway, including:

- sublimits and exclusions relevant to business email compromise and social engineering, ransomware, data restoration, and cyber business interruption
- cyber business interruption waiting periods and trigger structures
- prerequisites and conditions precedent, including control requirements
- claim outcomes by pathway where feasible, including accept, deny, partial, and time to resolution bands

Example

Business email compromise and invoice fraud are high frequency pathways for small organisations. Many cyber policies treat these losses differently depending on definitions, verification procedures, and sublimits. Without pathway coding and claim outcome reporting, the Inquiry cannot distinguish between policies that exist and policies that reliably respond in dominant pathways.

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Business interruption

Business interruption is a core contemporary business need because it converts operational shocks into liquidity crises. Access and adequacy are inherently term sensitive. The existence of a business interruption section in a schedule does not establish usability.

Public record baseline

The post pandemic period produced major disputes and test case litigation about disease clauses and denial of access style wordings. The Federal Court maintains an online file for Covid 19 business interruption insurance test cases in view of public interest.[28] AFCA also publishes updates on business interruption test cases and complaint handling following the conclusion of legal action.[29] This public record shows a simple point the product turns on precise triggers, definitions, and exclusions.

Exhibit BI 1. Replication audit cross reference, business interruption insurance availability and terms propositions and testability status

Proposition business interruption access and terms	Replication verdict public record	Why not replicable on public data summary	Minimum production required to test
Business interruption cover is unavailable for small organisations in identifiable sectors or regions as measured by declines, no quote outcomes, or non renewals	Not testable	Public record does not observe business interruption quote funnels, declines, no quote outcomes, or non renewals by segment	Business interruption quotes and renewals outcomes dataset with funnel outcomes, time metrics, reason codes, segmentation by state or territory, ANZSIC sector, size band, activity flags

[28] Federal Court of Australia, COVID 19 Business Interruption Insurance Test Cases, Online File (Web page, online file established in view of public interest).
[29] Australian Financial Complaints Authority, Business Interruption Insurance Test Cases (Web page, updated 25 March 2024); Australian Financial Complaints Authority, Business Interruption Insurance, Test Case Instructions (Guidance document).

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Business interruption terms have tightened materially through exclusions, waiting periods, indemnity period reductions, or trigger changes such that cover is less usable for contemporary shocks	Not testable	Public datasets do not capture business interruption term structures or changes over time	Business interruption terms dataset with coded exclusions, waiting period, indemnity period, trigger type, contingent business interruption structures and sublimits, renewal narrowing flags, segmentation as above
Business interruption cover is present but unusable for real world shocks because the trigger architecture and exclusions do not align with dominant disruption pathways	Not testable	Requires mapping triggers and exclusions to disruption pathways and observing claim outcomes, none of which are in public datasets	Terms coding by pathway plus claim outcome reporting by disruption type where feasible, accept, deny, partial, dispute incidence proxies, time to resolution bands, segmentation as above
Cyber driven interruption is now a dominant interruption pathway for many small organisations, but cover is constrained by prerequisites, waiting periods, and narrow triggers	Not testable	Cyber interruption is often embedded in cyber products and cannot be observed without cyber terms and outcomes data	Link business interruption and cyber data requirements by requiring coding for cyber interruption features, waiting periods, prerequisites, triggers, sublimits, plus claim outcomes and funnel outcomes as above

Minimum production required for business interruption

Require business interruption quote and renewal outcomes with reason codes, time metrics, and segmentation by sector, region, and size.

Require business interruption terms coding for:

- indemnity periods
- waiting periods
- trigger structures
- key exclusions, including communicable disease carve outs where present
- contingent business interruption structures and sublimits
- renewal narrowing flags

Require claim outcome reporting by business interruption loss type where feasible, including accept, deny, partial, dispute incidence proxies, and time to resolution bands.

Conclusion for Terms of Reference item 1

This Part shows that access failures operate through measurable mechanisms across the supply chain. Quote and renewal outcomes, placement friction, and policy usability interact with external permissioning gates.

On the current public record, it is fair to say there is material premium pressure in public liability and professional indemnity at the portfolio level.[30] It is also fair to say that portfolio averages can conceal distributional stress across sectors, regions, and occupations.[31] The most policy relevant access failures, declines, non renewals, and hollowing out of cover through terms, are not observable on APRA Level 1 aggregates without outcome and terms data production.[32]

[30] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (n 1) and associated Level 1 releases for public and product liability and professional indemnity.
[31] Australian Prudential Regulation Authority, NCPD Analysis - Review of claims trends and affordability of public liability and professional indemnity insurance in Australia (n 22) (sections addressing variation and dispersion by industry and occupation group).
[32] Australian Prudential Regulation Authority, National Claims and Policies Database Explanatory Notes (n 18) (sections describing the scope and limits of NCPD aggregate reporting and what it does not observe, including transaction level quote and renewal outcomes and policy term content).

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Those mechanisms sit with underwriting appetite, capacity allocation, reinsurance and capital settings, broker placement processes, and policy architecture. Public reporting does not isolate plaintiff lawyers as a primary causal lever for availability and terms outcomes. The safer discipline is to measure any asserted legal cost pathway using claims pathway fields, then compare its explanatory power against the direct access levers that determine whether small organisations can operate on usable terms.

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Affordability across regions and sectors

Affordability is a distributional question. It asks whether cover is affordable and obtainable across identifiable region by sector cells, including regional and remote Australia and higher risk industries. A national average premium can rise, fall, or stabilise while practical access fails in specific cells, because insurance often operates as a permissioning input into contracting and operations and those permissioning gates are applied locally by councils, principals, landlords, venue operators, financiers, and grant makers.[33]

This Inquiry therefore needs segmented, repeatable evidence. If the Committee treats affordability and availability as a story told through portfolio averages plus a small number of anecdotes, it will miss the failure mode that matters most for Terms of Reference item 2. That failure mode is concentrated tail stress in identifiable region by sector cells, producing cancellations, output loss, and cost shifting to households and governments.

Section 2 explains why insurance is permissioning for many SMEs and community organisations. For Terms of Reference item 2, the key point is that permissioning failures rarely occur uniformly. They occur in cells, meaning a particular activity delivered by a particular type of organisation in a particular geography, subject to particular third party requirements.

Region and sector drive access outcomes through mechanisms that portfolio averages do not observe. Four mechanisms matter most for report ready affordability findings.

First, tail sensitivity and risk concentration. Many high friction activities have low frequency but severe tail loss, including events, high footfall venues, and child related services. A

[33] See discussion in Section 2 of this report on insurance as permissioning and contracting gate requirements.

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change in tail assumptions, reinsurance pricing, or underwriting appetite can dominate availability and pricing even if portfolio averages are stable.

Second, thin markets outside major centres. Regional and remote Australia can face fewer underwriters with appetite for certain classes and fewer specialist placement options. This tends to increase no quote outcomes, extend time to bind, and increase placement friction.

Third, higher control state burdens. In product lines like cyber, insurers commonly gate availability on control state, including multi factor authentication, backups, patching cadence, endpoint detection, and incident response planning. Those prerequisites can impose uplift costs that are proportionally larger for small organisations and for organisations outside major centres.[34]

Fourth, hard permissioning gates. Many counterparties impose binary requirements, such as minimum limits, specific endorsements, and certificates of currency on specified terms. In that world, “a policy exists” does not answer affordability. The relevant question is whether the insured can purchase a policy that satisfies the gate at a cost proportionate to its scale.

For Terms of Reference item 2, the evidence standard should therefore measure affordability and availability together, using distributional access metrics that can be reported by region and sector. These include declines and no quotes, non renewals, placement time, quoted not bound due to price, premium burden, coded usability and terms, and renewal narrowing.

What the public baseline can safely say now and what it cannot

[34] Australian Signals Directorate, Australian Cyber Security Centre, Annual Cyber Threat Report 2023-2024 (Report, 20 November 2024).

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The public record can support cautious baseline statements about portfolio level pressure, but it cannot localise affordability failures or explain them.

APRA's National Claims and Policies Database Level 1 statistics are useful for portfolio level movements in premiums, risks written, and claims measures. APRA released the most recent Level 1 statistics for the year ending 31 December 2023 on 31 July 2024.[35] APRA has also published an update indicating a change in schedule, with the next issue anticipated in the first half of 2026.[36]

Those aggregates can support a baseline finding that affordability pressure exists at portfolio level in relevant liability lines. They can also support a baseline finding that geography matters at least at state level, because state averages can diverge materially from national averages.

But APRA aggregates cannot answer Terms of Reference item 2 on their own because they do not observe the variables that define distributional affordability stress as experienced by SMEs. They do not observe declines and no quotes, non renewals and their reasons, quoted not bound walk aways, time to quote, time to bind, markets approached, or systematic renewal narrowing and usability changes by region by sector.[37]

The decisive gap for item 2 is therefore outcomes plus terms evidence, segmented in a way that is fit for purpose.

The identity test for causal claims about affordability

[35] Australian Prudential Regulation Authority, 'APRA releases its National Claims and Policies Database statistics for December 2023' (Media Release, 31 July 2024).
[36] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (n 1) under 'Update on National Claims and Policies Database (NCPD) Report release'.
[37] Australian Prudential Regulation Authority, 'APRA releases its National Claims and Policies Database statistics for December 2023' (n 34).

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Affordability debates often default to a simple story. Premiums are high because claims and lawyers made liability lines structurally unviable. That may be true in some cells, but this report recommends not treating it as a factual premise for system level reform unless it can be reconciled to replicable data, or made testable through specified production.

This report applies a premium identity reconciliation to APRA sourced aggregates on a financial year basis for public and product liability. On that reconciliation, observed premium per risk movement is explained only to a small extent by claims per risk movements, with the majority of movement sitting in a non claims residual described as underwriting expenses derived.

This does not prove what caused premium movements. The residual can include expense allocation effects, distribution and acquisition costs, reinsurance net cost changes, cost of capital settings, and margin, depending on construction. It does, however, impose a discipline that is directly relevant to Terms of Reference item 2.

If stakeholders assert that claims, disputation, or plaintiff lawyers are the dominant driver of region and sector affordability stress, this report recommends requiring those stakeholders to reconcile their claim to a transparent decomposition that separates, at minimum, claims, expenses and distribution, reinsurance, and capital loads in the stressed cells, not merely at whole portfolio level.

Affordability proposals are often distributional proposals in disguise. If legal rights are narrowed on affordability grounds without cell level decomposition and pass through evidence, the practical effect can be to shift costs from premiums to injured people, households, councils, hospitals, and public budgets.

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A worked mechanism, live music, festivals and cancellation risk

The live venues and festival segment illustrates why Terms of Reference item 2 cannot be answered from portfolio averages and why the causal story is often about capacity, terms and underwriting appetite rather than local claims frequency.

Creative Australia reports that for many festivals event cancellation cover is now either commercially unviable or strategically avoided, with smaller operators reporting premiums of 15 to 20 per cent of the event budget. Creative Australia also reports that around three quarters of participating festivals, 76 per cent, had policies underwritten by Lloyd's of London via brokers.[38]

This is a clean illustration of the mechanism the Committee must be able to measure under item 2. In higher friction classes, pricing and terms can become disconnected from local claims experience because capacity is specialist, cycle driven, and responsive to global underwriting and capital conditions. In that world, premium increases and tighter terms can coexist with strong insurer profitability in aggregate, while SMEs experience permissioning failure because they cannot obtain cover that is usable and affordable for trading.

Cyber is a clean region by sector stress test

Cyber is a contemporary business need and a region and sector amplifier. It behaves less like a routine SME product and more like a conditional product gated on control state and bundled with incident response services. The ACSC Annual Cyber Threat Report 2023 to 2024 provides a public baseline that cyber threats and cybercrime impacts remain material for Australian businesses and organisations.[39]

[38] Creative Australia, Music Festival Insurance Study: A Summary by Creative Australia (n 16) 2.
[39] Australian Signals Directorate, Australian Cyber Security Centre, Annual Cyber Threat Report 2023-2024 (n 33).

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For Terms of Reference item 2, cyber matters because affordability often presents as combined price plus compliance uplift cost, including time and capability, not as a litigation driven stress story. In regional and remote settings and among small organisations with thin capability, control state prerequisites can convert insurance is theoretically available into whether it is practically unobtainable.

Required information for Terms of Reference item 2

To answer item 2 in a way that is reportable and not anecdotal, this report recommends requiring two core datasets, outcomes plus terms, segmented for region and sector, plus a third dataset only to test causal claims about litigation and legal costs.

Table 1: Minimum viable distributional evidence for affordability

Evidence block	What it answers	Minimum segmentation	Minimum fields
A1. Quote and renewal outcomes	Availability and affordability, where stress concentrates	State or territory; ANZSIC; size band; activity flags	Quote requests; quoted, declined, no quote; quoted not bound; renewals due, offered, renewed, not renewed; time to quote and time to bind, median and P90; locked reason codes for decline, no quote, non renewal, quoted not bound
A2. Terms and usability	Adequacy and stability as experienced by insureds	Same as A1	Limits and excess distributions; coded exclusions and sub limits; prerequisites and conditions precedent flags; renewal narrowing flags, including limit down, excess up, exclusion added, sub limit reduced; permissioning compatibility flags tied to declared requirements
A3. Claims pathway cost and dispute incidence	Tests claims and legal cost narratives in stressed cells	Same as A1 plus claim type and pathway codes	Indemnity and expense split, including legal and adjusting; litigated status; time to decision and time to resolution; IDR and AFCA escalation flags; dispute reason categories; outcome codes

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For region classification, the cleanest approach is reporting by ABS ASGS Remoteness Areas, being Major Cities, Inner Regional, Outer Regional, Remote, and Very Remote, where those fields are held in operational systems. This is a standard national structure and it supports consistent reporting across Commonwealth processes.[40]

Provisional findings the Committee can safely make now

On the present record, the Committee can safely conclude the following.

Affordability pressure is observable at portfolio level in relevant product lines, and geography already matters at least at state level. This report's replication tables, built from APRA NCPD Level 1 releases, show Western Australia diverging materially from national public liability averages over the UWY2019 to UWY2023 window.[41]

The decisive region and sector affordability and availability variables are not on the public record. APRA's publicly available NCPD Level 1 reporting is aggregated and limited in scope, so Terms of Reference item 2 cannot be answered without compelled quote and renewal outcomes and coded terms and usability data.[42]

Causal claims that default to claims and lawyers as the system level explanation should not be treated as premises for reform unless they are reconciled to transparent decompositions

[40] Australian Bureau of Statistics, Remoteness Areas (Australian Statistical Geography Standard Edition 3, July 2021 to June 2026).
[41] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (n 1) under the heading 'Level 1 reports', published 31 July 2024; see also this report, replication tables for public liability underwriting year outcomes UWY2019 to UWY2023.
[42] Australian Prudential Regulation Authority, National Claims and Policies Database Explanatory Notes (n 18) (section on Level 1 reports and reporting scope, including definition of Level 1 reporting and implications for what is not observed in Level 1 reporting).

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in the stressed cells. At a minimum that requires separation of claims, expenses and distribution, reinsurance, and capital loads, plus evidence about pass through.[43]

[43] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (n 1) 'Level 1 reports', published 31 July 2024.

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Adequacy of regulatory framework

A regulatory framework for small business insurance is adequate only if it can do three things in practice. First, it must make access observable through measurable quote and renewal outcomes, with usable terms, in identifiable industry segments. Second, it must constrain conduct and process failures that manufacture dispute cost and delay, because those costs feed directly into premiums and into the real economy viability of insureds. Third, it must deal with modern product realities across cyber, business interruption, complex exclusions and thin specialist capacity, where cover can exist yet still be operationally unusable.

A framework is not adequate merely because it can punish misconduct after the fact. It is adequate only if it can force production of decision relevant market outcomes and then discipline insurer behaviours that predictably generate deadweight cost in permissioning markets. That includes opacity, meaning no quote and non renewal decisions without coded reasons. It includes term hollowing through excess, exclusions, sub limits and conditions precedent. It includes process friction through delay, dispute escalation and avoidable legal spend.

Adequacy in this Inquiry is practical. It is whether a small business or not for profit can obtain a policy that is available in practice, affordable relative to its operating margin, and adequate to satisfy the permissioning gates that actually control whether it can operate. Those gates include leases, licensing, council permits, procurement contracts, finance covenants, principal contractor requirements and venue hire terms.

Aggregate indicators can improve while access fails in specific segments. Gross written premium, average premium and even portfolio profit can rise while access fails through no quote outcomes, non renewals, prohibitive excesses, exclusions that defeat the dominant risk pathway, or cover that is technically available yet unusable against contracting

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requirements. A framework that cannot require segment coded quote and terms data cannot reliably distinguish a tight market from a segment level access failure.

On the current public record, the framework does not reliably do the three things above for small business and community organisations. It can intervene after harm occurs through complaints, disputes and insolvencies. It struggles to force production of the datasets required to test the mechanisms being advanced as premises for reform.

The current architecture

Australia splits prudential and conduct regulation. APRA focuses on insurer safety and capital. ASIC focuses on conduct and consumer protection. There is also a dispute backend, internal dispute resolution and external dispute resolution through AFCA, plus industry codes. At a high level that architecture is rational, but it has a predictable weakness for this Inquiry. It can be robust on solvency and still weak on access outcomes.

Much conduct regulation is framed as general obligations, including to provide financial services efficiently, honestly and fairly, and to maintain compliant dispute resolution systems where the retail client settings apply.[44] The key adequacy question for small business insurance is whether these rules force production of access funnel data and whether they discipline insurer process choices that inflate friction costs.

A structural adequacy risk is the retail and wholesale boundary. Many essential SME covers are purchased in forms that often fall outside the strongest retail style comparability and disclosure settings. That is not a moral complaint, it is a practical design feature of the law that can leave small organisations facing complex products, greater discretion to decline or non renew, and limited standardised explanation on the public record.[45] In permissioning markets, that discretion is not neutral. It determines whether an organisation can trade.

[44] Corporations Act 2001 (Cth) s 912A(1)(a).
[45] Corporations Act 2001 (Cth) s 761G.

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The core adequacy failure is informational. The most decision relevant variables sit inside insurer and broker systems, and the framework does not presently force them onto the public record in a segment coded, replicable form. That is an enabling condition for pricing power and blame shifting. Insurers and industry bodies can advance claims such as availability tightened, terms narrowed, claims costs drive premiums, and lawyers are the binding constraint, while declining to publish the quote and renewal funnels, coded reasons for no quote and non renewal, renewal narrowing flags, and cost splits that would allow those claims to be tested.

A regulator can only regulate what it can see. If the framework does not compel segment coded quote outcomes and segment coded terms outcomes, it cannot reliably distinguish four different failures. A capacity withdrawal where quotes do not exist. A price only failure where quotes exist but are beyond viability. An adequacy failure where policies exist but exclusions and excesses defeat the dominant pathway. A stability failure where renewal shock defeats planning even if cover can be purchased.

Minimum datasets required for regulatory adequacy

For this Inquiry, adequacy requires at least three linked datasets, segment coded in a way that corresponds to real operating categories such as venues, childcare, disability services, construction roles, community organisations, and regional and remote risks.

First, quote and renewal outcomes. Quote requested, quoted, declined, no quote, quoted not bound. Renewals offered and not offered. Time to quote and time to bind. Reason codes that separate pricing from appetite or capacity from information gaps. Without this, availability is rhetoric.

Second, terms and usability outcomes. Limits and excess distributions. Coded exclusions and sub limits relevant to each segment dominant risk pathways. Flags showing whether a

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policy satisfies common permissioning requirements such as minimum limits and required endorsements. Without this, availability can be technically true while operationally false.

Third, claims pathway and cost split. Claim type coding that matches the segment. Indemnity. Defence and handling costs, including external lawyers and experts, and internal handling where reportable. Dispute incidence proxies such as IDR escalation and time to resolution. Delay markers such as time to liability decision and time to payment. Without this, claims cost becomes a single bucket that hides insurer controlled friction and invites blunt rights reducing reform.

Why live venues and festivals are a clean diagnostic

Live venues and festivals show why adequacy cannot be assessed from portfolio aggregates or slogans about claims. Parliamentary evidence records sharp insurance cost increases for venues and festivals, including very large increases in cancellation insurance premiums over time and evidence of viability pressure where insurance is a condition of operating.[46] The regulatory question is not whether these outcomes are understandable. It is whether regulators can compel the segment coded datasets needed to distinguish genuine loss cost pressure from thin capacity pricing power and insurer controlled friction costs. On the present record, that level of routine, publishable segmentation is not reliably in place.

Indemnity versus insurer controlled friction costs

ASIC Report 802 is directly relevant to this Inquiry because it tests enforceable internal dispute resolution obligations under Regulatory Guide 271 and documents material failures in complaint identification, communication quality and delay compliance.[47] ASIC reported that it reviewed 11 general insurers and analysed over 1.4 million complaints and 36.9

[46] House of Representatives Standing Committee on Communications and the Arts, Am I Ever Gonna See You Live Again? (Report, March 2025) ch 2, esp [2.35]-[2.37], [2.63]-[2.64].
[47] Australian Securities and Investments Commission, RG 271 Internal Dispute Resolution (Regulatory Guide, 30 July 2020, as amended).

million data points.[48] ASIC also reported that insurers failed to identify one in six customer complaints, and that all insurers in the review failed to provide delay notifications within required timeframes, with the worst performer late over 90 per cent of the time.[49] ASIC also reported systemic issue detection gaps, with insurers identifying only 85 systemic issues from 1.4 million complaints while AFCA identified 11 systemic issues from about 16,000 escalated complaints.[50]

These are not abstract governance points. They are cost amplifiers. A slow or defective posture converts resolvable matters into disputes, disputes into litigation, and litigation into bilateral legal spend that does not buy safety or compensation outcomes. It buys delay and transaction cost.

This report recommends splitting claims costs at the source. Indemnity is payment for harm or loss. Friction is defence and handling cost, dispute escalation and delay. Friction is materially insurer controlled. If the framework cannot measure and publish friction by segment, by time to liability decision, time to payment, dispute escalation, litigated share, and defence and handling proxies, it cannot distinguish harm is expensive from process made it expensive. That leaves Parliament exposed to rights reducing reform sold on an untested cost story.

The role of lawyers

The narrative that lawyers drive costs offers a simple villain. The framework becomes inadequate when it allows that story to substitute for measurement.

In stressed segments, lawyer involvement often rises where insurers and insureds operate under uncertainty, delay and dispute escalation. Legal work can reduce cost where it

[48] Australian Securities and Investments Commission, Cause for Complaint (n 1) 4.
[49] Ibid 5.
[50] Ibid 5.

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clarifies liability early, narrows issues and forces decision timelines. It can improve access where it makes contracts insurable and where it presents structured evidence that reduces underwriting uncertainty loadings.

Adequacy therefore requires the framework to distinguish lawyer cost that follows insurer controlled friction from lawyer cost that is genuinely opportunistic. The only defensible way to do that is to require the cost split dataset described above and link it to dispute incidence and time to resolution.

Recommendations for Terms of Reference item 3

Adequacy requires minimum regulatory outputs.

First, mandatory publication of segment coded quote and renewal funnels for essential SME lines, including no quote and non renewal reason codes and placement time metrics.

Second, mandatory publication of a coded terms and usability dataset, including renewal narrowing flags and a standard taxonomy for exclusions, sub limits and conditions that defeat operational usability in each permissioning segment.

Third, mandatory publication of claim cost splits by segment, indemnity versus defence and handling and dispute escalation, linked to time to decision and time to payment metrics, so claims cost cannot be used as a black box justification for rights reducing reforms.

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Industry examples

Terms of reference items 1 and 2 are not satisfied by showing that insurance exists in Australia in aggregate. Insurance operates as a gate to operating in many small business and community settings. The relevant question is whether cover is available, affordable, adequate, and stable in identifiable sector and location cells.

Industry examples help the Committee see how this gate works in practice. They show the observable symptoms of access failure, including renewal shock, no quote outcomes, non renewal, higher excess, and cover that is technically available but hollowed out in the risk pathways that matter. They also show the downstream effects when the gate fails, including output loss, risk shifting to weaker parties, and cost shifting to government funded systems.

A discipline for these examples

In each industry, this report recommends resisting a default story that unaffordability is caused by claims and by plaintiff lawyers. That proposition might be true in a specific micro segment. It should not be treated as a general premise for reform unless it is reconciled to a driver split that separates indemnity cost from insurer controlled friction costs, including defence, handling, disputes, and delay. It also needs to be linked back to quote outcomes and to the terms offered.

This discipline matters when evaluating the Insurance Council of Australia reform approach. The ICA has called for changes to state and territory civil liability settings in the name of business insurance affordability and has framed legal cost and litigation dynamics as part of the mechanism.[51] A package of liability and legal process restrictions may reduce

[51] Insurance Council of Australia, Reform of state laws needed to reduce business insurance costs (Media Release, 15 October 2025) describing a newly released white paper calling for reforms to state based civil liability laws and linking affordability pressures to litigation and legal fees.

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insurer outlays in some scenarios. It can also weaken compensation, shift costs to households and government, and fail to address the access failure modes that dominate in thin and specialist markets, including capacity withdrawal, conditional availability, and terms that fail permissioning requirements.

Table 2 sets out the main cost shifting channels that arise when the insurance gate fails, or when rights are narrowed without evidence of pass through.

Table 2: Cost shifting channels when insurance fails as permissioning or when compensation rights are narrowed

Industry segment	**Primary access failure modes**	**Immediate private impacts**	**Where the cost shifts in government systems**
Live venues and festivals	Renewal repricing shock, thin capacity, cancellation cover unusable, excess increases	Event cancellations, reduced programming, workforce contraction, risk shifted by waivers and contracts	Lost tax base from reduced activity, increased unemployment and income support, increased public hospital and Medicare costs for injury claims where compensation pathways weaken
Childcare and early learning	Adequacy hollowing out, excess and sublimits, conditional availability, volatility	Reduced excursions and programming, staffing cuts, service closures, increased provider insolvency risk	Increased regulatory intervention costs, increased state child protection and health system costs when serious incidents are under compensated
Disability services and NDIS providers	Conditional availability, exclusions for dominant pathways, control and documentation gating	Reduced service coverage, provider exit in regional areas, higher retained risk, more disputes	Increased NDIS costs as the payer of last resort, increased public health and community services demand, increased state safeguarding and oversight costs

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Construction and building practitioners	Unavailability or non compliant terms, exclusions for systemic pathways, high excess and run off constraints	Reduced capacity to tender, narrower scopes of work, increased defects risk retained by SMEs	Increased public enforcement and remediation costs, increased tribunal and court workload, increased consumer and social housing remediation exposure

Live music venues festivals and entertainment

Live venues and festival operators are a clean test case because insurance is an operating requirement, not a discretionary product. Venue hire, licensing, council permits, supplier contracts, touring arrangements, and finance or lease covenants commonly require insurance at particular limits and on particular terms. When cover is unavailable, unaffordable, or hollowed out by exclusions, sublimits, and high excess, the impact is not merely higher cost. It is cancelled events, reduced programming, and risk shifting onto workers, volunteers, patrons, contractors, and public systems.

The House of Representatives Standing Committee on Communications and the Arts recorded evidence that the Australian live music industry contributes about 21.8 billion dollars and supports around 500,000 jobs. The Committee also recorded evidence that about 1,300 live music venues have been lost since 2017 and noted that rising insurance costs form part of the operating cost squeeze on venues.[52]

The report also summarises evidence of sharp premium increases and volatility large enough to break viability in a thin margin industry. Examples recorded in evidence include a renewal premium rising from 10,000 dollars to 60,000 dollars, a 330 per cent premium increase with no claims made, and a premium increase from 10,000 dollars to 120,000 dollars.[53]

[52] House of Representatives Standing Committee on Communications and the Arts, Am I Ever Gonna See You Live Again? (n 45) [1.6], [2.9].
[53] Ibid [2.24]-[2.27].

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For festival and event cancellation insurance, the report records a worked example where the premium increased from 138,000 dollars in 2020 to 526,000 dollars in 2024.[54] The report also records concern about market thinness and notes evidence that, for some organisers, cover is typically only available internationally through the Lloyd's market in London.[55]

These are not mere anecdotes floating free of mechanism. They map directly onto the Inquiry access dimensions. Affordability stress appears as premium uplifts and premium burden spikes. Adequacy stress appears as higher excess and reduced usability for common cancellation pathways. Availability stress appears as thin underwriting capacity and limited real quoting options. Stability stress appears as volatility that defeats planning and contracting.

Are claim costs the binding constraint and if so whose costs

The Committee can treat claims cost as a hypothesis, but it must split it. In this segment, the relevant cost channels are indemnity cost paid for loss, defence and handling cost including insurer lawyers, experts, investigations, and internal handling, and dispute cost and delay driven by denials, slow decisions, and poor internal dispute resolution that escalates matters. Defence and dispute channels are materially insurer controlled. In identical underlying incidents, dispute intensity varies with claims handling posture, speed, and early clarity on liability and quantum.

ASIC has identified deficiencies in general insurance complaints handling, including failures to identify complaints properly and failures that undermine timely and fair resolution.[56] Those failures are not only a consumer problem, as they increase frictional cost and can convert resolvable matters into expensive disputes. They also reduce trust and make

[54] Ibid [2.39]-[2.40].
[55] Ibid [2.69].
[56] Australian Securities and Investments Commission, Cause for Complaint (n 1).

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insureds more likely to seek external dispute pathways, which increases cost on both sides and increases delay.

How an ICA style reform package would land in this sector

A package that narrows civil liability rights or restricts damages can reduce insurer outlays in some cases, but it does not target the dominant access failure modes that are visible here. The most visible failures are thin capacity, repricing shocks, and cancellation terms that defeat the product purpose. Those failures are driven by underwriting appetite, market structure, and policy architecture. They are not solved by weakening the compensation rights of patrons, workers, and contractors.

A rights reducing package also risks worsening the distributional outcome. If injured people face tighter thresholds or reduced recovery, the cost does not disappear; it shifts to Medicare, state hospitals, income support, and households. For live venues, this cost shift can also reduce deterrence and safety investment incentives, which can increase incident rates over time and impose further public costs.

For policies coded as venues, live performance, festivals, and events, the minimum production should link access outcomes and terms to cost channels and to market structure drivers.

Required data production schedule for live venues and events

LV A1 Quote and renewal outcomes

This dataset measures availability, affordability, and placement friction. It should capture quote requests and outcomes including quoted, declined, no quote, and quoted not bound. It should capture renewals due and outcomes including offered, renewed, not renewed, and cancelled. It should report time to quote and time to bind, including median and P90. It should use locked reason codes that separate pricing from appetite or capacity and

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information gaps. Segmentation should be at least state or territory, ANZSIC where held, size band, and an activity code for venues, festivals, and events.

LV A2 Terms and usability

This dataset measures adequacy, renewal stability, and permissioning compatibility. It should capture limits and excess distributions for new business and renewals. It should code exclusions and sublimits relevant to cancellation and dominant pathways. It should flag renewal narrowing events including limit reduced, excess increased, exclusion added, and sublimit imposed or reduced. It should include permissioning compatibility flags including minimum limit met and certificate of currency feasible on required terms. It should separate new business from renewal and segment as for LV A1.

LV A3 Claims pathway and cost split

This dataset tests whether cost pressure is indemnity or insurer controlled friction and links that to access outcomes. It should include claim pathway coding and cost bands for indemnity and for defence and handling proxies. It should include litigated share, time to resolution bands, and dispute incidence proxies including internal dispute escalation and external pathways where applicable. It should segment as for LV A1 and link to LV A1 risk cells.

LV A4 Drivers disclosure

This dataset prevents residual categories masking drivers and tests whether any savings could pass through. It should disclose expense and distribution allocation, net reinsurance cost indicators, and the capital allocation method and hurdle rate and how these load into pricing. It should link to LV A1 and LV A2 so the Committee can test whether premium movements track loss cost or other loadings and margin. It should report at segment level with suppression thresholds.

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Childcare and early learning services

Childcare is a clean access test case because insurance is a statutory and practical permissioning gate. A provider must hold public liability insurance with a minimum of $10 million cover.[57] This is not optional risk transfer, rather a part of the licence to operate, and it is also an input to leases, finance, and excursion arrangements.

Access failure rarely presents as a gentle drift. It presents as permissioning failures that are measurable. Premium uplifts can break viability because margins are thin and fee structures are sticky. Even when a service can buy cover, it may only do so by cutting staffing, training, or service quality, or by exiting higher risk activities such as excursions.

The most harmful failure mode is insured but unprotected. A policy exists, but risk pathways are pushed back onto the provider through excess increases that make routine claims uneconomic to notify, exclusions and sublimits that concentrate retained risk on the provider where the sector is exposed, and conditions that increase declinature risk. Availability often fails as conditional access where quotes exist only on terms that fail permissioning gates or transfer so much retained risk back to the provider that the policy is functionally unusable.

How an ICA style reform package would land in this sector

In childcare, the policy stakes are unusually high. When serious incidents occur, downstream costs can be lifelong. If reforms reduce compensation entitlements, the burden can shift into government funded supports, including health and disability supports, and family assistance systems. The immediate budget exposure is not limited to courts and disputes. It includes increased demand on public services when households cannot meet care costs, and increased state intervention costs in safeguarding systems.

[57] Education and Care Services National Regulations 2011 (WA) reg 29.

A rights reducing package also does not address the dominant access problems. If premium volatility and adequacy hollowing out are being driven by tail assumptions, market structure, reinsurance cost, and policy architecture, then weakening claimant rights is a blunt instrument that risks shifting cost without restoring stable and usable cover.

Required data production schedule for childcare

For policies coded to childcare and early learning, minimum production should mirror LV A1 to LV A4, with additional focus on renewal narrowing and excess distributions because these are common hollowing mechanisms.

Disability services and NDIS providers

Disability services are a clean test case because the sector sits at the intersection of vulnerable client risk pathways, layered contracting, and heavy dependence on compliance systems. In that setting, terms and claims posture often matter more than averages.

NDIS providers operate inside a permissioning chain. The NDIS Practice Standards governance module includes a quality indicator that appropriate insurance is in place.[58] Commercial gates also apply through principals, host facilities, allied providers, and transport contractors, many of which require minimum limits and certificates as conditions of engagement.

Premium burdens can be severe relative to revenue, especially for smaller providers and in regional markets where broker and underwriter choice is thin. Common failure modes include tighter exclusions and sublimits in pathways that are operationally central to disability services, including client to client incidents, transport and community access, and incidents that trigger complex dispute pathways. Availability often becomes conditional on governance and documentation, including incident management systems and staff

[58] NDIS Quality and Safeguards Commission, NDIS Practice Standards and Quality Indicators (web page) section on provider governance and operational management, insurance indicator.

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screening and training. Where insurers price uncertainty aggressively, providers end up paying for compliance uplift simply to reach insurability.

How an ICA style reform package would land in this sector

When compensation pathways weaken, cost shifts quickly to the NDIS and to public health systems because these systems already act as payer of last resort for many participants. A rights reducing package that reduces insurer outlays can therefore raise government outlays unless pass through is proven and unless reform materially improves access and reduces disputes.

A package that focuses on narrowing rights also risks increasing disputation if it increases incentives to contest eligibility thresholds or to push disputes into different jurisdictions. In a sector already heavy with governance requirements, the policy priority should be transparency of terms and outcomes, faster and fairer claims handling, and measured reductions in insurer controlled friction costs.

Required data production schedule for disability services

For policies coded to disability services and NDIS supports, minimum production should mirror LV A1 to LV A4, with pathway coding aligned to service delivery settings and explicit linkage to dispute escalation.

Construction and building

Construction is a clean test case because insurance is a contracting gate and often a licensing expectation in practice. It is also a high tail sector where terms and exclusions can defeat the product purpose. Access failure can present as no compliant cover, or as cover that exists but excludes the dominant pathway, which is insured but unprotected.

The market can fail as no compliant cover in specific risk categories or project types. Practitioners exit those categories of work, stop tendering, or narrow scope. Policies can

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renew with carve outs that remove meaningful protection for modern systemic pathways. Excess levels can also shift risk back to SMEs and convert insurance into a thin compliance artefact. Long tail disputes mean delay and dispute posture can materially inflate total cost, which can feed back into underwriting appetite and drive tighter terms and exclusions. That makes insurer controlled friction costs a regulator relevant lever.

How an ICA style reform package would land in this sector

A rights reducing package may reduce insurer outlays in some disputes, but it does not address the core construction problem where access fails through terms and exclusions and through market appetite. It also risks increasing public cost. When building defects and serious incidents occur and compensation is reduced, costs shift to households and to government systems through public enforcement, public housing remediation exposure, and increased demand on tribunals and courts for alternative remedies. A package that narrows liability without ensuring usable insurance and without addressing claims handling friction risks shifting cost rather than reducing it.

Required data production schedule for construction and building

For construction coded policies and endorsements, minimum production should mirror LV A1 to LV A4, with emphasis on compliance and usability flags tied to typical contracting requirements, and reason codes that separate appetite, terms non compliance, pricing, and information gaps.

Conclusion

These examples support five propositions.

First, in each sector the insurance product is a permissioning gate rather than a discretionary purchase. That makes access failures economically and socially costly.

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Second, the public record already contains observable symptoms of access failure in at least some segments, including renewal shock and product architecture that defeats usability.

Third, a claims and lawyers story cannot be treated as a default causal premise without a driver split and without linkage to quote outcomes and to terms. Insurer controlled friction costs are a plausible cost amplifier and a regulator relevant lever.

Fourth, an ICA style rights reducing package risks cost shifting to households and to government funded systems unless pass through is demonstrated and unless the package addresses the real access failure modes that dominate in thin and specialist markets.

Fifth, the Committee can make affordability and availability policy relevant by compelling a minimum viable production suite that links quote and renewal outcomes, terms and usability, claims pathway cost splits, and driver allocations, segmented by sector and region.

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An audit of the Insurance Council of Australia October 2025 paper

This Part tests the Insurance Council of Australia paper titled A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform against a decision standard suited to legislation. This report recommends not treating a proposition as a factual premise for reform unless it is replicable on the public record, or can be made testable through specified data production.[59]

On that standard, the ICA paper is not presently fit to support a package style reform response. It advances reform relevant propositions about availability, capacity, and terms. It also links those propositions to claims pathway drivers including legal and litigation costs and social inflation.[60] Yet the public datasets that are normally relied on in parliamentary processes do not observe the variables needed to test the key mechanisms, especially quote and renewal outcomes and coded term movements.[61]

Reformers therefore faces a practical choice. It can proceed on the ICA narrative while accepting that key mechanisms cannot currently be verified. Or it can treat the ICA paper as a set of hypotheses and compel the minimum datasets needed to determine whether there is an access failure, what form it takes, what drives it, and whether any proposed reform reduces system costs or merely shifts them from insureds to households and governments.

[59] Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia (n 7).
[60] Ibid 3-6.
[61] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (n 1); Australian Prudential Regulation Authority, NCPD Analysis - Review of claims trends and affordability of public liability and professional indemnity insurance in Australia (n 22) 3-5.

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This Part implements the second approach, and it distinguishes three things. It sets out what can be established now from public baselines, identifies the decision relevant gaps, and specifies what must be produced so Parliament can test claims rather than choose between advocacy accounts.

Two safeguards follow from that approach. First, compel quote and renewal outcomes and coded term change fields, linked to claims pathway and cost split fields that separate indemnity from insurer controlled handling, dispute, and delay costs. Second, require an explicit distributional and fiscal impact statement so any premium change is assessed alongside cost shifting to households and public systems.

Section specific terms

Term	Meaning in this Part
A1 QUOTES	A proposed dataset of quote requests and outcomes, including declined and no quote outcomes and reason codes
A1 POLICIES	A proposed dataset of policy and renewal terms, including coded term change fields such as excess, limits, exclusions, sublimits and waiting periods
A2 CLAIMS	A proposed dataset of claim level pathways and cost splits, including representation, proceedings, duration, settlement channel and defence legal costs
A3 DRIVERS	A proposed dataset of insurer class level cost allocations, including expenses, reinsurance and capital and margin assumptions
Access failure	A material inability to obtain or renew insurance on usable terms in an identifiable segment or region

What the public record can support

Premium pressure is real, but anchor statistics are definition sensitive. This project replicates APRA National Claims and Policies Database Level 1 series and shows that premium change magnitudes vary materially depending on line definition and time basis. Underwriting year and financial year series will not always tell the same story. Premium per

risk and portfolio measures will not always move the same way. This is not semantics. It determines whether a headline number is stable enough to carry legislative weight.[62]

Portfolio level resorting is visible, but access is not. Aggregate risk counts and market composition indicators such as Lloyd's share can be consistent with market repositioning.[63] But they do not show who is being declined, non renewed, or only renewed on hollowed out terms that fail permissioning gates.[64]

Psychological injury trends can be described only cautiously. APRA's public analysis supports qualified observations about claims trends and the limits of aggregate inference. It does not, by itself, support strong causal claims that psychological injury is the dominant driver of public liability premium increases without public liability specific pathway and cost split evidence.[65]

What the public record cannot answer

Small business insurance is a permissioning market. In most segments, an insured does not buy cover at a posted price. The insured seeks underwriting permission through a broker or direct channel. The underwriter can decline. The underwriter can refuse to quote. The underwriter can offer cover only with terms that shift risk back to the insured through high excess, lower limits, exclusions, sublimits, and longer waiting periods.

Because of that structure, access cannot be inferred from portfolio averages. The decisive evidence sits in quote requests and outcomes, renewal decisions, and coded term changes.

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[62] Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics (year ended 31 December 2023, released 31 July 2024); Australian Prudential Regulation Authority, National Claims and Policies Database statistics release information and update timing (web page, stating next release expected in the first half of 2026).
[63] Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics (n 61).
[64] Australian Prudential Regulation Authority, National Claims and Policies Database statistics release information and update timing (n 61).
[65] Australian Prudential Regulation Authority, NCPD Analysis, Review of claims trends and affordability of public liability and professional indemnity insurance in Australia (May 2023).

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Those are the points where the market grants or withholds permission, and where it narrows cover in ways that can leave an insured technically covered but practically exposed.[34]

Personal injury lawyers and insurer lawyers sit downstream of this permissioning decision. Their work affects the cost and predictability of claim pathways. It also performs a public enforcement function through structured evidence testing and dispute resolution. That function matters most when the upstream system fails, through unclear terms, delay, and defective internal dispute processes.[66]

The Committee's Terms of Reference require findings about access to products that meet contemporary needs including public liability, professional indemnity, cyber threats, and business interruption. Those are, in practical terms, quote outcomes and term structure questions. Yet APRA Level 1 releases do not observe quote requests, declines and no quote outcomes, non renewals, cancellations, coded term changes, or placement friction.[67]

Many ICA propositions about what drives premiums are also not testable on public evidence without claim pathway data and insurer allocation data. The ICA paper makes repeated assertions about availability, terms tightening, legal costs, litigation, psychological injury, nervous shock, worker to worker recoveries, and procedural reform. Those propositions can only be evaluated as mechanisms if the Inquiry compels the datasets that observe them.[68]

Replication verdicts and what they mean for legislation

[66] Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia (n 7).
[67] Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics and update timing (n 61).
[68] Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia (n 7).

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Appendix 1 identifies 60 discrete propositions in the ICA October 2025 paper and assigns a verdict for each proposition based on whether it is replicable now, testable with specified production, or too underspecified to test.

Table 3: ICA claim replication scoreboard (n = 60 claims)

Verdict	Count	Share
Supported	5	8.3%
Partly supported	10	16.7%
Not testable with public data	20	33.3%
Ambiguous pending further specification	25	41.7%

This does not prove the ICA propositions are wrong. It proves that many of them are not safe to use as factual premises for reform on the current public record.

Two central risks if there are moves on the current record

First, portfolio averages can improve while the binding constraint remains hidden in micro level outcomes. Premium relief can coincide with higher excess, tighter exclusions and sublimits, lower limits, and longer waiting periods. SMEs and community organisations can end up worse off on adequacy even if average premiums look better.[69]

Second, reforms that narrow compensable loss or constrain quantum can reduce insurer outlays and may reduce premiums, but system costs do not automatically fall. They can be redistributed to injured people and households, and to government systems including health services and income support. The Inquiry should treat affordability claims as trade off claims unless it has evidence that costs are not transferred from insureds to taxpayers and families.

[69] Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics and update timing (n 61).

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Fairness and equity sit at the centre of this trade off. A liability system that lowers premiums by removing compensation for genuine harm can improve affordability for one group while imposing hidden costs elsewhere. Plaintiff lawyers are the professional group most directly tasked with making those trade offs visible in practice, because they test proof of loss and enforce legal responsibility where insurers and insureds disagree.

Cost shifting is a measurable policy risk

To make fiscal risk legible, this report uses the project cost shift model to provide order of magnitude bounds under alternative intensity settings.

On the Base settings, total government exposure is around 101 million dollars per year and around 1.0 billion dollars over a decade undiscounted. On the High settings, the model implies around 263 million dollars per year and around 2.6 billion dollars over a decade undiscounted.

These are scenario outputs, not observed fiscal outcomes. They are presented to prevent the Inquiry treating premium reductions as net social savings by default.

Evidence sequence recommended

Given the audit findings and the limits of aggregate data, this report recommends not accepting a package style reform response on the current record. The appropriate sequence is as follows.

First, compel A1 QUOTES and A1 POLICIES in the sectors and regions alleged to face severe access constraints, to measure declines, no quote outcomes, non renewals and cancellations, and coded term changes at renewal.[70]

[70] Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics and update timing (n 61).

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Second, diagnose the failure mode and identify whether the binding constraint is price, capacity withdrawal, or term tightening.

Third, compel A2 CLAIMS to test driver narratives using claim pathway fields including representation, proceedings, duration, settlement channels, and cost splits, including coding for psychological injury, nervous shock, and worker to worker recoveries where asserted.[71]

Fourth, compel A3 DRIVERS where necessary to test premium driver assertions and avoid attributing price movements solely to legal settings, including expenses, reinsurance, capital loads, and margin assumptions at a class and segment level with suppression where needed.[72]

Fifth, only then consider targeted reforms where a measurable access failure is demonstrated, the causal mechanism is testable on produced data, and distributional and fiscal impacts are explicit.

If reforms proceed earlier, minimum safeguards should include a distributional and fiscal impact statement and post implementation monitoring using A1 and A2 fields so premium changes are assessed alongside non renewals, term changes, and claimant pathway outcomes.

[71] Australian Prudential Regulation Authority, NCPD Analysis (n 64).
[72] Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics and update timing (n 61).

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ICA claim replication audit and scoreboard

This section audits the Insurance Council of Australia October 2025 report A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform. It extracts 60 discrete propositions from that report, then assigns each proposition a verdict based on whether it is replicable on the public record, and records the minimum additional evidence required to make any non replicable proposition testable.[73]

The ICA report contains some propositions that replicate on public evidence, but a large share are either not testable without insurer or broker microdata, or are not specified tightly enough to test even in principle. Any inquiry should therefore treat a material portion of the ICA report as hypotheses rather than premises for legislative change.

Before relying on those hypotheses to recommend reform, an inquiry should compel the minimum datasets set out in Annex 1 and require ICA to restate any ambiguous propositions in a testable form. That approach keeps an inquiry anchored to mechanisms that can be checked, rather than narratives that cannot.

The ICA report advances factual, comparative, and causal propositions about affordability, availability, and premium drivers, especially for public liability. This section applies an evidentiary standard suited to legislation, namely replicability. It does three things. It identifies propositions that are specified well enough to test. It replicates those propositions using public evidence where replication is possible. It converts the remainder into precise production requirements, so disputed propositions can be resolved empirically rather than rhetorically.

Data and method

[73] Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia (n 7).

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The controlling dataset for this section is the replication ledger in Appendix 1. It records each ICA proposition as a separate Claim ID and includes the quoted proposition, the ICA page reference, the metric definition, the testability tier, the replication attempt and result where replication is possible, the verdict category, and the minimum additional data required to test any proposition that is not resolvable on public evidence.

Table 4 keeps the replication chain transparent by listing each source family used, its artefact, and its role in replication.

Table 4: Replication sources used in this Part

Source family	Artefact available	Role in replication
Primary claim source	Insurance Council of Australia October 2025 paper	Defines the propositions audited in this Part, including verbatim claim text and page references
Controlling audit dataset	Appendix 1 ICA claim replication ledger claim cards	Assigns each proposition a Claim ID and records the extract, verdict, replication notes, and minimum missing specification or production required
Public portfolio statistics and definitions	APRA National Claims and Policies Database Level 1 statistics releases, plus APRA data specifications and explanatory notes	Provides the public evidence used to replicate portfolio indicators such as premium per risk, exposures, early maturity claim frequency proxies, and market composition, using consistent definitions
Public analytical interpretation	APRA analytical reporting on NCPD trends, including the May 2023 report	Provides context on class composition and limitations of aggregate data to support interpretation of replicated indicators
Production requirements for non testable or ambiguous claims	Annex 1 Data required to test the ICA propositions	Specifies the minimum datasets, fields, and codebooks required to make non testable claims testable and to support post reform monitoring

A claim cannot be treated as supported unless it can be tested against a defined dataset and a defined method. At minimum, a claim must specify, or allow unambiguous inference of, the metric, population, time basis, and the evaluation window. It must also specify any adjustments required to make the measure comparable over time or across sources.

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At minimum, testability requires specification of the following elements. The metric, for example premium per risk rather than gross written premium, quote decline rate rather than anecdotal non availability, or loss ratio rather than premium movement alone. The population or segment, for example national versus state, sector, and whether the claim concerns SMEs or larger insureds. The time basis, for example underwriting year, accident year, or financial year. The start and end dates. Any adjustment basis required, such as nominal versus real values, and where claims development or maturity adjustments are relevant, the development basis and cut off.

Where these elements are missing, the claim is coded Ambiguous pending further specification. The replication ledger records the missing elements required to convert the proposition into a testable statement.

No replicated result is recorded without a traceable calculation reference. Each replication entry must identify the dataset source, the file and location reference, and the calculation method, so a reader can reproduce the result and so transcription error can be detected.

Verdict taxonomy and meaning

Table 5: Verdict categories used in the replication ledger

Verdict	What it means	What it implies
Supported	The claim is sufficiently specified and replicates on public evidence	May be used as a factual premise (subject to normal caveats)
Partly supported	Direction or broad proposition is supported, but magnitude/definitions/time basis differ, or critical qualifiers are missing	Can be used only with qualification; not reliable as an anchor statistic
Not testable with public data	The claim requires insurer/broker microdata or non-public data (quotes/renewals/terms, claims pathways, insurer allocations)	Should not be treated as fact; convert into production order

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Ambiguous pending further specification	Too vague to test even in principle until ICA specifies metric/population/time basis	Should not be relied on; require ICA to specify or withdraw

How to interpret the verdicts

The verdict categories are decision rules. They indicate whether a proposition can be used safely as a factual premise for reform, based on whether it is replicable on the public record or can be made testable by specified data production.

A claim coded “Supported” may be treated as a factual premise, subject to ordinary limits on generalisation and scope, including segment specificity and time basis.

A claim coded “Partly supported” may be used only with the qualification recorded in the replication ledger. The common reasons are definition sensitivity and time basis sensitivity, meaning the proposition is directionally correct but not reliable as an anchor statistic for legislation or public messaging.

A claim coded “Not testable with public data” should be treated as an untested hypothesis unless and until the minimum datasets in Annex 1 are produced. These propositions are often the most decision relevant for assessment, including availability, non renewal, term tightening, litigation pathway claims, and insurer cost component assertions.

A claim coded “Ambiguous pending further specification” should not be relied on unless the ICA specifies the metric, segment, and time basis required to test it. Where the ICA does not specify, this report recommends treating the proposition as not being advanced in a form capable of scrutiny against evidence.

Scoreboard

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Table 6: ICA claim replication scoreboard (n = 60 discrete claims)

Verdict	Count	Share
Supported	5	8.3%
Partly supported	10	16.7%
Not testable with public data	20	33.3%
Ambiguous pending further specification	25	41.7%

This means 45 of 60 claims (75 per cent) are either not testable on public evidence or not specified well enough to test.

Testability

Table 7: Public testability

Tier	Meaning	Count
Public	Claim points to APRA NCPD analysis/appendices or other public evidence sufficient for replication in principle	37
Not public	Claim requires insurer/broker microdata or non-public APRA datasets (or internal allocations)	23

Even within the "public" tier, a large share of claims still fail the minimum specification rule (hence "Ambiguous pending further specification").

Topic breakdown

Table 8: Verdict by topic tag

Topic	Supported	Partly supported	Not testable	Ambiguous
Pricing	1	4	11	1
Legal	2	1	1	12
Legal/pricing	0	3	4	2
Reform	0	0	1	5
Availability (and mixed availability tags)	2	2	1	1
Other	0	0	2	3

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This shows a consistent pattern:

1. Pricing anecdotes are typically not testable without quote/renewal microdata.
2. Legal and reform propositions are predominantly ambiguous unless tied to a specific doctrine, jurisdiction, time window, and measurable outcome.
3. "Availability" claims can be persuasive rhetorically but are rarely observable in APRA aggregates unless supported by quote/decline and term-change evidence.

What the public evidence can and cannot support

ICA premium growth claims are often expressed as a single since 2019 statistic, without stating the line definition, the time basis, or whether the measure is per risk or portfolio premium. On the public record, those choices change the measured magnitude enough to matter for legislation. Any anchor statistic should therefore state the dataset, line definition, time basis, and end date.[74]

Table 9 sets out one replicable public series for public and product liability on an underwriting year basis, using APRA NCPD Level 1.

Table 9 Public and product liability indicators Underwriting years 2019 to 2023 APRA NCPD Level 1

Underwriting year	Average written premium per risk All states ($)	Average written premium per risk WA ($)	Risks written, all states	Risks written, WA	Lloyds share of premium (%)
2019	768.99	807.37	2998571	287577	4.67
2020	811.7	858.85	3154769	297621	4.92
2021	893.51	941.84	3083673	295324	7.72
2022	960.38	1059.75	3034084	290259	9.05
2023	1025.97	1112.56	2888684	276171	8.02

Note: Also reflected in Chart 1-3

[74] Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (n 1).

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Chart 1: Average written premium per risk (UWY2019-2023) public and product liability

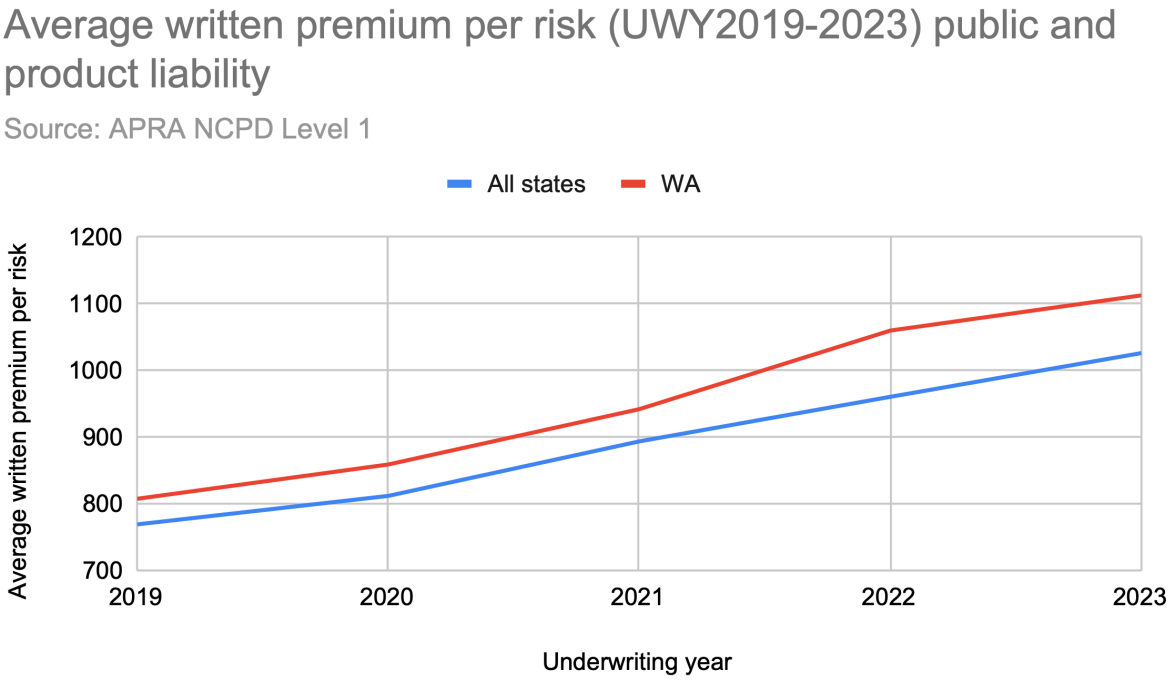

Chart 2: Risks written/exposures (UWY2019-2023) public and product liability

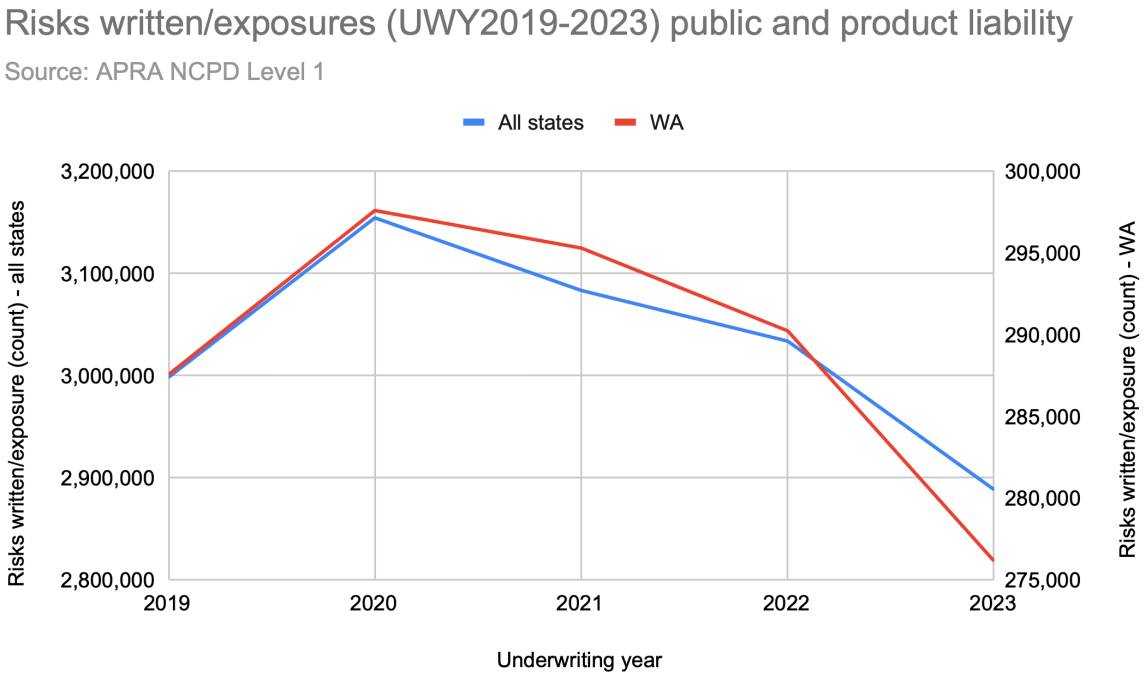

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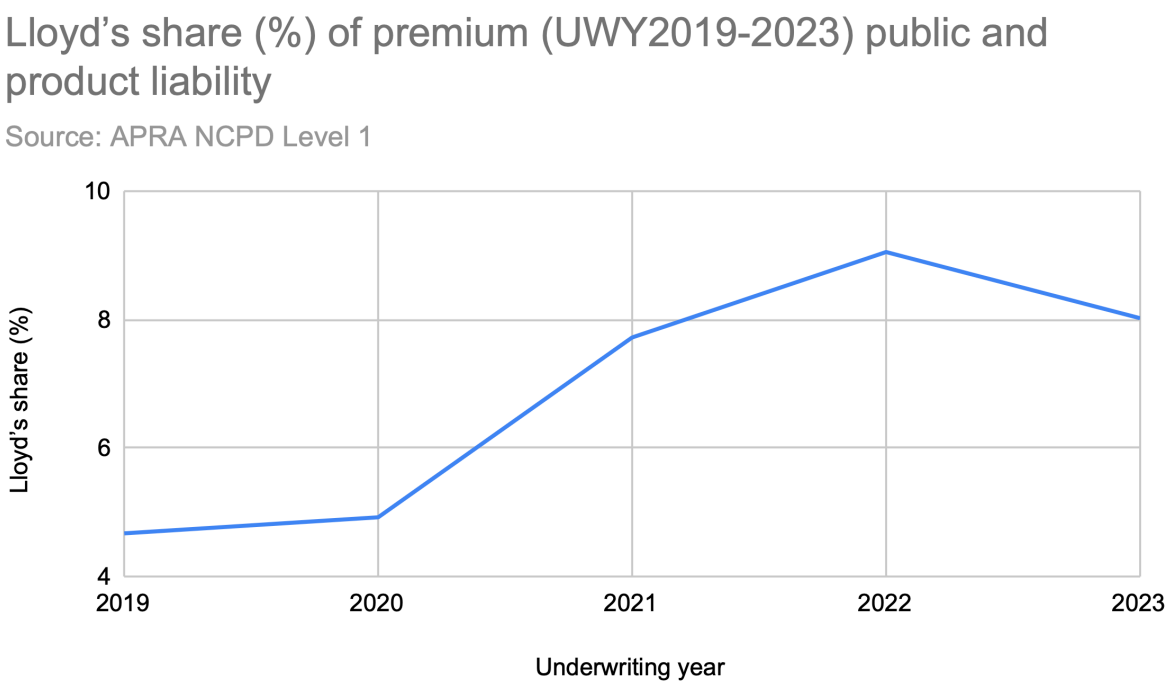
Chart 3: Lloyd's share (%) of premium (UWY2019-2023) public and product liability



This series implies average written premium per risk growth of about 33 per cent over UWY2019 to UWY2023 for all states. On the same line definition, WA grows by about 38 per cent over the same window.[75]

An ICA style claim that average cost increased 55 to 60 per cent since 2019 is therefore only partly supported unless it specifies a different series. One common way to obtain a larger number is to move to a financial year basis and a different aggregation and denominator construction for public and product liability, which can produce an estimate around 51 per cent over FY2019 to FY2023 in the project replication.[76]

Table 10: Definition sensitivity premium change varies materially by dataset and time basis

Measure	Dataset and time basis	Change approximate	Why it differs

[75] Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics (n 61).
[76] Project replication exhibits derived from APRA data, financial year reconciliation for public and product liability, FY2019 to FY2023, in the working pack workbook.

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Average written premium per risk	APRA NCPD Level 1 underwriting years 2019 to 2023	33 per cent	Underwriting year basis and NCPD exposure construction
Average premium per risk public and product liability	Project replication derived from APRA data on a financial year basis 2019 to 2023	51 per cent	Financial year basis with different aggregation and denominator treatment

The point is not which number is more persuasive. The point is that a number is not decision grade until it is pinned to a defined measure, population, and time basis. If those elements are not stated, reformers are being asked to accept a statistic that cannot be verified.

Psychological injury claims and access observability

Public evidence supports careful and qualified statements about psychological injury in general insurance and workers compensation settings. APRA's NCPD analysis reports a rising share of claim costs associated with mental and nervous system categories, and highlights the role of psychological harm in longer claim duration and higher costs. It does not, on its own, support strong causal claims that psychological injury is the dominant driver of public liability premium outcomes, unless reformers compel public liability specific claims pathway and cost split microdata, including representation, litigation steps, settlement channel and defence handling costs.[77]

The Terms of Reference require findings about access to insurance that meets contemporary business needs, including public liability, professional indemnity, cyber and business interruption. APRA Level 1 NCPD releases are useful for portfolio level indicators such as written premium per risk, risks written and claim metrics. They do not observe the practical access variables that define availability, adequacy and stability as experienced by

[77] Australian Prudential Regulation Authority, Trends in General Insurance Claims and Affordability, Insights from the National Claims and Policies Database (Report, 4 May 2023) 7 to 9, 53 to 54.

SMEs and community organisations, because the public releases are not quote and renewal funnel datasets and they do not publish coded term change fields at renewal.[78]

To keep inquiries report ready, access propositions should be treated as hypotheses unless and until the A1 and A2 production suites are compelled

Table 11 maps the common claim types in the ICA paper into the minimum production needed to make each proposition testable.

Table 11 Production mapping for decision critical claim types

Claim type, typical ICA proposition	**Why it is not testable on public data**	**Minimum production to test, fields**	**Schedule**
Coverage is unavailable for a stated sector	Public aggregates do not observe quote attempts, declines, no quote outcomes or markets approached	Quote request and outcome quoted declined no quote quoted not bound. Number of markets approached. Reason codes. Time to outcome. Sector code. Turnover or payroll band. Requested limits and excess	A1 QUOTES
Terms have tightened and exclusions increased	Public aggregates do not capture term structures or renewal changes	Renewal terms including limits excess key exclusions sublimits waiting periods. Coded term change flags at renewal	A1 POLICIES terms
Premium rises are driven by legal costs and litigation	Public evidence does not include claim pathway fields and legal cost splits by line and segment	Claim level pathway fields including represented yes no litigated yes no stage dates claimant legal costs where available defence legal costs handling costs settlement channel paid	A2 CLAIMS

[78] Australian Prudential Regulation Authority, 'National Claims and Policies Database Statistics' (Web Page, published 31 July 2024).

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		incurred by development point	
Reinsurance or capital drove premiums	Internal allocation and pricing loadings are not published in public aggregates	Reinsurance premium commission recoveries by line. Capital allocation method and hurdle rate by line. How these load into price. Attestations on allocation methods	A3 DRIVERS plus insurer attestations
Anecdotes of seven to fourteen times premium rises	Distributional evidence and like for like comparability are missing	Quote and renewal distributions by sector and size. Term comparability fields for limits and excess. Renewal notices and reason codes	A1 QUOTES plus A1 POLICIES

Table 12 Production triage recommended sequencing for compelled disclosure

Priority	Dataset	What it resolves in practical terms	Why it comes first
1	A1 QUOTES	Quote declines and no quote outcomes. Placement friction. Pricing distribution. Quoted not bound due to price. Like for like terms at point of purchase	Without this, availability remains anecdotal and the Inquiry cannot locate the access gap
2	A1 POLICIES renewals and coded term changes	Non renewals and cancellations. Term tightening at renewal including limits excess exclusions sublimits waiting periods	Converts yes but policies into measurable evidence and separates price effects from coverage degradation
3	A2 CLAIMS pathway and cost splits	Litigation rates. Legal cost inflation. Attribution tests for psychological injury and related categories. Duration drivers	Tests causal narratives against observable claim pathways and cost components
4	A3 DRIVERS allocations	Reinsurance capital and expense contribution to premiums by class	Needed to test premium driver claims and avoid

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	and attestations		attributing price movements solely to legal settings

The safe finding on the current record is narrow. Public evidence can support qualified statements about psychological injury and claims mix trends. It cannot support confident causal attribution to public liability premium outcomes without public liability specific pathway and cost split production.[79]

The larger point for the Inquiry is structural. Access failures and terms tightening sit in quote and renewal outcomes and renewal term architecture, which are not observable in APRA Level 1 public aggregates.[80] If reformers want findings that will survive critique, it should seek A1 QUOTES and A1 POLICIES first in the sectors alleged to be under stress, then test causal stories using A2 CLAIMS, and only then consider targeted reform levers.

[79] Australian Prudential Regulation Authority, Trends in General Insurance Claims and Affordability (n 76) 7 to 9, 53 to 54.
[80] Australian Prudential Regulation Authority, 'National Claims and Policies Database Statistics' (n 77).

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Assessment and likely impact of accepting the ICA's reform package

ICA proposes a civil liability reform package to address claimed public liability affordability and availability problems. The package centres on narrowing compensable loss, including psychological injury and nervous shock. It also proposes changes to damages quantification, including gratuitous care. It proposes reductions in transaction costs, including legal costs and pre litigation processes. It also proposes measures directed at claimed sources of claim inflation, including worker to worker recoveries and claim farming.

This Part's replication audit establishes that most decision critical ICA propositions are not currently testable on public evidence, including the strongest narratives about availability and term tightening. The project's quantitative work supports the magnitude and trend layer, meaning aggregate premium movement and its definition sensitivity. It also provides an affordability lens by expressing premium movement relative to business scale. The project does not support a reliable estimate of the premium or access impact of any reform package without A1 to A3 production. That is because the decisive access variables, meaning quote outcomes, non renewals, cancellations, and coded term changes, and the decisive causal attribution fields, meaning claims pathway, cost splits, and insurer driver allocations, are not observed in public datasets.

Accordingly, the impact assessment below is expressed as:

1. Mechanism based expectations, meaning what would occur if reforms work as intended.
2. Risks and failure modes, meaning how reforms can fail or create offsetting costs.
3. Evidence requirements and sequencing, meaning what must be measured to know whether reform improves access rather than redistributing loss.

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This project's costings and modelling establishes:

1. **Aggregate trend and definition sensitivity.**

   The project replicates APRA and NCPD aggregate series for public and product liability and reconciles differences that arise from definitional and time basis choices, including underwriting year versus financial year and premium per risk versus portfolio measures. This work shows that premium growth estimates can vary materially depending on dataset choice and time basis. Since 2019 anchor statistics must be pinned to a defined series before they can be used as premises for reform.

2. **Market re sorting is observable, but access is not.**

   Risk counts, exposure proxies, and market composition indicators, including Lloyd's share, provide evidence consistent with portfolio level re sorting. They do not identify who is being declined, non renewed, or renewed on materially tightened terms.

3. **Terms and retentions matter.**

   Available APRA analysis, including deductible segmentation, shows premiums vary materially by deductible group. Premium change can also differ by deductible level.[81]

4. **Affordability is not solely price.**

   It can reflect risk being shifted back to insureds through higher retentions and weaker usable cover. This is not observable in Level 1 aggregates unless terms are measured directly.[82]

5. **Affordability stress testing is coherent but not dispositive of access.**

   The project's affordability approach expresses average premiums as a share of business scale, using turnover and payroll parameters to identify plausible stress

[81] Australian Prudential Regulation Authority, Insurance Risk and Capital and the Pricing of Insurance, discussion of premium dispersion by deductible and limits of aggregate reporting, Report, May 2023.
[82] Ibid.

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points and behavioural thresholds. It does not observe quote or renewal outcomes or policy terms. It therefore cannot, by itself, establish an access crisis or measure reform impacts.

The project's work can ground a disciplined assessment of what is happening in aggregates and where affordability stress plausibly concentrates. It cannot justify claims that civil liability reform will restore access or reduce premiums by a quantified amount without A1 to A3 production.

What accepting the ICA proposal would likely do, and where the risks sit

If reforms reduce expected loss cost, claim duration, or frictional legal cost for defined claim classes, insurers may respond through some combination of lower premiums, relaxed underwriting criteria, or less term tightening, including lower excess, fewer exclusions, and higher limits.

Aggregate premium movements and affordability stress testing establish that premium pressure can be material and may cross behavioural thresholds for some business types. They do not identify whether the binding constraint is price, capacity withdrawal, or term tightening.

Without quote, renewal, and terms microdata, apparent improvement can be illusory. Premium reductions can coincide with higher excesses, tighter exclusions and sublimits, and lower limits and longer waiting periods. The practical effect can be less usable cover even where the average premium appears to stabilise.

If the Committee is inclined to consider the proposal, A1 QUOTES and A1 POLICIES should be compelled to measure quote decline and no quote rates, non renewal and cancellation rates, and coded term change metrics at renewal, including excess up, limits down, exclusions and sublimits added, and waiting periods increased.

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Distributional effects and fiscal cost shifting

Civil liability reforms that narrow heads of damage or constrain quantum tend to shift costs away from premium payers, meaning SMEs, not for profits, and their customers. They tend to shift costs towards injured claimants and households through uncompensated loss, reliance on savings, informal care, and increased use of social security and health systems. That may be a defensible policy choice in some settings. It is not costless.

A practical consequence of narrowing liability or reducing damages is that some losses that would otherwise be met through liability insurance are borne by government systems, including income support and publicly funded health and disability services, and by households through informal care. This is cost reallocation rather than an automatic saving. It can be material even where premiums fall because fiscal channels operate through ongoing support needs and service use rather than one off settlement payments.

Civil liability reforms that narrow compensable heads of damage or constrain quantum can reduce insurer outlays and, potentially, premiums. The system cost does not disappear. It is commonly reallocated to State and Territory statutory schemes, especially where reforms affect worker to worker recoveries and reimbursement mechanics. It can also reallocate to Commonwealth programs, including income support and nationally funded supports, and to State and Commonwealth funded health services, including public hospitals and Medicare funded care.

This distinction is decision critical. A premium reduction can coexist with a net fiscal increase, or a redistribution from insureds to taxpayers, because government channels operate via ongoing service and income support rather than one off settlement payments.

This report uses an internal scenario costing model to estimate the order of magnitude of system cost reallocation under three parameter settings called Low, Base, and High. The

model is a mechanical allocation tool. It starts from a FY2023 baseline premium pool and incurred cost pool for public and product liability that is replicable from APRA NCPD Level 1 outputs and the associated reconciliation working in the project pack. It then applies stated reform effect assumptions to insurer outlays for each reform lever considered in this Part. It applies an explicit overlap adjustment so reductions are not double counted where levers interact. It then allocates the resulting reduction in insurer outlays into five destinations. These are workers compensation schemes, government funded services, households, an efficiency component for genuine transaction cost reduction, and an implied premium change based on a stated pass through assumption.

The Low, Base, and High settings are not forecasts, they are parameter sets that vary assumed effect sizes, overlap adjustment, and pass through to show sensitivity. The scenario outputs are contingent on those assumptions. They are not presented as observed fiscal outcomes. They do not imply causation. They are presented as a disciplined bound on fiscal exposure that should be tested and refined once claim pathway and quantum microdata are produced.

Table 13: Annual redistribution and implied premium impact (Low, Base, High cases)
All figures are $ million per year, model outputs. The implied premium change is shown separately.

Case (model parameters)	Insurer outlay reduction ($m per year)	Shift to WC schemes ($m per year)	Shift to govt services ($m per year)	Shift to households ($m per year)	Efficiency gain ($m per year)	Implied premium change ($m per year)	Implied premium change (per cent of FY2023 premium pool)
Low (overlap 0.70, pass through 25 per cent)	60.16	44.21	1.01	9.48	5.46	15.04	0.4

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Base (overlap 0.80, pass through 50 per cent)	234.94	73.68	27.42	76.96	56.88	117.47	3.1
High (overlap 0.90, pass through 100 per cent)	721.6	103.15	160.08	223.42	234.95	721.6	19.3

Even on the Base case, the modelled government borne cost shift is $27.42 million per year in services plus a $73.68 million per year shift into State and Territory workers' compensation schemes. In the High case, government exposure rises to $160.08 million per year in services plus $103.15 million per year in workers' compensation schemes.

The model's lever structure makes the cost shift pathways explicit:

- Worker to worker recoveries reform reclassifies costs from liability policies to workers' compensation schemes. This increases statutory scheme costs unless offset elsewhere.
- Care damages reform reduces insurer funding of care. This increases reliance on public disability supports and household informal care.
- Non economic loss and general damages changes reduce cash compensation. The substitutes are household coping and government health and income supports where incapacity persists.
- Limitation and notice changes reduce the number and value of claims paid. Substitutes skew toward households and government services depending on claimant capacity and severity mix.
- Process and legal cost controls are the main source of efficiency gains in the model. They still require claim pathway evidence to test whether costs reduce or reappear elsewhere through additional procedure and contest.

Table 14: Base case lever breakdown

All figures are $ million per year, Base case.

Lever (Base case)	Insurer outlay reduction	To WC schemes	To govt services	To households	Efficiency
Worker to worker recoveries reform	89.24	62.47	0	0	26.77
Psychological injury change	16.71	0	8.69	8.02	0
Care damages reform	70.61	0	16.66	53.95	0
Non economic loss and general damages	28.38	0	2.06	26.32	0
Legal cost and process controls	22.03	0	0	0	22.03
Limitation and notice reform	6.04	0	0	6.04	0
Dangerous recreation	1.85	0	0	1.85	0
Nervous shock change	0.09	0	0	0.09	0
Total Base	234.94	73.68	27.42	76.96	56.88

In the Base case, the government services exposure is driven primarily by care damages reform at about $16.66 million per year and psychological injury change at about $8.69 million per year. The workers' compensation schemes exposure is driven almost entirely by the worker to worker recoveries lever at about $62.47 million per year.

Fiscal cost shifting and program mapping

The project's cost shift model separates government impacts into two buckets:

1. Workers' compensation schemes in the States and Territories. This is an explicit shift line for the worker to worker channel.
2. Government services across Commonwealth and State and Territory budgets. This is an aggregate services bucket capturing substituted use of publicly funded supports, including health, disability supports, and income support proxies.

The workers' compensation component is directly attributed to State and Territory schemes by model design. The services bucket cannot be uniquely allocated across

programs using public data alone. That requires claimant level outcomes, including transitions into DSP and NDIS and incremental health utilisation. Those are not observable without A2 microdata.

For reporting now, the section maps the services bucket to program lines using published spending benchmarks and transparent scenario assumptions. This makes the mapping replaceable once A2 outcomes exist.

Program mapping method used for this section

Step 1: Split services into three program classes, as an assumption. NDIS type disability supports. Health services. Income support.

Step 2: Allocate each program class between Commonwealth and State and Territory, using benchmarks.

> Health funding split in 2022 to 23 is Australian Government $101.5 billion and State and Territory governments $77.3 billion.[83]
>
> For NDIS, this section uses an illustrative benchmark where the Commonwealth funds more than half of total scheme costs, with States and Territories contributing the remainder under bilateral agreements.[84]

Step 3: Bound plausible program mix with two scenarios, as assumptions.

Scenario A disability heavy. Scenario B health heavy.

Table 15: Annual and 10 year government program impacts (Base case)

All figures are $ million. Ten year is a simple undiscounted sum, annual times 10.

[83] Australian Institute of Health and Welfare, Health Expenditure Australia 2022-23, web report, "Australian Government spending" and "State and territory government spending", 2022-23 totals.

[84] Parliamentary Library, Parliament of Australia, National Disability Insurance Scheme: a Quick Guide, Research Quick Guide, 2021-22, statement on Commonwealth funding responsibility for the balance of NDIS costs and that the Commonwealth contributes more than half of total scheme costs.

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Scenario A. Disability heavy allocation. 50 per cent NDIS. 20 per cent health. 30 per cent income support.

Program and budget holder	$m per year	$m over 10 years
Commonwealth. NDIS component	8.09	80.89
Commonwealth. Medicare and other health component	3.12	31.15
Commonwealth. Income support. DSP and related proxies	8.23	82.25
State and Territory. NDIS component	5.62	56.22
State and Territory. Public health component	2.38	23.79
State and Territory. Workers' compensation schemes. Worker to worker channel	73.68	736.81
Total Commonwealth	**19.44**	**194.29**
Total State and Territory	**81.69**	**816.82**
Total governments	**101.11**	**1011.11**

Scenario B. Health heavy allocation. 30 per cent NDIS. 50 per cent health. 20 per cent income support.

Program and budget holder	$m per year	$m over 10 years
Commonwealth. NDIS component	4.85	48.54
Commonwealth. Medicare and other health component	7.81	78.1
Commonwealth. Income support. DSP and related proxies	5.48	54.84
State and Territory. NDIS component	3.37	33.72
State and Territory. Public health component	5.96	59.47
State and Territory. Workers' compensation schemes. Worker to worker channel	73.68	736.81

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Total Commonwealth	**18.14**	**181.38**
Total State and Territory	**82.99**	**830**
Total governments	**101.11**	**1011.38**

On these assumptions, the model implies total government exposure of about $101 million per year, or about $1.0 billion over 10 years, once the explicit workers' compensation shift is included. The dominant exposure in this model is the State and Territory workers' compensation channel.

Table 16: Program and jurisdiction breakdown (annual)

All values are $ million nominal per annum. Two mixes are shown to give a range for how the government services component may land across programs.

Scenario	Cth NDIS	State NDIS	Cth income support	Cth health	State health	State workers' comp shift	**Total Cth**	**Total States**	**Total all governments**
Base Mix A NDIS heavy	8.09	5.62	8.23	3.11	2.37	73.68	**22.43**	**81.67**	**101.1**
Base Mix B health heavy	4.85	3.37	5.48	7.78	5.93	73.68	**18.11**	**82.98**	**101.1**
High Mix A NDIS heavy	47.22	32.82	48.02	18.17	13.84	103.15	**113.41**	**149.81**	**263.23**
High Mix B health heavy	28.33	19.69	32.02	45.44	34.6	103.15	**105.79**	**157.44**	**263.23**

Table 17: Program and jurisdiction breakdown (10 year totals)

All values are $ million nominal over 10 years. This is simple multiplication of Table 14 by 10. No discounting.

Scenario	Cth NDIS	State NDIS	Cth income support	Cth health	State health	State workers' comp shift	**Total Cth**	**Total States**	**Total all governments**
Base Mix A NDIS heavy	80.9	56.2	82.3	31.1	23.7	736.8	194.3	816.7	1011

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Base Mix B health heavy	48.5	33.7	54.8	77.8	59.3	736.8	181.2	829.8	1011
High Mix A NDIS heavy	472.2	328.2	480.2	181.7	138.4	1031.5	1134.2	1498.1	2632.3
High Mix B health heavy	283.3	196.9	320.2	454.4	346	1031.5	1057.9	1574.4	2632.3

Even if reforms reduce insurer outlays and premiums, the scenario modelling indicates a fiscal substitution range of about $101 million to $263 million per year, or about $1.0 billion to $2.6 billion over a decade, onto Commonwealth and State systems, depending on intensity.

These are scenario mappings. They should be converted into measured estimates once A2 is compelled. Until then, they operate as fiscal risk bounds to prevent the Inquiry treating premium reductions as a net saving by default.

Fiscal cost shift benchmarks and how to quantify fiscal exposure once A2 exists

The Inquiry record still cannot support a credible estimate of total fiscal cost shifting from the ICA proposal because the decisive inputs are not observable in public datasets. Those inputs include the number of affected claims, the change in paid and incurred amounts by head of damage, and subsequent utilisation of income support and health and disability systems. Those inputs require claim level pathway and quantum microdata under A2 CLAIMS and, depending on the lever, renewal terms and access microdata under A1.

However, the Committee can be provided with stable unit cost benchmarks for the main fiscal channels so that, once A2 is produced, the fiscal shift can be quantified mechanically and transparently.

Table 18: Fiscal cost shift benchmarks

Unit costs for government borne substitutes

Fiscal channel (budget holder)	**What cost shift looks like in practice**	**Unit cost benchmark (AUD)**	**Source**
Disability Support Pension (Commonwealth)	Claimant moves onto longer term income support due to reduced compensation and or reduced capacity to fund supports	Use the current maximum single fortnightly rate at the time of analysis and convert to an annualised benchmark	DSS, Guides to Social Policy Law, Social Security Guide, common rates tables for current benefit and pension rates.[85]
NDIS participant plan payments (Commonwealth and States)	Claimant becomes or remains an NDIS participant and relies more heavily on publicly funded supports	Total payments and active participant counts can be used to derive an indicative average annual amount per active participant for the reference year	NDIA, National Quarterly Performance Report, National Dashboard as at 30 June 2024.[86]
Public hospital admitted acute episode (State and Commonwealth)	Increased admitted hospital utilisation where private funding and compensation is constrained	$6,239 average cost per admitted acute episode, public sector, 2022-23	IHACPA, National Hospital Cost Data Collection, Public Sector Report, Round 27, 2022-23.[87]
Emergency department presentation	Emergency department utilisation associated with	$980 average cost per emergency department presentation, 2022-23	IHACPA, National Hospital Cost Data Collection, Public

[85] Department of Social Services, Guides to Social Policy Law, Social Security Guide, current rates and common rates tables, accessed 31 January 2026.
[86] National Disability Insurance Agency, National Quarterly Performance Report, National Dashboard as at 30 June 2024, accessed 31 January 2026.
[87] Independent Health and Aged Care Pricing Authority, National Hospital Cost Data Collection Public Sector Report 2022 to 23 (Report) 6, 7, 8.

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(State and Commonwealth)	injury and or mental health sequelae		Sector Report, Round 27, 2022-23.[88]
Non admitted service event (State and Commonwealth)	Outpatient and clinic visits including mental health	$403 average cost per non admitted service event, 2022-23	IHACPA, National Hospital Cost Data Collection, Public Sector Report, Round 27, 2022-23.[89]

These benchmarks do not solve the fiscal question on their own. They make the fiscal question computable once A2 CLAIMS produces the missing quantities, namely affected claim counts, measured reductions by head of damage, and measured substitution into supports and services.

How fiscal cost shifting is estimated once A2 CLAIMS exists

For each reform lever, fiscal cost shifting can be estimated by summing across affected claims. For each claim, the estimate combines three components.

First, any increase in income support payments, valued using an agreed rate and a measured duration.

Second, any increase in disability supports, valued using an agreed benchmark and a measured duration. The analysis should separate additional reliance on supports from baseline utilisation.

Third, any incremental publicly funded health utilisation, valued using episode counts multiplied by IHACPA unit costs.

[88] Ibid.
[89] Ibid.

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Once A2 CLAIMS data is available, probabilities and durations can be measured rather than assumed. The calculation then becomes a transparent accounting identity rather than a debate about narratives. It also forces the policy trade off into the open because it shows who pays after the reform, not only whether insurer outlays fall.

Even if the ICA package reduces insurer outlays and premiums at the margin, this report recommends not treating that reduction as a net saving unless it is demonstrated that costs have not been shifted onto Commonwealth and State budgets through income support, NDIS type supports, public hospitals and non admitted care, and onto households through informal care. Any recommendation to proceed should be conditioned on a distributional and fiscal impact statement based on A2 CLAIMS production and on post implementation monitoring using A1 and A2 fields.

The ICA paper contains normative propositions about fairness and balance. Those cannot be resolved by replication, they require explicit policy choice. this report recommends treating affordability and fairness as a trade off question rather than a single metric optimisation.

If reform proceeds, it is integral to require a distributional impact statement, meaning who loses compensation for what harm types and what alternative supports exist, and post implementation monitoring using A1 and A2 fields so the trade off is transparent rather than implicit.

Psychological injury and nervous shock propositions

APRA analysis supports qualified observations about claims trends and the limitations of aggregate data. It does not, on its own, support strong causal claims that psychological injury is the dominant driver of public liability premium increases absent public liability specific claim pathway and cost split evidence.

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If reforms target psychological injury and nervous shock in public liability, the potential benefit is that reduced uncertainty and reduced tail risk for defined harm categories could reduce expected loss costs in some portfolios. The main risks are that over broad tightening can reduce meritorious compensation, displace disputes into other doctrinal pathways through relabelling and pleading strategy, and increase disputation and expert costs rather than reduce them.

A2 CLAIMS must code public liability claims by loss type and pathway, including representation, proceedings issued, stage timing, and cost components including defence legal, handling, settlement channel, duration, and paid and incurred development.

Transaction costs and process reforms including legal costs and Queensland style pre action processes

ICA advances propositions about legal costs and process design, including support for Queensland style pre court procedures. Queensland uses structured pre action steps in personal injury, including notice requirements, information exchange, compulsory conferences and mandatory final offers before proceedings in many matters. Those mechanisms can reduce uncertainty and narrow issues where parties comply early and disclose properly.

The risk is not the idea, but the execution. A poorly enforced process can add steps without reducing duration. Static thresholds can decay in real terms if not indexed. Impacts can also be uneven across cohorts, including self represented claimants, vulnerable claimants, and claimants in regional areas with limited expert access.

Evidence requirement. Any proposal sold as reducing friction must be testable against outcomes. A2 CLAIMS should include time stamps, representation status, dispute

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escalation flags, and cost splits so changes in duration and cost are measurable rather than asserted.[90]

Worker to worker recoveries and recovery complexity

ICA makes strong propositions about worker to worker recoveries, including claim size, cost shares, underwriting difficulty and deductibles. The replication audit classifies multiple worker to worker propositions as not testable on the public record as asserted.

If reforms target worker to worker recoveries, the potential benefit is simplification and reduced reserving uncertainty in defined cases. The central risk is cost shifting. The reform can re allocate costs from liability policies to State and Territory workers compensation schemes without reducing total system cost. It can also change incentives for injury prevention, return to work, and litigation behaviour.

Evidence requirement. A2 CLAIMS should identify worker to worker matters, separate reimbursement components, and record duration, settlement channel, and defence and claimant legal cost proxies where available. If ICA asserts a material premium driver effect at class level, A3 DRIVERS may also be required.

Claim farming

ICA asserts claim farming as a driver of claim frequency and cost, with links to fraud and organised conduct narratives. Many such propositions are not testable on public evidence in the form asserted.

If policy targets claim farming, the best case is targeted enforcement that reduces low merit inflows and frictional costs. The main failure mode is over reach. Broad design can chill legitimate claims, raise barriers for vulnerable claimants, and displace behaviour into

[90] Explanatory Notes, Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 (Qld) and associated legislative scheme addressing claim farming in Queensland personal injury settings.

harder to detect channels. Queensland has legislated against claim farming in personal injury contexts, which helps illustrate that this issue can be framed as targeted misconduct control rather than a basis for across the board restriction of substantive rights.

Evidence requirement. At minimum, A2 CLAIMS needs a measurable lead source or referral pathway field, or defensible proxies, plus outcomes such as withdrawal, repudiation, and litigated proportion.

Decision summary

Table 19. Assessment of ICA reform package mechanisms, present evidentiary status, key risks, and required production

Reform bucket as advanced by ICA	Intended mechanism	What our project establishes now	Key risks if accepted on current record	What must be produced to assess impact
Narrower liability and damage heads including psychological injury and nervous shock	Reduce expected loss cost and tail risk	Aggregate trend work does not establish public liability causation and psychological driver propositions are not validated on public evidence	Compensates less harm, increases disputation, shifts costs to households and health systems	A2 CLAIMS including public liability loss type pathway and cost splits
Quantification changes such as gratuitous care	Lower quantum and reduce exaggeration risk	Not established on public evidence as a premium driver	Undervalues real care needs and shifts costs to families and disability supports	A2 CLAIMS including quantum components and care claim distributions

Transaction cost and process reforms including legal cost caps and pre action design	Reduce duration and frictional legal costs	Not testable on the current public record and modelling cannot quantify the effect	Adds layers, thresholds decay without indexation, uneven impacts across cohorts	A2 CLAIMS including timing, representation, litigation flags and cost splits
Worker to worker recovery reforms	Reduce complexity, duration and reimbursement uncertainty	Key worker to worker cost share claims are not testable publicly	Scheme cost shifting, incentive effects, unintended litigation behaviour	A2 CLAIMS including worker to worker coding, reimbursement components, duration and costs plus A3 if premium impact is claimed
Claim farming controls	Reduce low merit claim inflows	Not testable publicly as asserted	Chills legitimate claims and displaces behaviour	A2 CLAIMS including pathway indicators or proxies and outcomes

Recommended approach

Given the audit findings and the limits of what current aggregate modelling can establish, this report recommends not accepting the ICA reform package as a single solution on the current record. The appropriate sequence is to compel A1 QUOTES and A1 POLICIES first in the sectors and regions alleged to face the most severe access constraints, test whether observed access failures are predominantly price driven, term driven, or capacity driven, then compel A2 CLAIMS to test driver narratives and pathway cost mechanisms, and only then consider targeted legal reforms where a measurable access failure is demonstrated and the likely distributional effects are transparent.

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Conclusion

This report applies one decision standard throughout, that Parliament should not legislate on contested premises unless the premises are replicable on the public record or can be made testable through specified data production.

On that standard, the Insurance Council of Australia October 2025 reform case is not fit to support package style civil liability change today.

Because the ICA October 2025 reform case is not replicable on the public record, legislating on it now risks shifting material costs from insurers and insureds onto governments and households while any premium reduction remains untestable without the missing datasets. On our scenario ranges, the plausible order of magnitude is roughly $101 million to $263 million per year in cost shifting, with the principal channels including greater reliance on income support and disability systems, increased public hospital and related health costs, and uncompensated care and support borne by families and communities. In practical terms, this would substitute a contested and unmeasured premium promise for a more certain transfer of costs into budgets and household balance sheets, with the distributional burden concentrated on those least able to absorb it.

The record already supports three clear findings. Premiums have risen while risks written have fallen, which is consistent with an access and affordability failure in markets where insurance now functions as a permission to operate. The decisive mechanisms that would justify narrowing rights are not observable from public datasets, including how many claims would be affected, what heads of damage would change, and what would happen to claimant outcomes and to insured business viability. The conduct and process failures that generate delay, dispute cost and deadweight loss are real, observable, and within regulatory reach without weakening rights.

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This report recommends treating proposed civil liability restrictions as a last resort, not a default lever. If Parliament narrows rights on a non testable record, it risks shifting substantial costs onto governments, households, and small operators while any premium reduction remains untestable. That is not a defensible basis for law reform, particularly in a permissioning market where the practical question is not only price, but whether usable cover is available on workable terms.

This report has taken the reader through a transparent, replication-led pathway designed to separate what is currently observable from what is asserted but not testable. We began by defining a decision standard and then auditing the ICA's key claims against the public record, identifying precisely where replication fails and what minimum data production would resolve the ambiguity. We then used APRA's NCPD Level 1 reporting to replicate the market indicators that can be measured on the record, and we reconciled definitional and time-base sensitivities so that any inferences rest on like-for-like comparisons. Where critical inputs are not observable in aggregate datasets, we have specified the exact microdata needed and provided unit-cost benchmarks so that once the missing data is produced the fiscal and distributional impacts can be quantified mechanically and transparently, without relying on opaque modelling or non-verifiable assumptions.

This report recommends four practical asks.

First, compel the minimum datasets needed to test the ICA narrative. That includes claim pathway and quantum microdata at a level that allows replication of the key causal claims, and access microdata that observes quotes, renewals, non quote outcomes, reasons, and term usability. Without that, the reader cannot measure whether reform changes access, merely who bears the cost.

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Second, adopt access observability as a regulatory requirement. Require insurers and intermediaries to report quote and renewal funnels and outcomes by relevant segments, including small business and not for profit cohorts, and to report the features that drive non usability of cover. Treat no quote outcomes and unusable terms as market outcomes that must be measured, not anecdotes that can be waved away.

Third, prioritise conduct and process reform that reduces friction costs without weakening rights. Strengthen and enforce claims handling, internal dispute resolution, and distribution obligations. Target practices that predictably manufacture delay and dispute, because those costs flow into premiums and into real economy viability.

Fourth, preserve the accountability function that personal injury and plaintiff insurance lawyers provide in these markets. Litigation is not just a cost centre. It is a discipline mechanism that detects non compliance, clarifies obligations, and supports fair resolution when bargaining power is uneven. Reforms that reduce access to representation or remedies can increase downstream cost and harm, even if they appear to reduce transaction volume on paper.

Taken together, these steps give the reader a clean implementation path. Make the market observable. Fix the conduct mechanisms that create avoidable cost. Test any civil liability proposition on replicable data before touching substantive rights. That sequence protects small businesses and community organisations from both unaffordable cover and non operational cover, while keeping Parliament on evidence rather than assertion.

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Appendix and annex

Appendix 1 ICA claim replication ledger claim cards ICA PL 01 to ICA PL 60

Appendix 1 reproduces verbatim extracts from the Insurance Council of Australia October 2025 paper. Page references in the table refer to that document. Verdict and testability fields are the authors classification using the method described in Part 3.

Source: Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform (October 2025).

Claim ID	Page	Topic	Verdict	Public testability tier	Exact quote
ICA-PL-01	3	pricing	Partly supported	Public (NCPD analysis/appendices)	“Since 2019, in response to deteriorating performance and increasing claim headwinds, the average cost of public liability insurance has increased by 55-60%, outpacing inflation.”
ICA-PL-02	3	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	“Many small businesses and not-for-profit organisations have experienced even higher increases. For example, some live music venues have experienced premiums increase from $10,000-$20,000 to $140,000-$160,000.”
ICA-PL-03	4	pricing	Partly supported	Public (NCPD analysis/appendices)	“The Australian Prudential Regulation Authority (APRA) and insurance actuaries have identified rising claims costs as the primary driver… These factors have led to unsustainable high loss ratios and unprofitability in the public liability insurance market, resulting in: • Increasing premiums • Higher claims excesses/deductibles • Reduced capacity/coverage/appetite.”

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ICA-PL-04	4-5	reform	Not testable with public data	Not public (needs Level 2 or insurer data)	"These types of businesses provide valuable contributions to the economic and social fabric of communities… However, there may be limited further actions these businesses can take at an individual level to de-risk their offerings. In this context, civil liability (tort) reform is a critical step to meaningfully reducing liability risk. This sort of reform has a proven track record of addressing insurance affordability and availability issues."
ICA-PL-05	5	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"The Ipp review saw reforms to civil liability settings which were not consistent across Australia but were successful in stabilising the public and products liability market, leading to improved insurer appetite to write public liability policies. Businesses, professionals, occupation groups and community organisations benefited from greatly improved availability of coverage."
ICA-PL-06	5	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"The effectiveness of those reforms has eroded over time due to expansive judicial decisions, a more litigious society, an active plaintiff lawyer environment and increasing claims costs particularly resulting from psychological injury claims."
ICA-PL-07	6-7	pricing	Partly supported	Public (NCPD analysis/appendices)	"Significant increases in claims for psychological injury… are one of the biggest drivers of increasing claims costs for public liability insurance as well as other liability type classes, such as workers compensation and CTP insurance… This is supported by APRA claims data, which shows an increasing number of psychological injury claims in recent years."
ICA-PL-08	7	pricing	Partly supported	Public (NCPD analysis/appendices)	"Compensation awarded for psychological injury claims also continues to rise, with Safework Australia finding psychological injury claims can cost four times that of physical injury compensation claims."

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ICA-PL-09	7	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Psychological injuries are now treated equivalently to physical injuries for civil liability purposes… There has also been a broadening of psychiatric illness definitions with the concept of 'normal fortitude' becoming blurred… due to higher numbers of people being diagnosed with conditions that allow a psychological injury claim."
ICA-PL-10	8	legal	Not testable with public data	Not public (needs Level 2 or insurer data)	"These types of changes [Vic and NSW psych reforms] have effectively reduced the number of psychological claims and controlled compensation costs within these schemes."
ICA-PL-11	8	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"However, to date, there have been no such changes to civil liability settings."
ICA-PL-12	8-9	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Insurers have reported a substantial increase in the number and cost of nervous shock claims made by family members of injured people… This increase in nervous shock claims is part of the increasing claims costs identified by APRA that are driving the increasing costs of insurance premiums."
ICA-PL-13	9	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	[Example of elderly hospital patient nervous shock claims: many relatives and in-laws, none treated, expert based on uncorroborated accounts]; "The cost involved just to respond to these claims… was so high that the claims were settled to avoid excessive costs."
ICA-PL-14	10-11	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Damages sought for gratuitous care can amount to a significant proportion of the total of a personal injury claim… Unlike commercial care… it can also be open to potential claims exaggeration."

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ICA-PL-15	11	pricing	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"The availability of Sullivan v Gordon damages will continue to increase claims costs and liability risk in the community. These additional costs and liability risks increase the underwriting risk for insurers… resulting in more expensive public liability insurance premiums."
ICA-PL-16	12-13	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Despite these provisions, judicial decisions over time have diminished their effectiveness, limiting the protections intended for business operators… The current insurance access challenges faced by segments of the leisure and tourism industry… underscore the critical need to review these civil liability provisions."
ICA-PL-17	14-15	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"APRA data shows recent WTW claims are on average approximately $260,000, which is more than double the average size of other bodily injury claims… Finity Consulting believe WTW claims comprise between 20%-70% of bodily injury claims costs for individual liability portfolios…"
ICA-PL-18	15	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Finity Consulting and APRA have identified the higher number and cost of these claims have added to the increasing cost of public liability insurance for businesses."
ICA-PL-19	16	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Workers compensation insurers may benefit financially through recovery… which allows workers compensation premiums to be lower than they otherwise would be. However, the additional costs involved in WTW claims means the total costs to businesses across workers compensation and public liability insurance is likely to be higher."
ICA-PL-20	21	pricing / legal	Not testable with public data	Not public (needs Level 2 or insurer data)	"According to APRA, recent increases in claims costs (and subsequent increases in insurance premiums) has also driven legal and litigation costs inflation… it is not unusual for law firms to attribute 50% of an 'inclusive of costs settlement' towards legal costs and disbursements."

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ICA-PL-21	21	legal / reform	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Across jurisdictions there is an inconsistent approach to caps on recoverable legal costs… [NSW] cap only applies to claims up to $100,000 and has not been increased since 2002… with the rising average cost of claims, fewer claims fall under the cap, diminishing its effectiveness."
ICA-PL-22	22	legal / pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Claim farming… has been identified as a significant driver of personal injury claims costs… Claim farming has been shown to increase the frequency of claims, including those without merit… activities are also linked to fraudulent claims and organised crime…"
ICA-PL-23	23	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Growing public liability claims costs driven by high quantum 'worker to worker' claims represent one of the biggest premium cost pressures."
ICA-PL-24	23	reform	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"…clarifying liability settings for recreational and leisure activities would immediately improve availability and affordability of insurance cover for many businesses in the tourism and recreation industry."
ICA-PL-25	20	legal / pricing	Partly supported	Public (NCPD analysis/appendices)	"Consequently, venues and their insurers often have no choice but to pay a 'commercial settlement' close to the full compensation amount sought by the claimant, along with significant legal fees incurred by the claimant's lawyer."
ICA-PL-26	3	availability	Supported	Public (NCPD analysis/appendices)	"Public liability insurance, which provides coverage for personal injury and property damage claims brought by a third party, serves as a crucial financial safety net for businesses, not-for-profits, and community organisations."
ICA-PL-27	3	availability / pricing	Partly supported	Public (NCPD analysis/appendices)	"However, increasing litigation and rising claims costs have made it difficult for some businesses to obtain the necessary coverage, threatening their viability.

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					Similarly, grassroots community and non-profit organisations face uncertainty due to escalating premiums."
ICA-PL-28	3	legal / reform	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"While risk management and mitigation are essential to ensuring ongoing market viability, the legal framework, and civil liability settings also play a significant role in determining underwriting risk and ensuring access to public liability insurance. This paper outlines the urgent need for governments to review and reform civil liability settings… to maintain a sustainable public liability insurance market."
ICA-PL-29	4	pricing / availability	Partly supported	Public (NCPD analysis/appendices)	"Availability and affordability of insurance products is driven by risk. In the case of civil liability, these risks can be influenced by the actions of the business, and by the civil liability settings in Australia. To create a more sustainable public liability insurance market, we must address two key areas: 1. Risk Management and Mitigation… 2. Civil Liability Settings…"
ICA-PL-30	4	pricing	Supported	Public (NCPD analysis/appendices)	"Where risk management and mitigation practices and procedures have been improved, it can take some time for these measures to flow through to the claims experience and be reflected in the cost of premiums."
ICA-PL-31	5	availability	Supported	Public (NCPD analysis/appendices)	"Several business sectors have unique characteristics and underwriting risks that mean risks remain high regardless of risk management practices in place."
ICA-PL-32	5	availability / reform	Not testable with public data	Not public (needs Level 2 or insurer data)	"These types of businesses provide valuable contributions to the economic and social fabric of communities and are often keystone businesses in regional areas. However, there may be limited further actions these businesses can take at an individual level to de-risk their offerings."
ICA-PL-33	6	legal	Supported	Public (NCPD analysis/appendices)	"Civil liability settings and regulations must be designed to balance the very real needs of injured people, whilst ensuring businesses can still access the insurance

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					they need to keep operating. Access to compensation for injured people and damaged property needs to be fair and reasonable."
ICA-PL-34	6	reform	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Reforms must also look to address inefficiencies in the current compensation system. Ideally, these reforms will have little to no impact on injured people's access to compensation but would remove or lower additional costs such as legal fees and expert evidence costs."
ICA-PL-35	7	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"It has also become commonplace for initial physical injury claims to be accompanied by claims for psychological injuries, with larger damages awarded."
ICA-PL-36	7	legal / pricing	Partly supported	Public (NCPD analysis/appendices)	"This is made more complex as psychological injuries are extremely difficult to objectively assess because they are highly dependent on self-reporting. These injuries can also develop or appear long after the initial physical injury which creates delayed payments and increased claim durations, adding to costs."
ICA-PL-37	7	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"There are also debates about the health and recovery benefits of providing broad access to compensation for psychological injuries through common law and statutory schemes. Issues include individuals suffering from poor mental health on average faring worse when compensation or financial benefits are involved."
ICA-PL-38	7	legal / pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"This has been done to ensure greater balance between providing compensation, and the cost of insurance premiums. It has also been necessary to ensure ongoing scheme sustainability." (re Victorian psych reforms)
ICA-PL-39	9	reform / pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"This increase in nervous shock claims is part of the increasing claims costs identified by APRA that are driving the increasing costs of insurance premiums.

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					This warrants relatively simple legislative changes to address the inflation pressure these claims have on premiums."
ICA-PL-40	10	reform	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Civil liability legislation should be amended across jurisdictions so that damages for gratuitous care… are calculated on the basis of the average minimum wage… rather than a commercial rate. This approach ensures fairness by reflecting that gratuitous care is provided by family members as opposed to paid staff, avoiding overcompensation through commercial rates."
ICA-PL-41	11-12	legal / pricing	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Limitations on non-economic loss damages are designed to keep the overall cost of damages under control and to direct most of the compensation available to those with more serious injuries, which in turn helps insurers better price and underwrite risk."
ICA-PL-42	12	legal / pricing	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Assessment provided by injury scales can assist in more effective claims resolution by removing incentives for claimants and their lawyer to make unrealistically high compensation demands. The use of injury scales or WPI assessments also provide greater clarity… to underwrite and provide insurance for personal injury claims."
ICA-PL-43	12	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"It is the experience of insurers and Finity Consulting that injury assessment by reference to injury scales or WPI determined by medical experts provides significantly greater clarity and consistency in assessment compared to a determination by a non-medical practitioner (eg. courts or judges)."
ICA-PL-44	13	legal / availability	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Despite these provisions, judicial decisions over time have diminished their effectiveness, limiting the protections intended for business operators. The current insurance access challenges faced by segments of the leisure and tourism industry… underscore the critical need to review these civil liability provisions."

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ICA-PL-45	14	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"WTW claims are difficult to underwrite and extremely costly for businesses and their public liability insurers compared to other types of public liability claims."
ICA-PL-46	14	legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"The recovery provisions contained in many state-based workers compensation schemes… are often extremely complex, and not reflective of the extent to which a third party has caused or contributed to the worker's injury."
ICA-PL-47	14	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Significantly higher settlement amounts: WTW claims typically result in higher settlements due to their prolonged nature and requirement to pay/reimburse any payments and benefits paid by the workers compensation insurer. The size of the workers compensation reimbursement is often as much or more than the compensation provided to the injured person as part of the settlement."
ICA-PL-48	14	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Previously WTW claims were mainly… isolated to particular industries such as construction. However, these have increased significantly and moved into many other industries in Australia over recent years as the workforce has embraced flexible working arrangements such as increased use of labour hire and subcontracting."
ICA-PL-49	16	pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"As well as experiencing higher insurance premiums, businesses also carry higher deductibles and excesses for WTW claims compared with standard liability excesses, meaning they must carry more financial risk for these claims."
ICA-PL-50	16	legal	Partly supported	Public (NCPD analysis/appendices)	"Research suggests that long delays often involved in settling WTW claims can have a negative impact on people's long term health outcomes."
ICA-PL-51	16	legal / reform	Ambiguous pending	Public (NCPD analysis/appendices)	"From a fairness perspective, WTW claims are also problematic. This is because they provide some, but not all, workers who have suffered the same level of

			further specification		injury… with access to additional compensation… Compensation frameworks should provide fair and equitable access to compensation to all workers, regardless of who they work for and where they are working."
ICA-PL-52	18	legal	Ambiguous pending further specification	Not public (needs Level 2 or insurer data)	"In states lacking formal pre-litigation processes, minimal communication between plaintiff lawyers, defendants, and insurers is common during the initial years of a claim. Legal proceedings are frequently initiated just before the limitation period expires, with both parties withholding information tactically."
ICA-PL-53	18	legal / pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Queensland has addressed these issues effectively through the Personal Injury Proceedings Act (PIPA), which promotes efficient dispute resolution and reduces personal injury claim costs, leading to lower overall scheme costs compared to other states, highlighting PIPA's effectiveness."
ICA-PL-54	17	reform	Ambiguous pending further specification	Not public (needs Level 2 or insurer data)	"Clarifying that personal injury claims could only be made under either civil liability laws or the ACL, not both, would make the process simpler and cheaper. This amendment would not affect a claimant's ability to seek compensation. Instead, claimants would benefit from a more streamlined and expedient resolution of claims and reduce friction in the system."
ICA-PL-55	19	legal	Supported	Public (NCPD analysis/appendices)	"Limitation periods play an important role in ensuring defendants are not subject to indefinite legal exposure and in encouraging timely and efficient resolution of disputes… [They] are also crucial for insurers to underwrite risk and provide insurance, while also providing timely and efficient resolution of claims for injured individuals."
ICA-PL-56	19	legal	Ambiguous pending	Public (NCPD analysis/appendices)	"The practical effect of these multiple elements of discoverability is that it extends the time in which a personal injury action can be brought against a third-party and their insurers, and is not always effective in encouraging more

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			further specification		proactive commencement and resolution of claims and providing greater underwriting certainty to insurers."
ICA-PL-57	20	pricing / legal	Ambiguous pending further specification	Public (NCPD analysis/appendices)	"Having a clear and consistently applied timeline within which a claim must be brought provides insurers with greater certainty about their potential liability exposure and reduces the need to increase premiums to reflect the increased potential liability exposure."
ICA-PL-58	20	legal / pricing	Partly supported	Public (NCPD analysis/appendices)	"Prolonged claims processes, spanning years from the date of injury to final resolution, offer no benefit to the injured parties and can hinder their recovery and health. Typically, the primary beneficiaries of drawn-out claims are the lawyers on both sides, whose fees materially increase as the timeline extends."
ICA-PL-59	21-22	legal / pricing	Not testable with public data	Not public (needs Level 2 or insurer data)	"Claim farming (or claim harvesting) has been identified as a significant driver of personal injury claims costs… Claim farming has been shown to increase the frequency of claims, including those without merit… The unchecked growth of claim farming can encourage false claims and drive-up insurance premiums… Claim farming activities are also linked to fraudulent claims and organised crime…"
ICA-PL-60	22	reform	Ambiguous pending further specification	Not public (needs Level 2 or insurer data)	"However, given the increasingly sophisticated and cross-jurisdictional operations of claim farmers, comprehensive legislative reform at both state and federal levels are required to effectively address this issue."

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Annex 1 Data required to test the ICA propositions

Annex 1 identifies 60 discrete propositions advanced by the Insurance Council of Australia and records whether each proposition is supported on public evidence, partly supported, not testable with public data, or ambiguous pending further specification.

Most decision relevant propositions cannot be resolved from APRA aggregate releases alone. The public NCPD outputs focus on policy and claims data. They do not observe quote requests, quote outcomes, renewal decision funnels, or coded term change fields at renewal in a way that allows the Committee to test availability and adequacy claims.[91]

Accordingly, Annex 1 specifies the minimum datasets and codebooks required to make the Annex 1 propositions testable. The objective is practical. It is to convert narrative claims into measurable propositions that can be accepted or rejected on produced evidence rather than asserted as generalities.

Summary of minimum production objects

A1 QUOTES and A1 POLICIES are required to test access claims. This includes declinatures, no quote outcomes, non renewals, cancellations, and term tightening captured as coded fields such as higher excess, lower limits, exclusions, sublimits, and waiting periods.

A2 CLAIMS is required to test driver and pathway assertions. This includes representation, proceedings issued, duration, settlement channel, and cost splits that separate indemnity from defence and handling.

Where ICA claims rely on causal attribution, the minimum requirement is not only data, but a specified empirical design. This includes jurisdiction mapping, time mapping, a measurable outcome definition, and an identification strategy that can be audited.

[91] Australian Prudential Regulation Authority, National Claims and Policies Database Statistics and Data (Webpage).

Where ICA claims are underspecified, the first step is to compel ICA to specify the metric, population, and time basis before data can sensibly be compared.

Legend for Annex 1: Table 20

NONE means the claim is either assessable on public evidence or is a normative proposition where production does not change testability.

SPEC means the claim is too vague to test. ICA must specify metric, population, and time basis first.

A1 requires quotes, renewals, and policy terms to test availability and adequacy.

A2 requires claim pathway and cost split fields to test causal and driver narratives.

A3 requires insurer class level driver allocations, including expenses, reinsurance, and capital and margin assumptions, to test premium driver assertions.

EXT means the proposition relies on external statutory scheme evidence such as workers compensation or CTP. It should not be used as public liability proof without public liability specific testing.

Annex 1: Table 20 Production requirements by claim ID

Claim ID	Production needed	Why
ICA-PL-01	SPEC plus A1 if used as an access claim	Anchor statistic is definition sensitive and cannot be validated without metric and time basis. Distribution and terms are needed if it is relied on to prove access.
ICA-PL-02	A1	Extreme sector example needs quote outcomes and like for like terms. Not observable in aggregates.
ICA-PL-03	A1 plus A3	Primary driver and underwriting response claims require terms evidence and cost driver decomposition.
ICA-PL-04	A1 plus A2 plus A3 if pricing drivers asserted	Reform works is an effect claim requiring access outcomes and claim pathway and cost effects.
ICA-PL-05	SPEC plus A1	Improved appetite and availability is not measurable unless defined and tested via declinatures, non renewals, and terms.

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ICA-PL-06	SPEC plus A2 plus A1 if underwriting response asserted	Bundled causal narrative must be split into measurable parts and tested using pathway evidence.
ICA-PL-07	A2	Biggest driver claim requires public liability claim coding and cost attribution at claim level.
ICA-PL-08	SPEC and A2 if used to justify public liability reform	Four times depends on comparator. If relied on for public liability policy, it needs public liability specific psych cost shares.
ICA-PL-09	SPEC plus A2	Doctrinal and behavioural effect claim needs jurisdiction mapping and claim pathway testing.
ICA-PL-10	EXT and do not generalise, if extrapolated then A2	Statutory scheme claim requires primary scheme evidence. It is not proof about public liability without public liability claims testing.
ICA-PL-11	SPEC	Assertion about absence of changes needs defined scope, jurisdictions, and time.
ICA-PL-12	A2	Nervous shock frequency and cost claim needs pathway and cost split evidence.
ICA-PL-13	A2 plus documentary proof if relied upon	Case example needs underlying data and representativeness plus pathway and cost splits.
ICA-PL-14	A2	Significant proportion and exaggeration risk needs quantum distribution and cost components.
ICA-PL-15	A2 plus A3 if premium driver asserted	Causal path from damages head to premiums needs quantified contribution and pricing linkage.
ICA-PL-16	SPEC plus A1 if access challenges asserted	Doctrinal diminution claim needs mapping. Access challenges need A1 evidence.
ICA-PL-17	A2	Worker to worker average size and cost share claims require claim level coding and attribution.
ICA-PL-18	A2 plus A3 if premium driver asserted	Added to increasing cost is attribution needing claim evidence and pricing linkage.
ICA-PL-19	A2 plus A3	Total cost across schemes and lines requires recovery flows and allocation evidence.
ICA-PL-20	A2	Litigation cost inflation and cost shares require claim level legal and handling cost splits and pathway.

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ICA-PL-21	SPEC plus A2 if effects asserted	Cap regime claim needs jurisdiction and time mapping. Any cost effect needs pathway evidence.
ICA-PL-22	A2 plus A1 if access effects asserted	Claim farming incidence and impact not observable in aggregates. Needs measurable inflow pathway and outcomes.
ICA-PL-23	A2 plus A3	Biggest premium pressure needs quantified contribution and allocation linkage.
ICA-PL-24	A1 plus A2 if mechanism asserted	Immediate improve availability and affordability is an effect claim requiring quote and renewal outcomes.
ICA-PL-25	A2	Commercial settlement behaviour requires pathway evidence on timing, litigation, and cost splits.
ICA-PL-26	NONE	Definitional proposition.
ICA-PL-27	SPEC	Vague access and viability assertion needs measurable definitions.
ICA-PL-28	SPEC plus A2 if asserted as a driver	Driver claim requires pathway evidence if relied on empirically.
ICA-PL-29	EXT	Statutory scheme claim requires primary scheme evidence and is not public liability proof.
ICA-PL-30	SPEC	General assertion needs jurisdiction and measure.
ICA-PL-31	A2	Plaintiff environment to frequency and cost requires measurable pathway indicators.
ICA-PL-32	A2	No win no fee to litigation and cost requires litigation rates, durations, and cost splits.
ICA-PL-33	A2	Add on psych claims require loss type coding over time.
ICA-PL-34	A2	Expert contestation claim requires pathway evidence on expert use, disputes, duration, and costs.
ICA-PL-35	A2	Commonplace claim needs distributional evidence of psych add ons and quantum contribution.
ICA-PL-36	A2	If relied on as a cost driver it must be tested using pathway and duration and cost evidence.
ICA-PL-37	NONE	Normative and clinical debate, not an empirical proposition for this inquiry record.

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ICA-PL-38	EXT and SPEC if relied on	Scheme tightening claim requires primary sources and is not public liability proof.
ICA-PL-39	A2 plus A3	Nervous shock to premiums is causal and needs quantified contribution and allocation linkage.
ICA-PL-40	NONE, effect claim requires A2	Reform proposal is normative. Any claimed cost effect needs claim level quantum evidence.
ICA-PL-41	SPEC plus A2 if empirical effects asserted	Any pricing or behaviour effect requires pathway evidence.
ICA-PL-42	A2	Injury scales to settlement demands claim needs pathway outcomes and time and cost comparisons.
ICA-PL-43	A2	Experience of insurers requires measurable outcomes such as duration, disputes, and quantum dispersion.
ICA-PL-44	SPEC plus A1 if access asserted	Doctrinal claim needs mapping. Access challenges need quote and renewal evidence.
ICA-PL-45	A2	Extremely costly underwriting assertion requires claim quantum distribution and cost splits.
ICA-PL-46	SPEC	Complexity assertion needs identification of provisions and measurable consequence.
ICA-PL-47	A2	Settlement and reimbursement structure claims require claim level quantum components.
ICA-PL-48	SPEC plus A2	Increased significantly and moved industries requires a defined trend series and claim coding.
ICA-PL-49	A1	Higher deductibles and excesses for worker to worker must be observed in policy terms history.
ICA-PL-50	NONE	General literature proposition is testable via cited research.
ICA-PL-51	NONE	Normative fairness proposition.
ICA-PL-52	A2	Pre litigation tactics claims require timing and dispute indicators.
ICA-PL-53	EXT	PIPA scheme cost claim needs primary scheme evidence and is not public liability proof.
ICA-PL-54	SPEC plus A2 if cost effects asserted	ACL interaction reform needs defined problem statement and measurable outcome.
ICA-PL-55	NONE	General legal principle.

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ICA-PL-56	A2	Discoverability timing claim requires distributions of notification and filing timing.
ICA-PL-57	A1 plus A3	Certainty reduces premiums is causal and needs access outcomes and driver allocations.
ICA-PL-58	A2	Lawyers benefit claim requires cost split evidence and duration and pathway analysis.
ICA-PL-59	A2 plus A3 plus A1 if access effects asserted	Claim farming to premiums needs incidence, attribution, and pricing linkage.
ICA-PL-60	NONE, effect claim requires A2	Reform necessity claim is normative. Any asserted effectiveness needs measurable incidence and cost outcomes.

Note on Appendix 1 claim cards

Appendix 1 should include a short source note. The proper source is the ICA paper. The Appendix itself is a derived working dataset prepared for this report, with quotes and page references extracted from the ICA publication.

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References

Australian Bureau of Statistics, 'Remoteness Areas' (Australian Statistical Geography Standard (ASGS) Edition 3: July 2021 to June 2026, Web Page, released 21 March 2023) https://www.abs.gov.au/statistics/standards/australian-statistical-geography-standard-asgs-edition-3/jul2021-jun2026/remoteness-structure/remoteness-areas.

Australian Financial Complaints Authority, 'Business Interruption Insurance Test Cases' (Web Page, updated 25 March 2024) https://www.afca.org.au/news/current-matters/business-interruption-insurance-test-cases.

Australian Financial Complaints Authority, COVID-19 Business Interruption Insurance Test Case Instructions (Guidance Document) https://www.afca.org.au/media/999/download.

Australian Institute of Health and Welfare, Health Expenditure Australia 2022-23 (Web Report)

Australian Prudential Regulation Authority, Data Specifications and Classifications: National Claims and Policies Database (Data Specifications, August 2016).

Australian Prudential Regulation Authority, National Claims and Policies Database Explanatory Notes (Explanatory Notes, June 2018).

Australian Prudential Regulation Authority, 'National Claims and Policies Database statistics' (Web Page, 10 December 2025) https://www.apra.gov.au/national-claims-and-policies-database-statistics.

Australian Prudential Regulation Authority, National Claims and Policies Database, Level 1 Statistics (year ended 31 December 2023, released 31 July 2024).

CONRAD LIVERIS
0430 449 116 | CONRAD@LIVERIS.NET | CONRADLIVERIS.COM

Australian Prudential Regulation Authority, 'APRA releases its National Claims and Policies Database statistics for December 2023' (Media Release, 31 July 2024).

Australian Prudential Regulation Authority, NCPD Analysis: Review of Claims Trends and Affordability of Public Liability and Professional Indemnity Insurance in Australia (Report, May 2023).

Australian Prudential Regulation Authority, Trends in General Insurance Claims and Affordability: Insights from the National Claims and Policies Database (Report, 4 May 2023).

Australian Prudential Regulation Authority, 'Quarterly general insurance performance statistics' (Statistical publication page).

Australian Prudential Regulation Authority, 'Annual general insurance institution level statistics' (Statistical publication page).

Australian Prudential Regulation Authority, Quarterly General Insurance Performance Statistics (Statistical publication page).

Australian Prudential Regulation Authority, Annual General Insurance Institution Level Statistics (Statistical publication page).

Australian Prudential Regulation Authority, Insurance Risk and Capital and the Pricing of Insurance (Report, May 2023).

Australian Securities and Investments Commission, 'Design and distribution obligations' (Web Page) https://asic.gov.au/regulatory-resources/credit/design-and-distribution-obligations/.

CONRAD LIVERIS
0430 449 116 | CONRAD@LIVERIS.NET | CONRADLIVERIS.COM

Australian Securities and Investments Commission, 'Are you ready? Laws on unfair contract terms apply to insurance from 5 April 2021' (News Item, 22 March 2021) https://asic.gov.au/about-asic/news-centre/news-items/are-you-ready-laws-on-unfair-contract-terms-apply-to-insurance-from-5-april-2021/.

Australian Securities and Investments Commission, Cause for Complaint: Complaints Handling in General Insurance (Report 802, December 2024) https://download.asic.gov.au/media/5p3axgd0/rep802-published-5-december-2024.pdf.

Australian Securities and Investments Commission, RG 271 Internal Dispute Resolution (Regulatory Guide, 30 July 2020, as amended).

Australian Signals Directorate, Australian Cyber Security Centre, Annual Cyber Threat Report 2023-24 (Report, 20 November 2024) https://www.cyber.gov.au/about-us/view-all-content/reports-and-statistics/annual-cyber-threat-report-2023-2024.

Australian Signals Directorate, Australian Cyber Security Centre, Annual Cyber Threat Report 2024-25 (Report, 14 October 2025) https://www.cyber.gov.au/about-us/view-all-content/reports-and-statistics/annual-cyber-threat-report-2024-2025.

City of Port Lincoln, 'Community Group Insurance' (Web Page) https://www.portlincoln.sa.gov.au/community/lcis.

Civil Liability Act 2002 (NSW).

Civil Liability Act 2002 (WA).

Corporations Act 2001 (Cth).

CONRAD LIVERIS
0430 449 116 | CONRAD@LIVERIS.NET | CONRADLIVERIS.COM

Creative Australia, Music Festival Insurance Study: A Summary by Creative Australia (Report, October 2025).

Department of Home Affairs (Cth), Charting New Horizons: Horizon 2 Policy Discussion Paper (Discussion Paper, 2025).

Department of Social Services (Cth), Guide to Social Policy Law: Social Security Guide (Web Page) (accessed 31 January 2026).

Education and Care Services National Regulations 2011 (WA).

Explanatory Notes, Personal Injuries Proceedings and Other Legislation Amendment Bill 2022 (Qld).

Federal Court of Australia, 'COVID-19 Business Interruption Insurance Test Cases' (Online File, Web Page).

House of Representatives Standing Committee on Communications and the Arts, Am I Ever Gonna See You Live Again? Report on the Inquiry into the Australian Live Music Industry (Report, March 2025).

Independent Health and Aged Care Pricing Authority, National Hospital Cost Data Collection: Public Sector Report 2022-23 (Report) https://www.ihacpa.gov.au/sites/default/files/2025-05/nhcdc_public_sector_report_2022-23.pdf.

Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform (Report, October 2025).

CONRAD LIVERIS
0430 449 116 | CONRAD@LIVERIS.NET | CONRADLIVERIS.COM

Insurance Council of Australia, 'Reform of state laws needed to reduce business insurance costs' (Media Release, 15 October 2025) https://insurancecouncil.com.au/resource/reform-of-state-laws-needed-to-reduce-business-insurance-costs/.

Legal Profession Uniform Law (NSW).

Legal Services Council, Information Sheet for Legal Practitioners: Costs Agreements (Information Sheet, July 2022).

National Disability Insurance Agency, National Quarterly Performance Report: National Dashboard as at 30 June 2024 (Dashboard, 2024) (accessed 31 January 2026).

NDIS Quality and Safeguards Commission, 'NDIS Practice Standards and Quality Indicators' (Web Page) (accessed 31 January 2026).

NSW Small Business Commissioner, Small Business Insurance Requirements Guide for Local Government (Guide, October 2023) https://www.smallbusiness.nsw.gov.au/sites/default/files/2023-10/3.%20Insurance%20Guide%20Councils%20.pdf.

Parliamentary Library (Parliament of Australia), National Disability Insurance Scheme: A Quick Guide (Research Quick Guide, 2021-22).

Project replication exhibits derived from APRA data, Financial Year Reconciliation for Public and Product Liability, FY2019 to FY2023 (Working pack workbook, unpublished).

Supreme Court Act 1986 (Vic).

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Victorian Legal Services Board and Commissioner, ‘Costs Disclosure’ (Guidance Web Page) (accessed 31 January 2026).

Victorian Model Litigant Guidelines

Victoria has its own Model Litigant Guidelines. These are policy guidelines originally issued in 2001 and revised in 2011. They set standards for how the state should behave as a party to legal proceedings.

All Australian governments have a common law responsibility to act as model litigants.

The Victorian Government has also issued Common Guiding Principles that provide guidance on how departments should ordinarily respond to civil claims involving allegations of child sexual abuse. The Common Guiding Principles are policy guidelines that complement the Model Litigant Guidelines.

Guidelines on the State of Victoria's obligation to act as a model litigant

1. In order to maintain proper standards in litigation, the State of Victoria, its departments and agencies behave as a model litigant in the conduct of litigation.

2. The obligation requires that the State of Victoria, its departments and agencies:

- (a) act fairly in handling claims and litigation brought by or against the State or an agency;
- (b) act consistently in the handling of claims and litigation;
- (c) deal with claims promptly and not cause unnecessary delay;
- (d) make an early assessment of:
    - (i) the State's prospects of success in legal proceedings; and
    - (ii) the State's potential liability in claims against the State;

- (e) pay legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount paid;
- (f) consider seeking to avoid and limit the scope of legal proceedings by taking such steps, if any, as are reasonable having regard to the nature of the dispute, to resolve the dispute by agreement, including participating in appropriate dispute resolution (ADR) processes or settlement negotiations;
- (g) where it is not possible to avoid litigation, keep the costs of litigation to a minimum, including by:
    - (i) not requiring the other party to prove a matter which the State or the agency knows to be true;
    - (ii) not contesting liability if the State or the agency believes that the main dispute is about quantum;
    - (iii) taking such steps, if any, as are reasonable to resolve such matters as may be resolved by agreement and to clarify and narrow the remaining issues in dispute; and
    - iv) monitoring the progress of the litigation and, where appropriate, attempting to resolve the litigation, including by settlement offers, offers of compromise and ADR;
- (h) when participating in ADR or settlement negotiations, ensure that as far as practicable the representatives of the State or the agency:
    - (i) have authority to settle the matter so as to facilitate appropriate and timely resolution; and
    - (ii) participate fully and effectively.
- (i) do not rely on technical arguments unless the State's or the agency's interests would be prejudiced by the failure to comply with a particular requirement;
- (j) do not take advantage of a claimant who lacks the resources to litigate a legitimate claim;
- (k) do not undertake and pursue appeals unless the State or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest; and

- (l) consider apologising where the State or the agency is aware that it or its representatives have acted wrongfully or improperly.

Notes

3. The State of Victoria acknowledges the assistance of the Commonwealth in developing these Guidelines. The Guidelines are based on the Directions on the Commonwealth's Obligation to Act as a Model Litigant, which were issued by the Commonwealth Attorney General pursuant to s 55ZF of the Judiciary Act 1903.

4. The obligation applies to litigation (including before courts, tribunals, inquiries, and in arbitration and other ADR processes) involving state departments and agencies, as well as ministers and officers where the State provides a full indemnity in respect of an action for damages brought against them personally. Ensuring compliance with the obligation is primarily the responsibility of the agency which has responsibility for the litigation. In addition, lawyers engaged in such litigation, whether Victorian Government Solicitor, in-house or private, will need to act in accordance with the obligation to assist their client agency to do so.

5. Appropriate Dispute Resolution (ADR) means a process including but not limited to mediation, early neutral evaluation, judicial resolution conference, settlement conference, reference of a question to a special referee, expert determination, conciliation, and arbitration.

6. Where State of Victoria departments and agencies are involved in disputes with other State of Victoria departments and agencies, they are expected also to adhere to the 'Guidelines for the conduct of disputes between different public sector bodies within the State of Victoria', approved by Cabinet on 11 February 2008.

7. In essence, being a model litigant requires that the State and its agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the State and its agencies will act as a model litigant has been recognised by the courts. See, for example, *Melbourne Steamship Limited v Moorhead* (1912) 15 CLR 133 at 342; *Kenny v State of South Australia* (1987) 46 SASR 268 at 273; *Yong Jun Qin v The Minister for Immigration and Ethnic Affairs* (1997) 75 FCR 155.

8. The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

9. The obligation does not prevent the State and its agencies from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to pursue claims by the State and its agencies and testing or defending claims against them. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the State or an agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable.

10. The obligation does not prevent the State from enforcing costs orders or seeking to recover costs.

11. The obligation should be observed in conjunction with the provisions of the Civil Procedure Act 2010 and, in particular, the paramount duty and overarching obligations imposed by Chapter 2 of that Act.

Was this page helpful? ○ Yes ○ No

Annexure 'C'

Model Litigant Policy for Civil Litigation

1. Introduction

1.1 The Model Litigant Policy has been adopted to assist in maintaining proper standards in litigation and the provision of legal services in NSW. The Model Litigant Policy is a statement of principles. It is intended to reflect the existing law and is not intended to amend the law or impose additional legal or professional obligations upon legal practitioners or other individuals.[1]

1.2 The Model Litigant Policy applies to civil claims and civil litigation (referred to in this Policy as litigation), involving the State or its agencies including litigation before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes.

1.3 Compliance with the Model Litigant Policy is primarily the responsibility of the Head of each individual agency in consultation with the agency's principal legal officer. In addition, lawyers, whether government or private, are to be made aware of the Model Litigant Policy and its obligations.

1.4 Issues relating to compliance or non-compliance with the Model Litigant Policy should attempt to be resolved between the parties in the first instance, and then are to be referred in writing to the Head of the agency concerned.

1.5 The Head of each agency may issue guidelines relating to the interpretation and implementation of the Model Litigant Policy.

1.6 The Model Litigant Policy supplements but does not replace existing Premier's Memoranda and policies relating to Government litigation, in particular:

- M1997-26 - Litigation Involving Government Authorities
- M1995-39 - Arrangements for Seeking Legal Advice from the Crown Solicitor's Office
- NSW Government Guiding Principles for Government Agencies Responding to Civil Claims for Child Abuse.

2. The obligation

2.1 The State and its agencies must act as a model litigant in the conduct of litigation.

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[1] It should be noted that clause 2 of Schedule 2 of the *Legal Profession Uniform Law Application Act 2014* provides that a law practice must not provide legal services on a claim or defence of a claim for damages unless a legal practitioner reasonably believes on the basis of provable facts and a reasonably arguable view of the law that the claim or the defence (as appropriate) has reasonable prospects of success.

3. Nature of the obligation

3.1 The obligation to act as a model litigant requires more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations. Essentially it requires that the State and its agencies act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the State and its agencies will act as a model litigant has been recognised by the Courts.[2]

3.2 The obligation requires that the State and its agencies, act honestly and fairly in handling claims and litigation by:

a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation;

b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;

c) acting consistently in the handling of claims and litigation;

d) endeavouring to avoid litigation, wherever possible. In particular regard should be had to the NSW *Civil Procedure Act 2005* which provides that the overriding purpose of the Act is to facilitate the just, quick and cheap resolution of the real issues in civil proceedings;

e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:

I. not requiring the other party to prove a matter which the State or an agency knows to be true; and

II. not contesting liability if the State or an agency knows that the dispute is really about quantum;

f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;

g) not relying on technical defences[3] unless the interests of the State or an agency would be prejudiced by the failure to comply with a particular requirement and there has been compliance with Premier's Memorandum M1997-26 - Litigation Involving Government Authorities;

h) in accordance with Principle 10 of the *NSW Government Guiding Principles for Government Agencies Responding to Civil Claims for Child Sex Abuse*, State agencies

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[2] See, for example, *Melbourne Steamship Co Ltd v Moorehead* (1912) 15 CLR 333 at 342; *Kenny v South Australia* (1987) 46 SASR 268 at 273; *Yong Jun Qin v Minister for Immigration and Multicultural Affairs* (1997) 75 FCR 155 and *Australian Securities and Investments Commission (ASIC) v Hellicar* (2012) 247 CLR 345.

[3] A 'technical defence' is commonly understood to be a defence that 'lacks all substantive merit and is supportable only on a narrow or literal appreciation or interpretation that is at odds with clear reality': *Liao v New South Wales* [2014] NSWCA 71 at [356]. Statutory defences available to government parties, such as defences under Part 5 of the *Civil Liability Act 2002* (NSW) or "good faith" defence provisions are not considered to be technical defences. Where appropriate, such defences should be pleaded.

may not rely on a statutory limitation period as a defence in civil claims for child abuse;[4]

i) when settling civil claims agencies should consider the use of confidentiality clauses in relation to settlements on a case by case basis;

j) only undertaking and pursuing appeals where the State or an agency believes it has reasonable prospects for success or the appeal is otherwise justified in the public interest. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interest of the State or an agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable;

k) apologising where the State or an agency is aware that it has acted wrongfully or improperly; and

l) providing reasonable assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.

3.3 The State or an agency is not prevented from acting firmly and properly to protect its interests. The obligation does not prevent all legitimate steps being taken in pursuing litigation, or from testing or defending claims made.

3.4 In particular, the obligation does not prevent the State or an agency from:

a) enforcing costs orders or seeking to recover costs;

b) relying on claims of legal professional privilege or other forms of privilege and claims for public interest immunity;

c) pleading limitation periods (other than in child abuse actions);

d) seeking security for costs;

e) opposing unreasonable or oppressive claims or processes;

f) requiring opposing litigants to comply with procedural obligations; or

g) moving to strike out or otherwise oppose untenable claims or claims which are an abuse of process.

[4] See also section 6A of the *Limitation Act 1969* which came into effect on 17 March 2016.