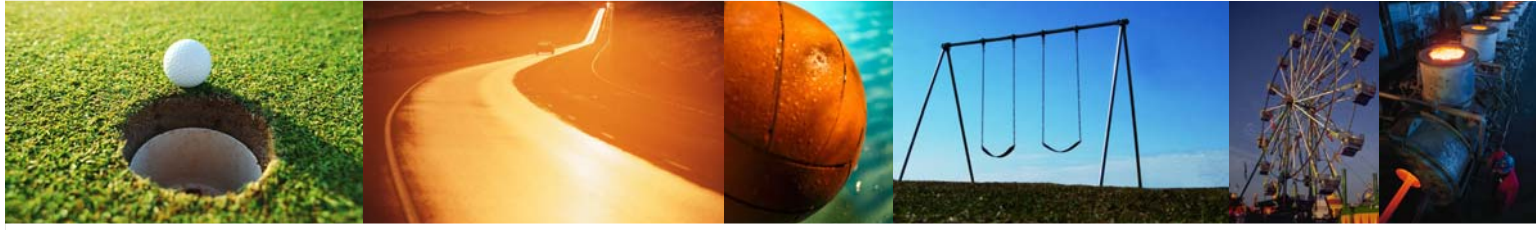


INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

Organisation: Suncorp Group
Name: Mr Neil Singleton
Position: [-]
Telephone: 07 3362 2984
Date Received: 11/03/2005

Subject: Submission to Personal injury compensation legislation lodged by
Neil Singleton

Summary



Submissions on the Operations and Outcomes of Personal Injury Compensation Legislation in NSW Approved from 1999

March 2005





Report prepared by:

Suncorp Metway Insurance Limited
ABN 83 075 695 966

And

GIO General Limited
ABN 22 002 861 583

Purpose

This submission has been prepared specifically for the NSW Legislative Council inquiry into Personal Injury Compensation Legislation conducted by the General Purpose Standing Committee No 1. This submission should be used only for the purposes of that inquiry.

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If you would like to reproduce any of this submission, please contact Peter Worthy, Manager Legal Services on (07) 3362 2296 or email peter.worthy@suncorp.com.au

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March 2005



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General Purpose Standing Committee No. 1
Parliament House
Macquarie Street
Sydney NSW 2000

Attention: Stephen Frappell

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Dear Sir,

Re: Inquiry - Personal Injury compensation legislation

In response to your call for submissions dated 29 January 2005, Suncorp has prepared this submission to answer some of the terms of reference of your Committee's Inquiry.

This submission has been authorised by Diana Eilert, Group Executive – General Insurance on behalf of the Suncorp Group which incorporates Suncorp Metway Insurance Limited ABN 83 075 695 966 and GIO General Limited ABN 22 002 861 583.

Suncorp is pleased to be able to provide this information to the Inquiry and would be happy to provide any further clarification should this be required. Please contact me on (07) 3362 2984.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Neil Singleton".

Neil Singleton
General Manager
CTP Customer Development and Injury Claims
Suncorp



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introduction to submission

Suncorp's Background

The Suncorp Group is one of Australia's leaders in banking, insurance, investment and superannuation. It includes Australia's fourth largest general insurance group and sixth largest bank. It has total assets of over \$43 billion and over \$11 billion funds under management.

GIO General Ltd is a wholly owned subsidiary of Suncorp-Metway Ltd. The Group's acquisition of GIO and AMP's general insurance business increased the customer base and diversified the business mix with growth in personal and commercial insurance and workers compensation.

Australia-wide, Suncorp's insurance market share is 23% home, 22% motor, 20% workers compensation and 21% commercial.

The Suncorp Group, through GIO General Ltd is a licenced CTP insurer in NSW and provides Public Liability insurance to policy holders in NSW.

Ambit of Report

Commentary on claims that fall under the NSW Worker's Compensation Scheme and those that form part of the NSW Government's Treasury Managed Fund portfolio, has been left for the authorities in charge of those portfolios. In these instances Suncorp merely acts as claims manager.

This submission is limited to the Suncorp Group's underwritten portfolio's experience and represents the Suncorp Group's opinions only.

Executive Summary

- Tort reform has allowed Suncorp to increase the availability of Public and Product Liability Insurance to Not for Profit Organisations. This cover will, in many instances, extend to community events and activities.
- Reforms in CTP have resulted in an initial decrease in premiums. Since that time premiums have not changed significantly resulting in a decrease in real terms. CTP insurance is cost effective providing:
 - Quick access to appropriate rehabilitation
 - appropriate benefits to people suffering minor injuries
 - largely the same level of compensation to those who have suffered more serious injuries as existed prior to the reforms.
- Whilst it is still too early to determine the actual effect, Suncorp's experience to date is that tort reform has assisted to remove uncertainty in public liability claims. A combination of tort reform and changes in claim portfolio mix have resulted in a decrease in real terms only of insurance premiums in this class.
- There are a number of areas within the terms of the reforms that require monitoring. However, the actions of the Courts in interpreting and applying these reforms may prevent the realisation of the expected benefits.
- Suncorp is not able to comment on the effect of tort reform on regional employment. Whilst data is available, it is not possible to identify changes in employment levels which have been driven purely by tort reform.

the impact on community events and activities, and community groups

Since the introduction of the reforms, Suncorp has increased the availability of our Public and Products liability insurance to eligible Not for Profit Organisations (“NFPOs”). Prior to the commencement of these reforms, Suncorp did not offer insurance to these types of organisations at all.

Whilst Suncorp is not able to provide direct statistics on the number or frequency of community events and activities, the availability of this type of insurance ensures that NFPOs are able to conduct events and activities with appropriate insurance cover.

To be eligible for NFPO Public and Product Liability Insurance an organisation must:

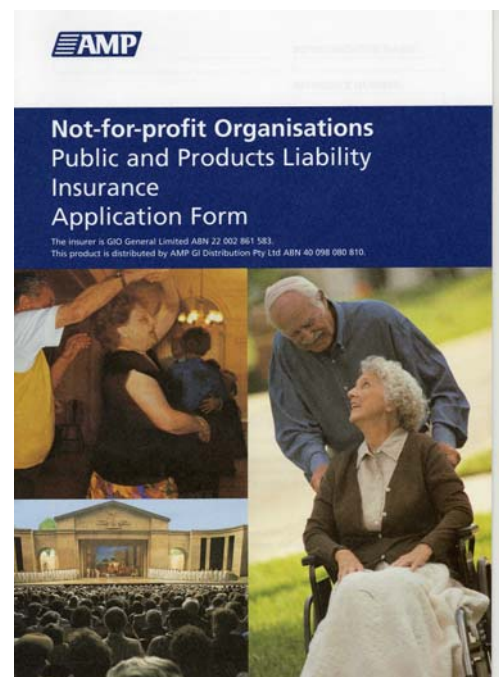
- ♦ Be formed by a group of people with a community purpose that is lawful and it is not carried on for the profit or gain of its individual members or owners
- ♦ Provide a public benefit or serves a charitable purpose
- ♦ Support the social fabric of the community
- ♦ Not be controlled by business or government or semi-government sectors
- ♦ Not have an annual turnover exceeding \$10,000,000

If eligible, cover of up to \$20,000,000 is available.

Voluntary workers are covered for claims made against them as a result of the performance of volunteer work for the NFPO.

Cover extends to claims against members for personal injury caused by the member whilst they are engaged as a member in activities organised by the NFPO.

Additional cover is also available for member’s participating in certain low risk sport and recreational activities and for most fund raising events, live drama, dance and music performances, entertainment, functions, parades and festivals.



the impact on insurance premium levels and the availability of cost-effective insurance

CTP Insurance

Premiums

The introduction of the reforms saw the immediate reduction of average premium. Since then premiums have remained stable overall, representing a significant drop in real terms. This drop in real premiums is due to the reforms working as projected - with the removal of payment of general damages for small claims combined with a drop in claim frequency over the past 5 years as collision claim frequencies have dropped and utilisation rates dropped (See Graph 1).

Graph 2 shows the average CTP premium per quarter since 1992. This graph shows 2 lines, the average premium for class 1 and all classes.

Availability

CTP is a statutory insurance. As such, no-one can be denied CTP insurance.

The main issue for determining availability is price. As has been discussed above, the cost of premiums has fallen considerably since the introduction of reforms.

Cost-Effective

CTP remains the most cost effective insurance available. There is no upper limit to the cover of this type of insurance and the benefits provided to injured persons are substantial.

Claims Frequency

Claims frequency has decreased since implementation. Graph 3 indicates that in the

most recent accident years of the current scheme, claims frequency remains just over 50% of claims frequency in the previous scheme.

Benefits for Minor Injuries

Notwithstanding the thresholds which prevent access to General Damages (non-economic loss) for persons whose injuries do not meet an impairment assessment of over 10%, benefits are still provided. An abbreviated claims process (through lodgement of an Accident Notification Form or "ANF") enables faster recovery from injury through the early provision of rehabilitation and reimbursement of expenses.

Suncorp's experience is that the level of benefit by way of medical expenses paid by an insurer, has increased for this group of claimants following the introduction of these reforms.

Benefits for Serious Injuries

The CTP Scheme ensures that appropriate compensation is provided to those who suffer serious injuries.

The requirements around the provision of rehabilitation ensure that needs are met very quickly through:

- ♦ Faster identification of need via early contact
- ♦ Greater access to rehabilitation and support needs
- ♦ Faster resolution of issues that may arise through the MAS process.

This leads to better long term outcomes for this group of claimants.

The reforms have little effect on the compensation entitlements for this group of

injured persons. The limitation on Non-Economic Loss is indexed and increases each year. Currently it is \$341,000. Suncorp submits that this provides reasonable and appropriate compensation for this head of damage.

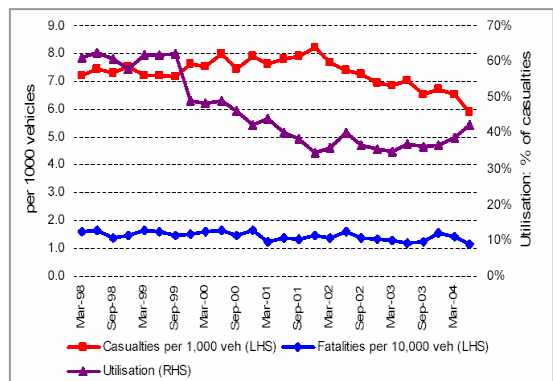
Limitations on other heads of damage including attendant care and economic loss have little or no impact on these claims.

Summary

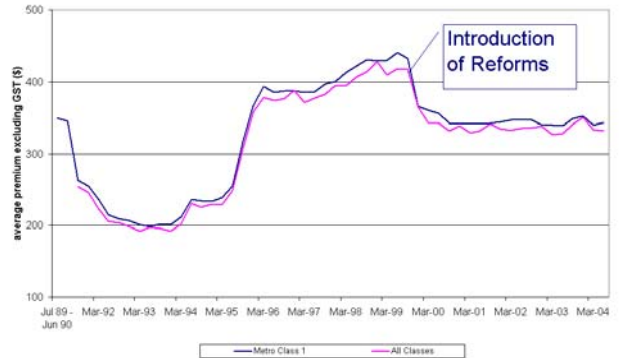
Overall the reforms have been working:

- ♦ Claims for minor injuries have decreased however persons suffering these types of injuries are still able to access treatment and rehabilitation within the ambit of the scheme
- ♦ Persons suffering serious injuries are able to quickly access support for treatment, rehabilitation and other needs and the reforms have had little or no impact on their entitlement to compensation

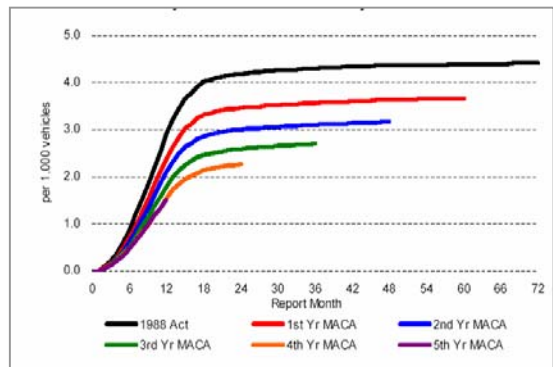
Graph 1: NSW CTP Scheme Utilisation



Graph 2: NSW CTP Premium History



Graph 3: NSW CTP Claim Frequency



Source for Graphs 1 and 3: Trowbridge Deloitte Report, Review of Industry Experience under MACA to 30 September 2004

the impact on insurance premium levels and the availability of cost-effective insurance

Public Liability Insurance

Premium Levels

It is still too early to accurately measure the actual impact of tort reform on insurers loss ratios. However experience to date indicates there has been a change in claim portfolio mix positively impacted by tort reform.

There has been a decrease in the frequency of small (low value) claims.

Graph 4 depicts the impact in claims frequency driven by both insurer instigated changes in portfolio mix and the effects of tort reform.

Tort reforms have also led to greater competition in recent times making public liability insurance more available particularly for community based organisations such as NFPOs.

Whilst the ACCC Public liability and professional indemnity insurance – Fourth Monitoring Report (January 2005) reports a 15% reduction in the average premium, this represents a nationwide average. As noted in that report it may also reflect changes in insurers' portfolios and is not a reflection of the premium paid by all consumers.

Whilst the number of claims is now lower, the rate of finalisation has also been low. This adds considerable uncertainty to the average cost of claims.

This slow down in finalisation of claims may suggest that the current mix of claims may be larger and more complex when compared to past experience.

Further, due to the recent implementation of tort reforms in NSW affecting liability claims, many claims are still being reported. Those claims have not yet reached the statute of limitations date for litigation. Past experience indicates that a large proportion of these claims involve

multiple parties and become litigated before they are resolved.

For these claims, resolution takes many years and the result is higher average claims cost.

As a result, Suncorp has not taken any active decisions on pricing in this line of business until more experience is gained both in its risk profile and claims outcomes. However, insurance premiums have stabilised as a result of tort reform avoiding further increases in premium or reduction of cover.

The effect has been that Suncorp has not increased premiums in a recent rate review. Therefore there has been a decrease in premium in real terms through the absorption of superimposed inflation and GDP inflation (a combined effect of approximately 9%).

Availability

As mentioned above, following the commencement of the reforms nationwide, Suncorp began offering Public and Products Liability Insurance to eligible NFPOs in Queensland from 1 September 2002. By February 2003 Suncorp was offering public liability insurance to NFPO's in all States and Territories.

Schedule B has a comprehensive list of the range of NFPOs to which Suncorp has made public liability insurance available.

Currently, Suncorp provides broad coverage public liability insurance to over 1300 NFPOs. These organisations would have faced closure had it not been for the provision of public liability insurance coverage.

Further:

- ♦ In August 2002, Suncorp extended public liability insurance in NSW (subject to the

company's usual underwriting guidelines) to additional occupations including Iron Works, Saw Mills (sprinklered) and Local and Community Fundraising (Schedule A has a complete listing of these occupations); and

- ♦ In September 2002, this was further extended to include occupations such as Aged Person Support, Organisations – Family Welfare and Performing Arts Venues.

From 30 June 2004, Suncorp provided professional indemnity insurance to 1450 architect practices, who are either members of the Royal Australian Institute of Architects or registered practitioners. The RAI A had previously been unable to obtain professional indemnity insurance in the Australian market.

Cost Effectiveness

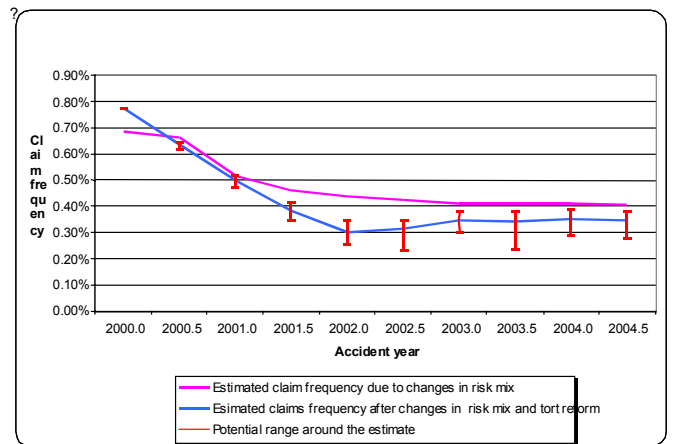
Recently Suncorp launched a new initiative aimed at encouraging NFPOs to implement a risk management program. A web based risk management tool was provided to customers at no extra cost subject to a commitment to renew with Suncorp/GIO for two years.

The benefit to the NFPO was that Suncorp offered 2 years of stable NFPO Public and Products Liability premiums.

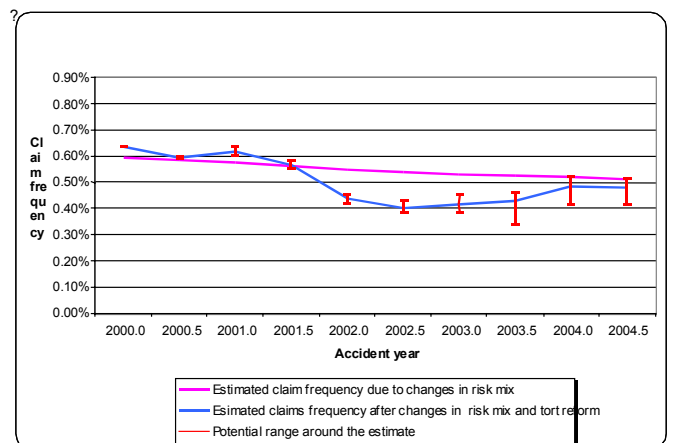
The benefits of tort reform are certainly being delivered to claimants. Whilst the reforms have resulted in a reduction in small (low value) claims being made, the benefits provided to those who have been more seriously injured have not been impacted.

- ♦ The reduction of access to general damages affects only those who do not reach the threshold of 15% of most extreme case or those who fall between 15 and 25%

Graph 4: NSW Liability Claims Frequency



Graph 5: Non-NSW Liability Claims Frequency



of the most extreme case. Catastrophically injured persons do not have any restrictions.

- ♦ Economic loss caps only affect the highest of income earners.
- ♦ The reforms do not impact future needs for those who are catastrophically injured. This is the largest component of compensation for this class of claimants.

Summary

Generally the reforms do appear to be working, specifically with regard to the number of small (low value) claims:

- ♦ Without tort reform, claims uncertainty would have caused insurers to apply even larger premium increases or reduce coverage;
- ♦ Premiums have stabilised and in many instances are declining in real terms
- ♦ Tort Reform has allowed insurers to increase accessibility in select occupational types; and,
- ♦ There is an increased availability of coverage to community based organisations such as NFPOs.

the level and availability of Compulsory Third Party motor accident premiums required to fund claims cost if changes had not been implemented in 1999

Graph 2 (above) clearly indicates where the premiums were heading to without reform intervention.

In projecting forward a likely premium if the reforms had not been introduced, it is important to consider that in 1999 inflation on CTP claim costs was approximately 9% (including super imposed inflation of around 5% driven by increased payments on whiplash claims and large claims).

However It is not valid to assume this rate of inflation over the next 5 years as reductions in claim frequency and casualty rates must also be factored in to determine claims outcomes. This decrease can be attributed to the reduced collision claim frequencies and also lower utilisation driven by the reforms.

To predict what the average premium would be without the new Act is therefore open to much debate and conjecture. However a conservative approach should be taken. With the continued rate of inflation in claims costs and no major surge in claim frequency, without the introduction of the new Act in 1999, current average CTP premium is predicted to be over \$600 today.

other issues of relevance to the inquiry

General Issues

The future efficacy of the tort reforms may be affected by:

The actions of the Courts

Judicial precedent will largely determine the effectiveness of the reforms. The award of “new” heads of damage, allowing claims to cross thresholds and allowances for existing heads of damage beyond current levels would all have the effect of eroding the controls built into the reforms.

Failure to uphold the intention and spirit of the reforms by the Courts is a real risk for overall effectiveness.

Repeal of the reforms

Any change in the scheme as it currently stands could be catastrophic as far as the availability of cost-effective insurance is concerned.

The removal of the reforms can only result in a return to the previous position – increasing claims frequency and cost. The effect will be an increase in premiums for these classes of business. Many community organisations and events will again be at risk due to the cost of public liability insurance.

The reforms were an integral part of allowing Suncorp to recently offer insurance again to many professions and community groups.

CTP Issues

The reforms have had a number of major objectives:

- ♦ to encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities,
- ♦ to provide compensation for compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims,
- ♦ to promote competition in the setting of premiums for third-party policies, and to provide the Authority with a prudential role to ensure against market failure,
- ♦ to keep premiums affordable, recognising that third-party bodily insurance is compulsory for all owners of motor vehicles registered in New South Wales,
- ♦ to keep premiums affordable, in particular, by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities,
- ♦ to ensure that insurers charge premiums that fully fund their anticipated liability,
- ♦ to deter fraud in connection with compulsory third-party insurance.

Experience to date has been that the objectives of this reform have been largely achieved.

Delivery of Rehabilitation

The scheme ensures the early delivery of rehabilitation to an injured person. Through the Treatment, Rehabilitation and Attendant Care guidelines issued by the Motor Accident Authority:

- ♦ the rehabilitation needs of an injured person are determined by an insurer soon after a notification is received
- ♦ rehabilitation can be provided on a “without prejudice” basis notwithstanding a determination of liability has not been made
- ♦ continual assessment and review occur until the injured person has reached maximum recovery
- ♦ reimbursement of treatment expenses occurs over very short time frames.

These measures ensure that an injured person is provided with appropriate rehabilitation as soon as possible after notification to the insurer. Suncorp’s experience is that this maximises recovery and delivers benefit not only to the injured person but also to the scheme. Suncorp also feels that the provision of early rehabilitation to direct claimants creates a focus on recovery rather than compensation.

Early Resolution

Recent data from Trowbridge indicates that resolution rates for claims (those that have proceeded beyond the ANF process) have remained the same as under previous legislation.

Suncorp submits that this is driven by:

- ♦ Initial delays experienced with the Medical Assessment Service (MAS) and the Claims Assessment and Resolution Service (CARS). Both of these bodies have implemented changes to address these issues and these changes appear to be having a positive effect.
- ♦ Uncertainty by Claimant’s solicitors with the process and its outcomes. As both the MAS and CARS processes were new, claimant solicitors were hesitant to refer claims to these bodies until there was some

understanding of the process and the determinations from the process.

Both the CARS and MAS processes have been established to resolve disputes around claims in a more efficient manner than using the Court process. Initially, insurers experienced considerable delays in obtaining determinations from MAS and assessments from CARS.

The MAA has moved to meet insurer concerns streamlining processes and revising resourcing of these two services to provide better turnaround times for determinations and assessments.

Access to Benefits by Injured Persons

ANFs

The ANF process was created to enable persons suffering only minor injuries a simple and time effective process to access rehabilitation and receive reimbursement for medical expenses. Suncorp submits that this process has largely been successful in achieving these goals.

Insurers are taking a pragmatic approach to ANFs. Whilst the reforms provide a \$500 limit on benefits to be provided by insurers, many will provide benefits above this limit in order to assist the injured person and resolve the compensation at this time.

Table 1 demonstrates this process delivers a reasonable level of benefit to the injured person in a very short period of time – especially when compared to the standard claims process.

Claims

Since the introduction of these reforms, the level of claimant's accessing benefits from

Figure 1: Progress of Reports Years 1 – 3 of MACA

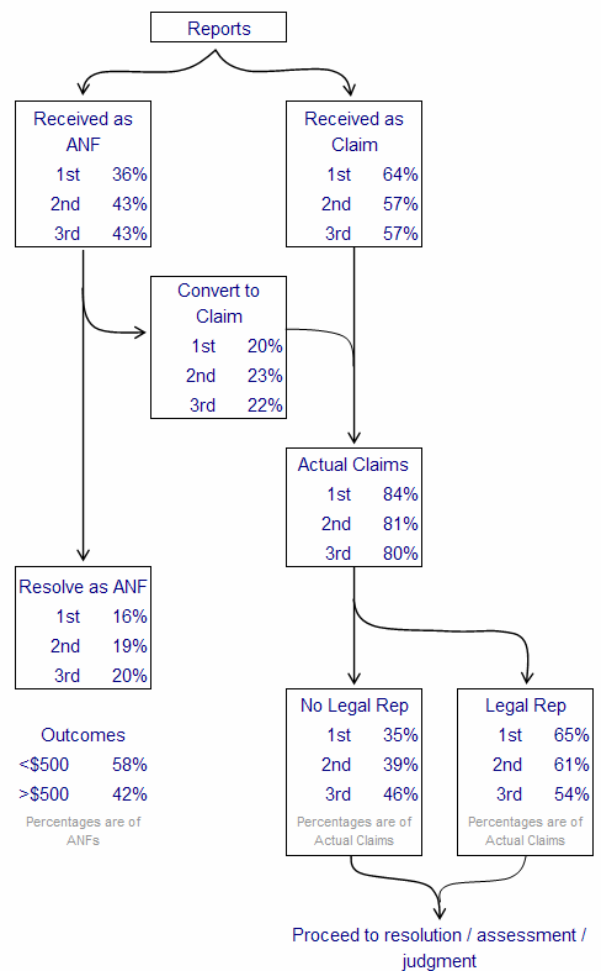


Table 1: ANF Outcomes

	MACA Accident Year				
	1st	2nd	3rd	4th	5th
No. Finalised	2668	2906	2714	2531	1419
% of ANFs	100%	100%	100%	99%	51%
%finalised < \$500	84%	87%	82%	83%	82%
Average cost (\$)¹	319	305	343	329	328

¹ Excluding nil finalisations

Source: Trowbridge Deloitte Report, Review of Industry Experience under MACA to 30 September 2004

insurers without legal representation has increased considerably. This has been driven by:

- ♦ simplification of the claims process both in notification and assessment of benefits;
- ♦ a combination in the restriction of legal costs and the amount of damages recovered reduces the incentive for lawyers to become involved in these claims; and
- ♦ activity by insurers to assist claimants to manage the claims process without the need for legal representation.

Actions of CARS Assessors

It was mentioned above that the actions of the Courts in upholding the spirit and intent of the reforms is key to the success of those reforms.

Similarly, the actions of CARS assessors in CTP will have a similar influence. CARS assessors determine the level of compensation to which an injured person is entitled (for those claims that proceed to this method of resolution). As such, they act in a similar capacity as the Courts.

Decisions by CARS assessors therefore will impact upon the success of the reforms in the same way as Court precedent.

Case Study 1

The injured person was 3 years old at the time of the accident. She was in a child safety seat at the time of the accident, however somehow was thrown from the vehicle when the accident occurred.

She suffered a severe head injury with scalp lacerations and skull fractures – extensive compound fractures of the middle and upper thirds of the face. This injury also involved her brain where there was a diffuse bifrontal contusion together with frontal sub-arachnoid haemorrhage. This has resulted in cognitive and behavioural impairment and loss of sight in her left eye.

The injured person now requires constant supervision for self care and daily routine.

From the time of notification the rehabilitation team was able to work closely with the health services managing the injured persons needs. When the injured person was due to commence pre-school it was determined that she would need full-time teacher aid support. GIO was able to work with the relevant Brain Injury Unit and the injured person's mother to ensure that appropriate support was and continues to be provided. All reports are that the benefit of this support has been significant.

At the present time the injured person is now 7 years old. Whilst it will take many years for the full impact of these injuries to be known and for the claim to be resolved, GIO has been able to ensure that the injured person receives the support she needs.

Public Liability Issues

Background

The views expressed in this submission come about as a result of a targeted review of 98 claims arising under Public & Products Liability policies issued by the Suncorp Group under the GIO General Limited or AMP General Limited brands and managed by the Injury Liability Claims teams in Sydney.

These files were broken down by (see Table 2):

- ♦ Resolved by negotiated settlements or judgment at Arbitration; and
- ♦ Affected by the *Civil Liability Act 2002 NSW* (“CLA”) or pre-dated the reforms.

The review and these comments are largely confined to the tort reforms effected by that Act though some observations relate to costs provisions and related reforms effected by the amendments to the *Legal Profession Act 2004 NSW*.

This submission provides comments in relation to each of the “principal reforms” nominated in the “Inquiry into Personal Injury Compensation Legislation Information Sheet” and in respect of other reforms which appear to have had an impact upon claims outcomes.

The impact of the reforms varies dependent upon the nature of the specific reform provision. Some provisions clearly had greater impact on claims and therefore on availability and cost of insurance.

Reforms Positively Impacting

CLA Part 1A, Divisions 1 to 3

These Divisions largely adopt into the legislative framework the principles of the Tort of Negligence established at Common Law.

Suncorp does not believe that this substantially modifies these Common Law principles so the effect upon Suncorp’s portfolio of claims from these provisions is neutral.

However, Suncorp submits it is essential for these provisions to remain within the reforms as they drive certainty in the application of these principles.

CLA Part 1A, Division 4 – Assumption of risk

This Division makes certain provisions in relation to obvious and inherent risks and a defendant’s duty to warn of such a risk or their liability where an inherent risk materializes. To some extent these principles were already recognised under the common law but they are expanded upon and made clearer by the reforms.

Defences relying in whole or part upon obvious or inherent risks were raised in only 9% of the claims reviewed for this submission (7 claims in total). These were almost equally divided across the pre and post tort reform categories.

Where argued, these defences were successful, in whole or part, in 2 of the 7 files within this sample. Both files were subject to the CLA provisions and, though the sample size is very small, Suncorp submits that the prospects of successfully limiting a defendant’s liability on the grounds of an obvious risk or materialisation of an inherent risk are significantly improved by the reforms.

CLA Part 1A, Division 5 – Recreational activities

Injuries resulting from or associated with participation in a recreational activity affected only 10 % of files in the sample. None of these

involved activities falling within the definition of a “dangerous recreational activity”.

Of the claims in this category, 29% also involved the giving of risk warnings which proved to be adequate in 50% these cases.

Suncorp submits that this indicates these provisions are unlikely to apply frequently to claims within Suncorp’s particular segment of the Public & Products Liability Insurance market. However, in respect of the small number of claims where they have had application, they do appear to have significantly improved our prospects of defending our Insured’s, in whole or in part.

Table 2: Breakdown of claims included in Review

	Pre-CLA	Post-CLA	Total
Negotiated Settlement	32	51	83
Judgment at Arbitration	8	7	15
Total	40	58	98

CLA Part 1A, Division 8 – Contributory Negligence

These provisions of the CLA again largely recount the position at common law. However the provisions do advance this position significantly by the specific provision which allows a court to determine a reduction of 100% on this basis if it is judged just an equitable to do so.

This review is unable to provide, with a real level of accuracy, an indication of the frequency of application of this provision as specifically agreed and documented discounts for contributory negligence in negotiated settlement amounts are uncommon. However Suncorp believes that such concessions are made at a greater frequency than would be suggested by the review figures despite the failure to openly acknowledge them between the parties to the dispute

This observation is based upon a comparison between the estimated quantum of the claim documented on these files prior to settlement which, when compared to the settlement results achieved, indicate reductions for contributory

negligence are agreed at a higher rate that the review figures of 18% suggest.

The review data suggests that 11% of these cases actually represent instances where there is an agreement that 100% contributory negligence applied and the claims resolved on the basis of an agreed verdict for the defendant.

From the small data sample collected, no conclusions can be drawn as to whether or not the tort reforms have affected our prospects of successfully arguing a level of contributory negligence in the context of a fully contested hearing. However, slightly higher numbers of claims within our review sample which were subject to the tort reforms, and resolved by negotiated settlement, resolved with a reduction of the settlement amount for contributory negligence.

Factors said to have established contributory negligence in the cases reviewed included intoxication, failure to keep a proper look-out and obvious risks.

The evidence relied upon in order to establish these factors included witness statements and other information gathered for the purposes of factual investigation.

Though difficult to establish with any precision from the data drawn from this review sample, anecdotally the tort reforms have facilitated reductions for contributory negligence at least in the context of negotiated settlement.

CLA Mental harm Provisions

The provisions of the CLA in this Division largely adopt the current common law position, established by recent cases decided by the High Court, in respect of liability for pure mental harm suffered by witnesses to an event or the

close family members of an injured or fatally injured party.

The review sample contained no instances of such claims so Suncorp is unable to comment upon the effectiveness of the tort reforms in this regard.

However, claims in respect of consequential mental harm have, for some time, been a quite common feature of claims in Suncorp's portfolio. The mental harm in these cases is generally a minor component of a larger claim for physical injuries though there are some where an award for damages may relate more to compensation for a recognised psychiatric illness than for the physical injuries which led to the mental harm.

Public & Products liability Insurers did expect to see a greater number of consequential mental harm claims made post reforms. The effect would be to:

- ♦ establish pain and suffering or loss of the amenities of life to the extent necessary to overcome the 15 % of a most extreme case threshold necessary to attract an award in respect of non-economic loss under the CLA; and/or
- ♦ to maximise the award for that head of damage in the critical range of 20 to 30 % of a most extreme case where a difference of one or two percentage points may make a difference of many thousands of dollars.

However, from this review sample and anecdotal evidence from the wider portfolio Suncorp has not seen a real increase in these claims for this portfolio.

In relation to S32 in respect of the duty of care owed by a defendant in the case of pure or consequential mental harm, Suncorp submits the provisions may be of significant assistance where that mental harm was not a foreseeable

consequence of the breach of the duty owed by the Insured.

CLA Part 7 – Self defence and recovery by criminals

These provisions appear to have had no effect upon claims in the sample reviewed. However, Suncorp occasionally does encounter claims made in circumstances where these provisions would apply and welcomes these reforms.

CLA Part 2, Division 2 – Fixing damages for economic loss

This division imposes a cap in respect of awards of damages for economic loss at 3 times the amount of average weekly earnings at the date of the award.

None of the claims within this sample would have been affected by this cap. Suncorp submits that the introduction of this provision remains important. Suncorp agrees with the observations made in the Ipp report that claimants in this category of remuneration might be expected to have made other arrangements in respect of income protection. The benefits (eg avoiding increasing premiums) outweigh the limitations of this provision.

S15 of this Division affects awards in respect of gratuitous attendant care services. In addition to setting up some threshold issues to be satisfied before an entitlement to award of damages for these services is established, they relevantly provide that there are no damages to be awarded under this head if the services are provided, or are to be provided:

S15 (3)(a) for less than 6 hours per week, and (b) for less than 6 months.

A comparison between pre-reform claims and recoveries for this head of damage and those claims post-reforms does disclose that this effective threshold for entitlement in respect of gratuitous attendant care services has reduced claims costs.

There was some apprehension on the part of Public and Products Liability Insurers that the introduction of this threshold might lead to a shift from gratuitous attendant care services to paid attendant care services which were unaffected by the reforms.

Section 15A of this Division also makes provisions in relation to damages for the loss of superannuation entitlements. Suncorp submits that this provision remains important in containing the cost of insurance.

CLA Part 2, Division 4 Interest on Damages

Suncorp submits that the reforms introduced under Section 18(1) have had benefit for our portfolio.

Of the 40 pre-CLA claims reviewed, 17 claims (42.5%) had interest paid on past General Damages and/or past gratuitous care.

Due to the long tail nature of these claims, interest on these heads of damages represents a significant proportion of the claims cost. However, as recognised by the reforms, the payment of interest on these heads of damages is not appropriate.

The removal of interest has created a small saving with respect to overall claims cost.

The Effects of reforms to the Legal Profession Act 2004 NSW

Amendments to the this Act have introduced a range of provisions in respect of maximum costs for legal services in claims where the amount sought or recovered is less than \$100,000.

Given that these provisions do not extend to disbursements it is difficult to speculate with any degree of precision, the effect that these reforms have had. We suspect that greatest effect is in seen in the significantly lower number of small quantum claims being brought.

Similarly, the effects of S345 of the Act which relates to the consequences for acting in respect of a claim (or defence) where there is no reasonable belief on the basis of provable facts and a reasonably arguable view of the law that a claim (or defence) has reasonable prospects of success, is likely to be reflected in the significantly lower number of smaller quantum claims.

Reforms Having Neutral Impact

Whilst these reforms may be having neutral impact as far as claims cost and frequency with respect to Suncorp's portfolio, Suncorp submits that they remain important features of the reforms. Therefore, these provisions should not be removed or altered at this point in time.

CLA Part 2, Division 7 – Structured settlements

It is anticipated that structured settlement agreements would be most attractive to both plaintiff's and defendants in the case of catastrophic and similar very severe injury types. It is a feature of Suncorp's portfolio of claims that injuries in these categories are quite rare. However, it appears that it is the absence in the Insurance market of any Insurer providing the necessary prescribed annuities which has

resulted in no structured settlement arrangements being contemplated in any of Suncorp's claims to date.

However, the obligation under S25 that a legal practitioner must advise, in writing, a plaintiff who proposes to negotiate settlement of a claim for personal injuries about structured settlements and the desirability of independent financial advice about these and lump sum entitlements might be expected to lead to further claims costs as the cost of this financial advice is passed on to defendants.

To date there is no evidence from our sample that this particular provision has increased claims costs in this way.

CLA Part 6 – Intoxication

The provisions in this part make substantial changes in respect of a duty of care and the standard of care owed by a defendant in the case of an intoxicated plaintiff and in respect of the assessment of contributory negligence in these cases.

Suncorp submits that these provisions have not and will not have a significant effect in the context of Suncorp's portfolio of claims for two main reasons:

1. In the context of commercial Insureds, the commercial element to the relationship between the Insured and the Plaintiff will alter the duty of care and standard of care that exists in that circumstance; and
2. Due to the inevitable evidentiary hurdles to establishing impaired capacity due to intoxication in accident circumstances where formal blood alcohol readings are not required, and hence are not taken. These readings are not required by law in any other circumstance than those involving some form of motor vehicle accident.

Without this evidence, and the presumptions which can be drawn about a person's functioning and judgment based upon blood alcohol levels, insurers are forced to rely upon what health care providers or other witnesses to an accident or it's aftermath recall from their observations or from the plaintiff's history taken when they attend for medical treatment.

This generally leaves an insurer with sketchy notes to the effect that the plaintiff smells strongly of alcohol or that they report having consumed a certain quantity of alcohol over an estimated time frame. None of this provides a solid basis for expert evidence as to the likely effects upon the plaintiff's ability to exercise judgment.

In relation to the issue of intoxication, three claims in the sample reviewed were affected by the provisions of the CLA and were claims in which it was thought that intoxication was a factor causative, in whole or part, in the plaintiff's injuries.

One of these three claims went to a judgment in the District Court whilst two were resolved by negotiated settlement.

Of the two resolved by negotiated settlement, a level of intoxication was agreed in only one. In that claim it was agreed that this would be reflected in a 20 % reduction in the damages agreed for contributory negligence on this basis.

With regard to the claim which did proceed through a fully contested hearing and judgment in the District Court no reduction for contributory negligence was made on the basis of intoxication.

CLA Part 10 – Apologies

The review sample indicates there to be only one instance where an apology or expression of regret had been made by an Insured. Unfortunately, this had no real impact upon the development of the claim. However this is not unexpected as the personal injuries suffered were significant.

It is Suncorp's expectation that apologies and expressions of regret would be most effective where the injuries suffered are minor. It would be reasonable to expect that an injured party, in this instance, might be satisfied with an acknowledgment of their injury, perhaps accompanied by some evidence that any causative factor in their injuries would be remedied so as not to pose a risk to others. This may be limited to circumstances where there would be no significant financial impact to the injured party in accepting that as a remedy.

Given that the number of low value (minor) claims has significantly reduced due to the effects of tort reform and insurer action in managing portfolio mix, it is not expected that the ability to make an apology or expression of regret will have a significant impact on claims outcomes. Nevertheless, Suncorp submits that this provision should remain as part of the reforms.

CLA Part 2, Division 3 – Fixing damages for non-economic loss (general damages)

The provisions made under this Division appear to have had the most significant impact upon Suncorp's portfolio of claims.

Certainly, the introduction of S16 which provides that no damages may be awarded for non-economic loss in cases where the loss is

less than 15 % of a most extreme case has, in our view, been the most significant factor in a substantial decrease in claims frequency in respect of minor injuries.

It is difficult to quantify with any precision, the claims costs savings as a result of these reforms in the claims sample reviewed. Table 3 illustrates the awards made in claims affected by the CLA along with a brief description of the injuries to which those awards relate.

Based on this data Suncorp submits that, whilst many claimant's who suffer minor injuries may now not receive an award in respect of non-economic loss, it is still relatively common for small awards in respect of non-economic loss to be made in cases involving soft tissue injuries (which represents the predominant injury in the category classed as a minor injuries).

The awards in all categories outside this class of minor injuries appear to be in line with awards made pre-reforms for similar injuries.

CLA Part 2, Division 6 – Exemplary and similar damages

The CLA provisions preventing awards in respect of exemplary, punitive or aggravated damages have had no impact on our portfolio of claims.

Suncorp submits that Public and Products liability policies of Insurance as well as Legal Liability sections of Householder policies have, for many years, featured exclusions in respect of such awards.

Notwithstanding, it is important in other lines of business for this provision to remain as part of the reforms.

CLA Part 8 - Good Samaritans

Suncorp submits that the provisions of the CLA in respect of good samaritans have not, and are unlikely, to affect the claims within our portfolio.

CLA Part 9 – Volunteers

Despite the inclusion in our portfolio of claims of a small number of claims falling under Public and Products Liability Insurance policies issues to Not-For-Profit-Organisations which might be expected to evidence claims against volunteers we have no such claims within that portfolio and are unable to comment on the effectiveness of this part of the Act.

Reforms where change is required

Suncorp submits that there is one area within the reforms where change is required to support the intentions of the reforms.

Part 4 - Proportionate liability

As section 34 specifically excludes claims arising out of personal injury from these provisions. Therefore they have not provided any relief in respect of the issues commonly arising for our Insured's from the implications of joint and several liability where a concurrent tortfeasor is uninsured and impecunious.

Suncorp submits these provisions should be extended to claims arising out of personal injury.

Table 3: Sample of Awards/Resolutions under CLA in Liability Claims

MEC %	AWARD AS ROUNDED	INJURY DESCRIPTION
15	\$4,000	Soft Tissue Injury shoulder & hip
15	\$4,000	Lacerated toe
15	\$4,000	knee injury + mental harm
15	\$4,000	Soft Tissue Injury back
17	\$8,000	Soft Tissue Injury shoulder, arm & neck
19	\$12,000	Soft Tissue Injury back
20	\$14,000	Soft Tissue Injury ankle
20	\$14,000	mental harm
20	\$14,000	Soft Tissue Injury back & arm
20	\$14,000	Knee injury
21	\$16,000	L3/4 disc protrusion
21	\$16,000	Soft Tissue Injury back & knee
22	\$18,000	Knee injury
24	\$22,000	Fractured hip + elbow injury
25	\$26,000	L4/5 disc prolapse
25	\$26,000	Soft Tissue Injury shoulder, face, hip & foot
25	\$26,000	Fractured ankle + knee injury
25	\$26,000	nerve compression
25	\$26,000	Fractured ankle
27	\$40,000	Shoulder injury, surgery, but pre-existing extensive osteoarthritis
28	\$56,000	torn meniscus
28	\$56,000	Soft Tissue Injury back & shoulder
29	\$72,000	Fractured humerus
29	\$72,000	serious hip injury
29	\$72,000	Fractured tibia, surgery & post-op infection
29	\$72,000	rotator cuff injury + depression
29	\$72,000	Fractured coccyx + Soft Tissue Injuries
30	\$92,000	Fractured sacrum, STI back & hip
30	\$92,000	Fractured hip
30	\$92,000	Soft Tissue Injury back
30	\$92,000	Knee injury
50	\$200,000	amputation of several fingers & others injured, child

Schedule A

Occupations made eligible for public liability insurance in NSW post-reforms

With effect from 22 August 2002:

- Dental supplies and/or equipment
- Building materials (used)
- Car wholesaling
- Air conditioning and refrigeration installation (Commercial – no cooling tower)
- Iron Works
- Battery manufacturing & warehousing
- Site preparation services
- Banana ripening services
- Tent manufacturing
- Tent makers
- Log sawmilling (sprinklered)
- Saw mills (sprinklered)
- Iron monger
- Vacant land property owner
- Local community fundraising (lotteries and raffles)
- Personal and household goods hiring
- Metal scrap, waste and bottle merchant
- Scrap metal dealer

With effect from 19 September 2002:

- Charitable organisation office
- Charitable aids depot
- Charitable sheltered workshop
- Benevolent institutions – sheltered workshop
- Organisations – Disadvantaged groups aid
- Residential care services
- Aged persons support
- Disability services & support organisations
- Organisations – family welfare
- Welfare & charitable homes & services
- Cinemas – Drive-in
- Museums
- Conservatories
- Hairdressing colleges
- Other education
- Radio and Television schools
- Clubs – unlicensed
- Long distance bus transport
- Performing arts venues

Schedule B

Organisations to which Suncorp has made available public liability insurance

- Adult education and training services
- Adult support groups
- Advisory and referral services
- Advocacy groups
- Aged care services / nursing homes
- Animal protection societies (no shelters)
- Animal shelters
- Animal training
- Arts, culture and heritage Associations
- Bible study groups
- Business and Professional Associations
- Charitable organisations
- Childcare services and playgroups (where incidental)
- Civic improvement organisations
- Community/Neighbourhood centres
- Crisis care shelters
- Dance clubs/classes/teachers
- Disability support services
- Emergency & security services
- Employment placement services (clerical)
- Employment placement services (non-clerical)
- Environment Protection Organisations
- Family and child support services
- Health care centres
- Hobby / social clubs (sedentary / office <100 members)
- Hobby clubs (non-sporting)
- Indigenous associations
- Information centres/services
- Libraries / Galleries / Museums
- Multicultural Associations
- Music and theatre groups (amatuer)
- Neighbourhood watch
- Organisations – ex-service and service
- Political interest groups
- Respite Care
- Sailing and yacht clubs (Licensed)
- Sailing and yacht clubs (Unlicensed)
- Senior Citizens Centres (Unlicensed)
- Social Clubs (Licensed)
- Social Clubs (Unlicensed)
- Spirituality Interest groups
- Sporting Clubs (Licensed)
- Sporting Clubs/Centres (Unlicensed)
- Sports & Fitness Trainers / Instructors
- Swimming clubs / lessons
- Youth activity groups
- Youth support/care services