Law Council
OF AUSTRALIA

Inquiry into small business insurance

Parliamentary Joint Committee on Corporations and Financial Services

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Contents

Acknowledgements 2
Executive summary 3
Part 1: Small business insurance 4
The clarity of insurance contracts 4
Affordability and availability 5
Insurance crisis in not-for-profit sector for children and family services 6
The growth of new risk categories 8
The role of government 9
Part 2: Insuring the legal profession 10
Part 3: Civil liability reform 11
The importance of efficient outcomes in public liability matters 12
The reality of damages payments for serious injury 12
Diverse Australian public liability schemes 13
The New South Wales example 13
The Queensland Example 15
Additional comments 20
About the Law Council of Australia 22

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Executive summary

1. The Law Council welcomes the opportunity to provide this submission to the Parliamentary Joint Committee on Corporations and Financial Services (**Committee**) as part of the inquiry into small business insurance in Australia (**Inquiry**).

2. This submission is in three parts. Part 1 addresses matters identified as general small business insurance concerns by the Law Council's constituent bodies. Part 2 identifies matters directly linked to the legal profession as a category of small business. Part 3 addresses issues linked to civil liability and tort law reform.

3. In our view, it will be important for the Inquiry to consider the various economic and other drivers that may be impacting the availability and affordability of products for small businesses across insurance classes. In particular, we note the need for a multi-faceted approach to address concerns of small businesses that are facing multiple challenges in obtaining insurance, even in circumstances where they have invested heavily in risk management and mitigation measures.

4. The Law Council has identified some areas that the Inquiry could consider in its deliberations that may assist in striking the balance between the rights of injured parties and the ongoing viability of the insurance industry. This submission highlights:

   (a) the importance of clarity and simplification of insurance contracts and product disclosure;

   (b) the importance of investing and making available evidence-based risk mitigation strategies linked to reducing premiums; and

   (c) specific measures to enhance the resilience of small business to cyber risks.

5. We expect the issue of tort/civil liability reform to be raised in the context of the Inquiry. However, the Law Council considers that civil liability settings and processes are broadly appropriate, and that they are primarily a matter for the states and territories.

Part 1: Small business insurance

6. Small businesses in Australia are a significant part of the national economy, contributing more than $500 billion annually.[1] That contribution arises from more than 2.7 million entities across the country, employing more than 5 million people.[2] Despite that contribution, approximately 90 per cent of those businesses have a turnover of less than $2 million, and 24 per cent have a turnover of less than $50,000.[3] Insurance is a critical part of business expenditure and, given the economics of small business, recent financial pressures and practices in the insurance industry have significant implications.

The clarity of insurance contracts

7. The Law Council's constituent bodies report that small business insurance contracts are often technical and difficult for business owners to understand. Insurance contracts tend to be ambiguous, contain specialised terminology, and have lengthy product disclosure statements. Often the detail within the product disclosure statement is significant because it defines the scope and practical availability of the insurance product and explains trigger conditions that exclude, quality and limit liability claims.

8. The Inquiry's terms of reference acknowledge that small businesses require access to coverage that meets their needs, including public liability, cyber, business interruption, and professional indemnity insurance. We observe that often these are the areas where definitions, exclusions and variable limits create confusion and practical restrictions. The NSW Small Business Commission has reported longstanding issues regarding complex regulatory obligations, legal liability frameworks, and insurance products that do not align with business needs or are too complex for ordinary owners to assess.[4]

9. For newly established businesses with little experience or advisory support, the complexity of insurance products can result in accidental underinsurance or the selection of products that are unsuitable or actually not available to them. As a result, business owners can purchase a policy without understanding coverage limits, exclusions, or obligations, which could lead to avoidable losses during claims.

10. There are a number of regulatory settings that could be considered and refined to assist small businesses. For example, the design and distribution obligations which currently apply to financial products distributed in retail settings require issuers and distributors to ensure that financial products meet the needs of the target market to which they are sold. Extending some of these product governance requirements to small business insurance contracts may remove some complexity for those businesses by improving the information provided and the conduct of industry to connection to none advised sales scenarios.

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1 Australian Bureau of Statistics, Counts of Australian Businesses, including Entries and Exits (26 August 2025); Australian Small Business and Family Enterprise Ombudsman, Number of small businesses in Australia (Web Page).

2 Ibid.

3 Ibid.

4 New South Wales Small Business Commissioner, *Small business insurance: contemporary challenges and experiences* (August 2022).

11. In this context, insurance brokers can play an important role in the provision of information and advice about insurance products, which can reduce the risk of underinsurance or exclusions resulting in inadequate cover. However, broker advice increases the total cost of insurance for small businesses, despite recent changes to make fees more transparent.[5]

Affordability and availability

12. Affordability has emerged as the most significant barrier to proper insurance coverage for homeowners, small businesses and not-for-profit organisations. The rise in premiums is the result of a cluster of factors, including inflation, climate-related impacts, regulatory costs and increased loss severity. Australian insurers identified premium affordability and insurability as the top business challenge for 2026, with 22 per cent citing it as their leading concern.[6]

13. Rising premiums, higher excesses, exclusions, and the growth of limitations in insurer appetite for certain sectors and locations create substantial barriers for many operators seeking to adequately protect their assets and manage risk. This applies in both metropolitan and regional areas, especially those areas facing higher premiums because of flood and storm surge risk.

14. The potential losses for small business should not be underestimated. The owners of small businesses in at-risk areas who cannot afford insurance risk losing not only their businesses but their homes in circumstances where they have used their homes to secure small business loans. Farmers and primary producers are also significantly impacted by the difficulty of obtaining insurance for stock, crops and fences when damaged by floods, cyclones and fires, especially in northern Australia.

15. The Queensland Law Society, for example, has reported receiving comments from members where premiums are significantly higher, illustrated by home and content insurance costing 60 per cent more than the national average.[7] Reduced competition, and limited insurer willingness to operate in areas that are prone to natural disasters, contribute to escalating costs for businesses, particularly in areas exposed to natural weather events.

16. In addition, the Australian Chamber of Commerce and Industry (**ACCI**) has reported that small businesses pay additional government taxes and levies on insurance premiums, with the result that small businesses can pay up to 30 per cent more for premiums due to those taxes with a growing trend of under insurance or non-insurance as a direct consequence.[8] That situation arises because of the operation of both state duties[9] and the Commonwealth Goods and Services Tax, which is an additional charge. In this context taxation is a driver of increased insurance costs for small businesses.

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5 National Insurance Brokers Association, Insurance Brokers Code of Practice (1 November 2023) 12-14.
6 Roxanne Libatique, 'Premium affordability tops Australian insurers' concerns amid rising risks' (*Insurance Business*, 13 February 2026).
7 Australia Institute, 'Premium price: The impact of climate change on insurance costs' (4 November 2024).
8 Australian Chamber of Commerce and Industry, Addressing the Small Business Insurance Challenge (3 October 2025) 14-17.
9 See, eg, *Duties Act 1987* (NSW) s 234 (imposes a duty of 2.5 per cent to 9 per cent on the premium).

17. This financial pressure regularly encourages small businesses, especially new small business owners, to choose the cheapest policy available, often without regard to the adequacy or exclusions. Due to the premiums being extremely high and policies remaining complex, many small business owners engage only superficially with their insurance requirements. We understand that many small business owners view insurance procurement as an administrative obligation required for leasing premises, obtaining a licence, or engaging clients, rather than as a strategic safeguard against catastrophic loss. In this context new and emergent risks, such as cyber security, may not even be considered.

18. We note that the issue of government taxes and levies can increase the cost of an insurance product substantially. This is a well-known problem in insurance, being identified and criticised by the *Report on Australia's Future Tax System* (the **Henry Review**) in 2009.[10] The Henry Review recommended that taxes on insurance should be uniformly abolished.[11] We note that, as recently as 2024, the Productivity Commission echoed that call, also recommending the abolition of insurance levies as a step that would immediately place downward pressure on affordability of insurance.[12]

19. We also note that premium reduction can also be achieved through a combination of proactive measures, including grants and tax relief for cyber security upgrades, safety improvements, and insurance awareness and information for small businesses linking risk mitigation practices to premiums, and for that information to be made available at the point of inquiry.

Recommendation 1

To support small businesses in reducing their insurance premiums, the Australian Government should consider additional measures that encourage investment in innovation and risk mitigation (such as cyber security upgrades, safety improvements, and resilience measures).

Recommendation 2

The Australian Government should, in conjunction with states and territory governments, coordinate a national review of taxes and levies (including GST) currently imposed on small business insurance products, with a view to removing impediments to the affordability of adequate levels of small business insurance.

Insurance crisis in not-for-profit sector for children and family services

20. One of the sectors that is especially affected by rising insurance premiums is the not-for-profit child and family services sector. In June 2021, numerous children and family services peak bodies wrote to the NSW Treasurer and Attorney-General

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10 Ken Henry et al, Australia's Future Tax System (Report to the Treasurer, December 2009).
11 Ibid 469.
12 Productivity Commission, *Submission to Select Committee on the Impact of Climate Risk on Insurance Premiums and Availability* (July 2024) 9.

regarding the collapse of the insurance market for organisations seeking physical and sexual abuse coverage for children's services.[13]

21. As a result of that letter, an interjurisdictional working group (**IJWG**) on NGO physical and sexual abuse insurance was established.

22. There is still no permanent solution to the problems identified by the June 2021 letter and the work done by the IJWG in several Australian jurisdictions. There is no permanent government or market intervention solution yet in place in Queensland, Tasmania, South Australia or the Northern Territory.

23. The absence of the availability of consistent and suitable insurance for this significant area of organisational risk (given there are no time limitations for the bringing of child sexual abuse claims in any jurisdiction in Australia), means many providers are unable to obtain clear cover for their legacy liabilities, as well as present and future risk in this space. We note that a large number of these organisations are not-for-profit organisations.

24. The currently inconsistent national landscape is summarised below:

ACT	**NSW**	**QLD**	**SA**
A long-term scheme is in place via the Australian Capital Territory Insurance Authority.[14]	The Special Liability Insurance Scheme came online on 1 January 2025.[15]	No permanent scheme in place. 2024/25 budget revealed funding to support development of a long-term indemnity scheme, but no update has been shared about a permanent scheme.[16]	A temporary scheme was in place until September 2022. It is unknown if or for how long this will be extended.[17]
TAS	**VIC**	**WA**	
No permanent scheme is in place.	A long-term scheme in place	Indemnity cover for out-of-home care	

[13] Letter to the Hon Alister Henskens SC MP, Minister for Families, Communities and Disability Services (NSW), Market Failure – Physical & Sexual Assault (PSA) insurance coverage in OOHC & SHS, 30 June 2021.

[14] ACT Insurance Authority, Annual Report 2022-2023 (20 September 2023) 10, 95.

[15] Department of Communities and Justice, NSW Government, Special Liability Insurance Scheme (6 August 2025) <https://dcj.nsw.gov.au/service-providers/deliver-community-and-sector-assistance/ngo-insurance-for-physical-and-sexual-abuse-psa-claims.html>.

[16] Insurance News, 'Queensland care providers welcome 'critical' abuse cover scheme' (14 June 2024) <https://www.insurancenews.com.au/daily/queensland-care-providers-welcome-critical-abuse-cover-scheme>.

[17] Department of Child Protection, Government of South Australia, 'Temporary OOHC insurance coverage continues' (23 December 2021) <https://www.childprotection.sa.gov.au/support-and-guidance/service-providers/latest-news/sp-news/temporary-oohc-insurance-coverage-continues>.

A short-term scheme is in place.[18]	via the Victoria Managed Insurance Authority.[19]	and youth homelessness accommodation services only.[20]	

25. Accordingly, the Law Council recommends urgent and coordinated examination of the state and availability of insurance for the not-for-profit sector providing child and family support services.

Recommendation 3

There should be an urgent and coordinated examination of the state and availability of insurance cover and affordability for the not-for-profit sector providing child and family services.

The growth of new risk categories

26. The Law Council notes that the economics of insurance is affected by the emergence of new categories of risk and insurance requirements that are reshaping the needs of small business. Cyber threats have become unavoidable; with the result that cyber insurance is now considered essential. The insurance industry is currently grappling with its approach to insurance for loss causes by business use of Artificial Intelligence, with some providers moving to exclude coverage from a range of policies, including professional indemnity insurance. Climate-related events have also driven interest in new solutions like parametric insurance,[21] a form of insurance that is not widely known as an option.[22]

27. The evolution of insurance products tends to be more sophisticated, worsening the knowledge gap for new entrants and complicating knowledge gaps for existing entities. Against this background, businesses may tend to decline certain types of work or customers, limit their expansion into higher risk services, and even reduce physical presence due to higher property premiums. Arguably, this influences innovation, competitiveness, and community services, particularly in regional areas.

28. Whilst insurance brokers play an important role, it is also notable that some small business owners rely heavily on them which is symptomatic of a system where

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[18] Christopher Knaus, 'NSW taxpayers to fund indemnity for 47 organisations against child abuse claims', The Guardian (online), 16 May 2023 <https://www.theguardian.com/australia-news/2023/may/17/nsw-taxpayers-to-fund-indemnity-for-47-organisations-against-child-abuse-claims>.

[19] Victoria Managed Insurance Authority, Policies and cover (12 March 2026) <https://www.vmia.vic.gov.au/policies-and-cover.>.

[20] Government of Western Australia, Physical and Sexual Abuse Indemnity Scheme, 28 January 2026 <https://www.wa.gov.au/government/document-collections/physical-and-sexual-abuse-indemnity-scheme>.

[21] Parametric insurance is a mechanism whereby a payment is made by reference to a trigger event and the extent to which the trigger event exceeded or failed to reach a specified threshold. If the threshold is met, the insured amount is payable. If the threshold is not made, a payment proportionate to the threshold is made. See Rohini Sangupta and Carolyn Kousky, 'Parametric Insurance for Disasters' (Wharton Risk Centre, 2020).

[22] Mike Berry, 'Small Business Insurance Trends 2026' (Dudgeon Berry Insurance Group).

policies are too difficult for ordinary people to understand independently of expert advice, emphasising the need for clarity highlighted above.

The role of government

29. Insurers are uniquely placed to set the pricing of insurance products and should be guided by government and incentivised to create affordable, tailored microinsurance and other options for small businesses and not-for-profit organisations. In the context of global underwriting of insurance, for example, there is an identified need to engage and educate international reinsurers operating in the Australian market. The ACCI has observed that international reinsurers play a critical role in elevated pricing structures and disproportionate risk mitigation requirements inconsistent with local risk profiles and industry standards.[23] The ACCI concluded:

> *Without meaningful intervention, the cycle of rising premiums, increasing underinsurance, and heightened financial vulnerability, coupled with rising incidence of natural disasters, will continue to erode small business resilience. Governments at all levels have a role to play in ensuring insurance remains accessible and affordable, whether through tax and levy reform, reinsurance support, or regulatory adjustments that allow for more innovative and cost-effective coverage options.*[24]

30. In our view, the economic and systemic drivers impacting the availability and affordability of products for small businesses across core insurance classes (public liability, professional indemnity, asset and cyber insurance) are critical considerations for the Inquiry. There is an apparent need for a multi-faceted approach to address concerns of small businesses facing multiple challenges in obtaining insurance, even when heavily involved in risk management and mitigation. Recommendations should not focus exclusively on tort law reform but should consider a range of policy settings and associated tax policy.

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[23] Australian Chamber of Commerce and Industry, Addressing the Small Business Insurance Challenge (3 October 2025) 14.

[24] Ibid 17.

Part 2: Insuring the legal profession

31. The legal profession in Australia is characterised, overwhelmingly, by small practice lawyers servicing a local community and a modest client base. Nationally, over 90 per cent of private law practices are very small practices of between one and four principals.[25] In addition, barristers in Australia operate on a sole-trader model, often in chambers similarly requiring various small business insurances. The cost, accessibility and coverage of insurance is a growing concern for many members of the legal profession. Ensuring that these small practices continue to be viable businesses is also critical ensuring that legal services remain available to Australians (without significant additional costs).

32. As small business operators, the legal profession maintains both ordinary small business insurances as well as specific forms of insurance. Many law practices will purchase insurance products including:

    - professional indemnity insurance;
    - public liability insurance;
    - workers' compensation insurance;
    - cyber liability insurance;
    - management/directors and officers insurance; and
    - business and property insurance.

33. Professional indemnity insurance is compulsory and required as a precondition of being issued with a practising certificate in all jurisdictions in Australia.[26] Workers' compensation insurance is similarly mandated where the practice employs staff.[27] Other forms of insurance are optional, but usually maintained. Accordingly, insurance is a substantial cost factor in the running of a legal practice.

34. The Law Council's constituent bodies report substantial variation in the costs and available insurances in each jurisdiction. This reflects the general insurance landscape in Australia which is not uniform, with costs associated with the risk profile of the specific firm, including the location of the firm. A recent report into insurance costs in North Australia found that property insurance costs are approximately double the rate found in the rest of the country. Salient factors include the frequency and intensity of natural disasters, the risk appetite of insurers, and levies on insurance premiums.[28] That is a particular issue for the legal profession in northern Australia (Queensland, NT, WA) and the communities they serve.

35. An area of reported emergent insurance risk for the legal profession relates to the proliferation of information stored relating to client matters. Contested matters involving highly sensitive information ranging from criminal matters, sensitive family law proceedings, through to intellectual property of international significance, in

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[25] Urbis, 2024 National Profile of Solicitors (Report prepared for the Law Society of New South Wales, 13 June 2025) 2, 28.

[26] See, eg, *Legal Profession Uniform Law 2014* (NSW) s 211; *Legal Profession Act 2007* (Qld) s 353; *Legal Practitioners Act 1981* (SA) s 52 (Professional Indemnity Scheme 2021, cl 8).

[27] See, eg, *Workers Compensation Act 1987* (NSW) s 155; *Workers' Compensation and Rehabilitation Act* 2003 (Qld) s 48.

[28] Australian Competition and Consumer Commission, Northern Australia Insurance Inquiry (Final Report, 2020) 22-59.

addition to storage of primary identification documents makes law firms prize targets for cyber attack. With the incoming requirements under the Anti-Money Laundering and Counter-Terrorism Financing reforms commencing in July 2026,[29] a significant part of the legal profession nationally will be required to maintain and keep documents related to identification and source of funds in conveyancing transactions. The proliferation of personal and financial records stored electronically across the legal profession is opening a significant field of ongoing risk linked to cybersecurity.

36. Given the type of information and the size of the population for whom records will be kept, we suggest that premium rise in this sector is likely. This will almost certainly place additional costs on small business law practices. The Law Council understands that many cyber insurance products may already be too expensive or inaccessible for medium and small businesses. In this context, insurance is part of larger capital outlay linked to computer hardware and software, which imports substantial ongoing costs in running a legal practice. That landscape is complicated by the exponential growth in hybrid and remote work practices, staff mobility, and advanced social engineering in cyber-attack. Small business, including law practices, often do not have the kinds of security controls in place that insurers require to mitigate cyber risk.

37. In our 2026–27 Pre-Budget Submission, the Law Council called for investment in building the capacity of small businesses (including law practises) to prevent, identify and respond to cyber threats as part of the Horizon 2, 2023–2030 Australian Cyber Security Strategy by expanding the resources of the Small Business Cyber Resilience Service or considering international approaches to mitigating cyber risk.[30]

Recommendation 4

As a part of Horizon 2 of the 2023–2030 Australian Cyber Security Strategy, the Australian Government should provide additional funding to support the capability building of small businesses in response to cyber threats.

Part 3: Civil liability reform

38. The legal profession also plays an important role in the distribution and redistribution of liability costs in insurance, and in this respect plays an ambient role in the costs associated with insurance, particularly in civil liability. In this respect tort law reform has been a consideration in several jurisdictions, notably in NSW and Queensland.

39. Tort law is primarily a creature of the common law, playing a direct and indirect role in the insurance sector through the distribution and redistribution of indemnity costs and related recovery proceedings by the insurance industry. Legislation plays a role in shaping, codifying and restricting the operation of civil liability proceedings. The legislative provisions operating in the civil liability context are not uniform but tend to function in a way that limits the quantity, type and quantum of damages recovered by claimants. Since the 2002 *Review of the Law of Negligence* (the **Ipp Report**),[31] the

[29] *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).
[30] Law Council of Australia, 2026-27 Pre Budget Submission to the Treasury (6 February 2026) 26.
[31] The Hon David Ipp et al, Review of the Law of Negligence (Final Report, September 2002).

focus of tort law reform has often been about restricting the number of claims and the damages payable as a front-end control reducing (in theory) the demands on the insurance system.

40. Because tort law is mainly a creature of the common law and shaped by a diverse legislative framework in each jurisdiction, a complete review is not possible in this submission. We would recommend that, if a national reform is considered, tort law should either be the subject of a special inquiry similar to the Ipp investigation in 2002 or referred to the Australian Law Reform Commission. For the purposes of this submission, we provide specific comments in relation to the position in New South Wales and Queensland, noting that there will be overlaps and unique aspects in other jurisdictions.

The importance of efficient outcomes in public liability matters

41. We note that in some jurisdictions outside NSW there are detailed pre-litigation procedures, including mediations and negotiations, that must be adhered to before commencing personal injury proceedings.[32] While such measures encourage early settlement in some cases, members of the legal profession acting in these jurisdictions have noted that there are some matters where these procedures have caused considerable delays and increased costs because of the personnel involved in the process, particularly in cases where settlement negotiations fail and the matter needs to be resolved in a court. We therefore suggest caution in relation to the impact of mandatory pre-procedures in public liability matters as a general requirement in all cases as it may have the undesirable effect of complicating the process and escalating costs in complex cases. Orders for negotiations are appropriately made on a case-by-case basis by the relevant court.

The reality of damages payments for serious injury

42. There is a perception that the damages awarded to people who suffer serious and particularly catastrophic injury receive significant and disproportionate sums for the rest of their life. That perception is incorrect. Practically, it often takes some years for a matter to proceed through the courts and a lump sum payment to be made to the plaintiff. During that time, it is common for a person to be in receipt of payments from Centrelink, which must be repaid following a compensation payment.[33] The remainder often becomes a sum from which a preclusion period is determined. When the money runs out, the person is then in a position of either having to seek a waiver of the preclusion period (which is onerous and often unsuccessful) or having little or no income for the remainder of the preclusion period.[34] After that period is served, the person usually transitions to a disability pension and/or support through the National Disability Insurance Scheme. Simply stated, the caps on damages awards can have the effect of rapidly shifting the economic burden for injury from insurers to the taxpayer.

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[32] See, eg, *Personal Injuries Proceedings Act 2002* (Qld) ch 2, pt 1; *Civil Law (Wrongs) Act 2002* (ACT) ch 5.

[33] *Social Security Act 1991* (Cth) pt 3.14 (see, especially, s 1178).

[34] Law Council of Australia, The Justice Project: People with a disability (Final Report, August 2018).

43. Policy changes linked to downward pressure on damages for injured persons must be carefully examined. For example, the amount paid may not cover the life of the injured person in cases of catastrophic injury and may be too little to invest with a reasonable return but may also be too much to make them eligible for the National Disability Insurance Scheme or Centrelink payments. Due consideration must be given for how damages awards intersect with the availability of lifetime care and support.

Diverse Australian public liability schemes

44. It is important to recognise the distinct legislative schemes in respect of civil liability insurance that operate across Australia. We note that the concerns around the availability and affordability of insurance products for small businesses and not for-profit and community organisations are not new. As discussed above, those concerns formed the basis for different legislative responses to a perceived insurance crisis across Australia in the early 2000s. As there is no single tort law scheme operating in Australia, reforms would need to be targeted at a uniform approach involving the states and territories.

45. The Law Council is of the view that most civil liability settings and processes are entirely appropriate and function well. There may be scope for replication of examples in jurisdictions that are noteworthy, as well as refinement, but there is no indication that the downward pressure placed on civil liability by national liability schemes is failing.

46. In our view, a reduction in insurer spending on civil liability should be achieved through risk mitigation by insured parties and the appropriate and early settlement of claims rather than restricting damages to insured parties. We are also of the view that there is a role for government in enacting policy settings that allow claims to be managed efficiently, for example policies that contribute to the availability of sufficient numbers of medical specialists being available in the community to both treat injured people and provide expert medico legal advice.

47. Fundamentally, it is desirable that the focus of policy moves from limiting payouts to injured parties to the prevention of injuries and improving the efficacy of the medical and legal systems.

The New South Wales example

48. In NSW there is a well-established and functional system based on the *Civil Liability Act* 2002 (NSW). This Act was introduced following the recommendations of the Ipp Report. The primary purpose of the Civil Liability Act was to reduce the quantity of claims, limit the types of claims, and restrict the amounts that could be recovered by claimants. When the Bill was first introduced in 2002, it was in the context of a perceived insurance crisis, felt primarily by local government.[35]

49. It is widely recognised that the Civil Liability Act, by significantly altering the liability principles of negligence found in the common law, has achieved the intended purpose described above. It is broad in scope considering that negligence provisions

[35] New South Wales, *Parliamentary Debates*, Legislative Assembly, 28 May 2002 (Robert Carr MP).

contained in Part 1A apply to all claims for damages for personal injury, death, property damage and economic loss, regardless of whether the claim is brought in tort, contract, statute or otherwise.[36]

50. Preceding this Inquiry, in October 2025, the Insurance Council of Australia released a position paper entitled *A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform* (**ICA Paper**).[37] We note that several of the suggestions for public liability reform raised in the ICA Paper are already legislated in New South Wales. Of note are the following provisions:

    (a) The mental harm provisions in Part 3 of the Civil Liability Act, which curtail common law rights in relation to 'nervous shock'. Subsection 30(2), for example, limits recovery for pure mental harm unless the plaintiff witnessed, at the scene, the victim being killed, injured or put in peril, or the plaintiff is a close member of the family of the victim.

    (b) The limitation on damages with respect to gratuitous attendant care under subsection 15(2) of the Civil Liability Act.

    (c) The dangerous recreational activity provisions. Of note is the defence at section 15L in respect of claims for harm suffered as the result of a materialisation of an obvious risk of a dangerous recreational activity. We also draw attention to section 5M, which provides that a person does not owe a duty of care to another person who engages in a recreational activity in respect of a risk of the activity if the risk was subject of a risk warning to the plaintiff. This provision effectively indemnifies providers of recreational activities that involves physical risk from liability.

    (d) Curtailment of the damages available at common law (including maximums for non-economic loss under section 16, and economic loss under sections 12 and 13.

51. The ICA Paper draws attention to an increase in worker-to-worker claims and associated delays in the making of these claims. These claims operate based on a person being injured in their employment by a third party, and are often made against the head contractor, occupier of premises and/or a host employer. Such arrangements are frequently used in the construction mining and manufacturing industries where contractors are a frequent part of the working environment.

52. We appreciate that liability insurers face challenges in underwriting this category of employment and relationship, particularly because the liability claim may be made after a workers compensation claim has run its course, with the attendant expenses over time. However, we suggest that any recommendations with respect to these arrangements take account of the fact that a business using internal labour hire entities is making an informed commercial decision to expose themselves to workers compensation and third-party liability claims across their subsidiaries and related entities. In practical terms, labour hire arrangements may be the only way that certain industries are able to function and maintain expertise in a complex work site.

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[36] *Civil Liability Act 2002* (NSW) ss 5 and 5A.

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

53. We also note that there are certain statutory protections in New South Wales that largely protect against dual compensation for the same injury.[38] Further, the deemed worker provisions means that workers who are not considered employees in the traditional sense are still entitled to statutory workers compensation.[39] This extended definition of worker therefore provides further protection to small businesses from claims that might otherwise be made against public liability insurers.

Limitation periods and discovery

54. Civil liability is characterised by diverse limitation periods across Australia, and there will be different views about the appropriateness of them. In New South Wales, the limitation is the first of the following to expire:

    (a) the so-called discover ability limitation period, which runs for three years after the date on which the cause of action is discoverable by the plaintiff; and

    (b) the long stop limitation period, which refers to 12 years after the date of the act or emission that caused the injury or death.[40]

55. The Insurance Council is critical of the concept of discoverability, noting that multiple elements of discoverability create greater underwriting uncertainty for insurers—for example, the time at which a person sustained an injury as opposed to the time at which the person knows the extent of those injuries. Whilst members of the legal profession representing insurers have noted that the ability to obtain evidence to defend an action can be difficult, particularly years after the event, we suggest at the same time that it is important that there is sufficient flexibility within a limitation system in order to ensure fairness for plaintiffs as well as defendants. It is often the case that a person is not aware of the extent of any disability or injury until well after the event, and may not be in a position to make an early claim because of the distress involved.

The Queensland Example

Psychological injuries

56. While recognising that primary and, particularly, secondary psychological injury claims have substantially increased in recent times, the Law Council does not support reform proposals that would see access to damages for psychological injuries significantly restricted. In Queensland, under the *Civil Liability Regulation 2014* (Qld) adverse psychological reactions to physical injuries are treated as a feature of the physical injury for the purpose of calculating an injury scale value (**ISV**) upon which general damages are calculated. Where there is a diagnosed mental disorder and a physical injury, the court must determine which is the dominant injury and adjust the ISV for the dominant injury to take into account additional injuries. The psychiatric injury rating scale (**PIRS**) rating accepted by the court informs how a mental disorder is allocated or contributes to an ISV. We do not think that there is any significant need to adjust how general damages for combined physical/psychological claims are calculated in Queensland.

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[38] See, eg, *Workers Compensation Act* 1987 (NSW) s 151Z.
[39] *Workplace Injury Management and Workers Compensation Act 1998* (NSW) sch 1.
[40] *Limitation Act 1969* (NSW) s 50C.

57. We consider that there are other levers that can reduce the impact of psychological injuries on insurance schemes, such as improved access to treatment through government policies that promote increased access to mental health professionals. This would mitigate the development/exacerbation of psychological injures. Increased access to psychiatrists for independent medical examinations / expert reports would also assist in reducing the time it takes to resolve a claim, which would reduce the costs of claims and reduce the adverse impact that drawn out claims can have on the psychological health of the claimant. The suggestion that an independent panel of psychiatrists be available to assess PIRS as a single expert sounds attractive in theory, but Queensland experience has shown it to be counterproductive and unworkable.

Third-party nervous shock claims

58. The ICA Paper advocates for significant restrictions on the ability to claim damages for nervous shock based purely on whether the claimant was present or directly witnessed the primary injury or incident or, alternatively, excluding entirely claimants who have not sustained the primary/initial injury.

59. While recognising that third-party nervous shock claims have an impact on insurers' costs and therefore on premium, the Law Council considers that substantially restricting such claims by imposing arbitrary requirements or excluding them altogether is not justified.

60. The evolution of the law of negligence in relation to nervous shock claims has always involved tension between incremental development of legal principle and consideration of public policy regarding how far the scope of liability should extend. The Queensland *Civil Liability Act 2003* addresses duty of care and causation without prescribing the exact class of persons who can make a third-party nervous shock claim.

61. The Law Council considers that this approach is appropriate and that the social utility in a third party being able to claim damages for nervous shock resulting in diagnosed mental disorders, where breach of duty and causation, are proven should not be discarded purely because of its impact on insurance premiums. Rather, it is worthwhile the legal profession engaging in meaningful discussion about the limits of the law of nervous shock while the courts remain empowered to decide matters on a case-by-case basis. The fact that the common law still applies restrictions on third party nervous shock claims is illustrated by the matter of *Lundbergs v Fu* [2025] QSC 135.

62. As with the general discussion above regarding psychological injuries, improvements can be found in relation to access to mental health support and availability of specialists to provide expert assessment.

Gratuitous and paid care

63. The ICA Paper advocates for increased restrictions on the availability of damages for paid and/or gratuitous care.

64. When considering the availability of damages for care, the rationale for awarding such damages must be borne in mind, including that the need for care has been created by the tortious actions of the defendant and should therefore be compensated, particularly considering scale of injury required for upper-level compensation. Practically speaking, a curtailment of damages reduces the length of time that a person is able to be self-sufficient and speeds up the transition from private funding to public funding of the injured party.

65. For gratuitous care in Queensland, this rationale is reflected in section 59 of the Civil Liability Act, which provides that, in order to attract damages, gratuitous services must be necessary, arise solely out of the injury in relation to which damages are awarded and not have been provided to the injured person before the breach of duty happened. Further, the services must have been provided, or are to be provided, for at least six hours per week for at least six months and must be offset for any benefit the service provider obtains through providing the service and take into account any period for which the injured person has not or will not require the services because of care provided in a hospital or other institution. Interest is not paid on past gratuitous care. Damages awarded for future gratuitous services are discounted on the 5 per cent tables rather than the 3 per cent tables as would have been the case at common law.

66. Taken together, the Law Council considers that these legislative settings already sufficiently restrict the availability of damages for gratuitous services and provide an appropriate balance between the needs of injured persons and the need to keep insurance affordable. We do not think that any further caps or thresholds are required, including a proposed injury threshold.

67. In terms of the contention that gratuitous care should be paid at the rate of minimum wage rather than at commercial rates and that commercial rates should only be available where commercial care has been used, we highlight that an injured person who has not used commercial care may not continue to have access to friends or family who are providing gratuitous care. Commercial rates, discounted appropriately on the 5 per cent tables and for vicissitudes and contingencies, are therefore justified and do not represent overcompensation for future care needs. Further, damages at commercial rates should not be available only to those who have already been able to afford commercial rates. Lack of having engaged paid care after an injury will in many cases relate to lack of means rather than lack of need or easy availability of gratuitous care.

Gratuitous care provided to third parties (Sullivan v Gordon damages)

68. *Sullivan v Gordon* damages were reintroduced in Queensland in 2010 but are subject to significant restrictions.[41] These include that the injured person died or that they meet an injury threshold imposed by the requirement that general damages must exceed a prescribed amount (currently $58,090, which calculates to an injury scale value of 23 or more) and that the recipient of the care resided at the injured person's usual residence. There are several other requirements, including a threshold on the amount of care the injured person would reasonably have been expected to provide.

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41 *Civil Liability Act 2003* (Qld) ss 59A-59D.

69. Arguably, the current provisions already result in claimants who could reasonably be considered deserving missing out on any damages. For example, an injured grandmother who previously cared for a terminally ill grandchild but did not live in the same household would not be eligible for *Sullivan v Gordon* damages despite the immense impact on the needs of her family.

70. The Law Council opposes any argument that *Sullivan v Gordon* damages should be further restricted in states where they are currently available, or that such damages should be a component of general damages, given that general damages are properly treated as a separate head of damage and are heavily restricted (in Queensland, the amount payable for general damages for the most severe injury is currently limited to $436,100).

Assessment of damages: non-economic loss damages, minimum injury thresholds, caps and injury scales

71. The assessment of general damages in Queensland using the injury scale value system and calculation provisions in the *Civil Liability Regulation 2014* (and similar provisions in the workers' compensation scheme) have significantly restricted the general damages recovered for "less significant claims" making many of them commercially unviable to pursue beyond the pre-proceeding process. The use of the ISV system does achieve consistency in the assessment of general damages but at a significantly reduced amount for lower range injuries. Damages awarded for ISVs in public liability matters are calculated on a sliding scale from $1780 for an ISV of 1 to $436,100 for an ISV of 100. These are modest sums, given that the level of injury required for an ISV of 100 is extreme. An ISV of 75, for example, is quadriplegia, and 71 is an 'extreme brain injury'.[42]

72. The Law Council considers that the modest sums payable in relation to low ISVs already restrict injured claimants' entitlements and that there is no need to introduce any further thresholds, noting that it is possible for an ISV of 0 to be assessed where an injury is purely temporary. If anything, there is a case for a marked increase in those sums given the costs associated with lifetime care and support of a catastrophic injury.`

73. We note that the introduction of thresholds that must be satisfied before an entitlement to damages can be exercised results in unintended consequences and a misdirection of resources, often with significant increases in costs incurred.

Review of legislation regarding dangerous recreational activities

74. The Law Council considers that the Queensland provisions governing dangerous recreational activities—Chapter 2, Division 4 of the Civil Liability Act—and courts' interpretation of those provisions have been appropriate. We do not think that the exclusion of liability for materialisation of obvious risks should be extended to disentitle people who are injured participating in an 'active recreational activity'.

[42] Workers' Compensation and Rehabilitation Regulation 2025 (Qld), Schedule 4.

'Worker-to-Worker Claims'

75. Some of the concerns raised in the ICA Paper are not relevant in Queensland due to the regulatory framework and it may be that these concerns can be addressed to some extent by the adoption of the Queensland pre-proceeding framework in other jurisdictions. For example, the requirement that early notice be given to public liability defendants under Queensland's pre-proceedings legislation (the *Personal Injuries Proceedings Act 2002*) eliminates concerns about late notice being provided to public liability insurers. We suggest that moderating the impost of worker-to-work claims by improving procedural requirements in other jurisdictions is a fairer and more effective approach than making wholesale changes to the way in which contribution is managed or to the ability of statutory insurers to recover damages from host employers.

Procedural reforms to increase efficiency and lower claims costs

Restricting multiple causes of action

76. The Law Council does not consider there is a need to restrict the ability to claim damages under multiple causes of action.

Streamline pre-litigation procedure for personal injury claims

77. The Law Council agrees that *Personal Injuries Proceedings Act 2002* (Qld), and similar provisions in relation to motor accidents and common law claims for workers' compensation, are largely effective and can provide a model to other states for streamlining pre-litigation procedures.

Clear and consistently applied notification and limitation periods

78. We do not see any need for reform of personal injuries limitation periods in Queensland.

Greater oversight and control of legal costs

79. The Law Council considers that the regulation of legal costs within *the Legal Profession Act 2007* (Qld), including the '50/50 rule' in speculative personal injuries matters (s 347) is generally appropriate and effective.

80. In terms of costs recoverable from defendants, the concept of upper and lower costs thresholds as used in Queensland is effective, though the thresholds should not be annually indexed. Indexation has been counterproductive because the thresholds have increased faster than the awards of total damages to which they are linked.

Addressing claim farming: a national and consistent approach is required

81. The Law Council has been a proponent of laws prohibiting claim farming, which now apply across motor accident, workers' compensation and other personal injuries matters. In some jurisdictions it is an offence to engage in claim farming, which

carries with it professional misconduct findings.[43] These laws have been effective in deterring claim farming. The Law Council supports calls for nationally consistent and appropriately targeted laws against claim farming.

Additional comments

82. The Law Council notes the genesis of this inquiry in concerns raised by the insurance industry that negligence claims and litigation processes are a primary driver in public liability insurance premium increases, with proposed recommendations to civil liability law reform to further limit the availability of remedies and damages to the public. The ICA Paper reported that the main drivers of rising premiums include "expansive judicial decisions, a more litigious society, an active plaintiff lawyer environment and increasing claims costs particularly resulting from psychological injury claims."[44]

83. With respect, the Law Council disputes the suggestion that the primary driver for increasing insurance costs are individuals asserting a justifiable right to compensation for injuries. According to the Productivity Commission, the most significant driver of increasing insurance costs is linked to climate change through increased frequency and intensity of major natural disasters and associated payouts—not as a result of civil liability claims.[45]

84. While it may be correct that there are an increasing number of claims for workplace injuries, especially psychological injuries, this likely reflects poor workplace safety and management practices. As discussed above there are significant regulatory caps on liabilities, costs and procedures in place that are functional and place substantial downward pressure on damages awards across the country.

85. Insurance affordability is not a new issue in Australia. We note that the ICA Report refers to the last major inquiry into insurance and tort law reform presided over by the Honourable David Ipp in 2002. At that time, a Senate inquiry found that there were multiple causes of insurance premium increases in the early 2000s, which included reinsurance availability and prevailing insurance market conditions that had little to do with the activities of the legal system.[46] This included international influences, including the withdrawal of capacity and the increasing cost of reinsurance following the destruction of New York's World Trade Centre in terrorist attacks on 11 September 2001. The hardening of the insurance market after a period of under-pricing and poor profitability in the mid-1990s caused insurers to focus on improving profitability rather than increasing market share, and the increasing cost of the administration of claims, were also found to be relevant factors.[47]

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43 See, eg *Claim Farming Practices Prohibition Act 2025* (NSW); *Personal Injuries Proceedings Act 2002* (Qld), Chap 3; *Statutes Amendment (Claim Farming) Act 2025* (SA).

44 Insurance Council of Australia, A Sustainable Public Liability Insurance Market in Australia: The Case for Civil Liability Reform (October 2025) 4.

45 Productivity Commission, Natural Disaster Funding Arrangements (Inquiry Report No 74, 17 December 2014). See, especially, vol 2, 314-451. See also Productivity Commission, *Submission to Select Committee on the Impact of Climate Risk on Insurance Premiums and Availability* (July 2024).

46 The Hon David Ipp et al, Review of the Law of Negligence (Final Report, September 2002).

47 Senate Economics References Committee, Parliament of Australia, A Review of Public Liability and Professional Indemnity Insurance (Report, October 2002) 29.

86. Public liability schemes will always be affected by decisions of the courts because of the common law right that a person injured by the intentional or unintentional conduct of another is entitled to compensation as a matter of law and justice. Any one of us could suffer a workplace injury at any time, whether physical or psychological, with a variety of consequences—sometimes catastrophic. It is entirely fair and just that, so far as possible, a person be restored to the position they would have been but for the injury. This is an overlooked, underlying rationale that underpins tort law, which must be respected and protected.

87. We also note that, while legal costs are a factor in civil litigation, we emphasise that most cases involving civil litigation are settled,[48] and that costs are actively supervised and ordered by the courts and subject to heavy regulation in every jurisdiction.[49]

[48] See, eg, The Hon Geoffrey Davies, 'Is the Civil Trial Past its Used-by Date?' (2024) 43(2) *University of Queensland Law Journal* 301.

[49] See,eg, *Legal Profession Uniform Law 2014* (NSW) pt 4.3.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

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- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.