



ACERH

AUSTRALIAN CENTRE
FOR
ECONOMIC RESEARCH
ON HEALTH

Tort law reform: Impact on compensation scheme design

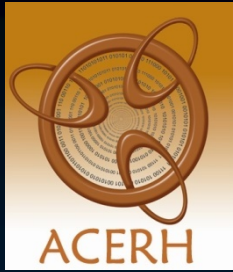
Natalie Spearing
ACERH/UQ

26 November 2008



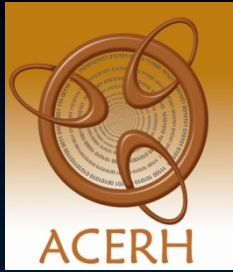
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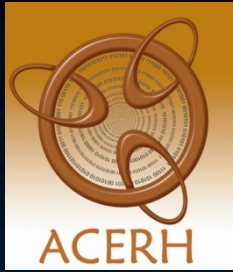
Tort law

- A tort is a wrongful act
- Under tort law, people injured as a result of a careless (negligent) act are eligible for compensation for
 - Economic losses, and
 - Non-economic losses
- Objectives
 - Compensation, rather than punishment
 - Deterrence of careless behaviour



Appropriate compensation

- *'that sum of money which will put the party who has been injured or suffered **in the same position** as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation'* (Lord Blackburn, 1880)

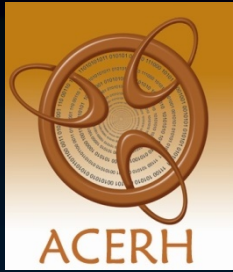


Compensation: a balancing act

Cost and
availability
of insurance

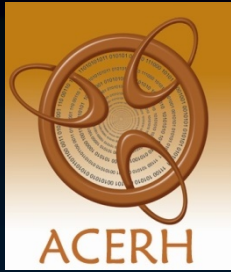
Needs of the
injured
(restitution)



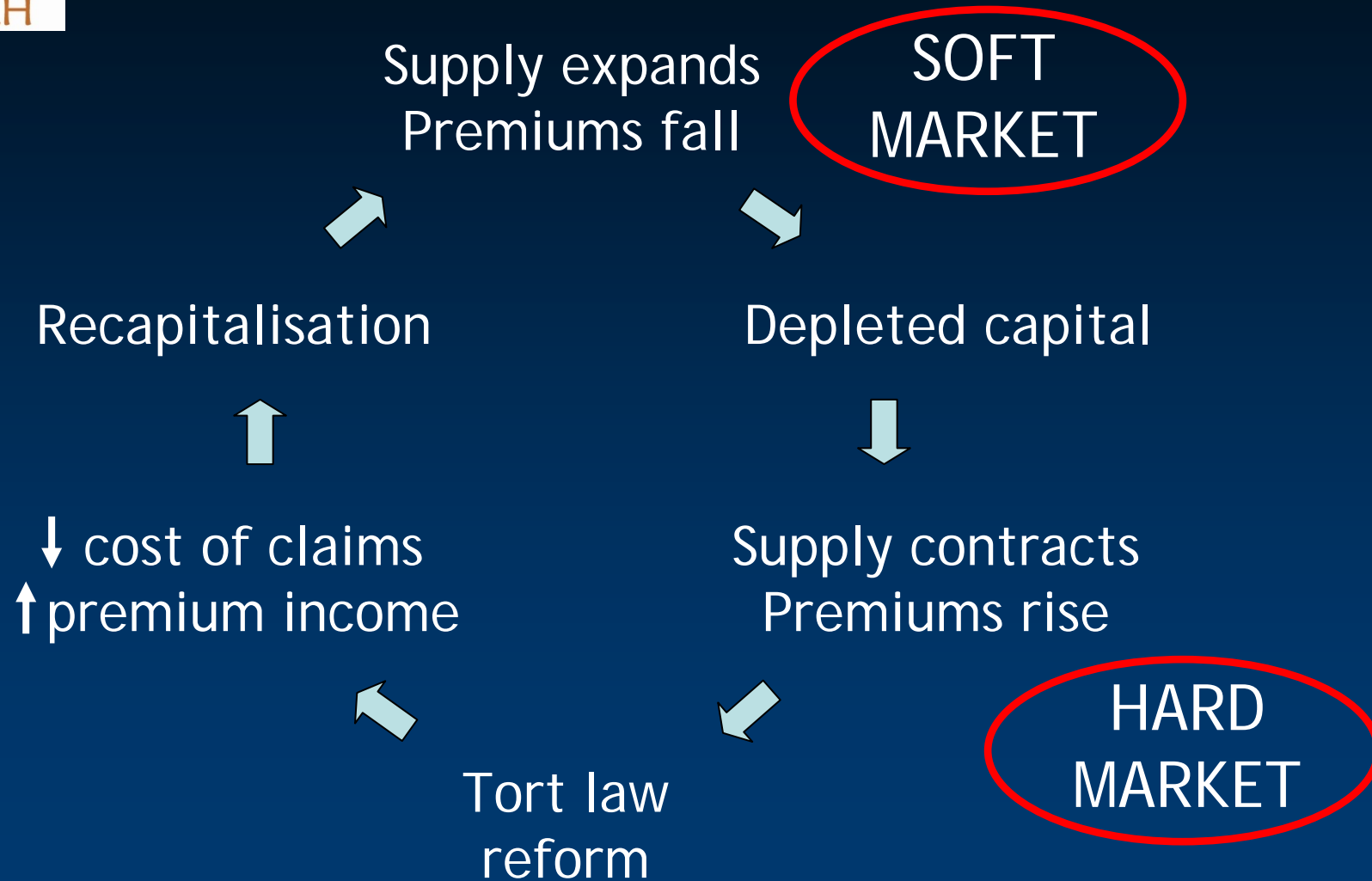


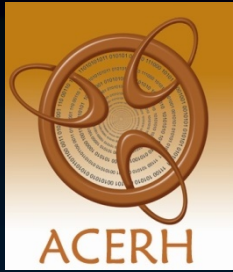
Affordable and available insurance

- Two things have an impact on the affordability and availability of insurance
 - Use of the scheme
 - Number and size claims; transaction costs
 - Return on investment
- Tort law reforms alter the use of the scheme to decrease claim costs → decrease premiums
- Tort law reforms don't address the issue of volatility in investment returns.



Insurance market cycle

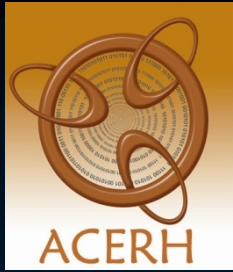




Tort law reforms

AIM: decreased claim costs → decreased premiums

- Damages
 - Thresholds and caps
 - Structured settlements vs lump sum
 - Discount rates
- Procedural reforms
 - Pre-litigation procedures
 - Limitation periods
 - Legal costs, advertising
- Establishment of liability
 - Contributory negligence
 - Proportionate liability
 - Joint and several liability



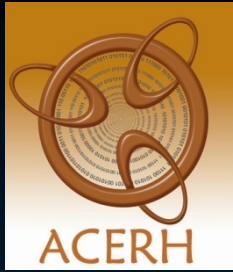
Insurance crisis

Decreased capital reserves

- Heavy losses in the 1990's (competition)
- Falling investment returns
- The collapse of the HIH group and liquidation of UMP
- 9/11
- Increasing compensation payments for personal injury
- Changing community attitudes towards litigation
- Greater tendency of the courts to extend liability for negligence

Australian Government (Treasury). Available and affordable: Improvements in liability insurance following tort law reform in Australia (Dec 2006).

Australian Government (Senate). Economics References Committee: A review of public liability and professional indemnity insurance (Oct 2002).



Insurance crisis

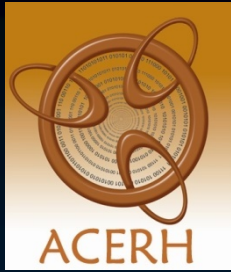
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Lack of data on risk exposure and claims

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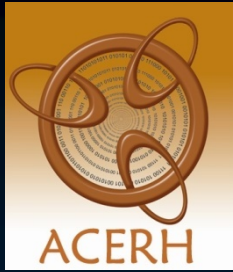


Insurance crisis

- From the insurers' perspective, these factors resulted in:
 - Decreasing profitability due to the underwriting losses and falling investment returns
 - Increasing costs of claims
 - Increasing uncertainty in the way negligence cases were decided (which increased risk in setting premiums).

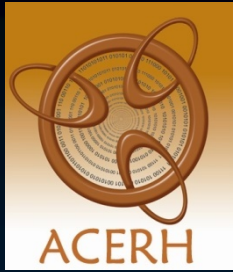
- Result
 - An increase in premiums for liability insurance
 - Decreased availability of liability insurance

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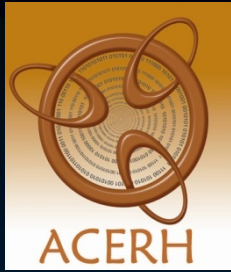
Government response

- Review of the law of negligence (Justice Ipp)
- Focus:
 - Public liability and medical negligence
- Outcome:
 - Changes to the establishment of liability
 - Limiting access to, and quantum of awards
 - Procedural reforms



Addressing inconsistencies in personal injury laws

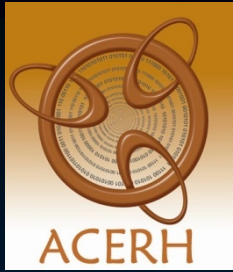
- Compensation is different according to
 - How the injury occurred (work, vehicle, public place), and
 - Jurisdiction
- Reduce inequity in compensation awards between different classes of insurance and between jurisdictions



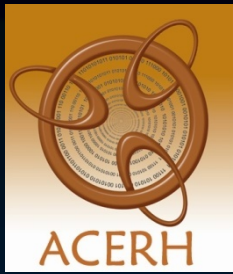
Comparison of public (civil) liability law: damages for non-economic losses

	Threshold	Cap
C'th	15% most extreme case	\$250,000*
NSW	15% most extreme case	\$350,000*
Vic	>5% physical impairment >10% psychiatric impairment	\$371,380*
Qld	--	\$250,000 0-100 scale and precedent
WA	\$12,000*	--
SA	7 days of impairment or \$2,750 medical expenses	\$241,500* 0-60 scale(m)
Tas	\$4,000 for claims <\$20,000	--
ACT	--	precedent
NT	5% whole person impairment	\$350,000*

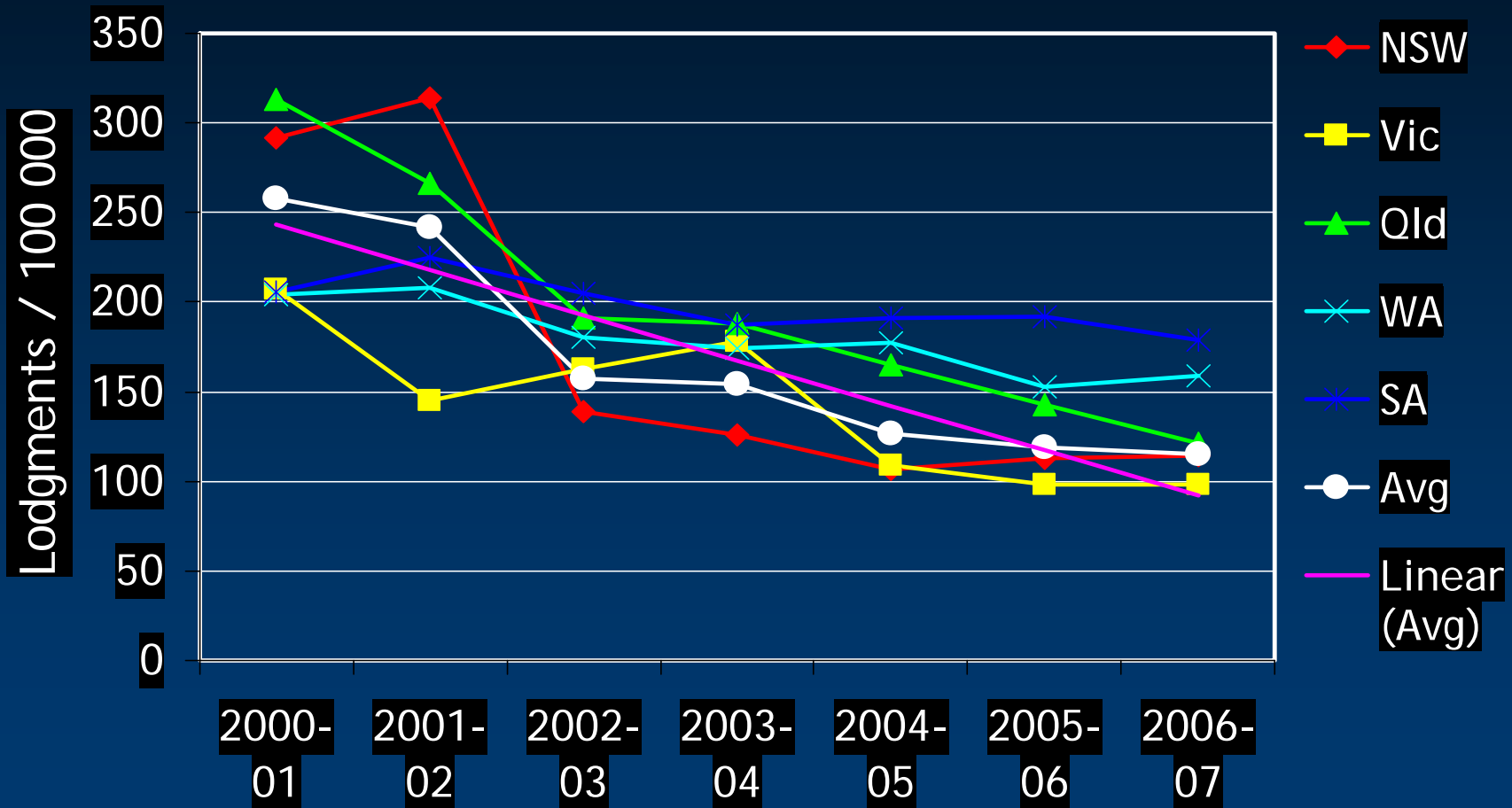
* indexed

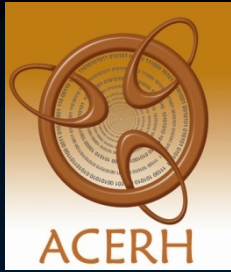


Impact of tort law reform (public liability and medical negligence)

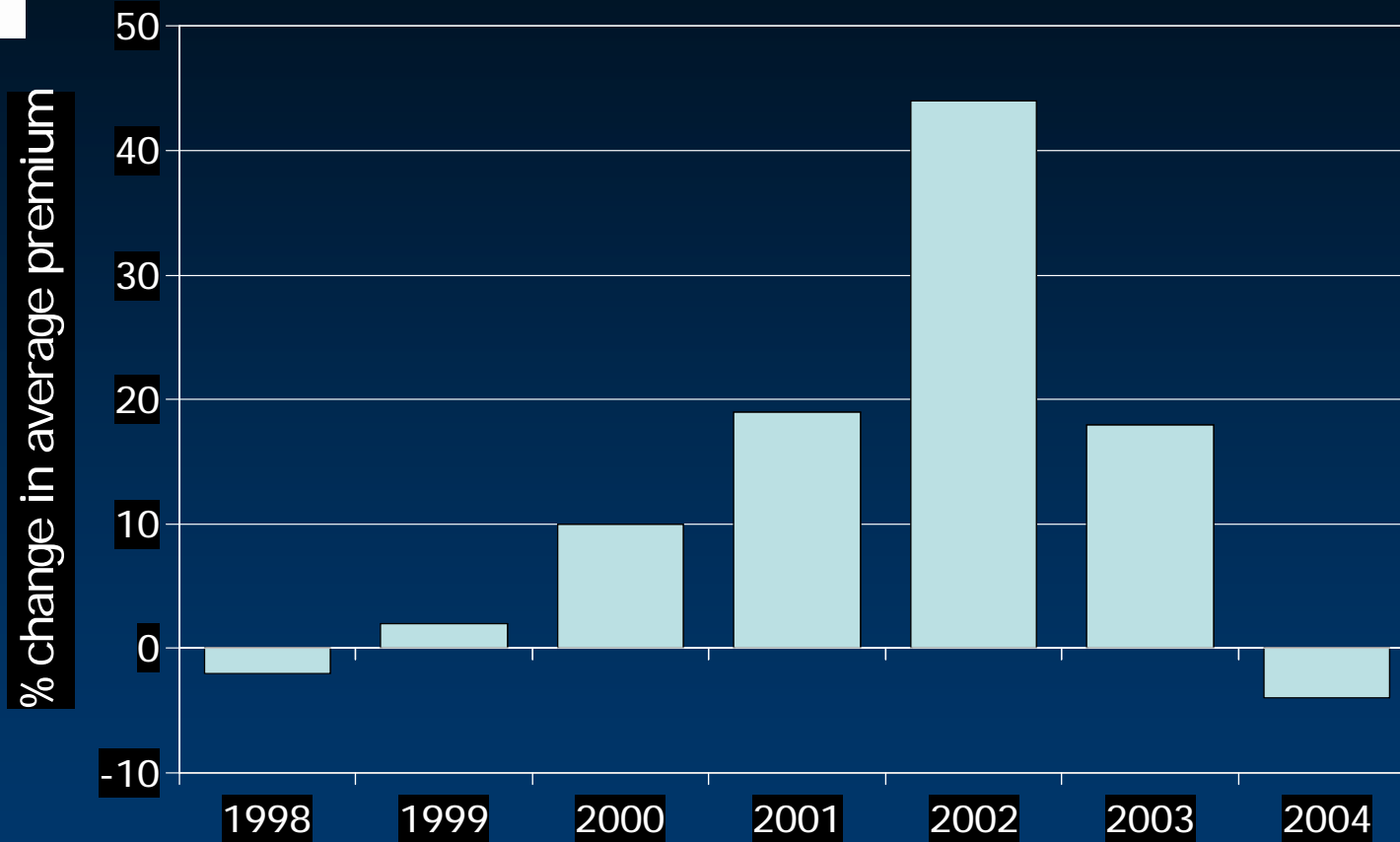


Lodgments (civil) in District/County courts

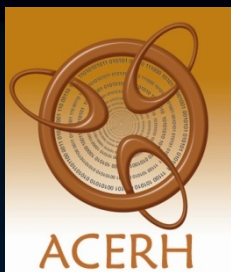




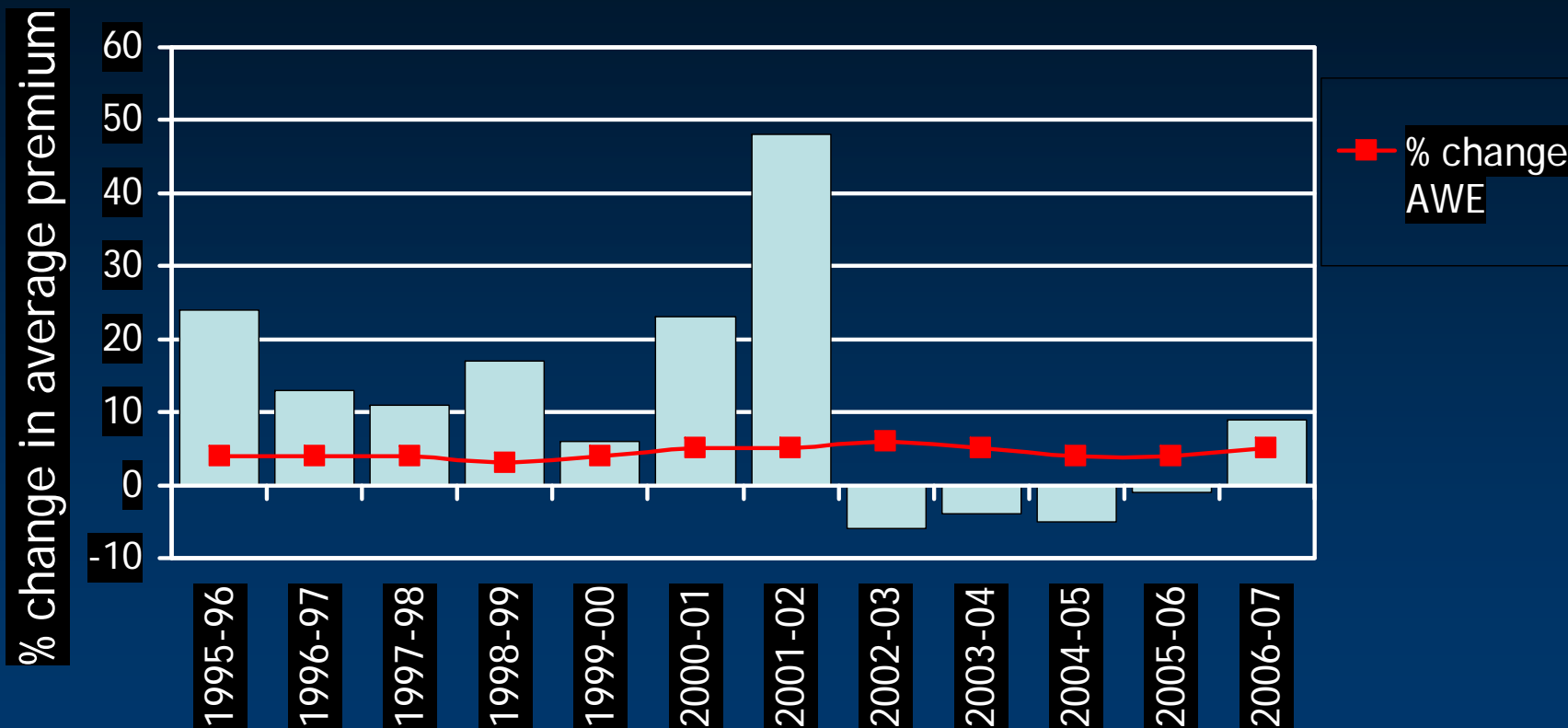
Average public liability insurance premiums (% change)



Based on data provided to ACCC by seven insurers, adjusted to 31 December 2004 using AWE index

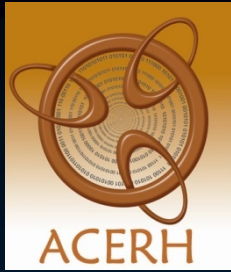


Average medical indemnity insurance premiums (% change)

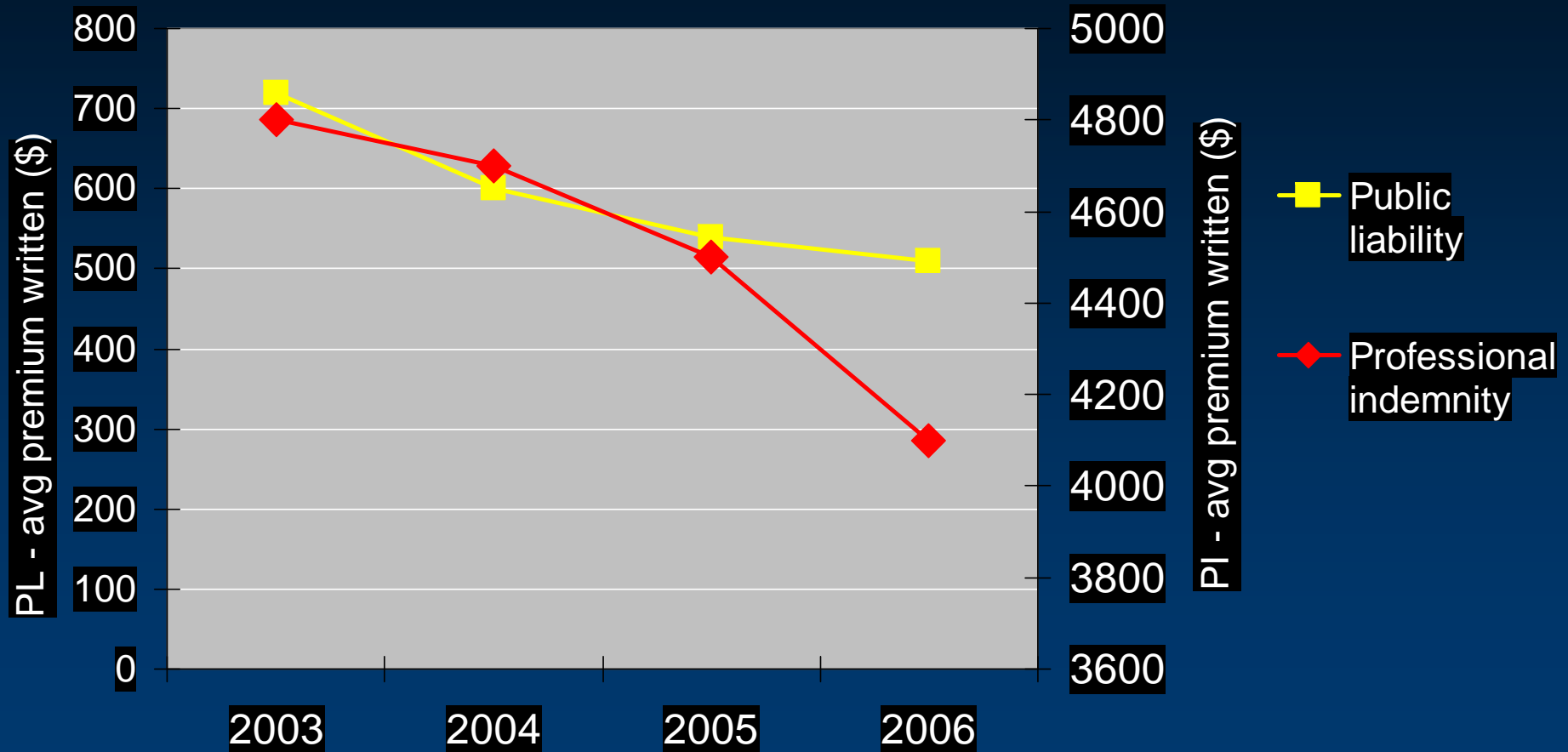


Source: Medical indemnity report 1997-2007.

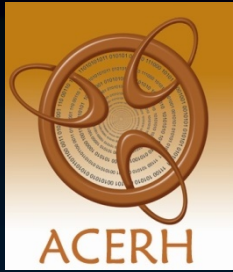
© Insurance Statistics Australia Limited on behalf of its members. Used with permission



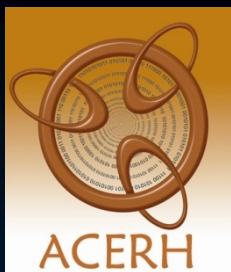
Trend in average written premium, all jurisdictions



APRA National Claims and Policies Database. Overview of Professional Indemnity and Public and Product Liability Insurance (2007)

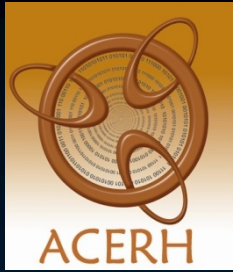


Impact of tort law reform in Queensland (motor accident insurance)

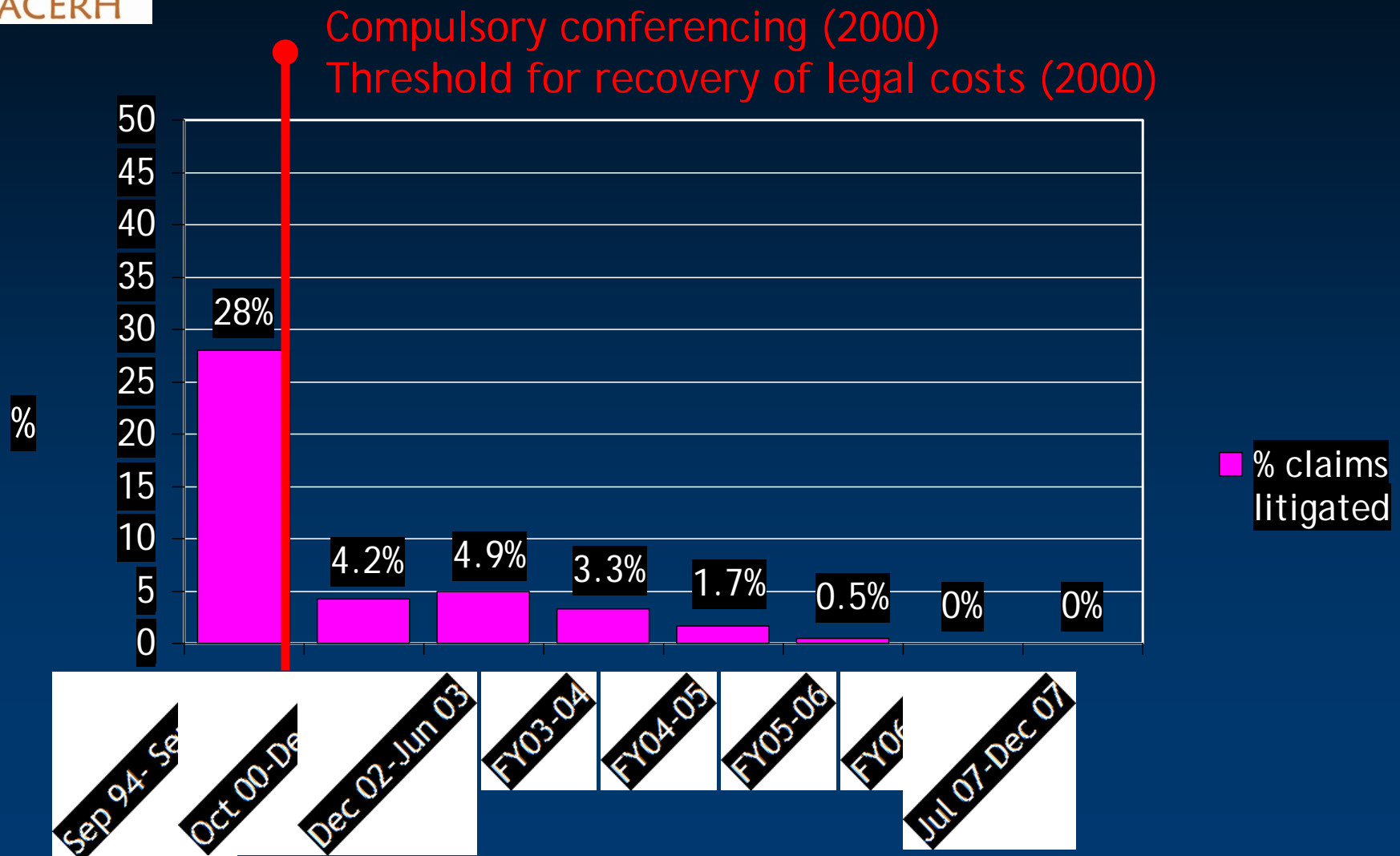


Tort reform in Queensland (motor accident insurance)

Legislation:	As of:	Some key changes:
<i>Motor Accident Insurance Amendment Act 1999</i>	Dec 1999	Touting prohibited
<i>Motor Accident Insurance Amendment Act 2000</i>	Jul 2000, Oct 2000	Thresholds for recovery of legal costs Compulsory pre-proceedings conf.
<i>Personal Injuries Proceedings Act 2002</i>	Aug 2002	Restrictions on legal costs payable
<i>Civil Liability Act 2003</i>	Dec 2002	Cap of \$250,000 on NEL damages Injury scale (0-100) for NEL damages

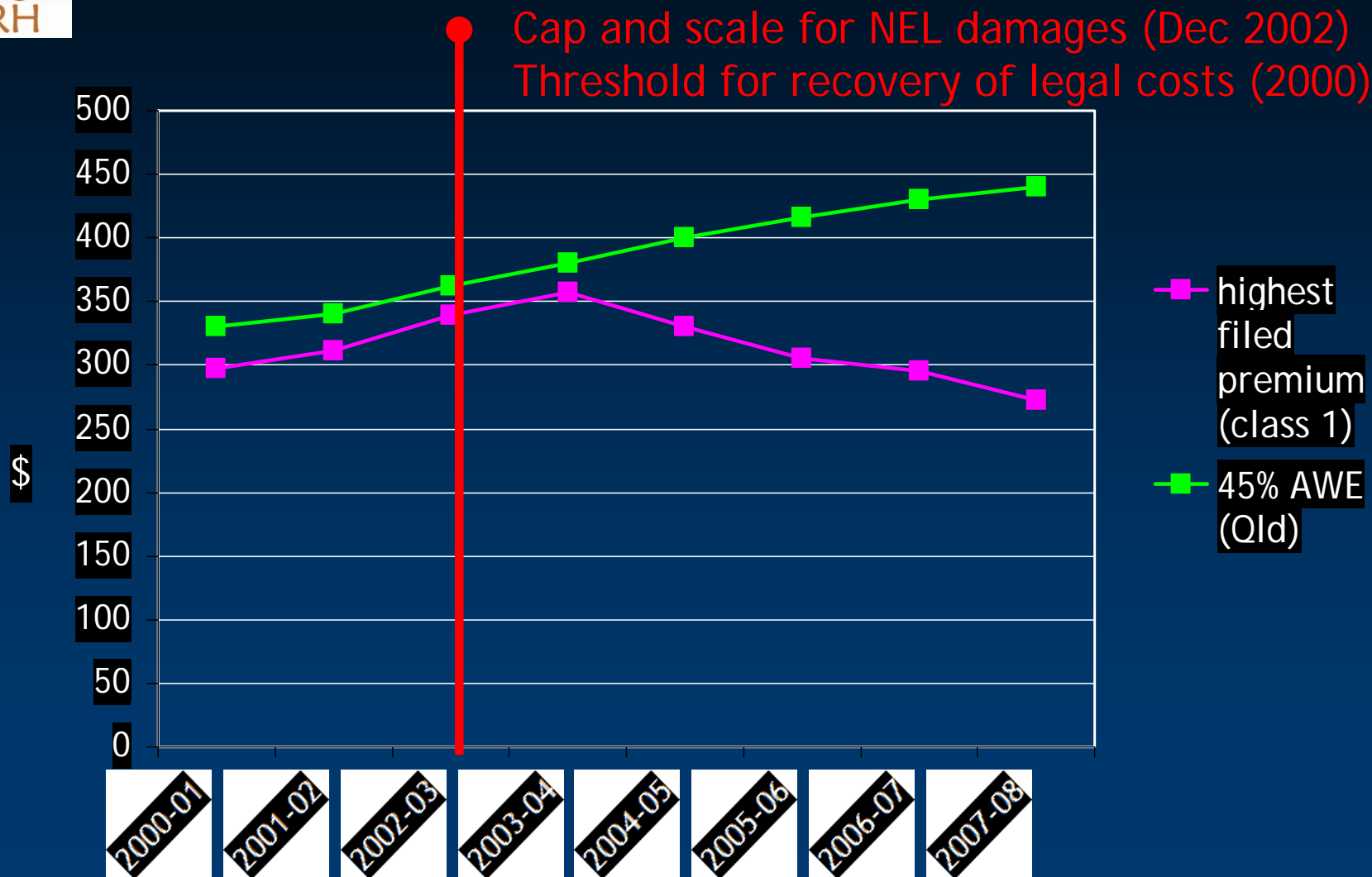


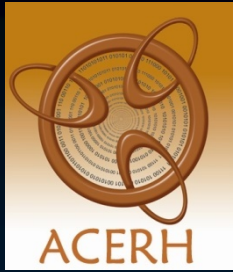
Litigation rate (Queensland motor accident scheme data)





CTP premium (Queensland motor accident scheme data)



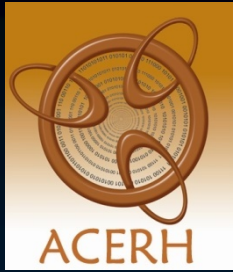


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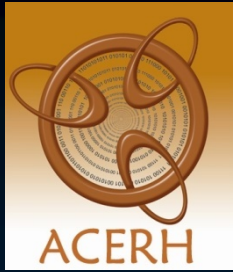
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Conclusion

- Sufficient capital is required to support the provision of (some level of) compensation
- Tort law reforms are generally successful at decreasing premiums (at least in the short-term), but they don't address volatility in investment returns (so do they address the root cause of the problem?)
- Questions:
 - How do we know what an 'appropriate' balance is?
 - Full compensation and high premiums OR less than full compensation (where we don't meet the needs of some injured people) and low premiums?
 - How do we measure the benefits of premium controls against the costs of not compensating some injured people?
 - When tort law reforms occur, how much of an impact is desirable? Acceptable? How much and what type of reform is needed to reduce premiums?



Acknowledgements

- *Australian Centre of Economic Research on Health*
- *Centre of Clinical Research Excellence in Spinal Pain, Injury and Health*
- *Motor Accident Insurance Commission*