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9-12th Nov 2008
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What crisis?

Tort reform 6 years on

Estelle Pearson, Finity Consulting



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Content

- The crisis and the solution
- What did we think then?
- What has happened to claims?
- Are the tort reforms still working?
- A plea for data



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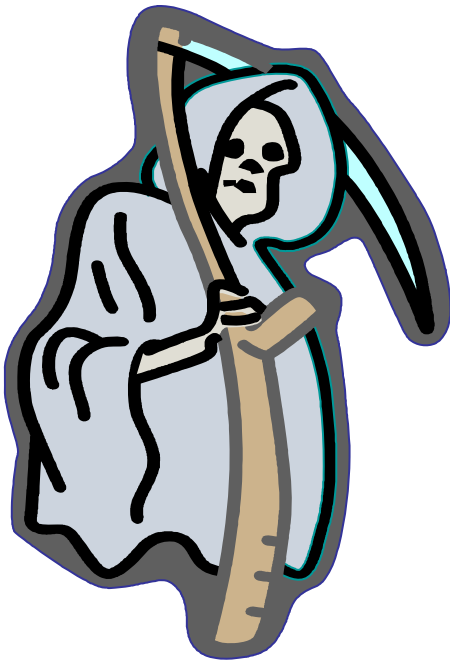


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The Crisis

- **Death of Fun**





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The Solution – part I

- Negligence – duty and standard of care
- Defence – obvious risk
- Defence – public authorities
- Contributory negligence – alcohol, drugs and criminal activities
- Causation



The Solution – part II

- General damages – thresholds, assessment and caps
- Discount rate
- Economic loss – caps
- Gratuitous care - thresholds



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The Solution – part III

- Legal cost restrictions for smaller claims
– NSW, Qld, NT and ACT



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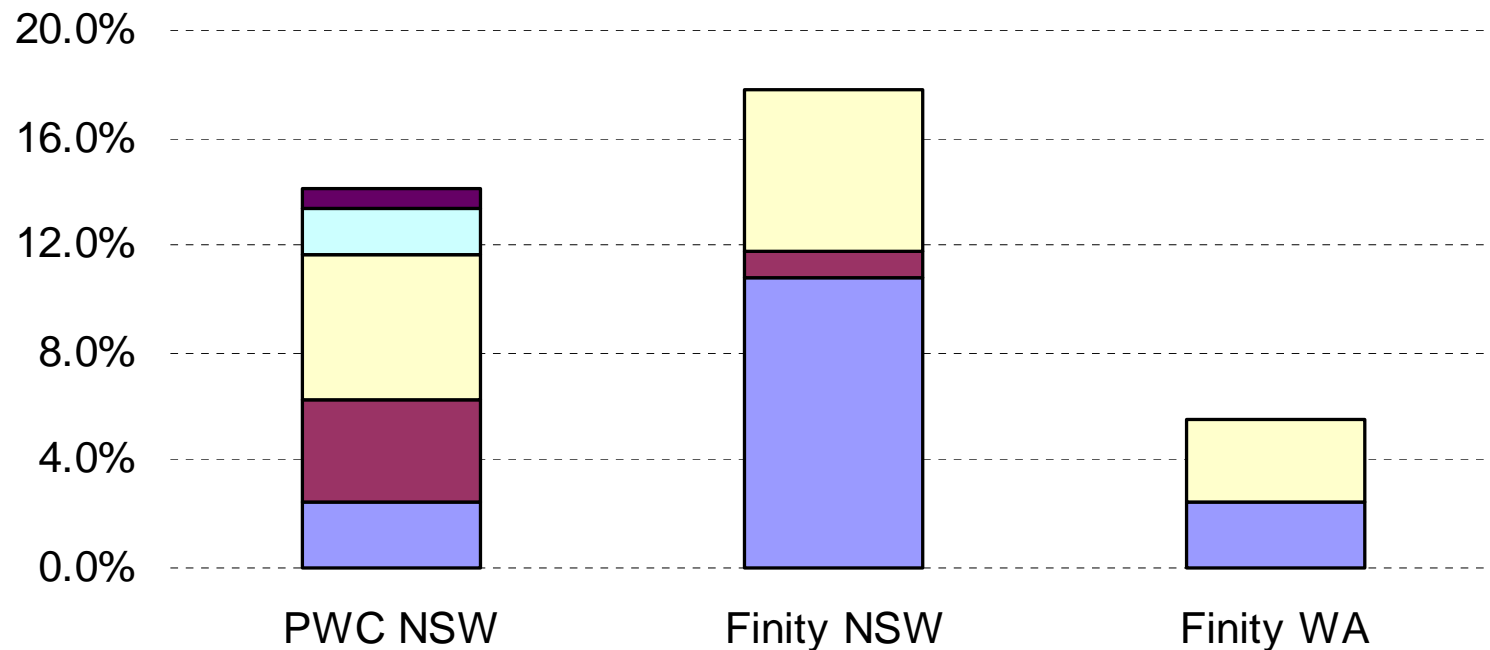


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What did we think then?

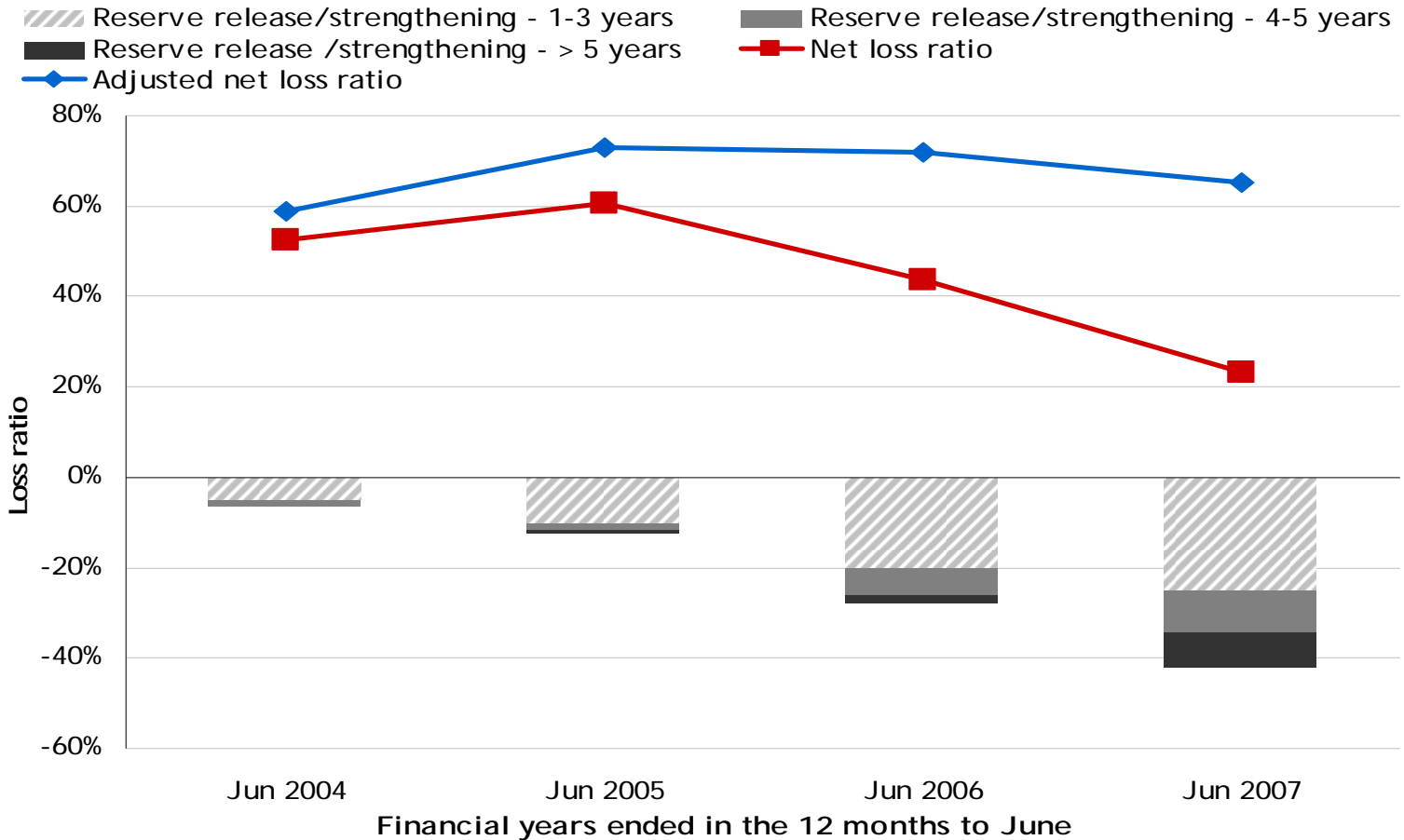
Estimated reduction in BI claim costs



■ General Damages ■ Discount rate ■ Legal fees ■ Interest ■ Gratuitous care

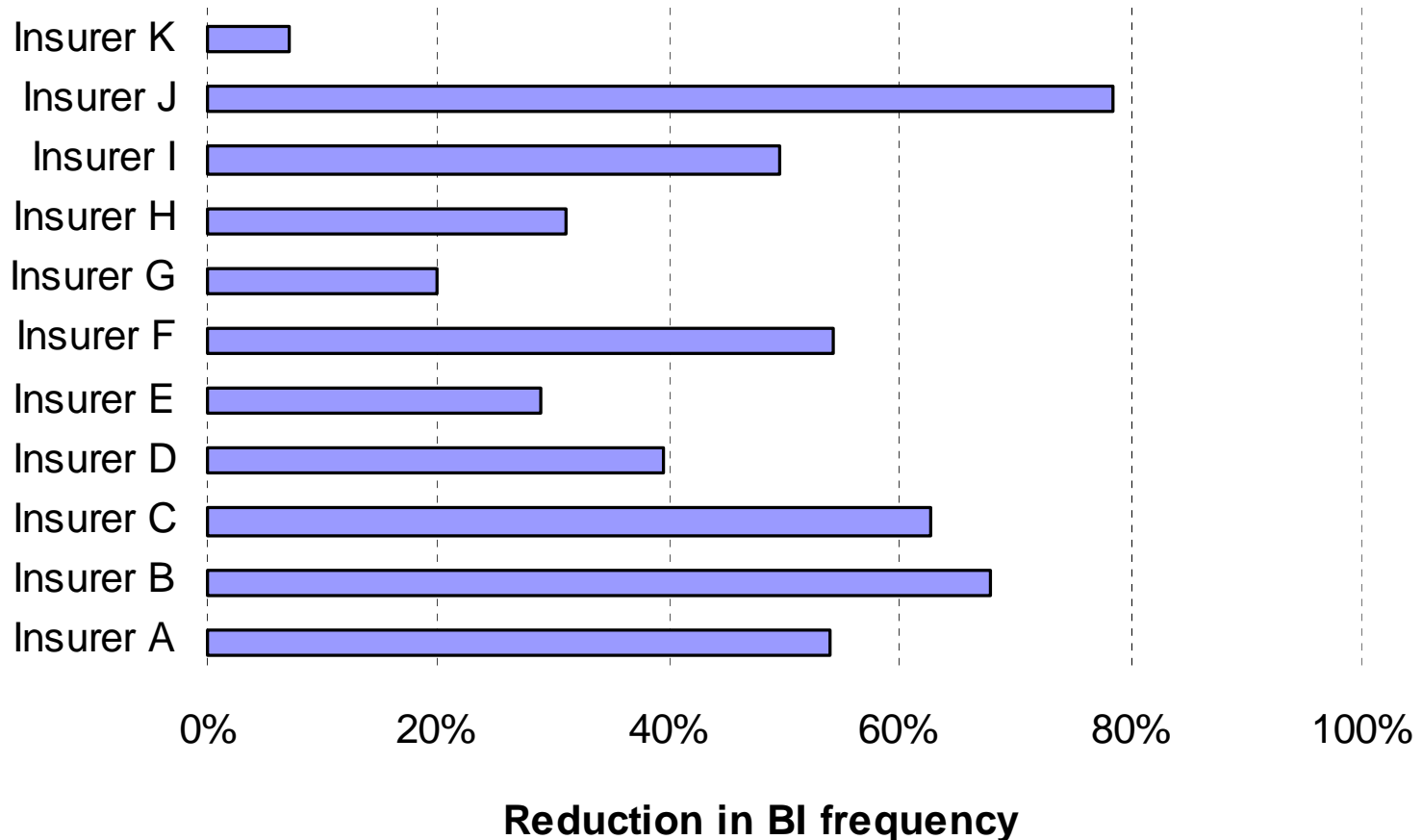


What did we think then?





What has happened to claim volumes?





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What has happened to claim volumes?

- **Claims manager interviews**
 - 90% say “huge” decrease (30% - 50% decrease)
 - 10% say no/little decrease



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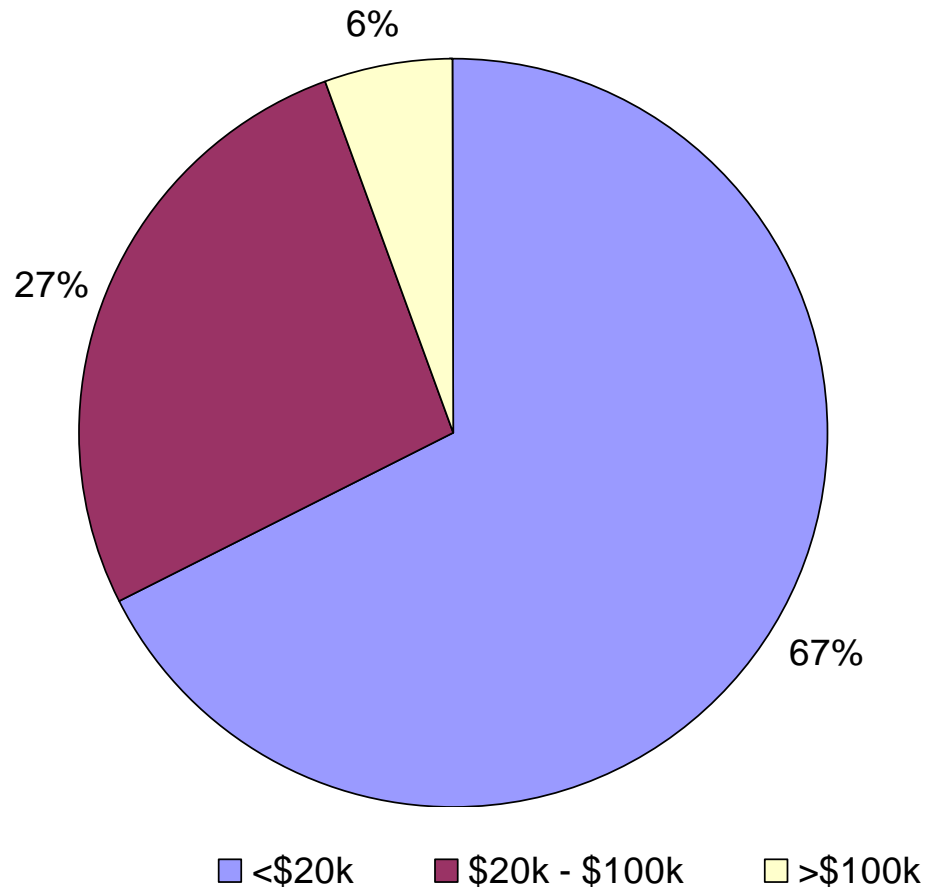


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Which claims have gone?

Size Distribution for Bodily Injury Claims (Pre Tort Reform)





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Which claims have gone?

- Average claim size has not responded how we expected



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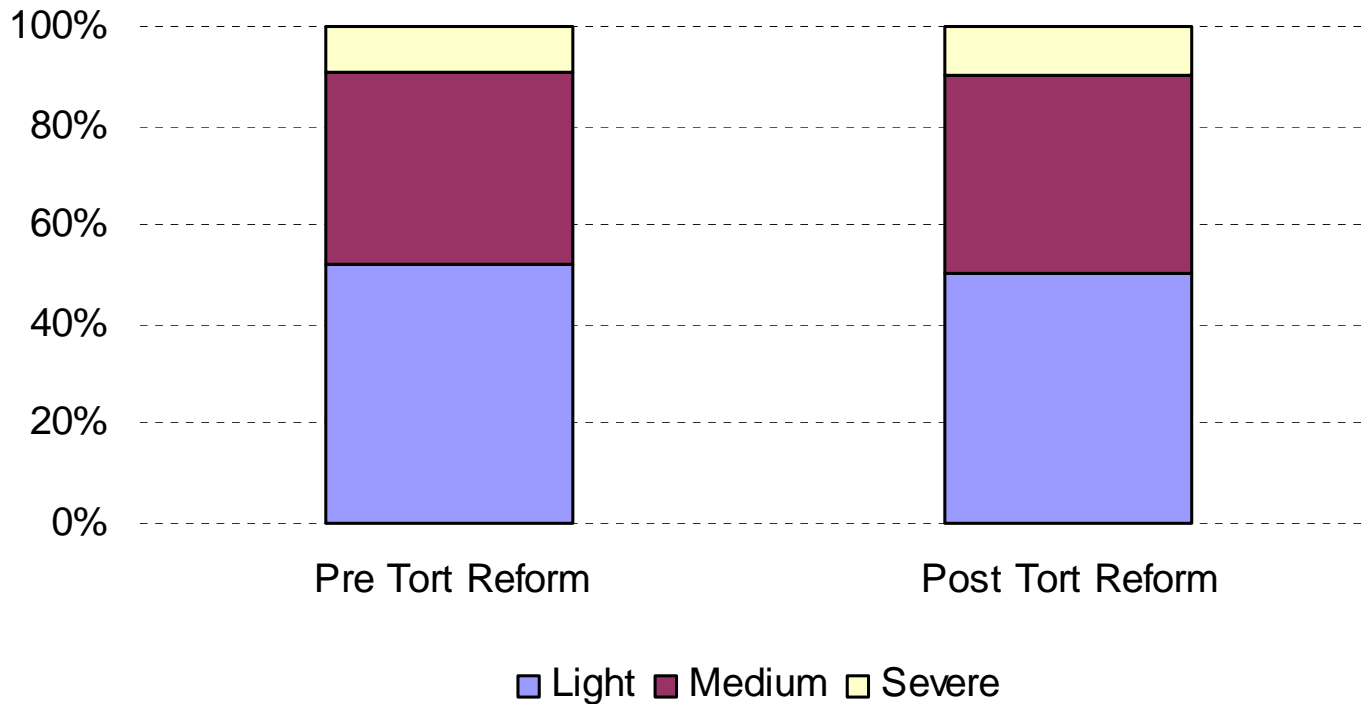


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Which claims have gone?

Injury severity mix



Source: BI claims only, large frequency reduction, no change in composition



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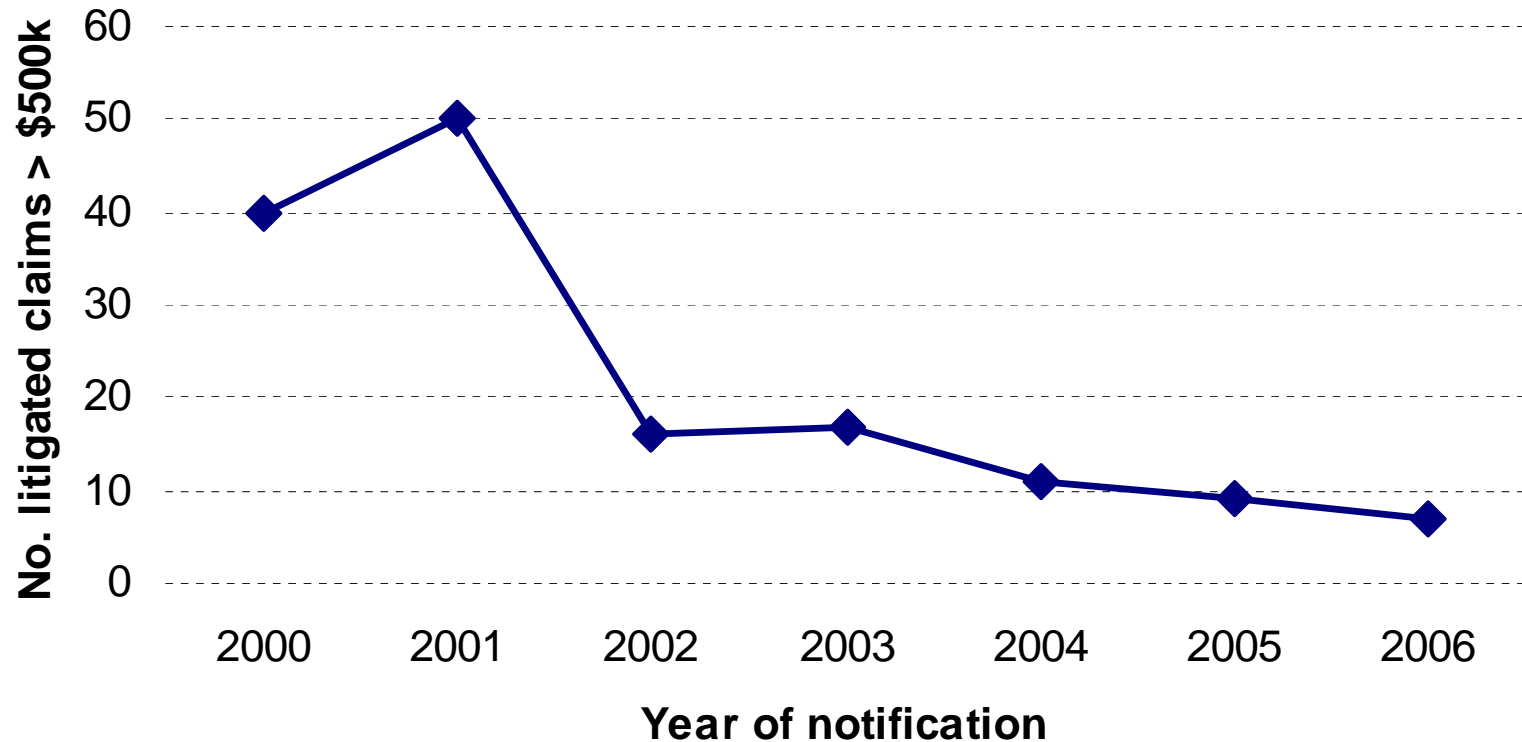


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Which claims have gone?

UMP large claim experience





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Which claims have gone?

- Claim manager interviews –
 - Represented claims
 - Litigated claims
 - Small and medium claims
 - Large claims not impacted



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Why did claims go?

- **Claims manager discussions –**
 - Not meeting GD threshold
 - Low value claims not “worth” pursuing
 - Legal cost restrictions
 - Personal responsibility (obvious risk, reasonable foreseeability, intoxication clauses)
 - Closure of some personal injury practices
 - Good economic conditions



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Are the tort reforms still working?

- Generally yes but with areas of “creep”
 - Psychological and physical injuries (NSW)
 - “Generous” % extreme case (NSW)
 - ISV multiplier (Qld)
 - Use of buffers (Qld)
 - Harrison v Melhem case (NSW)



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Other comments

- Divergent medical opinions remain
- Greater sophistication of remaining personal injury firms
- Potential narrative test in Victoria
- WorkCover activity
- No political will to unwind reforms



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Plea for data

- Industry claims data exists – NCPD
- Could be used to examine –
 - Progress of reforms
 - Erosion aspects
 - Superimposed inflation



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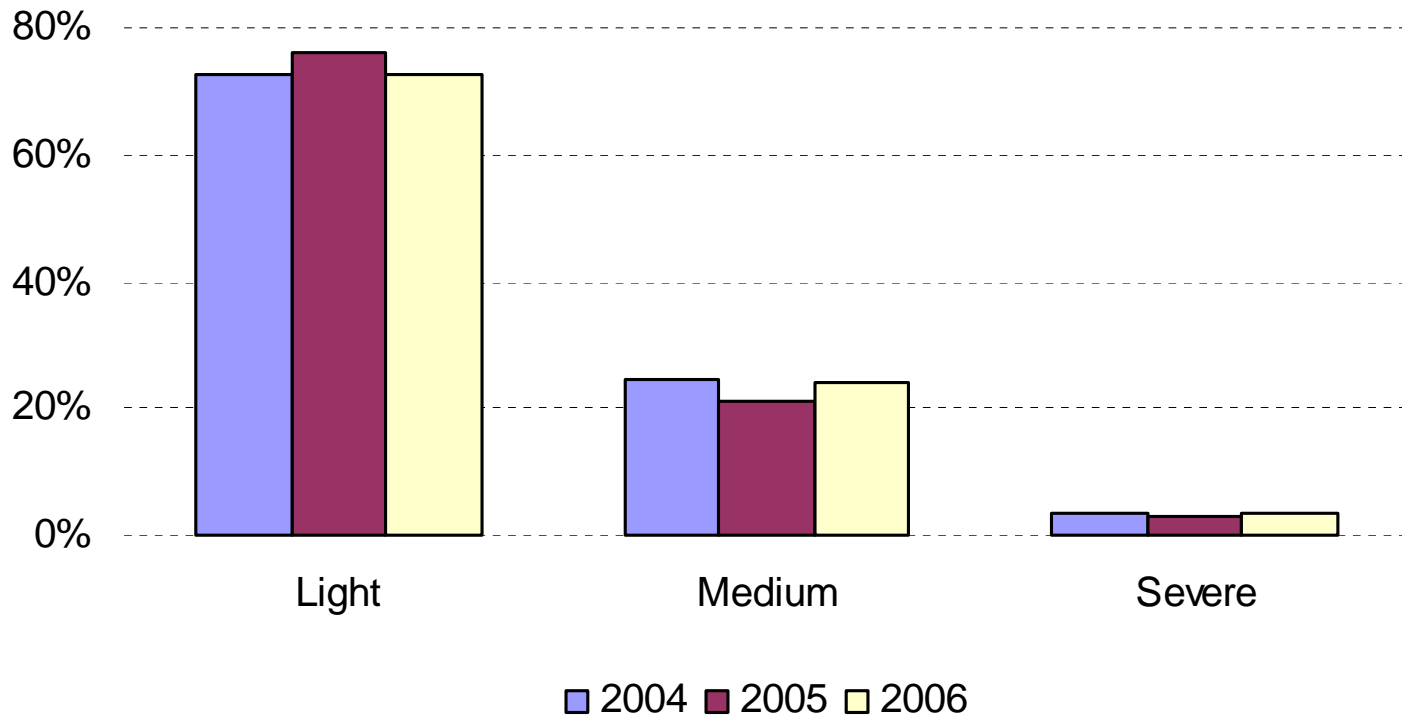


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What could be done

Mix by injury severity by accident year



Source: 5 insurers' NCPD claim data for BI claims



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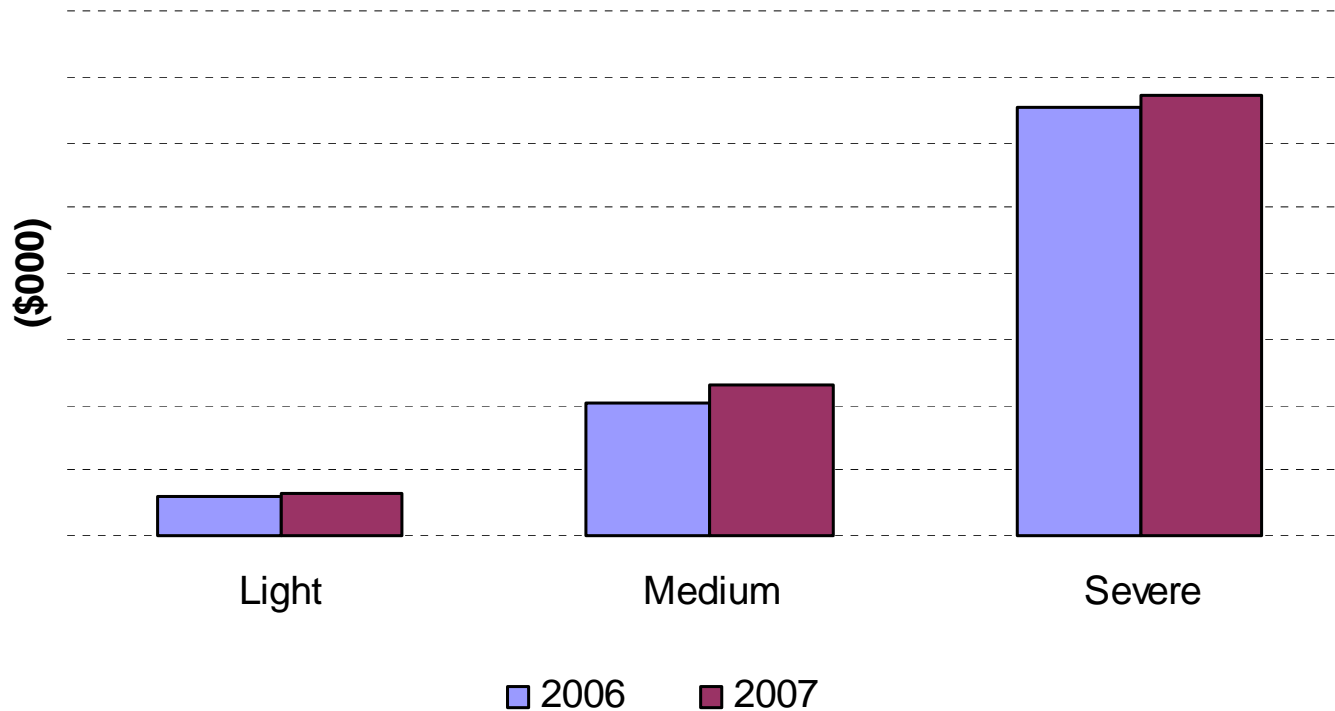


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What could be done

Post tort reform estimated average finalised cost



Source: 5 insurers' NCPD claim data for BI claims



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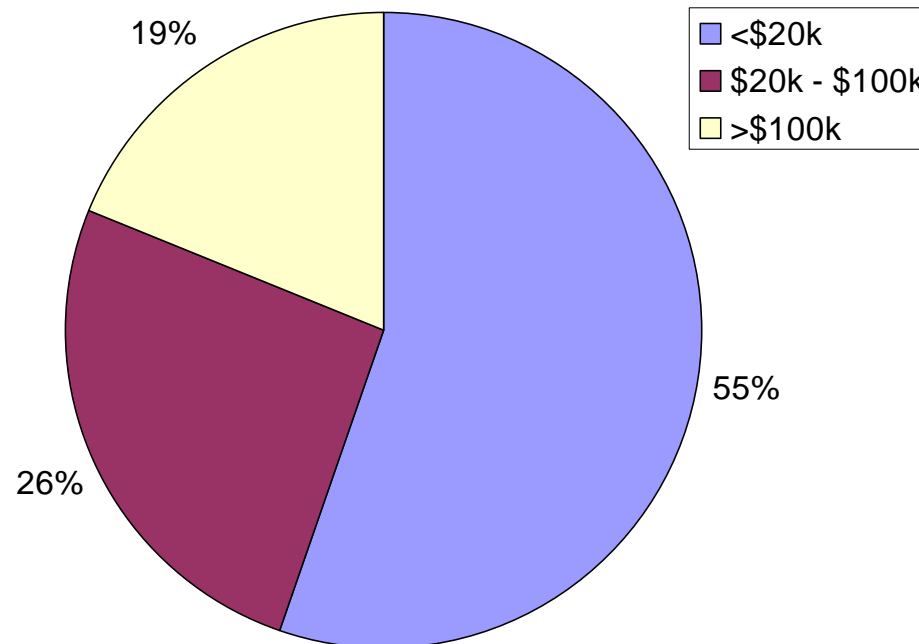


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What could be done

Post Tort Reform Data



Source: 5 insurers' NCPD claim data for BI claims



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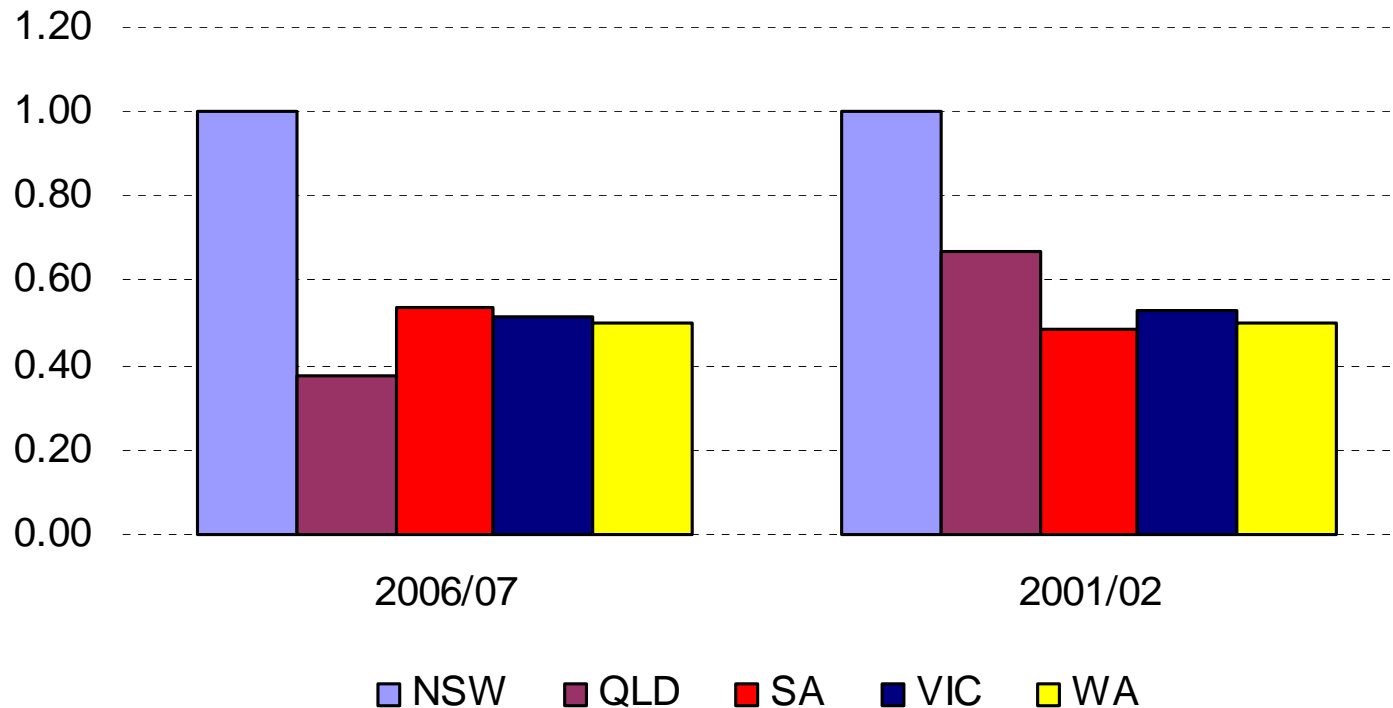


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What could be done

Average size - state relativities



Source: 5 insurers' NCPD claim data for BI claims



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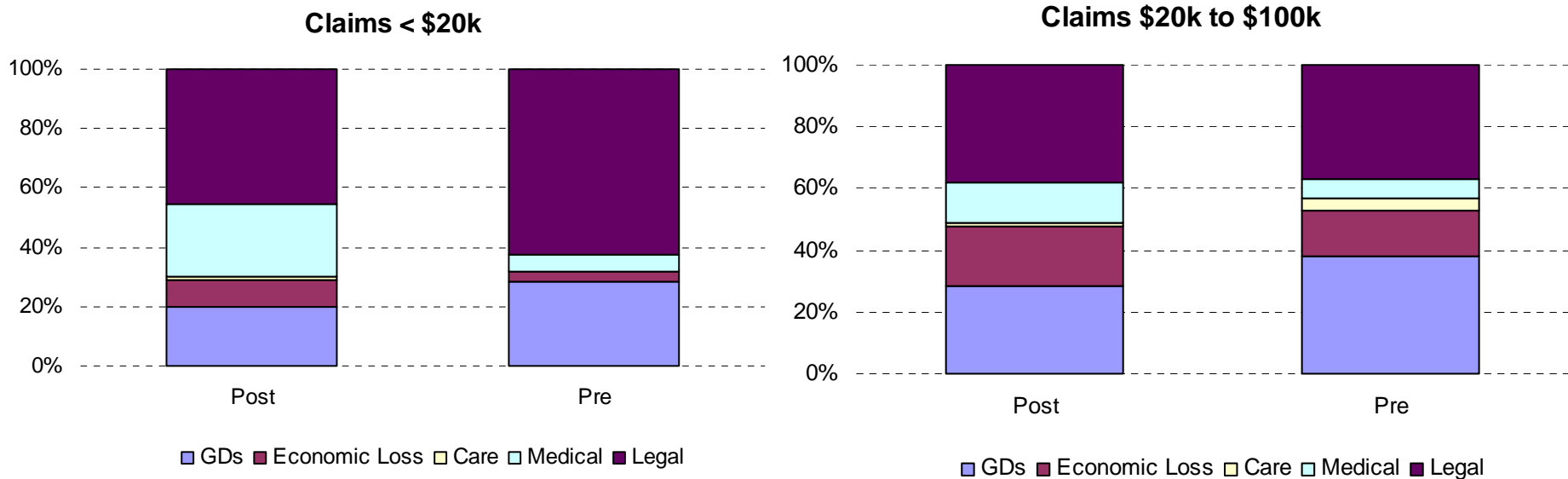
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What could be done



Source: 5 insurers' NCPD claim data for BI claims



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Concluding remarks

- Tort reform + judicial attitude had dramatic impact on liability claims costs
- Reforms continue to be effective
 - “normal” erosion
- Industry data exists but is not accessible
- Extra information is available to actuaries to use in valuation/pricing