

We Can Afford To Give Injured People A Fair Go

**An Analysis of the MAA and WorkCover Schemes
By the Law Council of Australia**

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A Fair Go For Injured People



The New South Wales Bar Association



The Law Society
of New South Wales



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We Can Afford To Give Injured People A Fair Go

On the eve of the 1999 election year the Carr Government announced that it would be amending personal injury laws to restrict the amount of compensation available for people seriously injured in motor vehicle accidents and in the workplace.

This announcement was made in response to claims that large insurance companies would be forced to raise premiums to keep up with payments to injured people.

The legislative changes that followed substantially reduced the liability of insurers to meet the true cost of injury. Five years later, we have a clearer picture of the breathtaking profits claimed by insurers and the NSW Government since the changes were introduced. These profits have been claimed at the expense of injured people and their families.

The NSW Minister for Commerce has consistently defended insurer profits and laws which oppress the most vulnerable people in our community. He has claimed that costs are down, payments to seriously injured people are up and injured people are better off.¹

Here are the numbers to prove the Minister is wrong...



Profit margins for CTP greenslip insurers have doubled

Insurers set premiums based upon the amount of revenue needed to cover the cost of expected claims. The difference between the amount an insurer charges for greenslips and the projected cost of providing that insurance policy is an accurate measure of the profitability of the policy.

- Under the old motor accidents scheme, insurer's profit margin on compulsory third party (CTP) greenslip premiums was **12%**.²
- Under the new scheme insurers have collected profits in excess of **27%**.³
- According to the Motor Accidents Authority of NSW (MAA) "a profit margin in the range of **4%** to **6%** of premium might be reasonable".⁴

Insurers have a right to make a profit. However, since the Carr Government's changes, insurers have made as much as **six times** what the MAA considers to be a 'reasonable profit'. It is time for the NSW Government to intervene to redress the balance.

Since the new scheme commenced in 1999, CTP insurers have collected more than **\$10 billion** in premium revenue, but have paid just **\$2.7 billion** in compensation payments to injured motorists.⁵ It is reasonable for insurers to claim that not all of this is profit. However, it is clear that, despite reductions in premiums that have occurred, injured drivers are much worse off than they need to be and it is insurers who are benefiting.

Table 1 demonstrates that in September 1999 the average greenslip premium was \$418. By September 2005 premiums had fallen to \$319, a decrease of \$99. However, column three shows that the cost of that premium to an insurer has fallen by \$130, resulting in a net gain of \$31 per policy.

The final column shows the dollar and percentage difference between the average premium and the cost to insurers of providing that premium. Even though average premiums have fallen by around 25% since 1999, the surplus margin on those premiums has more than doubled because the claim exposure to insurers per policy has fallen by \$130.

Table 1: Profitability of Premiums

Date	Average Premium (annual policies) all classes (Change) ⁶	Projected ultimate claim per registered vehicle (change) ⁷	Difference between Average Premium and Projected claim per vehicle
Sep-99	\$418	\$367	\$51 (12%)
Sep-00	\$332 (-86)	\$287 (-80)	\$45 (13%)
Sep-01	\$342 (+10)	\$278 (-9)	\$64 (19%)
Sep-02	\$336 (-6)	\$268 (-10)	\$68 (20%)
Sep-03	\$339 (+3)	\$247 (-21)	\$92 (27%)
Sep-04	\$328 (-11)	\$237 (-10)	\$91 (28%)
Sep-05	\$319* (-9)	\$237 (0)	\$82 (26%)

*figures shown for June quarter 2005.

(all figures shown are exclusive of GST)

In 2005 QBE, a major CTP insurer in NSW, made a net profit of **\$1.098 billion**, an increase of 27% from **\$864 million** in 2004.

Since the changes to the *Motor Accidents Compensation Act* in 1999, QBE, NRMA and other major CTP insurers have as much as **tripled in value** on the ASX.

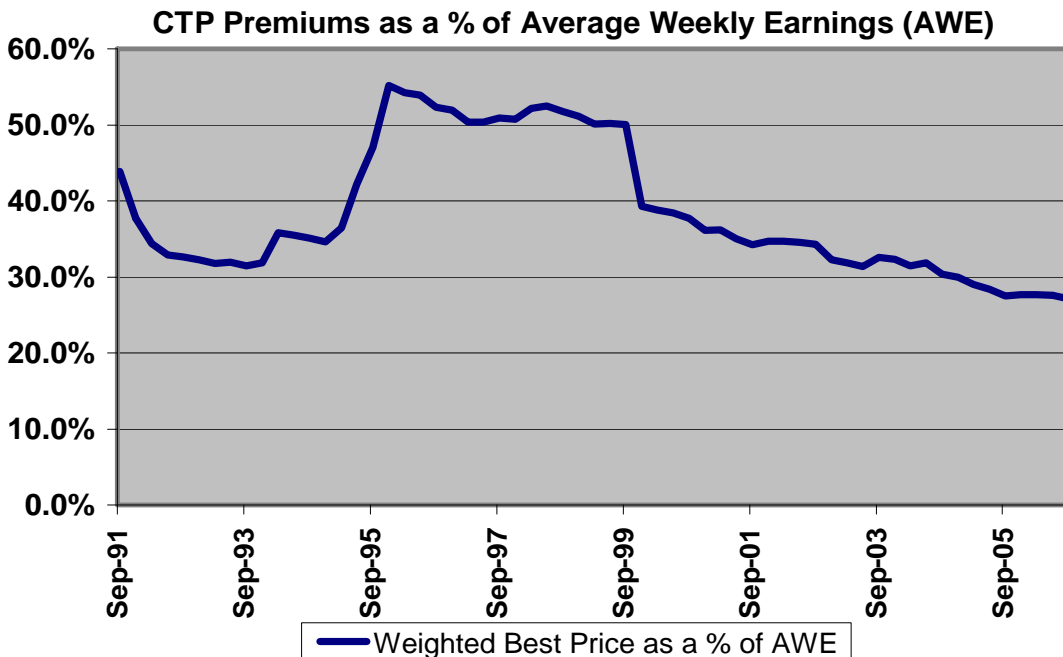
Insurers are pocketing 61% more per CTP greenslip policy now than in 1999. In real terms, surplus margins have more than doubled from 12% to 26% at the expense of injured people.⁸

Insurers have a duty to their shareholders to maximise profits within the confines of insurance industry laws and regulations. However, the NSW Government is responsible for allowing this regulatory framework to continue at the expense of injured people.

Greenslip premiums are cheaper than ever

Despite the extraordinary profits claimed by CTP insurers, greenslip premiums are now more affordable than ever before under the NSW motor accidents compensation scheme.

Figure 1.



Source: data provided by the Motor Accidents Authority 2007.

Figure 1 demonstrates that, as a percentage of average weekly earnings, the cost of the average greenslip premium in NSW has fallen from over 50% average weekly earnings in the late 1990s to 27% average weekly earnings in September 2006. This means that in real terms, premiums are cheaper now than they were in the early 1990s.



Greenslip premiums will not rise by \$100

In 2005, a NSW Upper House Committee unanimously recommended (among other things) that the MAA scheme be brought into line with the fairer *Civil Liability Act* scheme, which has been successful in addressing the rising cost of public liability insurance premiums.⁹

NSW Finance Minister the Hon. John Della Bosca rejected all findings of the Upper House report and claimed that “CTP premiums will rise by \$100 if motor accident compensation laws are scaled back”. These claims were based on the most pessimistic assessment by the MAA’s actuaries, an assessment which, by the actuaries’ own admission, is subject to a high margin of error.¹⁰

Given the level of insurer profits and the low level of premiums, it is clear that the Minister’s claims about premium increases are designed only to scare the public at the cost of real debate.

Insurers can still earn a reasonable profit if a little is handed back to injured people, who are supposed to be the ultimate beneficiaries of the scheme.

Summary

CTP greenslip insurers are claiming three times the amount of profits considered ‘reasonable’ by the MAA.

CTP greenslip policies are cheaper than they have ever been.

There is room to implement key reforms recommended by the NSW Upper House Committee without causing a substantial increase in premiums.



Impact of Scheme on Claims for Non-Economic Loss

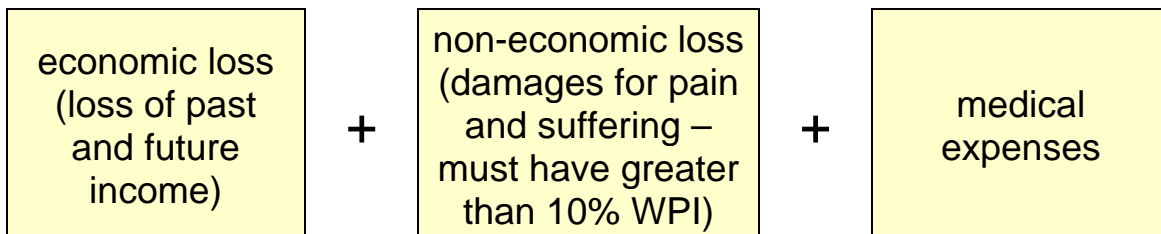
Payments for non-economic loss (NEL) compensate injured people for ongoing pain and suffering endured as a result of an injury.

The success of claims for NEL has reduced because of the introduction of the 10% whole person impairment (WPI) threshold. The threshold prevents injured people from claiming any payment for NEL unless their injuries result in permanent impairment to greater than 10% of their entire body.

In practice, one doctor is handed the task of determining an injured person's eligibility to be compensated for pain and suffering endured as a result of injuries cause by the negligence of another. The doctor is required to use inflexible American Medical Association Guidelines for Assessing Physical Impairment, rather than considering the actual impact of the injury on the day-to-day life of the injured claimant. The Guidelines state in the preamble that they were "never intended to be used for the purpose of assessing eligibility for compensation".¹¹

The reality is that the threshold is so high, it prevents nine out of ten people from claiming any compensation for NEL.

The following is a simple representation of compensation available to injured people:



Courts determine the extent of an individual's NEL and attribute a monetary value to that loss by reference to a range of sources, including case law and evidence from specialists and other witnesses, to demonstrate the true impact of an injury on the injured person's life.



Table 2: Payments for Non-Economic Loss (NEL)

Accident Period	Average payment for successful NEL claim* ¹²	Propensity for traffic casualties to claim for NEL ¹³	Percentage of claims resulting in NEL payment of less than \$50 000 ¹⁴	Percentage of claims resulting in any payment for NEL ¹⁵
Old Scheme 1996-1999	\$33 784	60%	82%	58%
New Scheme 2000-2005	\$79 664	37.5%**	38%	11%
Difference	+\$45 880	22.5%	44%	47%
Change (%)	136%	-37.5%	-54%	-81%

* In 31 December 2005 values

** Estimate range 35% - 40%

The data presented in this table is broadly consistent with the Annual Report of the MAA 2005-2006.

Under the new scheme, the average payment for successful NEL claims has increased from \$33 784 to \$79 664. The increase in the average claim size merely reflects that fewer people are able to make successful claims of less than \$50 000 for NEL. Column five of the table shows that the number of claimants receiving payments for NEL has fallen by more than 80%.

Payments for NEL have decreased for everyone, including the most catastrophically injured.

Table 3: Reduction in cost to insurers of payments for Non-Economic Loss (NEL)

Accident Period	Average annual cost to insurers of claims for NEL	Average cost to insurers of claims for NEL per traffic casualty	Average cost to insurers of claims for NEL per registered vehicle
Old Scheme 1996-1999	\$326 million	\$12 326	\$94
New Scheme 2000-2005*	\$125 million	\$4 423	\$32
Change	-\$201 million (61%)	-\$7 903 (64%)	-\$62 (66%)

Source¹⁶

*figures shown as at 31 December 2005




Table 3 shows that the average cost to insurers of claims for NEL has fallen by more than 60% under the new scheme. This means that significantly less compensation is being paid to injured people who suffer genuine non-economic loss.

It is clear from Table 3 that the new scheme has made it much harder for injured people to make a claim for NEL. This has reduced the cost to insurers of claims for NEL by more than \$200 million.

The most devastating effects of these restrictions on payments for non-economic loss have been felt by some of the most vulnerable people in our community. Stay-at-home mums and dads, children, retirees, volunteers and the unemployed are unable to claim any compensation to access non-economic loss payments following an accident, unless they are catastrophically injured, and are not eligible for damages for economic loss.

Summary

The Minister's claims that NEL payments to seriously injured people have increased are false.

A higher average payment reflects the fact that only the most catastrophically injured (one in ten seriously injured people) will receive NEL payments.

Mothers, children, retirees and volunteers are the most seriously affected by changes to NEL eligibility requirements because they suffer no economic loss and therefore will only be reimbursed for medical expenses.

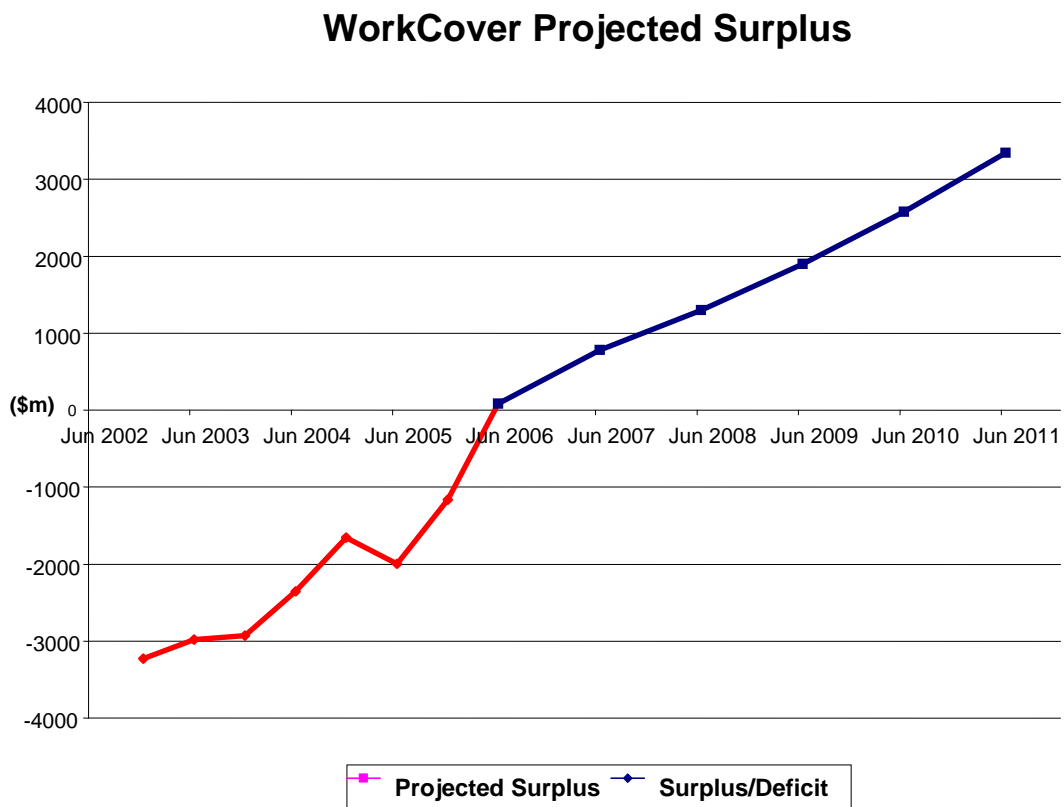
We Can Afford To Give Workers A Fair Go

The NSW WorkCover Scheme is projected to be \$3.34 billion in surplus by 2011

As demonstrated by Figure 2, the NSW WorkCover Scheme has recovered more than \$3 billion in surplus revenue in just three years. This means that premiums paid by employees to WorkCover have exceeded the operating cost of WorkCover by more than \$3 billion over three years.

Remarkably in one year, between June 2005 and June 2006, WorkCover accumulated \$2 billion in surplus revenue.

Figure 2.



Source¹⁷

This outcome was apparently a surprise to the Minister and to the actuaries retained by WorkCover to monitor and report on the scheme's financial performance. In January 2006, actuarial advice prepared for WorkCover indicated that it would take until 2012 to clear a \$2 billion debt¹⁸.

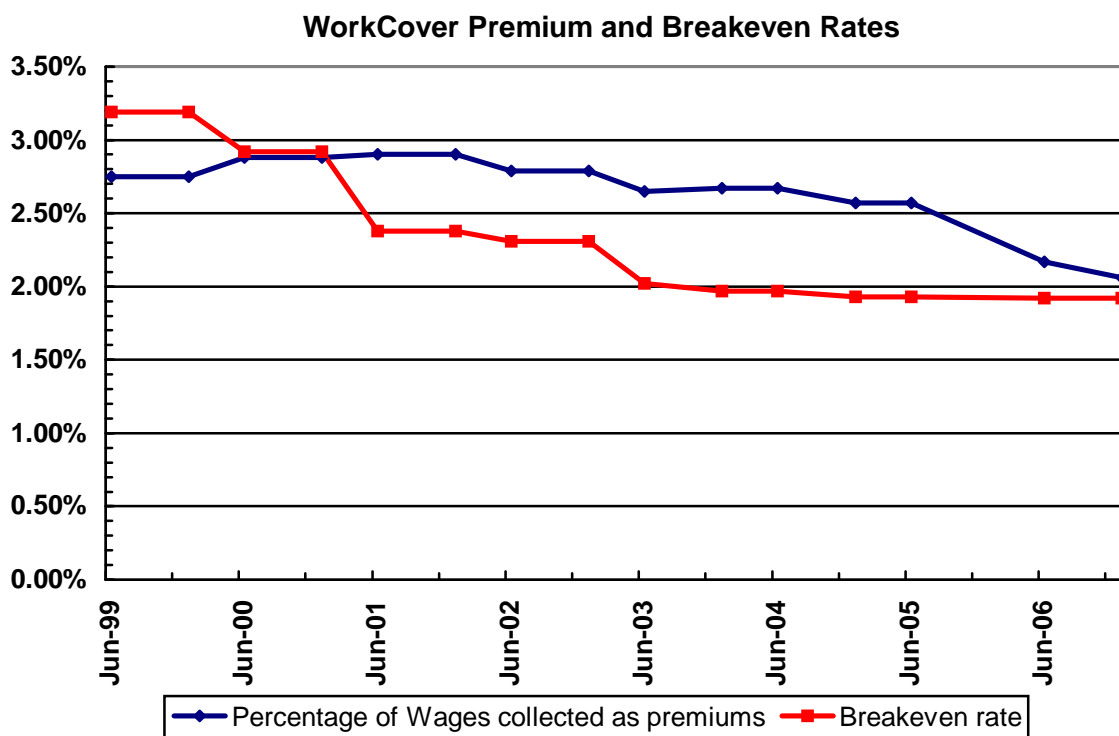
However, in September 2006, just nine months later, the Minister announced that the WorkCover scheme was \$85 million in surplus.

Despite recovering a \$3.2 billion deficit in just three years the WorkCover Scheme is projected to make a further \$3.3 billion over the next four years. This is an average of \$668 million a year in excess of the amount which needs to be collected to ensure the scheme does not slip into deficit.

WorkCover premiums cost less and deliver less

The breakeven premium rate is the percentage of wages which need to be collected as premiums to ensure that the WorkCover Scheme breaks even.

Figure 3.



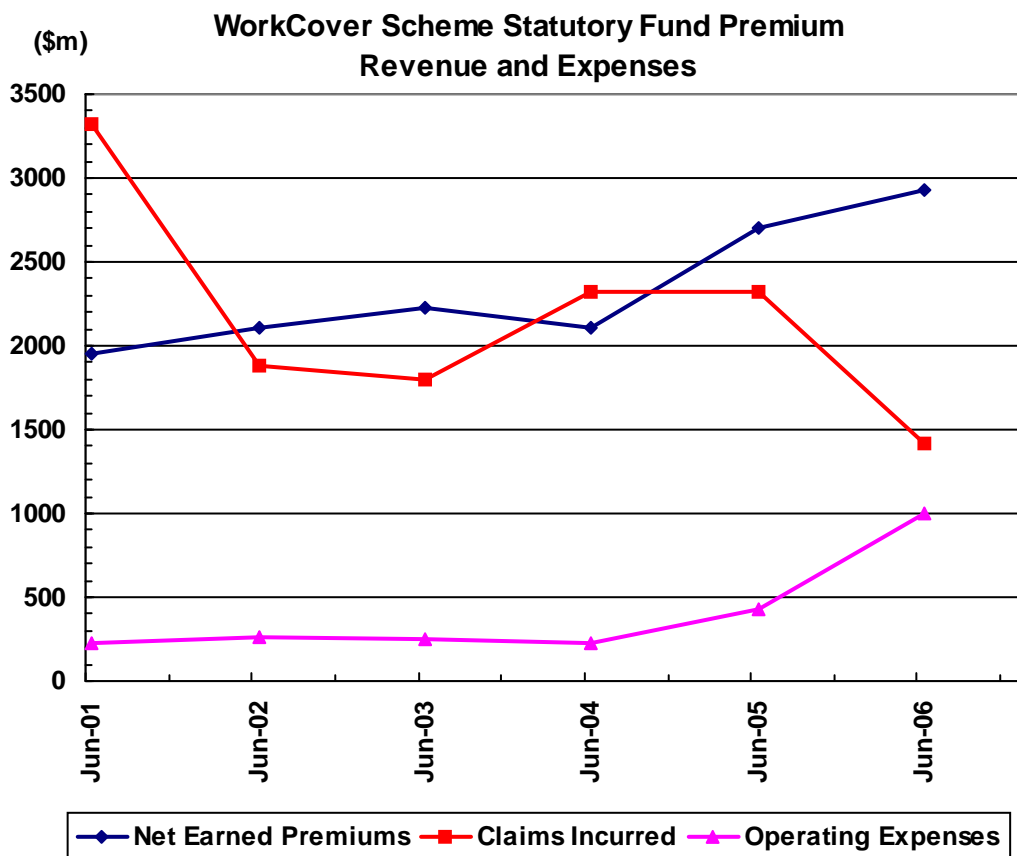
Source¹⁹

Recently, the Premier announced a further reduction in WorkCover premiums to 2.06% of payroll. This puts NSW 9% below the national average of 2.25% (only Queensland and Western Australia have lower premiums).

While employers are now benefiting from some of the lowest WorkCover premiums in years, workers have gained nothing and are far worse off under the current scheme. In NSW, 95% of injured workers miss out on damages for pain and suffering. If a worker elects to sue their negligent employer, no matter how badly injured they are, they will be punished by the NSW Government, by having any payments for medical and other expenses discontinued.


Despite the windfall in revenue being generated under the WorkCover scheme, which has resulted in a massive \$3.34 billion surplus in just four years, the Government has refused to offer a fair go to injured workers in NSW.

Figure 4.



Source²⁰

Figure 4 shows that net earned premiums have risen by almost \$1 billion since June 2001. Similarly the operating expenses of the WorkCover scheme have increased by 150% since 2004. However, compensation paid to injured workers has fallen by approximately \$1.9 billion since June 2001.



Summary

The Minister claims that implementing the NSW Upper House recommendations will force WorkCover premiums up.

However, in just one year, the WorkCover scheme went from \$2 billion in deficit to \$85 million in surplus.


The scheme is projected to run to a \$3.34 billion surplus in just four years.

Meanwhile, WorkCover premiums are lower than they've been in years.

**The pendulum has swung too far –
it's time to give injured workers
a fair go.**



The Law Council of Australia represents the legal profession on a national level. We advise governments, courts and other federal agencies on ways in which the law and the justice system can be improved for the benefit of the community; promoting the administration of justice, access to justice and general improvement of the law.



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- ¹ Minister's release, "Premiums would skyrocket under Bar Association's proposal", 19 September 2006.
- ² Gould Adrian, "Report to Motor Accidents Authority: Estimates as at 30 June 2005 of profitability of past NSW compulsory third party premiums written by insurers", 12 October 2005. Table 2.1, page 3. (Document obtained under FOI).
- ³ Ibid. n. 2.
- ⁴ Letter from Greg Taylor, Taylor Fry Consulting Actuaries to Motor Accidents Authority of New South Wales, 21 December 2004. Paragraph. 1.2 (p 1-2). (Document obtained under FOI.)
- ⁵ MAA Annual Report 2005/06, page 89.
- ⁶ Ibid. page 83.
- ⁷ Letter from Taylor Fry Consulting Actuaries to the Deputy General Manager of the Motor Accidents Authority of New South Wales, 11 April 2006. Table 3, page 9.
- ⁸ See Table 1.
- ⁹ NSW Legislative Council General Purpose Standing Committee No.1, "Report of the Inquiry into the Personal Injury Compensation Legislation", Report 28, December 2005.
- ¹⁰ Taylor Fry Actuaries and Consultants provide cautionary statements in bold throughout their reports to the MAA that the estimates are "unavoidable approximate and subject to a high margin of error".
- ¹¹ American Medical Association, "Guides to the Evaluation of Permanent Impairment", 4th Edition, page 12.
- ¹² Letter from Taylor Fry Consulting, 11 April 2006, n. 7. p. 8.
- ¹³ Ibid. n. 7. Paragraph 3.1 (p. 3). Figures shown are for the 2002 and subsequent accident years.
- ¹⁴ Ibid. n. 7. Figure 3 (p. 8).
- ¹⁵ Ibid. n. 7. Table 3 (p. 9).
- ¹⁶ Ibid. n. 7. Table 3 (p. 9).
- ¹⁷ Pricewaterhouse Coopers Actuarial Pty Ltd, "Executive Summary – Actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 30 June 2006", 14 November 2006. at pp. 10 and 24. (Document Obtained under FOI.)
- ¹⁸ PriceWaterhouseCoopers Actuarial Pty Ltd, "NSW WorkCover: Costing of the recommendations of the Personal Injury Compensation Legislation Report", 25 January 2006, page 39.
- ¹⁹ Data compiled from public data available from www.workcover.nsw.gov.au and PricewaterhouseCoopers Actuarial Pty Ltd, 14 November 2006, n. 17.
- ²⁰ Data compiled from:
- WorkCover Annual Report 2000/01, p. 115;
 - WorkCover Annual Report 2001/02, p. 93;
 - WorkCover Annual Report 2002/03, p. 70;
 - WorkCover Annual Report 2003/04, p. 51;
 - WorkCover Annual Report 2004/05, p. 46;
 - WorkCover Annual Report 2005/06, p. 88.

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