
National Trends in Personal Injury Litigation: Before and After “Ipp”

Professor E W Wright

Dean and Professor of Law, School of Law, and Director,
Justice Policy Research Centre, University of Newcastle

justice policy
research centre



26 May 2006

Commissioned by the
Law Council of Australia



Table of Contents

Executive Summary	3
Background	4
Tort law “before and after lpp”	6
Research Scope and Methodology	7
Results	11
National summary: litigation rates “pre-” and “post-lpp”	11
Jurisdiction by jurisdiction analysis	15
New South Wales.....	15
Victoria.....	17
Queensland.....	19
Western Australia.....	21
South Australia.....	23
Tasmania	24
Australian Capital Territory.....	26
Northern Territory.....	27
Conclusion	29

Executive Summary

In 2002 the Commonwealth, state and territory governments reacted to a “crisis” over the availability and affordability of personal injury liability insurance cover by appointing a “Panel of Eminent Persons” to review the law of negligence (the Ipp Review). Between 2002 – 2004 the legislatures in every Australian jurisdiction enacted significant tort law reforms, many of them recommended or inspired by the Ipp Review.

This report analyses data on trends in personal injury litigation (excluding motor and workplace accident claims) in Australian state and territory courts over the past decade. The data show that, contrary to widespread belief, litigation rates had not, generally, been increasing in the period leading to the Ipp Review. This finding provides no empirical foundation for the premises underlying tort law reform as a strategy for addressing the insurance crisis in 2002.

It is evident that the reformers could have had no empirical foundation, either for predicting the impact of the reforms on personal injury litigation in their jurisdictions, or for determining by how much it was desirable to reduce it. The reforms introduced by the state and territory legislatures have caused a substantial decline in personal injury litigation rates in most jurisdictions. The ‘corrections’ in the three largest states, New South Wales, Queensland and Victoria, have been particularly dramatic.

The data also show that litigation rates both before and after the reforms varied appreciably among the states and territories, and that the degree of change wrought by their reforms also vary appreciably.

E W Wright¹

Justice Policy Research Centre

26 May 2006

¹ Dean and Professor of Law, School of Law, and Director, Justice Policy Research Centre, University of Newcastle.

Background

This report was commissioned by the Law Council of Australia. Its aim was to gather data on trends in personal injury litigation prior to the Review of the Law of Negligence (the Ipp Review)² and after the implementation by the states and territories of the recommendations of that report. The Law Council was particularly interested to know two things:

1. Whether the widespread belief that Australia was experiencing a “litigation explosion” in the period leading up to the Ipp Review could be verified by hard, statistical data, and
2. What effect the state and territory tort law reforms enacted (predominantly) in the period 2002 – 2004 have had on the incidence of personal injury litigation.

It should be said at the outset that the Ipp Review was not prompted by a litigation crisis as such, but rather by what was perhaps more precisely termed an “insurance crisis”. This, although not systematically documented in any way, was manifested by many media reports of, and high level political concern about, the unavailability or unaffordability of insurance cover against the risk of liability for personal injury. The premise of the Ipp Review – explicit in its terms of reference – was that “personal injury law has contributed to this state of affairs, and that reducing liability and damages would make a significant contribution to resolving the crisis.”³ In another passage, the Report explains

1.4 The Ministerial communiqué, the Terms of Reference, and the breadth and range of the responses the Panel received in submissions and consultations, indicate that there is a widely held view in the Australian community that there are problems with the law stemming from perceptions that:

- (a) The law of negligence as it is applied in the courts is unclear and unpredictable.*
- (b) In recent times it has become too easy for plaintiffs in personal injury cases to establish liability for negligence on the part of defendants.*
- (c) Damages awards in personal injury cases are frequently too high.*

...

1.6 The Panel’s task is not to test the accuracy of these perceptions but to take as a starting point for conducting its inquiry the general belief in the Australian community that there is an urgent need to address these problems.

² *Review of the Law of Negligence* (Commonwealth of Australia, 2002). The chair of the “Panel of Eminent Persons” who authored the report was the Hon David Ipp (Judge of the New South Wales Court of Appeal). The other members were Professors Peter Cane and Don Sheldon, and Mr Ian Macintosh. The report may found at <http://revofneg.treasury.gov.au/content/review2.asp>

³ Ipp Review, para 1.36.

The conditions assumed to warrant the Ipp Review – increasingly *successful* claims and *larger* awards – may be distinguished from increasing *numbers* of claims. Nevertheless, they are also conditions that would be expected to lead to more litigation, and the media reports of the time contained many assertions of a link between the insurance crisis and rising numbers of claims.⁴ Data on success rates and the size of awards is virtually impossible to obtain.⁵ It is, however, reasonable to regard data on numbers of claims as evidence of the existence (or otherwise) of the systemic problems which ostensibly provided the point of departure for the Ipp Review.

The Ipp Review was far from unmindful of the difficulties that the lack of systematically collected empirical data posed for would-be-reformers of personal injuries compensation law. As it noted

1.33 *The law concerned with liability for personal injury and death has been developed by courts and parliaments over hundreds of years. It is comprised of countless principles and rules, many of which are inter-dependent. Together they form a system of great complexity and subtlety. It is often extremely difficult – and sometimes impossible – to ascertain how changes in one area will affect others. In addition, none of the issues raised by our Terms of Reference admits of one obvious solution, and all require a balancing of legitimate and competing issues. ... These matters are mentioned to make it plain that the Panel is properly cognizant of the nature of the task set for us in our Terms of Reference.*

...

1.38 *Many different changes could be made to the law of negligence to further the objectives stated in the ... Terms of Reference. Many bodies and individuals with differing interests and objectives have made submissions to the Panel as to the changes that should be made. Such changes were often recommended on the basis of assertions about their likely effects; but typically they were not supported by reliable and convincing empirical evidence. The vast majority of the assertions were based merely on anecdotal evidence, the reliability of which has not been tested.*

1.39 *A consequence of the dearth of hard evidence in the areas in which decisions are called for, is that the Panel's recommendations are based primarily on the collective sense of fairness of its members, informed by their knowledge and experience, by their own researches and those of the Panel's Secretariat⁶, and by the advice and submissions of those who have appeared before the Panel and who have made written representations to it.*

Despite, however, what appears to be a salutary note of caution applying as much to its own enterprise as to any other, the intrepid panel explained its willingness to proceed: it was a “widely held view” that tort law reform would be beneficial, there was

⁴ See Ted Wright and Angela Melville, “Hey, but who’s counting? The metrics and politics of trends in civil litigation” in W Prest and S Roach Anleu (eds) *Litigation: Past and Present* (UNSW Press, 2004) 96

⁵ The vast majority of personal injury actions settle, and the relevant information is typically confidential to the parties. Although the result of proceedings which go to trial may be recorded in the court file, this data is not collated in any form by the courts.

⁶ Not, presumably, empirical in nature.

“an opportunity” to achieve reform nationwide, and if not taken “the opportunity may be lost.”⁷ We should note, in this vein, also that all of the states and territories departed from the Review’s recommendations in various respects, while likewise lacking “reliable and convincing empirical evidence” about the “likely effects” of their changes. Hard empirical data on the impact that the reforms have had on the numbers of injured persons who now seek compensation for their losses is, then, of obvious policy significance.

Tort law “before and after Ipp”

While it is convenient to refer to the raft of tort law (and related) reforms enacted by the states and territories between 2002 – 2004 as “post Ipp”, and thus imply that the reforms were “Ipp-inspired”, we should acknowledge that these labels involve an element of infelicity. The decision to appoint a “panel of eminent persons” to review the law of negligence was taken by a “Ministerial Meeting on Public Liability”⁸ on 30 May 2002. At that point the New South Wales and Queensland Governments had already announced their intention to legislate a number of significant tort law reforms,⁹ and the Western Australian Government had announced its in principle support for a national approach to a range of similar measures.¹⁰ The Panel of Eminent Persons was appointed on 2 July 2002, and its final report was released at the end of September, 2002.

Many of the reforms introduced by the states and territories depart in their detail from the Ipp recommendations, and most if not all of the jurisdictions elected, in varying respects, not to adopt some of the recommendations; indeed, in at least one respect most jurisdictions acted contrary to the recommendations of the Ipp Review.¹¹ A jurisdiction by jurisdiction summary of all of the reforms (“Ipp-inspired” and otherwise) adopted to address the liability insurance crisis has been prepared by the Commonwealth Treasury Department.¹² Two very thorough-going summaries of the fate of each of the Ipp Review’s 61 recommendations in each of the states and territories have also been published, one by Professor Butler¹³ and another by the law firm Minter Ellison.¹⁴

It is beyond the scope of this report to attempt yet another detailed summary of these tort law reforms. It is, however, essential to point out that they were typically enacted by the states and territories in several stages, so that not only do the substantive details of many reforms differ considerably among jurisdictions but also, when jurisdictions have

⁷ Paragraph 1.36.

⁸ Comprising Ministers from the Commonwealth, States and Territory governments, and the President of the Local Government Association.

⁹ Indeed, New South Wales’ *Civil Liability Act 2002* was an extension of reforms that had previously been enacted in relation to medical negligence (*Health Care Liability Act 2001*) and even earlier in relation to motor vehicle and workplace accidents.

¹⁰ It would appear that the Ipp Review was seen as a strategy for achieving that national approach, although in the event the reforms adopted by the states and territories differ in many respects from the Review recommendations.

¹¹ It appears that all states and territories departed from the Review’s recommendations (10 and 16) regarding the liability of “NPOs” (not for profit organisations). See D Butler “A comparison of the adoption of the Ipp report recommendations and other personal injuries liability reforms” (2005) 13 *Torts Law Journal* 203.

¹² *Reform of Liability Insurance: Progress as at 8 April 2005*
<http://www.treasury.gov.au/contentitem.asp?NavId=&ContentID=971>

¹³ D Butler “A comparison of the adoption of the Ipp report recommendations and other personal injuries liability reforms” (2005) 13 *Torts Law Journal* 203.

¹⁴ *Tort law reform throughout Australia: A brief review of recent amendments* (6th ed, December 2005).

done the same or similar things, their timing has often differed.¹⁵ We gave some effort to trying to discern whether some particular reforms have had a greater effect than others. The result was a number of suspicions but these remain, in the absence of further research, largely speculative.¹⁶ For present purposes it is enough to say that the *prospect* of reform¹⁷ had in many jurisdictions a palpable effect between 2001-3, and the reforms themselves, where they have bitten, have had a manifest effect from 2003-4. We add some more detail in our presentation of the jurisdiction by jurisdiction trends in personal injury litigation below.

Research Scope and Methodology

As already noted, the aim of the research was to gather data on trends in personal injury litigation before and after the tort law reforms prompted by the Ipp Review. The results reported here are limited in a number of respects, principally by the availability of data. Detailed statistical data on civil litigation trends in Australia is not readily available.¹⁸ While the courts publish some annual statistics on their caseloads, generally these are not broken down into categories that distinguish personal injury actions from other civil claims. Because of the limitations of the Law Council's budget, it asked the Justice Policy Research Centre (JPRC) to conduct a preliminary study into the available data in each state and territory, with a view to proposing a cost-effective method for compiling statistics on the frequency of personal injury tort litigation in Australia. The results of this preliminary study can be summarised as follows:

1. The only practical metric of tort 'claims' or 'litigation' is a count of cases commenced in the courts.¹⁹
2. We decided to exclude claims arising from workplace and road accidents from the study (with one minor exception discussed in numbered paragraph 8, below). These presented several difficulties that would have greatly complicated both the collection and the analysis of the data. Australia has 10 principal Commonwealth, state and territory acts relating to workers' compensation.²⁰ The institutional arrangements for handling disputes (including the roles of the courts, properly so-called) differ appreciably among jurisdictions, as do the provisions affecting availability of common

¹⁵ Indeed, in some jurisdictions (for example New South Wales and Victoria) significant reforms to damages applied with retrospective effect (ie to awards made after the legislation came into force, regardless of when the injury occurred). We initially suspected that this explained the immediate and dramatic effect of the reforms in those two states, and perhaps explained, on the other hand, why the reforms in the Northern Territory (similar in many respects to those in Victoria) do not (yet) appear to have had a significant effect. But the similar reforms in Queensland apply only to injuries occurring after the commencement dates of the legislation, and as we shall see, the impact of the reforms in Queensland was as immediate and dramatic as it was in New South Wales and Victoria.

¹⁶ Thus we wondered if Queensland's regulation of awards of costs might explain why litigation has declined in that state to the same dramatic extent as it has in New South Wales and Victoria; but Victoria doesn't have similar costs provisions, and the Northern Territory does.

¹⁷ See note 40 and accompanying text, below.

¹⁸ Indeed, the decision to establish the Ipp committee and the policy decisions recommended by it and implemented by state and territory governments were made largely in the absence of such data.

¹⁹ In most cases where a 'claim' for compensation is asserted it can probably be safely assumed that a liability insurer, somewhere, will maintain a record of the claim but independently verifiable data on claims in this sense are not publicly available, because insurers regard it as confidential (although many made public statements about trends in claims, ostensibly based on their own data, in the course of the recent tort law reform debate). Not all claims lead to legal proceedings, and not all proceedings commenced lead to substantial litigation but, while data on cases commenced are readily and reliably available (relatively speaking) data on the proceedings after commencement are not.

²⁰ Richard Johnstone, *Occupational Health and Safety Law and Policy: Text and Materials* (2d) (2004) at p 621.

law (tort) claims.²¹ While the position in relation to motor accidents compensation is not quite so complex, there is likewise a significant legacy of legislative reforms in most jurisdictions that is difficult to ‘unpack’ and relate meaningfully to trends in ‘litigation’.²² These kinds of personal injury claims were not, in any event, the focus of the Ipp Review.²³ Confining the analysis to personal injury litigation, other than work injury and road accident claims, provides a clean picture of the trends in litigation of the kind which ostensibly prompted the Ipp Review, and of the impact of the Ipp Review inspired reforms on tort litigation.

3. In most jurisdictions the Supreme and District Courts maintain computer records of claims filed that make it relatively easy to construct frequency statistics on personal injury litigation for the period 1995 – 2005 (ie the past 11 years), with some limitations (set out in the next paragraphs).
4. Computer records of all personal injury claims were only available for some courts for somewhat shorter periods, or only for some registries, or both:
 - (a) records of claims in the District Courts of New South Wales and Western Australia and the County Court of Victoria are available only from 1996 - 2005 (ie 10 years)
 - (b) records for the Supreme and District Courts of Queensland, and the Supreme Court of Tasmania are available only from 1995/96 – 2004/5 (ie 10 years)
 - (c) records of claims in the New South Wales District Court going back to 1996 are available for the Sydney registry only
 - (d) records for the Supreme and District Courts of Queensland going back to 1995/96 are available only for their Brisbane registries.

Computerised record-keeping in other registries in the District Court of New South Wales and the Queensland Supreme and District Courts was introduced progressively, such that worthwhile trend data cannot be constructed for the states as a whole. However, the registries from which data was obtained handle very substantial proportions of the personal injuries claims lodged in their states, and there is no reason to suspect that the trends in filings in other registries differ.²⁴

5. The codes used to classify different causes of action generally make it possible to distinguish “other personal injury” cases from motor accident

²¹ Cf Richard Johnstone, *Occupational Health and Safety Law and Policy: Text and Materials* (2d) (2004) at pp 664-7 and 673, 679-80. The differences in dispute resolution processes between jurisdictions are such that they would raise, for an exercise of the kind undertaken for this report, serious definitional issues about the identification of ‘litigation’.

²² The Northern Territory has introduced a no-fault scheme for residents, and other jurisdictions, such as Victoria, have significantly restricted access to the common law in motor accident claims. New South Wales introduced major reforms in the dispute handling processes in both the Workers Compensation and Motor Accidents jurisdiction in 1999 and 2000; these, in effect, create wholly new classes of disputes which do not conform neatly to conventional understandings of the term ‘litigation’.

²³ Although, of course, some of the acts (eg *Civil Liability Act 2002* (NSW)) implementing Ipp Review recommendations extend (at least in part) to motor vehicle accidents and, to a lesser extent, workers compensation claims. Likewise some reforms previously introduced in relation to, for example, workers compensation and motor accident claims in New South Wales, clearly inspired some of the Ipp Review recommendations in relation to negligence claims.

²⁴ In 2004, 78% of all civil claims lodged in NSW were filed in the Sydney Registry. Between 2002/3 – 2004/5 77% of all personal injury actions lodged in the Supreme and District Courts of Queensland were filed in the Brisbane Registries.

and workplace injury cases. However, we were warned by several courts that the accuracy of classification could not be guaranteed.²⁵ It can, however, generally be assumed that ‘contamination’ between categories has not affected the apparently significant patterns reported in the results presented below.²⁶

6. Although several Supreme and District courts sub-categorise their caseloads more finely (eg “occupier liability”, “medical negligence”), differences in the categories used, both between jurisdictions²⁷ and over time within jurisdictions²⁸, as well as the issues about accuracy of classification identified above, preclude the construction of worthwhile trend data by finer categories.
7. The Supreme Court of South Australia codes motor accident and workplace claims distinctly, but other personal injury claims are lumped into a category of “other” civil claims including non-personal injury causes of action. Thus it was not possible to include South Australia Supreme Court data in the study. However, because the South Australia District Court has had unlimited personal injury jurisdiction over the whole of the study period, it can be assumed that the number of personal injury actions in the Supreme Court is small, and their exclusion from the data will not have seriously distorted the overall picture.²⁹
8. The Supreme Court of Western Australia handles a small number of personal injury claims and does not sub-categorise these. It appears that they are all or nearly all asbestosis cases, and it can be assumed that *some* are workplace related and others are not.³⁰ The District Court has had unlimited personal injury jurisdiction since well before the study period, and the numbers of claims in the Supreme Court are small; we decided to *include* the Supreme Court figures in the analysis presented here, notwithstanding that this meant that a relatively small numbers of workplace related claims were thereby also included.
9. In most states and territories the computer records maintained by the Magistrates’ or Local Courts identify claims only as “civil”. The cost of constructing frequency data on personal injury claims even by sampling paper files would obviously be prohibitive. Therefore we have excluded Magistrates’ and Local Courts data from our analysis. However, although some at least have jurisdiction, personal injury claims in these courts are very few in number.

²⁵ Only one state had a documented protocol for classifying cases, and this was only introduced recently; in the others the classification was left to the clerk creating the record. In several states the codes used are apt to be applied differently, one suspects, from clerk to clerk (for example, the Victorian County Court codes discussed below in note 27 would appear potentially to overlap). There is also some potential for straight-out misclassification.

²⁶ However, there is a striking feature of the Western Australian figures for which we have been unable to find any explanation other than contamination of the data by workers compensation claims. This is discussed below.

²⁷ For example, the NSW District Court has a code for “Occupier Liability” but not public liability, while the Victorian County Court has codes for “Public Liability”, “Slipping” and “School Accidents” but not occupier liability. There are even differences in the codes used between courts within a state, for example, the NSW District Court combines “Occupiers/Public Liability”, while the Supreme Court distinguishes “Occupiers Liability” from “Other PI”.

²⁸ For example, the NSW Supreme Court did not segregate “Medical negligence” from “Other PI” until 2000.

²⁹ We provide further details in our discussion of the South Australia data.

³⁰ We were advised that the split is about 50:50.

10. The computerised records maintained by the Federal Court identify only the relevant Commonwealth Acts relied on by the claimant, and it is therefore not possible to segregate claims involving personal injuries from others which invoke the same legislation (for example, product liability claims relying on the *Trade Practices Act 1975* cannot be distinguished from misleading conduct claims). Therefore we have excluded Federal Court data from our analysis.

In summary, we present here year-to-year³¹ trend data in the total number of personal injury tort claims (other than those based on workplace and road accidents) for the following courts and periods:

Australian Capital Territory	Supreme Court ³²	1995 – 2005
New South Wales	Supreme Court	1995 – 2005
	District Court (Sydney Registry only)	1996 – 2005
Northern Territory	Supreme Court	1995 – 2005
Queensland	Supreme Court (Brisbane Registry only)	1995/6 – 2004/5
	District Court (Brisbane Registry only)	1995/6 – 2004/5
South Australia	District Court ³³	1995 – 2005
Tasmania	Supreme Court ³⁴	1995/6 – 2004/5
Victoria	Supreme Court	1995 - 2005
	County Court	1996 - 2005
Western Australia	District Court	1996 – 2005
	Supreme Court ³⁵	1995- 2005

The Law Council wrote on 28 July 2005 to the principal registrars of the courts asking them to provide the study data to the JPRC. Three court registries responded in August, six in September and one in October. Because of the timing of our request, we received figures to the end of 2004 from those jurisdictions that report on a calendar year basis, and to 30 June 2005 from those jurisdictions that report on a financial year basis. In February 2006, the Law Council again wrote to the registrars of the courts that had provided data to the end of 2004, requesting the data for 2005. This was supplied by all of the courts concerned by the end of March 2006.

Where necessary, we give further details concerning our methods of analysing this data, in connection with our discussion of the results.

³¹ As we have noted, some jurisdictions maintain their records by calendar year, and others by financial year.

³² The ACT does not have a District Court.

³³ As we have noted, the Supreme Court of South Australia handles a small number of personal injury claims but these cannot be separated from other, non-personal injury civil claims. Further details about the available data are given below, in our discussion of the South Australia data.

³⁴ Tasmania does not have a District Court.

³⁵ The Supreme Court of Western Australia handles a relatively small number of personal injury claims, believed to be mostly asbestosis related; it does not distinguish between work-related and other personal injury claims and thus the inclusion of this data has resulted in the inclusion of a small number of work-related claims.

Results

National summary: litigation rates “pre-” and “post-Ipp”

The detailed data on annual trends in personal injury litigation are presented below for each jurisdiction. As will be readily apparent when we turn to this data, there is little or no evidence of a sustained, significant increasing trend in claims prior to the Ipp inspired reforms. Likewise, however, that data indicates in most jurisdictions that there has been an appreciable (in some states dramatic) decline in litigation since the tort law reforms were enacted.

The number of claims brought in each jurisdiction of course differs greatly (no one will be surprised to learn that very many more claims are brought in New South Wales than in Tasmania). We can, however, convert the claim *numbers* to a claiming *rate* related to the population of each jurisdiction. This makes it possible to compare the data across jurisdictions directly, in a meaningful way. Conversion to claiming rates also adjusts the year to year data for population growth, which is universally assumed to be a driver of litigation.

In most jurisdictions, the calculation of a claiming rate involves nothing more than simple arithmetic.³⁶ However, to calculate claiming rates in New South Wales and Queensland, we had to estimate the total number of claims lodged in each year for those states, based on our data for Sydney and Brisbane.³⁷

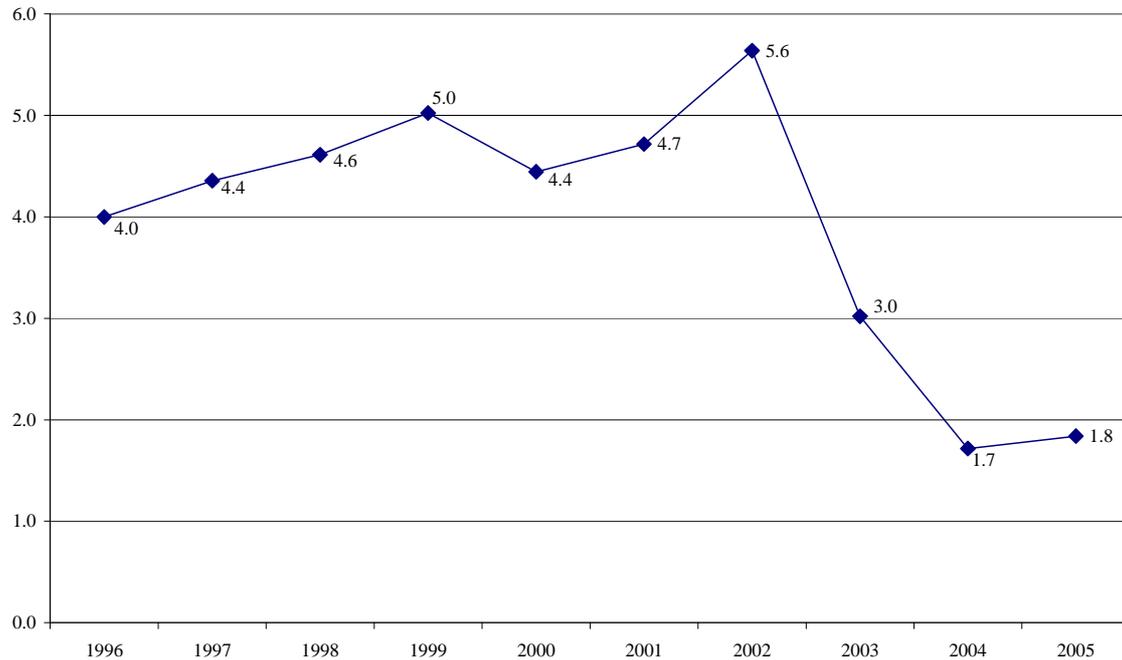
We can also calculate a national claiming rate figure for each year (from 1996 onwards), by summing the total numbers of personal injuries claims in each state and territory in each year, and dividing these by the national population in that year.³⁸ It must, however, be noted that these figures incorporate our estimates of the state totals for New South Wales and Queensland. We have, however, given our reasons for believing that these estimates are reasonably indicative of the true underlying rates. The results of these calculations are shown in Figure 1.

³⁶ We divided the claim figure in each year by the population of the jurisdiction in that year, using Australian Bureau of Statistics census data. As the last year for which a census figure is available is 2004, we have used the 2004 figure as an estimate of the 2005 population figures (the difference between the actual 2005 figures and the 2004 figures is such as to be inconsequential for present purposes). To produce a number that we thought most people would find easiest to relate to, we chose to express the rate as a number per 10,000 population.

³⁷ The reader will recall that we were only able to get claim figures for the New South Wales District Court's Sydney Registry. However, we were also given data on the proportion of the state's *civil* claims handled by the Sydney Registry in each year, and we assumed that this was the same as the proportion of personal injury claims handled, in order to estimate total personal injury claim numbers in each year. In the case of Queensland, we were given apparently reliable figures for all registries covering the last 3 years. Thus our calculation of the claiming rate in this period is reliable. This data was also used to calculate the average proportion of personal injury matters (other than motor vehicle and workers compensation claims) handled by the Brisbane registries in those years. We used this figure (77%) to estimate state totals in the earlier years based on the Brisbane figures.

³⁸ This required matching data provided for Queensland and Tasmania on a financial year basis with data for calendar years provided by the others. Any error thereby introduced can be assumed to be trivial.

Figure 1. National total personal injury claims per 10,000 population, 1996 – 2005 (data incorporates estimates of NSW and Qld state totals)³⁹



On the face of it, there is an overall increasing trend in the claim rate between 1996 – 2002. However, this ostensible trend needs to be interpreted with care. There is a very sharp increase in claims lodged in 2002. Significant increases in filings in a period immediately preceding law reform are a very familiar phenomenon.⁴⁰ They are the result of legal practitioners taking every possible precaution to preserve their clients’ existing rights in the face of an imminent prospect that they may be appreciably diminished by changes in the law. These “spates” in filings do *not* indicate a long-term trend – even one ‘nipped in the bud’ by the reforms; they are caused by the prospect of reform. As will be evident when we turn to our detailed treatment of the trends by individual jurisdiction, there were spate increases around 2002 in many of them, including several where there is absolutely no doubt that the overall trend in claims prior to the reform period was stable. In fact, it will also be seen that the 2001 claiming rate figure almost certainly contains an element of spate filing, that is, the figure of 4.7 is an overestimate of the true underlying rate.⁴¹

Thus while the claiming rate appears to have climbed steadily from 4 claims per 10,000 population in 1996 to 5 claims per 10,000 population in 1999, it fell in 2000 back to the 1997 level and, as we have just noted, the rate in 2001 (4.7) is inflated by spate filing (but nevertheless below the 1999 high). Moreover, we have not been able to discover any reason for the relative peak in claims that occurred in 1999, nor why the claiming rate should have declined after it. Of course both of these things occurred well before the Ipp Review was in contemplation. We suggest then that Figure 1 portrays a

³⁹ See note 37.

⁴⁰ See Ted Wright and Angela Melville, “Hey, but who’s counting? The metrics and politics of trends in civil litigation” in W Prest and S Roach Anleu (eds) *Litigation: Past and Present* (UNSW Press, 2004) 96 at 102 (discussing the surge in motor accident claims preceding the introduction of the NSW TransCover Scheme).

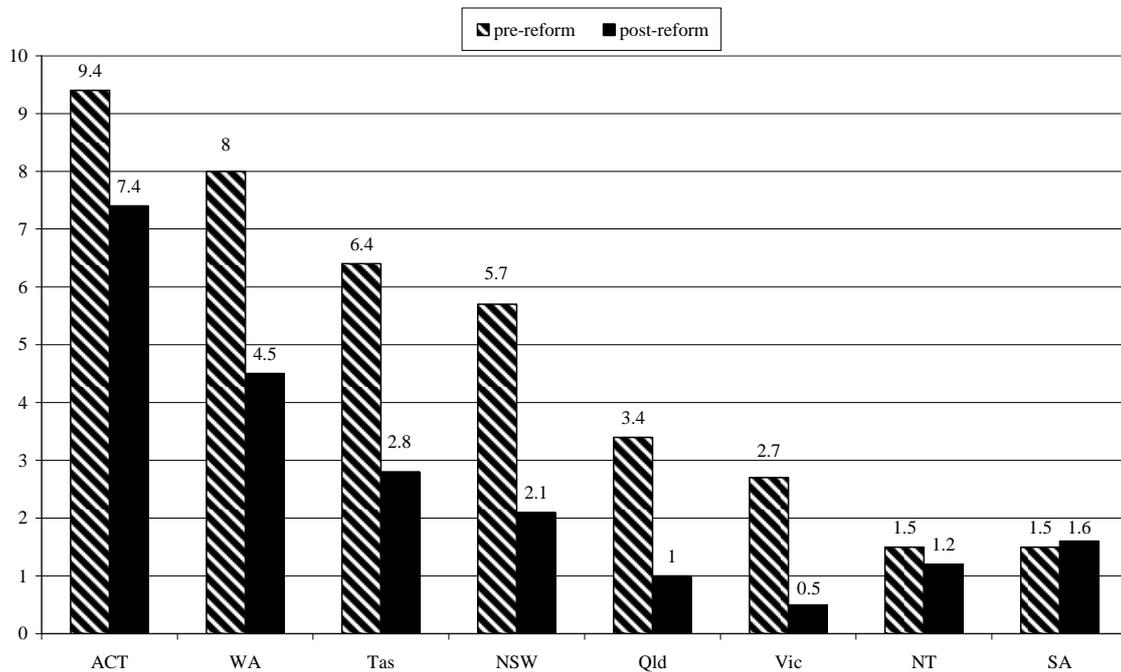
⁴¹ There appears to be a very evident element of spate filings in 2001 in NSW and it is possible that the figure in 2001/2 in Queensland (which we have combined with the 2001 data of jurisdictions that provided their data by calendar year) was also inflated by spate filings. See the separate discussion of these jurisdictions below.

national trend in claiming prior to the reform period that was essentially stable, with fluctuations in year-to-year filings around an average rate of about 4.5 claims per 10,000 population.

In contrast, the decline of about 60% in the claiming rates in 2004 and 2005⁴², following tort law reform, is striking, to say the least.

Another summary picture of the national trends in personal injury litigation “before and after” tort law reform can be formed by averaging the annual claiming rates in each state and territory before the Ipp Review, and comparing this to the average calculated for the years following the major tort law reforms in each jurisdiction.⁴³ The results are shown in Figure 2.

Figure 2: Average annual injury claims per 10,000 population before and after tort law reform, by jurisdiction (NSW and Qld figures based on estimates of year to year state totals)⁴⁴



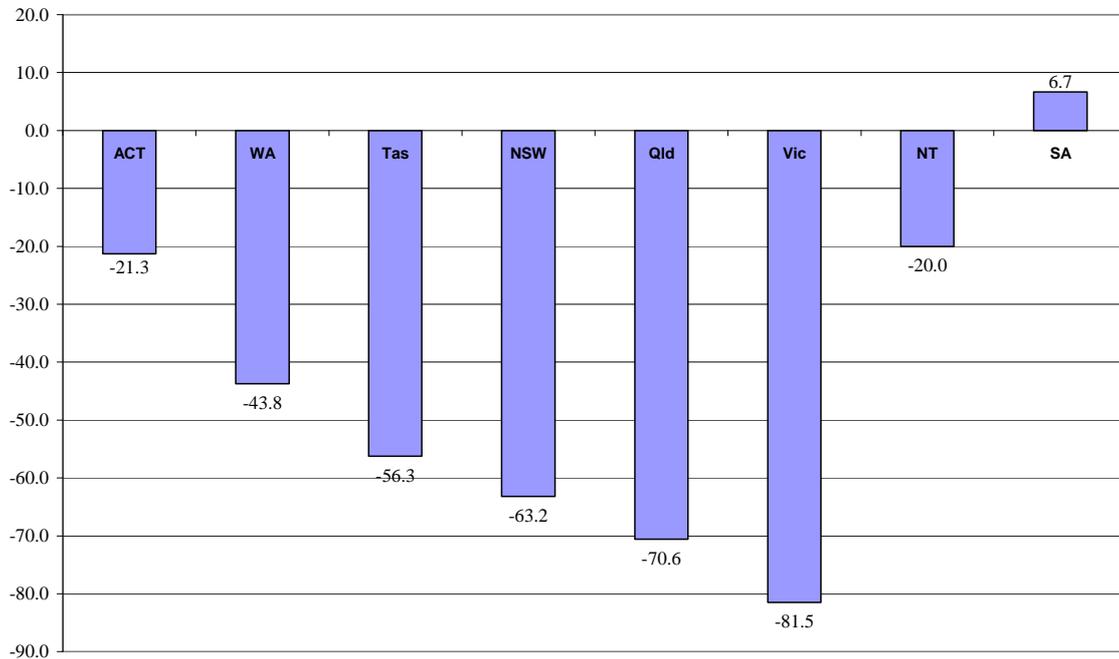
This picture, we suspect, contains a few surprises. It will be noted that the claiming rate varies between jurisdictions very appreciably, both before and after the reforms. Likewise, it is also evident that the reforms in each jurisdiction have had differing effects on claiming rates. The percentage changes in the average claiming rates before and after the reforms in each jurisdiction are shown in Figure 3.

⁴² Filings in Victoria in 2003 included an appreciable spate element, and hence we are justified in viewing 2004 and 2005 in more indicative of the “post Ipp” claiming rate.

⁴³ We have excluded from the both the “before” and “after” calculation data for a year in which there was an evident “spate” increase in claims preceding the implementation of reforms. In summary, the periods compared, by jurisdiction are as follows: ACT “before” (1995 – 2002), “after” (2003 – 2005); New South Wales “before” (1996 – 2000), “after” (2003 – 2005) (2001, 2002 excluded); Northern Territory “before” (1995 – 2002), “after” (2004 – 2005) (2003 excluded); Queensland “before” (1995/6 – 2001/2), “after” (2002/3 – 2004/5); South Australia “before” (1995 – 2001), “after” (2003 – 2005) (2002 excluded); Tasmania “before” (1995/6 – 2001/2), “after” (2002/3 – 2004/5); Victoria “before” (1996 – 2001), “after” (2004 – 2005) (2002 and 2003 excluded); Western Australia “before” (1996 – 2002), “after” (2003 – 2005).

⁴⁴ See note 37.

Figure 3: Percentage change in average claiming rates before and after tort law reform, by jurisdiction (NSW and Qld figures based on estimates of year to year state totals)⁴⁵



The largest changes have been wrought in the three most populous states. Even more striking is the fact that the claiming rates in Queensland and Victoria were appreciably *below* the national average *prior* to the reforms, and have been reduced to the lowest in the country as the result of their reforms. In comparison, the reforms in the ACT and the Northern Territory have had a moderate impact, while the average claiming rate in South Australia between 2003 – 2005 is actually modestly higher than the pre-reform rate (our detailed consideration of the data, below, suggests that the South Australian claiming rate is in fact unchanged).

⁴⁵ See note 37.

Jurisdiction by jurisdiction analysis

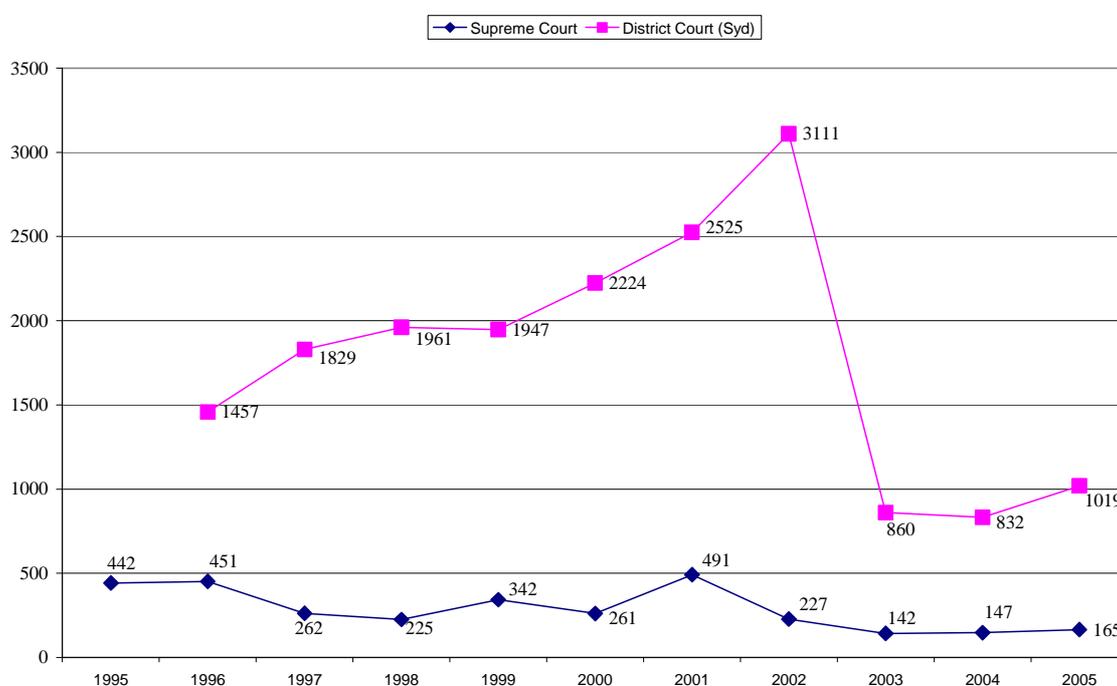
Year-to-year trends in personal injury claims are presented, in graph form, by jurisdiction, below. For all jurisdictions we present the number of personal injury claims filed, by year. We also present graphical representations of the trends in claiming rates, that is, the number of claims filed per 10,000 population, by year.⁴⁶ (The claiming rate data for New South Wales and Queensland are estimates but we believe them to be reliable indications of the actual figures.⁴⁷) While for the most part the raw figures and claiming rates indicate similar trends, claiming rates adjust the raw data for population growth (an assumed ‘driver’ of claim numbers) and, as we have seen, can be directly compared between jurisdictions, with some interesting results.

It should be emphasised again that the data are based on the numbers of personal injury actions commenced in the Supreme or District (or County) Courts, or both, in each year *excluding workplace and road accident injuries*. (As explained above, the Western Australian data includes an unknown but relatively small number of workplace related asbestosis claims.)

New South Wales

The numbers of personal injury actions commenced in the NSW Supreme Court each year between 1995 – 2005, and in the NSW District Court (Sydney Registry only) each year between 1996 - 2005 are shown in Figure 4. The combined data for the period 1996 – 2005 are shown in Figure 5.

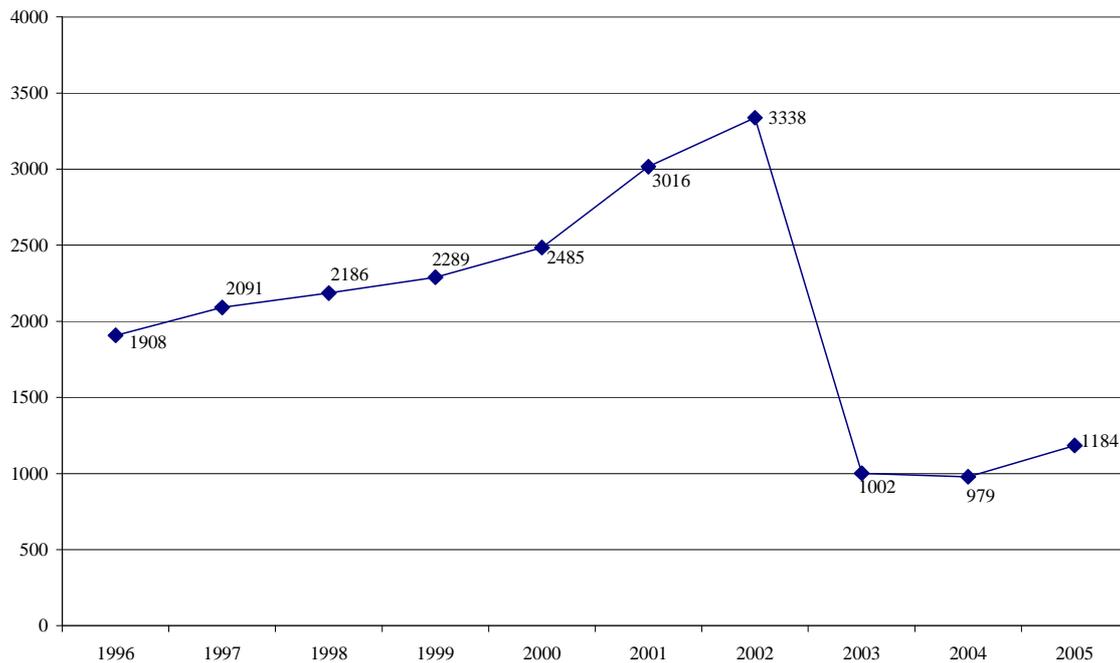
Figure 4: Number of Personal Injury Actions Commenced in the NSW Supreme Court, 1995 – 2005, and the NSW District Court (Sydney Registry) 1996 - 2005.



⁴⁶ Again using Australian Bureau of Statistics census data (see note 35).

⁴⁷ See note 37.

Figure 5: Combined Number of Personal Injury Actions Commenced in the NSW Supreme Court and the NSW District Court (Sydney Registry) 1996 - 2005.



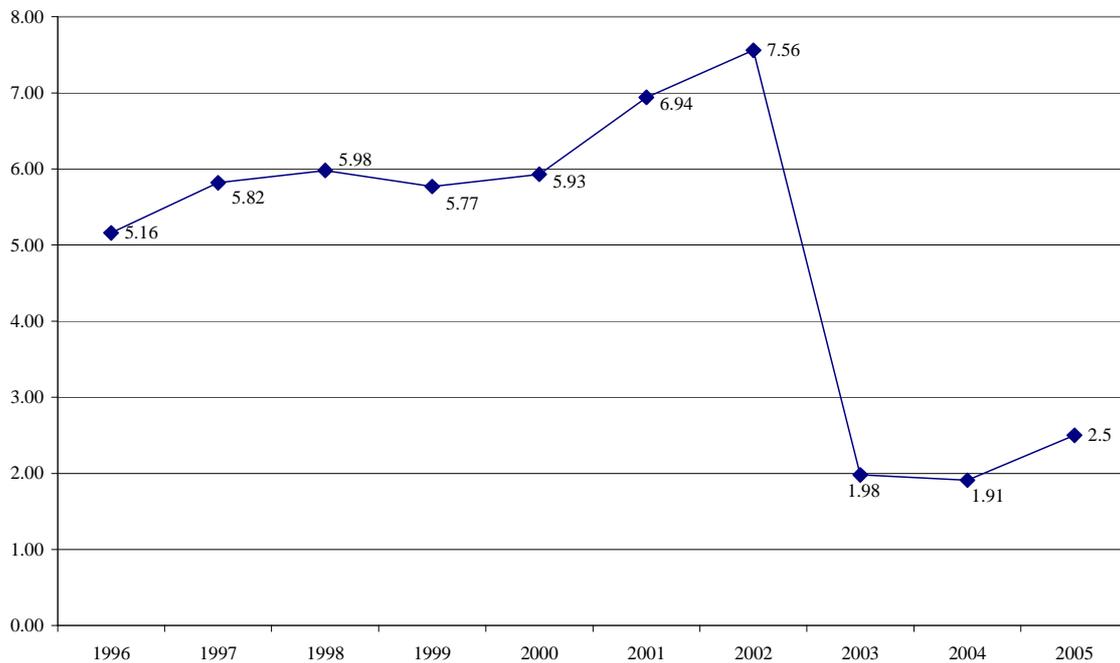
Although it appears that the number of personal injury actions in the District Court grew rapidly between 1996 and 2002, these data need to be interpreted with care. The jurisdiction of the District Court was substantially increased in 1997, resulting in an appreciable transfer of case load from the Supreme Court. Thus while the number of cases commenced in the Sydney registry of the District Court appears to have grown by over 50% in the 5 years between 1996 – 2000, compensating for the transfer of cases by combining the data for the two courts suggests the growth overall in personal injury litigation in the same period, although considerable, was significantly less (30%).

However, even the growth trend in the combined data is not necessarily quite what it seems. As we have already noted, only data for the Sydney registry of the District Court was available. The proportion of the State's civil work handled through the Sydney registry has changed – it was 53% in 1996 and reached a high of 73% in 2003.⁴⁸ Thus some of the increase between 1996 and 2002 in the number of cases filed in the Sydney registry can be attributed not to an overall increase in litigation, but rather to a transfer of load to it from other District Court registries in New South Wales.

The available data on the proportion of the District Court case load handled by the Sydney registry relates to *all civil claims* and not just personal injury matters. However, if it is assumed that the proportions of personal injury matters are the same, then it is possible to derive an estimate of the total number of personal injury matters commenced in the state for each year. To the extent that the assumption is valid, this calculation removes the 'load transfer' effect from the picture shown in Figure 5. Further, using the resulting estimate, we can calculate an estimate of the rate of personal injury filings per 10,000 population, that can be compared with similar data we present here for other jurisdictions. The results of this calculation are shown in Figure 6.

⁴⁸ Data supplied by the Principal Registrar.

Figure 6: Personal injury claiming rates in the NSW Supreme & District Courts (combined) per 10,000 population, 1996 – 2005 (District Court component is estimated)



As the resulting picture shows, personal injury litigation rates in New South Wales were apparently comparatively stable between 1996 – 2000. The increases in 2001 and 2002 undoubtedly contain an appreciable “spate filing” component.

The most significant of New South Wales’ tort law reforms (described above) came into force with effect from March 2002. The decline in cases filed between 2003 – 2005 is substantial. Even if we exclude both 2001 and 2002 from the calculation of the personal injury claiming rate prior to the reforms (on the ground that they are “spate years” and artificially inflate the estimate of the true underlying rate), the decline in tort litigation produced by the reforms is over 60%.

Victoria

The numbers of personal injury actions commenced in the Victorian Supreme Court each year between 1995 – 2005 and in County Court each year between 1996 – 2005 are shown in Figure 7 (County Court data for 1995 was not available). The Victorian claiming rates, combining the data from the two courts between 1996 – 2005, are shown in Figure 8.

Figure 7: Numbers of Personal Injury Actions Commenced in the Victorian Supreme 1995 - 2005 and the County Courts 1996 - 2005

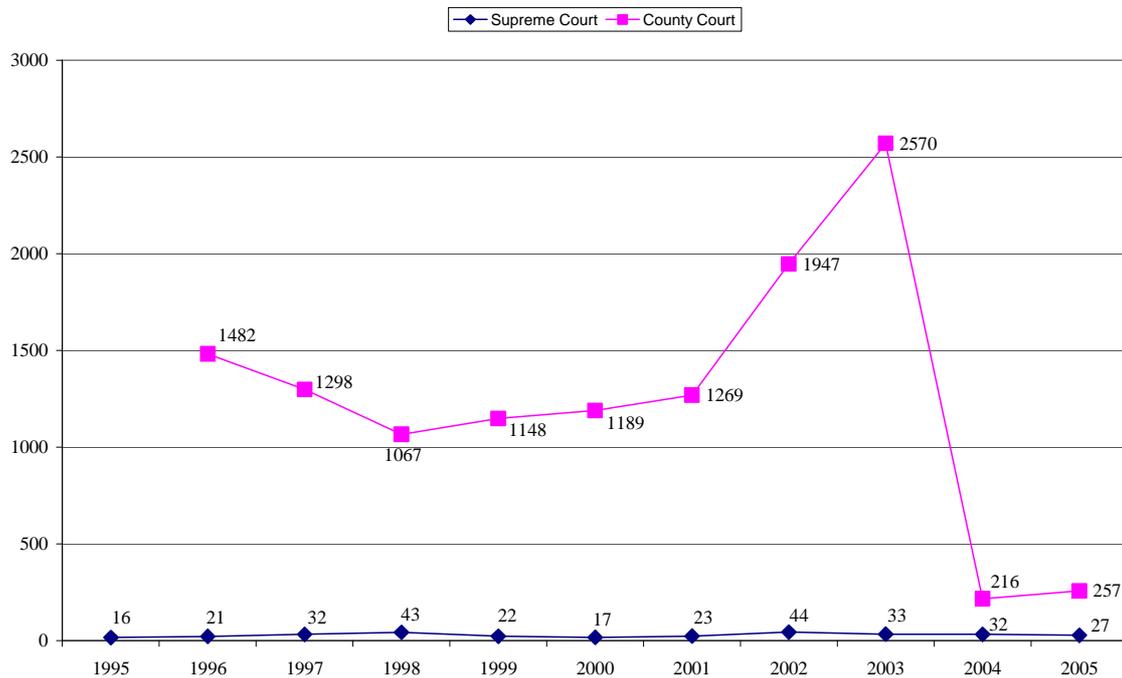
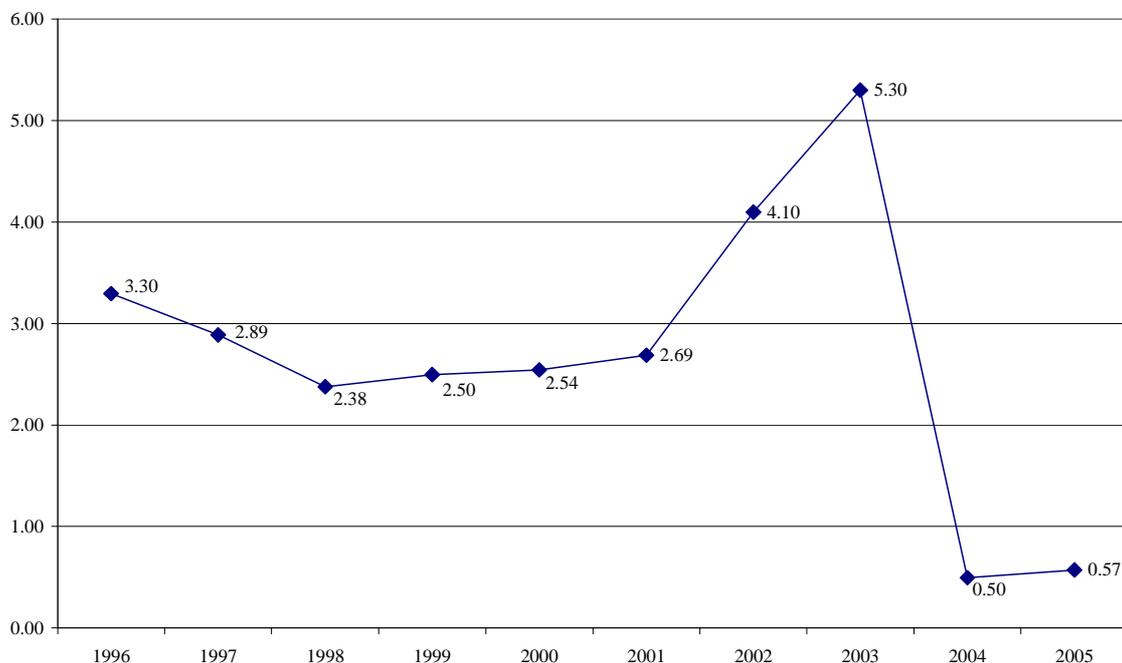


Figure 8: Personal injury claiming rates in the Victorian Supreme and County Courts (Combined) per 10,000 population, 1996 - 2005



As can be seen from Figure 7, very few personal injury claims are brought in the Supreme Court of Victoria, and the story of interest is to be found in the County Court, where by far the majority of personal injury claims are brought. The claiming rates combining the data for both courts, depicted in Figure 8 effectively reflect the same story. Personal injury claims in Victoria were stable between 1996 and 2001. Victoria's

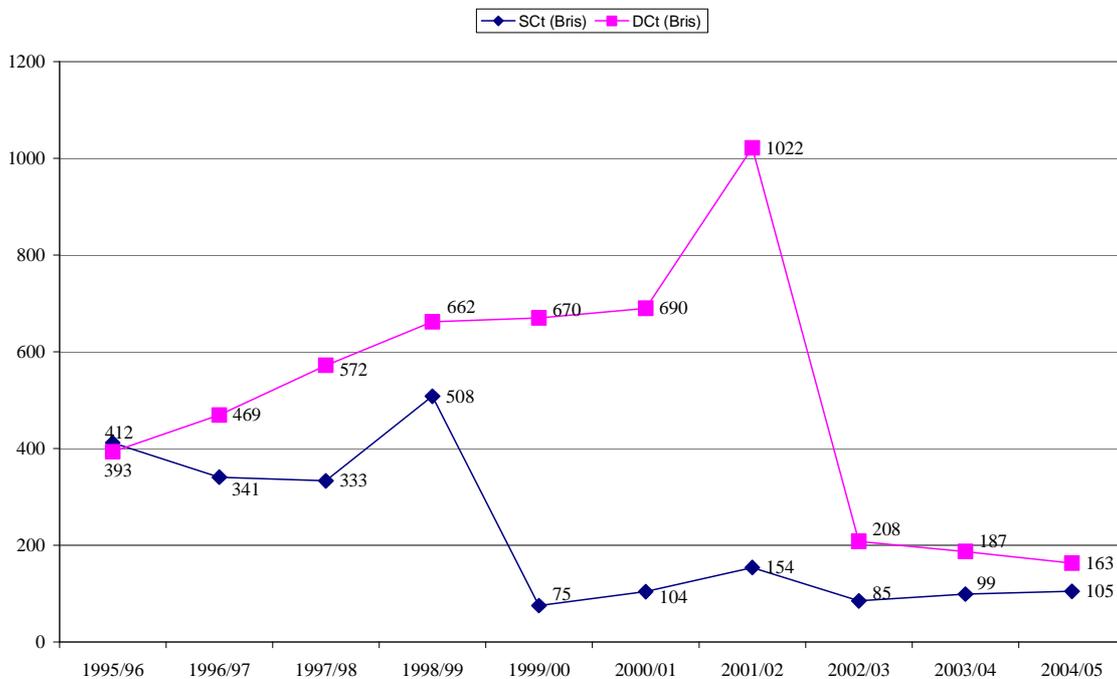
tort reforms were introduced in stages beginning in October 2002, with other significant reforms coming into force later in 2003. The sharp increase in claims in 2002 and 2003 is almost certainly the familiar spate phenomenon.

The decline in claims in 2004 and 2005 is dramatic, giving Victoria the distinction of now being the lowest claiming state in the country. The decline from the stable, pre-reform period is in the order of 80%.

Queensland

The numbers of personal injury actions commenced in the Brisbane registries of the Queensland Supreme and District Courts each year between 1995/6 – 2004/5 are shown in Figure 9. Figure 10 combines the same data in a single series. *Estimated* personal injury claiming rates for Queensland as a whole, by year, are shown in Figure 11.⁴⁹

Figure 9: Number of Personal Injury Actions Commenced in the Qld Supreme and District Courts (Brisbane Registries) 1995/6 – 2004/5.



⁴⁹ The figures for the last three years are based on complete data for the State, and are therefore accurate. The figures for earlier years are calculated from estimated State claim numbers, based on known Brisbane figures, assuming that the Brisbane registries of the Supreme and District Court together handled approximately 77% of the State's personal injury claims (the proportion handled by the Brisbane registries in the last 3 years). See also note 37.

Figure 10: Combined Number of Personal Injury Actions Commenced in the Qld Supreme and District Courts (Brisbane Registries) 1995/6 – 2004/5.

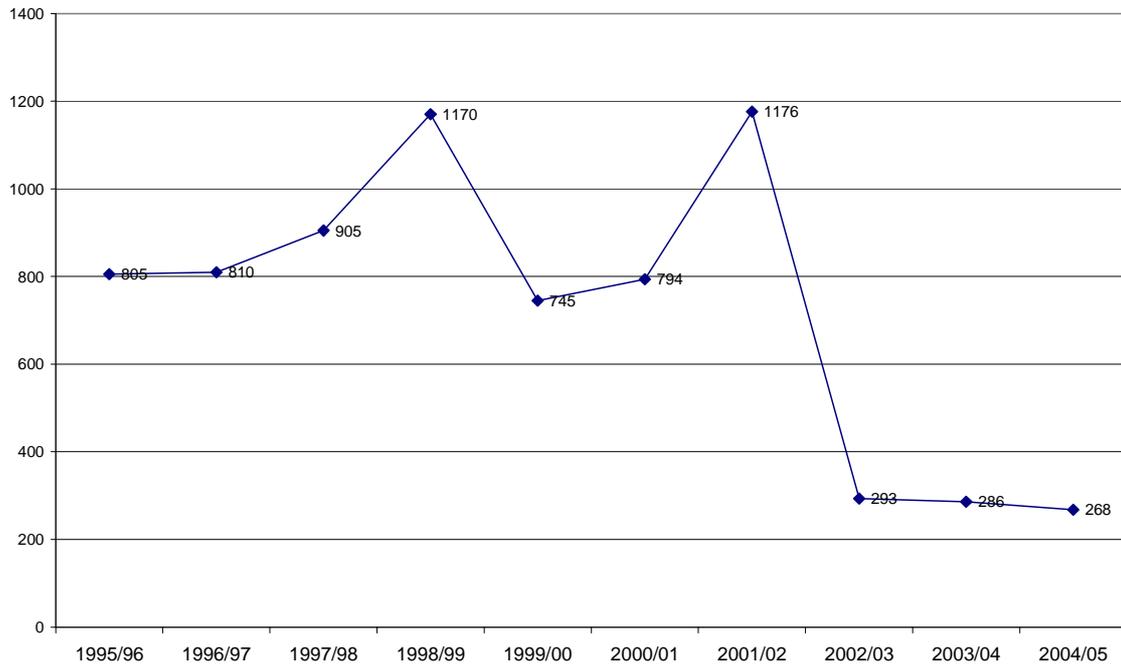
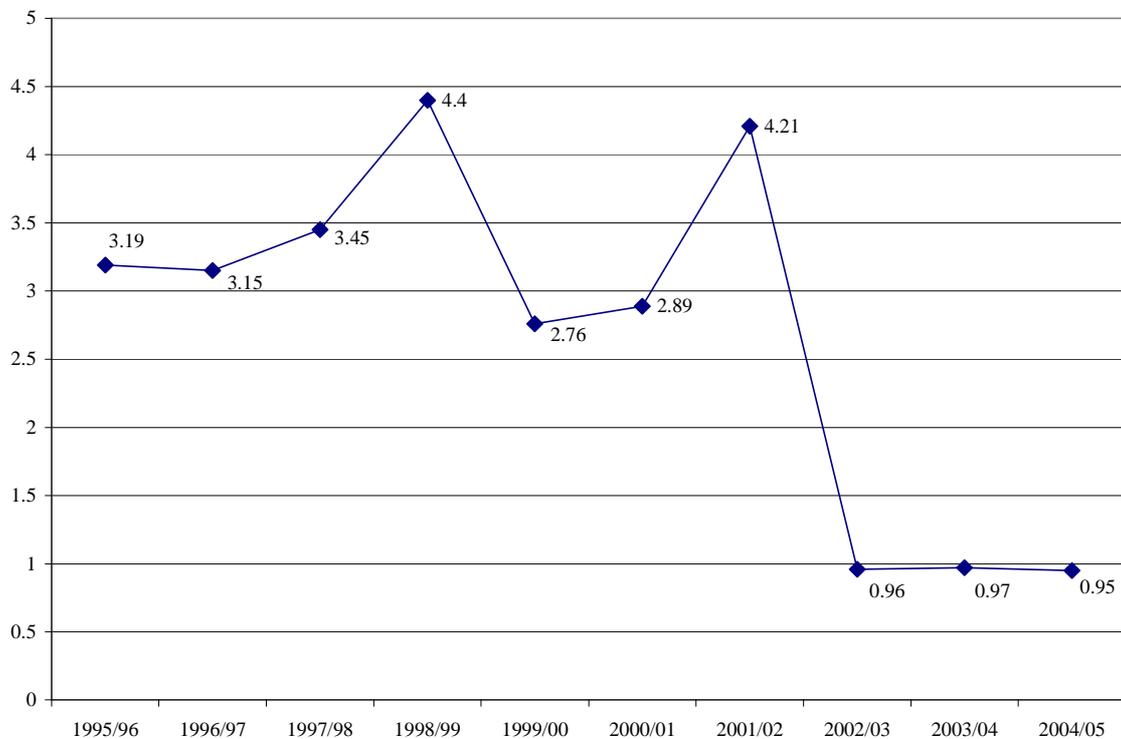


Figure 11: *Estimated* personal injury claiming rates in the Qld Supreme & District Courts (combined) per 10,000 population, 1995/6 – 2004/5.



The pattern appearing in Figures 10 and 11 up to 2001/2 is not easily explained. A very significant part of the sharp increase in claims filed in 1998/9 is, as Figure 9 makes evident, due to an increase in Supreme Court filings but the reason for this increase is

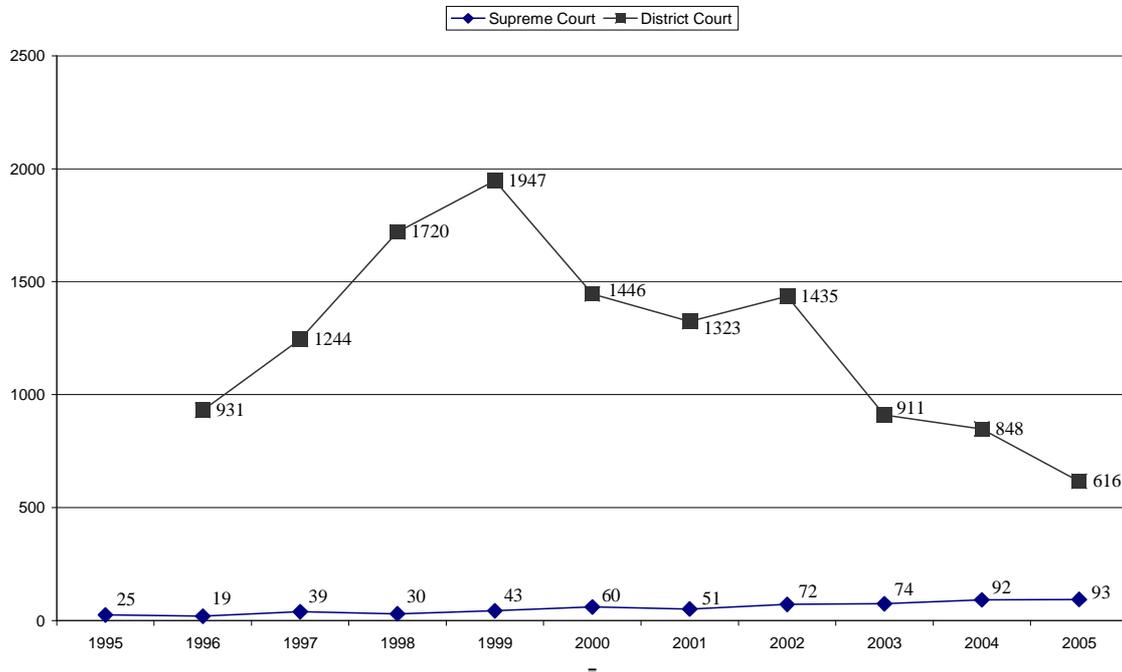
not known. The increase in 2001/2 (in both Supreme and District Court filings) bears many of the hallmarks of the 'spate' phenomenon but it is also no greater in magnitude than the unexplained increase in 1998/9. The average number of claims lodged each year up to and including 2001/2 was 915. It can reasonably be suggested that the numbers in each year during this period are simply random year-to-year fluctuations about this mean, that is, the trend in personal injury litigation in Queensland prior to its tort law reforms was essentially stable. The overall trend in the estimated claiming rates up to 2001/2 is, if anything declining. While we are loath to rely too heavily on estimated data, we would venture that neither the claim numbers for Brisbane nor the estimated claim rates for the state provide any evidence of a sustained increasing trend in personal injury litigation in Queensland prior to the Ipp Review.

Queensland's tort law reforms were enacted in 2002 and 2003. The decline in claims lodged in 2002/3 and thereafter is dramatic; the number in 2002/3 is down 75% on the preceding year, and down by more than two-thirds (68%) from the average of the preceding 7 years. The estimated claiming rate data indicates a post-reform decline of over 70% from the pre-reform average.

Western Australia

The numbers of personal injury actions commenced in the Western Australia Supreme Court⁵⁰ (1995 – 2005) and District Court (1996 – 2005) are shown in Figure 12. The combined Western Australian claiming rates by year are shown in Figure 13.

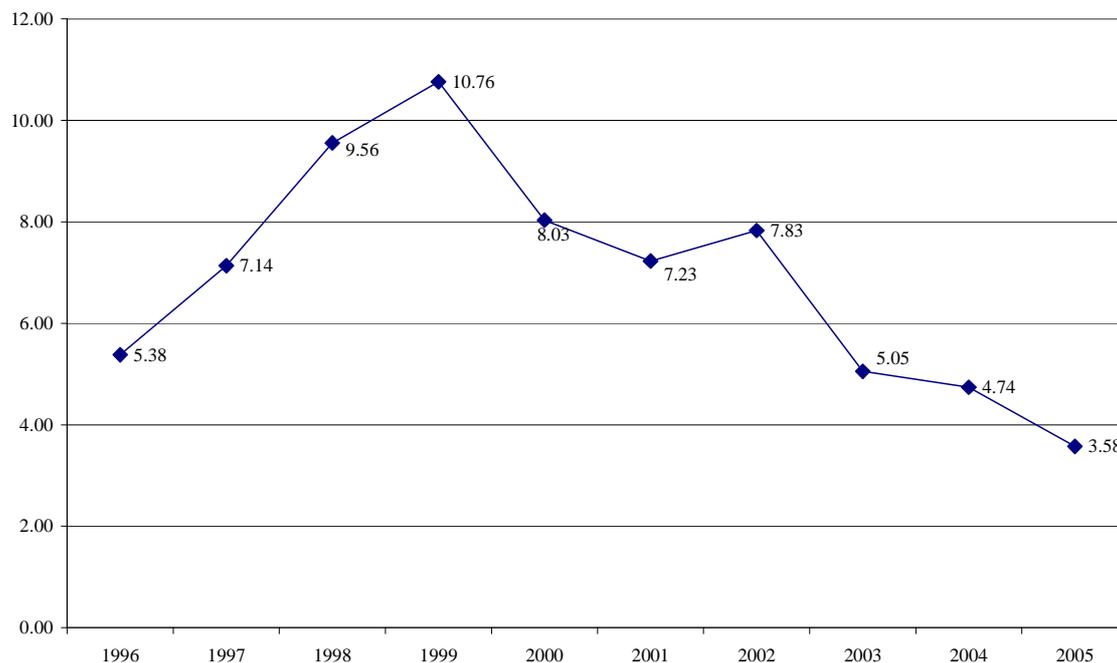
Figure 12: Number of Personal Injury Actions Commenced in the Western Australia Supreme Court⁵¹ (1995 – 2005) and District Court (1996 – 2005)



⁵⁰ Includes some work-related asbestosis claims. See numbered paragraph 8 (Research Scope And Methodology) above.

⁵¹ Includes some work-related asbestosis claims.

Figure 13: Personal injury claiming rates in the Western Australia Supreme⁵² and District Courts (combined) per 10,000 population, 1996 – 2005



It may be noted that the numbers of Supreme Court claims have risen slightly but steadily over the whole of the study period. These are believed to be nearly all asbestosis related claims, and the numbers are, in absolute terms, of course small. The Western Australian District Court data is a bit perplexing. The state ranked, prior to its Ipp inspired reforms, as one of the higher litigation states in the country but, as is evident from Figure 12, claims in the District Court increased sharply between 1996 and 1999, and then declined rapidly, several years *before* the tort law reforms were introduced. If the high figures in 1998 and 1999 are put to one side (as, we will explain very shortly, perhaps they should be), it can be suggested that the average Western Australian personal injuring claiming rate was reasonably stable around, or *very slightly* rising to, 7 claims per 10,000 population – not very different from the Tasmanian (see below) and New South Wales rates. We asked the Principal Registrar for his comments on this graph. He knew of no reason why the claim rate should have risen so steeply and then declined in the late 1990s. The only explanation he could offer for the high figures in 1998 and 1999 was that the data may have been “contaminated” by misclassified industrial accident claims.⁵³

Western Australia’s first raft of reforms came into effect on 1 January 2003. A second tranche came into effect at the end of 2003. As Figure 13 demonstrates, the claiming rate dropped appreciably in 2003, and has continued to fall at a more moderate rate through 2005. If we accept that the best estimate of the claiming rate prior to the reforms is around 7 claims per 10,000 population, the rate in 2005 represents a decline

⁵² Includes some work-related asbestosis claims.

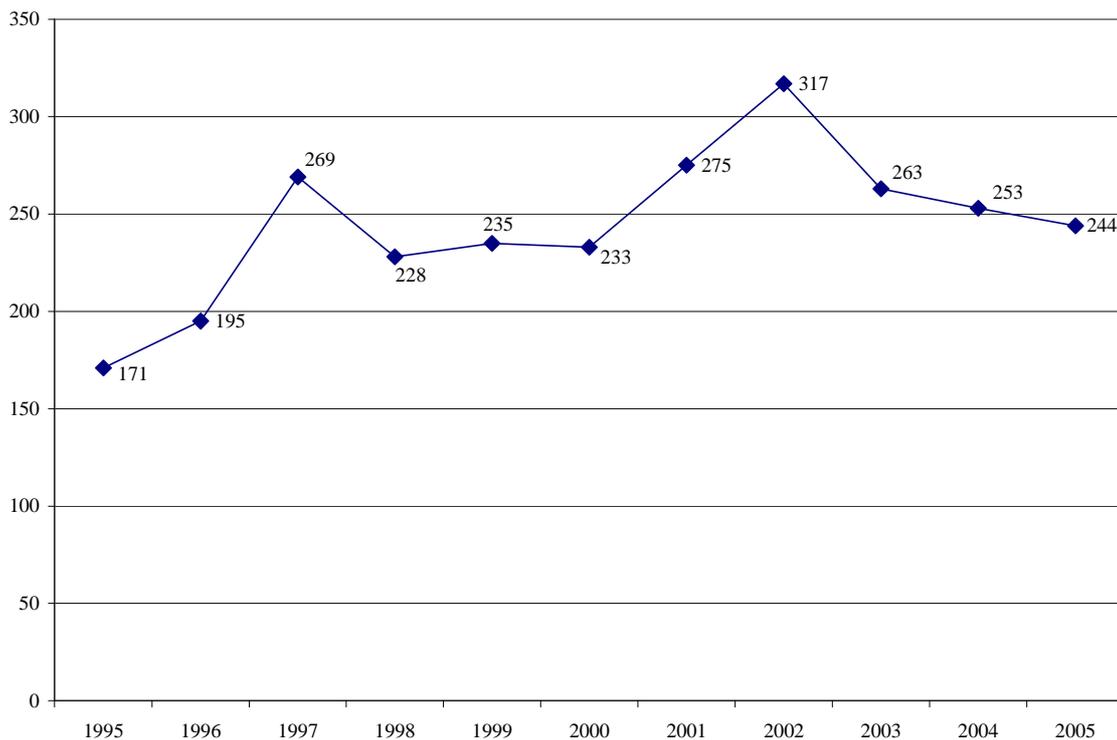
⁵³ There was a very large spate of industrial accident filings beginning in late 1998 and running into 1999, resulting from the WA Government announcing its intentions to remove this jurisdiction from the District Court after October 1999. Strictly speaking these claims should have been excluded from our data, but as the coding of claims required some effort by the clerks receiving the initiating documents, and they very possibly attached no great importance to accuracy, the belief is that large numbers of “Damages Industrial Accident” might have been misclassified as “Damages General”.

of about 55%. The decline between the “pre-reform” and “post-reform” averages⁵⁴ (that is, not excluding the 1998 and 1999 rates from the calculation) is over 40%.

South Australia

The numbers of personal injury actions commenced in the South Australia District Court⁵⁵ each year from 1995 – 2005 are shown in Figure 14. The South Australian claiming rates by year are shown in Figure 15.

Figure 14: Number of Personal Injury Actions Commenced in the South Australia District Court, 1995 – 2005.



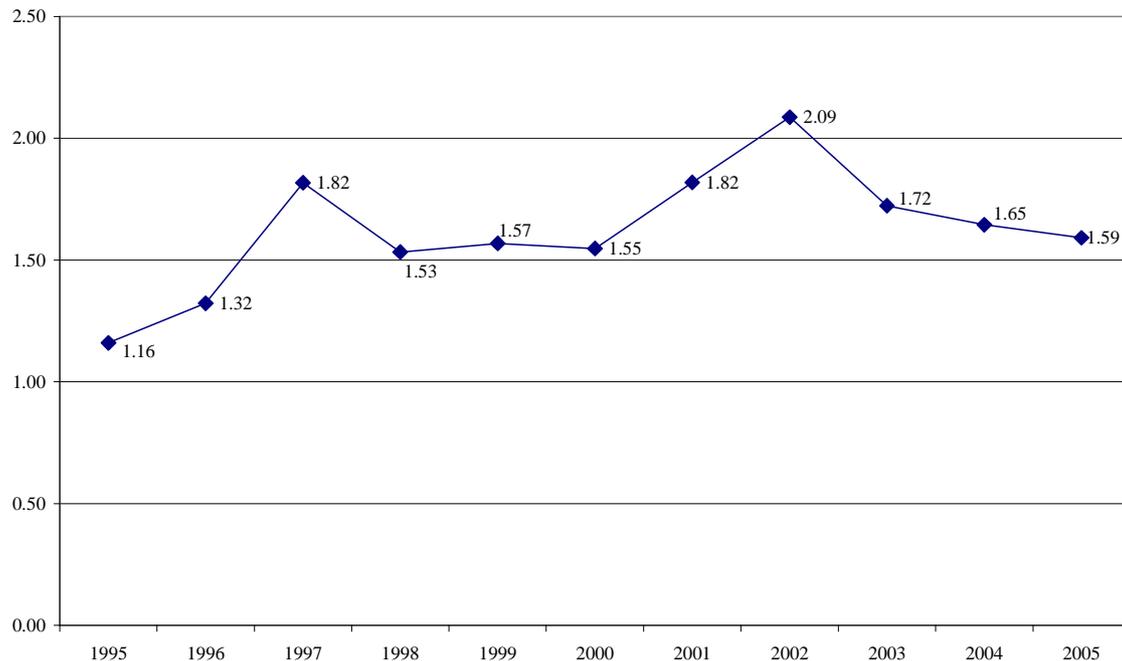
⁵⁴ See Figures 2 and 3.

⁵⁵ Only a small number of personal injury claims are brought in the Supreme Court of South Australia, and this number cannot be segregated from other civil claims, including non-personal injury proceedings. Thus we have not included Supreme Court data in our analysis. For the record, the numbers of civil claims, including personal injury claims *other than* motor vehicle and workplace accidents in the Supreme Court were as follows:

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
75	38	52	85	99	106	92	105	87	77	63

It may be noted that these data show a slight increasing trend up to 2002, and a declining trend after 2002, similar to the District Court pattern.

Figure 15: Personal injury claiming rates in the South Australia District Court per 10,000 population, 1995 – 2005



Prior to the Ipp inspired reforms, South Australia shared the distinction (with the Northern Territory) of being the lowest claiming jurisdiction in the country, with an average claiming rate between 1995 – 2001 of 1.5 claims per 10,000 population. It is more than likely that the peak at 2002 is due to the spate filing phenomenon but nevertheless, Figure 14 shows a distinct but moderate increasing trend in claims between 1995 – 2002. This is the only jurisdiction in which we found such clear evidence of an increase in personal injury litigation over the period leading up to the Ipp Review.

South Australia's tort law reforms were introduced in stages between 2002 and 2004. The claiming rate in 2005 is exactly the same as the average in the period between 1997 – 2001 (1.59 claims per 10,000 population), suggesting that the South Australian reforms have had little impact. It may be noted that, while South Australia's reforms affecting general damages can be described as amongst the least severe in the country, they also only applied prospectively, unlike those in Victoria and New South Wales. It is possible then, that their effect is yet to appear, although there is also reason to believe this effect will not be dramatic.

Tasmania

The numbers of personal injury actions commenced in the Supreme Court of Tasmania⁵⁶ each year from 1995/6 – 2004/5 are shown in Figure 16. The Tasmanian claiming rates by year are shown in Figure 17.

⁵⁶ Tasmania does not have a District Court.

Figure 16: Number of Personal Injury Actions Commenced in the Supreme Court of Tasmania, 1995/6 – 2004/5.

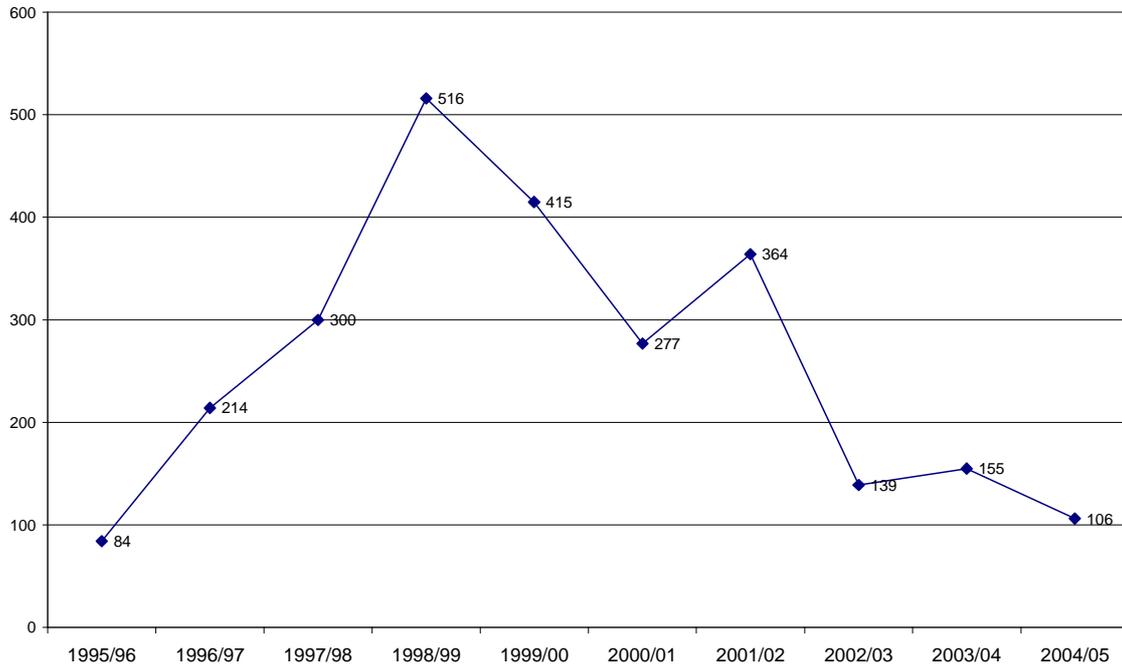
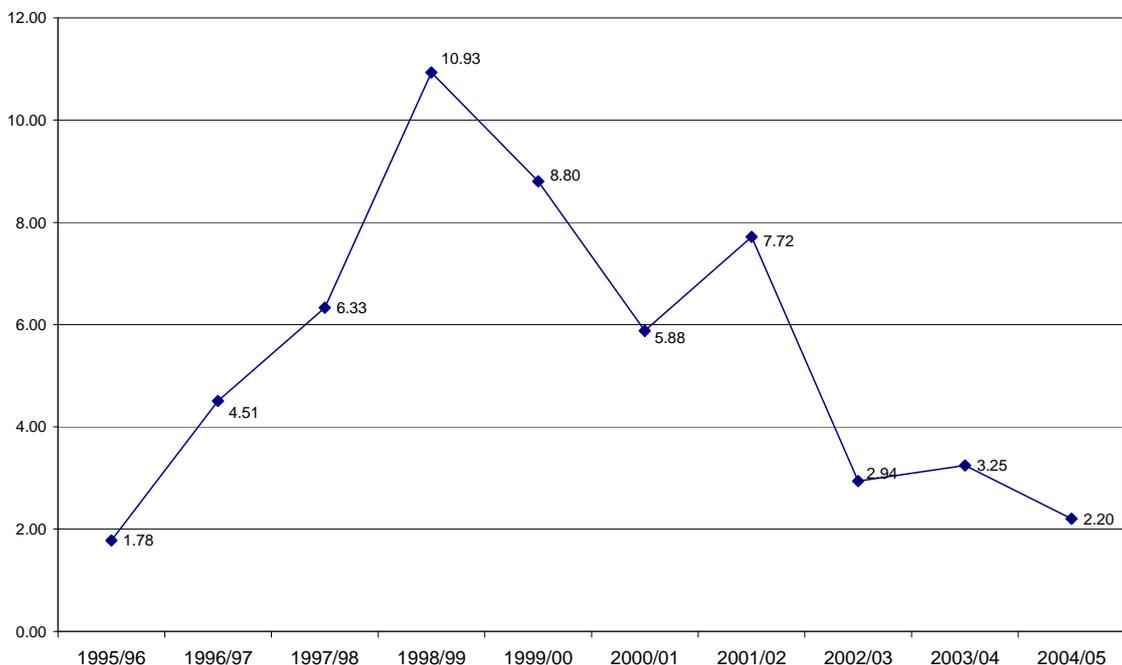


Figure 17: Personal injury claiming rates in the Tasmanian Supreme Court per 10,000 population, 1995/6 – 2004/5.



The Tasmanian data share some features with that of Western Australia that are not easily explained. There was a rapid increase in the rate of personal injury litigation in the period up to 1998/9 but then the rate declined at a similarly rapid rate to under 6 claims per 10,000 pop in 2000/1 – about the same as the New South Wales and Western Australian rates – *before* Tasmania’s tort law reforms were introduced. The

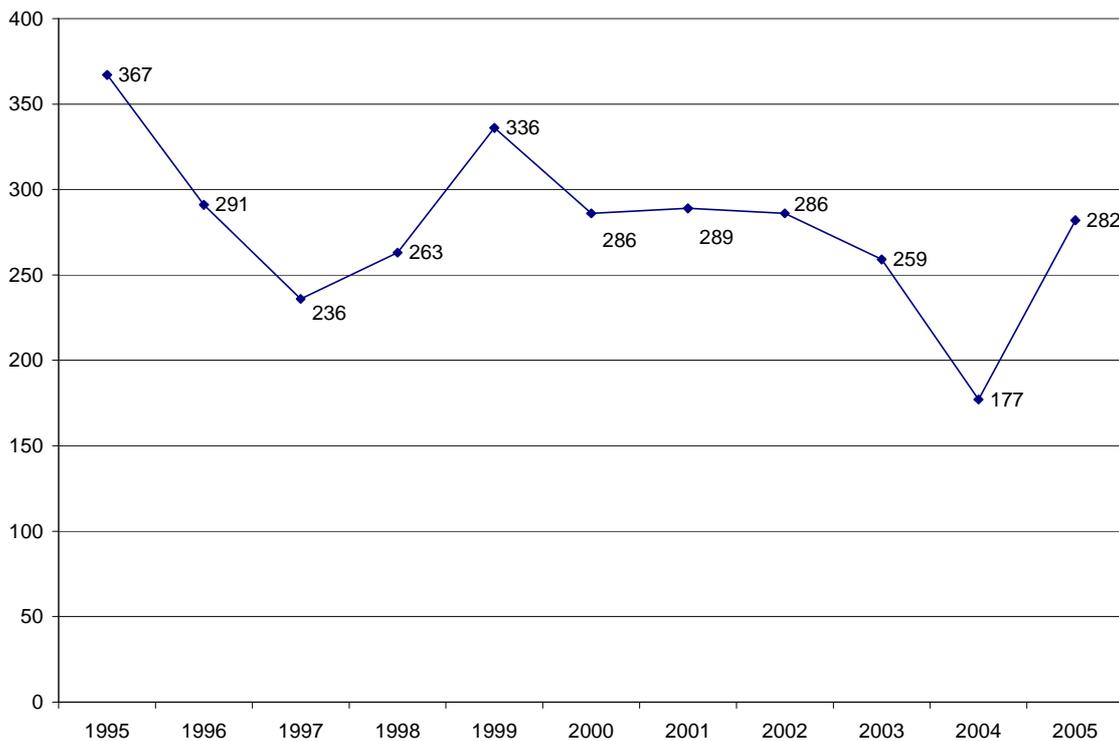
slight reversal, in 2001/2, in this declining trend can be attributed to a spate increase in filings in anticipation of the reforms.

Tasmania's tort law reforms were introduced in stages in 2002 and 2003. The Tasmanian post-reform claiming rate (approximately 2.8 claims per 10,000 population) represents a drop of over 55% from the apparent pre-reform average rate of about 6.4 claims per 10,000 population. We should, however, note that there is some reason to suspect that the impact of the reforms has not been as great as these numbers suggest because the pre-reform claim rate indicated by these data may be an over-estimate of the true underlying rate.⁵⁷

Australian Capital Territory

The numbers of personal injury actions commenced in the ACT Supreme Court⁵⁸ each year between 1995 – 2005 are shown in Figure 18. The ACT personal injury claiming rates by year are shown Figure 19.

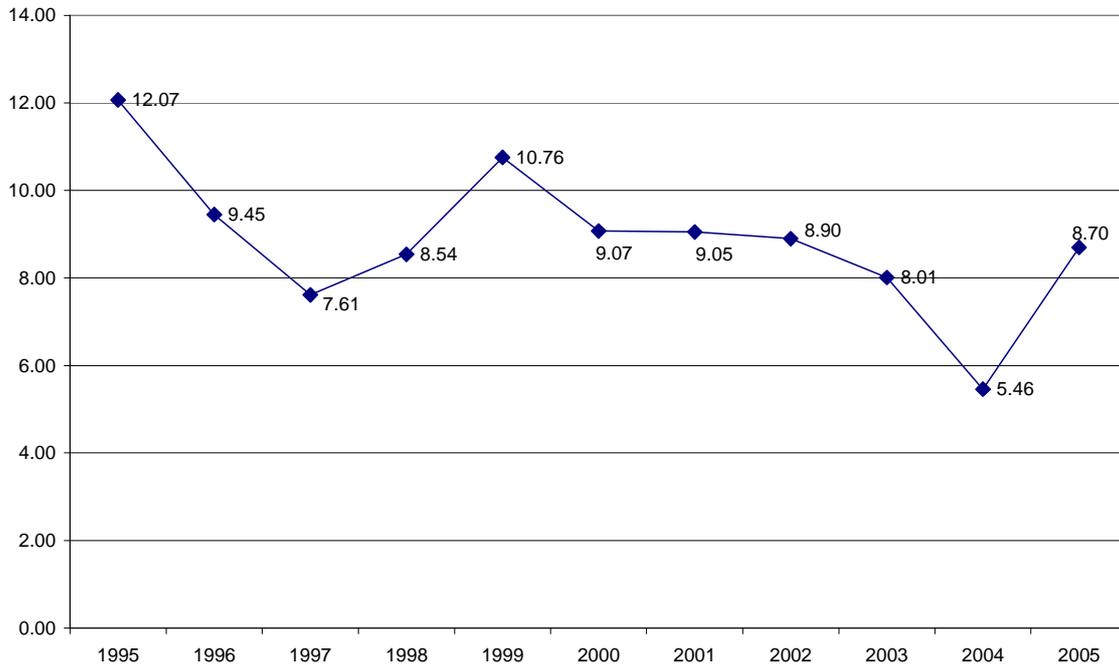
Figure 18: Number of Personal Injury Actions Commenced in the ACT Supreme Court, 1995 – 2005.



⁵⁷ The trend portrayed in Figures 16 and 17 are plainly odd and perplexing. We sought comments through the Law Council from Tasmanian practitioners, and it was suggested that the rapid increase, followed by the equally rapid decline over the period between 1996/7 2000/1 could be attributed to the entry into the Tasmanian legal services market of two or three “mainland firms” specialising in personal injuries litigation, which aggressively marketed their services in the latter part of the 1990s but then, apparently, rapidly withdrew from the market. If this explanation is correct, it suggests that the true underlying rate of personal injury claiming in Tasmania was considerably lower prior to the reforms than 6 claims per 10,000 population.

⁵⁸ The ACT does not have a District Court.

Figure 19: Personal injury claiming rates in the ACT Supreme Court per 10,000 population, 1995 – 2005



It may be noted that both the number of actions commenced (Figure 18) and the claiming rate (Figure 19) were at their highest in 1995, the beginning of the period. There is another relative peak in 1999, and two relative troughs, one at 1997 (for which we can offer no explanation) and at 2004 (the first full year after the ACT's tort law reforms came into effect). But the claiming rate in 2005 (8.7 per 10,000 population) is more-or-less in line with the average over the whole period (8.9 per 10,000 population) and the trend over the whole period is, if not stable, actually declining slightly, from well before the enactment of the tort law reforms.

The ACT's tort law reforms were mostly introduced in late 2002 and 2003. They were, arguably, the least severe of those enacted by all of the states and territories. The decline in the claiming rate in 2004, while on its face striking, was as we have already observed followed in the next year by a rise back to the average of the past 10 years. Thus while Figures 18 and 19 indicate that there has been an appreciable post-reform decline in the average claiming rate, time may tell that the ACT's reforms have had little or no enduring impact.

Northern Territory

The numbers of personal injury actions commenced in the Northern Territory Supreme Court⁵⁹ each year from 1995 – 2005 are shown in Figure 20. The NT personal injury claiming rates by year are shown in Figure 21.

⁵⁹ The Northern Territory does not have a District Court.

Figure 20: Number of Personal Injury Actions Commenced in the NT Supreme Court, 1995 – 2005.

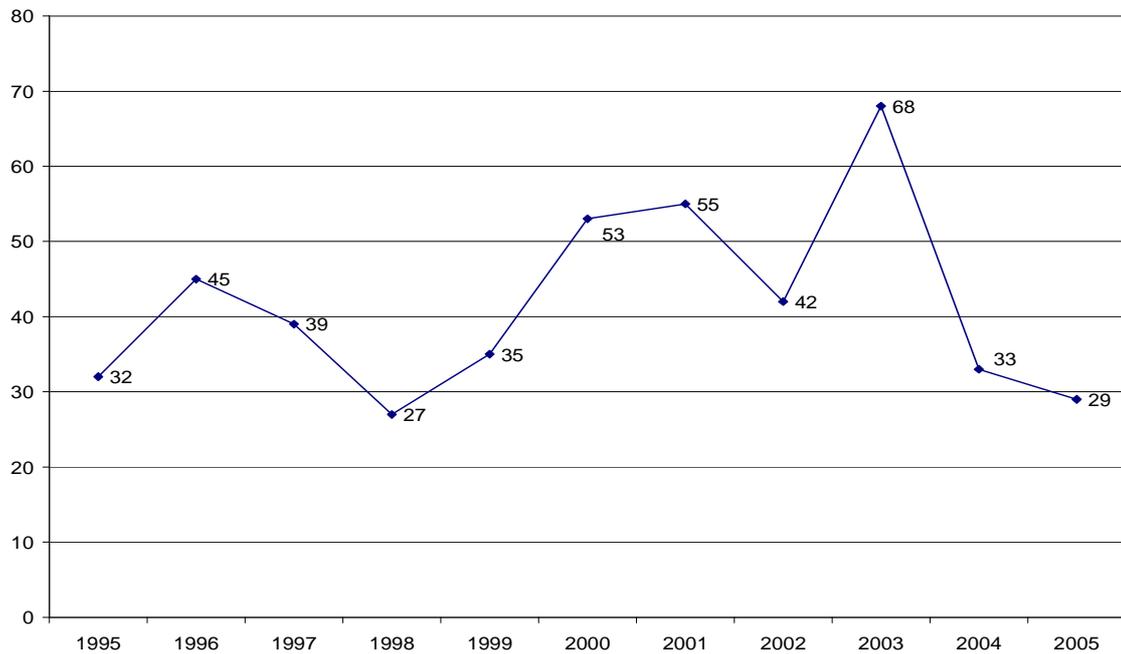
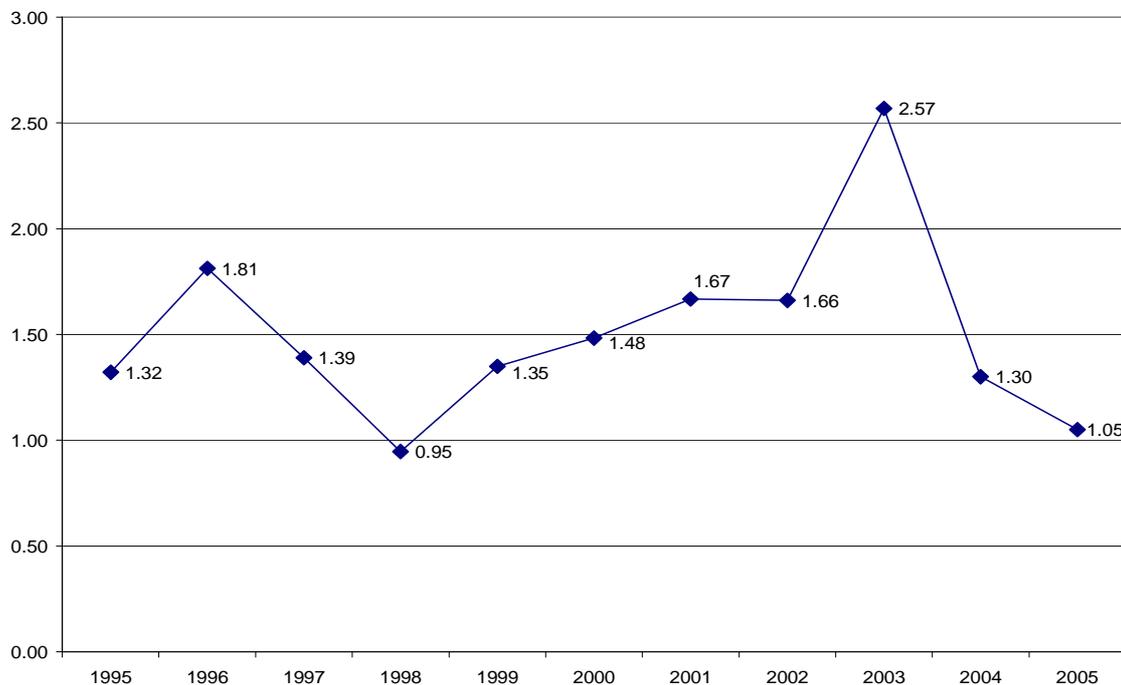


Figure 21: Personal injury claiming rates in the NT Supreme Court per 10,000 population, 1995 – 2005



While the claim numbers in the period leading up to the Northern Territory's tort law reforms suggest a modest increasing trend, the claiming rate data (which, of course, adjusts for population growth) suggest that personal injury claiming has been comparatively stable. The spate of claims in 2003 is almost certainly the product of precautionary filing preceding the introduction of the reforms.

The Northern Territory's tort law reforms mostly came into effect on 1 May 2003. While the decline in claims in the Northern Territory after 2003 is comparatively modest, it is possible that it may become more pronounced in future years. In broad terms the Northern Territory's reforms are similar to Victoria's, but unlike Victoria, the changes affecting recoverable damages did not apply retrospectively.

Conclusion

We set out to answer the question "what was the trend in personal injury litigation in the Australian States and Territories prior to the Ipp Review?" Was it the case that Australia was experiencing a "litigation explosion" and that this was a cause of the "insurance crisis" the Ipp Review was meant to address?

There is only one state in which there appears to have been a clear rising trend in claim numbers from the beginning of the study period (1995); this was South Australia, which rivaled the Northern Territory for the distinction of lowest rate of personal injury litigation in the nation, and the increase was comparatively slight (from 1.16 claims to 1.82 claims per 10,000 population⁶⁰).

Claim numbers in Tasmania and Western Australia rose rapidly in the late 1990s. However, they were also unambiguously in decline *before* the Ipp reforms were in contemplation. Some questions about the quality of the Western Australian data⁶¹ make it tempting to ignore the very high claiming rates in 1998 and 1999, and on that basis it can be ventured that the claiming rate was perhaps rising very slightly, if it was not stable. If one is prepared to indulge this degree of speculation, it places Western Australian into the "rising" group, along with South Australia.

In the ACT (the nation's highest litigation jurisdiction) the trend prior to the reforms was, if not stable, possibly declining. The data more clearly suggests that litigation rates were stable in New South Wales, Queensland, Victoria and the Northern Territory.

Our answer to the first question is, then, that there was no evidence of a general increase in personal injury litigation between 1995 and 2002, when the Ipp Review was commissioned to address the insurance crisis. Of course, as we noted at the outset, the direct premise on which the Ipp Review proceeded was not that claim numbers were increasing but rather something a little different, namely that personal injury claims were becoming increasingly *successful* and were resulting in increasingly *larger* awards. However, neither the Ipp Review nor the coterie of government policy makers responsible for implementing its recommendations had empirical confirmation of these supposed facts either. The data required to confirm the "widely held view"⁶² that these were the facts was (and is) simply not available. If, however, it was indeed the case that it had become "in recent times too easy" for plaintiffs to succeed in personal injury cases, and to obtain damages awards that were "frequently too high", one would surely expect an evident rise in claims over time. We did not find this trend.

Of course, even if personal injury litigation was not the root cause of the insurance crisis, tort law reforms explicitly designed to reduce both the number and value of

⁶⁰ Our reasons for excluding from consideration the peak figure in 2002 of 2.09 claims per 10,000 population is explained in the text accompanying Figure 15 – the data in that year undoubtedly includes a component of "spate filing".

⁶¹ See the discussion accompanying Figures 12 and 13 above.

⁶² Ipp Review, para 1.4 (quoted more fully in "Background" above).

personal injury claims could be expected to alleviate an insurance crisis (albeit not by addressing its causes). What then of our second question: what effects have the state and territory tort law reforms had on personal injury litigation in Australia?

The impact of their tort law reforms is evident in all jurisdictions except South Australia and the ACT.

On the face of it, the Northern Territory reforms have had only a limited impact. However, the trend in the Northern Territory claiming rate after 2003 is declining. Given that the Northern Territory's reforms differ little from those adopted in Victoria, save in their prospective application, it is possible that their effect may become more apparent in the next few years.

Given the significant (and somewhat inexplicable) fluctuations in the Western Australian and Tasmanian claiming rates prior to 2002, some caution is warranted in putting a precise figure on the effect of their tort law reforms. But it is not unreasonable to suggest that the claiming rate has been reduced in Western Australia by something between 40% - 55%, while the reduction in Tasmania has been towards the high end of that range.

Finally, the correction (if this is the right term) wrought to personal injury claiming rates by the reforms in Queensland, New South Wales and Victoria has been dramatic – claims in New South Wales have fallen by over 63%, in Queensland by more than 70% and in Victoria by a breath-taking four-fifths (80%).

We have observed that personal injury claiming rates varied appreciably between jurisdictions before the reforms, and continue to do so following them.⁶³ We cannot pretend to know the reasons for this but it begs an obvious question about what ought to be regarded as an acceptable norm. Likewise, it is also evident that the reforms in each jurisdiction have had differing effects on claiming rates. We have made some suggestions about the significant differences among the reforms in each jurisdiction that may be responsible for their differing impact, but it must be admitted that these suggestions are largely speculation. We would conclude simply by noting again that the tort law reformers also had no empirical foundation for knowing by how much it was desirable to reduce tort litigation, nor by how much their reforms would reduce it. These are not facts which inspire confidence in the reform process.

⁶³ The statistical variance will, of course, have been diminished simply by virtue of the fact that rates have been reduced, but it remains appreciable.

**National Trends in Personal Injury Litigation:
Before and After “Ipp”**

Professor E W Wright

Dean and Professor of Law, School of Law,
and Director, Justice Policy Research Centre,
University of Newcastle

justice policy
research centre



Commissioned by the Law Council of Australia

