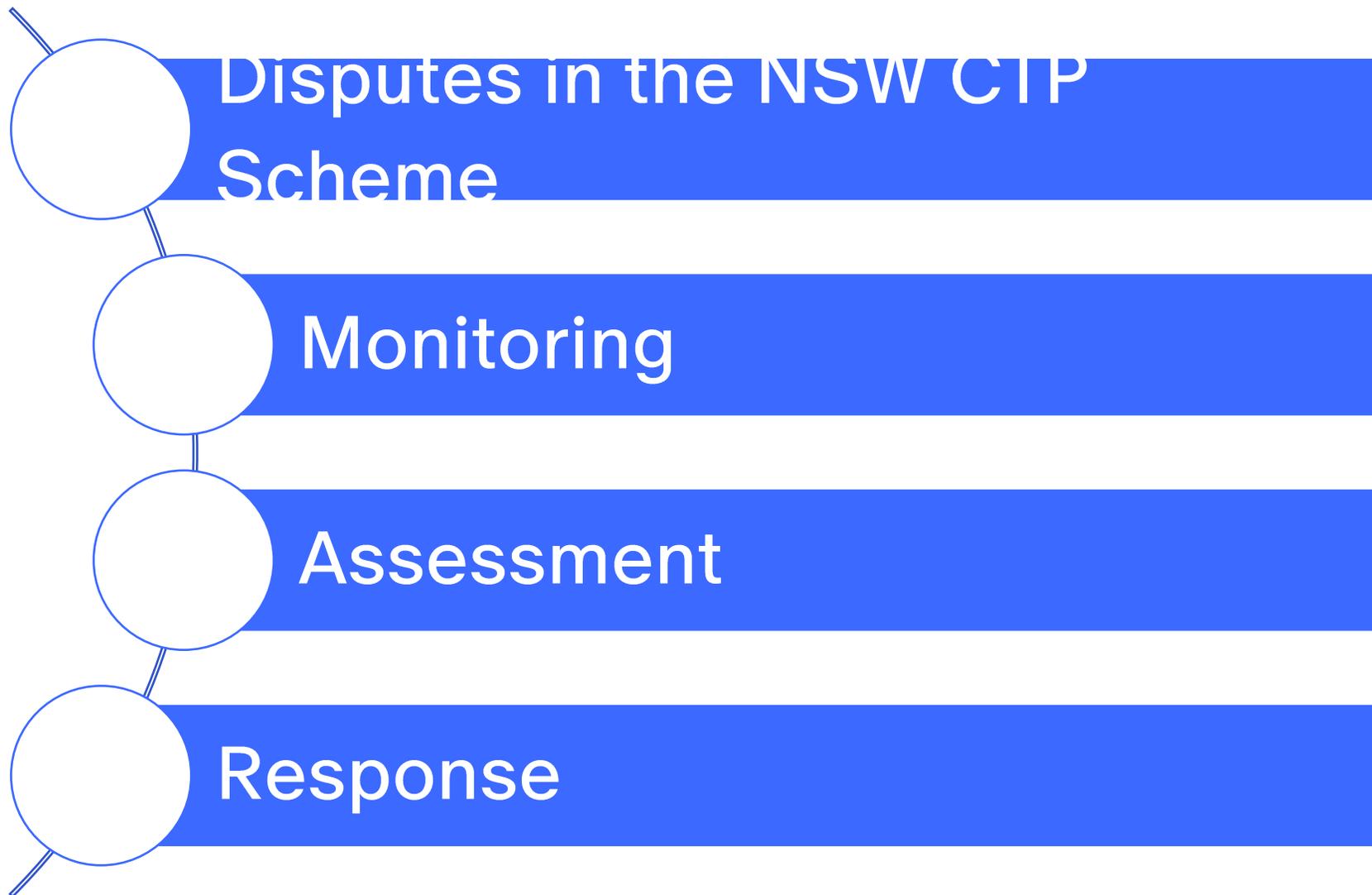




**Actuaries
Institute.**

**Judgement day: Insights into the impacts of
legal judgements**

Emily Wooden & Danny Rouel
November 2025



Disputes in the NSW CTP Scheme

1. Nature of disputes
2. How are they monitored?
3. How can we respond?



Allianz Australia Insurance Limited v The Estate of the Late Summer Abawi [2024] NSWSC 1245



Is an injury to the skin a non-threshold injury?



A *soft tissue injury* is (subject to this section) an injury to tissue that connects, supports, or surrounds other structures or organs of the body (such as muscles, tendons, ligaments, menisci, cartilage, fascia, fibrous tissue, fat, blood vessels, and synovial membranes), but not an injury to nerves or a complete or partial rupture of tendons, ligaments, menisci, or cartilage.



McTye v Chang [2025] NSWCA 3



Is a state operated bus accident a motor vehicle crash or a public transport accident?

Transport Administration Act 1988



(2A) The regulations may—

(a) apply provisions of the *Motor Accident Injuries Act 2017* (with or without modifications) relating to the award of damages or statutory benefits to public transport accidents, and

(b) exclude the application of subsection (1) in connection with those public transport accidents.



Actuarial costing of legal decisions – key considerations

Typical yet niche actuarial analysis, SME support and the need to explore the uncertain



Understanding the possible legal outcomes and decisions



Data quality and availability



Model development, assumptions and uncertainty



Direct and behavioural effects



Prospective vs retrospective costing



Results and ranges



Ongoing monitoring and response



Key costing challenges for Abawi

Data and experience

- Limited data
- Uncoded or missing injuries
- Assistance of injury coding SMEs and insurer views

Key assumptions:

- Assume wider list of codes for skin injury
- Assume injury severity is irrelevant
- Insurers will assess skin injury as non-threshold
- No behavioural change from injured people

Key uncertainties:

- Relevance of severity of skin injury
- Missing or uncoded skin injuries
- Stakeholder behaviour
- Additional cost after transition to non-threshold

Modelling approach:

- Frequency x average claims size approach
- Frequency: reliance on injury code listing
- ACS: Development of 4 segmentation approaches to assess additional claims cost following transition to non-threshold

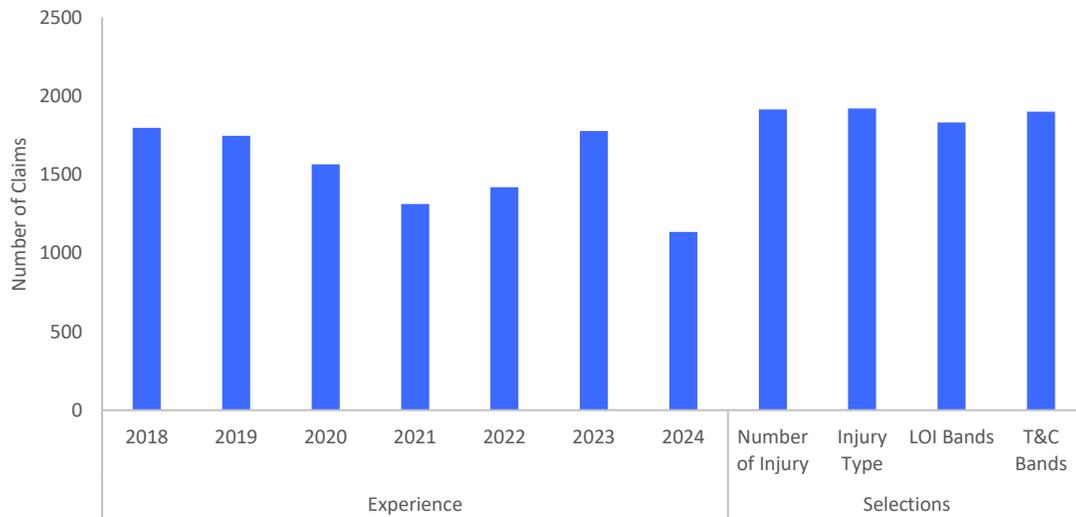


Key results and advice - Abawi

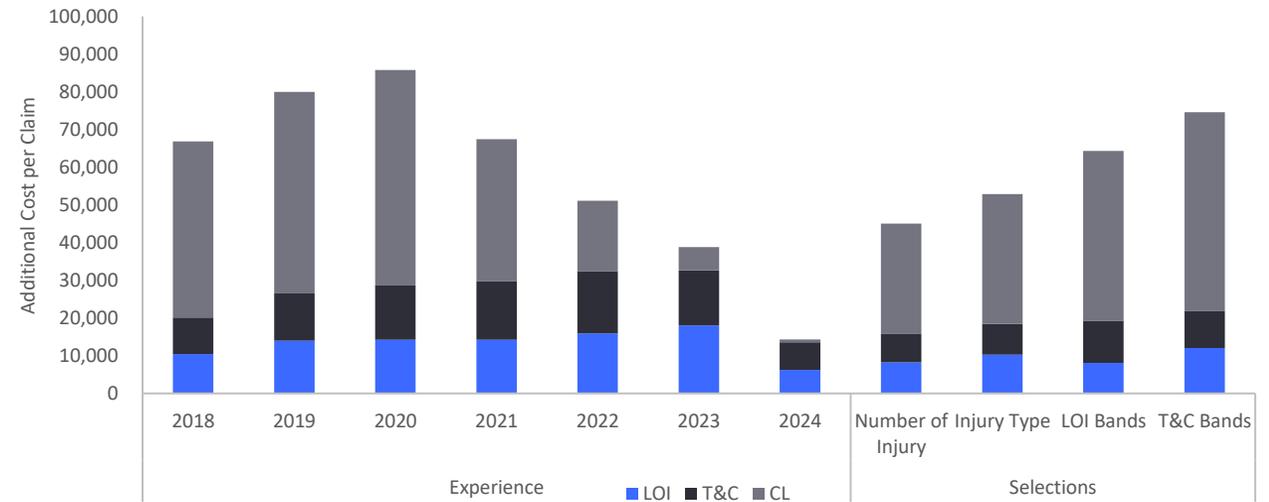
Abawi

- More material impact due to broader claim applicability (30+% of threshold injuries)
- Shift from threshold to non-threshold could significantly increase costs and premiums
- Retrospective impact could reopen closed claims, affecting past AY profitability
- Wider uncertainty ranges for ABAWI due to potential behavioural impacts
- Advice included both prospective and retrospective cost scenarios

Number of Threshold Skin Injury Claims by Accident Year



Additional Cost per Claim by Accident Year



Retrospective impact	2018	2019	2020	2021	2022	2023	2024
% open	1%	1%	2%	4%	9%	15%	67%
% legally represented	25%	18%	19%	20%	21%	20%	19%
% open and legally represented	0%	1%	2%	3%	6%	8%	16%
No. open and legally represented	7	16	21	35	75	117	133



Key costing challenges for Chang

Data and experience

- Limited data - Class 6C
- Volatile experience
- Lack of long-term mature data
- Requires use of 1999 scheme data

Key assumptions:

- Only impacts public transport buses (Class 6C)
- Injured people cannot elect which schemes to claim
- No double dipping
- Claim frequency is not different between 1999 and 2017 scheme

Key uncertainties:

- Legal complexity
- Small number of claims with volatile experience
- 1999 scheme experience may be less relevant
- Key issue: additional cost from access to damages
- Potential for double dipping

Modelling approach:

- Frequency x Average Claims Size approach
- Frequency: use injury code list with criteria
- ACS:
 - Compare schemes for changes in ACS
 - Use analysis from ABAWI

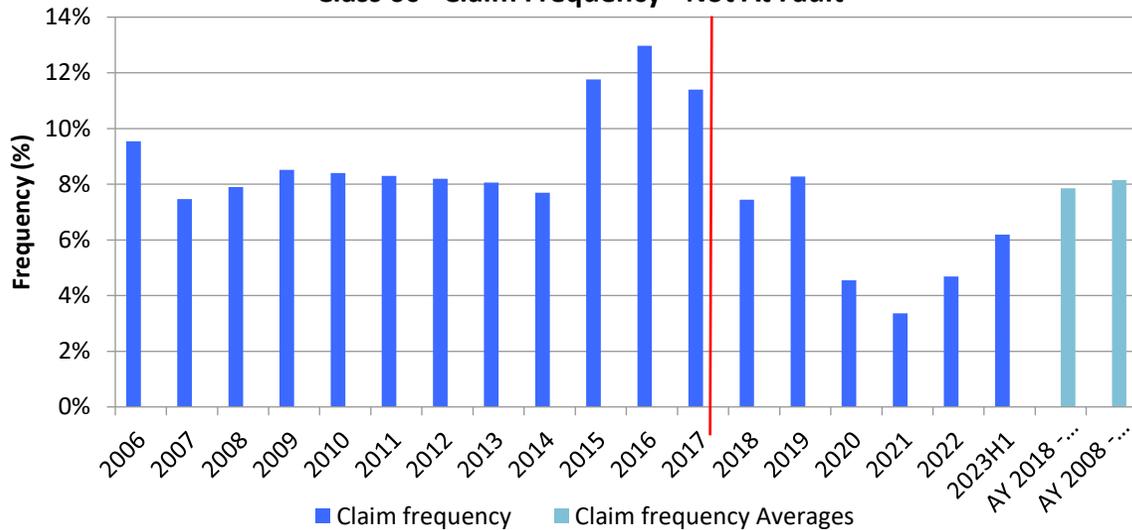


Key results and advice - Chang

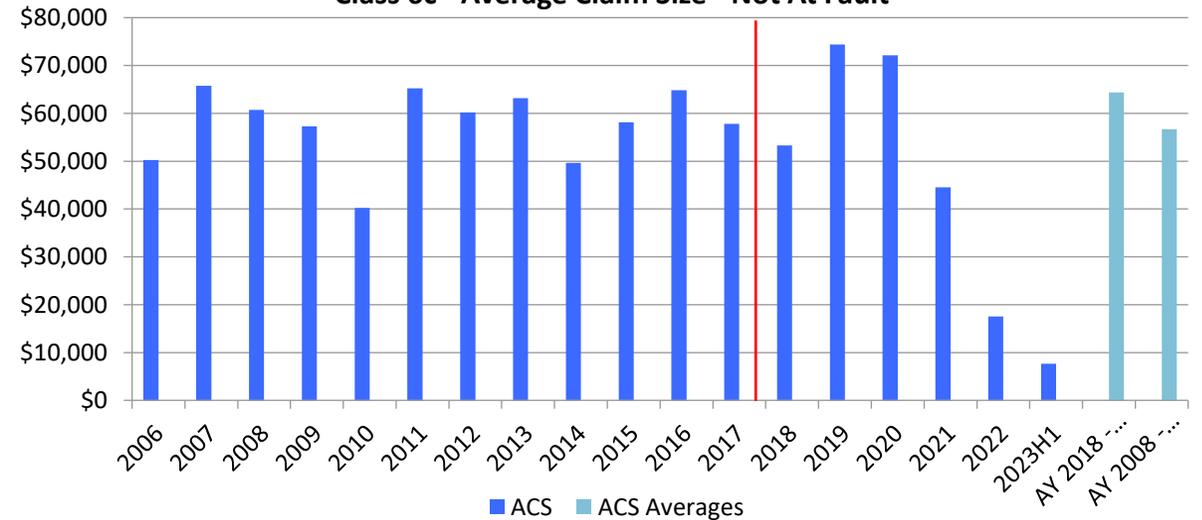
Chang

- Chang's impact was limited to class 6C buses, with minor scheme-wide effects.
- Impact to Class 6C buses premium was material
- Retrospective impact to past claims leading to increased disputes (~90 legally rep cla
- Operational impact for insurers: maintain capability to manage 1999 scheme claims.

Class 6c - Claim Frequency - Not At Fault



Class 6c - Average Claim Size - Not At Fault



Allianz v Abawi

Decision

An injury to the skin is a "soft tissue" injury and, therefore, a "threshold injury" - skin is both "tissue" and an "organ"

Scheme Impact

The decision reinstated the way the scheme had approached skin injuries in the past, allowing for flexibility in application

Response

Active review of application and use

McTye v Chang

Decision

An accident involving a bus operated by the State Transit Authority should be categorised as a 'public transport accident'

Scheme Impact

Scheme uncertainty, and practical, operational, and legal challenges for stakeholders

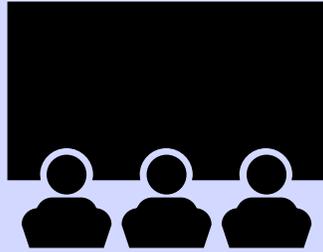
Response

Coordination, Consultation and Regulation





Ongoing
Monitoring



Stakeholder
Engagement



Response
and
assessment

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Actuaries have a reputation for a high level of technical financial expertise and integrity. They apply their analytical and risk management expertise to allocate resources efficiently, identify and mitigate emerging risks and to help maintain system integrity across multiple segments of the financial and other sectors. This unrivalled expertise enables the profession to comment on a wide range of issues including life, general and health insurance, climate change, superannuation and retirement income policy, enterprise risk management and prudential regulation, the digital economy, finance and investment and wider health issues.

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