PRIVATE AND PUBLIC REGULATION
OF THE GENERAL INSURANCE INDUSTRY
IN AUSTRALIA
1897 TO 1992

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Declarations.

This Thesis is less than 100,000 words in length.

This Thesis comprises only my own original work and that due acknowledgment has been made to all other material used.

Rodney Lloyd Benjamin.

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ABSTRACT

Only one third of the number of Australian insurance companies that were trading in 1890 survived the financial crisis of the decade that followed. In the wake of these collapses, a group of the major British companies operating in Australia set up a cartel-like organisation in 1897 which set rates and policy terms for the whole country. Through an agency network it controlled distribution, and its inter-company trading rules concerning reinsurance and risk sharing effectively excluded any new opposition. Despite a Federal Royal Commission appointed in 1908 to inquire into the insurance industry, which recommended Commonwealth regulation in 1910, governments did not proceed with legislation. With the pressures of World War I the matter was passed over. This private regulation, known as the 'Tariff', went largely unchallenged until 1974.

The Tariff co-existed with State regulation introduced in Queensland in 1916, resisted competition from Lloyd's and other free-riders between the Wars, and adapted to deposit only requirements for insurance companies introduced by the Commonwealth in 1932. It also co-existed with a number of state government insurance companies, the first of which was established in Victoria in 1915. The Tariff distribution system, and the political pressure it applied to keep state offices out of the direct competition they were designed to create, prevented the state offices from making any significant impact on the market.

Competitive pressures exerted by overseas brokers, and by new insurers entering the expanding motor vehicle insurance market, eroded Tariff dominance to some extent after World War II, but private regulation was abandoned only after the introduction of the Trade Practices Act 1974. In 1973 the Commonwealth introduced solvency
regulation for all general insurance companies. This regulation is still in place.

This history offers a rare, perhaps unique, opportunity to compare the behaviour of two markets in the same country, one under private and the other under public regulation. For a period of more than forty years the outcomes of public regulation of the industry in Queensland can be compared with outcomes of private regulation in the rest of the country. It is also possible to measure changes in the market under private regulation arising from some competition after the Second World War, and the further changes which occurred when private regulation was abandoned in the face of the Trade Practices Act 1974.

The evidence produces the conclusions that private regulation kept profits and distribution costs at a level that allowed the least efficient companies to remain in the market, and created super-normal profits for the most efficient. State government insurance offices are shown to have been failures as mechanisms for government to regulate markets.

Although the present market is shown to be much more efficient, a critique of existing Federal regulation is offered. This increasingly expensive operation has failed to achieve the purpose for which it was established. The failure rate of insurance companies is higher under public regulation that it was before the legislation was introduced, the public are not able to obtain full information of the financial status of insurance companies from the Insurance and Superannuation Commission, and policyholders are not protected by a guarantee fund from company failure.

Finally, classic regulatory theory is tested against each
of these forms of regulation and their outcomes. The conclusions reached are that these theories could not have predicted either the forms of regulation adopted, or the outcomes of the movements.
ACKNOWLEDGMENTS

The preparation for, and of, a doctoral thesis, is a long and mostly lonely journey. The route can usually be enlivened by only one companion, your supervisor. I was fortunate enough to encounter two lively people in this role, Professor Boris Schedvin and Associate Professor David Merrett both, at different times, Head of the Economic History Department at the University of Melbourne. Professor Schedvin patiently read many thousands of words that I wrote as he directed me along the path of how to approach the writing of economic history. With his departure from the Department, Associate Professor Merrett took on the task. His suggestions enabled me to create a positive restructuring of the work, and his continuing and conscientious attention to a field not totally familiar to him, general insurance, was most rewarding for me. I am indeed very grateful to both, but more particularly to David Merrett who saw the work through to its conclusion.

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CHAPTER 1

INTRODUCTION

The purpose of this thesis is to assess the consequences of both government and private intervention in an otherwise competitive general insurance market in Australia. The general insurance market means all forms of insurance except life insurance and superannuation.

The general insurance industry, which encompasses insurance companies, reinsurance companies, insurance brokers, insurance agents and loss adjusters is an important service industry in the Australian economy. Premium income of all insurers, both private and public, including reinsurers in Australia for the calendar year 1991 totalled $13,750 million. This figure represented 3.65 per cent of Australia's Gross Domestic Product. 1

The private sector of general insurers had total assets at the end of 1991 with a market value of $21,350 million. Seventy five per cent of this sum was invested in public securities, deposits and other current assets, while a further twenty per cent was invested in shares. Public sector insurers had total assets of $16,659 million which were similarly invested. Only five per cent of assets were invested in real estate. 2 The nature of general insurance is such that reserves are generally in a secure, readily realisable form. At 30 June 1992 there were 158 authorised private insurers in Australia. At 30 June 1992 there were 955 registered general insurance brokers in Australia. Brokers handled $3,659 million of

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2 Ibid., Table 4.6, p.125.
premium monies, or just over one quarter of the total, to the year ended 30 June 1992, and they had under their control assets totalling $1,463 million. 3 Lloyd's premium income in Australia for the 1991 year of account was $239 million. 4 It is estimated that insurers, both private and public, and insurance brokers employ some 28,000 persons in Australia. 5

In world terms, in 1988 Australia ranked seventh, behind the U.S., Netherlands, Israel, Ireland, West Germany, and Switzerland as the countries which spent the highest proportion of their Gross Domestic Product on general insurance. 6

The Australian general insurance market whilst modelled on, and for many years dominated by, British insurers and their market practices, law and culture, has been subject to several local influences not present in other insurance markets.

The Australian market lends itself to a study of the effects of private regulation by a cartel-like organisation that existed for more than sixty years from 1897. A similar organisation existed in Britain but British insurers have operated internationally since the early nineteenth century. Their financial and other reports are based on their world-wide operations. There

3 Ibid., p.133; and Tables 6.2 and 6.3, pp.141-2.
4 Ibid., Table 4.11, p.132.
5 The number is only an estimate. Census figures include all persons engaged in the insurance industry, both life and general. The Insurance Council of Australia advised in May 1993 that they were of the view that there were 32,000 people engaged in the general industry. On the same day the Insurance Employers Industrial Association advised that their estimate was closer to 28,000.
6 Sigma, Swiss Reinsurance Company, Zurich, 2/91, Table V. Australia was followed by Great Britain, Austria and Norway.
are difficulties in establishing figures just for the British home market. Data for the Australian market only is in existence.

In 1917 the Queensland government regulated the general insurance market in that state. The Queensland market under government regulation can be compared to market performance in the rest of Australia under private regulation.

At various stages since 1915 Australian states have formed state insurance offices to compete in some or all of the general insurance market. As this development was not consistent it is possible to measure the effects of this movement on state markets. Similar studies are not possible in other general insurance markets of the world.

Federal regulation, which came late to Australia measured in international terms 7, has now existed for nearly twenty years. Some measurement of its effects on market performance is already possible. The legislation, which relates solely to keeping insurers solvent and makes no direct attempt to regulate prices, profits or products, affords an interesting study because other countries with regulated insurance markets tend to have a mixture of controls.

Finally this thesis will explore how these various forms of intervention in market performance relate to regulatory theory.

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7 France, Switzerland, Germany and Sweden had all regulated their general insurance industries by the early part of this century. Britain introduced a level of supervision in 1909. J.Finsinger and M.V.Pauly (eds.), The Economics of Insurance Regulation, A Cross National Study, St.Martin's, New York, 1986.
Federal Government Regulation in Australia

Federal legislation regulating the general insurance industry in Australia, the Insurance Act 1973, came into force in August 1974. The Act required all insurers to be authorised by an Insurance Commissioner; minimum capital was prescribed as were minimum levels of the surplus of assets over liabilities (the 'solvency margin'). Solvency margins had to be increased in direct proportion to rises in premium income.

Although the legislation was brought down in the early days of the Whitlam Labor administration the way had been prepared by the previous Liberal government. Pressure for regulation, both from within and without the Parliament, was evident in 1970 as a result of the failure of a number of general insurers.8

In December 1971 B.M. Snedden, then Treasurer in the Liberal government, made a ministerial statement on the proposed legislation. The aim of the Bill was 'to prevent weak, inefficient companies from entering the business and by continuing supervision to keep the industry in a healthy condition'. The Treasurer went on to thank 'the members of the insurance industry who have assisted in various ways in the development of the proposals which I have outlined'.9

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8 Commonwealth Parliamentary Debates (hereafter C.P.D.), House of Representatives (hereafter H. of R.), 26 August 1970. The Treasurer, L.H. Bury responded to a question about the failure of several insurance companies with the information that the Commonwealth had been approached by two State Premiers to introduce Federal legislation and that 'work in this field has been proceeding for some time in my department...and is now being considered as a matter of urgency'.

Why Regulate the Insurance Industry?

Many styles of market intervention have been used by governments in developed world economies to influence the behaviour of general insurance markets in favour of consumers. The insurance market exhibits five characteristics which have initiated regulatory activity. Many of these characteristics are present in other financial markets but their impact on buyers of insurance has attracted the attention of governments in all developed countries.

1. There appears to be an even greater asymmetry of information between buyers and sellers in the insurance market than exist in other financial markets. The large number of insurers currently licensed in Australia offering different products at different prices makes the selection of a supplier much more difficult than in other financial markets where the choice is among fewer suppliers. Most purchasers of insurance have neither the time nor the knowledge to establish the solvency of the many companies in the market with whom it is proposed to deal, or to distinguish the value of the product on offer from other products in the market, or to compare prices in an effective way.

On the other hand there is an asymmetry in favour of the buyer who has a better knowledge of the risks to be insured than does the seller. The nature of this latter asymmetry is explained in the following terms. Insurance is the pooling of risks whereby those who join the pool should contribute to it in proportion to their own risk. It is vital for the insurer to be aware of the nature of the risks being accepted in order to establish the levels of contribution to the pool. However this information is
in the hands of the insured. And even assuming a full disclosure of the nature of the risk the insurer is faced with other problems of risk assessment. There is the certainty that there will be an adverse selection of risks; only those who see themselves at risk will buy insurance. A person living on top of a mountain does not seek flood insurance. And there is a recognised facet of human nature, which is part of the hazard for insurers known as the 'moral risk', that those who are insured tend to be less careful than those who are not thus increasing the inherent risk. 10

Lereah, in reviewing the literature on the information problems that exist in the insurance market, summed up the problem in these terms:

An important generality can be inferred from these studies: the conventional perfect information condition is not a good approximation for insurance market behaviour. 11

2. There is a long history of the entry of dishonest suppliers into the insurance market and as long a history of credulous customers. 12


These authors concentrate on the effects of consumer misinformation on competitive equilibrium and conclude that the existence and efficiency of competitive insurance markets can be affected by consumer misconceptions of risk.

11 Ibid., p.16.

3. There is the possibility that an insurer can fail for reasons of incompetent management, or a run of losses, or a collapse of other financial markets which destroy the value of reserves, or inadequate reinsurance arrangements, or a combination of all these factors.

When an insurer fails not only the transaction price, the premium, is lost to the consumer but the security presumed to have been purchased is also lost. It is the problem of claims not being paid by a failed insurer that is the central problem of the insurance market. It is at its extreme with life assurance, endowment assurance and superannuation where consumers can suffer the loss of life savings and expectations. But it is still of considerable importance in general insurance where capital goods are destroyed, factories, houses, motor cars, with no prospect of recovery. The purpose of an insurance contract is to insure.

4. The nature of the contract between the buyer and the seller. The explicit part of the contract is difficult for an uninformed purchaser to understand. There has always been the problem of the 'fine print' of insurance policies. The implicit nature of the contract, which relies on several centuries of common law decisions not even written into the policy wording, will certainly be unknown to, and not understood by, the purchaser. The legal requirement for 'full disclosure' by the insured before the contract is completed, or the requirement to conform to the doctrine of 'good faith' are matters not known to the average consumer.

5. There is what one author has called 'the alternation between competition and collusion which has so sharply
characterised insurance activity’. Over time, and throughout the world, there is a great deal of evidence of the tendency of insurers to agree prices between themselves if they are not prevented from doing so by effective legislation.

Styles of Government Intervention

Finsinger, et.al. listed ten styles of intervention in the general insurance market that have been practiced by governments.14

1. Compulsory disclosure of prescribed financial information to customers.

2. Compulsory disclosure of prescribed financial information to the public.

3. Compulsory disclosure of financial, underwriting and reserving information as prescribed by government.

4. Control of market entry.

5. Monitoring of solvency by government.


7. Regulation of investments.


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10. Prescription of insurance contract terms and conditions.

These authors did not include in their list the proscription of collusive activities nor competition from a government insurer.

The first three forms of market intervention outlined above have been described as allowing 'freedom with disclosure'. They have their British genesis in the last quarter of the nineteenth century, (see Chapter 3) although the French used this approach during the Napoleonic era 15 and it formed part of the first Victorian Companies Act 16.

The concept of the fourth item on the list was to keep dishonest operators out of the market. Companies were required to lodge a substantial deposit with government as evidence of their bona fides before licensing or authorisation took place. More recent approaches are to require minimum capitalisation which has to be maintained.

The British tradition of market intervention, which started with legislation in respect of life companies in 1870 but was extended to non-life companies in 1909 (see


\[16\] The Companies Statute 1864, 27 Victoria No. 190, required, in Section 41, that the managers of all insurance companies had to make a declaration of the company's financial position, signed before a J.P., on a prescribed form. The form was a balance sheet containing insurance specific questions relating to outstanding claims and types of assets held. This declaration was to be made twice a year and exhibited in the registered office of the company and each of its branches. Default carried a penalty of £5 a day. The same provisions were carried forward into the Companies Act 1890.
Chapter 3), was based on a combination of disclosure of financial information and requirements to make a deposit with the government in order to be registered as an insurer. It was a tradition of freedom with disclosure, added to a substantial deposit to keep the dishonest out of the business \(^{17}\), that Australian governments made attempts to follow in the early days of Federation.

The fifth item, government monitoring of solvency, is a comparatively recent innovation. It was first introduced in Britain under the Insurance Companies Act 1946 as a substitute for the deposit system. Companies were required to show a margin of £50,000 of assets over liabilities or 10 per cent of premium income whichever was the greater. Minimum paid up capital was also set at £50,000.\(^{18}\) Solvency supervision required the lodging of financial statements after the end of the financial year and a degree of latitude was allowed for this. Accounts were not examined until six months after the end of the year by which time companies could be in serious financial difficulties. In the mid 1960s a number of recently established motor insurers did collapse without the supervisory body, the Board of Trade, being able to

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\(^{17}\) O.M.Westall, 'The Assumptions of Regulation in British General Insurance', in G.Jones and M.Kirby, Competitiveness and the State, Manchester University Press, Manchester, 1991. 'Insurance regulation in Britain remained essentially passive relying on publicity to alert consumers and constrain companies.', p.144. Westall goes on to argue that 'the light regulatory framework...was largely shaped by the existence of relatively effective self-regulation through collusion.' p.156. See Chapter 2 for an analysis of this 'collusion' in Britain.

\(^{18}\) J.Tapp, 'Regulation of the UK Insurance Industry' in Pinski and Pauly, The Economics of Insurance Regulation, p.32. In 1937 a Parliamentary Committee had suggested licensing of companies undertaking insurances made compulsory by government. Tapp suggests that the 1946 legislation was the result of the inquiry. It would seem that companies already in the market would prefer a solvency test, with which they would comply, rather than making deposits with government.
provide any warning signals of failure. A number of refinements to the concept of solvency, and an increase in the supervisory powers of the Board of Trade followed; in addition legislation to protect policy-holders in the event of further failures and the registration of brokers was introduced. These matters are discussed in Chapter 9.

The concept of solvency is examined in detail the same Chapter, but in general terms the theory suggests that solvency regulations are an early warning system. If weaknesses are discovered early enough then appropriate measures can be instituted to prevent failure. If this is not possible, the theory proceeds, then because of the substantial acquisition costs already expended on the troubled company’s portfolio of risks, a buyer can usually be found for the portfolio and so save a total failure. Although this has happened on some occasions in some countries there have been others where failure has not been prevented by the most stringent solvency requirements.

It is obvious that the more restrictive solvency requirements become the greater the economic cost. It has been suggested that, weighing these costs against the benefits, the optimum solvency requirements will allow some probability of failure. It is doubtful whether current public opinion and existing regulatory

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21 Finsinger, Hammond, Tapp. p.15.
authorities share this view, but it will be demonstrated that failures within the present Australian system of solvency requirements has led regulatory authorities to impose more restrictive solvency requirements which involve greater costs and more restrictions on entry. Increased market concentration has followed.

These problems have produced another solution which is described in item 6 above. Either the state, or a fund subscribed by all insurers, compensates the policyholders of a failed insurer. There are advantages and disadvantages with this approach. On one hand it is proposed that where all insurers contribute to a fund that it provides an incentive for trade associations to monitor the solvency of its members more closely. Opposing views suggest that the effect of this guarantee is to encourage reckless behaviour in marginal companies. Apart from proposed legislation to fund the losses caused by the failure of two life assurance companies such guarantees, so far, have been eschewed by both governments and industry in Australia. This is in contrast to British responses which introduced such legislation in 1975.

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22 The Australian Insurance and Superannuation Commission says of its function that 'the Insurance Act 1973 was introduced with the purpose of seeking to ensure the financial soundness of companies carrying on general insurance business...[the Commission] is concerned only with the solvency of those carrying on insurance business.' A Guide to the Insurance Act 1973, Australian Government Printing Service (hereafter A.G.P.S.), 1989, p.1

23 In September 1990 there was a fraudulent attempt to buy the Occidental and Regal life assurance companies. Legislation was introduced into the Australian parliament to charge a levy on other life companies to pay the losses occasioned by the fraud when their full extent is known. Insurance and Superannuation Commission Annual Report, 1990-91, pp.17-18.

24 Policyholders' Protection Act 1975.
Market intervention of the types outlined in 7, 8 and 9 above have not been adopted in either Britain 25 or Australia. Such measures have been widely employed in various states of the U.S.A. and in some European countries. 26

Finally there is intervention with policy terms and conditions that may be issued by insurance companies. English common law, and Australian law generally followed the English precedents, was based largely on the assumption that with insurance contracts the balance of knowledge was heavily skewed in favour of the insured. In 1766 Lord Mansfield pronounced his dictum that was to influence the law for more than two centuries.

Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the underwriter trusts to his representation, and proceeds on the confidence that he does not keep back any circumstance in his knowledge...that would induce the underwriter to estimate the risque as if it did not exist. 27

25 There was one exception to this rule in Britain in respect of workers' compensation insurance. Under what was known as the 'Home Office Agreement' of 1922 insurers agreed to pay insureds a rebate of premium if loss ratios for this class of insurance fell below an agreed percentage. This percentage started at 60 per cent in 1924 and was subsequently raised to 62.5 and then 70 per cent. W.A.Dinsdale, History of Accident Insurance in Great Britain, Stone & Cox, London, 1954, pp.158-9.

26 Finsinger and Pauly, Economics of Insurance Regulation, See sections on U.S.A., Germany, Switzerland and France. These countries use some or all of these techniques. The most stringent of these is the German motor insurance market where premiums, profits, policy wordings and risk classifications are all regulated.

To counter-balance this presumption of asymmetry in favour of the insured, the common law developed in such a way that any non-disclosure of matters which the insurer might regard as material to the risk allowed the insurer not pay a claim, or to avoid the policy altogether. Thus not only was the insured at a disadvantage in respect of the contract itself, which was written by only one party to it, but the additional conditions of the contract implied by the common law, which followed Mansfield’s ruling, were heavily in favour of the insurer.

As a result of the deliberations and recommendations of the Australian Law Reform Commission, the Commonwealth Parliament passed the Insurance Contracts Act 1984. The introduction to the Act reads as follows:

An act to reform and modernise the law relating to certain contracts of insurance so that a fair balance is struck between the interests of insurers, insureds and other members of the public and so that the provisions included in such contracts, and the practices of insurers in relation to such contracts, operate fairly, and for related purposes.

Market behaviour of the general insurance market can be, and is, heavily influenced in a variety of ways by government intervention in its performance. This thesis examines the history of the introduction of this intervention and proposes the effects that such intervention has had on market behaviour.

This brief summary of market intervention by government ignores the even greater hindrance to competitive performance of the insurance market that has been effected during the last two centuries by private regulation.
Private Regulation in Australia and Britain

In Australia a cartel-like organisation, known as the 'Tariff', set prices and policy terms and controlled distribution for all classes of non-life insurance between 1897 and 1973. The structure of the Tariff was inherited from Britain where a similar organisation had existed formally since 1860 and where less formal combination of insurers to set prices had been practised since the late eighteenth century (See Chapter 2). This British structure has been described as 'one of the most sophisticated and long-standing of all British pricing agreements'. 28 No doubt the same comment is equally true of the Australian general insurance Tariff and Australian pricing agreements.

In both countries the Tariff was largely able to restrict entry to the market to its own members. This was done by refusing to accept reinsurance from non-members and by not allowing sharing of large fire risks with non-members.

Private Regulation in the U.S.A.

In the list of styles of government intervention in insurance markets set out earlier, those that attempt to control prices and profits have been applied most generally in the U.S.A. Fire insurance rating agreements were evident in that country by 1819 and formally constituted on a national basis in 1866. A variety of state attempts to enforce anti-compact laws for the insurance industry during the latter part of the nineteenth century were not successful. In 1911 the New York State legislature tried a compromise solution by

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passing a law that allowed companies to fix rates between them but requiring that those rates to be approved by an insurance commissioner. This 'prior approval system' of rate setting was followed by nearly all other states.\textsuperscript{29}

Joskow makes the interesting comment that the primary concern of U.S. regulators at the time had moved from trying to effect anti-compact laws to guard against rates that were too low.\textsuperscript{30} Intense competition was feared because it would lead to instability of the insurance market and many insolvencies. This was part of the movement of the time to seek an end to 'ruinous competition'.\textsuperscript{31} Security was seen as being of greater public good than competitive pricing. Insurance was not made subject to U.S. federal anti-trust laws brought in between 1890 and 1914. \textsuperscript{32} If Joskow's observation of the market in the early part of the century was correct it was a view that was to be tempered as the years passed. In 1975 the State of New York Insurance Department described its function as being one 'which permitted property and liability insurance prices to be


\textsuperscript{31} The 'Merritt Committee Report', the report of a joint committee of the Senate and Assembly of the State of New York Legislature appointed to investigate 'corrupt practices' of non-life insurance companies in 1911 came out strongly against open competition and in favour of combination for the setting of rates as the only means of providing a stable industry. This Report was reprinted in the United States Senate Hearings on Anti-Trust and Monopoly - Insurance, 1959-71.

set by cartel action with State Insurance Department approval.  

More recently there has been action in some states to limit prices that can be charged by insurance companies for motor insurance and, contradictively, a number of substantial failures of general insurance companies have brought renewed demands for much tighter supervision of all companies.  

The Agency System of Distributing Insurance Products  

In Joskow's study of the American market he found that cartel rate making and other collusive behaviour, with the approval of state regulators, had led to a grossly inefficient sales and distribution technique and unnecessarily high prices. The sales and distribution techniques referred to by Joskow were the American agency system.  

This thesis will show that the agency system in Australia served the objective of non-price competition between companies during the period of the Tariff and contributed to an efficiency loss in this country. The origin of the agency system common to both countries was in England.  

The use of agents, that is the payment of commission to individuals who act only on behalf of one principal, to market general insurance products was introduced when the

industry started. In an era when branch offices were not in common usage agents were used generally in commerce to conduct transactions away from the principal's usual place of business. When fire insurers in London sought to expand their business outside the city the use of agents was the accepted way for them to do so.  

In 1710, the year that the Sun Insurance company was founded, its managers decided that the way to extend their business beyond the confines of London was to appoint a network of agents in all the cities and towns of Great Britain.

Fire insurance was in its infancy. Three other companies were in existence in London, but they did not do business outside that city so there was no fire insurance available elsewhere in the country. The early attempts by the Sun to establish agents were not successful. In 1720 new managers in the company set about the task again. By 1730 the Sun had more than 30 working agencies throughout Britain; by 1740 there were more than 50 and by 1786 more than 120.  

The Royal Exchange appointed its first agent outside London within a month of receiving its Charter to conduct fire business in 1721. This enthusiasm did not last. In 1734 there were only four agents, one each in Dublin, Liverpool, Norwich and Portsmouth. In the later years of the century the Royal Exchange decided to expand its


agency network outside London. In 1780 there were 60 agents in the provinces and the country, in 1788 a further 135 had been appointed and by 1805 there were a total of 319 agents in Britain and Ireland.  

The Phoenix Fire Office, formed in 1782 by a group of sugar refiners who felt that existing insurers were charging them excessive rates of premium, immediately set about broadening the company's underwriting base by establishing a network of agencies. Within twelve months they had appointed 58 agents. Deliberately setting out to expand into the industrialising north of Britain the Phoenix had appointed more agents in its first two years of operation than had the Sun after 70 years and the Royal Exchange after 60 years in the business. 

Although these London companies used a sales force of agents to acquire business outside the metropolitan area, the many provincial companies that were established during the eighteenth and early nineteenth centuries also tended to saturate their own areas, and beyond, with agents. The Norwich Union, founded in 1797, had appointed 300 agents throughout the provinces by 1811 and had increased the number to more than 500 by 1818. 

Despite this obvious dependence on an agency system to market their products it appears that company records of the system, and precise measures of its results, were poor. Business historians of the great British companies have not been able to obtain accurate figures of the

39 Ibid. p.99.


number of productive agents acting for their principals at any one time nor the level of income produced by the agents as a percentage of the total.

Trebilcock deals extensively with the appointment of agents by the Phoenix between 1783 and 1870. A table is presented of the production of 'total premium', presumably fire premiums but it is not stated, split between 'country agents' and 'foreign premiums' for the period after 1790. The former are consistently in the range of 33 per cent of the total and the latter moves between a high of 45 per cent and a low of 25 per cent. On the assumption, it is not stated, that most foreign income is brought in by agents, Trebilcock seems to be saying that some sixty to eighty per cent of income was generated by agents during the period.  

This conclusion would be consistent with the sources of sales that are implied in other major insurance companies which have been the subject of investigation by historians. The word 'implied' has been used because the words 'sales' or 'markets' or 'marketing' have received no investigation or mention in any of these company biographies. One is left with the impression that the major London and provincially based companies were usually formed by groups of business men with particular interests to serve and that the extension of this business beyond their own circle was achieved by customers walking in off the street or by an agency network. Towards the end of the nineteenth century agents were supervised, first by head office employed 'inspectors', and later by district offices.  

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42 Trebilcock, Table 3.1

In 1906 the general manager of the Caledonian Insurance Company of Edinburgh addressed the Insurance and Actuarial Society of Glasgow on the subject of the agency system. He expressed the view that this 'haphazard system' of appointing persons engaged in professions or commerce to obtain business for insurance companies 'in their spare time' was 'mainly' responsible for the production of all forms of insurance business including life. 'Insurance companies have scarcely any other style of representative'. Income produced by brokers was a 'very small proportion indeed'.

The Solution of Information Problems was at the Core of the Success of the Agency System.

The three biographers of the oldest British companies, Dickson, Supple and Trebilcock, all note that the agents appointed tended to come increasingly from professional classes and successful commercial men as the years progressed. Trebilcock analysed the occupation of Phoenix agents in 1821 and found that 32 per cent were attorneys and solicitors and a further 6 per cent were bankers. By 1860 53 per cent of Phoenix agents were in the 'professions' of solicitors, bankers, auctioneers and land agents and a further 35 per cent were 'retailers'. (Table 12.5) Trebilcock found that this was evidence that 'increasing "respectability", even increasing bourgeoisification, was clearly being sought by the Phoenix.'

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44 Ibid., pp.76-8.

45 Dickson, Sun, pp 133/4, Supple, Royal Exchange, p.154 and Trebilcock, Phoenix, pp.86-8.

46 Ibid.p.86.
It is put forward in this thesis that the appointment of 'professional or commercial men' has a more straightforward significance. The trend was generated, perhaps even unconsciously, because in addition to the occupations of solicitors and estate agents having the advantage of becoming aware of property and business transactions at an early stage, they were also privy to detailed knowledge of the potential insurance customer's financial position and personal characteristics which would otherwise not be available. It helped to solve, from the insurers' view point, at least part of the asymmetry of information flow.

It was successful as a marketing strategy because it was seen by the buying public as a solution to their information problems. Agents with professional or commercial standing in their community would be much better placed to win consumer confidence for the selection of an appropriate insurance product.

**Agency in the Australian Insurance Market**

The culture of marketing through agency appointments was brought to Australia together with other aspects of insurance business practice imported from Britain. The deed of settlement of the first Australian fire insurance company, the Australian Fire and Life Assurance Company established in New South Wales in 1836, (the first local company, founded in 1832, wrote only marine insurance) instructed the directors that they 'shall and may appoint any Agent or Agents in any town or place within the Colonies of New South Wales and Van Diemen's Land'. 47 The agency system assumed greater importance in Australia because of the distances involved from the

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47 Deed of Settlement of the Company, Mitchell Library, Sydney.
centres of colonial insurance. Insurance companies had their offices in the capitals of each colony. It was rare for a company to have a branch office, even in another colonial capital. The sales force of each company consisted of agents appointed in the city and suburbs of its 'home' city and other colonial capitals, supported by a network of agents in country towns.

The widespread nature of Australian settlement was ideally suited to the agency system breaking down the asymmetry between buyer and seller in the insurance market outlined in the previous page. The agent in an outer suburb, or a country town, or in the outback, be the agent the local real estate or stock and station agent, or a solicitor or accountant or the local storekeeper, knew the business and the honesty of the insurance company's potential clients and whether their business should be accepted or not. If a claim occurred these same agents would know the background to the loss and whether there were any suspicious circumstances. For the potential customer, if your solicitor or accountant or any other respected business man was the local agent for an insurance company that, in itself, meant that the company, its products and its prices were vouched for by a person who knew about such things; and if there was a claim the assistance of the agent would be forthcoming.

As will be discussed in the next Chapter competition for successful agents in Australia was always keen. The establishment of an enduring Tariff would tend to produce even fiercer non-price competition by offering higher rates of commission to agents or by appointing more agents than other companies. This was recognised by those who set up the Australian Tariff of 1897. To pre-empt unduly rough competition an agreement on commission rates and the number and places of agency appointments was put into place a year before the Tariff of fire rates
was introduced. So important was this issue that an argument between Tariff members over agencies was the only internal dissension that ever threatened to break the agreement during its 76 years of existence. The circumstances of the argument centred round the question that if one company took over another, a frequent happening with British companies during the early part of this century \(^{48}\), was the acquiring company allowed to retain all the agents of the acquired company? As discussed in the next Chapter the members of the Australian Tariff sought direction from the British Tariff to solve this problem.

It will be argued that the agency system perpetuated, and was perpetuated by, the Tariff. The inefficiencies of the Tariff were evidenced, not by excessive profits, but by heavy expense rates of which commission payments to agents were an increasingly significant proportion.

In a review of the Australian Tariff system by one of its members in 1930 he said of the agency system that

in Melbourne, for example, 20 agents can be appointed by each of the [104 Tariff] companies, and 150 agents in the suburban area...in important centres, such as Ballarat, Bendigo, Geelong, Newcastle, Coolgardie and Fremantle, two chief agents are allowed who may be remunerated...to such an extent as each company may determine...in addition to two chief agents each company may appoint four sub-agents and two directors...in these

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cities business is conducted at excessive cost...

The Challenge to the Tariff and its Agency System

The advent of large scale private motoring during the 1920s helped to change the face of insurance markets. It did so in two ways. First, the nature of motor vehicle insurance allowed the formation of viable non-tariff companies; and second, that motor insurance was a suitable product for direct marketing by specialist organisations that had no need of agency networks.

In relation to the first point the Tariff had been able to restrict entry to the market by refusing reinsurance to non-members and refusing to share larger risks with non-members. Generally values of motor vehicles were only a fraction of those for fire risks. There was less need for reinsurance and risk sharing for motor vehicles than for fire insurance. Further, improved international communications now allowed access to the developed professional reinsurance markets in London and Europe.

In Australia motor vehicle insurance was marketed en masse by recently formed motorists' associations such as the N.R.M.A. in New South Wales and the R.A.C.V. in Victoria. Other states followed. There was no need for agents in these transactions. The association was either the insurer itself (N.R.M.A.) or it was the agent for an insurer (R.A.C.V.). In either case the association was known to its members and thus satisfied any consumer information problems. The association had a ready made

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pool of potential customers without the need for a sales force of agents.

As detailed in Chapter 6, the opening of the market was used by others to form new insurance companies that could operate outside the Tariff. Some non-tariff companies were formed to specialise in motor insurance but took the opportunity to spread into fire and other forms of insurance. Other companies were formed by industry associations, such as co-operative societies and the service industry for motor vehicles, which had a ready made pool of potential customers to whom products could be marketed without the use of agents. Non-tariff companies invariably undercut Tariff rates, usually by the 15% margin that was saved in agents' commissions.

During the same period of the 1920s the Tariff faced further new competition from Lloyd's brokers who were now operating in Australia and from state government insurance offices (see Chapter 7). Lloyd's offered both price, usually 15% because they too did not pay agent's commission, and product competition. The Lloyd's market was traditionally a fertile field for trying new ideas and many different forms of cover; comprehensive household insurance, policies on stock where the premium was adjustable on the actual values held, cash in transit and policies on jewellery and furs for private persons were just a few of the covers that were first made available to the Australian market by Lloyd's brokers.

It could be thought that the Tariff would have faced destruction of its market to these new forces. Chapter 6 offers reasonably accurate figures which demonstrate that by 1940, after 20 years of competition, the Tariff control of the market, excluding the share of state offices which at that stage was only in workers' compensation, had been barely dented. Pursell's estimate
for the year 1957/8, which included an allowance for state offices' market share, gave the Tariff companies 72% of the fire market, 64% of the marine market and approximately 50% of motor vehicle and other business.50

**State Intervention in the Australian Insurance Market by Competition**

In a system peculiar to Australia, which is dealt with in Chapter 7, the general insurance market has been subject to varying degrees of state competition from insurance companies set up by governments. This development grew out of a movement within the Australian Labor Party during the early years of the twentieth century 51, although it had found expression before that in less radical forums,52 and as discussed in Chapter 7 the first state office was created by a Liberal government.

This first state office was formed in Victoria to handle only workers' compensation insurance. A private member's Bill was introduced into the Victorian Assembly seeking to introduce workers' compensation insurance for that state in 1907. It was to follow similar legislation introduced by the British government in the previous year.53 During the next eight years six attempts were made by different governments to pass such legislation. In a compromise with opposition to this proposal,

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52 In Chapter 2 the Melbourne *Age* is quoted in 1897 suggesting that by its introduction of a Tariff the insurance industry was inviting competition from the state

53 *AIBR*, 20 November 1907.
generated particularly by graziers and small manufacturers who feared that private insurers would charge exorbitant prices for insurance of employers, the government agreed to set up a state office to handle only workers' compensation business in competition with private insurers. Legislation to make workers' compensation compulsory in Victoria and to establish the State Insurance Office, to handle that class of business only, was finally passed in 1915.

All state insurance offices, with the exception of South Australia, were started at the time of the introduction of legislation for compulsory insurance of workers' compensation. Victoria and New South Wales were initially restricted to that class of business. Victorian SIO started writing motor insurance in 1941 but did not compete in all fields until 1984. New South Wales GIO enabling legislation to write general business was not passed until 1941.

State insurance offices were founded in the following years:

Victoria 1915
Queensland 1916
Tasmania 1919
New South Wales 1926

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54 Ibid. 21 February 1914, pp.160-1. The journal, not noted for its advocacy of government enterprise, said of the establishment of the SIO that 'it is obvious, of course, that compulsory insurance entails the establishment of a State Accident Insurance Office.'

Western Australia 1926  
South Australia 1970

As will be examined in Chapter 7 some state legislation required workers' compensation insurers in that state to be registered and regulated.

The Commonwealth Insurance Act 1932

The first Commonwealth legislation in respect of general insurance was passed in 1932. It required each general insurer to deposit £40,000 in cash or securities with the Federal Treasurer. There was no supervisory role for the Commonwealth intended or written in to this legislation. The purpose of the legislation was to thwart Jack Lang's proposed legislation in New South Wales to seek cash deposits from all life and general insurers operating in that State.

This legislation was one of several pieces rushed through by the Lyons United Australia Party government to forestall Lang's plans to raise money from the banking and insurance industries. 56 Amended from time to time and being renamed as the Insurance (Deposits) Act 1932 it remained in force as the only Commonwealth legislation in respect of general insurance until it was superseded by the Insurance Act 1973.


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56 G. Sawyer, Australian Federal Politics and the Law 1929-1949, Melbourne University Press, 1974 edn., pp.48-53. As further protection against Lang's moves the Commonwealth passed the Financial Emergency (State Legislation) Act 1932 which, quite unconstitutionally according to Sawyer, enabled a vote by both Federal Houses that if a state levy on banking or insurance endangered the economic stability of the Commonwealth, then the Governor General was empowered to relieve the levied businesses of their liability to the state.
It was indicated that this legislation was the result of the failure of a number of insurance companies during the 1970s. The companies that failed were mainly cut price motor insurers. The insurance market in Britain suffered from the same phenomenon.

It has been mentioned earlier that the U.K. Board of Trade was, at the time, already receiving financial reports from insurers. It was found that not only were the reports received too late but that they did not disclose the true position of the company that enabled a proper assessment of its financial status.

In order to establish the true financial position of a general insurance company, and to determine whether it will be able to meet its financial obligations as they fall due, it is necessary to establish three factors which have become known, under solvency regulatory theory, as 'statutory reserves'. It is the nature of these reserves that differentiate a general insurance enterprise from other enterprises. The calculation of shareholders funds may present a reasonable yardstick as a measure of solvency for most companies, but for general insurance companies an estimate of insurance liabilities peculiar to the business are essential before shareholders funds provide this measure. An explanation of the nature of these liabilities, and the different accounting practices developed for them, are an integral part of the concept of 'solvency' for the general insurance industry.

The three 'statutory reserves' are:

1. Unearned premium reserve

This reserve is based on the concept that, as an insurer's portfolio of policies fall due at different
times of the year, not all of the premiums debited or received in one accounting period relate to liabilities of that period. At balance date a calculation must be performed to estimate which part of premiums can be treated as 'earned' and which part should be carried forward to the next accounting period as 'unearned'. The unearned reserve should represent the unexpired portions of all policies in the portfolio.

The earliest attempts to calculate this reserve assumed that all policies fell due on a regular basis throughout the year. Thus 50 per cent of premiums should be treated as unearned at any time. However at least half the expense of these policies had already been spent, so an assumed 10 per cent was deducted for these expenses, and 40 per cent of premiums written during the financial year was the amount carried forward. This method was almost universally adopted and was still current until the 1970s. 57

But it was clearly inaccurate. Different insurers hold a variety of policy portfolios. Those who concentrate on commercial insurance will have most of their policies falling due at 30 June in each year with the balance of their other policies falling due on the remaining quarter dates; their business clients find it easier to handle insurances in this way. Insurers issuing cover on yachts find that very few policies start in the winter months. Motor vehicle insurers would have their policies more evenly distributed throughout the year but there may be seasonal variations involved.

Obviously the most accurate method, and now available through electronic data processing, is to calculate the precise amount for each policy. However the almost

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universally adopted method is known as the 'twenty-fourths' calculation. Premiums are broken down into the months that they became due. All policies are assumed to be written in the middle of each month. Thus policies written in the first month will still have 1/24th to run at balance date, policies written in the second month 3/24ths, and so on. It is not absolutely accurate but it is the method currently accepted by the Australian Insurance and Superannuation Commissioner and other regulatory authorities throughout the world.

2. Reserves for unsettled claims

Whilst most claims, motor vehicle, household, burglary and fire claims are settled promptly there are many types of claims that take a long while to negotiate. With personal injury claims, which are involved in such classes of business as workers' compensation, motor vehicle third party, public liability, and medical professional indemnity the extent of the injury may not be determinable for several years. The final assessment of compensation may depend on the extent of negligence involved by the insured party and this could in turn involve lengthy legal process.

In the meantime the insurer has to estimate the extent of the pecuniary liability involved in the claim as soon as it is reported. Not only are there the problems mentioned in the previous paragraphs but the size of the claim will be affected by inflation that occurs between the date that it is advised and the actual settlement date. Further, courts have in the past made awards, to reflect community values, that increase the level of damages well above inflation rates. To balance these factors of increase the insurer can offset the earning of the funds put aside to meet the eventual liability; such calculations involve assumptions of future interest
rates. Even with actuarial assistance a reasonable estimate of an insurer's liability for outstanding claims can be very difficult. Many methods have been tried but none are infallible. 58

3. Reserves for unreported claims

While most claims are reported by policy-holders soon after the claims have occurred this does not always happen. Even with standard classes of insurance some claims will be reported after the company closes its books for any financial period. For liability policies the policy-holder may not be aware that a claim will be made against the policy for a number of years. In workers' compensation it may be years before the effects of industrial disease become apparent; with medical indemnity it may be a long time before it is known that an operation to prevent fertility has failed; the proprietors of a department store may not be aware of an injury to a customer on their premises until a writ is issued several years later. The problem is so common that a reserve for claims 'incurred but not reported' is now made mandatory by regulatory authorities.

There are many difficulties in setting adequate reserves for claims that have not yet been reported. The best that can be done is to analyse past experience for each insurer and to make a judgement accordingly. However even this may prove to be totally inaccurate because new factors enter the market from time to time. It may be many years before a product, such as a breast implant, is found to be faulty. Chemicals that are ultimately found

to affect the environment are notorious in current experience.

Over estimation of premium income and underestimation of claims leaves the insurance industry vulnerable to the dishonest and the inexpert manager. Furthermore the market value of assets to support these reserves for outstanding liabilities, as well as shareholders funds, is of paramount importance. The Australian Insurance Act regulations require all authorised insurance companies to submit returns quarterly declaring their solvency with assets valued at current market prices.

Having complied with all of those accounting standards the actual test of solvency under the Act in early 1993 is that assets shall exceed liabilities by $2,000,000, or 20 per cent of premium income, or 15 per cent of outstanding claims, whichever is the greater.

Conclusion

There is a temptation to agree with Pinsinger and Pauly in the conclusions reached in their study of regulated and unregulated general insurance markets. Their conclusion is that these studies produce some information on performance of unregulated markets indicating a level which is not bad but not perfect. Our subjective judgement is that this level is closer to the ideal than...in regulated markets, where the imperfections generally include those present in competitive markets and additional imperfections generated by the regulatory process itself.

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This thesis presents an opportunity to examine those judgements from the Australian experience.
CHAPTER 2
PRIVATE REGULATION
OF THE AUSTRALIAN GENERAL INSURANCE MARKET

A noteworthy feature of the industry’s organisation is the development of market associations which have had a significant influence on competitive behaviour. ¹

It has been noted in the previous Chapter that the Australian general insurance market was dominated by such a market association, known as the ‘Tariff’, from 1897 until it was forced to disband in the face of the Trade Practices Act 1974. It was subjected to some competition after World War I and this was intensified after World War II. However the Tariff showed remarkable resilience and was defeated in the end by legislation rather than by market forces.

The author of the quotation heading this Chapter, Professor R.L.Carter, qualifies this anti-competitive behaviour in his next sentence with the words that in Britain ‘all [these associations] were formed at times when intense competition threatened the stability of the market and the security which could be provided for policyholders.’ It will be demonstrated that whilst Carter’s first remark appears to be a reasonable generalisation about insurance markets, his qualifying comment presents a theory that did not always match experience in Britain and is quite at odds with the behaviour of the Australian colonial insurance markets in the period leading up to the establishment of private regulation.

Private regulation of general insurance markets has been allowed to flourish only in Britain and Australia. As has been indicated briefly in Chapter I other developed insurance markets have been regulated by government, even if U.S. state government attempts to control private regulation have been ultimately perverted.

The concept of regulation in Australia was derived from its British forebear. The Australian practice of regulation was adapted to its own local economic and geographic national character. Although, as will be discussed, Australian private regulation was put into effect and maintained in a manner markedly different from its forbear, a study of the parent is a fruitful way of entry into an understanding of the child.

**Private Regulation in Britain**

The British general insurance market was controlled by private regulation from 1860 without government interference for more than a century. Although certain reporting requirements were introduced in 1906 substantive government regulation, and then only in respect of solvency, was not introduced until 1973.

Why private regulation of insurance was tolerated only in Britain is a topic not yet addressed by British commentators. Carter's analysis that it was necessary to keep order in an otherwise unstable market, and that this was better than government interference, seems to have gone unchallenged.

Nor have Australian social or economic historians yet written of the extent to which Australian business has been influenced by the culture of British business or the extent of the influence of British models on Australian business legislation. Such studies are outside the scope
of this thesis but the manner of conducting general insurance business, insurance legislation and common law decisions reached in Britain have been so pervasive in the Australian scene that an understanding of the former is necessary to explain the latter.

Supple found evidence of agreement between the only two London fire insurance companies, the Royal Exchange and the Sun, for risks in warehouses at the London docks as early as 1775. In 1788 the Royal Exchange, the Sun and the recently formed Phoenix companies combined to inspect, and to set common rates for, the new steam powered cotton mills which posed fire hazards not previously encountered. ²

It is important to note the manner of these early agreements. One was in respect of specific risks in a particular location; the other was for rates relating to an industry. This pattern of regulation continued for nearly two centuries. Rating agreements were for particular risks or industries with a poor record for fires.

Because the Sun, Royal Exchange and Phoenix were the only competitors in the market the sole rationale for their agreements was quite simply to keep prices at profitable levels. Throughout the 1790s the three companies had a standing committee, 'Friday’s Committee', that pooled information and set rates.³ The culture of price agreements between British insurers was firmly established in the late eighteenth century.

² Supple, Royal Exchange, pp.88-90, Dickson, Sun, pp.90-92.
³ Supple, ibid. p.90. Supple, Dickson and Trebilcock all recount these agreements. Trebilcock, in particular, emphasises what he calls 'the pre-history' of later market agreements.
Economic growth in Britain during the Napoleonic Wars encouraged new entrants to the insurance market. In 1805 a meeting of the 'Great Offices', the three companies just mentioned, and several of the more respectable new companies which had been allowed to join their ranks, considered this new problem and concluded that

it appears to this Meeting that the Competition by means of the reduction of Rates between Fire Offices has been productive of injurious results not only as regards the Interests of the Offices but the Security of the Public. \(^4\)

This early reference to the 'public good' argument for price fixing in the insurance market appears to support Carter's proposition. But the question is whether this was pious rhetoric or whether these company managers were really concerned about the public interest will never be known because they were overtaken by events. By 1810 there was a total of 36 fire companies operating in London and major provincial cities. This even less manageable British market was made more difficult again by a rush of new entrants in 1824 and 1825. Amendments to company law had created a legal position which favoured flotation of new insurance companies. In 1824 a section of the Bubble Act of 1720, which had given a monopoly of marine insurance to Lloyd's and the London and Royal Exchange companies, was repealed. In 1825 the Bubble Act was further amended to allow formation of joint stock companies with transferable shares. \(^5\) In the frenzy of

\(^4\) Quoted by Dickson p.97.

speculation in insurance companies that followed at least 20 new fire offices were floated. The 'Great Offices' met in 1826 to address 'the necessity of reducing premiums' to meet competition. Supple estimates that at least 20 offices, including several that had been formed before 1824, had ceased fire underwriting by 1832. F.G. Smith, the canny Secretary of the Scottish Union Insurance Company and a moving force in the establishment of rating agreements in Scotland, viewed the level of rate reductions agreed by the major companies as being more than just meeting new competition. He commented that

The object which led to the reduction in rates and competition having, it is presumed, been in a degree attained by compelling numerous offices to relinquish the fire business, it is but reasonable to look forward to some improvement.

Smith's analysis was profound. It is a tactic that was to be repeated on a number of occasions in Britain and Australia both before and after private regulation was established. One or several companies deliberately destabilised the market in order to thin out the opposition ranks and then lead a crusade to halt the 'ruinous competition'. Having conveniently forgotten the public interest during the process of de-stabilisation it then becomes a catch cry for reform.

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6 Supple, Royal Exchange, p.123

7 Ibid., p.125. Dickson, p.146.

8 F.G. Smith, 'Practical Remarks on the Present State of Fire Insurance Business.' (1832) Quoted Dickson, Sun, p.146. Smith was Secretary of the Scottish Union Insurance Company and a moving force behind the combination of Scottish insurers which had been formed in 1829.
In the freshly stabilised British market a new round of regular weekly meetings were convened by the major London companies but they now included Scottish, Manchester, West of England and Norwich companies in the so-called 'Monday Committee' deliberations. If public interest theory was in the minds of these survivors it was not recorded in their deliberations.

The first issue tackled by the new group of insurers was that of the insurance of cotton mills. Heavy losses and competition had proved to be a continuing problem. Discussions of rating for these risks took place between English and Scottish companies in 1829 and 1830. An investment boom in new power machinery during the next twenty years resulted in quadrupling the number of power looms and doubling the number of spindles in the British cotton industry. Further rationalisation of fire rates was needed. In 1842 a new cotton tariff was brought out by insurers. Trebilcock hailed it as 'the first of the great industrial truces, and a prototype for the tariff arrangements that came to dominate the ...insurance market', and Supple regarded it as 'an excellent example of detailed rating and careful surveying - with strong financial incentives to mill-owners to achieve improved standards of construction and thereby improve the risks.'

This tariff principle was applied to insurance of other industries. Trebilcock counted no fewer than 11 tariffs.

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9 Trebilcock, p.405.
12 Supple, p.159.
for a variety of manufacturing premises in Britain during the 1840s for corn, flax, wool, flour and other major trades; and there were new tariffs for warehouse risks as well, such as the Liverpool New Tariff which incorporated discounts for premises conforming to the Liverpool Fire Prevention Act 1842.  

1842 was a bad year for fire underwriters. There was a large fire in the Liverpool docks and serious losses in cotton mills. The Phoenix Insurance Company’s losses on cotton mills in that year were 190 per cent of premiums. Trebilcock argues that the depression between 1839 and 1842, Chartist agitation and industrial poverty all combined to create a climate which resulted in ‘mass arson’ for which the insurers had to pay. These factors, he concludes, were a spur to renewed efforts to create a new set of tariffs and had a greater effect on the market than is usually allowed for in conventional histories of the British Tariff movement.  

It is true that a series of disasters will set insurers thinking about recouping their losses through price increases. No doubt the losses of 1842 were a spur to tariff making activity at the time but no British historian has pointed to particularly severe losses which might have hastened the enduring Tariff agreements that were introduced in 1860.

It was more likely that it was the effect of Gladstone’s Joint Stock Companies Act 1844. This fresh company legislation brought a further rash of fire insurance companies into the market. Twenty four new companies were

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13 Trebilcock, p.486.
14 Trebilcock, pp.423-4.
formed during the 1840s and a further 23 in the 1850s.  

The new competition undercut the tariffs yet again and it was not until 1860, by which stage 31 of the 36 London fire companies formed between 1840 and 1858 had succumbed to competition, that the survivors were able to reform their ranks and reissue standing orders. Again a stabilised market followed the demise of a number of unruly competitors.

The year 1860 is usually taken as the formal establishment of the British Tariff organisation when a general meeting of representatives of all the British offices drew up rules for the conduct of fire insurance business. In 1868 this ‘Fire Insurance Tariff Association’ adopted the name of the Fire Offices Committee (FOC) in recognition that it was a central committee representing the three working district committees of the Tariff in Southern and Northern England and Scotland.

In 1863 Tariff members were instructed by the FOC not to accept any facultative reinsurance (reinsurance offered on individual risks) from a non-member and in 1868 this prohibition was extended to treaty reinsurance (a

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15 Supple, Royal Exchange, quotes the ‘Minutes of the Meetings of Offices’ of 1842 that the high Tariff rates were ‘calling into existence many new offices’. p.129. Raynes, History, produces figures to demonstrate the influence of 1844 Companies Act with 140 general and life companies registered under the Act in the first eight years after its introduction. pp. 246-7. No doubt all factors contributed.

16 Trebilcock, Phoenix, p.508 Of six English provincial companies formed in that same period four survived. They included the Royal, launched in Liverpool in 1845, which became the largest British company and the only one, during the late 1980s, to rate in the world top ten largest insurers.

17 Dickson, Sun, pp.155-158.
contract by which any number of risks within defined limits may be declared). The Scottish Tariff group had practised these limitations since 1845. These prohibitions on reinsurance were to constitute the most significant barriers to entry devised by the Tariff. Although the first company formed to handle only reinsurance had been founded in Germany in 1846 (Cologne Re) and other Swiss and German companies followed in 1863 and 1880 (Swiss Re and Munich Re respectively) the first professional British reinsurer (Mercantile and General) did not commence business until 1907. The culture of British reinsurance had thus grown to be one of reciprocal business between direct insurers. If a newcomer did not join the club not only was reinsurance geographically difficult to obtain but the newcomer did not participate in reciprocal business.

This barrier to entry was successful. Westall’s detailed study of the Tariff and non-tariff markets in Britain at the beginning of this century showed that in 1900 members of the FOC controlled 98 per cent of the British domestic fire market. 18 The AIBR published figures of British Tariff and non-tariff fire insurers in 1901 showing that there were 17 non-tariff companies writing an ‘insignificant’ premium income of £207,680 by comparison with 35 ‘Tariff Offices’ with a premium income of £20,062,295. 19 The difference between Westall’s figures and the AIBR’s is probably because the latter includes world-wide income while Westall’s were estimates of the British domestic market only.

In 1906 the Central Insurance Company of London sent a circular letter to its shareholders explaining why it had

18 O.M.Westall, ‘David and Goliath’: The Historian, Table 1.

19 AIBR, 20 October 1902, p.872.
been found necessary to give up its role as a non-tariff
office and join the FOC. 'The difficulty in obtaining
adequate reinsurance security in respect of larger
policies, which is one any non-tariff office operating on
a large scale has to face' was given as the major reason.
The other reason given was that 'on the other side of the
account, the company has received promises of cordial
support from many of the best British fire offices, who
have much desirable reinsurance business to place.'

The Central letter indicated that although they had been
able to obtain reinsurance facilities outside the Tariff
in the past they expected this to be of 'continually
recurring difficulty'. In addition to that problem
professional reinsurance companies and Lloyd's did not
offer reciprocal desirable business.

This was the culture from which Australian insurance
developed in the nineteenth and early twentieth century.

Early Attempts at Private Regulation in Australia

The first Australian insurance company was founded in
Sydney in 1832. Others followed. The first agency for a
British insurance company was established in Hobart in
1833. Others followed.  

Pursell found evidence that insurance companies in
Australia, which met to cooperate on the running and
financing of fire brigades from the mid 1850s, often

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AIBR, 20 March 1906, p.255. The AIBR editorial note at the
heading of the letter, that it published in full, commented
that by joining the tariff 'the best interests of shareholders
will thus be served'.

\[21\]

R.L.Benjamin, A History of Insurance Broking in Australia,
Craftsman, Melbourne, 1988, Chapter I.
discussed such matters as rates and policy conditions. Pursell tabulated 12 fire tariff agreements completed and abandoned in Victoria between 1866 and 1881. The number of signatories to these agreements was 17 for the earliest and 40 for the latest. Similar rating agreements were struck and then abandoned, either in the face of competitive behaviour amongst the signatories or outside competition, or because of public protest, in the other Australian colonies as well.

In its first year of publication the AIBR addressed the collapse of the Victorian Country Fire Tariff blaming rate cutting caused by 'the mistaken zeal of managers whose knowledge of the profession is confined to the collection of premium' by comparison with 'underwriters who are skilled in their business'.

If rating agreements had been practiced so successfully for so long in Britain why were these Australian colonial attempts so prone to fracture?

There were several reasons. The Australian market was shocked from time to time, either by individual companies quoting low rates to buy business, or by the familiar deliberate de-stabilisation in order to force weaker

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22 Pursell, Thesis, p.278.
23 Ibid. Table IV.4
25 AIBR, 2 August 1877, p.60.
companies out of the market. However the underlying problem seems to have been competition centred on allowing discounts from rates either as an 'agency' discount, or a directorial or advisory 'allowance'. A minimum agency discount was 15 per cent and it rose as high as 50 per cent for substantial agents in major provincial centres. In addition contemporary comment frequently railed against the practice of companies granting 'own case' agencies; that is where the customers were never intended to bring any business to the company except their own and the agency appointment was just a subterfuge for discounting the price.  

All of these avenues for tariff breaking were exacerbated by competition that was offered by non-insurance business houses which ran so called 'chief agencies' for overseas insurance companies. An overseas insurance company seeking representation in Australia would appoint a leading business house as its agent for the country. These 'chief agencies' were allowed to accept business at the discretion of the agent. The agents were

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26 AIBR made editorial comment on 10 October 1882 that 'it may be, indeed, that there is a purpose underlying some of the present competition, and that it is hoped to drive offices into another combination'. (p.374)

27 AIBR editorial, 8 March 1877, headed 'Insurance Brokerage and Discount' commented adversely on the 'system which now exists in respect of allowances which are made by the offices in reduction of their premiums in the shape of discount allowed to all who bring their own business.' And letter to the editor of AIBR 16 January 1888 which complained of 'the unsatisfactory mode...which has prevailed for some years...to allow private insurers (sic) a discount of 15%...and so deprive local agents of their legitimate commission.'

28 AIBR in one of its earliest issues, 8 January 1879, p.12, complained of the 'plethora of insuring power' and decided that 'the most active causes are to be found in the eagerness which many of our men of business evince to add other strings to their bow by securing agencies for English or foreign [insurance] companies.' This was driven, said AIBR, by the overseas companies being 'desirous of showing a continuous advance of their premium revenue.'
frequently inexperienced in insurance matters and, as their substantial commissions were based on turnover, the temptation was to both cut rates and to rebate their own commission to develop income with little regard for profitability of their principals. Management of chief agencies which resulted in losses was not allowed by the principal to continue indefinitely but a number of agents in the market operating on similar lines in the short term was enough to destroy any attempts at solidity.  

The number of mutual fire insurance companies constituted another problem. These companies not only competed in the agency field but they fulfilled their mutuality by declaring a bonus at the end of each year which was allowed as a discount from the member’s premium in the subsequent year. Non-mutual companies allowed a discount from their rates to match the mutual companies’ bonus.

Pursell mentions the ‘chief’ agency arrangements and mutuals as two of the factors which caused breakdowns of the early tariffs, but he singled out another cause as being of ‘special significance’. This was the conversion of chief agencies for several large British companies into full branch activities. Between 1870 and 1880 a number of major British companies including Royal, Norwich, Commercial Union, North British, Phoenix and Sun

29 The chairman of the New Zealand Fire Underwriters' Association in his annual report for 1893 put the point very delicately when he 'regretted that some of our competitors are not selling their own goods instead of acting in a fiduciary capacity for others because if such was the case I imagine different ideas would speedily prevail'. AIBR, 19 October 1894, p.716.

30 The Sydney Fire insurance market was dominated by mutual companies. Australian Mutual Fire, City Mutual Fire and Mercantile Mutual were among the top five fire insurance companies in the Sydney market measured by fire brigade returns, AIBR, 18 September 1891, p.706. In Melbourne there were several smaller Australian mutual companies, the largest of which was the Colonial Mutual Fire, AIBR June 17 1891, p.457.
converted agency networks into branch offices in Australia, and in the early 1890s Atlas, Royal Exchange and Guardian followed the same pattern.\textsuperscript{31} This seems to be a contradictory argument. Branch offices run by experienced employees under instruction would have been expected to have been more profit conscious than chief agents. However, Pursell had access to the letter books of five of these companies which indicated that there was a common pattern of action adopted by managers of newly created branches. This was, in what was now a familiar tactic, to break into the market by cutting rates and, having established a market share, then support a new tariff. No doubt this was also a considerable factor in the breakdown of early tariffs.

There was little regard for the public interest in any of these tactics. In none of the many editorials or pieces of correspondence in \textit{AIBR} of the period, either encouraging the establishment of tariffs or bemoaning the latest failure, is there any reference to the public interest. Discussion, without exception, is directed to the profitability of the insurance industry.

The Victorian tariff collapsed in 1881 in circumstances of considerable acrimony. In an expanding economy insurance companies sought new business, and poached old business from each other, by rate cutting and the payment of large commissions. The following year a mock epitaph was published in the \textit{AIBR} which 11 September blamed 'surreptitious discounts and private cheques (secret commissions)' for the death.\textsuperscript{32} Feelings were still so bitter two years later that the \textit{AIBR} commented that 'the distrust engendered by past events is too deep-seated to

\textsuperscript{31} Pursell, \textit{Thesis}, pp.296-319.

\textsuperscript{32} \textit{AIBR}, 11 September 1882, p.343.
render [a date for] re-establishment within the bounds of calculation.’

The rise and fall of other colonial tariffs were as frequent as those in Victoria and quite as acrimonious. In 1885 a number of companies combined to set rates for major commercial risks in the Sydney metropolitan area. Not only were several significant British companies not prepared to participate but the compact included an agreement not to pay brokers any commission. Details of the proposal were leaked to the daily press. In response a public meeting of 500 persons in Sydney formed the Merchants’ Fire Insurance Corporation to compete with the published rates. Sydney insurance brokers formed their first association to protect their own interests. The Merchants’ company survived only seven years but it was long enough to destroy that attempt at private regulation and inhibited any further endeavours for more than a decade.  

Insurance companies were so chastened by these events that when a new association, the Fire Underwriters’ Association of Victoria, was formed in 1887 its objects specifically excluded ‘the power to deal with tariffs of rates’.  

The Strength of Local Insurers by 1890

Notwithstanding the strong incursion of British companies Australian insurers held a formidable position in the Australian fire market by 1890. Generally the local

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33 AIBR, 10 October 1882, p.374.

34 Benjamin, pp.36-7.

35 AIBR, 15 October 1887, p.637.
companies operated only in the city in which they had been established with only a few developing branch structures. In Sydney three of the top four companies, by market share, were Australian. Between them these three Australian companies controlled 32 per cent, and all Australian companies 50 per cent, of the Sydney market.\footnote{36} In Melbourne four of the top five companies in 1890 (not the same companies that dominated the Sydney market) were Australian. These four Australian companies controlled 27 per cent, and all Australian companies 38 per cent, of the Melbourne market.\footnote{37}

This difference between Sydney and Melbourne markets is of interest. Although there were 29 non-Australian companies in the Melbourne market and 33 in the Sydney market, Melbourne was the city where most of the British companies maintained their head offices and was regarded as the insurance capital of Australia. Competition in Melbourne from the foreign companies was stronger.

\footnote{36}{Statistics that enable calculation of market share on an Australia-wide basis were not available until 1975 with the establishment of the Insurance Commission. Information on market share for fire insurance is available for certain periods from fire brigade records. Insurance companies had to pay a proportion of the costs of running the brigades and were assessed on premiums collected or sums insured. \textit{AIRR}, 18 September 1891, p.706, made an analysis of the sums insured declared by all insurers to the Sydney Metropolitan Fire Brigades Board during the previous five years.}

\footnote{37}{From premium income declared to the Melbourne and Metropolitan Fire Brigade. Fire Brigade archives.}
Effect on the Australian Insurance Industry of the Financial Crisis of the 1890s.
While a great deal of attention has been paid to collapse of the Australian economy in the 1890s, a crisis which in 1893 enveloped thirteen of the eighteen banks of issue whose Australian head offices were located in the eastern mainland colonies.

By contrast there have been no previous attempts to analyse the effect of the failure of the Australian financial and real estate markets on the Australian insurance industry. It is argued in this thesis that the effect of the financial crisis was the most important factor in the establishment of private regulation of the insurance industry in Australia. As detailed below the local insurance industry was largely eliminated during this period and the few that survived the 1890s were so weakened that they either succumbed in the early part of the 1900s or adopted a much less aggressive market stance. The crisis achieved for the British companies the elimination of smaller competitors without the necessity of the price wars that were waged in Britain to achieve the same ends. The point has been made that the ranks of British insurers in Australia had consisted of chief agents who were replaced by zealous branch managers. By


39 Boehm, op.cit., p 312.

40 Pursell's Thesis contains a section headed 'Failures of Australian Companies' (pp.162-171) which mentions the effect of the 1890s depression in passing. (pp.169-170) See comment below.
the mid-1890s the branch offices of British companies were in a position to dominate the Australian market and to establish firm private regulation in this country.

The demonstration of this point requires the examination of a variety of colonial sources because no central register of insurance companies existed in the 1890s. Establishing the companies that failed can only be done by collating names and levels of premium income from various official records that were in place both in 1890 and 1900. For fire insurance the records of fire brigades are the most reliable. As previously mentioned, in both Sydney and Melbourne insurance companies were required by statute to submit returns of fire insurance effected by them in each city. Insurance companies were levied on these returns for contributions to the upkeep of the brigades. For marine insurance, and the few other insurances effected, the only official record that survives is in Victoria where all insurers were required to be registered under the Stamps Act. Comment and information published in *ATBR* is a useful adjunct to this material.

In Sydney there were 14 local fire insurance companies operating in 1890. In 1900 there were only four left. The total market share of the Australian companies had fallen from 50 per cent to 35 per cent. The four companies that were left were the market leaders mentioned earlier in this Chapter. Of these, the top three still controlled the same market share. 41

In Melbourne only six local fire insurance companies were still in business in 1900 out of the 17 that had traded in 1890. By 1900 the Australian companies in Melbourne

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controlled just 26 per cent of the market by comparison with 38 per cent in 1890. In 1890 four of the five leading companies in Melbourne were Australian controlling 27 per cent of the market; in 1900 only one Australian company was left in the top five and its market share was just nine per cent.42

Companies handling only marine insurance failed too. Information about the income of these companies is no longer available but numbers of those registered to pay stamp duties in Victoria can be determined from the Victoria Government Gazette. In 1890 there were 6 local marine insurance companies licensed under the Stamps Act. In 1900 there were only three. It is not known how many local marine insurers perished in the Sydney market.

From details of financial statements published in AIBR it is possible to determine a further two companies in Adelaide and two in Tasmania that did not survive the decade.

The shift in power from Australian to British and European insurers in Victoria is illustrated in the following Table.

<table>
<thead>
<tr>
<th></th>
<th>1890</th>
<th>1900</th>
<th>CHANGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian</td>
<td>20</td>
<td>9</td>
<td>-11</td>
</tr>
<tr>
<td>New Zealand</td>
<td>7</td>
<td>3</td>
<td>-4</td>
</tr>
<tr>
<td>European</td>
<td>1</td>
<td>4</td>
<td>+3</td>
</tr>
<tr>
<td>British</td>
<td>39</td>
<td>48</td>
<td>+11</td>
</tr>
<tr>
<td>Total</td>
<td>68</td>
<td>64</td>
<td>-4</td>
</tr>
</tbody>
</table>

Source: Victorian Government Gazettes

42 Melbourne Metropolitan Fire Brigades Board Contributions Register, Brigade archives.
The numbers of Australian companies had fallen by 55 per cent whilst the total market had been reduced by only six per cent. The number of British companies had increased by 28 per cent. This shift was commented upon in passing by the AIBR but only in terms of the decline in the number of Australasian companies that appeared in its annual review. Importantly the journal made no reference to the collapse of any one company and the problem that this had created for policy-holders left without cover. The implication is that each company that left the market passed over its client register and its policies to another company still in the market. The fate of the Australian Alliance outlined below seems to have been typical.

Reasons for the Failure of the Australian Companies

AIBR gave a summary of the profit and loss accounts and balance sheets of thirty Australasian companies as at their balance dates in 1890. Fourteen of those companies did not survive the decade. As outlined in Chapter 1 modern standards of solvency of insurance companies stipulate that assets must exceed liabilities by $2,000,000 or 20% of premium income which ever is the greater. An analysis of the accounts of the companies that did not survive shows that all had solvency margins, based on asset values shown in their accounts, in excess of 20% of premium income, and eight had shareholders funds well in excess of the present minimum converted to 1890 currency. The six that would not have passed the minimum requirement still showed healthy asset surpluses.

It would appear that it was asset valuation that was the critical factor in survival. Most of the non-survivors had more than 75% of their assets, according to the AIBR analysis, in 'Loans on Mortgage'. The fall in property
values during the early 1890s had played havoc with these asset bases. 43

The records of two of the largest Australian insurers at the time, Victoria Insurance and the Australian Alliance, still exist and their analysis supports the theory that it was the fall in the value of assets of general insurers which brought about the mass demise of local companies.

The Victoria Insurance Company was founded in Melbourne in 1849 and survived the crisis of the 1890s. Although the Victoria was listed on the stock exchange in 1879, it was closely controlled by one family both in shareholding and management supervision. Henry (‘Money’) Miller was one of the directors on the first board of the Victoria; elected chairman in 1851, he remained in that position until his death in 1887. He was succeeded as chairman by his second son (Sir) Edward Miller who also stayed in that position until his death in 1933. 44 In 1890 the Victoria was the largest indigenous general insurance company in Australia. Unlike its local competitors the Victoria had established branches in other colonies.

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimated No. of Dwellings</th>
<th>Value £</th>
</tr>
</thead>
<tbody>
<tr>
<td>1892</td>
<td>15,844</td>
<td>19,778,330</td>
</tr>
<tr>
<td>1893</td>
<td>15,867</td>
<td>18,983,510</td>
</tr>
<tr>
<td>1894</td>
<td>15,335</td>
<td>16,553,200</td>
</tr>
<tr>
<td>1895</td>
<td>15,146</td>
<td>14,023,650</td>
</tr>
<tr>
<td>1896</td>
<td>15,637</td>
<td>14,467,100</td>
</tr>
<tr>
<td>1897</td>
<td>15,318</td>
<td>14,331,310</td>
</tr>
<tr>
<td>1898</td>
<td>15,075</td>
<td>13,110,490</td>
</tr>
</tbody>
</table>

43 G.H.Knibbs, Local Government in Australia, Commonwealth Bureau of Census and Statistics, Government Printer, Melbourne, 1919, lists in the Table at page 43 the number of dwellings and their values during the period of the crash.

including New Zealand. The paid up capital of the company was £44,935; 89,871 shares of £10 were paid to 10 shillings. During the financial crisis of the nineties the key items in the company’s profit and loss accounts and balance sheets were:

**TABLE 2.2**

<table>
<thead>
<tr>
<th>Year</th>
<th>Premium Income</th>
<th>Net Profit</th>
<th>Dividend per share</th>
<th>Profit as % Shareholders’ Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1890</td>
<td>135,280</td>
<td>18,349</td>
<td>43 pence</td>
<td>29.4%</td>
</tr>
<tr>
<td>1891</td>
<td>136,889</td>
<td>21,775</td>
<td>40 pence</td>
<td>34.5%</td>
</tr>
<tr>
<td>1892</td>
<td>143,414</td>
<td>22,193</td>
<td>45 pence</td>
<td>34.4%</td>
</tr>
<tr>
<td>1893</td>
<td>134,818</td>
<td>34,117</td>
<td>50 pence</td>
<td>52.0%</td>
</tr>
<tr>
<td>1894</td>
<td>170,037</td>
<td>44,430</td>
<td>50 pence</td>
<td>37.9%</td>
</tr>
<tr>
<td>1895</td>
<td>115,452</td>
<td>20,768</td>
<td>45 pence</td>
<td>31.0%</td>
</tr>
<tr>
<td>1896</td>
<td>114,864</td>
<td>17,081</td>
<td>40 pence</td>
<td>24.5%</td>
</tr>
<tr>
<td>1897</td>
<td>168,147</td>
<td>18,031</td>
<td>40 pence</td>
<td>26.0%</td>
</tr>
<tr>
<td>1898</td>
<td>124,783</td>
<td>(23,268)</td>
<td>NIL</td>
<td></td>
</tr>
<tr>
<td>1899</td>
<td>127,798</td>
<td>15,608</td>
<td>10 pence</td>
<td>31.0%</td>
</tr>
<tr>
<td>1900</td>
<td>138,449</td>
<td>29,148</td>
<td>25 pence</td>
<td>50.6%</td>
</tr>
</tbody>
</table>

**Source:** Published accounts and accounting records of the company in Melbourne University Archives.

There are a number of points to be made from these figures. First, that although premium income fell by some 15 per cent from its high of 1890 to its low in 1896, it had recovered by 1900. Income was not greatly affected by the downturn of the economy and its recovery was very rapid. Second, it is difficult to establish a correlation between profitability and premium income but the effect of underwriting losses in 1897 (reflected in 1898 results), which is discussed below, is clear. Third, whether judged by dividends paid per 10/- share, or by a calculation of a return on shareholders’ funds, the company remained profitable. And finally, the loss suffered in 1897/8 financial year was not crippling by
comparison with profits earned in the immediately preceding years.

And yet behind this comfortable facade the company faced a cash flow crisis which almost brought it down. The crisis was engendered by a severe fall in the value of the company's assets brought about by the nineties crash. In 1896 shareholders funds stood at £134,000. Two major assets in the balance sheet, 'mortgage, freehold properties and investments' and 'debentures' represented between them 81 per cent of shareholders' funds.

In late 1897 the great fire of Melbourne almost totally destroyed the city block bounded by Flinders Street, Flinders Lane, Swanston and Elizabeth Streets which housed most of the city's softgoods warehouses and clothing factories. In addition several ships were lost. It was a disastrous underwriting year for the Victoria which was reflected in their 1898 result. (See Table 2.2) Assets had to be realised to meet these losses. At the annual general meeting held to review the accounts to the end of June 1898 Miller advised that, in addition to the trading loss for the year, £20,000 had been written off the value of assets 'as the directors wished to provide for all possible losses that might arise'. What had been, on the face of it, a single bad underwriting year had become a considerable disaster. Realisation of assets to pay losses had revealed the true worth of the company. Total shareholders' funds fell by nearly 40 per cent from £138,000 in 1897 to £87,015 in 1898.

The annual general meeting of 1898 was followed by an extraordinary general meeting to wind up the company. The meeting then agreed to form a new company to take over the assets of the old including its name. In the new company £2 shares, paid up to 11 shillings and twopence, were issued to shareholders. Shares in the old company
which had exposed shareholders to uncalled capital of £9/10/- per share. Assets were revalued again in the reconstruction. Loans on mortgage were reduced from £37,500 to £14,800; real estate was reduced from £52,000 to £47,000. A comparison of the assets shown in the balance sheets of the company for the years 1896 and 1898 shows these movements clearly.

### TABLE 2.3

**ASSETS OF VICTORIA INSURANCE COMPANY SHOWN IN BALANCE SHEETS AT 30 JUNE 1896 AND 1898**

<table>
<thead>
<tr>
<th>Asset</th>
<th>1896</th>
<th>1898</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed deposits</td>
<td>13,158</td>
<td>5,842</td>
</tr>
<tr>
<td>Cash at bank</td>
<td>11,373</td>
<td>15,020</td>
</tr>
<tr>
<td>Bills receivable</td>
<td>144</td>
<td>144</td>
</tr>
<tr>
<td>Balances at branches</td>
<td>6,046</td>
<td>3,052</td>
</tr>
<tr>
<td>Debtors</td>
<td>2,864</td>
<td>4,497</td>
</tr>
<tr>
<td>Mortgages</td>
<td>37,500</td>
<td>14,400</td>
</tr>
<tr>
<td>Real estate</td>
<td>52,000</td>
<td>42,001</td>
</tr>
<tr>
<td>Debentures</td>
<td>14,240</td>
<td>-----</td>
</tr>
<tr>
<td>Govt of N.Z. deposit.</td>
<td>5,000</td>
<td>5,000</td>
</tr>
<tr>
<td>Bank of Victoria Pref.</td>
<td>------</td>
<td>2,200</td>
</tr>
<tr>
<td>shares</td>
<td>------</td>
<td>2,634</td>
</tr>
<tr>
<td>Building Society shares</td>
<td>------</td>
<td>-------</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>142,325</strong></td>
<td><strong>95,240</strong></td>
</tr>
</tbody>
</table>

**Source:** As for Table 2.2

Apart from the company’s own premises there was no investment in real estate. In future years investment in government and semi-government borrowings were utilised when they became available.\(^{45}\)

Another large Australian company, the Australian Alliance, did not have a management as astute as the

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\(^{45}\) Details of the Victoria Insurance Company have been extracted from company records, accounting, minute books and correspondence in University of Melbourne Archives.
Miller family to help it overcome similar problems. In 1890 its assets carried a book value of £573,000. Over the next 15 years it wrote off £300,000 of this value without disclosure in its published accounts. In the meantime the company continued to pay dividends. Nemesis appeared in 1908 when some large claims could not be met from income. The remains of the company were taken over by the London and Lancashire Insurance Company.  

Pursell, in his Thesis, lists the failure or takeover of 166 Australian insurance companies during the period 1871 to 1961. From chairmans’ addresses and annual reports he was able to classify 78 of these exits under eight different headings. These ranged from a takeover of a financially sound company to the demise of fraudulent companies. Surprisingly his reference to the massive departures of Australian companies during the 1890s is confined to one paragraph.

Reasons 3 and 4 (underwriting losses overseas and weakness in assets) were particularly important for companies failing between 1893 and 1909. A few were unable to survive the 1893 crisis. Others were left very weak and were not able to withstand periods of bad underwriting results. Thus, a number revealed large capital losses in 1897-98, although they must have occurred some years before.

These comments are valid but miss the point. Pursell counted 82 local companies that had disappeared from the scene between 1871 and 1910. This represents an average wastage of some 20 companies each decade. Thus the number of failures during the 1890’s was not remarkable.

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However, the central issue of the 1890s was that there were no local new entries and that the few companies that were left by 1900 were a battered remnant that could not afford to try to seize market share by cutting prices. They had been shaken by both the drastic re-valuations of their asset base and the crisis that each faced engendered by heavy underwriting losses.  

Pursell’s list of reasons for the ‘1897 settlements’ (his euphemism for the establishment of the Tariff) advances no fundamental economic reasons for the final triumph of the Tariff. He does not mention the failure of local companies, underwriting losses or the new dominance of British companies as factors. The ‘main developments in the movement’ which resulted in the establishment of private regulation listed by Pursell were the influence of AIBR and the Insurance Institutes (social organisations formed in 1884 which served as a forum for ideas) which were in addition to ‘general reasons for co-operation’ of risk and information sharing.  

A more realistic picture is one of a market now dominated by British companies represented by branch offices, which had also shared in the heavy underwriting losses, keen to replicate the successful structure of their ‘home’ market; and a decimated local industry which yearned for an

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48 Major fires in the manufacturing and warehouse centres of Brisbane, Sydney and Melbourne during the 1890s resulted in severe losses for all insurers. The extent of the losses in Sydney and Melbourne can be gauged by the measure that each loss was well in excess of the total fire premium of the relevant colony for the year of the fire. Benjamin, History, pp.59-60.


50 On a world-wide basis British insurers had not been very profitable. A leading insurer looking back on the period in 1900 pointed out that the return on funds for all British insurers for the seven years ending 1896 was only 7.5 percent and that three-quarters of the surplus came from investment income rather than underwriting profit. J.Ostler, ‘The Cost
easier life. It was a far cry from the scene painted by Carter and quoted at the beginning of this Chapter that all [these associations] were formed at times when intense competition threatened the stability of the market and the security which could be provided for policyholders.

What had happened was that the particular market forces operating in Australia during the 1890s had achieved for the heavyweights in the insurance industry that which direct competition had achieved in Britain earlier in the century. It was not, to use the words of the Scottish company manager quoted earlier in this Chapter, 'the reduction in rates and competition having, it is presumed, been in a degree attained by compelling numerous offices to relinquish the fire business' but rather it was the financial crisis and insurance losses that made it 'but reasonable to look forward to some improvement'.

Structuring the Tariff

The British companies chose to move first in New Zealand. It was in response to a plea, in 1894, that the Fire Offices Committee (F.O.C.) in London should appoint a representative of the British companies doing business in New Zealand to have jurisdiction over the whole colony. The problem in New Zealand arose from competition offered by chief agents; the market was neither large enough nor concentrated enough in any geographical area for many

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price of Fire Insurance', *Journal of the Federation of Insurance Institutes of Great Britain and Ireland*, Vol.3, 1900, p.259. Although the Australian market was a tiny part of their overall income British companies would wish to avoid losses in any part of the world.

51 F.G. Smith, quoted by Dickson, refer footnote No.8.
British offices to set up branches. The F.O.C. refused this request for them to appoint an insurance supremo in New Zealand. But in the following year, 1895, the FOC acted by 'summoning' companies that wrote business in New Zealand to a conference in Melbourne. Over a five week period the conference 'finally adopted rules and regulations for the conduct of business and a tariff of rates coupled, of course, with a classification of risks.' It was this agreement that was to be the model for later Australian tariffs.

In Victoria, the Fire Underwriters' Association (FUA) decided to act in stages. The committee of the Association consisted of five branch managers of British companies, one manager of a New Zealand company with branches in Australia and the manager of one Australian company, the Australian Alliance! Their first steps were to standardise discounts offered by proprietary companies to match mutual companies' bonuses, and to set commission rates that would be paid only to recognised insurance brokers. The 'Discount and Brokerage Agreement', signed by all fire companies operating in Victoria, came into effect on 1 March 1896. Under the discount section the precise allowance that signatories could make to meet the mutual companies' bonus would be promulgated each year. Under the brokerage section companies could allow only the rate of commission set by the agreement to an approved list of brokers. Insurance brokers were thus

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52 AIBR, 19 October 1894, p.715.
53 AIBR, 19 June 1895, p.397.
54 AIBR, 19 January 1897, p.37.
55 'The continued existence of fire offices is not dependant on the goodwill and services of that large army of individuals who, in these days of depression, have constituted themselves insurance brokers'. AIBR, 19 December 1895.
privately licensed by the companies. One of the pre-requisites for licensing was that brokers had to sign an agreement that they would place business only with insurers who were members of the FUA.56

It was this agreement, which was later to be incorporated in the full Tariff, which was one of the major factors which set Australian private regulation apart from the British form. The Australian Tariff cast the agency system in stone and codified this form of non-price competition. It was a practice invented in Australia which was never to be a part of agency practice in Britain.

The full fire Tariff was completed and brought into effect in Victoria one year later on 1 March 1897. It was signed by all 43 fire insurers in the Colony. There were 26 sections to this original Tariff. After sections containing the list of members, the articles of association (the objects were stated blandly as being 'to promote...the maintenance of uniform and sound practices in Fire Underwriting...'), there were eleven pages of regulations concerning the types of policy that could be issued, reinsurances ('no reinsurance shall be given to or accepted from a company...which is not a member of the Association'), and other details of procedure.

The 'Discount, Brokerage and Agency Agreement' followed. This section ran to 19 closely worded pages that endeavoured to ensure that no company could gain an advantage by offering any discount or agency allowance that was not available to any other company. Rules concerning the number of agents, and their rate of commissions, that could be appointed by each company for the city of Melbourne, each of its suburbs and each

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56 Benjamin, History, pp.47-53.
country town was prescribed. The number of agencies and their remuneration has already been described in Chapter 1. It will be argued later that it was this section of the Tariff that contributed largely to the maintenance of inefficiencies in the market by these expensive distribution costs. The appointment of agents, directors and advisers became the focus of non-price competition.

The largest section of the Tariff was devoted to the manner in which fire rates were to be calculated for every building and its contents in the Colony. Every city, town and country area in Victoria was classified by risk according to water supplies, fire fighting capacity and bush fire hazard. Particularly hazardous industries, flour mills, sawmills, tanneries, and public stores, had their own sections of rating instructions and every other known trade or industry from acid works to yeast factories were classified in a general section according to risk. The next part of the rating matrix was constituted by construction of the premises to be insured whether of brick, wood or mixed; these basic ratings were qualified by sections relating to light and power installations, storage of inflammable liquids and discounts offered for fire fighting equipment. It was an extremely comprehensive document.

This rating of every fire risk in the state was the second major departure from the British model. It will be recalled that the latter dealt only with a number of specific risks and some industries; no attempt was made to bring all classes of fire risk within the British tariff system. The expense of rating every risk in the country and the levels of commissions built into the agency system were matters of criticism levelled at

57 Details of the Tariff in these paragraphs are taken from a Victorian Tariff dated 1 March 1897 and updated to 27 April 1906 in the archives of the Insurance Council of Australia.
Australia by British head offices from time to time. The overseas manager of the Sun Insurance Office in London was critical that the Australian tariff was costly to administer because of its complexity; he calculated his company’s expense rate for Australian business at 45 per cent. And he was critical of the Australian mania 'to regulate everything whether they understand it or not'.

A similar Tariff was introduced in New South Wales in October 1897 and in the other Colonies soon after. All companies in Australia were signatories to the individual agreements for each Colony.

These rating methods were, said the AIBR, an improvement of the 'imperfect rule of thumb methods' of the past but they were not, as claimed by the AIBR, putting 'the whole business on a scientific basis'. However, the ratings were not the result of analysing data accumulated over many years. Some of the rating details, such as increasing the rate on a brick building by one shilling per cent if it was attached to or within 10 feet of a wooden building, or deducting two shillings and sixpence per cent from the rate on a wooden building if all the walls were lathed and plastered, could not have been supported by statistical evidence. No uniform system of data collection was in existence that would have allowed the calculation of such fine detail or even the basic rating structures. The Tariff fire rates were a codification of experienced insurance managers' rules of thumb that were designed to create a profitable structure.


59 19 January 1897, p.37.
which included a sufficient margin for non-price competition through an extensive agency system.\(^{60}\)

One of the contemporary critics of the Tariff was John Goodwyn. He was an actuary who, early in his Australian career as manager of a British company, was elected to chairmanship of a federal Tariff committee. Goodwyn, who takes a leading part in incidents related in Chapter 4 of this Thesis, commented on the Tariff structure and rating methods that it appears that they have never scientifically investigated their actual experience and that the rates to all intents and purposes have...been fixed by guess work. Agents have been paid as much as 25 and 30 per cent...and rates have to be maintained at an unduly high level to provide for these excessive commissions.\(^{61}\)

A Tariff for marine risks for all the Australian colonies except Tasmania and Western Australia was completed on 2 August 1897. This agreement allowed its members to pay 10 per cent commission to 'bona fide agents' but the payment of commission to all others, including brokers, was prohibited.\(^{62}\) This refusal of marine insurers to pay brokerage is of importance because, as discussed in

\(^{60}\) Evidence was given to the 1908 Royal Commission on Insurance, see Chapter 3, suggests that this was how Tariff rates were established.

\(^{61}\) Goodwyn's private files in the archives of the Queensland Insurance Commissioner. This quotation is taken from an attachment to a document headed 'Insurance Act of 1916. Fair copy handed to the Minister 27.9.1916.'

\(^{62}\) Minute books of the Marine Underwriters' Association, Latrobe Library, Melbourne.
Chapter 8, it was to be a critical factor in the ultimate failure of the Tariff in Australia.

The reasons for this stand by marine insurers on agency commissions and brokerage were not spelled out. Two possible explanations are put forward. The first is that the 'culture' of agency and broking as a marketing technique for fire insurance was never a part of the marine insurance market in Australia which consisted of a few specialist insurers. This is in contrast to Britain where brokers were central to the functioning of marine markets like Lloyd's or its clones, because a specialist knowledge was needed to place business with the many individual underwriters making up the market. But the second factor was that marine insurance was seen as a necessity by merchants sending their goods by sea; the perils of shipwreck and losses of vessels which just failed to arrive were so common that marketing of insurance through an agency network was regarded as unnecessary.

Public Reaction to the Introduction of Tariffs

Apart from the few isolated incidents recounted below there is no record of opposition to the introduction of the Tariff. The Melbourne Age ran its first editorial on the subject on 26 May 1897. The paper condemned the 'combination' of fire insurance companies in very scathing terms. It pointed out that the depression had not increased the number of fires and that if some companies had lost money recently then this was due to bad management and the 'notoriously extravagant' system of agency appointments. If companies entered into agreements to increase rates, the paper warned, then insurance companies must expect either legislation to prohibit price rings or that their action would invite competition from the state.
Two days later the paper ran its second editorial on the subject. It had examined figures, obtained from the AIBR, which showed that during the twelve years to 1895 the record of Australian fire and marine insurance showed a profit £1 million from underwriting for the period. These figures refuted the claims of insurance companies that they had lost money in recent years. The Age supported the resolution carried at a conference of local councils and shires, held in the Melbourne Town Hall a week earlier to protest rate increases demanded in the new tariff, that insurance should be offered by municipalities in conjunction with their rates as competition for the companies. This was the often mooted 'municipal insurance' option of the time. Municipal insurance, although it remained as a discussion point for a number of years, never became a reality in Australia.

Public reaction took two forms. First, a number of wealthy instrumentalities in the Colony, among them the Government, the Melbourne Harbour Trust and the Railways decided either not to insure their assets at all or only to insure the more hazardous ones. The Melbourne City Council, after first withdrawing, decided by a narrow margin of votes to continue insuring. Second a number of large warehousemen and clothing manufacturers with British connections sought to break the Tariff by arranging insurances in London. This attempt to run the blockade was thwarted by the FOC in Britain. It prohibited such placements in the London market either with their own members or by British Tariff brokers or

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63 Where AIBR obtained these figure from is not known. It did not publish such figures in a tabular form, nor was it available from any central source. The results of Australasian insurers were known from annual reports but the results of foreign insurers operating in Australia were not known.

64 AIBR, 19 March 1898, p.178.
agents. Notwithstanding the labelling of such action by the London Drapers’ Record as ‘oppressive behaviour’ it was successful. ⁶⁵

When the Tariff was introduced in New South Wales it was welcomed by The Sydney Morning Herald. Insurance companies wanted to get rid of ‘unfair competition...from an unscrupulous rival’ and the ‘general outcry’ heard in Victoria earlier in the year would soon pass when ‘cooler heads’ prevailed. ⁶⁶ This editorial was hailed by the AIBR as ‘a very fair presentation of the subject to the general public.’⁶⁷ The Sydney Morning Herald editorial was the only contemporary comment which raises the question of whether the Tariff served the public interest. It did so in a very guarded and limited manner.

If no great increase in prices has been made then the public gains by the new combination because it is a guarantee against the operation of weak companies, which in the event of a big fire would collapse...⁶⁸

The paper was not specific how the public would be protected except by the implication that under a Tariff system there would be no weak companies.

Consolidation of Private Regulation

Accident Tariffs, which covered all forms of insurance that fitted neither fire or marine classifications, such as workers’ compensation, plate glass, burglary and motor

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⁶⁵ AIBR, 19 January 1900, pp.39/40.
⁶⁶ 4 October 1897.
⁶⁷ 19 October 1897, p.712.
car, were established by Accident Underwriters' Associations in each colony. Eventually the Australian Tariff system included all forms of insurance. It exercised much broader control than its British progenitor which left many forms of insurance cover unregulated. 69

Rather than opposition from either the public or governments it was an internecine war within the Tariff which almost brought about its collapse in 1906. Disagreement surfaced on two fronts. The first and most serious arose out of disputes engendered over agency networks when one company was taken over by another. The second was over breaking the Tariff by a major British company in an attempt to gain market share in Perth.

The number of agents appointed by each company was a running sore on the corpus of an otherwise successful Tariff. In 1899 the Victorian FUA had found it necessary to require from all companies every six months a complete list of all agents and canvassers which had to be verified by the company's chief executive. 70 In essence this was a market-sharing agreement so that the absorption of one company by another highlighted the problem. Was the acquiring company entitled to continue operating all the agencies in the network of the acquired company? The acquiring company believed that the price that it had paid included the important distribution channel of the purchased company. The others left in the

69 AIBR, 20 October 1898, carried an article published in the London Times of 29 August about the British Tariff. It said that at least half the business done by FOC offices was not covered by any tariff. Private houses, most public buildings and a large number of businesses were unregulated.

market saw a proliferation of such takeovers as a debasement of the original market-sharing agreement.

Takeover of competitors was a feature of the British insurance industry during the last decade of the nineteenth century and the first quarter of the twentieth. Specialist marine or accident companies were absorbed by large fire companies as an economic way of moving into these markets. Companies expanded by buying other companies for their client and agency networks. Raynes counted more than 60 companies that were taken over in Britain during this period.\(^\text{71}\) This was reflected in Australia; companies that had previously operated individually were amalgamated. And British companies in Australia had absorbed their Australian rivals or picked up failing or failed companies.\(^\text{72}\) By 1906 these activities had put a severe strain on the carefully constructed agency agreements. Larger companies had acquired extensive agency networks through takeovers and smaller companies were being left behind.

It was this issue that brought state Tariff organisations, which still operated as autonomous bodies with no central organisation, to a conference in Melbourne on 29 October 1906. The meeting was attended by the chief executives of all companies in Australia. The conference took the name of 'The Fire Underwriters' Association of Australia and Tasmania'. A sub-committee was appointed to come up with a solution for mergers and absorptions and a full meeting of 1 November accepted their recommendations. These were to allow the takeovers

\(^{71}\) Raynes, *A History of British Insurance*, Chapter XVIII.

\(^{72}\) In 1930 there were 98 members of the Victorian Tariff but in fact 42 of them were subsidiaries of other member companies. Of these takeovers, 18 had occurred before 1910. Archives of the Insurance Council of Australia.
already completed to include all existing agency arrangements but, for the future, acquiring companies should 'obtain no advantage' from the agency networks acquired. This did not satisfy the Australian managers of two of the major British companies who threatened to withdraw from the Tariff. At a meeting in January 1907 the members of the Association, which included Australian and New Zealand company general managers, voted unanimously to refer the matter to the FOC in London for solution. On 21 March the august London body responded by upholding the decision of the Association reached in November and delivered a reprimand to the British managers who were creating the problem. 73

During the course of these events the Perth fire Tariff fell into total disarray. Although insurance agencies had existed in Perth for many years branch offices were the product of the boom in that city following the Western Australian gold rush. Competition between the managers of recently established branches was very keen. The collapse of the Tariff was engineered by the local manager of Royal Insurance Company who engaged in the tested technique of cutting rates to obtain a larger foothold in the market. The Royal offered the Fremantle City Council a 50 per cent reduction in rates; when their offer was accepted it withdrew from the Tariff. Mayhem ensued. On 30 November 1906 the local press in Perth carried advertisements from most companies that Tariff rates no longer applied and that they would quote lowest rates for fire business.74

73 The companies concerned were the Guardian and the Phoenix. Association Minute Books in the archives of the Insurance Council of Australia.

74 Benjamin, History, p.66-7.
This collapse was referred to the meeting of the new Association taking place in Melbourne. Coming in conjunction with disagreements concerning acquired companies the meeting decided that 'a Council of Control and reference be formed with a view to ensuring the maintenance of Tariffs throughout Australia'. 75

It took several years to sort out the Perth debacle. Insurers had given their new clients three year contracts at discounted rates and these could not be abrogated without further loss of face for the industry. It was not until 1909 that a federal roof body for the Tariff was in place. Known as the Council of Fire and Accident Underwriters' Association of Australia (CFAU), and composed of the general managers of the largest and most influential companies, it acted as the appeal court for state Tariff bodies, approved new Australia-wide Tariffs of rates and policy terms (motor car, plate glass, burglary, seaman's compensation, livestock, sprinkler leakage and consequential loss in 1910; public risk in 1911; and motor cycle in 1913) and acted as a general watchdog over the industry including negotiations with governments. 76

A federally organised privately controlled regulatory system was in place for the general insurance industry in Australia that controlled price, product and distribution. The only 'non-price' competition possible was at the margins of regulation through the manipulation of agency arrangements. Although breaches of these agreements could be reported and penalised by the CFAU, as could any other breaches, the manipulation of agencies was less likely to be as easily detected as a straight

75 F.U.A. Minutes, 12 December 1906.
76 Ibid.
cut in rates or issuing a policy that offered a broader cover than allowed by Tariff forms.

Conclusion

The circumstances surrounding the establishment of such a Tariff organisation should have provided those wishing to propound a 'public good' argument an excellent opportunity to extol the virtue of establishing an industry not prone to the recent collapses. The only attempt at such an argument that has been traced was the Sydney Morning Herald's half-hearted effort quoted earlier.

Generally the 'public good' arguments propounded to support the operation of cartel-like insurance organisations appear to have been developed with hindsight. There are many examples in Britain, U.S.A. and Australia which date from after the introduction of private regulation in each country and were developed to support an existing system.

The underlying economic argument put forward in those documents involves the uncertainty of the cost of claims which comprises the major proportion of general insurers'

77 An early published British justification is in F.J.Kingsley, 'Tariff Legislation' Journal of the Federation of Insurance Institutes of Great Britain and Ireland, Vol.2, 1899. 'The subject of my paper is not political' declared the author. The intention of the article was to demonstrate that the rating structure of the Tariff encouraged safer building and factory layout because it rewarded better risks with lower rates. Indeed the insurance inspector could 'insist on risk improvement under the threat of heavy penalties'.

An impressive American justification of privately controlled pricing is in the 'Merritt Committee Report' of 1911 to the Senate and Assembly of the State of New York which was referred to in the previous Chapter.

In Australia M.T.Sadler, 'Underwriting Associations and their Relations to the Public' Journal of the Incorporated Australian Insurance Institute, Vol.2,1920, pp.153-196 is one of the earliest in-depth studies of the subject to achieve publication.
costs. The problem of having to determine the price of a product in advance of knowledge of the most significant part of its cost is one of the distinguishing feature of insurance. And because, the argument extends, the number of risks insured by an individual general insurer are statistically inadequate to project claims costs for the future, the pooling of data from a group of insurers is the only way to reduce this inherent uncertainty.

It follows that rating structures established by individual companies would lead to them using rates which were too low to support the known claims experience and expense rates of the industry plus a profit. Pooled claims experience would establish sets of prices from which, variations in long-run costs apart, individual companies will depart at their, and their customers' peril.

Experience appeared to show these authors that free competition between insurance companies tended to produce rates that were too low. This imperiled weaker companies and put their policy-holders at risk of not only loosing the premium that had been paid but worse of having no protection. Professor Supple expressed this view.

the harsher criticisms made against the (tariff) offices were not always justified. For one thing, violent competition, if it produced rates less than the risk warranted, could well lead to the sort of insecurity and failures which would do harm to the public as well as the industry.78

The evidence of Australian markets in the nineteenth century does not support these views. The massive failures of the 1890s were not the result of extreme

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78 B.Supple, Royal Exchange, p.129
competition but of a sharp decline in asset values compounded by the need to realise these assets to pay for a run of unusually heavy losses. Indeed empirical evidence points to a remarkable stability for the results of Australian insurers for the decade 1887 to 1896. Information for the whole market is not available because British and other foreign insurers did not make returns in respect of their Australian business. A spread of Australian insurers should be representative of the results of the whole market.

Table 2.4 illustrates that it is difficult to argue that extreme competition had brought about the failure of so many insurers and that restructuring prices would have saved those that failed. Perhaps it was the absence of such evidence that silenced those who would have liked to put forward public interest as the driving force of these cartel-like arrangements.
TABLE 2.4

LOSS RATIOS, CLAIMS TO PREMIUMS AS A PERCENTAGE, AND EXPENSE RATIOS, EXPENSES TO PREMIUMS AS A PERCENTAGE, OF AUSTRALIAN INSURERS 1887 TO 1896

<table>
<thead>
<tr>
<th>Year</th>
<th>Premiums</th>
<th>Claims</th>
<th>Expenses</th>
<th>Loss Ratio</th>
<th>Expense Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
<td>%</td>
<td>%</td>
<td></td>
</tr>
<tr>
<td>1887</td>
<td>586,853</td>
<td>360,329</td>
<td>168,345</td>
<td>61.40</td>
<td>28.69</td>
</tr>
<tr>
<td>1888</td>
<td>631,373</td>
<td>379,725</td>
<td>170,153</td>
<td>60.14</td>
<td>26.95</td>
</tr>
<tr>
<td>1889</td>
<td>612,244</td>
<td>410,432</td>
<td>179,196</td>
<td>67.04</td>
<td>28.53</td>
</tr>
<tr>
<td>1890</td>
<td>602,890</td>
<td>366,804</td>
<td>172,034</td>
<td>60.84</td>
<td>28.53</td>
</tr>
<tr>
<td>1891</td>
<td>604,566</td>
<td>423,367</td>
<td>178,859</td>
<td>70.03(a)</td>
<td>29.58</td>
</tr>
<tr>
<td>1892</td>
<td>557,230</td>
<td>331,282</td>
<td>167,967</td>
<td>56.41</td>
<td>30.14</td>
</tr>
<tr>
<td>1893</td>
<td>490,843</td>
<td>208,288</td>
<td>162,986</td>
<td>42.43</td>
<td>33.21</td>
</tr>
<tr>
<td>1894</td>
<td>472,313</td>
<td>226,735</td>
<td>155,902</td>
<td>48.01</td>
<td>33.01</td>
</tr>
<tr>
<td>1895</td>
<td>462,185</td>
<td>252,957</td>
<td>155,366</td>
<td>54.73</td>
<td>33.62</td>
</tr>
<tr>
<td>1896</td>
<td>489,901</td>
<td>259,071</td>
<td>165,744</td>
<td>52.88</td>
<td>33.83</td>
</tr>
</tbody>
</table>

Sources: Data has been extracted from results of individual companies published in AIBR, and some tabulations prepared by that paper, over the period.

Note: (a) This was the result of a severe fire in the manufacturing centre of Sydney.

Total profitability is calculated by adding the loss ratio to the expense ratio. It is a crude calculation but the only one available from this period where it was universally accepted as a measure of profitability. It takes no account of investment income and does not lend itself to any measure of return on funds employed.

A cartel-like organisation had set up an agency system which fulfilled two purposes. It was a market sharing agreement and it offered an opportunity for non-price competition. A pricing and product agreement had been put in place which provided marginal operators with a place in the market and ensured monopoly style rents for the most efficient.
CHAPTER 3

THE FIRST ATTEMPTS AT GOVERNMENT REGULATION 1908 - 1915

The basic principle of the measure was to let the public know what was going on and to let public opinion effect its own salvation.¹

A General Movement Towards Regulation

The later years of the nineteenth century and the early years of the twentieth saw a broad movement towards the regulation of insurance. This regulation was directed primarily towards life assurance. In an era that was only slowly developing government funded social security benefits ² life assurance companies undertaking this class of business, particularly those selling sixpence a week 'industrial assurance' policies, were seen as trustees of the peoples' savings and that these should be protected by law. ³ In some countries the regulation of general insurance followed. Australian development of industrial policies came later. The major mutual life companies moved slowly into this field in the early 1900s, but the movement was not widespread until after World War I.⁴ Pressure for regulation in Australia from this source did not arise until much later.

¹ W.M.Hughes', Federal Attorney-General, summary of the Insurance Bill which was then before the Federal Parliament. He was addressing a deputation of insurance company managers that waited on him on 16 June 1915. Quoted AIBR 21 June 1915, p.567.


³ Clayton, British Insurance, suggests that 'there developed a growing feeling that...industrial life assurance was a thinly disguised swindle organised at the expense of the poor'. p.123.

The collapse of a major British life company, the Albert, in 1869 triggered the Life Assurance Companies Act 1870 in the U.K. The first feature of the Act was that life companies were required to deposit a sum of £20,000 with the Court of Chancery before a certificate of incorporation would be issued. The deposit could be withdrawn when a company's life assurance fund reached £40,000. Other sections of the legislation related to the style of accounts that had to be kept, the manner of handling proposals for amalgamation and winding up, and the methods by which this information was to be advised to shareholders and policyholders.\(^5\) It was legislation that was designed to keep fraudulent promoters out of the market by the size of the deposit; but otherwise the principle adopted in the legislation was that of 'freedom with disclosure'.\(^6\) There were no restrictions on company operations but the legislation imposed obligations to report on a company's activities. No agency was established, or empowered, to act on that information; responsibility for doing so rested with shareholders and policy holders.

The introduction of insurance regulation in major European economies and the U.S. at the turn of the nineteenth century has been noted in Chapter I. In 1906 the AIBR reported a movement in both Britain and the U.S.towards further regulation of life insurance.\(^7\) In the U.S. the reasons were a number of scandals concerning life companies in New York.\(^8\) But other than perhaps a flow on effect of those matters there were no failures or

\(^5\) Raynes, pp.349-352.

\(^6\) Finsinger, Hammond and Tapp, pp. 12, 21-2.

\(^7\) AIBR, 20 January 1906, pp.38-9.

\(^8\) New York Times, editorial 10 January 1906.
allegations of fraud in Britain that could be cited as being a trigger for regulatory reform in that country.

However, in Britain a bill was introduced into the Lords to amend the Life Assurance Act and to appoint a Royal Commission to examine the issue. It was also intended to empower the Board of Trade to take action if insolvency was apparent; certain types of insurance contracts which were seen as exploitative were to be prohibited; and foreign companies were to be required to hold sufficient funds in Britain to satisfy their liabilities in that country. Rather than a Royal Commission The Lords chose to appoint a Select Committee. The recommendations of the Committee suggest that it was control of the activities of foreign companies operating in Britain that was the paramount concern of the legislators. The Committee’s only recommendations were that deposits under the Act should not be withdrawable and that British trustees should be appointed to foreign life companies operating in Britain.

In the United States, where regulation was controlled by the states, Roosevelt’s Message to Congress in December 1905 sought to introduce federal legislation to take over these activities. The AIBR report which gave this information also mentioned a suite of bills for the supervision of life companies that were being introduced in the state legislature of New York. These ‘Armstrong’ bills were passed later that year under which

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10 Ibid. 21 August 1906, p.698.
11 These 25 bills were introduced in response to the report of a committee of inquiry of the New York legislature known as the ‘Armstrong Committee’ after its chairman Senator W.M.S.Armstrong. New York Times, 20 January, 23 February, 6 March, 1906.
all activities of life companies were regulated from the products that could be sold to the investments that were allowed. 12

The British government first moved to regulate a section of non-life insurance in 1907 with the Employers' Liability Insurance Companies Act. The government wished to prevent a possible flow on to injured workers if the insurer of an employer's liability were to fail. Similar deposit requirements were applied to new companies undertaking this class of business as for life insurance and annual reports on employers' liability insurances had to be made to the Board of Trade. This generated debate about extending legislation into the fields of fire and accident insurance. 13

Australian Responses

With the exception of New South Wales all the Australian colonies had followed the original British legislation of 1870 for the regulation of life assurance. 14 There was no legislation at all in New South Wales.

However it did not appear to be a situation calling for urgent measures by government. Only one Australian life company, the Industrial Mutual in 1888, is on record as having gone into liquidation during the nineteenth

12 AIBR, 20 July 1906, pp.598-9. See Meier, The Political Economy of Regulation, pp.57-59, for an effective overview of this period.

13 Clayton, pp.124-130; Raynes, pp.352-4.

14 A.C.Gray, Life Insurance in Australia, an Historical and Descriptive Account, McCarron Bird, Melbourne, 1977, pp.171-2. Legislation was enacted in the following years with varying deposit requirements. Victoria 1873, £5,000; Tasmania 1874, £5,000; South Australia 1882, £5,000; Western Australia 1889, £10,000; and Queensland 1901, £10,000.
A further six life companies between the years 1846 and 1900, had to transfer their life or industrial business to other companies but with no losses to policyholders. The original draft of the Australian Constitution contained no reference to insurance. However a clause was introduced at the Adelaide convention in 1897 extending the Powers of the Parliament to include this branch of commerce. The clause that was agreed read simply 'insurance other than State insurance'. The debate about the proposed amendment was concerned only with the exclusion of State insurance conducted within its own boundaries. There is no reference to the underlying reason for the inclusion of insurance. The Constitution gave Parliament full powers to legislate in respect of all classes of insurance in the terms adopted by the 1897 conference.

In the early years of Australian federation there was no call for the use of these powers. In 1906 Littleton Groom, then minister for Home Affairs in Deakin's Liberal

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15 The Industrial Mutual was established in Brisbane in 1884 to write only industrial life assurance, the first company in Australia to offer this cover. It endeavoured, unsuccessfully, to market its product in the far North and the outback of Queensland. Its collapse four years later brought little reaction in Melbourne and Sydney. Gray, Industrial Life Assurance, pp.31-33.

16 Insurance and Superannuation Commission Annual Report 1991-1992, A.G.P.S., Canberra, 1992, lists in Table 3.2 all life assurance companies that have ceased transacting business in Australia. The earliest entry is 1846. Unfortunately no such official record of non-life companies exists.


18 Section 51 (xiv).
Protectionist administration, sought to bring in a bill to regulate foreign life assurance companies operating in Australia. He was, presumably, influenced by the British Select Committee's recommendation. The bill was read a first time later that year but proceeded no further.

In 1907 the AIBR reported more developments overseas concerning regulation of life assurance. The New York legislation controlling life assurance was being copied in 27 other U.S. states. In South Africa the president of the Insurance Institute was lobbying government for federal legislation.

On 5 June 1908 the Melbourne Age reported that the Federal government had been approached by directors of the Citizens' Life Assurance Company to appoint a royal commission to make recommendations for 'legislative control in the interests of policyholders and shareholders' of life assurance. Although the Age gave its approval to the suggestion, and said that the government was supposed to be considering the matter, it offered no reason for the Citizens' Life's overtures. During that year Citizens' Life business was 'transferred' to the Mutual Life and Citizens' Assurance Company (now the MLC), one of the large Australian

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19 Groom, later Sir Lyttleton, was a barrister and judge turned politician. In his early years in parliament he was involved in a wide range of activities designed to expand Commonwealth influence. He played a major part in drafting and carrying legislation that introduced Commonwealth invalid and old age pensions. D.Carment, 'Lyttleton Groom', B.Nairn and G.Serle (eds.) Australian Dictionary of Biography, Melbourne University Press, Melbourne, 1983, Vol.9.


21 AIBR, 20 June 1907, p.492 and 20 December 1907, p.1058.

22 Insurance and Superannuation Commission Annual Report, 1991 - 92, AGPS, Canberra, 1992, Table 3.2
mutual life companies, so it is a reasonable assumption that the Citizens’ Life interest in legislation was connected with its own survival rather than the general interests of policyholders and shareholders.

The following day, 6 June, the Age carried a column heading that ‘Great Interest [was] Aroused’ by the prospect of a Royal Commission ‘especially amongst the policy holders in the working classes.’ The interest stemmed, thought the Age, from its article on the previous day. The newspaper reported that, in answer to a question in Parliament, the Prime Minister informed the House that a royal commission was under consideration by the government.

On 24 September 1908 King O’Malley, Labor member for the seat of Darwin in Tasmania, moved a private member’s motion in the Federal Parliament to appoint, not a royal commission but, a select committee for the purpose of

1. Inquiring into the methods of operation of Fire, Life Prudential, and Industrial Insurance Companies.
2. Reporting on and recommending a system which, while economical, will guarantee the poor against extortion. 23

O’Malley, the ‘mountebank from North America’ 24, was a life insurance salesman, ‘the Travelling Commissioner for the Equitable Life’, turned politician. 25 O’Malley had

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23 C.P.D., p.334
25 Hoyle, King O’Malley, pp.29/30, 84.
an interest for many years in regulating life insurance and banking. In 1893 he had written to the Adelaide newspaper, *The South Australian Register*, urging legislation for banks and a law that would 'guarantee the solvency of life assurance companies'. 26

When Littleton Groom, now Attorney-General in Deakin's administration, joined the debate that followed it seems clear that O'Malley's motion had been put in order to give Groom the opportunity to make a statement. Groom suggested that there was a widespread feeling in the community that the government should use its express constitutional powers to legislate in respect of fire, life and marine insurance. There were, said Groom, two other notices of motion dealing with insurance. One related to fire insurance 27 and the other was his own 1906 bill on life assurance. Groom indicated that in 1907 he had a draft life assurance bill, following the English model, prepared. As there was no British precedent for regulation of fire insurance he had corresponded with authorities in the United States for information on their approach to the matter. Groom also indicated that he was conversant with recent U.K. legislation modifying the law relating to marine insurance.28

Groom undertook to take to Cabinet a proposal that a Royal Commission should be appointed rather than a Select

26 In a letter to the editor, 1 June 1893

27 One notice was a private member's bill unsuccessfully introduced in 1906 and again in 1907, The Federal Fire Insurance Bill, which sought to require insurers to pay the sum insured shown on the policy, in the event of destruction of the property, without the insured having to demonstrate the value of the property at the time of the loss. C.P.D., 9 August 1906 and 25 July 1907.

Committee which, under existing legislation, would lack the power to conduct an adequate inquiry. 'We have to consider', said Groom whether we should have complete supervision over insurance business - whether we should have a superintendent of life, marine and fire insurance.29

He went on to explain that, in his view, legislation in respect of fire insurance was 'particularly' necessary because it had been impossible for him to obtain any satisfactory statistical information from the industry concerning its operations. He proposed that the Commission should look at insurance law generally as well as business methods.

In the debate that followed Hutchinson, the member for Hindmarsh, recounted that in South Australia insurance company returns to the local Fire Brigades Board were so jealously guarded, in case details were revealed to competitors, that the secretary of the Board had been persuaded by the companies not to disclose individual returns even to his Board members. Hutchinson went on that it is no secret that there is a solid ring controlling fire insurance - one that has operated most injuriously for years, according to some of the leading business people of South Australia.30

No defence of the insurance industry was forthcoming during the ensuing debate despite 'this House being', as

30 Ibid. p.340
claimed by a Labor member, 'as full of insurance directors as a Hawthorn bush is of berries'.

The Melbourne *Age* on 26 September gave second place in its leader to O'Malley's motion. The newspaper's somewhat extravagant opening claim was that

the question of Australian insurance has become almost exigent with us. The many articles which have appeared in the columns of *The Age* have ripened public thought and made the subject ready for legislative attention.

However the substance of the leader was largely a summary of the parliamentary debate highlighting the unanimity in the House that there should be uniformity of insurance law in Australia. The only reason that the newspaper offered in support of its approval of the parliamentary initiative was that

the principal grounds of complaint are that the insuring public have too little security. They have to pay too high premiums and are without adequate safeguards on their policies.

Melbourne's other daily, the *Argus* made no report or comment.

**Royal Commission Appointed**

Debate was resumed on 8 October and the House was informed by Hume Cook, the Liberal whip who was a minister without portfolio, that the Government's decision was to appoint a small Royal Commission as

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foreshadowed by Groom. This must have been a disappointment for O’Malley who had seen himself as a member of a Select Committee. 32

Notwithstanding the fall of Deakin’s second administration in November Andrew Fishers’ government proceeded with the appointment of a Royal Commission which received its Letters Patent on 16 December 1908. It was the fourteenth Royal Commission appointed since Federation and stands with other Royal Commissions that had been previously appointed on such important questions as Commonwealth tariffs, old-age pensions, shipping services, the butter industry, tobacco monopolies, secret drugs and the site of the Commonwealth government. 33

The governments of the day clearly vested the question of insurance regulation with some degree of importance; this was to be the first Commonwealth Commission not consisting chiefly of members of parliament. 34

The composition of the Commission was much as foreshadowed by Groom when he said that he wanted both the law and the practice, based on sound statistical evidence, examined. The two Commissioners appointed were Mr. Justice J.H.Hood of the Victorian Supreme Court and J.H.Knibbs the Commonwealth Statistician.

It was a nice combination of talents. Hood, later Sir Joseph, was the first barrister born and educated in Melbourne to be appointed to the Victorian Supreme Court.

32 During debate on 24 September O’Malley, in supporting his motion for a Select Committee, had proffered his services on the grounds that ‘I think I know as much as anybody of the [insurance] game’. p.341.

33 D.H.Borchardt, Checklist of Royal Commissions, Select Committees of Parliament and Boards of Inquiry.

34 Sawer, 1901-1929, p.79, Footnote 98.
He was known as the 'lightning judge' because of the speed with which he delivered his fair and careful judgements. Knibbs, later Sir George, was appointed the first Commonwealth statistician in 1906. A licensed surveyor who later turned to science and statistics, Knibbs presided over the conference of state statisticians which produced the first Commonwealth Year Book. He achieved international recognition for his work in statistics. 35

The Commission was charged 'to inquire into and report upon the law relating to and the methods of operating Fire, Life, Industrial and other Insurance in Australia' 36. The Commissioners described their methodology in relation to their inquiry into fire insurance in terms of seeking information from the Australian Federal and State Governments concerning existing legislation and practice, and obtaining answers to a series of questions from companies transacting fire insurance in Australia. They also advertised in the public press for submissions but reported that the response was 'practically nil'. 37

It is clear that the Commissioners regarded the regulation of life insurance as being of greater necessity and urgency than fire insurance. Life companies dealt with the life savings of a proportion of the community as well as handling long term insurance contracts. By comparison fire insurance was 'a traffic in contingencies' of short duration 'terminable at the will


of either party'. Knibbs attended an international conference of actuaries, which was concerned with regulation of life companies, in Vienna in June 1909. The balance of the topics in the Report reflects these concerns. Part I of the Report on life assurance is a total of 184 pages most of them densely argued proposals for regulation of the industry. Part II on fire insurance occupies only 26 pages supported by appendices of the questions addressed to, and the answers provided by, 43 fire insurance companies. This does not detract from the comments on fire insurance but reflects the priorities seen by the Commissioners. Gray, the author of the only histories of life insurance in Australia commented that the recommendations of the Commission for the regulation of life insurance 'anticipated to a considerable extent...the Commonwealth's 1945 Act'.

The Commission was instructed to report by 30 June 1909. Not surprisingly they found the time allowed to be too short and they applied for and were granted an extension of a year. The Report on fire insurance is dated 15 October 1910. This was less than two years since it commenced its examination of the complex issues involved; in Australia the Commissioners were working in a vacuum of knowledge. They hardly deserved the description given them by Butlin, Barnard and Pincus as 'a laggard Royal Commission'.

Royal Commission's Method of Inquiry

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38 Ibid.
On receipt of their Commission the Commissioners devised a set of questions for fire insurance companies. By a letter dated 21 December 1908 the Commission sent a questionnaire to the 43 fire insurance companies operating in Australia. They were all members of the Tariff. Eleven were Australian, four were New Zealand owned, 25 were British and three European. The letter enclosed an ‘Inquiry Form’ with 97 questions which was to be completed and returned within a month. This, said the letter, would ‘enable all replies to be made with due deliberation…and save witnesses time and expense’.

Insurance Company Responses to the Commission

Appendix B of the Commission’s Report, which contains the answers submitted to these 97 questions, comprises 75 pages of small print. A process of selection has been used in producing the following summary of the questions and responses. The selection process has taken the following factors into account:
1. Questions and answers that reflected the modus operandi of the companies.
2. Questions and answers that gave an indication of the financial results of the industry.
3. Questions relating to solvency.
4. Questions that reflected public thinking about general insurance and insurers’ responses to those questions.
5. Answers that indicated attitudes of insurers to the Tariff, to regulation, to the publication of information and to state competition.

The Commission categorised its 97 questions into 30 topics. The first three topics and 10 questions were procedural in identifying the company, its places of business and head office, nominal and paid up capital and the dividends most recently declared.
The answers to one of these questions confirm the observation made in Chapter 2 that Australian companies were parochial in their approach to business. Two Australian companies only did business in their own State, nine were represented in several or all States but only two were engaged in business outside the country. This representation was in New Zealand and the Pacific islands. Two of the New Zealand companies were much more adventurous; they transacted business in the U.S., U.K., India, Japan, South Africa and 'the East generally'. The British and European companies surveyed were all world-wide organisations. This narrow base for Australian companies would have left them exposed to heavy Australian losses without the balance of a book of business from other areas in the world. 42

Answers to the question on dividends last declared by the company produced, by present standards, some extraordinary answers. Whilst many companies had declared dividends of '4 per cent' or '8' or '15 per cent' a significant number of companies declared very substantial returns to their shareholders. The Aachen and Munich company paid a dividend of 75%, the British Alliance 50%, London and Lancashire 32% although the local manager leavened this answer by adding that this was a return of only 4% on shareholders funds and 3.6% on the market value of the shares, Royal's dividend was 66.6% which represented 5.6% on shareholders funds, while the Sun reported an unqualified dividend of 100% All the Australian companies declared modest dividends with the Victoria topping the list with 20%. No question was asked by the Commission concerning the value of shareholders funds.

42 The great fire in Melbourne of 1897 has already been mentioned. Other severe urban fires occurred in Australian cities in Brisbane in 1864, Sydney in 1890 and Melbourne again in 1900.
Unfortunately the answers received by the Commission for the sums insured of each company on Australian business and the proportion that this represented of their world wide income, a split of sums insured by State, and the questions relating to premium income and claims were 'treated as confidential by the Commission' and not published in the Report. It is thus not possible to interpret whether all the respondents showed modest returns on Australian business in line with the local companies.

The responses to the question which asked for the classes of business undertaken by the respondents reveals a much greater specialisation than might be expected. Eight of the 43 companies wrote only fire insurance and another five wrote only fire and marine insurance. Thirty per cent of the market was thus not yet engaged in underwriting burglary, liability, plate glass or other forms of 'accident' insurance which would become staple products of all companies during the next two decades.

The next set of questions sought information concerning the assets of the respondents; the total value in the Commonwealth, the basis of valuation and who did the valuation. The Australian companies could answer these questions and in most cases the valuation of assets seems to have rested with the directors. The responses to this section from the managers of overseas companies was invariably that they had no knowledge of the answers because 'this matter is dealt with by head office'.

The final question in this group asked for the average interest rate earned on investments during the latest financial year. Most answers were in the range between three and four per cent. The lowest was 2.485 per cent and the highest 4.66 per cent. One respondent answered
that he did not know and could not see the relevance of the question for general insurance!

Responses to the questions which sought the views of the companies on the extent of the reserves that should be carried revealed both an extraordinary lack of understanding of the subject and a wide disparity of methodology and procedures. The first question related to a 'reserve for unexpired risks'. The reasons for this reserve have been explained in Chapter 1 under its modern title of 'Unearned Premium Reserve'. This concept was recognised in the late nineteenth century and commented upon by the AIBR on a number of occasions. 43 The Commissioners must have recognised that there was no uniformity of treatment by insurers; in fact fewer than half the respondents were creating such a reserve and some of the answers revealed a total lack of understanding of the concept, several respondents answered that 'all of the reserves of the company are available'.

The next question in this section asked respondents if any minimum ratio should exist for reserve funds to amounts at risk. It was a question that sought to establish views on solvency margins for general insurers. This was a concept that had not been explored by any other regulatory authority at that time. (See Chapter 7) The question shows the perspicacity of the Commissioners but the answers reveal that the respondents had no understanding of the question. Some confused it with the concept of reserves for unexpired risks, others just answered 'yes' or 'no', whilst others gave extensive

43 As early as 1892 an AIBR editorial (10 February, p.54) pointed to the lack of uniformity of accounting practices amongst fire insurers and commented that reserves for outstanding risks were either fixed on arbitrary principles or, in most cases, such reserves were 'conspicuous by [their] absence'. 
replies which served only to confirm an embarrassing lack of understanding of their business.

The Commissioners devoted the next section to rates of premium, how these were established, commission rates and whether it would be practicable to calculate fire rates from the combined experience of the industry.

The first question asked if rates were fixed by open competition or by a tariff association. Three-quarters of the companies answered simply that rates were fixed by tariff agreement. The balance prevaricated a little by answering that some rates were reached by open competition and others by a tariff. It was prevarication because open competition existed only in Western Australia where the Tariff was, at that time, temporarily suspended and there was considerable effort being expended to reintroduce fixed rates. (See Chapter 2)

While some answers tried to justify the Tariff on the grounds that its rates were 'scientifically' calculated, the manager of the Royal Insurance Company, who had been a prime mover in the establishment of the Tariff in Australia, described the rating system in the following terms:

Rates...are determined on the basis of a scale formed upon the joint experience of all Companies. Differences of opinion prevail as to proper rates and no absolute statistics are procurable...what is done is to ascertain the opinion of the majority, based upon individual judgement, as to what is proper, and arrange the scales accordingly...under a tariff [rates are set] at approximately an average of opinions. 44

The Royal manager and the managers of the Guardian and the Northern, all British companies, gave extensive answers in justification of the Tariff. They all centred round the concept that this was the only way to ensure the continued solvency of all companies.

The next question asked for minimum rates charged for urban and rural properties. As all respondents were members of the Tariff it is hard to know how the Commissioners reacted to the wide variety of answers. Several quoted extensive extracts from the Tariff, which at least put the rating system into a logical context within its own framework, but most answers were quite inaccurate based on these quoted extracts.

The answers to the question asking for rates of commission allowed on fire insurance were misleading. Most answered that commission varied between five to 15 per cent. A few answered that they paid up to 20 per cent on some classes of business and one admitted to paying 30 per cent. The Brokerage and Agency agreement of the Tariff \(^{45}\) set out quite clearly that commission payable to agents generally was 15 per cent, but 20 per cent was paid on agricultural risks; brokers and real estate agents were paid 10 per cent; and solicitors and financial institutions 5 per cent; there was no restriction placed on the commission payable to ‘chief agents’ in the cities of Ballarat, Bendigo and Geelong and other similar major provincial centres of the Commonwealth.

When the respondents were asked whether it would be practicable to tabulate the combined experience of fire companies, in the same manner that life companies tabulate their combined experience, 24 replies were an

\(^{45}\) Copy in the archives of the Insurance Council of Australia.
unqualified 'no'. Only two responses were 'yes' and there were several answers couched in terms that foresaw, with considerable alarm, standard rates being fixed on such a basis. The succeeding two questions asked if it would be possible to classify data according to locality and the nature of the risk, and how could this be put into effect. The answers were nearly all a monosyllabic negative.

Questions seeking respondents' answers to problems relating to insurance law followed. They touched on such matters as assignment of policies and insurable interest. Once again the questions reflected on the sagacity of the Commissioners 46 and the answers reflected an inadequate understanding of the law by those running insurance companies. When asked whether they favoured the publication details of business by fire companies and, if they did object, to state their reasons, only two insurers responded with a 'yes'. Objections could be summarised by one response which was

It is unnecessary. It would be useless. It might be misleading, and it certainly would be unfair as it would place details of our business in the hands of competitors. 47

Only 14 of the 43 respondents considered that fire insurance companies should lodge a deposit with the Commonwealth and only one saw it desirable that, if a deposit system was introduced, the size of the deposit should relate to the volume of business undertaken. Not

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46 Both subjects were considered by the Australian Law Reform Commission in the late 1970s and their recommendations, which were clearly anticipated by the tone of the 1908 Royal Commissioners, resulted in appropriate changes to the law by the Insurance Contracts Act 1984, see Chapter 9.

surprisingly insurers totally rejected suggestions that either the Commonwealth or the States or municipalities should compete for fire insurance and called for reform of the existing system of insurers contributing to the cost of running fire brigades.

Recommendations of the Royal Commission

Notwithstanding some of the responses outlined above the Commissioners were kind to insurers in their Report. Perhaps there was a degree of irony in their comment that insurers responded promptly and although, ‘in some instances the particulars furnished were meagre, the information obtained was of great service in enabling the Commissioners to arrive at conclusions’.48

A summary of their findings, which cover more than 20 pages of the Report, is as follows:

A. For the control of insurers.
1. That the Commonwealth should legislate in respect of fire insurance, that a commissioner be appointed to administer the act, and that fire insurers should be registered and supervised by the commissioner.
2. Fire insurers should be required to lodge Commonwealth securities to the value of £20,000.
3. That licensed insurers would have to lodge annual accounts in respect of their Australian business. These accounts would have to make provision for unexpired risks.
4. That foreign companies should appoint a permanent resident of Australia as its recognised representative.
5. That the commissioner should make arrangements for the classification and tabulation of risks, premiums collected and losses paid. The rates ‘deduced from these

data for a series of years should be made the basis for...standard rates of premium.'

B. For the reform of insurance law
1. Where policies are issued 'subject to average,' this fact should be indicated by a 'distinctive stamp' on the policy in coloured ink.
2. Each policy should contain a statement of the risks covered.
3. That all policies and proposal forms should be approved by the commissioner.
4. That all fire loss assessors be licensed by the commissioner.
5. That an innocent misdescription of a risk, or an innocent misrepresentation or omission should not be grounds for an insurer to avoid a policy.

C. Political reform and comment
1. That is not desirable for state or municipal bodies to enter the insurance market, but government or municipal property should be insured against fire.
2. Fire brigades should not be funded by fire insurance companies.
3. There should be uniform laws in Australia for fire inquests.
4. Fire insurance policies should continue to be contracts of indemnity - that is in accordance with the principle established at law that no more than the value of the property at the time of the loss should be recovered however large the sum insured. This is unlike life assurance where the sum assured is paid at death or maturity.

49 A clause that states that where property is insured for less than its full value the policy will only pay any claim in the proportion that the sum insured bears to the full value. e.g. Sum insured £750, full value £1,000 then the policy pays only 75% of any claim no matter its size.
5. That Tariff associations are not against public interest.

This last comment was given subject to various qualifications and riders which are set out below. However the bald statement of approval of the Royal Commission was hailed by the insurance industry with great enthusiasm and frequently quoted, not in its full context, for years to come when defence of the Tariff was undertaken.

The whole passage of the Commission’s comment on the Tariff, the last topic in its Report, reads:

From the replies received from the representatives of the various companies in response to a query concerning the method by which Fire Insurance premiums payable in the Commonwealth were determined, it appears that the major portion of the business is conducted on rates determined by tariff associations. These rates represent the combined experience of the offices connected with the association which, in the absence of a complete scheme of classification and tabulation of risks and losses, such as that recommended in section 24 (see A.5 above), appears to furnish a fairly satisfactory method of determining a reasonable basis of operations.

An objection that is sometimes urged against such an association is that it tends to maintain rates at an unduly high level, and if there were unrestricted competition among offices the public would benefit.

Your Commissioners are of the opinion that this view is largely erroneous, and that under the supervision of the Insurance Commissioner guided by data
collected in accordance with section 24, the possibility of injustice to the public arising from agreement amongst companies as to rates of premium would be negligible. In the event of the Commissioner becoming satisfied at any time that such an agreement between the Fire Insurance companies was inimical to the interests of the public, your Commissioners are of the opinion that powers should be conferred upon him to cite the various Companies before the High Court or the Supreme Court to show cause why their rates should not be reduced.

The qualifications to the Commission's approval may be summarised as follows:
In the absence of the proposed properly constructed rating table the Tariff 'appears to offer a fairly satisfactory method'; and that the rating system of the Tariff was satisfactory if it was under review by the Commissioner who would have accurate statistics from which he could determine fair rates. The Commissioner would be empowered to challenge companies in the courts if he found that rates were not in the public interest.

Reaction to the Royal Commission Report on Fire Insurance

Both Melbourne newspapers, The Age and The Argus, carried columns on the release of the report and its major recommendations on 18 November 1910 without any editorial comment.

The following day The Argus reported that it had contacted a number of members of the insurance industry who had voiced their 'general approval' of the report. There was agreement, said The Argus, that a deposit was
reasonable and that a permanent resident to represent overseas companies was unobjectionable. The items that were particularly welcomed were the suggestion of removing the insurance companies' contributions to fire brigades, the disapproval of competition from municipal or state insurers, and the approval of the Tariff. Approval was also given to a concept of having one Commonwealth law, but there were strong objections to proposals to change existing common law rules about insurance contracts, or to exert any controls by a Commissioner over the style of contract that could be offered. Again no editorial comment was offered.

The AIBR, when reviewing the Commission's life assurance Report when it as released in June 1910, commented that:

With very great reluctance, for at one time we were innocent enough to believe that life assurance business was conducted in Australia on perfectly equitable lines, and that the "publicity" method sufficed, we have now come to the conclusion that some kind of supervision is requisite. 51

In December of the same year very different views were held about supervision of fire insurance companies. 52 No objections were raised against the concept of all companies having to register with a Commissioner and obtain a license. But agreement with the Commission's Report stopped there in respect of supervision. If the deposit was merely a matter of good faith why should the major British insurers be required to make such a deposit and be forced to 'ear mark portion of their assets' in this manner, asked the journal. The AIBR did not

51 21 June 1910, p.498.

52 AIBR Leading article, 21 December 1910, pp.1061-3.
understand the Commission’s approach to solvency and confused it, as had the companies in their responses to the Commission’s questions, with reserves for unexpired risks. The suggestions by the Commission for giving publicity to fire insurers by publishing, not only balance sheets and profit and loss accounts, but underwriting results on Australian business written by overseas companies was seen by the AIBR as not necessary and would ‘supply information which would make their competitors acquainted with details of their business.’

In summary the AIBR supported the Commission’s findings which made the industry’s position better, suggestions which did away with fire brigade contributions or competition from state or municipal insurers, but took ‘strong exception’ to its findings that ‘the Insurance Commissioner should be called upon to exercise certain functions in connection with the active transactions of business’ or to have ‘an undue interference with the right of contract’. 53

In the meantime the process of amendment to British legislation initiated by the Lord’s Select Committee of 1906 had been started. The Assurance Companies Act 1909 was the culmination of this movement. The Act was primarily concerned with consolidating existing legislation for life assurance (the Life Assurance Companies Acts 1870 to 1872); but the Act clarified the law in relation to industrial assurance, brought bond investment societies within the framework of the legislation and included foreign life companies within the jurisdiction of the Board of Trade and the requirements to make deposits.

53 Ibid.
Although workers’ compensation insurers in Britain had been regulated in 1907, as discussed earlier in this Chapter, the Act of 1909 included all non-life insurance, with the exception of marine insurance, in regulatory legislation for the first time. A number of British companies undertook life, fire and accident insurance. In order to ascertain the true position of life policy holders in the books of those companies distinct funds had to be maintained for each class of business undertaken. This logic lead to a concept of separate deposits for different classes and the Act provided for £20,000 for a life fund and a further £20,000 for fire and accident business. The regulation of all fire and accident companies was included because of several bogus companies that had been floated at the turn of the century and had gone into liquidation.\(^{54}\) In addition to a £20,000 deposit all fire and accident companies were required to submit regular returns to the Board of Trade on prescribed forms.\(^{55}\) Here was a model for Australian legislators.

Nevertheless the Fisher Labor government was slow to move on the matter. It did introduce a Bill on 20 December 1912 for the regulation of all forms of insurance in the Commonwealth. It was based on the British 1909 legislation, but as the AIBR commented ‘it was...neither the intention nor opportunity of proceeding during the life of the present Parliament’. The AIBR was critical of the proposed legislation that it followed the British model slavishly. The Australian Royal commission had

\(^{54}\) Winston Churchill, President of the Board of Trade, mentioned two companies during the second reading debate of the Bill, the Castle General and the British Union, which had gone into liquidation in 1905. The assets of the former realised £14 and the latter £54. A deposit of £20,000 ‘is a guarantee of a certain status’ said Churchill. House of Commons, Hansard, 3 November 1909, p.1950.

\(^{55}\) Sources for the preceding paragraphs see Raynes, pp.352-358; Clayton, pp.130-1; AIBR, 22 November 1909, p.973.
recommended separate legislation for life and non-life insurance but this Bill combined the two, as did the British legislation, with 'confusing' results. A deposit of £20,000 was to be required of all non-life companies.\textsuperscript{56}

The Fisher government lost the May 1913 election to the new Liberal party under Joseph Cook, but the Commonwealth’s fifth parliament did not proceed with insurance legislation although it did call for suggestions from the insurance industry on the bill submitted to Parliament the previous year, \textsuperscript{57} and the legislation did re-appear, unsuccessfully, before the Senate in May as a private measure.

Both Fisher and Cook promised insurance legislation in their policy speeches in the run for the September 1914 elections and the decisive victory for Labor left the matter in Fisher’s hands once again. \textsuperscript{58} The new government did introduce an Insurance Bill into the Senate for a first reading on 30 April 1915. The \textit{AIBR} was extremely critical of the government that it had ignored the submissions made by industry bodies during the intervening period and had presented the 1912 bill virtually unaltered.\textsuperscript{59}

On 16 June a deputation from the Tariff companies saw Billy Hughes, the Attorney-General, to put their views on the proposed legislation. They expressed themselves as

\textsuperscript{56} \textit{AIBR} 21 January 1913, pp.59-60. The Bill is summarised on p.71 and its summary corrected p.166 the following month.

\textsuperscript{57} \textit{AIBR}, 21 August 1913, p.730.

\textsuperscript{58} G.Sawer, \textit{Australian Federal Politics and Law, 1901-1929}, Melbourne University Press, 1972, p.129.

\textsuperscript{59} \textit{AIBR}, 21 June 1915, pp.541-5.
'entirely friendly to the spirit of the bill and recognised the desirability of such a measure' 60 but sought several amendments. The first was the earlier objection to the amalgamation of life with all other forms of insurance in one piece of legislation. It was pointed out that although it was common for life and general business to be undertaken by one insurer in Britain this was 'unknown' in Australia. 61 A number of desirable alterations to the Bill would flow if separation of life from other classes was effected.

The companies then raised objections to specific clauses in the Bill. It provided for a penalty of £100 if a company charged fire rates that were 'unreasonable or unjust' and a penalty of £500 for a company that combined with others to fix rates to the 'detriment of the public'. The delegation then proposed the virtues of the Tariff organisation. Hughes was not impressed. 'What chance is there for the formation of new companies in an exploited market?' he asked. The companies then advanced their objections to providing the Insurance Commissioner with detailed claims experience as suggested by the Royal Commission. 'Statistics were liable to be very misleading in the hands of people who were not intimately familiar with the actual circumstances' said the delegation. Hughes replied that 'the basic principle of this bill is publicity', and expanded on this axiom with the words quoted at the heading of this Chapter; but he undertook to consider all the points raised by the delegation and to give effect to some of them. Hughes concluded the

60 AIBR 21 June 1915, pp.566-7, a report on the delegations' meeting with Hughes.

61 This statement was true at the time. Australian life companies did not enter the general field until the late 1950s.
interview with the words that 'the community must be protected'.

A long editorial in the AIBR on 21 June reiterated all of the points taken up by the delegation but made an interesting observation that 101 of the 131 sections of the Bill came under the heading 'Provisions for Security of Insured'. Nevertheless the editorial was deeply suspicious. The proposed legislation struck at the Tariff and intended amendments to the law which tilted the scales marginally in favour of the insured in a manner which 'can only be looked upon as a dangerous departure from established usage'.

The Bill reached the Committee stage in the House of Representatives but failed to emerge from there. It suffered the fate of 42 other bills which either lapsed or were laid aside because of the pressures of the war on the government and the political crises of the period.

The first attempt to achieve Federal regulation of the whole insurance industry in Australia just petered out. It was defeated by the times and by a degree of indifference by successive governments. The question of Commonwealth regulation of general insurance was not to be raised again for another 15 years, and then in quite another context, while Commonwealth legislation in respect of the original spring board of insurance regulation, life assurance, was not passed until 1945.

The Shape of the Industry in 1914

62 Ibid.

63 Sawer, pp.142-155.
The general insurance industry had developed in the years since Federation. No Commonwealth figures were published until 1923/24 so data has to be gathered from various sources to establish a picture of the industry after a number of years of private regulation.

The general insurance industry reflects capital investment mainly in the private sector and it tends to move in sympathy with GDP.\(^{64}\) GDP, in current prices, grew from £190 million in 1901 to £412 million in 1914.\(^{65}\) This was an increase of 117 per cent. Gross private capital formation at constant prices increased by 120 per cent during the same period from £15 million to £33 million.\(^{66}\) It could be expected that there would be a reflection of these figures in the insurance industry.

In 1900 the AIBR reported on 11 Australian companies doing business. In 1914 the number had increased only to 16. In 1900 there were 64 insurers licensed under the Victorian Stamps Act. In 1914 there were 85 companies. The Victorian Government Statist reported that for 1914 those companies had a combined premium income of £1,178,112. The earliest figure available for comparison in Victoria is for 1904 when premium income for the state totalled £614,283, an increase of 109 per cent.\(^{67}\)

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\(^{64}\) The Insurance and Superannuation Commission publishes figures each year comparing the growth of premium income of general insurance with GDP. Since 1975 these figures show that movement in G.D.P. is fairly closely matched by total premium income. However, as discussed in Chapter 8, premium rose much faster than G.D.P. in the years following World War II.

\(^{65}\) G.Vamplew (ed.), *Australian Historical Statistics*, Fairfax Syme and Weldon, Sydney, 1987, Table ANA 50-64, p.133.

\(^{66}\) Ibid., Table ANA 72-78, p.134.

\(^{67}\) Victorian Year Books. Victoria Governments Gazettes.
No comparable figure are available for New South Wales. The premium income in the state for 1914 was £1,437,823. The number of companies included in the return was 74. The companies are not named so comparisons with Victoria are not possible. Western Australia, South Australia and Queensland government statisticians were yet to produce figures annual figures for general insurance. The most reliable guides available for the period were the returns to the Melbourne and Sydney fire brigades. In 1900 41 companies declared a total premium income for fire risks in the Melbourne area of £255,653. The top 10 companies controlled 57 per cent of that market. In 1914 79 companies declared premium of £516,405. The top 10 Companies in 1914 controlled 45 per cent of that market.68

In New South Wales companies declared, not the premiums, but the sums insured on property in the Sydney fire brigade district. In 1900 these sums insured totalled £66.5 million from 42 companies. The top 10 companies controlled 52 per cent of the market. In 1914 this information was no longer published and the author has been refused access to the Sydney Fire Brigade's archives. There were no companies operating outside the Tariff in either Melbourne or Sydney.

The overall impression is of a market that has been further dominated by foreign companies. Five new Australian insurers had entered the market and perhaps, on the evidence of the Victorian fire brigade returns, some 30 new foreign companies had arrived. Such market concentration that had existed in 1900 had been diluted by these new arrivals. This necessarily sketchy outline,

68 Melbourne Metropolitan Fire Brigade archives.
because of the absence of data, is fleshed out in Chapter 6 to indicate the effects of private regulation.

Conclusion
If it had not been for the intervention of World War I Australia would almost certainly have had public regulation of both life and general insurance during the second decade of the twentieth century. Hughes' comments just quoted indicate that the basic intention of the Government was to legislate in the U.K. mould of freedom with disclosure; but the clauses in the Bill to which the Tariff took exception, the fines if companies charged unreasonable or unjust premiums, and quite heavy penalties for combining to set unjustified rates, gave Tariff members cause for real concern. The thrust of the proposed legislation also diminished the domination enjoyed by insurers in their contractual relations with their customers. As the AIBR had commented, most of the provisions of the Bill favoured the insured.

It is evident that it was not the Tariff that had sought this regulation. If the government lobbying by the doomed Citizens' Life company is disregarded, as it is suggested that it should be, then the thrust for regulation seems to have originated in what can only be described as a world-wide movement in commercially developed countries of the time, in the U.K., U.S.A. and some European states to protect the public from insurance company failure or exploitation. The legislation proposed for Australia was as experimental in its approach as its model, the U.K. 1909 Act, but its thrust was for the common good. The Tariff in Australia, after its hiccup of 1906 that was recounted in the last Chapter, was in an extremely strong position with no opposition from any non-tariff source.
It certainly did not need to seek government intervention in the market to replace its failing cartel.  

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CHAPTER 4

THE FIRST GOVERNMENT REGULATION OF GENERAL INSURANCE IN
AUSTRALIA - QUEENSLAND 1916

A Labor Majority Government in Queensland.

T.J. Ryan, the first Labor premier of Queensland to rule with a majority, was the fifth son of an illiterate Irish migrant farm worker. Scholarships to Xavier College and the University of Melbourne enabled him to graduate B.A. and LL.B. Ryan first become a teacher and moved to Queensland in 1899 where he taught classics in the private school system. In 1901 he started practice as a barrister. Much of Ryan’s legal work was for unions in the field of workers’ compensation. The Queensland Workers’ Compensation Acts of 1905 and 1909, amongst their other defects, did not include any provisions for compensation of industrial disease or journey accidents. In a state where mining was a major industry, the absence of disease provisions was most keenly felt by workers. As early as 1907, even before entering parliament, Ryan advocated substituting an administrative government scheme of compensation for workplace injuries and disease for the adversarial position between employer and employee that characterised all the workers’ compensation systems that currently existed in Australia, Britain and the U.S.

Ryan’s move into Labor politics, after a brief flirtation with Deakin liberalism, and on to the leadership of the party in Queensland enabled him to incorporate these ideas into his party’s broader programme of radical change. Ryan’s policy speech for the State election of
1915 promised reform of compensation and the establishment of a 'State Insurance Department'.

As is discussed in Chapter 7, the Victorian Government had established a State Accident Insurance Office in 1914 when compulsory workers' compensation legislation was introduced in that State. However the legislation was in the adversarial model and the State office was in competition with private insurers. No other state had either introduced legislation making workers' compensation compulsory or had created a state insurance office.

The Labor Party won 45 seats to the Liberal's 21 in the Legislative Assembly at the 1915 election in Queensland. The Governor's speech on 13 July 1915 announced the first Queensland Labor government's wide ranging programme of reform. It promised the establishment of state enterprises to compete with private enterprise that would fight high prices, price rings and monopolies. General insurance was not among the industries nominated for government attention in this manner; but workers' compensation insurance, because it was seen by Ryan and

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2 H.L.Wilkinson, The Trust Movement in Australia. Critchley Parker, Melbourne, 1914. Writing in 1914 Wilkinson observed that state competition with private enterprise was limited to state run butchers shops in Western Australia, although state enterprises to supply state needs woollen mills, clothing factories, coal mines, brickworks, lime and stone quarries. p.181-2. This movement was distinct from state owned railways and municipal gas and electricity supplies. p.175-6.
Theodore as a matter of workers' rights, and not the proper subject of adversarial combat between insurers on behalf of employers and unions on behalf of employees, was to be compulsory and a government monopoly. The only 'insurer' was to be a newly constituted State Insurance Office.

Workers' Compensation Legislation

The Workers' Compensation Bill was given its first reading in the Assembly on 25 August 1915 just five weeks after Parliament opened, and on 8 September Ryan's assistant Minister for Justice, J.A.Fihelly, introduced its second reading. In terms of benefits and the availability of compensation the Bill was not remarkable by comparison with recent equivalent legislation in other parts of the world or the Victorian legislation. But the Queensland bill did have one central feature which distinguished it from all other systems. Although there was much discussion about 'compulsory insurance with a State office', the concept of the employer being liable for injury to employees and this liability then being insured was abolished. Claims were to be made by injured employees directly to the Commissioner, who would decide whether the injury or disease fell within the legislation. There were to be limited rights of appeal for a worker whose claim was refused, but the channel which had existed for litigation between employee and employer/insurer, and which in Ryan's experience had given rise to so much bitterness and expense, was now closed. In this new administrative system there was to be no place at all for private insurers in what had once been their undisputed territory. This was an administrative system of compensating workers injured in the workplace by the State government; the scheme was to be funded by employers.
The man Ryan had chosen to shepherd the Workers’ Compensation Bill through the Queensland lower house was J.A. Fihelly. Fihelly, Irish born, was seen as anti-British in his support of Irish home rule and was such a fervid anti-conscriptionist that the term ‘fihellyism’ was coined to describe attitudes signifying disloyalty to the Crown. He was so outspoken on both subjects that the Queensland Governor refused to attend executive council meetings if Fihelly was present. Fihelly was an opponent whose personality and politics in 1915 must have been particularly obnoxious to a British dominated insurance industry.

The insurance companies started their attack on the proposed legislation as soon as the Bill commenced its passage through the Assembly. The Australian Alliance company, which had a useful name but had, as has been noted earlier, failed and had been a subsidiary of the London and Lancashire Insurance Company since 1909, was chosen by the Tariff to play the lead role in these proceedings. The Australian Alliance and fourteen other companies petitioned the Assembly asking leave to be heard by counsel before the bar of the house. The petition was denied on a motion that was carried on party lines. The Bill passed the Assembly in a similar manner and it had been sent on to the Council for a first reading by 21 September 1915.

The Council began the second reading a week later. Waiting this event was a petition signed by 12,209 persons ‘praying that the Workers’ Compensation Bill be

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so amended as to preclude State monopoly of insurance'. The government could rely on only a handful of votes in the twenty six appointed member Council so insurers were confident that the Bill would be defeated. E.W.H. Fowles, a Brisbane barrister, was the unofficial leader of the opposition in the Council. Fowles was an interesting comparison with Ryan. Fowles was educated at Brisbane Grammar and was sent by his wealthy parents to the University of Melbourne where he took a B.A., an M.A. and an LL.B. Fowles too had been a teacher before he went to the Bar and a classics scholar who had published a well known Latin grammar. The similarities ended there. Fowles was very much an establishment figure, a fervent Methodist and notable hymn writer.  

Fowles led the attack for the opposition, and initiated a large number of amendments to the Bill which were duly passed. The essential amendment enabled employers to obtain insurance from insurers other than the State Insurance Commissioner. The Government leader in the Council, the Secretary of Mines, William Hamilton, summed up the proceedings after the Committee debate in the Council had been in progress for three days saying that

It was immaterial what honourable members put into the Bill now, or what they kept out, because the Bill was [now] useless.  

The Assembly duly rejected all the amendments put forward by the Council. When it received that message the Council went into Committee again on 28 October to consider its position. Hamilton proceeded to move that each of the

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5 Ibid., p.1134
7 Q.P.D., 6 October 1915, p.1134.
Council's earlier amendments should be withdrawn. The response was taken up by A.J.Carter, a company director, part time diplomat, long time president of the Brisbane Chamber of Commerce, and an underwriting member of Lloyd's who had held a local insurance agency among his many mercantile activities.\textsuperscript{8} To the first two such motions put by Hamilton on behalf of the Government, Carter moved that the Committee insist that the original Council amendments should stand. When the third such motion was put, it was Fowles who again took control of the proceedings on behalf of the opposition.\textsuperscript{9}

Fowles argued a constitutional line that there were three ways in which the Council could act in response. It could seek a conference between both houses, or it could re-commit the Bill back to the Assembly, or it could offer a totally different amendment.\textsuperscript{10} He proposed to follow the last approach. What Fowles now suggested was the that the Bill should be amended to allow existing workers' compensation policies to be renewed by their present private insurers for a period of three years. The Chairman of the Committee would not allow the amendment on a point of order that such an amendment would defeat the main thrust of the Bill. A complex debate followed on whether the Chairman's ruling was correct, and the Council was adjourned to consider the matter.


\textsuperscript{9} This point is being made because Murphy in \textit{T.J.Ryan}, and Crouchley in the \textit{A.D.B.} entry on Carter both, incorrectly, blame Carter for the mistakes made during the Council debate.

\textsuperscript{10} \textit{Q.P.D.}, 28 October 1915, p.1619.
Council reconvened on 2 November to resume the debate. Fowles was allowed to move his motion again in conjunction with the earlier amendments to the original clause made by the Council in its first deliberations. But some of his own party were confused by the complexities. They believed that Fowles' amendment was in conflict with an earlier one, introduced by Carter and passed by the Council, which allowed private insurers to apply for licenses to conduct workers' compensation business. In a vote Fowles' amendment was lost 14 votes to 12 and with the loss went the other crucial amendments to the Bill one of which would have deprived the Insurance Commissioner of the sole right to issue policies. No one in the Council, including Fowles, noticed the implications.  

It was in this form that the Council sent the Bill back to the Assembly.

It was not until 15 December that Fihelley raised the matter of the Workers' Compensation Bill in the Assembly. He moved simply that the Council's amendment to clause 3 be agreed to. There was a stunned response from the opposition, and it was only then that Fihelley disclosed the nature of the mistake that had been made. Fihelley had sought opinions from four leading barristers whether the Council's amendments in their present form would affect the principle of the scheme, or the working of the Act, and particularly the principle of compulsory State insurance free from competition with private companies. The barristers had responded that 'we are clearly of the opinion that it would not.'

The Assembly passed the Bill in its partially mutilated form. The Government was politely adamant in its refusal when the Council sought to have the Bill returned. The

12 Ibid., 15 December 1915, p.1619.
Workers' Compensation Bill received the Governor's assent on 5 January 1916.

The reaction of the insurance industry can be gauged from the address given in the opening session of the New South Wales Insurance Institute for 1916. The President, M.de Chateaubourg of Fireman's Fund Insurance, spoke of the events in Queensland in these terms:

The Socialist Government of Queensland is not only endeavouring to impose permanently upon the people of a British State an institution of purely German origin and German ideals, but is seeking to enforce its will upon the people by the exercise of the same German doctrine of force...that conceived and carried out the rape of Belgium...The ethical theories of the horrible Hun have been embraced and put into practice by the Queensland Socialistic Government masquerading as democrats. 13

Insurance Commissioner Appointed

The last figure who was to constitute the Labor triumvirate to do battle with insurers was John Goodwyn. Goodwyn was appointed Insurance Commissioner by Fihelly on 16 February 1916. Goodwyn was English born, insurance trained and a qualified actuary. In 1902, when he was not yet thirty, his company, the Norwich, sent him to Sydney as its Australasian manager.

Young Goodwyn made an immediate impact on the Sydney insurance scene and was elected to the committee of the New South Wales Accident Underwriters' Association. In a photograph of the committee, published in the AIBR,

13 AIBR, 1916, p.654. De Chateaubourg's hyperbole, spurred on by the war, relates to the origin of workers' compensation in Bismarck's Germany.
Goodwyn appears a tall, unsmiling figure, the only one in the group with crossed arms to keep himself to himself, and by far the youngest member. In 1905 Goodwyn left the Norwich and became manager of Ocean Accident and Guarantee Corporation. In 1908 he was elected chairman of a Tariff committee that was to set up uniform agreements for Tariff accident business and was a member of the first committee that was established to form an Australian governing Tariff body for fire and accident business. A year later Goodwyn fell out with his London board on a matter of principle and resigned. He commenced practice in Sydney as a claims adjuster and consulting actuary.

Fihelly had consulted Goodwyn in September 1915 about the Queensland government’s plans to establish a state accident insurance office. Goodwyn had studied the results of the insurers that wrote workers’ compensation in Queensland. He advised Fihelly that by his calculations ‘the claim ratio of the companies under the present Act has been far less than 45% on a premium income of £80,000 per year...if the entire community were insured the true claims cost...would not reach 45%...’

Within five weeks of the Governor’s approval of the

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14 Minutes of the Victorian Fire Underwriters Association, 29 June 1908.


16 Queensland State Archives. JUS TR 1193 Z1. Report dated 23 September 1915 from Goodwyn to Fihelly. In this long document Goodwyn outlined a proposal for the structure and staffing of a state office, ratings under the proposed new act and a budget for the first two years operations. He forecast a surplus of £17,500 in the first year, and £30,000 in the second year. In fact Goodwyn showed a surplus in his first year of £76,000 after allowing for claims which he believed had happened but
Workers' Compensation Act Fihelly had appointed Goodwyn the first Queensland Insurance Commissioner. Goodwyn took up his post in Brisbane within three days of his appointment.

Goodwyn was to be described by the Bulletin in an obituary notice as 'the most brilliant man that any English Insurance Office ever sent to Australia'. In its issue of 21 February 1916 the AIBR described Goodwyn as 'a man well fitted by ability, knowledge and character [for the post of Insurance Commissioner]...he held the position of President of the Interstate Conference of Controlling Officers of Insurance Companies...' (the Tariff). Not only was Goodwyn a clever man thoroughly experienced in all aspects of insurance, but he knew the inside workings of the insurance industry and the Tariff at the highest levels. There was no doubt that here was a formidable opponent for private insurers in any battle that was to follow.

Goodwyn went straight into action. There was one small non-tariff office in Brisbane, the Brisbane Fire Office. Goodwyn used it as an agent and offered to write workers' compensation business under the old legislation at 20% below tariff rates until the new provisions became operative. Goodwyn's calculations showed that the state office would be able to write insurances under the new legislation, with its benefit increases of 75% and wider cover, at the same rates as before. On 31 March the Queensland Government Gazette proclaimed 15 May as the date by which all employers were to deliver to the Commissioner an estimate of the wages that they expected to pay in the following financial year. The premiums which had not yet been reported; this last allowance, now known as 'incurred but not reported', see Chapter 1, was quite unusual at that time. (Report of the SGIO dated 31 August 1917)

The Bulletin, 14 January 1925.
payable to the Insurance Commissioner would be calculated from these returns.

In the meantime the insurance industry was seeking a legal means to prevent the government proceeding with its plans. On 14 April they succeeded in obtaining a temporary injunction from the Supreme Court. The injunction restrained Goodwyn from enforcing the regulations under the new Workers' Compensation Act, and from publishing material suggesting that the State Accident Insurance Office had the sole right of transacting such business.

Other Forms of Insurance Brought into the Conflict

This started a desperate game of tit-for-tat between the warring parties. The *Brisbane Courier* of 1 May carried Goodwyn's response to the insurers' injunction; he advertised that he would undertake all classes of insurance business at discounts of twenty to fifty per cent from tariff rates and offered ten year contracts at those rates.

This was a radical departure from earlier tactics. Goodwyn was counter-attacking the insurance industry by offering competition in all areas of their business. Later, it was to be alleged in court proceedings that Fihelly had gone to insurers with an offer to desist from competition on fire insurance if insurers withdrew their opposition to a state monopoly under the Workers' Compensation Act. 18 Whether this took place or not, it was certainly Goodwyn's suggestion to Fihelly that the State should enter into competition with private insurers.

for fire business in order to soften up the insurers' opposition. 19

The private insurers let it be known that it was the view of their lawyers that the Government did not have a legal right to conduct fire insurance business. The Government response was for the State Governor to issue a proclamation on 10 May that he authorised the Goodwyn, as Insurance Commissioner, to transact insurance business other than workers' compensation. Then the Government disclosed a further move on 11 May in the Queensland Government Gazette. It would enter into competition with private insurers for business under the old workers' compensation acts if it could not have its new act.

Goodwyn confirmed the details of both these initiatives in the public press. He advertised in the Brisbane Courier on 13 May that, pending proclamation of the 1916 Workers' Compensation Act, he would accept insurances under the old Acts 'at from 25 per cent below current tariff rates', and 'all classes of fire insurance business will also be accepted at from 25% below current Tariff Rates. Applications are invited for Agencies. Liberal commissions will be paid.'

Immediately under Goodwyn's advertisement was a 'Public Notice' placed by the Fire and Accident Underwriters Associations of Queensland. It suggested that banks, trustees, mortgagees, owners of property and employers should satisfy themselves that Goodwyn had the statutory power to offer fire insurance at all, or to write workers' compensation business other than under the 1916 Act. And, went on the advertisement, if Goodwyn did not have these powers, and as Parliament had not appropriated the necessary funds to allow him to support the risks he

19 Queensland State Archives, JUS M 7, Memorandum from Goodwyn to Fihelly, 17 April 1916.
was accepting, how could the insured party be sure that a
State policy would have any value at law?

The Australian Alliance Assurance Company, on behalf of
all insurers, now successfully sought a further
injunction from the courts which prohibited Goodwyn from
undertaking fire insurance. The injunction upheld the
notion that there was no statutory authority for him to
do so. The State insurance office was at a standstill.
It could not operate the new workers' compensation
legislation and was unable to issue other policies.

On 29 June 1916 the Queensland Full Court delivered its
judgements in respect of both injunctions. The Court
found against the Government and for the Australian
Alliance on both issues. The court ruled that the State
Government Insurance Office was not entitled to a
monopoly under the Workers' Compensation Act. As to its
entry into fire and other insurance business, the court
found that there was no legal foundation, specifically
any act of Parliament, to support its actions, and that
therefore the whole venture had been illegal.

SGIO Finally Wins Workers' Compensation Monopoly

One of the amendments to the Workers' Compensation Bill
made by the Council, which was accepted by the Assembly
when that house decided to enact the mutilated Bill as it
had come back from the Council, allowed for the Governor-
in-Council to approve insurers other than the State
Accident Office. So, in anticipation of the successful
outcome of their court action, the Australian Alliance
and twelve other insurers had, in mid-May, made
application under the Workers' Compensation Act for
permission to carry on this business.
If private insurers thought the battle had been won, they were in for a shock. Fihelly was prepared for this legal outcome. He advised the Governor that, under the Act, the Governor-In-Council had discretion to grant or refuse this permission to other insurers to undertake workers' compensation business. It was the government's wish not to grant any applications, and the Governor-in-Council refused them all. As the S.G.I.O was empowered under the Act this left the government with its monopoly. Goodwyn lost no time in proceeding to tie up the market. Private insurers were outraged and challenged the Government's refusal of a license through the courts. Their challenge was lost in the Australian courts and they took the case to the Privy Council. It was not until 18 June 1917 that the Privy Council gave judgement 'that the employer must cover with the Commissioner as a State insurer.'

Ryan, Fihelly and Goodwyn had finally triumphed.

Queensland Insurance Act 1916

In order to allow Goodwyn to undertake other general insurance business it was necessary for the Queensland government to bring down enabling legislation. Goodwyn advised Fihelly that the act should contain not only those provisions, but that the government should take the opportunity to regulate insurance companies. In a memorandum to Fihelly, dated 27 September 1916, Goodwyn suggested that every insurance company who wished to carry on business in Queensland would have to deposit £10,000 in cash with the Treasurer. But, said Goodwyn, the main feature of the Bill was that

the Commissioner shall declare by regulation the maximum rates which may be charged by insurers for

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each class of risk. Companies are at liberty to charge lower rates...

Under the proposed legislation, all licensed insurers were to submit returns 'from which standard rates of premium are to be deduced.'

Commission was to be limited to 10 per cent on the ground that if rates will stand a higher commission... then the insured should be entitled to a reduction in rates rather than the Agent to an increase in remuneration, and commissions are to be paid only to persons licensed to receive such commissions.

Finally, Goodwyn proposed that only licensed insurers could write Queensland risks, and that licensed insurers were not allowed to reinsure outside Queensland (and that included treaty business) unless all insurers licensed in Queensland had 'signified their inability to accept the risk'. The intention of these last provisions was to keep money in the State, and in particular to keep Australian money away from 'undisclosed foreign Companies' who may be hidden by treaty arrangements.

There was a considerable feeling against Australian insurers having reinsurance arrangements with German reinsurers during wartime.

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21 Memorandum headed 'The Insurance Act 1916' with a handwritten note at the top, 'Draft, Fair copy handed to Minister 27.9.16.' In Goodwyn's files in the archives of the Queensland Insurance Commissioner.

22 Ibid.

23 Ibid.

In a later, but undated, memorandum Goodwyn expanded on his reasons for wanting to impose maximum fire rates which had been calculated from Queensland experience.

Although the Companies have been carrying on business in Queensland under a uniform Tariff for twenty years, it appears that they have never scientifically investigated their actual experience and that the rates to all intents and purpose have been fixed by guess work. The Government feels that this is not in the interests of the business community and proposes to take steps to have the rates systematically calculated with revisions at periodical intervals.

Insurers had won the court battle to prevent the SGI0 from entering the general insurance market but were now about to lose the war. They now sought to obtain the most favourable outcome from the inevitable legislation, and with the prospect of victory Goodwyn now seemed prepared to be gracious to his former colleagues.

In a further undated memorandum to his minister Goodwyn explained that Sections 15 and 16 of the Bill (those relating to maximum commissions and the licensing of intermediaries) had been discussed with insurers, "and the sections as they stand are the result of collaboration with them." He went on to explain that companies welcomed these clauses because they had been unable to enforce the provisions of the Tariff agreement "in respect of the appointment and remuneration of Brokers, Agents and Directors". This, the companies had told Goodwyn, was one of "the main causes of the high

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25 Goodwyn's files in the Queensland Insurance Commissioner's archives.
cost of insurance in Queensland'. This is particularly interesting because it draws attention to the fact that, at least in Queensland, the Tariff was still having trouble controlling its members with this form of non-price competition and the market allocation inherent in the system.

Goodwyn attended a meeting with the Council of Fire and Accident Underwriters in Sydney on 17 August 1916. The Council sought the Commissioner's assurances that the Government office would not have any preferential treatment by way of freedom from taxation, stamp duties, or fire brigade charges, and that government insurance business would not be the sole prerogative of the Commissioner. He gave them assurances on all counts.

Goodwyn received a deputation from the Brisbane Brokers Association on 18 October. Their discussions of the Bill included the proposed definition of a broker and whether the Bill could be widened to prevent rebating of commissions by agents and brokers. Most importantly, the brokers asked whether the provisions in the section dealing with the licensing of brokers could be broadened to give the Commissioner the power to withhold a license if he was not satisfied that the applicant was competent. Goodwyn indicated that he thought 'the Minister would have no objection to accept such an amendment in Committee'.

On 11 October 1916 Fihelly had moved a Notice of Intention in the Assembly to introduce a Bill to allow

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26 Ibid.

27 Ibid. Documents headed 'Memorandum of negotiations with representatives of the Council of Fire and Accident Underwriters at Sydney, 17 August 1916', and 'Notes of an informal interview with Mr. Noble and Mr. Cummings of the Brokers' Association' dated 18 October 1916.
the State of Queensland to carry on all classes of insurance and to regulate insurance in the State. The Bill was read for the first time on 13 October, but the Second Reading was not introduced until 14 November. When he moved the Second Reading of the Insurance Bill, Fihelley announced the intention of the legislation to fix maximum rates, and went on to expound on 'the second most important feature, that we will regulate expenses and commissions.' It was for this reason that the control of brokers and agents would be introduced. 28

The Opposition tried to defend the Tariff. It quoted, out of its proper context, the approval given to the Tariff system by the Federal Royal Commission. Fihelley's response was that 'the present arrangement is really a combination in restraint of trade'. 29

The leader of the opposition, James Tolmie, was in charge of the attack on the Bill when the assembly moved into Committee to examine the legislation clause by clause. Many of the amendments suggested by Tolmie had obviously discussed beforehand with Fihelley or Goodwyn. Most of Tolmie's suggestions were accepted by Fihelley, including the addition to Clause 16 of the Bill. As moved and accepted the added words read

The Commissioner shall not be bound to grant any application for a broker's license unless he is satisfied that the applicant is competent to perform the duties of a broker.

Tolmie explained the reason for the addition, that

28  Q.P.D., p.1753.
29  Ibid., pp.1764-5.
the amendment was put forward by the companies and the brokers. Seeing that for the future the companies would be unable to exercise their customary discretion with respect to the appointment of brokers, they asked the Commissioner to exercise the discretion on their behalf. 30

When the Bill reached the Council, nearly fifty further amendments were suggested by that Chamber. However, only a handful of those were accepted by the Government. Ultimately the Bill was passed on 2 December 1916 when the differences between the house were settled at a conference.

For many years the Preliminary Note to the Insurance Act 1916 and its amendments carried the explanation that part of the legislation was rendered necessary by the decision in Australian Alliance Assurance Co.Ltd. v. Goodwyn [1916]...that the Executive Government had no power in law to enter into an ordinary commercial or industrial enterprise without the sanction of Parliament....The State Government Insurance Office was constituted for the purpose of carrying on Government insurance...

What does this Regulation of the Insurance Industry in Queensland Contribute to Regulatory Theory?

The Queensland Labor party did not include the control of the general insurance industry in its election platform, nor the licensing of brokers and agents, nor entry into competition with private insurers by the state. All these

30 Q.P.D., p.1876.
actions were consistent with the general philosophy of the Labor party of the time, but when Labor was elected to government there were many pressing issues to deal with that would have received a higher priority.\textsuperscript{31}

The history of events leading up to regulation point clearly to the conclusion that it arose in the course of the struggle between the government and the insurance industry. As Murphy, et.al. put the matter it was less a question of planning, ambitious scheming or socialist design than the product of the dynamic situation which developed as the private companies attempted to thwart the bid of the state government to secure for itself a monopoly of workers' compensation.\textsuperscript{32}

Furthermore, whilst the influence of individuals on the course of history is not fashionable amongst economic or social historians at present, one is left with the feeling that without the presence of Ryan, Fihelly, Goodwyn and Fowles the outcome of these events may well have been different. There were no moves elsewhere in Australia, in state or federal spheres, for another half-century or more to take similar action on either workers' compensation or general insurance. Regulation of the general insurance industry, and even then on a less restrictive basis, did not take place until federal legislation in 1973; similar treatment of workers' compensation waited until the Victorian government's 'WorkCare' scheme of 1985.

\textsuperscript{31} D.J. Murphy, 'State Enterprises', \textit{Labor in Power}, pp.138-140.

\textsuperscript{32} Murphy, Joyce, Hughes, \textit{Prelude to Power}, p 7.
There seems to be little evidence in the Queensland story to support Stigler's central thesis that regulation is acquired by industry and is designed and operated primarily for its benefit. \(^{33}\) Although the insurance industry supported the control of agents and their rates of commission when it was evident that the government would succeed in bringing down legislation, overall the Act was clearly not designed for the benefit of insurance companies and they opposed it fiercely in the courts and in parliament.

The idea of government intervention into the insurance market was abhorrent to the industry. The insurance industry saw the proposed action on workers' compensation as a move
to deliberately confiscate a large section of the business of insurance companies [which] they [had] pioneered [and] that [it was this which had] rendered possible the introduction of workers' compensation legislation. \(^{34}\)

If the Queensland government was successful in its bid for, what was seen as a 'socialist' monopoly of workers' compensation, and this was followed by regulation of all insurance, and competition from a state insurance office, then these were the opening moves which could result in the loss of all private insurance. \(^{35}\) The question of British insurers' investment in Queensland was raised as an implied threat of a capital strike against the

\(^{33}\) Stigler, 'The Theory of Economic Regulation', p.3

\(^{34}\) AIBR, 21 October 1915, p.950.

\(^{35}\) Ibid. 'The Minister for Justice (Fihelly) has previously stated that this Workers' Compensation Bill is only an instalment, and that the Government of Queensland propose introducing further legislation whereby a Government monopoly of fire, life and marine business shall be established.'
Queensland government.\textsuperscript{36} This was conveyed to the parliament by a cable from the chairman of the Australian Chamber of Commerce in London.\textsuperscript{37}

At that stage of the development of the insurance market the cartel-like operations of the Tariff had produced precisely the results that were intended. Entry, price, distribution and products were already privately controlled. Public regulation, introduced by a Labor government, had effectively destroyed private control.

Only when it was clear that the legislation would be introduced did private insurers co-operate with Goodwyn to accomplish some minor good from the debacle. They were pleased with controls over the number and remuneration of agents which was an area of non-price competition that they had always found to be difficult to police. Insurers requested, as we have seen, that the Insurance Commissioner would take over from them the task of vetting aspiring insurance brokers. But these were minor issues. It is clear that none of that accommodation to regulation by the insurance industry can be classified as trading with government for the protection of legislation.

Regulation was imposed on the insurance industry by a government which was happy to include general insurance in its programme of reform. Such a move was perfectly consistent with its other programs of social and economic reform which it employed in a variety of industries including cattle stations, sawmills, coal mines, butchers shops, a cannery, plant nurseries and a number of others.\textsuperscript{38}

\textsuperscript{36} London \textit{Times}, 6 October 1915.

\textsuperscript{37} AIBR, 21 October 1915, p.950.

\textsuperscript{38} Murphy, 'State Enterprises', Op.Cit., pp.140-141.
If this is accepted then the regulation of insurers can be viewed as a form of consumer protection, a 'keep the bastards honest' move. Posner nominated this as the 'public interest' theory of regulation which is a response by government to public demands for the rectification of imperfections in the operation of a free market. 39 There is no evidence that there was a demand by the public for government intervention into the insurance industry before the fracas commenced. It is not mentioned in the Queensland Labor Party's platform for reform in 1915 40 nor in any subsequent parliamentary debates although one can be sure that supporters of the Ryan government would have been delighted by the turn of events as they unfolded.

The process to regulation in Queensland can be seen as an inversion of Peltzmann's addendum to Stigler and Posner. 41 Peltzman brought to regulatory theory the concept that political parties use the economic value of regulation to maximise their political majorities. The probability of support can be measured, posits Peltzman, by the per capita net benefit derived by the beneficiaries less the cost to the beneficiaries of the campaign to influence legislators and silence opposition.

The Peltzman addendum sought to explain why small groups of producers have been able to dominate the regulatory


40 Ryan's speech announcing the Labor Party's electoral platform for the election in 1915 did not include any reference to insurance other than workers' compensation. Under the heading of 'Affecting the Worker' Ryan mentioned the establishment of a State Insurance Department only in connection with workers' compensation reform. Murphy, et al. *Prelude to Power*, Document 19.

process rather than larger groups of consumers. Peltzman suggests that it will be difficult to persuade a numerically large group of consumers that they should spend resources to support a campaign to achieve a small price reduction. Sizeable transaction costs exist in order to organise coalitions of consumers and there will be free-rider costs to be borne. These costs, says Peltzman, limit not only the size of the dominant group but also their gains.

Fels' interpretation of these arguments is that both Stigler and Peltzman are asserting a law of diminishing returns to group size in politics. Beyond a certain point the costs per head of the group rise faster than benefits per head. 42

The problem with any of these models is that they do not explain or predict such pieces of regulation as the Queensland saga just related. No doubt part of the attraction to the Queensland government of regulating insurance companies would have been to be able to say to its political supporters at a future election that we have provided you with a benefit of cheaper insurance. But in this case regulation would fall into a general basket of activities undertaken by any government to woo its supporters by reducing their taxes and prices at the expense of its/their political opponents. Such transactions might well be the subject of other models but they do not fit the Stigler mould.

Nor can the Queensland saga be seen as that of a disintegrating insurance cartel seeking government

42 A. Fels, 'Theories of Economic Regulation and their Application to Australia', a paper presented to a conference on government regulation, University of Newcastle, 1981.
regulation as a substitute for its own powers. John Goodwyn resigned as Commissioner in 1920. His resignation was over his salary. He had been promised that this would be brought into line with insurance industry standards but this was not done. He returned to private insurance as manager of the Australian Provincial in Sydney. He was succeeded by his deputy John Watson. Watson, too, had come from the insurance industry. He had 20 years experience with private insurers, including that of Brisbane branch manager of an Australian company and president of the Queensland Insurance Institute, before joining the SGIO in 1916.

Goodwyn's and Watson's employment with SGIO tend to fit the 'revolving door' concept of appointments to regulatory bodies as part of the 'capture theory' of regulation. The evidence that we have seen in relation to Goodwyn indicates that he used his knowledge of the insurance industry against rather than for its interests. Watson's approach to his former colleagues in private industry will be examined later. He remained Commissioner for 25 years.

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43 Finsinger and Pauly, op.cit.

44 Thomis and Wales, pp.10, 37-39.

45 Posner, 'Theories of Economic Regulation', says that 'capture theory was proposed by political scientists in the 1950s and 1960s and is not part of economic regulatory theory. pp.341/2.
The Effects of Regulation on the Market

Goodwyn, the actuary, was pleased to be able to demonstrate that the rates of premium under the Tariff system were not calculated according to 'scientific methods'. He reported to parliament in 1919 that he and the representative of insurers had examined the data on premiums and claims for fire business that had been collated in terms of the Insurance Act. They had agreed that this data would allow for a reduction in Tariff rates. The largest class of fire insurance business in Queensland was wooden private dwellings. In 1916 the Tariff rate varied from a low of .41% for a house in suburban Brisbane to a high of 1.26% for a house out in the bush with no water supply. The new rates agreed in 1918 were .27% and .57% for the same risks. The second largest category of business was for wooden commercial properties; rates for these risks were reduced by 20 per cent. These rate reductions were matched by the SGIO. In addition the SGIO announced that it was making a profit distribution to its fire policy-holders of 10 per cent of the premiums that they had paid.

Clearly the initiative of the Labor government in the area of insurance appeared to be of considerable benefit to the consumer in that State. Although Labor had only intended to create a state system of compensation for injured workers their unintended foray into other areas was consistent with their aims of coping with trusts and

47 Ibid.
combines and the establishment of state enterprises as an instrument to achieve these aims. 48

Market Structure

The market structure changed in the following decade.

<table>
<thead>
<tr>
<th></th>
<th>SGIO</th>
<th>AUST</th>
<th>N.Z</th>
<th>BRITISH FOREIGN</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1917</td>
<td>1</td>
<td>14</td>
<td>4</td>
<td>51</td>
<td>70</td>
</tr>
<tr>
<td>1920</td>
<td>1</td>
<td>15</td>
<td>4</td>
<td>52</td>
<td>72</td>
</tr>
<tr>
<td>1926</td>
<td>1</td>
<td>25</td>
<td>4</td>
<td>57</td>
<td>87</td>
</tr>
<tr>
<td>PerCent Growth</td>
<td>0</td>
<td>79</td>
<td>0</td>
<td>12</td>
<td>24</td>
</tr>
</tbody>
</table>

Source: Insurance Commissioner's Annual Reports, Q.P.P.

Despite the continued enthusiasm of Australian insurers for the Queensland market they did not increase their market share as a group. New Zealand, British and other foreign companies lost market share to the SGIO as shown in Table 4.2.
TABLE 4.2
MARKET SHARE BETWEEN AUSTRALIAN AND OTHER INSURERS
QUEENSLAND 1917 TO 1926

<table>
<thead>
<tr>
<th></th>
<th>SGIO</th>
<th>%</th>
<th>AUST</th>
<th>%</th>
<th>N.Z.</th>
<th>%</th>
<th>BRIT</th>
<th>%</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1917</td>
<td>30</td>
<td>5</td>
<td>160</td>
<td>24</td>
<td>130</td>
<td>19</td>
<td>345</td>
<td>52</td>
<td>665</td>
</tr>
<tr>
<td>1920</td>
<td>104</td>
<td>12</td>
<td>197</td>
<td>22</td>
<td>138</td>
<td>16</td>
<td>431</td>
<td>50</td>
<td>870</td>
</tr>
<tr>
<td>1926</td>
<td>216</td>
<td>16</td>
<td>349</td>
<td>25</td>
<td>188</td>
<td>14</td>
<td>622</td>
<td>45</td>
<td>1,375</td>
</tr>
</tbody>
</table>

Source: as for Table 4.1

It can be seen that the increase in market share of the SGIO was at the expense of non-Australian companies in the Queensland market while the increased group of local companies did not achieve any great penetration. Given the nature of the regulation and government competition these movements were a natural outcome.

Underwriting Experience

It is also possible to compare the underwriting performance and the expenses of the state run insurer with the performance of several groups of private insurers in Queensland.

Goodwyn chose to collect data in a manner that would measure the performance of the SGIO against the performances of Australian, New Zealand and British and other foreign companies. He also further chose to collect data from each of the private groups separating small private insurers from larger private insurers. Small was defined as companies with less than £10,000 premium income.

In Table 4.3 companies with income in excess of £10,000 are in group A and those with less in group B.
If the two earliest years of the SGIO's existence are removed as not being representative of their experience then their average ratio is 40.9 per cent. As the Table shows there is no statistical significance between any of the groups.

**TABLE 4.3**

CLAIMS RATIOS Per cent OF QUEENSLAND INSURERS
1917 TO 1926

<table>
<thead>
<tr>
<th></th>
<th>SGIO</th>
<th>Australian</th>
<th>New Zealand</th>
<th>British &amp; Foreign</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
<td>B</td>
<td>A</td>
<td>A</td>
</tr>
<tr>
<td>1917</td>
<td>12.0</td>
<td>36.5</td>
<td>35.5</td>
<td>33.1</td>
</tr>
<tr>
<td>1918</td>
<td>14.6</td>
<td>42.0</td>
<td>32.4</td>
<td>31.9</td>
</tr>
<tr>
<td>1919</td>
<td>36.6</td>
<td>37.9</td>
<td>37.0</td>
<td>35.9</td>
</tr>
<tr>
<td>1920</td>
<td>29.2</td>
<td>28.7</td>
<td>31.8</td>
<td>36.7</td>
</tr>
<tr>
<td>1921</td>
<td>25.6</td>
<td>28.1</td>
<td>27.5</td>
<td>28.4</td>
</tr>
<tr>
<td>1922</td>
<td>36.5</td>
<td>32.4</td>
<td>32.5</td>
<td>49.0</td>
</tr>
<tr>
<td>1923</td>
<td>55.1</td>
<td>47.0</td>
<td>53.0</td>
<td>45.9</td>
</tr>
<tr>
<td>1924</td>
<td>37.4</td>
<td>52.3</td>
<td>51.4</td>
<td>53.8</td>
</tr>
<tr>
<td>1925</td>
<td>56.4</td>
<td>46.0</td>
<td>46.1</td>
<td>56.3</td>
</tr>
<tr>
<td>1926</td>
<td>50.5</td>
<td>56.1</td>
<td>61.1</td>
<td>58.1</td>
</tr>
<tr>
<td>Avg.</td>
<td>35.4</td>
<td>40.7</td>
<td>40.8</td>
<td>42.5</td>
</tr>
</tbody>
</table>

Source: As for previous Tables.

On the assumption that over a decade the claims experience of each group would not vary significantly the figures show that pricing between the public insurer and the five groups of private insurers was nearly identical and extremely profitable underwriting for all.

In fact comparative prices in Queensland under this 'competitive' and regulated market offered showed much the same result as in Victoria, 37.5 per cent, during the 1920s where the Tariff was in largely undisputed sway. For the same period the claims ratio in New South Wales averaged 50.8 per cent; for the five year period 1921-22
to 1925-26 the average was 57.3 per cent. The reasons for this worse result are not apparent.49

Expense Rates

When the SGIO entered into competition with private insurers their opposition confidently expected the SGIO to have a significantly higher expense rate because of the alleged inefficiency of state run enterprises.50

| TABLE 4.4 |
| EXPENSE RATIOS Per cent OF QUEENSLAND INSURERS 1917 TO 1926 |

<table>
<thead>
<tr>
<th>SGIO</th>
<th>Australian A</th>
<th>B</th>
<th>New Zealand A</th>
<th>British &amp; Foreign</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1917</td>
<td>41.7</td>
<td>41.1</td>
<td>40.7</td>
<td>45.0</td>
<td>40.4</td>
<td>36.0</td>
</tr>
<tr>
<td>1918</td>
<td>29.9</td>
<td>41.7</td>
<td>40.7</td>
<td>48.3</td>
<td>42.0</td>
<td>36.2</td>
</tr>
<tr>
<td>1919</td>
<td>29.2</td>
<td>47.6</td>
<td>42.3</td>
<td>50.9</td>
<td>42.4</td>
<td>43.2</td>
</tr>
<tr>
<td>1920</td>
<td>36.0</td>
<td>44.6</td>
<td>44.1</td>
<td>49.4</td>
<td>40.0</td>
<td>38.8</td>
</tr>
<tr>
<td>1921</td>
<td>35.7</td>
<td>47.6</td>
<td>58.3</td>
<td>47.4</td>
<td>41.0</td>
<td>43.0</td>
</tr>
<tr>
<td>1922</td>
<td>32.0</td>
<td>46.4</td>
<td>49.8</td>
<td>44.0</td>
<td>41.3</td>
<td>46.7</td>
</tr>
<tr>
<td>1923</td>
<td>35.3</td>
<td>47.0</td>
<td>55.5</td>
<td>43.4</td>
<td>45.4</td>
<td>43.5</td>
</tr>
<tr>
<td>1924</td>
<td>27.2</td>
<td>40.4</td>
<td>49.1</td>
<td>40.0</td>
<td>41.1</td>
<td>42.3</td>
</tr>
<tr>
<td>1925</td>
<td>28.9</td>
<td>47.5</td>
<td>50.2</td>
<td>43.2</td>
<td>42.2</td>
<td>48.4</td>
</tr>
<tr>
<td>1926</td>
<td>27.4</td>
<td>44.6</td>
<td>49.1</td>
<td>45.4</td>
<td>41.8</td>
<td>42.3</td>
</tr>
</tbody>
</table>

Avge. 32.3 44.8 48.0 45.7 41.8 42.0

Source: As for previous Table.

The SGIO expense rate is considerably better than private insurers, particularly if the obviously aberrant first year of operation is removed. This reduces the SGIO average to 31.3 per cent. However the SGIO was heavily

49 Victorian Year Books for the period.
New South Wales Statistical Register, 1920/1921.
New South Wales Official Year Book, 1926/27

50 Thomis and Wales, SGIO to Suncorp, p.17. The Baltimore Underwriter 'bet any sporting gent in Brisbane two bits against a lamb that...private companies will beat the state concern hands down.'p.36. The AIBR congratulated Goodwyn in 1919 for keeping costs down to those of the private companies.
subsidiary by other government departments. It is not possible to estimate these subsidies and there do not appear to have been any contemporary calculations.

The largest Australian and British companies (the 'A' category) appear to show some consistency throughout the period. It is surprising that local companies had costs that were higher than overseas companies. And the volatility of the figures for smaller companies tends to put the credibility of the figures for this group into some doubt. The move from a rate of 44.1 per cent in 1920 to 58.3 per cent for Australian 'B' companies a year later seems improbable, and it is difficult to calculate how these local companies would have had an expense rate averaging 50 per cent for the last part of the decade.

Rate Competition by the S.G.I.O.

As mentioned earlier the S.G.I.O. reduced rates on all private dwelling fire insurances by 25 per cent and all other fire risks by 10 per cent from 1 May 1918. In subsequent years during the first decade of its existence the Commissioner declared a profit return on fire insurance to its policy holders of 10 per cent in his annual reports. From the figures in the last two Tables it would appear that these later reductions were financed from lower expense rates rather than through price reductions which would have reflected in higher claim ratios.

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51 Thomis and Wales. pp.24/25 'Goodwyn was making a frank admission of the informal help and hidden subsidies that the office received...it had available in country districts a whole army of clerks of petty sessions, savings bank officials, police officers and other public employees whose services were not available to the private companies.'

With these advantages it is interesting that the SGI0 did not make greater in-roads into the private companies’ market share, particularly as it rapidly developed an extensive agency network throughout the state.

Thomis and Wales report only intermittently on SGI0 agency appointments, but they do record that in 1916/1917 169 agents were appointed in country centres; a year later there were 514 ‘local agents throughout the state’, and by 1926 this number had grown to 726. Many of these agents were clerks-of-court and police officers. 53

It is suggested that the strength of the tariff hold on its business derived from the social position of its agents. On the other hand, dealing with one’s local policeman or clerk-of-courts as a business confidant and adviser might well have been a limited one that not even the prospect of a profit share would modify.

53 Thomis and Wales, pp. 20, 35, 44, 84.
Chapter 3 described the world-wide movement towards regulation of insurance, particularly life insurance, which took place towards the end of the nineteenth and at the beginning of the twentieth centuries. That Chapter also related the recommendations for regulation proposed by the Commonwealth 1908 Royal Commission into insurance, and the vain attempts at the introduction of Commonwealth legislation which petered out in 1915.

As a consequence the only insurance regulations in Australia in the mid 1920s were still those which had been put in place by the Colonies during the nineteenth century and, as related in Chapter 4, the Queensland regulation of 1916. In summary, five of the Australian states had legislation in place which required life insurance companies to make deposits with those governments before they could obtain a license to operate. Four states also required deposits from general insurance companies. However, as shown in Table 5.1, the requirements were far from standard and, in particular, there was no legislation in existence at all in New South Wales.
TABLE 5.1

DEPOSIT REQUIREMENTS OF AUSTRALIAN STATES
FOR INSURANCE COMPANIES
1925

<table>
<thead>
<tr>
<th></th>
<th>General</th>
<th>£s</th>
<th>Life</th>
<th>Year of First Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>---</td>
<td>---</td>
<td>5,000</td>
<td>1873(a)</td>
</tr>
<tr>
<td>Victoria</td>
<td>---</td>
<td>5,000</td>
<td>50,000</td>
<td>1901(b)</td>
</tr>
<tr>
<td>Queensland</td>
<td>20,000</td>
<td>20,000</td>
<td>1882</td>
<td></td>
</tr>
<tr>
<td>South Australia</td>
<td>10,000</td>
<td>20,000</td>
<td>1889</td>
<td></td>
</tr>
<tr>
<td>Western Australia</td>
<td>5,000</td>
<td>5,000</td>
<td>1874</td>
<td></td>
</tr>
<tr>
<td>Tasmania</td>
<td>5,000</td>
<td>5,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: CPD, Representatives, 9 March 1932, p. 847.
Gray, Life Assurance in Australia, p. 143.

Notes: (a) Victoria required deposits from companies writing workers’ compensation insurance – see Chapter 7.
(b) The deposit required in Queensland under the 1901 legislation was £10,000 for life only. The deposits shown in the Table are from the 1916 legislation.

It is remarkable that none of the Labor governments in New South Wales which had been in power for more than half the period between 1910 and 1925 ¹, had not deemed it necessary or desirable to follow Queensland’s lead or to require substantial deposits at least from life companies.²

² Gray, Life Insurance, recounts that deputations waited on New South Wales governments concerned with the reliability of the 20 life companies that were formed in New South Wales during the decade of the 1920s. By comparison only three life companies were established in the rest of Australia during the same period. pp.142-145.
Tariff Pressure for Deposit Legislation in New South Wales.

Jack Lang's first ministry dates from 17 June 1925. On 9 September 1925 Lang received a letter from the chairman of the Tariff Insurance Brokers' Association of New South Wales, A.B. Pursell, which strongly recommended that companies and others 'doing insurance business' in New South Wales should be required to have deposits with the state. This was a veiled reference to Lloyd's. Pursell was seeking deposit legislation for all general insurers in the State and was seeking to put Lloyd's underwriters in a position where they would have to withdraw, on the basis, recounted later in the Chapter that each underwriter at Lloyd's would have to make a deposit. This would have removed the only opposition to the Tariff at that time. 3

As will be discussed in Chapter 6 a Lloyd's broker had started in business in Sydney in 1922. The broker, Bennie S. Cohen, was armed with facilities from Lloyd's which enabled the broker to both undercut Tariff rates and to offer products which were common in the London market but not yet introduced in Australia. Cohen's prime targets were motor vehicle insurance where Lloyd's was offering premiums considerably lower than Tariff, and the largest business firms in Sydney which spent substantial sums on insurance. Cohen was paid by brokerage (commission) from Lloyd's and could not afford to pay agents a commission out of brokerage. It was more profitable for Cohen to get motor insurance direct through bulk marketing and to obtain large accounts rather than compete for house insurance and other business paying individually small

3 A.B. Pursell collection of business and private papers, Deposit No.18, A.N.U. Archives of Business and Labour, Canberra. ABL 18/2/2/1. Hereinafter referred to as the Pursell Collection.
premiums. In the latter category Cohen was immediately successful with a major brewery, Tooths; in the former, Cohen made steady inroads into the Tariff market.4

The business of the major Tariff brokers in Sydney was under immediate threat. Even if the Tariff-held accounts were successfully defended against these sorties, the defence inevitably meant that premiums, and as a consequence the broker's commission income, had been lowered to match Lloyd's competition. At best this meant a reduced income for the Tariff broker who had worked hard to retain the business. At worst the Tariff broker had worked hard and lost the business.

Pursell's letter to Lang enclosed a submission of seven closely typed pages. The submission proposed that insurers should make deposits with the government; that all insurers in the state should be in a position to be sued in the state; that all insurers doing business in the state should be compelled to have a reasonable amount of their assets invested in local securities; that those representing Lloyd's in New South Wales should have to pay a deposit of £5,000 for each underwriter at Lloyd's with whom they did business, and a similar deposit for each foreign company that they represented; that provision must be made for Lloyd's be sued in New South Wales; 5 that all brokers and agents be licensed by the

4 Archives of Edward Lumley & Sons, Sydney. Lumleys are the successors in business to Cohen.

5 At that time there was no agreement in Lloyd's policies that the underwriters could be sued in Australia. Pursell and other Tariff brokers made much of this point in anti-Lloyd's propaganda. Lloyd's responded to this criticism, and other similar pressures from elsewhere in the world, by including a 'overseas jurisdiction clause' in its policies by which underwriters agreed to be sued in the country where the insured resided and to be bound by the decisions of local courts. See D.E.W.Gibb, Lloyd's of London, Macmillan, London, 1957, Chapters 16 and 17.
state; that the state should appoint an insurance commissioner to control companies, brokers and agents. 6

In 1925 Pursell owned the largest firm of Tariff brokers in New South Wales with a branch office in Brisbane. 7 He was chairman of the state brokers association and part owner and director of the Sydney equivalent of the AIBR, The Review, an Australasian Journal of Banking, Insurance and Finance. 8

Pursell’s suggestion of requiring insurers to make a deposit was, on the face of it, merely a reiteration of a well-established principle. But the thrust of the paper was a thinly disguised attempt to put Lloyd’s brokers out of business in New South Wales. The attack on Lloyd’s started in the fifth line of the submission and the whole of the fourth page was devoted to describing how Lloyd’s brokers in Australia were cutting Tariff rates.

We pay duty on goods to counteract competition from outside and the great army of clerks and inspectors in the Insurance business have a right to be protected the same as manufacturers. 9.

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6 Pursell Collection.

7 Alexander Benjamin Pursell was born in London, migrated to Australia in 1885 at the age of 20 and found a job as an insurance agent in Tasmania. He moved to Sydney after a year and continued his new occupation. By 1890 he had established himself very successfully as a broker and counted the largest retail stores in Sydney, David Jones & Co. and Anthony Hordern & Sons, among his clients. He was one of the first brokers to be recognised by the Tariff. Pursell Collection for autobiographical notes, and a biographical sketch of Pursell in the Review (see following footnote), 30 April 1914, pp.165/6.

8 The Review was first published in 1899 and ceased publication in 1936. Complete set in Mitchell Library, Sydney.

W.J. McKell, then the Minister of Justice and Assistant Colonial Treasurer, responded to Pursell’s letter on behalf of the government. McKell advised Pursell that his communication had been filed for reference if the government contemplated introducing legislation to control insurance.

It is difficult to tell why Pursell should have chosen to approach the new Lang government on this issue. As will be discussed in Chapter 7, Lang was involved in a major confrontation with the Tariff when, in 1926, his government introduced long overdue compulsory workers’ compensation insurance into New South Wales. In his memoirs Lang referred to this episode in terms of how he had battled with the ‘insurance ring’ that was dominated by ‘the London Insurance Headquarters’. It is perhaps a commentary on the man that during his years as an estate agent in Auburn his firm was an agent of at least one Tariff company, the Colonial Mutual Fire. Perhaps Pursell believed that Lang’s long history as a Tariff agent might have paved the way for receptive hearing from the Lang government. It turned out that this approach was an error of judgement. Whether or not it was in part a reaction to this lobbying is not clear but, as discussed later in this Chapter, Lang was to favour Lloyd’s in his proposed legislation to seek deposits from insurance

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11 Ibid. Letter dated 14 September 1925.


companies because Lloyd's offered competition to the Tariff.

Attempts to Introduce Federal Deposit Requirements for Life Companies

During the decade of the 1920s a number of life assurance companies had collapsed in New South Wales. The absence of any legislation for life companies, and a companies act that was regarded as the least demanding of all the states' company legislation, encouraged the formation of six, allegedly, fraudulent companies in Sydney. 14 The matter had become so notorious that federal legislation to regulate life companies was promised by the Bruce-Page government in its 1928 election platform. 15

Senator A.J. McLachlan, an Honorary Minister in the short-lived second administration of the Bruce-Page coalition, honoured the election promise by introducing a comprehensive piece of legislation into the Senate on 22

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14 Insurance in Australia and New Zealand, 1985. Craftsman, Melbourne. lists the following life companies as going out of business during this period: Equitable in 1922, Co-operative in 1923, Empire Life and Citizens and Graziers in 1926, Colonial Provident in 1927 and Associated Deposits in 1928. All are listed as having had their life assurance business taken over by another larger insurer. pp.18-19. The suggestion of fraud was made in Parliament. See following footnote.

15 CPD, Senate, 22 August 1929, pp.190-1, and 28 August 1929, pp.313-317. A variety of frauds by life insurance companies, which were not named, were detailed during debate. In the debate on the Insurance Bill in the Representatives 9 March 1932, p.847, further collapses were named. Property Insurance, Australian Federal Life, Peoples' Prudential, Commonwealth Traders and the Community General were the insurance companies cited. They were said Blakely, the member for Darling, companies of a 'mushroom nature...with New South Wales...a happy hunting ground for go-getters and the spierer-type of company'.
August 1929. 16 The Life Insurance Bill was based on the report of the Royal Commission of 1910 and was updated to incorporate relevant aspects of the most recent British legislation for life companies including the recommendations made in the 1927 U.K. Board of Trade Report for further changes. The Australian Bill was, said McLachlan, legislation based on the principle established by the U.K. Life Assurance Act 1870 of 'freedom and publicity'. In keeping with that Act the new Bill provided for deposits of £20,000 from each company. McLachlan believed that a deposit of this size would keep fraudulent promoters out of the market.17 The same deposit was required from both Australian and foreign companies, but new mutual companies which had no subscribed capital were allowed to achieve this level over ten years.18 The Bill was passed by the Senate but it lapsed with the change of government in October 1929.

Although the Scullin ministry allowed the Opposition to bring the Bill back into the Senate in March 1930, where it was duly passed, and the Bill received its first reading the House of Representatives in mid-July, other events, particularly the crisis in government finance and Jack Lang's reappearance as Premier of New South Wales, overtook its further progress.


17 The deposit would also be available to satisfy outstanding liabilities to policy-holders if the company failed.

18 CPD, Senate, 22 August 1929, pp.190-1.
The Lang Gambit on Insurance Companies

When Lang was returned to office in November 1930 Australia as a whole was facing the problems of a rapidly declining national income, increasing unemployment and a shrinking taxable capacity. The states' incomes were largely dependant, to the extent of 30 per cent, on income tax and no less than 70 per cent of their revenue was committed to servicing public debt.\textsuperscript{19} New South Wales was harder hit than the other states. The New South Wales deficit was 54 per cent of all state deficits and it raised in revenue only 42 per cent of all state income.\textsuperscript{20}

Despite Lang's protestations during the 1930 state election campaign that the Labor Party had 'set its face against all repudiation', in March 1931 Lang defaulted on the New South Wales interest bill due to the Commonwealth. In April the Commonwealth Bank was forced to meet New South Wales interest due in London when Lang defaulted. The Commonwealth government then retaliated by withholding funds due to the state.\textsuperscript{21}

In his search for funds Lang realised that the singular position of New South Wales having no legislation for insurance companies, either life or general, requiring them to make deposits with the state presented an opportunity for his government to raise some money. As Schedvin has pointed out, banks and insurance companies showed conspicuous wealth at that time. They owned the


\textsuperscript{20} Ibid., p.176.

\textsuperscript{21} Ibid., pp.188 and 232-5.
largest and most important city buildings; their branches dominated the commercial centres of suburbs and country towns; they advertised that they controlled large sums of money. Furthermore, the postponed Federal legislation would not have gone un-noticed; nor would have the Tariff approach for deposits in 1925 have been forgotten.

On 13 May 1931 Lang introduced the Insurance Companies Deposit Bill into the New South Wales Assembly. Its purpose, he said,

is to provide a measure of security to the investing public...by placing an obligation on insurance companies doing business in this State to lodge sums of money with the Treasury as security against liability.

On the face of it there was nothing untoward in this statement. However, by using the phrase 'sums of money' Lang had signalled that he was going to seek cash deposits from insurance companies, rather than the normal cash or securities required in other states and proposed in the recent Federal legislation that had not been passed. Although Lang had indicated that he regarded the Bill as an urgent measure ('I want the Bill out of here in a week') during his opening statement he refused to disclose, despite direct questions from the opposition, the amount of the deposits that he was going to seek from insurers.

The Government revealed its intentions during the ensuing debate. Every insurer, both life and general, already

22 Ibid., p.94.
24 Ibid.
operating in New South Wales was to be required to deposit £50,000 in cash, although there was a sliding scale downwards that reduced the deposit to £20,000 if the company's premium income was less than £10,000 per annum. For new insurers wishing to start in business in New South Wales the deposit requirements were to be £50,000 for Australian companies, £75,000 for British companies and £100,000 for 'foreign' companies. The Bill was pushed through the Assembly in all its readings by 19 May. 25

In a year when the total premium income of all general insurers operating in New South Wales was £4.8 million 26 the government was demanding an approximately equivalent sum as a cash deposit from them. The impact of having to deposit £50,000 in cash just for business in New South Wales can be gauged by looking the premium income and total shareholders funds of some leading Australian insurers in 1930.

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25 Ibid. 14 and 19 May 1931.

26 C.L.Camilleri, A Statistical History of General Insurance in Australia, Insurance Council of Australia, Melbourne, 1986, Table 1.3.2.
TABLE 5.2
AUSTRALIA-WIDE PREMIUM INCOME AND TOTAL SHAREHOLDERS
FUNDS
SELECTED AUSTRALIAN GENERAL INSURERS, 1930

<table>
<thead>
<tr>
<th>Company</th>
<th>Australian Premium Income</th>
<th>Shareholders Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Queensland</td>
<td>774,560</td>
<td>803,723</td>
</tr>
<tr>
<td>Victoria</td>
<td>412,918</td>
<td>439,903</td>
</tr>
<tr>
<td>Mercantile Mutual</td>
<td>362,202</td>
<td>617,979</td>
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<tr>
<td>Auto Fire General</td>
<td>156,378</td>
<td>45,563</td>
</tr>
<tr>
<td>Australian General</td>
<td>116,026</td>
<td>70,000</td>
</tr>
<tr>
<td>NRMA</td>
<td>158,101</td>
<td>65,884</td>
</tr>
</tbody>
</table>

Source: J.B.Were & Son Statistical Service summaries for each company, except NRMA which are from the company’s archives.

Bearing in mind that the deposit was just for New South Wales business, and the figures quoted in the Table are for Australia-wide business, £50,000 would have been an uncomfortable figure for even the largest companies; it would have been impossible for the three smallest companies which all proved to be viable entities in future years.

It is not possible to estimate the extent of the problem that depositing £50,000 in cash would have posed for British companies because none of them published figures for their Australian business. But the size of the deposits demanded were quite out of proportion to those put forward in the recently stalled Life Insurance Bill and those required under current British legislation.\textsuperscript{27}

\textsuperscript{27} This was still £20,000 under the 1909 act for each class of business, fire, life and accident, undertaken although there were exemptions written in to the regulations which usually reduced the total deposit for each company to just one deposit. Raynes, pp.354-57.
The other aspect of Lang's Bill that caused considerable alarm was the probable effect on the securities markets when large sums were realised by both life and general insurers to meet the requirements of the legislation.

The AIBR expressed grave concerns about the proposal. It conceded that company law in New South Wales was not stringent enough to prevent undesirable insurance companies entering the market. It saw the answer in amendment to the Companies Act. And, it went on, if it was desirable to seek deposits then compared with similar requirements in other countries, the amounts proposed are much too large and far beyond what might reasonably be demanded to guarantee security to the public...there can be no question that the main object of the Government is to raise what is virtually a forced loan of four to five millions which, though nominally placed in a special deposit account, would no doubt be used as revenue and remain as a mere book entry... Having regard to the present state of public finances in New South Wales and the deliberate repudiation of interest payments by the present Government, there is a good deal of force in the suggestion that the public would enjoy much greater security if the money were left in the hands of the companies. 28

It was the assumption that the deposits would disappear into general revenue that particularly outraged the insurance lobby and Lang's other opponents. When the Bill reached the Legislative Council on 20 May 1931 Sir Alfred Marks rose to the attack soon after the debate opened for the second reading.

28 AIBR, editorial of 21 May 1931.
It is obvious that the true purpose of the measure is to raise funds to carry on the government...we know that the Government cannot raise a loan except through the Loan Council, and this is another way of trying to get money...29

A reaction to Pursell's submission to Lang's previous government surfaced during the Council debate. J.M.Concannon, a member of Lang's ministry, handled a question from the opposition about Lloyd's position under the proposed legislation. He replied that no deposits at all would be required from those acting as agents for Lloyd's brokers as 'they do not issue policies or undertake risks or liability and therefore do not come within the provisions of the Bill'.30 There had obviously been lobbying by both the Tariff and by Lloyd's before the matter reached the Council. The Tariff view that had been put by Pursell, that deposits should be demanded of each Lloyd's underwriter represented in the state, rather than Lloyd's as a Corporation, would make it uneconomic for Lloyd's to be in business in New South Wales. The Lang government was not impressed. Lang was aware that the Tariff was a British dominated 'price ring'.31 To add to the injury of calling for cash deposits from insurance companies was the further one that their major competitor, Lloyd's, was not to have to pay any deposit at all in New South Wales.

The Tariff lobby was not to be put off. When the Council went into committee to examine the Bill clause by clause,

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the first amendment moved and carried by the opposition added a new wording to the clause that made insurance companies liable for the deposit. This new wording included a person, or association of persons, liable under a policy, either directly or through agents or brokers. 32 This was the old Pursell tactic again. If the legislation was passed then the Tariff would use it to place Lloyd’s at a disadvantage in New South Wales. The Council proceeded to amend almost every clause in the legislation that had been passed by the Lower House.

Although Lang had been able to nominate 25 members to this Governor-appointed New South Wales upper house in 1925, by 1931 only ten of those 25 were still alive and Lang supporters. At the time that this legislation was being considered the opposition was firmly in control of the Legislative Council.33

The major thrust of the opposition amendments were to ensure that deposits could not be used for revenue purposes by Lang. Deposits were to be lodged with the Public Trustee rather than paid to the Colonial Treasurer. Deposits could be lodged in either Commonwealth or State securities or cash at the option of insurers. These amendments were passed by a majority of 19.34

After this rebuff the government let the matter lie for three months. In August 1931 the Legislative Assembly went into Committee to consider the Council’s amendments. Substantially reduced deposits were agreed. The minimum deposit of £20,000 was reduced to £10,000 and the most

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32 Ibid.
33 H.Radi, 'Lang's Legislative Councillors' in Radi and Spearitt, pp.112-3.
34 N.S.W.P.D., Council, 20 and 21 May 1931, pp.2786-93, 2844-53.
common deposit of £50,000 was reduced to £35,000. For new companies deposits were set at £35,000 for Australian, £40,000 for British and £50,000 for 'foreign' insurers. However the Council amendments relating to deposits being made in securities with the Public Trustee were rejected.

The Bill came back to the Council on 13 August and that body again insisted on its amendments that would allow deposits in securities and only with the Public Trustee. The Council appointed a Select Committee to draft reasons why it maintained this stand. The Committee reported back that a deposit of securities was less likely to disappear into general revenue and that to force insurers to convert securities in the present depressed state of the market could well impose a financial strain on their resources. Faced with an intransigent upper house Lang had no option but to let the matter remain dormant.

On 21 November 1931 the Sydney Morning Herald carried headlines of 'Bombshell'. Twenty-five new Lang-nominated appointments had been made to the Legislative Council. They were all, said the paper, 'militant unionists'. Here was a renewed and very real threat, not only to the insurance industry, but also to financial markets generally and to the control that the Federal government was endeavouring to exercise over the country's finances.

Commonwealth Government Reaction to the Lang Legislation.
The Insurance Act 1932

During 1931 a split amongst the members of the Federal Parliamentary Labor Party led ultimately to the fall of

35 N.S.W.P.D., Assembly, 11 August 1931.
36 Ibid., and A.I.B.R. 21 August 1931, p.718.
the Scullin government on 25 November. At the election held on 19 December, with the Labor vote split between the A.L.P. and Lang Labor, the newly formed United Australia Party was returned with an absolute majority. J.A. Lyons, who had resigned from the ministry in Scullin’s government earlier that year, was Prime Minister. 37

The Governor-General opened the new Parliament on 17 February 1932. His speech promised legislation requiring deposits from insurance companies ‘in order to protect the interests of policy holders upon a uniform basis.’ 38 Earle Page was much more forthright about the intention of the legislation during the debate which followed.

Everyone recognises that there is a definite threat of confiscation of much of the assets of insurance companies - which are part of the bulwarks of Australian social life - in the proposal made in New South Wales that excessive deposits in cash be demanded. 39

A bill giving effect to the promise of legislation was introduced into the Senate just seven days later. There was little time to lose if Lang was to be prevented from moving in New South Wales now that he had a majority in the Legislative Council.

The second reading of the Insurance Bill in the Senate was introduced by McLachlan, now Vice-President of the

37 Hughes and Graham, pp.15-17
39 Ibid., p.95.
Executive Council. The Bill was designed, he said in his opening remarks,

to protect the people of Australia from any improper application of the deposits lodged by insurance companies in which they are interested. It also secures uniformity of practice as to deposits throughout Australia. 40

The deposits required under the proposed legislation were £50,000 for existing life companies with lesser demands for smaller companies based on their net worth; existing general insurance companies were called upon to deposit £40,000 with lesser sums required for smaller companies based on premium income. New British companies were to deposit £50,000 for each class of business (life and general) undertaken; the deposit for new foreign companies was £60,000.

Although the deposits were two and a half times those put forward in the proposed Federal legislation for life companies several years before, this was moderated by the wide definition of how those deposits could be met. Deposits could be either in cash or in 'approved securities'. It was the definition of this term that made the Commonwealth legislation acceptable to the insurance industry and to the Government. 'Approved securities' included any existing securities deposited with State authorities. Referral to Table 5.1 set out in the beginning of this Chapter shows that many companies would have already satisfied these new deposit criteria through their existing state deposits. Further, 'approved securities' included municipal securities, debentures, government securities issued in any 'part of the King's

40  C.P.D., Senate, 24 February 1932, p.167.
dominion', bank guarantees and freehold titles. No realisation of securities were required for companies to meet these requirements. It achieved the declared intention of the Lang government, which was to provide a measure of protection to policy-holders, without disruption of insurance company reserves or the securities markets.

These provisions were so broad that they encouraged the insurance industry not to oppose the legislation. Whereas it might be supposed that existing insurers would welcome the prospect of an act of Federal Parliament that restricted access to the market the AIBR implied that insurers did not welcome any form of government intrusion. Furthermore they accepted this form of regulation only in order to keep Lang at bay and because of the manner in which the Bill had been drafted.

Provision is made [under the proposed legislation] for the transfer to the Commonwealth of existing State deposits, and to the extent of existing deposits, the depositors are exempt from liability to make deposits under the Federal Act. It was largely on account of these provisions that leading insurance interests offered no opposition to the bill, but rather welcomed it as consolidating the position.

For the Federal government the nub of the Bill, as an anti-Lang measure, was in Clause 7. It contained the ruling that no State Act, whether passed before or after the commencement of the legislation, would have 'any force or effect'. The Bill was consequently characterised by a Lang sympathiser, Senator J.P.D.Dunn, as an 'attempt

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41 Ibid. p.167.
42 AIBR, 21 March 1932, p.236.
to destroy the sovereignty of the State of New South Wales' and as a measure 'which has really been framed in the interests of insurance companies'. His attempt to amend this clause was defeated by 23 votes to 2. 43

The Bill reached the House of Representatives on 4 March and the second reading continued five days later. It was during this latter debate that S.M.Bruce, then Assistant Treasurer 44, reacted to provocation by the member for West Sydney, J.A.Beasley. 45

I will abandon my reticence. A Bill is now before the Parliament of New South Wales providing that insurance companies must deposit security with the Treasurer of that State. From beginning to end the Bill stipulates that money shall be lodged...It is essential that action be taken by the Commonwealth to prevent large sums of money being drawn into the coffers of the State of New South Wales...it is necessary to protect the interests of insurance companies which hold such a large proportion of the savings of the public. 46

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43 Ibid., p.262.

44 Bruce, the former Prime Minister and Treasurer, held the position of Assistant Treasurer in Lyon's Ministry before becoming a Minister without Portfolio and moving to London in September 1932.

45 Beasley had been an Honorary Minister in Scullin's government until he led the split which formed the Lang Labor group in the Federal Parliament. This move brought down the Scullin government. Beasley has been described as 'Lang's henchman'. Bette Nairn, in the entry under 'J.T.Lang', B.Nairn and G.Serle (eds.), *Australian Dictionary of Biography*, Melbourne University Press, Melbourne, 1983, Volume 9.

It should be noted that under clause 6 of the Bill the Corporation of Lloyd’s was included as a single insurer for deposit requirements. Both the Tariff and Lloyd’s had been involved in lobbying, and once again the Tariff had sought, unsuccessfully, to exclude Lloyd’s competition from Australia. Senator Thompson from Queensland had been briefed on behalf of Lloyd’s. He referred to Lloyd’s as that great institution...which does the greatest insurance business in the world...I need not stress the benefit Lloyd’s is to the community...in reducing insurance rates, particularly fire insurance. Naturally that has earned Lloyd’s the hostility of the Association of insurance companies which, I believe, is the biggest monopoly of its kind in the Southern Hemisphere. A strong attempt was made by the Association to exclude Lloyd’s from Australia but of course it was ridiculous to expect that effort to meet with success.\footnote{CPD, Senate, 25 February 1932, p.252. The Purcell Files contain a document headed ‘Draft of a Proviso to sub-clause (i) of Clause 6’.}

The Bill became law on 16 March 1932.

The Insurance Act 1932, the first Commonwealth legislation introduced more than 20 years after legislation had been recommended by the Royal Commission, was born of New South Wales and Federal rivalries in the context of the Depression. The legislation contained no provisions other than those relating to deposits. No supervision of companies was undertaken and no insurance commissioner appointed. There were no provisions for disclosure of information. There was still freedom but there was to be no publicity.
Conclusions Concerning the Insurance (Deposits) Act 1932

The Insurance Act 1932 was just one piece of legislation passed by the Lyons government, in what Schedvin has labelled as

one of the most unedifying inter-governmental struggles in Australian history, which could be likened to comic opera if its implications were less serious.\textsuperscript{48}

The series of Financial Agreements Enforcement Acts and the final thrust in the battle, the Financial Emergency (State Legislation) Act, were all part of Lang against the Commonwealth war.\textsuperscript{49} The last mentioned Act, rushed through to nullify Lang's Mortgages Taxation Act, was introduced by Lyons as being

A bill for an act for the peace, order and good government of the Commonwealth with respect to taxation, insurance and banking, foreign corporations, and trading and financial corporations formed within the Commonwealth.\textsuperscript{50}

No theories of regulation are comprehensive enough to embrace the Gilbertian nature of the suite of legislation of which the Insurance Act forms a part. They were counter moves to what has been described by Nairn as part of 'Lang's feverish search for new sources of

\textsuperscript{48} Schedvin, Great Depression, pp.252-4.

\textsuperscript{49} Sawyer, Federal Politics 1929-1949, pp.51-2. Sawyer comments that this Act was clearly unconstitutional but was never tested because Lang was dismissed on the day that the Act was passed.

\textsuperscript{50} CPD, H.of R., pp.737.
revenue’.\textsuperscript{51} If distance enables us to see these events as theatrical, as Schedvin has suggested, there is no doubt that the members of the Lyons government saw themselves as heroes battling with a real villain in a very serious drama. Lang and his policies were seen by many as a considerable threat to the financial and economic stability of the Commonwealth and its future international credibility. This stability and credibility were the public good that the Federal Government sought to serve. That the interests of the consumers of insurance and the interests of the insurance companies were protected in a minor way at the same time was coincidental. In its haste to block Lang, the Insurance Act 1932 contained no real consumer provisions. If this had been intended there was a ready-made piece of legislation for life assurance available from 1930. This bill, already approved by the Senate on two occasions, could have been revived and quite simply extended to include general insurance following the then current British model. It was not.

Why there was no attempt to broaden the Deposits Act was not the subject of any contemporary comment that has been discovered. It has been mentioned that it was McLachlan who introduced the second reading of the Bill into the Senate. He did so in his usual well-informed manner by citing the history of British insurance legislation but stopped short of proposing following this example other than in the matter of deposits. McLachlan’s opening remarks that the Bill was designed to secure uniformity of deposit legislation and to prevent ‘improper’ application of these funds have been quoted already in this Chapter. This seems to tie in with the editorial comment of the AIBR, already quoted, that it was for these reasons that the insurance industry welcomed the

\textsuperscript{51} Nairn, The ‘Big Fella’, p.213.
legislation. The conclusion seems to follow that if the legislation was to be pushed through in time to thwart Lang then deposit only proposals would not attract opposition from the insurance industry. More comprehensive legislation would at least delay matters while a consultation process took place.

It can be said that Pursell’s approach to Lang in 1925 to introduce legislation that would have excluded Lloyd’s from the market at in New South Wales was a classic demonstration of lobbying government for regulations that would have sustained the position of the cartel against Lloyd’s competition. It was competition that behaved in a typical ‘free rider’ fashion. Nearly all of Cohen’s facilities from Lloyd’s allowed Cohen to offer rates described as ‘net Tariff less 15 per cent’.\textsuperscript{52} This attempt at regulation by the Tariff was ignored by Lang, and their attempts to influence the Commonwealth legislation in the same manner were rebuffed. In Peltzman’s terms each government saw the economic value of its regulation in terms of general electoral support in preference to that which the Tariff may have had to offer either government.

Overall it can be said that the Lyons’ government stand was just one further indication of the extent to which Lang and his methods overshadowed the political process in Australia for seven years from 1925 until 1932. The result of this haste by Lyons was that it delayed regulation of life insurance until 1945 and general insurance until 1973.

\textsuperscript{52} Copy underwriting contracts in Lumley archives.
CHAPTER 6
THE TARIFF HEGEMONY CHALLENGED

As mentioned in the previous chapter, an interesting side issue that arose during debates in both the New South Wales and Commonwealth parliaments on the subject of deposits was the disclosure of the Tariff's reaction to competition from Lloyd's brokers operating in Australia. The establishment of several Lloyd's brokers in Australia during the 1920s and 1930s coincided with the growth of a non-Tariff insurance market which was based on the great growth of private and commercial motoring that took place during that period. Both of these developments threatened the hold that the Tariff had exercised over the Australian insurance market since 1897.

Lloyd's in Australia

There is evidence of use of the Lloyd's market for Australian risks for many years. The earliest discovered is in an advertisement, placed by the emancipated convict Simeon Lord, in the Sydney Gazette and New South Wales Advertiser in 1806. Lord advertised that he had facilities to arrange insurance in London, which would have been at Lloyd's, on goods being shipped to the Colony. Lloyd's established a claims settling agency in Sydney in 1816. ¹

From the 1890s, when Lloyd's expanded its activities to include fire and other non-marine risks in addition to its traditional marine insurance, there is evidence that Australian insurance brokers utilised this facility quite extensively. Indeed A.B. Pursell's firm was at the forefront of such activities, albeit only for risks which were so large

¹ Benjamin, History, p.8 for those specific references. Edward Lloyd's coffee house, where marine insurance was conducted over the tables, was established in 1689. Lloyd's started creating overseas settling agencies in 1811. Wright and Fayle, Chapter I, and p.272.
that the Australian market could not handle them all and the excess had to be placed in London. The Tariff had to sanction these placements before their brokers could utilise this facility for their clients; and the Tariff demanded not only this metaphorical tribute to its sovereignty in the market. Those customers of the Tariff who found that the Tariff market in Australia was inadequate to meet their needs had to pay an additional premium calculated at sixpence (0.025) per cent to that body on the sum insured placed overseas. As a Tariff broker Pursell also used Lloyd’s for risks which the local Tariff companies would not accept. During this period Lloyd’s was an insurer of last resort for the Tariff market in Australia and its use was carefully controlled by that body.

However Lloyd’s had no direct representation in Australia and did not become a competitive force until the 1920s. In 1921 a firm of Lloyd’s brokers, Bennie S. Cohen and Son established a branch office in Melbourne. Offices in other state capitals followed soon afterwards. No Australian Tariff broker had such wide representation; most operated in their home cities. Even Pursell only had one branch office. Several other firms

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2 Benjamin, History, pp.2 and 8. The Pursell Files contain details of the placement of the Anthony Hordern stores in 1901. One third of the risk was placed by Pursell at Lloyd’s.

3 Ibid., p.62.

4 Pursell Files. Pursell sought cover against damage caused by riots and strikes from Lloyd’s during the World War I conscription debate when the local market would not offer insurance.

5 Cohen was born and educated in Australia, the grandson of a convict, and the son of Edward Cohen who was both Mayor of Melbourne and a Minister in the Victorian Parliament. Bennie Cohen migrated to London and became a Lloyd’s broker. After World War I he sent his son Edward, who took his mother’s name of Lumley, to Australia to utilise his family and social contacts to establish the firm in this country. The Cohen firm name was changed to Lumley in 1944. Benjamin, History, p.96.; B. Falk, No Other Home, Penguin, Ringwood, 1988, for a history of the Cohen family in Australia.
of Lloyd’s brokers started business in Australia during the 1920s and 1930s. By 1939 there were five operating although Cohen was by far the largest having by that time absorbed its major competitor, Steeves Agnew.\footnote{Benjamin, \textit{History}, p.111.}

In usual insurance transactions a broker acts as the agent of the insured and places the risk with an insurer on behalf of his principal; the broker does not accept the risk on behalf of the insurer. Because of time and distance problems these normal arrangements would impose practical difficulties for Lloyd’s brokers operating outside Britain. A system was developed whereby Lloyd’s brokers operating overseas could accept risks on behalf of Lloyd’s underwriters as their agents under a ‘binder’. A binder is a contract between the insurer and the broker which allows the broker to accept carefully defined risks at a predetermined scale of premiums on behalf of the insurer. The binder often allows the broker to settle smaller claims without reference to the insurer. In these circumstances the usual role of the broker is reversed. A broker using a binder acts as the agent of the insurer and not of the insured.\footnote{None of the histories of Lloyd’s make reference to the origins of this practice. The author holds copies of such binders granted to Cohen in 1922. The use of binders by insurers generally is now so widespread that their manner of usage is the subject of federal legislation in Australia under the Insurance (Agents and Brokers) Act 1984. This Act, inter alia, requires brokers to disclose to their clients if they are using a binder in a transaction. This is so that the client is aware that broker is not, in this case, acting as the client’s agent but as the agent of the insurer.}

The binders given by Lloyd’s to brokers in Australia presented the brokers with marketing advantages in both price and product. The binder for fire risks given to Cohen in 1922 allowed them to issue Lloyd’s fire policies at a 15 per cent discount from net Tariff rates. Net in that context meant after allowing for any discount by way of agency or director’s
fee that might be paid by the Tariff to the insured. For business other than fire Cohen could usually discount the rate by 10 per cent. The products that Cohen had on offer are now commonplace but at that time were not available from the Tariff market – earthquake damage, household comprehensive, cover on jewellery and personal effects outside the home, cover on jewellers' stocks against all risks, cash in transit and a broader cover on motor vehicles. The Pursell Files contain a letter from an erstwhile Pursell client company explaining why it had transferred all its insurances to Lloyd's. The client company was a wool merchant whose stock values obviously fluctuated throughout the year depending on the wool selling season. The wool merchant explained to Pursell that the Tariff had insisted on a premium that was based on the maximum value of stocks held. Lloyd's had offered a policy the premium for which was adjustable on the average values of stocks held.

Given such advantages, what impact did Lloyd's have on the Australian market? The effect was threefold. The first effect was a market share that was picked up by Lloyd's brokers. The second was the price reductions that the Tariff had to offer its major clients in order to meet competition. And finally the Tariff had to increase its product range to match the one being offered by Lloyd's.

Lloyd's Market Share of Fire Insurance 1921-1941

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8 Lloyd's binders issued to Cohen. Copies in author's possession.


10 The year 1941 has been selected as a rest in the examination of data for two reasons. Firstly the price of insurance was pegged in 1942 as part of war-time legislation. Second there was a non-competition 'stand still' agreement amongst Tariff insurers to last for the duration of the war which was observed by Lloyd's brokers and other non-tariff insurers. R.Woff, The
As noted earlier the only precise figures that are available to establish market share are the records of the Melbourne Metropolitan Fire Brigade.\textsuperscript{11} For the period under review Victoria's share of Australia-wide fire premium income was between 28 and 32 per cent.\textsuperscript{12} Given that Lloyd's brokers operated in all but one state\textsuperscript{13} the closest estimate possible for Australia-wide figures is to use the Melbourne Fire Brigade returns.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Lloyd's</th>
<th>Lloyd's Percentage</th>
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<tr>
<td>1925</td>
<td>1,010,896</td>
<td>3,401</td>
<td>0.3</td>
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<tr>
<td>1930</td>
<td>1,050,120</td>
<td>13,566</td>
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<tr>
<td>1935</td>
<td>938,484</td>
<td>18,211</td>
<td>1.9</td>
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<td>1940</td>
<td>1,078,123</td>
<td>26,759</td>
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</table>

Source: Melbourne Metropolitan Fire Brigades Board Contributions Register.

This is not a large share to have achieved after 20 years in the market given the price and product advantages that Lloyd's brokers possessed. And in view of this lack of success it is

\textsuperscript{11} As noted previously equivalent figures, but based on sums insured, exist at the Sydney Metropolitan Fire Brigade but are still regarded as confidential.

\textsuperscript{12} Camilleri, Table 1.3.4.

\textsuperscript{13} The exception was Queensland. Were Lloyd's brokers, given the nature of their business, to be licensed as insurers or brokers? The ultimate decision was to treat them as insurers but Cohen was unable to establish an office in Brisbane until 1936.
difficult to understand the fervour with which A.B. Pursell and the Tariff had pursued Lloyd's politically in 1925 and again in 1932. Perhaps there were other answers.

In 1940 there were 139 insurers making returns to the Fire Brigade. It was obviously a very fragmented market. Lloyd's brokers, with just a 2.5 per cent share still ranked fourth in this market behind the Royal, Victoria and Commercial Union in that order. No doubt, then, that Lloyd's must have been quite visible to its competitors and, furthermore, as it was not part of the Tariff market sharing agreement, there was always the possibility of Lloyd's continuing to gain increasing market share.

The pressure on the Tariff to reduce rates in order to meet Lloyd's competition has been the subject of comment in the previous Chapter. Under Regulation 3 of the fire Tariff there was provision for special rates to be declared on risks at the discretion of the Council. Such discretion was to be exercised, in the original Regulations, on large and complicated risks. However with the advent of Lloyd's competition a new regulation was passed, 3 (a) (ii), which provided for a special discount from Tariff rates to be approved in order to meet non-tariff competition. The Board Minutes of Bennie S. Cohen and Son (N.S.W.) Pty.Ltd. record that on 1 October 1929 a copy of the Tariff regulation 3 (a) (ii) was shown to the meeting. It disclosed that fire rates could be reduced by 25 per cent to meet Lloyd's competition. The meeting was also informed that an informal meeting of the New South Wales Tariff had agreed that 'where an account was in jeopardy and likely to go to Lloyd's the company or companies holding such lines could reduce their rates to the basis of Lloyd's without infringing any clause of the Agreement'.

14 Minutes of Board Meetings of Bennie S Cohen and Son (N.S.W.) Pty.Ltd., archives of Lumley Group, Sydney.
hundreds of risks were specially rated by the Tariff both for reasons of competition and for 'genuine' reasons, it is not possible to estimate the precise effect of this competition in this manner.

It could be expected that a more fruitful measure would be to examine the ratio of premium to claims during this period. Expressed as a percentage of claims to premium, this ratio presents the gross profit of insurers from the business before charging marketing and administration expense. If prices are falling then this would be reflected in an increased ratio of premium to claims provided that claims remain consistent.

Because fire risks were being improved during the period of the 1920s and 1930s with more buildings constructed of fire resistant materials, more sprinkler systems being installed and improved water supplies it could be expected that in a regulated market the ratio of premium to claims would tend to improve, or perhaps remain relatively constant. If, however, competition was forcing prices down then it could be expected that the loss ratio would reflect this by increasing over the period.

Australia wide figures were not collected until 1930. Prior to that date figures were collected by State statisticians and the Queensland Insurance Commissioner, but on an uneven basis. Table 6.2 shows data for the decade of the 1920s collated from state sources. Table 6.3 shows data for the succeeding decade. It was not until the 1930s that Lloyd's started to gain significant market share.

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15 The Minutes of the Victorian Fire Underwriters Association record that by April 1901, four years after the Tariff had been brought in, 889 special rates had been declared in Victoria. These reductions would not have been for reasons of competition because none existed at that time.
TABLE 6.2
AUSTRALIA-WIDE LOSS RATIO OF PREMIUMS TO CLAIMS
FIRE INSURANCE ALL INSURERS 1920-1929

<table>
<thead>
<tr>
<th>Year</th>
<th>Loss Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>39.53</td>
</tr>
<tr>
<td>1921</td>
<td>39.63</td>
</tr>
<tr>
<td>1922</td>
<td>46.62</td>
</tr>
<tr>
<td>1923</td>
<td>53.11</td>
</tr>
<tr>
<td>1924</td>
<td>53.56</td>
</tr>
<tr>
<td>1925</td>
<td>48.43</td>
</tr>
<tr>
<td>1926</td>
<td>55.80</td>
</tr>
<tr>
<td>1927</td>
<td>58.22</td>
</tr>
<tr>
<td>1928</td>
<td>51.33</td>
</tr>
<tr>
<td>1929</td>
<td>50.44</td>
</tr>
</tbody>
</table>

Mean 49.67


Note: Results from some States were not available for certain years as follows. 1920, Queensland, Western Australia. 1921, Western Australia. 1925 South Australia. Those omissions would not greatly influence the loss ratios because nearly 70 per cent of income came from New South Wales and Victoria.
TABLE 6.3
AUSTRALIA-WIDE LOSS RATIO OF PREMIUMS TO CLAIMS
FIRE INSURANCE ALL INSURERS 1930 -1941

<table>
<thead>
<tr>
<th>Year</th>
<th>Loss Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1930</td>
<td>51.74</td>
</tr>
<tr>
<td>1931</td>
<td>46.00</td>
</tr>
<tr>
<td>1932</td>
<td>37.38</td>
</tr>
<tr>
<td>1933</td>
<td>32.36</td>
</tr>
<tr>
<td>1934</td>
<td>28.97</td>
</tr>
<tr>
<td>1935</td>
<td>28.01</td>
</tr>
<tr>
<td>1936</td>
<td>38.32</td>
</tr>
<tr>
<td>1937</td>
<td>34.61</td>
</tr>
<tr>
<td>1938</td>
<td>32.78</td>
</tr>
<tr>
<td>1939</td>
<td>39.70</td>
</tr>
<tr>
<td>1940</td>
<td>34.32</td>
</tr>
<tr>
<td>1941</td>
<td>31.31</td>
</tr>
</tbody>
</table>

Mean 36.29


The difference between the two periods is not readily explicable. If competition was forcing prices down it would be expected that the ratios in the 1930s would be higher than in the 1920s. One explanation of these results is that given the heavy concentration of premium in New South Wales and Victoria. A series of fires in those states would have a heavy impact on the Australia-wide results. Victoria did suffer severe bush fires in the summer of 1925/1926 which affected those years, but it was the results in New South Wales that largely contributed to the poor loss ratios during the years from 1922 to 1931. The AIBR referred to 'the alarming frequency of fires in Sydney [which] is a matter of common knowledge'. 16 Why the Sydney fire record should have been particularly bad, or why it suddenly improved, was not the subject of contemporary comment. Contributing factors would have included such matters as: the worst fire risks were the

16 AIBR, 21 January 1927, p.62.
first to burn and the replacement buildings were more fire resistant; the fire hazards of modern industry became better known and better controlled; water supplies and fire fighting equipment were improved; new industries were established in purpose built factories; and an increased use of sprinkler installations.

The stochastic nature of insurance must be the major influence in any explanation of the differences between the data shown in Tables 6.2 and 6.3. The considerable improvement in the loss ratio between the decade of the 1920s and the 1930s can only be explained in these terms. If the Tables reflected prices being forced down by competition it would be expected that the higher loss ratios in Table 6.2 would at least be mirrored, if not exceeded by the ratios in 6.3. The fact that the ratios during the later period were lower is a clear indication that competition had not significantly reduced prices.

There is anecdotal evidence, such as that provided by the Cohen Board Minutes quoted above, that prices were reduced for a great number of large commercial risks. However a major factor in the overall market was that the vast majority of risks were in the medium and small category, and these, together with house insurance, would have remained unaffected because Lloyd’s brokers had no means of entering these markets in a serious way. The influence of the Tariff agency system on these categories of business was difficult to dislodge.

**Tariff Marketing and Administration Expense for Fire Insurance**

It is proposed that the agency system of marketing insurance by the Tariff is the critical factor in keeping competitors out of the market during the period between World Wars I and II. The nature of the Tariff agency system has already been described. Although Lloyd’s brokers were allowed by Lloyd’s underwriters to quote lower rates than the Tariff, the
brokers' remuneration was itself paid on commission. This commission was usually 20 per cent out of which the broker had to pay all his expenses of marketing, general administration and claims handling. Using the 'binder' facilities the brokers' expenses were roughly the same as an insurance company. There was certainly no margin for a Lloyd's broker to set up agency connections in emulation of the Tariff. This thesis suggests that it was the fact of Lloyd's brokers being restricted to direct marketing of their product was the major reason why they were not more successful in gaining more market share.

The Commonwealth Bureau of Census and Statistics (CBCS) did not begin to publish figures of general insurers' expenses and commission expenses until 1943/44.\(^\text{17}\) Some data for the period between the wars was collected by state statisticians. Collation of that data has been used to produce the Tables 6.4 and 6.5.

\(^{17}\) CBCS, *Australian Financial Statistics*, 1943/44, Table VII.
### TABLE 6.4

COMMISSION PAID BY INSURERS ON FIRE BUSINESS 1920 TO 1929 EXPRESSED AS A PERCENTAGE OF COMMISSIONS TO PREMIUM INCOME

<table>
<thead>
<tr>
<th>Year</th>
<th>Premium £</th>
<th>Commissions £</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>2,835,750</td>
<td>399,497 (a)</td>
<td>14.08</td>
</tr>
<tr>
<td>1921</td>
<td>3,415,922</td>
<td>509,135 (a)</td>
<td>14.90</td>
</tr>
<tr>
<td>1922</td>
<td>3,765,429</td>
<td>581,765 (b)</td>
<td>15.45</td>
</tr>
<tr>
<td>1923</td>
<td>3,806,077</td>
<td>599,730 (b)</td>
<td>15.75</td>
</tr>
<tr>
<td>1924</td>
<td>4,100,025</td>
<td>644,265 (b)</td>
<td>15.71</td>
</tr>
<tr>
<td>1925</td>
<td>4,294,936</td>
<td>682,759 (b)</td>
<td>15.90</td>
</tr>
<tr>
<td>1926</td>
<td>4,814,034</td>
<td>767,568 (c)</td>
<td>15.94</td>
</tr>
<tr>
<td>1927</td>
<td>5,195,512</td>
<td>847,975 (c)</td>
<td>16.32</td>
</tr>
<tr>
<td>1928</td>
<td>5,162,702</td>
<td>840,023 (c)</td>
<td>16.27</td>
</tr>
<tr>
<td>1929</td>
<td>5,230,992</td>
<td>869,663 (c)</td>
<td>16.63</td>
</tr>
</tbody>
</table>

Source: As for Table 6.2

Note: (a) New South Wales and Victoria only  
(b) New South Wales, Victoria and Western Australia only.  
(c) All states except Queensland.  
State statisticians only gave figures in the years shown in the Table. The Queensland Insurance Commissioner did not publish figures for commission on fire business separately.

The effect of adding other states to the figures relating to New South Wales and Victoria is to reduce the rate of growth in commission payments. In the year 1929 commission on fire insurance in New South Wales and Victoria was 16.75 per cent. It could be assumed that the steady growth in commission was a further effect of forcing the Tariff to reduce prices in response to Lloyd’s. But there was also the question of commissions being the only form of competition available between Tariff companies themselves and we have seen that the Tariff organisation found it a difficult area to police. In view of the small market share of Lloyd’s brokers, competition between companies seems to be the more likely cause of increasing commission payments.

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18 Source as for Table 5.5
Administration expense seems to have been remarkably stable during the period of the 1920s.

**TABLE 6.5**

ADMINISTRATION EXPENSE ON FIRE BUSINESS 1920 TO 1929 EXPRESSED AS A PERCENTAGE OF EXPENSE TO PREMIUM INCOME

<table>
<thead>
<tr>
<th>Year</th>
<th>Premium £</th>
<th>Expense £</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>2,835,750</td>
<td>827,422</td>
<td>(a) 29.18</td>
</tr>
<tr>
<td>1921</td>
<td>3,415,922</td>
<td>922,125</td>
<td>(a) 27.00</td>
</tr>
<tr>
<td>1922</td>
<td>3,765,429</td>
<td>1,072,534</td>
<td>(b) 28.48</td>
</tr>
<tr>
<td>1923</td>
<td>3,806,077</td>
<td>1,040,063</td>
<td>(b) 27.33</td>
</tr>
<tr>
<td>1924</td>
<td>4,100,025</td>
<td>1,105,299</td>
<td>(b) 26.96</td>
</tr>
<tr>
<td>1925</td>
<td>4,294,936</td>
<td>1,136,352</td>
<td>(b) 26.46</td>
</tr>
<tr>
<td>1926</td>
<td>4,814,034</td>
<td>1,361,486</td>
<td>(c) 28.28</td>
</tr>
<tr>
<td>1927</td>
<td>5,195,512</td>
<td>1,447,985</td>
<td>(c) 27.87</td>
</tr>
<tr>
<td>1928</td>
<td>5,162,702</td>
<td>1,473,519</td>
<td>(c) 28.54</td>
</tr>
<tr>
<td>1929</td>
<td>5,230,992</td>
<td>1,516,301</td>
<td>(c) 29.00</td>
</tr>
</tbody>
</table>

Mean 27.91

Source: As for Table 6.2

Note: (a) New South Wales and Victoria only.
(b) New South Wales, Victoria and Western Australia only.
(c) All states except Queensland.

State statisticians only gave figures in the years shown in the Table. The Queensland Insurance Commissioner did not publish figures for expenses on fire business separately.

It can be argued that these expense figures are at best reasonable estimates because insurance companies did not have sophisticated costing techniques in place that would allow them to cost one section of their business with accuracy. Despite this criticism the closeness of the figures around the mean does indicate a consistency of calculation.

However adding administration expense to commission payments means that during the period under review on average some 44 per cent of premiums were absorbed by expenses. The Tariff had created a price structure which allowed for expensive non-
price competition and offered a shield behind which inefficient operators could stay in business and which provided efficient operators with the opportunity of monopoly rents.

Motor Vehicle Insurance

In 1921 there were 87,000 motor cars and commercial vehicles registered in Australia. By 1930 this figure had risen to 571,000 and by 1940 it was 821,000. Table 6.6 outlines this growth. This growth represented a new market for insurance which had not previously existed. Not only was insurance required for the motor vehicles themselves, but the owners required insurance as protection against claims that might be brought against them both for bodily injury and for damage to property caused by the vehicles.

**TABLE 6.6**

**NUMBERS OF VEHICLES REGISTERED IN AUSTRALIA 1920-1940**

<table>
<thead>
<tr>
<th>Year</th>
<th>Motor Cars and Commercial Vehicles 000's</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>87</td>
</tr>
<tr>
<td>1925</td>
<td>282</td>
</tr>
<tr>
<td>1930</td>
<td>571</td>
</tr>
<tr>
<td>1935</td>
<td>614</td>
</tr>
<tr>
<td>1940</td>
<td>821</td>
</tr>
</tbody>
</table>


Growth of motor vehicle insurance matched this increase in numbers of cars and trucks on the road. The Government Statist of Victoria gave details of non-life insurance effected in the State for the years 1910 to 1912 in the Victorian Year Book 1912-13. Motor insurance was not a separate category in those years. It was first published as a separate category in 1914 when it represented just over 2 per cent of the State's total
premium. In 1920 motor vehicle premium income had risen to only 3 per cent of total premium income, but by 1926 motor vehicle insurance premiums ranked second only to fire insurance of all classes of insurance. Australia-wide premium income for motor insurance in that year was £1,828,468 representing 16.5 per cent of total premium income. Marine, the oldest form of insurance, had held second place to fire insurance for a century but it lost this position to motor insurance in 1924. As shown in Table 6.7 the motor vehicle insurance market grew to more than 22 per cent of the total insurance market at the end of the 1930s after a sharp decline during the depression years.

TABLE 6.7

MOTOR VEHICLE PREMIUM INCOME AUSTRALIA-WIDE
AND AS A PERCENTAGE OF TOTAL PREMIUM INCOME 1930-1941

<table>
<thead>
<tr>
<th>Year</th>
<th>Motor Premium</th>
<th>All Classes Total Premium</th>
<th>Motor Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1930</td>
<td>2,589,402</td>
<td>13,723,438</td>
<td>18.9</td>
</tr>
<tr>
<td>1931</td>
<td>1,911,040</td>
<td>11,611,017</td>
<td>16.5</td>
</tr>
<tr>
<td>1932</td>
<td>1,644,590</td>
<td>10,671,456</td>
<td>15.4</td>
</tr>
<tr>
<td>1933</td>
<td>1,613,427</td>
<td>10,348,052</td>
<td>15.6</td>
</tr>
<tr>
<td>1934</td>
<td>1,650,587</td>
<td>11,121,130</td>
<td>14.8</td>
</tr>
<tr>
<td>1935</td>
<td>1,940,942</td>
<td>12,759,177</td>
<td>15.2</td>
</tr>
<tr>
<td>1936</td>
<td>2,332,486</td>
<td>14,420,054</td>
<td>16.2</td>
</tr>
<tr>
<td>1937</td>
<td>2,793,559</td>
<td>16,089,944</td>
<td>17.4</td>
</tr>
<tr>
<td>1938</td>
<td>3,550,005</td>
<td>16,089,944</td>
<td>22.1</td>
</tr>
<tr>
<td>1939</td>
<td>3,847,938</td>
<td>16,849,919</td>
<td>22.8</td>
</tr>
<tr>
<td>1940</td>
<td>3,905,845</td>
<td>17,658,788</td>
<td>22.1</td>
</tr>
<tr>
<td>1941</td>
<td>3,497,763</td>
<td>18,433,628</td>
<td>19.0</td>
</tr>
</tbody>
</table>

Source: As for Table 6.3

19 Victorian Year Book 1918-19, p.154.
20 Ibid. 1920-21, p.261.
Apart from showing the growth of the motor insurance market during the period this Table is an interesting reflection on the effect of the depression on general insurance as a whole and on motor insurance in particular. By 1941 the motor insurance market is starting to reflect wartime restrictions on motoring.

Growth of a Non-Tariff Market

The Australian Motor Vehicle Tariff was established in 1910, but the appearance of such an obvious new sector of the insurance market was bound to attract a crop of new insurers. The first serious competition to the Tariff was from Lloyd's through Cohen in 1921; the Cohen binder allowed them to write business for members of automobile associations at 80 per cent of Tariff rates and at 90 per cent of Tariff rates for others. Cohen's first coup in the motor insurance business was to arrange cover for the South Australian Automobile Association in 1923. In Victoria the Automobile Insurance Company had been formed in 1922 under the aegis of the Royal Automobile Club of Victoria (RACV). In 1923 the Automobile also formed an association with the Automobile Chamber of Commerce. On the basis of the size of the inflow of business from these two bodies Automobile

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22 The first facility for motor insurance in Australia was a Lloyd's binder handled by Dalgety and Co. in 1908. The first Australian motor tariff was based on the Lloyd's rating scale and terms. Dalgety agreed to give up its Lloyd's facility and operate through the Tariff in 1910. Minutes of the Council of Fire and Accident Underwriters of 25 May 1910.

23 Pursell, Thesis, Table IV.6, p. 430, counted 10 new non-tariff companies (excluding government offices) entries and 3 exits for the Australian market between 1911 and 1920, and a further 39 entries and 17 exits between 1921 and 1930. His source is quoted as 'writer's card index'.

24 Copy of 'Australian Motor Car Agreement' between Lloyd's and Cohen for the calendar year 1926 in the author's possession.

25 Lumley, Adelaide, archives.
Insurance was able to offer rates that had been reduced by 58 per cent from its original rating structure. By 1927 the Automobile had a net premium income of £83,028 which represented 13.5 per cent of the Victorian market. But at the end of that year the Automobile fell out with the council of the RACV because the Club felt that it did not derive enough income from the company. Cohen stepped in with an offer of over-riding commission to the Club and won the business for Lloyd's.

The Automobile company changed its name to Automobile Fire and General Insurance Company (AFG) and continued to trade. Although it lost some motor insurance business it was still writing some £50,000 of income from that class of business in 1930. The income of Lloyd's through the RACV is not known but it is probable that the combined income of Lloyd's and AFG from motor insurance would have been between 17 and 20 per cent of the Victorian market.

This was loss of market share that must have been of some concern to the Tariff. They tackled the problem by recognising that the RACV was going to control a proportion of the market at a discount from Tariff rates. A group of leading Tariff companies subscribed to an 'RACV Pool' which offered to undercut Lloyd's arrangements with the RACV; it recovered the RACV business for the Tariff at the beginning of 1934. In order to do so the Tariff had of course to cut its own rates for this group of motorists, and to pay an over-riding

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26 The company was formed 'mainly to insure motor car risks of members...at as near cost price rates as the experience of the company, governed by sound financial methods, and the provision of a reasonable return on capital, would permit.' History of the company in J.B. Were & Son Statistical Summary of the company dated 1 June 1933.

27 Ibid.

28 Estimated from AFG annual reports, and records of Cohen's commission income (Lumley, London archives).
commission to the RACV, but it was an imaginative move to recover an otherwise lost market.  

The same opportunity did not arise in New South Wales. The National Roads Motorists Association (NRMA) set up its own insurance company in 1925, NRMA Insurance Ltd., to handle its members' motor insurance. By 1930 NRMA Insurance had a premium income of £171,000 from motor insurance which represented a 12 per cent share of that New South Wales market. By 1939 motor income had reached £220,000 but this still only represented a 12 per cent market share.  

Cohen was in the motor market in New South Wales for perhaps another three per cent.  

Motor insurances in other states were not organised by motorist associations until the late 1930s. Then they were handled by a Tariff pool.  

The Non-Tariff Market in 1940

A number of insurance companies which had entered the Australian market since 1920 had either not joined the Tariff or had left it. The most notable of the latter category was the major Scottish company, the General Accident, which had been a Tariff company but resigned in 1930 for reasons which are not recorded.  

Although not part of the Tariff the General Accident did not engage in price competition with the Tariff to the same extent as other non-tariff companies and

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29 AAMI archives, (AAMI is the successor to the Tariff Pool. It was formed into a competitor to RACV when the latter formed their own insurance company in 1968.)

30 NRMA audited financial statements in the Company archives.

31 Estimated from Cohen premium figures in author's possession.


was known by the Tariff as quite friendly.

In 1941 the AIBR listed 31 Australian companies, not including government offices, in its annual summary of Australasian general insurance companies for the year 1940. Of these only five were not members of the Tariff. The Automobile Fire and General had been joined in the non-tariff ranks by the Federation, formed by the Employers' Federation, in 1927, and the Transport and General, formed by road transport operators, in 1938. In addition there were two small companies, the Melbourne Fire Office and the Mutual Fire and General of Tasmania which do not appear in Tariff records. AIBR did not include the V.A.C.C Insurance Company in its summary; this company had been formed in 1930 by the Automobile Chamber of Commerce. Between these six non-tariff companies recorded a premium income of £412,700 for the year in 1940. This represented just over 2 per cent of the total market in Australia which in 1940 stood at £17,658,788.

The other 26 Australian companies listed by AIBR were all members of the Tariff. Twelve of those Australian insurers had been taken over by British Tariff companies but still traded in their own names in order to preserve their agency networks.

Premiums written by Lloyd's in Australia must be added to those of the non-tariff companies but, as has been demonstrated by measuring the Lloyd's penetration of the Melbourne fire market, it is unlikely that as a group Lloyd's

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34 Woff, *History of VACC Insurance*.
36 This information was obtained from a list of members of the Victorian Fire and Accident Underwriters' Association. The list includes cross references which enable determination of the members that are owned by other members. ICA archives.
brokers in Australia had captured more than three per cent of the Australian market as a whole. Overall, but excluding the New South Wales motor market where the Tariff had not been able to counter the NRMA's own insurance company as effectively as had been done with the RACV arrangements, the total impact of 20 years of competition to the Tariff in Australia had resulted in the loss of only five to seven per cent of its market.

Those figures ignore, for the moment, the question of workers' compensation and government competition. This is dealt with in detail in Chapter 7. It is worth noting here only that the Tariff was able to persuade two major insurance companies, set up by manufacturing interests as mutual concerns to handle workers' compensation insurance on a non-tariff basis, to join the Tariff ranks. These companies were the Chamber of Manufactures Insurance in Melbourne and the Manufacturers' Mutual in Sydney. They joined the Tariff cohort not because of difficulties in arranging reinsurance but because they were persuaded to close ranks with the Tariff companies in the face of government competition. 38

Why Was The Tariff So Redoubtable?

It must be said that the company managers of the largest British companies who ran the Tariff were clever and resourceful businessmen. This is evidenced by their handling of the serious intrusion of non-tariff competition in to the motor and workers' compensation markets. They protected their cartel-like group with skill and imagination and utterly rejected any suggestion of commerce with those outside their group.

The rejection of non-tariff was extended to social and

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38 See Chapter 6.
educational matters. The Insurance Institutes, formed in 1884 to encourage social intercourse amongst those engaged in the industry, became Tariff clubs after 1897. Although the Australian Insurance Institute became the formal educational body of the industry in 1920, it did not admit employees of non-tariff companies, or brokers, to membership until the mid 1930s and overtones of this exclusion were evident for another twenty years after that. 39

But no doubt the managers of the non-tariff companies and Lloyd’s brokers were also skilled and resourceful business men who had groups of potential customers in their foundation charters. They all had a price advantage and furthermore Lloyd’s brokers had product advantages. The lack of penetration must be explained in other terms. This thesis proposes that the explanation must lie principally in the prevailing culture of agency arrangements that existed at the time. To this factor must be added the frequency of directorial appointments by insurance companies which tied key clients to Tariff companies and their subsidiaries.

In this era between the Wars the bulk of the clients of insurance companies were private individuals or small businesses. Branches of British businesses tended to insure with the British companies that were used by their head offices. Major Australian companies had been tied to Tariff companies by a system of inter-locking directorates. Tariff rules allowed each company to appoint six of their clients as directors. Commission, usually of 20 per cent 40, which in most cases could be passed on to the client, were paid to directors for the business that they brought in. As there were more than 70 operating Tariff companies there was a total of

39 P.C.Wickens, Insurance Institutes in Australia, Massina, Melbourne, 1984, pp.116, 139/140.

well over 600 directorships of insurance companies that could be sold to obtain and retain clients in each state. The major British insurance companies, which had taken over a number of smaller companies and maintained them as operating subsidiaries, were in a position of potentates with principalities at their disposal. Pursell cited the Commercial Union as having 58 directorships at its disposal and the Royal 48. He also studied the extent of cross directorships between company directors and found that of 98 companies listed in Jobsons Directory in 1959, 68 of them had at least one director who was also a director of an insurance company.41

Product and price advertising was not undertaken at all by insurance companies. Advertising was restricted to the presentation of an image, and this was usually in terms of the great age of the company and its financial strength.42 Such advertising would have had little impact on the individual consumer. But a vast army of agents, who all operated within their own locality, who knew their potential customers and were known by them, created a very strong hold over an existing client base.

The extent of the saturation by Tariff agents can be gauged by the report of an agent appointed by the Victorian State Accident Office to obtain workers' compensation business when the Office opened in 1915. The agent, who was appointed to the small country town of Beechworth in northern Victoria, reported that he was in competition with 35 Tariff agents in

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41 Ibid., pp.530/1 and pp.120-134.

42 The advertisements placed by insurance companies, month after month and year after year, in AIBR, which stress their worldwide activities and monetary size, were typical of the 'image' advertising undertaken.
the district. Other agents reported similarly. All stock and station agents were agents of Tariff companies. Insurance was just part of the general business arrangements that were undertaken for their clients. Insurance costs were deducted as part of general expenses. It was a relationship that was very difficult to break.

Apart from the Lloyd’s brokers in Australia the only other insurance brokers in the market were those approved by the Tariff. Tariff companies would only accept business from registered Tariff brokers. Under the Tariff Registered Broker’s Agreement brokers were prohibited from placing business with non-tariff companies except, as mentioned earlier, with dispensation for risks that could not be placed one hundred per cent with the Tariff.

This network of Tariff agents and brokers, albeit a very expensive one, solved the information problems of both the buyer and the seller quite effectively. It was an era of restrained advertising in, by comparison with the television age, a comparatively small mass media. Most insurance brokers were licensed by the Tariff and as we have seen those Tariff brokers were staunch defenders of their privileges. Until all these circumstances changed the Tariff was in a strong position to defend itself.

The companies outside the Tariff formed themselves into the Non-Tariff Insurance Association (NTIA) in 1942, which included the Lloyd’s brokers operating in Australia. This organisation never achieved anything like the same influence in the market as the FUA. Its main function was dissemination of information to its members that may otherwise not have been

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43 G.James, State Insurance in Victoria, p.17. The letter from the Beechworth agent is quoted in full.

available to them as individual entities. For instance it published a number of rating tables for its members in each state which, ironically, carried such titles as 'The Non-Tariff Workers' Compensation Tariff'.

A Comparison with the Growth of the British Non-Tariff Market

Westall's study of a similar period in Britain yields interesting comparisons with Australia. He calculated that British non-Tariff companies and Lloyd's had gained more than 30 per cent of the domestic motor market, and nearly 35 per cent of the international motor market, by 1938. Although Lloyd's played a substantial part in this it was the growth of a company non-Tariff market, with such names as General Accident, Eagle Star, Co-operative, Cornhill and Provincial, that was of particular significance. Both the Eagle Star and the Co-operative had joined the Tariff in Australia in 1918 and 1919 respectively, and none of the other companies were major contenders in the Australian market of the time. It is, perhaps, an interesting reflection of the strength of the Australian Tariff through its agency system.

As will be shown in Chapter 8 the Tariff was destroyed by factors other than outside competition.

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46 Ibid., p.442.
CHAPTER 7
PUBLIC COMPETITION
STATE INSURANCE OFFICES IN AUSTRALIA

State Enterprise in Australia

The establishment of state enterprises in Australia that were designed to compete with private enterprise in the market place during the first twenty five years of the present century has been well documented.\(^1\) This movement was comparatively short-lived. It was started by Labor governments in Western Australia, New South Wales and Queensland, and saw the establishment of coal-mines, sugar mills, butcher's shops, fisheries and cattle stations established by the state to compete with private enterprise. It was a movement quite distinct from state monopolies of railways, roads and utilities that were established in Australia during the nineteenth century. These new experiments of state-run businesses in competition with private enterprise had largely failed and petered out by the late 1920s. E.G.Theodore, who succeeded Ryan as the Queensland Labor Premier, said of the movement that it was

not inaugurated as the commencement of a state-wide scheme of nationalisation of industry [but] as a check on profiteering and a regulation of commodity

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Probably the same could be said of the intention of Commonwealth entry into such services as shipping and airlines and, with the exception of Queensland Labor's treatment of workers' compensation insurance described in Chapter 4, this broad generalisation is probably a reasonable description of the intentions of state governments that set up insurance corporations.

While that may be true of its origins, state insurance is second only to state banking in Australia in terms of its longevity and the consistency with which all Australian states set up, or attempted to set up, state insurance offices. The 1990s are probably seeing the end of more than seventy years of the existence of state insurance offices in Australia and there has been very little analysis of this broad movement.

This chapter will examine the formation, and, in some cases, the attempted formation of state insurance offices in all Australian states other than Queensland. It will be recalled that Chapter 4 examined the formation of the Queensland State Insurance Office in 1916 because it brought in its train the first public regulation of general insurance in Australia. This chapter will then go on to analyse the performance of all these state insurance offices, including Queensland, and compare these with the privately regulated markets of their 'host' states. A comparison will also be made between the markets where government competition existed with markets in other states where there was only private regulation by the Tariff.

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State Insurance in Australia

The entry of state-run insurance companies into competition with private insurers is described by Finsinger and Pauly as 'meta-regulation' in the sense that it is regulation by sharing in the market. Its use in the insurance market in the twentieth century was an Australasian innovation. No government insurance offices were established in Britain or in other parts of the British Commonwealth during a comparable period, and generally the state-owned insurance companies in Europe, France, Germany, Italy, Sweden and Switzerland are of comparatively recent origin.

The first Australasian government insurance office was formed in New Zealand in 1870 to transact life assurance and early in the present century its activities were extended into fire and other classes. The first Australian state insurance office was formed in Victoria in 1914. State insurance instrumentalities were created in all states during the next twelve years and these organisations ultimately came to play an important role in the general insurance market in Australia. By 1990, in what was the zenith of the movement, given the 'privatisation' of the New South Wales and Victorian government offices in 1992, public sector insurers in Australia wrote $5.7 million premium income which was 41.4 per cent of the Australian market.

3 Finsinger and Pauly, Economics of Insurance Regulation, p.5.
4 Ibid. Several provinces in Canada established state offices in the second half of this century to guarantee a source of mandatory insurance cover.
5 Ibid. The chapters on those individual countries deal with this aspect. French public ownership of insurers was, for instance, accomplished by nationalising 34 insurance companies after World War II.
Despite the importance of this experience there have been no extensive studies of the economic impact of state insurance enterprises in Australia. Three 'in-house' histories of individual offices have been written. One has already been referred to in Chapter 4, the Thomis and Wales study of the Queensland State Government Insurance Office. The others include an unpublished history of the Victorian State Insurance Office and a 35 page publication issued to mark the first 30 years of the Western Australian State Government Insurance Office. All are discussed later in this Chapter. The only study of the subject as a whole was an article published by Pursell in an American journal, the Journal of Risk and Insurance, in 1967.7 Pursell's primary purpose was to compare rate control in Australia with state 'bureau rating' in the U.S.A. He arrived at the conclusion that, at the time of writing, the Australian market was still dominated by the Tariff, and although substantial areas of it, compulsory third party and workers' compensation, were theoretically subject to government rate control, competition between Tariff, non-Tariff and state offices still existed for these forms of insurance. Because of political interference (at that time, as will be discussed later, most state offices were not allowed to enter the market for all forms of insurance but were restricted to compulsory classes) only Queensland had achieved significant market share.8 This may have been true at the time of writing, but it will be argued that before and since 1967 state insurance offices have exerted a broader influence than the one allowed by Pursell.


8 Ibid., 'Abstract', p.237.
This Chapter will relate how that, with one exception, all the State insurance offices established in Australia were formed in the mould of 'meta-regulation', even where the initiating government was not Labor. It will be argued that the intention was to create state competition with the Tariff for some, or all classes of insurance, but particularly for workers' compensation and motor vehicle third party insurances when these were made compulsory by government. It will also be shown that, from time to time, these intentions have been diverted for political ends. As discussed later in this Chapter, the New South Wales Government Office was forced to abandon writing other than government business by conservative governments between 1933 and 1941, and conservative governments in Victoria, South Australia and Western Australia all retarded the growth of their state offices.

In time all state offices had their franchises extended to allow them to compete freely in all sections of the insurance market. It will be argued that, in addition to this political interference, state offices failed to take as much market share as might have been expected because they could not overcome the imperfect consumer information entrenched in the insurance market by the agency system. It will be also be shown that meta-regulation failed because state offices did not fill their original intentions because they competed for profitability with private insurers rather than regulating price by charging premiums that would show a break-even result. And in Queensland the regulatory authority was 'captured' by the Tariff system.

**Workers' Compensation Insurance**

The introduction of legislation which provided
comprehensive compensation for workers injured in the course of their employment and which, in Australia, embodied the requirement of compulsory insurance by employers of their liabilities, was the catalyst which brought about the establishment of all but one of the state offices in Australia.

This form of workers' compensation legislation and compulsory insurance was introduced by the states in a very uneven pattern. Victoria was the first to legislate in this manner in 1914 and New South Wales the last in 1927. British precedent was the model and the spur for the development workers' compensation legislation in Australia.

**British Origins of Employers' Liability and Workers' Compensation Legislation**

The origins of workers' compensation in Britain lay in two areas, the early factories acts and the common law. The former emphasised the provision of safer working conditions, and attempts were made to reinforce safety provisions of factories acts by making mill employers responsible for pecuniary losses suffered by workers who were injured through failure to comply with safety regulations. The first British factory legislation, the Factory Act 1833, not only regulated the labour of children in factories but made employers responsible for both medical expenses and a weekly payment to injured children.⁹ The first recorded common law action in Britain by an employee against an employer for injury negligently caused at work was in 1837, but Bartrup and Burman argue that there was a longer tradition of such

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However common law developed in a manner that made it almost impossible for workers to recover damages from employers. Employers could avail themselves of three defences; first, that the employer was not liable if one employee was injured as the result of another employee's fault; second, that the employer was not liable if it could be shown that the employee had taken on the work knowing that there were risks of injury; and finally that the employer could avoid all liability if any degree of contributory negligence on the part of the injured employee could be demonstrated. Employers' liability legislation was introduced in Britain in 1880 to remedy those defects that had developed under common law. Australian colonies followed the British Act, in a piecemeal fashion, during the decade of the 1880s.

Employer's liability legislation failed to redress the position of injured workers to any marked extent. The first court case recorded under the Victorian Act in 1887 concerned a worker who was injured by a block and tackle

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11 During the debate in the Commons on the Employers' Liability Bill in 1880 it was reported that an action by the dependants of a plate-layer railway worker, who had been killed when he was run over by a train, had failed because the plate-layer and the train driver responsible for the death 'had been engaged in a common task'. Quoted by W.A. Dinsdale, History of Accident Insurance in Great Britain, Stone and Cox, London, 1954, p.148. The Bill was designed to remove such defences.

12 Colonial legislatures were slow to recognise that the worker was entitled to rights against the employer. The passage of the Victorian legislation was, for instance, seriously delayed by the Legislative Council. It took five attempts, between 1883 and 1886, for the legislation to be passed. G. Serle, 'The Victorian Legislative Council 1856 - 1950', Historical Studies, Vol.6, No.22, May 1954.
which fell on him when the ring bolt holding it to the ceiling broke. The jury in the County Court found in favour of the plaintiff, but on appeal the Supreme Court found that the worker had used the machinery in an improper way and gave judgement to the defendants with costs.  

Later in the year AIBR reported four more cases brought under the Employers' Liability Act where the judge 'non-suited' the plaintiff because no proof of negligence of the employer could be offered. Eventually AIBR had to admit that this legislation had been hopelessly inadequate.

It has been found in practice that very few cases come within the scope of this Act, which has afforded so little relief for those desirous of obtaining compensation, that it must be regarded as a failure.

The British Parliament had acted on this inadequacy a decade before AIBR made its comment. Workers' compensation legislation replaced the British employers' liability experiment in 1897. Workers' compensation changed the concept of employers being liable only for their own negligence to one where employers were made liable for any accident to an employee arising out of and during the course of employment. In effect it treated workers as being insured against these risks by their employer. British employers were not compelled to insure

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13 AIBR, 1887, pp.310 and 641.  
14 Ibid., 16 December 1887.  
15 Ibid., 20 September 1907, p. 775.
this new statutory liability.\textsuperscript{16} The 1897 Act was still limited in its application. Only the most hazardous occupations in specified industries such as railways, mines, quarries, engineering works and construction works over thirty feet in height were included. Only injuries suffered in or at the employer's workplace were the subject of compensation.\textsuperscript{17}

In 1906 the British Parliament adopted the recommendation of a Departmental Committee, which had been set up in 1903 to examine the adequacy of the 1897 act, that it should expand the legislation to include nearly all employees in the country. Those excluded were casuals, outworkers and those receiving a salary of more than £250 per year. Police and members of the armed forces were also excluded. But the legislation did include sickness or death from a number of industrial diseases - lead, mercury, phosphorous and arsenic poisoning, and miners' diseases. It is of significance to this thesis that employers were still not required to insure their liability under the British Workmens' Compensation Act 1906.\textsuperscript{18}

\textbf{Australian Workers' Compensation Legislation}

Despite the fact that the topic of compensation for industrial accident had been on the agenda of Australian


\textsuperscript{17} Raynes, \textit{History}, p.294.

\textsuperscript{18} Ibid. and Fabian Tract No.82, \textit{The Workmens' Compensation Act, 1906. What It Means and How to Make Use of It}, Fabian Society, London, second edition, 1907. Employers in Britain were never required to effect insurance on their liability for workers' compensation. The only exception was made for coal mines where insurance was made compulsory by legislation passed in 1934. Raynes, pp.301-2.
trades unions since 1884 19, workers' compensation legislation was introduced by Australian states in an uneven manner. The acts of South Australia in 1900, and Western Australia in 1902, followed the British legislation of 1897 that allowed compensation for workers in specific dangerous industries. Queensland, in 1905, was the first state to extend benefits to virtually all workers. Western Australia extended its legislation to all workers in 1908, Tasmania in 1910 and South Australia in 1911. The states with most workers were the last to legislate. New South Wales introduced an act in respect of dangerous industries in 1910 and did not extend it to cover all workers until 1916. None of this legislation, either British or Australian, made it compulsory for employers to insure the liability that was imposed on them. Victoria had no legislation at all until 1915.20

Victorian Workers' Compensation Legislation and the First State Insurance Office.

Because it was the last state to introduce workers' compensation insurance, and had so many different models to examine, Victorian legislation was the most advanced of all states when it was finally enacted. During this process Victoria became the first state in the British Commonwealth to legislate for compulsory insurance by employers of their liability for compensation to workers, and the first Australian state to establish a government office to compete with private insurers for this class of

19 Minutes of the Second International Trades Union Congress, Melbourne, 1884, p.89.

20 The respective pieces of legislation were:
South Australia. 1900. 63 Victoria. No.739.
Western Australia. 1902. Edward VII. No.5.
Queensland. 1905. 5 Edward VII. No.26.
Tasmania. 1910. 1 Geo.V. No.66.
Victoria. 1915. 6 George V. No.2750.
insurance.

In Victoria there was no direct connection between compulsory insurance and the establishment of a state insurance office. It was the proposal of a statutory liability rather than compulsory insurance which the prudent would wish to insure that brought the suggestion of a state office from a Liberal government. It was a curious development because the argument, which was put forward in Parliamentary debate and echoed, as detailed later in this Chapter, in AIBR editorials, seemed to assume that cartel-like control of price and product was in order for insurance that was effected in the course of normal commerce, but it was not reasonable if insurance was to be taken in response to a liability imposed by the state.

The Victorian legislation was significant because it brought in its train the first regulatory provisions for general insurers in Australia. While it regulated only those companies undertaking workers' compensation insurance, it required not only a deposit from insurers but it also imposed a form of supervised solvency requirements on licensees.

Victoria had not introduced any workers' compensation insurance as other Australian States had done in response to British workers' compensation legislation of 1897. But in 1905 a private members bill was introduced into the Victorian Legislative Assembly by A.S. Bailes, the member for East Bendigo.21 It was based upon the British Bill of 1905 that revised the 1897 legislation. The Victorian government did not allow the Bill to proceed beyond the

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first reading. Another Bill was introduced in 1906, again by Bailes, but this time the debate was carried by the author of the Bill, Donald Mackinnon. The Bill was now based on the British 1906 Act, and consideration had been given to existing legislation in other Australian states and New Zealand. In common with the models used for the Bill of Britain, New Zealand and the other Australian states, compulsory insurance was not mentioned in its provisions or during debate. As discussed below this was to be a later development devised in Victoria.

Opposition to the Bill, which came from small industrial employers and primary producers, was based on several grounds. Reflecting the 'cottage' nature of much of Victorian industry, small employers, who had succeeded in avoiding being brought under Victorian factory

22 VPD, Assembly, 29 August 1906. pp.1205-11.

23 Mackinnon, educated at Geelong Grammar, Melbourne University and Oxford was a barrister who represented Prahran in the Victorian Assembly from 1900 to 1920. At the time of presenting this legislation Mackinnon was parliamentary leader of the Liberals. He was appointed Commonwealth Director-General of recruiting during World War I and subsequently to other Commonwealth offices. G.Browne, Biographical Register of the Victorian Parliament 1900-84, VGPO, Melbourne, 1985, p.143.

24 New Zealand had followed the British Act of 1897 in 1900, 64 Victoria No.43, but had extended the concept of naming specific industries by adding workers engaged in any industrial, manufacturing or commercial work. Agricultural workers were included in 1902. A new Act was passed in 1909. The state insurance office which had been established, as mentioned earlier, in 1870 to write life business was enabled to handle workers' compensation in 1910 in competition with private insurers. Insurance was not made compulsory. (AITBR, 21 May 1914, p.430)

25 VPD, 29 August 1906, pp.1205-1212.
legislation 26, sought exemption from the proposed workers' compensation act. Primary producers also lobbied to be excluded on the grounds that their increased costs could not be passed on by price increases. Finally there was confusion in the minds of a lobbyists and government members over the question of who should pay the premiums for workers' compensation insurance. Under the existing system still in force in Victoria, of Employer's Liability legislation only, many employers effected personal accident insurance on behalf of their employees and deducted the premiums from employees' wages on a weekly basis. Employers sought to continue contributions from employees under the proposed new system.

The lobby representing small employers and primary producers succeeded in persuading the government of their cause; the revised Bill, introduced in 1908, excluded employers where

the number of workers employed by him at the time of the accident was less than four unless the accident was attributable to the use by the employer of machinery driven by steam water gas electricity or other mechanical power. 27

Notwithstanding these revisions this Bill, and a virtually identical one introduced in 1910, failed to pass the Assembly. Neither was put to a vote. The Government was faced with such dissent within its own ranks over the issues of which workers should be included

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26 The Victorian Factories Act 1885 defined a factory in terms of premises employing six or more persons. In 1893 the number was reduced to four. The legislation made an exception for Chinese workers; any place where even one Chinese worker was employed was a 'factory' under the terms of the Act so that working hours could be controlled.

27 VPD, Assembly, 30 July 1908, p.403. This wording was taken from the Factories and Shops Act.
and who should pay the premium that in each case the Bills were abandoned. In 1911 another attempt was made to legislate but this time insurance was to be compulsory and the employee was to bear part of this cost. The lobby representing country interests successfully excluded rural workers, but major objections to this proposal centred on distrust of insurance companies that they might exploit the needs of employers for insurance. In consequence the government sent its statist, A.M. Laughton, to New South Wales and Queensland to study insurance company rating systems for workers' compensation. Laughton's report cannot be traced but it would appear that he was not satisfied that private insurers were charging reasonable rates of premium for those employers that did insure their liabilities under the legislation then in force in those states. It will be recalled from Chapter 4 that Goodwyn arrived at the same conclusion concerning Queensland rates when he examined these in 1915.

It is of particular interest that the spur to establishing the Victorian state insurance office was not compulsory insurance for workers' compensation but fear of the Tariff. The man who lead the debates in the Victorian Assembly on behalf of the government from 1910 onwards was John Murray, first as Premier and then as Chief Secretary. Murray put the government view on the matter to the Assembly when introducing the second reading of the Bill in 1912.

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28 V.P.D., Assembly, 10 August 1911, p.612.

29 Murray was a wealthy Western District grazier turned politician. He was a member of the Assembly from 1884 to 1916 being at various times Premier, 1909-12, and then Chief Secretary in succeeding ministries until his death in 1916. Serle described him as 'most uncommonly radical for a provincial member...[who] never signed the Labor pledge and always regarded himself as a Liberal.' G. Serle, 'John Murray', Australian Dictionary of Biography, Volume 10, Op.Cit.
It was thought that there should be a system of insurance that would secure to the employers a certainty of not being sweated by insurance companies.  

Laughton’s report convinced the government that Victorian employers should be protected against the Tariff charging excessive rates. So in 1912 revised legislation was introduced, but this time it contained provisions for the establishment of a Government Accident Insurance Office to undertake workers’ compensation insurance in competition with private insurers. However, the Bill allowed that insurance was not compulsory, and that insurance premiums were to be contributed one-third by employees and two-thirds by the employer. A further provision of the legislation was that if insurance was effected with the proposed state office then the Treasury would contribute one sixth of the premium on behalf of employers, the employer three sixths and the employee one third. These suggestions were not well received by the unions, which did not want workers to have to contribute to premiums, nor by private insurers and those that did not wish the state office to be favoured to the extent proposed in this Bill. Once again the legislation failed to gain acceptance. Again the matter was not put to a vote. Even within Government ranks there was a wide divergence of opinion on the question. The Bill lapsed at the end of 1912.

Murray tried again to get legislation through the Assembly in mid-1913. This time, all employees in the State were to be included and employers were required to

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30 VPD, Assembly, 27 November 1912, p.3149. ‘Sweating’ was Australian parlance at the time for exploitation.

31 Ibid., 27 November 1912, pp.3148/51.

32 Ibid., p.3152.
be insured against their liabilities. It was still proposed to establish a state insurance office but two sticking points remained: employees were to contribute to the premium and employers gained a subsidy from the government of one-sixth of the premium if the insurance was placed with the state insurance office. The Government had even included an item in its budget to allow for this subsidy but the clause containing these last requirements passed the Assembly by one vote and it was the Legislative Council that voted it out. It was, said the AIBR, either mistakenly or tongue in cheek, that 'alleged stronghold of conservatism that came to the rescue of the worker and to liberalise a Liberal measure.' 33 In fact what had happened was that the Council had been successfully lobbied by the Tariff and had been persuaded to send the measure back to the Assembly with the clauses favouring insurance placed with the State Office struck out.

During the debate on the Bill in the Council a memorandum from a leading Tariff manager, A.E.Wall, 34 was quoted extensively. His memorandum put the view that

The insurance companies do not object to the establishment of a State Accident Insurance Office provided it is not placed in a preferential position and that insurance companies can compete on equal terms. 35

Wall went on to complain that the proposed contribution

33 AIBR, 21 February 1914, p.160.

34 The memorandum was written by A.E.Wall, author of a pamphlet defending the Tariff entitled 'Popular Fallacies With Regard to Fire Insurance', Australian National Library.

35 VPD, Council, 28 October 1913, p.2094.
by the State of one-sixth of the premium if the employer insured with the State Office was a seen by the insurance industry as 'inequity and unfairness'. 36

The defeat of the Watt government delayed the reintroduction of the measure into the Assembly, as revised by the Council, until the next year. Only then was it passed by the Assembly with the Council's amendments on 12 February 1914.

The Victorian government had no Australian model on which to base its state insurance office so Laughton, the Government Statist, was despatched to New Zealand to examine the state office there. The New Zealand state office had been writing workers' compensation insurance, which was not compulsory in that country, since 1910.37 Waiting on Laughton's report and then drafting appropriate regulations delayed matters further. The Workers' Compensation Act 1914 did not become operative until 7 November in that year. It contained several provisions that are of significance in the study of government regulation of the Australian insurance market.

The Victorian Government Gazette, of the 6 November 1914, contained both the regulations for the conduct of the State Accident Insurance Office (SAIO) and laid down rules for private insurance companies that wished to write workers'compensation insurance. Companies seeking approval to compete with the SAIO were required to have a paid-up capital of £25,000 and to provide for a reserve of 40 per cent of premiums to allow for unexpired risks. A deposit of £6,000 from each approved insurer, lodged with the State Treasurer, was to be invested in Government stocks at 4 per cent interest. Finally the

37 AIBR, 21 May 1914, p.430.
undercutting the rates of premium fixed for the State Accident Insurance Office, or who pays commission above the ruling rates or allows excessive bonuses or discounts on premiums...then the Governor in Council reserves the right to increase the deposit to a sum necessary to safeguard the interests of policy holders.\(^{38}\)

There was a dual purpose in regulating for a 'floor price' for workers' compensation of rates set by the SAIO. First a concern that an unwise private insurers might jeopardise its solvency by undercutting rates which had been set by the SAIO at no-profit levels. Second was a fear that the Tariff would combine and cross subsidise workers' compensation premiums with other profitable lines to force the SAIO out of business.

After eight years of endeavour the Victorian parliament had brought in legislation that broke new ground in Australia on two fronts. It formed a government office to compete with private enterprise, and it took the first steps towards establishing solvency regulation of private insurers. The solvency requirements were those relating to minimum paid-up capital, the inclusion of a reserve for unexpired risks and setting a floor price.

These were slow and hesitant steps by a liberal government seeking to resolve new issues in a number of areas. Not only was the legislation in respect of workers the most advanced in Australia, it was the first in the British Commonwealth to make insurance compulsory, it established the first Australian state office and it was the first attempt in Australia to introduce a concept of

\(^{38}\) Victorian Government Gazette, 6 November 1914.
solvency regulation for insurers.

The difficult progress of this legislation lends no support to regulatory theory other than the original 'public good' one. There is no evidence of insurance company lobbying until the clauses favouring the SAIO were brought into the legislation. The Tariff had agreed to charge the same rates and to offer the same commissions as the SAIO when it met with Murray on 28 August 1914. But when the SAIO advertised for agency applications on 28 September in order to commence business it found that the Tariff had already been at work to tie up as much business as possible before the SAIO was operative. This tactic was so successful that the newly appointed Insurance Commissioner reported to Murray on 15 January 1915 that the great hopes that he had of writing large volumes of business were not being fulfilled. 39

Against such a background it did not take long for friction to develop between the Tariff and the SAIO. The Chamber of Manufactures had formed its own insurance company in 1914 40 to handle workers' compensation insurance for its members on a mutual basis. The Chamber Company rates were not discounted but Chamber members were offered a bonus to be paid out of profits. In response the Government brought in regulations that state and semi-government bodies receiving government subsidies should place all workers' compensation insurance with SAIO. This was later extended to any contracts let either by the State or Federal governments. As this included contracts let by the Defence Department during the War it


40 Insurance in Australia and New Zealand, Craftsman, Melbourne, 1988, p.129.
brought retaliation from the Tariff in the form of
discounts on large payrolls and reductions for good
claims experience.\textsuperscript{41}

It is little wonder that when, in September 1915, the
Queensland Premier, Ryan, had attended a premiers’
conference in Melbourne and asked Murray for his view of
the Victorian scheme that Murray responded by letter to
Ryan that

had it been compulsory to insure with the State
office alone, the result would have been that with
the necessary expenses of competition removed, a
material reduction in premium rates could have been
made and insurance provided to employees at cost.
\textsuperscript{42}

In 1919 the Public Accounts Committee noted in its report
to Parliament that disagreements between the Insurance
Commissioner and the forty three companies now approved
to conduct accident insurance had resulted in such keen
competition that the rates had now, according to the
Insurance Commissioner, ‘practically reached bedrock’.\textsuperscript{43}
No explanation was put forward for the Insurance
Commissioner not exercising the powers given to him under
the regulations, set out above, to bring his competition
into line; presumably it was difficult to show that the
discount war was jeopardising policy holders’ interests.

Despite being handed all the government business the SAIO

\textsuperscript{41} Ibid., pp.22-33.

\textsuperscript{42} Q.P.D., 21 October 1915, p.1496. Quoted in D.J.Murphy,
T.J.Ryan, A Political Biography, University of Queensland

\textsuperscript{43} James, p.41
was writing only 14 per cent of the state workers' compensation market in 1919.\textsuperscript{44} This comparatively small market share continued throughout the 1920s. By 1929 it had risen to just 19 per cent but the 1930s saw a marked increase that reached 26 per cent in 1939.\textsuperscript{45} What enabled the SAIO to be competitive was that it was able to operate at an expense rate, which according to James, was only a third of the expense rate of general insurers in the market.\textsuperscript{46} By 1939 SAIO had reduced its expense rate to 9.5 per cent which compared to 25.6 per cent for the Victorian workers' compensation market as a whole.\textsuperscript{47} The reason for this lower expense rate was not speculated upon by James, his implication being that it was greater efficiency. No doubt this was true by reason of specialisation. The SAIO handled no other business but workers' compensation whilst other insurers fitted this business into their general systems. Further, the SAIO would have had lower acquisition costs as government and semi-government business was directed to it and most of its business was thus done directly rather than through an agency network. The SAIO's low expense rate allowed it to rebate profits to its policy holders by way of an annual bonus deducted from its renewal premiums. It would appear that it was this facility that, given a long enough run in the market-place to acquire a reputation, enabled the SAIO to penetrate the Tariff agency system and to pick up additional market share.

Despite this achievement, successive Victorian Insurance

\textsuperscript{44} Ibid.p.55.

\textsuperscript{45} Market share calculated from SAIO annual reports and the Victorian Government Statist's figures published in AIBR.

\textsuperscript{46} James, p.60.

Commissioners in vain sought to obtain from Government an extended franchise to undertake all other classes of insurance business. The argument that they put forward was that private insurers were cross subsidising workers' compensation insurance with other profitable business and had driven rates down to uneconomic levels. These efforts to obtain a full franchise were not successful. A short lived Labor government in 1924 prepared a bill to extend the franchise but it fell before legislation could be passed.\textsuperscript{48} Successive governments of both political hues refused to take any action.

There is no doubt that, from the viewpoint of seeing a state office as a successful competitor in the marketplace, the SAIO was extremely effective in the limited functions it was allowed to perform. Despite, as mentioned above, the fact that after nearly thirty years of existence it had captured only one quarter of the market, the Commissioner reported proudly in 1938 that in competition with 82 private insurers it had achieved a profit of £35,000 for the year; a bonus of £45,000 had been declared to policy holders; and £35,000 of the £50,000 'lent' to the State government in 1930 had been written off.\textsuperscript{49}

Judged on its more fundamental role of meta-regulation of the Tariff the Victorian SAIO must be judged a failure. As demonstrated in Table 7.1 prices charged for workers' compensation insurance in Victoria during the decade of the 1930s were higher than those charged by the Tariff in New South Wales during the same period where there was no competition from a state office.

\textsuperscript{48} The Prendergast ministry which lasted only from July to November 1924.

\textsuperscript{49} SAIO Annual Report, quoted by James p.66. In December 1930 Hogan's ministry had 'subsumed' £50,000 of SAIO funds held by the Treasury. James p.63.
TABLE 7.1

WORKERS' COMPENSATION LOSS RATIOS
PRIVATE INSURERS
VICTORIA AND NEW SOUTH WALES, 1931 - 1940

<table>
<thead>
<tr>
<th>Year</th>
<th>Victoria</th>
<th>New South Wales</th>
</tr>
</thead>
<tbody>
<tr>
<td>1931</td>
<td>67.8</td>
<td>73.2</td>
</tr>
<tr>
<td>1932</td>
<td>73.3</td>
<td>83.4</td>
</tr>
<tr>
<td>1933</td>
<td>77.5</td>
<td>79.5</td>
</tr>
<tr>
<td>1934</td>
<td>78.0</td>
<td>78.8</td>
</tr>
<tr>
<td>1935</td>
<td>72.0</td>
<td>77.5</td>
</tr>
<tr>
<td>1936</td>
<td>62.6</td>
<td>79.6</td>
</tr>
<tr>
<td>1937</td>
<td>56.2</td>
<td>77.7</td>
</tr>
<tr>
<td>1938</td>
<td>58.7</td>
<td>74.6</td>
</tr>
<tr>
<td>1939</td>
<td>59.3</td>
<td>71.5</td>
</tr>
<tr>
<td>1940</td>
<td>63.5</td>
<td>74.8</td>
</tr>
<tr>
<td>Mean</td>
<td>66.9</td>
<td>77.1</td>
</tr>
<tr>
<td>SD</td>
<td>7.6</td>
<td>3.4</td>
</tr>
</tbody>
</table>

Source: Official Year Book of New South Wales, Table 447, 1939-40, Victorian Year Books.

Assuming a significance level of 0.005 a T-test confirms that the loss ratio, and thus prices, for Victoria was significantly lower than the loss ratio for New South Wales. The possible reasons for this outcome are discussed in detail below when looking at the statistics in Queensland and the operation of the SGIO in that state. In essence the evidence suggests that where a state insurance office was in competition with private insurers the managers of the state office eventually sought to show that it could be run more efficiently and profitably than their private competitors rather than exercising the original role of setting a price floor for its products.

A New Form of Compulsory Insurance - Motor Vehicle Third Party

Because of the influence of the Tariff and a conservative upper house, Victoria lagged behind most other states with the introduction of compulsory third party (CTP)
insurance for motor vehicles. A bill was passed by the Assembly in 1934 but it was defeated in the Council at the behest of insurance companies, because insurers wanted the right to select their own clients and the bill allowed motorists to nominate an insurer of their own choice. The Dunstan interventionist Country Party government eventually introduced legislation for CTP insurance for motor vehicles in 1939. But even this conservative government still saw it as necessary to provide a state run alternative to private insurance when an insurance was to be made compulsory. Accordingly, the legislation contained provisions to establish a State Motor Car Insurance Office. However, on this occasion the Tariff could not prevent the entry of the state office into competition for the comprehensive insurance of cars as well as the compulsory aspect. It was recognised that the public would not support an insurer for CTP that was not in a position to offer comprehensive cover as well. The State Motor Car Insurance Office was to be allowed to insure motor vehicles comprehensively as well as for CTP. The Act giving effect to these matters came into force in January 1941.

Other State Offices: Tasmania.

As recounted in Chapter 4 Queensland was the next state, after Victoria, to establish a state insurance office. Tasmania followed in 1919. A Liberal-Nationalist coalition government passed the Tasmanian Government Insurance Act in 1919 which came into force in June 1920. The Act set up a Tasmanian Government Insurance Office (TGIO) to transact all classes of insurance except life assurance.

50 James, p.85.

51 By then legislation had been introduced in South Australia, Queensland, Tasmania and New Zealand.
The Act prohibited the General Manager from entering into rating agreements with other insurance companies but empowered the government to set rates for its own workers' compensation insurance. But it was obvious from other sections of the legislation that the mould of this state office was to be different from Victoria and Queensland. The TGIO was to pay all taxes under Federal and State laws as well as local rates, and was made subject to any legislation that affected other insurance companies, specifically including fire brigade charges and stamp duties. The effect of the insurance lobby was evident in those last provisions which had claimed that state offices were given preferential treatment.

The Tasmanian treasurer in his budget speech of 28 September 1920 defended his government's stance on the TGIO.

Some objections have been raised that the office did not upon its inauguration institute a rate-cutting policy. This to my mind would have been entirely wrong. A large sum would have been required from the whole body of taxpayers to be applied for the benefit of only those who may insure in the office.

The Treasurer, Sir Neil Elliot-Lewis, went on to add that the decision to operate in this manner enabled the TGIO to obtain reinsurance facilities from the market and to be given reciprocal business in exchange. The hand of the Tariff is detectable again. It raises the question of why this conservative government proceeded into state insurance at all? Lewis continued his budget speech that his government's intention was to

52 AIBR, 21 October 1920, p. 697.
effect all the State insurances, and employing every legitimate effort, to secure all the good lines that may be obtainable outside.\textsuperscript{53}

This was not state entry into the market in the Ryan or even the Murray mode, and with this philosophy of business operation the TGI\textsuperscript{O} did not make an impact on the insurance market. In its first year of operation, 1921, its premium income was £9,743. By 1929 it was £21,673 and in 1940 it had reached £34,894. These figures represented a consistent market share of only some 3 per cent of the total Tasmanian market. The expense rate of the TGI\textsuperscript{O} hovered round 40 per cent, which was on a par with the Tariff and greatly in excess of other state offices.\textsuperscript{54}

In two of the remaining states, South Australia and Western Australia, Labor governments battled reactionary upper houses in endeavours to establish state offices that would compete with the Tariff. The attempts failed in South Australia, where a state insurance office was not established until 1972 by the Dunstan government. There was a little more success in the West.

South Australia

When the Labor party under John Gunn was elected to office in April 1924 one of their first pieces of legislation brought in to the Assembly was a bill to create a state insurance office. As Treasurer, Gunn introduced the second reading with the statement that The Government is convinced that the State can meet the demands of the public more cheaply and with

\textsuperscript{53} Ibid.

\textsuperscript{54} TGI\textsuperscript{O} Annual Reports to the State Treasurer \textit{Tasmania, Journals and Printed Papers of Parliament}. 
greater efficiency and security than private companies.\textsuperscript{55}

Gunn went on to attack private insurers for their high level of expenses. The bill passed the Assembly.

A month later the Government introduced amending legislation to the existing Workers' Compensation Act. All workers were to be included and insurance was compulsory for employers.\textsuperscript{56} Concurrently the Insurance Companies Deposits Bill was introduced requiring deposits of between £5,000 and £10,000, depending on premium income, for insurers who wished to undertake workers' compensation insurance. These two bills were passed by the Assembly and by the Council, but the latter body refused to pass the State Insurance Bill.

Gunn decided to establish a GIO notwithstanding this rebuff. It was created within the Accounts Branch of the Treasury to handle all government risks, in particular workers' compensation. It continued to operate notwithstanding Tariff action to suppress it through the courts.\textsuperscript{57} However under these constraints the South Australian state office was writing only £16,000 in premiums by 1940, as shown in Table 7.2 below.

All subsequent South Australian attempts to create a fully fledged SIO were thwarted by a Tariff inspired Council for the next fifty years. It was not until 1970, when Dunstan's first Labor government was elected with a majority in both houses that it was possible for legislation to be passed. The Bill to establish the South

\textsuperscript{55} S.A.P.D., Assembly, 30 September 1924, pp.792-7.

\textsuperscript{56} Ibid., 21 October 1924, pp.1154-5.

\textsuperscript{57} Ibid., 1926, pp.43, 66, and 2283.
Australian State Government Insurance Corporation (SGIC) introduced on 29 July 1970 was the first piece of legislation brought before the Assembly by the new government. It was, said Dunstan, the role of the SGIC to keep premiums at reasonable levels, ensure by competition that service was adequate...and to make funds available for investment...important to the development of the state.\footnote{Ibid., 29 July 1970, p.433.}

The SGIC legislation was proclaimed on 20 October 1970 and the Corporation commenced business in January 1972.

Western Australia

The Western Australian workers' compensation legislation of 1924 required employers to insure their liability. Negotiations took place between insurers and the government concerning the rates to be charged. A stumbling block was the rate to be charged for miners. The companies said that there was insufficient data to calculate a rate which was to include miners' diseases, so the Government appointed a committee consisting of the state actuary, the Queensland Insurance Commissioner and the State Minister for Mines to determine a fair rate. But the Tariff refused to accept the rate of £4/10/- per cent put forward by the committee.

Matters stalled there for some time but in 1926 a broker acting for Lloyd's in Western Australia indicated that Lloyd's would accept this rate and the Government offered a monopoly to these London underwriters. But when Lloyd's terms were actually received it was found that they excluded miners' phthisis. An exasperated Government decided to set up its own office which would accept
mining risks in order to break this deadlock. Realising that legislation to give effect to this move would not pass a hostile upper house a government department under the state actuary was instructed in June 1926 to handle the risks. This was illegal because the workers' compensation legislation required insurance to be placed with 'an incorporated insurance office' and no government department could be that. Nevertheless, the department continued to act as an insurer and despite six attempts by governments to legalise the position during the next 12 years all were defeated by the Council. In 1938 the Labor government under J.C.Wilcock eventually passed the State Insurance Act to legalise the position. The State office was only licensed to write workers' compensation but this was extended in 1943 to include compulsory third party insurance. In 1949 the State Office was given a monopoly of workers' compensation for the mining industry.\(^{59}\)

Between 1953 and 1958 there were seven unsuccessful attempts to pass legislation to extend the franchise of the Government office that would enable it write all classes of insurance. They, and a further attempt in 1972, all failed. A Royal Commission to make recommendations on the matter was appointed in 1973. However the Report of the Royal Commission, which recommended a full franchise for the State Office, including life assurance, did not find favour with the Charles Court government. Presumably to save the any embarrassment that might have been caused by the government disregarding the recommendations of its own

\(^{59}\) Uren, op.cit.; and the Report of the Western Australian Royal Commission into State Government Insurance, 24 May 1974. Para. 17 traces the history of state insurance in Western Australia. The report of this Royal Commission was never published in Western Australian Parliamentary Papers. The only copy that the author has found was in the personal papers of R.Jacobi, M.H.R. for Hawker. Box 14 in the Adelaide branch of Australian Archives.
Royal commission, the Report was suppressed. It was never tabled in the Western Australian Parliament, and thus does not appear in Western Australian Parliamentary Papers. It is not even listed in E. Zalums and H. Stafford, A Bibliography of Western Australian Royal Commissions. By suppressing the Royal Commission Report the Court government succeeded in shelving the matter.

It was not until 1987 that the State Government Insurance Commission was formed in Western Australia. The Commission itself was to conduct the old business of the SGIO, mining diseases, compulsory third party for motor vehicles and insurance for government. Through its commercial arm, the State Government Insurance Corporation, which traded as the SGIO, the government office at last entered into competition with general insurers.

New South Wales

Government entry into the insurance market in New South Wales commenced in 1891 when the Treasury Guarantee Fund was established to insure the fidelity of public servants who had previously been required to effect their own cover in the commercial market. In 1903 the Fund, without being granted statutory authority, took on the fire risks of government properties. It was not until 1911 that this position was made legal by establishing a separate Fire Insurance Fund. In 1917 a further fund was established, the Treasury Workers' Compensation Fund, to insure

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60 See the many questions from the Opposition to the Government under the heading of 'State Government Insurance Office', WAPP, during 1974 and 1975. The answers were evasive, promising that the Report would be tabled at some later stage, but it never was produced. The matter eventually became stale and was not pursued further by the Opposition.

61 The only copy that the author has been able to trace is the one referred to in the penultimate footnote. The author now has a photocopy in his possession.
government employees under the new Workers’ Compensation Act of that year. In 1924 the Treasury was empowered by Executive authority to undertake all classes of general insurance on matters in which the government had an insurable interest. However, as with so many other Australian states, it was the introduction of compulsory insurance for workers’ compensation that led to the formation of a fully fledged government insurance office.

The New South Wales Legislative Council was probably even more conservative than similar bodies in other states. Projected amendments to bring in revised workers’ compensation legislation in 1911 and 1913 failed to reach the statute books. The Council rejected 25 per cent of the bills presented to it during the period of the first Labor governments in New South Wales between 1910 and 1916, compared to only eight per cent during the previous six years of non-Labor governments. Among the bills rejected by the Council in 1916 was one designed to bring New South Wales workers’ compensation legislation into line with the other states. It was not until 1926, when Jack Lang had persuaded the New South Wales Governor to appoint 25 new Labor MLCs, that legislation equivalent to that passed in Victoria by a liberal government in 1914 became law in New South Wales. The New South Wales Act contained the now standard Australian provisions requiring employers to effect insurance, and it gave rise to the same arguments with the Tariff over


64 Ibid. p.123.
the rates to be charged that had been repeated so often before.

Lang, in one of the volumes of his memoirs, included a chapter entitled 'Workers' Compensation: How the Insurance Combine was Beaten'. The new Act increased benefits payable to injured workers and provided cover for diseases such as anthrax and lead poisoning. The Tariff decided that the increases in rates required to meet the added claims costs were 150 per cent of current rates for accidents plus a further 40 per cent for the disease provisions. Further, a Tariff deputation that waited on the author of the Act, J.M. Baddely, proposed that for a five year term insurers should be allowed to fix their rates by using a 60 per cent loss ratio. This would have allowed them a margin of 40 per cent for expenses and profit. However, the New South Wales government was aware that the Queensland SGIO expense rate for workers' compensation was under 15 per cent. Lang had no power to prevent the Tariff setting their own rates and loss ratios so he decided that his only course of action was to offer competition by creating a government insurance office. By Executive Decree he changed the name of the Treasury Insurance Board to the Government Insurance Office (GIO) of New South Wales to compete for workers' compensation business.

Employers were not pleased with the Tariff proposals either. The Chamber of Manufactures had established their own insurance company in New South Wales, the Manufacturers Mutual, in 1914 which at that stage did not belong to the Tariff. The Manufacturers Mutual cut the Tariff rates for sickness by 33 per cent and the GIO followed suit by cutting them by 50 per cent. The Tariff tried to force the issue by refusing to offer cover for

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65 Lang, I Remember, pp.229-235.
workers' compensation under the new Act but employers as a whole were sufficiently disenchanted with the Tariff approach that a number of other mutual insurers were established by groups representing retailers, farmers and graziers, timber merchants and other country interests to break the blockade. When the Act came into force on 30 June 1926 a total of 17 companies, including a number of renegades from Tariff ranks, had registered and paid the £10,000 as required under the terms of the legislation in order transact business. 66

The GIO operated for a year under executive decree until Lang's government passed the GIO (Enabling and Validating) Act 1927. Even this move left it as a branch of the Treasury without a legal entity. There is considerable doubt that it was the GIO that forced the hands of the Tariff in this battle. Rather it seems to have been the employers' mutuals that set the tone. Nairn labelled Lang's account of the story as told in I Remember as 'highly coloured' and that Lang allowed the GIO to charge unnecessarily high rates for some time. 67 It should be noted that Lang did acknowledge the part played by employers' mutuals, particularly the Manufacturers Mutual, in the struggle. 68.

By 1928 the GIO was writing workers' compensation premiums of £268,000 and other business totalling only £86,000. Its share of the New South Wales workers' compensation market had reached 15 per cent after just two years of operation, but as this figure included all government business its impact on the private sector was

67  Nairn, The Big Fella, p.123.
68  Lang, I Remember, pp.234-5.
only marginal. In 1931 Lang prepared a plan to turn the GIO into a corporation, rather than it being a department of government, that would to give it wider scope for investment of its funds. Lang saw the GIO as another revenue source for government. However the move did not eventuate as Lang was dismissed as Premier before he could take the necessary action.

Notwithstanding the lack of impact of the GIO on the New South Wales private insurance market, in 1933 the Stevens-Bruckner U.A.P.- Country coalition government decided to stop GIO competition with private insurers and by instructing it to write only government business. The coalition was in power until 1941 so it was not until 1942 that W.J.Mckell's Labor administration reinstated the GIO to a full franchise. The impetus for this move was the introduction of compulsory third party insurance for motor vehicles in New South Wales. Once again it was the compulsory nature of the new insurance that brought state insurance into play.

There was continuing pressure from the Tariff to curtail the influence of government offices in the market. This was particularly successful with conservative administrations. The advent of a new Labor government in New South Wales with its avowed intention of restoring the GIO to a full franchise in 1941 provoked an outburst from the then president of the Tariff, Colonel W.K.Fethers, who was Australian manager of the Royal Insurance Company. The AIBR quoted Fethers' address to

69 AIBR, 1929 pp.426,989.
the South Australian Insurance Institute on 15 September 1941 in full. Fethers' concern was

the growing tendency of State Governments to open up competitive departments...our quarrel is with the principle of Government v. private enterprise. The entry of Government into business results in the following sequence:- Monopoly, Dictatorship, Socialism, Slavery. 72

Was this concern of the Tariff a real one or was it a retreat to conservative dogma?

Summary of the Position Achieved by State Offices by 1941

In 1941, despite the endeavours of various State Labor governments, the only fully developed state office was in Queensland where the SGIIO had a monopoly of workers' compensation insurance and operated in competition with private industry in all other classes. In Victoria the SAIO operated in competition with private insurers for workers' compensation, and had just entered the market for compulsory third party and comprehensive motor insurance. It has been shown earlier in this Chapter that the competition from the Victorian SAIO for workers' compensation was not effective as a regulator of price. The Tasmanian TGIIO conducted all classes of business, and although it was licensed to do so, did not actively seek business at the expense of private insurers. In New South Wales the GIO had just been given a charter to compete in the open market for business and its portfolio at the time consisted only of government business. In both South Australia and Western Australia government departments acted, without proper authorisation, as insurers of government risks only and mining risks for workers'

72 AIBR, 21 October 1941, p.440.
compensation in Western Australia. Table 7.2 sets out this pattern and shows the market share of public insurers in each State and in the Commonwealth.

TABLE 7.2

PUBLIC SECTOR INSURERS
PREMIUM INCOME AND MARKET SHARE BY STATE
1940

<table>
<thead>
<tr>
<th>Workers Compensation</th>
<th>Fire and Other Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income</td>
<td>Market Share</td>
</tr>
<tr>
<td>£</td>
<td>%</td>
</tr>
<tr>
<td>Queensland</td>
<td>724,434</td>
</tr>
<tr>
<td>Victoria</td>
<td>214,190</td>
</tr>
<tr>
<td>N.S.W.</td>
<td>N/A, total all classes</td>
</tr>
<tr>
<td>Tasmania</td>
<td>N/A, total all Classes</td>
</tr>
<tr>
<td>South Aust.</td>
<td>13,929</td>
</tr>
<tr>
<td>West Aust.</td>
<td>194,258</td>
</tr>
<tr>
<td>Total</td>
<td>1,146,811</td>
</tr>
</tbody>
</table>

Sources: Annual Reports of State Insurance Offices, Victorian Year Book, Official Year Book of New South Wales, South Australian Statistical Register, Western Australia Statistical Register and Queensland Parliamentary Papers.

The high proportion of the market held by the Western Australian Government Office related to miners' diseases and workers' compensation generally for miners in the gold fields. These covers were not written by private insurers.

The total premium income of all state offices was thus £1,672,906 compared to an Australia wide premium income for 1939-40 of £17,658,786 \(^{73}\) or a market share of 9.5 per cent. Given the length of time some of the state offices had been in existence this was still a small

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\(^{73}\) Commonwealth Finance Bulletin No.32.
share but it seemed to present a threat to the private insurance industry beyond the reality of the situation. The opposition of the Tariff to state competition was persistent and it had clearly been very successful. Nearly twenty-five years after the movement had started the Tariff was firmly still in control of the market. As will be discussed in Chapter 8, the Tariff opposition reached a crescendo when the Whitlam government proposed to start a Commonwealth government office in 1972. Protest marches in the streets of all the capital cities by insurance company staffs were organised to oppose the Federal move.

Assessment of the Effectiveness of State Competition
The section on Victoria discussed how ineffective meta-regulation of workers compensation had been in that state. By comparison the privately regulated Tariff market operating in New South Wales was offering lower prices for this class of business.

Queensland
The Queensland SGIO had now been in operation for more than 20 years. A comparison of the Queensland market for general insurance, which was subject to SGIO competition in all fields of insurance excluding workers' compensation, with the market in the rest of Australia should reflect the effect of state competition. With the exception of Tasmania there was no state competition other than for workers' compensation in the rest of the Australian markets. As shown in Table 7.2 the Queensland market represented just over 13 per cent of the total Australian market in 1940. Total premium income by state was:
### TABLE 7.3

**PREMIUM INCOME ALL GENERAL INSURANCES INCLUDING WORKERS’ COMPENSATION BY STATE IN 1940, PERCENTAGE SHARE OF MARKET**

<table>
<thead>
<tr>
<th>State</th>
<th>Income £000,000</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>7.39</td>
<td>42.7</td>
</tr>
<tr>
<td>Victoria</td>
<td>4.73</td>
<td>27.4</td>
</tr>
<tr>
<td>Queensland</td>
<td>2.35</td>
<td>13.6</td>
</tr>
<tr>
<td>South Australia</td>
<td>1.27</td>
<td>7.3</td>
</tr>
<tr>
<td>Western Australia</td>
<td>1.10</td>
<td>6.4</td>
</tr>
<tr>
<td>Tasmania</td>
<td>0.45</td>
<td>2.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>17.29</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: *Official Year Books of New South Wales, Victorian Year Books, Statistical Registers of South Australia, Statistical Registers of Western Australia.*

Note: There is an unexplained difference of some £360,000 between the total income given in this Table and that shown in the Commonwealth Finance Bulletin quoted above.

In Chapter 4 it was pointed out that not only was the Queensland SGIO in competition with private insurers but that the latter were subject to regulation by the Insurance Commissioner. This regulation encompassed maximum premium rates, policy conditions and maximum agents and brokers commissions. Before comparing the Queensland market with the rest of Australia the Queensland market itself is of some significance because it allows comparison of a state enterprise in competition with a regulated private market.

A comparison of claims ratios, that is the ratio of claims to premiums, over a long enough run in the same market is an indication of price because variations in claims experience between the groups in the study will tend to be smoothed out. The inversion of these ratios represent gross profit from insurance before charging expenses. Thus a loss ratio of 30 per cent represents a gross profit of 70 per cent before charging distribution.
and management expense.

**TABLE 7.4**

<table>
<thead>
<tr>
<th>Year</th>
<th>SGI0</th>
<th>Private Insurers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>29.2</td>
<td>33.9</td>
</tr>
<tr>
<td>1921</td>
<td>25.6</td>
<td>28.2</td>
</tr>
<tr>
<td>1922</td>
<td>36.5</td>
<td>42.9</td>
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<tr>
<td>1923</td>
<td>55.1</td>
<td>55.6</td>
</tr>
<tr>
<td>1924</td>
<td>37.4</td>
<td>54.6</td>
</tr>
<tr>
<td>1925</td>
<td>56.4</td>
<td>46.7</td>
</tr>
<tr>
<td>1926</td>
<td>50.5</td>
<td>57.1</td>
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<td>1927</td>
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<td>56.0</td>
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<td>1930</td>
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<td>49.4</td>
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<tr>
<td>1931</td>
<td>49.4</td>
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<tr>
<td>1932</td>
<td>46.2</td>
<td>53.9</td>
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<td>1933</td>
<td>38.8</td>
<td>36.1</td>
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<td>42.0</td>
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<tr>
<td>1937</td>
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<td>42.8</td>
</tr>
<tr>
<td>1938</td>
<td>27.0</td>
<td>34.8</td>
</tr>
<tr>
<td>1939</td>
<td>21.6</td>
<td>34.3</td>
</tr>
<tr>
<td>1940</td>
<td>22.6</td>
<td>37.2</td>
</tr>
<tr>
<td>Mean</td>
<td>37.3</td>
<td>44.6</td>
</tr>
</tbody>
</table>

Standard Deviation 11.1 10.1

Source: SGI0 Annual Reports, Queensland Parliamentary Papers.

A T-test with a significance level of 0.005 confirmed that the SGI0 loss ratios were significantly lower than those of private insurers. The numbers within each set of figures indicate that the SGI0 was operating, except for two years 1923 and 1925, at claims ratios which were below, and in the later years substantially below, the Tariff market in Queensland. This appears to have been a matter of some pride to the Insurance Commissioner to
judge from his reports to Parliament. However to have achieved such a substantial level of gross profit meant that the SGIO could have reduced its price levels in order to achieve a loss ratio of 65 per cent, which would have been near a break-even point, and forced private insurers to match its prices. It is apparent that this approach was not followed. It was private insurers, with a loss ratio that was 7.6 points on average above the GIO’s that were offering slightly lower prices during the period under review. The result, as shown in Table 7.2, is that after more than twenty years of competition the SGIO had captured only 12.5 per cent of the Queensland market. Why this should have been so is discussed later in this Chapter.

The comparative expense ratios of the SGIO and Tariff companies during the same period are of significance in two aspects. First, that the expense rates of the Tariff had come in for criticism consistently over the years; how did a state-run enterprise compare? Second, that adding expense ratios to claims ratios gives a net profit figure that indicates the margin being earned by each sector of the market.
### TABLE 7.5

**EXPENSE RATIOS OF GENERAL INSURANCES EXCLUDING WORKERS’ COMPENSATION**
**QUEENSLAND SGIO AND QUEENSLAND PRIVATE INSURERS**
**1920 TO 1940**

<table>
<thead>
<tr>
<th>Year</th>
<th>SGIO</th>
<th>Private Insurers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>36.0</td>
<td>41.9</td>
</tr>
<tr>
<td>1921</td>
<td>35.7</td>
<td>43.3</td>
</tr>
<tr>
<td>1922</td>
<td>32.0</td>
<td>41.9</td>
</tr>
<tr>
<td>1923</td>
<td>35.3</td>
<td>43.9</td>
</tr>
<tr>
<td>1924</td>
<td>27.2</td>
<td>39.1</td>
</tr>
<tr>
<td>1925</td>
<td>28.9</td>
<td>42.0</td>
</tr>
<tr>
<td>1926</td>
<td>27.4</td>
<td>41.3</td>
</tr>
<tr>
<td>1927</td>
<td>30.4</td>
<td>38.6</td>
</tr>
<tr>
<td>1928</td>
<td>26.3</td>
<td>36.5</td>
</tr>
<tr>
<td>1929</td>
<td>31.3</td>
<td>36.4</td>
</tr>
<tr>
<td>1930</td>
<td>36.0</td>
<td>38.0</td>
</tr>
<tr>
<td>1931</td>
<td>35.9</td>
<td>39.8</td>
</tr>
<tr>
<td>1932</td>
<td>38.2</td>
<td>39.9</td>
</tr>
<tr>
<td>1933</td>
<td>39.9</td>
<td>41.8</td>
</tr>
<tr>
<td>1934</td>
<td>36.4</td>
<td>41.0</td>
</tr>
<tr>
<td>1935</td>
<td>36.2</td>
<td>40.1</td>
</tr>
<tr>
<td>1936</td>
<td>39.5</td>
<td>42.8</td>
</tr>
<tr>
<td>1937</td>
<td>35.8</td>
<td>37.5</td>
</tr>
<tr>
<td>1938</td>
<td>34.3</td>
<td>37.7</td>
</tr>
<tr>
<td>1939</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>1940</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Mean</td>
<td>33.8</td>
<td></td>
</tr>
<tr>
<td>SD</td>
<td>4.2</td>
<td>2.2</td>
</tr>
</tbody>
</table>

**Source:** As for Table 7.3

During the second decade of the series the differences between the two sets of figures are obviously considerably less than in the first decade. The mean for the SGIO for the period 1929 to 1938 was 36.3 and for the private market 39.5. There is no obvious explanation for the rise in expense rate of the SGIO during this period and none is offered in the Insurance Commissioner's Annual Reports.

By adding the claims ratios to the expense ratios during
the 1930s it appears that the Queensland general insurance was extremely profitable for both sectors of the market. The SGIO made a net profit over that ten years of 32 per cent on turnover before interest earnings were credited, and the Tariff companies 18 per cent. During this period the SGIO was giving a 20 per cent discount off its premiums by way of a bonus on renewal which is taken into account in these figures. Obviously a great deal more could have been returned to policy holders or premiums reduced considerably.

The opportunity exists to be able to compare this performance of the Queensland market, which represented 14 per cent of the total Australian market and was subject to both state competition and regulation, with 86 per cent of the Australian market which was subject to private regulation by the Tariff.
TABLE 7.6

CLAIMS RATIOS OF GENERAL INSURANCES
INCLUDING WORKERS' COMPENSATION
ALL INSURERS, QUEENSLAND AND THE REST OF AUSTRALIA
1920 TO 1940

<table>
<thead>
<tr>
<th>Year</th>
<th>Queensland</th>
<th>Rest of Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>39.0</td>
<td>39.8</td>
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<tr>
<td>1921</td>
<td>38.5</td>
<td>41.8</td>
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<td>1922</td>
<td>49.2</td>
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<tr>
<td>1923</td>
<td>60.6</td>
<td>49.3</td>
</tr>
<tr>
<td>1924</td>
<td>59.0</td>
<td>54.7</td>
</tr>
<tr>
<td>1925</td>
<td>50.6</td>
<td>51.1</td>
</tr>
<tr>
<td>1926</td>
<td>58.5</td>
<td>53.3</td>
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<tr>
<td>1927</td>
<td>64.3</td>
<td>55.7</td>
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<td>1928</td>
<td>60.1</td>
<td>52.8</td>
</tr>
<tr>
<td>1929</td>
<td>55.2</td>
<td>52.3</td>
</tr>
<tr>
<td>1930</td>
<td>56.5</td>
<td>52.9</td>
</tr>
<tr>
<td>1931</td>
<td>60.4</td>
<td>51.4</td>
</tr>
<tr>
<td>1932</td>
<td>64.9</td>
<td>46.5</td>
</tr>
<tr>
<td>1933</td>
<td>50.6</td>
<td>40.5</td>
</tr>
<tr>
<td>1934</td>
<td>46.1</td>
<td>42.1</td>
</tr>
<tr>
<td>1935</td>
<td>46.9</td>
<td>44.1</td>
</tr>
<tr>
<td>1936</td>
<td>56.6</td>
<td>51.0</td>
</tr>
<tr>
<td>1937</td>
<td>51.8</td>
<td>48.7</td>
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<tr>
<td>1938</td>
<td>45.6</td>
<td>48.3</td>
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<tr>
<td>1939</td>
<td>44.4</td>
<td>51.2</td>
</tr>
<tr>
<td>1940</td>
<td>46.8</td>
<td>49.1</td>
</tr>
</tbody>
</table>

Mean 52.6 48.8

Standard Deviation 7.6 4.6

Source: As for Tables 7.2 and 7.3

The figures in this Table would indicate that the effect of SGI0 competition in the Queensland market was to reduce prices over this period even if it was only a relatively small margin of 3.8 per cent over two decades. However a breakdown of the Queensland figures between general insurance and those of workers' compensation written as a monopoly by the SGI0 reveal that the latter was running at substantial losses during the 1930s. By 1936 the workers' compensation account of the SGI0 showed accumulated losses for the previous five years of
£258,000 which forced the Government to provide an injection of funds.\textsuperscript{74} In the other major states, New South Wales and Victoria, privately written workers' compensation insurance produced mean loss ratios for the decade of the 1930s of 77.1 per cent in the former and 66.0 per cent in the latter by comparison with Queensland of 89.2 per cent. As the mean expense rate of the SGIO in handling workers' compensation during that period was 15.4 per cent the overall losses averaged 104.6 per cent of premiums received.\textsuperscript{75}

We therefore have mixed messages coming out of Queensland for the period under review. Workers' compensation insurance was being run at a loss by the SGIO requiring a subsidy from the Government. On the other hand the SGIO general insurance account was being run at a substantial profit. The intention of SGIO management was to run workers' compensation at cost but they did not succeed in achieving that result. The intention of running the general insurance account was quite different. It appears to have been to have been of profit maximisation. The SGIO competed with private insurers at being profitable rather than by endeavouring to force prices down. When the 1934 results were published in 1935 showing that the SGIO had a most successful year derived from general insurance profits (see Table 7.3) the Insurance Commissioner proclaimed jubilantly that 'we have had a wonderful year'.\textsuperscript{76} Each year the Commissioner's Annual Report contained an Appendix comparing the results of the SGIO in the field of general insurance with its private competitors split into Australian, New Zealand and

\textsuperscript{74} Thomis and Wales, \textit{SGIO}, pp.91/2.

\textsuperscript{75} Data from \textit{Official Year Book of New South Wales}, \textit{Victorian Year Book}, and \textit{Queensland SGIO Annual Reports} in Queensland Parliamentary Papers.

\textsuperscript{76} Thomis and Wales, p.102.
'foreign' companies for both loss and expense ratios. The clear message of the manner in which the figures were displayed was to demonstrate that the SGIO performed better in this part of the insurance market than its private competitors.

This was a far cry from the purpose for which the SGIO had been established and the intentions of the first Insurance Commissioner, John Goodwyn, who had predicted that private enterprise would be 'finally booted out of a field which it had callously exploited for its own benefit'. But there was a tension, for the government and succeeding insurance commissioners, between exercising a restraining influence on private enterprise on one hand, and on the other hand to build up a state enterprise that was both profitable enough to contribute to the state economy through investment of its reserves in government borrowings, and to make contributions of its profit to general revenue. To these tensions was the added factor for both the government and the commissioner that the SGIO was the only one of all the state enterprises established by Ryan's government that was a commercial success.


'The object has been not to secure a monopoly or to squeeze out of the business legitimate private traders but to protect the public by competition on fair and efficient lines...competition from the State proving a more efficient method...than any amount of direct regulation...' p.142.

78 Ibid.p.38.

79 Murphy, op.cit. pp.147-8. State cattle stations and state mining and smelting had accumulated losses in excess of £2 million by 1929; the state butchery, fishery, sawmills, coalmines, cold stores, produce agency and cannery were all unprofitable to a lesser extent.
When Goodwyn resigned in 1920 he was succeeded by his deputy J.A. Watson. Watson had worked for Tariff companies since 1897 until he was appointed to the SGIO in 1916. He was Brisbane branch manager of the Australian Mutual Fire Insurance Company and president of the Insurance Institute of Queensland at the time of his appointment to the SGIO. Watson remained as Insurance Commissioner until his retirement in 1945. He was highly respected by the insurance industry and kept his contacts open. This appointment was significant to the relationship that continued between the SGIO management and the Tariff. The minutes of the Queensland Tariff organisation, the Queensland Fire and Accident Underwriters' Association reflect what was obviously a cosy relationship between that body and the Insurance Commissioner. The minutes refer on many occasions to new rates and policy conditions being referred to the Commissioner for his approval. Almost without exception these were later noted as having received the Commissioner's 'concurrence'.

It was a relationship that enabled the historians of the SGIO to conclude that

The SGIO...had consistently succeeded in living harmoniously with their private enterprise rivals in a non-threatening relationship within Queensland.

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80 In a letter dated 2 May 1920 to the Queensland Public Service Board (see Goodwyn's personal files in the archives of the Insurance Commissioner, Brisbane) Goodwyn tendered his resignation because his salary had not been increased, as he believed he had been promised, above public service levels to that which was commercially available to him.

81 Thomis and Wales, SGIO, p.43.

82 Minutes of the weekly meetings of the Queensland P.A.U.A. in the archives of the Insurance Council of Australia. The Minutes of 11 February 1930, for instance, noted eight matters on which the 'commissioners' concurrence was noted'.

83 Thomis and Wales, SGIO, p.231.
The profitability of the SGIO was not without its benefits for the Queensland government. By 1958 SGIO had investments in Queensland local authorities totalling £22 million and a further £9 million in Commonwealth and Queensland securities.\textsuperscript{84} The ultimate value of the SGIO to the State government was demonstrated in 1976 when five building societies were found to be in extremis. The SGIO’s initial rescue of these five involved an injection of $50 million that was needed to save them, and during the next two years it was used to save a further three building societies from collapse by absorbing them into the newly formed SGIO Building Society.\textsuperscript{85}

\textbf{Conclusion}

In summary, by 1940 reactionary political forces at least reinforced, if not prompted by the Tariff and other private insurers, had managed to keep the influence of state insurance offices restricted largely to sharing the market for compulsory insurances of workers’ compensation and motor vehicle compulsory third party. In Queensland the activities of the SGIO and the Insurance Commissioner in the field of general insurance had been captured by the Tariff. The SGIO was not attempting to lower prices but rather was competing with private insurers at their own game and demonstrating that a government enterprise could be run more effectively than private industry. The Tariff in Queensland, far from being under the thumb of the Insurance Commissioner who controlled their price levels and products for the benefit of consumers, was able to operate marginally more profitably in that state than elsewhere in the

\textsuperscript{84} Ibid., p.187.
\textsuperscript{85} Ibid., p.229.
country. This margin was, however, so small that it is not possible to gauge any effect that an SGIO floor price may have had to strengthen the Tariff in Queensland or to discourage new entrants.

State government insurance offices in Australia reached their zenith in the 1970s and 1980s. This happened for two reasons. First the public sector share of compulsory insurances, motor vehicle third party and workers' compensation, rose as private insurers withdrew from these fields because of inflating claims and as premium levels were held down by state governments. In 1971 public sector insurers wrote 64 per cent of the Australian market for compulsory third party insurance, whereas by 1983 it as writing 94 per cent of the market. With workers' compensation the process took longer. By 1983 the public sector market share had reached 33 per cent but by 1988 it was 83 per cent.

The second reason was the influence of state Labor governments seeking to expand these enterprises. It has been mentioned earlier that the Victorian, South Australian and Western Australian and Labor governments of the 1970s and 1980s all sought to expand the activities of their state insurance bodies. In 1988 public sector insurers, with a premium income of $4,475 million, reached their largest share of the Australian market at 42 per cent. This share has declined marginally.

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86 The mean loss ratio of the Queensland Tariff in Table 7.3 is 46.8 per cent compared with the Australian wide results, excluding Queensland, in Table 7.5 which shows a mean loss ratio of 48.8 per cent.

87 Camilleri, Tables 2.6.1 and 2.6.2.

since then.\textsuperscript{89} The share will fall substantially with the privatisation of state offices in New South Wales, Victoria in 1992 with Tasmania planned to follow. And notwithstanding the efforts of the public sector to gain market share of general insurance from the private sector, 82 per cent of the public sector premium income was still derived from compulsory third party and workers' compensation in 1990.\textsuperscript{90}

Measured in terms of effective regulation the state insurance experiment in Australia, which can now said to be finished, was not a success. During the period of the Tariff rule conservative forces managed to keep the experiment largely confined to compulsory insurance. Even in those fields, as was demonstrated with the Victorian SIO, the Tariff agency system was an effective barrier to market penetration. Probably, although there is no evidence, this was also true in Queensland.

Finally it is pertinent to quote Manning Clark's observation about state competition with private enterprise.

\begin{quote}
Labor argued [that state enterprises] would make capitalist society more efficient...[but]
Labor...was trapped into arguing which [system] could administer more efficiently the affairs of the bourgeois state.\textsuperscript{91}
\end{quote}

This seems to have been true of the attitude of many of the state insurance commissioners who saw this demonstration of efficiency of a state run enterprise as

\textsuperscript{89} Insurance and Superannuation Commission Annual Report, 1990-1991, Table D1.

\textsuperscript{90} Ibid. Table D.3.

their role rather than providing effective competition for the Tariff.

As will be discussed in Chapter 8 the Tariff was a spent force by the early 1970s and was formally disbanded in 1975. After that date there was genuine competition among the more than 150 private general insurers in Australia and the various attempts at this form of meta-regulation had become redundant.
CHAPTER 8
THE BREAKDOWN OF PRIVATE REGULATION
1950 - 1974

In contrast to the instability and slow growth of the Australian economy between 1890 and 1950 \(^1\), with its reliance on public capital formation, the immigration-led post World War II expansion attracted predominantly private capital \(^2\). This 'very high rate of capital inflow'\(^3\) attracted both foreign insurers and foreign insurance brokers to Australia. Brokers and insurers tended to follow their clients' new Australian investment or they were enticed by a growing economy with a stable political environment which was not, at that time, subject to massive insurance shocks of earthquakes, cyclones and other natural disasters endemic elsewhere in the world.

During the period 1950 to 1974 five factors emerged which were to have a lasting impact on the Australian general insurance market. The first was the arrival of numbers of multi-national insurance brokers. These brokers bought their way into the market by purchasing established Australian Tariff brokers and then proceeded to apply pressure to the Australian Tariff for the introduction of prices and policy terms available in the international market. The second factor was the creation of a substantial non-Tariff market of insurance companies attracted by the growing number of private motor

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vehicles. This diluted the Tariff hold on the market and created an unstable sector of marginal insurers. Closely allied to this development was the third factor. It was growth of the Compulsory Third Party (CTP) market referred to in the last chapter. Political control of premiums at uneconomic levels forced private insurers out of CTP and left this field largely in the hands of public insurers. They too entered the comprehensive motor insurance market. These factors, together with competition for workers' compensation insurance put public insurers, as discussed in Chapter 7, in control of a substantial share of the total market. Fourthly, as will be discussed later in this Chapter, there was a new found determination by the Australian Parliament to introduce trade practices legislation. Although insurers were not a target for this move it ultimately had the effect of proscribing the Tariff organisation. Finally, the failure of a number of small motor insurers during the early 1970s persuaded governments, more than sixty years after it had been suggested by the Royal Commission of 1908, that general insurance in Australia should be regulated to protect consumers. This Chapter will deal with each of these factors which brought the Australian general insurance market to its present composition.


Premium income in Australia grew, at current prices, from $93.5 million in 1950 to $1,552.1 million in 1974. In deflated terms the 1974 figure was $509.6 millions, or a real growth factor of five and a half times. As another measure of this growth, insurance income can be compared to the growth of Australia's Gross Domestic Product for the period. Table 8.1 shows that insurance premiums grew at a rate of 150 per cent of GDP.
TABLE 8.1

PREMIUM INCOME OF GENERAL INSURERS
AND GROSS DOMESTIC PRODUCT
AUSTRALIA 1950 -1974, FIVE YEARLY RESTS

$000,000, CURRENT PRICES

<table>
<thead>
<tr>
<th>Year</th>
<th>Premium Income</th>
<th>Index</th>
<th>GDP</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>93.5</td>
<td>100</td>
<td>5,105</td>
<td>100</td>
</tr>
<tr>
<td>1955</td>
<td>218.5</td>
<td>234</td>
<td>9,613</td>
<td>188</td>
</tr>
<tr>
<td>1960</td>
<td>361.8</td>
<td>387</td>
<td>13,746</td>
<td>269</td>
</tr>
<tr>
<td>1965</td>
<td>551.4</td>
<td>590</td>
<td>19,769</td>
<td>387</td>
</tr>
<tr>
<td>1970</td>
<td>981.4</td>
<td>953</td>
<td>30,545</td>
<td>598</td>
</tr>
<tr>
<td>1974</td>
<td>1,552.1</td>
<td>1,660</td>
<td>51,336</td>
<td>1,006</td>
</tr>
</tbody>
</table>

Sources: Premium, Camilleri, Table 1.1.2., GDP, N.G.Butlin, ‘Australian National Accounts’ Table ANA 158-167, Australian Historical Statistics.

Numbers of Insurance Companies in the Market

The list of companies which paid deposits to the Commonwealth Treasury under the Insurance (Deposits) Act 1932, and its subsequent amendments, during the period under review were not published by Treasury. The total amounts deposited were published but because the size of the deposit varied for smaller companies on the extent of their premium income it is not possible to draw any adequate conclusion from these figures. The lists of companies has not been available from Treasury archives.

In contrast, the insurance companies licensed under the Victorian Stamp Duties Act (refer Chapter 2) were still published annually in the Victorian Government Gazette and reprinted in the AIBR. Although these lists do not represent all insurance companies trading in Australia, all of the major companies and most of the smaller ones operated in Victoria and so were licensed in that state. These Victorian records show that in 1950 a total of 127
insurance companies were licensed. By 1974 there were 205 licensed companies, but as 40 of the companies licensed in 1950 were no longer operating in Victoria, most of them having been the subject of takeover, the figures show an entry of 118 new insurers to the Victorian market.

Five of these new general insurers were subsidiaries of the Australian mutual life companies, A.M.P., C.M.L., M.L.C., National Mutual and T.and G. There had been an understanding between the Tariff and the life companies that they would not tread on each others toes in the Australian market. This was in contrast to the British market where the so called 'composite' life and general insurers operated freely in both of those markets. After World War II a number of British companies moved into the life market in Australia, including Royal, Phoenix, Commercial Union, Eagle Star and Norwich Union, and some Australian general insurers including Federation, Mercantile Mutual and Australian Catholic followed. The Australian mutual life companies retaliated by setting up subsidiaries to compete for general insurance. Some order was retained in the market as all the life office subsidiaries joined the Tariff.

Another group of entrants during this period was that of professional reinsurers. Reinsurers do not compete in the retail insurance market but offer reinsurance facilities to the retailers. As discussed in Chapter 2, reinsurance in Australia was handled before World War II either as reciprocal business between retail insurers or by arrangements with the head office of the British parent.

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4 AIBR, 21 March 1950, p.134. The count does not include insurance brokers placing business at Lloyd's. These brokers fell within the provisions of the Act and were required to be licensed. In order to present a consistent picture brokers have been excluded from this and the following counts.

5 AIBR, August 1974, p.516.
company. The long established European reinsurers, Munich, Swiss, Copenhagen, Vesta of Sweden, and American reinsurers were attracted to Australia during the 1950s by the growth of the total market. Several local reinsurers joined the group and by 1974 there were a total of nine reinsurance companies in Australia.

Approximately forty per cent of the other 104 new companies established were Australian in origin and the balance were from Britain, Europe, U.S.A. and Japan. Many of the foreign companies chose to join the Tariff while the majority of the new Australian companies did not. It is interesting to analyse the effect of these changes on the hegemony of the Tariff.

In 1950 a total of 156 organisations, made up of insurance companies, brokers using Lloyd’s underwriting contracts and major commercial companies carrying their own risks, made returns to the Melbourne Metropolitan Fire Brigades Board. By 1974 the total number of organisations making these returns had increased to 185.

In 1950 95 of the 156 organisations making these returns were Tariff insurance companies. Between them the Tariff companies controlled 86 per cent of Melbourne fire insurance premiums. By 1974 the number of Tariff companies had shrunk by three to 92. The increase in the number of companies operating in the market was entirely made up of non-tariff companies. However the Tariff share of the market had fallen only to 83 per cent. Clearly this change in the market composition was not of any great significance to Tariff supremacy in fire insurance, but other changes had taken place which had a significant

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6 Archives of the Metropolitan Fire Brigades Board, Melbourne.
7 Ibid.
effect.

These alterations can be categorised into the composition of the market brought about by technological and social changes and falling prices for insurance when competition with the Tariff grew and as Tariff controls ceased to function.

**Changes in the Composition of the General Insurance Market**

In 1950 fire insurance represented 31 per cent of premium income of the total insurance market in Australia. However by 1974 fire premiums were only 13 per cent of the market.\(^8\) There had been considerable changes to the composition of the market. It had been influenced primarily by the growth in motor vehicle ownership and its demand for insurance both for the vehicles themselves and for CTP insurance. In 1950 there were 768,000 private and 502,000 commercial vehicles registered in Australia. In 1974 the numbers had grown to 4,604,000 private and 1,090,000 commercial vehicles.\(^9\) There was a considerable growth in home building. At current prices private investment in dwellings grew from $190 million in 1950 to $2,573 million in 1974 with each year showing an increase over the previous one.\(^10\) In addition there was a general demand for liability insurance which had not been present before. Table 8.2 reflects these changes.

\(^8\) Camilleri, Table 1.1.4


\(^10\) Butlin, 'Australian National Accounts', Table ANA 181-183, in *Australian Historical Statistics*. 
TABLE 8.2
PREMIUMS RECEIVED, PRINCIPAL CLASSES OF BUSINESS
BY PERCENTAGE, FIVE YEARLY INTERVALS, 1950 - 1974

<table>
<thead>
<tr>
<th>Year</th>
<th>Fire</th>
<th>Home</th>
<th>Marine</th>
<th>Motor</th>
<th>CTP</th>
<th>WCA</th>
<th>Liab’l</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>30.9</td>
<td>3.9</td>
<td>9.7</td>
<td>17.6</td>
<td>5.2</td>
<td>24.7</td>
<td>0.8</td>
<td>7.2</td>
<td>100</td>
</tr>
<tr>
<td>1955</td>
<td>24.2</td>
<td>4.4</td>
<td>6.7</td>
<td>26.9</td>
<td>9.7</td>
<td>20.3</td>
<td>1.1</td>
<td>6.7</td>
<td>100</td>
</tr>
<tr>
<td>1960</td>
<td>20.2</td>
<td>5.2</td>
<td>4.7</td>
<td>27.1</td>
<td>11.0</td>
<td>21.4</td>
<td>1.6</td>
<td>8.8</td>
<td>100</td>
</tr>
<tr>
<td>1965</td>
<td>17.3</td>
<td>6.0</td>
<td>4.6</td>
<td>27.5</td>
<td>13.6</td>
<td>20.8</td>
<td>2.0</td>
<td>8.2</td>
<td>100</td>
</tr>
<tr>
<td>1970</td>
<td>15.3</td>
<td>7.1</td>
<td>5.3</td>
<td>25.4</td>
<td>16.1</td>
<td>18.4</td>
<td>2.6</td>
<td>9.8</td>
<td>100</td>
</tr>
<tr>
<td>1974</td>
<td>13.5</td>
<td>8.2</td>
<td>4.5</td>
<td>23.6</td>
<td>13.4</td>
<td>24.4</td>
<td>2.7</td>
<td>9.7</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Camilleri, Table 1.1.4

The fall in income derived from marine insurance is also evident. This will be dealt with later in this Chapter; it was a direct result of competition to the Tariff brought by overseas brokers and which soon resulted in the abandonment of pricing arrangements for this class of business. A fall in prices for fire insurance, again initiated by competition, was a contributing factor to the diminution of the fire market. This will also be examined later in the Chapter.

Multi-national Brokers Enter the Australian Market

Between 1950 and 1970 thirty overseas, mainly British, insurance brokers started branch offices throughout Australia. 11 Their mode of entry into the Australian insurance market was in marked contrast to the four Lloyd’s brokers which had built up business in Australia between the Wars. It will be recalled that in Chapter 6 it was shown that the strategy of Bennie S.Cohen (now Lumleys) 12 and the other brokers was to utilise the Lloyd’s market to compete with the Tariff. After two decades of competition they had captured only some 2.5

11 Benjamin, History, p.128 and Appendix III.
12 Bennie S.Cohen and Son changed its name to Edward Lumley and Sons (Lumleys) in 1944. Edward Lumley was the son of Bennie Cohen. Benjamin, p.96.
per cent of the fire market. (Table 6.1) The Tariff bastions had hardly been breached.

The fresh, and larger, invasion of brokers that occurred after World War II chose to enter the market by purchasing the largest and most successful local brokers in Australia. These local broking houses were all Tariff. It was a feature of the development of Tariff brokers in Australia that almost without exception even the largest of them did business only within the capital city where they had commenced operations. This was a divergence from the evolutionary path of insurance companies in Australia that saw branch offices established very broadly. Why brokers did not follow this pattern of expansion is not now clear, but of the 43 Sydney Tariff brokers in 1940 only two had established branch offices; one had a Melbourne office and the other an office in Brisbane. 13 No other Tariff brokers in Australia had spread outside their home base. The insurance programs of the few Australian enterprises that before 1950 operated on a national basis were handled in each state by a local Tariff broker who acted as the correspondent for the broker that handled the head office account. It was a situation which, in the rapidly expanding Australian market, that was waiting for a more sophisticated approach.

The Scottish broking firm of Stenhouse created the greatest impact on the Australian market. Stenhouse established in Australia in 1961 by purchasing the leading Tariff broking house in each state. In three years it had acquired nine local firms and it absorbed another eight during the following decade. 14 Other U.K

13 Ibid., pp.109-111.
14 Ibid., Appendix III. Stenhouse was taken over in 1986 by the U.S. brokers Alexander and Alexander, and now operates as Alexander Stenhouse.
and U.S. brokers followed the same pattern of development in Australia.

But having joined the Tariff in this way the overseas brokers found that they were in an all-encompassing strait jacket. Tariff regulations would not allow registered brokers to place business outside the cartel. This meant that the brokers had to be content with Tariff rates even where they knew that rates on offer overseas would be to their clients' advantage. They also had to be content with the range of policies and policy wordings available from the Tariff when they knew of much broader product ranges and wordings available in the world market.

In his Thesis Pursell devoted twenty pages to an analysis of Tariff products in the early 1960s. In a damning summary of findings he concluded that 'there is not a single instance where the Tariff has taken the initiative in introducing new covers', 15 and that defence against non-tariff competition had been the sole spur to innovation. Even then, Pursell continued, wordings were taken from British usage which were frequently not applicable to Australian conditions, and they usually lagged many years behind their introduction in the U.K. As a last condemnation he found that certain forms of cover in common use in other countries have never been introduced and remain forbidden to tariff companies in Australia. 16

For an experienced broker wishing to place business for his client on the best possible terms these conditions were suffocating.

16 Ibid. p.516.
Finally the Tariff operated a bar to brokers being appointed to handle the business of the Tariff's major clients by a regulation prohibiting the payment of brokerage if the client had been appointed a director of the insurance company handling the business. These directorial appointments were the chief means of marketing by Tariff companies to large commercial and industrial businesses, and as each Tariff company was allowed to appoint 'local' boards of directors in each major city the number of such ties were quite numerous. Regulation No.6 of the Victorian Tariff under its Discount, Agency and Brokerage Agreement allowed each company to appoint six directors in Melbourne and three each in Ballarat, Bendigo and Geelong. Similar numbers were allowed in other cities in Australia. As there was an average of 150 members of the Tariff at this time it meant that in each capital city there were close to 1,000 'directorial' appointments possible. It is not surprising that much of the pressure to burst the Tariff came from Tariff brokers.

Breakdown of the Tariff: Marine Insurance

When the Tariff for marine insurance was introduced in 1898 it prohibited the payment of brokerage. Brokers were allowed to place business with the Tariff, indeed they had no other market, but received no income for their work. The marine Tariff was much more restrictive with agency payments than was the fire Tariff. The maximum agency commission allowed by the marine Tariff was 10 per cent and it was strictly followed. The reason that marine insurers were able to take such a tough line at the end of the nineteenth century was the almost universal demand for marine insurance. The perils of sea transport were such that shipowners and merchants would not consider a venture that was not insured. Furthermore, the banks, that were used universally to handle the finance of
shipping documents for cargoes, insisted on insurance. Marine insurance was an assured market, unlike fire insurance which largely had to be 'sold' by a network of agents and brokers on an individual basis.

However, this treatment of brokers for marine insurance by the Tariff was in marked contrast to the position of brokers in the marine market in Britain. Since the sixteenth century brokers had been an integral part of the development of marine insurance in London. Brokers put together a market of merchants who were prepared to 'underwrite' risks for the brokers' clients who wished to insure. At Lloyd's, business was only accepted through recognised brokers and members of the public had no access to that market.\(^\text{17}\) Insurance companies from all round the world maintained offices in London to participate in what was the world centre for marine insurance. It was brokers who handled this business as well. Payment of brokerage was an accepted practice for both Lloyd's and the companies.

The Australian Tariff treatment of brokers in the marine market was somewhat of a shock, both culturally and financially, to the British brokers who came to Australia in the 1950s. The Australian Tariff, after many years without competition in the marine market, soon found that it was in a vulnerable position in respect of this insurance. Imports into Australia, the bulk of which came either from, or were transshipped through, Britain could be insured by the brokers' clients in London and brokerage paid over there without the brokers being in breach of the Australian Tariff. Australian primary production exports, which were handled by pools or 'boards' on behalf of producers, could also be insured in London through their agents there where, because of its

diversity and size of that market it was able to offer highly competitive rates for such risks that undercut the capacity of the Australian marine Tariff market. The Australian marketing authorities could instruct their London agents to utilise brokers in London to effect insurance there so that the brokers in Australia were not technically in breach of the Tariff.

Faced with this competition the Australian Tariff was forced to give ground. In July 1957 the Tariff agreed to pay brokerage of 5 per cent on hull insurance and 10 per cent on cargo insurance. The Tariff tried to tie this relaxation of their rules to an agreement by brokers that they would not accept brokerage from marine insurers who were not members of the Tariff, which would have excluded the London market. The prohibition was not a realistic one and the Tariff was forced to abandon it within a few months. The whole marine Tariff was loosing its force because of the competition imported by the new Tariff brokers, and although it limped on for a few more years the Marine Underwriters’ Association of Australia finally abandoned its Tariff in December 1969. The marine insurance market in Australia was truly competitive for the first time in seventy years.

Breakdown of the Tariff: Fire and Accident Insurance.

It is evident from the records of the ruling Tariff body, the Council of Fire and Accident Underwriters’ Association of Australia (CFAU) and the minute books

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18 Minute books of the Marine Underwriters’ and Salvage Association of Victoria for the years 1879 to 1903. Latrobe Library Manuscript Collection, Melbourne. Minutes books of the Corporation of Insurance Brokers of Australia (CIBA), at present in the author’s possession. 1959 to 1969 are complete, but those from 1970 to 1976 are incomplete.

19 Minute books in the archives of the Insurance Council of Australia, Melbourne. See later specific references.
of the association of registered Tariff brokers, the Corporation of Insurance Brokers of Australia (CIBA)\(^\text{20}\), that the brokers put continuous pressure on the underwriters to relax their rules governing the placement of all non-marine (fire and accident) business from the mid 1950s onwards as well as marine insurance. Many of these changes to the Tariff rules were sought by brokers out of self-interest, so that they might win new business and retain business that was under attack, but others were the result of endeavours by brokers to place business on behalf of their clients at more advantageous terms than were on offer from the Tariff.

There was a 'respectable' non-tariff market available in Australia by this time that would undertake the larger risks being handled by brokers, apart from the group of smaller insurance companies that mainly specialised in motor insurance. There was Lloyd's and the London insurance company market, together with the local offices of the old and respected Scottish insurance company, the General Accident, and the substantial Insurance Company of North America. Both these companies had joined the Tariff when they established branches in Australia but later withdrew because of the constraints imposed on them. There was pressure by the Tariff brokers to use these markets which could offer their clients some relief from Tariff rates and more up-to-date policy terms.

The first sign of a Tariff breakdown occurred in 1955. Tariff rules had, since 1897, prohibited members from sharing in fire risks on which non-members were participating. As pointed out in Chapter 2 this was a device to inhibit the emergence of a non-tariff market by depriving it of sharing in the Tariff fire market. In August 1955 the CFAU relaxed its rules and allowed its

\(^{20}\) Currently in the author's possession.
members to participate on schedules of fire policies which were placed partly with non-members. But as a sting in the tail to this relaxation, brokers were not allowed to accept remuneration from the non-tariff insurers who participated on the risks.\textsuperscript{21}

Tariff brokers continued to pressure the CFAU on several fronts. There was discontent about the commission paid to brokers on fire insurance that they handled. The 1897 fire Tariff set the rate at 10 per cent after the underwriters had outmanoeuvred the brokers in a bitter fight in which brokers fought to retain the 15 per cent brokerage that they had been paid.\textsuperscript{22} The 15 per cent was commonly paid to brokers on world markets and this was the figure that was demanded by the multi-national brokers now operating in Australia. In November 1956 the Tariff capitulated to these calls but with one major exception. It offered 15 per cent brokerage but excepted cases from this new rate where the client was a director of a Tariff insurance company and was in receipt of a directorial allowance. The extent of directorial appointments has been mentioned already in this Chapter so the victory of the brokers in this battle was only partial.

Continuous pressure was placed on Tariff prices for fire insurance on large industrial risks. This pressure was usually exerted by brokers. With the advent of Lloyd’s competition in the 1920s Tariff had introduced a regulation that allowed special fire rates to be struck for major risks in the face of non-Tariff competition.

\textsuperscript{21} CFAU Minutes, 25 August 1955.

\textsuperscript{22} Benjamin, \textit{History}, pp.51-53.
generally.\textsuperscript{23} The minutes of the Annual General Meeting of the CFAU recorded each year the number of risks that had been re-rated downwards to meet 'non-Tariff competition'. A sample of the number of risks that had their rates reduced because of this real or perceived competition\textsuperscript{24} is set out in the following Table.

\textbf{TABLE 8.3}

\textbf{NUMBERS OF TARIFF FIRE RISKS GIVEN RATE REDUCTIONS BECAUSE OF 'NON-TARIFF COMPETITION'}
\textbf{SELECTED YEARS 1955 TO 1963}

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Risks Granted Rate Reductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1955</td>
<td>156</td>
</tr>
<tr>
<td>1956</td>
<td>150</td>
</tr>
<tr>
<td>1959</td>
<td>229</td>
</tr>
<tr>
<td>1960</td>
<td>176</td>
</tr>
<tr>
<td>1961</td>
<td>168</td>
</tr>
<tr>
<td>1963</td>
<td>121</td>
</tr>
</tbody>
</table>

\textit{Source:} CFAU Annual Reports.

The numbers continued to decline as the Tariff breakdown escalated, but the Tariff book of 'Special Ratings' declared on major fire risks in Australia in 1974 comprised three volumes with over 1,300 specially rated risks.\textsuperscript{25}

Both CFAU and CIBA records indicate several years of negotiation between the two bodies from 1960 onwards that

\textsuperscript{23} This was a tactic developed in Britain in the early part of the twentieth century as one of the strategies developed by the Tariff to combat non-tariff rate reductions on sprinklered fire risks. Westall estimates that non-tariff companies and Lloyd's had gained 5.4 per cent of the fire market in Britain by 1907. 'David and Goliath,' in Westall (ed.) \textit{The Historian}, pp.147.

\textsuperscript{24} From the writer's own experience it was common knowledge that Tariff brokers often claimed 'non-Tariff competition' to obtain a rate reduction from Tariff rates under these provisions.

\textsuperscript{25} Copy of the Tariff 'Special Ratings' in the library of the Australian Insurance Institute.
endeavoured to solve two outstanding problems for the brokers which were resisted by the insurance companies. Brokerage payable on director's accounts was one and the other was that Tariff brokers should be able to accept brokerage on business that they were allowed to place with non-tariff insurers. In 1964 the Tariff capitulated on the latter subject in a guarded way as brokers could now accept brokerage on non-tariff placements 'where there was no Tariff market to accept the risk'.

Clearly these rules, and the earlier one that prohibited the acceptance of brokerage on non-tariff placements, could not be policed by the Tariff. In these circumstances a more realistic agreement was reached with the brokers in December 1964.

The new agreement was that subject to the risk first having been offered to the Tariff in full, the risk could then be placed 75 per cent with the Tariff and 25 per cent with non-tariff. As an indication of the extent to which the old rules had been flouted a moratorium was offered to brokers allowing them two years to bring existing business within the new rules. The Tariff was unable to see how the tide of events was running against them in this battle which was being fought by the brokers as agents for consumers who were not prepared to submit to these restrictive practices. Under the new 75/25 rule the Tariff had stipulated that the rates payable on the non-tariff section of the placement were to be the full Tariff rates. This was clearly not a tenable position and the Tariff had to withdraw from it within a year.

Although pressure from brokers continued to open the market even further it was not until the end of the 1960s that global pressures forced the hand of the Tariff in

26 CFAU minutes, 25 March 1964.
27 CFAU Annual Report for 196-65, p.5.
Australia. World wide economic expansion and inflationary pressures had created a demand for insurance which could not be met by the existing capacity of insurers throughout the world. An insurer's capacity to absorb risks is, apart from reinsurance, dependant on its own capital and reserves. Thus a greatly increased demand for insurance, or substantial world wide insurance losses which deplete reserves, can create a temporary shortage of capital in insurance markets.28 The Australian insurance market reflects these shortages, and the Tariff had to acknowledge that in order to satisfy the increased Australian demand for insurance, it had to allow a market for brokers that was virtually free. In May 1970 a new brokers agreement was drawn up that allowed either a 75/25 placement between Tariff and non-tariff or 100 per cent placement with non-tariff on fire business. Accident business could be placed 100 per cent in either market. Brokers could accept brokerage on all placements. This change in rules meant that the Lloyd's broking firms which had set up in opposition to the Tariff during the 1920s and 1930s, and had been seen as the implacable enemy, were no longer excluded form Tariff ranks. If Tariff brokers were able to place business in the market that suited the needs of their clients without restriction then there was no point in the Tariff refusing to deal with Lloyd's brokers. Lloyd's brokers were now admitted as Tariff brokers and became fully fledged members of the Tariff broking association. The major broking houses in Australia could now offer their

28 It is not within the province of this thesis to discuss the recognised phenomenon of recurrent shortages of capital in the insurance market, resulting in general price increases, which are usually followed by capital surpluses, resulting in lower prices. There is fierce debate about whether this is a cyclical movement or one that occurs from time to time generated by specific factors. G.Taylor, 'Underwriting Cycles' in G.Gribbin and R.L.Benjamin (eds.), The Australian Insurance Industry, 160 Years On and Looking Ahead, Deakin University Press, Melbourne, 1992, offers a recent view which summarises international literature on the topic, and comes down in favour of the movements not being cyclical.
clients the best available market whatever its source.

These developments meant that there was an effective open market in Australia for businesses that were large enough to utilise the services of brokers, but the Tariff and its agency system was still in place for small business and private insurances that did not use the services of a broker.

The extent of price reductions in the fire insurance market by a combination of these factors can be gauged by looking at the loss ratios for this class of business in the twenty year period from 1955 to 1974. As a basis of comparison it will be recalled that Table 7.5 gave the mean loss ratio of private insurers for all classes of business for the years 1920 to 1940 at 48.8 per cent.
<table>
<thead>
<tr>
<th>Year</th>
<th>Fire</th>
<th>Marine</th>
<th>Workers</th>
<th>Public Risk</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1955</td>
<td>29.2</td>
<td>40.9</td>
<td>84.2</td>
<td>38.8</td>
<td>57.9</td>
</tr>
<tr>
<td>1956</td>
<td>30.6</td>
<td>40.3</td>
<td>79.4</td>
<td>43.9</td>
<td>58.0</td>
</tr>
<tr>
<td>1957</td>
<td>33.3</td>
<td>42.1</td>
<td>81.2</td>
<td>46.2</td>
<td>59.8</td>
</tr>
<tr>
<td>1958</td>
<td>30.5</td>
<td>43.0</td>
<td>72.5</td>
<td>51.0</td>
<td>56.7</td>
</tr>
<tr>
<td>1959</td>
<td>31.6</td>
<td>38.7</td>
<td>81.0</td>
<td>41.0</td>
<td>59.2</td>
</tr>
<tr>
<td>1960</td>
<td>32.3</td>
<td>42.4</td>
<td>75.0</td>
<td>46.4</td>
<td>59.7</td>
</tr>
<tr>
<td>1961</td>
<td>36.2</td>
<td>48.2</td>
<td>72.7</td>
<td>45.0</td>
<td>65.1</td>
</tr>
<tr>
<td>1962</td>
<td>36.1</td>
<td>47.6</td>
<td>77.8</td>
<td>47.0</td>
<td>62.6</td>
</tr>
<tr>
<td>1963</td>
<td>35.4</td>
<td>45.9</td>
<td>79.5</td>
<td>46.4</td>
<td>62.0</td>
</tr>
<tr>
<td>1964</td>
<td>41.4</td>
<td>48.9</td>
<td>79.4</td>
<td>46.3</td>
<td>65.2</td>
</tr>
<tr>
<td>1965</td>
<td>37.1</td>
<td>53.7</td>
<td>72.7</td>
<td>52.0</td>
<td>64.5</td>
</tr>
<tr>
<td>1966</td>
<td>39.2</td>
<td>58.6</td>
<td>65.4</td>
<td>50.0</td>
<td>63.4</td>
</tr>
<tr>
<td>1967</td>
<td>41.8</td>
<td>54.6</td>
<td>66.4</td>
<td>53.0</td>
<td>64.0</td>
</tr>
<tr>
<td>1968</td>
<td>44.0</td>
<td>56.3</td>
<td>70.3</td>
<td>47.0</td>
<td>65.8</td>
</tr>
<tr>
<td>1969</td>
<td>46.2</td>
<td>59.8</td>
<td>71.5</td>
<td>42.4</td>
<td>64.9</td>
</tr>
<tr>
<td>1970</td>
<td>47.6</td>
<td>54.8</td>
<td>71.4</td>
<td>47.0</td>
<td>67.3</td>
</tr>
<tr>
<td>1971</td>
<td>45.0</td>
<td>50.5</td>
<td>69.8</td>
<td>51.2</td>
<td>64.4</td>
</tr>
<tr>
<td>1972</td>
<td>45.3</td>
<td>42.1</td>
<td>69.8</td>
<td>40.7</td>
<td>65.3</td>
</tr>
<tr>
<td>1973</td>
<td>46.1</td>
<td>44.1</td>
<td>84.1</td>
<td>47.3</td>
<td>68.4</td>
</tr>
<tr>
<td>1974</td>
<td>54.4</td>
<td>65.1</td>
<td>93.1</td>
<td>55.9</td>
<td>77.9</td>
</tr>
</tbody>
</table>

Source: Camilleri, Table 1.1.1

It is not the absolute figures that are of interest in this Table but rather the trends that, with the exception of Workers' Compensation, show a steady increase in the loss ratios and a declining profitability over the period. In addition to falling rates of premium the fire market was subject to a number of natural disasters during the period including an earthquake in South Australia in 1954 which did some damage to Adelaide, a total of three major bush fires in Victoria and Tasmania during the 1960s, and three minor cyclones in Queensland during the early 1970s. The first major natural disaster to strike a built-up area of Australia was Cyclone Tracy which hit Darwin in 1974 at an insurance cost of $200 million which was reflected in the figures of subsequent
years and not those in Table 8.4. 29 The inference that can be safely drawn from these figures in the Table is, therefore, that prices were being reduced by competition.

It is worth noting that the results for 1973 and 1974 in workers' compensation were influenced by very poor years in Queensland where the SGI0 showed loss ratios of 111 and 146 per cent respectively. 30

The Extent of the Broker Controlled Market in Australia

Until insurance brokers in Australia were regulated by the introduction of the Insurance (Agents and Brokers) Act 1984 (see Chapter 9) there was no attempt to collect data about their business by any body in the country. The various broking organisations that existed did not do so, neither did state or Commonwealth statisticians nor the Tariff. The first figures ever gathered on the volume of business handled by brokers in the Australian market was a survey carried out by the Australian Bureau of Statistics at the instigation of the Australian Law Reform Commission which had commenced a study of insurance brokers in 1977. 31 The A.B.S. survey General Insurance Brokers, Australia 1977-78 32 was published in 1979. The survey was exploratory because there was no accepted definition of an insurance broker, nor any central register of brokers. The A.B.S. did not disclose how many survey forms were sent out but responses were received from 576 broking firms which employed a total of 5,464 persons. As set out in Table 8.5 direct premiums

29 Camilleri, Page xxiv.
30 Ibid., Table 6.1
31 It was the recommendations of the Australian Law Reform Commission that ultimately led to the regulation of brokers in Australia. See Chapter 9.
32 Catalogue No. 5634.0
handled by these brokers in the financial year ended 30 June 1978 totalled $1,110 million which was almost precisely one third of the total premiums received in Australia for the same period. However this percentage varied considerably between the classes of insurance. In the major commercial classes of fire and marine insurance, brokers handled 53.8 and 70.6 per cent of the market respectively, and 53.6 per cent of workers’ compensation premiums. In the markets of mostly personal insurance, motor and houses, brokers controlled only 13.9 and 16.4 per cent of each respectively.  

**TABLE 8.5**

**GENERAL INSURANCE PREMIUMS PAID TO INSURANCE BROKERS AS A PERCENTAGE OF THE TOTAL MARKET YEAR ENDDED 30 JUNE 1978**

<table>
<thead>
<tr>
<th>Class</th>
<th>Brokers</th>
<th>Total Market</th>
<th>Brokers’ Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>208.9</td>
<td>388.4</td>
<td>53.8</td>
</tr>
<tr>
<td>House</td>
<td>55.5</td>
<td>338.7</td>
<td>16.4</td>
</tr>
<tr>
<td>Marine</td>
<td>75.5</td>
<td>106.9</td>
<td>70.6</td>
</tr>
<tr>
<td>Motor</td>
<td>113.9</td>
<td>822.2</td>
<td>13.9</td>
</tr>
<tr>
<td>CTP</td>
<td>3.3</td>
<td>347.4</td>
<td>1.0</td>
</tr>
<tr>
<td>Workers’ Comp.</td>
<td>490.5</td>
<td>914.6</td>
<td>53.6</td>
</tr>
<tr>
<td>Liab.</td>
<td>62.1</td>
<td>81.8</td>
<td>75.9</td>
</tr>
<tr>
<td>Other</td>
<td>100.1</td>
<td>285.0</td>
<td>35.1</td>
</tr>
<tr>
<td>Total</td>
<td>1,109.8</td>
<td>3,285.0</td>
<td>33.8</td>
</tr>
</tbody>
</table>


The proportion of the brokers’ market share a decade earlier can only be guessed at. No doubt it had increased after the total abandonment of the Tariff in 1975 (see later in this Chapter). However as brokers would have controlled at least half of the income in commercial fire

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33 A.B.S. Cat.No.5634.0, Table 2, and Camilleri, Table 1.1.2.
and marine insurances, and nearly as much of the workers' compensation market, the pressure that they brought to bear on the Tariff for change during the 1960s was considerable.

Federal Regulation of the General Insurance Industry in Australia

It will be recalled from Chapter 6 that the only Commonwealth statute relating to the general insurance industry was the Insurance Act 1932 which was enacted as a counter to Jack Lang's plans to raise money from insurance companies in New South Wales. The 1932 Act sought only deposits from insurance companies and imposed no supervision over their activities or their continued solvency. The deposit was intended to pay the debts of an insurer that failed.

In 1945 the Commonwealth legislated to supervise the activities of life insurance companies in Australia under the provisions of the Life Insurance Act 1945. Subject to amendment this legislation is still in force. However the Chifley government, which introduced this regulation of the life insurance industry, saw no need to produce similar constraints for the general insurance industry. Despite a steady stream of general insurance company failures, but there appeared to be little pressure

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34 Pressure for regulation of the Life industry was a result of complaints concerning the manner in which some companies handled industrial policies during the 1930s depression. The Victorian Government appointed a Royal Commission in to examine this question in 1938. Legislation, the Industrial Life Assurance Act 1938, later copied by some other states, was enacted in Victoria to remove the worst of the abuses. The Victorian public servant who first investigated the matter on behalf of the government was A.A. Caldwell. In 1945 Caldwell was a minister in Chifley's government. He was one of those who drafted legislation for the Life Insurance Act 1945. Gray, *Life Insurance in Australia*, pp.162-3 and 176.

from any source for regulation of general insurers until the collapse of the Standard Insurance Company in 1961. The absence of pressure for the regulation of general insurance was perhaps because the collapses listed by Pursell were small enough to be absorbed by other Tariff companies.

The Standard Fire and Marine Insurance Co. Ltd. of New Zealand, by far the largest company to fail in Australia, was established in Dunedin in 1874 and commenced business in Australia in the same year. It had been a foundation member of the Tariff in Australia. 36 Its collapse was brought about by the Australian manager of the company underwriting, in spite of standing instructions from his head office to the contrary, some forms of bond and guarantee insurance which it was called on to pay. Claims on these bond insurances totalled £1,890,000 which resulted in the company being in deficit to the extent of £1,655,000. 37 The Standard was an authorised insurer of both workers' compensation and compulsory third party insurance throughout Australia. The collapse of the company raised problems of carrying on the portfolio of the company for these and other risks as well as the question of the payment of outstanding claims.

The reaction of the Australian government to the collapse of the Standard, which was not announced until early 1963, was not to introduce regulation of general insurance companies as had been suggested by the Royal Commission in 1910, nor to follow the then current U.K. legislation, the Insurance Companies Act 1958, which required a solvency margin of assets to exceed liabilities by £50,000 or 10 per cent of premium income whichever was the greater. Rather, the Australian

government chose to alter the 1932 Act only to remove an anomaly and to increase deposit requirements. The anomaly had given preference to policyholders seeking a return premium over policyholders seeking the payment of claims. The increased deposits were to be a maximum of £80,000 for Australian companies up from a maximum of £40,000, and to a maximum of £100,000 for all 'foreign' companies from the previous maximum of £50,000 for British companies and £60,000 for ‘foreign’ companies. Lesser deposits were required from companies with low premium incomes.

These proposed changes drew a critical response from the CFAU. By resolution of its Council the Commonwealth Treasury was advised that

the deposit of securities does not guarantee the solvency of insurance companies and that the British Board of Trade system of solvency returns would be a more effective safeguard.

During the Federal Parliamentary debate on the amending legislation to increase the deposit under the 1932 Act Frank Crean, then shadow Treasurer, but who was to introduce full regulatory legislation in 1973 as Treasurer in Whitlam's government, asked the question

why should there not be the same public scrutiny for general insurance such as we have for life insurance? 40

The interesting response to this question from the

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38 AIBR, May 1963, p.244.
government benches was that a distinction could be drawn between life and general insurance and that in the general insurance field we should be prepared to depend on competition.\textsuperscript{41}

The Government view was that life insurance companies were effectively trustees for the savings of its policyholders while general insurers were merely parties to a commercial contract.

This view ignored the plight of individuals who had valid claims against their employers under workers' compensation legislation and that the employers were now without insurance to indemnify them for this liability. Likewise, it ignored the position of those injured in motor vehicle accidents where the motorist to blame had no insurance. Rectification of these defects, in-so-far as the Standard Insurance company was concerned, was left to State governments to protect the rights of injured workers and those involved on motor accidents. The states enacted legislation that obtained funds from all authorised insurers for CTP and workers' compensation, in proportion to their premium income, that would pay the outstanding claims.\textsuperscript{42}

Despite the widely used motto of the Tariff at the time of 'Security, Equity, Service'\textsuperscript{43} there was no suggestion that the Tariff as a group should assist policyholders of the defunct Standard. On the contrary the President of the CFAU, Mr.J.A.Duguid, the general manager of the Royal in Australia, attacked the decision of the states to collect funds from insurers generally to

\textsuperscript{41} Ibid., p.1215.

\textsuperscript{42} CFAU Annual Report, 1963. AIBR, April 1962, p.216.

\textsuperscript{43} Pursell, Thesis, p.576.
pay CTP and workers’ compensation claims as 'discriminatory legislation' and a 'remarkable situation'. He offered no other solution. 44 As president of the Tariff it might have been expected that he would have been keener for his organisation to pick up the worst of the pieces left over from the failure of one of the Tariff's oldest members.

The solution preferred by the Tariff was to encourage government supervision of insurance company solvency. The resolution passed in 1963 mentioned above was reinforced by declining profitability of the industry as shown in Table 8.4. The imposition of solvency tests with minimum margins of assets over liabilities would restrict the entry of small firms seeking a market share by rate cutting, and continuous monitoring of solvency would tend to enforce minimum price levels.

In the face of their declining margins on fire insurance the CFAU, in 1970, imposed two new charges on all fire policies. The first was a straight addition to the premium called an 'administration surcharge' which varied between a minimum of 8 per cent for country risks up to a maximum of 15 per cent for Sydney metropolitan risks. The second, a further charge to policyholders to offset the contributions of insurance companies to the maintenance of fire brigades, was called a 'Fire Brigade Levy'. 45

In 1969 the CFAU had established an industry-wide committee, which included both Tariff and non-tariff insurers, to co-operate with the Federal Treasury to introduce federal legislation based upon solvency. In 1971 the president of the CFAU reported that his working party had met with Treasury officials on three occasions

44 AIBR, November 1963, p.540.
45 CFAU Annual Report, 1971, p.9
and that the Commonwealth Life Insurance Commissioner and the Queensland Insurance Commissioner had also been present at the meetings. The president anticipated that legislation would be introduced in 1972.\textsuperscript{46}

Further Insurance Company Failures

Attention has been drawn to the substantial increase in the number of motor vehicles on the roads in Australia during the period reviewed in this Chapter. As discussed earlier in this Chapter the growth of the Australian insurance market encouraged a variety of new entrants into the market with some of them specialising in the expanding field for motor vehicle insurance.

Reference was made to the collapse of the Vehicle and General Insurance Company in Britain in Chapter 1 which prompted amendment to British legislation regulating insurance companies. The Vehicle and General, which specialised in motor insurance, also operated in Australia and was one of the 11 insurers that failed in this country during the period between July 1970 and May 1971.\textsuperscript{47}

There was a pattern of failure of these insurers. Almost invariably the companies had entered the market by cutting prices below sustainable levels. Claims on insurance policies fall at a later stage than when the premium is received. This time lag obscures the uneconomic levels of the premiums being charged for some time, typically eighteen months to two years. When this is realised the insurer either goes into liquidation or endeavours to write sufficient new business in order to meet the increasing level of claims. If it increases

\textsuperscript{46} Ibid., 1970 and 1971.

\textsuperscript{47} First Annual Report of the Insurance Commissioner, AGPS, Canberra, 1975, p.3; and C.P.D., 6 May 1971.
prices it is unlikely to obtain the cash flow that is necessary, and if it does not increase prices it compounds its already difficult position. Which ever way the insurer turns failure is inevitable. \(^{48}\)

The history of the Vehicle and General in Britain is the example par excellence. Founded in 1961 with a capital of £50,000 it achieved a growth rate during the next five years which averaged nearly 20 per cent per annum. Its marketing strategy was to offer low rates of premium for small, popular, cars and to pay high rates of commission to insurance brokers. By 1967 it was estimated to have captured 10 per cent of the UK private motor market. The following year the UK Tariff, faced with this and other non-tariff competition, abandoned the motor tariff and, as the Tariff companies reduced their prices in an endeavour to recover lost market share, there was a wild scramble for business at cut rates. In 1970 the loss ratio for motor vehicle business in UK peaked at 114.5 per cent. In this market the Vehicle and General found it impossible to finance its accumulated losses through continued expansion of premium income. It was declared insolvent in early 1971.\(^{49}\)

With the Australian failures, general incompetence and fraud by directors was added to miscalculation of the market. Five of the 11 companies that failed did not keep proper books of account, or the directors could not provide details that would, four years later, allow the liquidators to estimate deficiencies.\(^{50}\)

It was against that background that the question of

\(^{48}\) Beale, After the V & G Crash.

\(^{49}\) J.Tapp, 'Regulation of the UK Insurance Industry' in Finsinger and Pauly, The Economics of Insurance Regulation, pp.33-34.

\(^{50}\) Insurance Commissioner's First Annual Report, op.cit.
regulating insurance companies to protect consumers was raised in Federal Parliament from March 1970 onwards. A Labor back bencher, the member for Hawker in South Australia, Ralph Jacobi turned the matter into a personal crusade. Jacobi’s maiden speech was on the topic and he harried succeeding governments to introduce legislation for the next three years.51

In August 1970 the first Treasurer in Gorton’s ministry, Bury, answered a Jacobi question about insurance company failures with a response that the Cabinet was considering representations made to it by both State governments and representatives of insurance groups. He added that the Treasury had been working on the matter for ‘some time’.52 But the issue still dragged on. In January 1971 the insurance industry submitted a paper, later described as ‘an outline of tentative views’ on regulation, to the Treasury 53. In May the new Treasurer in Gorton’s Cabinet, B.M. Snedden, in answer to yet another question from Jacobi, reported that 11 insurance companies were now in the hands of liquidators and that ‘a scheme to control the activities of general insurance companies has been prepared’.54

But it was not until the end of 1971 that Snedden made a ministerial statement on the proposed legislation. It was the Government’s intention to abolish the old deposit scheme and substitute a continuous test of solvency that would be supervised by a Federal Insurance Commissioner. The test for solvency would require a minimum paid-up capital of $200,000 and assets would have to exceed liabilities by half the company’s paid-up capital or 15

51 Benjamin, History, pp.147, and 158-9.
52 C.P.D., 26 August 1970.
53 Ibid. 9 December 1971. Treasurer’s reply to question no.4597.
54 Ibid., 6 May 1971.
per cent of premium income which ever was the greater. It was intended to prevent weak and inefficient companies from entering the market and to monitor performance of those already in it, but, as Snedden warned,

regulatory legislation of this kind cannot guarantee that no insolvencies would ever occur. 55

He added that the Government had rejected the concept of establishing a guarantee fund to which insurers would contribute and which would be available to meet the obligations of failed companies because

it could be held unreasonable to compel sound insurers to do this...[it] could tend to perpetuate weaknesses in the industry by underwriting the activities of companies engaged in risky practices. 56

The opinion of the Tariff, as expressed by its president at the time of the failure of the Standard company quoted earlier, was evident in the Treasurer's remarks.

On 28 September 1972 an Insurance Bill was introduced into the House of Representatives. It contained the provisions for solvency announced a year earlier with the difference that the minimum solvency margin was now a fixed sum of $100,000, rather than 50 per cent of paid-up capital, or 15 per cent of premium income 57, but a month later the Government was still listening to

55 Ibid., 9 December 1971, p.4456.
56 Ibid.
57 Ibid., pp.2149-52.
alterations proposed by insurance companies 58. An amended Bill was introduced on 28 November and discussions were still proceeding when the McMahon government fell.

Although the new Whitlam government had many other priorities the Insurance Bill was introduced and given its second reading on 10 May 1973. It was essentially the same legislation that had been put forward by the Liberal government the previous year. It was not opposed in its passage through both houses. 59 The Bill received Royal Assent on 19 June 1973 and the operative sections of the Insurance Act 1973 came into effect on 1 August 1974. Its essential features were the creation of a Commonwealth Insurance Commissioner to license and then to supervise the solvency of general insurance companies in Australia. Companies were to have a paid-up capital of not less than $200,000 and assets were to exceed liabilities by not less than $100,000 or 15 per cent of premium income whichever was the greater. It had taken more than fifty years for the Federal Parliament to heed the recommendations of the Royal Commission of 1908.

The effectiveness of the legislation is considered in Chapter 10.

Restrictive Trade Practices Legislation

The concern of early Australian Commonwealth Parliaments with the question of restrictive trade practices and

58 Ibid. Snedden's answers to Jacobi's questions, 25 October 1972, by which time a total of 14 companies had gone into liquidation.

59 Ibid. 23 May 1973, p.2533.
attempts to monopolise industries is well documented, but the High Court decision in the Moorehead case in 1909 denied the Parliament power to prevent harmful business practices in connection with intra-state trade and commerce or productive industry. Five referenda between 1911 and 1944 to change the constitution to allow the government power to legislate with respect to monopolies all failed.

A trade practices act was initiated by Garfield Barwick, when he was Attorney-General in the Menzies government, to ensure the proper functioning of the market, and also as an anti-inflationary measure. It was a watered-down version that finally became law some four years later. Because of alarm in the Liberal-Country Party government over the extent of Barwick's proposals, and the successful lobbying of business interests, the Restrictive Trade Practices Act of 1965 was very mild in its application. By this time Barwick had been appointed to the High Court and Snedden, now the Attorney-General, had been no match, even if he had a mind to be, for business interests opposed to the original legislation.

Snedden's introduction of the Bill, which outlawed only the practices of collusive tendering and bidding, other trade agreements having to be registered and examinable to see if they were against the public interest, included the phrases that


the Government is conscious that the lessening of competition, in some areas of the economy may be unavoidable...and it believes that there may well be some practices, restrictive in nature, which are in the public interest.63

In the resumed debate in November Whitlam's comments deploiring the abandonment of Barwick's proposals to legislate in respect of resale price maintenance, persistent price cutting and monopolies fell on deaf ears.64

By 1972 this half-hearted attempt to control market abuses was in a shambles. Administration of the legislation was well nigh impossible. Over 12,000 industry agreements were registered with the Commissioner who was supposed examine them to determine whether they were against the public interest. His office was handling this flood at a rate of 50 per annum.65 If the Tariff had lodged its agreements for approval this was not recorded in the minutes of the annual meetings of the CPAU.

The Trade Practices Act 1974, introduced by the Whitlam government, reversed the approach of the 1965 compromise. This had allowed practices until they were shown to be against the public interest. The new Act prohibited anti-competitive practice unless it could be shown to be in the public interest.66 Part IV of the Act contained, and still contains, provisions prohibiting anti-

63 C.P.D., 19 May 1965, p.1635.
64 Ibid. 25 November 1965, p.3233.
competitive behaviour which struck at the heart of the Tariff agreements in three ways. First, most price agreements are deemed to lessen competition and are therefore prohibited outright. Second, under the heading of 'Primary Boycotts' collective refusals to deal with other parties are prohibited outright. And finally, the exclusive dealing provisions, which encompass supplying goods or services only from one or a group of suppliers, prohibits such activities if they have the purpose or effect of lessening competition.67

In 1972 the Tariff had started examining its own procedures with the assistance of management consultants. One of the suggestions that arose from that exercise was to discard Tariff rates for all classes of insurance, except fire risks in excess of $50,000 sum insured and all workers' compensation, and to substitute advisory ratings which would be made available to the insurance industry at large. The cost of trying to maintain and administer tariffs for domestic, accident and motor insurances was no longer justified in markets which had been already substantially lost to non-tariff. It will be recalled from Chapter 2 that the British Tariff had only operated in respect of major risks and that as early as 1909 had been extremely critical of their Australian counterpart's propensity to 'tariff everything' at great expense. By 1974 this concept was still being explored with the management consultants but the passage of the Trade Practices Act cut across any new decisions. In August 1974 all Tariff rates and policy terms were announced as being 'advisory' only. 68


68 IBR, October 1974, p.618. Announcement by the President of CPAU. (In 1974 AIBR changed its name to the Insurance and Banking Record)
But in November 1974 the Tariff was forced to announce its own dissolution. It had sought legal opinion on its position under the Trade Practices Act 1974, and this advice was that its proposed position of offering even only 'advisory' rates would not be lawful. It was decided that an industry body, to be known as the Insurance Council of Australia, that would be seen 'to be solving broader social issues in providing protection to meet the changing needs of Australian society' should replace the Fire, Accident and Marine Underwriters' Association. 69 After 77 years, for most of which time its rule was largely undisputed, the British-dominated Australian insurance cartel was broken.

Conclusion

The Tariff welcomed the Insurance Act 1973 as a measure that would be 'conducive to stability and sound underwriting...the industry sees the Act as a long overdue public safeguard against insurers of inadequate strength, the failure of which would cause hardship to the public and inevitably reflect upon the reputation of the industry as a whole.' 70

It is interesting that the first point raised in their comment related to stability and sound underwriting and secondly to consumer protection and public confidence. The nature of continuous solvency supervision, with minimum entry requirements, is some safeguard that new entrants to the market, and those already in it, will not be able to seek market share by long term price cutting strategies. A reduction in prices below the level needed to fund claims and expenses would soon erode reserves below the requirements of solvency laid down by

70 IBR, December 1974, p.745-6. Statement by president of CFAUJ.
legislation.

The established insurance industry recognised that a continuing expansion of their market in Australia required an immaculate reputation for stability. Abuse of the reputations of the old-established companies by free-riders had to be prevented. If it was no longer possible for the Tariff to perform this task then only government regulation could stand in its place. There have been several studies which have shown that in a number of countries, Germany and the US and others, that where cartels of insurers were setting premiums, 'episodes of firm failure was often attributed to the breakdown of the pricing cartel', and that regulation was supported by insurers as a remedy that 'restored cartel-like price stability'.

The position of insurance in Australia in the early 1970s bears a remarkable similarity to that which existed in the 1890s in Australia and elsewhere in the western commercial world. In the earlier period, as discussed in Chapters 1 and 2, the British and Australian answer to this 'ruinous competition' was private regulation. In Germany the insurance industry sought and obtained government regulation in the Law for Insurance Regulation of 1901 to solve the problems of continuing company failure.

It has been shown in this Chapter that there had been a severe breakdown of the Tariff's pricing and product cartel. This had affected profitability and market share.

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71 Finsinger and Pauly, Economics of Insurance Regulation, p.6. They quote H.Runreuther et.al. 1983 study of the United States market and Finsinger's 1984 study of German insurance regulation, both published in German, in support.

72 Finsinger, et.al. Insurance:Competition or Regulation?, p.50.
generally but more in some areas than others. The cost of trying, ineffectively, to maintain price control in some sections of the market had been pointed out by management consultants as being uneconomic. There is abundant evidence that the Tariff supported the introduction of legislation to limit entry and monitor solvency. The reasons that insurers generally advanced for government intervention were the same as those put forward as those who sought only consumer protection.

Can an argument be sustained that, on this evidence, the Australian insurance industry acquired this regulation and that it was designed to operate primarily for its benefit? Although insurers saw that regulation would control entry and would, at least to a limited extent, inhibit price competition, there would be no regulation of prices and products, no subsidy to be gained from government, and no exclusion of overseas competition or control. They had no manner in which to estimate the direct cost to them of government regulation, because this was not contained in the legislation, and thus comparing it to the cost of their own regulation.

The answer is that pressure for this regulation was applied by the public at large. There is the evidence of public demand that insurance companies that were inefficiently or fraudulently run, or were likely to collapse, should not be allowed to trade. The pressure that was exerted at State and Federal political levels, as exemplified by Jacobi’s sustained efforts, can be identified as the leading character in this long-running saga. The insurance industry carried an important, but supporting, role.

This interpretation of events appears to be the only explanation of why successive governments, first a conservative one and then arguably the most politically
radical government to rule in Australia, should have supported and introduced this form of regulation. While it is known that a number of general insurers supported the Liberal Party with substantial funds at that time, there was an implacable hatred of the Whitlam government by the insurance industry. The Whitlam government proposed to introduce a national 'no-fault' scheme for personal injury which would have removed workers' compensation, compulsory third party, personal accident, and professional indemnity insurance for hospitals and the medical profession from private insurers. Furthermore, it was proposed to set up a national government insurance office to compete for what was left of the market. The insurance industry as a whole was convinced that the government's intention was nationalisation. Street marches and demonstrations by insurance staffs were organised in protest against these moves. The end of the Whitlam era in December 1975, which came before either proposal could be given legislative effect, was greeted jubilantly by general and life insurers alike.

73 From the author's own experience in the industry as an executive director of a major insurer and broking house during the period.

74 M. Considine, Australian Insurance Politics in the 1970s: Two Case Studies, Unpublished Ph.D. Thesis, University of Melbourne, 1986. This thesis looked at only two specific episodes in the 1970s. One was the attempt by the Whitlam Labor government in 1974 to establish an Australian Government Insurance Office. This move was defeated in the Senate in response to what Considine describes as an 'energetic and comprehensive' insurance industry campaign. The other event considered in his thesis was the successful campaign by the insurance industry to defeat recommendations by a Victorian Government inquiry in 1970 that private insurance of workers' compensation in that state should be abolished. That task was less difficult; the government considering the report of the inquiry was the Hamer conservative government which was sympathetic to the cause of private insurers. The concern of Considine's study was to look at, in these particular contexts, 'the pattern of interaction between governmental and private interests.' The work reinforces what has been written in this thesis concerning the strength of the insurance lobby. From the author's personal knowledge of that period, the insurance industry fought the Whitlam government much more fiercely over its proposals to introduce a general 'no-fault' scheme for the
these circumstances an argument that regulation was 'acquired' by general insurers from the Labor government of the time cannot be sustained.

whole country than either of the issues examined by Considine. The proposed national compensation scheme, the 'Woodhouse Scheme' named after the author of the New Zealand national compensation scheme, threatened workers' compensation throughout Australia as well as all other forms of insurance which dealt with tort liability as a remedy for personal injury. Its repercussions would have been far greater for the insurance industry than one more government insurance office as a competitor, or the loss of workers' compensation in one state.
CHAPTER 9

FURTHER REGULATION AFTER 1974
AND THE AUSTRALIAN INSURANCE MARKET UNDER THE NEW REGIME

Regulation of Insurance Brokers

The market share of the general insurance industry that is controlled by insurance brokers that was discussed in the last chapter indicates that comprehensive regulation of the insurance industry needs to encompass insurance brokers. Both consumers of insurance and insurance companies have an interest in broker regulation. The interest of insurers was expressed at the Annual Meeting of the Australian Insurers Association in 1974 in these terms,

The close relationships which exist between insurers and insurance brokers are well known. In some areas brokers often assume a representative role on behalf of insurance companies. It is very important and fitting, therefore that insurance brokers operate under some measure of control as do insurers.¹

Public interest is involved in several ways. Perhaps the most pressing concern was the question of when payment of a premium is effectively paid to the insurer. There were continuing legal disputes concerning whether payment to an intermediary, a broker or an agent, achieves this end. The intermediary may be forced into liquidation before the premium is paid to the insurer or, as has happened not infrequently, the intermediary absconds with the funds. It had been held in several courts of law that if

¹ IBR, December 1974, p.743.
the premium paid to a broker is lost in this way then the
insured must pay a second premium to the insurer who has
not yet received consideration for the transaction. Other
troubling questions have arisen over matters of
disclosure. If the insured makes disclosure of critical
information about the risk to be insured to his broker or
the agent, and this information is not passed on to the
insurer, has there been disclosure to the insurer?

As has been the case with the failure of insurance
companies, whenever there has been a spate of broker
failures, there have been cries to regulate the
occupation, and to clarify the law regarding
responsibilities for clients' premiums paid to the
intermediary and which have not been passed on to the
insurer.

Other matters which gave impetus to broker legislation
was the need for the public to be able to distinguish
between dealing with an insurance agent or an insurance
broker. The importance is that the broker is the agent of
his client, the insured, and places his clients' business
on the best available terms from a secure market. An
agent is the agent of the insurer and accepts business on
the insurer's behalf at the terms offered by his
principal. If purchasers of insurance endeavour to
rectify the information imbalance between purchaser and
vendor in insurance transactions by using an intermediary
to act on their behalf, then at least it should be made
abundantly clear whose interests are being protected by
the intermediary. If this is not clear then a further
information barrier is erected against the purchaser.

To confuse the issue further, both types of
intermediaries are remunerated by commission paid by the
insurer. That the broker is paid for his services not by
his client, the insured, but by the insurer is a custom
of trade, but it is nevertheless a commercial oddity. It has lead to allegations of a conflict of interest for the broker. If brokers were forced to charge clients for their services, as do all other 'professionals', this would make this issue clearer.

Even if brokers and agents make their basic functions clear to members of the public with whom they deal, some transactions can become blurred. Brokers frequently utilise 'binders' from insurance companies which allow the broker to issue cover on behalf of the insurer.2 'Binders' are usually for such risks as house insurance, motor vehicles or small retail risks. However, when a broker arranges insurance in this manner he is acting as the agent of the insurer which issued the 'binder' and not as the agent of his client. Many agents, on the other hand, have agencies for six to ten insurance companies. They can thus offer their clients several quotations for their risks. These clients could well form an impression that they are dealing with a broker, but they are dealing with what are called 'multi-agents' who act as the agent of all the companies that they represent. It was a confusing position that adds to the imbalance between purchaser and vendor in insurance transactions.

If intending purchasers sought to solve the information problems of the insurance market by seeking the assistance of a broker, the purchasers had to be in possession of adequate information concerning the function of the broker and agent markets or the problems that the purchaser sought to solve would be compounded. During the period of Tariff this position was even more complex as there were Tariff brokers who could only deal in that market; there were Lloyd’s brokers who dealt only with Lloyd’s; there were non-Tariff brokers who did not

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2 Reference was made to the 'binders' used by Lloyd's brokers in Australia in Chapter 6.
have access to either Tariff or Lloyd's markets but only to non-Tariff market.

No study of the regulation of the general insurance industry is complete without including brokers and agents in the analysis.$^3$

Associations of insurance brokers existed sporadically before World War II. In 1945 Lloyd's brokers in Australia set up an association which was open only to brokers representing Lloyd's in Australia. It was known as Lloyd's Insurance Brokers Representatives Association, (LIBRA). In 1959 Tariff brokers set up their own Australia-wide association, the Corporation of Insurance Brokers of Australia (CIBA), which allowed only Tariff brokers as members. Although there were unsuccessful attempts to fuse the two bodies in the mid-1960s, discussions did take place in 1968 concerning a joint approach to government to impose occupational control over insurance brokers. This was in response to the growth of small firms of insurance intermediaries who called themselves 'insurance brokers' but who belonged to neither association. These intermediaries had begun to flourish in the market for motor vehicle insurance that was available from non-Tariff companies and in 1968 these brokers attempted to form their own association. LIBRA and CIBA members were concerned that the intrusion of 'unqualified' persons into the 'profession' would damage the reputation of their occupation. But after due consideration CIBA and LIBRA decided not to approach government for occupational

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$^3$ The following section on insurance broking is a summary taken from R.L. Benjamin, A History of Insurance Broking in Australia, unpublished M.A. Thesis, University of Melbourne, 1987, Chapters 3, 4 and 5.; and Benjamin, History, Chapters 11 to 14. The thesis is a study, within a theoretical framework of the evolution of professional bodies, of the development of occupational control of brokers between 1945 and 1984. The regulation of brokers is an integral part of the present regulation of the industry.
control on the premise that they would prefer this intrusion rather than inviting government intervention in an otherwise free area of commerce.

In 1970 there were a number of broker failures associated with the collapse of the insurance companies noted in Chapter 8. This brought about a reconsideration of the problem and on this occasion both broking associations agreed it was necessary to lobby the government to introduce an appropriate regulatory legislation. It is significant that it was the spectre of the industry being brought into disrepute by the failure of marginal operators that sparked this reaction rather than an intrusion into the market by new competitors that was the catalyst for brokers to seek regulation. A firm of solicitors prepared draft legislation which was used as a basis for a series of discussions with Federal Treasury which were commenced in 1971. The purpose of the proposed legislation was merely to set guidelines for educational and experience qualifications before the Insurance Commissioner would grant a license which was to be renewed annually. Matters dragged on slowly. In 1973, when he was introducing the Insurance Act legislation into Parliament, the Treasurer, Frank Crean, indicated that his government was preparing a Bill giving the Commonwealth power to supervise insurance brokers. However, the fall of the Whitlam government at the end of 1975 stopped this move.

The incoming Fraser government at first promised to proceed with legislation and a 'Bill for an Act Relating to the Licensing of Insurance Brokers' was drafted. But after several years while the brokers negotiated with Treasury over the detail of the proposed legislation, the government withdrew from this position and adopted a stance that the broking industry should regulate itself. No doubt this decision was prompted both by the general
deregulatory approach now being adopted by Treasury and also by the UK legislation introduced in 1977. The UK Insurance Brokers Registration Act 1977 left the machinery of regulation to a Registration Council which was composed of practising brokers, with only three outside members to represent legal, accounting and government views. Under the UK Act brokers had to demonstrate technical competence, either through examination or practical experience, and to satisfy the Council of their good character. Under this legislation only registered brokers are allowed to call themselves 'brokers', but there was no attempt to limit the use of such words as 'consultant' or 'adviser' which left the British buying public with some doubts concerning the type of intermediary with whom they were dealing. Registered brokers were required to effect professional indemnity insurance and to handle their clients' monies in a specified manner.4

The task of agreeing an approach to self-regulation by Australian brokers was made more difficult by the existence of a third association of brokers. This was the Insurance Brokers Association of Australia (IBA), formed in 1971, to represent brokers who were unable to join either of the other associations because they were neither Tariff nor Lloyd's. In retaliatory mode IBA restricted its membership to broking houses which were Australian owned and managed. This xenophobic group built up an Australia wide organisation which eventually insisted that the chairman of its members' boards and a majority of board members also had to be Australian citizens. Although CIBA membership included the large British and American broking firms it also included a number of purely Australian brokers, but IBA resisted early moves to form one association of brokers on the

4 Finsinger, Hammond and Tapp, Insurance, Competition or Regulation, pp.30-33.
grounds that it would be dominated by the large multinational firms.

A joint negotiating group of the three bodies was formed in 1976, the Insurance Brokers' Council of Australia (IBCA), but IBA swiftly broke away to make its own submissions to government. In this fractured way the brokers' negotiations with Treasury, and with John Howard as Treasurer, continued throughout the years to 1979. On top of this inability of brokers to present a united front, it was becoming evident that Treasury was no longer enthusiastic about regulating the occupation of insurance broking in any manner at all. In June 1979 IBCA eventually delivered its draft legislation for self regulation to Treasury. The proposed bill ran to 18 pages of text and the commentary to 16 pages. But by now another champion had entered the lists of this extended tournament between Treasury and brokers. As indicated briefly in the last Chapter, on the question of the size of the market controlled by brokers, this was the Australian Law Reform Commission.

The Australian Law Reform Commission and Insurance Brokers

Until Lionel Murphy established the Australian Law Reform Commission (ALRC) in 1973, law reform in Australia was handled first by the Colonies, and then by the States, with little or no co-ordination between them. Despite a recommendation for a Federal body by the Chief Justice of the High Court, Sir Owen Dixon, in 1957 no government had proceeded with the concept.5

The ALRC recorded twelve topics that were the subject of submissions to it in response to the call that it made

for issues papers soon after its formation. One of these topics was the reform of insurance law in Australia on which it had received three papers. ⁶ In September 1976 R.J. Ellicott, Attorney-General in the Fraser government, asked the ALRC to report on

the adequacy of the law governing contracts of insurance (excluding marine, workers compensation and compulsory third party insurance) having regard to the interests of insurer, insured and the public... ⁷

The terms of reference went on to enumerate seven aspects of current insurance law that the Commission was to examine, and it was also asked to report on other measures that might be 'required to ensure a fair balance between the interests of insurer and insured, and any other related matter.' ⁸ There was no specific reference to insurance brokers or agents. One hint was offered by the Commission's chairman, Mr. Justice Kirby, when he spoke at an ICA lunch in February 1977 about the uncertainty of the law in relation to agents and whether disclosure by the insured to the agent was disclosure to the insurer. ⁹ It was not until the ALRC published its discussion paper on insurance contracts in October 1978 that the community at large, and the insurance industry in particular, became aware that broker regulation was a prime concern of the ALRC.

⁶ Ibid.


⁸ Ibid.

⁹ Copy of Kirby's speech in Jacobi's papers, Australian Archives, Adelaide.
The ALRC saw the legal problems relating to agency in insurance contracts, and placing agents and brokers under some form of regulatory control, as being related topics.\textsuperscript{10} There were several problems raised by this intervention of the ALRC into the negotiations that had now been going on between brokers and Treasury for eight years. The first was that Treasury saw the matter as being their responsibility and not that of a Commission reporting to the Attorney-General. Treasury had the running of Commonwealth insurance matters since 1932. The ALRC felt that Treasury had not only allowed the issue to drag on for too long, but it had also got the whole thing terribly wrong. The ALRC opposed the concept of self-regulation on the grounds that the tendency for a monopoly to arise from the regulation of an occupational group is 'at its worst in cases where regulatory power is given to the occupational group itself.'\textsuperscript{11} Furthermore the ALRC was at pains to distinguish between registration and licensing. The UK legislation, upon which the present proposal before Treasury was based, was a registration act which only gives the public the means to distinguish between those that have official approval and those that do not. The ALRC wanted licensing of brokers which would prohibit entry to the occupation of those who were not licensed. Finally it disapproved very strongly of the brokers' proposed legislation which imposed educational and experience qualifications, and subjection to approval of being a fit and proper person, and to compliance with a code of ethics, on those wishing to be registered by this self-regulated occupation. All those matters, said the ALRC, should be left to the market place to decide

\textsuperscript{10} Paper given by Professor D.St L.Kelly, Commissioner in Charge of the investigation into insurance contracts, to the Australian University Law Students Association, August 1979. Jacobi's papers.

\textsuperscript{11} ALRC Report No.16 \textit{Insurance Agents and Brokers}, 1980, p.79.
rather than the self interest of those already in possession of the field.\textsuperscript{12}

The ALRC Report Number 16, \textit{Insurance Agents and Brokers}, listed 27 insurance broker insolvencies which had occurred in the years from 1970 to 1979.\textsuperscript{13} It was a situation that prompted the Western Australian government, which refused to wait any longer for the Commonwealth to act, to introduce its own broker legislation in early 1981. But the Liberal Federal government refused to be moved. Included in the ALRC Report was a draft bill for an act relating to insurance intermediaries. The Labor Opposition chose to embarrass the government by introducing this draft verbatim into the Senate as a private member’s bill by the shadow Attorney-General, Gareth Evans, on 28 May 1981. With the support of the Democrats, it was passed by the Senate on 29 October 1981. The Liberal Treasurer, John Howard, had rejected this move on the grounds that the Government view on intervention in commercial relationships is that a clear need must be demonstrated...the Government does not believe that such a need has been established either by the Law Reform Commission or by others making submissions.\textsuperscript{14}

The Labor Party policy for the 1983 Federal election included legislation for regulation of insurance brokers and agents. But after the election of the Hawke government continued wrangling between the Attorney-General’s department and the Treasury over the

\textsuperscript{12} ALRC Discussion Paper No.7.

\textsuperscript{13} Op.Cit., p.61.

\textsuperscript{14} Melbourne \textit{Age}, 11 June 1981.
responsibility for the legislation, delayed its introduction for nearly a year. A Bill, based on the one passed by the Senate in 1981, was introduced into the House of Representatives by the Minister Assisting the Treasurer on 10 May 1984 and passed virtually without debate on 4 June. The Insurance (Agents and Brokers) Act 1984 received Royal Assent on 25 June.

This Act required all insurance brokers, both life and general, to be registered by the relevant Insurance Commissioner. Unless insurance brokers were registered it became an offence to use that title, or to use a description that might lead a member of the public into believing that they were dealing with an insurance broker. No qualifications were required for registration but registration could be cancelled if a broker was convicted of an offence under insurance legislation, or for dishonest conduct. Brokers were required to keep their clients' premiums in a separate fund, to carry specific levels of professional indemnity insurance and to disclose the commission received by them from insurers if this information was requested by their clients. This was, said the ALRC, 'a restricted system of regulation aimed at the protection of premiums and other insurance monies' while these were in the hands of brokers. 'General responsibility for the conduct of brokers should be left to the common law.'  

Insurance agents were not regulated by the Act but all agents were now required to act under written agreements, and insurers were made responsible for the conduct of their agents and their agents' employees. Insurers were also made responsible for the conduct of brokers acting under 'binder' arrangements because in those circumstances they were acting as agents of insurers.

The ALRC had triumphed absolutely in negotiations for regulation of brokers. The original scheme of the broking associations to impose statutory educational and experience requirements for entry had been abandoned, as had similar self-regulatory schemes which were designed to achieve the same ends. The broking associations (one national body, the National Insurance Brokers Association, NIBA, was eventually formed in 1982) finally supported the ALRC movement when it became apparent that this was going to succeed.

The Australian Law Reform Commission and Insurance Contracts

In Chapter 1 it was mentioned that one of the forms of government intervention in the insurance market was the prescription of insurance contract terms and conditions. This was developed briefly into an outline of how British and Australian common law had developed an asymmetry in favour of the insurer. It was this broad frame of reference that had been drawn to the attention of the ALRC and was now the subject of its intense scrutiny under instruction from the Attorney-General. In one sense the ALRC’s successful sally into the battle field of broker legislation was a diversion from this main purpose of reforming the law on insurance contracts as it then existed in Australia. Discussion of this reform became a 'major national inquiry' 16 that sought to establish one Commonwealth law that would replace outmoded common law principles and a melange of Imperial, Federal and State Statutes.

The ALRC appointed nearly 50 consultants to its inquiry, most of whom were actively engaged in the general and life insurance industry, together with several academic

16 Ibid., p.xx.
lawyers and practising solicitors who were experienced in this field. Public hearings were held in each capital city, and several hundred written and oral submissions were made to the Commission.\(^\text{17}\) The published Report of the ALRC on Insurance Contracts, which had been five years in preparation, was over 350 pages in length. The Report set out its guiding principles in these terms: that there should be uniformity of insurance law throughout the Commonwealth and that the law should be modernised; that the law should assure fair competition in the industry; that informed choice for consumers should be promoted; that the principle of good faith between the parties to insurance contracts should be maintained; and that an equitable balance should be found between insurer and insured in matters of disclosure so that insureds should not lose insurance cover through no fault of their own.

Most of the ALRC recommendations related directly to those matters but it considered many other concerns. One of these was the wide variety of policy conditions available in the market and the difficulty this posed for purchasers. The Trade Practices Commission had rejected a proposal from the ICA that ICA's 'model' policies should be granted authorisation. The TPC view was that these documents offered no flexibility and favoured the insurer rather than the other parties to the contract. The TPC saw some value in model policies if these could be made less anti-competitive and contributed more to the public benefit than those proposed by ICA.\(^\text{18}\) The ALRC took the view that domestic insurance, that is on houses and house contents, motor vehicles, personal accident, travel and consumer credit, should be subject to standard policy terms. Insurers would be free to offer policies giving

\(^{17}\) Ibid. Appendices D and E.

\(^{18}\) TPC, Draft Determination on ICA Application, para. 8.3.3.9-10. and Appendix F.
more or less cover than the standard, but the latter would have to be drawn to the attention of intending insureds. The ALRC attitude towards commercial insurances was that standards should not be set for these contracts. Their grounds for this approach were that greater sophistication could be attributed to those in business than to private insurers and that there was a widespread use of brokers by business houses. The ALRC included standard cover for the domestic insurances mentioned above in draft regulation form in its Report.

Many of the changes to the law proposed by the ALRC had a substantial impact on the cover that had to be offered in all classes of insurance. The rules governing matters which had to be disclosed by the insured before the contact was completed were to be changed to favour the insured instead of the insurer. The latter’s remedies, if there had been a failure to disclose, or there had been a misrepresentation, were to be radically restricted. The insurer’s previous rights to limit their liability for under insurance, for dual insurance, for pre-existing defects, or when a property had been sold were, all to be severely curtailed in favour of the insured. In a similar manner insurers’ remedies for breaches of policy conditions and fraud were limited. New rules were to be introduced regarding the insured’s rights on renewal, on cancellation and on a number of other matters where the common or statute law had been heavily weighted in favour of the insurer.

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19 Ibid., Chapter 3 and Recommendation 10.

20 Ibid. Appendix B.

21 Recommendations in the ALRC Report No.20 on these topics number more than 60.(pp.xxv -xxxix). This paragraph tries to summarise the more important and readily understood issues.
The recommendations of the ALRC for these reforms were accepted by government and the Insurance Contracts Act 1984,

An Act to reform and modernise the law relating to certain contracts of insurance so that a fair balance is struck between the interests of insurers, insureds and other members of the public and so that the provisions included in such contracts, and the practices of insurers in relation to such contracts, operate fairly, and for related purposes \(^\text{22}\) received Royal Assent on 25 June 1984.

There are current proposals for further amendments to this legislation.\(^\text{23}\)

The Australian Law Reform Commission and the Insurance Act 1973

The ALRC Report Number 20 was critical of some aspects of the Insurance Act 1973. It pointed out that to February 1980 five general insurers licensed under the Act had gone into liquidation in addition to a further four that had not been licensed but had failed since the Act had been in force. To remedy these defects it examined the issues of government regulation of investments, premiums levels and directorial appointments. It was in favour of the first control to be exercised by the Insurance Commissioner if a particular investment put the insurer’s solvency at serious risk, but rejected the other two controls on the grounds that these would be anti-competitive. On the issue of protecting the interests of

\(^{22}\) Introduction to the Insurance Contracts Act 1984.

\(^{23}\) The ISC circulated a discussion paper on proposed amendments to the Act and at the date of publication of the ISC Annual Report for 1991-92 was studying responses.
insureds, the ALRC came down strongly in favour of instituting a guarantee scheme funded by insurers to pay 75 percent of the outstanding claims of a failed insurer.\textsuperscript{24} None of these recommendations of the ALRC to review the Insurance Act were accepted by government.

The Australian Insurance Market since the Insurance Act 1973

1. Numbers of companies in the market.

It is a mistake to use the number of companies licensed under the 1932 legislation, the ‘Deposits Act’, as a starting point to establish the effect of the 1973 legislation. The Insurance Act came into effect from 30 June 1975 but it took another twelve months before the Insurance Commissioner could provide figures which reflected the numbers in the market. At 30 June 1976 there were 525 organisations subject to the old Deposits Act. This number included 139 insurance brokers handling ‘binders’ for overseas insurers who were required to be registered under the old Act but not the new one, and a further 139 registrants under the old Act were ‘former insurers’ which had ‘either not applied for an authority or had withdrawn their applications’. Another 19 were in liquidation, and seven were refused registration. This left a total of 235 insurers having obtained or still seeking registration under the new legislation.\textsuperscript{25}

As set out in Table 9.1 if the 19 companies in liquidation, and the 139 insurance brokers are subtracted from the total of 525 registered under the Deposits Act, this leaves a total of 367. Thus the remnant of 235 registered under the new Act represented only 64 percent

\textsuperscript{24} Op.Cit. pp.xxxxviii -xxxix.

of those organisations which could have registered under its provisions. The 36 per cent of that market which had been 'rationalised' by the new Act would have included some subsidiaries of large insurance groups that had been maintained for their agency and directorial connections under the Tariff and which were now no longer required for that purpose. However the immediate effect of the introduction of the Insurance Act 1973 was to reduce the number of insurers in the market by at 36 per cent.

**TABLE 9.1**

**NUMBER OF INSURERS IN THE AUSTRALIAN MARKET BEFORE AND AFTER THE INTRODUCTION OF THE INSURANCE ACT 1973**

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of organisations registered under the 1932 Deposits Act at 30 June 1976</td>
<td>525</td>
</tr>
<tr>
<td>Less insurance brokers registered under that Act</td>
<td>139</td>
</tr>
<tr>
<td></td>
<td>386</td>
</tr>
<tr>
<td>Less companies in liquidation</td>
<td>19</td>
</tr>
<tr>
<td>Number of companies that could have constituted the general insurance market at 30 June 1976</td>
<td>367</td>
</tr>
<tr>
<td></td>
<td>100</td>
</tr>
<tr>
<td>Number of companies registered or seeking registration under the Insurance Act at 30 June 1976</td>
<td>235</td>
</tr>
<tr>
<td></td>
<td>64</td>
</tr>
<tr>
<td>Number of companies 'rationalised' by the Insurance Act 1973</td>
<td>132</td>
</tr>
<tr>
<td></td>
<td>36</td>
</tr>
</tbody>
</table>


Since 1976 there has been a continuous decline in the number of general insurance companies registered under the Insurance Act 1973.
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Companies Registered (b)</th>
<th>Number of Inactive Companies Excluding (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>235 (a)</td>
<td>100</td>
</tr>
<tr>
<td>1977</td>
<td>222 (a)</td>
<td>94</td>
</tr>
<tr>
<td>1978</td>
<td>206 (a)</td>
<td>88</td>
</tr>
<tr>
<td>1979</td>
<td>209 (a)</td>
<td>89</td>
</tr>
<tr>
<td>1980</td>
<td>205 (a)</td>
<td>87</td>
</tr>
<tr>
<td>1981</td>
<td>207</td>
<td>88</td>
</tr>
<tr>
<td>1982</td>
<td>205</td>
<td>87</td>
</tr>
<tr>
<td>1983</td>
<td>197</td>
<td>84</td>
</tr>
<tr>
<td>1984</td>
<td>180</td>
<td>77</td>
</tr>
<tr>
<td>1985</td>
<td>172</td>
<td>73</td>
</tr>
<tr>
<td>1986</td>
<td>179</td>
<td>76</td>
</tr>
<tr>
<td>1987</td>
<td>176</td>
<td>75</td>
</tr>
<tr>
<td>1988</td>
<td>172</td>
<td>73</td>
</tr>
<tr>
<td>1989</td>
<td>174</td>
<td>24</td>
</tr>
<tr>
<td>1990</td>
<td>169</td>
<td>20</td>
</tr>
<tr>
<td>1991</td>
<td>166</td>
<td>20</td>
</tr>
<tr>
<td>1992</td>
<td>158</td>
<td>21</td>
</tr>
</tbody>
</table>

Source: Insurance Commissioner’s and Insurance and Superannuation Commissioner’s (ISC) Annual Reports 26

Notes: (a) Numbers include companies awaiting authorisation and allowed to continue business in the meantime.

(b) from 1989 onwards the Commissioner has noted the number of companies that were still licensed but which had ceased trading and were running off their liabilities before surrendering their licences.

If the number of companies that had ceased operations between 1989 and 1992 are deducted from the licensed companies then the number of companies actively trading represented respectively only 64, 63, 62 and 58 per cent

Reference has been made in previous paragraphs to the Insurance Commissioner. Under the Insurance Act 1973 the office of an Insurance Commissioner was created to supervise non-life insurance. In 1987 the offices of the life and the general insurance commissions were combined into the Insurance and Superannuation Commission under one Commissioner by the Insurance and Superannuation Commissioner Act 1987.
of those trading in the base year of 1976. Or, if the
effective number of insurers in 1992 of 137 is compared
to the 367 effective insurers before the Insurance Act
1973 was brought in, the number of insurers has shrunk to
nearly one third of those trading less than 20 years ago.

Which factors have given rise to this dramatic fall in
the number of companies operating in the Australian
general insurance market? One factor has been the
imposition of barriers to entry. When the Insurance Act
was introduced in 1973 it set up higher financial
barriers than those imposed by the Deposits Act 1932 as
amended. However these barriers, and the supervision
exercised by the Insurance Commission, did not prevent
the continuing failure of insurers. So governments have
been persuaded to raise the barriers again, and again, as
set out in Table 9.3.

TABLE 9.3

MINIMUM PAID-UP CAPITAL AND SOLVENCY MARGINS
REQUIRED UNDER THE INSURANCE ACT 1973

<table>
<thead>
<tr>
<th>Year</th>
<th>Paid-up Capital</th>
<th>Minimum Sum by which Assets are to exceed Liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973</td>
<td>200,000</td>
<td>100,000</td>
</tr>
<tr>
<td>1983</td>
<td>500,000</td>
<td>1,000,000</td>
</tr>
<tr>
<td>1991</td>
<td>2,000,000 (b)</td>
<td>2,000,000 (b)</td>
</tr>
</tbody>
</table>


Note: (a) This sum is a minimum. There is another test
of solvency. The solvency margin must increase in
proportion to premium income. In 1973 assets had to
exceed liabilities by 15 per cent of premium income. In
1983 this was increased to 20 per cent. In 1991 a further
test was added, that assets were to exceed liabilities by
15 per cent of outstanding claims provisions.

(b) There is a five year phasing in period to
reach these requirements.
At the same time as these barriers were increased further rules concerning the method of valuation of assets and liabilities were added, and the regulations concerning the frequency of returns, and the detail required in those returns, were tightened. Extensive quarterly returns, and audited annual returns, which are to be supported by actuarial valuations of outstanding claims if required by the Commissioner, and appropriate valuations of assets, all in prescribed forms are required to be submitted to the ISC within a strict timetable with substantial fines for non-compliance.

There is a considerable internal cost for licensed insurers conforming to these stringent requirements which, since 1991, have included complying with a set of accounting standards (ASRB 1023) drafted specifically for the general insurance industry. No public estimates seem to have been made of these internal costs to which should be added the charges for further auditing and actuarial work. Since 1989, under the General Insurance Supervisory Levy Act 1989, general insurers have been contributing to the cost of running that part of the ISC that supervises their activities. This levy now stands at $13,000 per company per annum which raises just over $2 million. The cost of supervision of general insurers is not separated from the cost of supervising life assurance and superannuation funds in the published accounts of the ISC, whose total direct costs amounted to $17 million for the financial year ended 30 June 1992. 27

These barriers and costs have been a considerable factor in the removal of marginal operators from the market, but it would be simplistic to argue that this has been the sole reason for their departure. Other factors, which will be outlined later in this Chapter, have been the

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extremely competitive nature of the Australian insurance market since the dissolution of the Tariff, a concentration of market shares, the growth of direct marketing for personal insurances which has been enabled by technological change, and an international trend towards takeovers and amalgamations which reduced the number of subsidiaries of foreign companies operating in Australia. But before examining those developments the failures of general insurers which have prompted the tightening of regulation will be examined.


How many failures of general insurers have there been in Australia in the past three decades? Unfortunately some of the sources provide conflicting figures. When Jacobi spoke to the second reading of the Insurance Bill in May 1973 he said that 16 companies had collapsed in the last three years but tabled a document in Parliament during the debate which listed only 14 companies that had been placed in liquidation between July 1970 and March 1973.\(^{28}\) This is four more than the list of companies in liquidation shown for the same period in the Insurance Commissioners' First Annual Report for year ended June 1975. This refers to the 'Companies subject to the "Deposits Act"...in the course of being wound up.'\(^{29}\) The Commissioner's list records a further five companies that had been placed in liquidation in the two years following the introduction of the Insurance Act but which had never been subject to his supervision because they had been refused authorisation. By 1978 a further four companies in this category had failed. These companies had all been refused a license by the Commissioner under

\(^{28}\) CPD, 23 May 1973, p.2535.

\(^{29}\) p.3.
the provisions of the Insurance Act 1973. On this count a total of 23 companies which had never been subject to the supervision of the Insurance Act, or had been refused a license under its provisions, had failed between the years 1970 to 1978. All these companies can reasonably be categorised into failures before regulation came into effect.

The question then becomes how many failures have there been since regulation under the Insurance Act became effective. These are set out in Table 9.4

**TABLE 9.4**

**NUMBERS OF FAILED INSURERS AUTHORISED UNDER THE INSURANCE ACT 1973**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Failures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>Nil</td>
</tr>
<tr>
<td>1977</td>
<td>Nil</td>
</tr>
<tr>
<td>1978</td>
<td>1</td>
</tr>
<tr>
<td>1979</td>
<td>2</td>
</tr>
<tr>
<td>1980</td>
<td>1</td>
</tr>
<tr>
<td>1981</td>
<td>Nil</td>
</tr>
<tr>
<td>1982</td>
<td>2</td>
</tr>
<tr>
<td>1983</td>
<td>1</td>
</tr>
<tr>
<td>1984</td>
<td>2</td>
</tr>
<tr>
<td>1985</td>
<td>1</td>
</tr>
<tr>
<td>1986</td>
<td>1</td>
</tr>
<tr>
<td>1987</td>
<td>Nil</td>
</tr>
<tr>
<td>1988</td>
<td>Nil</td>
</tr>
<tr>
<td>1989</td>
<td>2</td>
</tr>
<tr>
<td>1990</td>
<td>2</td>
</tr>
<tr>
<td>1991</td>
<td>1</td>
</tr>
<tr>
<td>1992</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
</tr>
</tbody>
</table>

*Source: IC and ISC Annual Reports, 1976 to 1992*

The failures thus average slightly more than one per annum since 1976. This compares to the figures mentioned

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in the preceding paragraph of 23 companies that had not been subject to supervision by the Insurance Act having failed between the years 1970 to 1978. This represents an average of 2.5 failures a year. During the decade of the 1960s there was only one failure.\textsuperscript{31} An actuary pointed out in 1990 that the failure rate of general insurance companies in Australia 'seems to have stayed at about 0.6\% a year' both before and after the implementation of the Act.\textsuperscript{32} Updating those figures and using the number of companies registered under the Deposits Act as 525 and the average number of companies registered under the Insurance Act 1973 (from Table 9.2) at 170, the failure rate has worsened under the new regulations from 0.5 per cent per annum to 0.6 per cent per annum. It is not an impressive record for a regulatory authority whose 'Objective is to ensure the financial protection of policyholders...'\textsuperscript{33} In response to this succession of failures the ISC has sought and obtained legislative amendments to tighten regulatory controls and lift barriers to entry as set out in Table 9.3.

\textbf{Competition in the General Insurance Market After 1973}

It will be recalled that 1973 saw the breakup of the Tariff as well as the introduction of the Insurance Act. Although the last 15 years of Tariff rule were, as has been examined in Chapter 8, subject to some competition from non-tariff sources, and the effects of this competition on specific sectors of the general insurance market were examined, it is now possible to compare the performance of the insurance market subject only to

\textsuperscript{33} ISC \textit{Annual Report} 1989-90, p.2.
public solvency regulation post 1973 with previous eras of private regulation.

In Chapter 7, Table 7.6, the claims ratio of private insurers for the period 1920 to 1940 was examined separately for the state of Queensland and for the rest of Australia as a measure of the effect of regulation in Queensland. The mean of those ratios were 52.6 and 48.8 respectively, and this indicated that prices were lower in the rest of Australia under private regulation of the Tariff than under government regulation in Queensland. Comparable figures for all of Australia for the twenty years to 1974 were examined in Chapter 8 to measure the effect of the erosion of Tariff control during that period in Table 8.4. The claims ratio for all business in the private sector moved in an almost steady regression from 57.9 in 1955 to 68.4 in 1973 and leaped to 77.9 in 1974.

Comparable figures for the period 1975 to 1991 are these:
### TABLE 9.5

**CLAIM RATIOS PRIVATE INSURERS, SELECTED CLASSES AND TOTAL, AUSTRALIA, 1975 TO 1991**

<table>
<thead>
<tr>
<th>Year</th>
<th>Fire</th>
<th>Home</th>
<th>Motor</th>
<th>Marine</th>
<th>Workers</th>
<th>Liability</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>53.2</td>
<td>59.2</td>
<td>81.4</td>
<td>82.7</td>
<td>82.0</td>
<td>76.8</td>
<td>75.5</td>
</tr>
<tr>
<td>1976</td>
<td>41.5</td>
<td>49.3</td>
<td>69.6</td>
<td>63.7</td>
<td>72.7</td>
<td>71.1</td>
<td>65.2</td>
</tr>
<tr>
<td>1977</td>
<td>47.5</td>
<td>68.8</td>
<td>68.8</td>
<td>65.3</td>
<td>72.6</td>
<td>69.7</td>
<td>68.1</td>
</tr>
<tr>
<td>1978</td>
<td>62.1</td>
<td>79.4</td>
<td>75.2</td>
<td>66.1</td>
<td>72.1</td>
<td>62.8</td>
<td>71.1</td>
</tr>
<tr>
<td>1979</td>
<td>68.6</td>
<td>75.0</td>
<td>79.6</td>
<td>74.9</td>
<td>71.7</td>
<td>66.8</td>
<td>72.5</td>
</tr>
<tr>
<td>1980</td>
<td>79.2</td>
<td>81.0</td>
<td>79.6</td>
<td>77.6</td>
<td>94.8</td>
<td>69.1</td>
<td>80.9</td>
</tr>
<tr>
<td>1981</td>
<td>84.6</td>
<td>73.8</td>
<td>85.6</td>
<td>78.3</td>
<td>124.2</td>
<td>86.3</td>
<td>89.8</td>
</tr>
<tr>
<td>1982</td>
<td>80.0</td>
<td>65.2</td>
<td>87.9</td>
<td>81.6</td>
<td>112.2</td>
<td>76.7</td>
<td>88.0</td>
</tr>
<tr>
<td>1983</td>
<td>78.2</td>
<td>67.5</td>
<td>79.6</td>
<td>73.4</td>
<td>97.6</td>
<td>87.3</td>
<td>82.5</td>
</tr>
<tr>
<td>1984</td>
<td>71.6</td>
<td>60.8</td>
<td>79.0</td>
<td>64.8</td>
<td>103.6</td>
<td>96.4</td>
<td>83.5</td>
</tr>
<tr>
<td>1985</td>
<td>82.8</td>
<td>65.0</td>
<td>86.8</td>
<td>64.2</td>
<td>105.0</td>
<td>90.2</td>
<td>86.7</td>
</tr>
<tr>
<td>1986</td>
<td>79.3</td>
<td>66.5</td>
<td>100.1</td>
<td>65.3</td>
<td>110.3</td>
<td>92.7</td>
<td>89.2</td>
</tr>
<tr>
<td>1987</td>
<td>77.3</td>
<td>70.7</td>
<td>92.4</td>
<td>68.0</td>
<td>107.7</td>
<td>83.6</td>
<td>85.4</td>
</tr>
<tr>
<td>1988</td>
<td>81.2</td>
<td>72.3</td>
<td>84.6</td>
<td>66.3</td>
<td>115.3</td>
<td>66.8</td>
<td>78.7</td>
</tr>
<tr>
<td>1989</td>
<td>88.2</td>
<td>74.6</td>
<td>87.0</td>
<td>71.8</td>
<td>101.2</td>
<td>61.4</td>
<td>78.1</td>
</tr>
<tr>
<td>1990</td>
<td>103.5</td>
<td>87.6</td>
<td>93.2</td>
<td>79.6</td>
<td>73.9</td>
<td>68.9</td>
<td>85.1</td>
</tr>
<tr>
<td>1991</td>
<td>106.5</td>
<td>88.2</td>
<td>90.0</td>
<td>80.1</td>
<td>85.6</td>
<td>74.9</td>
<td>83.7</td>
</tr>
</tbody>
</table>

Source: IC and ISC Annual Reports, Tables 4 and D4 respectively.

The overall increase in the claims ratio for all but one class of insurance in Table 9.5 over the 17 years an accurate presentation of a highly competitive market. The increases in the ratios represent an increasing claims cost which also reflect such natural disasters as the Ash Wednesday bush fires in Victoria in 1983, very costly storms in Brisbane in 1985 and the more recent Newcastle earthquake, which are not matched by increased premiums. The only figures which show a reduction over the period, the ratios for workers' compensation, relate to complex state political issues where government interventions in these markets have influenced outcomes for private insurers.\(^{34}\) CTP figures have not been included at all

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\(^{34}\) This issue is too broad for inclusion here. But in Victoria, for instance, legislative changes to entitlements and benefit scales were changed with retrospective application, and insurers had no opportunity to charge appropriate premiums; in
because of an even greater variety of state issues involved.

In order to determine the 'gross profit' of general insurance companies it is usual, as discussed in Chapter 1, to add to the claims ratio the ratio of expenses to premium. The total ratio represents whether a profit is made from insurance business before crediting investment income. Conventional wisdom of the industry is that insurers should be profitable from insurance activities before bringing investment income into account. These ratios and the net surpluses or deficits for the same period of Table 9.5 are set out in Table 9.6

1985 the WorkCare scheme was introduced leaving private insurers with unsettled claims to handle and no new income. There were changes in New South Wales which also affected the loss ratios shown in the Table.
### TABLE 9.6

CLAIMS, EXPENSE AND TOTAL RATIOS OF PRIVATE INSURERS IN

AUSTRALIA

1975 TO 1991

<table>
<thead>
<tr>
<th>Year</th>
<th>Claim Ratio</th>
<th>Expense Ratio</th>
<th>Total Ratio</th>
<th>Surplus (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975</td>
<td>75.51</td>
<td>34.75</td>
<td>110.76</td>
<td>(133)</td>
</tr>
<tr>
<td>1976</td>
<td>65.19</td>
<td>33.45</td>
<td>99.64</td>
<td>21</td>
</tr>
<tr>
<td>1977</td>
<td>68.13</td>
<td>29.61</td>
<td>97.74</td>
<td>40</td>
</tr>
<tr>
<td>1978</td>
<td>71.14</td>
<td>30.75</td>
<td>101.89</td>
<td>(34)</td>
</tr>
<tr>
<td>1979</td>
<td>72.74</td>
<td>31.54</td>
<td>104.28</td>
<td>(80)</td>
</tr>
<tr>
<td>1980</td>
<td>80.91</td>
<td>32.06</td>
<td>112.96</td>
<td>(261)</td>
</tr>
<tr>
<td>1981</td>
<td>89.75</td>
<td>31.32</td>
<td>121.07</td>
<td>(486)</td>
</tr>
<tr>
<td>1982</td>
<td>87.97</td>
<td>30.38</td>
<td>118.35</td>
<td>(510)</td>
</tr>
<tr>
<td>1983</td>
<td>82.45</td>
<td>28.46</td>
<td>110.91</td>
<td>(369)</td>
</tr>
<tr>
<td>1984</td>
<td>83.51</td>
<td>27.05</td>
<td>110.56</td>
<td>(408)</td>
</tr>
<tr>
<td>1985</td>
<td>86.73</td>
<td>26.34</td>
<td>113.07</td>
<td>(569)</td>
</tr>
<tr>
<td>1986</td>
<td>89.24</td>
<td>29.02</td>
<td>118.26</td>
<td>(800)</td>
</tr>
<tr>
<td>1987</td>
<td>85.43</td>
<td>29.38</td>
<td>114.81</td>
<td>(717)</td>
</tr>
<tr>
<td>1988</td>
<td>78.72</td>
<td>33.15</td>
<td>111.87</td>
<td>(583)</td>
</tr>
<tr>
<td>1989</td>
<td>78.13</td>
<td>34.18</td>
<td>112.31</td>
<td>(687)</td>
</tr>
<tr>
<td>1990</td>
<td>85.14</td>
<td>31.11</td>
<td>116.25</td>
<td>(1,084)</td>
</tr>
<tr>
<td>1991</td>
<td>83.70</td>
<td>31.75</td>
<td>115.45</td>
<td>(1,041)</td>
</tr>
</tbody>
</table>

Source: As for Table 9.5

Thus in only two of the last 17 years have private insurers in Australia made a profit from what has traditionally regarded as the core activity of general insurers, which without long term profitability, will lead to instability in the market. Two inter-related factors have come into play during the period which have changed this traditional view. First is the Insurance Act itself which imposed increased prudential reserves on insurers. These are the three statutory reserves referred to in Chapter 1, for unearned premiums, unsettled claims and unreported claims. With interest rates running at very high levels for most of the period under review, the second factor was the unprecedented levels of investment income earned by insurers from these increased reserves, which more than offset the losses shown in Table 9.6. As shown in Table 9.7 after-tax profits were still achieved
by the industry as a whole notwithstanding the 'disastrous' underwriting results.\textsuperscript{35}

\textbf{TABLE 9.8}

AFTER TAX PROFITS, SHAREHOLDERS' FUNDS AND THE RATE OF RETURN, AUSTRALIAN PRIVATE GENERAL INSURERS 1976 TO 1991

<table>
<thead>
<tr>
<th>Year</th>
<th>After Tax Profit</th>
<th>Shareholders' Funds</th>
<th>After Tax Return on Shareholders' Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ millions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>124</td>
<td>723</td>
<td>17.15</td>
</tr>
<tr>
<td>1977</td>
<td>162</td>
<td>891</td>
<td>18.18</td>
</tr>
<tr>
<td>1978</td>
<td>155</td>
<td>1,050</td>
<td>14.76</td>
</tr>
<tr>
<td>1979</td>
<td>146</td>
<td>1,180</td>
<td>12.37</td>
</tr>
<tr>
<td>1980</td>
<td>98</td>
<td>1,320</td>
<td>7.42</td>
</tr>
<tr>
<td>1981 (105)</td>
<td>1,443</td>
<td>(7.28)</td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>0</td>
<td>1,649</td>
<td>0</td>
</tr>
<tr>
<td>1983</td>
<td>193</td>
<td>2,018</td>
<td>9.56</td>
</tr>
<tr>
<td>1984</td>
<td>205</td>
<td>2,071</td>
<td>9.90</td>
</tr>
<tr>
<td>1985</td>
<td>255</td>
<td>2,554</td>
<td>9.98</td>
</tr>
<tr>
<td>1986</td>
<td>369</td>
<td>3,310</td>
<td>11.15</td>
</tr>
<tr>
<td>1987</td>
<td>353</td>
<td>3,512</td>
<td>10.05</td>
</tr>
<tr>
<td>1988</td>
<td>507</td>
<td>5,464</td>
<td>9.28</td>
</tr>
<tr>
<td>1989</td>
<td>826</td>
<td>6,084</td>
<td>13.58</td>
</tr>
<tr>
<td>1990</td>
<td>330</td>
<td>6,032</td>
<td>5.47</td>
</tr>
<tr>
<td>1991</td>
<td>428</td>
<td>7,456</td>
<td>5.74</td>
</tr>
<tr>
<td>Total</td>
<td>4,046</td>
<td>46,757</td>
<td>8.65</td>
</tr>
</tbody>
</table>

Source: IC and ISC Annual Reports, Tables 6 and 7, and D5 and D7.

Note: Assets are at book value for all years except 1991 which has been given at market value.

\textsuperscript{35} In 1985 the then Insurance Commissioner in an address to the New South Wales Insurance Institute commented that underwriting profits now appear to be manifestly unachievable...like the dodo and the Tariff they belong to another era and are not likely to return...it is ironic that after more than a decade of more or less huge underwriting losses the industry 'objective' of making underwriting profits is still proclaimed. 

\textit{Australian Insurance Institute Journal}, Vol.10, No.3, August 1987, p.21
The rate of after-tax return on equity in the Australian insurance market has been the subject of recent analysis. Using a shorter series of results, from 1981 to 1989, and a running five year average, Lester argued that even including the best years of the 1980s the return was only some 2.5 percentage points above an average after-tax risk free return. The latter was based on 180 day bank bill yields.\textsuperscript{36} Using the same measure, the average return over the longer period shown in Table 9.8 would show only one point above an average after-tax risk free return. This is well below the six percentage points above a risk free return traditionally required by the Australian investment market,\textsuperscript{37} and is another factor in the explanation of the diminishing numbers of insurers in the Australian market.

Concentration

As could be expected from all the factors outlined above there has been a steady increase in the concentration of business in the Australian market during this period. The ISC has been publishing figures of the earned premiums of the 20 largest companies since 1980. These figures show the following pattern.

\textsuperscript{36} R.R.Lester, 'Financial Reporting, Management Information Systems and Return on Investment for General Insurers', Benjamin and Gribbin (eds.), The Australian Insurance Industry, pp.88-90. Lester's calculation of five year average 180 day bank bill yields were 1985 7.6\%, 1986 7.8\%, 1987 7.6\%, 1988 7.5\%, 1989 7.9\%.

\textsuperscript{37} Ibid.
TABLE 9.9

CONCENTRATION OF THE PRIVATE GENERAL INSURANCE MARKET
PERCENTAGES OF PREMIUMS EARNED BY LARGEST DIRECT
UNDERWRITERS, AUSTRALIA, 1980 TO 1990 (a)

<table>
<thead>
<tr>
<th>Year</th>
<th>Top 5 Companies</th>
<th>Top 10 Companies</th>
<th>Top 20 Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>28</td>
<td>44</td>
<td>63</td>
</tr>
<tr>
<td>1981</td>
<td>27</td>
<td>42</td>
<td>62</td>
</tr>
<tr>
<td>1982</td>
<td>27</td>
<td>44</td>
<td>65</td>
</tr>
<tr>
<td>1983</td>
<td>30</td>
<td>47</td>
<td>68</td>
</tr>
<tr>
<td>1984</td>
<td>32</td>
<td>51</td>
<td>70</td>
</tr>
<tr>
<td>1985</td>
<td>32</td>
<td>50</td>
<td>67</td>
</tr>
<tr>
<td>1986</td>
<td>32</td>
<td>49</td>
<td>68</td>
</tr>
<tr>
<td>1987</td>
<td>33</td>
<td>51</td>
<td>70</td>
</tr>
<tr>
<td>1988</td>
<td>35</td>
<td>51</td>
<td>71</td>
</tr>
<tr>
<td>1989</td>
<td>38</td>
<td>55</td>
<td>76</td>
</tr>
<tr>
<td>1990</td>
<td>39</td>
<td>57</td>
<td>78</td>
</tr>
</tbody>
</table>

Source: IC and ISC Annual Reports, Tables 11 and D4.

Note: By 1980 most, if not all, the subsidiary companies of the old Tariff companies, which had been retained for their agency networks under the Tariff system, had been wound up. The cost of maintaining them under the provisions of the Insurance Act 1973 was not warranted.

This is not a high level of concentration by Australian standards, but it does show a continuous trend of towards greater concentration, and that some 100 companies not in the top 20 are sharing only 20 per cent of the market between them. Even allowing that some smaller companies operate in specialist areas and have established adequate niche markets to create a viable volume of business, the figures in Table 9.9 indicate that more and more companies with small market shares are slowly being marginalised even further.

38 K. Sheridan, The Economic Record, March 1968. Using employment as the measure it was found that in 13 industries a single firm accounted for 80 percent of employment, that in another 12 industries 80 per cent of business was in the hands of two firms, and another 24 industries were in the hands of only three firms. In only 14 of the 104 industries studied did 50 or more firms share 80 per cent of the business.
This tendency is even more marked if individual market segments are examined.

**TABLE 9.10**

PERCENTAGE OF PREMIUMS EARNED BY LARGEST DIRECT PRIVATE INSURERS, AUSTRALIA,
BY CLASS OF BUSINESS, 1990

<table>
<thead>
<tr>
<th>Class</th>
<th>Top 5 Cos.</th>
<th>Top 10 Cos.</th>
<th>Top 20 Cos.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>45</td>
<td>67</td>
<td>86</td>
</tr>
<tr>
<td>House</td>
<td>46</td>
<td>68</td>
<td>89</td>
</tr>
<tr>
<td>Contractors</td>
<td>52</td>
<td>80</td>
<td>96</td>
</tr>
<tr>
<td>Marine</td>
<td>40</td>
<td>62</td>
<td>83</td>
</tr>
<tr>
<td>Motor</td>
<td>46</td>
<td>64</td>
<td>85</td>
</tr>
<tr>
<td>CTP</td>
<td>68</td>
<td>91</td>
<td>100</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>65</td>
<td>83</td>
<td>96</td>
</tr>
<tr>
<td>Public Liability</td>
<td>42</td>
<td>62</td>
<td>86</td>
</tr>
<tr>
<td>Other</td>
<td>29</td>
<td>48</td>
<td>71</td>
</tr>
<tr>
<td>Total</td>
<td>39</td>
<td>57</td>
<td>78</td>
</tr>
</tbody>
</table>

Source: ISC Annual Report 1991-92, Table 4.8

It can be seen from Table 9.10 that the share of the major sectors of the market available to the companies outside the top 20 is really quite small for the large number that fall into that category. Their marginalisation is even more pronounced than the overall figures indicate. This factor on its own would lead inevitably to further reductions in the number of companies in the market.

**Conclusion**
To place some overall perspective on the size of the Australian general insurance market, in 1991 direct premiums of the private sector totalled $8,063 million,
and the public sector $5,687 million. In total that represented 3.6 per cent of GDP.\textsuperscript{39}

This Chapter has demonstrated the effects of both the Trade Practices Act and the Insurance Act, with its subsequent amendments, to the functioning of the insurance market in Australia. The first piece of legislation finally freed the market from a cartel-like rule which had lasted for 75 years. This has lead to severe competition which has forced prices down to a level which has increasingly marginalised a number of smaller companies in the market. This factor has coincided with progressively raised barriers to entry, and stricter rules regarding the solvency of those that wish to remain in the market, imposed by the second piece of legislation and its amendments.

These factors have combined to drastically reduce the number of companies in the market and to increase the levels of concentration. However there are still more than 100 general insurers in the Australian market which is more than an adequate number to provide keen competition, and the levels of concentration that have been reached have not yet threatened price or product competition.

Whilst solvency regulation has so far not been effective in the role that it was designed to play, that of prevention of insurance company collapse, it has brought about standardised accounting practices in the industry,\textsuperscript{39}

\textsuperscript{39} ISC Annual Report, 1991-92, Table 4.1 and notes. This Table compares the growth, measured in premium income, of the private and public sector general insurance industry with Gross Domestic Product provided by the Australian Bureau of Statistics. From the base year of 100 for 1987, GDP grew to 136 in 1991 compared to 131 for private insurers and 160 for the public sector. The latter was influenced by legislative changes to workers' compensation and CTP during the period. The overall growth of the insurance market was 141.
the collection and collation of statistics that have not been available before, and hopefully the full publication of full accounting information. This important point is examined in detail in Chapter 10, but it can be pointed out here that in the Annual Report of the ISC for 1990-91, Table D8 showed that 19 companies handling 28.5 percent of the premium income of general insurers in Australia were 'less than or equal to the statutory minimum'. It is not possible for the general public, or indeed the insurance industry generally, to ascertain the names of these companies. The ISC Annual Report for 1991-92 did not carry a similar Table.

The intervention of the Australian Law Reform Commission into the regulation of insurance intermediaries, and in reform of the law to redress the imbalance that had arisen to favour insurers at the expense of insureds has also been significant. Those changes are much more difficult to measure in economic terms. There has been a significant reduction in the expense rates of general insurers between the mean of 40.1 per cent for private insurers in Queensland discussed in Chapter 7, Table 7.4, during the height of Tariff rule and the figure of just over 30 percent for recent years shown in Table 9.6. It would appear to be the result of competition rather than regulation.
CHAPTER 10

CONCLUSION

Solvency should be the sole criterion for the grant of a license and the licensing system should not be used to impose on insurers conditions which have nothing to do with solvency.¹

This study has examined the various phases of private and public regulation through which the general insurance industry has passed during the last 95 years. An attempt has been made to measure how these regulated markets differed from competitive outcomes which might otherwise have been in place. The insurance industry in Australia presents an unusual opportunity for such an analysis.²

Theories of Economic Regulation

It is not the purpose of this thesis to provide an overall review of the extensive literature on this topic which spans a period of more than thirty years. Such

¹ Report of the Committee on Compulsory Insurance, (the Cassel Committee), presented to the President of the U.K. Board of Trade, July 1937. Reports to Parliament, Vol.XII, 1936-37, p.17. It was this committee which devised the concept of establishing solvency requirements for insurance companies. The concept grew out of an earlier House of Commons committee, the Clausen Committee of 1927, which warned that the existing system of deposits would not protect policyholders interests but merely keep some speculative concerns out of the market.

² J.J.Pincus and G.A.Withers, 'Economics of Regulation' in F.H.Gruen (ed.) Surveys of Australian Economics, George Allen and Unwin, Sydney, 1983, Vol.III,p.17, make the observation that it is rare to find an Australian industry or occupation heavily regulated in one state, and lightly or not at all in another.
reviews have already been undertaken in the U.S.\textsuperscript{3}, in 
Australia \textsuperscript{4}, and elsewhere\textsuperscript{5}. Rather, it is proposed to 
look at the original theories and their subsequent 
refinements and to further examine whether the 
circumstances of regulation of insurance in Australia, 
and the effects on the insurance market of that 
regulation, support or detract from those theories.

Stigler's central thesis, 'that, as a rule, regulation is 
acquired by the industry and is designed and operated 
primarily for its benefit'\textsuperscript{6}, was refined by Peltzman. 
Peltzman's amendment was to show that 'Stigler's 
presumption that the (regulatory) agency confers benefits 
on a single victorious group' \textsuperscript{7} is not sustainable and 
that political expediency will produce a situation where 
members of the losing group (consumers) still receive 
consideration. Fels has suggested that Peltzman thereby 
established that the constituency of the regulator is not 
confined to one economic interest, and thus it cannot be

\begin{itemize}
\item \textsuperscript{3} P.L. Joskow and R.C. Noll, 'Regulation in Theory and Practice: An 
Overview' in G. Fromm (ed.) Studies in Public Regulation, MIT 
Press, Cambridge, Massachusetts, 1981, pp.1-65, provide a 
useful summary as does Meier, The Political Economy of 
Regulation, Chapter 2.
\item \textsuperscript{4} J.J. Pincus and G.A. Withers, 'Economics of Regulation' op.cit., 
pp.9-76; R.F Cranston, 'Regulation and Deregulation: General 
Issues' and A. Fels, 'The Political Economy of Regulation', 
University of New South Wales Law Journal, Vol.5, No.1, 1982, 
pp.1-60 and 61-79 respectively; and A. Fels, 'Theories of 
Economic Regulation and their Application in Australia' in 
B.A. Twohill (ed.), Government Regulation in Industry, 
University of Newcastle, 1981 provide an excellent overview of 
Australian research.
\item \textsuperscript{5} The many publications of The Institute of Fiscal Studies, 
London, including the already referred to Insurance:Competition 
or Regulation?; and J. Finsinger (ed.), Economic Analysis of 
Regulated Markets, Macmillan, London, 1983 provide useful 
summaries of research in Britain and Europe.
\item \textsuperscript{6} G.J. Stigler, 'The Theory of Economic Regulation', Bell Journal 
\item \textsuperscript{7} S. Peltzman, 'Toward a More General Theory of Regulation', 
\end{itemize}
predicted which combination of interests will win the competition to control regulation. The significant contribution that Stigler made to the regulatory debate was to focus attention on the economic interests involved in the process, and thereby demolishing the notion that regulation was a costless remedy for market imperfections. It is apparent that a number of factors have influenced the introduction of government regulation in the Australian insurance industry in addition to Stigler's and Peltzman's assumed goal of regulators to maximise electoral majorities. Perhaps Fels' expansion just mentioned fits the insurance mould quite well, but it raises the question of whether, if the factors which can influence regulation are so many and so diverse, any central theory remains.

In addition to the theories surrounding the introduction of regulation there are the very relevant, for the Australian insurance industry, theories which focus on the agencies themselves. This study has demonstrated that in Queensland the regulatory body was itself a determining factor in the outcome of regulation in that State, while the same comment is true of the State insurance office in Victoria and to a lesser extent of other State offices because of their tighter political shackles. And the office of the Insurance and

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9 Joskow and Knoll summed up Stigler's contribution, a little unkindly, that his theory 'reminds us of the impossibility of a free lunch', 'Regulation in Theory and Practice' p.40.

Superannuation Commission is a continuing influence on the present Australian general insurance market. The ISC has taken on a life of its own which, in many respects, has moved away from parameters of the legislation that gave it birth.\textsuperscript{11}

What is quite clear is that the circumstances surrounding the appointment of the Royal Commission in 1908, the acceptance by government of its recommendations for regulation in 1915, the introduction of regulation in Queensland in 1916, the establishment of state insurance offices between 1915 and 1927, the Commonwealth Insurance (Deposits) Act 1932, the Insurance Act 1973, the Trade Practices Act 1974, the Insurance (Agents and Brokers) Act 1984 and the Insurance Contracts Act 1984 were all quite different, and that no one theory of regulation can encompass, let alone have predicted all of the outcomes. As discussed in each Chapter which dealt with these issues, various interests were served on different occasions.

The welfare economist notion that regulatory purpose is indicated by its effects \textsuperscript{12} is clearly contradicted, as discussed below, by the results of regulation in Queensland, but an examination of outcomes can be a fruitful way of examining each of the regulatory events of Australian insurance history.

\textbf{Some Specific Outcomes.}

\textsuperscript{11} The ISC Annual Report for the year ended 30 June 1992, pp.35-36, sets out the areas of the insurance industry currently under review by the Commission. These include a review of the Insurance (Agents and Brokers) Act to consider amendments that would regulate the timing of monies paid to insurers by their agents, and the liability of insurers for actions of multi-agents. The ISC is also reviewing the Insurance Contracts Act.

\textsuperscript{12} Pincus and Withers, op.cit., p.9.
1. The Tariff.

Despite some limitations of available data it is clear that the Tariff cartel-like arrangements classically distorted prices and products by its protective devices. Under the Tariff the increase in insurers' and consumers' expenditure contributed to substantial social costs of both losses of real income and super-normal profits for insurers. The increases in the ratio of claims to premium, and the reduction in the ratio of expenses to premium, when competition to the Tariff first started, and then when the Tariff was abandoned, demonstrate the extent of these costs and profits. It is not possible to quantify the effect of the Tariff's restrictive practices concerning product innovation.

2. Queensland.

Whatever the market distortion of the Tariff's private regulation, it has been shown that the first attempts at state regulation in Queensland imposed even greater costs. The original intentions of the Ryan government were to regulate prices of the private sector in line with its claims experience, to limit distribution costs, and to create a competitor to private insurers that would maintain its own price levels at a minimum and to become a leader in product innovation. But the insurance commissioner never exercised the powers given to him to force price reductions to a level indicated by statistical returns in the manner that was envisaged by the legislation. And a succession of insurance commissioners, whose roles included being general managers of the State insurance office, saw their principal task to be a demonstration that public enterprise could be more efficient and more profitable than the private sector. If they had used the potential competitive power of the SGIO to reduce prices their task
of running a profitable state enterprise would have been more difficult. This method of operation was antithetical to the concept of meta-regulation and was a double perversion of the original intentions of the regulation.

A failure of state competition to keep private enterprise honest has not been uncommon in state enterprises in Australia but it does not appear to have been demonstrated empirically elsewhere, as it has been in Chapter 4, that government regulation can distort a market even more than private regulation. The outcome that public regulation, which was vigorously opposed by the industry at the time of its introduction, should benefit the regulated more than its own private regulation is unexpected.

The appointment of a senior person from the ranks of private insurers as the Queensland Insurance Commissioner was at the root of these problems. It was capture par excellence, but it was a capture initiated and perpetuated by the Labor governments of the day, rather than an initiative of the industry. A succession of men trained in the private sector were appointed as commissioners when tough minded senior public servants with a clear mandate to carry out the intention of the legislation may have been more successful. The door to the commissioner's office did not revolve. Through it passed a succession of people from the private sector to fill this regulatory role. The biographers of the

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13 N.G.Butlin, A.Barnard and J.J.Pincus, Government and Capitalism, George Allen and Unwin, Sydney, 1982,p.69, summed up this movement in these terms. In practice, with rare exceptions, this regulatory process, designed to introduce public business competition with the private sector, did little more than delude some Australian voters that Australian Labor politicians had some potential as dangerous revolutionaries.
Queensland SGI0 do not record any employees of that body moving to the private sector. 14

In summary the Queensland exercise in state regulation, although its introduction was bitterly opposed by the insurance industry, ultimately resulted in the private sector being more profitable in Queensland than the Tariff could achieve under its own regulation in the rest of Australia. None of these outcomes could have been predicted by regulatory theory. The regulatory agency bestowed benefits on the losing group. And although the reason for the failure of regulation can be ascribed to 'capture', 'capture' as theory was effectively demolished by Posner. 15

Finally it must be said of the Queensland episode that if the Tariff had not chosen to oppose Ryan's government over workers' compensation in such an obdurate manner, which brought them into conflict with the equally uncompromising and shrewd duo of Goodwyn and Fihelly, then almost certainly there would have been no general insurance regulation in Queensland in 1916.

3. Other Attempts at Meta-Regulation.

State insurance offices other than Queensland had problems which were principally related to being politically shackled until the 1980s. One exception to

14 Thomis and Wales. SGI0. From 1916 until 1960 the dual roles of general manager of the SGI0 and insurance commissioner were filled by men drawn for the private sector insurance industry. In 1960 the roles were separated but the new office of Commissioner was filled by the old incumbent who had trained in the private sector.

15 Posner pointed out the three main failings of 'capture' theory. First, there are many examples of agencies that have not been captured. Second, the theory has no predictive capacity for which agencies will be captured and those that will not be. And finally there are many examples of agencies that favour customer groups rather than the regulated firms. Op.cit. p.342.
this was the New South Wales GIO. It was allowed to adopt an aggressive market strategy after World War II which was accelerated particularly during the recent decade until it became one of the market leaders in Australia. Most other SIOs were restricted to writing only compulsory insurances, and in that role they frequently became insurers of 'last resort' with the risks that the private sector did not want, or they were not allowed to compete with private insurers in other classes. When these restrictions were lifted during the 1980s the role of state insurers as meta-regulators was no longer relevant in what had become a highly competitive market.


Although this Act offered some barriers to entry to the market by imposing requirements of a deposit with the Commonwealth, the size of the deposit was not onerous and, as related in Chapter 9, it did not visibly inhibit the growth of the number of insurers in Australia and did nothing to help the free-rider problem that confronted the Tariff at the time.

It is important to recall that if Lang had not sought to plunder large sums of cash from the insurance industry in New South Wales then there would have been no Commonwealth Insurance (Deposits) Act in 1932. This regulation was welcomed by the insurance industry because it relieved them of the threat of a severe financial

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16 State offices became monopoly insurers of CTP insurance at differing times as governments, which were seen by the electorates as the price setters, held down premium increases for so long that private insurers withdrew from the market, for example Victoria in 1973, and South Australia in 1976. Other states set up statutory authorities for this class of business. As insurers of workers' compensation state offices were often left with risks of such a poor claims record that private insurers would not handle them.
burden in New South Wales, but if we apply a test of analysing the distribution of benefits and costs of the legislation then the answer could appear in the following form. Lyon's United Australian Party government maximised its electoral support by defeating both Lang and Labor with this Act at no measurable cost; they already had the support of the insurance industry on ideological grounds. The insurance industry won, but the barrier to entry put up by the Act consisted only of a meagre financial deposit without even any of the controls suggested by the Royal Commission in 1908, as discussed in Chapter 3, for lodgement of annual accounts and the general supervision of insurers, including rates, by an insurance commissioner which would have given the Tariff a measure of protection from increasing competition from Lloyd's and other non-tariff companies. It will be recalled from Chapter 5 that the crude attempt by the Tariff to persuade the government that Lloyd's would have to pay a huge deposit to stay in the Australian market was rejected. Their win, measured in terms of continuing benefits from regulation, were minimal. The costs of such regulation that the Deposits Act did impose, which were also minimal, fell on to the general community by taxes to support the new branch of government and to the insurance industry with compliance costs.


The introduction of the Insurance Act 1973 was heralded by a classic scenario, the collapse of a cartel. By the late 1960s the Tariff, as outlined in Chapter 8, had lost control of the market; prices had fallen, costs had to be reduced, profit margins had been steadily eroded. The Tariff section of the industry, as the surviving representatives of the cartel, could have been expected to seek regulation as a substitution for the failure of
their organisation. The Tariff actively participated in working parties to draft the provisions of the Act, and publicly expressed concern about the collapse of the companies which precipitated the legislation because of a genuine apprehension for the image of the industry which was being mauled by these failures. Unfortunately submissions made to Treasury by the Tariff during the period when the legislation was being framed could not be discovered in I.C.A. archives, and all attempts to obtain these documents from Federal sources have been fruitless.

At the same time there were pressures on governments, both state and federal from sources other than the insurance industry to regulate insurance companies. Many private individuals and companies had lost both premiums and their right to claim because of insurance company failures and it was generally felt throughout the electorate that this was a matter on which 'government should do something'. The zeal with which Ralph Jacobi pursued this matter as a Labor backbencher from 1970 encapsulated this public concern. When Frank Crean, as Treasurer of the Whitlam government, introduced the Insurance Bill into the parliament in 1973 he

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17 Posner, pp.345-6, postulates, as an addendum to Stigler, that it may be cheaper for large number industries to obtain public regulation than to cartelise privately particularly where a considerable free-rider problem exists.

18 The ISC claim not to have these documents on the grounds that this relates to a period before its existence. Treasury archives report that they are unable to find any submissions.

19 Jacobi's maiden speech in the House of Representatives (C.P.D. 19 March 1970, p.606) concerned the failure of insurance companies and the hardship suffered by one of his constituents. He was extremely critical of the absence of legislation that would give protection to the public with such failures.
acknowledged the part that Jacobi's persistence had played in getting the legislation before the House. 20

Although there is obvious technical insurance input into the legislation from industry sources, in such areas as reinsurance, accounting records and Lloyd's operations in Australia, it is possible to identify only one sections of the Act which is there to support the position of the companies rather than the concept of legislation as consumer protection. As discussed below in some detail, this section, number 123 of the Act, related to the restricted information on company results that could be made available to the public. Comment was made in Chapter 9 that it is not possible to determine the identity of the 19 licensed companies handling nearly 30 per cent of the market that the Commissioner reported in 1991 as being 'less then or equal to the statutory minimum.' And there was no inclusion in the Act of a guarantee fund. As discussed below, it is clear that this omission was due to insurance lobbying.

As an indication of the temper of the insurance industry even in 1979 there was at least a section of it that hankered after the halcyon days of the Tariff. The Australian Insurance Association, an association of local insurers nearly all of whom had been staunch Tariff members, made a submission to the Campbell Committee criticising the Trade Practices Act that it would not allow 'the discipline that used to be ... exercised under the previous Tariff system'. The submission recommended that the Trade Practices Act should be amended to allow the ICA to set new standards of ethics, practices and rates because

20 C.P.D., Representatives, 10 May 1973.
the experience of recent years has demonstrated that the insurance industry is vulnerable to price cutting behaviour that could ultimately be quite destructive. 21

The Campbell Committee rejected the proposal.22

The Interested Parties in the 1973 Regulation – Benefits and Costs

There were thus at least three interests involved in the introduction of the legislation. There was the public interest of private individuals in particular, because they could least afford not to have indemnity for the loss of their major assets of house or motor vehicle, or not to be indemnified against claims made against them by injured third parties; and businesses were threatened by the same factors. Politicians had an interest in maximising their political majority by catering to this public interest pressure. There was no private or business lobby against such regulation at that time, although it will be recalled from Chapter 9 that a decade later Treasury opposed insurance broker legislation on the grounds of economic rationalism. Finally there were the interests of the insurance industry which have been discussed in preceding paragraphs.

The regulation imposed by the Insurance Act 1973 has had a classically predictable outcome. The Act’s substantial and escalating entry criteria, and its increasing requirements for levels of solvency, have dramatically reduced the number of companies in the market. This has been reflected in a marked rise in market concentration. On the other hand, despite these factors, there are still

a sufficient number of insurers in a relatively unconcentrated market for them to compete fiercely for either for an overall market share or for specialist niche markets.

The welfare costs of the legislation were the creation of a new branch of Treasury to oversee the regulation, the costs to the industry of compliance and the considerable task of reporting to Treasury and a continuing dialogue with Treasury concerning the accuracy of the data returned. The former costs were born in part by taxpayers generally, while the latter were born by that part of the community which purchases insurance. Other costs have been identified in Chapter 9; a sharp decline in the number of insurers and an increase in market concentration. Further costs are difficult to identify because the effects of the Trade Practices Act, which coincided with those of the Insurance Act, restored effective competition to the industry; as shown in Chapter 9, this resulted in reduced profit margins and operating costs.

Whilst it is possible to postulate that the situation might well have been worse in a totally unregulated market without any supervision of solvency, there is little public benefit that can be quantified to offset those costs. The regulation of the Australian insurance industry by the Insurance Act 1973 has not prevented insurance company failure. The rate of failure is, as discussed in Chapter 9, marginally worse than the rate of failure before regulation. It could be assumed that the insurance industry has benefited from the effective barriers to entry that were imposed, and by the removal of many insurers from the market who found themselves marginalised by the increasing solvency requirements of regulation. However because of the overwhelming effects
of the Trade Practices Act just mentioned the effect of these benefits to the industry have not been realised.

Despite these results there is no call for the present regulation to be abandoned. The only calls, which are being responded to by Treasury and the legislators, are for tighter regulatory rules to stem the flow of company failures. The report of the Economic Planning Advisory Commission in mid 1991 on prudential regulation, Discussion Paper 91/05, reflects the tone for contemporary discussion of this topic. EPAC considered life and superannuation regulation in this paper rather than general insurance, together with companies and securities regulation, supervision of non-bank financial institutions and the supervisory role of the Reserve Bank. Its conclusions were that 'an effective legislative, supervisory and enforcement framework was essential' and their concerns were 'to avoid unnecessary, excessive, and to the extent possible, overlapping regulation'. The assumption implicit throughout the paper is that prudential regulation is an essential part of the fabric of the Australian economy of the late twentieth century, and although general insurance was not considered specifically, it is a regulation that fits nicely within the 'prudential' description.

Theories of Solvency Regulation of General Insurers

United States
There is a long history of solvency regulation in the U.S. It was noted in Chapter 1 that the state regulation of insurance in that country (a Supreme Court case in 1869 exempted insurance from Federal law) in its early

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days at the beginning of this century, was directed towards ensuring that rates were not too low. If rate cutting was not allowed the theory presumed that no insolvencies would happen. As Joskow has commented, no studies seem to exist which demonstrate that competition in insurance is more destructive than in any other industry. However, this concept of rate setting was to rule state regulatory thinking for many years. Between 1940 and 1970 44 states followed guidelines set by the National Association of Insurance Commissioners (NAIC) for rate regulation and this established what has already been described in Chapter 1 as state endorsed price cartels. The NAIC rules included filing annual audited statements and periodic on site examinations by the regulatory authority to determine the continued solvency of insurers, but not to any specified formula.

It was an ineffective system because the information produced by the companies was not sufficiently current to predict likely failures and there was no body of enforceable rules available to the regulators. Individual states set their own limits on minimum capitalisation. Between 1969 and 1986 there were 140 general insurance company insolvencies in the U.S., 42 per cent of them occurring in one year, 1986. In 1987 the NAIC reported that of the more than 2,000 companies its members had examined that year 24.1 per cent were in 'potentially hazardous conditions'. These prediction were well founded. The following year massive collapses, including Mission Insurance with a deficit of $1.5

24 Joskow, Cartels, Competition and Regulation, pp.394/5.
26 Ibid., pp.67-8.
27 K.Black, 'Through the Looking Glass - Perception and Reality', address to the Australian Insurance Institute Annual Conference, 1989. Black was the Regents' Professor of Insurance at Georgia State University.
billion, Transit Casualty with a deficit of $2 billion and several others for lesser amounts rocked the general insurance industry. A House of Representatives committee of inquiry was established, the Dingell Committee, which, not surprisingly, reported in February 1990 'that the present system for regulating the solvency of insurance companies is seriously deficient'.

Because regulation of general insurance markets in the U.S. has traditionally centred on price, theoretical work in that country has tended to concentrate on how this particular form of regulation can be applied satisfactorily. The California Insurance Code, 1988, Section 790.3, encapsulates the fond hope of U.S regulation that premiums should not be so low as to endanger solvency, nor so high as to be unfair to the consumer. [Insurance] should not discriminate unfairly between good and bad risks, should be available to those who need it, the product should not be deceptive, and insurers should settle claims fairly and promptly.

On the other hand a long line of authors have argued in favour of deregulation, while other studies have

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29 Quoted in B. McDowell, Deregulation and Competition in the Insurance Industry, Quorum Books, New York, 1989, p.25. McDowell argues against deregulation on the grounds that in the U.S. a free market has been shown to be discriminatory in the selection of risks and that many are excluded from cover on the grounds of geographical location (notorious slum areas, storm and earthquake zones) and race.

examined price regulation to test Stiglerian theory. Another strand of research rejected conventional wisdom that dishonesty and managerial incompetence are the root causes of insurer failure, and sought to demonstrate empirically that managers adopt underwriting and investment risks that seek to maximise the value of the firm and that, therefore, the probability of insolvency is chosen and not determined exogenously by the distribution of claims and investment returns. This line of research, and its most recent development, have some application to a theoretical approach to Australian insurance regulation. In a paper published in 1990 Lamm-Tennant, Starks and Stokes reported that they had empirically modelled the determinants of solvency from a sample of 1489 general insurers in the US for the period 1980 to 1985 inclusive. Their model appeared to be effective in identifying likely insolvencies and found that change in the surplus, that is the surplus of assets over liabilities, was the best tool for predicting insolvency. Of course such predictions would depend

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31 R.A. Ippolito, 'The Effects of Price Regulation in the Automobile Insurance Industry', *The Journal of Law and Economics*, Vol. XXII (1), 1979, tested the underwriting results and expense rates of insurers in 17 states which had competitive rating laws, and represented nearly half of all motor premiums in the country, with the results of insurers in 33 states which still used the prior approval system. He found that producers did appear to gain from the existence of regulation even though no evidence of Stiglerian cartelisation was found. p. 86.


on the extent to which assets and liabilities were accurately determined by the company being examined, and in turn, to the degree of regulation applied to valuation techniques. This aspect was not dealt with by these authors.

Meier's extensive study of the U.S. market, published in 1988, uses analyses derived from politico/economic models. His conclusion was that 'the insurance industry does not dominate the regulatory process.'[34] In a review of all 50 states Meier modelled insurance company regulation, taxation, price regulation of life, health, and general insurance, litigation in insurance, no-fault insurance for automobiles, and access to insurance markets. He endeavoured to measure the relative influences in all these areas exerted by the insurance industry, consumer groups, bureaucracies and political elites. His analysis was that 'Stigler's theory of economic regulation is inferior to a multi-interest view of regulatory policy.'[35]

Meier's study arrives at conclusions that are very similar to those of this thesis. Although, as outlined earlier, there are substantial differences between the general insurance industries in Australia and the U.S. historically, culturally and in legal systems, and the extent and manner of state and federal regulation in the two countries, and, as outlined in the last paragraph, different methodologies were used by Meier, it is of some significance that each study of insurance should independently arrive at the same view of regulatory theory.

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34 Meir, The Political Economy of Regulation, p.166.
Britain

The concept of a clearly defined solvency margin for general insurers was pioneered in Britain. The Assurance Companies Act 1946 required companies in that country to have a minimum surplus of £50,000 or 10 per cent of premium whichever was the greater. Subsequent amendments to this legislation increased the margin both as to amount and percentage and included a percentage of outstanding claims into the calculation of solvency. All of these substantial pieces of legislation were introduced as a consequence of the failure of one or more insurance companies. It has been a slow but steady move away from freedom with disclosure for the British insurance market, but there has still been a steady stream of failures.

Europe

The German insurance market is in stark contrast to the British and Australian. Faced with the same problems at the end of the nineteenth century of a series of failures, the German insurance industry successfully sought government intervention in the market rather than regulating the market themselves as was done in the British tradition. The German Law for Insurance Regulation was passed in 1901. It encompassed market entry restrictions, minimum capital requirements and the supervision of all business operations. These provisions were tightened over the years, being extended to include

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36 Introducing the second reading of the Bill Sir Stafford Cripps, President of the Board of Trade, said 'the margin of solvency is...the additional reserve referred to in the Cassel Report...the insurer who does not maintain this standard is deemed to be insolvent.' House of Commons Debate, 12 November 1945, p.1826.

37 Finnsinger, Hammond and Tapp, Insurance: Competition or Regulation, p.28.
exact controls over the types and places of investment, and reached an apex during the Third Reich when the formation of cartels was encouraged as an instrument of government policy. Attempts by post-war German governments to break this system were resisted successfully by the insurance industry.\textsuperscript{38} Not surprisingly no German insurance company has failed during all this time. One German company faced insolvency but it was absorbed by one of the local giants. Three foreign companies operating in Germany have been bankrupted but in each case German nationals' claims were met either by the government or by the industry.\textsuperscript{39} This nearly total absence of failure in European tightly regulated markets has meant that research on regulatory theory in those countries has concentrated on the effects of price and expense regulation.\textsuperscript{40}

Suggested Modification of Australian Regulation

It is proposed to adopt two widely recognised economic theories in this discussion. First, that price and entry regulation in an otherwise competitive market generates economic inefficiencies \textsuperscript{41} and second, that if economic efficiencies are to be maintained, regulation must not rule out the failure of the least efficient firms in the market. This latter point has received support from

\begin{itemize}
  \item \textsuperscript{38} Ibid. pp.50-53.
  \item \textsuperscript{39} Ibid.p.159.
  \item \textsuperscript{40} Finsinger and Pauly, \textit{The Economics of Insurance Regulation}, contains studies of the German, French, Swiss, and Swedish markets.
  \item \textsuperscript{41} Joskow and Knoll in Fromm, \textit{Studies in Public Regulation}, preface their discussion of this topic with the statement that 'if economics has any scientifically settled issues, one is surely that....', p.4.
\end{itemize}
unexpected sources in Australia quite recently.  

It is also proposed that the prohibitions of anti-
competitive behaviour embodied in the Trade Practices
legislation are unlikely to be abandoned in the
foreseeable future and that, in the absence of renewed
private regulation, public regulation of the insurance
industry will continue.

The ISC in Australia has followed what has been described
by a British economist, when examining the record of
British solvency regulation, as a 'stable door' approach
to regulation.  This process is still continuing.  It is
proposed that it is essential to the future
operations of the general insurance market in Australia
that regulation should move from its present emphasis,
which can only result in more regulation, and which will
result in increasing social cost. The emphasis must move
towards two areas in which the present regulation is
seriously deficient.

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42 'The object of statutory regulation should never be ... to
guarantee that ... no company would ever fail or no
policyholder would ever be disadvantaged ... (this) would
stifle competition, enterprise and efficiency as well as
producing substantial additional costs.' Richard Beetham,
Australian Insurance Commissioner, Conference Proceedings of
the Australian Insurance Law Association, Canberra, 1992, p.3.

43 Writing on British insurance regulation Tapp in Finnsinger,
Hammond and Tapp, Insurance:Competition or Regulation, comments
that it is characterised by 'after another failure' amendments.
As another horse is seen bolting across the fields, a new
door is set in place which, if it had been there a few
hours earlier, would have kept the horse inside. It is
doubtful whether this is a sensible way of designing a
stable [or] a regulatory structure for the insurance
industry. p.28.

44 Beetham, op.cit., forecasts that the present $2 million
requirement for paid up capital 'may very well be inadequate',
and that 'it may be necessary to develop specific or more
detailed regulatory arrangements...for new and marginal forms
of insurers which could become attractive as the market
changes'.(sic.) pp.6-7.
The first deficiency is that there is still no guarantee fund in Australia to protect the buying public from losses that they will suffer when the next insurer fails. The second deficiency is that the ISC still does not release sufficient information at all, let alone in good time, for the public to be properly apprised about the business of licensed insurers so that an informed choice can be made by the buying public.

There is evidence that both of these deficiencies are the result of successful lobbying by the insurance industry of both governments and regulators. In respect of the first will be recalled from Chapter 8 that the industry had persuaded the Liberal government in 1971 that it would not be desirable to establish a guarantee fund.\(^45\) To reiterate insurers' objections, they were and are that it is inequitable that sound insurers should first have to cope with price cutters destabilising the market, and then have to contribute to the losses when failure inevitably overtakes those responsible for the destabilisation. Succeeding governments and regulators have accepted the same argument. It ignores the fact that many insurer insolvencies are the result of fraud.\(^46\)

A further argument is sometimes advanced that policyholder protection would remove any incentive that the buying public might have in selecting a financially sound insurer rather than just the cheapest, and that this would force sound insurers to compete on price which

\(^{45}\) Refer Snedden's Ministerial Statement, 9 December 1971, already quoted in Chapter 8.

\(^{46}\) The Deputy Insurance Commissioner, in a public address on 4 September 1990, commented upon the 14 companies that had failed in the 15 years since the commencement of the Insurance Act, 'each of these cases involved elements of incompetence and fraud.' Quoted in R.Cumpston, 'Insurance Regulation in Australia', Proceedings of the Seventh General Insurance Seminar of the Institute of Actuaries of Australia, September 1990, p.244
would in turn threaten their solvency. There is some force in this argument, but if solvency supervision and full disclosure of financial results are in place then the risk to the market would be outweighed by the benefits to the consumer.

As mentioned in Chapter 9, the ALRC examined the question of policy-holder protection in some detail and received a number of submissions. The ICA rejected the concept although some major insurers, like the N.R.M.A., were in favour.\(^47\) The ALRC recommended that Australia should follow a U.S.A. model which would pay up to 75 per cent of claims to prescribed limits. The Campbell Committee also examined the question and concluded that 'there was no need for government involvement in any arrangements along the lines of those provided in the Policy Holders Protection Act in the United Kingdom',\(^48\) and went on to endorse the view widely held by insurers that it is wrong in principle that competent insurers should be forced to subsidise the folly of others. The existence of a guarantee fund would encourage reckless rate cutting and allow speculative investment of shareholders funds and technical reserves.

This last argument is open to question. Many insurers have cut rates in the past and invested in other than safe securities. However they have done this in the belief that they will make more from their enterprise by conducting it in this manner rather than by following more conventional paths. Indeed some insurers have been very successful in doing this whilst others have failed. But to suggest that an insurer would deliberately risk the collapse of its business on the grounds that policy

\(^{47}\) ALRC Report No.20, p.227.

\(^{48}\) Final Report (1981), para. 20.42
holders' interests would be protected if the insurer failed presumes that an insurer places policy holders' interests above the security of its own business. It does not make sense that rational business people might be tempted to make decisions which could threaten the survival of their own enterprise if they believed the security of consumers was protected.

In relation to the matter of the prudent insurer subsidising the imprudent, it is submitted that the present form of regulation does precisely this at a considerable cost to the community without providing underlying protection for policy holders. A system of guarantees would offer this security. Yet this concept has been rejected consistently by the ISC.49

The largest insurance insolvency in Australia to date was of a British firm, the National Employers' Mutual General Insurance Association, which was put into liquidation in 1990 with a deficit of $361 million.50 This company was, during the late 1970s and early 1980s, the largest private insurer of workers' compensation in Australia. Its inability to accurately determine outstanding claims, which were greatly increased by the unexpected appearance of asbestosis and other industrial diseases, was the basic cause of its downfall. The available records of this company's surpluses, as set out in Table 10.1,

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49 One recent statement was in March 1991 when, paradoxically, the Commissioner of the ISC announced that the Government intended to legislate for life companies to pay a levy to provide protection to for the interests of policy holders in the Occidental and Regal life companies. Policy holders' funds in both these companies had been depleted $65 million in a fraudulent transaction for the supposed sale of the companies. However the Commissioner went on that 'I would need some convincing arguments to be supportive of an all embracing guarantee scheme.' R.Beetham, 'Issues Facing the Supervisor', Seminar, Insurance and Superannuation Commission, Canberra, 19 March 1991, p.9.

whilst requiring explanation for some fluctuations, did not indicate its impending demise until the 1987 figures became available in late 1988.

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<th>Year</th>
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Because the company was primarily an insurer of workers' compensation and because that form of insurance is a state matter, each state was forced to pick up the outstanding liabilities of the company that would pay injured employees their entitlements. Some states have had legislation in place for some years to operate guarantee funds in respect of failed workers' compensation insurers' liabilities whilst others had to legislate specifically. Employers, either through licensed workers' compensation insurers in each state, or a state scheme if in force, have paid for the shortfall by way of premiums or levies. The continuing opposition of the insurance industry to the operation of a Commonwealth guarantee fund does not stand up to close examination and should be rejected.

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Another aspect of the failure of the National Employers’ Mutual relates to the second deficiency of Australian regulation, the lack of information made available about the financial stability of insurers and the timeliness of its availability. The ISC did not act to withdraw the National Employers’ Mutual license until it was placed in provisional liquidation in 1990. It has been alleged that the financial position of the company ‘was causing concern’ to both Commonwealth and state licensing authorities since 1983.52

Actuaries have been complaining since 1979 that, under the Insurance Act 1973 (Section 123), the information available to the public concerning individual companies is inadequate to make a sound judgement on their solvency.53 The Insurance Laws Amendment Act 1991 amended Section 123 to allow the Commissioner discretion to make all accounts and statements lodged with the ISC available for inspection. At the date of publication of the ISC Annual Report 1991-92 the Commissioner was still ‘examining representations from individual insurers and the Insurance Council of Australia relating to the commercial sensitivity of the information before making a decision on the extent of additional disclosure.’ In October 1992 he was still considering the matter.54

The existence of imperfect information about the financial stability of insurers must be remedied if insurance markets are to function efficiently. The counter argument put forward by the industry is that if adverse reports of a weak company were made available then this would destabilise the company and ensure its

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52 Cumpston, 'Insurance Regulation', p.244.


54 Beetham, op.cit.
failure. No evidence is offered that hiding such adverse reports has prevented possible failures in the past.

The quotation at the head of this Chapter that insurance regulation should be restricted to solvency supervision should still be the desired aim of regulation seventy years on. For the system to work timely and complete information about the solvency of all insurers must be made publicly available. Insurers must be prepared to operate in this open manner. Insurers must be allowed to fail, but to suit the current temper of prudential regulation all policyholders in the country should contribute to a guarantee fund that would provide a safety net only for policyholders, but not general creditors, of failed insurers. The ISC should withdraw from its endeavours to regulate the mechanics of the insurance industry, in such matters as when brokers and agents should pay monies owing to insurers, and from the reform of insurance law. The former should be left to market forces and the latter to law reform commissions and the parliament which are less likely to be captured by the industry.
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