

2023 Review of Queensland's Compulsory Third Party (CTP) insurance scheme

Submission to the Motor Accident Insurance
Commission

20 April 2023

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the 2023 Review of Queensland's Compulsory Third Party insurance scheme ('CTP scheme') and to respond to the 2023 Review's accompanying discussion paper ('Discussion Paper') released by the Motor Accident Insurance Commission (MAIC).
2. The ALA thanks MAIC for meeting with the ALA on 21 March 2023 to discuss matters relating to this review.
3. We commend that, while Queensland has the most affordable CTP scheme in mainland Australia, MAIC and the Queensland Government are still committed to exploring ways to improve Queensland's CTP scheme to ensure it is stable, sustainable and affordable.²
4. The ALA will always support improvements to Queensland's CTP scheme to make it more efficient, fair and flexible for motorists and all injured persons – provided those changes are grounded in evidence and prioritise what is best for Queenslanders.
5. The ALA also notes that the Queensland Government has emphasised in the Discussion Paper its commitment to ensuring that "access to common law damages is preserved for injured road users" through Queensland's CTP scheme.³
6. The ALA's submission responds thematically to the questions presented in the Discussion Paper, including in relation to Scenarios 1, 2 and 3.

A note on CTP insurer profit data

7. In correspondence dated 14 March 2023 (**attached** to this submission), the ALA requested that MAIC release CTP insurer profit data, which we contend is essential in order for stakeholders (including the ALA) to comprehensively respond to this review into Queensland's CTP scheme.
8. At the ALA's aforementioned meeting with MAIC and in subsequent correspondence to the ALA dated 23 March 2023 (**attached** to this submission), MAIC declined to release the CTP

² Motor Accident Insurance Commission, *2023 Review of Queensland's Compulsory Third Party insurance scheme* (Discussion Paper, March 2023) 4. ('Discussion Paper')

³ Discussion Paper, 4.

insurer profit data that the ALA had requested. MAIC referred the ALA to seek that insurer profitability data directly from the insurers.

9. The ALA submits that anything less than full financial transparency compromises the ability of stakeholders to respond fully and forensically to this review. This is compounded by a lack of CTP-specific data publicly available from the insurers.⁴

Scenario 1: Status quo

10. The first scenario outlined in the Discussion Paper explores the possibility of making no changes – neither scheme design change nor legislative reform – to the current CTP scheme, which is underwritten by private licensed insurers.
11. Three main consequences of this scenario are detailed in the Discussion Paper:⁵
 - 1) That the ongoing lack of premiums price competition will continue; and/or
 - 2) The possibility that “any one of the licensed insurers may elect to hand in their licence and withdraw from the scheme for any number of commercial reasons”; and/or
 - 3) There would need to be “a renewed focus on process improvements, tightening of premium assumptions and ongoing collaboration with insurers to encourage continued participation in the CTP scheme”.
12. The ALA supports greater competition within Queensland’s CTP scheme. If there are further possible measures which may foster enhanced competition beyond the potential initiatives mentioned in the Discussion Paper, the ALA would be happy to comment those in due course.

⁴ Suncorp’s 2021-22 annual report shows their 2022 Insurance results but not split by insurance type – see Suncorp Group Limited, *Annual Report 2021-22* (8 August 2022) 123 <<https://www.suncorpgroup.com.au/news/suncorp-annual-review/full-year-results-2022>>; QBE’s 2022 Annual Report includes segment information but, again, not split by insurance type – see QBE Insurance Group Limited, 2022 Annual Report (2022) 96 <<https://www.qbe.com/investor-relations/reports-presentations>>; see also RACQ Operations Pty Ltd, ‘Insurance results’, *Annual Report 2021-22* (23 September 2022) 29 <<https://www.racq.com.au/about-us/corporate/annual-reports>>.

⁵ Discussion Paper, 20.

MAIC Forums and CTP Claims Protocol

13. MAIC has held a series of forums over the past six to nine months with licenced insurers, both plaintiff and defendant solicitors, along with the ALA and the Queensland Law Society, with a focus on:
 - a. *What can we do to make the claim process quicker?*
 - b. *What can we do to make the claim process easier?*
 - c. *What can we do to improve claimant access to treatment and rehabilitation?*
 - d. *What are the current barriers to claimants receiving high quality services from the CTP insurer?*
14. The anticipated outcome of these forums is a CTP Claims protocol to which licenced insurers and plaintiff firms will have an opportunity to agree. If this initiative is successful, we anticipate that there will be improvements in efficiencies across the CTP scheme, which will further enhance its strength and success in its current architecture.
15. The ALA submits that, if and when the claims protocol is operational or 'live', any efficiencies must be tracked and reported and reviewed in a period of six to 12 months. We note that the claims protocol is not enforceable and will rely on the cooperation of insurers, plaintiff solicitors and defendant solicitors for it to have any impact on the overall efficiency of Queensland's CTP scheme.
16. Whilst the protocol has not yet been released and the ALA considers that it is sensible to await the outcome of that protocol, we hope that it will positively impact some of the inefficiencies within the CTP scheme before any other wholesale changes are considered necessary. That is, the ALA does not consider there is the need for any fundamental changes but supports the collaborative nature of MAIC's forums for insurers and plaintiff firms to continue to work together to alleviate some inefficiencies in processes.
17. The ALA proposes that the efficacy of the new claims protocol be evaluated six months from its inception. At that point we would hope to see significant and sustainable improvements in critical metrics, including claims duration for each insurer.

Current equality within the CTP scheme

18. The proposal to await the outcome of the protocol rather than consider any fundamental change is further supported by recent data released by MAIC to the ALA for the purpose of this submission. This data is **attached** to this submission.

19. This data provided by MAIC shows proportionate equality amongst the CTP insurers and does not support any proposition that any one insurer holds a disproportionately risky portfolio. The ALA's observations from this data are as follows:

- RACQ have increased their market share over the five-year period, while all other insurers' market share has decreased;
- QBE are settling claims the quickest, AAI the slowest;
- From 2018 to 2021, QBE and RACQI have had similar claim durations, while QBE have a much smaller market share;
- In 2022 RACQI and Allianz claim duration increased by several months, but AAI and QBE claim duration decreased slightly;
- Duration of claims have increased for each insurer since 2018;
- The claim severity is relative to each insurers market share:
 - AAI hold the market share overall, and for each claim severity level;
 - RACQI market share has increased, as has their share of claims added for each severity level;
- Each insurer saw a drop in claims added in 2020 (presumably related to the COVID-19 pandemic), but also in 2022 (the reason for this is not clear);
- Allianz and QBE saw a decrease in claims added over the five years, and they also had a decrease in number of claims finalised;
- AAI, however, also had a decrease in claims added over the five years, but had an increase in the number of claims finalised;
- RACQ saw an increase in claims added and an increase in claims finalised; and
- There is a significant difference in the number of severity 1 claims verses the number of severity 2 to 6 claims and, therefore, the suggestion would be that the

greatest efficiencies to be gained overall from the scheme come from the efficiencies to be gained for severity 1 claims.

20. The ALA submits that this data supports that insurer behaviour, differing business acumen and corporate governance is considered to be the driver of any inequality in profit margins, as opposed to an unequal distribution of risk.

Scenario 2: Retain the existing privately underwritten model with scheme design changes

21. The second scenario canvassed in the Discussion Paper involves “retaining the existing privately underwritten scheme, but with some adjustments aimed at improving competition for the benefit of motorists”.⁶
22. The Discussion Paper notes that any of the proposed design changes would require legislative reform for MAIC to implement any new model; that it is unclear whether the proposals would translate from their application in other jurisdictions into Queensland’s CTP scheme; and that the benefits to Queensland motorists are as yet also unclear.⁷

Premium Equalisation Mechanism

23. The ALA submits that how premium equalisation will foster market competition has not been adequately explained and the ALA thus cannot support this kind of mechanism.
24. The ALA does not consider that there is any data which suggests that this is necessary, nor will it change the underlying behaviours that are causing any inefficiencies within the CTP scheme. The ALA does not support a premium equalisation mechanism.
25. The Discussion Paper proposes further alternatives, such as random allocation, multiple licences and promotion of active decision-making by motorists. The details of each of those mechanisms have not been explained.

⁶ Discussion Paper, 22.

⁷ Ibid.

26. Nevertheless, subject to more detail, the ALA is supportive in principle of any mechanisms which encourage reasonable market competition amongst the insurers.
27. When considering changes to how a CTP insurer is selected by a motorist, the ALA considers that any such changes should ensure that it would not result in any large movement in market share over a short period of time, as this would cause significant issues for claims management and therefore claimant outcomes.
28. Further, the ALA is opposed to any model where CTP premiums are set based on driver experience or risk, including location and/or certain demographics (for example, age).⁸

Scenario 3: A public underwriting model

29. In this scenario, the State itself “would assume the role of administrator and underwriter of the CTP scheme and would become the sole provider of CTP insurance in Queensland”.⁹
30. As the Discussion Paper identifies,¹⁰ publicly underwritten schemes are currently operational in Victoria, Tasmania, Western Australia and the Northern Territory. However, the legislative architecture of the schemes in each of those four jurisdictions is dramatically different.
31. The ALA also acknowledges the hypothetical opportunity for success and efficiencies under this model in Queensland, including as a result of the effective joinder of the governance of National Injury Insurance Scheme, Queensland (NIISQ) and MAIC. The Discussion Paper notes that motorists, injured people and members of the legal profession would no longer need to navigate separate entities regarding the provision of CTP insurance and related claims.¹¹
32. The assessment of ALA members who have had vast experience with CTP schemes in the aforementioned interstate jurisdictions, however, is that publicly underwritten schemes tend to:
 - be more bureaucratic;
 - be less efficient;

⁸ See, eg, references to the NSW model in the Discussion Paper, 11.

⁹ Discussion Paper, 29.

¹⁰ Ibid.

¹¹ Ibid.

- foster more disputes; and
- grow in size and expense, which puts pressure on premiums and can lead governments to restrict common law rights for injured motorists and other injured people in response to the financial pressures on that CTP scheme.

33. Further, in some other jurisdictions, the ALA notes that publicly underwritten schemes have been sold off to private enterprise, leaving the public with a CTP scheme run by a private insurer monopoly. For example, we have seen this in South Australia. This invariably causes major problems and risks for the general public. ALA members in South Australia have reported negative experiences since that privatisation.

34. In Queensland, practitioners have experienced significant challenges in historical abuse claims against Queensland Government departments that have been managed by Crown Law and the Queensland Government Insurance Fund. There is concern amongst practitioners that a public underwritten model for CTP claims could result in similar inefficiencies and, therefore, would be opposed to such a change.

35. As such, the ALA recommends that the Queensland Government does not pursue a public underwriting model for Queensland's CTP scheme. The long-term experience of ALA members is that the determinants associated with government underwritten schemes in Australia far outweigh the benefits.

Conclusion

36. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the 2023 Review of Queensland's Compulsory Third Party insurance scheme.

37. The ALA is available to provide further assistance to the Queensland Government and the Motor Accident Insurance Commission on the issues raised in this submission.



Sarah Grace
President, Queensland Branch Committee,
Australian Lawyers Alliance

Mr Neil Singleton

Motor Accident Insurance Commissioner
Queensland Treasury

14 March 2023

By email only: Neil.Singleton@treasury.qld.gov.au
CC: RACQ, Suncorp, QBE & Allianz CTP Managers

Dear Neil

RE: CTP insurer profit data to adequately respond to scheme review discussion paper

The ALA welcomes the opportunity to provide a submission in relation to the discussion paper released by MAIC regarding the Qld CTP Scheme Review 2023.

We note that insurer profits are fundamental to all three (3) scenarios provided. In order to adequately consider each scenario, the ALA considers that being informed of each insurer's profit margin over the past five (5) years would greatly assist in addressing a response to the discussion paper, and in particular Scenario 2.

Whilst we are grateful for the availability of data and analytics provided on your website and in regular stakeholder consultation on both a quarterly and annual basis, the data shared in that context is aggregated, and not broken down by insurer.

We refer to the recent rethink CTP campaign where RACQ sought, unsuccessfully, to promote a scheme re-design to strip common law rights; they did so acknowledging that their lack of profits was a key impetus for that campaign. During that campaign, a RTI for the individualised profit data was made to MAIC. The RTI application was refused, and not subsequently litigated. Plainly in our view, the landscape has now changed.

The ALA appreciates issues of commercial-in-confidence and does not propose that the CTP insurers should reveal any sensitive data of that nature. An overall percentage margin and dollar figure for each financial year is all that is sought and is clearly relevant to all scenarios (but especially scenario 2). Without this, it seems stakeholders and the government will be hamstrung by incomplete information, which risks a poor outcome for this review.

If "commercial in confidence" had ever been a sound rationale for keeping the individual margins secret; the government's release of the discussion paper makes it clear that that data ought to be now available to all stakeholders. To be clear, we do not think we can respond fully to the discussion paper without that data.

We would appreciate the release of this information at your earliest convenience.

Yours sincerely,



Sarah Grace
Australian Lawyers Alliance
President of Queensland Branch



23 March 2023

Sarah Grace
Australian Lawyers Alliance
President of Queensland Branch

Via email: sgrace@shine.com.au
CC: greg.spinda@schultzlaw.com.au, rodhodgson@outlook.com.au

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Dear Sarah

ALA request for CTP insurer profit data to adequately respond to scheme review discussion paper

Thank you for your correspondence dated 14 March 2023 and for the subsequent discussion on 21 March 2023 in relation to your request for CTP insurer profit data.

As mentioned in our meeting, MAIC is not in a position to release the information requested. Any detail of individual insurer profitability would need to be sought directly from the insurers.

The fact that scheme profitability performance is not distributed equally amongst all insurers is well documented. RACQ have recently made public statements including some metrics of their recent performance.

MAIC appreciates the concern that this lack of information may prevent the ALA from making a fully informed submission, and we note this is likely to be a factor raised in any submission you do ultimately provide.

As an important stakeholder in the Queensland CTP scheme, MAIC would appreciate your observations and responses to the Discussion Paper where possible.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Singleton', is written over a white background.

Neil Singleton
Insurance Commissioner
Motor Accident Insurance Commission

Severity Data Pack

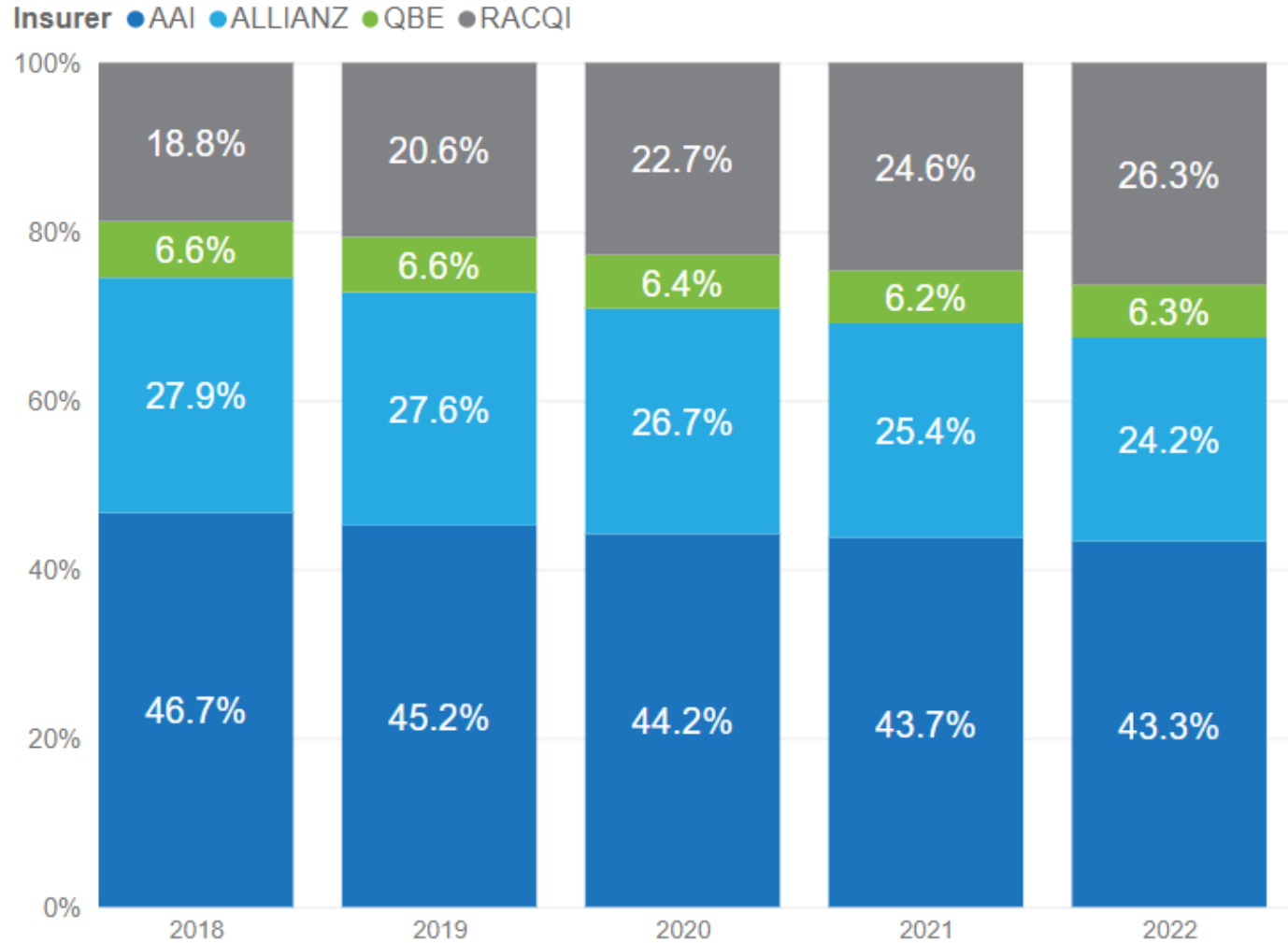
March 2022



NIISQ



Market share



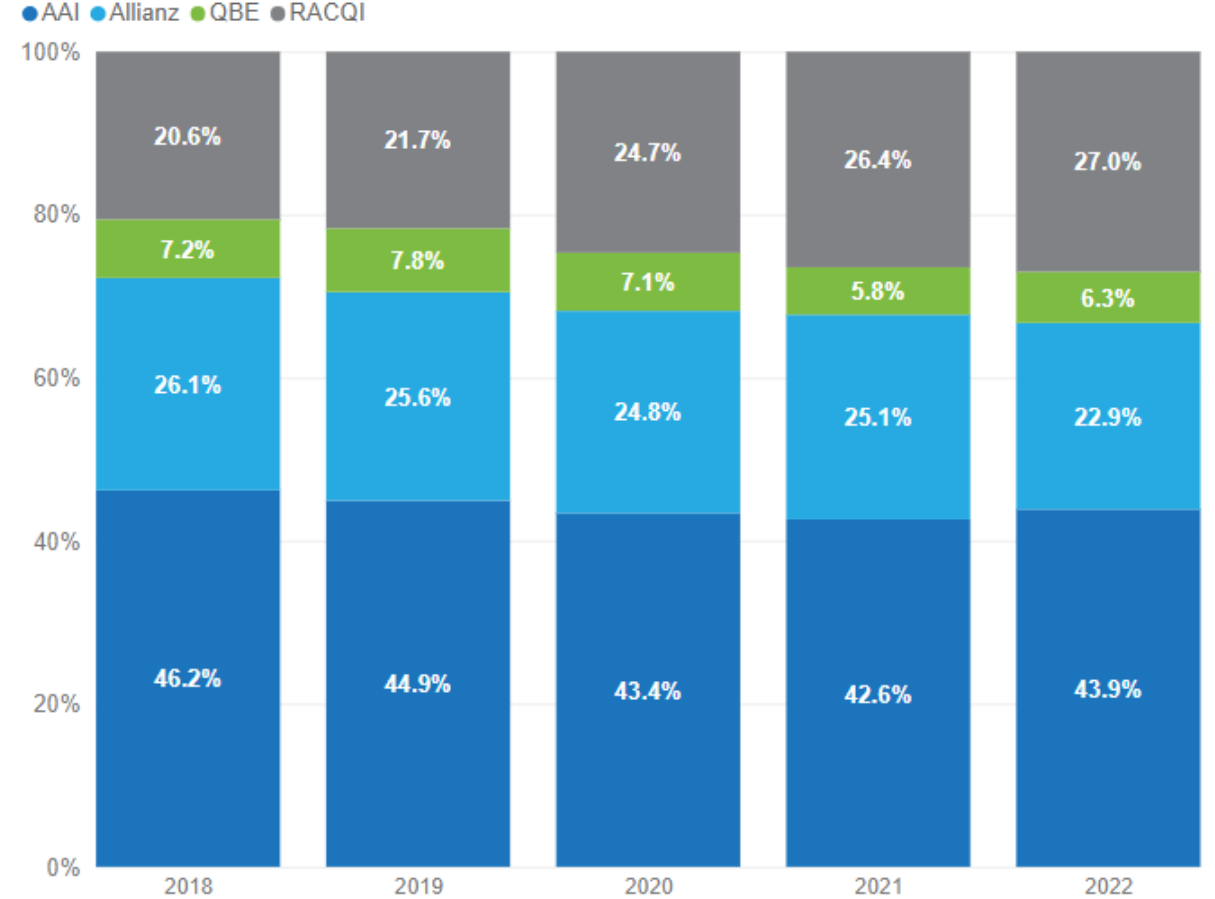
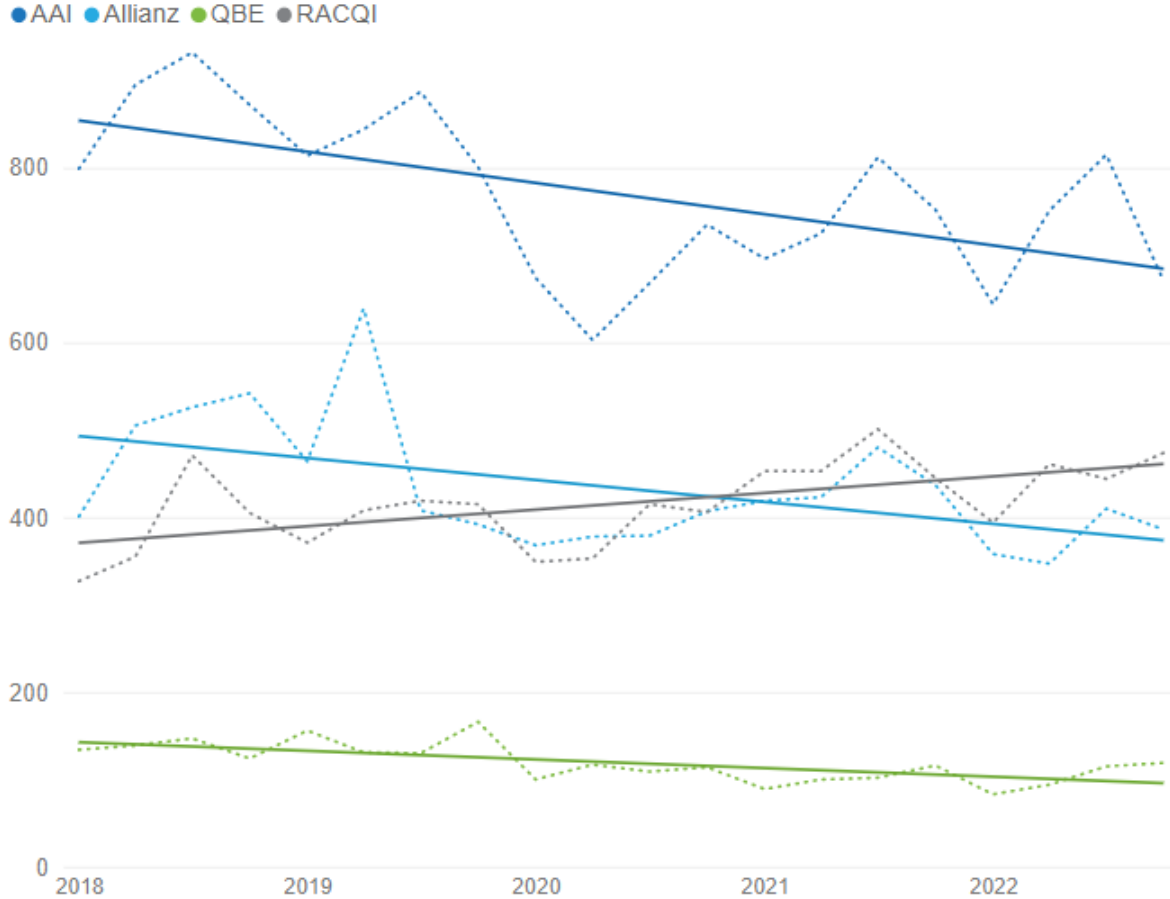
Claims added



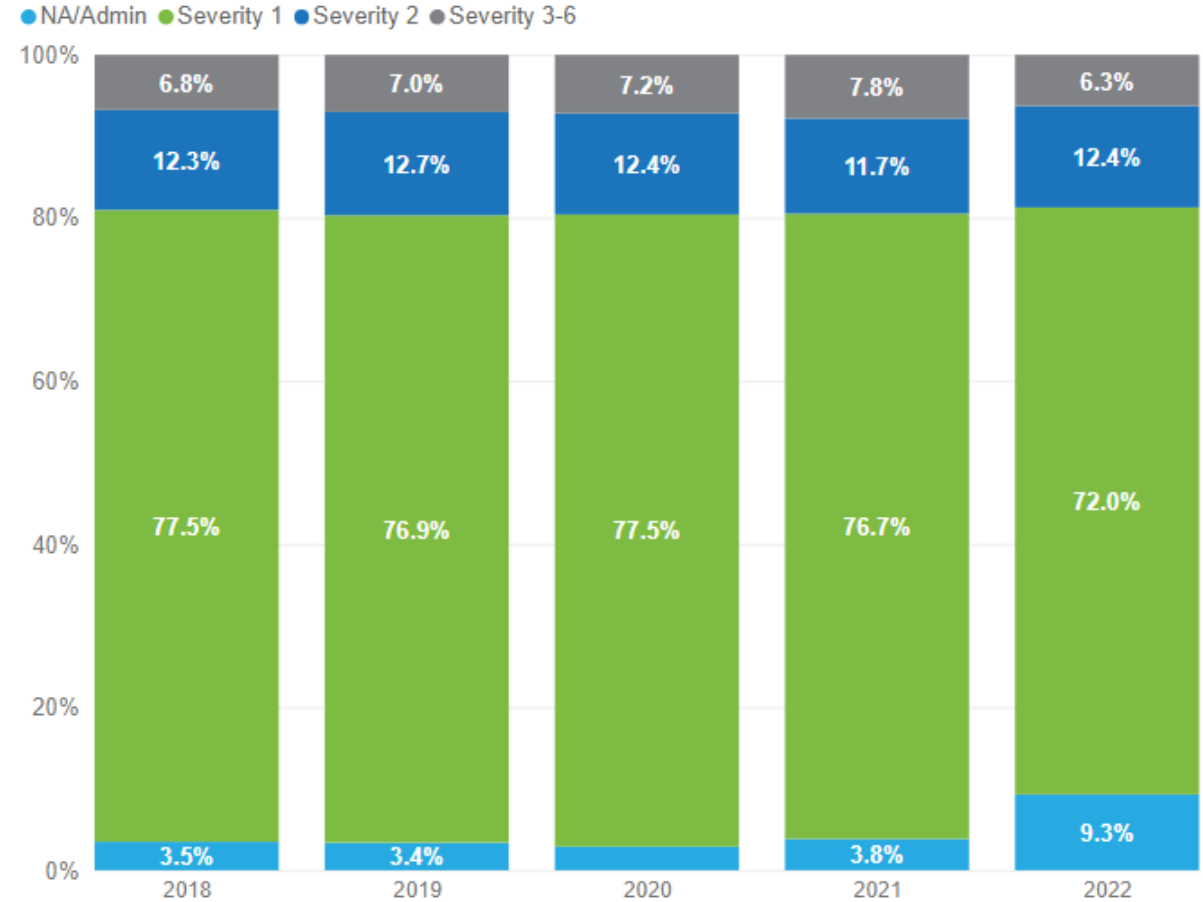
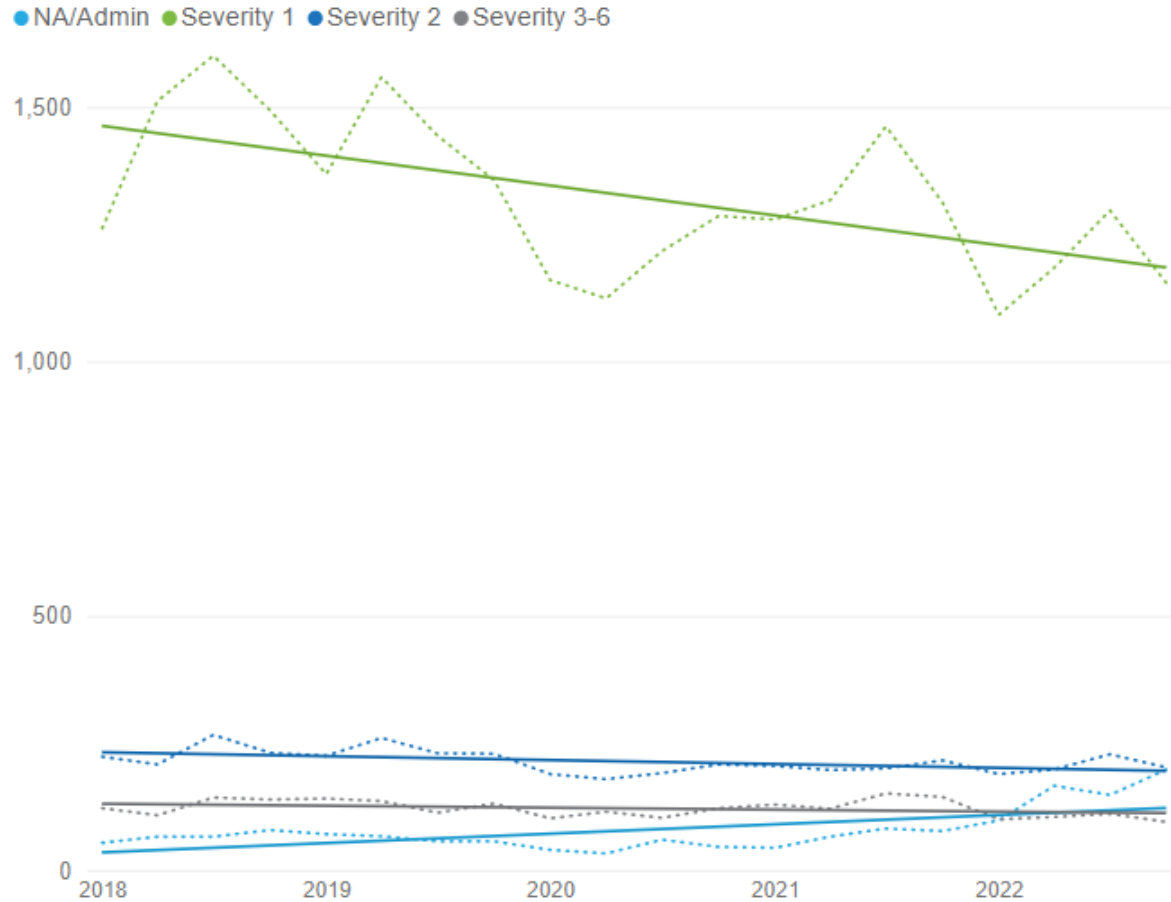
NIISQ



Claims Added, by Insurer



Claims Added, by Severity



- *Please note; severity will develop over time as more information regarding a claimant's injuries becomes available.*



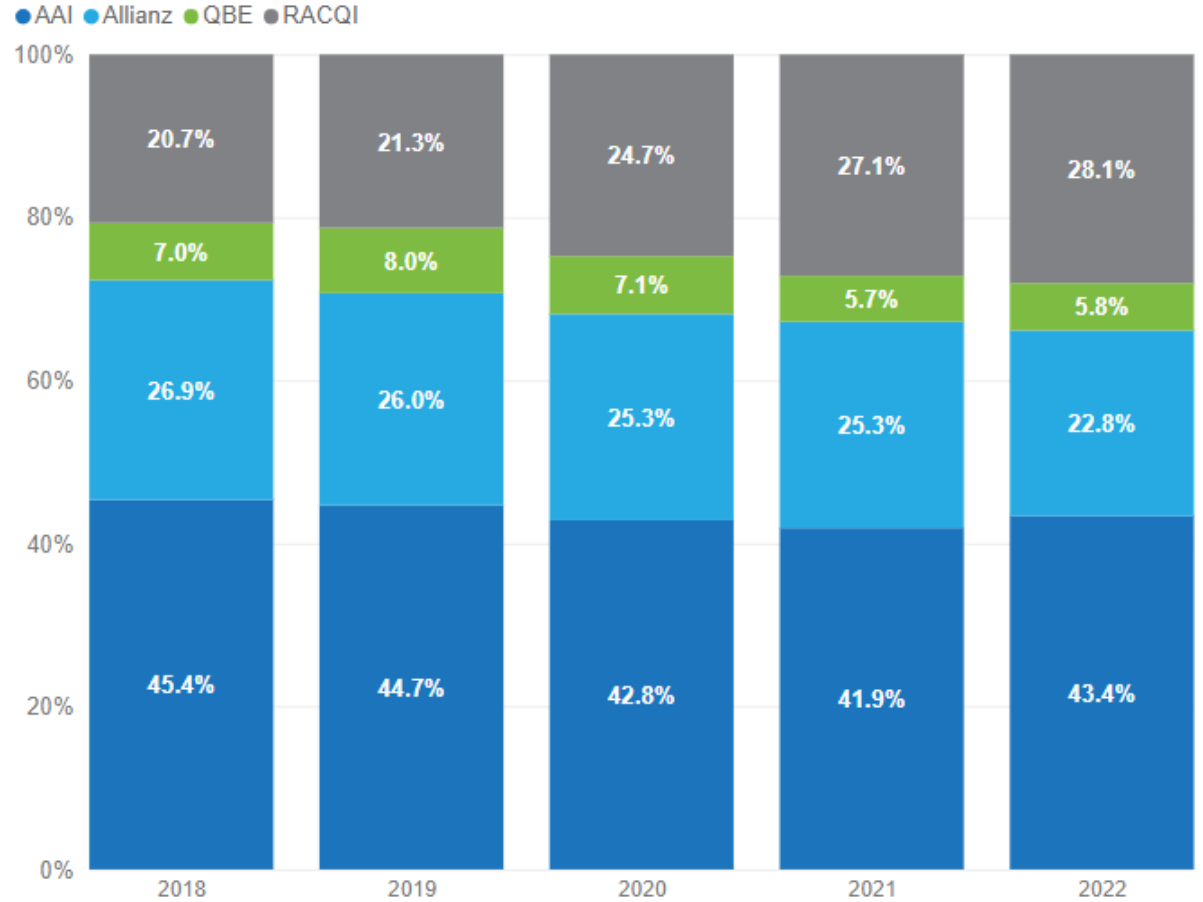
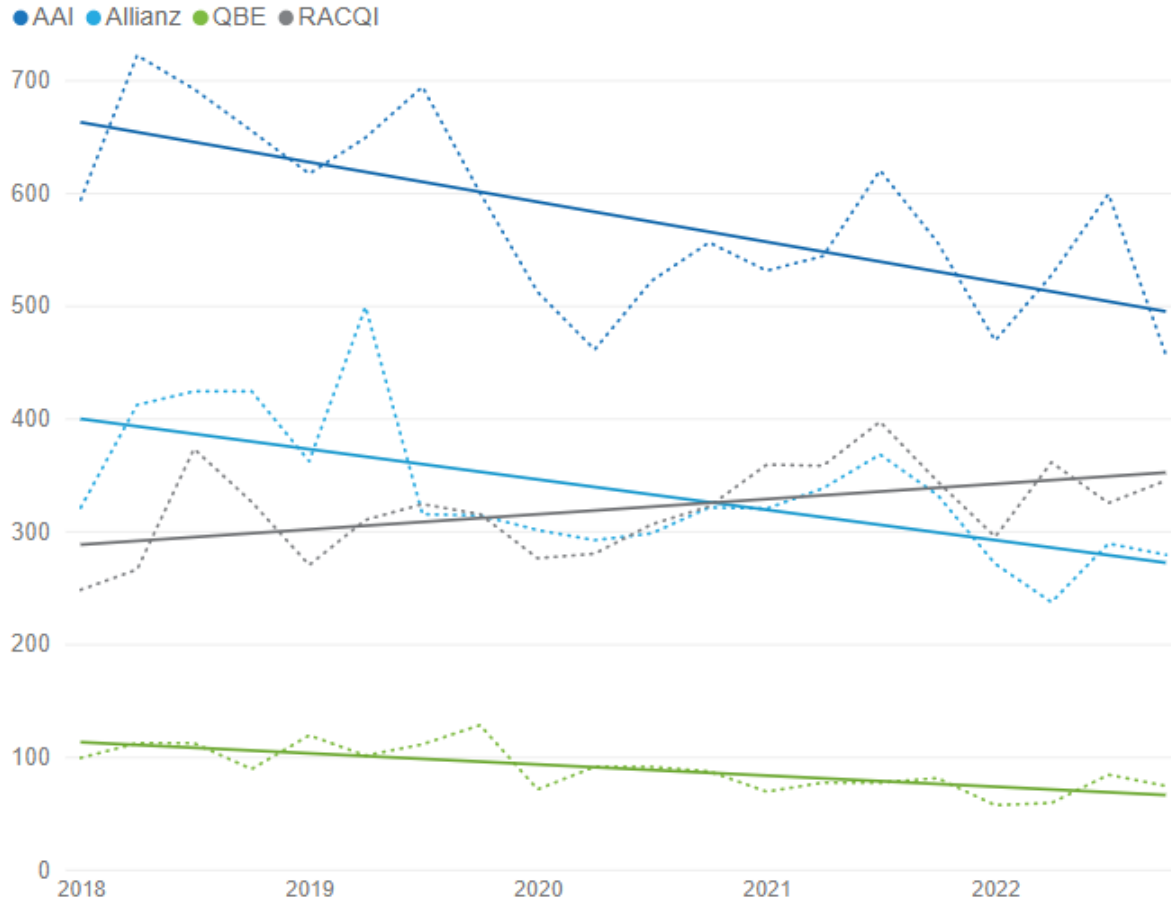
Claims added – Severity



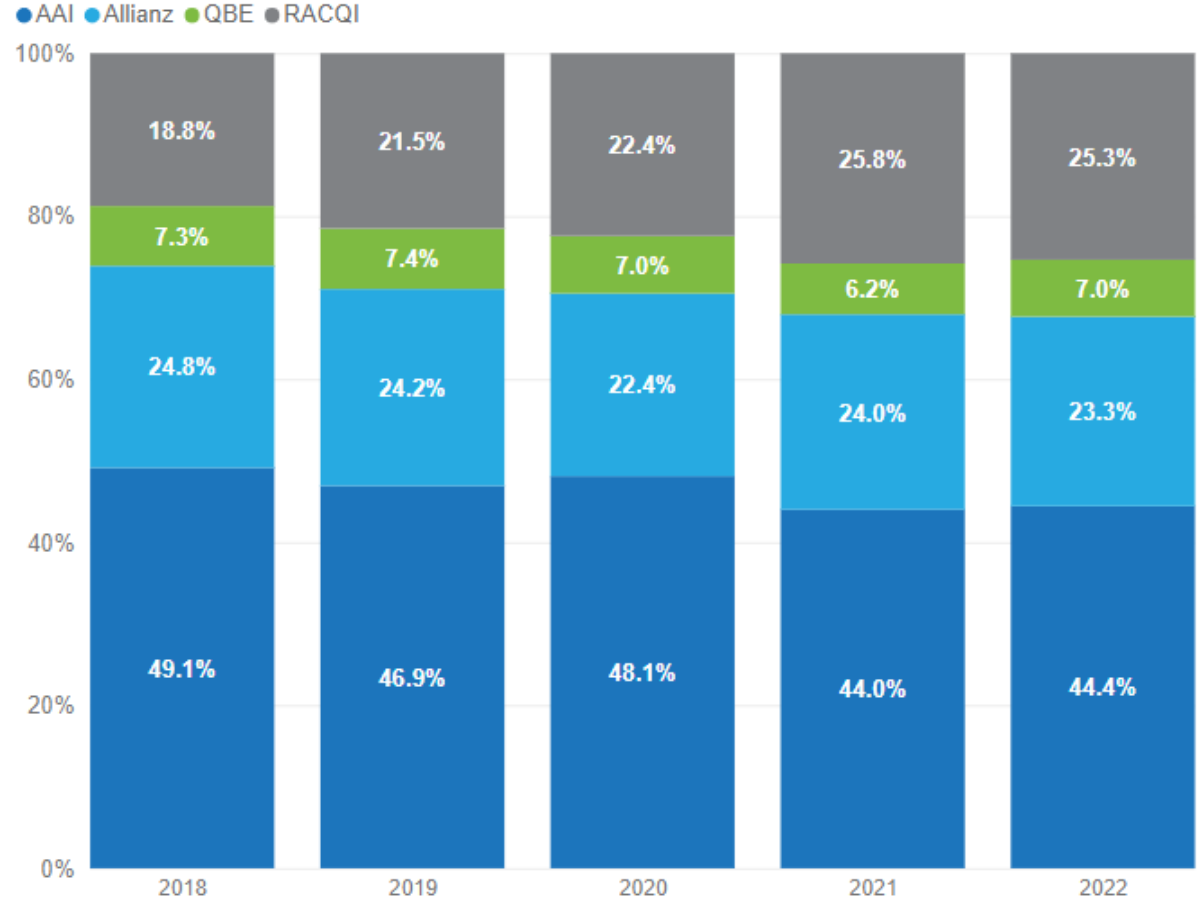
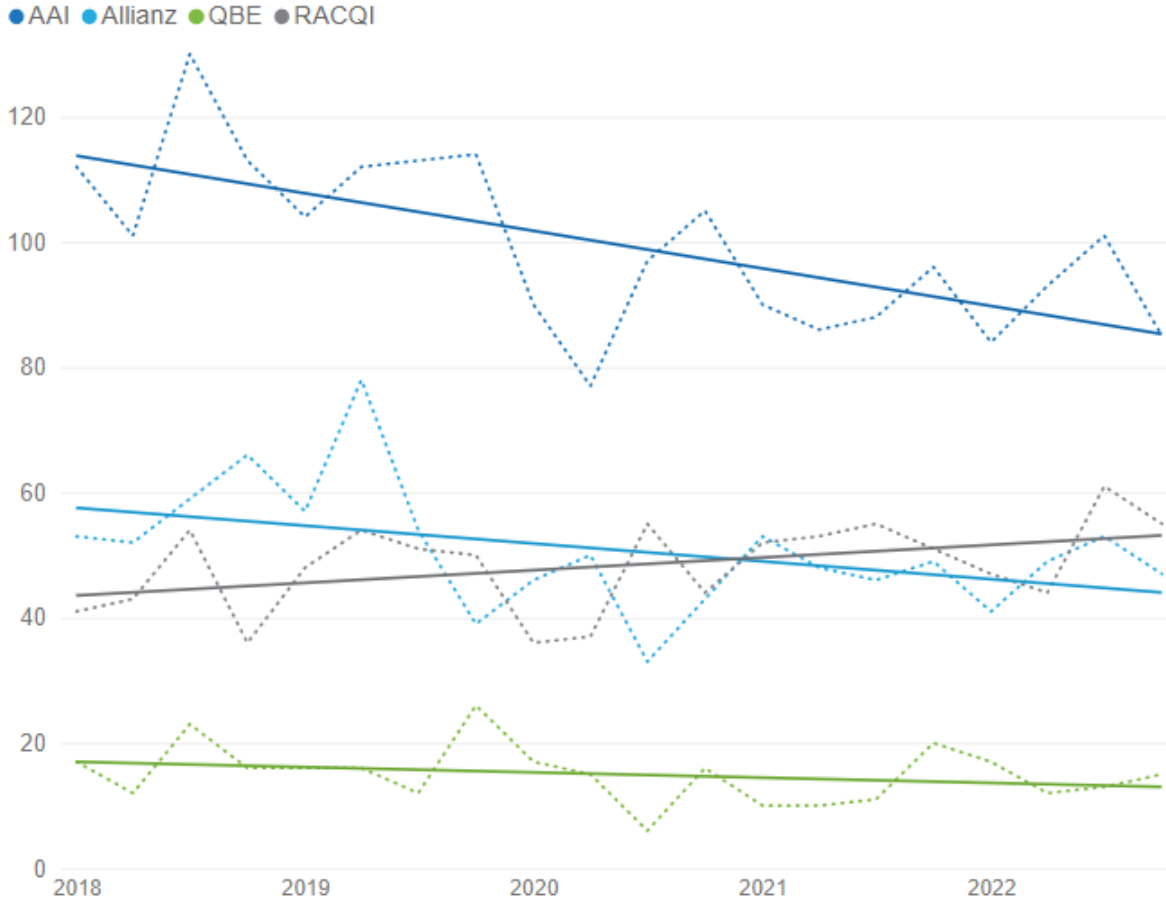
NIISQ



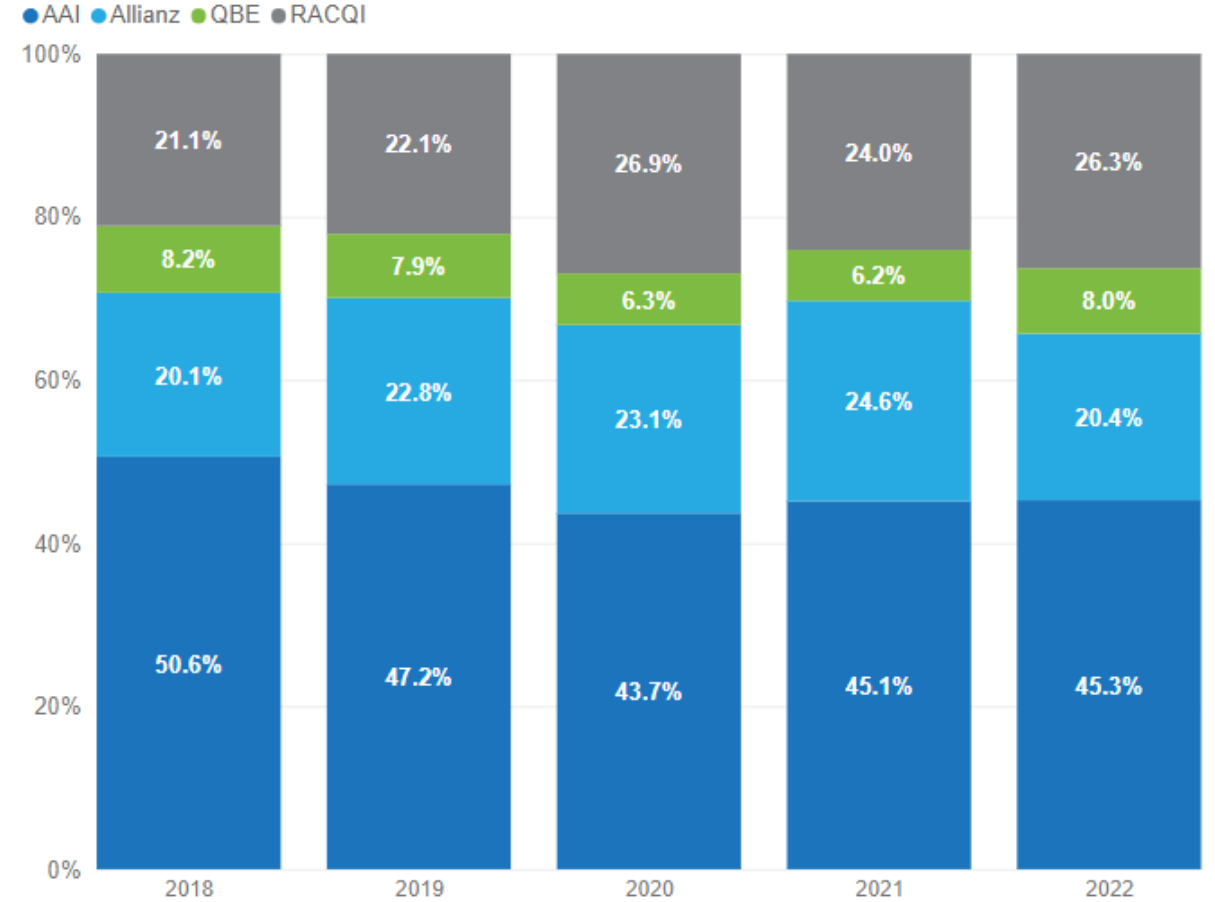
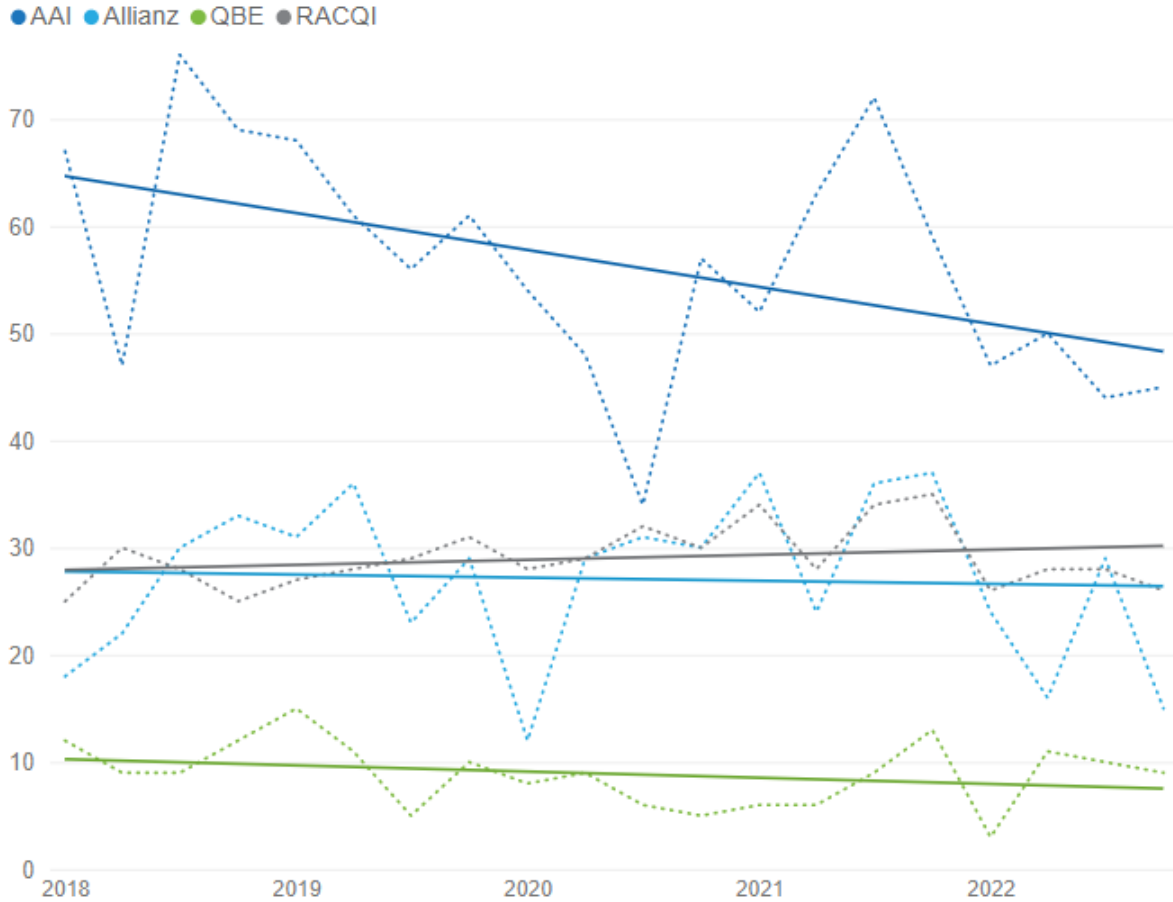
Claims Added – Severity 1



Claims Added – Severity 2



Claims Added – Severity 3-6



Claims finalised



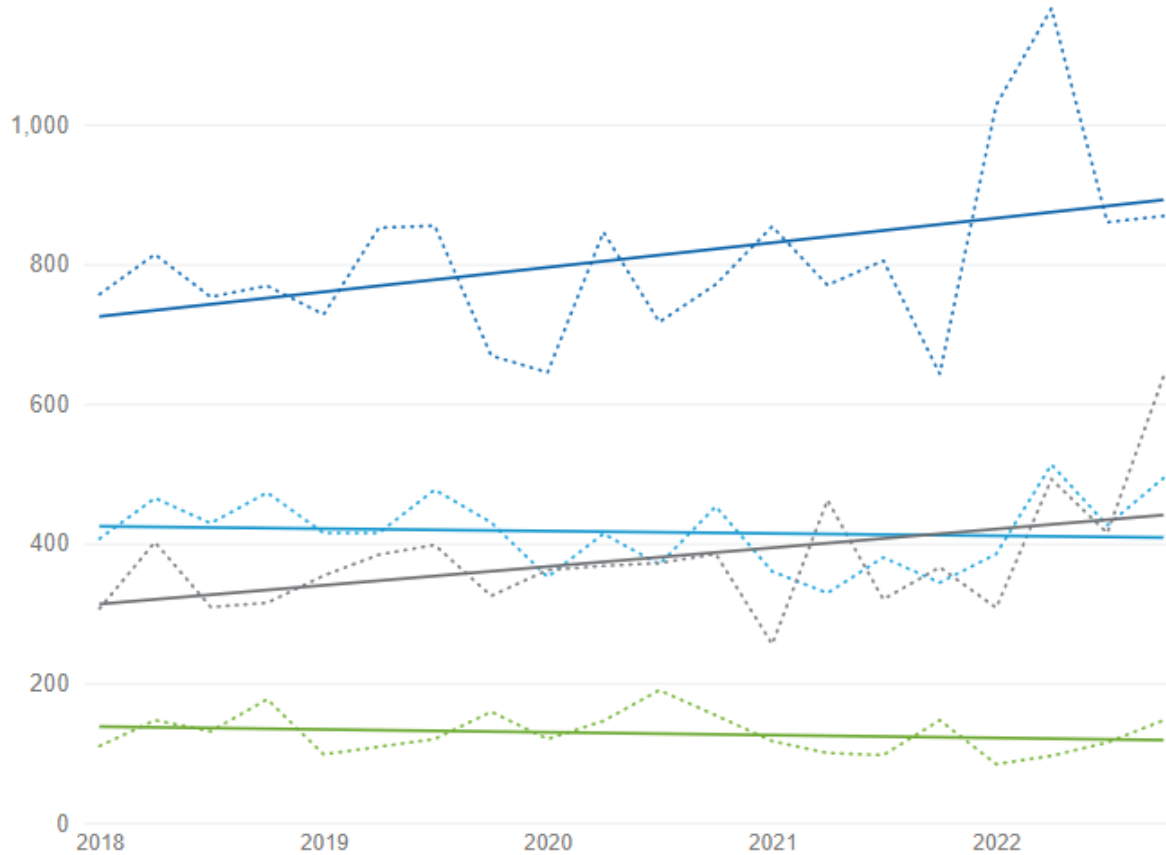
NIISQ



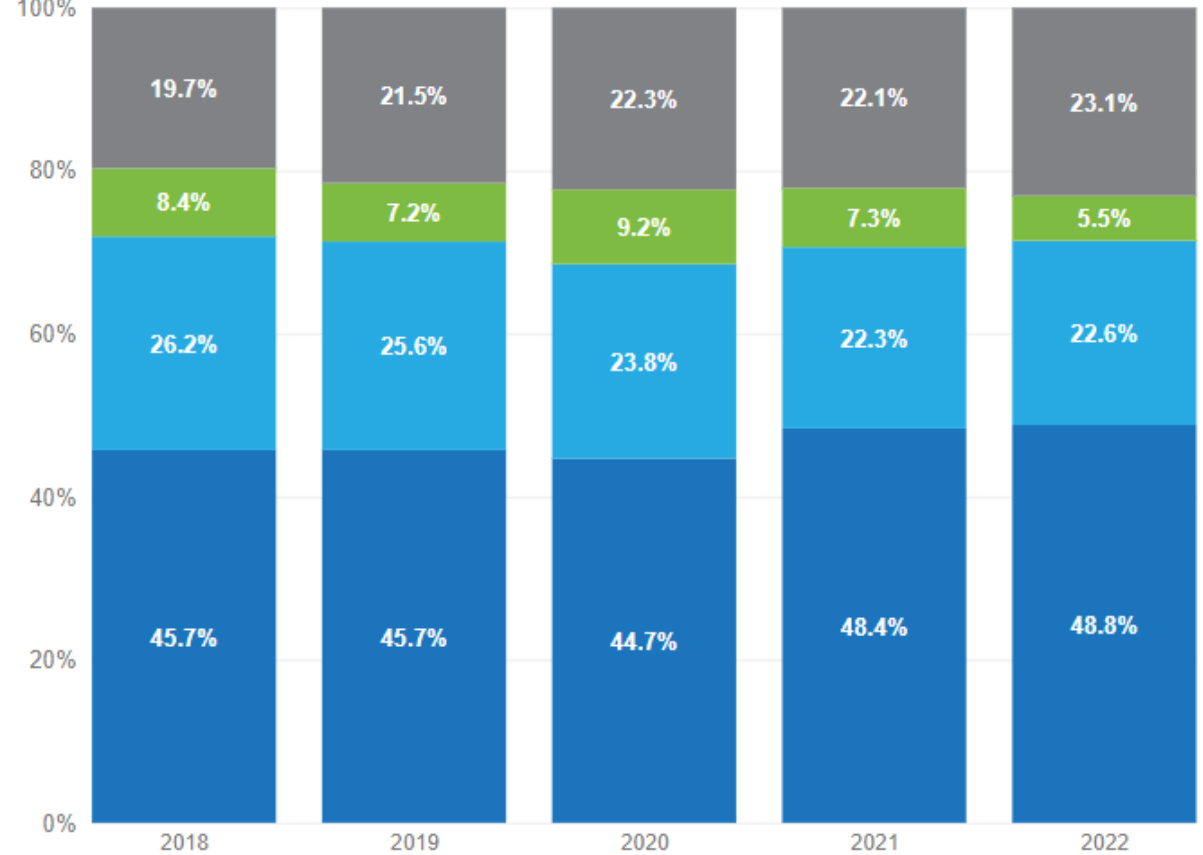
Nominal
Defendant

Claims Finalised, by Insurer

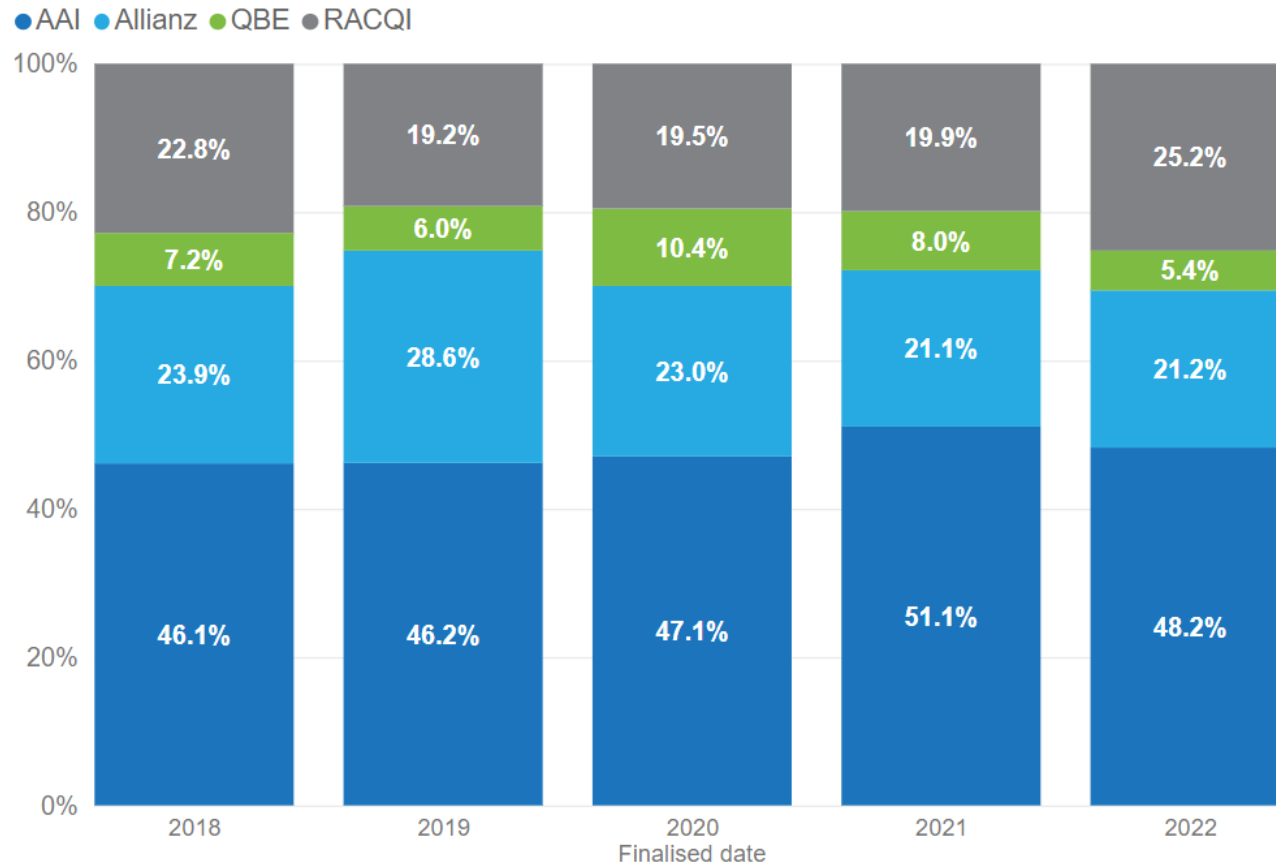
● AAI ● Allianz ● QBE ● RACQI



● AAI ● Allianz ● QBE ● RACQI



Total claim size, by Insurer



- *Note; dates refer to when the claim was finalised, not when payment was made*

Notification to finalisation (average months)

