



# Injury Schemes Seminar\*

**Balancing Outcomes**

10–12 November 2013  
Sheraton Mirage Gold Coast

\* Formerly the Accident Compensation Seminar



**Actuaries  
Institute**

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## SYNOPSIS

### A RELATIVELY RISKY PRACTICE: DRIVERS OF COMMON LAW PAYMENTS

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**Key words:** Common law, analytics, risk factors, data visualisation, medical indemnity

**Purpose of your paper:** By analysing risk relativities across jurisdictions and time for a database of US malpractice claims, we determine which drivers are universal features and how these are impacted by changes in the common law environment.

**Synopsis:** Changes in legislation can impact common law settlement amounts, but not always as anticipated. For example, do caps on general damages reduce the aggregate cost or do they end up increasing this as the cap becomes the default settlement amount? It can be difficult to assess the success or failure of broad legislative amendment in a relatively homogeneous common law environment such as Australia. Thankfully, we can explore the drivers of common law payments across diverse jurisdictions by using a comprehensive database of US medical malpractice claims.

Since malpractice in the US is legislated at a state level and varies considerably between states, we have a strong foundation for understanding the universal drivers of common law payments. This includes the impact of legislative changes on these payments, and the responsiveness of common law settlements to specific legislative action. Using data analytic methods, we can isolate drivers that are likely to translate to the Australian marketplace. By analysing the risk relativities across jurisdictions and time, we determine which drivers are universal features of malpractice claims and how these are impacted by changes in the common law environment.