



**QBE Submission
NSW CTP scheme reform**

May 2016

About QBE

QBE is one of the few domestic Australian-based financial institutions to be operating globally, with operations in and revenue flowing from 38 countries. Listed on the ASX and headquartered in Sydney, stable organic growth and strategic acquisitions have seen QBE grow to become one of the world's top 20 insurers with a presence in all of the key global insurance markets. As a global insurer, QBE believes that Australia must continually look to refresh its financial and regulatory systems to ensure the nation remains competitive with global financial markets, and attractive to investment.

As a member of the QBE Insurance Group, QBE Australia operates primarily through an intermediated business model that provides all major lines of insurance cover for personal and commercial risk throughout Australia.

QBE Australia has a major presence in the Australian workers compensation and compulsory third party sectors providing insurance and specialist agency services in most jurisdictions throughout the country. QBE also has extensive experience in these areas in international jurisdictions.

QBE is one of the licenced insurers currently providing compulsory third party (**CTP**) insurance in New South Wales.

Background

In March 2016, the NSW Government (**Government**) announced a major review of the NSW CTP scheme (**Scheme**) issuing an options paper as the first step in a genuine and broad ranging consultation process (**Options Paper**). This review is aimed at creating a fairer and more affordable scheme for road users and focuses on four key objectives:

- Increasing the proportion of benefits provided to the most seriously injured road users;
- Reducing the time it takes to resolve a claim;
- Reducing opportunities for claims fraud and exaggeration; and
- Reducing the cost of green slip premiums.

The Options Paper poses a number of policy questions and puts forward a number of options for Scheme reform, including retaining and improving the current common law fault-based system, as well as moving to a no fault, defined benefits system. A hybrid option is also outlined along with possible premium and underwriting system reforms.

Mandatory compensation schemes supporting injured persons are generally developed as a response to serious societal problems and are established to address a range of socio-cultural, economic and political arrangements. As societal expectations and scheme experience changes, there is a continual challenge to ensure suitability and sustainability for the future. Compensation schemes need to be reviewed and adjusted to ensure societal needs and benefits for injured individuals are recognised and appropriately balanced against the rising costs for participants, inefficiencies and funding deficits that can be faced.

QBE welcomes the opportunity to participate in the Government's consultation on Scheme, supports the key objectives outlined by Government to measure performance and develop reform options, and appreciates the consultative approach taken by the Government.

QBE recognises that determining this balance and establishing and maintaining a statutory compensation scheme that is both financially and socially sustainable, is a matter of public policy for governments.

QBE underwrites and provides agency services in a variety of statutory compensation schemes, both in Australia, and internationally. These schemes have varied design and benefit structures including fault based, hybrid and no fault schemes. QBE has the capability and capacity to underwrite and provide support for any variant of a viable and sustainable compensation scheme. As one of the truly international insurers to operate in this space (either as a private underwriter or agent), QBE would be pleased to provide Government with any further detail or insights into the consultation process for Scheme reform.

Potential reform options

QBE has participated in and supports the Insurance Council of Australia's submission on the Options Paper (*ICA Submission*).

As outlined in the ICA Submission, we support Option 3 (moving to a hybrid no-fault, defined benefits scheme with common law benefits retained in parallel) as the most likely option to achieve Government's objectives.

To assist Government in its consideration of the potential options for reform, the ICA Submission also includes actuarial analysis of a possible option 3 model. This analysis is aimed at providing information as a first step about the nature and extent of the reforms that may be necessary to achieve Government's pricing objectives, recognising, however, that further work or variants are likely to be required as the consultation develops.

Appropriate incentives should be embedded in the Scheme to establish and maintain a scheme that is both financially and socially sustainable, with a range of elements that will need to work together. QBE considers the following overarching attributes will be critical for successful scheme reform:

- Fairness to injured persons, promoting recovery and rehabilitation, helping people bring their lives back together after an accident.
- A reasonable balance of entitlements and premiums to establish and maintain a fully funded scheme.
- Effective management of the Scheme to strive for efficiencies to maximise the proportion of premiums paid to claimants.
- Timely, consistent, efficient and easy to navigate dispute management processes.
- Appropriate scheme governance, with separate scheme management and regulatory oversight.
- Scheme consistency.

QBE also considers the following are important hygiene factors for consideration in Scheme reform:

- There should be a focus on revising the existing adversarial approach with a view to improving health outcomes, with insurers empowered to be directly involved in care and rehabilitation.
- Optimally, the architecture and wording of the legislation needs to be simple and easy to understand and administer.
- There should also be a focus on ensuring processes can be easily understood and navigated by claimants.

We recognise and appreciate that effective consultation with industry experts and other relevant stakeholders on scheme reform and design is necessary to develop a Scheme that will be successful and sustainable into the future.

Questions on policy considerations

1. Should there be support or a safety net for anyone injured on the roads?

There is some justification to support incorporating all road users under the Scheme in terms of simplicity and universal coverage for accidents that occur on roads. There is however, a public policy question as to whether premium paying motorists should be subsidising other non-paying users (such as bicycles). Including additional participants, without increasing the premium pool, will obviously put pressure on existing premiums and reduce affordability, unless this is factored into the broader scheme reform (by way of reduced or redistributed benefits).

2. Is it better to make a claim against your own insurer as opposed to the insurer of the at-fault driver. If so why?

There are arguments both for and against a third party or first party Scheme model. The key issue, regardless of the model adopted, is to ensure the Scheme is structured in a way to enable insurers to focus on helping people recover from their injuries and resume their life as quickly as possible after an accident. QBE's claimant focus is to ensure we engage with injured motorists with humanity and humility, helping people to recover as quickly as possible.

Any move to implement a first party Scheme model by Government would need to be carefully considered. Government should recognise that a first party model may favour certain insurers over others and may impact on competition in the Scheme. As such, the transition to a first party Scheme, if adopted, would need to be carefully managed to ensure there are no unintended consequences.

3. Private or public underwriting

As outlined in the ICA Submission, insurers underwrite a variety of schemes with differing benefit designs including fault based, no fault and hybrid schemes. QBE does not agree with the comment in the Options Paper that defined benefits, no fault schemes are typically delivered by publicly underwritten monopoly providers.

In Australia, there are ten separate workers compensation systems and eight separate compulsory third party systems. Governments at both state and federal level with publically underwritten schemes have significant exposure and fiscal liability for personal injury schemes. Additionally, unlike APRA prudentially regulated insurers, government monopoly schemes are not subject to consistent prudential or pricing oversight and can be subject to and influenced by conflicting social and political pressures.

Various governments have embarked on scheme reviews and reform programs in recent years, leading to overhauls of scheme administration arrangements focused on addressing rising scheme costs, substantial funding deficits and slower injury recovery and return to work rates. Further reform remains on the agenda.

Insurance is not “core business” for government. Having private capital underwriting supporting scheme liability has a range of benefits over public underwriting including:

- Greater competition and certainty in pricing, with less potential for volatility driven by underlying political objectives.
- Greater innovation in claims management with more incentive for private insurers to invest in systems and practices to ensure the best community and financial outcomes are achieved for all parties.
- Less potential for inherent conflicts, with the regulator able to focus on scheme design principles and regulating the scheme rather than underwriting, managing and administering the scheme.
- Increased clarity and delineation of roles between scheme regulators and the prudential regulator (APRA). Put simply, APRA can focus on the prudential and capital adequacy aspects of the scheme insurer and the scheme regulator can focus on the delivery of the scheme legislative and regulatory intent, avoiding any duplication of effort or conversely, avoiding gaps in regulation.
- Improved capital management of the schemes, with prudential oversight by APRA, reducing the probability of schemes falling into deficit.
- Reduced fiscal volatility for governments (and flow through implications for taxpayers) through removal of the potential for ratings agencies to consider scheme deficits when assessing state credit ratings.

Accordingly, QBE strongly submits that Government should retain private underwriting. If Government were to consider returning to public underwriting delivery of the Scheme, the following considerations would be important:

- The Scheme is currently exposed to approximately \$4 billion in outstanding claims which is presently borne by, and diversified amongst, the licensed insurers of the Scheme. With public underwriting, Government will be exposed to the entire risk pool and the resultant fiscal volatility;
- As insurance is not “core business”, Government would need to significantly increase expertise, capability, capacity, people and systems to undertake this endeavour, which again will add to Government’s fiscal liabilities and the size of the bureaucracy.
- Public underwriting would be inconsistent with Government’s aim for New South Wales to be the “place to do business” and Government’s desire to expand and maintain areas where competition already exists.

4. How should Government best deal with fault?

The Scheme currently is primarily fault based, making it complex and adversarial leading to disputes over liability, extent of fault, severity of injury and the amount of compensation. This can create friction points which can lead to high legal, medical and administrative costs, court action and delayed compensation. This also impacts premiums which are high, particularly compared with other states, and affordability is decreasing.

There is significant commentary on the advantages and disadvantages of “fault vs no fault” compensation schemes. There is already a limited no fault injury scheme in operation in New South Wales, with life time care available for significant injuries and ANF for minor injuries. Similarly, there is no-fault for children and blameless accident provisions that can create a no-fault environment (for example, for pedestrians). Some expansion of no-fault cover is a logical evolution, not revolution however, Scheme reform would need to address how these additional liabilities are to be funded.

An appropriately designed and funded no fault CTP scheme would also assist to reduce the burden on the health and social welfare system. Consistent however, with personal responsibility being a relevant factor to scheme design, we make the following suggestions when considering expanding the Scheme to a no-fault model to minimise moral hazard:

- Entitlement to benefits (and common law damages) should be excluded or minimised for injuries that occur in the course of an illegal act or enterprise;
- Some benefits and heads of damage should be reduced to reflect contributory negligence;
- Consideration could be given to defining percentages for some common contributory negligence situations such as a motorcyclist not wearing a helmet, a passenger or driver not wearing a seatbelt, a passenger getting into a vehicle with an intoxicated driver. This would increase certainty.

Additionally, to the extent that no-fault benefits are to be adopted, QBE suggests that careful consideration needs to be given to the payment mechanism for loss of income benefits to ensure the right incentives are embedded in the Scheme, and that the Scheme does not inadvertently become a de-facto social welfare system.

For example, there is a risk that payment of weekly benefits structured like a workers compensation style model will:

- lead to higher medical utilisation, and superimposed inflation of medical costs;
- create tax implications with insurers required to withhold PAYG tax and issue group certificates (again impacting on the principle that the majority of the premium should be going to the injured person and reducing Scheme efficiency);
- create higher claims costs, as people will be more inclined to remain on weekly payments until they expire, and may not be sufficiently incentivised to return to work;
- will deliver longer claims duration if payments are made over 3 -5 years;
- come with their own challenges in respect of fraudulent activity.

5. What changes to the CTP scheme could increase competition?

The issue of competition in the Scheme was addressed in the recommendations in the Report into Insurer Profits (currently being separately considered by Government) and will need consideration in the context of the broader Scheme reform, as this develops. We would be pleased to provide additional insights in this respect, however some preliminary considerations that QBE considers could increase competition include:

- Maintaining the fully funded test to avoid the risk of an insurer using CTP as a loss leader by deliberately underfunding;
- Increasing the speed at which insurers can change prices by improving the rate filing process;
- Minimising the use of risk pools (these remove competition from a section of the market – the larger they get, the less competitive the market);
- Regulating the total costs of policy acquisition in a way that treats all insurers equally.

Conclusion

QBE supports Government's consultation on significant reform of the existing CTP Scheme to deliver a more sustainable, efficient, timely and affordable Scheme for New South Wales and we look forward to further consultation as the reform process develops.

If there is any further detail or information QBE could provide that would assist, please do not hesitate to contact Kate O'Loughlin, Head of Government Relations & Industry Affairs at

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