



**Submission to the NSW Government's
discussion paper on insurer claims
handling and dispute resolution in CTP
motor accident insurance**

November 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 37 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 general insurance and reinsurance companies, with a presence in all 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 & New Zealand (**QBE**) operates primarily through an intermediated business model that provides all major lines of general insurance cover for personal and commercial risk throughout Australia.

QBE has a major presence in the Australian workers compensation and compulsory third party (**CTP**) 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 CTP insurance in New South Wales (**NSW**).

Background

In March 2016, the NSW Government (**Government**) announced a major review of the NSW CTP scheme (**scheme**) aimed at creating a fairer and more affordable scheme for road users and focusing 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.

QBE supports the key objectives of the scheme outlined by Government and appreciates the opportunity to participate in the reform consultation process.

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 scheme 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 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.

In November 2016, the Government issued two further discussion papers focusing on insurer profits and claims handling and dispute resolution. QBE has participated in and supports in the Insurance Council of Australia's (**JCA**) submissions on these matters.

QBE welcomes the opportunity to provide this brief submission providing additional commentary in response to the Government's discussion paper on claims handling and dispute resolution.

Questions for consideration

As noted above, QBE supports the ICA's submission in response to the claims handling and dispute resolution discussion paper, but offers the following additional comments.

1. What do you believe are the major issues, cultural or otherwise, for insurers, and other service providers, in moving to a defined benefits scheme?

As previously indicated, QBE is broadly supportive of the Government's proposal to move to a hybrid no fault defined benefits scheme, which retains common law benefits for those most seriously injured.

QBE considers that the move from an adversarial common law scheme to a defined benefits scheme will positively change the culture of the scheme as a whole. It will allow all parties to focus on restoring the health and quality of life of injured road users. While the move to a defined benefits model will change the role played by our claims staff to a degree, our claims philosophy – to help people to bring their lives back together after an accident – is consistent with the move to a defined benefits scheme. Removing adversarial aspects of the scheme will further assist our staff to build relationships with injured parties and support their recovery. QBE sees this as a positive outcome for both injured road users and individual claims staff.

We note that moving to a defined benefits no fault model will increase the number of people who are able to access support under the scheme, likely leading to a greater call on dispute resolution services.

Detailed information about the specifics of the proposed scheme are not yet available, so QBE cannot at this stage comment on whether the Government's reform objectives are likely to be achieved. Care should be taken to ensure that the changes made do not cause unintended consequences.

2. What do you believe are the key considerations in establishing the support and advocacy service?

QBE considers that the proposed support and advocacy service will need to be carefully designed to ensure that it achieves the desired outcomes, and does not duplicate services that are already provided by existing service providers and professionals. Further, the role of a claims advocate should be limited to guiding people through the scheme, rather than undertaking the role of formally trained legal professionals.

We note that there would be benefit in considering the following questions:

- › Who would regulate and oversight claims advocates?
- › What ethical and professional obligations would they be subject to?
- › How would their independence be maintained, especially if they are situated within SIRA?
- › Would insurers still be permitted to use lawyers, or would claims staff need to deal directly with experienced advocates?

3. Which support and advocacy service option do you think would deliver the best outcomes for claimants and why?

Please refer to our response to question 2.

4. What do you believe should be the powers of the Claimant Advocate?

Please refer to our response to question 2.

5. What involvement should SIRA have in the lodging and management of claims? Should there be early intervention or outreach for newly injured people?

QBE believes SIRA should provide claimants with guidance in relation to lodging claims, identifying the correct insurer and navigating the scheme (for example, frequently asked questions and fact sheets). As early outreach and intervention is already undertaken by insurers, we consider that involvement by SIRA in this area would be unnecessary and would duplicate existing processes.

6. What are your views on introducing term licences, rather than perpetual licences?

QBE is not supportive of the introduction of term licences for insurers. CTP schemes are capital intensive and require significant operational resources, including specialist staff. Short term licences could be a source of instability for existing insurers, and are likely to make the NSW market less attractive to private insurers.

7. What are your views on the dispute resolution model, particularly the type of disputes dealt with at each tier?

QBE supports Option 4 as set out in the discussion paper. QBE considers that this option best balances the need for accessibility, fairness and efficiency. With respect to the tiers, we make the following comments.

Tier One – Internal Dispute Resolution (IDR):

- › QBE considers insurers should continue to be given the opportunity to resolve disputes with customers in the first instance. Many disputes are resolved this way under the current scheme. This allows insurers to detect and remedy any systemic issues, and is also efficient for both parties.
- › IDR is typically undertaken by a separate team within the insurer. Operational aspects, including reporting lines, should remain the responsibility of insurers.
- › Once scheme details are known and following consultation, SIRA could issue guidelines and service standards, and engage with insurers on an ongoing basis to ensure that standards are followed and there is consistency across the industry.

Tier Two – External Dispute Resolution (EDR):

- › QBE supports the industry view that there would be benefit in having a single body resolve all Tier Two disputes. This would make it much easier for claimants to navigate the dispute resolution system, and allow for operational efficiencies.
- › Where IDR has been unsuccessful, the single body could consider disputes about:
 - › Defined benefits, and
 - › Common law quantum and contributory negligence
- › Crucially, the body could also approve the commutation of benefits. Section 151Z recovery disputes could also be included, with the option of formal court proceedings retained for more complex disputes.
- › Decisions made should be binding on both parties. For transparency, all documents and evidence should be disclosed and decisions published.
- › As currently occurs, the onus needs to be on the injured person to prove their claim. Reversing this onus would likely have significant consequences for the cost of the scheme. This is because there is an information asymmetry in cases involving physical and mental injuries, where insurers have an information disadvantage. It is generally easier for a claimant to prove that they have suffered a particular injury than it is for an insurer to refute the claim.

- › There should be the option to agree to single medical experts, and the number of assessments able to be obtained should be limited.
- › Simple claims could follow a different path to more complex claims. For example, low value simple claims could be reviewed on the papers, with options including conciliation, arbitration and mediation for more complex claims.

Tier Three – Court proceedings

- › A right to appeal to Court should be retained for complex and novel cases, such as common law claims where liability has been denied, claims involving suspected fraud, complex claims and common law claims involving children.
- › This will ensure that more scrutiny is applied to these claims, providing a disincentive for fraudulent and exaggerated claims, while also ensuring that less complex claims are resolved by the tribunal in shorter timeframes, avoiding adverse outcomes for claimant recovery.

8. What are your views on aspects of dispute resolution being provided by an independent tribunal and which types of disputes or appeals, if any, would be best dealt with by that tribunal?

As noted in our response to question 7, QBE supports an independent tribunal with the ability to resolve disputes concerning defined benefits, common law quantum and contributory negligence. The body should also have the ability to approve agreements reached between insurers and claimants regarding the commutation of benefits.

9. Given each dispute resolution option has advantages and disadvantages, what do you see as the best option in a hybrid scheme and why?

For the reasons set out under questions 7 and 8, QBE supports Option 4. We believe that this option most effectively balances competing priorities, as it will contribute to the broader objective of reducing the adversarial nature of the scheme and be far easier for claimants to navigate. This option provides a mechanism for effectively dealing with fraudulent and exaggerated claims. To maintain efficiency, the single body would need to have mechanisms for prioritising disputes and rejecting claims outside of its mandate.

10. Do you believe any further powers would be required for internal claims assessors than currently exist for the Principal Claims Assessor or other SIRA staff assessors?

QBE considers that the ability for claimants and insurers to agree to the commutation of benefits is an essential component of any new scheme. Internal claims assessors need to be able to agree to the commutation of benefits with claimants. Commutations can then be approved by the tribunal. This will benefit both parties – claimants will be able to move on with their lives, and insurers will be provided with a greater level of financial certainty.

11. Are there opportunities to pursue positive incentives for good claims management outcomes, along with the proposed actions already being taken by SIRA to address current claims management behaviours in the scheme?

One of the advantages of competitive underwriting is that it creates an incentive for insurers to continuously improve and innovate claims management practices. While all insurers should be required to comply with minimum standards, any reforms should preserve the incentive for insurers to drive improvement in claim outcomes.

12. Any other item of relevance or importance requiring comment?

We refer to our comments above regarding the importance of allowing insurers and claimants to agree to the commutation of benefits.

Conclusion

QBE appreciates the opportunity to respond to the discussion paper. Please do not hesitate to contact Kate O'Loughlin, Head of Government Relations & Industry Affairs, on [REDACTED] or at [REDACTED], if we can provide any further assistance.