



Submission on the Proposed Industry Funding Model for the ASIC

October 2015

1. About QBE

For over 127 years, QBE has been an integral part of the Australian business landscape providing peace of mind to Australians during normal business and times of crises. Our business has been a significant feature of Australia's commercial landscape since its early beginnings in Queensland. QBE is proud of its heritage and the support that it has provided to our customers and policy holders during this time.

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. QBE today is one of the few domestic Australian-based financial institutions to be operating on a truly global landscape with operations in 38 countries around the globe.

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

2. Background

The 2014 Final Report of the Financial System Inquiry (*FSI*) found that the Australian Securities and Investments Commission's (*ASIC*) costs are not transparent to regulated industry participants and recommended Government consider introducing an industry funding model for ASIC's regulatory activities together with enhanced accountability arrangements.

On 28 August 2015, Government issued a consultation paper *Proposed Industry Funding Model for the Australian Securities and Investments Commission (Paper)* on this proposition seeking feedback and comments from stakeholders to inform the Government's approach to implementation and aid it in meeting the objectives of best practice regulation. QBE welcomes the opportunity to provide this submission in response to the Paper and has also participated and supports the Insurance Council of Australia's submission.

3. Proposed industry funding model for ASIC

QBE, as one of the few domestic Australian-based financial institutions to be operating on a truly global landscape, stresses the importance of ensuring that our regulatory and taxation regime does not significantly impede our international competitiveness. In the competitive global market for investment capital, the insurance industry must continue to be an attractive destination that provides adequate commercial returns to its shareholders. To do this, the insurance industry must keep its costs competitive and operate as efficiently as possible in an environment that recognises and supports this goal, so we are not put at a disadvantage to other industries competing for investment.

The insurance industry in Australia already pays a substantial amount in levies and fees to regulators. The proposal to introduce industry funding of ASIC that ignores the broader public benefit from ASIC regulation is akin to an increase in business taxes. Increasing the cost burden on insurers, at the end of the day, will ultimately result in higher prices to customers and affect shareholder returns. Fees, taxes and levies impact on affordability and have been identified as significant barriers to insurance affordability.

QBE does **not support** the proposal to introduce an industry funding model for ASIC. Given ASIC's broad role as the national regulator of corporate entities with responsibility for market protection and consumer integrity issues across the financial system, QBE considers it is appropriate for ASIC to be funded by Government, rather than industry.

4. Ongoing accountability and transparency

QBE considers if any move to a more autonomous funding methodology for ASIC is made, it must be implemented with greater transparency, consultation and ongoing accountability.

QBE recognises the need for operational independence of regulators, however, it also considers that regulators should be held accountable for their performance and compliance with their mandates. QBE suggests both APRA and ASIC's mandates should be reviewed to incorporate a formal objective that the regulators must consider the impact of regulatory requirements and reforms on competition, efficiency and innovation in the insurance industry, which operates in a global marketplace.

We appreciate the proposition that consultation will be built into the process, however, it will be important to ensure that regulators consult early with the industry on the proposed activities and priorities for the coming year to enable industry to provide meaningful input and debate. Additionally, there needs to be embedded mechanisms for ongoing monitoring and effective review of regulators' performance to ensure that value for money is provided. As outlined in the Insurance Council of Australia's submission on the Paper, establishing accountability, embedding incentives to generate efficiencies and ensuring this is accompanied by genuine performance metrics is essential.

As outlined in QBE's initial submission to the Financial System Inquiry¹, APRA's continually expanding regulatory ambit over time has led to commensurate increases in costs, and consequently, increases in levies for financial institutions that have been significantly higher than inflation. All regulation creates and imposes costs which ultimately flow through and impact affordability of insurance for consumers and policy holders. As previously noted by the Insurance Council of Australia², there has been a long running lack of meaningful consultation on the level of industry funding to be provided to APRA and a lack of accountability for its efficient and effective use. This is despite the Australian Government having had a formal cost recovery policy since December 2002.

There is significant potential for moral hazard if the funding of the regulators is separated from appropriate and meaningful measures to ensure greater internal and external scrutiny of regulatory activities, resourcing and efficiencies.

5. Funding ASIC's activities

The Paper proposes that under an industry funding model for ASIC's regulatory activities, the Government would seek to recover all costs, **except** for those activities the Government determines should not be recovered.

QBE considers given the broad role of ASIC, if the industry funding proposal is pursued, it would be more appropriate for Government to fund all activities of ASIC and that industry should **only** fund specific regulatory activities that are identified as appropriate for industry funding to maintain integrity and discipline in the process.

6. The proposed industry funding model

If Government proceeds with the proposed industry funding of ASIC, QBE considers the suggested approach of determining levies based on proxies for supervisory intensity is appropriate **provided** there is appropriate oversight and accountability to ensure ASIC is complying with its mandate (as outlined above) and ASIC applies a risk based approach to its supervisory responsibilities.

QBE has been involved in and supports the Insurance Council of Australia's submission on the Paper and does not propose to comment in detail in relation to the specifics of the proposed industry funding model, except in relation to the following key matters.

Activities included and excluded from proposed industry funding model

QBE notes that there is currently some inconsistency in the proposals relating to regulatory activities to be, and not to be, funded by industry and their alignment to the Government's Charging Framework and Guidelines.

The Government's Cost Recovery Guidelines (***the Guidelines***) state that "*it is usually inappropriate to cost recover some government activities, such as general policy development, ministerial support and law enforcement.*" However, QBE notes that the Guidelines do include these activities as examples of outputs and business processes that may still fall within the scope of a cost recovery levy (but not a cost recovery fee).

QBE considers that there should be clarity in relation to the activities that are proposed to be included in the industry funding model and suggests that further consideration should be given to the scope of those activities. In particular, ASIC's activities in relation to policy advice, stakeholder engagement and enforcement, should be further assessed against the Guidelines to ensure alignment.

The Paper also states that:

¹ QBE submission to the Financial System Inquiry, March 2014, page 35;
<http://fsi.gov.au/consultation/submissions20140520/>

² Insurance Council of Australia, Submission to the Financial System Inquiry, Final Report, page 14;
<http://treasury.gov.au/ConsultationsandReviews/Consultations/2014/FSI-Final-Report/Submissions>

- financial literacy programmes to educate investors and consumers on financial matters are not included in the proposals covered by the paper; and
- the following ASIC regulatory activities are already wholly or partly funded by industry through explicit cost recovery arrangements and these would be continued or be transferred to ASIC:
 - financial literacy programmes to educate investors and consumers on financial matters, including the operation of the MoneySmart website (mostly cost recovered by APRA);
 - regulatory and enforcement activities relating to the products and services of APRA-regulated institutions (including the funding of the Superannuation Complaints Tribunal (SCT)) (mostly cost recovered by APRA).

QBE is of the view that the cost of education activities undertaken by ASIC should be funded by Government. The insurance industry is already a strong supporter and funder of education and awareness through initiatives such as the understanding insurance website, created by the Insurance Council of Australia.

Funding model for companies

As a global insurer listed domestically on the ASX, QBE Insurance Group Limited will be levied as a public company (listed, disclosing) based on the market capitalisation tiers, and is likely to be subject to the maximum levy (capped at \$320,000). Given QBE's global operations, we query whether the market capitalisation is appropriate in these circumstances, or whether the levy should be calculated based on an alternate measure and limited to QBE's Australian operations only.

The proposed levy appears based on the premise that "larger entities, generally pose a higher risk to the Australian economy as the number of investors and the entity's significance to the market is high", however QBE considers this to be an oversimplified position that overlooks a number of relevant factors including:

- investor base – investors of companies listed on the ASX are not exclusively Australian and comprise a mix of wholesale and retail investors. The *Corporations Act 2001* already makes provision for the different nature of investors and the levels of protection afforded to them varies accordingly;
- the organisational structure and geographical location of an entity's business – companies listed on the ASX may not solely operate in Australia and, as in QBE's case, will use their capital to support both Australian and overseas business. Capitalisation is therefore not a true or accurate measure of a company's significance to the Australian market;
- regulatory system – the proposals do not take into account the other regulatory models applying to a listed company and, again as applies to QBE, there is extensive prudential and market conduct regulation that applies not only in Australia but in the many jurisdictions that QBE operates in across the globe. Australian prudential regulation also applies on a group-wide basis. The proposal to not "discount" any of the levies for entities operating across a range of sectors does not take into account the protections afforded by these regulatory regimes;
- ASX listing requirements – as these are not only contractually binding, but are enforceable under the *Corporations Act 2001*, entities are subject to monitoring and enforcement by the ASX, and in some areas also by ASIC, resulting in a potential overlap and duplication; and
- system of risk management and internal control – although the potential impact of failure may be higher for a large entity, the probability of that entity's failure may not necessarily be high. There is no recognition of an entity's internal systems and controls that may actually result in a lower likelihood of potential failure and therefore require less regulatory oversight, enforcement or intervention (consideration could be given to APRA's approach in this regard using the PAIRS and SOARS supervisory tools). Further assessment should be undertaken in relation to the ASIC resources devoted to large listed entities versus other types of entities.

QBE also notes that as a consequence of many of the above factors, QBE is already subject to fees and levies imposed by APRA, ASX and regulators around the globe. The proposal for additional fees and levies should have regard to this, particularly where there is risk of increased cost to consumers.

Lenders mortgage insurance

QBE notes the proposed funding model for Australian credit licensees does not appear to contemplate the position of lenders mortgage insurers (**LMI**). LMI is a business to business insurance product that protects a

lender in the event of a borrower credit default on a residential mortgage loan. If the security property is required to be sold as a result of the credit default and the net sale proceeds do not cover the outstanding loan balance, LMI covers the lender for the shortfall. LMI providers are licensed under the consumer credit legislation only for the very limited credit activities they provide, which more readily resemble a debt recovery arrangement rather than the establishment and management of a credit contract with a consumer.

The LMI provider has no role and no contact with the consumer in the establishment and ongoing management of the home loan credit contract. LMI insurers work directly with the lending institutions through the establishment and during the management of the mortgage, as opposed to directly with the borrower.

The provision of LMI in Australia is already highly regulated by APRA. As a general insurance product, LMI providers will be levied as a general insurer, as well as subject to the levies due from credit providers. Given ASIC's minimal supervision of the very limited credit activities undertaken by LMI providers, QBE submits LMI providers should be exempt from the credit providers levy or, if a levy is to be imposed on LMI providers, it should be a small flat annual levy commensurate with the supervisory role of ASIC in this space.

Conclusion

Thank you for the opportunity to respond to the consultation Paper. Please do not hesitate to contact Kate O'Loughlin at kate.oloughlin@qbe.com or on (02) 8275 9089 if you would like to discuss any aspect of this submission if should you require more information.