



**Submission on the Interim Report – Review
of the financial system external dispute
resolution and complaints framework**

January 2017

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.

Background

QBE welcomes the opportunity to respond to the Commonwealth Government's *Interim Report – Review of the financial system external dispute resolution and complaints framework (Interim Report)*. QBE has also contributed to and supports the Insurance Council of Australia's (**ICA**) submission in response to the Interim Report.

QBE recognises that accessible, efficient and effective internal and external dispute resolution processes are fundamental to maintaining consumer confidence in the financial system. As the Panel notes, while the rise in the number of interactions between individuals and the financial system has increased demand for dispute resolution services, the number of disputes remains small compared to the overall number of transactions taking place.

While QBE is broadly supportive of a number of the Interim Report's recommendations, we note the Panel's observation that the current schemes perform well against the Review's core principles. QBE urges the Panel to retain those aspects of the current schemes which have been tried and tested, and have delivered proven and fair outcomes for the benefit of both consumers and financial sector participants.

Response to recommendations

For ease of reference, QBE's response addresses each recommendation in turn. We have not addressed Recommendations 4, 5 and 11, as they are not directly relevant to the general insurance industry.

Draft recommendation 1 – A new industry ombudsman scheme for financial, credit and investment disputes

QBE, in principle, supports this recommendation.

As noted in QBE's earlier submission to the Panel¹, a combined scheme has the potential to streamline accessibility for users, and improve efficiency for industry participants. The Interim Report notes that there are areas of overlap between the jurisdictions of existing bodies – in particular between the Financial Ombudsman Service (**FOS**) and the Credit and Investments Ombudsman (**CIO**) – contributing to consumer confusion and inconsistent consumer outcomes.

¹ Submission in response to the Issues Paper, *Review of the financial system external dispute resolution and complaints framework*, QBE Insurance, October 2016.

While QBE supports the proposal to merge the FOS and CIO, we caution however against the creation of new processes that are significantly different to those currently in use. The general insurance industry has worked closely with FOS in recent years to increase transparency, improve the efficiency of complaint handling processes, and reduce resolution timeframes for consumers. Care should be taken to ensure that the success achieved to date is not undone.

Draft recommendations 2 and 3 – Consumer and small business monetary limits and compensation caps

While QBE agrees in principle with the indexation of monetary limits and compensation caps, we are not supportive of a significant overall increase to current monetary limits for all financial products. A blanket increase could impact negatively on different classes of insurance by introducing a greater level of uncertainty into the claims determination process. This may in turn place upwards pressure on insurance premiums.

While the proposed new industry ombudsman scheme would be an appropriate forum for the resolution of small and relatively simple claims, it would not be an appropriate forum to deal with the issues likely to arise in more complex claims, which can involve challenging questions of fact and law.

Determining larger and more complex claims in a jurisdiction which does not allow appeals, where determinations are binding only on financial services providers and not on consumers, and where the rules of evidence and legal precedent are not binding, would directly conflict with a number of assumptions underpinning the insurance model.

If however the Panel is minded to recommend an increase to monetary limits and compensation caps, QBE makes the following suggestions for the Panel's consideration.

Firstly, QBE suggests that the Panel consider the benefits of a tiered approach. Where the Panel considers that the characteristics and average claim value of certain types of products warrants a higher monetary limit, the limit for those classes of product could be raised. For example, the Interim Report notes that increasing housing costs have pushed many mortgages and guarantees on home loans beyond the jurisdiction of the existing scheme, which has a limit of \$500,000. It may in these circumstances be appropriate to raise the limit for this class of product.

However, we strongly caution against introducing higher limits for financial products with a lower average claim amount, such as general insurance claims. In the absence of compelling evidence that the current limit is inadequate for these types of financial products, it should be maintained. As submitted by the CIO, there is a point at which the amount in dispute means that a court is a more appropriate forum for the dispute.

Secondly, and related to the above point, QBE believes it is critical for relevant legal precedents to be binding on and followed by the new ombudsman scheme. The failure to do so poses a number of challenges, including the question of whether future claims should be decided in accordance with the scheme's decision in individual claims, or established court precedent. Insurers must also decide how the uncertainty created when legal precedent is not followed by the industry ombudsman scheme should be factored into premium pricing.

As a large company handling a high volume of claims we endeavour to make decisions that are consistent with established legal precedent. This has benefits for both parties. For consumers, this operates as a protection against arbitrary decision making. For insurers, this provides certainty and allows companies to make financial and claims decisions based on probable outcomes.

The existing industry ombudsman determination process, in which legal precedent does not apply and is not binding, already poses challenges for our business. Increasing the proposed scheme's jurisdiction, without addressing this issue, is likely to magnify the problem and lead to greater uncertainty and inconsistency.

Thirdly, QBE considers that one way to balance the accessibility of the industry ombudsman approach with the rigour of a court of law would be to allow parties with higher value claims to access

the scheme's alternative dispute resolution processes, without the obligation to proceed to a determination under the scheme. Where alternative dispute resolution is unsuccessful and both parties consent, the matter could remain with the industry ombudsman and be determined by a scheme member. However, absent a joint agreement to do so, the matter would proceed to a court of law.

Draft recommendation 6 – Ensuring schemes are accountable to their users

QBE, in principle, supports this recommendation.

We consider that any measures taken to promote scheme accountability should involve ongoing collaboration with all scheme users – including industry – to ensure that the process is workable and the focus on end-user outcomes is maintained. In the interests of transparency, industry users who fund the scheme should be provided with a level of detail in relation to fee setting and charges.

QBE considers that the proposal for an independent assessor is consistent with the accountability objective. There could also be merit in the independent oversight of fee setting and charges.

Draft recommendation 7 – Increased Australian Securities and Investments Commission (ASIC) oversight of industry ombudsman schemes

QBE, in principle, supports ASIC oversight of industry ombudsman schemes, but echoes the ICA's comments regarding the importance of ensuring that such schemes also ultimately retain a degree of independence.

Draft recommendation 8 – Use of panels

QBE, in principle, supports this recommendation. We agree with the Interim Report that while complaint complexity, monetary value and precedent are relevant to the question of whether a panel should be convened to determine a particular dispute, there should be defined criteria in place to maintain consistency and cost efficiency.

Draft recommendations 9 and 10 – Internal dispute resolution (IDR), and scheme to monitor IDR

QBE, in principle, supports this recommendation.

QBE would welcome the opportunity to participate in consultation by ASIC on the appropriate content and format of any IDR reporting requirements. It is important that this information can be collected in an efficient manner without unnecessarily diverting resources away from core IDR activities, and in a form able to be easily deciphered by end-users.

For context and transparency, QBE suggests that the information collected and published by ASIC appropriately recognises IDR activity as a proportion of the overall number of policies held by an individual insurer. Larger companies will generally experience more IDR activity, simply because of the higher number of claims being processed.

Information that allows for an analysis of both volumes and trends will be of most value to regulators and consumers, and will assist policy-makers and insurers to monitor trends and respond appropriately.

IDR reporting could be consolidated and published by the new scheme, similar to the current publication by FOS of an annual return, as well as comparative tables which reflect external dispute resolution volumes relative to premium pool on an annual basis.

Response to Panel observation

QBE agrees with the ICA's submissions regarding the Panel's comments in favour of an industry-funded compensation scheme of last resort, and does not support the establishment of such a scheme. We are not aware of the existence of evidence which would support the finding that there are gaps in the current framework sufficient to warrant the creation of a new industry-funded scheme.

We support the ICA's call for a breakdown of the types of financial firms that have been unable to pay determinations made by FOS, so that a targeted approach can be taken to address any problematic parts of the sector.

QBE considers that requiring financially secure and responsible parts of the sector to cover claims made against more problematic parts of the sector carries the risk of significant moral hazard, as it takes away an otherwise strong incentive to address systemic issues in those areas.

We consider that the preferable approach would be to identify and directly address problematic areas. This would also lead to better consumer outcomes by improving the quality of financial services received by consumers, and ultimately preventing losses from occurring in the first place.

Further information

Once again, QBE appreciates the opportunity to respond to the Interim Report.

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, or if you require any further information.