Submission on improving dispute resolution in the financial system

June 2017

About QBE

QBE is one of the few Australian-based financial institutions to be operating on a truly global landscape, 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 *Consultation Paper – Improving dispute resolution in the financial system* (***Consultation Paper***). QBE has also contributed to and supports the Insurance Council of Australia's (***ICA***) submission in response to the Consultation Paper.

QBE recognises that accessible, efficient and effective internal and external dispute resolution processes are fundamental to maintaining consumer confidence in the financial system. 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.

As noted in our earlier submission in response to the Review's Interim Report, QBE is broadly supportive of the proposal to combine existing dispute resolution bodies. The proposed Australian Financial Complaints Authority (***AFCA***) has the potential to streamline accessibility for users, and improve efficiency for industry participants.

We are, however, concerned that proposed increases to compensation caps and monetary limits could increase costs for general insurers, and may ultimately lead to premium increases for consumers. In this respect, QBE believes it is important that an appropriate balance be struck between the desirability of a streamlined process for dispute resolution, with the potential for additional pressure to be placed on insurance affordability.

We also caution against the creation of new processes that are significantly different to those currently in use. We urge the Government 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 service providers.

Response to consultation questions

QBE has limited our responses to those questions in the Consultation Paper that are the most relevant to our interactions with the dispute resolution system.

Question 2 – Do you consider that the Bill strikes the right balance between setting the new EDR scheme's objectives in the legislation whilst leaving the operation of the scheme to the terms of reference?

QBE is broadly supportive of this approach. Setting out operational aspects in the terms of reference is likely to provide a greater level of flexibility, allowing the scheme to respond to emerging issues and stakeholder feedback. This will be especially important as the AFCA will be a new entity, and the

terms may need to be amended with the benefit of experience. In this context, we look forward to engaging with the Government on proposed minimum requirements for the terms of reference.

Question 3 – Are there any issues that are currently in the Bill that would be more appropriately placed in the terms of reference or issues that are currently absent from the Bill that should be included in the Bill?

QBE, in principle, supports ASIC oversight of industry ombudsman schemes, however we echo the ICA's comments regarding:

- the need to ensure that the AFCA also ultimately retains a degree of independence and stakeholder accountability; and
- the importance of a mandatory period of consultation before any material changes are made to the scheme.

Additionally, with respect to monetary limits, we note the proposal for ASIC to have the power to issue directions to increase monetary limits in the event they become inadequate over time. We consider that any such direction by ASIC should only occur following a period of mandatory consultation. Where changes are proposed to limits to general insurance products, the likely impact on claims costs and the level of risk carried by insurers should be considered. Further it would be challenging for industry to implement any changes with a notice period of only three months.

Question 4 – Are there any additional issues that should be considered to ensure an effective transition to the new EDR scheme?

The general insurance industry has worked closely with the Financial Ombudsman Service (***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. To the extent possible, the AFCA should adopt existing processes already in place with financial service providers. This will minimise the regulatory burden on industry, and increase the likelihood that the transition to the new scheme will be as smooth as possible.

Consumers often lodge complaints with FOS immediately after lodging a claim, or soon after lodging an internal request for review. We consider that there would be benefit in limiting the AFCA's jurisdiction to complaints that have first been through the financial service provider's internal dispute resolution (***IDR***) process. This approach would ensure that both the AFCA's resources, and the provider's resources, are not unnecessarily expended on complaints that would have otherwise been resolved through the IDR process. As a signatory to the General Insurance Code of Conduct, QBE's IDR processes follow strict timeframes, and requests for review are considered by a separate team.

QBE understands that consumers may have the option of transferring an existing complaint from the FOS to the AFCA during the transition period. We agree with the industry position that this is likely to adversely affect the transition process by unnecessarily complicating individual matters and increasing the workload for all parties. Further, complainants may 'forum shop', and transfer their matter to the new scheme if they consider it unlikely that the FOS' decision will be favourable.

QBE also believes the AFCA should have formal processes in place to address issues caused by difficult, abusive or uncooperative complainants. In particular, where the complainant has made threats against a financial service provider or its staff, or the provider considers that a particular complainant poses a genuine risk to their staff, there should be a process for formal notification to the AFCA. In these circumstances, the staff member's personal information should not be released to the complainant, and the staff member should not be required to communicate directly with the complainant (for example, by attending a conciliation conference). Instead, these communications could occur in writing and be facilitated by AFCA staff.

Finally, we are fully supportive of the objective of maintaining the AFCA as a low cost jurisdiction. However, there could be scope for the AFCA to have the discretion to impose costs on some complainants where, in the AFCA's view, it is fair and reasonable to do so. This could provide an incentive for particularly uncooperative complainants to actively participate in the resolution process.

Question 5 – Would moving immediately to a compensation cap of $1 million have significant impacts on the availability/price of professional indemnity insurance?

In relation to professional indemnity insurance, QBE is concerned that increasing the compensation cap to $1 million dollars could negatively impact the professional indemnity insurance market, as it would lead to more complex cases being heard in a forum which is not well-suited to determining complex issues of fact and law. Individual insurers would need to determine whether to absorb this additional risk, and if so, how best to do it.

In the absence of legal precedent binding the AFCA, members could potentially determine cases in a manner inconsistent with established law. Insurers will be faced with the dilemma of whether to determine future claims in accordance with AFCA decisions or legal precedent. 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 some challenges for our business. Increasing the new scheme's jurisdiction, without addressing this issue, is likely to magnify the problem and lead to greater uncertainty and inconsistency. This uncertainty could place upwards pressure on insurance premiums. In the interests of justice and consistent consumer outcomes, we consider that both insurers and consumers should have the right to appeal matters on questions of law.

Additionally, we understand that decisions will continue to be binding on insurers, but not consumers. Combined with a substantial increase to financial thresholds, this also has the potential to increase premiums, as insurers may incur additional costs contesting cases in multiple forums. Consumers, however, will have the ability to walk away from an adverse decision cost-free and commence action in another forum.

QBE considers that one way to balance the accessibility of the AFCA 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 AFCA and be determined by a scheme member. However, absent a joint agreement to do so, the matter would proceed to a court of law.

Question 6 – Are the existing sub-limits for different insurance products still required?

QBE considers that further consultation is required on this question. We note that the Treasury's AFCA fact sheet states that the AFCA will commence operations with 'a minimum $500,000 compensation cap for non-superannuation consumer disputes', and that 'there will be consultation on whether consumer disputes relating to certain products, including mortgages and general insurance products, should move immediately to a compensation cap of $1 million'.

The question of which limits should apply to certain products, as well as the broader implications of any such changes, requires detailed consideration. We look forward to engaging with the Government further on this issue, and note that it would be appropriate to consider the current sub-limits in the context of this broader discussion.

Question 8 – What will the regulatory impacts of the new EDR framework be?

The regulatory burden for QBE could either be manageable or significant, depending on how the AFCA is rolled out. Much will depend on the degree to which the AFCA's processes are aligned to those currently in place with FOS, as noted above.

In relation to IDR reporting requirements, while QBE is in principle supportive of the proposed requirements, it is important that this information is collected in an efficient manner which does not unnecessarily divert resources away from core IDR activities.

This information should be easily decipherable by end-users and should recognise 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.

It will also be important to ensure that financial service providers are given a sufficient period of lead time within which to adapt or introduce new technology to meet the reporting requirements. We would welcome the opportunity to engage closely with ASIC as the new requirements are designed, with a view to maximising the effectiveness and minimising the regulatory burden of the new regime.

Finally, we note that the current scheme sets timeframes based on calendar days, rather than business days. This causes significant practical challenges for our dispute resolution teams, especially where time periods expire over the Christmas and New Year holiday period. It also means that our staff sometimes need to work outside of business hours in order to provide information to FOS, even though FOS staff will not consider the information until the next business day.

As AFCA staff will not be at work on weekends, public holidays, or over the Christmas and New Year holiday period, we suggest that either:

- where a time period expires on a weekend or public holiday, the timeframe be extended to the next business day, or alternatively
- timeframes are set in terms of business days, instead of calendar days.

Conclusion

Once again, QBE appreciates the opportunity to respond to the Consultation Paper. QBE is supportive of setting operational aspects out in terms of reference, as opposed to legislation. We also look forward to commenting on the proposed terms, and urge the Government to continue the processes in place under the existing scheme which have been refined over time and have proven to be effective and efficient.

As outlined above, we are however concerned that significant blanket increases to financial thresholds will have unintended consequences for both insurers and consumers. In addition, while we are supportive of IDR reporting in principle, this information should be collected in a manner that both recognises the needs of end users, and also minimises the compliance burden on insurers.

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.