



Submission to the Review of Queensland's Compulsory Third Party Insurance Scheme

September 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 ANZO**) 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 Queensland.

Background

QBE ANZO welcomes the opportunity to respond to the Queensland Government's *Discussion Paper: A Review of Queensland's Compulsory Third Party Scheme (the Paper)*.

QBE recognises that Queensland's CTP scheme (**the scheme**) has historically operated relatively effectively, and is one of the most secure and affordable personal injury schemes in the country. Premiums are low compared to other jurisdictions, and the scheme has enjoyed a high degree of stability while also achieving a reasonable level of efficiency. We commend the Queensland Government for implementing this review, as we believe there are a number of external and internal pressures which must be considered in the context of the scheme's ongoing sustainability and efficiency. We are in the midst of significant economic, social and technological change. To ensure the scheme's long term sustainability it needs to be sufficiently flexible to take advantage of emerging opportunities, capitalise on innovations, and actively counter threats.

QBE considers that a number of policy adjustments are required to ensure that the scheme continues in the future to meet its objective of supporting those injured as a result of a motor vehicle accident, while also remaining a viable and attractive market for private sector insurers.

Competition

QBE believes there is considerable scope to improve the competitiveness of the current scheme. As noted in the Paper, there is very little movement in market share between industry participants, and only minor differentiation between premiums charged. Smaller market participants attempting to grow their market share face significant structural barriers, which has already led to the voluntary exit of one insurer from the market. Additionally, the current structure of the scheme provides little incentive or opportunity for insurers to effectively compete on price.

QBE considers that the following scheme adjustments – already in place in other jurisdictions – would vastly improve scheme competitiveness:

- Introducing a level of risk rating to enable insurers to compete on price, and
- Improving the equity of the registration renewal process which currently creates significant barriers to competition.

All CTP schemes necessarily involve compromise between community rating (the pooling of risks) and risk rating (the differentiation of risks) to achieve a level of social equity. Maintaining an element of community rating is important as it ensures that this mandatory insurance remains affordable for higher risk drivers. The Queensland scheme however, has a disproportionately high level of

community rating, which leads to significant cross-subsidisation between different categories of vehicle owners. For insurers to be able to effectively compete on price, there must be scope for some risk differentiation. As the only differentiator for personal vehicles under the current scheme is vehicle type, insurers are only able to set one premium per vehicle class, leaving little room for price competition within that class.

While theoretically an insurer could attempt to grow its market share by setting a price lower than other insurers, industry experience demonstrates that the insurer which sets the lowest price in a non-risk differentiated market will tend to attract and retain higher risks. This operates as a substantial disincentive for smaller market participants to compete on price – not only are they likely to pick up higher risks, but they are also unlikely to have the backing of a large premium pool to cover any additional losses.

QBE **strongly recommends** that a level of risk rating be introduced into Queensland's CTP scheme to address this issue. Experience in other jurisdictions has shown that competition offers significant benefits for consumers, including lower prices overall, rewards for safer and lower risk drivers, innovation in and greater choice of product offerings, and strong incentives to improve customer service. To appropriately protect the social objectives of the scheme, the existing price ceiling could be maintained so that insurance remains affordable for higher risk drivers. This would mean that no consumer would pay a premium above the cap, no matter how high their actual risk is.

To reduce administrative overheads, risk rating could be based on information which is already collected by the Department of Transport and Main Roads (**DTMR**) – vehicle type and year of manufacture, owner age and location, and owner demerit status. QBE considers that the use of demerit points for the setting of premiums will also create an incentive for safer driving, as drivers with better driving histories will be rewarded with lower premiums, as occurs in other jurisdictions.

Crucially, risk rating also offers opportunities for insurers to leverage new technologies to encourage safer driving behaviors among higher risk drivers, such as young drivers. An example currently available to QBE's comprehensive insurance customers is the [Insurance Box](#) – a device which uses telematics to monitor driver actions and provide feedback to the driver. This enables the driver to understand how they can improve their driving behavior. The Insurance Box also enables individual drivers who have been placed within a high risk category – and consequently pay a premium commensurate with the category's overall level of risk – to differentiate themselves by demonstrating safe driving, and be rewarded with comprehensive insurance premium discounts.

QBE also **strongly recommends** that a number of relatively simple changes be made to the registration renewal process to level the playing field between market participants. As the Paper notes, the number of consumers switching insurers in the scheme has fallen from an already low five per cent, to an even lower three percent, corresponding with lessening price competition. Optimally, consumers should be encouraged to make an active choice about which company best meets their needs and to switch providers when alternative options offer more benefit. For those consumers who do decide to change insurers, the switching process should be as streamlined as possible.

At present registration papers identify the consumer's existing insurer as the 'default' option, which strongly advantages insurers with a large existing market share. This system, coupled with consumer inertia, makes it very difficult for insurers to compete for renewal business, particularly where there is no real opportunity to compete in other ways, such as rewarding safer drivers with lower prices or differentiating on managing claims. In addition to removing 'default' options, registration papers could provide consumers with access to a more competitive landscape by including additional information about the insurance options available, and be structured in a way that facilitates ease of choice.

Motor dealers

Access to the new car market is highly sought after by insurers. New cars generally represent lower risks – they often have good safety features which lower the risk of injury, and tend to be driven by more careful drivers.

QBE considers that there is significant merit in, and would be supportive of, the option outlined in the Paper to randomly allocate insurers to new car buyers for the first year of insurance. The current system, together with the 'default insurer' renewal system creates a stagnant market with very little

ability for existing insurers to grow market share, or for new insurers to participate. Randomly allocating CTP for new cars equally amongst the number of active insurers in the scheme could demonstrably level the playing field, allowing insurers with a smaller market share to compete more actively and be able to demonstrate their offerings more effectively to consumers.

Insurer pricing and profitability

Profitability is an indicator of market performance. As the Paper identifies, a key contributing factor to insurer pricing is the lack of risk rating in the current scheme. QBE submits that the best way to address any concerns regarding insurer profits is to create an incentive for insurers to compete on price. As noted in our risk rating proposal above, the current price ceiling could be maintained. QBE believes this will have the effect of reducing premium pricing overall and leading to better outcomes for consumers.

Transparency of legal costs

QBE notes the Paper refers to research carried out in 2014 by the Motor Accident Insurance Commission (**MAIC**). We understand this research indicates that on average claimants ultimately only retain 52 per cent of their compensation award, with the remaining 48 per cent predominantly going to pay for legal costs, and a portion for statutory reimbursements. Noting that for the majority of cases statutory disbursements are relatively small, the ratio of legal fees to compensation received does not appear to be appropriate, and may leave injured motorists unable to cover their future costs. QBE **strongly supports** the proposal for a disclosure regime on legal costs, similar to that introduced in New South Wales (**NSW**), so that further analysis on the cause of this high ratio can be undertaken.

Fraud

Recent experience in NSW has demonstrated that fraudulent and exaggerated claims can have a significant impact on scheme viability. The NSW Government has announced its intention to redesign its CTP scheme, with increasing numbers of fraudulent and exaggerated claims being one of the key drivers of cost in the scheme and a clear trigger for the need for reform. The NSW Government estimates that fraudulent claims are costing its motorists up to \$400 million extra each year in CTP premiums, or up to \$75 per vehicle.

Given that the NSW Government is actively working to deter and detect fraud, QBE considers that there is a significant risk that the problem – which may in part be driven by the practices of overseas claims harvesters – may simply move across the border and become a feature of the Queensland scheme. QBE suggests it may be beneficial for the Queensland Government to closely consider the outcomes of the NSW Fraud Taskforce and apprise itself of the experiences of its interstate counterparts to reduce the likelihood that fraud and exaggeration will place upwards pressure on CTP premiums in coming years. QBE also suggests that consideration be given to increasing MAIC's powers to enable it to take a more proactive role in detecting and deterring fraud.

CTP premiums for personalised transport vehicles

QBE understands that the review panel has also been asked to consider options for CTP insurance for personalised transport vehicles, including taxis and ride-sharing vehicles. In our view, a usage-based system, similar to that being adopted in NSW, is most likely the fairest way to ensure that all drivers operating their vehicles for profit pay a premium appropriate to their actual risk. We discuss this proposal further under question 18 below.

Discussion questions

As our comments above address a number of the specific questions for discussion set out in the Paper, we do not propose repeating those comments below. Some additional comments in relation to other relevant questions follow.

1. Do the guiding principles as outlined represent an appropriate framework to underpin the Scheme? Do you have any comments on how they should be assessed?

QBE considers the guiding principles represent an appropriate framework to underpin the scheme, however we make the following additional comments:

Affordability – While Queensland's CTP scheme is amongst the most affordable in the country, the introduction of a greater level of competition in the scheme could place additional downwards pressure on premiums. We further note that State taxes and levies also impact upon affordability. As a mandatory insurance scheme, Queensland CTP premiums are now subject to four different types of Government levies, in addition to the GST and the Queensland Government's administration fee.

Efficiency – Scheme efficiency is a crucial indicator of scheme effectiveness. In particular, QBE agrees that an efficient scheme should resolve claims early where possible so that claimants are able to move on with their lives and focus on recovering. Scheme efficiency should also be measured so that a benchmark can be set and improvements can be quantified and to ensure legal and administration costs are minimised. Two key indicators of the success of a CTP scheme are the proportion of benefits ultimately paid to claimants when compared to:

- The total premium, and
- The total settlement or judgment amount.

Fairness – QBE submits that as indicated above, the overly high level of cross-subsidisation in the current scheme raises fairness issues. While we agree that a degree of community rating in the scheme is necessary so that premiums remain affordable for all drivers, there is scope for the market to offer lower premiums for safer drivers if an element of risk rating is introduced.

Flexibility – QBE submits that the lack of flexibility in the current scheme may pose a significant risk to the viability of the scheme going forward. The rigidity of the current pricing structure leaves little room for insurers to compete and innovate.

2. Is the current Affordability Index still an appropriate benchmark for deciding when a scheme review needs to be undertaken? Do you have any suggestions of alternative approaches for assessing affordability?

The Affordability Index has trended favourably over time, which is borne out by a comparison with CTP premiums in other jurisdictions. However, as the original affordability index is now so far away from the price, it may be advisable to reset the benchmark. We note that if an element of risk rating is introduced the existing benchmark will need to be replaced, possibly with an index.

3. On balance, which underwriting model do you believe best meets the guiding principles and why?

Insurance is not core business for governments. Private underwriting of Queensland's CTP scheme reduces threats to government finances by transferring risk and long term liabilities away from taxpayers, and removing the significant cost to Government of scheme and claims administration. Private underwriting also enables the regulator to focus on regulating the scheme, rather than administering it.

Further, while governments at both the federal and state level already have significant exposure and fiscal liability for personal injury schemes (for example, workers compensation), government monopoly schemes are not typically subject to consistent prudential or pricing oversight, and can be influenced by conflicting social and political pressures. Private underwriting reduces fiscal volatility for governments by removing the potential for ratings agencies to consider scheme deficits when assessing state credit ratings. Prudential oversight by APRA can also improve capital management and reduce the probability of schemes falling into deficit.

For private sector markets to operate efficiently however, there needs to be a level of competition. QBE supports the Financial Services Inquiry's position that 'the main role of Government is to support the market working as effectively as possible, rather than subsidising prices'. When properly regulated, private sector underwriting encourages competition and creates an incentive for innovation in claims management and rehabilitation. As outlined elsewhere in our response, QBE considers there is significant scope to improve the competitiveness of the current scheme.

4. Do you believe there is fair price competition in the current Scheme? If not, why not? What changes do you think need to be made to achieve fair price competition if this is seen as a desirable objective?

Please see our general comments above.

5. In your view, what are the main reasons why motorists do not actively switch CTP insurers? Are there any perceived costs and barriers to switching? Would more active switching lead to increased price competition between insurers?

Please see our general comments above.

6. Are there any other features of the current Vehicle Class Filing Model that need to be changed to improve Scheme outcomes?

QBE suggests that the current vehicle class structure lacks a coherent guiding philosophy. There are a significant number of small classes. Many different classes include risks which are almost identical, while others bundle diverse risks within the same class. Further, the inappropriate pricing of some vehicles – including maxi-taxis, which are currently categorised as passenger vehicles – creates inequities across the scheme.

7. Have the changes made to the Scheme in 2010 achieved their intent in ensuring that motorists are aware of their ability to choose their CTP insurer and exercise that choice in the market? Are further changes required, and if so, what?

Please see our general comments above on motor dealers and the existing renewal process.

10. Does the current CTP Scheme create barriers to entry that are preventing or deterring new insurers from entering the market? If so, what do you perceive these to be and how should they be addressed?

Please see our general comments above.

12. Should the MAI Act be amended to:

a) introduce a provision to remove the legal defence of inevitable accident?

As a general principle, we agree with the proposal to extend coverage in circumstances where an accident is caused by unforeseen circumstances not related to the fault of a motorist, including sudden medical incapacity. However, we caution against introducing broad 'blameless' accident provisions, or removing the defence of inevitable accident altogether, and strongly submit that any changes made should be carefully drafted to avoid issues that have arisen in other jurisdictions, including:

- significant interpretation issues
- disputes that flow from any ambiguity in the provisions and interpretation issues
- the use of substantial court resources to resolve interpretation issues and ambiguity, and
- increased claim and scheme costs that arise as a consequence of disputes in relation to the interpretation and application of the provisions.

By way of illustration, QBE notes that issues with legislative drafting in NSW have led to ongoing ambiguity about the application of the provisions to single vehicle accidents involving claims brought by drivers. As a result a number of single driver claims were resolved in favour of the driver, which

was at odds with the apparent intention of the legislation. The NSW Court of Appeal has recently considered the issue, and significantly confined the scope of the provisions in question. We suggest that if the intent of the legislature is to exclude claims in these circumstances this should be clearly stated to avoid a repeat of the NSW experience.

b) allow children aged 16 years and under the ability to access compensation entitlements under the CTP Scheme even if he or she was at-fault?

QBE supports the introduction of no-fault claims for children, under the age of 16, to the extent that the medical, treatment and rehabilitation needs of injured children are covered. We recommend that if the Queensland Government introduces no-fault benefits for children, such provisions should include a fault deeming provision, to avoid ambiguity about whether interstate policies issued in no-fault jurisdictions provide coverage.

13. Do you have any other comments in relation to Scheme coverage?

We make the following additional comments in relation to scheme coverage:

Seat belts – A person who chooses not to wear a seatbelt places themselves at a much higher risk of injury in an accident. QBE submits that the lack of personal responsibility inherent in this decision should be reflected in a mandatory discount for not wearing a seatbelt. Where a claimant fails to wear a seatbelt, QBE considers there should be a presumption of contributory negligence of at least 25 per cent. The claimant may rebut this presumption by establishing that, on the balance of probabilities:

- a seatbelt was not available for their use, or
- if a seatbelt was available for their use, it was not in good and proper working order, and
- the claimant's injuries would have been to the same magnitude if a seatbelt had been worn.

We also consider that the onus of proof to rebut the presumption should rest with the claimant, in line with the common law principle that the claimant bears the onus of proving their case.

Loss of consortium and servitium claims – QBE believes that claims for loss of consortium and loss of servitium should be abolished. A number of these claims are still being received within the CTP scheme. In line with community expectations, we understand that these claims can no longer be made in most jurisdictions. We make the observation that these claims generally only arise in long-running legally represented disputes, which indicates that they are usually made on suggestion, as opposed to filling a legitimate need.

Nervous shock claims – The increasing incidence of nervous shock claims by relatives in claims other than death and catastrophic claims has the potential to significantly increase scheme costs. This is not isolated – it is widely acknowledged that claims for pure psychiatric harm are increasing considerably in all compensation schemes. This trend needs to be considered in context and balanced against the guiding principles of the scheme. These types of claims are costly to run as they involve a high level of investigation to determine causation and the extent to which the harm alleged meets common law thresholds. QBE recommends that the entitlement to compensation for pure psychiatric harm by a relative in relation to the injury to or death of another person should be reviewed. For example, such claims could be restricted to circumstances involving major trauma, where the person involved in the accident was killed, or where their injuries are such that they meet the serious personal injury criteria for entrance to the National Injury Insurance Scheme in Queensland (NIISQ).

Wilson v McLeay - We further submit that damages claimed pursuant to *Wilson v McLeay* should also be limited to claimants whose injuries meet the NIISQ eligibility criteria.

Gratuitous services – QBE notes that since the introduction of restrictions on the ability to claim damages for gratuitous services (to claim, such services must be provided for at least six hours per week, for six months), QBE has seen an increase in the number of claims for future commercial services.

14. Should the Queensland Government legislate to require lawyers to disclose details of their fees and the final settlement received by the claimant after all expenses and statutory refunds have been paid? What are the potential implications?

QBE supports the proposal for a disclosure regime similar to that introduced in NSW so that further analysis of legal costs can be undertaken as indicated above. Such a regime will allow the regulator to gain an accurate understanding of how settlement funds are disbursed, and consequently, the true cost of administering the scheme. Disclosure will also improve regulatory oversight by allowing the Government to monitor whether lawyers have been complying with the maximum threshold for legal fees. To be effective, we suggest it is important for the regulatory framework to be clear and unambiguous, with penalties for non-compliance, and a mechanism for confirming the accuracy of information submitted.

15. What other options would improve the transparency of claimant and insurer legal costs under the Scheme?

Legal costs incurred by a claimant, particularly in lower value claims, can often be an impediment to resolution. It is currently a requirement for solicitors to provide their clients with a costs statement prior to attending a compulsory conference, however, there is no requirement for that statement to be provided to the insurer. To assist with the resolution process, and improve transparency around legal costs, consideration could be given to extending the requirement for the costs statement, including solicitor own client costs, to be provided to the insurer prior to the compulsory conference.

16. Should the role, structure and functions of MAIC be amended in any way, and if so, how and why?

As outlined above, QBE believes MAIC's powers in relation to detecting and preventing fraud should be increased. We note that one of MAIC's functions is to 'develop and coordinate strategies to identify and combat fraud in or related to motor vehicle accident claims' – section 6(1)(l) *Motor Accident Insurance Act 1994*. At present, insurers are responsible for identifying fraudulent and exaggerated claims, and referring them to MAIC. Insurers generally attempt to resolve these claims before referring them to MAIC for review, which then makes a determination as to whether to pursue a prosecution. As the Paper notes, fraud referrals average less than 10 cases per year – a relatively low figure considering that approximately 6500 claims are lodged each year.

QBE queries whether this process sufficiently allows MAIC to detect any trends towards increasing numbers of fraudulent and exaggerated claims. In practice, insurers only refer matters to MAIC when there is some evidence of fraud. Many cases which fall below this threshold – such as where fraud is suspected or exaggeration found – may not be reported. There is no mechanism for picking up trends across the industry, or instances where suspect individuals repeatedly lodge claims with different insurers. Given the issues that fraudulent and exaggerated claims have posed in other jurisdictions, we suggest that the functions of MAIC be amended to enable it to play a much more proactive role in detecting and preventing fraud, including by analysing insurer data.

QBE also suggests that consideration be given to whether MAIC's role in the prudential oversight of insurers continues to be beneficial, given the enhanced role of the Australian Prudential Regulation Authority (*APRA*) in recent years. MAIC's prudential supervision largely duplicates APRA's role and is a drain on the resources of both MAIC and insurers.

17. Should Queensland's Nominal Defendant (or 'insurer of last resort') Scheme be amended in any way and if so, how?

We consider the current situation with the Nominal Defendant acting as a standalone insurer works well and should not be changed.

18. Based on your experience with the Queensland CTP Scheme, do you have any other suggestions as to how the objectives of this scheme review could be achieved?

CTP premiums for personalised transport vehicles

As acknowledged by the Government's Opportunities for Personalised Transport Taskforce, the current CTP premium pricing structure creates inequities between participants in the personalised transport market. Ride-sharing vehicles pay a much lower premium than taxis, which gives them a competitive advantage that is ultimately reflected in fare pricing.

QBE suggests that the introduction of usage-based premiums – similar to that being introduced in NSW – is the fairest way to maintain the integrity of the scheme as a whole. This will reduce inequities between taxis and ride-sharing vehicles whilst recognising that some ride-sharing vehicles may only be used for profitable purposes on a part-time basis. This could occur as follows:

- Create a new CTP insurance class for all personalised transport vehicles. All personalised transport vehicles, including taxis, maxi-taxis and ride-sharing vehicles – even those only used for profit part-time – must be included in this class.
- The initial base premium for vehicles in this class could be approximately equal to the current Class 1 passenger vehicle premium. Setting the premium base at this level would avoid creating a disincentive for part-time ride-sharing drivers to register in the appropriate class (this could also be achieved or cross-checked by mandating the provision of data from ride-sharing companies).
- Trip related usage would be measured in cooperation with taxi companies and ride-sharing vehicle companies. We understand that in NSW both groups have already indicated their willingness to provide data so that equitable premiums can be charged.
- Based on the data collected, personalised transport vehicle operators would pay additional premium reflecting actual usage on a quarterly basis in arrears. These calculations could be done by DTMR or by individual insurers. In NSW, the usage premium will initially be calculated and collected by the State Insurance Regulatory Authority, before transitioning to insurers.
- Usage premiums may be calculated as a set amount per fare, or a set amount per kilometre. In future, more sophisticated approaches using telematics could measure risk more accurately through on board devices or smart phone apps.

QBE **strongly advises against** any proposal to place personalised transport and passenger vehicles into the same CTP class, as we consider this would risk scheme viability and competitiveness. Combining disparate classes of vehicles could mean that insurers who inadvertently pick up higher risk segments of the market find themselves in a position where premiums do not cover claims. In a competitive market, it would not be possible to ensure that all insurers carry equal risk. Insurers carrying disproportionately high risks may ultimately exit the market – there is already a high degree of community rating in Queensland's scheme – and one insurer has already exited the market.

Conclusion

QBE appreciates the opportunity to respond to the Paper. Our key recommendations follow:

- We are strongly of the view that the introduction of a degree of risk rating is the best way to preserve the stability and affordability of the current scheme, while also stimulating competition and improving consumer outcomes.
- To safeguard scheme stability, the Government should ensure that emerging issues with the potential to place significant upwards pressure on CTP premiums – including fraud and exaggeration, inefficient legal costs and rising claim costs in certain areas – are proactively monitored and addressed.
- The most equitable way to set CTP premiums for personalised transport vehicles is to move to a usage-based premium system. This will level the playing field between taxis and ride-sharing vehicles, and appropriately recognise that some vehicles may only be used for profit part-time.
- Randomly distributing new vehicle registrations equally among insurers would go some way towards rectifying existing stagnancy in the CTP market, and allowing smaller market participants to demonstrate value to consumers.

Please do not hesitate to contact Kate O'Loughlin, Head of Government Relations & Industry Affairs, on (02) 8275 9089 or at kate.oloughlin@qbe.com, if we can provide any further assistance.