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Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
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QBE Submission on Options Paper – Conduct of Financial Institutions

QBE welcomes the opportunity to provide this submission in response to the Ministry of Business, Innovation and Employment's options paper on Conduct of Financial Institutions (*Options paper*).

Background

General insurance is a fundamental foundation of a modern economy and touches almost all levels of the community and our individual human and corporate activities. A strong, stable and innovative insurance industry, with suitable and affordable products for business, communities and governments, is critical for the smooth functioning of the economy.

In the competitive local and 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 it is not put at a disadvantage to other industries competing for investment.

QBE supports the focus on conduct to ensure that as an industry, we build and maintain trust, we are truly customer focused and communicate clearly and transparently with customers, and we address any issues as they arise.

Regulatory regimes, however, can either enable or impede a competitive, innovative insurance sector. It is important to understand that most regulation increases complexity, which also leads to increased cost. The additional cost burden of duplicative and inefficient regulation is borne by the industry, but ultimately impacts the customer and community, either through increased premiums or by impacting on the availability of insurance. This can exacerbate issues around non or under insurance.

As such, it is critical that the financial system and regulatory regime in which the insurance industry operates in New Zealand strikes the right balance between stability and protection on the one hand, and national competitiveness and productivity, on the other.

Options paper

As a member of the Insurance Council of New Zealand (*ICNZ*), QBE has participated in and supports ICNZ's submission on the Options paper. As such, we have not responded on the specific questions in the Options paper, but would like to emphasise the following key points:

1. Timeframe and process

QBE welcomes the review as an important opportunity to consider how New Zealand might better regulate the conduct of financial institutions to create better outcomes for their customers. QBE is, however, very concerned that the review timeframe and process may not be sufficient to enable appropriate consideration of proposed changes and the implications for insurers and customers alike.

In this respect, QBE is particularly concerned that no further consultation following submissions on the Options paper is contemplated before draft conduct legislation is introduced to Parliament. With such extensive change as is contemplated in the Options paper, we believe further consultation is imperative. This will enable both industry and government to undertake a detailed analysis of the implications of the proposed reforms and mitigate any potential unintended consequences that might impact on competition or availability and affordability of insurance in the New Zealand market.

At a macro level, it is critical that capacity and competition are maintained in the insurance market. Options for further regulation need to be carefully considered to ensure that the proposed reforms do not inadvertently impede competition (for example by favouring one distribution model over another), nor prevent organisations from providing accessible and affordable products. Otherwise, ultimately, this would be to the detriment of insurance customers.

As such, QBE strongly recommends that a detailed regulatory impact assessment is completed prior to implementation. Additionally, we suggest that implementation of the proposed changes outlined in the Options paper should be staged. This will enable impacts to be assessed and adapted as required and help to minimise disruption and mitigate unforeseen adverse consequences.

2. A principles-based approach

QBE is conceptually comfortable with a principles-based approach to legislation provided sufficient guidance and detail is made available, so that the approach taken (and therefore likely outcomes for consumers) is consistent across the industry. As indicated above, QBE believes it is critical that such guidance is developed in consultation with both industry and consumers, prior to implementation.

3. Duties on intermediaries

In the intermediated space, many insurance brokers sell (and may advise on) products manufactured by multiple insurers, often acting on behalf of the insured. QBE is concerned that imposing all duties on financial institutions (who are product manufacturers but may not be product distributors) will add so much complexity that it becomes unsustainable for intermediated insurers to continue to operate their current distribution model. As such, the changes will favour 'direct' insurers who carry out their own distribution functions in house and may create an un-level playing field between direct and intermediated insurers that may lessen competition. Ultimately, this may lead to a reduction in market participants and distribution

channels which would have a detrimental impact on value and accessibility of insurance for customers.

QBE suggests that a better approach would be to impose obligations relating to distribution of products on the distributors themselves, e.g. the duty to manage conflicts of interest fairly and transparently. We suggest this approach would minimise compliance costs and inefficiencies involved with multiple insurers overseeing the same distributor and negate the risk of intermediaries being reluctant to share commercially sensitive information, which is particularly relevant in the context where intermediaries distribute products from multiple providers. It would also align with the (potential) obligations of the distributor under the *Financial Services Legislation Amendment Act (FSLAA)* – otherwise a distributor may be accountable to the Financial Markets Authority for breaches of the financial advice regime, but only via the product manufacturer for their conduct obligations in a non-advice setting.

4. Relationship with FSLAA regime

QBE is concerned that the potential unintended consequences of a duty requiring distributors to 'have regard to the intended audience when placing a product' may risk imposing an implied obligation to conduct a suitability assessment before placing that product.

General insurance products are usually designed for mass markets of consumers and, unlike other financial products, the key factors in whether a general insurance product is appropriate for a consumer are the consumer's risk factors and risk appetite. In practice, many customers are not looking for guidance or financial advice (especially in the context of highly commoditised insurance products) and QBE considers that an express or de facto obligation to do so would impose additional unnecessary compliance costs that may impact on affordability.

QBE also considers there is a risk of overlap with the Code of Conduct obligations which apply under the FSLAA regime.

5. Conflict management/remuneration and commissions

QBE, in principle, supports a general duty to design remuneration and incentives in a manner that is likely to promote good customer outcomes. As mentioned above, we believe sufficient detail to provide certainty as to how the duty should be applied is necessary. This would ensure consistency between financial institutions and importantly, consistency of approach for customers, whichever institution they use.

QBE also supports appropriate controls on target-based incentives. Such duties, however, should be sufficiently articulated so they do not prohibit stakeholder engagement (such as training and marketing initiatives) which we believe has a positive impact on customer outcomes. Additionally, consideration could be given as to whether this duty would apply only to sales targets applicable to an individual, or whether this could cover organisation-wide target-based remuneration.

QBE believes these duties should also apply to product distributors directly, as well as financial institutions, so that target-based incentives paid by distributors to their own sales staff are also captured.

To ensure consistency with the FSLAA (and for the same rationale as applies for the FSLAA) QBE supports a requirement to disclose all incentives, such as commissions in all circumstances, not just advised sales.

6. Consumer definition

QBE supports the ICNZ's suggestion in its submission in the Options paper on the use of the *Fair Trading Act/Consumer Guarantees Act* definition of a consumer. As the regime is largely tied to the product lifecycle, this would provide a useful framework for the product design and review obligations. Otherwise, as mentioned by the ICNZ, given there is a broad range of commercial insurance products and there is no clear-cut divide between small and large business customers the proposition of <19 employees, or specific turnover thresholds is largely irrelevant and extremely difficult to identify and apply.

7. Claims handling

As with the Fair Insurance Code, QBE supports the duty to ensure claims handling by both product manufacturers and distributors (to the extent they are involved in the claims handling process) is fair, timely and transparent. We recognise it may be necessary to impose industry-specific guidance so that this broad duty is interpreted consistently. In our view, however, care must be taken to consider how this would apply in the intermediated insurance model, and where other entities (such as EQC) who (presumably) sit outside the regime are involved in the claims-handling process. In addition, one point which needs to be addressed is the scope of to whom the insurer would owe the duty. For example, under indemnity policies the insurer generally handles third party claims against its insured or is seeking recovery from at-fault third parties. QBE believes that third parties should not be captured within the proposed duty.


QBE supports clear obligations on insurers to ensure regular communications with consumers regarding the progress of their claim (as is provided for in the Fair Insurance Code). QBE is concerned, however, with the proposal to impose a set timeframe for claims handling in the general insurance space. In settling an insurance claim, an insurer will make claims decisions (investigating the claim, interpreting policy provisions, obtaining expert opinions, preparing estimates of loss or damage and likely repair costs, and conducting negotiations with the insured, other insureds' (and their insurers) and third parties (such as EQC)) as well as arrange claims fulfilment (e.g. engaging suppliers such as builders, restorers and motor vehicle repairers). These processes are supported by a claims management chain involving a broad range of parties. QBE considers that imposing an obligation on insurers alone in this space would be inappropriate. Additionally, as mentioned in the Options paper, catastrophe events would need to be exempt from a timeframe, as significant logistical and practical difficulties arise in handling and settling claims in those scenarios, such as site access difficulties and scarcity of trades and supplies.

We envisage imposing a statutory timeframe for settlement of claims would significantly add to compliance costs and may even result in a lessening of options for consumers, such as by incentivising insurers to cash settle difficult or complex claims in order to meet the timeframe, thus transferring the repair risk to the consumer.

In conclusion, QBE again welcomes the opportunity to provide this submission and is very happy to provide any further assistance or explanation. Please contact Terry Lawrence, Head of Strategy and Support, NZ and Pacific **Privacy of natural persons** or Olivia Neubauer, Regulatory Affairs Manager **Privacy of natural persons** in the first instance.

Yours sincerely

QBE INSURANCE (AUSTRALIA) LIMITED

A handwritten signature in black ink, appearing to be 'W G Donovan', written over a horizontal line.

W G Donovan

Chief Customer Officer (Acting), New Zealand and Pacific

PROACTIVELY RELEASED