

6 December 2016

The Hon Shayne Mallard MLC
Chair
Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney NSW 2000

Sent by email: law@parliament.nsw.gov.au

Dear Mr Mallard

Response to request for information – First review of the workers compensation scheme

Thank you for your letter of 10 November 2016, seeking a response to evidence presented to the Standing Committee on Law and Justice's first review of the New South Wales (**NSW**) workers compensation scheme.

QBE is one of the licenced insurers operating within the NSW scheme. We are committed to promoting healthy and safe workplaces and supporting injured workers throughout the recovery process. We pride ourselves on our comprehensive approach to claims management, and our commitment to innovation and continuous improvement.

QBE recognises that statutory schemes operate most effectively when both governments and scheme stakeholders proactively monitor emerging trends, and respond in a flexible and timely manner. As such, we welcome the opportunity to engage with the review and provide further information for your consideration.

For ease of reference, we have addressed the matters raised in the order set out in your letter:

Covert surveillance

Surveillance is a crucial claims management tool for insurers. Fraudulent and exaggerated claims are a burden for all scheme stakeholders and the community generally.

The Insurance Fraud Bureau of Australia estimates that fraudulent and exaggerated claims cost the general insurance industry \$2.2 billion each year. Ultimately this cost is passed on to honest policy holders by way of increased premiums. Where fraud or exaggeration is suspected, targeted surveillance may in some cases be the only way for insurers to investigate and collect solid evidence.

The policy case for surveillance has, for example, been recognised by the Australian Law Reform Commission (**ALRC**). In its 2014 report *Serious Invasions of Privacy in the Digital Era*, it noted that it 'is in the interests of all policy holders that insurers have safeguards against fraudulent claims' (at 193). The ALRC further acknowledged the legitimacy of insurance surveillance activities and the need for privacy protections to permit appropriate surveillance by the industry.

QBE is committed to treating injured workers with respect and empathy. Surveillance is only used in a minority of cases and by exception, where there is evidence or a reasonable foundation for suspicion that a claim involves fraud or exaggeration. We comply with guidance provided by icare and the scheme regulator, and legislative requirements. We do not authorise intimidation, and have internal procedures in place to manage the use of surveillance.

In some cases, surveillance only involves a desktop review, including a review of social media activity, but only where this information is publicly available and relevant to the management of a claim. QBE does not authorise or tolerate social media monitoring of claimants for any other purpose and this is explicitly stated in our policies and procedures. Occasionally, for more significant claims involving a stronger suspicion of fraud or exaggeration, QBE may authorise targeted surveillance.

Surveillance alone is not considered by QBE as sufficient to make a decision on a claim, and is only used to validate other evidence or inconsistent information that has been received. Prior to initiating surveillance, case managers must consult with senior officers and consider whether:

- less intrusive methods have been considered, or tried and found to be ineffective or inadequate
- the claim is of such a nature as to warrant the use of surveillance – this might include cases where there is evidence of misrepresentation, malingering or claims of excessive disability, and
- the benefits arising from obtaining relevant information by this activity outweigh the potential intrusion on the privacy of the worker.

Consistency in case management and case manager turnover

Consistency in case management is a key focus for QBE. We have developed training programs and handover protocols which aim to provide a consistent minimum standard of service to each injured worker throughout the claim process. Our training programs focus on maintaining the quality of the claims management approach so that case managers develop appropriate strategies to assist workers to achieve a safe and durable return to work. Ongoing coaching and support is provided by managers and technical experts so that case managers receive constructive feedback and guidance.

The ultimate objective of our programs is to equip our case managers with the tools to assist each injured worker to achieve the best outcome possible. Claims managers can find themselves in challenging situations – for example working with injured workers who are not coping well, or having to explain to injured workers why liability has been denied or benefits reduced. While consistency is important, we appreciate that every injured worker is different. For this reason, QBE also places great importance on ensuring that our case managers are able to tailor their approach to best support individual claimants, without substituting a quality approach.

QBE has a strong focus on employee retention. While unplanned turnover is unavoidable, QBE aims to provide a workplace culture where employees feel engaged and valued. In circumstances where there may be a disruption of service, QBE notifies customers and injured workers of the change in advance and provides updated contact details. QBE has a thorough claim handover process when a change of case manager is unavoidable. This handover process is designed to create a seamless transition for all stakeholders, including workers, employers and treating doctors.

In discussing consistency in claims management, it is important to understand that the NSW workers compensation scheme has been subject to extensive change since 2012 which we recognise has impacted workers and employers. We know the recently established icare has a focus on fostering consistency, and QBE fully supports their agenda. A stable policy framework will assist these efforts.

Qualifications and training of case managers

QBE prides itself on having a highly skilled and professional working environment. While many case managers who commence employment with QBE have tertiary qualifications and/or experience within the workers compensation industry, QBE places an emphasis on the continued learning and development of all employees.

QBE offers an internal training program in addition to the formal qualification opportunities offered to case managers. For example, we recognise that our claims managers will often be dealing with injured workers during a challenging period in their lives. QBE believes it is not enough for our case managers to have formal qualifications, they should also have the behavioural traits and skills necessary to support people through this time. QBE offers internally formulated programs, webinars, presentations and 'bite size' learning sessions which focus on developing our case managers' 'soft skills'.

Together, these programs are designed to improve the skills and experience of our employees and the outcomes of our injured workers. Formal qualifications available to QBE employees through scholarships include:

- Certificate III Personal Injury Management
- Certificate IV Personal Injury Management
- Graduate Certificate in Personal Injury Management, and
- Masters in Personal Injury Management.

Triage of claims for professional assessment

QBE understands that the term 'triage for professional assessment' refers to processes in place to refer claims to Independent Medical Examinations (**IMEs**) undertaken by medical specialists or allied health professionals. This assumption is based on the significant amount of commentary relating to IMEs from the hearings on 4th and 7th November.

As a claims manager, QBE follows WorkCover's *Guidelines on Independent Medical Examinations and Reports*, which set out the State Insurance Regulatory Authority's (**SIRA**) policy on IMEs, and the mandatory obligations that those requesting an IME must comply with when referring workers for an assessment. Within a workers compensation claim, an IME may be requested by the worker, the worker's legal representative or the insurer.

SIRA's guidelines are comprehensive, and address matters including:

- circumstances in which an IME is appropriate
- responsibilities of referring parties
- selection of an appropriate examiner
- documents that must be provided to the examiner
- information that must be provided to the worker, and
- avenues for complaint.

The length and complexity of work capacity decisions, including accessibility for non-English speaking workers

The work capacity process and associated decisions are a critical element of day to day case management, and have the ability to promote improved return to work outcomes for injured workers. The work capacity process has evolved since the legislation commenced in 2012. The 2012 legislative changes that introduced work capacity decisions represented a fundamental change in NSW workers compensation arrangements. Case managers have been on the frontline implementing and explaining these changes and there has been a period of transition.

QBE and the other scheme agents have worked closely with icare, the Merit Review Service (within SIRA) and the Workers Compensation Independent Review Office (**WIRO**) to clarify the interpretation of legislation and promote consistency in decision making across the scheme.

QBE claims staff are required to act openly and transparently throughout the claims process. Information and evidence considered in the determination of a work capacity decision is made available to injured workers. QBE recognises that the worker is the intended recipient of a work capacity decision, and that many are unfamiliar with legislative references and associated formal language. Within the legislative framework, QBE makes every attempt to communicate decisions in plain English and provide a clear explanation of, and the reasons for, our decisions.

QBE understands that the process can be challenging for injured workers to navigate. We take care to provide procedural fairness, and ensure that workers understand the process and the implications of any work capacity decision for their entitlements. Decision notices are not sent without prior discussion with the worker. The “fair notice” period that forms part of this process allows the worker time to provide supporting evidence prior to a decision being made.

Review process

At each key decision-making point QBE’s practice is to provide the injured worker with information regarding their right to seek a review of the decision, and the critical steps in the process. QBE has in place an independent Internal Review Team (*IRT*) responsible for completing the first tier of the review process. On receipt of a request for an internal review, the IRT will contact the worker to explain the process and invite them to provide any additional information they have that may impact the outcome of the review. The IRT will explain the outcome of the internal review and detail the options available to injured worker. The IRT may also liaise with Merit Review Service and the WIRO as decisions proceed through the review process.

Work Capacity Decision Notices

The requirements for Work Capacity Decision Notices are set out in legislation, and are designed to provide injured workers with procedural fairness. Notices must:

- explain the concept of a work capacity assessment and decision itself
- explain the legislative basis for the decision including what the legislation states
- provide an explanation of the evidence considered and how the evidence was assessed to make the decision
- explain the impact of the decision for the worker’s benefits, including weekly benefits and medical and related treatment, and
- explain the worker’s review rights and other options for assistance.

Work capacity decisions are tailored to individual claims. The complexity of each claim and the amount of evidence reviewed dictates the length of the decision notice. Copies of supporting evidence are attached to the decision notice issued to workers.

QBE understands that injured workers of both English and non-English speaking backgrounds need to clearly understand the process of work capacity decisions and also be treated fairly during this time. Our obligation is to ensure that injured workers receive all required information, are given the appropriate timeframes of notice and are provided with an opportunity to respond.

Accessibility for non-English speaking workers

In instances where QBE is aware that English is not the worker’s first language or the worker has indicated a preference for a translated document, QBE arranges for translators to assist with calls conveying a fair notice advice, a work capacity decision or an internal review decision. QBE also arranges for written fair notice, work capacity and internal review decision letters to be translated and provided to the worker. The exception to this is in circumstances where the worker advises that

translation is not required because a friend or family member will be translating the documents for them.

Once again, we thank you for the opportunity to provide this additional information to the review. Should you require any further information, the best contact within QBE is Kate O'Loughlin, Head of Government Relations and Industry Affairs, who can be contacted on _____ or at _____

Yours faithfully

Andrew Borden
General Manager, Workers Compensation
QBE Australia and New Zealand