

**Submission  
No 20**

**REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE  
WORKCOVER AUTHORITY**

**Organisation:** BlueScope Limited

**Date received:** 17/01/2014

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## **Submission into the Review of the WorkCover Authority of NSW and Dust Disease Board**

**Date: 17 January 2014**

### **Introduction**

This submission is made by BlueScope Steel ('BlueScope'). BlueScope provided a submission to the Inquiry into the NSW Workers Compensation Scheme in 2012 and again welcomes the opportunity to provide a response to the *Review of the exercise of the functions of the WorkCover Authority* being conducted by the NSW Legislative Council Standing Committee on Law and Justice..

BlueScope is the leading steel company in Australia and New Zealand, manufacturing a range of flat steel products for the building and construction, manufacturing, automotive, infrastructure and distribution sectors. Products manufactured by BlueScope include steel slab, plate, hot and cold rolled coil, coated and painted strip products, through to roof and wall cladding, purlins and house framing, and custom engineered building solutions.

BlueScope employs approximately 7,000 people across Australia, including over 4,000 in New South Wales, having evolved from the integration of three pioneer companies in the Australian steel industry - Broken Hill Proprietary Ltd (BHP), John Lysaght Australia Pty Ltd (John Lysaght) and Australian Iron & Steel Ltd (AIS). The Port Kembla Steelworks has employed over 150,000 workers since commencing operations in 1926, and continues to be a major source of employment in the Illawarra.

BlueScope entities have a long history of self insurance. Australian Iron & Steel became self insured in 1928, with the John Lysaght group holding a licence from 1979, with all entities moving under a Group Licence held by the Broken Hill Proprietary Company Limited in 1996.

The Broken Hill Proprietary Company subsequently became BHP Billiton, and in 2002 its steel division was spun out and became an independent company listed on the Australian Stock Exchange. BlueScope Steel has continued to maintain a self insurance licence since that time.

Self insurers occupy a unique position within the workers compensation scheme. Unlike scheme agents, who are licensed to manage claims on behalf of the nominal insurer (WorkCover) the self (and specialised) insurers are licensed to underwrite their own risk.

The licensing requirements for self and specialised insurers have always included substantial prudential and security requirements to guarantee the ability to satisfy all outstanding workers compensation liabilities. BlueScope is required to maintain a bank guarantee to support the requirement to provision funds amounting to 150 per cent of the actuarial liability. BlueScope has always accepted the requirement for such prudential criteria in the licensing process.

However, BlueScope has concerns arising from the regulatory requirements imposed through self insurance licensing conditions, specifically OHS Management Systems, and Claims & Injury Management auditing, that have no connection to prudential or security requirements.

It is BlueScope's submission that the WorkCover Authority should not be imposing audits on self insurers given that:

- Self insurers do not contribute to the costs incurred by the nominal insurer (WorkCover) so there is no financial or economic reason for the Authority to conduct such audits. Furthermore, it is anomalous that companies that are not self insured, and that do contribute directly and substantially to the costs incurred by the nominal insurer, are not subject to the work health and safety audits required of self insurers.
- Given self insurers bear all of the costs in the event of an injury, there is a strong financial (as well as legal and moral) incentive to promote safety and ensure safe workplaces, effective safety management systems and, in the unfortunate event of injury, durable return-to-work outcomes.
- Mandatory audits present an unnecessary burden that increases the cost of business and erodes competitiveness.
- The Authority already has a range of low cost tools available through which to monitor BlueScope's performance.

#### **Review of Workers Compensation (Dust Diseases) Board**

BlueScope has no specific concerns with the exercise of the functions of the Workers Compensation (Dust Disease) Board.

#### **Review of the WorkCover Authority NSW**

WorkCover NSW ([www.workcover.nsw.gov.au/about](http://www.workcover.nsw.gov.au/about)) cites its purpose "is to increase the competitiveness of the NSW economy through productive, healthy and safe workplaces. We are dedicated to promoting productive, healthy and safe workplaces for workers and employers in New South Wales".

BlueScope accepts that the WorkCover Authority has an important role to play in ensuring productive, healthy and safe workplaces.

However, it is our view that OHS Management Systems and Claims & Injury Management auditing requirements:

- Impose a resources impost on the Business that impairs competitiveness
- Duplicate other sources of data that allow WorkCover to monitor performance, and
- Do not result in increases in safety performance, nor better workers compensation or injury management outcomes, beyond those being achieved through the company's own efforts and initiatives.

Companies that self insure are licenced for their workers compensation liabilities and are held accountable to high prudential licencing conditions. WorkCover requires renewal of a self insurer's licence on a regular basis (usually every 3 years). A self insurer's compliance conditions are found within the licence renewal. For BlueScope, there are 80 compliance criteria the company must meet when including a self insurer's obligations with respect to Injury Management (Chapter 3, Workplace Injury Management and Workers Compensation Act 1998). Sign-off on the company's compliance is required by at least one Director and one of either a Company Secretary or Principal Executive Officer or General Manager.

The rationale for auditing is that it enforces safety standards, resulting in fewer injuries, and claims management practices that result in better post-injury outcomes. This is not supported by evidence. By way of comparison, NSW has a high regulatory threshold, while Western Australia has low regulatory requirements, with an absence of mandatory auditing.

*Safework Australia, Comparison of Work Health & Safety and Workers Compensation Schemes Fifteenth Edition* indicates:

- The incidence rate of serious injuries & disease (per 1000 employees) in 2011/12 was 13.5 in NSW but only 12.1 in WA.
- The frequency of serious injury (per million man hrs) in NSW in 2011/12 was 8.1 injuries and 6.9 in WA.
- The number of compensated fatalities over the period 2007-2012 in NSW doubles that of WA.
- The rate of disputation in NSW is higher than in WA.
- There is no difference in frequency of long term workers compensation claims between the two jurisdictions.
- There is no evidence to indicate durable return-to-work rates are better in NSW than other jurisdictions.

BlueScope understands that it is only self (and specialised) insured employers, covering approximately 25 per cent of the NSW workforce, who are subject to scheduled and mandatory audits, meaning in the bulk of NSW employers are exempt from the obligation. BlueScope, like all self insured companies, has a substantial incentive to promote safe workplaces and sound claims management practices as the full cost of injuries is a direct cost to the Company. Poor safety and injury management outcomes result in reduced profits, either through direct workers compensation

payments or WHS breach related fines and penalties, or through secondary costs such as lost productivity, industrial issues and market reputation. Consequently, BlueScope has well resourced and sophisticated WHS and claims management areas and employs specialist claims management and safety professionals.

BlueScope has achieved safety and claims management outcomes we maintain are a consequence of our commitment to our workforce, and our internal safety management systems, not a by-product of mandatory WorkCover auditing.

Data published by the WorkCover Authority demonstrates the superior outcomes being achieved by BlueScope compared to Scheme insured employers. *The (BlueScope) Self Insurer Performance Report* produced by WorkCover for the financial year ended 30 June 2013 indicated:

- BlueScope's average duration of lost time injuries was one-third the rate experienced by Scheme insured employers.
- BlueScope's rate of new claims reported per \$1 million in wages was 29 per cent less than Scheme insured employers.
- The rate of lost time injuries per \$1 million of wages was almost half the rate experienced by Scheme insured employers.
- The rate of incurred claim cost per \$1 million of wages is one-third less than the rate experienced by Scheme insured employers.

It is BlueScope's view that the imposition of audits in the area of work health and safety by WorkCover on a regular basis represents an unnecessary cost to our business. The scope and breadth of the OHS Management Systems audit is such that, through ongoing compliance activities, audit preparation, actual audit time and follow-up activities, substantial resources are diverted away from work health and safety initiatives in favour of compliance and auditing processes, for no discernible benefit to the business or its employees.

BlueScope estimates direct and indirect costs of our most recent audit, in February 2013, to be in the order of \$1.0 million. This is a significant cost to the company at a time when it is gradually returning to profitability after the global financial crisis and the drag imposed by the sustained high Australian dollar exchange rate, surging imports (including dumped imported steel) and weak demand in key domestic markets.

As a consequence of the aforementioned audit the Company received notice of the following non-conformances:

- The Health and Safety Management Plans did not specifically state how monitoring was occurring.
- Documents outside of the review date were still available on the intranet, contrary to system requirements.

- At two of the verification sites, a checklist used to audit the facilities and amenities was not controlled as per system requirements.
- Some system documents had not been reviewed within the review timeframes stipulated in system document Divisional Handbook.

BlueScope believes the above non-conformances, and subsequent correction, were of an administrative nature and had no bearing on reducing risks and injuries. Within the WorkCover OHS Management Systems audit there is a preoccupation with 'process' which does not translate into improved safety outcomes.

BlueScope also believes the WorkCover Authority has existing alternative mechanisms for collecting health, safety and workers compensation data that allow it to monitor performance in these areas. Such mechanisms include:

- Annual Claims & Injury Management Self-Audit
- Annual S.189 reporting
- Monthly electronic workers compensation data submission
- Complaints lodged with the Claims Assistance Service (or like bodies).
- Matters that go before the Workers Compensation Commission.
- Mandatory notification of serious incidents
- Direct reports to WorkCover.

In the event of serious deterioration in health & safety and/or claims & injury management performance, BlueScope would expect to be dealt with by the Authority in the same way the Authority would deal with any underperforming employer.

WorkCover continues to devote substantial resources to the work health safety auditing process and to the development and amendment of a National Audit Tool in circumstances where the requirement for the auditing process is unnecessary. Removal of mandatory auditing as a function of the NSW Authority would:

- Increase the competitiveness of NSW business relative to other states
- Result in improved allocation of resources within self & specialised insurers
- Result in improved allocation of resources and efficiencies within WorkCover.

## **Conclusion**

BlueScope accepts the WorkCover Authority has a key role to play in the promotion of safe working environments and providing a framework for returning injured workers to work. In addition, we accept it is prudent that WorkCover ensure we have the financial means to meet our workers compensation liabilities.

However, it is our view that the function of the Authority:

- should not extend to mandatory auditing, and
- that this function be removed as a licence condition for self insurance.

Thank you again for the opportunity to make this submission. We would be happy to provide further information or clarification in support of this submission. If you have any questions please contact Lyal Hammond, Northern Workers Compensation Manager

Yours sincerely

**Lyal Hammond**

Northern Workers Compensation Manager

BlueScope.