



**BlueScope Steel's response
to the National Review
into Model
Occupational Health and Safety Laws**

11 July 2008

Summary

Thank you for the opportunity to make a submission to the national review into model Occupational Health and Safety (OHS) laws.

Occupational health and safety is integral to the way BlueScope Steel does business. For over a decade, the company has continuously improved its safety performance, as measured by key indices such as injury rates. In the last four years BlueScope Steel's lost time injury frequency rate has been consistently less than one, compared to the NSW manufacturing industry average of over 20.

The foundation for this performance is a comprehensive safety management system, and good safety leadership, underpinned by the involvement of employees at all levels in the Company.

The current inconsistent legislation across the States and Territories means that BlueScope Steel must run hybrid OHS systems across Australia, creating greater work and expense, for no benefit to Safety.

The harmonisation of Australia's OHS laws and regulations can be determined to be a success if:

- It provides a consistent set of laws and regulations across Australia, and these are interpreted and applied consistently.
- These consistent laws do not hinder a risk management based OHS system.
- These laws allow and encourage employers to directly engage with their employees to jointly create a safe work place.

BlueScope Steel believes that we are all trying to achieve the same outcome, that of creating a work environment that does Zero Harm to our people.

About BlueScope Steel

BlueScope Steel is an Australian listed company (ASX: BSL) and was demerged from BHP Billiton in 2002.

BlueScope Steel manufactures flat steel products for domestic and export customers. The other Australian listed steelmaker – OneSteel – manufactures long products. BlueScope Steel's customers are in the building and construction, automotive, white goods and general manufacturing sectors.

BlueScope Steel's Australian iron and steelmaking facility is located at Port Kembla (NSW), while a rolling, coating and painting plant operates at Western Port (Vic), along with metal coating and painting plants at Springhill and Erskine Park (NSW). The Company operates in all states and territories and has over 30 BlueScope Lysaght building products manufacturing plants and seven service centres across Australia. It also distributes both long and flat steel products through the BlueScope Distribution business.

The Port Kembla Steelworks is an integrated steel plant with an annual production capacity of approximately 5.3 million tonnes. The Steelworks is modern, internationally competitive and is one of the largest employers in the Illawarra region. The economic contribution of the Steelworks to the region is significant, including 12,000 full-time equivalent (FTE) jobs, \$2.1 billion in gross regional product, and \$0.9 billion in household income. This equates to approximately 14 per cent of gross regional product in the Illawarra, and 10 per cent of household income.¹

Approximately 50 per cent of BlueScope Steel's upstream steel production is converted to products such as COLORBDOND® steel and ZINCALUME® steel, making it amongst the world's largest producers of value-added coated and painted steel products as a proportion of production.

The other 50 per cent is exported, with the company's Australian operations being its largest source of exports globally. In 2006/07, BlueScope Steel exported some \$1.6 billion of steel products, or approximately 2.3 million tonnes. This places BlueScope Steel in the top one per cent of Australia's exporters by value.² Key export destinations for BlueScope Steel include the United States, South Korea, Thailand and Indonesia, and to a lesser extent Europe, Africa and the Caribbean.

Over past two decades, BlueScope Steel has established a substantial international footprint including an integrated steelworks in New Zealand, a flat products steel-mill joint venture in the United States (Delta, Ohio), and metal coating and painting facilities in China, Vietnam, Indonesia, Thailand, Malaysia and under construction in India. Building products manufacturing plants are located throughout the Asia-Pacific region, and the company is the leading manufacturer of steel pre-engineered

¹ IRIS Research, 2007

² Australian Bureau of Statistics, 'Number and Characteristics of Australian Exporters, 2006-07', Cat No: 5368.0.55.006. According to the ABS, In 2006-07, less than 1% of goods exporters had aggregate exports of \$100m or more, but these exporters contributed 79% by value to total goods exports.

buildings in the USA and China. In 2007, BlueScope Steel acquired the IMSA steel businesses in North America.

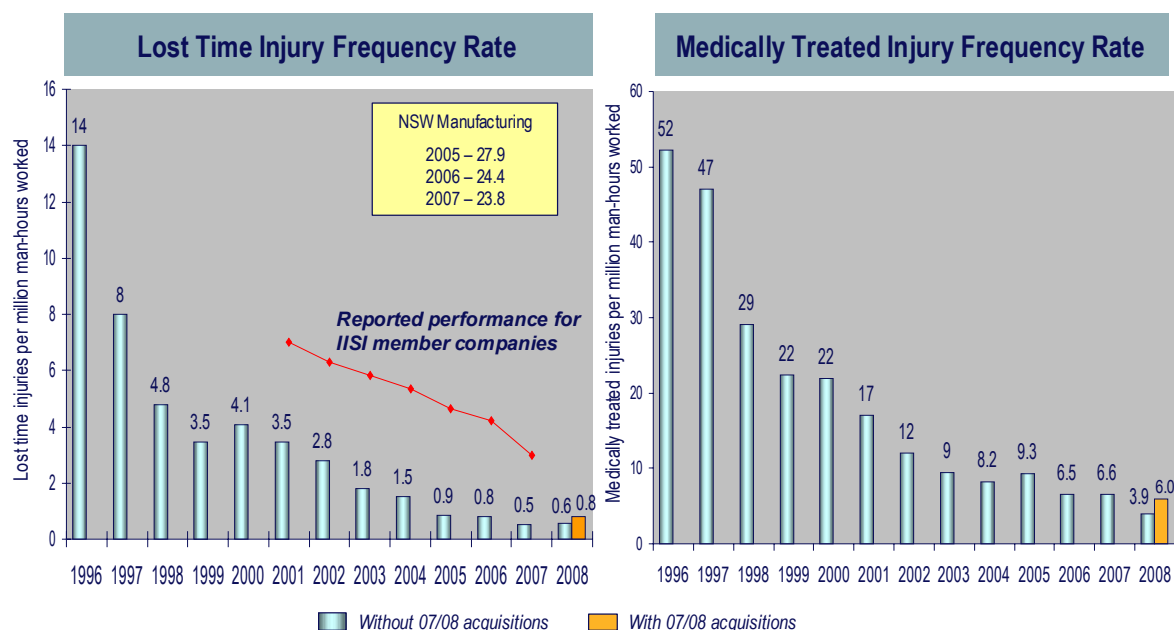
BlueScope Steel has an Australian based direct workforce of approximately 10,000 employees, with a further 11,000 worldwide.

BlueScope Steel's Approach to Safety

BlueScope Steel has a comprehensive and long-established Safety Management System, which has contributed to a substantial improvement in the company's safety performance. This system applies to all BlueScope Steel's operations globally, and is implemented in any new businesses the company established or acquires. The system has at its apex the Health, Safety, Environment and Community (HSEC) sub-committee of the Board of Directors. Reporting to the sub-committee is the Central Safety Committee comprising executives of the company. Below this, each business and sub-business has its own Central Safety Committee.

A key feature of this system is that BlueScope identifies (at a corporate level and at all lower levels) its top rated risks. Focus is then given to these risks (via cross business networks) to reduce the top risks. Each level of the organisation is likewise expected to know what its top risks are, have plans in place to address these risks, and be making good progress to mitigate them.

BlueScope Steel recognises that it is not possible to legislate this type of approach. It asks that any legislative approach should support and reinforce rather than hinder this approach.



IISI: International Iron and Steel Institute.

Response to questions in the Issues Paper

The responses detailed below address questions set out in the Review's *Issues Paper* dated May 2008. We have not responded to every question, but have addressed those matters of most importance to BlueScope Steel.

Q1 – Q2 Regulatory Structure

The legislation should be based on principles and process based standards - principled based standards to identify the goal, and process based standards to drive the behaviours needed to achieve the goal.

Prescriptive standards should be reserved for subordinate regulations and codes of practices.

Legislating outcome-based standards is not the most effective way of achieving workplace health and safety. It creates a disconnect for companies and individuals between their behaviour and legislative outcomes, and risks driving behaviour that is unhelpful, as actively identifying and documenting improvement opportunities will carry greater legal risk.

Q4 - Q5 Objectives and principles

BlueScope's own health and safety policy states that "We aspire to zero harm to people. Our fundamental belief is that all injuries can be prevented. This responsibility starts with each one of us."

One of the key practical lessons we have learnt in actively managing and improving our own safety systems and performance is that Safety is a continuous journey, and that whilst it is critical to aspire to absolute safety it is not possible to simply 'legislate' to achieve it. Better safety outcomes require passionate leadership and ongoing commitment from every employee.

A continuous improvement model is the corner stone of any system that is risk management based, as it requires resources to be focussed on the biggest risks.

We would encourage the model OHS Act to set clear aspirational goals, and include principles that encourage risk management, continuous improvement and shared responsibility, whilst continuing to recognise that what is reasonably practicable will differ in varying circumstances.

Q8 **Should a model OHS Act incorporate all industry specific safety legislation? If so, how and to what extent?**

BlueScope Steel strongly supports a consistent national approach to OHS.

There is currently a range of legislation, in a range of jurisdictions, which governs or impinges on occupational health and safety in addition to the examples identified in the Issues Paper. This includes major hazardous facilities legislation, rail safety legislation, road safety, maritime safety and general occupational health and safety laws.

These differing approaches require differing/multiple safety systems even within one jurisdiction. One framework should be used and specific requirements for different activities should be set out within that framework, as an addendum or Code of Practice etc. There should be a single regulator.

Q12 Should the scope and application of the model OHS Act be sufficiently broad and flexible to accommodate new and evolving types of work arrangements? If so, how should this be achieved?

The Act should be flexible and able to accommodate new and evolving types of work arrangements, however we have no opinion about how this could be achieved.

Q16 Should the model OHS Act include a “control” test or definition? If so, why and what should it be?

It is important to safety outcomes that organisations be able to engage experts in a particular field and give them “control” of a job. Control in this case should be defined in terms of who sets the OHS processes, systems, procedures, standards and who monitors and ensures they are being followed: whoever that is, controls the work.

Q18 Should control be able to be delegated or relinquished? If so, in what circumstances and what should the legal effect of doing so be?

Control needs to be able to be delegated in order that people or organisations with greater expertise can be employed to do specialist work safely. This delegation should be done by the *delegator* checking that the *delegatee* has appropriate expertise, that the *delegatee* has OHS systems, processes, procedures and standards and that the *delegatee* checks and enforces their own system. Once this check has been satisfied then control has been relinquished.

Q19. Should the model OHS Act clarify responsibilities where multiple duty holders and multiple duties are involved? If so, how should this be achieved?

The model OHS Act should clarify responsibilities where multiple duty holders and multiple duties are involved. Precisely how this is done is less important than ensuring responsibilities are clear.

Q25 How, and to what extent, should the model OHS Act specify worker’s duties of care?

Paramount to employment should be a responsibility to take reasonable care to avoid harm to themselves and others, and to abide by safety rules, particularly those identified as of a critical nature.

Q26. Should the model OHS Act include duties of care for persons who are not performing work (e.g. visitors to a workplace, members of the public)? If so, what should the duties be?

It would be appropriate for the OHS Act to require persons who are not performing work to take reasonable care to avoid harming themselves or others, and to comply with OHS instructions.

Q27-Q30 Appointed persons and officers

BlueScope Steel believes that line management is responsible for safety performance. Anything that dilutes or confuses these lines of responsibility would not be helpful. Other roles should only support line management in discharging these responsibilities.

Q37 Should a test of “reasonably practicable” be included in the model OHS Act?

Yes, a test of “reasonably practicable” should be included.

Providing as much clarity as possible about its’ meaning and application would definitely help employers, workers, regulators and the courts. It would also be helpful for what is reasonably practicable to be assessed in the context of both:

- the particular risk being contemplated; and
- the larger picture of what resources are being deployed to manage bigger and higher priority risks, so that resources aren’t deployed to protecting low risks at the expense of high risks.

Legislative steps to encourage regulators and courts to adopt a consistent approach across jurisdictions would also be most welcome.

Q39 How should the standard be defined? What level of detail should be provided?

The definition should be in broad terms and cast in terms of:

- current industry practices.
- Standards and codes currently in use (as opposed to standards and codes that have recently been introduced).
- The availability of commercial products or solutions

The definition needs to be broad enough to accommodate changing technology and standards.

Q43. Should a definition of ‘reasonably practicable’, or an alternative standard, include a reference to risk management principles and processes (hazard identification, risk assessment and risk control)? If so, how?

Determining what is “reasonably practicable” should be assessed in the context of it being appropriate for organisations to prioritise larger risks over smaller risks. (This is also mentioned in our response to question 37.)

Q44 Should risk management principles and processes be specifically required by the model OHS Act in relation to the general duties, or otherwise?

As expressed in our response to **Q5** the basis of the Act should be continuous improvement via a Risk Management approach.

Q45-Q47 Consultation

Consultation is important for achieving good safety outcomes.

As employers remain primarily responsible for ensuring workplace health and safety, the focus of consultation should be about engaging employees in the safety process.

The duty to consult should be expressed as generally as possible, so that organisations can ensure consultation occurs in the most effective manner possible. Regimes such as those that presently exist in NSW and Victoria are rather prescriptive and lack flexibility.

Employees should also have an obligation to engage in consultation.

Q49-Q58 Health and Safety Committees

This series of questions is going down a train of thought that is complicating something that should be simple. By making this complicated the options for consultation are limited by the complexity. General principles may be better than a prescriptive “one size fits all” model.

Q59 Should the model OHS Act include right of entry provision? If so, who should be entitled to exercise the right of entry?

It is the regulator that should have the right of entry. Even this should be done in a safe manner, and in consideration of the site’s safety management system (eg site manager should be informed ahead of time, regulator should be accompanied for their own safety, restricted accesses should apply, confined space etc.). Conferring powers on bodies outside the independence of government is not seen as appropriate or adding value.

If other parties have concerns they should report these through a normal issues resolution process and if they are not satisfied with the outcome then they should take these concerns to the regulator.

Q63-Q66 Issues Resolution Process

The employer should be responsible for having a defined issues resolution process, however as employers are primarily responsible for safety, they need to have the final say, subject to the laws and regulations of the jurisdiction.

Additionally employees should have to follow the issues resolution process. The regulator should only be approached after this process has failed to come to a satisfactory resolution.

Q71-Q78 Issues of discrimination or victimisation

This area is variously covered in different states. The model Act should specify a standard approach to ensure a consistent national approach.

Q79 Should the model OHS Act provide for the establishment, functions, powers and accountability of regulators? If so, what should be provided?

It is difficult to see the usefulness of any national model that doesn't define these areas. If each state has its own then the outcome will be different in each state, thus defeating an important objective of the harmonisation.

Q80 Should the model OHS Act require regulators to publish enforcement and prosecution policies?

Yes.

Q81 Should the model Act include provisions that allow the making of interpretative documents?

Yes, anything that helps with clarifying expectations and provides consistent interpretation and application.

Q85 Should the model OHS Act strengthen the role and capacity of inspectors to provide advice and assistance? If so, how?

Yes, anything that helps with clarifying expectations and provides consistent interpretation and application.

Q101 Should the model OHS Act provide for the use of enforceable undertakings as an alternative to prosecution for an offence against the Act? If so, for what offences?

In complex industrial processes there are many ways of achieving a safe outcome. Often safety is better served when the employer undertakes to do certain things rather than be subject to prosecutions or penalties.

Q102. Should the giving of an enforceable undertaking result in an admission of fault or liability?

An enforceable undertaking should be able to be given either with or without an admission of fault or liability.

Q110–Q111 Who should be entitled to commence criminal or civil proceedings?

Only the regulator should be able to commence proceedings.

Occupational Health and Safety legislation should only be focussed on the well being of people. Anything that could create the perception that the legislation is being used for other reasons will diminish the credibility of the legislation.

Q111 – Q116 Procedures for prosecutions and evidence

The model Act should specify a standard approach to ensure a consistent national approach.

Q122-127 Officers of the corporation liability

The model Act should recognise the complexity of modern organisations and the varying ability of individuals to influence corporate behaviour in the same way as it recognises the complexity of modern workplaces.

Individuals should only face liability for health and safety offences where they contributed to the offence, having regard to their role in the organisation. Imposing punishment that is unrelated to individual behaviour or ability to influence safety outcomes seems unlikely to in any way affect safety outcomes.

In large corporate groups in particular, it is important to recognise the impracticality of non-executive directors seeking involvement in every safety issue, and to acknowledge that the group's corporate structure may not perfectly reflect the group's management structure (eg, directors of a group subsidiary carrying on more than one business may not have line management responsibility for all of the subsidiary's business activities).

As such, automatically 'deeming' an individual to have committed an offence when a corporation has committed an offence is not appropriate.

Q132. Should the level of penalties depend on culpability (recklessness) or outcome (death) or repeat offences?

Consistent with the adoption of a continuous improvement/ risk management approach, penalties should primarily depend on culpability and repeat offences. Outcome should only be a relevant factor where a high level of culpability is established.

Q136 Should there be specific offences relating to workplace death or serious injury? If so, what?

If a continuous improvement / risk management approach is taken then it would be inconsistent to have specific offences relating to death or serious injury. Any offence should be related to the risk management approach and breaches of this approach, not the end outcome.

Q146 What provisions should be made in the model OHS Act for the external review of regulatory decisions?

There needs to be provision to dispute decisions by the regulator. This allows affected persons to question decisions in an equitable manner and provides feedback to the regulator on the interpretation of the regulations. In a harmonised system these decisions would clarify interpretation nationally, thus driving consistency.

Q150 What areas should be subject to formal mutual recognition provisions in the model OHS Act?

One of the main benefits to industry of harmonisation is to get consistency and mutual recognition across all areas and all states and territories, so that industry can set up common management systems across the country.

Q152 How should the model OHS Act be framed to reduce or remove the extent of overlap between federal and State or Territory OHS laws, or minimise the difficulties of such overlap?

We have no view on how this should be done, however the drive must be to get consistency across the States and Territories, so that corporations can develop organisationally consistent solutions to OHS issues, and what is accepted in one state will be accepted in all.

Conclusion

The Federal Government is to be congratulated for creating this opportunity to harmonise the OHS laws across Australia.

The current inconsistent legislation across the States and Territories means that BlueScope Steel must run hybrid OHS systems across Australia, creating greater work and expense for no benefit to Safety.

The harmonisation of Australia's OHS laws and regulations can be determined to be a success if:

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