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11 November 2016

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Dear Sir / Madam

Review of the New South Wales self insurance licensing framework

We thank you for the opportunity to contribute to the *Review* of the NSW self insurance licensing framework following the release of the Final Report. The *Review* has produced 16 recommendations, grouped into three categories:

1. Operating Model – Recommendations 1 & 2
2. Oversight – Recommendations 3 to 13
3. Financial - Recommendations 14 to 16

We will deal with each of the categories broadly, as opposed to commenting on each individual recommendation, except where we feel the impact of a specific recommendation requires highlighting.

The release of the Final Report has been accompanied by presentations by Price Waterhouse Coopers (PwC) and the State Insurance Regulatory Authority. We understand that much of the detail that will support the recommendations has yet to be developed. Notwithstanding this, BlueScope supports in principle the adoption of the recommendations as they have been presented, and believes the *Review* has largely succeeded in its goal of reducing the regulatory burden of the current arrangements.

1. Operating Model

BlueScope strongly supports the recommendation for an 8 year licence period and the intent to move most self-insured employers into the top (of three) tier from the outset.

We believe extending the self insurance licence period reflects the very low risk self insured companies present to the overall scheme, and provides a level of certainty with respect to resourcing and financial commitment.

We note the framework provides for insurers to move between tiers depending on performance, however we understand that a drop from the top tier to mid or lower levels would occur only after an appropriate period of discussion and opportunity for the self-insurer to correct any issues that may threaten top tier status. All organisations operate better in a stable environment – uncertainty about the term of a licence one year to the next distracts focus from the critical job of ensuring injured workers receive benefits and are able to return to work.

BlueScope also supports the proposal that Top Tier self-insurers be eligible for lower licence fees, and endorses the proposition that high performers create less administrative burden for the Regulator. Comment is made below with respect to oversight requirements, but fundamentally we are supportive of the proposed approach.

2. **Oversight**

At the outset we wish to highlight our strong support for Recommendation 8, the removal of WHSMS audit requirements. As stated at other times during the Review process, the regulator has at its access numerous mechanisms to satisfy itself of the integrity of a self-insurer's health & safety performance, including an annual Section 189 Return & WHS System Self Audit, monthly workers compensation data submission, mandatory notification of serious incidents and complaints to SafeWork NSW.

Recommendation 8 relies on the existing WHS engagement and enforcement activity undertaken by SafeWork NSW that applies to all employers in NSW. BlueScope believes this is an equitable and appropriate manner in which to deal with all NSW employers. WHS oversight and obligation beyond that expected of the vast majority of NSW employers puts self-insured organisations at a competitive disadvantage.

Across all business activities, BlueScope seeks continuous improvement. BlueScope employs 40 dedicated Health & Safety professionals (although it is core to our values that every employee is responsible for safety). The Company holds annual health & safety awards, and this year received over 70 entries. Safety performance across BlueScope Australia has continued to improve in the absence of Regulator audits – lost time injuries fell 18% over 2015/16, and medically treated injuries fell 3% for the same period. This improvement has come about through a focus on critical risk. Safety is a strong part of our culture and we constantly review, and as needed, adjust our strategies on our journey towards zero harm.

BlueScope's view is the approach to achieving healthy & safe workplaces will vary amongst organisations. Some organisations have reportedly found the WHSMS audit beneficial in highlighting their system failures. While an audit may be an effective tool for some businesses, it should be open to all organisations to utilise whatever resources they require to ensure they meet their safety goals, without having the activity imposed upon them. Self-insurers who wish to continue with regular WHSMS audits should be able to do so voluntarily but there should not be a mandatory audit requirement for companies that have demonstrably industry-leading safety performance, as BlueScope does.

It is of no surprise the Final Report found WHSMS audits did not meet IPART's test for the application of 'conduct rules', i.e. they "should only be applied if the risk is great, ability to remedy is poor, financial remedies insufficient, and the risk is driven by the licence holder's behaviour".

Throughout the *Review* BlueScope has been clear that as a consequence of bearing the full cost of injuries there is an inherent incentive to optimise health & safety outcomes. Providing a safe working environment is critical to building a positive workplace culture and enhancing labour productivity in a market in which we compete against low-cost imports.

The *Review* found no evidence that self-insurers pose any additional WHS risk compared with other (non-self-insured) employers, and the current licensing requirements are disproportionate to the risk posed. The 56 self-insured employers, accounting for 23% of NSW employers, are the only organisations required to undergo auditing. The requirement does not fall on the majority of employers, who are generally less resourced and capable of the level of health and safety achieved by self-insured businesses.

By their own admission, Regulator WHSMS audits are concerned with compliance with process, not outcomes. The *Review* cites the Productivity Commission as indicating Government regulators should focus on outcomes. BlueScope last underwent a Regulator audit in February 2013. Non-conformances recorded by the Auditors had no bearing on reducing risk or injuries – e.g. a checklist used to audit the facilities & amenities blocks (lunch room & toilet) was not used; documents outside a review date had not been replaced.

We note that changes or additions to specific oversight requirements under the proposed framework place an increased emphasis on claim management performance and workers compensation data reporting. The intent is monitoring of various measures on an ongoing basis as opposed to point-in-time evaluation. This is an approach common across most jurisdictions and to which BlueScope has complied with since licensing requirements were imposed on self-insurers. BlueScope recently underwent the annual (third-party) self audit required of all self-insurers and scored 92%. This scoring is consistent with our performance over many years. We note Recommendation 4 will lead to the adoption of a risk-based approach to claims management auditing, with top tier organisation require to complete the self-audit every 2 years. Claim management audits are significantly less burdensome than WHSMS audits and focus on injured workers.

BlueScope is of the view that a suite of tools allows the Regulator to form a holistic view of a self-insurer's performance, and note the multiple oversight measures recommended. Having reviewed the measures set forth in Recommendations 3 through to 13, most appear to require some work additional to current requirements, but do not appear onerous, or replicate reporting already being adhered to by the Company.
As a point of caution, BlueScope would also have concerns about complaints lodged with the Regulator as an indicator of performance. At the present time the Regulator records any query or issue that comes through its office as a complaint, with no investigation on the Regulator's part as to their merit.

Our understanding is the Regulator intends to provide a forum for the self-insurer and Regulator to meet so that any issues that might arise during the term of the licence can be dealt with. In this respect we welcome Recommendations 10 and 11, and the preparation of quarterly performance reports.

3. Financial

BlueScope's fundamental position is good safety is good business. Recommendation 14 provides an opportunity for high performing organisations to benefit from lower licence fees based upon the reduced oversight scrutiny required of them by the Regulator. This is clearly an equitable manner in which to apply a charge for the administration effort, and would cease the cross-subsidisation identified by the *Review*.

BlueScope strongly support a review of the prudential requirements of self-insurers, as set out by Recommendation 16, in anticipation it will likely lead to a reduction in the Company's obligation to hold a margin 50% above the actuarial-determined outstanding liability. We note the *Review* has not undertaken detailed assessments of current prudential requirements, but has raised it as an issue SIRA should further explore.

BlueScope is of the view the prudential margin should be capped at the current level, but should only be applied at the maximum in the event a self-insurer presents at risk of not being able to meet future liabilities, i.e. they face the prospect of insolvency or bankruptcy. Organisations that can demonstrate their financial strength should be able to carry a lower prudential margin commensurate with their risk. BlueScope is open to further discussions but suggests the margin should be in the range of 115%-125% of the outstanding liability.

Self-insured companies are required to support the prudential margin through some form of security. In BlueScope's situation, Guarantees are taken out at a fee from a financial institution. BlueScope's current requirement is $71.773 million. A reduction to the range noted above would reduce our exposure by approximately $14M, potentially freeing up funds for more productive uses.

We are thankful for the opportunities provided to the Company to contribute to the satisfactory outcomes of the *Review*. We would be happy to discuss this submission in more detail with you, or answer any questions.

Yours sincerely

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