



16 July 2009

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The Secretary  
Senate Standing Committee on Economics  
PO Box 6100 Parliament House  
**CANBERRA ACT 2600**

Dear Sir

### **Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009**

I refer to your letter to Ian Cummin dated 7 July 2009 inviting BlueScope Steel Limited (**BlueScope**) to make a submission to the Senate Standing Committee on Economics in relation to the Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009 (**Bill**).

There are a number of provisions in the Bill that BlueScope would like to make comment on. These are set out below.

#### **Definition of 'base salary' and 'termination benefit'**

The definition of 'base salary' that the Bill proposes to insert into section 9 of the Corporations Act (Cth) 2001 (**Corporations Act**) is of critical importance to the operation of the termination benefits provisions in the Corporations Act as amended by the Bill. The Bill provides that the Regulations will contain a detailed definition of "base salary" and it is noted that the Explanatory Memorandum to the Bill, at paragraph 2.10, provides that:

*"Given the fluidity of the definition of 'base salary' in application, this allows flexibility for the law to respond to an environment of rapid change and ongoing developments. Flexibility is also required as the new arrangements will facilitate greater understanding in this area and may reveal a case for change to provide clarity and certainty."*

BlueScope submits that it is vital that a definition of 'base salary' reflects the reality of executive remuneration. As such, given that the operation of the Bill will be materially affected by the Regulations, it is appropriate that stakeholders are given an opportunity to comment on the Regulations, and specifically the definition of 'base salary'. While BlueScope accepts that there are benefits in the Government amending the definition over time, it is vital that both executives and companies can enter into employment agreements with certainty.

BlueScope welcomes the comments made in paragraph 2.32 of the Explanatory Memorandum that the Regulations will provide certainty on what constitutes a 'termination benefit' but notes that the list will be non-exhaustive. Again, it is vitally important that executives and companies can contract with certainty as to what benefits require shareholder approval and in what circumstances. Specifically, BlueScope submits that clarity in relation to superannuation is required.

It is noted from the House of Representatives Second Reading Speech that the Government intends to engage in consultation on the Regulations (which are not currently available) and BlueScope would welcome that opportunity.

### **Section 43 - Application**

Section 43 of the Bill provides that it applies to a retirement from office or employment in circumstances where the agreement was entered into, renewed or extended, or had a condition of the agreement varied after the commencement of the Bill. What is unclear from section 43 of the Bill is to what extent an agreement has to be varied for the operation of the new requirements contained in the Bill to be triggered.

The Explanatory Memorandum, at paragraph 2.7, provides that the Bill will apply where a "*variation of a condition is made*" and that "*minor changes*" would not be considered a variation of a condition. However, paragraph 2.7 goes on to state that "*any term relating to remuneration would be considered a variation of a condition.*" As such it appears the intention is that in circumstances where an executive received a pay rise in accordance with his or her employment contract which was made before the commencement of Bill, it would be caught by the Bill.

It would seem that even circumstances where an executive agreed to a reduction in remuneration, that would literally trigger the operation of the Bill.

The Second Reading Speech states that the Bill will only apply to: "new contracts which are entered into, extended or substantially varied after the commencement date." The concept of a contract being "*substantially varied*" is considerably more confined than the circumstances that the Explanatory Memorandum suggests the operation of the Bill would be triggered. It is appropriate that the Bill is amended to provide the necessary clarity on this issue given that it is going to have an enormous impact in practice.

BlueScope appreciates the opportunity to contribute to the Senate's review and looks forward to an opportunity to participate in consultation in relation to the Regulations.

Yours sincerely,



**Graham Kraehe AO**  
Chairman