

**Tuesday, 21 September 2004**  
**Premier Bob Carr, Greg Combet, Bernie**  
**Banton and other asbestos victims on**  
**Jackson Report on James Hardie asbestos**

**E & O (excepted)**

CARR: Well ladies and gentlemen, the report is now with us and it's been, the report has justified all the faith we've had in the Jackson Inquiry. We wouldn't have got to this point with this information being available, and with this pressure on James Hardie, without the inquiry process.

The inquiry has worked. It's got all the details out there for the public to inspect and it's brought James Hardie to account.

I, today, have written to the Prime Minister and to Mark Latham urging them to use the full force of the Commonwealth laws and agencies to bring Hardie's managers to justice. So those letters are being signed and they've been sent off.

The grounds for the Commonwealth's corporate regulator, ASIC, commencing criminal proceedings against the senior managers is outlined in the report, and supported by the information in the report.

The thing that stands out for me is a simple message from these two fat volumes, and it's this.

James Hardie must pay up. It's got the money. The money was earned from the trading of asbestos products. The money should be with the victims and there needs to be a negotiated settlement.

The position the NSW Government takes is this. It's time for James Hardie to say they will pay the money and to sit down with the ACTU and the Labor Council in the presence of the victims and negotiate a settlement.

That settlement, if required, can then come to the NSW Government and we will respond, and here's a message to James Hardie, only when the package has got the tick off of the ACTU and the Labor Council and, of course, the victims.

I think that represents a might powerful incentive to James Hardie to do the right thing. And that is identify the money that will be paid, say they will pay in full and negotiate with the ACTU on the means by which the money will reach the victims.

And that's the position we take as a government.

If it doesn't get the tick off the victims, it doesn't get the tick off of the NSW Government.

So it's over to James Hardie. James Hardie must come with the money to the negotiating table.

There's another point I'd like to make here at that is that there are number of options.

The unions might come to us and say we want some improvements in the way the Dust Diseases Tribunal works under NSW law.

Or they might reach the view that all that's required is for James Hardie to top up the funding for the foundation, perhaps \$70 million a year if that's considered the appropriate amount, to see that money flows according to the existing scheme.

But either way, whatever way, we want to know that it's got the tick off of victims and unions before any suggestion to change in administration or legislation reaches us. That's the approach we are taking.

When it comes to the question of a boycott. Here there are difficulties with a boycott, but we're not ruling it out. If it is required down the track to see that James Hardie negotiates with good faith and pushes money across the table then it's something we are prepared, as the biggest Government in Australia, as a purchaser of 8 percent of James Hardie's products, that something we are prepared to join the ACTU in pursuing.

Another reason for James Hardie must come to the table with an adequate offer of money.

Over to ASIC has well, I think that covers immediate responses by us.

I'm happy to answer your questions, but today is all about the people who have been exposed to very serious diseases as a result of working with a James Hardie product.

The product brought great wealth to James Hardie and its shareholders.

And it's now time for James Hardie, as the report says, to accept its liability and to commit itself to paying the money.

Let me conclude with a quote from the Commissioner.

*"To put it directly, James Hardie Industries still has in its pockets the profits made by dealing in asbestos, and those profits are large enough to satisfy most, perhaps all, of the claims of victims of James Hardie asbestos."*

And that's something we fully endorse, and Bernie I don't think you'll be dissenting from that conclusion.

BERNIE BANTON (Vice President, Asbestos Diseases Foundation of Australia)  
...(inaudible)... , thank you Mr Premier.

Thank you Mr Premier, and that is a heartfelt thank you to the Premier, because without this inquiry we wouldn't be here today. And so we just say again – Mr Premier thank you. Because without you insisting on this inquiry you wouldn't be here today with all these people here. The press here today.

And thanks for showing us how much you care by meeting with Meso sufferers. We did appreciate that. We got an hour and a half of your time.

And we know that the Premier has been under a lot of innuendo and all sorts of things.

And we are just really appreciative of just how much he has shown that he does care on behalf of victims.

The inquiry took over 54 days. The report is a 1000 pages long. So we've not had time to read it all. But we feel vindicated in our view that the foundation James Hardie set up to fund victims was manifestly inadequate.

And that James Hardie and its senior executives particularly Peter Macdonald in setting up this foundation engaged in wrongful conduct and criminal conduct.

And I've offered before to be the one to offer him bread and water.

I look forward to joining with Greg Combet in any negotiations with the Government or the company.

Asbestos victims should not further be punished. We should get full compensation and retain all our rights.

It was James Hardie that made us sick and kill people. James Hardie should pay. Not the Government, not us and not the taxpayers but James Hardie alone.

Thank you ladies and gentlemen.

CARR: Can I ask any of the other people.

GREG HAYES (asbestos victim)

Greg Hayes is my name and it's a privilege to be here today and again I'd like to thank you Mr Premier for the report that's come out. I haven't read it, I know it's going to take, at the rate that I read, it's going to take me a long time.

It's pretty enlightening to see that something is going to be done.

I'm one of the fortunate people that's had a payout through the Dust Diseases Tribunal.

And for people to be denied that right would be absolutely criminal.

And today's report has come out with a positive side to it.

And James Hardie should be made responsible for what they've done. They've been quite aware for a lot of years of the damage that asbestos can do people's health.

And to be diagnosed with Mesothelioma, which is as fatal a disease as you can get according to the medicos, is quite a distraught, it left me totally distraught because of my position with my family, my kids.

And this has just made it so much easier for every other person that's going to be diagnosed and have claims in the future.

And I just thank Mr Premier, once more, and all of you people here today. Thank you.

CARR                      Nick Boss.

NICK BOSS (Queensland Asbestos Related Disease Support Society)

I'm Nick Boss and I'm the secretary of the Queensland Asbestos Related Disease Support Society, and I would like to thank Premier Carr very much for instigating this inquiry. It's been extremely important to our organisation and because we've got many people with asbestos related disease, and many people in the, into the future will be wanting to claim against James Hardie.

I'd also like to say that in Queensland we've had a lot of support from Premier Peter Beattie, who has been fully behind our organisation all the way.

Like Bernie, you know we've got a very large report to go through which you know we certainly we haven't had an opportunity to do at this stage. We'll be going through this in detail with our members in Queensland. And then we'll be able to respond fully.

The important thing to us is that the people who have been affected by Hardie's products will be able to continue to claim, and not be adversely affected by the restructuring of the company.

So once again thank you very much, Mr Premier. We very much appreciate everything that you've done for us.

CARR:                      Thank you. Greg Combet, secretary of the ACTU.

GREG COMBET (secretary of the ACTU)

Thank you Premier. And I also want to open my remarks on commenting on the report by thanking Bob Carr, the Premier of NSW, personally and on behalf of the ACTU and many, many workers around the country, because, I think without the special Commission of Inquiry that was established by the NSW Government into James Hardie restructuring, it's unlikely that we would be this close I think to ensuring that justice prevails for current and future victims of asbestos products of James Hardie.

It's been a very important initiative and the unions and asbestos support groups have also received significant levels of support from other State Premiers and State and Territory Governments.

I think the Jackson Report could be summed up pretty easily by saying James Hardie must pay.

There's no doubt when you have a read through the report, when you've got that opportunity you'll see that Mr Jackson supports the contention that was made. That the company restructured its affairs in order to separate its assets from I think he used the expression in the report – the stigma of its asbestos liabilities.

And I've described that on a number of occasions one of the most disgusting corporate acts I have seen, and I remain of that view.

And I think Mr Jackson's report though can take us a long way towards rectifying the wrongs that have been done.

There are several things that need to happen in view of the findings of the report, of the Commission of Inquiry.

One is that you'll see that there are particularly adverse findings in relation to James Hardie's CEO Peter Macdonald. I think Mr Macdonald should do the decent thing now and resign as CEO, resign immediately.

And if he doesn't so there's a challenge there for the new chairman of James Hardie, Meredith Hellicar and the other board members, because he should immediately be sacked if he doesn't resign.

There'll be an investigation one assumes following these findings by ASIC of Mr Macdonald's conduct along with other executives of the company.

The second important thing is that James Hardie must immediately now come out and say in an unconditional way that they will guarantee the funds in the years to come to make sure that anyone who suffers from an asbestos related disease, as a result of exposure to a James Hardie product, will be compensated.

And that needs to be an unconditional commitment.

And that in essence is also I think what Mr Jackson is calling for in this report.

He does canvas the difficulties of pursuing this matter through legal remedies, and we've always understood the complexity and difficulty of following the legal approach.

And it's why the third thing needs to happen now. And that is there is a negotiated and agreed settlement.

And the comments of the Premier has made are extremely important in this regard.

Because they are very clear and unequivocal indication to the company that the company must immediately come good, put the money on the table, show the money and reach a negotiated and agreed settlement, so that the payments that are to be made in the years to come can go forward with the full security for the potential victims and current victims.

There is one final broader issue I wish to draw attention to and that is the need for corporations law reform at the Federal level.

And this is a challenge really for Mr Howard and Mr Latham, because this thing must never be allowed to happen again.

And we must ensure that holding companies, parent companies in this situation can be held liable for the liabilities of their subsidiaries in circumstances such as this, where there is personal injury and death and, in my view, in circumstances where employee entitlements have been placed in jeopardy through a corporate restructuring.

There is an urgent need for corporate law reform to deal with these sorts of problems, and I call on Mr Howard and Mr Latham to make clear their commitment to that type of reform.

Mr Latham has made previous comments in relation to this matter, supportive of that view, and I would hope that that's something we can go into this election with on October the 9<sup>th</sup> very clear as a commitment, excuse me, from both of the political parties.

I want to thank the Premier again, once again, for the opportunity to speak.

CARR:

Before I take any questions I might just say something I forget earlier. I've told my Ministers and public servants there'll be no talking to James Hardie. We're a pro-business government, but I draw the line somewhere. And James Hardie won't get into see us until they settle with these people.

So no talking with James Hardie until they talk with these people and reach a satisfactory agreement, and at that point when it's ticked off by Greg Combet then we'll talk to the company.

But I want to see a report from this group, led by the ACTU, before we do any tinkering with what we think is a pretty respectable way of getting justice to the victims of asbestos, that is through the Dust Diseases Tribunal which is a scheme we've got in NSW from which I think everyone here has received justice.

So before we tinker with that in any way we would want a tick off from this group.

And if you've read the report you'd appreciate that Mr Jackson makes about 10 pretty substantive criticisms of the proposal put forward by James Hardie for a statutory scheme.

We've got a scheme in NSW that's delivered justice to these people.

But the people coming behind them need justice as well. Reg Stephenson.

REG STEPHENSON (asbestos victim)

Thank you Mr Premier. Can I suggest to you my presence this morning isn't for any personal gain because I've been through the system, and then spat out.

But it's tremendous encouragement to all asbestos victims to hear you saying, Mr Premier, Hardies [sic] must pay. That's really good music.

And can I make a plea to you people. Let's assist the Premier to drive a nail home and really make Hardies [sic] pay. Thank you

CARR: Any questions.

JOURNALIST: Premier, just wondering are you getting any ...(inaudible)...

CARR: I'd might refer that to you Greg.

COMBET I'm sorry I missed the start of the question.

JOURNALIST: ...(inaudible)... and looking back at the information ...(inaudible)... Amsterdam, were you getting any encouragement from what Ms Hellicar was saying ...(inaudible)...

COMBET Well Meredith Hellicar I suppose is making far more sympathetic and emphatic noises with victims, towards victims and their campaign that's been run against the company.

I think a cynic would say that a lot of that is driven by media spin doctoring advice.

The real test of it is whether or not there is a concrete financial commitment that is made to lift the current and future claims of asbestos victims of James Hardie products. And to date we do not have that commitment.

We have an offer which is vague. I think it's described by Mr Jackson in the report as embryonic and somewhat contradictory.

And as the Premier said as there are number of criticisms made of the proposition.

But that offer is entirely conditional upon the NSW Government accepting a statutory scheme in the nature described generally by the company.

I think that condition needs to be immediately removed. As I said earlier a simple, unequivocal, unconditional guarantee that the company will meet its asbestos liabilities is needed.

And what we are indicating is that we are prepared to sit down and discuss, negotiate and agree with the company the mechanism by which that funding will be delivered.

Now we believe that the best mechanism is through the Medical Research and Compensation Foundation that after all James Hardie established.

And that a periodic payment in the form a yearly payment underwritten by appropriate financial security – that that's the best way of delivering justice to asbestos victims.

People, we must never lose sight of this, in this circumstance. We're talking about real people, Australian people who through no fault of their own have contracted serious diseases from James Hardie products.

And I just think the most moral ethical thing to do in this circumstance, having been through all what we have with an inquiry and a report.

For heaven's sake. People at a senior level in the company and directors on the board must recognise their responsibility. It's a moral, ethical responsibility, if not a legal one, and they should face up to it pronto.

JOURNALIST: The Commission ...(inaudible)...

COMBET What we're indicating is we're prepared to sit down and look at the mechanisms by which the funding can be provided.

The unions and asbestos support groups have had a very clear view about the scheme proposed by the company in so far as it's able to be understood because it's only been very generally articulated.

And that is if it impinges negatively in any way on the rights of victims and the levels of their compensation we will not be supporting them.

There is no case you know for the general type of argument that the company has put forward for its statutory scheme in our views.

And we're prepared to sit down and hear their arguments and we'll put our position to them.

But at the end of the day we're not going to be conned into rewarding James Hardie for the conduct that they have engaged in.

And you have to remember that's essentially what they are saying – we've run off with the assets, we're prepared to bring some back provided you deliver us a dividend out of this whole exercise.

Well I'm afraid that's not on.

JOURNALIST: ...(inaudible)...

COMBET Well the Premier might wish to canvas that obviously. But I would say this to you. That there is also extensive discourse in the report about the legal hurdles that might need to be jumped.. .

Look it should never come to that. It shouldn't have come this far. The moral and ethical responsibility of the company is to pay people's compensation. If they have a legitimate claim for compensation against the company it should be met.

We shouldn't be having to contemplate litigating in the Netherlands or the United States or having officers of special prosecutors, or ...(inaudible)... the corporate file in the situation that we're in with one company.

If they want to go down that path I'd say this to them.

There's no where to hide.

You know, such is the nature of this act, the findings against the company and I think the anger in the community and the resolution from Governments in this country that the company will not be able to hide.

And I would say this to the institutional investors in James Hardie. If they think that's a great strategy then they better get a new fund manager. A new investment adviser.

Because until this issue is resolved the shareholder value in this company is not going to be revived. The value of this company can only be restored by the institutional investors along with the board accepting their responsibility to properly compensate people.

And as the Premier pointed out there's some important observations in the report on this point, and I'd just like to reiterate it.

Mr Jackson says the company still has in its profits.. in its pockets the profits made by dealing in asbestos and those profits are large enough to satisfy most perhaps all of the claims of victims of James Hardie asbestos.

JOURNALIST: Just having a look at what also ...(inaudible)... Jackson said. He said ...(inaudible)... that the fund may very well need just ...(inaudible)... payments rather than an once ...(inaudible)...

COMBET In dealing with this issue during the inquiry there's been a lot of attempt to quantify in today's value, current values what the actual liability is. And so these \$1.5 to \$2 billion figures are I think are about as best as people have been able to put their finger on it.

Mr Jackson says in the report that in his opinion it's at least \$1.5 billion. However no one knows what that amount may be at the end of the day, because we don't know just how many people may contract an asbestos related disease from a James Hardie product.

That's just trying to quantify the potential liability. The actual mechanism for delivering compensation is another matter.

And we've always had the view that the best mechanism from the stand point of victims, and I think for the viability of the company long term which is very important for the victims because that's where the compensation claims need to be financed, the best outcome would be for us to be able to secure on a guaranteed financial basis a regular periodic payment to the Medical Research and Compensation Foundation so that it can meet all of its liabilities as they fall due.

JOURNALIST: If James Hardie comes up with ...(inaudible)... what are you Bob Carr and the other ...(inaudible)... State Government or the Federal Government ...(inaudible)... David Jackson ...(inaudible)... there's nothing legally to stop this company ...(inaudible)... or if there's a management change to renege on anything ...(inaudible)... ?

CARR: Well we don't have responsibility for corporation law. That's a Federal Act, it's a Federal statute. So that part of it is a responsibility with the Federal Government. We can't regulate corporations.

And we, at this stage, this is something more immediate before us. No, don't point a finger at a State Government or accusing ...(inaudible).. the ACTU. There's one finger being pointed at this stage, and that's right at James Hardie.

And there's one thing to be clarified today or this week, and that is the obligation of James Hardie to accept the full amount. To allocate the full amount. To say it will do that. And then to negotiate how and on what terms it reaches the victims of their product with the ACTU. That's the matter that we ...(inaudible)... today.

There will be a lot of ...(inaudible)... up out of this 1000 page report down the track.

But the victims that we the Government and the ACTU want one thing today, and that's Meredith Hellicar to stand up at a press conference in front of all of you people and say after consultation with my colleagues on the board, we've agreed that James Hardie will pay all that's required to compensate the victims of a product that has earned our company its considerable fortune. Yes, we accept what the Jackson Report says about the money being there, the money being there because of asbestos products, and the money belonging with the victims.

JOURNALIST: ...(inaudible)...

CARR: No I think it's an excellent report and I'm remiss in not congratulating Mr Jackson for the report. I think it will be held up as a model for such inquiries well into the future.

JOURNALIST: ...(inaudible)...

CARR: Well that is a matter of the Supreme Court of NSW working with a Commonwealth statute, working with Commonwealth law. They're being called on to interpret Commonwealth law. And, yes, the Supreme Court was ...(inaudible)...

JOURNALIST: ...(inaudible)...

CARR: No, no. There is no alternative to James Hardie reaching an agreement with the victims present, in the future, and with the ACTU. There's simply no alternative to that.

And we will, I mean if they, if they were to hold out you'd have every government in Australia, every State Government in Australia and if there's a change Government nationally, a Federal Government I daresay joining a boycott and initiating international action that would make the operation of this company quite untenable, quite untenable. They won't be able to operate here or overseas if they stand out against the full force of this report and the views of the victims.

So I want Meredith Hellicar to convene a press conference before close of business today and say James Hardie can do no other but to accept our moral, our legal, our ethical obligation, to set aside money we made from the manufacture and sale of asbestos products, to look after the victims now and in the future.

That's what James Hardie must do, that's what James Hardie must say. And when they've said that we'll talk about all the details that can be explored and all 'i's to be dotted and 't's crossed.

But the ball is now in their court.

Thank you, thank you.

JOURNALIST: ...(inaudible)...

CARR: No I haven't, no I haven't.

JOURNALIST: Why ...(inaudible)...

CARR: Because everything I've said, I've said publicly about them, and my view is they've got to negotiate with the victims. And in any case it would have been wrong to have met them will the inquiry was looking at their affairs. What would you have said about that. Me having a meeting with James Hardie while I've got a, while I've got a powerful inquiry set up subjecting them to full legal scrutiny. We did things properly, as always.

JOURNALIST: ...(inaudible)...

CARR: Well, Ian, let us get advice on that. That's one of those things that we need to follow-up when the major bit of business has been responded to today.

JOURNALIST: ...(inaudible)...

CARR: I think they've got to start today. I think they've got to have a public response to this today. You expect a 12 hour turnaround from a State Government, that's when you're in generous frame of mind. More often you expect a response from me, or the ACTU within a couple of hours. What's wrong with them. They ought to be fleet footed, they're paid enough to do it.

JOURNALIST: ...(inaudible)...

COMBET ...(inaudible)... very serious findings in relation to Mr Macdonald in particular. And unfortunately I haven't had enough time yet to have a look at what other executives may have attracted the criticism of Mr Jackson.

But as I understand it is now a responsibility of ASIC to investigate and to launch appropriate prosecution.

But it's clear in the report that Mr Jackson finds not only that Mr Macdonald was a very unreliable witness, I think he was described as but that he engaged in misleading and deceptive conduct. And that on the basis of the evidence in the inquiry that could well breach the Corporations Act and that, therefore, it's our view that must now be investigated and prosecuted.

And that's why I say I think Mr Macdonald's position is untenable and he needs to resign now.

JOURNALIST: ...(inaudible)...

COMBET

I don't want to speculate, I don't want to speculate too much about you know alternative schemes. Our view's been very clear that the current scheme of NSW, which is where most of the claims are brought in relation to James Hardie or the majority compared to other State jurisdictions.

The system is working well. We believe however there is some scope for improving efficiency and the cost of the system.

And we made submissions to that effect along with the asbestos support groups and the Medical Research and Compensation Foundation to Mr Jackson. And those submission that we made, were produced in the report and attract favourable comment from Mr Jackson on the grounds that if implemented they could significantly reduce the costs of operation of the system.

Now that's our view about how this basically should be resolved and in any discussion with James Hardie that's obviously the position that we will be taking in those negotiations.

But we believe the current systems around the country work efficiently. We're open to examination of how the costs can be reduced to the benefits of victims I might add, not to the benefit of James Hardie, and how claims can be processed more efficiently.

We're very open to that but the company rather than providing conditions on whatever it says today, the starting point for those negotiations for the company to say we will meet our obligations.

That's a given, let's just talk about how they're implemented.

JOURNALIST: ...(inaudible)...

CARR: Well, these are things I'm happy to respond to tomorrow when we've combed through the report. I think I'll leave my comments now with a clear simple challenge for James Hardie to respond before close of business today. To the commitment we want from them to pay the money to the victims. And a commitment to negotiate how that be done with the group behind me here.

But I'm sure we'll have an opportunity to talk about some of the other implications and details serious as they are in the days ahead.

Just before I invite the people who are going to have negotiate with , hopefully, I just need a bit of advice.

JOURNALIST: ...(inaudible)...

BANTON What would I say.

JOURNALIST: ...(inaudible)...

BANTON I would say hurry up and pay it up. ...(inaudible)... I would say the same to James Hardie. James Hardie hurry up, pay up and then resign en masse, the whole board should go.

CARR: OK, that answers your question. Thank you thank you.

**ends**