

Tuesday, 28 September 2004
Premier Bob Carr, Attorney-General Bob
Debus with Greg Combet, John Robertson,
Bernie Banton on special James Hardie
legislation

E & O (excepted)

CARR: Secretary of the ACTU, John Robertson the secretary of the Labor Council of NSW, and Bernie Banton as well, who'd you remember from last week when we spoke about response to the Jackson Commission Report.

A number of matters on James Hardie. First of all, we welcome the commitment they've made to negotiate with ACTU about their moral obligation to provide financial compensation on a future basis to the victims.

This week in some surgeon's rooms someone is going to be diagnosed with lung cancer, as a result of exposure to a James Hardie product. We know that's the overwhelmingly likelihood.

We want to see that there is compensation available for that person and his or her family and that's what this battle is all about.

As you know the Jackson Commission revealed that they didn't make adequate financial provision to enable that to occur.

The ACTU position which is one we endorse as the starting point, is not that James Hardie favoured statutory scheme, but a recognition that we have a current compensation scheme in NSW and it's administered by the Dust Diseases Tribunal and the trade union movement, its proposal to make and improve its efficiency, and that should be the basis on which negotiations take place.

I've got to say I'm hugely disappointed by the Hardie response, on another front and that is the future Mr Macdonald and Mr Shafron. They should go frankly.

And I appeal to the members of the board to think again about their approach to the CEO and the Chief Financial Officer, because there's no way you can read Jackson Commission Report and not attribute to these people responsibility for the way James Hardie tried to shrug off its responsibility to victims.

And you can a whole lot of further as well but there are matters that are going to end up being prosecuted criminally, but those two should go, not simply be shifted to other responsibilities. And I think there are going to be a lot of people who will see their treatment as a sign that James Hardie still hasn't learned the lesson.

If you look at the way they're treating Mr Macdonald and Mr Shafron the message is clear. James Hardie still hasn't learnt the lesson and that's terribly disappointing. And I hope that they will think again. And I appeal to their board members to take responsibility for this, and to acknowledge the deep community concerns.

Just to push things along in a very helpful manner. We'll introduce legislation to State Parliament in our next sitting week. It will be ready for the 19th of October.

And that will do something, it will bring forward by six months to a year the ASIC investigation into James Hardie.

It will give ASIC a huge advantage here. Without that special legislation, ASIC in pursuing its prosecutions will have to go through a discovery process and that's going to take a lot of time. They'll be starting from scratch.

We can't simply handover to them the material that the Jackson Commission accumulated for itself. But with a special Act of Parliament we can do precisely that.

And that means James Hardie's own documentation, third party documentation and all the documentation that the Jackson Commission will go the minute the legislation's passed into the hands of ASIC.

The guess is that will shorten the ASIC process, bring forward their prosecutions by between six and 12 months. And it's a very neat way of doing it. It will go further than legislation has in the past.

For example, the material with HHH Royal Commission, legislation passed in the Commonwealth Parliament and it gave ASIC access to third party documents.

We'll go further, we'll give ASIC access to all the Special Commission of Inquiry's own documentation.

And that is a big step.

Legally it will, it will end the discovery process, there will be no need to go through that. And there will be no opportunity for James Hardie to fight against the production of documents. They will lose that opportunity. It will reduce the time by many months. It means everything is brought forward and ASIC can get right into the serious stuff.

So we're happy to have been helpful on behalf of people like you, Bernie and your mates...(inaudible)... is so important.

Bob Debus is charged with drafting that legislation, and as I said assures me he can meet this ambitious timetable.

But I might start with you, Greg before calling on John and then Bernie.

GREG COMBET

(Secretary ACTU)

Thank you Premier. The first thing we wish to do is again thank Premier Bob Carr and the NSW Government for the speed with which the Government has acted to ensure that ASIC has available to it all of the important material that was produced before the Jackson Special Commission of Inquiry.

That's a very important step. There's a lot of documentation there that might otherwise have been argued that it attracted privilege, been argued by the company that it attracted privilege.

This will inevitably facilitate the ASIC investigation by a considerable period of time.

And I think as you'll notice from the Premier's press release that the intent of the legislation is also to extend access to the documentation to any other regulator and notably the Securities Exchange Commission in the United States. I think it'll probably have access to it under the legislation. That's a very important step.

Secondly, I want to just make some reference to the release that James Hardie issued this morning.

This is one week late. I think that's ..a number of things that could have happened very swiftly a week ago ...(inaudible)... today when we ...(inaudible)... here.

But nonetheless it is positive in the sense that the company has now indicated publicly that it is prepared to accede to Premier Carr's request that the company meet and negotiate with the ACTU, the Labor Council of NSW and representatives of victims groups.

And that is for the purpose of trying to negotiate a solution to this mess that the company has created and to ensure that victims now and in the future have access to proper compensation.

The company has indicated in its release that it accepts that it does have a moral obligation to compensate victims of its products.

So we are at last making some progress on that front, and it is my hope and expectation that in consultation with the company, after we have been here today, that we will be able to convene a formal set of negotiations sometime later in the week.

And I think it's important that we get those discussions under way as quickly possible.

I endorse of course the Premier's comments in relation to the action taken by James Hardie concerning Mr Macdonald and Mr Shafron. I think it's about the most minimalist stance that the board could have taken.

I think given the nature of the evidence....before the Jackson Inquiry, including the fact that Mr Jackson himself found that Mr Macdonald's evidence which was extensive, could not be relied upon, since the CEO of a major corporation operating internationally, and his evidence could not be relied upon in a major inquiry.

In those circumstance and given the findings concerning Mr Shafron's role it remains our view that both of those officers of the company should be dismissed if they don't resign.

Having said that of course we're pretty keen to get into the discussion with the company to try and sort out a solution of this situation.

CARR: Thanks Greg. John.

JOHN ROBERTSON
LABOR COUNCIL OF NSW

The Labor Council obviously welcomes the Government's announcement today to introduce this legislation. The legislation removes privilege from a company that poisoned workers for years and years and years. A privilege that it doesn't deserve and now will ...(inaudible)... have to taken away from it.

This is legislation that will ensure that we do see the CEO investigated and hopefully prosecuted for these matters.

But the point here about stepping aside, having Shafron and Macdonald step aside. We don't want scapegoats out of this process, we want James Hardie to meet their obligations. To fully fund their responsibilities so that victims like Bernie Banton can be properly compensated. That their families are compensated for the actions of James Hardie over years in poisoning workers.

The Labor Council has taken the initiative in our a project of refurbishment of Trades Hall. We've instructed our builder Multiplex to ban James Hardie products from that refurbishment, and obviously that ban has been building momentum.

We're obviously going to see more people initiate those sorts of those bans.

If we're unsuccessful in negotiating a satisfactory outcome with the victims and the ACTU for fully funding the liabilities of James Hardie, that they acknowledge they have a moral obligation to meet.

And we want to ensure that that moral obligation's met and that the company meets those requirements of compensating the victims who have been poisoned by their asbestos products over the years.

BERNIE BANTON

(Asbestos victim) Good morning. Premier Carr, thank you. ...(inaudible)... , again.

CARR: Thank you.

BANTON Again you've led the way. On behalf of asbestos victims of Australia thank you.

And I can say that this is absolutely a vital step in the process against James Hardie. I'm no lawyer, but it's my understanding that if ASIC can get its access to everything that has been put before the special inquiry, not just the Jackson Report, there can be real progress and it can be quickly established all those details.

We victims are getting sicker, more of us are dying. This retrospective legislation will help us. Now ASIC will have the opportunity to look at every piece of evidence. Every document that he saw not just the report. And I think that's really vital.

We feel under no circumstances that people should sell their shares because having an inside voice may lead to greater pressure on James Hardie's board to finally do the right thing.

And of course I want James Hardie to pay up, hurry up.

Premier Carr thank you again from all of us, all of us who are sick, all of us who are dying, and all those who will become Hardie's victims in the future.

Thanks again.

CARR: Thank you. Any questions?

JOURNALIST: Can you now reveal the size of NSW ...(inaudible)... ?

CARR: NSW owns roughly 2.3 percent of the company. That's as of June 30, 2004. It's not uncommon, of course for public sector superannuation funds to have investments like this. In Victoria, and Victoria Work Cover alone it owns 4 percent of the company. So ours is certainly not the biggest government holding.

It would be a reasonable assumption that other governments, most industry superannuation funds including union operated funds have holdings in James Hardie Industries.

And we're going to hold onto it because that gives us real clout in seeing that they do the right thing. In fact, I've asked for legal advice that we bring together institutional shareholders to deal with this compensation issue.

I'd like the other institutions with links to government, or institutions ...(inaudible)... links with government, private institutions to talk about how they can get James Hardie to clean up its act.

JOURNALIST: ...(inaudible)...

CARR: No, no, no. It's an interesting figure from Victoria, but it indicates considerable holdings when you look at public investment funds around Australia.

And without putting words into the mouths of the people with here, you heard what Bernie had to say, Greg and John told me today their position is the same.

They'd be concerned if the government were to sell its shareholdings. They'd want us to hold on to those shares.

JOURNALIST: ...(inaudible)...

CARR: ...(inaudible)...

JOURNALIST: ...(inaudible)...

CARR: Oh no, we're not letting James Hardie off the hook. Hey, this about James Hardie funding a compensation scheme. It's not about the taxpayer. Why should the taxpayer fund it?

There's never been a ...(inaudible)... we've said from day one, as has Bernie, as has the union movement and, indeed, as has the Jackson Report. It shouldn't be for taxpayers to fund this.

JOURNALIST: ...(inaudible)... week later, really how unsatisfactory ...(inaudible)...

CARR: Exactly, totally unsatisfactory. It is woefully inadequate. It is as tardy as they can make it.

Now here you've got this major company being dragged every inch of the way towards an expression of decency to the victims of its products.

This will be a text book study in how not to do it.

If it goes on at this pace, the coddling treatment of Mr Macdonald, and his colleague Mr Peter Shafron, says it all. They should have gone. They should have gone immediately.

If James Hardie were trying to create some distinction between unconscionable behaviour in the past and the future of the company, those guys would have had their heads cut off. There would have been a very prompt decapitation.

JOURNALIST: ...(inaudible)...

JOURNALIST: ...(inaudible)...

CARR: I know. We discussed that this morning. I find it unbelievable that these people are being coddled by James Hardie. They're not coddling the victims, they've cut off funds for future victims as the flow of money trickles out by 2007.

So a company that has been saying of there'll be no funds available for victims after 2007, is coddling people who set up all these structures that took the money off shore, who arranged these plans to short change the people dying because of exposure to a James Hardie product.

By message to James Hardie board members is this.

Would you treat your Dad like this? Would you treat anyone in your family like this?

Why don't they, why don't they simply accept responsibility, sack the people who set up these, this web off deception. They've been condemned in this inquiry report. And get on with negotiating with ACTU.

JOURNALIST: Could the NSW Government ...(inaudible)...

CARR: No well they weren't, they weren't. No that's not right.

JOURNALIST: ...(inaudible)... unions ...(inaudible)... ?

CARR: No, look, I've been through ...

JOURNALIST: ...(inaudible)...

CARR: I've been through this. We're happy to go through the line chart with you again if that's required.

But when the foundation raised it with us, we sought confirmation and we responded by setting up the inquiry. I'll get the timeline for you all over again.

I mean the Minister for Industrial Relations had about a dozen meetings with the metalworkers union over the last couple days.

I had one meeting about another issue, this wasn't raised in February 2003.

We've responded when the foundation came to us and said we haven't been, we haven't been properly funded. We've been, we're going to be running out of money. There's been under funding.

What did we do? We went public and set up a public inquiry.

JOURNALIST: (inaudible)

CARR: I thought they should have, they should have been got rid of by close of business last Wednesday when we, last Tuesday when we shared this information with you.

JOURNALIST: (inaudible)

CARR: I'll ask the Attorney General to comment.

DEBUS: Well, we think it's good, it will be very water tight.

There is similar but not quite so extreme legislation passed by the Commonwealth at the time of the HIH inquiry.

So we are not without precedent although our legislation will go further and make more documentation immediately available to ASIC in this case.

JOURNALIST: (inaudible)

DEBUS: We've got some pretty heavyweight lawyers too.

JOURNALIST: (inaudible)

DEBUS: I am getting advice from a range of extremely competent people.

JOURNALIST: (inaudible)

DEBUS: Not necessarily. What this will do is ensure that ASIC knows everything that the Jackson Inquiry knew. There will then be further legal argument no doubt about individual documents.

The point is that we are putting ASIC six months, ...(inaudible)... think a year, ahead by ensuring that they know, actually know everything that Jackson knew and, therefore, you don't have to have the elaborate process of discovery that would otherwise be necessary for ASIC to begin to uncover these devastating facts.

JOURNALIST: (inaudible)

DEBUS: Well, Jackson himself made some observations about how some firms of lawyers and one particular firm of lawyer, lawyers had actually behaved. I'm not able to say anymore than that at the present time.

JOURNALIST: (inaudible)

DEBUS: Well, the NSW Government can't legislate away a private citizen's legal privilege.

But I do want to emphasise to you that this legislation makes a massive change to the effectiveness with which ASIC will be able to pursue. There is no doubt about that.

And it means that all of the sometimes really brilliant investigation that was done by the Jackson Inquiry will become immediately available to ASIC to then follow up as it thinks fit.

JOURNALIST: (inaudible)

DEBUS: But you can't use the documentation lying behind the report for the kinds of purposes that investigative purposes that ASIC would want it for.

JOURNALIST: (inaudible)

DEBUS: I don't believe it will have a direct effect on civil litigation by the victims.

This is a matter for ASIC under its company legislation responsibility including, of course, the criminal sanctions that exist within the corporations law.

JOURNALIST: (inaudible)

DEBUS: Well, we can't speculate on what James Hardie's going to do exactly.

JOURNALIST: (inaudible)

DEBUS: They have been extremely tardy in responding to the challenges that we have absolutely, legitimately laid down to them.

But they have said in their press release today that they will begin to negotiate with the union movement and the victims. This is the best part of what they've said today.

They have treated their own executives with kid gloves but they have indicated that they will begin the negotiation.

We have pointed out, already, that they might have made these undertakings about an hour after the Jackson Report came down, they should have but the fact they've made this undertaking a week later is nevertheless indicative of some progress.

JOURNALIST: (inaudible)

DEBUS: It will go, it will assist ASIC in any initiative it might take with respect to the corporations law.

JOURNALIST: (inaudible)

DEBUS: That's something that I think we would expect ASIC to do, although I will continue to investigate ways in which we may do it directly if that's possible.

But in the ordinary course you would expect that it would be exactly a function of ASIC to alert the American Securities and Exchange Commission which has, of course, very, very powerful sanctions that it may use against companies and James Hardie conducts around about 80 percent of its business in the United States these days.

CARR: Let's take you, just thinking out loud about this, if ...(inaudible)... one of those leather, two of those leather bound volumes across to the US Securities and Exchange Commission ...

JOURNALIST: (inaudible)

CARR: I think, I think.

DEBUS: We could leave them to make their own decision on how they're use them.

CARR: Leave them to make their own decision and allow ASIC to look at any follow-up it wants to make but we're proud of the report and we'll share it..

DEBUS: Premier we could send it to the New York Times as well.

CARR: Yeah sure.

JOURNALIST: (inaudible)

CARR: I'd expect them to be aware of it. But we'll do that if required. If required we'll do that.

But our big focus today is simply letting James Hardie know that the pressure is not retreating.

And we stand one with the ACTU and the Labor Council and Bernie Banton and other victims of their product, and they really should be much quicker in accepting the principle of corporate accountability here.

JOURNALIST: (inaudible)

BANTON: That's totally inadequate, totally inadequate. They've only stood on the side. Just reprehensible. It's just Hardie's at their best. They're full of shams. It's as simple as that.

JOURNALIST: (inaudible)

COMBET I couldn't possibly speculate on that. All I can say is that my intention is to get the negotiations convened as quickly as I can now that the company has indicated its preparedness to do so.

We will go in with a prepared position and a bullet proof position and seek ...(inaudible)... to this matter as quickly as is possible.

I'm expecting the same decency from the other side. The track record is of course not good.

But one of the, I think, important features of the announcement concerning Mr Macdonald and Mr Shafron today is that we won't be sitting across the table from them. That was an untenable proposition if it was ever considered by the company.

I certainly have made our position clear and that we have no intention of negotiating with them. At least they are aside.

I want to get on with the business with people on their side who are prepared to settle this.

And if they are not prepared to do so and ...(inaudible)... formed that view in the upcoming days or weeks it would be my intention to come back and ...(inaudible)... on a regular basis. And we'll have to take it from there.

JOURNALIST: (inaudible)

COMBET: One thing I don't do is negotiate through the media. With no disrespect.

It's just important that we start (inaudible) now and that we get on with the business of trying to provide certainty for the current victims, people who are suffering now and for people who are apprehensive about the future.

You must never lose sight of the fact that there's thousands have already died because of exposure to James Hardie products. And it is expected by everyone, tragically, that thousands more people will die and contract debilitating diseases like asbestosis.

That's the crux of this issue, it's the human dimension of it.

Just imagine any other circumstance where thousands of Australian people have died and who will die in years to come in a similar vein and you must understand the suffering that is engaged with this and the trauma that this company has caused people.

...said in a newspaper article yesterday one of the most upsetting things I've experienced in my working life and I mean it.

As 20 years of a full-time union official I've worked with asbestos victims on and off throughout that period. That's how I started my work as a union official. And I wrote research booklets on asbestos diseases. I worked with victims in an effort to establish their right to compensation.

I can't tell you how disgusted I am by a company that has conducted itself in this way.

And I think the fundamental thing is, and today's announcement is another important step along the way, is they will not get away with it. They must understand that they will not get away with this.

And the sooner that they recognise it properly, take serious steps and sit down with us and seriously seek to settle it the better.

JOURNALIST: (inaudible)

CARR: Well I just want the Commonwealth to share information with us.

The people of NSW have got a legitimate interest in whether the Commonwealth has a secret plan for a nuclear waste dump in this State.

Now I recognise the Commonwealth legislation would override our State laws including the State laws that bans a nuclear industry.

But come clean with us and tell us what your plans are so that we can begin to mobilise an assessment and a response.

JOURNALIST: (inaudible)

CARR: No I'm just responding to the report today.

I think all you can say at this stage ...

[interruption]

CARR: Yep. I think all you can say at this stage is that we want the Commonwealth to share its information with us.

Tell us whether they've got plans for a nuclear waste dump in the Hunter or on the South Coast so that we can begin to mobilise the material and make a response but NSW State law renders under State law any such development illegal.

JOURNALIST: (inaudible)

CARR: And that's our position, the State law but bear in mind, bear in mind the Constitutional position and that is that when the Commonwealth opts to override State laws for example for a defence facility or something like this the Commonwealth law a valid Commonwealth law overrides a State law.

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