

It's inescapable — Hardie CEO must go

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One of the more bemusing aspects of the debate about the James Hardie inquiry findings is the calls for the resignation of chief executive Peter Macdonald. Why should asbestos victims, unions, politicians and the Australian Shareholders Association have to plead for him to go?

Macdonald should have resigned or been sacked the day the inquiry reported, if not earlier. Indeed, he should have departed as soon as the board saw that its executives had grossly underestimated the liabilities facing the foundation James Hardie set up to handle its asbestos liabilities — regardless of whether or not that mistake was deliberate.

The inquiry's commissioner, David Jackson, found that Macdonald had breached his duty by encouraging the board to believe the foundation would be fully funded even though it was difficult to accept management really believed that.

Jackson also said there was evidence Macdonald knew that information provided to the ASX was false and misleading. The Australian Securities and Investments Commission is investigating that matter.

At Hardie's recent annual meeting, its chairman, Meredith Hellicar, defended Macdonald and said the board knew him, trusted him and supported him. Hellicar is chairing a special subcommittee that is examining the Jackson report and that, presumably, will decide Macdonald's fate.

Natural justice would suggest Macdonald should not be prejudged guilty of any of the potential breaches of the law Jackson outlined, but Hardie's board isn't obliged to wait for the outcome of ASIC's investigation.

Apart from the question of legality are issues of ethics and competence.

Jackson's report indicated that Hardie probably isn't legally obliged to fund the shortfall.

But Hardie directors have grudgingly accepted that the company has a moral obligation and whether for a blunder or a calculated act, Macdonald should be long gone. He devised and presided over an appallingly destructive transaction.

In any event, the company cannot escape responsibility for funding the foundation's obligations.

Jackson found that there would have been substantial public disapproval if it had been generally known that Hardie planned to separate its core assets from asbestos claims while leaving those claims underfunded.

It is clear from the furore that, had the probability of the shortfall been known before Hardie moved to the Netherlands, the move would probably not have occurred. Many believe the move was an attempt to distance the company from asbestos claims.

If Macdonald was aware that there would be a significant funding shortfall as a result of the transfer but did not acknowledge it, the fact that the victims probably had no legal recourse wouldn't excuse either the unpalatable amorality of the Hardie scheme or the staggering naivety that would have underpinned it.

If the Hardie executives knew of the underfunding, they must also have known that the truth would one day emerge.

What did they expect to happen when that news broke? Did they seriously believe Hardie could rely on legal technicalities to escape responsibility or liability?

Didn't they consider the damage to reputation and business that would occur?

If they did believe Hardie would escape unscathed, they were remarkably unsophisticated.

If they didn't know the foundation had been left underfunded, they were incompetent and equally deserving of censure.

Jackson calculates the net present value of the shortfall at \$1.5 billion — this for a foundation that Hardie gave less than \$300 million when it moved domicile.

If Macdonald innocently made a \$1.5 billion miscalculation he should still be held accountable for the damage done to Hardie's reputation and its business by such an extraordinary mistake as well as for the fact that the company will have to fund the shortfall.

Thus Hardie doesn't need to establish that Macdonald and his senior executives knew there would be a shortfall. Either way, he and the other executives directly involved created the mess Hardie finds itself in.

Their behaviour was either reprehensible or astonishingly inept. Or both.

ASIC can be trusted to assess the lawfulness, or otherwise, of the actions of those involved in the transfer and the disclosures to the ASX of the foundation's funding.

Hardie's board and its shareholders, however, should demand a less technical standard for assessing the behaviour of their executives.

It is inescapable that Macdonald devised and presided over an appallingly destructive transaction that has done real damage to the interests of his company and its shareholders and should accept, or be forced to take, responsibility.

And it is Hardie's board and shareholders — not the victims or the unions — who are responsible for making that happen.