

Hardie inquiry only starting point to resolving asbestos crisis

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SYDNEY, Sept 24 AAP — A six-month inquiry into James Hardie Industries has only provided the starting point for resolving a funding crisis for asbestos victims. Reaching the end point could take a long time.

The inquiry this week gave conditional support to a proposal by James Hardie for a statutory scheme to handle the future compensation claims of its victims.

But this option is facing opposition from governments, unions and asbestos victims, and NSW Premier Bob Carr has stressed that no solution will go ahead unless it receives the victims' tick of approval. It appears likely all sides will eventually need to sit down together to come to some sort of agreement.

Mr Carr this week gave James Hardie a deadline to phone the ACTU and arrange a meeting, but the company did not make contact.

The NSW government has now begun preparations for a boycott on James Hardie products in government-contracted construction work, with Acting Premier Andrew Refshauge saying similar preparations were underway in Victoria, Queensland, South Australia and the Northern Territory.

James Hardie had issued a statement after the inquiry findings were released saying it was willing to work with "all relevant stakeholders in developing a satisfactory compensation solution for asbestos claimants". But the company appears to be waiting until its board completes a detailed review of the inquiry's findings before talking to unions.

James Hardie's proposal of a statutory scheme would operate under NSW legislation that prescribes how it would work, as opposed to a common law system where lawyers fight it out to get compensation for the victims. Such a scheme would cut out the plaintiff lawyers and other costs known as superimposed inflation, which James Hardie says could ultimately save hundreds of millions of dollars.

At the moment, funding for compensation of James Hardie's asbestos victims will run out in just three years' time with a shortfall of up to \$2 billion. Analysts estimate a statutory scheme could reduce the shortfall in compensation funding to just over \$500 million.

Inquiry Commissioner David Jackson, QC, said in his findings that a scheme would be the "best long-term solution". He said James Hardie's proposed scheme still needed more clarification, but as a very broad proposition it could provide the starting point for dealing with asbestos liabilities in the future.

He also suggested that instead of making a lump sum payment, James Hardie could make ongoing contributions. "(James Hardie) 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," Mr Jackson said in his report.

A key sticking point is that if legislation prescribes how the scheme works, it would likely also prescribe how much money victims are able to claim — and could cap

payments.

“Whether the (James Hardie) proposal contemplates doing that is not entirely clear; it would not sit well with preserving the current levels of compensation in real terms,” Mr Jackson said in his findings.

But James Hardie chairman Meredith Hellicar last week told shareholders at a meeting in Sydney that caps were not assumed for the scheme. “Our position in proposing the scheme is not to cut payments to claimants,” Ms Hellicar said. “The scheme) will preserve the level of payments to victims in real terms into the future.”

In order for the NSW government to legislate for any such scheme, Premier Carr has made it clear that unions and victims would first need to give their approval. “If it doesn’t get the tick off of the victims, it doesn’t get the tick off from the government,” Mr Carr said.

ACTU federal secretary Greg Combet said James Hardie’s statutory scheme proposal was “dead in the water” because of the amount of opposition against it. “The key thing now is for James Hardie to accept its responsibility and pay up,” Mr Combet said. “The ACTU stands ready to negotiate with the company to resolve this issue and to ensure that all future claims by victims of Hardie products are met.”

Shares in James Hardie rose when they resumed trading after the inquiry findings were handed down, with investors relieved that the findings were not more damaging.

That’s despite the other damning findings of the report, including that James Hardie chief executive Peter Macdonald had misled and deceived the public when he claimed the company had set aside enough money to meet all asbestos compensation claims.

It’s also despite the announcement this week that the Australian Securities and Investments Commission (ASIC) had begun a formal investigation into the claims against James Hardie in the report.