

## **Dust settles with \$1.5bn Hardie deal**

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JAMES HARDIE has struck a \$1.5 billion deal to compensate people injured by its asbestos products, bringing an end to the crisis that has all but destroyed the company's reputation.

In the biggest voluntary compensation offer in Australian history, the building products company will pay asbestos victims up to 35 ¢ in every dollar of the cash flow generated by its global operations.

The deal, which will run for a minimum of 40 years, is conditional on the NSW government passing laws to reduce the company's hefty legal costs, as well as final approval by Hardie's board, its bankers and shareholders.

Asbestos victims and unions welcomed the deal, and investors sent the stock 6 per cent higher to \$6.60 on hopes it would end damaging product boycotts and allow the company to start rebuilding its reputation.

The shares have now risen 33 per cent from their 52-week low.

The deal will bring Hardie's former asbestos companies back into the corporate group, effectively remaking ties severed four years ago when it transferred its liabilities to a separate compensation fund.

It comes three months after a NSW government inquiry found that although key Hardie executives possibly breached the law in creating that fund, the now Dutch company had no legal liability to make up the shortfall.

Hardie chairman Meredith Hellicar said the voluntary agreement corrected that "unintentional underfunding" of the asbestos fund in 2001.

"We have continued to acknowledge our moral responsibility to current and future claimants and I hope that today's announcement convinces the Australian community that we are seriously committed to that responsibility."

While the deal includes a \$250 million cash buffer from Hardie, all sides stressed that there was no way to guarantee the money would last the 70 years over which people will fall ill from Hardie asbestos.

"We've made our best endeavours to come up with a funding arrangement which will ensure the viability of the company and see people paid, and I think we've got the balance

right,” said ACTU secretary Greg Combet, who represented victims in the talks.

“Companies reorganise, they restructure and they come and go. What we’ve tried to do is ensure that whatever changes take place in future, the funding for asbestos victims will survive, that’s nothing we can guarantee.”

Asbestosis sufferer and victims’ advocate Bernie Banton hailed the deal as a victory for victims and a complete turnaround from February, when Hardie said there was no basis for any additional funding.

“This is a momentous day for victims and their families,” an emotional Mr Banton said.

Now a heads-of-agreement has been signed, Mr Combet called for no “further harmful action” or “adverse criticism” against Hardie, though he flagged a return to hostilities if shareholders balk at the deal.

“We want to go forward in good faith with negotiations for a binding agreement,” he said.

“Shareholders must understand that there is no way that a position can be sustained whereby people are not compensated; that is not going to happen.”

Under the deal to be enforced by the NSW government and converted into a legally binding agreement by June Hardie will make an initial \$136 million payment to a special fund, with directors appointed by Hardie.

While there is no limit on total payments or payments to victims, annual payments will be capped at 35 per cent of global cash flow and may be stepped down in 5 per cent increments to a minimum of 10 per cent from 2012.

Payments are expected to peak by 2020 at \$120 million a year and reduce until 2045, when a final payment may be negotiated.

Ms Hellicar said the government review of legal costs, which were “eating up” 36 per cent of payouts to claimants, was “vital” to the deal, which assumes legal costs will come down to 20 per cent.

Hardie interim CFO Russell Chenu said Hardie’s continued profitability would determine the deal’s success.

“I’m certainly not going to stand here and say we’ll be here in 40 years. It’s quite unusual for a company to survive 40 years. That’s one of the reasons the buffer had been set.”

In an insolvency, asbestos victims will rank behind Hardie’s bankers but creditors will not have access to compensation assets.

Mr Chenu said the cap on annual payments meant Hardie could afford to fund its growth plans, including one “greenfields” plant a year.

The NSW government has agreed to release Hardie and its officers from civil claims although this will not affect federal investigations and agreed not to “legislate aggressively against the company”.

But NSW will still seek broader reform of directors’ duties to include responsibilities to stakeholders as well as shareholders.

“I certainly believe there’s a case for ensuring that directors’ duties are defined and that shareholders’ expectations are defined to respect everyday decency in corporate behaviour,” NSW Attorney-General Bob Debus said yesterday.

He said the next meeting of state attorneys-general was expected to consider a federal discussion paper on such reforms.