

JAMES HARDIE BROKE CORPORATIONS LAW, MISLEADS - REPORT

Tuesday, 21 September, 2004

SYDNEY, Sept 21 AAP - An inquiry into James Hardie Industries has found the company broke the corporations law and misled the public when it claimed it had put aside enough money to meet its asbestos liabilities, which could now total \$2.24 billion.

Commissioner David Jackson today handed the NSW government his findings following a six-month inquiry into James Hardie's massive underfunding of compensation for victims of asbestos disease.

In his report, Mr Jackson criticised James Hardie chief executive Peter Macdonald for making misleading and false statements about the company's asbestos liabilities being "fully funded".

While he did not recommend any action against Mr Macdonald, NSW Premier Bob Carr said James Hardie executives could be prosecuted.

Mr Carr said he had written to Prime Minister John Howard and federal Opposition Leader Mark Latham "saying that Mr Jackson highlights the potential prosecution of James Hardie executives".

"This is now a matter for the Australian Securities and Investments Commission (ASIC)," Mr Carr said.

In his findings, Mr Jackson has recommended James Hardie's proposal of setting up a statutory scheme as the best option for resolving the funding crisis.

Mr Jackson estimates the total amount for all James Hardie's future asbestos liabilities could be about \$2.24 billion.

In February 2001, James Hardie provided only \$293 million to cover all its liabilities.

The company put this money into a foundation it set up to take over the liabilities, then issued a media release where Mr Macdonald said the foundation was "fully-funded".

"In my opinion, the conduct of (James Hardie) in publishing the media release in the form in which it did was misleading and deceptive," Mr Jackson said in his findings.

"The assertion that the foundation was "fully-funded" was made without qualification.

"The statements attributed to Mr Macdonald are in the same category."

Mr Jackson said Mr Macdonald "ought reasonably to have known" that the information in the media release was false.

Mr Jackson also found that Mr Macdonald as well as James Hardie's then legal counsel - now chief financial officer - Peter Shafron had broken the Trade Practices Act and had breached their duties as officers of James Hardie.

Mr Jackson said the two men had allowed the foundation's directors to rely on an actuarial report which estimated the amount of money required, when they knew that the report was "wholly unsuitable to be used for the purposes of assessing the likely life of the foundation".

Both Mr Macdonald and Mr Shafron were also criticised for their conduct at the NSW Special Commission of Inquiry.

"Mr Macdonald's evidence, on so many matters, was so difficult to accept," Commissioner Jackson said.

"A particularly unattractive feature was his unwillingness to accept personal responsibility for matters in which he was obviously personally engaged."

Mr Jackson also said he could not accept some of Mr Shafron's evidence.

"His evidence, too, I think, was tailored to a result, though not to the same extent as that of Mr Macdonald," he said.

However Mr Jackson found that a former chief financial officer of the company, Phillip Morley, was a "fundamentally honest" man.

Mr Jackson suggested that James Hardie's proposal of providing funding for a statutory compensation scheme was the best way of coming up with the money needed when the foundation runs out of its current funds in three years' time.

"Of the proposals which have been advanced, the (James Hardie) proposal seems the most suitable in the long term. But it does need a lot of further definition," he said.

Unions and victims groups have criticised the scheme proposal, saying it would likely lead to caps on payments.

Mr Jackson notes in his report that "it is a legitimate legislative choice to fix the maximum amounts and heads of compensation available" if the NSW government were to legislate for such a scheme.

Mr Carr said the government would refuse to support the statutory scheme unless it had the support of unions and asbestos victims.

Mr Carr also said he had written to Mr Howard and Mr Latham asking them to explore the possibilities for prosecuting James Hardie executives over a misleading media release it submitted to the Australian Stock Exchange.