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21 December 2004

## James Hardie signs Heads of Agreement

James Hardie Industries NV (JHINV) today announced it had signed a Heads of Agreement with the Australian Council of Trade Unions (ACTU), Unions New South Wales, asbestos support groups and the New South Wales Government, to provide long-term funding of asbestos related personal injury claims against former JHINV companies. James Hardie made a voluntary funding proposal to the Jackson Commission in July 2004 and is pleased to have now reached agreement on the principles on which James Hardie will provide voluntary funding. These include:

- the establishment of a Special Purpose Fund (SPF) to compensate asbestos victims;
- initial funding of the SPF by James Hardie on the basis of the November 2004 KPMG Actuaries' report (which provided a net present value central estimate of \$1.5 billion in present and future claims at 30 June 2004). The actuarial assessment is to be updated annually;
- a two year rolling cash 'buffer' in the SPF and an annual contribution in advance based on actuarial assessments of expected claims for the next three years, revised annually;
- a cap on the annual James Hardie payments to the SPF, initially set at 35% of annual net operating cash flow of the JHINV Group for the immediately preceding financial year, with provision for the percentage to decline over time depending on James Hardie's financial performance and the claims outlook; and
- no cap on individual payments to proven claimants.

The Heads of Agreement will form the basis of a Principal Agreement to be settled between JHINV and the NSW Government which, in turn, will require the support of JHINV's lenders and shareholders. The Principal Agreement is to be a legally binding agreement.

Based on KPMG Actuaries' assessment and expectations of James Hardie's future financial performance, the arrangement is intended to allow payments to be made by the SPF to all future proven claimants against the former James Hardie subsidiaries for asbestos-related diseases. However, it should be recognised that because the number of claimants and the amounts that the courts may award is uncertain and James Hardie may not perform as currently projected, no absolute assurance on this can be given.

James Hardie has already paid out some A\$450 million in asbestos compensation. No legitimate claimant to date has gone unpaid.

JHINV Chairman Meredith Hellicar said: “The ACTU, NSW Government and asbestos support groups have worked with James Hardie to reach an agreement which we believe is in the best interests of claimants, shareholders, employees and all other stakeholders.

“All parties involved in the recent negotiations have agreed it is in the interests of asbestos claimants that James Hardie is, and remains, financially strong and able to continue to fund its growth. The proposed funding arrangements allow this and James Hardie will be able to continue to successfully grow its business.”

Ms Hellicar said the agreement was an important first step towards rebuilding the reputation of James Hardie over the coming months and years.

“I regret any stress caused to asbestos disease sufferers and their families by the unintentional funding shortfall of the MRCF, and hope that this announcement will ease the concern of those sufferers and their families.

“I also commit myself to the task of rebuilding the reputation of James Hardie over the coming months and years for the sake of our many employees, customers, shareholders and other stakeholders.

“This agreement follows the original intention of the Board of James Hardie in setting up the Medical Research and Compensation Foundation (MRCF) to properly fund the MRCF. It is expected to provide claimants and their families with assurance that their claims will be met, based on all of the data and estimates available to us.

“It is an historic agreement and our commitment reflects the fact - corroborated by the findings of Commissioner Jackson - that James Hardie did not restructure its affairs nor move to the Netherlands to avoid liability for asbestos claims. The Board is pleased with this agreement and looks forward to finalising the Principal Agreement and taking it to our lenders and shareholders for their consideration.”

Ms Hellicar said that the company and the NSW Government will now move to settle the terms of the Principal Agreement whilst waiting on the outcome of the NSW Government’s Review of Legal and Administrative Costs in Dust Diseases Compensation Claims. This Review is expected to have a significant impact on the financial strength of the proposed Special Purpose Fund and the affordability and sustainability of James Hardie’s funding proposal.

End

*A briefing on the Heads of Agreement follows.*

## **Heads of Agreement - Briefing**

This document provides key facts about the Heads of Agreement reached between James Hardie Industries NV (JHINV), The Australian Council of Trade Unions (ACTU), Unions New South Wales, asbestos support groups and the New South Wales Government.

Before the funding arrangement can be finalised, the NSW Government Review of Legal and Administrative Costs in Dust Diseases Compensation Claims (announced on 18 November 2004) will need to be completed and considered and any resulting reforms adopted. James Hardie will need lender and shareholder approval of the funding arrangement.

### **Key Principles**

The two key principles underlying the Heads of Agreement are:

- 1) James Hardie will provide funding on a long-term basis to a Special Purpose Fund which will be applied to paying proven claims now and into the future, and in dealing with claims; and
- 2) That to achieve this, James Hardie has to remain profitable and strong and be able to continue to successfully grow its business.

The Heads of Agreement includes the following key financial terms:

#### **Special Purpose Fund**

- A Special Purpose Fund (SPF) will be created to compensate proven asbestos claimants. A majority of directors of the SPF will be appointed by James Hardie.

#### *Annual Actuarial Assessment*

- There will be an annual actuarial assessment of the liabilities of the SPF in order to take into account the uncertainties associated with actuaries' projections. This will enable the projections to be regularly updated in line with the actual claims experience and claims outlook.
- Subject to the Annual Cash Flow Cap described below, James Hardie will make contributions to the SPF based on these annual actuarial assessments.

#### *Buffer*

- Subject to the Annual Cash Flow Cap described below, at the start of each year James Hardie will ensure that the SPF has a two-year rolling cash "buffer" and one year's contribution based on the annual actuarial assessment of expected claims for the next three years.
- Assuming legal costs as a percentage of compensation paid to claimants (currently running at approximately 36%) fall to 20% over a three year period, the initial three year amount is expected to be \$239 million (based on KPMG Actuaries' estimate of liabilities as at 30 June 2004). The contribution by James Hardie in the year ending 31 March 2006 will be reduced by assets to be contributed by the Medical Research and Compensation Foundation which are expected to be approximately \$125 million. As anticipated payments during the first three years of the SPF are expected to exceed the Annual Cash Flow Cap described below, James Hardie

expects to make an additional net payment of approximately \$22 million in the year ending 31 March 2006 to cover the period to 31 March 2008.

- This means that (subject to the Annual Cash Flow Cap) there should be a maximum of three years' funding available in the SPF at the start of each year which, during the course of the year, should reduce to an estimated two years of funding as claims are recognised and paid out. The funding will then be topped up by James Hardie (subject to the operation of the Annual Cash Flow Cap) at the start of the next year so that it again represents three years of projected claims based on the then current annual actuarial assessment. This dynamic structure should provide greater security to present and future claimants as the SPF should be better able to reflect changes in the incidence of claims and/or changes in the financial performance of James Hardie.

### **Annual Cash Flow Cap**

- There will be a Cash Flow Percentage Cap ("CFPC") on the annual James Hardie payments to the SPF in all years except the first year. It is not intended that there will be any caps on payments by the SPF to individual claimants. The CFPC will be initially set at 35% of James Hardie's net operating cash flow for the immediate preceding financial year. Net operating cash flow for the purposes of the cap will be equivalent to James Hardie's cash flow provided by operating activities as set out in its audited accounts and will therefore be after taxes, interest, changes in working capital and asbestos claims payments.
- The 35% level is designed to ensure that all proven claimants can be paid whilst preserving the financial health and growth prospects of James Hardie. All parties recognise that James Hardie's continuing success is crucial to the long term security of the future payments. However, because the number of claimants and the amounts that the courts may award is uncertain and James Hardie may not perform as currently projected, no absolute assurance on this can be given.

### **Changes in the level of Annual Cash Flow Cap**

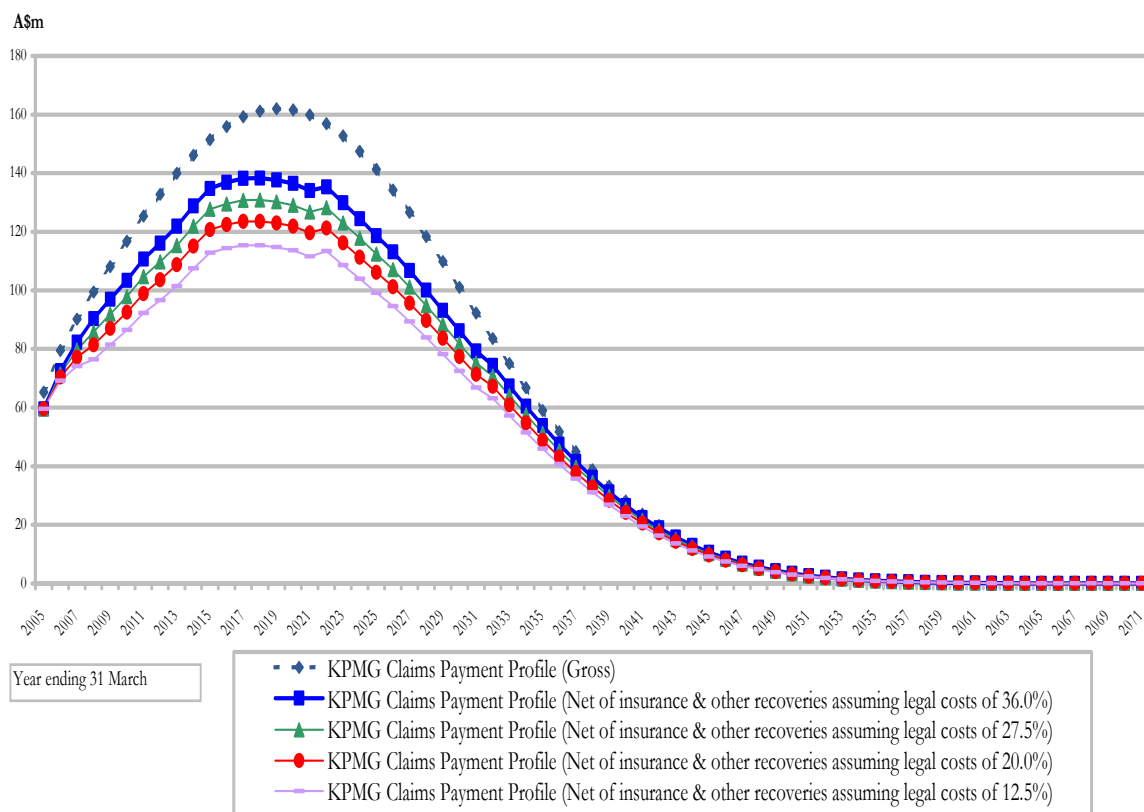
- After the year ending 31 March 2011, the Heads of Agreement provides that the CFPC may reduce in increments of 5% (to a floor of 10%), provided that the annual contributions are, on average, lower than the reduced CFPC level for the four years preceding the reduction, and that the CFPC cannot reduce by more than 5% in any four year period. There is also provision for the CFPC to increase in certain circumstances, although never above 35% and never by more than one increase of 5% above a previously reduced cap level.
- The practical impact of the above cap, and conditions for changes in the level of the cap, is that the earliest that the CFPC could step down would be to 30% in the year ending 31 March 2012, to 25% for 2016, to 20% for 2020, to 15% for 2024 and to 10% for 2028 depending on the claims experience, anticipated claims payments and the financial performance of James Hardie.
- Based on current actuarial estimates (KPMG Actuaries' central estimate of liabilities of \$1.5 billion as at June 30 2004) and expectations of James Hardie's future financial performance, the proposed caps are intended to allow payments to claimants to be properly funded and to have the benefit of a significant contingency provision.

## Legal Costs

All parties to the negotiations recognise the importance of achieving substantial legal and administrative cost savings in the claims management process in order to improve the financial position of the SPF, and therefore the security of future claimants, over the long-term.

Legal and administrative costs incurred in asbestos claims against the former James Hardie companies now owned by the MRCF have an estimated net present value of approximately \$410 million. This high level of costs (equivalent to 36% of payments projected to be paid to claimants by the SPF) has a major adverse effect on the long-term strength of any funding proposal over the lengthy time period proposed by James Hardie (at least 40 years but potentially as long as 70 years).

The expected claims (net of insurance and other recoveries) based on the KPMG Actuaries' report as at 30 June 2004 are set out below, together with the expected net claims assuming that legal costs as a percentage of compensation paid to claimants is reduced from their extraordinarily high current level of 36% to 27.5%, 20% and 12.5% per cent respectively.



For this reason, the outcome of the recently-announced NSW Government Review of Legal Costs and Administrative Costs in Dust Diseases Compensation Claims is expected to have a critical impact on the long-term financial strength of the proposed Special Purpose Fund and the affordability and sustainability of James Hardie's funding proposal.

## Timetable

The Principal Agreement contemplated by the Heads of Agreement is expected to be finalised shortly after the outcome of the NSW Government Review is known (anticipated to be in early

March 2005). Whereas the Heads of Agreement is non-binding, the Principal Agreement will be a legally binding and enforceable Agreement.

Subject to an assessment by the Board of JHINV of the affordability of the funding arrangement in light of the likely financial impact of any proposed reforms flowing from the NSW Government Review, and subject to receiving the support of its lenders and the findings of an independent expert's report (commenting on whether the voluntary funding proposal is in the interests of JHINV shareholders), the Board intends that shareholders consider the proposal at a general meeting, expected to be held mid-2005.

End

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#### **Disclaimer**

*This Company Statement contains forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with the Securities and Exchange Commission on Forms 20-F and 6-K, in our annual reports to shareholders, in offering circulars and prospectuses, in media releases and other written materials and in oral statements made by our officers, directors or employees to analysts, institutional investors, representatives of the media and others. Examples of such forward-looking statements include:*

- *Statements based on KPMG's actuarial analysis of future claims on which we have relied;*
- *projections of our operating results or financial condition;*
- *statements of our plans, objectives or goals, including those relating to competition, acquisitions, dispositions and our products;*
- *statements about our future economic performance or that of the United States, Australia or other countries in which we operate; and*
- *statements about product or environmental liabilities.*

*Words such as "believe," "anticipate," "plan," "expect," "intend," "target," "estimate," "project," "predict," "forecast," "guideline," "should," "aim" and similar expressions are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.*

*Forward-looking statements involve inherent risks and uncertainties. We caution you that a number of important factors could cause actual results to differ materially from the plans, objectives, expectations, estimates and intentions expressed in such forward-looking statements. These factors include but are not limited to: all matters relating to or arising out of the prior manufacture of asbestos by ABN 60 and certain former subsidiaries; competition and product pricing in the markets in which we operate; general economic and market conditions; compliance with and possible changes in environmental and health and safety laws; the successful transition of new senior management; the success of our research and development efforts; the supply and cost of raw materials; our reliance on a small number of product distributors; the consequences of product failures or defects; exposure to environmental, asbestos or other legal proceedings; risks of conducting business internationally; compliance with and changes in tax laws and treatments; and foreign exchange risks. We caution you that the foregoing list of factors is not exclusive and that other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements. Forward-looking statements speak only as of the date they are made.*