

ANNEXURE B

Conduct of the Inquiry

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1. Public Notice of the Inquiry

Public notice about the Inquiry was published in several national newspapers.

The notice was in the following terms:



Special Commission of Inquiry into the Medical Research and Compensation Foundation established by the James Hardie Group

Her Excellency the Governor has commissioned Mr David Francis Jackson QC to inquire into and report upon:

- 1 the current financial position of the Medical Research and Compensation Foundation ("the MRCF"), and whether it is likely to meet its future asbestos related liabilities in the medium to long term;
2. the circumstances in which MRCF was separated from the James Hardie Group and whether this may have resulted in or contributed to a possible insufficiency of assets to meet its future asbestos related liabilities;
3. the circumstances in which any corporate reconstruction or asset transfers occurred within or in relation to the James Hardie Group prior to the separation of MRCF from the James Hardie Group to the extent that this may have affected the ability of MRCF to meet its current and future asbestos related liabilities; and
4. the adequacy of current arrangements available to MRCF under the Corporations Act to assist MRCF to manage its liabilities, and whether reform is desirable to those arrangements to assist MRCF to manage its obligations to current and future claimants.

Mr Jackson is to report on or before 30 June 2004.

A **preliminary hearing** will be held on **Tuesday, 16 March 2004 at 10.15am**, at Court 8A, Level 8, John Maddison Tower, 88 Goulburn Street, Sydney. Applications for leave to appear on behalf of persons claiming to be substantially and directly interested in the subject matter of terms of reference will be heard at the preliminary hearing.

Any person intending to seek leave to appear should notify, in writing by **4pm on Friday, 12 March 2004**, the Solicitor to the Special Commission of Inquiry addressed to Ms Barbaro at either:

Postal: GPO BOX 1479, Sydney, NSW. 2001
E-mail: mrcfinquiry@agd.nsw.gov.au

Further, any person having information or any views on any of the matters the subject of the Inquiry is invited to forward their information or views, in typewritten or electronic form, as soon as possible to:

Ms Mimi Barbaro

Solicitor to the Special Commission of Inquiry into the Medical Research and Compensation Foundation at the above address.

For further information please contact Ms Barbaro on (02) 9224 5203 or (02) 9377 5306

Commission website: www.lawlink.nsw.gov.au (from 10 March 2004)

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The notice was published in the following newspapers on the following days:

Adelaide Advertiser	5, 6 March 2004
Australian Financial Review	5, 6 March 2004
Brisbane Courier Mail	5, 6 March 2004
Canberra News	5, 6 March 2004
Hobart Mercury	5, 6 March 2004
Melbourne Age	5, 6 March 2004
Northern Territory News	5, 6 March 2004
Sun Herald	7 March 2004
Sunday Telegraph	7 March 2004
Sydney Morning Herald	5, 6 March 2004
The Australian	5, 6 March 2004
West Australian	5, 6 March 2004

1. Venue of hearing

The Special Commission of Inquiry into the Medical Research and Compensation Foundation conducted its hearings in Court 8A, Level 8, John Maddison Tower, 88 Goulburn Street, Sydney, NSW 2000.

The Commission also conducted two days of the hearing on 10 and 11 May 2004 in a courtroom of the Supreme Court in Adelaide in order to hear the evidence of Mr McGregor who was unable to travel to Sydney.

2. The preliminary hearing

On 16 March 2004, the Commissioner conducted a preliminary hearing during which he heard and ruled on applications by parties for leave to appear before the Commission. At that preliminary hearing he made directions about the conduct of the Inquiry. The Commissioner directed parties to file any witness statements by 26 March 2004 and set the matter down for hearing commencing 5 April 2004.

3. Parties

The following parties were authorised to appear and to be represented by counsel or solicitor. Certain parties were grouped together to avoid multiple representations.

- (i) Medical Research Compensation Foundation
 - MRCF (Investments) Pty Limited
 - Amaca Pty Ltd (formerly James & Coy Pty Ltd)
 - Amaba Pty Ltd (formerly Jskearb Pty Ltd)
- (ii) James Hardie Industries NV
 - ABN 60 Pty Ltd
- (iii) Trowbridge Deloitte Ltd.
- (iv) Eraring Energy
 - Delta Electricity
 - Macquarie Generation
- (v) The Australian Services Union of NSW
 - The Australian Manufacturing Workers Union
 - The Maritime Union of Australia
 - The Communications, Electrical, Electronic, Energy Information, Postal Plumbing & Allied Services Union of Australia
 - The Construction, Forestry, Mining & Energy Union of Australia
 - The Rail Tram & Bus Union of Australia
 - The Finance Sector Union
 - The Trades & Labour Council of Western Australia
 - The Labour Council of NSW
 - The Australian Council of Trade Unions
 - The Asbestos Diseases Foundation of Australia
 - The Asbestos Diseases Society of Australia Inc
 - The Asbestos Victims Association of South Australia
 - Queensland Asbestos Related Disease Support Society
 - Gippsland Asbestos Related Diseases Support Inc
 - The Cancer Council of NSW
- (vi) State Rail Authority of New South Wales
- (vii) Michael Gill
- (viii) Wayne Attrill
- (ix) Labour Council of New South Wales and ACTU
- (x) PricewaterhouseCoopers and Stephen Loosley
- (xi) UBS Warburg Corporate Finance Ltd and Anthony Sweetman
- (xii) Jay Louise Gardner
- (xiii) Andrew Stevenson
- (xiv) William Koeck
- (xv) Anthony Bancroft

- (xvi) Partners of Allens Arthur Robinson from 30 June 2000 to 30 June 2004
- (xvii) Stephen Harman and Haitham Ghantous

The authorisation granted to the parties above was subject to the following conditions:

- (a) The authorisation may be withdrawn at anytime;
- (b) A person or organisation authorised to appear does not have an automatic right to cross-examine a witness and cross-examination may be limited;
- (c) Persons or organisations authorised to appear must abide by the directions of the Commission which will be aimed at the fair, efficient, timely and cost effective performance of the tasks the Commissioner has been appointed to conclude.

4. The hearing days

The Commission conducted public hearings between 10.15am-12.45pm and 2.15pm-4.15pm, on the following dates:

April 2004	5,6,7,8,13,14,15,16,21,22,23,27,28,29
May 2004	3,4,5,6,7,10,11,12,13,14,24,25,26,27
June 2004	1,2 3, 4,7,8,9,10,11,15,16,17,18,21,22,23
August 2004	2,4,5,6,9,10,11,12,13

5. Witnesses

Various statements were provided at the initiative of parties or in response to a request by the Commission.

Counsel Assisting tendered statements from David Brett and Ewan Waterman and expert reports from Prof. Kingston, Robin Humphreys and Guy Whitehead.

The Commission adopted a practice of summoning all witnesses to give evidence to avoid concerns about the disclosure of evidence which could be subject to client-legal privilege.

6. Access to documents

The practice adopted by the Commission in relation to providing the parties and the public with access to documents was as follows:

- (a) Persons authorised to appear were ordinarily granted access, including photocopy and uplift access, to all documents received by the Commission unless there was an order to the contrary. The parties ability to publish documents they received in the course of the Inquiry was limited by the following direction made on 5 April 2004.
- (b) Non-parties, those persons not authorised to appear, had restricted access to documents. They were entitled to uplift and photocopy only those documents that had been admitted into evidence at a public hearing, provided there was no order to the contrary.
- (c) There were a number of non-publication directions made by the Commissioner, a list of which is Annexure G to the Report.

7. The Issues Paper

To assist all parties, Counsel Assisting prepared a document prior to the commencement of the public hearing outlining the potential issues that they considered arose from the Commission's Terms of Reference.

Three versions of the document were circulated to all parties on the following dates:

- 25 March 2004 – Counsel Assisting produced a List of Potential Issues
- 20 April 2004 – Counsel Assisting produced a revised Issues Paper
- 28 June 2004 – Counsel Assisting produced a second revised Issues Paper

Publication of the Issues paper of 28 June 2004 was initially restricted to those parties with leave to appear. The entire Issues Paper became public on 28 July 2004.

8. The receipt of written submissions

The initial written Submissions of Counsel Assisting and all parties were received by the Commission on Wednesday, 14 July 2004.

The written Submissions in reply of Counsel Assisting and all parties were received by the Commission on Monday 26 July 2004. The written submissions of all relevant parties were made available through the Commission's website.

9. The Oral Submissions

Oral submissions commenced on 4 August 2004 and concluded on 13 August 2004.

10. The Website

A website was created for the Special Commission of Inquiry into the Medical Research and Compensation Foundation. It allowed all parties and the public access to the following information:

- A copy of the Special Commissions of Inquiry Act 1983 (NSW)
- The Terms of Reference as specified in the Letters Patent
- Key dates and announcements of the Inquiry
- The daily transcript of the public hearing
- Information regarding access to documents
- Copies of the Orders and Directions made by the Commissioner
- Written Submissions