Hardie sees bright side of asbestos compo equation

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Asbestos warning at Hardie site "ignored"

THE board of James Hardie Industries has given an eloquent description of the benefits of corporate social responsibility in an information memorandum about its new $1.6 billion asbestos compensation scheme prepared for an extraordinary general meeting in February.

Unanimously recommending that shareholders vote in favour of providing compensation, regardless of legal liability, the directors said the advantages would include "enhanced relationships with employees, customers and other stakeholders".

Refusing to pay, while legally defensible, would damage James Hardie's corporate reputation, depress the share price by introducing uncertainty about future asbestos liabilities, harm staff morale, distract management and hurt sales.

This reasoning is in contrast to the stance James Hardie took for three years after it was first alerted to the looming shortfall in funding for people injured by exposure to its asbestos products.

From 2001 until 2004 the directors refused to foot the bill, arguing that in the absence of legal compulsion their duties towards shareholders precluded spending company money on sufferers of asbestos diseases.

Yesterday's memorandum says that during that period directors considered "the legal issues as to how a contribution of funds ? would be in the best interests of James Hardie and, therefore, as to how its directors could satisfy their duties to act in James Hardie's best interests".

The commitment to pay was first made in July 2004, towards the end of the special commission of inquiry headed by David Jackson, QC. He concluded there was no legal obligation for the parent company to fund the liabilities of two former asbestos-producing subsidiaries "simply because they were its subsidiaries".

However, he said it was "right" that James Hardie should fund the future liabilities and it was "hard to see why it would not have been in the interests of [the company] to provide the funding" in 2001.

Most of the 329-page memorandum is taken up with a detailed explanation of the agreement reached after the inquiry through negotiations with the NSW Government, the ACTU and asbestos support groups in December 2004.

An independent expert's report by Lonergan Edwards & Associates also says the advantages of the proposed scheme "significantly outweigh" the disadvantages "after considering, in particular, the potential downside risks", including litigation, or legislation forcing James Hardie to pay.