

NSW Legislative Council Hansard

SPECIAL COMMISSION OF INQUIRY (JAMES HARDIE RECORDS) BILL

Page: 11607

Second Reading

The Hon JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [11.17 a.m.]: I move:

That this bill be now read a second time.

As the speech has been given in the other House I seek leave to incorporate it in *Hansard*.

Leave granted.

People around Australia and overseas were outraged by the recent report of the Special Commission of Inquiry into the Medical Research and Compensation Foundation. The report laid bare a long and unsavoury history of corporate manipulation and manoeuvring by James Hardie at the expense of ordinary workers and other victims of asbestos. The New South Wales Government shares the community shock and disappointment at the behaviour of James Hardie. The attitude of James Hardie and its managers towards workers and others struck down by lethal diseases—acquired from its products—defies comprehension. I again urge James Hardie to meet its obligations towards its former employees, their families, and other victims of its products without further delay.

This afternoon the Secretary of the Australian Council of Trade Unions, Greg Combet, and representatives of the victims groups, led by Bernie Banton, are talking to the appointed representatives of James Hardie. It could not be said that negotiations are moving with any speed, due to the position taken by the company. This may be hard to believe but that is the conclusion we are to draw from progress, if it can be called that, so far. The Government is not going to rely on James Hardie to do the right thing.

This bill demonstrates the Government's commitment to do all it can to make James Hardie and its executives accountable for their actions. The bill will assist victims of James Hardie to pursue adequate compensation, and assist regulators, such as the Australian Securities and Investments Commission [ASIC], to investigate James Hardie's conduct. The measures in the bill will ensure that James Hardie cannot avoid its moral responsibilities by using legal technicalities to frustrate litigation that may be instituted against it.

The bill will achieve two main objectives. First, it will transfer the records of the special commission of inquiry to the Australian Securities and Investments Commission. It will ensure that government regulators can make use of those records in the continuing fight to make James Hardie accountable for its actions. Second, it will ensure that the Medical Research and Compensation Foundation, the body set up by James Hardie to handle the compensation process, can make full use of the material it holds in civil litigation against James Hardie where the Attorney General has given his approval. This will maximise recovery of further funding for the victims of asbestos diseases.

As honourable members will know, ASIC is the Commonwealth body charged with regulating companies and their officers under the Corporations Act and its predecessors. We set up the Jackson inquiry. The foundation came to us and said that it had been set up by James Hardie, by the company, to handle compensation, but that it had short-changed the foundation and that it is running out of money, that it has been underfunded and that the company has taken millions of dollars in shares offshore. The foundation came to the Government and said that, and the Government responded by setting up this public inquiry.

Commissioner Jackson conducted his inquiry and found that James Hardie and its management had breached a number of significant provisions of the Commonwealth Corporations Law. The commissioner particularly criticised James Hardie for making misleading public statements about the extent of its asbestos liabilities. James Hardie said the foundation would be fully funded. It said that to the Stock Exchange; it said it to the court; it said it to the unions; and it said it to the Federal Government and the State Government. It said it was setting up this foundation and that the foundation would be fully funded.

It made these misleading statements before it then, some months later, abandoned Australia to set up shop in The Netherlands, taking along its valuable assets. The commissioner described James Hardie's announcement as "a pure public relations construct, bereft of substantial truth". That statement was part of a pattern of deceit by James Hardie that continues to have far-reaching consequences for the company's victims. The commissioner noted that prosecuting the company and its officers for making false and misleading statements was now a matter for ASIC. ASIC has specifically requested that this Parliament enact legislation to transfer the inquiry's records to it. That is, all material gathered by the Jackson commission of inquiry—great crates of it, boxes of it—can, through passage of this legislation, be lifted from the State Government and invested in ASIC. It is estimated that that will shave 6 months to 12 months off the time ASIC

would take to go about its prosecutions.

In other words, ASIC can roll up its sleeves and get right down to work. It does not have to go through the process of identifying documentation and setting up the procedures involved in a search. It gets the documents right out of our commission of inquiry and it can take the matter into court. ASIC requested this legislation and we are responding by seeing that it gets all of this material valuable to its purposes, as it was valuable to the purposes of the Jackson inquiry. The bill will, as I said, save ASIC considerable time in pursuing its investigations. It is similar to legislation enacted by the Commonwealth Government following the HHH royal commission. This bill goes further, however, in that it also provides ASIC with the special commissioner's own internal records, not just the evidence it obtained.

The bill makes clear that ASIC may use the records for the purposes of its investigations regardless of any claim for legal professional privilege that might be made in respect of the records. Consider the importance of that: legal professional privilege, important as it is, being set aside to enable this matter to proceed. The bill provides that the records can be used in proceedings to challenge a claim of legal professional privilege in relation to the relevant records. In regard to other proceedings, the bill provides that the records are to be treated as documents obtained under ASIC's own legislation for the purpose of New South Wales legislation. ASIC will be able to use the documents in civil and criminal proceedings as if it had obtained them under Commonwealth law.

This means that any legal professional privilege and confidentiality in the records will be overridden despite the New South Wales Special Commissions of Inquiry Act 1983 to the extent provided for under ASIC's legislation and general powers. The bill will not give ASIC more power over these records than over any other records it uses to prosecute Commonwealth offences or to pursue civil penalties and other remedies. However, the bill ensures that New South Wales law will not limit the use of these records through protecting legal professional privilege or confidentiality. The Government recognises that legal professional privilege is an important common law right. But when abhorrent corporate conduct on this scale is uncovered the offenders should not be able to avoid prosecution or other proceedings by hiding behind spurious claims for legal professional privilege. The special commissioner's report found that James Hardie's records were littered with claims for legal professional privilege that would be very difficult to justify.

Clause 4 (2) of the bill also makes it clear that ASIC may provide the transferred records to third parties. This is very interesting and it recognises that conduct identified in the special commission's report raises criminal and disciplinary issues under other legislation and in other jurisdictions. The bill will ensure that the information transferred to ASIC can be used by other regulators. The bill will ensure that the information can be used in this way. For example, ASIC will be able to disclose the records to another regulator such as the United States Securities and Exchange Commission. It was with great pleasure that I recently wrote to the director of the commission sending him the 1,000 pages, the fat two volumes, of Commissioner Jackson's report saying, "This company, now operating in the US—the bulk of its revenues arise from US activities—has engaged in activity that you may well be interested in." I want the SEC to consider whether James Hardie has breached any United States companies and securities legislation.

The Australian Prudential Regulation Authority will also be able to obtain records from ASIC. This will enable it to consider the conduct of the actuaries involved in the establishment of the foundation. Remember, the advice of the actuaries was, "There is enough money here to look after the needs of victims." Commissioner Jackson revealed that to be a hoax; there was not enough money there to look after the needs of the victims. Similarly, the conduct of lawyers can be scrutinised by the Office of the Legal Services Commissioner in New South Wales. ASIC's legislation allows information it obtained to be given to an agency of a State government. The bill will ensure that this can also occur in relation to the records of the special commission.

The second object of the bill is to support civil litigation by the foundation to recover more money for asbestos victims. The foundation appears to be in the best position to seek further compensation for victims from James Hardie through litigation. The Government remains hopeful, however, that it will not be necessary for the foundation to resort to further litigation. The bill will allow the records obtained by the foundation throughout the special commission to be used in civil proceedings brought by the foundation to which the bill applies. Under clause 11 the Attorney General will be able to make an order declaring that the provisions of part 3 of the bill will apply to particular proceedings. The Attorney will be able to make the order only where he believes that the proceedings are in the public interest. The primary public interest that the Government is seeking to advance in introducing the bill is the public interest in ensuring adequate compensation for James Hardie's asbestos victims. It is this public interest that the Attorney will consider before making an order under clause 11 of the bill.

The bill removes legal professional privilege over the records so that they can be used in these proceedings. The bill also makes it clear that orders made by the special commission restricting the publication of material no longer apply to the purpose of proceedings to which the Attorney General has given approval. While this aspect of the bill is unique, these measures are justified because of the impact that James Hardie's conduct has had on the ability of victims in the future to recover compensation for their illnesses. The public interest requirement and the application of part 3 of the bill only to civil proceedings recognise that it is a very serious matter to abrogate legal professional privilege and existing rights to confidentiality. The rights of individuals in relation to avoiding self-incrimination, however, are not affected. At this stage this part of the bill is limited to proceedings to be instituted by the foundation and the former James Hardie subsidiaries Amaca and Amaba. If it appears that proceedings by other bodies might also assist in recovering sufficient funds for victims these additional bodies can be prescribed by regulation. James Hardie knows what it owes its current and former workers, their families and the other victims of its products.

It also knows what it owes the Australian community. James Hardie has the financial capacity to act fairly. That was confirmed in the commissioner's report, in which he said—and I think these are the most eloquent words in the report:

To put it directly, JHI-NV still has in its pockets the profits made by dealing in asbestos, and those profits are large

enough to satisfy most, perhaps all, of the claims of victims of James Hardie asbestos.

However, it remains to be seen whether the company has the ethical backbone to put victims before profit in providing the compensation they deserve. As I said, negotiations are continuing this very afternoon between the ACTU and victims' groups on the one hand and James Hardie representatives on the other. Those negotiations are taking longer than the victims or the unions expected. I am sure that every member of this House hopes to see James Hardie meet its responsibilities as soon as possible. I hope this legislation can pass with the expedition and broad support it deserves. I commend the bill to the House.

The Hon MICHAEL GALLACHER (Leader of the Opposition) [11.18 a.m.]: On behalf of the Liberal-Nationals Coalition I indicate that we do not oppose this bill. All members would be well aware of the plight confronting asbestos victims. Thousands of Australians have faced tremendous suffering and horrible deaths as a result of asbestos. In my previous role as shadow Minister responsible for industrial relations matters and workers compensation I met with many workers who had suffered from workplace injuries, some of them obviously quite serious. However, I put it to all honourable members that the suffering experienced by asbestos victims and their families is a tragedy and a unique case, particularly as it resulted from the use of what was once regarded as an invaluable building material. It is amazing that nearly every person one speaks to who grew up in a blue-collar family, particularly in New South Wales and South Australia, is related to or knows of someone who has been affected by a dust-related disease. My uncle, who lives in Whyalla and who worked for BHP, is suffering the pain and stress caused by a dust-related disease. I fully understand and appreciate the pain and anguish that such diseases cause not only to individuals but to entire families.

Last month the Special Commission of Inquiry into the Medical Research and Compensation Foundation, headed by David Jackson, released its report. The report identified a serious shortfall in the funds available to meet future asbestos liabilities. It also identified potential breaches of the Corporations Law and the Trade Practices Act by James Hardie and certain senior executives that are now being investigated by the Australian Securities and Investments Commission [ASIC]. This legislation provides for the transfer of the special commission's records to the ASIC to assist its investigations and provide that such records may be shared with other governments and agencies where necessary. It amends New South Wales laws so as not to prevent the ASIC from using these records in court proceedings. It also overrides legal professional privilege and confidentiality in respect of the special commission's records so that the foundation can use them in civil litigation with approval from the Attorney General.

I congratulate the shadow Minister for Industrial Relations, the honourable member for Gosford, on his contribution to this debate, particularly his examination of legal professional privilege in this context. I make the observation that Ministers have advisors, assistants and the time to devote to the Government's legislative approach. The honourable member for Gosford was given the legislation and told when it was to be introduced in Parliament. His contribution to the debate on this bill in the other place this morning reveals the depth and the quality of Opposition members, who can understand legislation quickly, identify the issues and get to the nub of the debate. Let us not lose sight of the fact that there have been some problems with the Government's approach—one might even argue with the Government's conduct—in preparing this legislation. However, I do not intend to traverse that matter today. The honourable member for Gosford advanced a strong case, exploring not only the merits of and the background to the bill but the Government's approach to it.

Undoubtedly the problems with asbestos continue. If the Government is serious about the asbestos issue why is it not conducting a full State audit of its asbestos liabilities, such as those relating to railways and housing? The Opposition has suggested such an audit. Yesterday I raised in this Chamber the issue of asbestos removal from the Bondi Junction railway tunnel. That is a serious matter not only for the workers involved but for those who travel on that rail system. There is no doubt that in the past few years the community has become more aware of the threat that asbestos poses. More and more people are taking the time to ensure that when they come into contact with asbestos they comply with the latest advice and guidance regarding its removal. Anyone who does not do so is simply a fool because the evidence shows that asbestos must be handled with extreme care. Not to do so is to put oneself and others at risk.

That is why I raised the issue of asbestos removal in the Bondi Junction tunnel. I suspect that breakages will occur in the course of that work. The cables in the tunnels, which are made of asbestos and sprayed with PVC, are being removed and undoubtedly some breakages and subsequent dust contamination will occur. I think it is fair to ask what is being done to ensure that not only workers but passengers—especially those who are the first to use the rail system in the morning; the work will also proceed during the day—are protected from any contamination. We have raised in this Chamber and elsewhere our concerns about the health of electricity workers. We will continue to put pressure on the Government in that regard.

When asked in this place about the State's potential liabilities in this area, the Treasurer replied, "The State can meet its liabilities". That is the same reply that James Hardie gave in 2001. I am sure that point is not lost on the State's work force, particularly those involved in the electricity and rail industries, and all honourable members should bear it in mind. I make that point not only for the edification of Opposition members but for Government backbenchers. I urge them to take note that the Treasurer gave the very same reply as James Hardie offered in 2001. I draw their attention to that fact and call on Government backbenchers to keep Ministers honest. They must not lose sight of the fact that they have a responsibility to the unions and the workers of this State to ensure all that can be done is being done with regard to asbestos.

We do not know whether the State will be able to meet its future liabilities. James Hardie's potential liability was found to be more than \$1 billion and I suggest that the State Government's potential liability will be far greater than that. There has been no audit of that liability because the Government has refused to conduct such an audit. It had the capacity to seek further information in 2001 but, once again, it chose not to act. I think it is only fair to ask why. It falls to Government

backbenchers to ask Ministers that question and to ask what they are doing now to ensure that future liabilities are covered and that the workers of this State are being protected.

No matter what the Premier says, the Government's action in 2004 with respect to the special commission and this legislation does not make up for its inaction in 2001. It is our responsibility to take what measures we can to assist asbestos victims. The Coalition must accept the Government's assurances about the need for this legislation but we are entitled to raise the concerns to which I have referred. Workers in New South Wales should be very concerned about the Premier's failure to act with regard to James Hardie in 2001 and the Government's failure to conduct an asbestos audit in this State. We join Commissioner Jackson in expressing our regret to the many victims of asbestos. As I said at the outset, the Opposition does not oppose this legislation.

Ms LEE RHIANNON [11.27 a.m.]: The Greens certainly support the Special Commission of Inquiry (James Hardie Records) Bill. We feel very passionately about this issue. Workers' health has been damaged and their lives shortened because they worked hard to make profits for a big company. We are reminded of why we, as legislators, have a responsibility to step in and assist these people—particularly when they are challenging a company like James Hardie. The company is again dragging the chain when it comes to doing the right thing by thousands of workers who are now in a terrible predicament—their lives have been shortened and their health is poor. We have all seen the dramatic photographs of James Hardie factory workers, usually young men, covered in asbestos dust. They were completely unaware of the dangers of the product that they were working with. Builders are also suffering similar dust-related diseases and we have been alerted to the fact that renovators of buildings constructed from asbestos material could be the next generation to suffer in this terrible manner.

The Greens support this bill which will allow the release of records from the inquiry into the Medical Research and Compensation Foundation to the Australian Securities and Investments Commission [ASIC] so that they can investigate potential breaches of the law by James Hardie. The Greens see value in facilitating the work of the ASIC to pursue criminal action against James Hardie and its directors. The ASIC must be able to investigate freely any breaches of corporations law by James Hardie executives. The Greens also recognise the need to open up the possibility for the Medical Research and Compensation Foundation to be able to more successfully pursue adequate funding from James Hardie for victims of asbestos through civil litigation.

Time is of the essence for the victims who are facing life-threatening illnesses and whose families are faced with uncertainty about their future. On last night's *7.30 Report* some victims told their tragic stories. A man who had worked so hard for James Hardie spoke about his sadness about not seeing his young son go to school or proceed in life. I am not sure if the word is "congratulations" but at the moment that is the best word I can think of for the many victims of this disease who have worked so hard to bring this tragedy to our attention. I believe that if they had not made their contributions, with the back-up of unions and community groups, we would not have this bill before us. It is very much a case of community pressure being essential to ensure that the Government does the right thing.

James Hardie's conduct in skipping the country and leaving inadequate funds behind to pay for asbestos-related claims will be remembered as one of the most shameful acts, and possibly the most shameful, in Australia's corporate history. Through a combination of corporate skulduggery and deception it is clear that James Hardie has not met its current and future compensation obligations, and that is a disgrace. The Greens have been fighting, alongside the union movement, to support justice for asbestos victims, at local, State and Federal levels, to bring James Hardie to account. We have been pursuing boycotts of James Hardie products. The Greens believe that it is important to no longer purchase the goods and services of James Hardie until the community is sure that all compensation owing to the thousands of sufferers of asbestos-related diseases will be paid. We know that we still cannot be confident of that. James Hardie is again slipping out of a commitment it gave two weeks ago to asbestos victims.

Greens councillors from across New South Wales have taken a stand and secured boycotts of James Hardie products at their local council. I asked the Premier to enact a similar boycott and he has replied that "if some form of boycott is necessary to ensure that this occurs then it deserves the fullest consideration". We hope the Government does give a boycott the promised fullest consideration. My Federal colleagues have moved similar motions in the Federal Parliament. The Greens initiated the call for political donations from James Hardie to be handed back. I moved a motion in this House about that very matter and I was pleased that it got all-round support. We know that some of the major parties—the Liberal Party and the Australian Labor Party—have handed that money back. Kerry Nettle, my colleague in the Senate, successfully moved a motion calling for all political parties who took donations from James Hardie to put that cash into a trust fund for victims and their families, and that pressure has added up. Paying back the money from James Hardie would be a good first step to achieving the justice that victims deserve. The money received by political parties from a company that dealt in such a deadly product should rightly go into a trust fund.

The Greens hope that returning donations given by James Hardie will have a snow-balling effect, starting a trend for all political parties to draw a line in the sand and in future reject donations from corporations that deal in such deadly products. James Hardie has been hiding in The Netherlands while asbestos victims wait for justice. Recently, it has been having meetings with some of the victims of asbestos and unions and it is deeply disappointing that it is just talking and not acting. The Australian Greens worked with the Dutch Socialist Party in The Netherlands to lobby both governments to sign a treaty that would make court judgments mutually enforceable. This would allow Australian asbestos victims to use Australian courts to chase James Hardie for compensation in The Netherlands. Through this work we learned that the claim made by the Attorney General, Philip Ruddock, that The Netherlands had not responded to Australia's request for a treaty was false. According to our colleagues in The Netherlands, Australia had made no such request.

The Dutch Socialist Party [DSP] also tried to lobby James Hardie itself in The Netherlands. The people at the Amsterdam headquarters told the DSP advisers that they would have to contact Australia for information, which raises the question as

to what kind of headquarters James Hardie really has in The Netherlands. The Greens certainly believe that the work with the DCP has been most important in opening up an avenue for asbestos victims to pursue James Hardie, which has turned on victims and headed overseas in order to protect its profits. The former Greens member of Parliament for Cunningham, Michael Organ, met the Dutch Ambassador in Australia and presented a letter from the two political parties—the Greens and the Dutch Socialist Party—and also from 90 Dutch-Australian members and supporters of the Greens demanding justice for asbestos victims. This company has shown such contempt on a continuing basis for asbestos victims. James Hardie knew how dangerous its product was years ago and did not warn its workers, give them protection or move to stop using this lethal product. James Hardie has been ducking and weaving, restructuring and moving off-shore to escape liability. It is our responsibility to ensure that it pays up in full to all victims of this deadly product, asbestos, now and into the future.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.36 a.m.]: Asbestos disease is one of the most horrific conditions. Asbestosis is the more benign of the two. It is a worsened form of emphysema where lung fibrosis effectively means that people cannot get the air into their lungs and slowly asphyxiate, with exacerbations and remissions over a period of time in a generally downward trend. Many of them survive only by increasing the amount of oxygen in the inspired air and walk around with oxygen tanks or oxygen separators within their homes and live that sort of death in life for some years. They can live for quite a long time. On the other hand, mesothelioma is a tumour of the flora, the lining of the lungs, and when it grows it effectively takes up the space between the lungs and the chest wall. A tumour in that sensitive area is extremely painful, as anyone who has had pneumothorax, air in that space, or an infection in that area will know.

As the tumour grows relatively rapidly it constricts the lungs growing inwards because the chest wall limits it outwards. The tumour effectively crushes the lungs so there is no residual lung left with which to breathe. It seems to be incurable, although one case seems to have been cured by a new American treatment, but generally mesothelioma is fatal and causes a horrible death. Asbestosis and mesothelioma were described, I believe, as early as 1917, and was certainly well known by the 1930s. It was extraordinary that asbestos was still in widespread use until the mid-1980s. When we were children many of us built things made with fibro. We built two sheds in our backyard with fibro and I was instructed by my father to blow the dust away as he sawed along the line of the fibro sheeting. I suppose we are all at risk from asbestos sheeting.

James Hardie, which continued to make a profit, went overseas but has finally been outed. I refer to information from the Asbestos Diseases Foundation of Australia [ADFA]. The ADFA believe James Hardie acted dishonestly and criminally and feel vindicated by the submissions tendered at the commission, including counsel assisting the Jackson commission, John Sheahan, QC. The overview of the ADFA is that from at least 1995 James Hardie engaged in a scheme designed to remove and quarantine the company's operations from its asbestos liabilities. Its aim was to reduce the amount of money available to victims of asbestos disease caused by the negligence of James Hardie.

Between 1995 and 1998 James Hardie and Company Proprietary Limited paid management fees and dividends to its parent company, James Hardie Industries Limited [JHIL], and sold off its assets to other members in the James Hardie group. In doing so it removed \$1 billion to \$2 billion in assets in net present value. In February 2001 James Hardie Industries Limited separated its subsidiary companies with asbestos liabilities by setting up the Medical Research and Compensation Foundation [MRCF] with assets of \$293 million, a sum JHIL said would fully fund all anticipated asbestos claims. JHIL knew this sum was a gross underestimate of the James Hardie asbestos liabilities. In October 2001 JHIL entered into a scheme of arrangement whereby the parent company of the group was changed from the Australian company JHIL to a Dutch company JHINV. The link between the two companies was \$1.9 billion in partly paid shares held by The Netherlands company in the Australian company.

James Hardie told the Supreme Court of New South Wales that these shares were there to provide protection for creditors, including asbestos victims. In March 2003 the partly paid shares were cancelled, leaving the old Australian parent company, JHIL, with assets of approximately \$20 million and severing any link between it and the Dutch company, therefore reversing any link between the present profit of the company and its asbestos liabilities. In October 2003 the MRCF announced that it would run out of money in the next four years. JHINV said it had no liability to pay any further compensation to asbestos victims. The New South Wales Government called a special commission of inquiry into the MRCF to find out how and why the MRCF was underfunded. That is as good a summary as I have been able to find as to what happened. The Jackson inquiry basically revealed sordid details of the way the company had restructured its affairs to limit its liabilities to asbestos victims.

James Hardie, having been extremely dilatory in identifying and acting on the risk of asbestos to employees and the public, had the gall to ask the Asbestos Diseases Foundation of Australia [ADFA] to come to the launch of the Medical Research and Compensation Foundation to give credibility to their triumphant gesture that would enable them to pay their liabilities. The Asbestos Diseases Foundation of Australia chose not to attend the launch because they were not sure that it was not just a ruse to get rid of liabilities. They were suspicious. They did not trust the company, and why would they? They had not been warned about and in fact its members were dying from the effects of James Hardie's products. Why would they assume that the foundation was funded adequately? It would have been a great coup for James Hardie to have asbestos victims at the launch because they would have given credibility to its Medical Research and Compensation Foundation. It is a wonderful name—medical research is like motherhood—although I am not sure how much medical research is done.

The Asbestos Diseases Foundation were concerned that not enough money was in the foundation. They did not know how much money was in the foundation and they did not understand it. However, they were asked to attend the launch at short notice but chose not to because they were suspicious. The Australian Securities and Investments Commission [ASIC] were not so suspicious. They appear to have swallowed this hook, line and sinker even when the media started to ask questions about the nature of the foundation and the transfer of shares. Our watchdog was very sleepy, as it had been with HIH. The rather dozy approach of ASIC revealed their lack of concern for asbestos victims. They are much

better at watching money than they are at watching compensation, although the HIH fiasco would incline one to say that they did not watch money very well either. The head of ASIC, Joe Hockey, has been removed. One would have to say that was necessary.

It is interesting to note that the Jackson report states that the commissioner did not believe the Government could compel James Hardie to do anything. It is worrying to note that Commissioner Jackson is basically saying that voluntary compliance is the only way anything can be done legally under the present or future laws. The current public image of James Hardie is extremely poor, everyone is baying for blood and the Government has introduced special legislation to deal with the matter. But time passes and memories fade. It has been said that the asbestos epidemic has not yet peaked in Australia. In the next 10 to 15 years when asbestos victims are still coming out of the woodwork they will find it extremely difficult to obtain financial compensation. James Hardie continues to be cagey. They have suggested they want a fund and that they want to get rid of the cost of lawyers. They want a statutory scheme, which is all about limiting liability. It is one thing to say that there are not many lawyers and nobody minds if the legal process is streamlined.

If liability is admitted and it is merely a question of quantifying damage according to a formula, the cost of legal representation can be minimised as a percentage of the payouts. It is one thing to streamline the legal work, but it is another to have a statutory scheme. We have seen what I call the absolute farce of the American Medical Association guidelines for the assessment of permanent impairment, which do not even make the distinction between impairment and disability. They have a silly formula that relates to virtually nothing, then extremely limits liability to a percentage of total impairment, whatever that means. The insurance companies and a few legal precedents mean that it adds up to a certain amount of money, which would be desirable to a defendant and an insurer. James Hardie, even when they are at the nadir of their public image, continue to say that they will pay so long as there are caveats, such as a statutory scheme and not much money for lawyers, which will mean that injured workers or members of the public are poorly represented.

James Hardie has not come to terms with its liabilities. It was interesting to note that Meredith Hellicar, the new Chairman of James Hardie, said that she has not come face to face with an asbestos victim despite being on the board for 12 years. My position has always been that there should be restorative justice. A chief executive officer in whose company a worker has been injured or killed industrially should come to terms with those who suffer major injuries or the relatives of those who are killed so that they realise the impact of what has occurred. They should not be able to flow along or live in some gated community in United States of America or some relatively socially isolated area away from the people who are suffering. They should have to meet them face to face in a restorative justice situation.

The Hon. John Della Bosca: Hunters Hill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I acknowledge the interjection from my colleague the Special Minister of State. I note that he has done nothing about this, nor has he supported my calls for corporate manslaughter legislation, which is recommended by that wildly leftist body the Standing Committee of Attorneys-General as part of the national model criminal code, so that if behaviour is totally reprehensible, which I believe the James Hardie behaviour represents, those responsible are called to account eventually. But while we sit in this place passing legislation that demonises criminals who kill a person in a desperate attempt to get money for drugs or whatever, put them away and subject them to truth in sentencing, we do not make our corporate citizens who make decisions that will kill hundreds and hundreds of people face the courts.

We do not even suggest that they might perhaps come down from their high horse and be responsible for the consequences of their decisions. I do not suggest for a moment that this is not a good bill. It means that evidence from the Jackson report cannot be obstructed by various legal processes, which I do not understand. The idea is that only certain types of evidence can be used. Obviously the information collected by Jackson needs to be used expeditiously and I totally support that. But it is interesting to note that 12 people a day die of tobacco-related disease in New South Wales alone and the Government has done very little about that. In fact, it has done nothing in the nine years it has been in office to deliver smoke-free indoor areas or even a significant QUIT campaign.

This Government has done nothing to take direct action against tobacco corporations or assist in the prosecution in Australia of tobacco companies concomitant with prosecutions in the United States that have been based on the discovery of documents. British American Tobacco escaped prosecution because it had a policy of destroying what were referred to as "deadwood documents", which is tobacco industry parlance for the destruction of incriminating evidence. In Australia the process of the destruction of documents has been successfully completed. In the United States, documents have been successfully destroyed. Honourable members would be aware of the story, *The Insider*, and its main character, Jeffrey Wigand, who was a paralegal whose task was to destroy incriminating documents held by a tobacco company. He was so horrified by what he saw that he retained the documents and passed them over to others to ensure that justice would be done. The discovery of documents in some of the court cases conducted in America may be propitious to the prosecution of the tobacco industry in Australia, which is responsible for killing just as many people here on a per capita basis as is the case in the United States.

Sadly, although the Carr Government has taken strong action against producers of asbestos, it has taken no action against the producers of tobacco. It is distressing that prosecution of tobacco companies will not occur in Australia, and equally horrifying that the Carr Government has postponed taking any action to prevent people from smoking and contaminating indoor air until after the 2007 election. If the Carr Government claims to be extremely concerned about workers and that its action against Hardie is being taken for the good of the workers, why is it postponing action to protect the wellbeing of workers, assuming that enforcement is a realistic proposition, until July 2007 while 12 workers a day are being killed as a result of tobacco smoke poisoning? The current rate of enforcement of the prohibition against smoking in the workplace by prosecution against people who do not observe the laws is a disgrace.

I support this obviously necessary legislation, but the Government should do much more to protect the health of workers. The Government should have wider restorative justice policies, corporate manslaughter legislation—which I would be happy to introduce at short notice—and tobacco industry policy that is modelled on prosecutorial action that has been taken to protect workers from diseases related to asbestos. The Government should not introduce a statutory scheme: Victims of asbestos-related diseases are eager to use the existing scheme to obtain compensation. I support their rights to do so and suggest that the processes of justice involved in awarding compensation should be expedited.

Reverend the Hon. Dr GORDON MOYES [11.52 a.m.]: I congratulate the Hon. Dr Arthur Chesterfield-Evans who preceded me in this debate on his longstanding interest in medical health issues and on making some excellent points on the Special Commission of Inquiry (James Hardie Records) Bill. I am delighted to note that the Hon. Dr Arthur Chesterfield-Evans once more has managed to dovetail his comments on asbestos-related diseases with smoking-related diseases and to beautifully segue from asbestos to nicotine. The objects of the bill are very important. The Christian Democratic Party congratulates the Government on this bill which follows the Jackson report and widespread media concern. Members of the Christian Democratic Party have met many of the victims who are seeking support and compensation, and we agree with the direction taken by the Government in the introduction of this bill.

The main purposes of the bill are to provide for the transfer of the control of records of the Special Commission of Inquiry into the Medical Research and Compensation Foundation to the Australian Securities and Investments Commission [ASIC], to make provision with respect of the use and admissibility in proceedings of the transferred records, and to facilitate the use of records of the special commission, which are held by the Medical Research and Compensation Foundation, in certain civil proceedings brought by the foundation in New South Wales courts by preventing certain claims of privilege from being brought in respect to those records. Part 2 of the bill provides for the statutory transfer of records to ASIC.

Section 23 of the Special Commission of Inquiry Act 1983 makes an answer made, or record produced, by a witness to or before the special commission, who objects to answering the question or producing the document on the ground of legal professional or other privilege or any other ground, inadmissible in evidence against the person in civil or criminal proceedings. Part 3 of the bill includes provisions to overcome the effect of section 23 in this respect and to ensure that privilege cannot be claimed which would make evidence inadmissible in civil proceedings brought by the foundation and certain other bodies and persons. Part 3 of the bill also provides that certain directions given by the commissioner of the special commission do not apply to prevent or restrict the publication of evidence that is contained in the specified records.

The Christian Democratic Party believes that this bill is commendable. Corporations must be held accountable for their actions that damage the health and welfare of their employees, even though there may be a long tail to the evidence that is produced to establish the ill-health and subsequent death of employees. This bill is of utmost importance in providing grounds for access to information that may reveal the dealings of companies, such as in the case of the well-publicised dealings engaged in by James Hardie in hiding potential victims' money in The Netherlands. This episode has been a salutary lesson to other corporations, but unfortunately the possibility of the continuation of such practices still exists. This legislation is a necessary step in ensuring the accountability of companies for their workers in the future.

Corporations are invariably in privileged positions. They have abundant financial resources to obtain the best legal guns for hire. Their financial resources provide a key to escaping potential liability or having to face the music in relation to the harm suffered by employees under their care. Honourable members may recall that I have directed questions on this issue to the Special Minister of State and I have congratulated him and the Government on the progress of Government actions to date. ASIC, as the company watchdog, must be placed in a position of being able to ensure that companies are made accountable to their employees, especially in the light of the sufferings endured by James Hardie employees. This is essential because to date ASIC has not exercised its powers, nor demonstrated its concerns, widely enough. ASIC should be encouraged to be more diligent in its watchdog role. The consequences to the health and welfare of asbestos victims are far from fully ascertained. The potential for suffering may continue to affect employees for decades. This bill is essential for the future wellbeing of the victims. The Christian Democratic Party supports the Government in its introduction of this legislation.

Ms SYLVIA HALE [11.56 a.m.]: The Greens support this bill whose purpose is to ensure that James Hardie is made fully accountable for its actions and to ensure that the victims of its actions receive adequate compensation. It is clear that only the first wave of victims of asbestos-caused diseases has come to light and we may anticipate a second, more horrifying wave of victims in the future. The second wave will be made up in part of people who grew up with asbestos fibro—the building material of choice for many people right up until the mid-1980s. As a child I, in company with other children with whom I went to school, searched for broken pieces of fibro to use in games such as hopscotch, for which fibro was eminently suitable. Pieces of fibro were actively sought by children and it was not difficult to find because so much building in the post-war era incorporated asbestos fibro.

One only has to bring to mind the large estates in Riverwood and Liverpool to appreciate how asbestos fibro predominated in the construction of homes. There would be hardly a kitchen or a bathroom that was put together in the 40-year period after the war that did not contain asbestos in some form or other. It is because of the proliferation of that material throughout our housing stock that considerable concern is being felt regarding the future impact upon the health and certainly the wellbeing of many members of the community who might otherwise not have had any connection with James Hardie. That is particularly so given the current mania for renovating kitchens and bathrooms—asbestos must be proliferating, particularly in the areas I have mentioned. In that context it is important to draw attention to the way in which community groups respond to the threat posed by asbestos. I congratulate particularly Ashfield council on the moves it has undertaken to require people who are renovating, improving or applying for development approval within its area to provide an asbestos clearance certificate.

Pursuant to sessional orders business interrupted.

NSW Legislative Council Hansard, 20 October 2004, Pages 2 - (article 10)

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