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# Establishment of Foundation - Recap

## Background

- Established in February 2001 to:
  - Compensate people injured by asbestos from former group subsidiaries
  - Fund medical research aimed at finding cures
- Completely independent, non profit organisation with its own board and management
- Established with assets sufficient to meet anticipated future claims relating to asbestos from former group subsidiaries
- Resolved former group asbestos liability within these subsidiaries for the mutual benefit of shareholders and future claimants

# Establishment of Foundation - Recap

## Structure

- Foundation controls two former subsidiaries of the former parent company, AMABA and AMACA, that manufactured asbestos
- All shares in AMABA and AMACA were vested to Foundation
- Assets in AMABA and AMACA totalled A\$296 million including A\$90m above net assets
- Resulted in deconsolidation of AMABA and AMACA from the former parent company
- AMABA and AMACA indemnified the former parent company for past and future asbestos liabilities



## Establishment of Foundation - Recap

### Assets

- Established with assets of A\$296 million to meet legitimate asbestos related claims on AMABA and AMACA
- Investment income from assets would enable total claims payments to significantly exceed A\$296 million
- Independent advice was provided by specialists including Trowbridge actuaries, Access Economics, PwC and UBS Warburg
- Foundation was provided with an extra A\$90m in excess of entire assets of AMABA and AMACA at establishment, and any legal obligation, to a total of A\$296m
- A further A\$3m was provided to enable continued support of asbestos medical research



# Establishment of Foundation - Recap

## Benefits for Claimants

- Greater certainty
  - Foundation focussed on compensation
  - Anticipated future claims were expected to be met
  - Foundation has irrevocable rights to the assets
  - Assets not to be used for other purposes ahead of claims
  - Right of claimants to sue were undiminished
  - James Hardie has no rights to dividends or any surpluses
  - Special funds to help continue medical research



# Establishment of Foundation - Recap

## Benefits for Shareholders

- Greater certainty
  - Asbestos costs no longer impact P&L
  - No future asbestos provision required
  - Nature and extent of liability is clarified
  - Management focus entirely on core business
  - Investor focus entirely on core business
  - Increased attractiveness to investors

# Foundation Developments

## Impact of AASB 1044

- Requirement for AMACA and AMABA to disclose actuarial assessment of estimated contingent asbestos liability
- It is understood that AMABA and AMACA accounts show a shortfall in assets available to meet estimated contingent liability
- Disclosing contingent liability does not mean AMACA and AMABA have insufficient assets to meet known creditors or will have insufficient funds to meet all future claims
- Many factors will effect future funding requirements including: number and type of claims; investment returns; legal developments (e.g.Hay case); medical developments; and systemic reform



## Foundation Statement

- Foundation claims existing funding could be exhausted within 5 years
- Foundation unsuccessfully sought additional funding from James Hardie to meet expected liabilities
- Foundation is investigating a range of legal options involving James Hardie or related entities to ensure compensation for future claimants

## Foundation Funding Largely Intact

- Clearly there is no funding shortfall today. The Foundation's net worth is close to what it was at time of establishment
- It will receive \$130 million from agreed schedule of indemnity payments and insurance settlements – this is on top of its cash and investments
- All workers compensation claims covered by existing insurance
- Funding is sufficient for many more years even if no return earned on its assets

## Establishment was fair, legitimate & transparent

- Former parent company board took expert advice in determining funds provided
- Best information available was used
- Income assumptions were low end of 10 year historical performance
- Extensive consultation with acknowledged experts and interested parties
- Interests of claimants and shareholders were balanced

## James Hardie's Legal and Financial Position Unchanged

- There was no parent company liability for AMACA and AMABA before or after the establishment of the Foundation, or before or after the restructure
- There is no basis for legal action by the Foundation against JHI NV or any related entity
- James Hardie is confident it can defend any such action
- Potential for any asbestos related claims from AMABA and AMACA to have a material adverse affect on JHI NV remains remote
  - JHI NV not involved in Foundation set up or any asbestos claims
  - Circumstances for involving JHI NV do not exist
- JHI NV has no legal obligation to provide further funding to the Foundation



## A Wider Issue

- Actuarial cost estimates adopted in AMACA and AMABA accounts show a dramatic departure from many years of consistent and stable actuarial estimates of future claim costs
- It is difficult to contemplate any basis for such a change but a substantial departure would indicate a wider issue
- Foundation subsidiaries less than 20% of the problem and only 2 of about 150 defendants
- Investigations underway to assess government liabilities



## Disclaimer

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