

James Hardie Former Subsidiaries (Winding up and Administration) Amendment Act 2009 No 116

[2009-116]



New South Wales

Status Information

Currency of version

Repealed version for 20 November 2010 to 3 March 2011 (accessed 23 November 2024 at 15:10)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 4.3.2011.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 4 March 2011

James Hardie Former Subsidiaries (Winding up and Administration) Amendment Act 2009 No 116



New South Wales

Contents

Long title	3
1 Name of Act	3
2 Commencement	3
Schedule 1 Amendment of James Hardie Former Subsidiaries (Winding up and Administration) Act 2005 No 105	3

James Hardie Former Subsidiaries (Winding up and Administration) Amendment Act 2009 No 116



New South Wales

An Act to amend the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* to make further provision with respect to the funding of claims against certain former subsidiaries of the James Hardie corporate group.

1 Name of Act

This Act is the *James Hardie Former Subsidiaries (Winding up and Administration) Amendment Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005 No 105*

[1]-[12] (Repealed)

[13] Section 35 SPF trustee may apply to Supreme Court to secure continuing funding of claims

Omit section 35 (5) and (6). Insert instead:

- (5) **Supreme Court may make orders establishing approved payment scheme** If the Supreme Court is satisfied on an application under subsection (1) that it is likely that there will be insufficient funds for all payable liabilities of a liable entity to be paid in full as and when they fall due for payment, the Supreme Court may make an order approving a scheme (an **approved payment scheme**) for the payment by instalments of the full amount of payable liabilities due, or the deferral of payment of payable liabilities of the entity, during the period specified by the order (the **scheme period**).

(6) In specifying the scheme period:

- (a) the Supreme Court is to take into account the anticipated duration of the period before the liable entity will or is likely to have sufficient funds to pay payable liabilities in full as and when they fall due for payment instead of paying them by instalments or deferring payment, and
- (b) if the scheme period is to commence before the time it is anticipated that there will be insufficient funds—the Supreme Court is to be satisfied that the early commencement of the scheme period will result in claimants for proven personal asbestos claims being treated more equally in relation to the payment of their claims than would otherwise be the case.

[14] Section 35 (7), (8) (a) and (13)

Omit “insufficient funds period” wherever occurring.

Insert instead “scheme period”.

[15] Section 35 (7) (b)

Omit “subsection (8)”. Insert instead “subsections (8) and (8A)”.

[16] Section 35 (7) (e)

Insert after section 35 (7) (d):

- (e) the interest rate to be applied in calculating the interest payable on that part of any payable liability that would otherwise attract interest because it is not paid during the scheme period because of the operation of the scheme.

[17] Section 35 (7A)

Insert after section 35 (7):

(7A) An interest rate approved as referred to in subsection (7) (e):

- (a) need not be a commercial interest rate, but is to be an interest rate that the Supreme Court is satisfied is a rate that makes reasonable allowance for inflation while minimising the liabilities of the liable entity and the cost of the scheme, and
- (b) applies to the exclusion of any other interest rate that would otherwise have been applicable in determining the interest to be paid to any payable claimant in respect of any part of a payable liability that is not paid during the scheme period because of the operation of the scheme.

[18] Section 35 (8A)

Insert after section 35 (8):

- (8A) In addition to the matters for which a scheme must provide under subsection (7), the Supreme Court may approve a scheme that provides for any or all of the following:
- (a) the payment in full of liabilities to pay proven personal asbestos claims that are small claims (but only if the Supreme Court is satisfied that there will be sufficient funding to make such payments and the payments referred to in subsection (7) (a)),
 - (b) different payment options from which claimants may elect to be paid for the payment by instalments of proven personal asbestos claims that are not small claims (including a default payment option in the event that a claimant makes no election).

[19]-[22] (Repealed)