
Deed of Amendment

**Asbestos Injuries Compensation Fund
Limited as trustee of the Charitable Fund**

**ABN 60 Pty Limited (under NSW
administered winding up)**

**Amaca Pty Ltd (under NSW administered
winding up)**

**Amaba Pty Ltd (under NSW administered
winding up)**

The State of New South Wales

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Date 18th September 2015

Parties **Asbestos Injuries Compensation Fund Limited** (ACN 117 363 461) (*AICF*) of Suite 601, Level 6, 56 Clarence Street, Sydney, New South Wales, in its capacity as trustee of the Charitable Fund established under a trust deed dated 7 April 2006 (as amended and restated) between it as trustee and James Hardie Industries SE (now known as James Hardie Industries Public Limited Company) as settlor, (*Borrower*)

ABN 60 Pty Limited (under NSW administered winding up) (ACN 000 009 263) of Suite 601, Level 6, 56 Clarence Street, Sydney, New South Wales (*ABN 60*)

Amaca Pty Ltd (under NSW administered winding up) (ACN 000 035 512) of Suite 601, Level 6, 56 Clarence Street, Sydney, New South Wales (*Amaca*)

Amaba Pty Ltd (under NSW administered winding up) (ACN 000 387 342) of Suite 601, Level 6, 56 Clarence Street, Sydney, New South Wales (*Amaba*)

The State of New South Wales of c/- The NSW Treasury, 52 Martin Place, Sydney, New South Wales (*Lender*)

Recitals

- A The Borrower, each Guarantor and the Lender have entered into the Agreement.
- B In February 2014, the Borrower and each Guarantor proposed to enter into a deed of amendment with the Lender in respect of the Agreement. That deed has not been executed by the Lender and thus, the amendments proposed under that deed to the Agreement have not become effective.
- C At the request of the Borrower and Guarantors, the Lender has agreed to amend the Agreement as set out in this Deed.

Operative provisions

1. Definitions and Interpretation

Definitions

- 1.1 In this Deed, unless the context requires another meaning:

Agreement means the document entitled "*AICF facility agreement*" dated 9 December 2010 between the Borrower, the Guarantors and the Lender.

Effective Date means the date being the later of:

- (a) the date of this Deed; and

- (b) the date on which the Borrower provides to the Lender evidence of the written consent of James Hardie Industries Public Limited Company (ARBN 097 829 895) to the amendments set out in this Deed to the Agreement.

Guarantors means each of ABN 60, Amaca and Amaba.

Interpretation

- 1.2 A term defined in the Agreement, and not defined in this Deed, has the same meaning when used in this Deed.
- 1.3 The interpretation clause in Schedule 1 of the Agreement applies to this Deed as if set out in full in this Deed and all references to *this document* were references to this Deed.

2. Amendments

Consideration

- 2.1 The Borrowers and the Guarantors each acknowledge and agree that the Agreement is amended under this Deed at their request and for valuable consideration received from the Lender.

Amendments

- 2.2 With effect from the Effective Date, the Agreement is amended as follows (the clause references in this clause 2.2 are to the relevant clauses in the Agreement):
- (a) the definition of "Availability Period" in clause 1 of Schedule 1 (Dictionary) is deleted entirely and inserted in its place is the following definition:
- "Availability Period means the period starting on the date of this document and ending on the earlier to occur of:*
- (a) *1 October 2030 or such later date as agreed by the Lender in writing; and*
- (b) *the date when the Commitment is cancelled in full."*
- (b) sub-clauses 5.2(a) and 5.2(b) ("Commitment") are each replaced with the words "Not used";
- (c) clause 2.4 (*Quarterly and ad-hoc drawdowns*) is deleted entirely and inserted in its place are the words:
- "2.4 Not used."**
- (d) clause 2.5 (*Discretionary uplift*) is deleted entirely and inserted in its place are the words:
- "2.5 Not used."**
- (e) clause 3.4(c)(ii) is replaced by the following clause:
- (ii) must not, when aggregated with the previous Advances in the same Period in which the Advance is requested, exceed the relevant Shortfall Amount for such Period, unless otherwise agreed in writing by the Lender;"

- (f) in clause 3, the following new clause is inserted as clause 3.6:

"3.6 Maximum number of Advances

Unless otherwise agreed by the Lender in writing, the Borrower must not request, and the Lender is not obliged to provide, more than 4 Advances in any Period.";

- (g) in clauses 3.3(h)(i) and 3.3(h)(ii), the words "the Borrower delivers to the Lender" are replaced by the words "the Lender has received";
- (h) clause 4.2 is replaced by the following clause:

"4.2 Interest Periods

- (a) The first Interest Period for an Advance commences on its Drawdown Date and ends on the last day of the month in which the Advance is made;
- (b) Each subsequent Interest Period for an Advance starts on the first day of the month following the immediately preceding Interest Period and ends on the last day of the same month; and
- (c) An Interest Period which would otherwise end after the Final Repayment Date instead ends on the Final Repayment Date.";

- (i) clause 5.1(a) is replaced by the following clause:

"(a) Subject to clause 5.1(c), the Obligors must, in each Period in which there is an Amount Outstanding, apply in repayment of the Amount Outstanding 100% of each amount of Available Proceeds (or, if less, the amount required at that time to repay the Amount Outstanding in full):

- (i) if such amount is greater than \$500,000, within 7 days after receipt of such amount (or by direction to the payee in lieu of receipt); or
- (ii) if such amount is \$500,000 or less, no later than 7 days after the end of the calendar month in which such amount is received.";

- (j) clause 10.5(c)(i) is replaced by the following clause:

"(i) Despite any other provision of the Transaction Documents an Obligor may, without the consent of the Lender:

- (A) commute, or agree to the commutation of, any Insurance Policy as part of a court approved scheme of arrangement for the relevant insurer;
- (B) commute, or agree to the commutation of, any Insurance Policy where the amount of the liability of the relevant insurer under the relevant Insurance Policy that is commuted does not exceed \$10 million, provided that the total amount of all liabilities so commuted under subparagraph (A) or this subparagraph (B), together with the total amount of all claims settled or compromised under subparagraph (C), in each case in any Financial Year, does not exceed \$50 million; and

- (C) settle or compromise any claim under an Insurance Policy in the ordinary course of its business where the amount of the relevant claim that is settled or compromised does not exceed \$10 million provided that the total amount of all claims so settled or compromised together with all liabilities commuted under subparagraph (A) or subparagraph (B), in each case in any Financial Year, does not exceed \$50 million.";
- (k) the Obligors' and the Lender's notice details in clause 14.1(a)(ii) are replaced with the following:
- "(A) if to the Lender:
- Name: The NSW Treasury
- Attention: Director Crown Asset and Liability Management
- Address: 52 Martin Place, Sydney, NSW 2000
- Postal Address: GPO Box 5469, Sydney, NSW 2001
- With copies, if the NSW Government has appointed a Director or any Directors, to each such Director as notified to the Borrower from time to time by such Director;
- (B) if to an Obligor:
- Address: Suite 601, Level 6, 56 Clarence Street
Sydney, NSW 2000
- Attention: General Manager
- Facsimile: +612 9277 6699";
- (l) Schedule 1 - the definition of Interest Payment Date is replaced with the following definition:
- "Interest Payment Date means, in relation to an Advance, the last day of an Interest Period for that Advance. If the Interest Payment Date is not a Business Day, the Interest Payment Date is the immediately preceding Business Day."; and
- (m) Schedule 3 - Drawdown notice of the Agreement is amended to read as set out in Schedule 1 to this Deed.

3. Confirmation

Confirmation of Agreement

- 3.1 Subject to the provisions of this Deed, the Agreement is confirmed and remains in full force and effect. Nothing in this Deed is intended to create a new agreement in replacement of the Agreement, or to discharge, release or otherwise affect any liability or obligation arising under the Agreement before the Effective Date. This Deed and the Agreement will be read and construed as one document.
- 3.2 Every reference in the Transaction Documents to the Agreement is to be construed as a reference to the Agreement as amended by this Deed. Any reference to *this document*, *in this document*, *of this document* or words to the same effect in the Agreement will be construed as a reference to the Agreement as amended by this Deed.

No novation

- 3.3 The parties confirm that the amendment of the Agreement under this Deed does not and is not intended to constitute a novation of any of the rights and obligations of any party to the Agreement.

Confirmation of Security

- 3.4 Each of the Borrower and Guarantors confirms that each Security provided by it remains in full force and effect and the moneys secured by that Security includes all debts and monetary obligations owed by the Borrower to or for the account of the Lender under the Agreement as amended by this Deed.

4. Representations and warranties

- 4.1 Each of the Borrower and Guarantors makes the Warranties on the date of this Deed as if references in the Warranties to Transaction Document or Transaction Documents include this Deed and the Agreement as amended by this Deed.
- 4.2 Each of the Borrower and Guarantors represents and warrants that no Event of Default has occurred which remains unremedied or has not been waived by the Lender in writing.

5. Costs and Taxes**Costs**

- 5.1 Each party is to meet its own costs, charges and expenses which relate to the negotiation, preparation, signing and registration of this Deed.
- 5.2 The Borrower must pay or reimburse all of the reasonable costs, charges and expenses of the Lender and its officers, agents, employees and consultants which relate to any breach of this Deed by the Borrower or a Guarantor and any enforcement or preservation of a right under this Deed. Amounts under this clause include legal fees and disbursements and the fees of any professional advisers or consultants engaged by the Lender for those purposes.

Taxes

- 5.3 Clauses 7 of the Agreement applies to this Deed as if all references in that clause to Transaction Document included this Deed.

6. General provisions**Limitation of liability**

- 6.1 Clause 15 of the Agreement applies to this Deed as if it were set out in full in this Deed and the references to this document were to this Deed.

Invalid or unenforceable provisions

- 6.2 If a provision of this Deed is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and

- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

Counterparts

- 6.3 This Deed may be signed in counterparts and all counterparts taken together constitute one document.

Transaction Document

- 6.4 This Deed is a Transaction Document for the purpose of paragraph (d) of the definition of *Transaction Document* in Schedule 1 of the Agreement.
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7. Governing law and jurisdiction

Governing law and jurisdiction

- 7.1 This Deed is governed by the laws of New South Wales.
- 7.2 Each of the Borrower and Guarantors irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
 - (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Service of process

- 7.3 Each of the Borrower and Guarantors agrees that a document required to be served in proceedings about this Deed may be served:
- (a) by being delivered to or left at its address for service of notices under the Agreement;
or
 - (b) in any other way permitted by law.

Attorney

- 7.4 Each attorney executing this Deed states that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this Deed.

Schedule 1**Schedule 3 - Drawdown notice (as amended)**

To The State of New South Wales
c/- The NSW Treasury

Dear Sirs

AICF Facility Agreement dated 9 December 2010, as amended (*Facility Agreement*)

The Borrower gives notice that it intends to drawdown an Advance on *[insert date]*. Terms defined in the Facility Agreement have the same meaning in this notice.

Amount of Advance: The amount of the Advance is \$*[insert amount]*.

Drawdown Date: The proposed Drawdown Date is *[insert date]*.

Proceeds of Drawing: Please pay the proceeds of drawing to the SPF's (as defined in the Transaction Legislation) bank account *[insert details]*.

Interest Periods: Subject to clause 4.2 of the Facility Agreement, the first Interest Period will be the period commencing on the Drawdown Date and ending on *[insert date]*.

Representations and Warranties:

1. The Borrower represents and warrants that:
 - (a) the proceeds of the Advance will only be used for an Approved Purpose; and
 - (b) [except as disclosed to and accepted by the Lender in the attached document (marked "A")] *[delete if not applicable]*:
 - (i) each Warranty made by the Borrower remains correct, repeated with reference to the facts and circumstances existing at the date of this notice; and
 - (ii) no Event of Default has occurred which remains unremedied or which has not been waived in writing, or will occur as a result of the drawdown.
2. Each Guarantor represents and warrants that [except as disclosed to and accepted by the Lender in the attached document (marked "A")] *[delete if not applicable]*, each Warranty made by that Guarantor remains correct, repeated with reference to the facts and circumstances existing at the date of this notice.

Signed for and on behalf of Asbestos Injuries Compensation Fund Limited as trustee of the Charitable Fund in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Signed for and on behalf of ABN 60 Pty Limited (under NSW administered winding up) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Signed for and on behalf of Amaba Pty Limited (under NSW administered winding up) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Signed for and on behalf of Amaca Pty Limited (under NSW administered winding up) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary


Execution

Executed as a deed.

The Borrower


Executed by
**Asbestos Injuries Compensation Fund
Limited as trustee of the Charitable
Fund**

by a director and secretary/director:



Signature of director

JOANNE MARCHIONE
Name of director (please print)



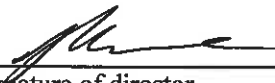
Signature of director/secretary

ROBERT RUSSELL
Name of director/secretary (please print)

The Guarantors

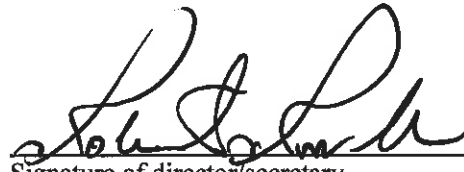
Executed by
**ABN 60 Pty Limited (under NSW
administered winding up)**

by a director and secretary/director:



Signature of director

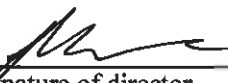
JOANNE MARCHIONE
Name of director (please print)



Signature of director/secretary


ROBERT RUSSELL
Name of director/secretary (please print)

Executed by
**Amaca Pty Ltd (under NSW
administered winding up)**
by a director and secretary/director:



Signature of director


JOANNE MARCHIONE
Name of director (please print)



Signature of director/secretary


ROBERT RUSSELL
Name of director/secretary (please print)

Executed by
**Amaba Pty Ltd Limited (under NSW
administered winding up)**
by a director and secretary/director:



Signature of director

JOANNE MARCHIONE
Name of director (please print)



Signature of director/secretary

LOUISE PEACOCK
Name of director/secretary (please print)

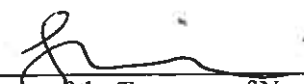
The Lender

Executed by
The Honourable **Gladys Berejiklian, MP,**
Treasurer of New South Wales for the **State
of New South Wales**
in the presence of:



Signature of witness

LOUISE PEACOCK
Name of witness (please print)



Signature of the Treasurer of New South
Wales