

# Australia: Asbestos sufferer and campaigner Bernie Banton dies at 61

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Well-known asbestosis campaigner Bernie Banton died on November 27 at his Sydney home from asbestos-related peritoneal mesothelioma. Banton, who was 61, contracted the disease, along with asbestosis and an asbestos-related pleural condition, when working on asbestos products from 1968 to 1974 for building materials manufacturer James Hardie Industries (JHIL).

Over the past three years Banton became the public face of a campaign against JHIL after it was revealed in 2004 that the Medical Research and Compensation Fund (MRCF) set up by the company to supposedly meet the claims of thousands of asbestosis sufferers had been deliberately under-funded.

JHIL set up the MRCF in 2001, closing its two asbestos products subsidiaries in Australia and relocating its head office to the Netherlands. The operation was designed to fire-wall its major assets from asbestos-related disease claimants. The fund was provided with only \$293 million, massively short of the billions of dollars needed to meet compensation claims.

The revelation outraged broad sections of working people. JHIL's shabby operation epitomised the underlying drive of big corporations everywhere to subordinate the health and lives of workers to the drive for profit.

Tributes to Banton have poured in from ordinary people around the country. The words "courage", "integrity", "principled" and "character" feature, as do phrases such as "giant-hearted", "fighting spirit" and "working class hero". One worker's tribute read: "May your courage and dignity be a light to others."

Alongside the heartfelt messages was a curt statement by a James Hardie spokesman. It read: "The company acknowledges the significant contribution Mr Banton made to raising the awareness of asbestos-related diseases in Australia, and his role in the eventual implementation of the final funding agreement to compensate Australians with asbestos-related personal injury claims."

Coming from the company whose directors for years withheld knowledge of the deadly affects of asbestos and then fought tooth and nail to cover up its dirty operation to rob asbestos disease sufferers, the statement oozes cynicism. The company demonstrated its real attitude to Banton by attempting to deny him a justified claim for extra damages for mesothelioma, even

as he lay on his deathbed.

Other "official" tributes, especially those of leading Labor Party and union figures, are also hypocritical. They exploited the anti-Hardie campaign and Banton to bolster their own tarnished credentials among working people, while at the same time seeking to contain demands for proper compensation and more militant action.

Labor leader and prime minister-elect Kevin Rudd, having initially mentioned the dying Banton in his election victory speech on November 24, later added: "Our whole nation will be poorer for Bernie's passing because he became a symbol, a living symbol of what is right and decent and proper in the workplace relations of this country, including industrial safety."

Given that the Rudd government plans to continue dismantling the conditions and protections that were fought for by people like Banton, such praise rings entirely hollow. Rudd has made clear he will act in the interests of big business, including retaining essential features of the Howard government's "WorkChoices" regime. Among them are anti-strike provisions outlawing industrial action over a range of issues, including safety.

In the same vein are comments by New South Wales (NSW) Premier Morris Iemma, who praised Banton as "a man of great courage" who "was suffering himself, but he was fighting for others". No doubt Banton "was fighting for others", but the same cannot be said of Iemma, a longtime Labor careerist and political mouth-piece for the interests of business.

Before being promoted to premier, Iemma served as health minister in the previous Carr Labor government, which carried out a relentless assault on working conditions and workers' rights, including those associated with health and safety. The purpose was to make the state "investor friendly" to attract globally mobile capital and corporate projects. In 2001, for example, Labor introduced a statutory scheme for workers' compensation that abolished common law actions against employers and capped payouts to claimants.

NSW Industrial Relations Minister John Della Bosca said: "He (Banton) was a man of integrity who came to symbolise his cause. He was loved, respected and will be greatly missed." True, but Della Bosca himself is far from respected or loved in the working class, especially by people who have lost family

and friends in preventable industrial accidents. In 2003, despite a demonstration of more than 10,000 building workers demanding the Carr government introduce industrial manslaughter laws following a spate of deaths in the construction industry, Della Bosca contemptuously ruled out legislation to prosecute and jail employers responsible for workplace fatalities.

Finally, former Australian Council of Trade Unions (ACTU) secretary and newly-elected federal parliamentarian, Greg Combet said: "He (Banton) was a person with very strong values for social justice and fairness." Referring to the negotiations with James Hardie, Combet said, "it was a very hard fight and Bernie contributed a lot".

During the federal election campaign, Combet made a great deal of the ACTU's role in brokering the final agreement with JHIL. It should be noted, however, that while Banton and other asbestos victims' representatives had waged a fight over a protracted period, Combet came to the centre of the campaign much later and only then to salvage the situation for the company.

In December 2004, facing widespread condemnation and investor disquiet over plunging share prices, JHIL tenuously agreed to "fully fund" future asbestos victims' claims. The "offer", however, was tied to a proposal for a statutory scheme that, if accepted, would have abolished common law actions, effectively capped compensation payments to victims and deprived claimants of recourse to legal advice.

Anxious to get the issue off the agenda, Combet and Premier Bob Carr rushed to sanction the proposal but asbestos victims—including Banton—and their lawyers rejected it. Carr then insisted the ACTU play a central role in further negotiations so as to ensure a deal commercially acceptable to JHIL.

The negotiations, in which the company demanded ever-greater concessions, dragged on for over a year until JHIL finally agreed to set up a new compensation fund, topped up by annual payments to provide \$4.5 billion over 40 years to fund future claims.

The annual payments, however, were capped at 35 percent of the company's free cash flow, making the amount available dependent on JHIL's commercial fortunes. The cap also allowed JHIL continued access to billions of dollars for investment and for lucrative dividends to its executives and shareholders.

The limitations of such an arrangement were evident in a report last month showing that JHIL's US earnings, which account for 80 percent of its income, had slumped 32 percent in the last quarter. The company's shares had plummeted almost 40 percent at the start of the year. Payments to the fund could fall substantially at any time, leaving claimants to face even tougher resistance from a compensation fund whose majority directors are hand-picked by JHIL.

In a recent comment in the *Australian Financial Review*,

Anthony Wamsteker, the chief executive of the union-backed Members Equity bank (Combet is on the bank's board) praised the ACTU-JHIL settlement as an example of Combet's "commercial nous". Wamsteker declared: "He (Combet) could have demanded every cent of their profit to compensate victims but he realised that if the company was to keep on providing compensation over the long term, it had to remain profitable."

Combet's actions are in line with his recent edict defining what should be the primary objective of unions in negotiations with employers. "You cannot be effective in a union role unless you are mindful of the legitimate interests of those with whom you are dealing in the business community and in government, and unless you are responsible in relation to the economic circumstances," Combet said. That is, the interests and needs of corporations must be paramount at all times.

For Combet, the dispute with James Hardie was another opportunity to reinforce his pro-business credentials in corporate circles and thus advance his career. On the other hand, with a federal election pending, Combet and the ACTU were intent on sowing illusions among workers that a Rudd government and the unions would serve their interests.

Clearly, Banton did not share Combet's motivations. However, his limited political outlook confined him to operating within the "official framework" and allowed him to be used as a cover for the ACTU's agenda. While at times he expressed reservations as negotiations with JHIL dragged on, he accepted the final agreement as "the best that could be achieved".

Banton is to be given a state funeral on December 7 and a service will be held at the 21,000-seat Acer Arena in Sydney. While thousands of people who believe in justice and human solidarity will flock to Sydney to honour Banton's memory, it should not be forgotten that the ultimate outcome of the ACTU's deal with JHIL was to protect the company's interests and help pave the way for a Labor government that will pursue the wider requirements of the corporate elite.



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