

Hardie inquiry finds legal failings

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Charges likely over James Hardie deception

The inquiry into James Hardie has pointed to significant failings in company law after the asbestos manufacturer was able to quarantine itself from responsibilities. Commissioner David Jackson stopped short of recommending an overhaul of corporations law, but said current rules appeared to be out of step with community expectations.

James Hardie cut itself off from its asbestos liabilities in 2001 by moving its headquarters overseas and putting the two subsidiary companies that manufactured asbestos products into a foundation.

The inquiry found the company misled the public when it claimed it had put aside enough money to meet its asbestos liabilities, which could now total \$2.24 billion.

Mr Jackson said there was room to review laws that protect parent companies from the actions of subsidiaries. "The circumstances that have been considered by this inquiry suggest there are significant deficiencies in Australian corporate law," the report said.

"The circumstances have raised in a pointed way the question whether existing laws concerning the operation of limited liability or the 'corporate veil' within corporate groups adequately reflect contemporary public expectations and standards."

The report noted a call from the Australian Plaintiff Lawyers Association to make the controlling entity responsible for any future liabilities. It said the suggestion would only affect parent companies, not all shareholders - who also use limited liability as protection from debts if a company collapses.

Treasurer Peter Costello said the Government had not had time to consider any need for corporate law reform. "I haven't read the report. But having said that, I will read it when I get the opportunity and, when I do read it, if there is a recommendation in relation to that, of course we will consider it very, very seriously," he said in Tasmania.

Opposition corporate governance spokesman Stephen Conroy said the report made it clear that existing laws were inadequate. "Labor will consider all of the options for reform, including counsel assisting's recommendation for reform of the Corporations Act so as to restrict the application of the limited liability principle, in respect of claims for damages for personal injury or death, to members of the ultimate holding company," he said.

The Australian Democrats said they would work with whichever party won government to make sure any loopholes in corporate law were closed. Democrats leader Andrew Bartlett said the James Hardie affair showed the importance of the Senate's work on corporate governance and audit reform and the need to keep the Democrats holding the balance of power.