

Directors need a safe harbour: Hellicar Bill Pheasant

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The chairwoman of James Hardie has called for an extension of corporate law to include a broad duty of fairness to all stakeholders, saying it could protect company directors from shareholder lawsuits.

Meredith Hellicar told a Monash University legal seminar on corporate social responsibility that the law in the Netherlands where Hardie is now domiciled gave a broader duty that encompassed the rights of employees.

She said laws that also encompassed the rights of other stakeholders would give boards better guidance for being generous with company funds beyond legal requirements.

"Corporate social responsibility should be able to be integrated into the business decision making all the time of companies and their directors," Ms Hellicar said.

James Hardie agreed late last year to pay part of its cash flow for the next 40 years to victims of its asbestos products, after intense pressure from governments and unions following the underfunding of a compensation foundation.

Ms Hellicar delivered a spirited defence of the company's actions, saying the board had funded its foundation in good faith and beyond its legal obligations to cover all future liabilities from its asbestos products.

"We are all too inclined to talk about the potential for the community crusaders to sue companies, and not enough attention is given to the potential for shareholders to sue companies," she said.

"What one needs is a safe harbour for directors to be able to integrate corporate social responsibility into their decision making without fear that they are going to be sued both personally, and as a company, by their shareholders."

Ms Hellicar supported Australian lawmakers' preference for principle-based law against US-style provisions that led to compliance-thinking and "box ticking".

"I think we have some guidance as a Dutch company that does help us integrate corporate social responsibility," she said.

"It requires that a board be guided by the interests of a company and its enterprise it specifically includes the interests of its employees but taking into account principles of reasonableness and fairness in all relationships among the company and those involved in its organisation.

"This use of 'among the company' still seems to direct you a little too inward . . . but those principles of reasonableness and fairness, if one extended that to the concept of all stakeholders and clarified that it was outwards as well as inwards we might be getting somewhere."