CFO

King says integrated reporting worries overblown

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Professor Merv King, chairman of the IIRC, counters arguments about the risk of directors being sued.
Photo: Rob Homer

Shaun Drummond

The chairman of the international committee promoting “integrated reporting” by companies has hit back at Australian directors’ claims the new approach will give lawyers another basis for class actions.

“I do not believe directors’ liability can be used as an excuse not to do an integrated report, because you cannot be risk-averse out of self-interest,” said the International Integrated Reporting Council chairman, former South African judge Professor Mervyn King.

“What really concerns me is when a director says to me that he is filled with self-concern about litigation and becomes risk-averse,” Professor King said. “Now that is an improper motive and that mere statement is a breach of your duty of care.”

Professor King said Australia was the only country where directors were concerned about being sued over integrated reporting and that had become the “critical issue” blocking its adoption in Australia.

As well as merging sustainability reports and the annual financial report into one document, integrated reporting has a core tenet that directors and management should comment on their business model and their plans for the future.

Directors argue that if their statements end up being wrong, they could be sued for misleading the market.

Professor King counters that if circumstances changed, they would just need to inform the market. If they did not, then that would be misleading.

IIRC chief executive Paul Druckman said the “negativity” of Australia’s response contrasted with comments from the 90 companies globally that are trialling the new approach.

“In the pilot program conferences we have had, the companies want to tell their story but they’re not allowed to because of the regulations and listing requirements,” he said.

In an opinion article in The Australian Financial Review published on Wednesday, John Stanhope , co-chair of the Business Reporting Leaders Forum, said he felt integrated reporting was inevitable. But Australia needed to clarify legal defences for directors making statements about the future, including the “business judgment” rule, Mr Stanhope said.

Robert Austin, senior legal consultant at Minter Ellison, said the business judgment rule on bona fide actions was not a defence in this case. He said the way the Australian Securities and Investments Commission had applied directors' duty of care rules in the Centro and James Hardie cases – as grounds for disqualification of directors – was unique to Australia.

In response to Professor King's views, Mr Austin pointed out directors had a duty to make "material disclosure of the matters required to be addressed in the annual report. But directors should not do so in such a way as to generate an unnecessary risk of liability".

But ASIC's new guidance on the operating and financial review (OFR) – which is the directors' and management comments at the front of annual reports – released in March, already made it clear companies should comment on future strategies and risks.

Mr Austin said integrated reporting was not categorically different from what already applied.

"There is an OFR requirement that the annual report must deal with matters such as strategy."

Some, however, believe the statements on future strategy will still end up being "boiler plate" comments with little meaningful detail. Otherwise competitors could copy strategy.

"I've seen someone's complete network integrated profitability by store pulled apart, based on what they were putting in their annual report," Wesfarmers finance director Terry Bowen told the Group of 100 business national congress in Sydney on Tuesday. "That makes you incredibly vulnerable to strategic attack from competition."

Richard Fennell, chief financial officer of the Bendigo and Adelaide Bank, believes the problems are overstated. "I see more positives in being able to differentiate yourself with customers, suppliers and employees," he said. "I do think there is a way to explain strategy and a forward view of company intentions and objectives without effectively providing guidance that would lead a shareholder to rely on those statements."

The Australian Financial Review